097

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant, Case No.: 82,673

vs. TFB No.: 93-10,983 (13C)

H. EUGENE JOHNSON,

Respondent.

_____/

RESPONDENT'S ANSWER BRIEF

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In proper person

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SYMBOLS AND REFERENCES

In this Answer Brief Respondent, H. Eugene Johnson, referred to as "JOHNSON"; The Florida Bar will be referred to as "The Bar" or "The Florida Bar."

The Report of Referee will be designated "Report of Referee." The transcript will be designated as "TR"; Rules of Professional Conduct will be utilized; and Standards for Imposing Lawyer Sanctions will be utilized. Cases, depositions and affidavits will be described.

Victoria Love Bartholomew will be referred to "VICTORIA"; and Joseph M. Bartholomew referred to as "JOSEPH".

STATEMENT OF THE CASE AND FACTS

Beginning with the marriage of Joseph M. Bartholomew (hereafter JOSEPH) to JOHNSON's daughter, Victoria Love Bartholomew (hereafter VICTORIA) in May 1983, and continuing until July 1991 (TR. 7, 87), JOHNSON provided free legal services to JOSEPH and VICTORIA for several corporations, business ventures, litigation and pawn operations (TR. 7, 40). As a result of their hard work and thousands of dollars of free legal advice they became millionaires by age 30 (TR. 87, 98, 99, 101). Working as a trial attorney JOHNSON maintained a law office near the Tampa County Courthouse since 1957. In 1988 JOHNSON negotiated the purchase of the four story office building (hereafter BUILDING) in North Tampa for JOSEPH and VICTORIA reducing the purchase price by $300,000.00 (TR. 8, 69, 88). In September 1989 JOSEPH and VICTORIA convinced JOHNSON to move his law office to North Tampa to the BUILDING with the promise of free rent for three years (TR. 72, 83, 89). This move was for the benefit of the Bartholomews as they were consulting daily with JOHNSON concerning their business enterprises and the BUILDING was only a few blocks from the Bartholomews' main business.

After JOHNSON moved into the BUILDING in the middle of October 1989 (TR. 89) JOSEPH sought a loan

from Village Bank (TR. 23, 76). JOSEPH asked JOHNSON for a lease to show the Bank and an estoppel affidavit to guarantee rent if the loan was defaulted. (TR. 73, 90, 91, Bar Exhibits No. 1, 2).

It was discussed on several occasions (TR. 72, 84, 91) that the lease would not be effective between JOSEPH and JOHNSON, and would be executed only by JOSEPH and JOHNSON (TR. 91), the sole purpose of the lease and Affidavit being for the benefit of the Village Bank (TR. 80, 85). The lease was drafted on JOSEPH's computer using the form lease that JOHNSON had prepared for tenants of the BUILDING (TR. 13, 109) except that JOSEPH was listed as the sole Landlord, as agreed (TR. 91, 105, 111). The standard estoppel affidavit submitted by the Bank was modified by JOHNSON (TR. 22).

Commencing in June 1991 JOSEPH and JOHNSON had violent arguments concerning JOSEPH's adultery (TR. 45-46), and as a result of JOSEPH's continued adultery JOHNSON ceased doing free legal work for JOSEPH in July 1991, but continued free legal work for VICTORIA and the BUILDING (TR. 19, 40, 82).

As a result of the JOHNSON - JOSEPH "feud" he retained his divorce counsel, Foley & Lardner, to commence a tenant eviction action against JOHNSON for non-payment of rent. This was commenced by Donald A.

Mihokovich (hereafter MIHOKOVICH) some thirty two months after the date of the alleged lease. During this period no rent had been asked, and none paid (TR. 95). MIHOKOVICH filed the eviction suit in June 1992 even though the full facts and law had been explained to him (TR. 95).

The Complaint falsely alleged that JOSEPH was the sole owner of the Building. After the entireties deed proved this false, JOSEPH then claimed he had the consent of VICTORIA to bring the litigation. An Affidavit by VICTORIA denied this (TR. 96). The third approach of JOSEPH and MIHOKOVICH asserted that the estoppel Affidavit (Bar Exhibit 2) bound JOHNSON to the Bank for rent, and therefore bound JOHNSON to JOSEPH for rent. This theory was denied by Judge Barton who dismissed the case by Order Granting Motion For Summary Judgment, dated August 28, 1992 (Resp. Exhibit No. 1.)

