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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

Case No. 82,673
(TFB No. 93-10,983 (13C))

v.

H. EUGENE JOHNSON,
Respondent.

_____/

THE FLORIDA BAR'S INITIAL BRIEF

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SYMBOLS AND REFERENCES

In this Brief, the Respondent, H. EUGENE JOHNSON, will be referred to as "Respondent". The Florida Bar will be referred to as "The Florida Bar" or "The Bar". The Report of Referee will be referred to as "RR". The Transcript of the Final Hearing held on April 15, 1994, will be referred to as "TR". The Respondent's Deposition taken on June 29, 1992 by Donald A. Mihokovich, Esquire, in the case Bartholomew v. Johnson, No. 92-797LT (Fla. 13th Cir. Ct. August, 1992) will be referred to as "Respondent's Deposition." "R" will refer to the record. "Standards" will refer to the Florida Standards Imposing Lawyer Sanctions. "Rule" or "Rules" will refer to the Rules Regulating The Florida Bar.

STATEMENT OF THE FACTS AND CASE

Respondent was the attorney for the Bartholomew family for many years. (TR, p.87, L.3-4, L. 7-20). Respondent began representing Joseph Bartholomew during 1979 or 1980 in corporate, real estate and personal matters. (TR, p.6, L.21 to p.7, L.1, p.87, L. 2-5). Until May, 1983, Respondent was paid for his legal services on a retainer basis, as well as on a per case basis for some matters. (TR, p.7, L. 5-11). After Mr. Bartholomew married Respondent's daughter in May, 1983, Respondent provided legal services to Mr. Bartholomew in personal, business, corporate and real estate matters free of charge. (TR, p.41, L. 16-22, and p.87, L. 2-8).

During August or September, 1989, Mr. Bartholomew and his wife approached Respondent about moving his office into their building. (TR, p.71, L. 24 to p.72, L. 20 and p.89, L. 22 to p.89, L. 11). It was agreed at that time that Respondent would not be required to pay monetary rent to the Bartholomews for a term of three years. (TR, p.72, L. 21-24 and p.89, L. 5-11). By a commercial lease dated September 15, 1989, Mr. Bartholomew agreed to lease space to Respondent in a building owned by Mr. Bartholomew and his wife (Respondent's daughter), Victoria Love Bartholomew, as an estate by the entirety. (TR, p.14, L. 21 to p.15, L.1). Respondent moved into the space during September or October, 1989, but the lease was executed by Respondent after he took possession of the space at the request of Mr. Bartholomew. (TR, p.103, L.5 to p.104, L. 9,

inclusive).

The original form of the lease was prepared by Respondent, as Mr. Bartholomew's attorney, for use by Mr. Bartholomew in leasing spaces in the building. (TR, p.105, L. 16-20). The form was copied by Mr. Bartholomew onto his computer and printed out for use in this circumstance. (TR, p.31, L. 10-15). The lease as executed listed and was signed by Mr. Bartholomew as "Landlord" and, while there were two witness lines next to each party's signature space, there was only one witness as to each signature. (R. Bar Exhibit 1 and TR, p.104, L. 10 to p.105, L. 15, inclusive). At that time he executed the lease, Respondent did not tell Mr. Bartholomew or Victoria Love Bartholomew, both of whom were present, that Mrs. Bartholomew's name and signature needed to be on the lease and that two witnesses were required for the lease to be valid. (TR., p.104, L. 16 to p.105, L. 15). Respondent intentionally and deliberately executed the lease in such a way that the document would be unenforceable and, he did not advise Mr. Bartholomew on the day that it was executed that the lease would be invalid. (TR, p.108, L. 3 to p.11, inclusive and R. Bar Exhibit 6, p.13, L. 4 to p.14, L.5, inclusive).

On or about January 19, 1990, Respondent drafted and executed a Tenant's Affidavit at the request of Mr. Bartholomew for the benefit of Village Bank of Florida. (R. Bar Ex. 2 and TR, p.91, L. 4-16). (TR, p.22, L. 2-23). Mr.

Bartholomew needed the lease and Affidavit to secure a line of credit for a refinance on the building and to show to potential purchasers.

By the Affidavit, Respondent swore under oath that the lease dated September 15, 1989 constituted the entire agreement between the parties. (R. Bar Ex. 2). Respondent further swore under oath in the Affidavit that he had no defenses, counter-claims, or set-offs against the Landlord under the lease, and that he was obligated to pay monthly a rental payment of $751.33 under the terms of the lease and that he was current in his rent due the Landlord. (R. Bar Ex. 2).

Mr. Bartholomew's marriage to Respondent's daughter ended sometime in July, 1991. Respondent did not make any rental payments from August 15, 1991 through May 15, 1992, and based thereon, Mr. Bartholomew instituted a civil action for eviction and rents due against Respondent on June 2, 1992. In Respondent's Amended Answer and Affirmative Defenses, Respondent claimed that the lease was not executed as a binding lease upon Respondent for the purpose of Respondent paying monies to Mr. Bartholomew. (R. Bar Ex. 3, p. 1). Respondent further admitted in his Amended Answer and Affirmative Defenses that he had drafted the Tenant's Affidavit and that he and Mr. Bartholomew had an oral agreement that Respondent would have possession of his office rent free until September 15, 1992. (R. Bar's Ex. 3, p.2).

