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CLERK, SUPREME COURT

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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

vs.

Supreme Court Case
No. 80,857

BARRY D. SCHREIBER,
Respondent.

_____ /

On Petition for Review

Answer Brief of Complainant

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STATEMENT OF THE CASE AND OF THE FACTS

On December 4, 1992, The Florida Bar filed its complaint charging the Respondent with misconduct which resulted in him being charged with the commission of a battery in violation of Florida Statute Section 784.03(1), as well as another incident of violence for which Respondent was not criminally charged.

A final hearing was held before the Honorable Kathleen A. Kearney, Referee on March 31, 1993. The Bar presented evidence which established that the Respondent committed two batteries against Rose Wolowitz and that Ms. Wolowitz sustained injuries as a result of those batteries.

The Florida Bar presented the testimony of Ms. Wolowitz, her brother-in-law, Marcos Rojas and an Assistant State Attorney, Patricia Small. The Respondent did not appear.

Ms. Wolowitz, in her testimony, explained the violence committed by the Respondent. Ms. Wolowitz testified that on January 25, 1991, the Respondent visited her home. (TR1. 12) As Ms. Wolowitz raised her glass of wine to drink, the Respondent suddenly turned violent, attempting to slap her in the face but instead broke her nail and the glass hit the wall. (TR1. 12).

This was not an isolated incident of violence. Ms. Wolowitz further testified to another, more severe, violent encounter with the Respondent. On the evening of February 13, 1991, the Respondent accompanied Ms. Wolowitz to her apartment expressing a desire to enter the apartment. As Ms. Wolowitz was tired, she told the Respondent that she just wanted "to go upstairs to bed." (TR1. 13-14).

The Respondent then told Ms. Wolowitz that he had left something in her apartment that he needed to get. Ms. Wolowitz told him "[o]kay, come upstairs and pick up whatever you have to pick up and go." (TR1. 14). Once upstairs in Ms. Wolowitz's room, the Respondent became very angry and began using abusive language. The Respondent then proceeded to go into the bathroom and Ms. Wolowitz followed to ensure that the Respondent was gathering his belongings. It is at this time that the Respondent became violent and as Ms. Wolowitz testified "he started to hit me and hit me ... he was kicking my legs and whatever he could do... I wanted to leave the room, but he wouldn't let me. He kept on punching." (TR1. 15).

After the Respondent finally left, Ms. Wolowitz phoned her daughter and subsequent to the arrival of her daughter, the police were called by Ms. Wolowitz's daughter.

Because of this act of violence, Ms. Wolowitz sustained injuries such that the Respondent "damaged the ear drum" and that "in one ear... I couldn't hear at all." (TR1. 17). During Ms. Wolowitz's testimony, the Referee requested that she look at and describe photographs taken a couple of days after the incident. The following is what ensued from that testimony.

THE REFEREE: All right.

BY MS. LAZARUS:

Q. These photographs that I have here, Mrs. Wolowitz, do you recall who took them?

A. My Daughter.

Q. When did she take these photographs?

A. Two days after this incident.

Q. After the second incident on February 13th?

A. Yes.

Q. What does this first photograph show in terms of your injuries?

A. I was all black and blue.

Q. Can you describe for the court reporter what you are pointing to?

A. Left or right, I can't determine that.

Q. It would be your right side.

A. The right side near to my ear and the lower part of my face.

Q. This second picture, which is of your feet, what are you showing in this picture?

A. He was kicking me so hard with his shoes. He was stepping on me with the heels and it made all these bruises, black, blue and bleeding.

Up here, he kicked me and also bruised my legs, the upper part of my legs.

Q. Were you wearing hose and shoes at the time?

A. At that time, because he was punching me so much, I lost my shoes. I had pantyhose on, but they were all torn apart.

He kept on saying, "I want to break your legs." He was trying to do that with his kicking.

Q. The third photograph of your hand, what does this show?

A. I was trying to protect myself, but he was hitting me. He hit my arms

and they got all bruised up.

Q. Here is another photograph of your face.

A. This is my eye, all around here, I was swelled up and black (indicating).

Q. This other photograph, which is a frontal photograph, what does this one depict?

A. He hit me in my mouth. I was swelled up and cut on my lower lip.

Q. Here are the last three photographs. What does the top one depict?

A. This part here (showing).

Q. That's the left side of your jaw?

A. Yes.

Q. What are you showing us there?

A. My ear. He hit me strong in this area, my ear, and also the right side of my face.

Q. This center picture where you are lifting up your lip, what are you showing?

A. From the punches, it was all cut and my lips underneath were all cut, open bruises.

Q. What is this last picture?

A. It's about the same as the other, the lower part of my face, all black.

THE REFEREE: Ms. Lazarus, attach copies of those photographs to the transcript for Mr. Schreiber so that he can see what the witness is making reference to.

MS. LAZARUS: Yes, Your Honor.