On December 17, 1992 JOHNSON and JOSEPH executed a Settlement Agreement drafted by MIHOKOVICH (TR. 100, Resp. Exhibit 2) settling all litigation between them. As soon as monies owed to JOHNSON were paid by JOSEPH, MIHOKOVICH filed a five page complaint to The Florida Bar against JOHNSON on January 15, 1993, stating <u>under oath</u> that JOHNSON had deceived his client (JOSEPH) and committed fraudulent acts. The Bar anxious to embarrass JOHNSON, immediately adopted MIHOKOVICH's

complaint as its official position.

For two decades JOHNSON has been an outspoken critic of the Thirteenth Circuit Grievance Committee, and it and Bar staff counsel have made a concerted effort to disbar JOHNSON. This current action is ample proof of the Bar's efforts to discredit JOHNSON.

The Florida Bar refused to grant JOHNSON a probable cause hearing where he and witnesses could testify. The Grievance Committee met privately with The Bar to determine probable cause.

JOHNSON offered to take a polygraph test at his own expense, and if he were found lying as to anything he had stated to Judge Barton, by Affidavit or to The Bar, he would immediately resign from The Florida Bar. The Bar, not interested in the truth, refused the polygraph exam offer.

The Referee, Honorable Claire K. Luten, Circuit Judge, held the final hearing on April 15, 1994. She gave no credence to the testimony of JOSEPH. She issued her Report of Referee on May 13, 1994, concluding: "I recommend that the Respondent be found not guilty. Having found the Respondent not guilty, no discipline is recommended." On May 26, 1994 Judge Luten executed an Additional Report of Referee awarding JOHNSON costs of $68.40. This Appeal has followed.

SUMMARY OF THE ARGUMENT

The Bar presented no testimony that the Tenant's Affidavit was executed for the purpose of misleading or defrauding any third party. Its cross-examination of JOHNSON produced no admissions of wrong-doing. Its direct examination of JOSEPH elicited no testimony that would infer that he or JOHNSON attempted to deceive or defraud The Village Bank, or any third party.

JOSEPH's assertions that JOHNSON was to pay monthly rent, and that JOHNSON deceived him with an invalid lease were illogical and unreasonable. It is illogical to assert that one expects monthly rental, and then fail to ask for rent for 31 months. The testimony of JOHNSON and VICTORIA contradicted the testimony of JOSEPH on every point as to the lease.

The testimony is clear and convincing that JOHNSON entered the Building in October 1989 after being promised 3 years free rent; that he executed a modified lease and a modified tenant's affidavit for the sole purpose of guaranteeing rent to the Bank if the Bartholomews defaulted on their obligation.

The Referee considered the evidence, the testimony, demeanor and credibility of the witnesses, and found that The Bar failed to establish any guilt of JOHNSON. This Report of Referee and Additional Report of Referee should be affirmed.

ARGUMENT

ISSUE I

THE REFEREE'S FINDINGS OF FACT AND CONCLUSIONS OF LAW ARE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE AND ARE CONCLUSIVE.

The sole testimony for The Bar was by JOSEPH. His story conflicted with logic, reason, all other evidence and testimony. JOSEPH's testimony was not believed by the Referee because it was unbelievable. All competent testimony supports the findings of the Referee, and therefore the Report of Referee is to be considered conclusive. The Florida Bar v. Smiley, 622 So.2d 465 (Fla. 1993), The Florida Bar v. Seldin, 526 So.2d 41 (Fla. 1988).

The Bar's Issue I is predicated upon half truths, non-sequiturs and disconnected testimony. An example of the convoluted multiple-issue questions by Bar counsel is:

> Q: Did you advise Mr. Bartholomew as his attorney that two witnesses were required at the time that he was signing this lease in September of 1989? (TR. 104, emph. added.)

The facts are that the lease was instituted by JOSEPH and VICTORIA (TR. 73); the designated "Landlord" was drafted by JOSEPH (TR. 109, 110); JOHNSON's status was that of a tenant; JOHNSON did not sign the Lease in the presence of JOSEPH (TR. 104, 83); and JOSEPH signed the

Lease at his place of business where at least a dozen employees were available to sign as witnesses (TR. 111). The Lease was signed in October, 1989, not September (TR. 90).

