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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

GRANVILLE H. CRABTREE,

Respondent.

_____/

Case No.: 75,119
TFB No. 88-10,904 (12c)

RESPONDENT'S INITIAL BRIEF

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SYMBOLS AND REFERENCES

Respondent's Statement of Facts are not completely annotated as to where some of said testimony can be found in the record. To fully understand the effect of the testimony, it will be necessary for the Court to read the testimony of Mr. Saunders and the testimony of Respondent in its entirety.

The transcript of each session is separate and the pages are not consecutively numbered. The pages of the transcript will be referred to by referring to the date of the session and the page therein. Where the volumes are numbered, the number of the volume will be included.

Thus, transcripts of November 2 in the morning will be designated (TR-11/2,Vol.1, p.1).

The transcript for the afternoon of November 2 will be designated (TR-11/2,Vol.1, p.1).

The deposition of Neil Saunders will be designated (Saunders-depo, p.1).

The Facts found by the Referee which are not questioned will be referred to in the Statement of Facts as (R.Report).

TABLE OF AUTHORITIES

STATEMENT OF CASE

This is a Petition For Review of a Referee's Report recommending that the Respondent be found guilty of several violations of the Code of Professional Responsibility and that he be disbarred therefore.

The Florida Bar filed its Complaint to which the Respondent filed an Answer. The matter was tried before the Referee, who filed his report from which report this Petition For Review was timely filed.

STATEMENT OF FACTS

The Statement of Facts and this entire Brief are very difficult to draft for the reasons that many of the Referee's Findings of Fact are not supported by substantial evidence and some of them are contrary to the uncontroverted evidence. In addition thereto, the Findings of Fact are incomplete in that they omit many of the uncontroverted facts which explain the Respondent's conduct and thus put it into proper perspective. It is therefore necessary to supplement the Findings of Fact of the Referee by showing relevant facts which are uncontroverted, while at the same time pointing out facts not supported by or contrary to competent and substantial evidence.

The events leading up to this disciplinary action occurred between the spring of 1980 and 1983. No Complaint was filed by any of the parties to the transaction. The Florida Bar, on its own initiative (TR-11/1, p.10) some time prior to December 7, 1987, began its investigation of the matter (Appendix 1). The Complaint and the Answer of the Respondent was tried before the Referee in November, 1990, ten years after the initial conduct had occurred and seven years after the transactions had concluded. In the interim, the witnesses', including the Respondent's, memories had dimmed and one of the prime witnesses, Mrs. VanAntwerp, because of cancer and other ailments, had greatly deteriorated physically (TR-11/9, Vol.2, p.19,20) Thus, many of the questions propounded to Mr. Prine and Mrs. VanAntwerp and a good many of the questions propounded to the Respondent elicited answers such as "I do not

recall," or "To the best of my recollection."

Mrs. VanAntwerp was a client and close personal friend of the Respondent for several years prior to 1980 which relationship continued at all material times. (R.Report)

Prior to August 18, 1980, Mrs. VanAntwerp requested Respondent to repatriate from Europe one and-a-half million dollars of her assets in such a manner as not to disclose the source of said funds. (R.Report) There is no evidence in the record reflecting that Mrs. VanAntwerp had any illegal or improper motive in being so secretive. Reposing great trust and confidence in Respondent, Mrs. VanAntwerp left it up to his discretion as to the method of accomplishing this repatriation of assets.(R.Report)

Shortly prior to August 18, 1981, Robert Prine, a real estate developer, approached Respondent relative to forming a joint venture to purchase some raw acreage in Sarasota County (hereinafter referred to as "The Orange Grove") for the purpose of developing it and, as developed, selling lots therein to home builders. (TR-11/9,Vol.2, p.22-24). Prine and Respondent had been and were at that time joint venturers in other similar and successful projects and Respondent had confidence in Prine's abilities as a developer and marketer of developed real estate. (TR-11/9,Vol.2, p.11, 12, 13).

Other lawyers in the professional association of which Respondent was a member had represented corporations controlled by Prine and joint ventures of which Prine was a joint venturer, and had at one time prepared a Will for Prine. There is no evidence

that Prine was looking to the Respondent or the law firm for legal advice or guidance as to any aspect of the "Orange Grove" project, or that he sought the same.

Respondent did not believe it appropriate to directly transfer the repatriated European assets to Mrs. VanAntwerp's bank account in Sarasota because the sudden and unexplained appearance of one and-a-half million dollars would undoubtedly cause an inquiry and result in disclosure of the source thereof. (TR-11/9,Vol.2, p.17, 20, 21, 22) He, therefore, took a several pronged approach to the problem:

1. To disguise the source of the funds, he would place them into some legitimate United States business venture from which venture the money would ultimately be transferred to Mrs. VanAntwerp.(TR-11/9,Vol.2, p.21)

2. The money would be repatriated through a Bahamas Bank and into a Bahamas corporation (Braddock Investment Co., Inc.) and thence into Respondent's Trust account and into the United States business venture. (TR-11/9,Vol.2, p.15)

3. To separate himself directly from the investment of the funds, he would have a bookkeeper named Jerry Reed act as the agent, supposedly, for a group of ""European investor"s" who were in reality Mrs. VanAntwerp and her repatriated $1,500,000.00.

4. Ultimately, the funds so repatriated and so invested would be drawn out of the venture and would be

paid to Mrs. VanAntwerp and the venture would appear to be the source of the funds. (TR-11/9,Vol.2,p.27).

The Orange Grove venture appeared to Respondent to be an appropriate U.S. business venture to utilize for the purposes above stated because:

1. Respondent had confidence in Prine's ability as a developer and marketer of real estate and the success of the Orange Grove venture. (TR-11/9,Vol.2,p.13).

2. The capital required for the venture was 1.4 million dollars which was approximately the amount to be repatriated.

3. He believed that the Orange Grove could be developed and sold or an acquisition and development loan could be obtained within one and-a-half years, so that Mrs. VanAntwerp would receive her assets within that relatively short time period. (TR-11/9,Vol.2,p.22-24).

On August 18, 1980, the Respondent wrote a letter to Mrs. VanAntwerp (Bar Exhibit 2). This letter is somewhat circuitous for the reason that Respondent did not want to record the exact nature of the Orange Grove transaction, because to do so would disclose the true source of Mrs. VanAntwerp's funds which were utilized. However, this letter reflects that:

1. The Orange Grove would be purchased for 1.4 million dollars, payable $400,000.00 in December, 1980 and the balance in January, 1981.

2. Respondent, Prine, and Mrs. VanAntwerp would be

co-venturers, each having a one-third interest in the venture and its profits.

3. A possible source of the purchase price would be through J. Reed, who represented "a European investment group known as Braddock Investment Co." which might want a participation in the joint venture or might be willing to lend it the money necessary to purchase the property without a participation.

4. The title to the Orange Grove would be taken in name of Respondent as Trustee.

5. Mrs. VanAntwerp would borrow $400,000.00 from SouthEast First National Bank in Sarasota to make the initial payment on the purchase.

