IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

-vs-

EDWARD B. ROOD,

Respondent.

_____/

Case No. 78,795

TFB No. 90-10,733(13E)
(Heidi Stephenson)

TFB No. 90-11,550(13E)
(Michael Ng)

Case No. 78,741

TFB No. 91-10,534(13E)
(Lakeland Property)

INITIAL BRIEF OF RESPONDENT IN COUNT I, TFB NO. 90-10,733(13E) HEIDI STEPHENSON

INITIAL BRIEF OF RESPONDENT IN TFB NO. 91-10,534(13E) LAKELAND PROPERTY

ANSWER BRIEF OF RESPONDENT IN COUNT III, TFB NO. 90-11,550(13E) MICHAEL NG

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SYMBOLS AND REFERENCES

In this Brief, "T" refers to Transcript of the Referee Hearing in that particular case.

INITIAL BRIEF OF RESPONDENT IN HEIDI STEPHENSON CASE (COUNT I) (TFB NO. 90-10,733(13E)

STATEMENT OF THE FACTS AND THE CASE

Mr. Stephenson employed David Webster to represent him in a slip and fall lawsuit in which his young daughter, Heidi, was injured. Webster was an employee of the firm of Rood, Hapner and Dekle. The personal injury case was settled by Webster in 1984. He prepared the guardianship papers making himself the guardianship lawyer. In 1986, Webster started his own firm and took the guardianship file with him but left the personal injury file. Jan Taylor (Webster's secretary) (T-84) remained as one of the secretaries for the firm. On December 17, 1986, the Probate Office mailed a Contempt Notice to the Stephensons and sent a copy to Webster, the guardianship attorney. Both Webster and the Stephensons had ignored other Notices.

On January 13, 1987, Jan Taylor wrote a letter to Mrs. Stephenson sending her the forms for an Inventory and Annual Return, probably at the request of Mrs. Stephenson. Shortly thereafter, Rood received a letter from Mrs. Stephenson (TFB Ex 4). This letter was the first time the Respondent had ever heard of Mrs. Stephenson or her daughter, Heidi. A part of that letter read as follows:

> "There is no money left, my daughter is also aware of this. She also knows that by the time she is 18 her father will do whatever is necessary to see she has her money. We do have property that is free and clear at 2711 68th Street North, Tampa."

Mrs. Stephenson asked that I go with her to a hearing

to explain to the Judge that her husband would pay the money to Heidi on her Birthday. Mrs. Stephenson and her daughter, Heidi, came to my office a few minutes before the time for the hearing on March 20, 1987. That meeting was the only time I was ever with Mrs. Stephenson until September 1989 in another hearing before Judge Alvarez. It was also my first meeting with Heidi, the daughter, and I only met her one other time until the meeting with Judge Alvarez in 1989. She said she was guilty of having used Heidi's money and that she and her husband would see that Heidi would be paid by her husband by whatever means it would require, by Heidi's eighteenth birthday.

I asked her why she asked me to go with her to see Judge Alvarez when David Webster was her probate lawyer, and the McAliley law firm was representing her in her train wreck accident, and a different law firm, Barkin & Neff, was working on her social security problem. Apparently she didn't want her other lawyers to know that she had used her daughter's money.

When we got to the office of Judge Alvarez, Mrs. Stephenson did not want to see the Judge unless he required it. I explained to Judge Alvarez the situation, told him that I didn't know anything about the case but that Mrs. Stephenson wanted me to assure him that she and her husband would pay Heidi on or before her eighteenth birthday. The Judge told me to tell her that she must make that payment, and that Heidi must acknowledge the payment. I

told Mrs. Stephenson exactly what the Judge had ordered, and that probably a Promissory Note, particularly if it was with security, would probably be satisfactory. Mrs. Stephenson didn't like the idea of securing the Note, but she did promise that Heidi would be paid as required by the Judge. Since David Webster was her attorney, I did not charge her a fee for attending the hearing with her and considered it a pro bono service.

I was surprised about a year later to receive a Notice from Judge Alvarez for a hearing on June 22, 1988 if additional papers were not filed. I also saw on my Notice that a copy had gone to Mrs. Stephenson. Soon thereafter she called me and informed me that Heidi had not been paid and so I told her I would write the Judge with the information since she had not lived up to her promise to pay Heidi. To make sure that she realized that I was going to write the Judge, I sent her a letter dated May 10, 1988 telling her what I was going to do. (Exhibit 12-A and T-50-51).

On June 10,, 1988, I received a telephone call from a Lakeland lawyer, Mark Clements, who informed me that Heidi had not been paid, just as Mrs. Stephenson had said. He told me then and later that Heidi was not present with him but that her sister and a friend were present. He wrote a letter dated June 14 to Heidi explaining her legal right to sue her parents for the money they had spent (Exhibit 12-B). Heidi testified that she did attend that meeting with her sister in Lakeland, and Mr. Clements' testimony at the

Referee hearing was that Heidi did not attend that meeting, and that was why he wrote her the letter of June 14 so that Heidi would know her rights. Shortly thereafter, I received a telephone call from Mrs. Stephenson telling me that Heidi had been paid. I reminded Mrs. Stephenson that the Judge had said that Heidi would have to acknowledge payment, and that Heidi should do that before the June 22nd hearing.

On June 20, 1988, at about 5:00 P.M., Heidi and her sister, Kalebra, came to my office. Heidi said she had been paid. I had a meeting I had to attend but I talked to both of them until I was convinced that she had received payment. The acknowledgement form had to be notarized, and I asked Mrs. Patricia Barnes, a notary, to come into my office. She had never notarized anything for me; in fact, she was just a temporary employee. I brought Mrs. Barnes into my office and she saw to it that it was signed by Heidi and notarized.(T-59)

Mrs. Stephenson apparently filled out several forms which were the same ones sent her in January of 1987 by Jan Taylor. I don't know how or when Mrs. Stephenson signed those papers or for certain where she got them, but someone in the office received them and filed them along with the acknowledgement signed by Heidi in the presence of a notary, Patricia Barnes.

I had no further conversations or meetings with Heidi or her mother or her family until the meeting with Judge Alvarez in September of 1989.

Mrs. Stephenson did not send in to the Probate Office any closing papers, and so another Notice came in June of

1989, setting a hearing at 10:00 A.M. August 17th. (Exhibit 18).

I turned the matter over to Dennis Lopez, a young lawyer on our floor of the building, who has his own practice not connected with my firm. Mrs. Stephenson and Heidi both signed documents for him with neighbors as witnesses that Heidi had been paid. Later, Mr. Lopez called Mrs. Stephenson and asked her again if the paper she had signed was correct and that Heidi had been paid, and Mrs. Stephenson assured him that Heidi had been paid. Later, he talked to Heidi again who said that not all of her money had been paid. Thus, to another lawyer, Mrs. Stephenson two or three times said that Heidi had been paid and Heidi signed an acknowledgement witnessed by several neighbors that she had been paid. Heidi even testified at the Grievance Committee hearing that I told her to tell Lopez that she had been paid. However, when questioned in more detail on that assertion, she admitted that she had not had any conversation with me and that I did not tell her to lie to Lopez. (T-250, 251). Heidi also stated that when she signed the acknowledgement in my office back in June of 1988 that there was no notary ever in the room when she signed. Thus, Heidi's testimony is contrary to that of Mark Clements, the notary Patricia Barnes, and lawyer Dennis Lopez, and lawyer Ed Rood.

Mrs. Stephenson's testimony is contrary to that of Respondent and contrary to that of Dennis Lopez. Mrs.

Stephenson said in her first and only letter to me that she spent Heidi's money and that her husband knew nothing about it. In her testimony (T-168), she testified under oath that her husband spent the money . In her testimony, she said that the Court guardianship documents were "misleading" and that she wasn't sure "what she was to do". In her only letter to me (Exhibit 4), she states clearly that what she should do was to pay Heidi by her eighteenth birthday, and that "whatever is necessary" will be done to pay Heidi. She also admits (T-174) that the matter could be resolved by signing a Promissory Note on or before Heidi's eighteenth birthday, and she admits that Rood discussed that with her. Also, she ignored two or three Orders from the Court which were sent to her and her husband and to Mr. Webster, all before my meeting with her in early 1987.