Bar counsel's cross-examination of VICTORIA set the matter in focus:

> Q. You did not believe that the lease would be binding?
>
> A. No.
>
> Q. Did your father explain to you that the lease would not be binding?
>
> A. We explained to him the lease would not be binding, JOSEPH and myself.
>
> . . . .
>
> A. I knew it was not a valid lease and I understand that you have to have two signatures (TR. 84).

And again:

> Q. Was the lease a valid lease?
>
> A. No.
>
> Q. Okay. When you represented that to the bank was that true?
>
> A. It would be true to them if we defaulted on the lease. Then it would be binding between the bank and Mr. Johnson (TR. 85).

Before The Bar filed its Complaint in this matter, it had available the entire Court file of BARTHOLOMEW

v. JOHNSON, Case No. 92-7907 LT, County Court, Hillsborough County, Florida. Depositions had been taken of JOHNSON, VICTORIA and Sharon Ramos, JOHNSON's legal secretary. These depositions fully substantiated JOHNSON's Affidavit in Support of Defendant's Motion for Summary Judgment (Bar Exhibit 4). However, The Bar chose to file a Complaint that contained these false statements:

> 3. On or about September 15, 1989, Respondent entered into a lease agreement with Mr. Bartholomew . . . to rent commercial space . . . (emph. added)
>
> 4. Respondent drafted the foregoing lease agreement . . . (emph. added)
>
> . . .
>
> 8. Respondent further swore under oath that he was obligated to pay monthly the rental payment . . . (emph. added).
>
> . . .
>
> 14. The lease agreement and tenant affidavit drafted and executed by Respondent was done for the purpose of misleading and/or defrauding innocent third parties (emph. added) . . .
>
> 18. Respondent failed to inform Mr. Bartholomew of Respondent's motive for drafting an unenforceable lease (emph. added).
>
> 19. Respondent further failed to advise Mr. Bartholomew that the lease was legally

unenforceable (emph. added).

20. The invalid lease agreement drafted and executed by Respondent was provided to third parties on several occasions by Mr. Bartholomew (emph added).

Before The Bar filed its said Complaint it knew that JOHNSON had committed himself to The Village Bank for rental payments in the event of a default by the Bartholomews. But The Bar deliberately set up a false scenario in asserting that JOHNSON executed the Affidavit for the "purpose of misleading and/or defrauding innocent third parties." The Affidavit states clearly that its sole purpose is for the "benefit of The Village Bank" and that it pertains only to "said Bank's relationship with Landlord." Only a deep-seated prejudice could claim an ulterior purpose. JOHNSON instructed JOSEPH to apprise the Bank fully of the lease situation (TR. 94). JOHNSON, at that point trusting JOSEPH, did everything reasonably proper to give the Bank a fair picture of the circumstances.

The Referee stated in her Report: "In considering the evidence I determined also the credibility of the witnesses" (p. 5). JOSEPH's testimony was not credible. He swore that the violent argument in JOHNSON's office where he threatened to throw JOHNSON out of the fourth floor office window (TR. 46) was the result of a disagreement over JOHNSON's legal advice to

the Board of the Florida Pawnbroker's Association (TR. 42). JOHNSON (TR. 94) and VICTORIA (TR. 79) testified the violent argument resulted from JOHNSON accusing JOSEPH of adultery (TR. 45). And JOSEPH's assertion that he expected to be paid rent is negated by the fact that he made no claim for rent for thirty-one months (TR. 41, 75, 95). Again, if JOSEPH expected monthly rental which could be set-off by services rendered to him by JOHNSON, how could the value of services be determined if JOHNSON never submitted monthly statements? (TR. 78).

The Committee and Bar should have been put on notice when MIHOKOVICH filed his complaint against JOHNSON. MIHOKOVICH had filed a tenant eviction suit after being fully advised by JOHNSON of the law, evidence and facts. His firm, Foley & Lardner, was representing JOSEPH in the divorce action. MIHOKOVICH first filed that JOSEPH was the sole "owner" of the Building; but the entireties deed disproved that. Then MIHOKOVICH filed a false Affidavit for JOSEPH that he had full consent from VICTORIA as to the lease and the suit. Her Affidavit to the trial court (dated July 13, 1992) included:

> 8. I am a full owner of 715 East Bird Street, owning the property as an estate by the entireties. I have never consented, and do not now consent, to any action by

> JOSEPH's that would attempt to evict JOHNSON from Suite 409, 715 East Bird Street, or charge him rent or taxes for his use of the premises.