6. Mrs. Van Antwerp would be reimbursed for her investment within 18 months from acquisition of the property.

This letter is the original basis for the transactions here involved, when the term ""European investor"s" or "European investment group" is construed to mean Mrs. VanAntwerp.

This letter to Mrs. VanAntwerp shows a carbon copy to Prine. Respondent testified that Mrs. VanAntwerp received the original and a copy was mailed to Prine. Neither Prine nor Mrs. VanAntwerp denied that they received the same although both in 1990, ten years later, had no recollection thereof.

Mrs. VanAntwerp borrowed $400,000.00 from SouthEast First National Bank which money was used for the down payment on the

Orange Grove in December, 1980 and title was taken in Respondent as Trustee. The balance of the purchase price was evidenced by a promissory note due January 26, 1981 secured by a purchase money mortgage.

From the very outset of this project, it was contemplated that once the title to the Orange Grove was acquired, plans would be drawn for the development of the land and the land subdivided into lots. With the plans, and the land subdivided, the joint venture could enter into a contract with a builder to buy a substantial number of lots when developed. Armed with the title to the property, the plans for development and the contract with a builder to buy a substantial number of lots, the joint venture could secure an acquisition and development loan from a commercial lender which would cover all costs of acquisition of the title and the development of the property. (TR-11/9-Vol.2, p.21, 22, 23, 24). At that point, the joint venture could refund to Mrs. VanAntwerp all moneys that she had invested in the joint venture, thus completing the repatriation of her funds.

Respondent and Reed, a bookkeeper who, from time to time kept the books for various ventures in which Respondent had an interest, went to the Bahamas and caused Braddock Investment Company to be incorporated there and made arrangements for the transfer of one and-a-half million dollars from the European source to Roy West Trust Corporation Ltd., a Bahamian bank, and from Roy West to Morgan Guaranty and Trust Company, a Bahamian bank, for the benefit of Braddock Investment Co. and thence to the Respondent's trust

account to be used to fully fund the joint venture's purchase of the Orange Grove. (TR-11/9,Vol.2, p.16, 28, 29, 30).

On January 26, 1981, in order to memorialize the plan of Respondent, Prine and Mrs. VanAntwerp in the joint venture after her contribution of the additional one million five hundred thousand dollars, Respondent and Reed prepared a letter to the Respondent (Bar Exhibit 8). (TR-11/9,Vol.2, p. 37, 38). This letter can only be understood if it is recognized that the ""European investor"s" are Mrs. VanAntwerp. This letter to Respondent, in effect, states that:

1. Reed had a group of "European investors" who were interested in joint venturing with a U.S. real estate developer land located in Florida.

2. A million and-a-half dollars was needed from the "European investors" for the purpose of satisfying all mortgages on the property before the joint venture would "commence the process of obtaining a loan for development of the property."

3. The "European investors" would contribute the funds as a part of a joint venture from which it would receive a negotiated percentage of the profits.

On January 27, 1981, Crabtree wrote Prine (Bar exhibit 8) enclosing a copy of the letter of January 26 signed by Reed (Bar Exhibit 7). Prine did not remember receiving this letter, but did not deny receipt thereof.

On January 29, 1981, Crabtree wrote Reed (Bar Exhibit 9)

enclosing, among other things, a proposed joint venture agreement between Crabtree as Trustee for the joint venture consisting of Respondent, Prine, and Mrs. VanAntwerp, and Reed as Trustee for the "European investors" (Bar Exhibit 11). The joint venture agreement attached to said letter provided, among other things, that:

1. The joint venture would subdivide and develop the Orange Grove for the purpose of selling the subdivided lots to lot purchasers.

2. Reed & Associates would provide one and-a-half million dollars for the acquisition and development of the property.

3. Crabtree would take all necessary steps to secure an acquisition and development loan for the purpose of developing the property.

4. No net profits from the development and sale of the property would be disbursed until all funds furnished by Reed's investors for the acquisition and development of the property, had been reimbursed.

5. The net profits of the venture would be divided; 50 percent to Crabtree, Prine and VanAntwerp, and 50 percent to Reed & Associates for the benefit of the "European Investors."

Said joint venture agreement was signed by Respondent and Reed. A copy of said letter and joint venture agreement was sent to Prine, who did not remember it but did not deny that he received it.

The planned procedure was utilized so that in February, 1981, the million and-a-half dollars approximately was deposited in Respondent's trust account in two installments -- one payment of approximately $1,100,000.00 and a subsequent payment of $395,000.00. Said funds were used to pay off the purchase money mortgage on the Orange Grove Property, to pay the $400,000.00 loan that Mrs.VanAnterp had secured from SouthEast First National Bank, and to pay certain commissions, attorneys fees, and costs incurred in the transaction.

On February 12, 1981, Respondent wrote Mrs. VanAntwerp advising her that he had received one million one hundred dollars which was used for the retirement of the outstanding note and mortgage encumbering the Orange Grove held by Mr. Massey to which letter was attached a copy of the closing statement reflecting the disbursement of said funds. Said letter further advised her that as soon as he received the remaining $400,000.00 he would retire her bank loan (Bar Exhibit 12). A copy was sent to Prine who did not remember it, but did not deny that he received it.

On February 23, 1981, Respondent wrote Prine advising him that the $400,000.00 loan to Mrs. VanAntwerp had been fully paid and that he was holding title to the property as Trustee "for the benefit of you, Mrs. VanAntwerp, and myself, as to one-third owners of one-half interest pursuant to the joint venture agreement with the "European investors" (Bar Exhibit 13). Prine did not remember

receiving this letter, but did not deny that he received it.

On March 30, 1981, Respondent wrote Prine (Bar Exhibit 14). This letter is noteworthy for it is the beginning of the next step toward delivering to Mrs. VanAntwerp her 1.5 million dollars which had been repatriated. Thus, Mr. Crabtree stated, "We may wish to proceed with the option of trying to sell the property or determining whether or not there is a market for development purposes. In the event of a development potential, perhaps we should determine who would like to stay in the project or those who would prefer to receive their funds at this time as a profit." Inasmuch as only Mrs. VanAntwerp (the "European investors") had any funds in the project, Respondent was obviously indicating that Mrs. VanAntwerp might well desire her money back.

Mrs. VanAntwerp could make a profit on the initial $400,000.00 she had borrowed and invested because disclosure of this profit would not disclose the source of the $1,500,000.00. She wanted to make no profit out of the $1,500.000.00 invested because a profit on this investment would reveal the investment itself, and its source. Thus, it was necessary, initially, to provide for a profit to the "European investor" so as to give the appearance of a legitimate business transaction, but it was also necessary to subsequently have the "European investor" waive all profit from the investment and to, in some manner, justify this waiver.

