IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR, Complainant, v. HERMAN T. ISIS, Respondent.	CONFIDENTIAL Supreme Court Case No. 72,644

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, a hearing was held on November 14, 1988 in Miami, Dade County, Florida. The pleadings, transcripts, notices, motions, orders, exhibits and cases submitted constitute the record of the case. The following attorneys appeared as counsel for the parties:

For The Florida Bar: Randi Klayman Lazarus, Esq., Assistant Staff Counsel on behalf of the Florida bar.

For the Respondent: Herman T. Isis, Esq., on his own behalf.

The court reporter and all witnesses were sworn.

II. CHARGES: The Florida Bar charges Mr. Isis with violation of:

A. The Rules of Professional Conduct:

Rule 4-8.4(b) (Commission of criminal act), and

Rule 4-8.4(c) (Engaging in conduct involving fraud, dishonesty, deceit, or misrepresentation);

B. The Integration Rule of The Florida Bar:

by commission of an act contrary to honesty, justice and good morals and commission of a crime;

C. The Disciplinary Rules:

Rule 1-102(A)(1) - violation of a disciplinary rule, and

Rule 1-102(A)(4) - violation of code of professional responsibility.

III. STIPULATIONS:

1. Mr. Isis admitted that he is a suspended member of The Florida Bar and subject to the jurisdiction of The Florida Bar and the rules of the Florida Supreme Court. (p. 3,4, transcript)

2. Mr. Isis admitted that on July 29, 1987 he pled no contest and was adjudicated guilty in Case No. 87-7195CF-K Count IV, charging conspiracy to commit an organized fraud, a second degree felony in the State of Florida under Chapter 817.036 F.S. (p.4, transcript and Fla. Bar Exh. 2).

3. Mr. Isis admitted that on July 29, 1987, he pled no contest and was adjudicated guilty of count 210, charging unlawful use of boiler rooms, a third degree felony in the State

of Florida, under Chapter 517.312 F.S. (p.4,5 and Fla. Bar Exh. 1).

IV. FINDINGS:

The transcript of Mr. Isis' no contest plea reveals that the charging document (the information counts 4 and 210) and the probable cause affidavit (not introduced into evidence) were adopted as the factual basis for his plea. (p. 12-14 plea transcript).

Mr. Isis has been adjudicated guilty of charges that constitute the commission of criminal acts involving fraud, dishonesty, deceit, or misrepresentation.

Mr. Isis agreed by stipulation that the hearing was basically to determine an appropriate sanction. (p. 10, transcript)

BASED UPON THE PLEADINGS, STIPULATIONS, FACTUAL BASIS FOR THE PLEA, FLORIDA BAR EXHIBITS 1 and 2 *AND* THE EVIDENCE PRESENTED, I RECOMMEND THAT MR. ISIS BE FOUND GUILTY BY CLEAR *AND* CONVINCING EVIDENCE OF ALL CHARGES IN THE FLORIDA BAR'S COMPLAINT, AND CONTAINED IN PART II OF THIS REPORT.

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE IMPOSED:

I recommend that as a minimum, Mr. Isis be suspended from the practice of law for the maximum period of three years and that he be required to demonstrate proof of rehabilitation as provided in Rule 3-5.1(e), Rules of Discipline; and at a maximum, that he be disbarred for five years.

There is abundant authority that disbarment is an appropriate sanction for violations of the criminal laws involving dishonesty, fraud, deceit or misrepresentation. The Florida Bar v Simons 521 So.2d 1089 (Fla. 1988) (Simons failed to respond to The Bar's complaint); The Florida Bar v Haimowitz 512 So.2d 200 (Fla. 1987) (convicted of six Federal felonies); The Florida Bar v Weinsoff 498 So.2d 942 (Fla. 1986) (unconditional guilty plea); and The Florida Bar v Cooper 429 So.2d 1 (Fla. 1983) (an unusually egregious case); The Florida Bar v Horne 527 So.2d 816 (Fla 1988) (Horne was convicted by a jury of four Federal felonies). Florida's standards for imposing lawyer sanctions (5.0 Violations of Duties Owed to the Public, 5.1, 5.11 (a) & (b), and 8.1(b) (previous suspension for similar misconduct).

