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FILED
SID J. WHITE
SEP 24 1993
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant

vs.

ALAN E. DUBOW,

Respondent.

C O N F I D E N T I A L

Case No. 80,327 and 80,479

****

RESPONDENT'S INITIAL BRIEF ON PETITION FOR REVIEW

****

Respectfully submitted by
NICHOLAS R. FRIEDMAN,
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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant

vs. Case No. 80,327 and 80,479

ALAN E. DUBOW,

Respondent.

RESPONDENT'S INITIAL BRIEF ON PETITION FOR REVIEW

I. STATEMENT OF JURISDICTION

This is a Petition for review of a Report of Referee dated June 4, 1993, a true copy of which is attached hereto as Appendix I. This Court has jurisdiction pursuant to Rule 3-7.7, Rules Regulating The Florida Bar.

II. STATEMENT OF CASE AND FACTS

This matter arises out of a prosecution by The Florida Bar of alleged disciplinary violations. The Referee deemed all matters admitted, and no trial on the merits of the violations has been held.

A trial was held on the issue of discipline, and the Referee took testimony, heard argument of counsel, and subsequently entered a Report of Referee recommending disbarment. Appendix I. This Petition for Review appeals both the discipline and the admission of all matters by the Court, without a trial on the

merits.

As a result of the admissions in the case, the Honorable Referee did not enter any factual findings, but presumably has found all facts to be exactly as alleged in the complaints filed by The Florida Bar. The Referee's rulings of guilt were all rulings only of the conclusion that the Respondent violated Rules 4-8.4(b), Rule 4-8.4(c), Rule 4-8.4(d) and Rule 5-1.1. Appendix I.

The Referee, in recommending discipline, stated that Respondent has two judgments outstanding against him and the Referee stated that the Respondent has shown a pattern of misconduct which is still ongoing because he has been fined by the Chief Bankruptcy Judge in Tampa because he "attempted to offer a Satisfaction of Judgment into evidence in this case which he knew or should have known [at least by examining the Court file] was a fraud," and because he allegedly lied to The Florida Bar prior to being represented by the undersigned counsel. The Court also characterized his conduct as, "check kiting on his trust account, writing checks on four closed accounts, comingling funds in his trust account, shortages in his trust account, outstanding judgments against him and a refusal to make substantial restitution." See Appendix I.

The Court did find that Respondent had no prior disciplinary convictions or disciplinary measures imposed upon him. The Court

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also imposed $13,022.91 in costs, including documents and records which were not introduced into evidence, inasmuch as there was no evidence presented on the case in chief.

The Referee found that the Respondent received respective Requests for Admission in cases number 80,327 and 80,479 on August 20, 1992 and September 17, 1992. The receipt of these documents is not disputed by the Respondent. On January 5, 1993, The Florida Bar filed a Motion for Order Deeming Matters Admitted. See Appendix II. On January 7, 1993, Respondent, representing himself filed a Reply to Motion for Order Deeming Matters Admitted. See Appendix III. At the same time, Respondent also submitted a Proposed Response to Request for Admissions.

On January 11, 1993, the Honorable Referee entered an Order on Motion for Order Deeming Matters Admitted. See Appendix IV. On January 20, 1993, Respondent, still pro se, filed a Motion to Vacate Order Deeming Matters Admitted. See Appendix V. On February 24, 1993, the Honorable Referee denied the Respondent's Motion to Vacate Order Deeming Matters Admitted. See Appendix VI. The Bar also moved in March of 1993 to Strike the Respondent's Answer.

On March 8, 1993, the undersigned filed a Motion for Re-Hearing of Order Dated February 24, 1993. See Appendix VII. On March 15, 1993, the undersigned also filed a Motion for Leave to

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Withdraw Admissions and File Late Answers. See Appendix VIII. During that time, Respondent also answered numerous other discovery requests, provided a witness list, and otherwise was cooperative in discovery.

All of Respondent's motions were denied by the Court and the matter proceeded to trial on discipline only. This Petition asks this Court to review the denial of all of Respondent's efforts to vacate the admissions, including but not limited to the Motion for Leave to Withdraw Admissions and File Late Answers and the authority set forth in that Motion.

III. SUMMARY OF ARGUMENT

The Respondent should have been given an opportunity to respond to the request for admissions. The Bar in turn should then have been forced to meet its burden of proving its case by clear and convincing evidence as opposed to having the functional equivalent of a default judgment entered. The Respondent had participated in the litigation, and unlike other Bar cases where requests for admissions were totally ignored, the Respondent below was unaware he had made an incorrect legal judgment while representing himself. There was not even a hearing on the motion. The Court never determined whether his failure to respond was willful and no prior order was ever entered seeking to compel him to respond to anything. Even after matters had

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been admitted, the Motion for Leave to Withdraw Admissions and File Late Answers should have been granted. This is particularly true where someone's entire livelihood is at stake. The Bar's only real argument in opposition was that to require them to prove their case would be a burden on them. That may be true, but that is the appropriate bhurden on them.

Based upon the evidence actually adduced at the trial on discipline, the discipline of disbarment is excessive. The Bar made it clear that the only discipline they were seeking was disbarment. One element of differentiating disbarment from the discipline of suspension is whether or not the individual could ever again be rehabilitated to stand before The Bar. The evidence that this particular Respondent was someone capable of being rehabilitated was uncontradicted and uncontroverted. None of The Bar's witnesses, although they were asked, stated that they could give an opinion about this issue, while the Respondent's witnesses were clear and convincing in their evidence that Respondent could be rehabilitated in the future, even based on the finding of guilt that was already in the record. Moreover, the determination of aggravating factors does not appear to be based on competent substantial evidence adduced before the Referee, but rather to be based solely upon the argument of opposing counsel, which is not evidence.

It is requested that the matter be remanded for trial on the

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merits and alternatively that the disciplinary finding be vacated and that a lesser discipline be substituted.

THE REFEREE ERRED IN DEEMING ALL MATTERS ADMITTED, WITHOUT A HEARING, AND THEN FAILING TO SUBSEQUENTLY ALLOW RESPONDENT TO WITHDRAW THE ADMISSIONS AND THEN FILE LATE ANSWERS

The Referee below granted an Order on January 11, 1993 (Appendix IV) which "found no response to the Complainant's request for admissions." There was no hearing held on the motion. In fact, on January 7, 1993, the Respondent had served a Reply, which should have at least have entitled him to a hearing on the matter. In a Motion for Rehearing which was filed with the Court, the undersigned pointed out that this case was distinguished from The Florida Bar v. Solomon, 589 So.2d 286 (Fla. 1991), because Mr. Solomon never responded to admissions in any way. Solomon, supra at 287. The Fifth District Court of Appeals in Durrance v. Thompson, 486 So.2d 711 (Fla. 5th DCA 1986) reversed a judgment on the pleadings where an unrepresented defendant (like Respondent below) was changing lawyers and a technical admission would have precluded the case being heard on its evidentiary merits. Also see Melody Tours, Inc. v. Granville Market, Inc., 413 So.2d 450, 451 (Fla. 5th DCA 1982) where admissions were 77 days late.