On April 1, Reed, with the assistance of Respondent, wrote a letter to Crabtree (Bar Exhibit 15). This letter is the next step in delivering to Mrs. VanAntwerp her funds out of the joint venture

without any profit. This letter states that:

1. Reed's "European investors" deemed their investment in Florida real estate ill-advised.

2. "Accordingly," the "European investors" requested to negotiate a settlement whereby they would be entitled to a guarantee of the return of the $1,500,000.00 at the earliest possible time.

3. "The European investors" would no longer be co-venturers with Respondent, Prine, and VanAntwerp. They would be limited to recouping their one and-a-half million dollars.

The purpose of this letter was to establish a legitimate reason for the "European investors" waiving all profits from the transaction. A copy of this letter was mailed to Prine who did not remember seeing it, but did not deny it was received.

On April 3, 1981, Respondent wrote Reed (Bar Exhibit 17). This letter in effect agreed with the proposals in the April 1 letter signed by Reed. In this letter, Crabtree stated:

1. Out of the proceeds from sale or development of the Orange Grove, Reed's investors would receive the first one and-a-half million dollars before any distribution of profits to the developers.

2. Reed's investors would relinquish all rights under the joint venture agreement to any profits and to any interest on the moneys which they contributed "Notwithstanding the duration of time necessary between

the date of this letter of agreement and the date on which my clients have satisfied the obligations hereinabove numerated and have distributed the sum of $1,500,000.00 to your investors." (Bar Exhibit 17)

3. In consideration of the waiver of interest and profits, the original joint venturers in effect released the "European investors" from any liability for breach of contract.

This letter was in form an agreement between Reed and Respondent as Trustees.

On April 3, 1981, Crabtree wrote Prine advising him of the letter of April 1 addressed to Respondent and signed by Reed and advising Prine of his letter of April 3 to Reed, enclosing a copy thereof. This letter of April 3 to Prine contains the following statement:

> "I have received a letter today from the European investment group which was somewhat of a surprise. I am enclosing a copy of that letter for you which is dated April 1, 1981."

The groundwork for this letter was laid in the letter of March 30, 1981 from Crabtree to Prine when he suggested that "we should determine who would like to stay in the project, or those that would prefer to receive their funds at this time as a profit." Characterizing it as "a surprise" was simply window dressing to make the entire transaction plausible to strangers to the transaction.

On April 17, 1981, Reed, with the assistance of Crabtree, drafted and delivered to Crabtree the letter of the same date, enclosing the letter agreement which had been executed by Reed. (TR-11/9,Vol.2, pps.43-55).

On April 20, 1981, Crabtree wrote Prine advising him of the then status of the matter.

In connection with the sale of the Orange Grove property to Mr. Saunders, the Referee found, among other things:

> "....I find that Respondent violated DR 1-102(a)(4), (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation). I find that the series of letters written to Mr. Prine was an intentional misrepresentation. Also, Respondent's dealings herein were fraudulent, dishonest, deceitful, and constitute misrepresentation. Respondent misled Mr. Prine regarding the European investor account.....
>
> "I also find that the aforementioned misrepresentations to Mr. Prine were done to freeze Mr. Prine out of the Orange Grove property."

The letters did not have the effect of "freezing" or contributing to "freezing" Prine out of the Orange Grove. As a result of said letters, the original joint venture of Crabtree, Prine, and VanAntwerp continued on as the only joint venture with each joint venturer entitled to one-third of the total profits from the venture.

Unfortunately, the real estate market for undeveloped lots had

deteriorated, while at the same time interest rates had increased enormously. As a result of the deterioration of the real estate market, acquisition and development loans from commercial lenders became extremely difficult to secure, and the increase in the interest rates made it impractical to secure such loans, even if available. (TR-11/9,Vol.2, p. 55, 56).

It became apparent that an acquisition and development loan could not be obtained and that in order to reimburse Mrs. VanAntwerp for her one and-a-half million dollars within the 18 months time period set out in Crabtree's letter of August 18, 1980 (Bar Exhibit 2) it would be necessary to sell the Orange Grove. Thus, in early 1982, the Respondent approached Neil Saunders about Saunders purchasing the Orange Grove. (R.Report)

The uncontroverted evidence reflects that Saunders was engaged in the business of acquiring parcels of real property for some Canadian investors he represented, one of whom was a Mr. Levy. Saunders believed that Mr. Levy or some other investors would join with him in a joint venture to develop and market the Orange Grove property. (Saunders Depo-pps. 6, 7, 8, 13, 14, 15, 30, 37). To that end, Saunders contracted to purchase the Orange Grove property from Respondent as Trustee for $1,800,000.00 which would be payable approximately $850,000.00 in cash at the closing, and the balance of $950,000.00 to be evidenced by a promissory note payable to Respondent as Trustee which note was to be secured by a second mortgage on the Orange Grove property. Saunders made arrangements to borrow from Horizon Mortgage Corporation the sum of $950,000.00

which was to be evidenced by Saunders' note and was to be secured by a first mortgage encumbering the Orange Grove. (Saunders Depo-pps. 17, 18, 36). Interest on said note was payable quarterly until April 29, 1984, at which time the principal indebtedness would become due. $850,000.00 of the money so borrowed from Horizon Mortgage Corporation was to be used to make the cash payment necessary to purchase the property and the Respondent as Trustee, would receive back a note in the amount of $950,000.00 secured by a second mortgage on the Orange Grove property. The Orange Grove was conveyed by Respondent as Trustee to Saunders as Trustee (Bar Exhibit 20). Saunders executed the first mortgage and note to Horizon Mortgage Corporation (Bar Exhibits 22 and 23). On May 4, 1982, Saunders executed and delivered to Respondent as Trustee, his promissory note in the amount of $950,000.00, together with his second mortgage encumbering the Orange Grove property, securing the same (Bar Exhibit 25).

As a result of the foregoing, Respondent as Trustee received a second mortgage in the amount of $950,000.00 and the balance of the purchase price in cash. (TR-11/9,Vol.2, p.60).

On May 5, 1982, Respondent wrote Prine a letter, advising him that the sale to Saunders as Trustee had been closed (Bar Exhibit 26), enclosing, among other things, a copy of the Closing Statement of the sale to Saunders (Bar Exhibit 21). This Closing Statement reflects that the selling price of the property was $1,800,000.00. The buyer was given a credit for the mortgage to Respondent as Trustee in the amount of $950,000.00 and the seller received in

cash the balance of the purchase price. Also enclosed with said letter was a Receipt and Satisfaction acknowledging that $66,666.67 was received by Prine "in full satisfaction of any and all rights, title, or interest he may have, as beneficiary or otherwise, in and to that certain Trust Agreement dated December 1, 1980 with Granville H. Crabtree, Jr. as Trustee." Said document further approved all transactions undertaken by Crabtree relative to the original joint venture which Receipt and Satisfaction was executed by Prine. From the Closing Statement, Prine either knew or at least had been told that the "European investor" (Mrs. VanAntwerp) had not received in cash $950,000.00 of her investment and that $950,000.00 was evidenced by a promissory note secured by a second mortgage.