MIHOKOVICH and JOSEPH were left with the argument that the insufficiencies in the Lease were cured by the Tenant's Affidavit (Bar Exhibit 2) wherein JOHNSON was obligated to the Bank. That is, the validity of the Affidavit as to the Bank cured all the defects in the lease as to JOSEPH. The trial court disagreed, denying that JOHNSON's obligation to the Bank in the Affidavit also cured the defects in the lease as to JOSEPH.

After Summary Judgment was granted JOHNSON and the Settlement Agreement (Respondent's Exhibit 2) was completed and all cases against JOSEPH terminated with prejudice, MIHOKOVICH filed his complaint to The Florida Bar on January 15, 1993. Under oath he said he was "compelled by Section 4-8.3" to "disclose" to The Bar "acts" which just "became known to me." For five pages MIHOKOVICH castigated JOHNSON, repeating JOSEPH's lies about the execution of the Lease and making the new claim that the Affidavit was fraudulent on its face. The Bar made MIHOKOVICH's approach the basis of its Complaint filed in this action.

The Referee agreed with the trial judge, finding:

> Neither the lease (TFB Exhibit 1) nor the tenant affidavit (TFB Exhibit 2) were to be binding between Respondent and Bartholomew

> (T. 83-85). They were executed solely for the protection of the bank in case the credit line or loan were defaulted on (T. 90-94, L. 18) . . . Additionally, Respondent advised Bartholomew to inform the bank of the situation (T. 94, L. 7-13).
>
> (Report of Referee, p. 3)

JOHNSON testified concerning the Affidavit:

> And I told him (JOSEPH) to tell the bank that I fully intended to honor this and I presume he did. I was not present, but this was done with the clear understanding that even though I had been promised three years free rent that I would submit rental to the bank if in fact they defaulted (TR. 94).

What could have been MIHOKOVICH's motive, besides money, in instigating these charges against JOHNSON? In the tenant eviction suit it was necessary for JOHNSON to file a Motion for Contempt and Sanctions dated August 21, 1992. This Motion listed MIHOKOVICH's violations of Standards For Imposing Lawyer Sanctions, 2.1, 5.22 and 5.23; and his violation of Rules of Professional Conduct, 4-3.4 and 4-8.4. JOHNSON withdrew this Motion in his Settlement Agreement with JOSEPH (Respondent Exhibit 2).

JOSEPH knew in his heart that his testimony was false, and that the Tenant Affidavit had been solicited by him and was a fair and accurate document. He admitted on cross-examination:

> Q. . . . when you asked me to sign this tenant's affidavit

did you see any part of it that you felt was improper?

A. No.

Q. Anything that was illegal?

A. No (TR. 54-55).

and:

Q. Did the bank ever tell you that it had a right to seek payments from me or any other tenant on these tenant affidavits because of your loan?

A. I believe it was - - to the best of my knowledge it's in the - - its in my mortgage that if I defaulted that they would have the right to come in and secure payments of the - -

Q. The rent?

A. - - the rent (TR. 57-58).

The Referee heard and watched JOHNSON, VICTORIA and JOSEPH testify. In her Report the Referee stated:

> In considering the evidence, I determined also the credibility of the witnesses. Taking all factors into consideration, I find that The Florida Bar has failed to establish the guilt of the Respondent. (Report of Referee, p. 5).

There is obviously nothing "clearly erroneous or lacking in evidentiary support" in the Referee's determination. The Report is predicated upon "substantial competent evidence." The Florida Bar v. Neely, 502 So.2d 1237 (Fla. 1987). This Court has

stated on many occasions that "it is a function of the referee to weigh the evidence and determine its sufficiency," and that this Court will not substitute its judgment for that of the Referee - unless clearly erroneous. See The Florida Bar v. Weiss, 586 So.2d 1051 (Fla. 1991).