On or about June 12, 1992, Respondent filed an Affidavit in support of Defendant's Motion for Summary Judgment with the County Court. (R. Bar Ex. 4). In the Affidavit, Respondent swore under oath that he executed the lease at Mr. Bartholomew's request, and that Mr. Bartholomew had explained that the lease was necessary for the benefit of third parties, particularly mortgage money lenders and potential purchasers. (R. Bar Ex.4, p.3). Defendant's Motion for Summary Judgment was granted on or about August 28, 1992 based on Victoria Love Bartholomew's failure to join in the action with her husband, Mr. Bartholomew. Because the property was owned by Mr. Bartholomew and his wife as an estate by the entirety, the County Court found that Mr. Bartholomew lacked legal standing to file the suit without his wife's participation.

Respondent has repeatedly testified that he knowingly drafted and executed the lease agreement in such a way that it failed to comply with applicable rules of law. (TR, p.108, L. 10 to p.114, L. 14, inclusive; R, Bar Ex. 6, p.13, L. 4-18; R, Bar Ex. 3, p.4). Respondent has further testified that at the time of execution of the Lease Agreement and Affidavit he was Mr. Bartholomew's attorney and that Mr. Bartholomew relied on him for legal advice. (TR, p.108, L. 21 to p.109, L. 2, inclusive).

In the Report of Referee, the Referee made specific findings of fact as to the deterioration of the marital relationship between Mr. Bartholomew and his wife. The

Referee further found that the relationship between Mr. Bartholomew and Respondent began to deteriorate after Respondent confronted Mr. Bartholomew about his alleged adulterous behavior. (RR, p.3).

On November 4, 1993, The Florida Bar filed with the Supreme Court a formal Complaint against the Respondent in this case. On April 15, 1994, a Final Hearing was held in this case before the Honorable Claire K. Luten, Referee. The Referee recommended that the Respondent be found not guilty of violating Rule 3-4.3 (the standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline); Rule 3-4.4 (whether the alleged misconduct constitutes a felony or misdemeanor The Florida Bar may initiate disciplinary action regardless of whether the respondent has been tried, acquitted, or convicted in a court for the alleged criminal

offense); Rule 4-4.1 (in the course of representing a client a lawyer shall not knowingly: [a] make a false statement of material fact or law to a third person; or [b] fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by rule 4-1.6); Rule 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); 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); and Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

On May 26, 1994, the Referee recommended in the Additional Report of Referee that Respondent was entitled to recover costs in the total amount of $68.40.

The Report of Referee was considered by the Board of Governors at its meeting which ended June 3, 1994. The Board of Governors voted to seek review of the Report of Referee. The Bar filed a Petition for Review with the Supreme Court of Florida on June 9, 1994.

SUMMARY OF THE ARGUMENT

The Referee's findings of fact and conclusions of law are contrary to the evidence in the record and are clearly erroneous.

The evidence in the record establishes clearly and convincingly that Respondent knowingly drafted and executed an invalid commercial lease between himself and his client. The evidence further establishes that Respondent failed to inform his client of the unenforceability of the lease at the time of its execution, and that he executed an Affidavit which contained several false statements and misrepresentations of material facts. Evidence in the record supports a conclusion that Respondent knowingly drafted and executed the invalid lease and false Affidavit with the intent to mislead or defraud a third party bank in the course of making a loan. The Florida Bar presented evidence that supports a finding of fact consistent with The Bar's allegations and that supports a finding Respondent guilty as charged.

A suspension of no less than one (1) year is appropriate in light of the seriousness of Respondent's misconduct and applicable aggravating factors.

The Florida Standards for Imposing Lawyer Sanctions and the analogous case law provide for suspension as an appropriate sanction for conduct involving fraud, false swearing, and misrepresentation of facts to a lending institution in order to obtain financing or a loan.

Respondent's drafting, executing, and causing his client to execute a lease which failed to conform to the applicable rules of law together with his lack of remorse for having made false statements, a false Affidavit and misrepresentations demonstrates an overall lack of respect for the law and the legal system.

Arguments as to the appropriate discipline were not made to the Referee as there was a finding of not guilty. However, The Florida Bar offers Respondent's prior disciplinary history in the event this Court sets aside the Referee's finding of not guilty.

Several aggravating factors are applicable to Respondent's misconduct:

1. prior disciplinary offenses;
2. dishonest or selfish motive;
3. refusal to acknowledge wrongful nature of of conduct; and,
4. substantial experience in the practice of law.

Respondent has been disciplined on two prior occasions, the most recent of which resulted in a fifteen (15) day suspension. Respondent had a selfish motive of protecting himself from his Landlord's enforcement of the commercial lease against him. Respondent has never acknowledged that his conduct was wrongful or improper in any way. Respondent had been engaged in the practice of law for over 30 years at the time of his misconduct.

Based on the evidence presented in this case, it was error for the Referee to find the Respondent not guilty of violating Rule 3-4.3, Rule 3-4.4, Rule 4-4.1(a) and (b), and Rule 4-8.4(a), (b), and (c). The findings and recommendations of the Referee should be rejected and Respondent should be found guilty of all of the charges of The Florida Bar. Respondent should be suspended from the practice of law for no less than one (1) year, and assessed the Bar's costs for these disciplinary proceedings.

ARGUMENT

ISSUE I. WHETHER THE REFEREE'S FINDINGS OF FACT AND CONCLUSIONS OF LAW ARE CONTRARY TO THE EVIDENCE AND CLEARLY ERRONEOUS.

A Referee's findings of fact and recommendations are presumed to be correct and should be upheld unless clearly erroneous and without support in the record. The Florida Bar v. Vannier, 498 So. 2d 896, 898 (Fla. 1986). The Referee's findings of fact and conclusions of law in the instant case is clearly erroneous and contrary to the evidence in the record.

