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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

FRANCES S. CHILDERS,

Respondent.

Case No. 76,126

TFB File No. 90-00363-02

COMPLAINANT'S REPLY BRIEF

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ARGUMENT

A THREE YEAR SUSPENSION IS SUPPORTED BY THE FINDINGS OF THE REFEREE

Respondent has argued to this court that the position taken by the Board of Governors of The Florida Bar in asking this court to review the referee's recommended order is untenable and made in bad faith. This position is not justified in view of the findings of guilt by the Referee.

In citing the undisputed facts of this matter, Respondent continuously argues that these facts do not make her out as a thief or that there was a misappropriation of funds.

Respondent's brief glosses over the findings of guilt made by the referee, wherein he found her guilty of criminal misconduct adversely reflecting on the Respondent's fitness as a lawyer; conduct involving dishonesty, fraud, deceit, or misrepresentation and Respondent's failure to hold in trust funds received belonging to another. (RR-4)

Respondent has repeatedly tried to characterize the conduct of Respondent in a manner that attempts to deny the findings of the referee. Respondent alleges there was a free admission made of the facts to her partners, the Bar and the referee. This is a less than candid statement, since she initially lied to the firm's bookkeeper when first confronted and the following free admissions were made only when confronted with undeniable evidence of guilt.

Respondent next argues her act was merely a diversion of funds and was not a misappropriation. These funds were not diverted as is commonly encountered when a lawyer transfers trust funds into a personal or office account. Respondent knowingly took funds not belonging to her and placed them into a special account and then lied about what she did.

The attempt of Respondent to distinguish the case law requiring rehabilitative suspension by arguing these were not client trust funds is merely a distinction without difference. The bottom line in all misappropriation cases is that the respondents are charged with violating a sacred trust and took funds not belonging to them.

Respondent argues that she merely "retained" the questioned funds for only sixteen days. This begs the fact that when she had the first opportunity to freely admit this taking to her firm's bookkeeper, she lied. The only reason this matter came up was because an alert bookkeeper realized that there was a problem and confirmed that the sheriff's check had been processed.

The Bar did not have to put up a "straw man" in regard to Respondent's actions subsequent to the theft. The facts are abundantly clear that Respondent acted in a consistent manner of evasion throughout this matter. She would not admit to her partners' agent her misconduct because she could not figure a way to put the money back. While admitting she knew she had committed a wrong and had the presence to report her actions to the Bar, she asks that she be allowed to hide from further

dishonesty behind the veil of confidentiality. Just as Respondent did initially with the firm's bookkeeper, it was not until she was caught in an undeniable posture did she go to her supervisor at HRS regarding the discipline matter. As the charged attorney, Respondent could always waive any spectrum of confidentiality regarding this matter to her prospective employer. It was only when she realized the severity of possible discipline did she consult counsel.

Respondent would also ask that she not be under any obligation to reveal such matters to her prospective employer because she was being allowed to wind down her duties after being discharged. Again the Respondent is splitting hairs in trying to justify her conduct. HRS had been inconvenienced. They had gone through an interview process and had chosen Respondent who then came in and expended resources in being trained. The same result will now occur even in the event of a ninety day suspension.

While Respondent cites to the mitigation provisions of the Standards for Imposing Lawyer Sanctions there is no attempt to dispute the referee's findings that the appropriate sections that pertain to imposing sanctions provide for a sanction of suspension to disbarment.

Respondent argues to great lengths the circumstances and facts surrounding the taking of the money. Respondent argues numerous distinctions regarding the amount of funds taken in the cited caselaw. The Bar would argue that it is the act itself that is reprehensible in dealing with the nature of this

misconduct. The Bar feels that the amount of money taken by a lawyer or the period of time such funds are retained should have little or no bearing on the finding of guilt or the subsequent discipline imposed.

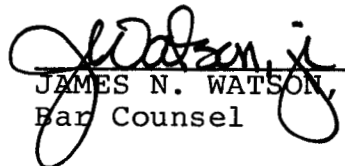
Anything less than the requested suspension would leave the false impression that the peripheral facts are what govern the proper disciplinary sanction and not the act itself.

CONCLUSION

Based upon the findings of fact and determination of guilt made by the referee, the appropriate discipline in this matter should be a three year suspension.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief regarding TFB File No. 90-00363-02 has been forwarded by hand delivery, to JOHN A. WEISS, Counsel for Respondent, at his record bar address of Post Office Box 1167, Tallahassee, Florida 32302-1167, on this 29th day of May 1991.



JAMES N. WATSON, JR.
Bar Counsel