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SID J. WHITE

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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. 82,536

v.

SEYMOUR FRIEDMAN
Respondent.

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Pursuant to the undersigned being duly appointed as referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.6, Rules of Discipline, a Final Hearing was held February 14, 1994. All of the pleadings, notices, motions, orders, transcripts and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

Counsel appearing for the parties:

On behalf of The Florida Bar: Alisa M. Smith
On behalf of the Respondent: Seymour Friedman, Pro Se

II. FINDINGS OF FACT:

Based upon the pleadings as well as the testimony and evidence presented at final hearing, I find:

1. Respondent, SEYMOUR FRIEDMAN, was, and at all times hereinafter mentioned, is a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of

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Florida.

2. Respondent was disbarred from the practice of law in New York by the Supreme Court of the State of New York, Appellate Division: Second Judicial Department on August 23, 1993.

3. The New York, Appellate Division: Second Judicial Department filed a five (5) count complaint in a petition dated February 28, 1991 against the Respondent.

4. The Supreme Court of the State of New York, Appellate Division: Second Judicial Department in its order dated August 23, 1993, made the following factual findings:

- a. Charge one (1) that Respondent was retained by Mary Lou Ramm, in or about May 1985, to prosecute her claim for personal injuries sustained in an automobile accident. Respondent met with Ms. Ramm in or about 1987, prior to a pretrial deposition she was scheduled to give. During this meeting, Respondent instructed Ms. Ramm to give testimony at her deposition which Respondent knew to be false.
- b. Charge Two (2) that from approximately January, 1984 through July, 1986, Respondent was entrusted as fiduciary with funds belonging to clients. Respondent improperly commingled those funds with funds of his own.
- c. Charge Three (3) that from approximately July 1986 through February 1988, Respondent was entrusted as fiduciary with funds belonging to clients. Respondent improperly commingled those funds with funds of his own.
- d. Charge Four (4) that from approximately December, 1984, Respondent as attorney and fiduciary for Margaret Gootnick, was entrusted with the sum of \$650.00, the settlement proceeds of a claim instituted on Ms. Gootnick's behalf. After depositing the proceeds into his Chemical Bank Escrow Account, Respondent drew upon the account with a check payable to Mary Gootnick, in the sum of \$308.50. This represented the payment of funds to which Ms. Gootnick was entitled. The bank dishonored that check upon presentation due to insufficient

funds in the Respondent's escrow account.

- e. Charge five (5) that Respondent engaged in a pattern of professional misconduct by issuing checks drawn upon his escrow accounts which failed to clear those accounts when presented for payment.

5. Respondent conceded factually to charges two, three, four, and five at the Special Referee hearing. (See the complainant's Composite Exhibit B).

6. Respondent contested the "conclusory paragraphs" of charges two, three, four and five, i.e. the alleged violations of the Disciplinary Rules were denied at the Special Referee hearing. (See the complainant's Exhibit B at page one (1)).

7. Respondent denied the allegations set forth in charge one. (See the complainant's Exhibit B at page one (1)).

8. The Supreme Court of the State of New York Appellate Division: Second Judicial Department found the Respondent violated the following Disciplinary Rules as correlated to the specific charges:

- a. Charge One: Code of Professional Responsibility DR 1-102(A) (1), (3), (4), (5) and (7) 122 NYCRR 1200.3(a) (1) (3), (5), (7) and Code of Professional Responsibility DR 7-102(A) (4) (6) and (7) (22 NYCRR 1200.33 (a) (4), (6), (7)).
- b. Charge Two: DR 9-102(A) (22 NYCRR 1200.46(a) and 22 NYCRR 691.12(a)).
- c. Charge Three: DR 9-102(A) (22 NYCRR 1200.46(a) and 22 NYCRR 691.12 (a)).
- d. Charge Four: Code of Professional Responsibility DR 1-102 (A) (1) and (7), (22 NYCRR 1200.3 (a) (1), (7)).
- e. Charge Five: DR 1-102(A) (1), (4), and (7); NYCRR 1200.3 (a) (1), (4), (7), DR- 9-102 (22 NYCRR 1200.46) and 22 NYCRR 691.12. (See Complainants' Composite Exhibit C).