The error could be considered harmless even where no motion was filed. Pelkey v. Commandeer Motel Corp., 510 So.2d 965, 966

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(Fla. 4th DCA 1987) even on an ore tenus motion summary judgment has been reversed and the matter remanded to the trial court for further proceedings where the error was reasonable diary error. Sterling v. City of West Palm Beach, 595 So.2d 284, 285 (Fla. 4th DCA 1992).

The Respondent properly moved for leave to withdraw admissions and file late answers (Appendix VIII) and pointed out that Rule 1.370(b) provides a liberal standard for this Court to grant the relief sought. The burden should have been on The Florida Bar to satisfy the Court that the withdrawal would prejudice The Bar "in maintaining [its] actions or defenses on the merits" R.C.P. 1.370(b).

> Having to prepare a trial on the merits is not the type of prejudice which [The Bar] can raise to combat [the Respondent's] Motion for Leave to File Late Answers because preparing for trial on the merits was [The Bar's] burden from the beginning. Durrance, supra at page 712.

The Bar never did present any evidence that it would suffer prejudice in the actual presentation of its case, resulted from the withdrawal of the technical admissions. In Pelkey, supra, technical admissions filed four days late were permitted to be withdrawn, since no prejudice was shown. In Melody Tours, supra, admissions 77 days late were likewise permitted to be withdrawn. More recently, the Fourth District Court of Appeals held that withdrawal of technical admissions should be permitted and not

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used to obtain through a technicality a way to preclude adjudication of legitimate disputes. Sterling v. City of West Palm Beach, 595 So.2d 284, 285 (Fla. 4th DCA 1992).

Simply put, the Respondent was under a mistaken impression of the procedures followed in disciplinary matters. When he became aware that he maybe wrong, he immediately took corrective action, and filed a pleading. (Appendix III). The Referee, from the clear language of its Order did not believe that any response had been filed. (Appendix IV). No hearing was ever held, and an ex parte Order was signed deeming all matters admitted.

Despite diligent and reasonable effort, fully complying with an established body of case law, the Referee did not vacate the admissions or allow them to be withdrawn. The Referee by its Order precluded the presentation of any testimony on the merits and thereby also deeply prejudiced the Respondent in his flexibility in presenting evidence on the only open issue, discipline.

There is no other case like this one in the annals of The Florida Bar, where an attorney had been participating in the proceedings, had filed pleadings, made one mistake and was technically defaulted.

The undersigned is aware that this Court has never granted the status of a vested right to an attorney's license to practice law. Nonetheless, the license is an extremely important matter

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to the attorney, and in this case constituted the attorney's sole livelihood. (Transcript page 161, lines 21-23).

Not only was Respondent never previously subject of a motion to compel, but even if the Court had felt that his conduct was willful, much more reasonable sanctions could have been imposed other than what amounted to a judgment on the pleadings. We respectfully and strongly urge the Court to adhere to the established line of case law which states that persons who have unintentionally admitted matters should be allowed to withdraw their admissions and file late answers, where to do otherwise would be to prejudice them most severely. This is especially true where the other side has never demonstrated that it would suffer any recognized prejudice.

THE REFEREE'S RECOMMENDATION OF DISBARMENT WAS NOT SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE, WHEREAS COMPETENT SUBSTANTIAL EVIDENCE SUPPORTED A FINDING OTHER THAN DISBARMENT

The only hearing conducted in this matter was on discipline. Therefore, all references to a transcript hearing are references to the transcript in the trial on the disciplinary proceeding which occurred on the 10th day of May, 1993. The bar began the proceedings by initially attempting to shift the burden to the Respondent, because he had already been found guilty through the Order Deeming Matters Admitted. (Transcript page 8, Lines 4-10). The Bar stated that it "would put on" some aggravating evidence.

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(Transcript page 10, Lines 2-7). The Report of Referee (Appendix I) does not correctly summarize the proceedings that occurred before the Referee. The Report states at page 2 that the hearing on discipline occurred on May 19, 1993, and shows that it was the last matter heard by the Court. This is incorrect. The hearing on discipline occurred on May 10, 1993, and on May 20, a subsequent proceeding was held before the Referee on The Bar's Motion to Reopen Final Hearing as to Appropriate Discipline. (Appendix IX). The matter at issue dealt with an Exhibit which was initially attempted to be put into evidence by the undersigned for Respondent, to which The Bar objected, and which was then deemed inadmissible and not seen by the Court. Canova v. Florida National Bank of Jacksonville, 60 So.2d 627, 628-629 (Fla. 1952). The transcript of the hearing of May 20, 1993 was concluded without the admission of the document and the evidence was not ever reopened. Nonetheless, at the Referee Report (Appendix I), the Court specifically found that the Respondent "knew or should have known" that the document was a fraud. Since the document as in Canova, supra, was never put into evidence, assertions about the document in the findings of fact are not supported by competent substantial evidence.

The Bar specifically questioned each of its own witnesses as to whether or not Respondent was someone who could be rehabilitated. In response to The Bar's own questions, its own

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witnesses did not give an opinion. See testimony of James C. Evans (Transcript page 38, lines 4-10); Testimony of Richard L. Allen (Transcript page 54, line 5 through page 55, line 1-4). Similarly, The Bar's witness Norman Roberts also proffered no opinion. (Transcript page 121, lines 9-10). In contrast, all of the witnesses called by The Bar were absolutely unrebutted and uncontradicted as to these matters. Andrew Sapiro testified that the Respondent was someone who can be rehabilitated and practice in the future. (Transcript page 27, lines 7-19). Jay Fusco testified that Respondent was someone who could be rehabilitated. (Transcript page 82, lines 23-25). Scott McPherson, a former state legislator (Transcript page 87, lines 2-3) testified that he would hire the Respondent in the future. (Transcript page 92, lines 18-22), as did former client Eugene Plugues (Transcript page 104, lines 10-11). John W. Pursse testified that the Respondent could be rehabilitated in the future and should in fact have the opportunity to do so. (Transcript page 109, lines 12-24).

The only evidence offered by The Florida Bar at the hearing on discipline, other than the argument of counsel, was tainted by the fact that the Referee at first indicated that she would exclude settlement negotiations of civil suits, and then went into those settlement facts in any event. (Transcript page 32, line 6-25). In reviewing this tainted testimony, the Court then

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acted on the impressions of lawyers from individual instances, where they were opposing party, notwithstanding a proper objection that The Bar did not present proper testimony of reputation, but rather individual animosity. (Transcript page 38 and page 39, lines 3-5; page 41, lines 10-12; page 52, lines 10-12; page 53, lines 1-9). Likewise, The Bar actually sometimes attempted to create aggravating testimony against the Respondent, notwithstanding the fact that another person, not Respondent made representations that an opposing lawyer disagreed with or found to be incorrect. (Transcript page 119, lines 12-19; page 121, lines 4-8).