Mrs. Stephenson was obviously not willing to pay anything to Heidi until their unencumbered Tampa property was sold. She and her husband received $45,900.00 from the sale of that property, and yet she only paid Heidi $13,000.00. She obviously didn't want to pay anything until that sale was made, and in order to put the payment off until the sale, she lied to me, had Heidi lie to me, lied to Mr. Lopez; then even after the property was sold in May of 1989, didn't tell me abut it, didn't tell Lopez about it, and then only paid $13,000.00 to Heidi instead of $20,000.00.

SUMMARY OF ARGUMENT

The Referee found me guilty of 1) failing to competently and diligently pursue and conclude Heidi's guardianship case; and 2) during his representation of the Stephensons, he knowingly and intentionally encouraged, advised and caused his clients to execute false documents.

I do not handle guardianship matters, and David Webster handled the slip and fall case and he prepared the guardianship papers and named himself as attorney of record in the guardianship proceedings.

I told Mrs. Stephenson in my one and only visit with her that I did not handle guardianship matters, and that if she wanted anything done after my visit that she should see Webster or one of her attorneys who was representing her in January of 1987. The only thing I did on any of the paperwork was to see that the guardianship form for acknowledgement was proper and that Heidi signed June 20, 1988 with a notary present.

With reference to the second finding of the Referee, I did not advise Mrs. Stephenson or her daughter to do anything illegal, and in fact for the three times that Mrs. Stephenson did something improper to my knowledge, I told it to the Judge. The first instance in which I told the Judge everything was at her request at the first meeting on March 20, 1987. The second time was on May 10, 1988 when she told me by telephone that Heidi had not been paid. I wrote her a letter stating that I was going to notify the Judge. And

the third time I notified the Judge was when Dennis Lopez and my son and I went over to see Judge Alvarez.

ARGUMENT

The Referee found me guilty of 1) failing to competently and diligently pursue and conclude Heidi's guardianship case; and 2) during his representation of the Stephensons, he knowingly and intentionally encouraged, advised and caused his clients to execute false documents with the Probate Court.

With reference to the first finding above, I do not represent people in guardianship matters, and I know very little about it. As the record will show, Mr. Webster was the attorney the Stephensons selected to handle the personal injury case, and after they refused the assistance of Mr. Oehler in the guardianship matter, Webster prepared and filed the guardianship papers and listed himself as the attorney of record, and he never resigned from that position to my knowledge.

On October 16, 1986, the Probate Division issued an Order To Show Cause directed by mail to the Stephensons and to the guardianship attorney, Mr. Webster. This occurred at about the time that Webster formed his own law firm. He took with him over 200 files and thus mail that came to my office addressed to him was always sent to him unopened. The Stephensons and Webster both ignored the October 16 Notice, just as they had ignored all of them prior to that.

On December 17, 1986, the Court issued a Contempt

Notice to Stephenson and Webster. My firm received no notice because we did not represent the Stephensons in the guardianship matter.

Sometime in January 1987, Jan Taylor, Webster's secretary when he was with my office, learned of the Contempt Order. She didn't mention it to me, but she, with the assistance of Dennis Lopez, sent Mrs. Stephenson the proper forms for meeting the Court's requirement. She and Lopez did not discuss it with me because she knew that I know little about guardianship matters. These same papers were completed by Mrs. Stephenson and delivered to someone in the office around June 20, 1988 and filed on June 22, 1988.

My first knowledge of anything about the Stephenson matter was when I was handed in late January of 1987 or early February a letter addressed to me from Mrs. Stephenson (TFB Ex. 4).

The Referee found as a part of his findings that I met Mrs. Stephenson for the first time when she and Heidi arrived at my office to attend the hearing before Judge Alvarez on March 20, 1987. After she and Heidi arrived in my office, I discussed with her the matters referred to in her letter to me in which she had stated that all of Heidi's money had been spent and that she had spent it and that her husband didn't know anything about it and that her husband would do "whatever was necessary" to pay Heidi on or before

her eighteenth birthday. We walked together to the Judge's office one block away, and Mrs. Stephenson decided that she did not want to face Judge Alvarez unless it was necessary, and so I went into the Judge's office alone and explained to him exactly what had happened. He told me to inform Mrs. Stephenson that Heidi should be paid on or before her birthday and that a Promissory Note was satisfactory if it was satisfactory with Heidi.

Mrs. Stephenson informed me during our conversation that day that she had several law firms representing her. The McAlily firm represented her in a train wreck case in which she was injured, and she was represented by Barkin and Neff in a Social Security matter, and Webster was her guardianship lawyer, and she worked in her job with many lawyers. She was told that I knew very little about guardianship, but that if she wanted help with a Promissory Note that Webster or someone in my office could help her. I never expected to see her again.

I didn't see her again but I received a Notice from the Probate Office that she should see the Judge on June 22, 1988. Soon thereafter, she telephoned me and told me that Heidi had not been paid. I told her that I would then have to inform the Judge of the situation, and in order to be certain she knew, I wrote her a letter dated May 10, 1988 informing her that the Judge must know of the situation. A copy of that letter was filed by the Bar at the Referee hearing. (TFB Exhibit 12-A).

On June 10, 1988, I received a telephone call from a Lakeland lawyer named Mark Clements, and he told me that Heidi's sister was asking for information, and he asked me whether or not Heidi had been paid, and I told him of the recent telephone conversation with Mrs. Stephenson that Heidi had not been paid. He told me that the sister, Kalebra, and a friend were asking for information and assistance. He also told me that Heidi was not at the meeting.

Sometime within the next week or so, I got a second telephone call from Mrs. Stephenson, and she gave me the new information that Heidi had now been paid in full, and that she wanted me to know it because she was going to the hospital in Gainesville. I reminded her that the Judge had required when I met with him back in 1987 that Heidi sign an acknowledgement that she had been paid, and that she must get that done. I heard nothing further, and so on or about June 18 or 19, I called Heidi to remind her that since she had been paid, she would have to sign an acknowledgement and that she should see an attorney. Late in the afternoon of June 20 around 5:00 or 5:15 P.M., she and her sister came to my office. She had with her an acknowledgement form and luckily one secretary, Patricia Barnes, was still at work. I asked her if she was a notary because I had never had her notarize anything, and when she said she was, I brought her into my office, and she went through the usual in having someone sworn by a notary when signing a document. Heidi

told me that she had been paid and somewhere in the conversation she was told that the document she signed would probably make the hearing on June 22 unnecessary, but to tell her mother to see one of her attorneys to finish the matter. Once again, I never expected to see or hear from the Stephensons, and I thought since I never heard from them again that one of her many attorneys had closed the matter. Thus, I was surprised when I received on June 6, 1989 a notice that the guardianship was still not closed. I immediately turned the notice over to Dennis Lopez who, together with his secretary, had knowledge of such matters. Lopez finally got the papers prepared, and Mrs. Stephenson and Heidi again, in the presence of witnesses, acknowledged that Heidi had been paid. Two weeks later, Lopez got a call from the Judge's assistant who asked him a question about the closing, and so Lopez called Mrs. Stephenson again and asked her if Heidi had been paid, and Mrs. Stephenson said yes. He then talked to Heidi, and Heidi said no, she hadn't been paid.

During the Referee hearing on February 26, 27, 1992, the testimony included that in June 1989, the Stephensons had sold their Tampa property for $45,900.00 cash less expenses, and that the parents had only paid her $13,000.00 although they had the money to have paid her completely. The fact that Mr. and Mrs. Stephenson didn't pay their daughter promptly and in full and the fact that they didn't tell the Judge or Mr. Lopez that the sale had been completed

in June 1989 revealed why Mrs. Stephenson wanted to delay paying Heidi until the sale was made; and even then not to pay her the entire amount. That motive and plan made it necessary for Mrs. Stephenson to put off paying Heidi; and then after she had sufficient money, to refuse to sign a secured Promissory Note. On February 26, 1992, Heidi had received no payment on the Note and no interest although 20 months had elapsed between the sale and the hearing before the Referee.