The Florida Bar alleged in the instant case that Respondent had knowingly drafted and executed an invalid commercial lease; that Respondent had counseled his client, Bartholomew, regarding the execution of the lease but failed to inform him of its invalidity at the time of execution; and, that Respondent knowingly executed a lease and tenant's Affidavit containing false statements of material facts which affected or potentially affected the rights of the third parties. (R, Complaint; RR, Section II).

The Referee found that Bartholomew prepared the lease and that neither Bartholomew nor Respondent intended it to be a valid lease. The Referee further found that the tenant's Affidavit did not and would not have affected the rights of any third party lending institution because Respondent would be bound by law to the statements contained therein. Based on these findings of fact, the Referee concluded there was no misrepresentation of a material fact or false statement to a

third party. (RR, Section III).

The Referee also found that since there was a family relationship between the parties. The Referee concluded this was a family matter that would not affect third persons. (RR, Section III).

Based on the foregoing findings of fact and conclusions of law, the Referee found that The Florida Bar had failed to establish the guilt of Respondent and recommended Respondent be found not guilty of violating Rule 3-4.3, Rule 3-4.4, Rule 4-4.1(a) and (b), and Rule 4-8.4(a),(b) and (c). (RR, Section IV). The Referee's findings and recommendations of not guilty are contrary to the evidence, contrary to the Rules Regulating The Florida Bar, and are clearly erroneous.

The Referee's finding of fact that Mr. Bartholomew, a non-lawyer, prepared the lease is contrary to the testimony of the witnesses and sworn statements of Respondent. The evidence shows that Respondent drafted the form lease for Mr. Bartholomew's use with his tenants. (TR, p.31, L. 10-15 and p.70, L. 25 to p.71, L. 3). Testimony reveals that Respondent prepared the substance of the lease and Mr. Bartholomew merely retyped the form on his computer. (TR, p.92, L. 1-4, and p. 105, L. 16).

At the Deposition on June 29, 1992, in the case Bartholomew v. Johnson, Case No. 92-7907 LT, the Respondent gave the following sworn responses to questions asked by Donald A. Mihokovich, Esquire regarding the lease between

Bartholomew and Respondent:

> Q. Could you not have refused to sign this document ...
>
> A. I could have.
>
> Q. ... unless it was truthful?
>
> A. I could have refused, but I set it up in such a way that it's not a legal document ... when this was signed, I had him [Bartholomew] sign only, did not ask Victoria [Bartholomew] to sign, did not want her to sign this. I had only one witness on each signature, deliberate. This is not a legal document.
> (R, Bar Ex. 6, p. 12, L.25 through p.13, L.16).

On cross-examination during the Final Hearing in the instant case, the Respondent was read the above statements. Respondent confirmed that the statements were true except for his being present when Joseph Bartholomew signed the lease. (TR, p.113, L. 13 through p.114, L. 14).

Mr. Bartholomew was acting under Respondent's direction in filling in the blanks and printing the lease out on his computer. Respondent supplied the substantive terms and form of the lease to Bartholomew. By Respondent's own testimony, he "set up" the lease and directed Bartholomew on how to fill it out. (R, Bar Ex.6, p.12, L.25 through p.13, L-16). Respondent, according to his own statements during the Deposition on June 29, 1992, advised Bartholomew how to execute the lease. It is clear from the evidence that Respondent, acting as an attorney, drafted and prepared the lease and that he controlled its execution.

The Referee's finding that Respondent did not intend the lease to be valid is supported by the record. However, it is not clear that Mr. Bartholomew intended the lease to be invalid. Respondent testified at the Final Hearing before the Referee as follows:

> (by Bar Counsel)
> 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?
>
> A. I did not say it at the time, I had told him repeatedly on every lease that he was to draw to have two witnesses and Victoria sign. He knew that, I told him that since 1983, since their marriage. If you're saying did I say, Joseph, don't forget you need two witnesses, no, because we had agreed this lease was only to show the bank, it had no other purpose.
>
> Q. Okay. And also when you signed this lease and executed this lease did you tell Mr. Bartholomew ... that both his signature and Victoria's signature and name must be on the lease for it to be a valid lease?
>
> A. Not in those words that day, Mr. Ristoff
> ...
> (TR, p.104, L. 16 through p.105, L.6).

Respondent further testified at the Final Hearing:

> Q. Mr. Johnson, isn't it true and correct that you intentionally and deliberately signed the lease and had the lease executed in such a manner that it would be unenforceable?
>
> A. Yes, that's true and he knew it at the time.
>
> Q. Did you tell him that?
>
> A. No. See ...

Q. I'm asking you in October of '89 that you told him you were drafting an unenforceable lease. Did you tell him at the time this lease was executed that it was not an enforceable lease?

A. Not the day I signed it. (TR, p.108, L. 3-14).

During his Deposition taken on June 29, 1992, Respondent gave the following answers to questions from Mr. Mihokovich regarding the legality of the lease:

A. I had only one witness on each signature, deliberate. This is not a legal document.

Q. That was deliberate on your part.

A. Yes, sir. That's just a precautionary measure.

Q. Did you tell Joseph Bartholomew that that's why you were having only one witness on each?

A. No, sir, but he knew the law, and he had a copy of the Tino decision. But I asked him to make it out to him only to me, and that's what he did?

