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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

MARTIN L. BLACK,

Respondent.
_____/

Case No. 76,866

TFB File No. 90-00662-03

ANSWER BRIEF

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OTHER AUTHORITIES CITED

PRELIMINARY STATEMENT

Appellant, Martin L. Black, will be referred to as Respondent or Mr. Black throughout this Brief. The Appellee, The Florida Bar, will be referred to as such or as The Bar.

References to the Report of Referee shall be by the symbol "RR" followed by the appropriate page number.

References to the final hearing before the Referee on April 18, 1991 shall be by the symbol "T" followed by the appropriate page number.

References to the exhibits submitted into evidence at the final hearing shall be as follows: the symbol "BE" followed by the exhibit number for Bar exhibits; the symbol "RE" followed by the exhibit number for Respondent's exhibits.

References to Respondent's Brief shall be as follows: "RB" followed by the appropriate page number.

References to the Referee's Order on Motion for Clarification shall be as follows: "RO" followed by the appropriate page number.

References to Respondent's Answers to Request for Admissions shall be as follows: "A" followed by the appropriate letter.

STATEMENT OF THE CASE AND FACTS

Respondent's statement of the case and facts submitted in his initial brief are incomplete. The findings of fact made by the Referee which are set forth below are an accurate statement of the facts of this case.

"On or about 25 November 1986, Respondent was retained to represent Joe L. Frazier, Sr. in a workmen's compensation case (RE-1) (T-48). Mr. Frazier's workmen's compensation claim was settled for $76,000.00, and on or about 5 July 1989, a check was issued to the order of Mr. Frazier and Respondent (T-8) (BE-1).

Prior to 29 June 1989, Respondent's home, which is located at 512 East Duval Street, Lake City, Florida, was foreclosed on by Barnett Bank (A-D). Prior to 5 July 1989, and prior to receipt of the workmen's compensation claim settlement check, Respondent asked Mr. Frazier for a loan of $24,000.00 for a period of thirty days (BE-2) (BE-5) (T-108); Respondent was to deduct the loan directly out of any proceeds Mr. Frazier received from his workmen's compensation case (T-116) (BE-6).

At the time Mr. Frazier and Respondent entered into the loan agreement, Respondent was still representing Mr. Frazier as his attorney in the workmen's compensation case (T12-14). Respondent agreed to pay Mr. Frazier $2,000.00 interest over the period of the loan, which was thirty days (BE-5) (T-107). When Respondent asked Mr. Frazier for the loan, he did not advise Mr. Frazier to seek outside counsel (T-70).

On or about 30 June 1989, Mr. Frazier agreed to loan Respondent $24,000.00 (BE-2). The interest rate on the note entered into between Respondent and Mr. Frazier amounts to 100% per year (BE-5). The loan was clearly usurious. Respondent did not inform Mr. Frazier that the loan agreement Respondent prepared was, based upon its terms, unenforceable (T-109). Respondent never explained to Mr. Frazier the potential conflicts of interest involved with the loan before it was made (T-115).

On or about July 1989, Respondent received $12,000.00 as attorney's fees out of the settlement of the workmen's compensation claim (A-M). On or about July 1989, Respondent received $24,000.00 as a loan from Mr. Frazier, which was taken directly from the settlement proceeds check (A-N) (BE-6). Settlement of the workmen's compensation claim resulted in payment to Mr. Frazier and Respondent in the amount of $76,000.00. The cost of transferring the funds from Boston by wire was $30.00. The money was disbursed through Barnett Bank,

which charged $13.00 for processing expenses, leaving $75,957.00 to be distributed (BE-6) (T-22).

Respondent was credited with a fee of $11,957.00 plus the loan from Mr. Frazier in the amount of $24,000.00, making a total of $35,957.00. From those funds, Respondent received a check for $7,926.50, and the balance was paid to Barnett Bank of Suwannee Valley in the amount of $28,030.50 as consideration for reconveyance to Respondent of his home after foreclosure. The balance of the settlement proceeds in the amount of $40,000.00 was disbursed to Mr. Frazier by paying off his loan in the amount of $11,717.72 and paying the remainder to Mr. Frazier in the amount of $28,282.28 (BE-6) (BE-9) (T-23).