On the other hand, Respondent had no reason to think that he was taking the place of Webster who was the attorney for the guardianship. His pro bono help to see Judge Alvarez with her in 1987 and his asking a notary to sign the acknowledgement was his connection with the case. Mr. Webster apparently wrote a letter to Mrs. Stephenson and the Court, but he never sent a copy to Rood or discussed it with Rood. It is certainly true that Jan Taylor may have prepared some papers with Mr. Lopez' help, but that was not discussed with me, and I still do not know who prepared the papers except to know that I didn't do it and I don't even know what forms would have to be used.

Three witnesses testified to facts that would make the Stephensons' testimony lack some credibility. Mark Clements, the Lakeland lawyer, told me on the phone and testified under oath that Heidi did not attend the meeting with him, and Heidi testified under oath that she did. Also, Mrs. Patricia Barnes, a notary public that I hardly

knew, testified under oath that she was in my office in the presence of Heidi and her sister when Heidi signed the acknowledgement that she had been paid. Heidi, on the other hand, denies that a notary was present.

Mrs. Stephenson, whose motive was not to pay her daughter until the sale was made, and whose motive was not to sign a Promissory Note that was secured, accomplished her purpose by delaying the entire process by saying that Heidi had been paid.

Mrs. Stephenson received the money in June of 1989. She didn't tell this to Lopez or to the Judge, and the reason she didn't tell it was that she didn't want to pay more than $13,000.00 to Heidi, and why she only wanted to give an unsecured Promissory Note rather than a secured Note which I would recommend. At the hearing before the Referee in February of 1992, Heidi had still not been paid anything on that Note.

The Referee states that there are several reasons that he thought Mrs. Stephenson's version of what happened was correct. The reason that he states is that when Heidi was told she would have to sign a document stating she had received her money, she became concerned that if she signed it, she would never get her money. She consulted her sister, Kalebra, who advised her to speak to an attorney friend. On June 10, 1988, Heidi and Kalebra went to Mark Clements' office to discuss the matter. They wanted a second opinion about how the guardianship case was being

handled. During that visit, Clements telephoned Rood and informed him that Heidi was claiming that she had not been paid her money. There is no reason to doubt Clements' testimony.

The Referee's statement outlined above is incorrect in two particulars. First, Clements said that Heidi did not come to his office; it was Kalebra who went to Clements' office together with her boyfriend, and what they asked Mr. Clements was what remedy her sister Heidi had, and Mr. Clements informed Kalebra that if Heidi had not received her money, she could sue her parents.

Second, the Referee omitted an important part of the testimony, to-wit: Shortly after the meeting with Mark Clements, I received a phone call from Mrs. Stephenson telling me that Heidi had now been paid. (T-349). Whether it was the meeting with Mr. Clements or some other happening, I don't know. I was pleased to hear that Heidi had been paid and reminded Mrs. Stephenson that Heidi should sign an acknowledgement, and that it should be done before the June 22nd hearing. I agree with the Referee that there is no reason to doubt Mr. Clements' testimony, and that testimony that Heidi could sue her parents as her remedy probably motivated Mrs. Stephenson's telephone call to tell me that Heidi had been paid, and probably motivated Mrs. Stephenson to sign the papers that had been sent to her by Jan Taylor in January of 1987 and to deliver them to Miss Taylor.

CONCLUSION

The Referee found me guilty of 1) failing to competently and diligently pursue and conclude Heidi's guardianship case; and 2) during his representation of the Stephensons, he knowingly and intentionally encouraged, advised and caused his clients to execute false documents with the Probate Court.

With reference to the Referee's first finding, I carried out to the best of my ability the only request made of me. I knew Mrs. Stephenson's lawyer was David Webster, and I knew of all the other lawyers who were working with her on other matters. She told me and let me know from the beginning that she didn't want to sign a Promissory Note with security, so I knew why she never came to anyone in my firm to have that done. Nothing that I did pro bono harmed Mrs. Stephenson or her daughter.

With reference to the second finding, it concerns me that the Referee would believe Mrs. Stephenson's testimony when she clearly had the motive to not pay her daughter until the sale was made and the motive to never give her all of her money. There was certainly no motive on my part to tell a lie as Mrs. Stephenson's testimony infers. It is hard for me to believe that anyone would think that I would take the chance of ruining my career to keep Heidi from getting her money. I wasn't charging a fee. I was not obligated to Mrs. Stephenson in any way, and if I <u>had</u> been trying to pull the wool over the eyes of the Guardianship

Division, I would never have turned the 1989 notice over to Dennis Lopez because I would have been afraid that he would find out that I was being dishonest. It is pretty obvious that if I was being dishonest, I would have asked for help from one of the secretaries to close the matter myself.

ANSWER BRIEF OF RESPONDENT IN MICHAEL NG BAD CHECK CASE (COUNT III) (TFB NO. 90-11,550)

STATEMENT OF THE FACTS AND OF THE CASE

Late in the afternoon of October 21, 1988, Mr. Ng asked Respondent (hereafter "Rood") to lend him cash to purchase an old house, refurbish it and sell it for a profit. Rood had lent Ng money in 1987, which was being repaid on schedule.

That evening (October 21) in Pasco County, Rood lent Ng $11,000.00 for which Ng gave Rood a $11,000.00 check on the North Tampa Branch First Florida Bank (Exhibit 2 in Appendix). The next day Ng told Rood he needed an additional $9,500.00 to complete the transaction buying the house. Rood lent him $9,500.00 for which Ng gave Rood a check for $9,500.00. Rood asked that the previous 1987 loan with a balance due of $32,000.00 be paid now. Ng gave Rood a check for that debt.

Rood told Ng that on Monday that he would need payment of at least one-half of the $20,500.00 loan. Ng assured Rood that sufficient money was in his bank account to do that. Ng's explanation for the need for a loan was that on October 21 he had learned late in the afternoon that if he paid the owner with cash, he could get the house for a better price, and since he didn't have time to get to his bank before it closed, he needed to borrow cash. On Monday morning, one of Rood's employees went to the downtown Tampa bank to cash at least one of the two smaller checks and

found that Ng had withdrawn his money from his account that morning.

Ng told Rood later that he could not pay any of the loan as he was in financial trouble. Rood's efforts to collect failed so the matter was turned over to the authorities in Pasco County.

Sometime during April or May of 1989, Rood and Ng were two of the many contestants in an all-day backgammon tournament. Other than that, Rood did not see Ng for many months.

Rood was not informed of it, but on June 27, 1989, Ng's attorney arranged for himself and Ng to meet with the Assistant State Attorney in Dade City to give a statement. With the help of a few leading questions from his attorney, Ng fashioned a defense he planned to use in his trial, to-wit: that the October 1988 checks to Rood were to pay Rood for gambling debts and were not payments for loans.

The Office of the State Attorney in Dade City asked Rood to be there on July 6, 1989 to discuss pre-trial matters. On the 4th of July, Rood got a bad case of flu. On the 6th, Rood still had the flu, was very weak, had a fever. An employee drove him to Dade City.

Rood learned, after arrival, that the Assistant State's Attorney, Mr. Allweiss, wanted to take his statement. That statement and the statement of Ng, which Rood never got to see until many weeks later, are not relevant, because in September 1989, Ng called Rood's office in Tampa and said he

had recovered from his financial problem and wanted to pay the loans. He began paying and later asked if the charges could be dismissed. Soon thereafter, he paid the balance and he signed a statement, witnessed by three persons, that he had borrowed the $20,500.00 from Rood and that he paid the debt. In addition, Ng told witnesses Lake and Foster that the $20,500.00 was a loan from Rood to Ng.

In September, 1989, before the amount due on the loans was completely paid, Ng asked if Rood would dismiss the charges, and Rood told him that he didn't know for certain if it could be done but that he would find out. Rood called the State Attorney's Office to ask for that information, and was informed that he should come to Dade City to discuss it. Rood then met with Mr. Allweiss on October 4, and told Allweiss that he was there to see if the charges could be dropped because Ng admitted and paid the loans. At the conclusion of the meeting, the charges were dismissed.

Another undisputed matter is that in 1988, when Ng said he couldn't pay the loans, Rood told his tax C.P.A. of the loan loss and he listed that loss on Rood's 1988 tax return. In 1989, when Ng paid the loans, Rood reported the payment to his CPA and an amendment was filed to Rood's 1988 Return showing payment of the loans and paying the additional income tax therefor due in the amount of $11,000.00.