Q. And what was the reason for that? Was that, also, to deliberately make the document invalid?

A. It was, between him and me, to make it invalid. I had no idea that he was going to do what he is now to me. That was one of the reasons that it was done, to make it invalid for him seeking rental from me without the consent of my daughter. (R, Bar Ex 6, p.13, L. 15 through p.14, L. 5).

Mr. Bartholomew's testimony at the Final Hearing affirmed that, at the time the lease was executed, Respondent failed as his attorney to advise him that the lease was invalid. (TR,

p.15, L. 2 through p.16, L. 16). Mr. Bartholomew testified at the Final Hearing that it was his intent to have the lease be a binding agreement. (TR, p.26, L. 2-4). Mr. Bartholomew's filing of a civil action for the eviction of Respondent and for rent due under the lease is further evidence that Mr. Bartholomew did not fully understand that the lease was unenforceable. (Bartholomew v. Johnson, Case No. 92-7907 LT (Fla. 13th Cir. Ct. August, 1992).

Further, Respondent failed to advise Mr. Bartholomew of his motive for making the lease invalid. Respondent's motive was not for some mutual protection of all parties, but was for his protection alone. By his own testimony, at Deposition on June 29, 1992, Respondent "set up" the lease so that Mr. Bartholomew could not enforce it without the consent of Respondent's daughter, a purely self-serving motive. (R, Bar Ex. 6, p.14, L. 1-5).

The Referee's finding that because Respondent would have been bound to the terms of the tenants' Affidavit to a third party, there was no misrepresentation of a material fact or false statement to such third party is contrary to the evidence and rules of law. The Referee's logic here would seem to be that even though a statement sworn to under oath as true is completely false at the time the statement is made, if the person making the false statement could be bound to the statement by a third party through the equitable defense of estoppel, then the statement becomes true as to the third

party. The Referee, based on this conclusion, made no specific findings as to the fact that Respondent knowingly and intentionally drafted and executed an Affidavit containing statements which were false at the time the Affidavit was made.

These facts, however, are undisputed in the Record. On or about January 19, 1990, Respondent executed a tenant's Affidavit at the request of Mr. Bartholomew for the benefit of Village Bank of Florida to secure a line of credit. (R, Bar Ex 2; TR, p.91, L. 4-16, p.23, L. 7-13, and p.53, L. 9-21). Respondent in his June 29, 1992 Deposition responded that he knew the Affidavit and lease were to be shown to potential purchasers of the property to assure them that Respondent, as a tenant, had no claims against the current owner. (R, Bar Ex. 6, p.8, L. 3-11, and p.19, L. 8 through p.20, L. 3). In his Affidavit in support of Defendant's Motion for Summary Judgment filed in the case styled Bartholomew v. Johnson, Case No. 92-7907 LT, Respondent stated under oath:

> In January 1990 Plaintiff and Defendant were negotiating a sale of the property through my office. At the request of the proposed buyer and plaintiff, I executed a form estoppel letter, "Tenant's Affidavit", a copy being attached to the Complaint as Exhibit "B." The sale was not completed.
> (R, Bar Ex. 4, p.3).

The "Tenant's Affidavit" to which Respondent refers is the same one referred to herein. From Respondent's own sworn statements, it is clear that he knew that the Affidavit would be shown to and potentially relied on by third parties such as

Village Bank and potential purchasers in making financial decisions.

As to the veracity of the statements contained in the Affidavit, Respondent repeatedly acknowledged that most of the statements were false as between himself and Mr. and Mrs. Bartholomew. In the Affidavit, Respondent swore under oath that the lease dated September 15, 1989 constituted the entire agreement between the parties. (R, Bar Ex. 2). That statement is contrary to Respondent's testimony in his Deposition of June 29, 1992:

> Q. So do you maintain that you kept possession of the premises pursuant to this lease agreement --
>
> A. No, Sir.
>
> Q. --or is it pursuant to your oral agreement?
>
> A. It started as the oral agreement. I moved in under the oral agreement of both of them. This was done for third party purposes, primarily, not done for the benefit of Joseph, Victoria, or myself.
>
> Q. What were the terms of this oral agreement that you're referring to as far as rent terms?
>
> A. No rent. It was a three year no payment of moneys, no payment of rent, no payment of taxes, mostly for services I rendered Joseph from '79 on, joint services from '83 on, way in excess of $100,000.00, which I received no compensation. It was also for continue to give them jointly whatever advice they wanted jointly. (R, Bar Ex 6, p.9, L. 18 through p.10, L.8).

It has been Respondent's position since September, 1989, and throughout the Final Hearing in this matter, that he had

a collateral oral agreement with Mr. and Mrs. Bartholomew that he would not have to pay rent for a period of three years.

Respondent's sworn statements in the Affidavit that he was a lessee pursuant to the lease dated September 15, 1989, between himself and Joseph M. Bartholomew owner/landlord and that he had no claims, or set-offs against the landlord under the lease were misrepresentations of material facts. The statements imply that there was a valid lease between the parties and that there were no set-offs or defenses available to Respondent against the landlord under the lease. From Respondent's own statements, reproduced previously herein, and the findings of the Referee, it has already been established that the lease as drafted and executed was not a valid lease between Respondent and Bartholomew. The Affidavit does not concern whether the lease would be effective or enforceable by a third party but whether there existed a valid lease between Tenant and Landlord as of the date of the Affidavit. (R, Bar Ex. 2).

Furthermore, Respondent's own statements previously presented herein reveal that Respondent did in fact have a defense or counter-claim against his landlord for the invalidity or unenforceability of the lease due to improper execution.