On or about 17 July 1989, as collateral for the $24,000.00 loan, Respondent executed a mortgage deed and a loan note purporting to give Mr. Frazier a first mortgage on Respondent's residence, located at 512 East Duval Street, Lake City, Florida (A-P) (BE-3) (BE-4). Respondent knew that he did not have title to the property when he executed the mortgage on 17 July 1989 (T-112) (BE-3). Since consideration for reconveyance of the property back to Respondent was to be paid directly from the settlement proceeds, it is possible to construe the transaction as being similar to a typical loan closing and title transfer situation. However, the failure to record the mortgage (A-U) left Mr. Frazier unprotected against judgment creditors and purchasers without notice.

On or about 20 July 1989, Barnett Bank executed a special warranty deed giving Respondent fee simple title to the property which was his home (A-R) (BE-9). Respondent kept both the original mortgage deed and the original loan note, and gave Mr. Frazier a copy of each (A-S). Respondent knew or should have known that Mr. Frazier's ability to enforce his rights with respect to the mortgage would be impaired unless he was given possession of the original note and mortgage.

It was Respondent's intent to use his home as collateral to get a loan and repay Mr. Frazier (A-E). After mortgaging the property to Mr. Frazier, Respondent attempted to obtain a loan in order to repay him by using as collateral the same property he had mortgaged to Mr. Frazier (A-W). When he was applying to lending institutions for a loan to pay back Mr. Frazier, Respondent failed to inform the banks that there was an unrecorded mortgage on the real property which he proposed to use as collateral. Respondent specifically intended that the mortgage to Mr. Frazier not appear in any title examination which might be done incident to a mortgage loan closing (T-119). Respondent was unsuccessful in obtaining a loan from a bank, using his property located at 512 East Duval Street, Lake City, Florida, as collateral (A-X). Respondent did not repay the loan from Mr. Frazier in the thirty-day period required by the loan agreement (A-Y) (BE-5).

Respondent and Mr. Frazier modified the loan agreement several times, with Respondent giving Mr. Frazier additional

sums of money as interest to induce him to agree to the modifications (T-25) (BE-7). Respondent's payments of additional interest to Mr. Frazier was at a rate greater than 30% interest per year (T-142) (BE-7). Respondent never informed Mr. Frazier that an interest rate of 30% or higher would make the loan agreement unenforceable (T-37).

When Respondent determined that he could not obtain a loan to repay Mr. Frazier his $24,000.00, Respondent directed Mr. Frazier to apply for a mortgage loan, using Respondent's home property as collateral (T-122 through 129). The terms of the proposed loan to Mr. Frazier were: (1) Respondent would transfer title to the property over to Mr. Frazier as collateral for the loan; (2) Respondent would make the monthly payments on Mr. Frazier's loan; and (3) if within 90 days Respondent paid Mr. Frazier the $26,000.00 that he owed him, Mr. Frazier would transfer the title back to Respondent (A-DD) (T-122 through 129). Respondent never transferred title to the property to Mr. Frazier in his name alone (T-123).

Mr. Frazier believed that Respondent was acting as his attorney with respect to the loan application (T-35 and 36). Mr. Frazier decided not to accept the terms of the loan because the lender would require Mr. Frazier to pledge a certificate of deposit as additional security (T-124 and 129). As an alternate means of obtaining a loan, Mr. Frazier and Hattie M. Sealey, Respondent's mother, applied for a joint loan at Barnett Bank (A-HH). In November 1989, Respondent conveyed his home property

to Mr. Frazier and Ms. Sealey (A-II) (BE-8). Responded recorded the deed to his mother and Mr. Frazier, and kept the deed in his possession (A-JJ). In February 1990, Barnett Bank approved Mr. Frazier's and Ms. Sealey's application for a loan (A-KK). Mr. Frazier decided not to accept the joint loan (A-LL). The documents marked as Bar Exhibits number 2, 3, 4, 5 and 8 were prepared by Respondent (A-MM).

Respondent repaid to Mr. Frazier the $24,000.00 which he had borrowed from him, plus approximately $10,000.00 in monthly payments over a period of approximately one year (T-21) (T-142)." (RR 2-8)

In addition to Respondent's statement of the case, the following procedural events took place:

Respondent filed a Petition for Review on or about November 26, 1991. The Florida Bar filed a Motion for an Order to Show Cause why Respondent's Petition for Review should not be dismissed on or about January 16, 1992. This Court entered an Order in this case dismissing Respondent's Petition for Review on March 12, 1992. Respondent filed his initial brief on or about March 16, 1992. Respondent filed a Motion for Rehearing on or about March 19, 1992. By letter dated April 2, 1992,

Respondent filed a Motion to Expedite which was granted April 13, 1992. On April 20, 1992, Respondent's Motion for Rehearing was granted.