Ng gave the State Attorney several xerox copies of checks. All of these copies were of checks signed by Rood at Rood's April Golf Tournaments at Pine Valley and Lynwood,

New Jersey (Rood's Exhibit 7). Many of the golfers wanted to visit a casino in the evening. Most of them had not established credit at a casino, and New Jersey law did not allow a casino to give cash for a check of a person whose credit was not already approved. The golfers ate together, and at dinner, Rood explained to them that in New Jersey it would take weeks to get credit in a casino, and if anyone wanted to gamble, he could use cash or they could use Rood's credit to get cash. Each golfer that wanted to use Rood's credit was given one of his signed checks. Rood would leave the amount blank if the golfer, or the foursome who planned to gamble together as a unit, wanted to decide later how much he or they wanted. Two xerox copies were made of each check, one copy staying with Rood to put into the golfer's folder, and the original and a xerox copy given to the golfer. If the golfer used the check, he was to write on his xerox copy the amount and return the copy to Rood together with his check for that same amount. If the golfer didn't use the check, or used it and won it back, he would return the original check to Rood. Rood would put the original in the golfer's folder, or if the golfer's name was on the check, void the check and return it to the golfer. Occasionally, Rood would leave the date blank because the golfer didn't know which night during the tournament he might want to play. Occasionally, a foursome was going to play together, and Rood would give them a blank signed check so that they could put in the name of the member of the

foursome who had no objection to his name being on a check cashed at a casino. Ng helped Rood by seeing that the xerox copies were made, and by staying up with the golfers as late as they wished. A few of the golfers were concerned about having his name on a check cashed in a casino. On one or two occasions, the golfer put Ng's name on the check and let Ng get the cash for him. If the check was made out to a golfer but wasn't used, he would occasionally ask Rood to void the check and let him destroy the check. If the check was signed but wasn't used, Rood would void the check. Ng obviously kept several of the xerox copies of checks issued, but not used by a golfer. Rood has no evidence that Ng intended some day to borrow money from Rood and then pretend that it was not a loan. It appears that he got into financial difficulties, and then after he was arrested, got frightened and planned to use the xerox copy of unused checks and the scorecards as a defense. Later, Ng's financial condition improved and he admitted to Rood and to other people that he did borrow the $20,500.00.

Ng signed Rood's Exhibit 3 in the presence of three people acknowledging the loan and that he had repaid Rood. Ng's signature is distinctive and is exactly like his signature and lettering in other parts of the record (also twice on Exhibit 1). There is no dispute in the record that Ng did acknowledge the loan and did pay Rood. In addition to the written acknowledgement, two witnesses testified that Ng admitted Rood lent the money to him and

that he repaid the loans to Rood.

Rood requested the October 4 meeting to see if the charges could be dismissed. During it, Rood was asked questions about the checks, and his answers were certainly in some respects different, simply because Rood had, after the July 6 meeting, examined the folders of the golfers and found Rood had signed the checks, but that none of the checks had been cashed. Thus Rood knew that it was Rood's signature on the xerox copies of the checks. In addition, during the off-the-record discussion on October 4, Allweiss finally understood that Rood was trying to indicate that when Rood signed the original checks, they were not and never became evidence of indebtedness to Ng, and that Rood's initials on a piece of a scorecard was never an IOU or a sign of indebtedness. Allweiss then understood my point and I told him I thought the initials were mine and that I was certain the checks were mine.

In the late 1950's, I was the Florida Chairman of the Polio Drive. I traveled all over the State helping to raise money, and in many of the cities, pictures were taken of me holding a child who had polio. It was generally believed at that time that you could not catch polio from someone who had it, and so no one considered that I was doing anything foolish in order to get a picture of a polio child in the newspaper. Unfortunately, I caught polio, and it caused a lot of pain in my right leg. Eventually the pain stopped and it appeared that I had a good recovery. Somewhere

around the middle of 1988, the polio came back and my right leg began wasting away. By the middle of 1989 the leg had become so weak that in order to walk I had to wear a brace. I could no longer play golf as I had played because of the pain and weakness. I became very very depressed, and from July to the end of the year, I was often so sick and depressed that I didn't think clearly and sometimes thought I should quit trying lawsuits, my favorite activity in life. I still have to wear a brace in order to walk, and many of the nerves in my right leg are dead and so the muscles are dying. So, I was ill with the flu and suffering a severe depression at the time of the meeting with Mr. Allweiss on July 6, 1989. A key question that Allweiss asked me was if I had ever signed any evidence of indebtedness indicating that I owed money to Mr. Ng. (T-17, Line 22), and I answered that I didn't believe that I had because I pay people if I owe them.

The next question (T-18, Line 2), was whether there was any reason why I would have ever signed any evidence of indebtedness that indicated I owed him money. In the following rambling discussion, the rambling being my fault, I tried to get Allweiss to understand that the copies of the checks and the IOU's were not signs of indebtedness to Ng. I tried to get over to him that I had never initialed a torn piece of paper which had a dollar mark on it, or had the letters "IOU" on it. I further tried to get over to him that two of the checks were in 1987 and that those were for

loans, but that all of the others were not signs of indebtedness to Ng and that I could check my folders in Tampa to determine if any of the checks had ever been cashed. I knew from the dates on the copies of the checks that they were issued at the golf tournaments in New Jersey. Ng's signature on the October 1988 (the loan) checks and his signature on the signed acknowledgements that he borrowed the money from Rood and paid it back are exactly alike. It is obvious that Ng's signature could not be faked by anyone. On one of the IOU's, Ng had taken a scorecard of 199 with no IOU on it, to which he added the figure 8 (it is not like Rood's figure 8), and he then added many zeros, his IOU letters and an incorrect date.

With reference to the xerox copies of the checks, Rood testified that they certainly looked like his checks, but some of them didn't have a payee, some of them didn't have an amount, and on at least one of them (Exhibit 8-B) Ng had taken his xerox copy, placed his name on the copy, and then made another xerox copy so that the new copy looked as if Ng's name had been on it from the beginning. The original check was never cashed or used in any way, but Ng gave his copies to the State Attorney pretending they were evidence of indebtedness from Rood.

On the Bar's Exhibit 9-A, it is obvious that when Rood gave the original check to a golfer, he had just put the number 24 on it so that the golfer could cash it if he wished for $240.00 or $2,400.00. The check was never

cashed. The golfer returned it to Rood as shown by his folder. Ng had a xerox copy of that check and in his own handwriting he added some zeros and his name. After adding the zeros and his name on his copy, Ng then took a xerox of that copy and turned 9-A over to the State Attorney to try to show that it was a sign of indebtedness.

It should also be noted that in the statement Ng gave the Assistant State Attorney, a meeting which I never knew about, the Assistant State Attorney asked Ng: "Why would you give Mr. Rood your three checks dated October 21, 22 and 23, 1988 if at that time Rood owed you a lot of money which you have testified he owed you. What's the reason?" (T-16). Ng could never give an answer.

SUMMARY OF ARGUMENT

The Bar alleges it proved that Rood:

I. Executed false Affidavits to initiate a criminal complaint alleging that Mr. Ng wrote three worthless checks and

II. That Rood gave false sworn statements to an Assistant State Attorney in the criminal investigation of Mr. Ng. (Page 22 of the Bar's Brief).

Those allegations rely on the testimony of Mr. Allweiss, the Assistant State Attorney for Pasco County who was allowed to express his "opinions" concerning Rood's statements. The opinions of Mr. Allweiss were based on a part of the testimony and a part of the Exhibits. The question of whether Rood is guilty of the Bar's allegations

should be determined from all of the testimony and all of the Exhibits and should be determined by a Referee and not by Mr. Allweiss.

The Referee found Rood not guilty after hearing all of the testimony and listening to all of the witnesses. The Referee had the benefit of the following evidence:

1) Rood's testimony that the three checks written by Mr. Ng and made payable to Rood were in payment for loans by Rood to Mr. Ng.

2) Mr. Ng signed a statement witnessed by three people that the two checks for $20,500.00 were to pay Rood for his loans (Appendix Exhibit 1).

3) Mr. James Lake was an eye witness to the loan transaction. He observed Rood give $11,000.00 to Ng and receive Ng's check in return, and he saw Rood give Ng $9,500.00 and saw Ng give Rood a check for $9,500.00, and saw him write on the check that the check was given for "cash". (T-108, 111). He also testified that Ng was a liar and dishonest.