By contrast, the competent substantial evidence adduced by the Respondent from numerous witnesses was that Respondent is an individual of high repute (Transcript page 82, lines 1-5) was a truthful and honest individual. (Transcript page 90, lines 2-4). His reputation was deemed to be one that was above reproach. (Transcript page 100, lines 23-25; page 101, line 1). A former client testified that the Respondent had a good general reputation. (Transcript page 103, lines 13-19) and contrary to the finding of the Referee that having been fined by a bankruptcy judge constituted aggravating evidence, an attorney from the community in which that occurred testified that notwithstanding the fine by the judge, the Respondent enjoyed a good reputation. (Transcript page 108, lines 6-10). The severity of the

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discipline is also grossly out of proportion to other disciplines, considering that The Bar's own staff auditor admitted that the "trust violations" consisted of temporary shortages in 1987, nearly seven years ago, of $503.00 and $2,955.61, both of which had long ago been made good. (Transcript at page 62). In fact, The Bar's auditor admitted that other attorneys have been missing $600,000.00 or $700,000.00 and were never even prosecuted. (Transcript page 66, lines 21 through 24; page 67, lines 2-4; page 70 and page 72, lines 2-10). Since they allegedly were relying on a third person. It is interesting that in the case of Respondent, The Florida Bar and the Referee pointed out an aggravating factor was that the Respondent was liable on judgments, as a result of apparent thefts by a third person, just as the unprosecuted lawyers were responsible for the theft of much more substantial sums by a third person. The Referee's ruling on admissions effectively prevented Respondent from presenting facts to show he was duped by others.

IV. CONCLUSION

The Referee below erred in failing to allow the Respondent to withdraw admissions and to file late answers. Accordingly, the matter should be remanded to the Court below with instructions to permit the admissions to be withdrawn, late answers to be filed, and for the Referee to proceed to a trial on

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the merits. This would render the issue of discipline moot.

Alternatively, if the Court does not permit the withdrawing of admissions and the filing of late answers, then based on the competent substantial evidence, the discipline should be less than disbarment.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing has been mailed this 22 day of September, 1993 to: Randi Klayman Lazarus, The Florida Bar, 444 Brickell Avenue, Suite M-400, Miami, FL 33131 and to John A. Boggs, Director of Lawyer Regulations, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399.

Respectfully submitted,

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Nicholas R. Friedman
Fla. Bar No. 199079

respnt.brf

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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

ALAN E. DUBOW,

Respondent.

_____/

Supreme Court Case
Nos. 80,479 and 80,327

The Florida Bar Case
Nos.90-70,820(11B),91-70,430(11B)
and 92-70,168(11B)

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, hearings were held on the following dates:

1. February 24, 1993 - Respondent's Motion to vacate the Order Deeming Matter's Admitted. The following attorneys appeared as counsel for the parties:

For the Florida Bar - Randi Klayman Lazarus, Esq.

For the Respondent - Alan E. Dubow, Esq., Pro se

2. March 22, 1993 - Motion for Rehearing of the Order of February 24, 1993. The following attorneys appeared as counsel for the parties:

For the Florida Bar - Randi Klayman Lazarus, Esq.

For the Respondent - Nicholas R. Friedman, Esq.

3. March 30, 1993 - Complainant's Motion to Continue and Motion to Compel Answers to Interrogatories. The following attorneys appeared as counsel for the parties:

For the Florida Bar - Randi Klayman Lazarus, Esq.

For the Respondent - Nicholas R. Friedman, Esq.

4. May 19, 1993 - Hearing on Discipline

For the Florida Bar - Randi Klayman Lazarus, Esq.

For the Respondent - Nicholas R. Friedman, Esq.

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED:

Respondent received the Request for Admission in case No. 80,327 on August 20, 1992 and in Case No. 80,479 on September 17, 1992.

On January 5, 1993, The Florida Bar filed a Motion to Deem Matters Admitted. The Referee received this Motion on January 7, 1993 and signed an Order Deeming Matters Admitted on January 11, 1993. On January 12, 1993 the Referee received Respondent's Reply to Motion for Order Deeming Matters Admitted on both cases. The Supreme Court received Respondent's Response to Request for Admissions on both cases on January 11, 1993 and forwarded them to the Referee. On January 29, 1993 the Referee received Respondent's Motion to Vacate Order Deeming Matters Admitted, and the Bar's Response on February 8, 1993. The Referee heard Respondent's Motion to Vacate on February 24, 1993 and denied the Motion on that date. Mr. Dubow represented himself on all these motions. On March 22, 1993 the Referee heard Respondent's Motion For Leave to Withdraw Admissions and File late Answers, and an order denying same was signed March 29, 1993. Because all the Admissions were deemed admitted, the Referee's Findings of Facts are that the Respondent is guilty of the misconduct contained in each and every count of both cases.

III. RECOMMENDATION AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY:

As to each count of the complaint in case No. 80,327 and as to each count of the Complaint in case No. 80,479 I recommend that the Respondent be found guilty, specifically as to case No. 80,327.

As to Count I -

I recommend that the Respondent be found guilty and specifically guilty of the violations of Rule 4-8.4(b) and Rule 4-8.4(c).

As to Count II -

I recommend that the Respondent be found guilty and specifically guilty of violating Rule 4-8.4(b) and Rule 4-8.4(c).

As to Count III -

I recommend that the Respondent be found guilty and specifically guilty of violating Rule 4-8.4(b) and Rule 4-8.4(c).

As to Count IV -

I recommend that the Respondent be found guilty and specifically guilty of violating Rule 4-8.4(b) and Rule 4-8.4(c).

As to Count V -

I recommend that the Respondent be found guilty and specifically guilty of violating Rule 4-8.4(b) and Rule 4-8.4(c).

As to Count VI -

I recommend that the Respondent be found guilty and specifically guilty of violating Rule 4-8.4(b) and Rule 4-8.4(c).

As to Count VII -

I recommend that the Respondent be found guilty and specifically guilty of violating Rule 4-8.4(c).

As to Count VIII

I recommend that the Respondent be found guilty and specifically guilty of violating Rule 5-1.1.

Count IX -

I recommend that the Respondent be found guilty and specifically guilty of violating Rule 5-1.1.

Recommendation as to case No. 80,479

As to Count I (the only count in the Complaint)

I recommend that the Respondent be found guilty and specifically guilty of violating Rule 4-8.4(c) and Rule 4-8.4(d).

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that the Respondent be disbarred from the practice of law in Florida.

Respondent has had two judgments issued against him. One in case No. 88-32345CA(11), Eleventh Judicial Circuit, issued on March 14, 1990 with the total amount of $18,459.58 plus 12% interest still outstanding and in the same case a total of $5,548.25 plus 12% for attorneys fees and costs on which the Respondent has made payments of $3,448.25. Respondent also has an outstanding judgment against him in the amount of $151,774.37 and has made no restitution of that amount.