SUMMARY OF ARGUMENT

THE REFEREE COMPLIED WITH RULE 3-7.6(K)(1) OF THE RULES OF DISCIPLINE WITH RESPECT TO THE CONTENTS OF HIS REPORT IN THIS CASE BY MAKING "FINDING OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED..."

The Referee's Report in this case complies with the requirements of Rule 3-7.6(K)(1) of the Rules of Discipline of The Florida Bar by making a finding of fact as to each item of misconduct of which the Respondent is charged. An item of misconduct within the meaning of this rule refers to the course of Respondent's conduct as it relates to his client, Mr. Frazier. An item of misconduct can produce a number of violations of the Rules of Discipline and Rules of Professional Conduct of The Florida Bar.

Respondent's conclusion that the Referee has made general findings of fact and has summarily recommended that he be found guilty of violating the rules Regulating The Florida Bar is erroneous. The Referee, as shown in his report, has made very specific findings of fact which lead to the inescapable conclusion that Respondent has violated the Rules Regulating The Florida Bar cited in the Referee's Report.

THE REFEREE'S RECOMMENDATIONS AS TO DISCIPLINARY SANCTIONS TO BE IMPOSED ARE APPROPRIATE GIVEN THE FACTS AND CIRCUMSTANCES OF THIS CASE.

The record in this case reveals an attorney who finding himself in financial trouble, decided to place his client at risk in order to help himself. The suggestion by the Respondent that somehow the Referee erred by not weighing the six mitigating factors in the proper proportion to the three aggravating factors thereby yielding an inappropriate recommended discipline is not supported by the case law or standards for imposing lawyer sanctions or the facts of this case.

The Referee solicited and received memorandum from both The Florida Bar and Respondent as to the appropriate discipline to be imposed in this case. The Referee made his decision after receiving the memorandum including the case law provided to him.

THE REFEREE DID NOT ERR IN CLARIFYING HIS ORIGINAL REFEREE'S REPORT TO ACCURATELY REFLECT HIS RECOMMENDATION AS TO THE DISCIPLINE WHICH SHOULD BE IMPOSED IN THIS CASE.

It is imperative that the Court note that at no time did the Referee in this case recommend a ninety-day (90-day) suspension. The portrayal by the Respondent of this term of suspension to this Court as the recommendation of the Referee is misleading. The initial report of the Referee as it pertains to discipline to be imposed was ambiguous. The Florida Bar filed a motion for clarification which the Referee deemed "well founded" (RO-1) and amended his report. The Referee's amended report is no more severe than his first; it is, however, far less ambiguous.

ISSUES AND ARGUMENT

THE REFEREE COMPLIED WITH RULE 3-7.6(K)(1) OF THE RULES OF DISCIPLINE OF THE FLORIDA BAR WITH RESPECT TO THIS CASE BY MAKING A "FINDING OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED."

This is a one count disciplinary complaint relating to Respondent's conduct with respect to his client, Mr. Frazier. The item of misconduct referred to in Rule 3-7.6(K)(1) does not refer to one rule violation or one independent or overlapping set of facts supporting a particular rule violation. In the case under review, the item of misconduct relates to the Respondent's dealings with Mr. Frazier and how those dealings amount to a number of violations of the Rules Regulating The Florida Bar. The Findings of Fact made by the Referee relate to the same subject matter and parties which are contained in the single count complaint filed by The Florida Bar.

Respondent's attempt to equate "item of misconduct" with a specific rule violation needing a separate and distinct factual finding in support of the finding of guilt is misleading. An item of misconduct is a set of related facts and/or parties which, given a particular case, can lead to several violations of the Rules of Professional Conduct of The Florida Bar as is shown in the case at hand. See The Florida Bar v. Barley, 541 So.2d 606 (Fla. 1989).

The Respondent relies on the case of The Florida Bar v. Lancaster, 448 So.2d 1019 (Fla. 1984), for the proposition that the Referee must make specific findings of fact as to each item of misconduct charged against Respondent before the Court can adopt the recommendation of guilt. Lancaster is distinguished from the case under review in that in Lancaster, the Referee was making recommendations on a six-count complaint and had failed to make a specific factual finding as to the allegations on one of the counts and the Court found that without said finding it could not accept the Referee's recommendation as to that count. In this single count complaint presently before the Court, the Referee has made a factual finding which serves as the basis of his findings of guilt.