4) The Referee heard the witness, Chuck Foster, testify that Mr. Ng admitted that he had given the checks to Rood for money borrowed from Rood and that Ng repaid the loans. Mr. Foster is a busy citizen who works for the Florida Chamber of Commerce. (T-85). He also testified that Ng stretches the truth.

5) The Referee heard the witness, James Lake, testify that Ng had admitted that his checks were to repay

Rood for loans.

6) The Referee saw the undisputed evidence that in 1988 Rood reported to his C.P.A. that he had a loss on three bad debts, and the Referee saw that in 1989 when Mr. Ng repaid the loans, Rood reported that recovery of the loans to his C.P.A., and the C.P.A. filed an Amended 1988 Tax Return showing a $52,500.00 payment ($11,000.00 check; $9,500.00 check; $32,000.00 check; total $52,500.00). This recovery required Rood to pay an additional tax of $11,000.00.

7) The Referee also heard from two doctors concerning Rood's illness and disability for the several months that Mr. Allweiss was involved. The doctors explained how polio had depressed Rood and his ability to remember.

However, the Bar misstates what Rood said because of his illness. I did say that I might quit trying cases, but I never mentioned or even considered resigning from The Florida Bar, an organization for which I served a large part of his life.

8) The Referee heard the testimony and saw the xerox copies of checks. Two copies were checks of 1987 which were loans to Mr. Ng. One of them was not used because the bank would not cash the check because the amount of the check in writing was different from the amount in numbers. The remaining are xerox copies of checks issued during the golf tournaments in New Jersey. All of them were

written to get credit for a golfer, or his entire foursome, if needed. All of the original checks were returned to Rood because the golfers didn't need to use them. Mr. Ng was helping Rood with the tournament and he had xerox copies of those checks which he obviously kept. The two with his name on the copy were written by Mr. Ng in his handwriting and then another xerox made of the altered copy.

9) With reference to the IOU's, Mr. Allweiss never got to see what the Referee saw; that is, that the zeros and the number "8" was made by Mr. Ng in that he tore off a part of a scorecard with the number "199" on it, to which he added a dollar mark, a number "8", and then some zeros, and under the last two zeros, two little "x"'s which the evidence shows is Ng's custom, not Rood's. Neither Rood nor Allweiss ever had the oportunity to question Ng.

COMMENTS ON THE BAR'S ARGUMENT

The Bar says that it proved that Rood:

I. Executed false Affidavits saying that Ng wrote three worthless checks as payment for loans; and

II. Made false sworn statements to Allweiss.

The evidence concerning No. I is that Rood lent Ng $20,500.00 and that Ng gave Rood worthless checks for the loan. The following unrebutted testimony proves that Rood's Affidavits are true:

1) Rood testified the three checks from Ng to Rood were in payment for loans and had nothing to do with gambling.

2) Ng signed a statement witnessed by three people that his checks were to pay for loans from Rood.

3) Ng signed a statement that he paid money to Rood to repay the loans.

4) An eye witness, James Lake, saw the loan transaction take place when Rood gave $20,500.00 to Ng for checks.

5) Ng admitted to the witness, Chuck Foster, and to James Lake that he had borrowed the money from Rood.

6) Rood reported to his C.P.A. the bad debt loss and his C.P.A. reported the loss in Rood's 1988 Tax Return. When Ng paid the debt in 1989, Rood's C.P.A. filed an Amendment to the 1988 Tax Return showing the payment of $52,500.00 (three checks: $11,000.00, $9,500.00, and $32,000.00 totalling $52,500.00). (Rood's Exhibit 3).

The second charge was that Rood made false sworn statements to Assistant State Attorney Allweiss.

1. At the July 6, 1989 meeting, Rood was ill and didn't have his glasses.

2. Rood knew he had never been indebted to Ng and so any check with Ng's name on it made Rood instantly suspicious that it was not a check signed by Rood. In order to find the truth, Rood wanted to see his folders regarding the golf tournaments on the same dates as those on the checks. Rood's confusion was that the signature appeared to look like his, but, on the other hand, Rood knew it couldn't be Rood's signature if the check was in payment of money to

Ng, and could not be his check to Ng on the dates on the check. Rood's memory was that checks had been signed by Rood for the golfers, but he thought all had been accounted for, but Rood wanted to see his folders to see if a mistake had been made. The folders indicated that all the checks were just copies of checks to golfers and none of them were ever payments to Ng.

With reference to the IOU's, Rood did not initial any IOU's. He did initial scorecards and Ng simply tore off a corner of the scorecard and added to the score, a $ sign, the letters "IOU", and occasionally more numbers and a fictitious date. The signed confession (Ex. 1 Appendix) clearly is Ng's signature. His checks to me contain the same signature. (Ex. 2 Appendix).

ARGUMENT

In the section called Argument, the Bar asserts several allegations which are either not relevant or inaccurate. On Page 23, the Bar states that Mr. Allweiss testified that in his opinion Respondent lied about whether he was gambling with Ng on backgammon in Pasco County. As already outlined in this brief, all the testimony except that of Mr. Ng is that there was no gambling on backgammon in Pasco County, and the only contrary testimony was from Mr. Ng who made such statements just for the purpose of a defense of the charges against him of giving me worthless checks for loans. All of the other witnesses testified that the backgammon games were regular tournament games with no gambling. The testimony was also that Mr. Ng was only in Pasco County from two to four times a year. Mr. Allweiss never had the opportunity to question Ng, and neither did Rood. Moreover, Mr. Ng confessed that his three worthless checks were given to Rood for loans, and thus it is easy to see that Ng's testimony was merely to manufacture a defense. Three of the IOU's manufactured by Mr. Ng had the dates of April 15, 16 and 17, 1989 in Ng's handwriting. It is absurd to think that Rood would have played backgammon with a man who was denying that he had borrowed money. There is testimony in the record that sometime in April or May, Ng and Rood were in the same one-day backgammon tournament along with many other contestants. Again, as in all tournaments, there was no gambling, and certainly there was no friendly meetings

with Ng about anything.

On Page 24, the Bar refuses to accept the evidence that Mr. Ng admitted that the three checks he issued to me in October of 1988 were checks to pay his loans from Rood and had nothing to do with gambling, and the Bar refuses to accept this evidence because "Rood failed to provide any proof that the signatures contained on the two documents were actually that of Mr. Ng". Such an unwarranted position ignores the fact that the signature of Mr. Ng could not be copied by anyone and that his signature on the October checks he issued to me is exactly the same as that on the two documents in which he admitted borrowing the money from me and repaying the loan. For the purpose of making this point very clear, an Appendix is attached hereto containing copies of the aforesaid checks and copies of his acknowledgement so that it can be seen that Mr. Ng did in fact sign the acknowledgement.

The Bar also says that it impeached all of Rood's witnesses. The first such witness was Mr. Foster. Mr. Foster is a friend of Mr. Ng and his name was given to the Assistant State Attorney by Ng as a witness who would testify for Ng, and Mr. Foster's sworn statement was taken by the Assistant State Attorney without Rood being present. Mr. Foster holds a responsible position with the Florida Chamber of Commerce. His testimony before the Referee was that Ng confessed to him that Rood had loaned Ng the money. Mr. Foster also testified that Ng only visited in Pasco

County two or three times a year and that there was no gambling during the backgammon tournaments and that he had supervised one in which Mr. Ng was a contestant and that there was no gambling. Mr. Foster also testified that Ng often stretched the truth. There was no impeachment of Mr. Foster concerning the issues in this case.

The next witness which the Bar says it impeached was James Lake. Mr. Lake says that he was present and saw the exchange of cash for Ng's checks, and that this exchange took place in Rood's kitchen. Rood also testified that's where it took place. Also, Mr. Lake testified that he saw Ng sign the checks when I handed Ng the cash.

The Bar's so-called impeachment of all this testimony is that in his statement to the Sheriff's Office, Rood said that the transaction took place at Ng's condominium. Rood has explained that the form supplied Rood by the Sheriff's Office only had one blank which Rood was to fill in concerning the place of the transaction. Rood listed the place where the $32,000.00 check was issued rather than the smaller checks.