Upon the sale of the Orange Grove to Saunders, Respondent treated the joint venture between himself, Mrs. VanAntwerp and Prine, as terminated. He considered himself as a Trustee, holding the $950,000.00 note secured by a second mortgage on the Orange Grove for the benefit of Mrs. VanAntwerp. From the cash purchase price paid by Saunders, he paid various costs, expenses, and attorney's fees, distributed to Mrs. VanAntwerp the sum of $602,559.00 and considered the remainder of the cash as profits of the Crabtree, Prine, VanAntwerp joint venture and distributed to each of the venturers $66,666.67. Thus, Mrs. VanAntwerp had been reimbursed for the million and-a-half investment by cash and the $950,000.00 which was evidenced by the promissory note and second mortgage held by Respondent as Trustee for her. (TR-11/9,Vol.2,

p.59, 64).

On or about August 13, 1982, Respondent wrote Prine. In this letter he stated, "It has come to my attention that Neil D. Saunders is talking to other people about the possible acquisition of this property. Accordingly, if you have someone that is available to purchase the property I would suggest that an offer be made so that he can submit it to his principal. It is my understanding that the asking price is somewhere in the vicinity of $18,000.00 an acre. As you know, I had to take back a second mortgage at the time of the sale, and I am vitally interested in making sure that the mortgage is paid when it is due. Therefore, if you have a potential purchaser, I would suggest that you either contact me or Neil Saunders directly so that we can have it considered by principals. Neil has indicated to me that he would be willing to co-broker the sale, thereby allowing you to receive a substantial commission as your consideration for acquiring the purchaser." This letter simply demonstrates that Respondent, at the time the letter was written, had no interest in the Orange Grove property other than to secure the payment of his mortgage held by him as Trustee. Prine never responded to this letter.

The evidence further reflects that Saunders attempted to find investors willing to go into a joint venture with him on the Orange Grove property and attempted to sell the same without any success whatsoever. (Saunders Depo-pps. 15, 39, 41). In the fall of 1982, Saunders advised Respondent that he was unable to go forward with the development of the Orange Grove property and would default

on the first mortgage encumbering it. (Saunders Depo, p. 41, 42). It was apparent to Respondent that in the event of a default in the Horizon Mortgage Company note and mortgage, Respondent as Trustee, the holder of the second mortgage, securing the $950,000.00 would in effect be wiped out by the foreclosure of the Horizon Mortgage. Thus, in order to protect the interest of Mrs. VanAntwerp in the second mortgage, Respondent undertook, with Saunders, to place the title to the Orange Grove in an entity that might be able to secure an acquisition and development loan sufficient in amount to pay in full the Horizon mortgage, the $950,000.00 mortgage held by Respondent as Trustee for Mrs. VanAntwerp, and to develop the property.

The Referee found that:

> "In early 1982 Respondent approached Neil Saunders, a client and business partner, about Mr. Saunders purchasing the Orange Grove.
>
> "Respondent specifically misrepresented (to Prine) that the European investor wanted its money back in the sale to Mr. Saunders and then again by stating that he was not going to be involved in the Orange Grove project as a principal.
>
> ".....I also find that the aforementioned misrepresentations to Mr. Prine were done to freeze Mr. Prine out of the Orange Grove property."

There is evidence that at some remote time, Respondent had been a partner of Saunders and had represented him. There is no evidence

that at the time of the transaction or the negotiations leading thereto such a relationship existed.

Prine testified that at the time of the sale to Saunders he asked Respondent if, after the sale, he would be involved in the project as a principal and Respondent told him he would not be so involved. He testified further that based upon this representation, he agreed to the sale to Saunders. There is no evidence in this record reflecting that said representation was false at the time it was made. There is no evidence that Respondent's conduct reflected any interest in the Orange Grove property or that he had any interest therein subsequent to the sale to Saunders (Saunders Depo-pps. 36, 42, 43) and prior to the time in the fall of 1982 when Saunders advised Respondent that he was going to default in the payments on the Horizon Company's mortgage. In order to protect the second mortgage, Respondent, of necessity, renewed his interest. (Saunders Depo-p. 44).

The only evidence, if it be evidence, relative to the "freeze out" of Prine consists of some of the testimony of Mr. Dumbaugh. Mr. Dumbaugh testified in effect that he was familiar with the transfer of the Orange Grove property from the joint venture to Mr. Saunders as Trustee which he learned about the day of the transfer. Dumbaugh made inquiries of Mr. Sanchez as to what was going on and Mr. Sanchez told him, "He told me that he and Granville had just completed a deal that would make them a million dollars, 10 million dollars, he said, and that it would be a 700 plus unit condominium project on Massey Orange Grove and that he had just completed a

classic freeze out from Mr. Prine. Mr. Prine ended up with a little bit of money but they would be taking a show regarding the Orange Grove from that point on and making these profits through development." (TR-11/2/90, 9:30 a.m., 9-10, 21-22).

Mr. Sanchez testified that he did not state to Mr. Dumbaugh that he, Sanchez, "completed a classic freeze out" of Mr. Prine. Dumbaugh's testimony relative to "freeze out" is contrary to the uncontroverted testimony by Sanchez, Crabtree, and Saunders, and when analyzed in the light of the conditions existing at the time of the transfer of the land to Saunders as reflected by the record will not stand scrutiny.

In November, 1982, Respondent's associate, Mr. Sanchez, activated a "shelf corporation" which was in the office known as the Enrichment Corp. On November 5, 1982, the name of this corporation was changed to "The Winthrop Group, Inc. (Bar Exhibit 32).

In February, 1983, The Winthrop Group applied to a mortgage broker (Fetters), in St. Petersburg seeking an acquisition and development loan in the amount of approximately 4.3 million dollars. Later, State Savings and Loan Association of Lubbock, Texas, committed to make said acquisition and development loan. Said loan was closed on or about May 5, 1983.

On May 4, 1983, Saunders, as Trustee, conveyed the Orange Grove to The Winthrop Group, Inc. (Bar Exhibit 28). On May 5, 1983, The Winthrop Group, Inc. executed and delivered to State Savings and Loan Association of Lubbock its promissory note and

mortgage, said note being in the principal amount of $4,300,000.00 (Bar Exhibit 30). Said mortgage was partially a development loan, and the entire amount thereof was not immediately disbursed, but was disbursable in periodic installments as the development progressed. However, there was enough cash disbursed at the time to completely pay and satisfy the Horizon mortgage and the mortgage held by Respondent as Trustee for Mrs. VanAntwerp and said mortgages were paid and satisfied (Bar Exhibit 29).

As a result of the foregoing, Mrs. VanAntwerp was fully reimbursed for her investment in the amount of $1,500,000.00, and in addition received $66,666.67 as profit from the initial joint venture. The repatriation and delivery of her one and-a-half million dollars in assets had been completed and the source not disclosed.