Respondent does not challenge the Referee's findings of fact and as this Court has held in the past, "A referee's findings of fact are presumed to be correct and should be upheld unless clearly erroneous or lacking in evidentiary support." The Florida Bar v. Stalnaker, 485 So.2d 815, 816 (Fla. 1986). The Respondent has not alleged that the Referee's findings of fact are not supported by the evidence or are in error and, therefore, the Court should accept the Referee's Findings of Fact as support for the Referee's Recommendation of Guilt in this case.

THE REFEREE'S RECOMMENDATIONS AS TO DISCIPLINARY SANCTIONS TO BE IMPOSED ARE APPROPRIATE GIVEN THE FACTS OF THIS CASE.

This is not an isolated incident of misconduct but rather a pattern of misconduct on the Respondent's part with respect to his client, Mr. Frazier. Respondent put forth the premise that he committed an isolated act of misconduct and, therefore, given the other factors enumerated within his brief, he feels the recommended discipline is too harsh.

The Referee, having considered the case law presented to him, the recommendations of the parties as to appropriate discipline, including the aggravation and mitigation present in the case, and the standards for imposing lawyer sanctions, and having determined the weight and sufficiency of the evidence before him, recommended "that the Respondent be suspended from the practice of law for a period of ninety-one (91) days and thereafter until Respondent shall prove rehabilitation as provided in Rule 3-7.10 of the Rules of Discipline of The Florida Bar. [and] ... that passage of the ethics portion of The Florida Bar examination shall be a condition of reinstatement."

Mr. Martin L. Black has been found guilty of violating Rule 3-4.3 (the commission by a lawyer of any act which is unlawful or contrary to honesty and justice) of the Rules of Discipline of The Florida Bar; and Rules 4-1.7(b) (a lawyer shall not represent a client if the lawyer's exercise of

independent professional judgment in the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents after consultation), 4-1.8(a) (a lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, except a lien granted by law to secure a lawyer's fee or expenses...), and 4-8.4(d) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice) of the Rules of Professional Conduct of The Florida Bar.

The starting point in determining the proper discipline to be imposed upon a lawyer who has been found guilty of violating the Rules of Professional Conduct of The Florida Bar is to review the Florida Standards for Imposing Lawyer Sanctions. Section 3.0 of the Florida Standards provides that:

> In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:
>
> a) the duty violated;
> b) the lawyer's mental state;
> c) the potential or actual injury caused by the lawyer's misconduct; and
> d) the existence of aggravating or mitigating factors.

Respondent has violated the following sections of the standards and, in the absence of aggravating or mitigating circumstances, and upon application of the factors set forth in Section 3.0:

4.32 - Failure to Avoid Conflicts of Interest

> Suspension is appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

7.2 - Violations of Other Duties Owed as a Professional

> Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

Respondent's mental state during the period under review, although not specifically addressed at the final hearing, appears to be one of distress over the foreclosure action on his house and his financial problems.

The potential injury in this case is the loss of the $24,000 loaned to Respondent by Mr. Frazier, his client.

The aggravating factors in this case are:

1) Selfish motive -- Respondent approached Mr. Frazier for a loan from the proceeds of a civil case in which he was representing him in order to buy his home back from the bank that had taken it in a foreclosure action.

2) Vulnerability of victim -- Mr. Frazier was Respondent's client.

3) Substantial experience in the practice of law -- Respondent was admitted to the practice of law in 1974.

The mitigating factors in this case are:

1) Absence of a prior disciplinary record.

2) Timely good faith effort to make restitution or to rectify consequences of misconduct.

3) Remorse.

4) Full and free disclosure to disciplinary board and cooperative attitude toward proceedings.

5) Absence of intent to deprive the victim of property.

6) Absence of intent to deceive the victim.

The next step in determining the appropriate discipline is the review of applicable case law. The following are cases which appear to be similar in nature to the case under consideration and may be helpful when determining discipline to be imposed in this matter:

The Florida Bar v. Pitts, 219 So.2d 427 (Fla. 1969). An attorney who borrowed a substantial sum of money from a client at a usurious rate and pled usury as defense to suit on the note should be suspended from the practice of law for a period of six months.