9. On December 10, 1993 The Supreme Court of the State of New York Appellate Division: Second Judicial Department vacated the Respondent's disbarment and instead suspended Respondent from the practice of law in New York for a period of five (5) years for the foregoing violations.

10. Respondent's New York disbarment was vacated due to the Respondent's remorse for failing to keep accurate escrow records, the absence of self-dealing and the character and reputation evidence presented on his behalf. (See Decision and Order of The Supreme Court of the State of New York Appellate Division: Second Judicial Department).

11. In the instant proceeding, the Respondent failed to establish that the New York Disciplinary proceedings were deficient or lacking in due process.

12. Respondent failed to show either an infirmity of proof that the New York judgment should not be followed or some other reason not to accept the consequences of that judgement and no transcript of the New York proceedings was filed with this Court.

III. RECOMMENDATIONS AS TO WHETHER RESPONDENT SHOULD BE FOUND

GUILTY: I recommend that Respondent be found guilty of misconduct for violating the Rules of Professional conduct, or knowingly assisting another to do so, in violation of Rule 4-8.4(a) of the Rules of Professional Conduct. Additionally, I recommend that Respondent be found guilty of misconduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of Rule 4-8.4(c)

of the Rules of Professional Conduct of The Florida Bar. My recommendation is based upon 3-4.6 of The Rules Regulating the Florida Bar and The Supreme Court of the State of New York Appellate Division: Second Judicial Department's final adjudication in the Respondent's New York disciplinary proceeding. Rule 3-4.6 provides:

"A final adjudication in a disciplinary proceeding by a court or other authorized disciplinary agency of another jurisdiction, state or federal, that an attorney licensed to practice in that jurisdiction is guilty of misconduct justifying disciplinary action shall be considered as conclusive proof of such misconduct in a disciplinary proceeding under this rule."

In accordance with this rule, the New York Court's final judgment of guilt is conclusive proof of the Respondent's misconduct. After review of the record proffered by the parties, which fails to include a copy of the transcript of the New York proceeding, I find that the Respondent has not met his burden of proof in attacking the New York Court's final judgment. The Respondent has failed to show that the New York judgment and its proceedings were deficient or lacking due process. Therefore, pursuant to Rule 3-4.6 of Rules Regulating the Florida Bar, the New York Court's final adjudication of guilt is conclusive proof of misconduct justifying disciplinary action in Florida.

Notwithstanding, there is an apparent inconsistency in applying Rule 3-4.6 and Florida's standard of proof in disciplinary matters in circumstances where the standard in the foreign jurisdiction differs from that of Florida. More specifically, it is unclear whether Florida, in disbarment proceedings where the

standard is clear and convincing evidence, should accept a final adjudication of guilt from a court in another state when that finding is premised on a preponderance of the evidence standard.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

After careful review of the evidence presented and due consideration of the Respondent's fitness to practice law in the State of Florida, I recommend that Respondent receive a suspension from the practice of law in the state of Florida for an indefinite period of time and may petition for reinstatement upon his readmission to the New York Bar for the above violations. In recommending discipline I have considered Standard 6.12 of the Florida Standards for Imposing Lawyer Sanctions as the applicable Standard.

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

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

Administrative Costs: (Rule 3-7.6(k)(1), Rules of Discipline)	\$500.00
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Court Reporter:	<u>\$179.75</u>
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TOTAL	\$679.75
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It is recommended that the foregoing costs be assessed against Respondent. It is further recommended that execution issue with interest at the rate of twelve percent (12%) to accrue on all cost assessments not paid within thirty (30) days of entry of the

Supreme Court's final order, unless the time for such payment is extended by the Board of Governors of The Florida Bar.

Dated this 21st day of March, 1994.



W. Herbert Moriarty
Referee

Copies furnished to:
Alisa M. Smith, Bar Counsel
Seymour Friedman