On the other hand, the Supreme Court has recognized that disbarment should be reserved for the most extreme cases, concerning a corrupt motive and never be sanctioned if a less severe punishment will accomplish the desired purpose. The Florida Bar v Thompson 271 So.2d 758 (Fla. 1972) p. 761 and The Florida Bar v Blessing 440 So.2d 1275 (Fla. 1983) p. 1277. Neither the integration rule or case law mandates disbarment for all attorneys who are convicted of a felony. The Florida Bar v Paulick 504 So.2d 1231 (Fla. 1987) p. 1235.

The Bar cited Matter of Goldberg 520 A. 2d 1147 (N.J. 1987 for the proposition that it is an aggravating circumstance when a lawyer uses his professional license and legal skills to violate the law. I agree. This case also held:

> "Because a judgment of conviction is conclusive evidence of respondent's guilt, there is no need to make an independent examination of the underlying facts to ascertain guilt. Matter of Bricker 90 N.J. 6, 10, 446 A.2d 1195 (1982). The underlying facts, however, may be relevant to the nature and extent of discipline to be imposed. In re Rosen, 88 N.J. 1, 438 A.2d 316 (1981)."

This proposition has been adopted by the Supreme Court of Florida in The Florida Bar v Pavlick 504 So.2d **1231** (Fla. **1987)** p. **1234** and in State ex rel. Florida Bar v Evans **94** So.2d **730** (Fla. **19571.** In Pavlick the court stated:

> "[I]n a disbarment proceeding based on conviction of a crime, the proof of conviction and an adjudication of guilt are sufficient to establish a prima facie case for disciplinary action. Due process, however, requires that the accused lawyer shall be given full opportunity to explain the circumstances and otherwise offer testimony in excuse or in mitigation of the penalty.
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> ...
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> We are of the view that when a lawyer is found guilty of a felony the adjudication of guilt is sufficient to justify setting in motion the disciplinary process. It may not, of itself, always prove him unfit to practice law. However, when not adequately controverted or explained after a full and fair hearing, the judgment of guilt may then constitute the basis for disciplinary action. [Citations omitted, emphasis added.]"

In both of those cases and in this case, no contest pleas were entered. Mr. Isis, like Mr. Pavlick, pled no contest to serious felony offenses and offered mitigating explanations motivating the plea, and at great lengths claimed their innocence in bar hearings. (Our case is distinguished in that Pavlick produced a positive polygraph result and the referee concluded that Pavlick was truthful.)

If Mr. Isis substantially and knowingly participated in the conspiracy he should be disbarred. If he had a minor role and only constructive knowledge of the fraud, I feel he should be suspended for the maximum three year period and be required to demonstrate proof of rehabilitation. The referee identified this concern over the extent of Mr. Isis' knowledge and participation before the testimony began (page 5, lines 11-25, transcript). The Bar introduced Mr. Isis' convictions, prior misconduct and the charging documents (informations). The referee ordered and included in the record a transcript of Mr. Isis' no contest plea and factual basis for the plea. The Bar cross-examined Mr. Isis, but offered no additional evidence. In State ex rel. The Florida Bar v Bass 106 So.2d **77** (Fla. **1958)** the referee and Supreme Court faced a similar dilemma regarding state of mind. The court stated at page **78:**

> "It goes without saying that the power to disbar or suspend a member of the legal profession is not an arbitrary one to be exercised lightly, or with either passion or prejudice. Such power should be exercised only in a clear case for weighty reasons and on clear proof."

I find that The Bar has not presented "clear proof" that Mr. Isis should be disbarred based upon his pleas alone.

I have reviewed "Florida's Standards for Imposing Lawyer Sanctions", (Aggravating and Mitigating Criteria set forth on pages **72-74)** and made the following findings:

(a) Prior Disciplinary Offense (aggravating) (m) Remoteness of Prior Offense (mitigating). In State v Isis, Fla. **113** So.2d **227 (1959)** a three month suspension was imposed for introducing an altered document in a court proceeding (page **51** lines **14-21** transcript). This is a serious disciplinary offense and should be considered as an aggravating circumstance; however, it was very remote in time.

