IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

L. VAN STILLMAN,

Respondent.

SUPREME COURT CASE NUMBER 76,066

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# REPLY BRIEF OF THE FLORIDA BAR

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## I.

**APPELLEE'S INSISTENCE THAT HE DID NOT PARTICIPATE IN ANY FRAUDULENT CONDUCT, DID NOT VICTIMIZE THE BANK AND DID NOT MATERIALLY AFFECT THE BANK'S LOAN SECURITY DEMONSTRATES A TOTAL MISCOMPREHENSION OF AND LACK OF REMORSE FOR THE MISCONDUCT INVOLVED IN THIS PROCEEDING.**

In his brief, appellee would have *the* Court believe:

1. "[T]here is no evidence that the secondary financing in any way jeopardized the primary mortgage lien . . . (page 5*).

2. "No funds were taken from the bank without their (sic) authorization" (page 9).

3. "[S]uch misrepresentation does not result in Greater New York being 'victimized' (page 9).

4. "There is no evidence that any of the five borrowers were attempting to defraud Greater New York" (page 12)

5. "Greater New York got what it bargained for . . ." (page 13).

Each of the foregoing propositions demonstrates either an attempt to mislead or a miscomprehension of the direct and inevitable consequences of appellee's misconduct. Taking just one (1) of the (5) incidents involved produces a clear picture of the nature, scope and extent of the damage sustained by the lender. Thus, in the Kaiser transaction where the sales price was $170,000.00, it was incumbent upon the purchaser to commit himself to the transaction to the extent of $42,500.00 which represents twenty-five (25%) per cent of the purchase price. According to the closing statement in that transaction, Mr. Kaiser invested $50,314.22 of his own funds upon acquiring title. *(See* bar's exhibit 11 in evidence). In fact, as a result of appellee's joining Kaiser in the fraud regarding the secondary financing, Kaiser

* Page references *are* to appellee's brief.

ended up with a $0.00 commitment to the property. One would expect that an individual with $50,314.22 on the line will be well motivated to honor his mortgage obligations and to do everything in his power to avoid losing such an investment. The fraud perpetrated by respondent and the five (5) mortgagors involved in this proceeding removed all incentive! and motivation. The mortgagors had less ties to their properties than guests to motel reservations.

The suggestion that no funds were taken from the bank without authorization is simply not true. There was no authorization to disburse absent full and complete compliance with the closing documents. The loans were made on the express basis that the mortgagors would be substantially tied to their acquisitions by financial contributions to the extent of at least twenty-five (25%) of the respective purchase prices. That condition was expressly emphasized in FannieMae affidavits in which each of the mortgagors represented, under oath, that there was no subordinate financing relating to the acquisition. The assertion by appellee that the misrepresentations in such affidavits coupled with the secondary financings that occurred in order to fund the purchases did not constitute fraudulent acts is either hubris or ignorance.

The same is true with respect to appellee's argument that "had each purchaser waited a short period of time . . . and then secured second or third mortgages, that there would have been no impropriety whatsoever" (page 14). There is no equating the two situations. If the mortgagors had honestly closed in the first instance with the resultant financial commitments to their properties, then, obviously, there would be no fraud involved in the securing of subsequent, subordinate financing. That is a far cry from procuring loan proceeds through

fraudulent acts as in the case at bar.

## CONCLUSION

Appellee's protestations to the contrary, notwithstanding, Greater New York Bank was victimized shamelessly, intentionally and with premeditation. After all is said and done, appellee aided five individuals to *secure* the disbursement of bank loans through artifice and device. He concealed three such instances from view until forced to reveal the same.

While the placid seas may temporarily have been disturbed in the milieu presented by The Florida Bar v. Hirsch, 342 So.2d 970 (Fla. 1977), the tempest encountered in our banking industry will roil the waters for the foreseeable future. Those who set the storm in motion should bear a heavy price. Those who may be contemplating sailing forth into the eye of the storm should be dissuaded by a substantial deterrent. It is respectfully submitted that the two *year* suspension recommended by the bar will sound the appropriate message.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing reply brief of The Florida Bar was furnished to John A. Weiss, Esquire, Attorney for Respondent, 101 North Gadsden Street, P.O. Box 1167, Tallahassee, Florida 32302 by regular mail this 8th day of October, 1991.

David M. Barnovitz

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