Respondent has shown a pattern of misconduct which is still on-going. He has been fined by Judge Paskay, Chief Bankruptcy

Judge in Tampa and attempted to offer a Satisfaction of Judgment into evidence in this case which he knew or should have known (at least by examining the court file) was a fraud. He also lied to the Florida Bar, telling them he was merely an employee of Jukica Construction Company when in fact he was the president. All this has transpired following his check-kiting on his trust account, writing checks on four closed accounts, co-mingling funds in his trust account, shortages in his trust account, outstanding judgments against him and a refusal to make any substantial restitution.

V. PAST DISCIPLINARY RECORD:

After finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1)(4), I considered that Respondent has no prior disciplinary convictions and disciplinary measures imposed upon him.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COST SHOULD BE TAXED:

I find the following costs were reasonably incurred by the Florida Bar.

Administrative costs	$ 500.00
Division of Corporations	20.00
Subpoena	24.00
Staff Investigator's Cost	1,511.51
Staff Auditor's Cost	4,235.17
Bank records	2,827.60
Court reporter cost for Grievance Committee Hearing (held July 10, 1990).....	1,356.00

Court reporter cost for Grievance Committee Hearing (held March 30, 1992).....	570.80
Court reporter cost for hearing (held on February 24, 1993 before Referee)	153.85
Court reporter cost for hearing (held March 22, 1993 before Referee)	298.90
Court reporter cost for hearing (held March 30, 1993 before Referee)	100.25
Court reporter cost for depositions (take April 12, 1993).....	408.20
Court reporter cost for hearing (held May 10, 1993 before Referee)	772.45
Court reporter cost for hearing (held May 20, 1993 before Referee)	148.40
Bar counsel travel costs	148.40
T O T A L	$ 13,022.91

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the Respondent.

Dated this 4 day of June, 1993.

PATRICIA W. COCALIS
A TRUE COPY

Patricia W. Cocalis

PATRICIA W. COCALIS, Referee
Broward County Courthouse
201 S.E. 6th Street, Room 1010
Fort Lauderdale, Florida 33301

Certificate of Service

I hereby certify that a copy of the above report of referee has been mailed to Randi Klayman Lazarus, Assistant Staff Counsel, The Florida Bar, Suite M-100, Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131, Nicholas R. Friedman, Attorney for the Respondent, 100 North Biscayne Boulevard, 24th Floor, Miami, Florida 33132 and to John T. Berry, Staff Counsel, the Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 4 day of June, 1993.

Patricia W. Cocalis

PATRICIA W. COCALIS, Referee

PATRICIA W. COCALIS
A TRUE COPY

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

ALAN E. DUBOW,

Respondent.

_____/

The Florida Bar Case
No. 90-70,820(11B)

Supreme Court Case
No. 80,479

MOTION FOR ORDER DEEMING MATTERS ADMITTED

THE FLORIDA BAR, Complainant, having propounded Request for Admissions, pursuant to Florida Rules of Civil Procedure, Rule 1.370, requiring Respondent to admit or deny facts set forth in the Request for Admissions be deemed admitted, and as grounds therefore shows the following:

1. That the Complaint and Request for Admissions was sent by Certified Mail Return Receipt Requested No. P 258 206 665 to Respondent's record bar address on September 15, 1992 and received on September 17, 1992. (A copy of the Return Receipt is attached hereto and incorporated herein as Exhibit A).

2. That as of this date, no answers or objections have been received by The Florida Bar to the Request for Admissions.

3. That in accordance with Rule 1.370(a), Florida Rules of Civil Procedure, the matters are admitted unless the party to whom the request is directed serves upon the person requesting the admissions a written answer or objections addressed to the matters written 30 days after service of the request ... a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of process and initial pleading upon him.

4. That Rule 3-7.11(b) of the Rules Regulating The Florida Bar states, "Every member of The Florida Bar is charged with notifying The Florida Bar of a change of mailing address or military status.

5. That according to Rule 3-7.11(b) of the Rules Regulating The Florida Bar, the

> Mailing of registered or certified papers or notices in these rules to the last mailing address of an attorney as shown by the official records in the office of the executive director of The Florida Bar shall be sufficient notice and service unless this Court shall direct otherwise.

WHEREFORE, the Complainant respectfully requests this Honorable Referee to enter an Order deeming the matters in the Request for Admissions as being admitted, pursuant to Rule 1.370(a), Florida Rules of Civil Procedures.

Respectfully submitted,

RANDI KLAYMAN LAZARUS
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Tel: (305) 377-4445

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the above and foregoing Motion Deeming Matters Admitted was mailed to the Honorable Patricia Cocalis, Referee, Broward County Courthouse, 201 S.E. 6th Street, Room 1010, Fort Lauderdale, Florida 33301 to Alan E. Dubow, Respondent at his record bar address P.O. Box 262131, Tampa, Florida 33685 and to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 on this day of January, 1993.

RANDI KLAYMAN LAZARUS
Bar Counsel

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

ALAN E. DUBOW

Respondent.
_____/

The Florida Bar File
No. 90-70,820(11B)

CASE NO. 80,479

REPLY TO MOTION FOR ORDER DEEMING MATTERS ADMITTED

Respondent, ALAN E. DUBOW, hereby replies to the Complainant's Motion for Order Deeming Matters Admitted as follows:

1. Undersigned Respondent has been unable to obtain counsel herein, as a result of this matter being heard in a location far removed from Respondent's county of residence and place of business.

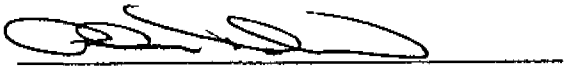
2. Respondent has consulted local counsel who, while declining to handle a matter in southeast Florida, did advise the undersigned that Complainant was not entitled to take discovery of this type from the Respondent, due to the prosecutorial nature of this proceeding. Respondent relied on said advice in not previously responding to the Request for Admissions.

3. Although Respondent objects to being subjected to such discovery in light of the prosecutorial nature of these proceedings, responses to the Request for Admissions are filed, under objection, of even date herewith so as to minimize the possibility that Respondent will be further denied due process and a fair hearing herein by the Complainant.

4. To grant Complainant's Motion would be plainly contrary to the interest of justice and fundamental fairness and would deny Respondent essential rights and protections herein, in that the result thereof would be to prevent Respondent from presenting a defense herein, especially in light of the proffered responses, which make it clear that there are material issues of fact presented.

WHEREFORE, Respondent prays that the Motion for Order Deeming Matters Admitted be denied, and that Respondent be protected from further discovery by Plaintiff, or, in the alternative that the Response to Request for Admissions be accepted and deemed filed.

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed January 7, 1993 to: Randi Klayman Lazarus, 444 Brickell Avenue #M-100, Miami, FL 33131; John T. Berry, Esq., The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300; and to Patricia Cocalis, Referee, Broward County Courthouse, 201 S.E. 6th Street, Room 1010, Ft. Lauderdale, FL 33301.