Approximately two years after Mrs. VanAntwerp completely received all of her funds, she, in some manner unknown, re-invested approximately $600,000.00 in the Winthrop Group, Inc. whether by way of purchase of stock, loan, or joint venture is not reflected in the record. The record does reflect that this investment has not been recovered by her.

The Referee found that "Subsequently, Mrs. VanAntwerp invested an additional $600,000.00 with the Winthrop Group, Inc. which $600,000.00 has not been repaid to date," and he also found "<u>that the Respondent caused Mrs. VanAntwerp to lose over $600,000.00.</u>" The record is silent as to the names of the shareholders of the Winthrop Group, excepting only Respondent who owned 41 percent,

Sanchez, Respondent's associate, held between 10 and 14% thereof and Mr. Saunders, owned seven percent thereof. The record is silent as to why Mrs. VanAntwerp invested the money in the Winthrop Group. The record does not reflect who, if anyone, induced her to make this investment, but the record is clear that it was not Respondent. Thus, Mrs. VanAntwerp testified as follows:

"Q. Did there come a time that you invested approximately $600,000.00 in a group called the Winthrop Group?

"A. I didn't realize it was the Winthrop Group. I didn't really know.

"Q. How was it that you came to invest the approximately $600,000.00 in the Winthrop Group?

"A. I just can't seem to remember at the time how it was done then.

"Q. Did Mr. Crabtree discuss it with you?

"A. No."

POINTS INVOLVED

FIRST POINT INVOLVED

WHERE THE REFEREE'S FINDINGS OF FACT ESSENTIAL TO A RECOMMENDATION OF GUILTY AND THE RECOMMENDATION OF A SANCTION ARE NOT SUPPORTED BY COMPETENT AND SUBSTANTIAL EVIDENCE AND IN SOME INSTANCES ARE CONTRARY TO UNCONTROVERTED EVIDENCE, SHOULD THE RECOMMENDATIONS OF THE REFEREE AS TO GUILT AND/OR SANCTIONS BE REVERSED?

SECOND POINT INVOLVED

WHERE THE REFEREE RECOMMENDED A FINDING OF GUILTY FOR MISCONDUCT OCCURRING BETWEEN 1982 AND 1984, SHOULD HE HAVE CONSIDERED AS AN AGGRAVATING FACTOR A PRIVATE REPRIMAND ADMINISTERED IN MAY, 1990 FOR MISCONDUCT OCCURRING IN 1982 AND 1983?

THIRD POINT INVOLVED

WHERE THE FLORIDA BAR ON ITS OWN INITIATIVE IN 1987 BEGAN AN INVESTIGATION OF ALLEGED MISCONDUCT OCCURRING DURING THE YEARS 1980-1983, SERVED ITS COMPLAINT ON RESPONDENT ON DECEMBER 6, 1989 AND THE MATTER WAS HEARD BEFORE A REFEREE IN NOVEMBER, 1990 AND WHERE:

1. RESPONDENT HAD PRACTICED LAW SINCE 1960 AND HAD ONLY ONE OTHER DISCIPLINARY MATTER RESULTING IN A PRIVATE REPRIMAND ADMINISTERED IN MARCH, 1990 FOR MISCONDUCT OCCURRING IN 1982-1983, SHOULD NOT THE REFEREE HAVE CONSIDERED AS EXTENUATING FACTORS:

A. THE UNDUE DELAY OF THE BAR IN INVESTIGATING AND PROSECUTING THIS MATTER TO CONCLUSION;

B. THE FACT THAT THERE HAVE BEEN NO DISCIPLINARY MEASURES AGAINST RESPONDENT DURING HIS 30 YEARS OF PRACTICE OTHER THAN THE TWO ABOVE MENTIONED.

SUMMARY OF ARGUMENT

The Findings of Facts of the Referee upon which he based his recommendations of findings of guilt and the imposition of the sanction of disbarment are not only not supported by competent substantial evidence, but in many instances are contrary thereto. There is no competent evidence in the record that the Respondent in any way engaged in dishonest, deceitful and fraudulent misconduct or made any misrepresentations to Mrs. VanAntwerp or Mr. Prine that in any way was intended to deceive them or that in any way injured them.

It is further the Respondent's position that under all of the facts and circumstances of this case, if the Respondent violated some of the provisions of the Code of Professional Responsibility, the sanction of disbarment is so harsh as to be punitive.

ARGUMENT

FIRST POINT INVOLVED

In the Statement of Facts, I have carefully set out the facts which I believe accurately reflect the nature, extent, and effect of all of the testimony in this case. To understand the basis of this appeal, this Court must have a complete overall picture of all of the facts, circumstances, and the motivations of the parties so as to put isolated instances into proper perspective.

In the Referee's Findings of Fact, he found, among other things, that:

> "Prior to 1980, Mrs. VanAntwerp hired the Respondent to repatriate funds into the United States from Europe without making public the location of those funds."

He also found that:

> "Mrs. VanAntwerp left it up to Respondent to determine the method by which her funds would be brought to the United States."

In his Recommendations as to whether the Respondent should be found guilty, the Referee found:

> "Respondent did not violate DR 7-101(A)(2) (A lawyer shall not fail to seek to carry out a contract for employment entered into with a client for professional services)."

These Findings by the Referee are based upon substantial evidence and constitute the very crux of the case. They establish that Respondent was employed by Mrs. VanAntwerp to repatriate funds

into the United States from Europe without making public the source of said funds. The method of doing so was left up to the Respondent's discretion. Respondent sought to carry out the contract for employment.

There is nothing in the record in any way indicating that the funds to be repatriated were in any way tainted or that Mrs. VanAntwerp was attempting to defraud the United States government or anyone else. The Referee did not find that in undertaking this employment by Mrs. VanAntwerp the Respondent was doing anything wrongful.

The funds to be repatriated had to appear to have some source -- they could not appear like manna from heaven. Yet, the true source could not be disclosed. Thus, to comply with the terms of his employment, it was necessary to create a fictitious source of said funds and to create this source in a manner which would have all of the appearances of a legitimate transaction. It was for this purpose that the fiction of the "European investors" was created, with Jerry Reed as the agent for said investors.

To give the appearance of legitimacy to this fictitious source, it was necessary to create a contractual relationship between the original joint venture of Respondent, Prine, and VanAntwerp, and the "European investors" which would make it appear that the "European investors" were engaging in a legitimate business enterprise with the intent of making a profit. Thus, a joint venture was entered into between the original joint venture and Jerry Reed as agent for the "European investors" whereby the

"European investors" would invest $1,500,000.00 in the venture and were entitled to 50% of the profit therefrom.

Respondent then caused $1,500,000.00 of Mrs. VanAntwerp's European assets to be transferred from Europe to a trust company in the Bahamas, thence to a bank in the Bahamas for the benefit of the Braddock Corporation, a Bahamas corporation organized by Reed with the help of Respondent, and thence to Respondent's trust account for the use of the joint venture.