Respondent further stated in his Deposition of June 29, 1992, that he occupied the office without paying rent in exchange for his providing continuing legal advice to Mr. and

Mrs. Bartholomew. (R, Bar Ex. 6, p.9, L. 18 through p.10, L. 8, previously reproduced herein). This is clearly in the nature of a set-off to the rent stated in the lease. Once again, the Affidavit did not state that Respondent had no defenses, counter-claims or set-offs valid as against third parties, but rather that Respondent had no such defenses, counter-claims or set-offs against Landlord under the lease. (R, Bar Ex.2).

Respondent's sworn statements in the Affidavit, that he was obligated to pay $751.33 per month under the terms of the lease and that he was current in his rent due Landlord, are false according to Respondent's subsequent statements. (R, Bar Ex. 2). In his Amended Answer and Affirmative Defenses filed in the civil suit for eviction and rents due, Respondent stated that the lease was not executed for the purpose of Respondent paying rent to Bartholomew and that the parties had an oral agreement that he would have possession rent free.

Respondent, at the Final Hearing herein before the Referee, denied that the above statement was false. Respondent previously stated during the deposition of June 29, 1992 that it was not a true statement to say that "tenant was obligated to pay monthly the rental payment of $751.33" and he affirmed this at the Final Hearing. (R, Bar Ex. 6, p.19, L. 1-25 and TR, p.119, L.6 through p.120, L. 13). However, Respondent asserted at the Final Hearing that because of the first clause of the statement, "Pursuant to the terms of said

lease", the statement in the Affidavit was merely a recitation of the terms as provided in the lease. He made an argument based on semantics, that the terms of the lease that say he was obligated to pay the rent are true, but that he was not actually obligated to pay the rent because of the oral agreement. (TR, p.118, L. 21 through p.120, L. 13). He further asserts that the next statement that "Tenant is current in its rent due landlord" was true because he owed no rent. (TR, p.119, L. 1-5 and R, Bar Ex. 2).

A reasonable interpretation of this language by a third party, for whose benefit it was executed, would be that the lease mentioned is in fact valid and, therefore, the Tenant is actually obligated to pay the rent according to its terms. This is especially true when read in conjunction with the second sentence contained in the paragraph which states that the tenant is current in its rent due. In other words, a reasonable interpretation by a third party would be that if the tenant is current in its rent, it must be paying the rent. Since the two sentences are included in the same paragraph, it is not reasonable to interpret them as completely separate and unrelated statements.

Respondent acknowledged in his Affidavit that the Affidavit was given for the benefit of Village Bank of Florida, pertaining to said Bank's relationship with Landlord. (R, Bar Ex.2). There is no real dispute as to the fact that Respondent drafted the Affidavit to his liking instead of

merely signing the one provided by the Bank. This was confirmed by Respondent's and Bartholomew's testimony at the Final Hearing. (TR, p.22, L. 3-23, and p.91, L. 4-16). Based on all of the foregoing, there was ample evidence in the record to support a finding that Respondent knowingly and intentionally drafted and executed an Affidavit containing false statements and misrepresentations of a material fact to third parties. The Referee's finding to the contrary was totally unsupported by the facts.

The only remaining issue on this point is whether the false Affidavit affected a third party. The Referee found that the execution of the Affidavit by Respondent did not and would not have affected the rights of any third party lending institution, but would have required Respondent to pay the rental price therein to the third party. The Referee further found that, if a third party had relied upon the lease or Affidavit, Respondent would have been bound to the terms of the document. (RR, Section III).

It was Respondent's argument throughout that there was no damage to the third party lending institution because the mortgage was timely paid and satisfied as of the time of the Final Hearing. However, economic damage to a third party is not required by the Rules Regulating The Florida Bar or as elements for the crimes of fraud or uttering a false document. The potential for damage to a third party is sufficient for a finding of guilt.

Furthermore, the purpose of such an Affidavit to a lending institution is not to bind the Tenant to the terms contained therein, but rather to confirm the information contained in the Landlord's tenant roll and application for a loan or credit. The Affidavit does not primarily concern the reliability of the Tenant, but instead the credit worthiness of the Landlord and his ability to repay the loan. Therefore, the lending institution suffers harm if those Affidavits contain false information because it has changed its position in reliance on the information contained in the Affidavit in determining whether or not to make the loan.

False affidavits potentially cause a lending institution to make a high risk loan without the knowledge that it is doing so and without adjusting terms accordingly. This is economic damage in and of itself.

Respondent's representations to the court that he would have been bound by the terms of the lease to the Village Bank, or any other third party who relied on it by virtue of his Affidavit, is not an accurate statement of the applicable law of estoppel. Neither does his being estopped to deny the truth of the matters he asserted in the Affidavit by a third party's defense of estoppel make the false statements somehow true as to the third party. This illogical argument, asserted by the Respondent and adopted by the Referee, rested solely in Respondent's misstatement of the applicable law of estoppel and manipulation of equitable principles and the facts of this

case to justify his wrongdoing. Estoppel is properly used as a shield, not a sword, and, therefore, one may not rely upon an estoppel against himself to justify his position or actions Waterman Memorial Hospital Association, Inv., v. Division of Retirement, Department of Administration, 424 So. 2d 57, 60 (Fla. 1st DCA 1982).