The $32,000.00 check given me by Ng was to pay an existing debt. It was given to me in Mr. Ng's condominium. The two cash loans were transacted in the kitchen of my office. The form I was filling out had just one space for stating where the transaction took place, and I listed the place where the major part had taken place. Where the transactions took place is not relevant, particularly in

view of Ng's admission that the checks were given me for loans. On Page 26, the Bar makes much of the fact that Rood and Ng had accounts at the same bank and that why Ng did not go to his bank to cash his check was not explained. Why Ng wanted to borrow the money from me instead of using the $10,000.00 he had in the bank is not relevant, and the real answer may never be known, but the probable answer is that Rood's downtown Tampa bank did stay open on Fridays later than its branch bank in Pasco, and Mr. Ng may have found out he needed to borrow money from me after his branch bank closed. It is also explainable by the fact that Ng only had $10,000.00 in the branch bank and he knew he needed more than that; hence his request to me for the loans.

At the bottom of Page 27 and on the top of Page 28 of its brief, the Bar again quotes false testimony of Ng. Ng's testimony to an Assistant State Attorney (not Mr. Allweiss) was that in Tampa on April 15, 16 and 17, 1989, he gambled with me and that the proof of it was his three IOU's which, as stated before, were fake, and a part of the fake was dates written on the scorecards in his own handwriting. There was never any backgammon in Tampa, and the only testimony that Rood ever saw Ng in the Spring of 1989 was testimony that during a one-day tournament in April or May, Ng and Rood were two of the contestants. I certainly had no friendly contacts with Ng after he refused to repay me, and I certainly would not have gambled with him in Tampa when he owed me money for loans and was refusing to pay me.

The Bar even alleges that the two doctors that testified concerning the flu and the polio were not qualified to express their opinions. There was no dispute that I had a serious case of the flu, and even Mr. Allweiss who was present did not deny that I was very ill on July 6th. On Page 30 and 31, the Bar quotes parts of my testimony, leaving out the testimony on both statements, that on July 6 I was ill, and I understood that Allweiss was seeking to know if I had ever put my initials on an IOU showing indebtedness to Ng, or had I written any checks to Ng that showed an indebtedness involving money. On the October 4 interview, I had requested an audience with an Assistant State Attorney, purely for the purpose of determining whether or not I could drop charges because of repayment by Ng. It was not a sworn statement. However, I did have an off-the-record conference with Allweiss to finally get him to understand that I was always saying that the checks or IOU's were not signed or initialled by me as a sign of indebtedness to Ng.

In summary, all of the testimony of witnesses at the Referee's hearing supported the signed and witnessed statement of Mr. Ng that he had borrowed the money from me, had refused to pay it, and then when his financial condition improved, paid me back.

The Bar charged me with executing false affidavits saying that Ng wrote three worthless checks as payments for loans. Ng admitted that those affidavits were correct and

all the witnesses at the hearing verified Rood's contention except Allweiss who didn't have all the facts and evidence. Secondly, the Bar alleged that I made false sworn statements to Allweiss. There was no evidence that I made false sworn statements to Allweiss in the July 6th meeting. The Referee had the evidence that I did lend the money to Ng and that Ng was lying in order to fabricate a defense that his checks to me were gambling debts rather than loans. At the July 6 meeting with Allweiss, I knew that the IOU's were not IOU's and I knew that I had not put my initials on any piece of paper, but that if they were my initials, the torn piece of paper had been changed. I had not brought my glasses so I could not be positive about anything, but I tried to get over to Mr. Allweiss that I had not put my initials on anything about indebtedness to Ng. The October 4 meeting, which was not a sworn statement, probably because I had requested the meeting just for the purpose of seeing if I could dismiss the charges, was finally concluded when I went off the record to explain to Allweiss that my answers were based on the fact that I knew that I never owed anything to Ng and that therefore I had not initialled IOU's but that the initials certainly appeared to be mine. I further told him that my investigation had revealed the checks were written at my golf tournaments and that Ng merely had xerox copies of checks that my golfers didn't use. Mr. Allweiss said he understood so I then told him to ask me if those were my initials and if those were my signatures on the

checks and that I would answer that they were. He agreed to leave off the inference of indebtedness and so I answered his question.

CONCLUSION

Mr. Ng admits in his statement and to several witnesses that I lent him money and that due to financial problems he could not repay me and that to avoid payment he pretended the loans were gambling debts. His financial condition improved, and he acknowledged his misstatements, because I knew that the xerox copies of checks and the fake IOU's were not evidence of any indebtedness to him, and because of my depression and not having my glasses, I was very careful and cautious about how I answered the questions.

I did not violate any of the Rules of Conduct, and the Referee promptly stated that I was not guilty.

APPENDIX TO INITIAL BRIEF OF RESPONDENT

Exhibit 1 and Exhibit 2 are attached hereto

To Whom It May Concern

During 1987 I, Michael Ng, borrowed from E. B. Rood a total of $110,000 which I invested in the stock market. In 1988, I reduced the loan by paying him $25,000

In October of 1988, I again borrowed $20,500 from him, and have repaid $25,000.00 on the loan.

Kelly Wood

Phyllis E. Smart

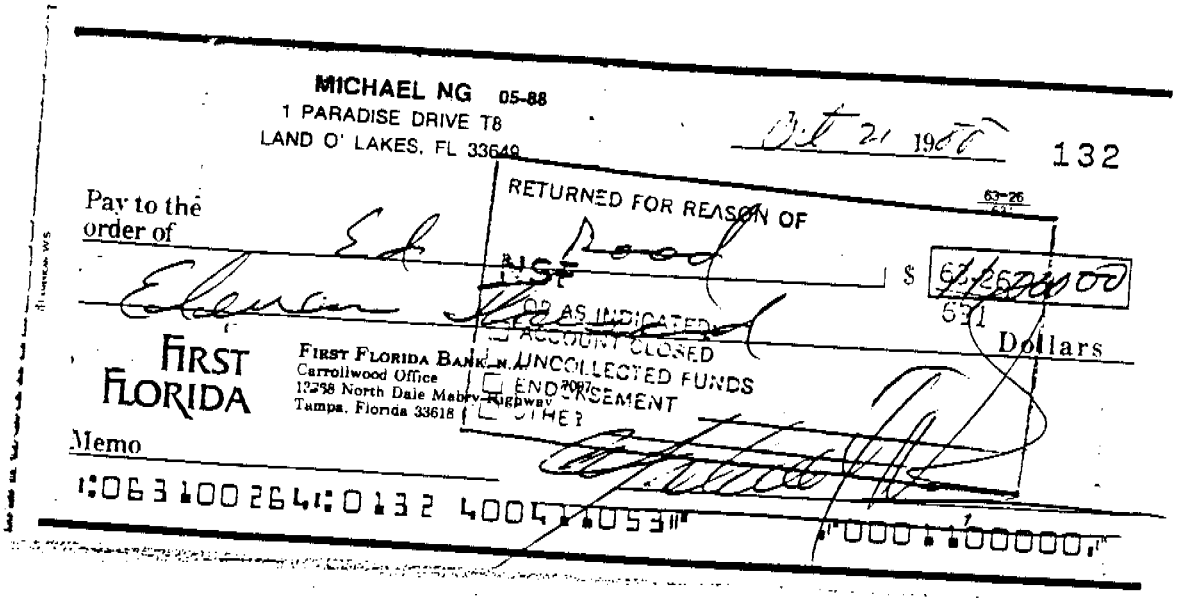
The above is true and correct.

E B Rood

The above loans have been repaid in full.

E B Rood

EXHIBIT
Rood #1



MICHAEL NG 05-88
1 PARADISE DRIVE T8
LAND O' LAKES, FL 33649

Oct 21 1996 132

Pay to the order of

RETURNED FOR REASON OF
NSF
OR AS INDICATED
ACCOUNT CLOSED
UNCOLLECTED FUNDS
ENDORSEMENT
OTHER

63-26
631

$ 6,000.00

Dollars

FIRST FLORIDA

FIRST FLORIDA BANK, N.A.
Carrollwood Office
13258 North Dale Mabry Highway
Tampa, Florida 33618

Memo

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ROOD EXHIBIT # 2

INITIAL BRIEF OF RESPONDENT IN LAKELAND PROPERTY CASE (TFB NO. 91-10,534(13E)

STATEMENT OF THE CASE

At the Referee Trial, the Bar offered in evidence the trial transcript of Alverson v. E. B. Rood and E. C. Rood, a Polk County civil case, and all of its exhibits. The Roods objected on the ground that the transcript and documents were not relevant to the issues or the facts to be determined by the Referee, and were therefore inadmissible pursuant to Florida Statute Section 90.403. The Referee denied the objection.