(TR1. 21-23)

A complaint was then filed by the State Attorney's Office in which the Respondent tendered a nolo contendere plea for the charge of commission of battery in violation of Florida Statute Section 784.03(1). A civil suit was also filed against the Respondent for both batteries resulting in a settlement.

Patricia Small, Assistant State Attorney, testified that the Respondent, being fully informed of his rights and what rights he was giving up, tendered his nolo contendere plea, subsequent to negotiations, voluntarily and without any inhibitions. (TR1. 41-43).

In addition to Ms. Wolowitz's testimony, her brother-in-law, Marcos Rojas testified that although the Respondent met with him and in speaking about the February 13 incident told him that he just pushed her and slapped her, upon seeing Ms. Wolowitz, Mr. Rojas believed that "...it appeared to me like it was not a slap. It was more than a slap... [b]ecause of the way she was bruised and kicked. She appeared to be kicked and so forth." (TR1. 33)

On June 1, 1993, the Referee issued a Report of Referee finding that the Respondent was in violation of Rule 4-8.4(b) of the Rules Regulating The Florida Bar. The discipline recommended by the Referee was a suspension from the practice of law for a period of one hundred and twenty (120) days and completion of the Florida Bar examination, including the ethics portion of the exam, a psychological evaluation and successful completion of a program for batterers of women. (Appendix A).

The Respondent filed a Petition for Review on July 1, 1993 and then an Amended Petition for Review on August 13, 1993. Respondent

then filed an Initial Brief in support of his Petition. The Bar now files its response to the Respondent's Initial Brief.

SUMMARY OF ARGUMENT

The Respondent, in his Initial Brief, asserts four points of appeal. The Respondent alleges that the allegations of the complaint filed by The Florida Bar are not proved, that there is no violation of the Rules of Professional Conduct, that he was denied due process and finally that the disciplinary measures imposed are erroneous, unlawful, unjustified and prejudiced. In it's answer brief, The Florida Bar will discount all points alleged by the Respondent by showing through case law and Bar rules that the ruling made by the referee should stand.

The Florida Bar will show that because a commission of a criminal act was made by the Respondent as indicated by his nolo contendere plea, as well as the testimony of the victim as to the other incident Respondent was in violation of Rule 4-8.4(b) of the Rules of Professional Conduct.

The Florida Bar will also show that the determination of a violation of the Rules of Professional Conduct was made as a result of a complete and fair Florida Bar disciplinary proceeding.

Finally, The Florida Bar will demonstrate that as a result of the commission of criminal acts and as a result of there being a violation of the Rules of Professional Conduct, the appropriate disciplinary measures were imposed by the Referee.

POINTS ON APPEAL

1

WHETHER THE ALLEGATIONS OF THE
COMPLAINT HAVE BEEN PROVEN?

2

WHETHER A VIOLATION OF RULE 4-8.4(b)
OF THE RULES OF PROFESSIONAL CONDUCT
HAS BEEN PROVEN?

3

WHETHER THE RESPONDENT WAS DENIED
DUE PROCESS OR THE RIGHT TO CROSS
EXAMINE HIS ACCUSERS?

4

WHETHER THE RECOMMENDED DISCIPLINARY
MEASURES ARE ERRONEOUS, UNLAWFUL OR
PREJUDICIAL? (RESTATED)

ARGUMENT

1

THE ALLEGATIONS OF THE COMPLAINT
ARE PROVEN

The Respondent contends that as a result of his entering a plea of nolo contendere, adjudication withheld and his record sealed and expunged, an inference can be made that no criminal act was committed. On the contrary, the Court, in Vernold v. State, 376 So. 2d 1166,1167 (Fla. 1979) decided that a "plea of nolo contendere...admitted the facts alleged in the information." The Court further finds that the defendant "may not now challenge these facts as he is attempting to do in this appeal." Id. at 1167. Based on the reasoning of Vernold, supra, the facts alleged in the information are admitted by the Respondent's nolo contendere plea, and The Florida Bar may pursue its disciplinary proceeding against the Respondent on that basis alone.

Assuming, however, arguendo, that as the Respondent claims, his plea resulted in a finding of not guilty, a violation of the Rules Regulating The Florida Bar nevertheless is present. On page eleven of the Respondent's brief, Respondent, believing that he was found not guilty asks "[c]an the Florida Bar come now and claim that Respondent did commit a criminal act...?" See Respondent's Initial Brief, p. 11. The answer to his question is yes. See, The Florida Bar v. Lancaster, 448 So. 2d 1019 (Fla. 1984).

Lancaster claims that he cannot be found guilty of counts one and two because the only evidence presented in support of these two counts was the fact that he pleaded nolo contendere to two misdemeanors. He points out that adjudication of guilt on these offenses was withheld. Lancaster argues that his plea

of nolo contendere was an admission of the facts alleged in the information only for purposes of that particular proceeding and could not be used as evidence in this proceeding. He asserts that his plea of nolo contendere does not by itself constitute a violation of the Code of Professional Responsibility and that there was insufficient proof that he was guilty of the misdemeanors charged. Id. at 1021.