If the second joint venture made a profit and 50% thereof was payable to the "European investors" it would be necessary to disclose the same and, inasmuch as the "European investors" was a fiction, it would be necessary for Mrs. VanAntwerp to disclose that she was in fact the "European investor" thereby disclosing the source of the funds. Thus, it became necessary in some apparently legitimate manner, to divest the "European investor" of any and all rights to profits on their investment, including interest. The apparent correspondence between Reed as agent for the "European investors" and Respondent as Trustee for the original joint venture was designed for that purpose. From said apparent correspondence, it appeared that the "European investors had changed their minds as to the desirability of being in the joint venture, and desired instead that their money be returned to them and in exchange for said return, they would waive any rights in the joint venture and all rights to any profits or interest on their investment; the original joint venture agreed that the "European investors" would be reimbursed for their million and-a-half dollars before any other

moneys were disbursed out of the original joint venture and in effect released the "European investors" from any liability for prematurely dropping out of the joint venture.

At this point, the source of the million and-a-half dollars had not been disclosed, the million and-a-half dollars had gone into the joint venture, the "European investors" had no rights to any interest or profit on their investment so that the source of the million and-a-half dollars would not have to be disclosed. The original joint venture of Prine, VanAntwerp, and Respondent was entitled to the entire profits from the joint venture and could continue operating.

The Referee found that the apparent correspondence between Reed and Respondent was fraudulent, dishonest, deceitful, and constituted misrepresentation. For conduct to be fraudulent, deceitful, dishonest, and constitute misrepresentation, there must be a victim -- someone who relied thereon and was injured as a result thereof. Prine and Respondent had the use of Mrs. VanAntwerp's million and-a-half dollars at no cost whatsoever to them and Mrs. VanAntwerp, who had employed Respondent solely for the purpose of repatriating her million and-a-half dollars without disclosing the source had partially achieved her objective without any disclosure that she was actually the source of the money.

Respondent submits that the apparent correspondence between himself and Reed was not intended in any way to detrimentally effect either Prine or Mrs. VanAntwerp and it did not detrimentally effect them. If both had known the real reason for this apparent

correspondence, neither would have objected because it furthered each of their interests. Further, the record does not reflect that either Mr. Prine or Mrs. VanAntwerp ever questioned the identity of the "European investor" or had any interest therein. In short, this apparent correspondence does not evidence any fraudulent, dishonest, deceitful conduct on the part of the Respondent or to misrepresent anything to either Mr. Prine or Mrs. VanAntwerp.

The real estate market collapsed, interest rates were exceedingly high, and there were no acquisition and development loans available. Thus, there was no way to develop the Orange Grove. Because of these circumstances and being mindful that in his letter of August 18, 1980 to Mrs. VanAntwerp (Bar Exhibit 2) he had assured her that her investment would be refunded within 18 months after the acquisition of the Orange Grove, Respondent, in the early part of 1982, began negotiations with Mr. Saunders to sell the Orange Grove at a profit to the joint venture.

Mr. Saunders was a recognized organizer of joint ventures for the purpose of acquiring, developing, and marketing raw real estate. He had contact with several investors for whom he had created joint ventures to acquire, develop, and market raw real estate and he believed that he could purchase the Orange Grove, put a joint venture together and develop and market it and make a profit therefrom. Under these circumstances, Saunders agreed to buy and Crabtree, as Trustee for the joint venture agreed to sell the Orange Grove for $1,800,000.00. At that time, Saunders did not have investors to go into the joint venture, but it was understood

that the purchase price would be paid by giving the seller a note for $950,000.00 to be secured by a second mortgage on the Orange Grove and the balance of the purchase price would be raised by Saunders from a loan of approximately $850,000.00 from Horizon Mortgage Corp. secured by a first mortgage on the Orange Grove and would be paid in cash.

Prine know of this proposed sale to Saunders and he asked Respondent whether he would have any future involvement in the project as a principal. Respondent told Prine that he would have no future involvement except to possibly provide legal services. Based upon this assurance, Prine did not object to the sale.

The sale to Saunders was closed, the property conveyed by Respondent as Trustee. Saunders executed the first mortgage and note to Horizon Mortgage Corporation and executed and delivered to Respondent, as Trustee, his promissory note in the amount of $950,000.00 together with a second mortgage encumbering the Orange Grove. Crabtree treated the sale to Saunders as terminating the joint venture between Prine and VanAntwerp and Respondent. He treated the $950,000.00 note and second mortgage held by him as Trustee as a partial reimbursement to Mrs. VanAntwerp to be applied against her $1,500,000.00 investment. From the cash purchase price, $602,559.00 was distributed to Mrs. VanAntwerp, various costs and expenses and attorney's fees were paid, and there was a profit remaining of $200,000.00 which he distributed one-third to each of the joint venturers, each receiving $66,666.67.

On May 5, 1982, Respondent wrote Prine a letter advising him

that the sale had been closed and enclosing the Closing Statement of the sale. This Closing Statement reflected that the selling price of the property was $1,800,000.00 and the buyer was given a credit for the mortgage held by Respondent as Trustee in the amount of $950,000.00 and that the seller received, in cash, only the remaining balance of the purchase price. Thus, Prine well knew that the "European investor" had not been completely reimbursed. In said letter there was enclosed a Receipt and Satisfaction, and it acknowledged receipt by Prine of $66,666.67 "in full satisfaction of any and all rights, title or interest he may have, as beneficiary or otherwise, in and to that certain Trust Agreement dated December 1, 1980." Said document approved all transactions undertaken by Crabtree relative to the joint venture. This document was executed by Prine. A like document was executed by Mrs. VanAntwerp. The record reflects that he voiced no objections whatsoever to the sale to Saunders.

Saunders attempted to create a joint venture to develop and market the Orange Grove and attempted to sell the Orange Grove without any success. There is no evidence in the record which in anyway indicates that subsequent to the sale to Saunders the Respondent evidenced any involvement in the Orange Grove until on or about the fall of 1982 when Saunders advised Respondent that he did not intend to go forward with the development of the Orange Grove property and would default on the first mortgage encumbering said property held by Horizon Mortgage Corp. Recognizing that the default on said mortgage would precipitate a foreclosure suit which

would have the effect of wiping out the second mortgage held by Respondent as Trustee for Mrs. VanAntwerp, Respondent undertook, with the cooperation of Saunders, to salvage Mrs. VanAntwerp's mortgage. To accomplish this, in November, 1982, Respondent, together with one of his associates, Mr. Sanchez, resurrected a shelf corporation, changed its name to the Winthrop Group, Inc. and in February, 1983, applied to a mortgage broker in St. Petersburg to secure an acquisition and development loan. Such a loan was obtained through the State Savings & Loan Association of Lubbock, Texas. On May 4, 1983, Saunders as Trustee conveyed the Orange Grove property to the Winthrop Group, Inc., and on May 5, 1983, the loan from State Savings to the Winthrop Group was consummated, said loan being in the amount of $4,300,000.00 for both the acquisition and the development of the Orange Grove. All of the proceeds from said loan were not disbursed, some being disbursable only as the development progressed. However, enough of the loan was disbursed so that the Horizon Mortgage was paid in full and the $950,000.00 note and mortgage held by Respondent as Trustee was likewise paid. Thus, Mrs. VanAntwerp was finally fully reimbursed for her $1,500,000.00 investment.