This Court has expressed many times:

> The referee who presides over the proceedings is in the best position to make judgment concerning the character and demeanor of the lawyer being disciplined.
>
> The Florida Bar v. Fine, 607 So.2d 416 (Fla. 1992)
>
> The Florida Bar v. Rood, 622 So.2d 974 (Fla. 1993)

It is obvious from reading the transcript and observing the documentation, that The Florida Bar failed to convince the Referee that it had even a probable cause or preponderance of the evidence in its favor. However, the burden upon The Bar in a disciplinary hearing is to prove its position with clear and convincing evidence.

> We also agree with the referee that The Bar has not proven with clear and convincing evidence that Rood made false statements to the court regarding his signature on gambling I.O.U.'s. The Bar has the burden of proof that the attorney is guilty of specific rule violations, The Florida Bar v. Weiss, 586 So.2d 1051 (Fla. 1991).

It is a figment of The Bar's imagination that the Tenant Affidavit is "completely false" (Initial Brief, p. 15). Only distorted vision would permit The Bar to claim that the Tenant's Affidavit's was "intentionally drafted and executed" to produce a document that was "false at the time the Affidavit was made." (Initial Brief, p. 16). This Honorable Court can take judicial notice of the common practice that lending institutions do not lend money on commercial buildings unless they first receive an assignment of rent from the owner and an estoppel affidavit from the tenant, who relinquishes all defenses, counterclaims and setoffs as a tenant to the bank.

Certain phrases in the form estoppel Affidavit submitted by The Village Bank were deleted and others inserted by JOHNSON, which clarified the position that JOHNSON was in. Thus, in par. 7 the Affidavit reads: "Pursuant to the terms of said Lease Tenant is obligated to pay monthly the rental payment . . . " (emph. added). That statement is perfectly true. Unfortunately, The Bar deliberately changed this wording, declaring it said that JOHNSON was "obligated to pay $751.33 per month." (Initial Brief p. 19).

The Initial Brief (pp. 15, 22, 23) confuses the purpose of an estoppel affidavit and the "equitable

defense of estoppel." It misapplies the ruling in Waterman Memorial Hospital Association, Inc. v. Division of Retirement, Department of Administration, 424 So.2d 57 (1st DCA 1982). The purpose of an estoppel affidavit is to be a "shield" to the Bank to prevent the tenant from denying his obligation to pay rent. Waterman states that one party cannot aggressively ("sword") utilize the estoppel right ("shield") of another party. It is quite clear that JOHNSON could not use as a defense against the Bank the modifications of the lease, to avoid rent payment upon a mortgage default.

The Bank received from JOHNSON a modified lease and a modified affidavit, which came with a copy of the entireties deed and a title search. Also JOHNSON instructed JOSEPH to explain the modifications on the lease and affidavit to the Bank and to assure the Bank that he was obligated to pay rent upon default. The Bank had no objection. The lease and affidavit were never deemed improper, deceptive or illegal. It is difficult to imagine what else JOHNSON could have done to be fair to the Bank and to be fair to his right to free occupancy of the suite. The Bar take this honest, fair and open position and colors it with such prejudicial words as: "invalid," "unenforceable," "completely false," "false," "false statement,"

"misrepresentations of a material fact," "false affidavit," and "damage to a third party." (TR. 14-22).

Contrary to the Bar's statement (Initial Brief, p. 23) JOHNSON did not argue that he "put the lender in the shoes of the Landlord." Quite the contrary. JOHNSON has consistently sworn and stated since 1991 that he put the Bank in a superior position to that of JOSEPH.

The Bar's argument and citations (Initial Brief 23 - 26) attacking the Referee's "consideration of the family relationship" are without merit. It is well settled that an attorney may be disciplined for engaging in illegal or immoral conduct in matters not specifically related to the practice of law. However, The Bar's citations are irrelevant.

The ruling in The Florida Bar v. Gentry, 447 So.2d 1342 (Fla. 1984) has no relationship to the facts before this Court. In Gentry the attorney drafted by mistake an unenforceable lease that the parties felt was valid. Evidently Gentry had not heard of Tino v. Outdoor Media, Inc., 242 So.2d 196 (3rd DCA 1970). Justice Boyd, in a long dissent, objected to the finding of misconduct on the careless drafting procedure by Gentry, stating that the only possible grounds would be an intent "to perpetrate a fraud on Dr. Yost." Yet there was not "proof of the mental

element of fraudulent intent" (at p. 1346).