Id., at 1021

The Court, in response to these claims made by that respondent, stated "[w]e disagree with these contentions. We...note that the admission of the nolo contendere plea into evidence was proper." Id. In any event, the Florida Bar submitted extensive evidence to prove that Respondent had engaged in conduct that constituted a crime. Thus, the Florida Bar did not rely solely on Respondent's nolo contendere plea.

Keeping in the spirit of the Respondent's reasoning wherein he believes himself to have been acquitted as a result of his nolo contendere plea and therefore the referee's report should be rejected, it has been determined that an "acquittal of attorney in criminal proceeding does not necessarily bar disciplinary proceedings." See, The Florida Bar v. Swickle, 589 So. 2d 901, 902 (Fla. 1991).

Finally, the Respondent argues his alleged innocence further by reiterating several times that his record was sealed and expunged. He then asks "[w]hy did the Florida Bar...fail to place into evidence the order of January 8, 1992 sealing and expunging the record? Were they afraid that it clearly exonerated Respondent?" See Respondent's Initial Brief, p. 12. The record in these proceedings reflects that the Florida Bar successfully moved to

unseal Respondent's criminal record. In fact, Respondent argued against such action before the Judge who heard the underlying battery charge. Should Respondent have felt this item to be of consequence he could have appeared at the final hearing and attempted its submission as evidence to the Referee. In any event, there is no dispute that the record was sealed. See, The Florida Bar's Motion to Obtain Documents From Sealed File and Order. (Appendix B).

Based on the above court findings, the Respondent is devoid of any defenses. Should he assert his nolo contendere plea as a defense against The Florida Bar proceedings against him, either as a proclamation of innocence or as neither innocence nor guilt, the Bar may still implement disciplinary action against him.

ARGUMENT

2

A VIOLATION OF RULE 4-8.4(B) OF
THE RULES OF PROFESSIONAL CONDUCT
IS PROVEN

Based on the above argument, the Referee having found (and the Respondent having admitted by virtue of his nolo contendere plea) that the facts alleged and the facts charged in the information are true, then he is in violation of Rule 4-8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects). The violence for which the Respondent was charged and the abuse of the Bar proceedings mark clear examples of professional misconduct in need of discipline. Florida Statute Section 784.03 defines a battery such that "(1) a person commits battery if he (a) actually and intentionally touches or strikes another person against the will of the other; or (b) intentionally causes bodily harm to an individual. (2) Whoever commits battery shall be guilty of misdemeanor of the first degree..."

As testified to during the final hearing the Respondent's physical and violent contact with Ms. Wolowitz was clearly against her will and caused bodily harm thereby committing a battery, a crime. Ms. Wolowitz testified that while the Respondent was striking her, she told Respondent to "...please stop. I want to get out of here... Stop. Get out of here." (TR1. 15). Additionally, Ms. Wolowitz states that she was bruised, sustained ear drum injury and suffered from a swollen lip. (TR1. 17).

The Respondent asks the Court to make no connection between

his violent behavior (if accepted as true) and his fitness to practice law. The Court cannot ignore this connection as comments to The Rules Regulating The Florida Bar, Rule 4-8.4 states that:

[m]any kinds of illegal conduct reflect adversely on fitness to practice law...[t]raditionally, the distinction was drawn in offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence...are in that category.

(Emphasis added)

ARGUMENT

3

**THE RESPONDENT WAS NOT DENIED
DUE PROCESS NOR THE RIGHT TO
CROSS EXAMINE HIS ACCUSERS.**

The Respondent continually alleges in his brief that he was not afforded due process by The Florida Bar. This is simply not the case. In fact, Respondent claimed that due to financial hardships he was unable to attend the final hearing in the disciplinary case. Therefore, the Respondent requested a telephonic hearing to be held after the final hearing and after a transcript was made available to him. See, Request for Telephonic Appearance. (Appendix C). The Florida Bar responded to this request by agreeing to Respondent's proposal. Respondent was noticed of the date and time to place a phone call to the Referee. No such call was made. (TR2. 5, 13)

The Respondent maintains that because he was not present at the final hearing, he was unable to properly present his side and cross-examine the witnesses. The opportunity for the Respondent's participation was made available. Respondent was never prevented from appearing or participating. He chose not to do so.

ARGUMENT

4

THE RECOMMENDED DISCIPLINARY
MEASURES ARE NOT ERRONEOUS,
UNLAWFUL NOR PREJUDICIAL
(RESTATED)

The Respondent contends that the punishment imposed is harsh and "tantamount to disbarment." In fact, the discipline administered is well within the appropriate sanctions provided for by both case law and Florida's Standards for Imposing Lawyer Sanctions.