ALAN E. DUBOW
Florida Bar #299332
P. O. Box 262131
Tampa, FL 33685-2131
Phone (813) 881-0399

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

ALAN E. DUBOW,

Respondent.

_____/

The Florida Bar Case
No. 90-70,820(11B)

Supreme Court Case
No. 80,479

ORDER ON
MOTION FOR ORDER DEEMING MATTERS ADMITTED

THIS CAUSE having come before this Referee, and the Referee having examined the files of these proceedings and having found no response to the Complainant's Request for Admissions, and the Referee being duly advised in the premises.

IT IS HEREBY ORDERED AND ADJUDGED that the matters contained in the Complainant's Request for Admissions are hereby taken as admitted.

DONE AND ORDERED in Chambers at Fort Laudedale, Broward County, Florida, this 11 day of January, 1993.

PATRICIA W. COCALIS

A TRUE COPY

PATRICIA COCALIS, Referee
Broward County Courthouse
201 S.E. 6th Stree, Rm 1010
Fort Lauderdale, Florida 33301

Copies furnished to:

Randi Klayman Lazarus, Bar Counsel
Alan E. Dubow, Respondent

APPENDIX IV

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

ALAN E. DUBOW

Respondent.
_____/

The Florida Bar File
No. 90-70,820(11B)

CASE NO. 80,479

MOTION TO VACATE ORDER DEEMING MATTERS ADMITTED

Respondent, ALAN E. DUBOW, hereby prays to this Court for its Order vacating the Order on Motion for Order Deeming Matters Admitted as follows:

1. On or about January 5, 1993, the Complainant filed a Motion for Order Deeming Matters Admitted, together with a proposed Order thereon. Said Motion was received by the Respondent on January 7, 1993, and a reply thereto, together with a proffered response to the Request for Admissions were filed and served, by mail, that same day.

2. On January 11, 1993, the Referee entered the Complainant's proposed Order, clearly without having considered either the reply thereto, or that a response to the Request for Admissions had been filed.

3. The subject Order is facially improper in that a number of the propounded Requests for Admissions inquire as to bare conclusions of law, which are not within the proper scope of admission requests.

4. The subject Order presumes, incorrectly, that the Respondent in a bar grievance proceeding is subject to discovery by admission, or that matters may be deemed admitted in the absence of a response.

5. The effect of deeming these matters admitted would be to deprive the Respondent of his due process rights, and to preclude his defense herein.

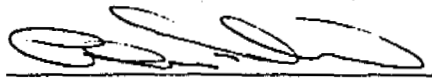
6. Because The Florida Bar is the statutorily authorized licensing authority for attorneys in Florida, the Respondent is an attorney, and the Respondent can not, by law, practice his profession in Florida if the Complainant is granted the relief requested herein, The Florida Bar is therefore a quasi-governmental entity such that any deprivation of Respondent's rights to due process, the opportunity to present a full defense,

and to receive a fair hearing, would constitute a violation of Respondent's rights under the Fourteenth Amendment to the Constitution of the United States.

7. The entry of the subject Order further presumes proper and effective service of process on the Respondent. Despite the attempt by Complainant to mislead the Referee on this point, no such valid service has taken place. The Complaint and Request for Admissions were transmitted to the Respondent by United States mail, at the same time and in the same envelope. At no time has Respondent been served as required by Chapter 48, Florida Statutes, nor has Respondent voluntarily submitted himself to the jurisdiction of the Court or the Referee, having appeared herein, prior to the Motion for Order Deeming Matters Admitted, for the sole and limited purpose of challenging venue.

WHEREFORE, Respondent prays that the Order on Motion for Order Deeming Matters Admitted be vacated, and that Respondent be protected from further discovery by Complainant, or, in the alternative that the Response to Request for Admissions be accepted and deemed filed.

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed January 20, 1993 to: Randi Klayman Lazarus, 444 Brickell Avenue #M-100, Miami, FL 33131; John T. Berry, Esq., The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300; and to Patricia Cocalis, Referee, Broward County Courthouse, 201 S.E. 6th Street, Room 1010, Ft. Lauderdale, FL 33301.



ALAN E. DUBOW
Florida Bar #299332
P. O. Box 262131
Tampa, FL 33685-2131
Phone (813) 881-0399

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

ALAN E. DUBOW,

Respondent.

_____/

The Florida Bar Case
No. 90-70,820(11B)

Supreme Court Case
No. 80,479

ORDER

THIS CAUSE having come before this Referee, and the Referee being duly advised in the premises.

IT IS HEREBY ORDERED AND ADJUDGED that Respondent's Motion to Vacate Order Deeming Matters Admitted is denied.

DONE AND ORDERED in Chambers at Fort Laudedale, Broward County, Florida, this 24 day of February, 1993.

Patricia W. Cocalis

PATRICIA COCALIS, Referee
Broward County Courthouse
201 S.E. 6th Stree, Rm 1010
Fort Lauderdale, Florida 33301

Copies furnished to:

Randi Klayman Lazarus, Bar Counsel
Alan E. Dubow, Respondent

APPENDIX VI

File

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

-vs-

ALAN E. DUBOW,

Respondent.

_____/

The Florida Bar Case Nos. 91-70,430(11B) and 92-70,168(11B)

Supreme Court Case No. 80,327

MOTION FOR RE-HEARING OF ORDER DATED FEBRUARY 24, 1993

The undersigned, on behalf of Alan E. Dubow, Respondent, hereby files this Motion for Re-Hearing of this Court's order dated February 24, 1993, and in support thereof states as follows:

1. On February 24, 1993, this Court entered an order. A copy of the order is attached as Exhibit "A".

2. The matter was heard on February 24, 1993.

3. On or about January 7, 1993, the Respondent, representing himself, filed a document entitled Response to Request for Admissions. A copy is attached as Exhibit "B".

4. The Response (Exhibit "B") was served two days after the filing a motion to deem matters admitted, which was served by The Florida Bar on January 5, 1993.

5. The matter at issue is a proceeding for discipline involving the Respondent's license to practice law.

6. The undersigned is aware that there are rulings of the Supreme Court of Florida that state that a license to practice law is a conditional privilege and not a right.

7. However, with all due respect, the possible loss of a

vested license to practice law, temporarily or permanently, is a severe sanction which should not be readily imposed, especially in circumstances where the issues are contested, but a procedural mistake may have occurred.

8. The Florida Bar, now relying on the order of February 24, 1993, has sent a notice requesting hearing solely on the issue of discipline.

9. The Respondent strongly objects to a hearing only on the issue of discipline, and requests re-hearing and reconsideration of the Order of February 24, 1993, which might appear to allow The Florida Bar such a "discipline only" hearing.

10. Before a sanction as severe as the admission of all matters is entered, it should be required that there have been prior incidents or hearings on motions to compel, or alternatively that willfulness would need to be shown.

11. The admission of these matters, from the prospective of the Bar's Notice of Final Hearing as to the Appropriate Discipline indicate that the Bar is treating this as though it has won a summary judgment proceeding.