The Florida Bar v. Delves, 160 So.2d 114 (Fla. 1964). Conduct of an attorney in furnishing a defective instrument to laymen from whom the attorney obtained a substantial loan and in thereafter filing his affidavit, in a suit by laymen to enforce the note, charging that the note was usurious and at least

partially unenforceable, warranted suspension from the practice of law for a period of twelve months.

The Florida Bar v. Barley, 541 So.2d 606 (Fla. 1989). Attorney misconduct in failing to advise a client to seek independent counsel to enforce provision of a divorce settlement agreement against deceased former husband's estate when attorney is also trustee of trust fund for settlement proceeds, charging both hourly fee and contingent fee, withdrawing fees directly from trust fund, thereby causing liquidity problems forcing client to borrow from bank, persuading client to loan money from trust fund and subsequently drafting and backdating notes with terms different from those agreed to so as to evidence loan, warrants 60-day suspension.

In the case of The Florida Bar v. Kramer, 17 F.L.W. S81 (1992), the Court ruled that a public reprimand would be the appropriate discipline where the Respondent had business dealings with his client without disclosing the exact nature of the transaction or obtaining client's consent. The Court noted that:

> "Business dealings between lawyers and clients are fraught with conflict-of-interest problems, as this case clearly illustrates. Human nature makes such conflicts virtually inevitable notwithstanding a lawyer's good intentions. When a lawyer deals with a client in a business transaction, the lawyer must be scrupulous in disclosing the exact nature of the transaction and in obtaining the client's consent in writing. Failure to comply with these safeguards normally warrants a greater punishment than a reprimand. However, in light of the referee's evaluation of all the evidence presented, we defer to the referee's judgment as to a reprimand.

> Nevertheless, as discussed above, we cannot agree that the reprimand should be private. See The Florida Bar v. Dougherty, 541 So.2d 610, 612 (Fla. 1989); The Florida Bar v. Dunagan, 509 So.2d 291, 292 (Fla. 1987)." Id. at S81.

In the case of The Florida Bar v. Crabtree, 17 F.L.W. S77 (1992), the Court disbarred the Respondent for conduct involving dishonesty, fraud, deceit, and misrepresentation, entering into business transaction with client without full disclosure and consent of client and representation of two clients who could have adverse interest without knowledge or consent of client.

Respondent's actions are far more egregious than those outlined in the case of The Florida Bar v. Barley, 541 So.2d 606 (Fla. 1989). Unlike the Court's decision in Barley, Respondent has been found guilty of the commission of an act which is either unlawful or contrary to honesty and justice, Rule 3-4.3 of the Rules of Discipline of The Florida Bar. In Barley, the Referee found and the Court accepted the fact that Barley's misconduct occurred mainly through ignorance and not through bad motives. In the case presently before this Court, the Referee found that Respondent possessed a selfish motive, a fact which is most certainly supported by the record.

While the case of The Florida Bar v. Kramer, 17 F.L.W. S81 (1992) may tend to support the proposition that violations of the Rules of Professional Conduct with respect to an attorney entering into business transactions with his or her client may produce a short term suspension, the case of The Florida Bar v. Crabtree, 17 F.L.W. S77 (1992), suggests that when you couple

the violation of the Rules of Professional Conduct regarding business transactions with one's client with violations that the Respondent was committing acts which were dishonest--in this case either unlawful or contrary to honesty and justice, the result may be a much more severe sanction.

Finally, the purposes for imposing discipline as outlined in the case of The Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970) should be considered:

> First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. Id. at 132.

Having reviewed the Standards for Imposing Lawyer Sanctions, case law and the purposes for imposing sanctions, the Referee's recommendation as to disciplinary measures to be applied in this case are appropriate.

THE REFEREE DID NOT ERR IN CLARIFYING HIS ORIGINAL REFEREE'S REPORT TO ACCURATELY REFLECT HIS RECOMMENDATION AS TO THE APPROPRIATE DISCIPLINE WHICH SHOULD BE IMPOSED IN THIS CASE.

The Referee in this case has never recommended that the Respondent be suspended for ninety (90) days as Respondent alleges. Rather, the Referee originally recommended a "three-month" (RR-8) rehabilitative suspension which caused The Florida Bar to file a motion for clarification. There is no requirement that a Referee make additional findings of fact in order to clarify a previously submitted recommendation to this Court in a disciplinary case.