The Respondent and his son were the only witnesses who testified. The Referee found Rood, Sr. and Jr. guilty and a Petition for Review was timely filed.

STATEMENT OF THE FACTS

The property involved in this case is a 33-acre parcel of real property located in North Lakeland. E. B. Rood purchased this property in 1974 and had it conveyed by the sellers to his son, E. C. Rood, as a conditional gift. The Lakeland real estate broker and Rood, Sr. and Rood, Jr. all testified that Rood, Sr. and Rood, Jr. verbally agreed that Rood, Jr. would reconvey the property to his father if he could not financially manage the property. The fact that it was a verbal conditional gift was not rebutted (T-186, 187, 217). E. B. Rood gave property to his other two children, each with the same verbal condition accompanying the gift.

Rood, Jr. was unable to financially maintain the Lakeland property, and in 1987 he was about to lose the property. (T-187) A citrus grove on the property died in a freeze, and thereafter Rood, Jr. was unable to pay the property taxes and pay the mortgage payments. The Southeast Bank instructed its lawyer to start a foreclosure action on the mortgage that Rood, Jr. had placed on the property. The Bank's attorney finally wrote a second letter to Rood, Jr. stating that unless the entire $141,000.00 was paid promptly, that a foreclosure suit would be filed in January 1987. (T-229, Line 5) Rood, Sr. arranged for Rood, Jr. to get a six-month loan for $100,000.00 from First Florida Bank to repay the $100,000.00 paid on on the Southeast mortgage. E. B. Rood paid the remaining balance of $41,000.00. Rood, Jr. received in January 1987 another contract from Winn Dixie to buy the land, and so he asked Rood, Sr. to give him several months to try to sell the property. Rood, Sr. agreed, but the sale failed because the land could not be rezoned. When the six-month loan became due, First Florida Bank insisted that the loan be paid; therefore, E. B. Rood took over that debt. He also paid three years' of back property taxes. (T-189-190).

On September 20, 1987, E. C. Rood prepared a deed reconveying the property to E. B. Rood in accord with the condition with the gift that it would be reconveyed to his father if he could not financially manage the property.

On the day of this conveyance, Rood, Sr. knew that a

Verdict or Judgment was against his son in the Michigan case. However, for several reasons, Rood, Sr. did not have any thought or reason to believe that the conveyance would in any way affect the Michigan creditor.

The first reason was that the insurance company had advised Rood, Sr. that the trial judge had reversed a part of the damages against his son and that the company was confident that it would win an appeal, but if that failed that the company would take care of all of any remaining amount due. That information was never rebutted, and at the time of the reconveyance, Rood had no concern about the Michigan case ever being a problem for his son.

Second, I was vaguely familiar with all my son's assets. However, he had one asset that I knew more about than any person alive. He owned 50 percent of a one-acre piece of land on Lemon Street in Tampa. I owned the land surrounding his property, and in 1987, I was receiving cash offers of $10.00 a square foot for my land exactly like my son's land, and I turned down such offers because I believed the property, which is well located in the fastest growing commercial area in the city, was worth more than $10.00 a square foot. Thus, I knew for a certainty that the acre would sell for $440,000.00-plus and that his half of that was worth more than the entire Judgment. In addition, an 1985 appraisal prepared by an expert proved the value of the acre to be $450,000.00 (Rood, Jr.'s Exhibit 1). Also, uncontroverted testimony proved that no change had occurred

between the appraisal date and September 20, 1987, the conveyance date. (T-239, 240). I knew of his three automobiles and a boat (T-253) but I did not know their value. The subject acre on Lemon Street is a part of a larger piece of property that I owned which contained a branch bank, an 11,000 square-foot building, parking lot, and additional vacant property.

I heard little more about the Michigan lawsuit until March 28, 1989 when Alverson filed a civil action in Polk County, Florida. The case was a Creditor's Bill requesting that the deed from my son to me be cancelled. The Michigan Judgment was domesticated on January 26, 1989, but it was not entered in Polk County until April 7, 1989. In that Creditor's Bill, the Plaintiff filed a Motion for a Partial Summary Judgment. My attorney, Jim Hahn of Lakeland, prepared and mailed the Affidavit in Opposition to that Motion. I signed the Affidavit and mailed it back to my attorney.

The Polk County case was a non-jury case. The Judge held in favor of Alverson ruling that the conveyance was void pursuant to Florida Statute Section 726.01. An Amended Judgment was entered on August 27, 1990. (TFB Ex. 10 and RR-Ex. A).

The dates mentioned herein, the reconveyance of the Lakeland property, the conditional gift of the original conveyance to Rood, Jr.in 1974, the date of the reconveyance on September 20, 1989, and in particular the statements to

me by the insurance company and my special knowledge of the worth in the fall of 1987 of my son's one-half interest in the acre, are not disputed in any of the testimony. However, there is a dispute about my intent and knowledge.

The Bar's Statement of the Facts contains a few errors.

On Page 15, it states that at the time of the conveyance, the Lakeland property was free of encumbrances. This statement ignores the evidence that I paid the $141,000.00 mortgage to Southeast Bank with cash and a loan from First Florida. I also paid three years of back taxes in the amount of $24,000.00.

The Bar is also not correct in stating that the Lakeland property had a "fair market value" of over one million dollars. The real estate expert said that it was worth over one million dollars, <u>if</u> it could be rezoned for commercial property purposes and if the necessary water and sewer permits could be obtained. All the evidence indicated it could not be rezoned; in fact, it still has not been rezoned and water and sewer service still cannot be obtained.

The Bar on the same page alleges that I assisted my son in the fraud by accepting the conveyance. No testimony, no case law or rule supports that allegation. The Bar further says that I paid no consideration directly to my son. Certainly relieving my son of his personal obligation to pay a Note in the amount of $141,000.00 to the Southeast Bank was consideration. The Bar's statement that the conveyance

left my son with no assets to satisfy the Michigan Judgment is simply not true.

On Page 16, the Bar says that the line of credit I got to give money to three Universities was for one million dollars. All of the evidence was that the Bank approved a Line of Credit for $500,000.00 for which I gave a mortgage to the Bank on some very valuable property, and in addition gave it a mortgage on the Lakeland property.

On Page 17, the Bar implies that Judge Bentley found me guilty of some fraud. Judge Bentley did not find me guilty of fraud.

On Page 18, the Bar says that I stopped making payments on my line of credit with First Florida Bank, and as a result the Bank pursued to conclusion a foreclosure action. There are two misstatements in that allegation. First, I had a line of credit which required me to pay it all if the Bank requested, but I did not have regular payments to make as is required on a loan. Second, the Bank was in financial trouble and it began foreclosure on most of its debtors because of its financial problems. (T-167).

SUMMARY OF ARGUMENT

The Referee's Findings of Fact are clearly erroneous and are not supported by clear and convincing evidence in the record.

I never denied knowing that on September 20, 1987 that a jury verdict had been entered against my son and that a Judgment would follow. In fact, I testified that the

insurance company talked to me and had said that there would be an appeal and that the company expected to win, and if they didn't win, the company would pay the remainder due, after deducting any payments by the joint Defendant, Dr. Gunderman.

I am not a real estate lawyer, but in discussing the case by telephone, my Lakeland attorney, Jim Hahn, said that the creditors' suit against me and my son was premature and that the Michigan Judgment had to be entered in Polk County before Alverson could get a lien on the property and could succeed in his Creditor's Bill suit. A Motion for Partial Summary Judgment had been filed, and my attorney prepared and mailed to me the Affidavit which I signed and mailed back to him. I understood it to mean that the suit was premature because there had not been an entry of the Judgment. I testified at the Referee's hearing that:

> "Q. In that Affidavit, you didn't call it a Final Judgment, did you?
>
> A. I didn't. Mr. Hahn prepared this and he is a straight-arrow type and he prepared this and mailed it to me and certainly, from my understanding, it's the truth. (T-151, Line 5-10).