12. Indeed, the effect may be the same, and such should not be the case absent a showing of willfulness.

13. The Respondent has indicated that while he admits that his failure to answer may have been technically incorrect, it was

not willful. Moreover, the Respondent did respond prior to any hearing on the motion, and he did so as soon as it appeared that he had been mistaken.

14. Moreover, the Respondent was under the mistaken belief and misapprehension that because no answer is required to be filed to a Bar complaint, therefore he might not need to answer the request for admissions. This is particularly reasonable given the fact that the request for admissions is not a traditional request for admissions, but in fact is identical to the complaint.

15. In fact, the Bar rules are different from the Civil Rules of Procedure in that in the Civil Rules of Procedure, if no answer is filed, a default may be applied for. Under the Bar rules, no answer is required to be filed.

16. To the extent that The Florida Bar may have relied on the case of The Florida Bar v. Solomon, 589 So.2d 286 (Fla. 1991), it appears that in the Solomon case, Mr. Solomon never did answer the request for admissions. Solomon, supra at 287.

17. Likewise, a failure to grant the motion to vacate would merely require the Respondent to seek permission to withdraw or amend, as permitted under Rule 1.370(b) of the Florida Rules of Civil Procedure. It would appear that such duplicate effort, given the circumstances, would not be in the best interests of justice.

18. While the Respondent is an attorney, the undersigned respectfully suggests that attorneys defending themselves, particularly in technical proceedings which do not follow the normal rules of civil or criminal procedure are not necessarily knowledgeable at following those rules properly.

19. The Fifth District Court of Appeals in Durran v. Thompson, 486 So.2d 711 (Fla. 5th DCA 1986), reversed a judgment on the pleadings where an unrepresented defendant was changing lawyers and a technical admission would have precluded the case being heard on its evidentiary merits. Also see Melody Tours, Inc. v. Granville Market, Inc., 413 So.2d 450, 451 (Fla. 5th DCA 1982).

20. Likewise, where the error could be considered harmless, such as where admissions were actually filed nearly two months before a hearing on the motion to deem matters admitted was heard, although they were untimely. Pelkey v. Commandeer Motel Corp., 510 So.2d 965, 966 (Fla. 4th DCA 1987). Also see Sterling v. City of West Palm Beach, 595 So.2d 284, 285 (Fla. 4th DCA 1992), where relief was granted on an ore tenus motion. In that case summary final judgment was also reversed and the matter remanded to the trial court for further proceedings.

WHEREFORE, the undersigned respectfully requests that this Court grant a re-hearing on the Respondent's Motion to Vacate Order Deeming Matters Admitted, allow the Respondent's Response to Request for Admissions as filed January 7, 1992 nearly two months before the hearing to stand, and then proceed on the matter on the merits, and not merely on discipline.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. mail this 8th day of March, 1993 to

Randi Klayman Lazarus, Esq., The Florida Bar, Rivergate Plaza, Suite M-100, 444 Brickell Avenue, Miami, FL 33131.

LAW OFFICES OF FRIEDMAN & FRIEDMAN
New World Tower, 24th Floor
100 North Biscayne Boulevard
Miami, Florida 33132

BY: _____
Nicholas R. Friedman
Florida Bar No. 199079

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

ALAN E. DUBOW,

Respondent.

_____/

The Florida Bar Case Nos. 91-70,430(11B) and 92-70,168(11B)

Supreme Court Case No. 80,327

ORDER

THIS CAUSE having come before this Referee, and the Referee being duly advised in the premises.

IT IS HEREBY ORDERED AND ADJUDGED that Respondent's Motion to Vacate Order Deeming Matters Admitted is denied.

DONE AND ORDERED in Chambers at Fort Laudedale, Broward County, Florida, this 24 day of January, 1993.

Patricia M. Cocalis

PATRICIA COCALIS, Referee
Broward County Courthouse
201 S.E. 6th Stree, Rm 1010
Fort Lauderdale, Florida 33301

Copies furnished to:

Randi Klayman Lazarus, Bar Counsel
Alan E. Dubow, Respondent

Exhibit "A"

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

ALAN E. DUBOW

Respondent.
_____/

The Florida Bar File Nos. 90-70,820(11B) and 92-70,168(11B)

CASE NO. 80,327

RESPONSE TO REQUEST FOR ADMISSIONS

Respondent, ALAN E. DUBOW, hereby responds to the Complainant's Request for Admissions as follows:

1. Admitted that the undersigned was a member of the Florida Bar, unable to reply as to legal conclusions.

2. Admitted that the undersigned maintained a personal account at Florida National Bank.

3. Denied.

4. Presently unable to admit or deny.

5. Presently unable to admit or deny.

6. Presently unable to admit or deny.

7. Presently unable to admit or deny.

8. Denied.

9. Presently unable to admit or deny.

10. Presently unable to admit or deny.

11. Denied.

12. Denied.

13. Admitted that Respondent was sued, otherwise denied.

14. Admitted.

15. Denied.

16. Denied.

Exhibit "B"

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Unable to admit or deny.

22. Denied.

23. Admitted.

24. Denied.

25. Denied.

26. Unable to admit or deny.

27. Denied.

28. Denied.

29. Unable to admit or deny.

30. Denied.

31. Unable to admit or deny.

32. Denied that the described exhibits were attached to the request, but the substance of the statements set forth as "a, b and c" are admitted.

33. Admitted.

34. Denied.

35. Denied.

36. Denied.

37. Admit having maintained such an account, but denied that same continued to be designated as a trust account through the dates stated.

38. Denied.

39. Denied.

40. Denied.

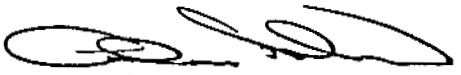
41. Presently unable to admit or deny.

42. Denied.

43. Denied.

WHEREFORE, Respondent has fully responded to the Request for Admissions propounded by Complainant herein.

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed January 7, 1993 to: Randi Klayman Lazarus, 444 Brickell Avenue #M-100, Miami, FL 33131; John T. Berry, Esq., The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300; and to Patricia Cocalis, Referee, Broward County Courthouse, 201 S.E. 6th Street, Room 1010, Ft. Lauderdale, FL 33301.



ALAN E. DUBOW
Florida Bar #299332
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Phone (813) 881-0399

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

Alan E. Dubow

Respondent.

The Florida Bar Case
Nos. 90-70, 820 (11B)

Supreme Court Case
No. 80, 479

Denied

MOTION FOR LEAVE TO WITHDRAW ADMISSIONS AND FILE LATE ANSWERS

The Respondent, ALAN E. DUBOW, by and through his undersigned counsel, moves this Honorable Court to grant him leave to withdraw admissions herein and as grounds therefor would show:

1. Requests for admissions addressing every factual allegation and every legal conclusion of The Florida Bar's complaint herein were served on Respondent along with the complaint.

2. Respondent mistakenly believed that, as is true with the complaint itself, no response to the Request for Admissions was required.