The only fraud found by the Referee relative to the sale to Saunders was that Respondent had represented to Prine that after the sale to Saunders he would not be involved as a principal in the Orange Grove project, and that this was a misrepresentation. The only evidence that this was a misrepresentation is the testimony of Mr. Dumbaugh, who in February, 1983, was an associate in

Respondent's law office. Dumbaugh testified that Sanchez, another associate in Respondent's office, told him that he and Crabtree had just completed a classic freeze out of Mr. Prine and that Sanchez and Crabtree were going to make millions of dollars out of the Orange Grove. This statement is not only hearsay but it does not comport with all, or any of the other evidence in the record. A careful reading of the testimony of Saunders and of Crabtree, and a chronological review of the events as they occurred from the date of the sale to Saunders, lends no credence to Dumbaugh's testimony. It is not only incompetent, being hearsay, but it is incredible and not worthy of belief. Sanchez denied making this statement to Dumbaugh.

Subsequently, State Savings & Loan Association of Lubbock, Texas was taken over by Resolution Trust Company which ceased making disbursements on the development loan. The property was then refinanced through Commonwealth Savings & Loan Association and from said re-financing the mortgage of State Savings and Loan was satisfied. Commonwealth Savings & Loan Association then was taken over by Resolution Trust Company which brought an action to foreclose its mortgage on the Orange Grove, the mortgage was foreclosed, the property was sold at a loss, and Commonwealth received a Judgment for approximately one million dollars against Crabtree on his personal guarantee of the loan.

The Referee found that:

"Respondent was dishonest with Mrs. VanAntwerp in his representation of her in the repatriation of her

funds in that he used her funds in obtaining the Orange Grove property for his own purposes."

The Referee further found that:

"Respondent did not fully disclose to Mrs. VanAntwerp that he was investing in the Orange Grove for his own personal gain."

Respondent was employed by Mrs. VanAntwerp to repatriate her money in a manner that would not disclose its source. The investment of the $1,500,000.00 in the Orange Grove was a part of the plan of repatriation and was for the purpose of making it appear that said investment when repaid to Mrs. VanAntwerp was the product of the venture. Mrs. VanAntwerp could not make a profit on this investment because such profit would have to be returned as a profit to her, thereby disclosing the source of the investment. After the reimbursement to Mrs. VanAntwerp for her investment and payment of the costs, fees and commissions had been paid, the original joint venturers, Mrs. VanAntwerp, Mr. Prine, and Respondent shared equally in the profits. The profit was $200,000.00, of which Mrs. VanAntwerp received one-third, for which she could account because it was based upon her original investment of $400,000.00

The Referee also found that:

"Respondent had a conflict in that his objective with Mr. Prine was to make a profit and his objective with Mrs. VanAntwerp was purely to get her money into the United States."

The objective of Mr. Prine and the objective of Mrs. VanAntwerp as found by the Referee above were not in conflict. Their objectives, although different, depended upon the successful conclusion of the Orange Grove venture -- without a successful conclusion, there would not be full reimbursement for Mrs. VanAntwerp and there would be no profit for Mr. Prine. As it worked out, the Orange Grove was sold at a profit, Mrs. VanAntwerp ultimately was completely reimbursed, and Mrs. VanAntwerp, Prine, and Respondent shared in the profit.

The Referee found that:

> "Respondent did not diligently seek to repatriate and return funds to Mrs. VanAntwerp in that he tied up Mrs. VanAntwerp's funds for four years with the mortgage and note to Mr. Saunders."

This is not an accurate statement. It is true that the note given by Saunders to the Respondent as Trustee for Mrs. VanAntwerp was not due for four years. On the other hand, the Horizon mortgage came due in two years. If Saunders had been successful in forming a joint venture and in securing an acquisition and development loan as was contemplated, the acquisition and development loan would have to have been a first mortgage and it would have been necessary from the proceeds thereof to prepay Mrs. VanAntwerp's mortgage. This was exactly what happened when the Winthrop Group secured an acquisition and development loan from State Savings and Loan Association in June, 1983, and Mrs. VanAntwerp was promptly reimbursed for the balance of her mortgage.

As an aggravating factor, the Referee cited:

"Also, the vulnerability of Mrs. VanAntwerp because of her age and implicit trust in Respondent."

The Referee saw Mrs. VanAntwerp when she was 79 years of age and had suffered the ravages of cancer, chemotherapy, and other illnesses for the prior four years (TR-11/9, 22,23) she weighed only about 80 lbs. (TR-9/2, Vol. 1, p. 19), the only evidence in the record as to her vulnerability. The transactions herein involved occurred between 1980 and 1983, at least three years before she became ill. At that time, she was a different person who was concerned about her funds and investments and bragged about her business acumen (TR-11/9, Vol. 2, p. 19, 20).

At a later date, Mrs. VanAntwerp, in some manner, invested approximately $600,000.00 more in the Winthrop Group, Inc. The record is not clear as to whether she did this by way of a loan, the purchase of stock, or a joint venture with said corporation. She has not received her $600,000.00 from this corporation. In this connection, the Referee found that, "Respondent caused Mrs. VanAntwerp to lose over $600,000.00." The Finding that Respondent caused Mrs. VanAntwerp to lose over $600,000.00 is contrary to the uncontroverted evidence. There is no evidence that the Respondent in any way induced or otherwise caused Mrs. VanAntwerp to invest the $600,000.00 in the Winthrop Group. Mrs. VanAntwerp testified in this cause as follows:

"Q. How was it that you came to invest approximately $600,000.00 in the Winthrop Group?

"A. I just can't seem to remember at the time how it was done then.

"Q. Did Mr. Crabtree discuss it with you?

"A. No."

The Referee found as an aggravating factor that:

"Prior disciplinary offense Supreme Court Case No. 74,740 - private reprimand - conduct similar in nature to the conduct herein."

Respondent submits that the testimony of the Respondent, Mr. Saunders, Mrs. VanAntwerp and Mr. Prine when read carefully in its entirety, and the desires and motives of these persons are understood, there is no credible, competent and substantial evidence supporting the recommended Findings of Fact by the Referee. This report should be reversed in its entirety and the Complaint dismissed by the Court. However, if the Court finds there is sufficient evidence to support some of the technical violations not involving fraud, deceit, misrepresentation or dishonest conduct, the Court should remand the matter to the Referee for the purpose of recommending appropriate sanctions, or in the alternative, enter its order determining the same.