The Referee also found there to be "a lack of adequate consideration for the transfer" (RR-6). This finding by the Referee is unsupported in the evidence. The evidence proves that the actual consideration for the conveyance was $709,250.00 (TFB Ex. 1, Pages 121-126, and T-187-189). No evidence or case authority was offered to establish what amount of consideration would have been adequate. The Bar

concedes in its written argument that the consideration paid for the Lakeland property by Rood "ranged from a minimum of $164,000.00 to $709,000.00." The evidence proves that under any interpretation of the facts, substantial consideration existed for the transfer. Thus, the evidence and the amounts admitted by the Bar as consideration is inconsistent with the Referee's finding of no consideration.

In the Report of the Referee, Paragraph 2 called "Findings of Fact as to Each Item of Misconduct of which the Respondents are Charged", the Referee states: "During the course of the Polk County Alverson v. Rood case, E. C. Rood and E. B. Rood filed separate Affidavits with the Court in response to Plaintiffs' Motion for Partial Summary Judgment". In pertinent part, the Affidavit of E. B. Rood states: "8. That Edward B. Rood had no knowledge of the entry of the Subject Judgment at the time of the conveyance of the Subject Property from Ed, Jr. to Edward B. Rood. Edward B. Rood first became aware of the Judgment sometime later after the conveyance". (Emphasis supplied).

It was my clear understanding that Alverson's Motion for Partial Summary Judgment should be defended by showing that Alverson's lawsuit was premature because the Michigan Judgment had not been entered in Polk County, and thus my attorney wanted an Affidavit that there had been no entry of the Michigan Judgment in Polk County, and he prepared that Affidavit for my signature with that in my mind for the purpose of showing the Creditors' Bill was premature. That

Affidavit became moot and was never used or argued. The purpose of the Affidavit and my understanding of it was that I had no knowledge of the entry of the subject Judgment at the time of the conveyance. Whether the suit was premature became immaterial and Judge Bentley never saw or heard about the Affidavit.

ARGUMENT

The Referee held that there were two factual issues:

1) Whether Respondent engaged in a course of fraudulent conduct with respect to the conveyance of the Lakeland property, and

2) Whether Respondent knowingly submitted false affidavits to the Court in order to defeat a Motion for Summary Judgment.

The Referee properly held that on January 20, 1987, that Rood, Sr. paid off the Southeast mortgage on the property and that he also paid delinquent property taxes for the preceding three years. The Referee omitted that on approximately that same date, Rood, Sr. gave Rood, Jr. approximately seven months to see if he could sell the property to Winn Dixie who had just signed a Contract for Purchase if the land could be rezoned. In approximately September 1987, that contract, like the others before it, was not closed because the property could not be rezoned, and there was still no water and sewer connections available. Thus, on September 20, 1987, Rood, Jr. handed me a deed to the property to carry out his oral agreement.

The Referee made minor errors in listing what occurred at various dates. Under the date of November 4, 1987, he stated that the Line of Credit was granted for up to one million dollars, whereas the record shows that the Bank only granted a Line of Credit for $500,000.00. It also misstates that Rood, Sr. stopped making payments on the Note. The account was not a loan; it was a Line of Credit and no payments were necessary. The Bank began foreclosure due to its shaky financial condition.

The Referee then discussed the Polk County Alverson v. Rood Creditor's Bill lawsuit in which there was an allegation that E. C. Rood with the knowledge and assistance of E. B. Rood fraudulently conveyed the Lakeland property. Fraud in that civil case is any act of transfer which delays a creditor, even if the motive and intent are both innocent. But even in that case, the Judge who tried that Creditor's Bill lawsuit did not find E. B. Rood guilty of fraud.

A major error of the Referee is contained in his next three paragraphs, all three of which discuss the value of the Lemon Street property on the date of the transfer. In the first paragraph, the Referee said that on October 4, 1988, Rood, Jr. was asked in a deposition what was the value of the property on Lemon Street, and Rood, Jr. answered that it was around $200,000.00. Several facts show the error in considering that testimony as proof of the value of the property at the time of the transfer on September 20, 1987. In the first place, the testimony doesn't indicate whether

Rood, Jr. meant $200,000.00 was the value of his half of the property, or whether he meant that was the value of the entire acre. Second, at the time of the transfer, there was no airport zoning on the property which affected its value; and third and most important, land values were less in 1988. Its actual value on September 20, 1987 was stated in the appraisal of a real estate appraiser and the testimony of Rood, Sr. of what that identical property was selling for in September 1987. Next, the Referee said that finally Rood, Sr. and Rood, Jr. engaged in a course of fraudulent conduct because of the indicia or badges of fraud set forth in Cleveland Trust Company v. Foster, 93 So.2d 112 (Fla. 1957). In it, the Judge again says there was a lack of adequate consideration for the transfer. All of the testimony was that Rood, Sr. had not only paid off the mortgage and the taxes, but he paid for the land to begin with, and the interest on the cost of the land for 13 years made Rood, Sr.'s consideration in the property approximately $700,000.00. The Referee then relies on Judge Bentley's Judgment even though the trial before Judge Bentley was on a different issue requiring different evidence to prove fraud than does a case involving whether or not a lawyer violated one of the ethical codes. The Referee completely forgot that Judge Bentley did not find Rood, Sr. guilty of fraud.

The Referee was equally confused by the difference in the Creditor's Bill lawsuit and the case filed by The Florida Bar. First of all, the Referee confuses the

difference between "entry of the Judgment" in the Michigan case seeking a lien in Florida and what it would mean in a Florida case. (Sebring v. O'Rourke, 134 So.2d 556 (Fla.). It was my understanding that the Michigan Judgment had to be "entered" in order for there to be a lien on the Lakeland property. That position was clearly pointed out to me when my attorney, Mr. Hahn, told me about a Florida case which said that the Judgment would have to be filed here in Florida in order for Alverson to have a lien on the property, and thus my Affidavit was needed to show there had been no such entry in Polk County. Another error is that I did not claim that I did not know about a "Judgment" until a Michigan appellate lawyer sent a copy of the Judgment to Rood, Jr., and that this copy of the Judgment occurred sometime between June and September, 1988. It is also untrue that I testified that I knew nothing about any Judgment. I didn't know when this jury verdict became a Judgment, but I certainly admitted that Mr. Atkinson called it a Judgment.

The Referee then says there are two problems with Rood, Sr.'s testimony. First, what he refers to as merely a jury verdict is in fact entitled "Judgment in a civil case". All of the testimony is that I have never seen that "Judgment in a civil case". However, I am sure that the Referee has seen it and I haven't. A review of the record will show that I never saw it and that the criminal trial judge finally called it a verdict. (T-179). I certainly know the

difference between a jury verdict and a Judgment, and I never said otherwise. I certainly was aware of there being a Michigan Judgment because the insurance company told me there would be an appeal, and so I knew that there had to be a Judgment. I wasn't worried about the Judgment, because of my faith in the insurance company, and because I knew the value of the Lemon Street property, so I didn't talk about or think about or try to find out the date that the Michigan verdict became a Judgment. I think that anybody who reads my testimony will find it normal if it is kept in mind that I knew what the insurance company had promised, and that I knew the value of the Lemon Street property, and that I was not concerned about the question of when the verdict became a Judgment.

CONCLUSION

In conclusion, the clear and convincing testimony was that I had not knowingly given false testimony on a material subject when I signed the Affidavit, an Affidavit which became moot. I am not guilty of violating Rule 4-3.3(a)(1), Rule 4-3.3(a)(4), Rule 4.8.4(b), Rule 4-8.4(c), and Rule 4-8.4(d).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing has been furnished by Airborne Express to Sid J. White, Clerk of the Supreme Court, Supreme Court Building, 500 South Duval, Tallahassee, Florida 32399-19827; and that a copy has been furnished to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; to Bonnie L. Mahon, Assistant Staff Counsel, The Florida Bar, Tampa Airport Marriott Hotel, C-49, Tampa, Florida 33607; this 2nd day of December, 1992.

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ATTORNEY FOR RESPONDENT