3. Respondent realized his error when The FLorida Bar moved to have the Requests deemed admitted and immediately filed his responses, admittedly late.

4. Respondent never intended to admit the facts in question.

5. Unless withdrawal of these technical admissions is permitted, the effect will be virtually a judgement on the pleadings. (While The Florida Bar has not moved for judgement on the pleadings, it is obvious the Bar believes it is entitled to

FRIEDMAN & FRIEDMAN, P.A., 24TH FLOOR NEW WORLD TOWER, 100 N. BISCAYNE BLVD., MIAMI, FLORIDA 33132, TELEPHONE (305) 358-8400

such as it has filed a Notice of Trial on Discipline only.)

6. Rule 1.370(b) provides a liberal standard for this court to grant Respondent the relief sought. Certainly allowing withdrawal of these technical admissions would allow presentation of the case on the merits. The burden is on The Florida Bar, the party who obtained the admission, to satisfy the court that withdrawal will prejudice it "in maintaining [its] actions or defenses on the merits." RCP 1.370(b)

> Having to prepare a trial on the merits is not the type of prejudice which the [Bar] can raise to combat the [Respondent's] motion for leave to file late answers because preparing for a trial on the merits was the [Bar's] burden from the beginning. Durrance v. Thompson, 486 So. 2d 711,712 (Fla.5th DCA 1986).

The burden on The Florida Bar, then, is to demonstrate that it will suffer some prejudice in the actual presentation of its case resultant from the withdrawal of the technical admissions.

7. In Pelkey v. Commander Motel Corp., 510 So. 2d 965 (Fla. 4th DCA 1987), allowing withdrawal of technical admissions (filed 4 days late) was affirmed because no prejudice was shown. Withdrawal of technical admissions was likewise approved in Melody Tours, Inc. v. Granville Market Letter, Inc., 413 So. 2d 450 (Fla. 5th DCA 1982) where the response to request for admissions was 77 days late. The Fourth District recently held that withdrawal of technical admissions should be permitted. Sterling v. City of West Palm Beach, 595 So. 2d 284 (Fla. 4th DCA 1992). "The use of admissions obtained through a technicality should not form a basis to prelude adjudication of a legitimate claim." Sterling, at 285. The same reasoning holds for a legitimate defense.

8. Unless Respondent is granted leave to withdraw his

technical admissions and file late answers to the request for admissions, he will be unable to present his defenses on the merits.

WHEREFORE, Respondent moves this Court to grant him leave to withdraw the technical admissions and to file late answers to The Florida Bar's request for admissions.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 15th day of March, 1993 to Randi Klayman Lazarus, Esquire, The Florida Bar, Rivergate Plaza, Suite M-100, 444 Brickell Avenue, Miami, Fl. 33131.

FRIEDMAN & FRIEDMAN
Attorneys for Respondent
24th Floor, New World Tower
100 North Biscayne Boulevard
Miami, Fl. 33132

By: _____
Nicholas R. Friedman
Florida Bar No. 199079

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

ALAN E. DUBOW,

Respondent.

_____/

Supreme Court Case
No. 80, 479

The Florida Bar File
Nos. 90-70, 820 (11B),

NOTICE OF APPEARANCE

COMES NOW Friedman & Friedman and files its notice of appearance as counsel for Respondent herein.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 15th day of March, 1993 to Randi Klayman Lazarus, Esquire, The Florida Bar, Rivergate Plaza, Suite M-100, 444 Brickell Avenue, Miami, Fl. 33131.

FRIEDMAN & FRIEDMAN
Attorneys for Respondent
24th Floor, New World Tower
100 North Biscayne Boulevard
Miami, Florida 33132

By: _____
Nicholas R. Friedman
Florida Bar No. 199079

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

Alan E. Dubow

Respondent.

_____/

The Florida Bar Case Nos. 91-70, 430 (11B) and 92-70, 168 (11B)

Supreme Court Case No. 80, 327

MOTION FOR LEAVE TO WITHDRAW ADMISSIONS AND FILE LATE ANSWERS

The Respondent, ALAN E. DUBOW, by and through his undersigned counsel, moves this Honorable Court to grant him leave to withdraw admissions herein and as grounds therefor would show:

1. Requests for admissions addressing every factual allegation and every legal conclusion of The Florida Bar's complaint herein were served on Respondent along with the complaint.

2. Respondent mistakenly believed that, as is true with the complaint itself, no response to the Request for Admissions was required.

3. Respondent realized his error when The FLorida Bar moved to have the Requests deemed admitted and immediately filed his responses, admittedly late.

4. Respondent never intended to admit the facts in question.

5. Unless withdrawal of these technical admissions is permitted, the effect will be virtually a judgement on the pleadings. (While The Florida Bar has not moved for judgement on the pleadings, it is obvious the Bar believes it is entitled to

such as it has filed a Notice of Trial on Discipline only.)

6. Rule 1.370(b) provides a liberal standard for this court to grant Respondent the relief sought. Certainly allowing withdrawal of these technical admissions would allow presentation of the case on the merits. The burden is on The Florida Bar, the party who obtained the admission, to satisfy the court that withdrawal will prejudice it "in maintaining [its] actions or defenses on the merits." RCP 1.370(b)

> Having to prepare a trial on the merits is not the type of prejudice which the [Bar] can raise to combat the [Respondent's] motion for leave to file late answers because preparing for a trial on the merits was the [Bar's] burden from the beginning. Durrance v. Thompson, 486 So. 2d 711,712 (Fla.5th DCA 1986).

The burden on The Florida Bar, then, is to demonstrate that it will suffer some prejudice in the actual presentation of its case resultant from the withdrawal of the technical admissions.

7. In Pelkey v. Commander Motel Corp., 510 So. 2d 965 (Fla. 4th DCA 1987), allowing withdrawal of technical admissions (filed 4 days late) was affirmed because no prejudice was shown. Withdrawal of technical admissions was likewise approved in Melody Tours, Inc. v. Granville Market Letter, Inc., 413 So. 2d 450 (Fla. 5th DCA 1982) where the response to request for admissions was 77 days late. The Fourth District recently held that withdrawal of technical admissions should be permitted. Sterling v. City of West Palm Beach, 595 So. 2d 284 (Fla. 4th DCA 1992). "The use of admissions obtained through a technicality should not form a basis to prelude adjudication of a legitimate claim." Sterling, at 285. The same reasoning holds for a legitimate defense.

8. Unless Respondent is granted leave to withdraw his

technical admissions and file late answers to the request for admissions, he will be unable to present his defenses on the merits.

WHEREFORE, Respondent moves this Court to grant him leave to withdraw the technical admissions and to file late answers to The Florida Bar's request for admissions.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 15th day of March, 1993 to Randi Klayman Lazarus, Esquire, The Florida Bar, Rivergate Plaza, Suite M-100, 444 Brickell Avenue, Miami, Fl. 33131.