The Respondent points out that the length of suspension is unreasonable, completing the ethics part of the bar exam in unprecedented and costs are unjustified.

In The Florida Bar v. Jones, 403 So. 2d 1340 (Fla. 1981) the Court found that "[e]ngaging in conduct prejudicial to administration of justice which adversely reflects on fitness to practice law warrants six-month suspension." In deciding the appropriate discipline, it is essential that the "Supreme Court must be primarily guided by the welfare of the public and the legal profession." See, The Florida Bar v. Riccardi, 264 So.2d 5,6 (Fla. 1972).

Further, Florida's Standards for Imposing Lawyer Sanctions, Standard 7.2 provides that "suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system." Further, Standard 5.12 states that "suspension is appropriate when a lawyer knowingly engages in criminal conduct which is not included within Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice."

In regards to taking the legal ethics portion of the bar exam, other courts have found this sanction to be appropriate in completing the disciplinary process in certain cases. For example, in The Florida Bar v. Routh, 414 So.2d 1023 (Fla. 1982), it was decided that "...committing crimes of...aggravated battery and aggravated assault warrants...successfully complet[ing] all three parts of state bar examination." In another case it was ordered that along with a three month suspension, the "passage of ethics portion of State Bar Examination" was proper for reinstatement. See, The Florida Bar v. Shapiro, 413 So.2d 1184,1185 (Fla. 1982).

Additionally, Florida's Standards for Imposing Lawyer Sanctions, Standard 2.8, provides that other sanctions, in addition to the typical admonishment, probation, suspension and disbarment, include "requirement that the lawyer take the bar examination or professional responsibility examination."

Finally, the Respondent asserts that the judgment of costs is unjustified. This statement is devoid of any factual basis. "Assessing cost of discipline on one who misbehaves, rather than on those who do not misbehave, is justified." See, The Florida Bar v. Gold, 526 So.2d 51 (Fla. 1988). Similarly, "[c]osts incurred by counsel for the bar in a disciplinary proceeding would be ordered paid by the subject of the proceeding." See, The Florida Bar v. White, 284 So.2d 690,691 (Fla. 1973).

Also, as cited above, Florida's Standards for Imposing Lawyer Sanctions provides for additional remedies including "assessment of costs." The Bar incurred costs of copying federal express, court reporters and administrative costs involved in bar proceedings.

Therefore, the assessment of costs in this case is justified.

The Respondent was granted the full, fair proceeding allotted to all respondents in a disciplinary case. It is clearly the actions and the behaviors of the Respondent that have placed him in the situation he now finds himself and not the harshness, unfairness and prejudices of The Florida Bar or the referee as the Respondent so claims.

CONCLUSION

Based upon the foregoing, The Florida Bar submits that the commission of a criminal act was proved, that the fact that a violation of the Rules of Professional Conduct was proved, that due process was extended and that the appropriate discipline was recommended by the Referee.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the above and foregoing Complainant's Answer Brief was sent by Airborne Express to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927 and that a true and correct copy was mailed to Barry D. Schreiber, Respondent at 27/1 Ha'Yovel Street, Ra'anana, Israel 43400 by Federal Express International Mail on this 30th day of September, 1993.


RANDI KLAYMAN LAZARUS
Bar Counsel

A P P E N D I X

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Appendix A

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Petitioner,

v.

BARRY D. SCHREIBER,

Respondent.

Supreme Court Case
No. 80,857

The Florida Bar Case
No. 92-70,352(11B)

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.5 of the Rules Regulating The Florida Bar a final hearing was held in chambers March 31, 1993 and April 29, 1993. All of the pleadings, transcripts, notices, motions, orders and exhibits are forwarded with this report and the foregoing constitutes the record of the case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar

Randi Klayman Lazarus
Suite M-100, Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131

For The Respondent

Barry D. Schreiber, pro se
32 Bialir Street, Number 11
Ramat Gan, Israel 52442
No appearance at final hearing.

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged: After considering The Florida Bar's complaint, I find:

IN GENERAL

1. Respondent is and was at all times material herein a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. That on or about January 25, 1991 while in Rose Wolowitz's home in Hallandale, Florida, the Respondent became enraged and abusive and attempted to strike Rose Wolowitz, in the face, knocking a glass from her hand and causing her personal injury.

3. That on or about February 13, 1991 while in Rose Wolowitz's home the Respondent again became enraged, lost his composure and repeatedly and intentionally hit Ms. Wolowitz about the head, face, and her back, and kicked her repeatedly in the legs after knocking her to the ground. During the beating, the Respondent verbally assaulted Ms. Wolowitz using the most vulgar of language and referenced to and about Ms. Wolowitz.

4. That as a result of Respondent's uncontrolled and repeated physical violence, Rose Wolowitz was required to call for help from the Hallandale Police Department, be attended by the City of Hallandale Fire Rescue, seek the care and attention of her family physician as well as a specialist for the treatment of her perforated ear drum, and the services of legal counsel for the purpose of obtaining a Restraining Order prohibiting the Respondent from further harassment of, injury to, or contact with Ms. Wolowitz.