Equitable and legal estoppel are defenses available to third parties which act to put them in the same position they would have been in if the false statements they relied on had been true. The purpose is to protect innocent third parties from injury due to the fraud or misrepresentation of another. Griffin v. Bolen, 5 So. 2d 691, 693 (Fla. 1942). It does not make the statements true. An estoppel letter or affidavit may provide the third party lender with the remedies available under estoppel, such as damages or specific performance of a valid contract in appropriate factual situations where there is no adequate remedy at law; but it does not automatically put the lender in the shoes of the landlord as the Respondent argued to the Referee at the Final Hearing.

The Referee's consideration of the family relationship as a mitigating factor, and her finding that Respondent was not acting as an attorney because of the relationship were contrary to the facts of the case, the Rules Regulating The Florida Bar, and the law. In The Florida Bar v. Hosner, 520 So. 2d 567 (Fla. 1988), the Supreme Court held that a lawyer may be disciplined for engaging in conduct which is improper,

though not necessarily related to the practice of law. This Court stated in support of that ruling that "lawyers are necessarily held to a higher standard of conduct in business dealings than are non lawyers." Hosner at 568.

In a similar case to the one at issue, The Florida Bar v. Gentry, 447 So. 2d 1342 (Fla. 1984), a lawyer drafted a rental agreement between himself and his landlord and thereafter denied its validity because his wife had not joined him in its execution. Unlike the instant case, there were no allegations that Gentry knew at the time of drafting the agreement that it was unenforceable, or that Gentry was acting as the landlord's attorney. Nonetheless, Gentry was found guilty of violating Disciplinary Rule 1-102(A)(6) (engaging in conduct that reflects on fitness to practice law). In so finding, this Court stated: "Little confidence of the Bar can be expected if a lawyer seeks to escape from a personal contract because of errors created by that lawyer in its preparation or execution." Gentry at 1343 -1344. Gentry was suspended for sixth months.

The facts of the Gentry case are similar to the facts in the instant case. Respondent drafted and executed a lease the validity of which he later denied on many occasions including during the civil action for eviction and rent due, filed by Mr. Bartholomew.

Based on Gentry, Respondent's preparation or execution of an unenforceable lease and his subsequent denial of its

validity are sufficient acts to subject him to discipline. However, the presence of aggravating factors in the instant case warrant harsher discipline than was imposed by this Court in Gentry.

In a case involving a family relationship, The Florida Bar v. Jennings, 482 So. 2d 1365 (Fla. 1986), the attorney borrowed money from two sets of in-laws and prepared, filed, and recorded a mortgage and note as to each in-law purporting to encumber the same property as security. The attorney did not inform either in-law of his deal with or mortgage to the other. At the time the mortgages were recorded, they were subject to another lien already in foreclosure. There was no attorney-client relationship and Respondent was the only attorney involved and did all the legal work, according to the Referee's findings. The Referee found that Jennings had abused his status as an attorney to secure the loans from his relatives and was guilty of over reaching in his dealings with them. The Referee further found Jennings guilty of engaging in conduct contrary to honesty, justice, or good morals; of engaging in conduct involving dishonesty, fraud, deceit, or misrepresentations; and, of engaging in other misconduct adversely reflecting on his fitness to practice law.

In Jennings, this Court accepted the Referee's findings and recommendation of public reprimand. Justice Ehrlich concurred as to the Respondent's guilt but dissented as to the discipline imposed by the majority. Justice Ehrlich's

dissenting opinion states as follows: "The fact that the misconduct took place in a non-lawyer-client setting is no defense and the fact that the victims were in-laws can hardly be a mitigating factor." According to Justice Ehrlich, Jennings had "hoodwinked" his in-laws to their detriment, had committed fraud and deceit from the outset, and betrayed their trust throughout.

It is completely contrary to case law and the Florida Standards to find that an attorney's wrongdoing and violation of ethical obligations should be obviated due to a close family relationship to the client. If anything, such a family relationship would impose a greater fiduciary duty and ethical obligation upon the lawyer because of the higher degree of trust and confidence placed in the lawyer by his family. Respondent's behavior towards his son-in-law client was inexcusable. The presence of a family relationship, if considered at all, should be considered as an aggravating factor, not as a mitigating one.

Further, it was completely contrary to the facts and the testimony of Respondent and Bartholomew for the Referee to have found that Respondent was merely acting as a father and father-in-law and was not acting as an attorney for his son-in-law and daughter in the transactions here concerned. At the Final Hearing, Respondent gave the following answers to questions regarding the time period when the lease was executed:

Q. And you were his [Bartholomew's] attorney; is that correct?

A. I was his attorney and also his father-in-law, also his tenant.

Q. And he relied on you for legal advice; is that correct?

A. He often didn't adhere to it but he should have. He relied on it yes, sir. (TR, p.108, L. 21 through p.109, L.2).

The Referee therefore erred in not recommending that the Respondent be found guilty of violating the Rules Regulating The Florida Bar.

ISSUE II: SUSPENSION OF NO LESS THAN ONE YEAR IS APPROPRIATE IN LIGHT OF THE SERIOUSNESS OF RESPONDENT'S MISCONDUCT AND APPLICABLE AGGRAVATING FACTORS.

The facts and evidence in the instant case clearly support findings that Respondent:

(1) knowingly, and intentionally drafted and executed an unenforceable lease between himself and his client, Bartholomew;

(2) failed to adequately advise his client regarding the unenforceability of the lease;

(3) knowingly drafted and executed an Affidavit containing false statements or misrepresentations of material facts with the intent to mislead or defraud third parties; and,

(4) knowingly assisted Bartholomew, his client, in providing false information with the intent to mislead or defraud the lending institution for the purpose of obtaining a loan or credit.