What the Referee recommends to the Court with respect to disciplinary measures to be applied in this case are clearly put forth in his order on motion for clarification, Respondent's position notwithstanding.

Surely Respondent's arguments that he knows what the Referee meant more so than the Referee is hard to believe. The clarification of the Referee's report by the Referee cannot and should not be viewed as enhancing the recommended discipline. The Referee added no new facts to his report, accepted no additional evidence and clearly allowed both parties to put forth their respective positions before he ruled.

CONCLUSION

Respondent and The Florida Bar have had the opportunity to plead their respective sides of this case to the Referee. The Referee, having heard the testimony, judging the credibility of the witnesses and having reviewed the evidence, has made his recommendations as to the guilt of Respondent and the discipline to be imposed.

The Respondent does not argue to any great extent the validity of the Referee's findings of fact or finding of guilt. What Respondent argues is that because of the facts of the case, the mitigation, and his years as a lawyer, this Court should not follow the recommendation of the Referee in this matter. It is most apparent that the Referee has considered Respondent's concerns and ruled appropriately.

Respondent has offered nothing to this Court by way of contrary testimony or documentary evidence which the Referee misconstrued or overlooked which would lead one to believe that the Referee has erred with respect to his findings of fact. With respect to Respondent's assertions that he finds it difficult to argue the facts on appeal, that position is most understandable in that the facts as presented by the Referee appear to be accurate and are supported by the evidence presented to him and support his recommended finding of guilt.

Respondent argues that the recommended discipline is too harsh in that a one-time incident should not warrant this stern a discipline. Respondent does not talk about the complainant who trusted him as his attorney. Respondent doesn't talk about his creation of an unenforceable note, his failure to record the note and mortgage in question, his failure to inform the lending institution from whom he was seeking a loan of the existence of the unrecorded mortgage, nor any of his other failings outlined in the findings of fact.

Respondent argues that some of the facts as found by the Referee are not supported by unrefuted evidence although he offers nothing further as to the relevance of this contention as it applies to this case.

This recommended discipline is supported by the Florida Standards for Imposing Discipline as outlined herein. This proposed discipline is in line with the case law, in that the selfish interest or needs of an attorney should not be allowed to override his duties and responsibilities to his client. There is no doubt that had an independent attorney been involved in the transaction between Respondent and Mr. Frazier, it would never have taken place the way it did.

The proposition that Respondent, through his actions, was only trying to repay Mr. Frazier is tantamount to putting the cart before the horse. Mr. Frazier should not have been in the position he found himself in with respect to the Respondent in the first place. Mr. Frazier went through months without his

funds, ended up applying for a loan to repay himself, and was forced to be placed in an adversarial position with his attorney through no fault of his own.

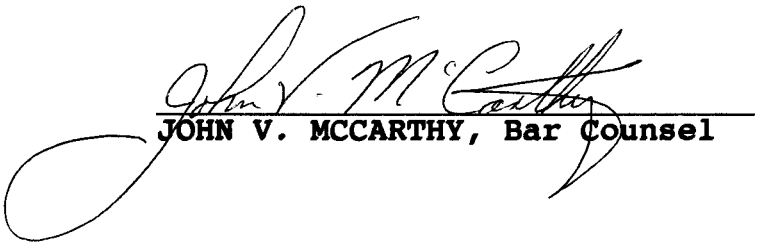
The purposes of discipline will be met by imposition of the recommended discipline in this case. Respondent's actions in this case establish a clear need to protect the public from possible similar actions by Respondent in the future should his financial position deteriorate. The proposed discipline is fair to Respondent in that it will encourage reformation and rehabilitation by allowing him the time to sort out and hopefully come to an understanding of why his actions in this case were inappropriate, while at the same time being sufficient to punish his breach of ethics. Finally, accepting this recommended discipline will be severe enough to deter others who might be prone or tempted to become involved in like violations.

Respondent's actions in this matter led exactly to what the rules he violated were written to avoid. Respondent's client was taken advantage of for the benefit of Respondent.

The Referee's recommendation in this case should be accepted.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief regarding Supreme Court Case No. 76,866; TFB File No. 90-00662-03 has been forwarded by regular U.S. mail to **MARTIN L. BLACK**, Respondent, at his record Bar address of 505 East Duval Street, DeSoto Plaza, Suite D, Lake City, Florida 32055-4073, on this 18th day of May, 1992.



JOHN V. MCCARTHY, Bar Counsel