SECOND POINT INVOLVED

WHERE THE REFEREE RECOMMENDED A FINDING OF GUILTY FOR MISCONDUCT OCCURRING BETWEEN 1982 AND 1984, SHOULD HE HAVE CONSIDERED AS AN AGGRAVATING FACTOR A PRIVATE REPRIMAND ADMINISTERED IN MAY, 1990 FOR MISCONDUCT OCCURRING IN 1982 AND 1983?

This point is only involved in the event this Court fails to reverse the Recommendation of a Finding of guilt made by the Referee.

This Court has resolved this point definitively. The misconduct found by the Referee in the instant case occurred between December 31, 1980, the date of the acquisition of the Orange Grove, through April 29, 1982, the sale of the Orange Grove to Mr. Saunders. The misconduct admitted and found by the Referee in Case no. 74,440 for which Respondent was administered a private reprimand, occurred between March 23, 1983 and July, 1983, although the private reprimand was not administered until March 8, 1990.

This Court was confronted with a similar situation in The Florida Bar v. Carter, 429 So.2d, 3 (Fla. 1983). In that case, the Court said:

> "The Referee recommended a four-months suspension. This Court has recently publicly reprimanded Carter, The Florida Bar v. Carter, 410 So.2d, 920, (Fla. 1982), and ordinarily, an additional finding of guilty warrants a more substantial penalty, but the activities complained of in this case did not fall within the category of

cumulative misconduct. Since the instant misconduct occurred prior to our decision in the previous case, the prior discipline could not, therefore, have deterred his conduct in this case. The Court restated the principle enunciated in The Florida Bar v. Dunagan, 565 So.2d 1327 (Fla. 1989).

THIRD POINT INVOLVED

The Referee, in his report, found that there were no mitigating factors.

The events involved in this case occurred between 1980 and the spring of 1983, at the latest. None of the parties involved in said transactions filed any Complaints with The Florida Bar. The Bar, on its own initiative, began its investigation in the matter sometime prior to December 7, 1987, the exact time being unknown and unascertainable by the Respondent. The matter was tried before a Referee in November, 1990. The Bar has suggested no reason for the delay in the investigation of this matter or the prosecution thereof.

As a result of the delay, memories had dimmed. The Respondent, for a long period of time, has had these problems hanging over his head.

This Court, in The Florida Bar v. Randolf, 238, So. 2d 635(Fla. 1970), when confronted with a somewhat similar situation stated:

> "We have repeatedly announced that disciplinary proceedings should be handled with dispatch. In cases of flagrant delays, such as the matter sub judice, we have held that years of exposure to public scrutiny and criticism supplemented by clear evidence of rehabilitation, justify a terminal penalty that otherwise would be considered inadequate. During this unduly long period of investigation and prosecution, the accused

lawyer is left roaming the field of Limbo where dwelt what Dante called, 'the praiseless and the blameless dead.'"

"We have pointedly held that the responsibility for exercising diligence in the prosecution rests with The Bar. When it fails in this regard, the penalizing incidents which the accused lawyer suffers from unjust delays, might well supplant more formal judgments as a form of discipline. This is so even though the record shows that the conduct of the lawyer merits discipline." (Citations omitted).

In The Florida Bar v. Fertig, 551 So. 2d 1213 (Fla.1989) the Referee recommended that Fertig be suspended from the practice of law for 12 months. In an most unusual move, The Florida Bar petitioned the Court to review the sanction and reduce the suspension to 90 days "because of the amount of time since the illegal acts occurred, (the conspiracy ran from 1978 to 1983) and because the Referee found Fertig to be rehabilitated ." In its Opinion, the Court, among other things, stated:

"On the other hand, there is much in mitigation..... the act for which he was charged occurred between 1978 and 1983, and his disciplinary record was spotless before and since that time."

This Court reduced the suspension to 90 days.

Respondent has practiced law in Florida since 1960. His disciplinary record is spotless except for a private reprimand for

conduct occurring in 1983, which conduct did not involve misrepresentation, fraud, deceit, or dishonesty and for these proceedings. No misconduct occurring subsequent to 1983 has been charged so that it must be assumed that since 1983 he has been guilty of no misconduct whatsoever.

Respondent submits that the practice of law for 30 years with only the transgressions above stated should be an extenuating factor and, further, that when coupled with the great and unexplained delay in the investigation and prosecution of this matter should weigh heavily in Respondent's favor.

Respondent submits that disbarment, that under the facts of this case and the foregoing circumstances, disbarment is so unduly harsh as to be punitive.

CONCLUSION

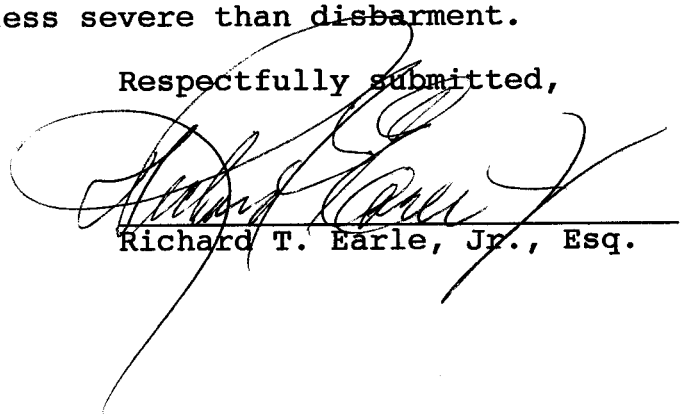
The record in this case, when considered in its entirety, reflects that there is no competent substantial evidence reflecting that the Respondent engaged in any conduct which was dishonest, deceitful, or fraudulent, calculated to in any way injure Mr. Prine or Mrs. VanAntwerp. Further, the evidence reflects that the Respondent completely fulfilled all of his duties to both of these individuals. Mr. Prine received a substantial profit from the Orange Grove transaction without investing any money therein. Mrs. VanAntwerp succeeded in repatriating one and-a-half million dollars, without the source thereof being disclosed and, in addition thereto, received an unexpected profit of $66,666.67 for which she was able to account by virtue of her initial investment of $400,000.00. As a result, neither Mrs. VanAntwerp nor Mr. Prine complained of the manner in which Respondent handled their affairs.

The Florida Bar, without any encouragement from either Mrs. VanAntwerp or Mr. Prine, some years after the transactions were all concluded, for reasons unknown, began its investigation of these transactions. Respondent was charged with serious violations of the Code of Professional Conduct and some years later, in 1990, was tried therefore. The Bar has offered no explanation for its conduct in belatedly instituting the investigation, belatedly charging Respondent with the misconduct, and belatedly trying the case.

Respondent submits that under all of the circumstances of this case, this Court should dismiss the Complaint. If, on the other

hand, the Court does not see fit to dismiss the Complaint in its entirety, the Court should take into consideration all of the foregoing and determine sanctions which are more appropriate and which sanctions will be far less severe than disbarment.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail this 12th day of April, 1991, to:

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