Discipline was not argued before the Referee as there was a finding of not guilty. However, The Florida Bar offers Respondent's prior disciplinary history in the event this Court sets aside the Referee's finding of not guilty.

Suspension is an appropriate minimum sanction under the Florida Standards for Imposing Lawyer Sanctions. Standard 4.62 provides that suspension is appropriate when a lawyer knowingly deceives a client and causes injury or potential injury to the client. Standard 5.11(b) provides that disbarment is appropriate when a lawyer engages in serious

criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation or theft. Standard 5.11(f) provides for disbarment when a lawyer engages in any other conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

A number of aggravating factors are present in this case. Respondent has received prior discipline on two prior occasions. Standard 9.22(a). In 1987, Respondent received a public reprimand for writing letters to clients expressing his religious beliefs as to what would happen to the clients as a result of their nonpayment of his fees. The Florida Bar v. Johnson, 511 So. 2d 295 (Fla. 1987). Additionally, in April, 1992, Respondent was suspended for 15 days effective May 25, 1992 with one (1) year probation upon reinstatement, for violation of rules regarding trust account records and procedures.

Other aggravating factors applicable to Respondent's misconduct under Florida Standards for Imposing Lawyer Sanctions are:

Standard 9.22 (b) dishonest or selfish motive;

(g) refusal to acknowledge wrongful nature of conduct; and,

(i) substantial experience in the practice of law.

Respondent was clearly motivated by selfish interests in avoiding any legal obligation to pay rent for a three year period. Further, Respondent has not acknowledged any wrongdoing on his part. Instead, he has vigorously defended his actions. Respondent has had substantial experience in the practice of law having been in practice for over thirty (30) years at the time of his misconduct.

There are no mitigating factors as described in Standard 9.32(a) through (m) which are applicable to Respondent's misconduct.

Comparable disciplinary cases have imposed suspension as an appropriate sanction. In The Florida Bar v. Stillman, 606 So. 2d 360 (Fla. 1992), this Court suspended Stillman from the practice of law for one year for misconduct involving misrepresentations to lending institutions. Stillman had no prior disciplinary offenses, and as a mitigating factor, the Referee in Stillman found no motive for personal gain. However, this Court found that the conduct warranted a suspension of one year, due to the severity of the overall pattern of misconduct, the number of separate acts of fraudulent conduct, the large amount of money at risk, and the likelihood that Stillman had violated federal and state laws.

The Stillman case is similar to the instant case in that it involved misrepresentations and fraudulent statements to a lending institution and the execution of false documents. The facts in Stillman involved a scheme by the lawyer to conceal

secondary financing and mortgages in obtaining loans for his clients. Respondent's acts in assisting his client in fraudulently obtaining financing by verifying false rental income and false swearing in an Affidavit are similar in nature, if not degree to those in Stillman. Respondent's intentional preparation and execution of an invalid lease, his failure to adequately advise his client, and his selfish motive, considered together with aggravating factors including prior disciplinary offenses, warrants discipline at least as severe as that imposed in the Stillman case.

In The Florida Bar v. Siegel, 511 So. 2d 995, 998 (Fla. 1987), this Court suspended Siegel for 90 days based on the lawyer's "deliberate scheme to misrepresent facts in order to secure full financing of their purchase." The lawyer in Siegel misrepresented a cash down payment to the bank which was instead obtained by secondary financing. The lawyer also provided an Affidavit containing false statements and misrepresentations on which the bank relied in making its loan. There were no facts in the Siegel opinion which suggest that the bank had suffered any actual economic damage. Siegel had no prior disciplinary offenses.

The facts in Siegel are comparable to the facts in the instant case. Both cases involve misrepresentations and false statements to a financial institution to obtain a loan, false affidavits, and fraudulent intent. Respondent's misconduct warrants a more severe sanction than that imposed in Siegel

due to the aggravating factors herein.

In another similar case, The Florida Bar v. Nuckolls, 521 So. 2d 1120, (Fla. 1988), an attorney obtained 100% financing by misrepresenting the purchase price to the lender. This Court found that the lawyer's conduct "was a deliberate attempt to perpetrate a fraud on lenders ... based on ... misrepresentations." Nuckolls at 1121. Nuckolls had no prior disciplinary offenses. Once again, the facts in the case at Bar demonstrate additional misconduct on the part of the Respondent and aggravating factors, not present in the Nuckolls case.

ISSUE III: WHETHER THE RESPONDENT IS ENTITLED TO RECOVER COSTS FOR THESE DISCIPLINARY PROCEEDINGS.

The Report of Referee finding Respondent not guilty, reserved jurisdiction as to costs. On May 26, 1994, the Referee submitted an Additional Report of Referee finding costs for Respondent in the amount of $68.40. This Court established that the standard for setting costs in disciplinary actions is the discretionary approach, rather than the civil standard that costs generally follow the result of the suit. The Florida Bar v. Bosse, 609 So. 2d 1320, 1322 (Fla. 1992). The Florida Bar v. Chilton, 616 So. 2d 449 (Fla. 1993).

In light of the facts herein, the Respondent's costs should have been denied. The Referee concluded, although finding Respondent not guilty, that "his conduct is not necessarily approved". (RR, Section III). The facts of this case do not establish justification for the assessment of costs against The Bar, however, insignificant the amount. (RR, Section III).

Moreover, the facts of this case clearly and convincingly establish Respondent's guilt. The Florida Bar seeks leave upon a finding of guilt by this Court to file an Affidavit of Costs in support of The Bar costs.