5. That as a result of the February 13, 1991 incident, criminal proceedings were instituted against the Respondent for violation of Florida Statute 784.03(1) Commission of a Battery.

6. That on October 14, 1991 Respondent plead no contest to the battery charge.

7. That Respondent's sentence to the foregoing no contest plea included a Withhold of Adjudication, six months probation and \$500.00 in Court costs.

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty: As to the complaint I make the following recommendations as to guilt:

I recommend that the Respondent be found guilty of the following violation, to wit: Rule 4-8.4(b) (A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects) of the Rules of Professional Conduct.

IV. Recommendation as to disciplinary measures to be applied:

I recommend that the Respondent be suspended from the practice of law for a period of One Hundred and Twenty (120) days. Respondent must show proof of rehabilitation by successfully completing the Florida Bar examination, including the ethics portion of the exam. I also recommend the following special conditions be imposed.

1. Respondent have a psychological evaluation by a licensed clinical psychologist, Ph.D. level, that then must be submitted to the Supreme Court for their review.

2. Respondent must attend and successfully complete a program for batterers of woman, such as that is offered by the Women in Distress Program in Broward County or its equivalent in Dade County or the country of Israel where the Respondent currently resides. Proof of successful completion must be forwarded to the Florida Bar and the Supreme Court.

V. Personal history and past disciplinary record:

Age: 50
Date Admitted to Bar: March 5, 1971
Prior disciplinary record: None

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
Staff Investigator's Cost and Witness Subpoenas:		952.55
International Federal Express:		191.76
Bar Counsel travel costs:		50.24
Court reporter cost for Grievance Committee Hearing held September 14, 1992:		175.50
Court reporter cost for attendance at telephonic conference held March 4, 1993:		106.95
Court reporter cost for hearing held before Referee on March 31, 1993:		231.36
Court reporter cost for Hearing on Respondent's Request to Make Telephonic Statement:		<u>96.90</u>
T O T A L	\$	2,305.26

Dated this 26th day of May, 1993.

KATHLEEN A. KEARNEY

A TRUE COPY

KATHLEEN A. KEARNEY, Referee
North Regional Courthouse
1600 West Hillsboro Boulevard
Deerfield Beach, Florida 33442.

Copies to:

Randi Klayman Lazarus, Bar Counsel
Barry D. Schreiber, Respondent
John T. Berry, Staff Counsel

Appendix B

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

vs.

BARRY D. SCHREIBER,
Respondent.

Supreme Court Case
No. 80,857

The Florida Bar
Case No. 92-70,352(11B)

In Re: Case Number 91-002840MM40A
In the Circuit Court for the
Seventeenth Judicial Circuit In
and For Broward County, Florida.

MOTION TO OBTAIN DOCUMENTS FROM SEALED
FILE IN CASE NUMBER 91-002840MM40A

The Florida Bar by and through its undersigned attorney files this Motion to Obtain Documents from Sealed File in Case Number 91-002840MM40A and would show:

1. That the Defendant in Case Number 91-002840MM40A, Barry D. Schreiber, is a member of The Florida Bar.

2. That Barry Schreiber is currently a Respondent in a disciplinary proceeding which concerns the same conduct to which he was subjected to criminal prosecution, in addition to other acts of misconduct. (Attached hereto and incorporated herein as Exhibit 1 is the Complaint filed by the Florida Bar on December 4, 1992).

3. That the State Attorney's Office did forward its file to the undersigned with its letter dated October 31, 1991. Said letter did advise the undersigned that on October 14, 1991 Respondent pled and was sentenced to six months probation and \$500.00 in court costs. (Attached hereto and incorporated herein as Exhibit 2 is the letter from the Assistant State Attorney dated October 31, 1991).

4. That on January 8, 1992 this Honorable Court did seal

Barry Schreiber's file pursuant to his Motion. (Attached hereto and incorporated herein as Exhibit 3 is the Order to Seal Arrest Record dated January 9, 1992).

5. That although Respondent had been noticed that a Florida Bar proceeding had been initiated prior to filing the Motion to Seal, said Motion or Order was not served on The Florida Bar.

6. That The Florida Bar maintains that any information in its possession prior to the date of the sealing regarding Barry Schreiber's criminal matter is subject to disclosure.

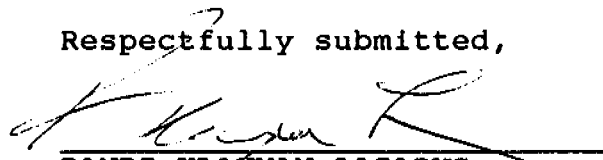
7. That The Florida Bar would need the actual plea agreement and/or colloquy and sentencing order to prove that Respondent did plead to a misdemeanor and was sentenced accordingly.