FRIEDMAN & FRIEDMAN
Attorneys for Respondent
24th Floor, New World Tower
100 North Biscayne Boulevard
Miami, Fl. 33132

By: _____
Nicholas R. Friedman
Florida Bar No. 199079

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

ALAN E. DUBOW,

Respondent.

_____/

Supreme Court Case
No. 80,327, 80,479

The Florida Bar File
Nos. 91-70, 430 (11B),
92-70, 168 (11B)

ANSWER

The Respondent, ALAN E. DUBOW, by and through undersigned counsel, answers the complainant, and states:

1. Admitted

2. Respondent admits he maintained a personal account at Florida National Bank, all other allegations of this paragraph are denied.

3. Denied

4. Unknown, therefore denied.

5. Unknown, therefore denied.

6. Unknown, therefore denied.

7. Unknown, therefore denied.

8. Denied.

9. Unknown, therefore denied.

10. Unknown, therefore denied.

11. Denied.

12. Denied.

13. Admitted that Respondent was sued, otherwise denied.

14. Admitted.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Respondent adopts his answers as stated in paragraphs 1-18 above.

20. Denied.

21. Denied.

22. Respondent adopts his answers as stated in paragraphs 1-21 above.

23. Denied.

24. Unknown, therefore denied.

25. Respondent adopts his answers as stated in paragraphs 1-24 above.

26. Admitted.

27. Denied.

28. Respondent adopts his answers as stated in paragraphs 1-27 above.

29. Denied.

30. Unknown, therefore denied.

31. Denied.

32. Respondent adopts his answers as stated to paragraphs 1 31 above.

33. Denied.

34. Unknown, therefore denied.

35. Denied.

36. Respondent adopts his answers as stated to paragraphs 1-35 above.

37. Unknown, therefore denied.

38. No exhibits were attached. However, Respondents admits

the substance of the statements.

39. Admitted.

40. Denied.

41. Denied.

42. Denied.

43. Admitted that such an account was maintained; denied it was a trust account throughout the dates stated.

44. Denied.

45. Denied.

46. Denied.

47. Respondent readopts his answers as stated above to paragraphs 43 through 46.

48. Unknown, therefore denied.

49. Denied.

50. Denied.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 15th day of March, 1993 to Randi Klayman Lazarus, Esquire, The Florida Bar, Rivergate Plaza, Suite M-100, 444 Brickell Avenue, Miami, Fl. 33131.

FRIEDMAN & FRIEDMAN
Attorneys for Respondent
24th Floor, New World Tower
100 North Biscayne Boulevard
Miami, Florida 33132

By: _____
Nicholas R. Friedman
Florida Bar No. 199079

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

ALAN E. DUBOW,

Respondent.

_____/

Supreme Court Case
No. 80, 327, 80, 479

The Florida Bar File
Nos. 91-70, 430 (11B),
92-70, 168 (11B)

NOTICE OF APPEARANCE

COMES NOW Friedman & Friedman and files its notice of appearance as counsel for Respondent herein.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 15th day of March, 1993 to Randi Klayman Lazarus, Esquire, The Florida Bar, Rivergate Plaza, Suite M-100, 444 Brickell Avenue, Miami, Fl. 33131.

FRIEDMAN & FRIEDMAN
Attorneys for Respondent
24th Floor, New World Tower
100 North Biscayne Boulevard
Miami, Florida 33132

By: _____
Nicholas R. Friedman
Florida Bar No. 199079

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

ALAN E. DUBOW

Respondent.

_____/

The FLorida Bar File
Nos. 90-70, 820 (11B)

The Supreme Court Case
80,479

ANSWER

Respondent, Alan E. Dubow, by and through his undersigned, hereby answers the Complaint as follows.

1. Admitted that the Respondent was and is a member of The Florida Bar; all other allegations in this paragraph are denied.

2. Admitted that Respondent was retained to prepare a warranty deed but denied that obtained the signature of the grantor was included in the original terms of employment.

3. Admitted that Respondent traveled to Nassau, otherwise denied.

4. Denied.

5. Denied.

6. Denied.

7. Unknown at present and, therefore, denied.

8. Unknown at present and, therefore, denied.

9. Admitted that Respondent was named as a third party defendant, otherwise denied.

10. Unknown at present and, therefore, denied.

11. Denied.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 15th day of March, 1993 to Randi Klayman Lazarus, Esquire, The Florida Bar, Rivergate

Plaza, Suite M-100, 444 Brickell Avenue, Miami, Fl. 33131.

FRIEDMAN & FRIEDMAN
Attorneys for Respondent
24th Floor, New World Tower
100 North Biscayne Boulevard
Miami, Florida 33132

By: _____
Nicholas R. Friedman
Florida Bar No. 199079

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

ALAN E. DUBOW,

Respondent.

_____/

The Florida Bar File Nos. 90-70,820(11B), 91-70,430(11B) and 92-70,168(11B)

Supreme Court Case No. 80,327 and 80,479

MOTION TO REOPEN FINAL HEARING AS TO APPROPRIATE DISCIPLINE

THE FLORIDA BAR, by and through its undersigned attorney files this Motion to Reopen Final Hearing on Appropriate Discipline and as grounds therefore would state:

1. That a final hearing as to appropriate discipline was held on May 10, 1993 before this Honorable Court.

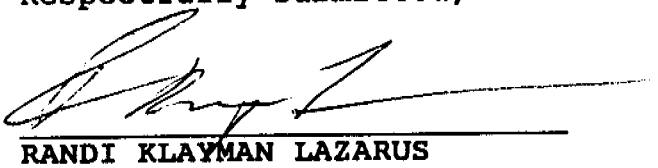
2. That at the hearing, Respondent testified that an individual named John Fernandez had satisfied the outstanding judgment against the Respondent as obtained by Florida National Bank. Respondent maintained that Mr. Fernandez gave him a copy of the Satisfaction of Judgment.

3. That The Florida Bar objected to the introduction of the document into evidence since it was not provided in discovery and was not certified. The court did not admit the document into evidence.

4. That The Florida Bar has newly discovered evidence relating to that transaction which is aggravating.

WHEREFORE, THE FLORIDA BAR moves this Honorable Court to reopen the Final Hearing as to appropriate discipline in order that The Florida Bar present newly discovered evidence in aggravation.

Respectfully submitted,



RANDI KLAYMAN LAZARUS
Bar Counsel
TFB #360929
The Florida Bar
444 Brickell Avenue
Miami, Florida 33131
Tel: (305) 377-4445

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the above and foregoing Motion to Reopen Final Hearing as to Appropriate Discipline was sent by Airborne Express to the Honorable Patricia W. Cocalis, Referee, Broward County Courthouse, Room 1010, 201 S.E. 6th Street, Fort Lauderdale, Florida 33301 and a true and correct copy was hand delivered to Nicholas R. Friedman, Esq., Attorney for Respondent, New World Tower, 21st Floor, 100 North Biscayne Boulevard, Miami, Florida 33131, this 13 day of May, 1993.

RANDI KLAYMAN LAZARUS
Bar Counsel