(b,c,d) Dishonest or Selfish Motive; a Pattern of Misconduct; Multiple Offenses. Mr. Isis pled no contest to multiple (two out of six) charges filed in a **210** count information. The Bar offered only the information and judgments of conviction as proof. Mr. Isis maintained his innocence and responded to these matters on the following pages of the transcript:

> See page **29,** L. **17-25,** page **40** and **41** (Financial Interest); page **88,** L. **2-9** Investigative report); page **36,** L. **13,** page **37,** L. **9** (control); page **53-55,** page **103,** page 111 **L. 21,** page **112 L.** 6 (knowledge).

Mr. Isis' state of mind has been inferred from his plea but has not been established by any direct factual evidence; thus, I find only the no contest plea to multiple offenses clearly proven as an aggravating circumstance.

(g,j) Refusal to acknowledge wrongful nature of conduct. Indifference to making restitution. Mr. Isis was fined but was not ordered to make restitution. He entered a no contest plea and has maintained his innocence, thus understandably has not offered to make restitution. These factors have not been clearly proven.

(i) Substantial experience in the practice of law. Mr. Isis began practicing law in **1953** at the age of **30.** (page **13,** line **14,15,** transcript.) Mr. Isis has had substantial experience in the area of the law covered by his criminal charges. He knew or should have known that his legal skills and professional license were being used to defraud the public. He has violated his fundamental duty as a lawyer toward the public, by failing to maintain the standards of personal integrity upon which the community relies. I find this to be an aggravating circumstance.

(c) Personal or emotional problems. Mr. Isis, Mrs. Isis and friend Norman Madan offered testimony relating to Mr. Isis' physical condition and personal problems (pages **29-34, 72-81** transcript), and Mr. Isis gave testimony as to why he pled no contest rather than to go trial on the charges. Bar counsel aptly points out that this mitigating circumstance may refer only to circumstances surrounding the commission of the underlying offenses. If so, then this mitigating circumstance was not established by Mr. Isis.

(e) Cooperating attitude toward proceedings. Mr. Isis was courteous throughout the hearing and the Bar recognized that Mr. Isis was cooperative throughout the entire process (page **107** transcript). I find this to be a mitigating circumstance.

(k) Imposition of other penalties or sanctions. Mr. Isis served **77** days on an **18** month jail term and is currently serving a **5** year probationary period. He was fined $10,000. One would expect to receive punishment for a no contest plea to these criminal charges; however, the sentence imposed is not unduly burdensome and thus I find the penalty actually served to be of minimal value as a mitigating circumstance.

Lastly, Mr. Isis, throughout his career, has practiced close to the line and certainly should have known he was participating in a fraudulent and criminal activity. Mr. Isis at no time mitigated his involvement by renouncing his connection to the fraudulent activity, ceasing to practice law for them, or

offering to cooperate with the authorities to uncover the details of the conspiracy. The Florida Bar v Pettie, 424 So.2d 734 (Fla. 1983).

I recommend that disbarment or suspension from the practice of law be effective August 15, 1987 (stipulated, page 118, line 4 transcript) as the date Mr. Isis closed his law practice. The date of conviction was July 29, 1987 and the date of interim suspension was October 30, 1987.

Recommendation as to cost. I find the following costs to have been reasonably incurred by The Florida Bar:

Grievance Level:	
Administrative Charge [Rule 3-7.5(k) (1)]	$ 150.00
Referee Level:	
Administrative Charge [Rule 3-7.5(k) (1)]	150.00
Final Hearing, November 22, 1988	
Transcript & Court Reporter's Attendance.	448.20
Transcript of proceedings of 7/29/87 State of Florida v Herman T. Isis Change of Plea before Judge Kaplan	127.80
	$ 876.00

Respectfully submitted this 5 day of January, 1989.

Radford R. Sturgis
Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Report of Referee was forwarded by U. S. Mail to Randi Klayman Lazarus, The Florida Bar, Suite 211, Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131; Staff Counsel, The Florida Bar, Tallahassee Bar Center, Tallahassee, Florida 32301; and Herman T. Isis, P. O. Box 144567, Coral Gables, Florida 33114, on this 5 day of January, 1989.

G. M. White
Assistant to Judge Sturgis