8. That presenting these documents in furtherance of a lawyer discipline matter is fundamental to the administration of justice.

9. That it is in the interest of the public to present evidence of an attorney's violent actions in furtherance of lawyer regulation.

WHEREFORE, The Florida Bar moves this Honorable Court to allow The Florida Bar to obtain documents from a sealed file in Case Number 91-002840MM40A in order to present evidence that Respondent has pled to a misdemeanor and has been sentenced accordingly.

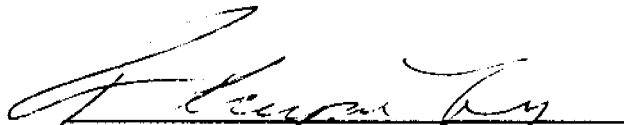
Respectfully submitted,



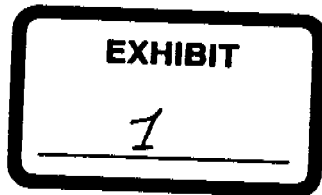
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Tel: (305) 377-4445

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the above and foregoing Motion to Obtain Documents from Sealed File In Case Number 91-002840MM40A was mailed to the Honorable Paul Lawrence Backman, Broward County Courthouse, 201 S.E. 6th Street, Room 329, Fort Lauderdale, Florida 33301 and that a true and correct copy was mailed to the Honorable Kathleen A. Kearney, Referee, Broward County Courthouse, 201 S.E. 6th Street, Room 464, Fort Lauderdale, Florida 33301, Patricia Small, Assistant State Attorney, 200 S.E. 6th Street, Fort Lauderdale, Florida 33301 and to Barry D. Schreiber, Respondent, 32 Bialir Street, Number 11, Ramat Gan, Israel 52442 and to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 on this 15 day of February, 1993.


RANDI KLAYMAN LAZARUS
Bar Counsel

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)



THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. _____

vs.

The Florida Bar File
No. 92-70,352(11B)

BARRY D. SCHREIBER,
Respondent.

COMPLAINT

The Florida Bar, Complainant, files this complaint against Barry D. Schreiber, Respondent, pursuant to Chapter 3, Rules Regulating The Florida Bar and alleges the following:

1. Respondent is and was at all times material herein a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. That on or about January 25, 1991 while in Rose Wolowitz's home in Hallandale, Florida, the Respondent became enraged and abusive and attempted to strike Rose Wolowitz, in the face, knocking a glass from her hand and causing her personal injury.

3. That on or about February 13, 1991 while in Rose Wolowitz's home the Respondent again became enraged, lost his composure and repeatedly and intentionally hit Ms. Wolowitz about the head, face, and her back, and kicked her repeatedly in the legs after knocking her to the ground. During the beating, the Respondent verbally assaulted Ms. Wolowitz using the most vulgar of

language and referenced to and about Ms. Wolowitz.

4. That as a result of Respondent's uncontrolled and repeated physical violence, Rose Wolowitz was required to call for help from the Hallandale Police Department, be attended by the City of Hallandale Fire Rescue, seek the care and attention of her family physician as well as a specialist for the treatment of her perforated ear drum, and the services of legal counsel for the purpose of obtaining a Restraining Order prohibiting the Respondent from further harassment of, injury to, or contact with Ms. Wolowitz.

5. That as a result of the February 13, 1991 incident, criminal proceedings were instituted against the Respondent for violation of Florida Statute 784.03(1) Commission of a Battery.

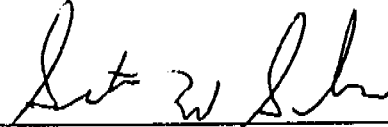
6. That on October 14, 1991 Respondent plead no contest to the battery charge.

7. That Respondent's sentence to the foregoing no contest plea included a Withhold of Adjudication, six months probation and \$500.00 in Court costs.

8. By reason of the foregoing, Respondent has violated Rule 4-8.4(b) (A lawyer shall commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects) of the Rules of Professional Conduct.

WHEREFORE, The Florida Bar respectfully requests that Barry D. Schreiber, Respondent, be appropriately disciplined in accordance with Chapter 3, Rules Regulating The Florida Bar.

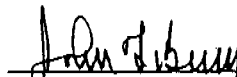
Respectfully submitted,



SCOTT W. SAKIN, CHAIR
Grievance Committee 11"B"
Florida Bar No.
1411 N.W. North River Drive
Miami, Florida 33125
Tel: (305) 545-0007



RANDI KLAYMAN LAZARUS
Bar Counsel
Florida Bar No. 360929
The Florida Bar
444 Brickell Avenue, Ste M-100
Miami, Florida 33131
(305) 377-4445



JOHN T. BERRY, Staff Counsel
Florida Bar No. 217395
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(904) 561-5839

JOHN F. HARKNESS
Executive Director
Florida Bar No. 123390
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(904) 561-5839

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original Complaint was served by U. S. Mail upon Sid J. White, Clerk, Supreme Court of Florida, 500 S. Duval Street, Tallahassee, Florida 32399-1927; and a true and correct copy upon Barry D. Schreiber, Respondent by Certified Mail Return Receipt Requested (No. P 258 206 660), at his official record bar address of 32 Bialir Street, Number 11, Ramat Gan, Israel, 52442 and to Randi Klayman Lazarus, Bar Counsel, The Florida Bar, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131 on this 4th day of December, 1992.