Who does The Bar contend JOHNSON defrauded? The Bank to whom JOHNSON gave a "guarantee" (TR. 90)? To JOSEPH who approached JOHNSON to sign a non-binding lease solely for the benefit of the Bank? (TR. 90 - 91).

The Bar (Initial Brief, p. 25 - 26) makes lengthy reference to The Florida Bar v. Jennings, 482 So.2d 1365 (Fla. 1986). Jennings "borrowed $30,000.00 from each of two sets of in-laws" (p. 1366) without telling them of the duplication and recording ineffective mortgages. Whom did JOHNSON deceive to receive $60,000.00? Does The Bar expect this Court to equate Jennings' mercenary bent with JOHNSON's subjection to rental payment upon mortgage default?

The only accusation not made to date in this plethora of wild and crazy charges of immorality and illegality against JOHNSON, is that JOSEPH had a psychological collapse caused by JOHNSON's cruelty which drove him to adultery! But there is still the Reply Brief.

The Bank wanted a lease and estoppel affidavit. JOHNSON, taking JOSEPH at his express word that the lease would not be effective as to him, agreed to the preparation of a non-binding lease. Certainly this was for JOHNSON's "protection," and certainly it was "self-

serving" (Initial Brief, p. 15). On direct examination VICTORIA testified:

> Q. All right. After I moved in what if anything did you and JOSEPH come to me and ask me to do concerning leasing?
>
> A. Regarding signing a lease?
>
> Q. Yes, ma'am.
>
> A. We asked you to sign a lease for the benefit to show the Bank the Tenants that were in the Building (TR. 73).

JOHNSON testified:

> When we did the lease we had a very clear discussion with VICTORIA and JOSEPH that this is not going to be a binding lease between us. JOSEPH said, yes, he knew that. It was then we agreed that he would sign it only as Landlord. He did not ask VICTORIA to sign, I did not ask VICTORIA to sign (TR. 91).

The Referee had before her the illogical and irrational statements of JOSEPH, and the consistent and believable statements of JOHNSON and VICTORIA. The Referee chose not to believe JOSEPH.

> It is for the referee to weigh the credibility of the witnesses before him. (citation) Any conflicts in the evidence are properly resolved by the referee sitting as this Court's finder of facts (citation).
>
> The Florida Bar v. Lipman, 497 So.2d 1165, 1168 (Fla. 1986).

The Report of Referee is well reasoned, it weighs the evidence carefully, and considers the character and

demeanor of the witnesses. Being in the best position to make these judgments, the Referee's decision and findings should not be disturbed by this Honorable Court.

ISSUE II

THE REFEREE CORRECTLY FOUND RESPONDENT NOT GUILTY AND RECOMMENDED NO DISCIPLINE

Issue II deliberately violates the Rules for an appeal from a Referee Report. Rule 3-7.7(c)(2) states:

> Record on Review
> The Report and Record filed by the referee shall constitute the record on review (emph. added).

In an act of desperation The Bar has attempted to interject "Respondent's prior disciplinary history" into this matter (Initial Brief, p. 28, 29). This is defiance of the authority of this Honorable Court. JOHNSON prays that this Court will strike Issue II from the Initial Brief.

Issue II (Initial Brief, p. 28-32) continues the proclamation of half-truths and irrelevancies. JOHNSON admits he "executed an unenforceable lease," but denies it was to trick a "client" (p. 28). JOHNSON, JOSEPH and VICTORIA agreed in advance that the lease would be unenforceable between JOHNSON and JOSEPH, but enforceable between JOHNSON and a lending institution or a purchaser (TR. 84, 85, 91). Again, the Bar asserts (p. 28) that JOHNSON "knowingly drafted and executed an Affidavit" (true) but added the falsehood "containing false statements . . . " This style of argument permeates the Brief. Tennyson stated it well: "A lie that is half a truth is ever the blackest of

lies."

Much of the Initial Brief, like the Complaint, is now moot. The issue of any irregularity as to the Tenant's Affidavit is settled. There is not one scintilla of evidence to support the accusations that JOHNSON "knowingly assisted Bartholomew . . . in providing false information with the intent to mislead or defraud the lending institution . . . " (Initial Brief, p. 28). There is no testimony that states or implies that Bartholomew assisted JOHNSON in a deception against The Village Bank. The testimony given by JOSEPH on cross-examination was:

> Q. . . . when you asked me to sign this tenant's affidavit did you see any part of it that you felt was <u>improper</u>?
>
> A. No.
>
> Q. Anything that was <u>illegal</u>? (TR 54 - 55) (emph. added)
>
> A. No.