John T. Berry

 JOHN T. BERRY, STAFF COUNSEL

Is your RETURN ADDRESS completed on the reverse side?

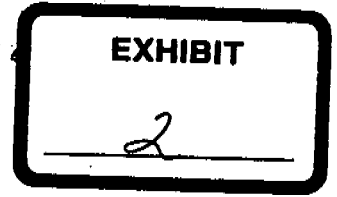
<p>SENDER:</p> <ul style="list-style-type: none"> • Complete items 1 and/or 2 for additional services. • Complete items 3, and 4a & b. • Print your name and address on the reverse of this form so that we can return this card to you. • Attach this form to the front of the mailpiece, or on the back if space does not permit. • Write "Return Receipt Requested" on the mailpiece below the article number. • The Return Receipt will show to whom the article was delivered and the date delivered. <p>3. Article Addressed to:</p> <p><i>Barry D. Schreiber</i> <i>32 Bialir Street</i> <i>Number 11</i> <i>Ramat Gan, Israel 52442</i></p> <p>5. Signature (Addressee)</p> <p>6. Signature (Agent)</p>	<p>1. <input type="checkbox"/> Addressee's Address following services (for an fee):</p> <p>2. <input type="checkbox"/> Restricted Delivery</p> <p>4a. Article Number: <i>P 258 206 660</i></p> <p>4b. Service Type</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Insured</p> <p><input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD</p> <p><input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt; Merchandise</p> <p>7. Date of Delivery</p> <p>8. Addressee's Address (Only if request and fee is paid)</p>
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P 258 206 660
RECEIPT FOR CERTIFIED MAIL
 NO INSURANCE COVERAGE PROVIDED
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

U.S.G.P.O. 1989-234-555 PS Form 3800, June 1981	Sent to <i>Barry Schreiber</i> Street and No.
	P.O., State and ZIP Code
	Postage
	Certified Fee
	Special Delivery Fee
	Restricted Delivery Fee
	Return Receipt showing to whom and Date Delivered
	Return Receipt showing to whom Date, and Address of Delivery
	TOTAL Postage and Fees
	Postmark or Date



NOV 4 1991



MICHAEL J. SATZ
STATE ATTORNEY

SEVENTEENTH JUDICIAL CIRCUIT OF FLORIDA

BROWARD COUNTY COURTHOUSE
FORT LAUDERDALE, FLORIDA 33301
PHONE (305) 357-6955

October 31, 1991

Ms. Randy Lazarus, Esq.
The Florida Bar
444 Brickell Avenue
Suite M-100
Miami, FL 33131

Re: State of Florida vs. Barry Schreiber

Dear Ms. Lazarus:

Pursuant to our telephone conversation, enclosed is a copy of our file regarding the above case. This case plead on October 14, 1991 before Judge Backman. The defendant's sentence included a Withhold of Adjudication, 6 months probation and \$500.00 in court costs.

If you need any further information, please do not hesitate to call.

Very truly yours,

MICHAEL J. SATZ
State Attorney

A handwritten signature in cursive script that reads "Patricia J. Small".

Patricia J. Small
Assistant State Attorney
200 SE 6th Street
Ft. Lauderdale, FL 33301
Telephone: (305)765-5379

PJS/aw

IN THE COUNTY COURT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. 91-002840MM40A

EXHIBIT

3

STATE OF FLORIDA,

Plaintiff,

vs.

BARRY SCHREIBER,

Defendant.

Florida Bar Number 350321

ORDER TO SEAL ARREST RECORD

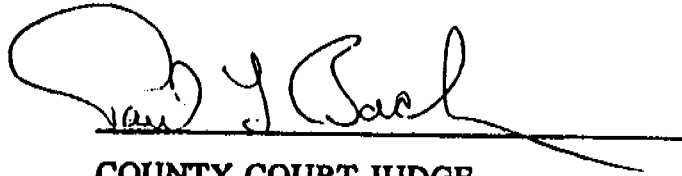
THIS CAUSE having come before the Court upon motion made by the Defendant, BARRY SCHREIBER, and the Court having heard representations of counsel and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED as follows:

1. Pursuant to F.S. §943.058 and Fla.R.Crim.P. 3.692, any and all records relating or referring in any way to the arrest or prosecution of BARRY SCHREIBER shall be expunged or sealed, and further in regard to the Official records of the court, including the court file of the cause, the Clerk shall do the following:
 - a. Remove from the official records of the court, except the Court file, all entries and records subject to such Order, provided that if it shall not be practical to remove such entries and records then to make certified copies thereof and thereafter seal by appropriate means such original entries and records.
 - b. Seal such entries and records or certified copies thereof, together with the court file and retain the same in a non-public index, subject to further order of the Court.
2. In regard to the official records of all agencies or departments named in such order, except those of the court, the head of such agency or department shall cause the official records thereof and which are the subject of said order to be sealed in a manner consistent with sub-division (c) of Fla.R.Crim.P. 3.692.
3. By virtue of this Order the Defendant shall be restored to the status occupied by the Defendant prior to the arrest and shall not be held henceforth to be guilty of perjury or

otherwise giving a false statement by reason of failure to recite or acknowledge such arrest in response to any non-judicial inquiry except for those inquiries set forth as exceptions by statute.

th DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida this
5th day of Jan, 1992.



COUNTY COURT JUDGE

Conformed copies furnished to:

State Attorney, Broward County Courthouse, 201 SE Sixth Street, Fort Lauderdale, Florida 33301

Robert H. Dolman, Esquire, 2601 East Oakland Park Blvd., Suite 600, Fort Lauderdale, Florida 33306

STATE OF FLORIDA
BROWARD COUNTY

I HEREBY CERTIFY that the at
and foregoing is a true and correct copy of

[Signature]
as filed in my Office.

WITNESS my hand and Official Seal in the City of FC
LAUDERDALE, FLA. this 11 day of Jan A.D. 1992
ROBERT E. LOCKWOOD, Clerk

[Signature]

RECEIVED
CLERK OF DISTRICT COURT
12-18-92 11:21 AM

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

vs.

BARRY D. SCHREIBER,
Respondent.

Supreme Court Case
No. 80,857

The Florida Bar
Case No. 92-70,352(11B)

In Re: Case Number 91-19159MM10A
In the Circuit Court for the
Seventeenth Judicial Circuit In
and For Broward County, Florida.

ORDER ON THE FLORIDA BAR'S
MOTION TO OBTAIN DOCUMENTS FROM SEALED
FILE IN CASE NUMBER 91-19159MM10A

THIS CAUSE having come before this Court and this Court being fully advised in the premises finds that it is hereby:

ORDERED AND ADJUDGED that The Florida Bar's Motion to Obtain Documents from Sealed File In Case Number 91-19159MM10A is granted.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida on this 30th day of March, 1993.

PAUL L. BACKMAN

PAUL LAWRENCE BACKMAN
Circuit Court Judge
Broward County Courthouse
201 S.E. 6th Street
Room 329
Fort Lauderdale, Florida 33301

Copies furnished to:

Randi Klayman Lazarus, Bar Counsel
Barry D. Schreiber, Respondent

Appendix C

THE Florida Bar
Petitioner
vs.
Barry D. Schaefer
Respondent

In the Supreme Court of Florida
(BEFORE A REFEREE) Dkt. 11.40

Sup. Ct. Case
No. 80,857

REQUEST FOR TELEPHONIC APPEARANCE

Respondent, answering the notice of final hearing, set for Fri. 3/5/93 at 9.A.M. (received in Israel 2/19/93) states as follows:

1. Respondent presently lives in Israel and has so resided since Jan. 1, 1992.
2. Over the past 4-5 years Respondent has suffered severe financial hardships and presently finds himself in very difficult financial straits.
3. Respondent is unable to hire an attorney to represent him in these proceedings.
4. Respondent is without sufficient funds to afford a trip from Israel to Ft. Lauderdale FL. in that a round-trip coach ticket is in excess of \$1,200, not including transportation and lodging.
5. Therefore Respondent will not be able, due to extreme financial hardship, to be present at the scheduled hearing.
6. It is therefore, respectfully requested that Respondent be afforded an opportunity telephonically to make a statement in response to the Florida Bar's allegations.
7. Such telephonic communications can be pre-arranged by all parties agreeing

TO a 2nd time to place the call. (as
is 7 hours later in ISRAEL). The conversations
and testimony can be taped and the record
transcribed, becoming part of the proceedings.

This should be done AFTER THE Florida

BAC HAS PRESENTED IT'S CASE
AND AFFORDED RESPONDENT A TRANSCRIBED
COPY OF ALL THE TESTIMONY OF RECORD.

8. Respondant, regretfully must request this
procedure in order to AFFORD him due
process OF LAW TO defend himself
procedurally and substantively from THE
baseless AND unfounded ALLEGATIONS by the
Florida BAC.

Respectfully Submitted
S/

Bruce D. Schneider
FBN 132515
3241 BIALIK ST
RAMAT GAN 52442 ISRAEL
TEL. 972 36736156

I hereby certify that a true copy of the
Tapes was made to John T. Berry and Rendi
Klayman Layman at their respective addresses of record
this 23 day of February 1987. S/