In its haste to crucify JOHNSON, The Bar now alleges its own witness is a liar, schemer and crook! "Oh, what a tangled web we weave, when first we practice to deceive!" All accusations concerning any impropriety as to the Affidavit have been properly dismissed.

Bar counsel evidently operates under the belief that a constant barrage of derogation will sway this Court's opinion. Issue II is replete with: "knowingly

deceived a client," "causes injury," "serious criminal conduct," "selfish motive," "selfish interest," "fraudulent statements to a lending institution," "execution of false documents," "fraudulent intent." All such charges were deemed unfounded and unsubstantiated by the Referee.

Grasping at any bent reed, The Bar pretends to be shocked at JOHNSON's "refusal to acknowledge wrongful nature of misconduct" (p. 29) and his "lack of remorse" (p. 34). Remorse? Why should an honest man with a clear conscience feel remorse? But, one emotion is paramount. JOHNSON does express anger at the continuing insidious acts of slander and libel perpetrated against him by The Bar.

The "Conclusion" of the Initial Brief has the audacity to intone piously that JOHNSON "has a lack of appreciation for the concept of 'truth'" (p. 34). This is amazing after penning thirty-four pages of half-truths, distortions and fabrications! Pilate was more honest when he replied sarcastically to Jesus: "What is truth!" The Bar, in its all-out assault on JOHNSON has cried "truth" in a masquerade of lies.

Perhaps Disraeli was correct, that Justice is truth in action. A mature, experienced trial judge, as Referee, evaluated the testimony, character and demeanor of JOHNSON, VICTORIA and JOSEPH. She found no

truth in JOSEPH's accusations and testimony. Neither should this Honorable Court.

ISSUE III

RESPONDENT IS ENTITLED TO RECOVER COSTS FOR THESE DISCIPLINARY PROCEEDINGS

The Referee has recommended to this Court that JOHNSON:

> is entitled to recover travel expenses of $48.00 and photocopy costs of $20.40 for a total amount of $68.40.
> (Additional Report of Referee)

When the Referee issued her Additional Report JOHNSON had not received a bill from the court reporter. Rule 3-7.6(k)(E) also includes, as permissible costs, "court reporter fee." JOHNSON received an Invoice dated 7/15/94 from Clark Reporting Service in the sum of $171.75. The original Invoice is attached as Appendix. This cost, plus the recommended $68.40, is a total of $240.15.

It is firmly established first, that costs can be awarded to a Respondent, and second, that a Referee has the "discretion to recommend the assessment of costs," but the final discretionary authority rests "solely" with this Court. The Florida Bar v. Bosse, 609 So.2d 1320 (Fla. 1992).

JOHNSON requests this Honorable Court to enter an award of costs in the sum of $240.15 against The Florida Bar and in favor of H. Eugene Johnson.

CONCLUSION

From May 1983 to July 1991 JOHNSON generously gave thousands of hours of free legal service to VICTORIA and JOSEPH, they becoming millionaires by the age of 30. In 1989 - 1990 JOHNSON, though granted three years free rent, agreed to obligate himself as a "guarantee" to The Village Bank for a loan to the Bartholomews.

After JOHNSON exposed JOSEPH's adultery in June of 1991, he filed a Tenant eviction suit that was dismissed. When JOHNSON settled all his pending litigation with JOSEPH, MIHOKOVICH filed a complaint against JOHNSON. The Bar utilized this complaint to file its Complaint against JOHNSON alleging impropriety and deception in the drafting and execution of the lease and affidavit.

After reviewing all of the documentation and hearing all of the testimony the Referee properly concluded that there was no dishonesty, fraud, deceit or misrepresentation by JOHNSON; and found that The Bar failed to establish any wrong doing.

Respectfully Submitted,

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Respondent, in proper person

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Answer Brief has been furnished by U.S. Mail to David R. Ristoff, Esquire, Branch Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport, Marriott Hotel, Tampa, Florida 33607, and John T. Berry, Esquire, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 22 day of July, 1994.

H. EUGENE JOHNSON, ESQUIRE

APPENDIX TO RESPONDENT'S ANSWER BRIEF

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