CONCLUSION

The testimony and prior statements of Respondent, testimony of witnesses, and other evidence presented in this case clearly establish a violation of the Rules Regulating The Florida by the Respondent. Respondent's conduct involved fraud, misrepresentation and false swearing, as well as a breach of the duty owed to his client. Aggravating factors of prior disciplinary offenses, dishonest or selfish motive, lack of remorse, and substantial experience in the practice of law are applicable. There are no recognized mitigating factors present.

The evidence establishes that Respondent used his knowledge and skill as an attorney to circumvent the law and commit fraudulent acts for dishonest or selfish motives. Respondent's testimony and other evidence establish that Respondent has a lack of appreciation for the concept of "truth," and a lack of understanding of the implications associated with swearing under oath.

WHEREFORE, The Florida Bar respectfully requests this Court to reject the Referee's findings of fact and conclusions of law challenged by the Bar, specifically rejecting the Referee's recommendation that Respondent be found not guilty of violating Rule 3-4.3, Rule 3-4.4, Rule 4-4.1(a) and (b) and Rule 4-8.4(a),(b), and (c); find the Respondent guilty of violating the above Rules; suspend Respondent from the practice of law for one year; and assess the costs of the

disciplinary proceedings to Respondent.

Respectfully submitted,

DAVID R. RISTOFF
Branch Staff Counsel
The Florida Bar
Suite C-49
Tampa Airport Marriott Hotel
Tampa, Florida 33607
(813) 875-9821
Attorney No. 358576

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and a correct copy of the foregoing FLORIDA BAR'S INITIAL BRIEF has been furnished to H. EUGENE JOHNSON, Respondent, at 715 E. Bird Street, Suite 409, Tampa, Florida 33604-3109, and a copy to JOHN T. BERRY, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 5th day of July, 1994.

DAVID R. RISTOFF

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

Case No. 82,673
(TFB No. 93-10,983 (13C))

v.

H. EUGENE JOHNSON,
Respondent.

_____/

APPENDIX TO
THE FLORIDA BAR'S INITIAL BRIEF

LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into at Tampa, Florida on this 15th day of September, 1989, by and between JOSEPH M. BARTHOLOMEW (LANDLORD) and H. Eugene Johnson, Esquire (TENANT),

WITNESSETH:

1. Grant. Landlord, in consideration of the rents herein reserved to be paid and the covenants and agreements hereinafter contained, does hereby let, demise and lease unto the Tenant certain Premises located on the 4th floor of the four story office building (Building), Suite No. 409 located at 715 East Bird Street, Tampa, Hillsborough County, Florida. The area leased consists of approximately 1,127 square feet. The approximate location and boundaries of the Premises are outlined in the sketch attached hereto as "Exhibit A".

2. Term and Commencement Date. The term of this lease shall be for a period of 3 years, beginning on the 15th day of September, 1989, and ending at midnight on the 14th day of September, 1991. Tenant shall have possession of said Premises commencing September 10, 1989.

3. Rent. Tenant shall pay to Landlord as rent, at Landlord's address set forth below or such other address specified in writing, the sum of $ 751.33, payable monthly as designated in "Exhibit B" attached hereto. Tenant shall also pay monthly all applicable rental, privilege or sales taxes. Landlord acknowledges receipt from Tenant of $ 1,690.50 being the first and last month's rental hereof.

4. Security Deposit. As additional security for the full and prompt performance of all Tenant's obligations under the lease, concurrent with the execution of this lease, Tenant shall deposit with Landlord a security deposit in the amount of $ 0. If Tenant fails to comply with each of the terms, covenants, and conditions of this lease, Landlord may, but is not obligated to, apply the security deposit to payment of the costs and expenses (including reasonable attorneys' fees) Landlord incurs in connection with performing Tenant's obligations on Tenant's behalf, regaining possession of the Premises, or reletting the Premises without thereby curing Tenant's default or releasing Tenant from any of the Tenant's obligations under this lease. Landlord may commingle the security deposit with Landlord's other funds, and Landlord shall not be required to pay Tenant any interest on the security deposit. If Tenant fully and promptly performs all Tenant's obligations under this lease, within thirty (30) days following The expiration date, Landlord shall return the security deposit to Tenant at Tenant's address set forth in this lease or at such other address specified by Tenant in a notice to Landlord received by Landlord before the expiration date.

5. Parking. Tenant acknowledges that Tenant's right to utilize the parking facility serving the Building is in common with other tenants, except that certain parking spaces may be reserved from time to time for Landlord's employees.

6. Use. Tenant may use the Premises for any lawful purpose reasonably related to legal office. Tenant shall not permit the Premises to be used for any unlawful or immoral purpose. In the conduct of Tenant's business, Tenant shall comply with all applicable laws, ordinances, rules and regulations, the reasonable requirements of all insurance underwriters providing insurance to the Premises and the Building, and the Rules and Regulations attached to this lease as "Exhibit C", as they may be reasonably amended by Landlord from time to time. Tenant shall not use the Premises in a manner that increases the fire insurance premiums for the Building. Tenant shall not install safes, heavy file cabinets, bookcases, or other heavy equipment in the Premises without Landlord's prior approval of the installation, location, and method of installation, which approval shall not be unreasonably withheld. In the conduct of Tenant's business operations, Tenant shall not make any noise or odor objectionable to the other tenants, the public, or Landlord, and Tenant shall not create or maintain a nuisance in the Premises. Tenant shall not use, create, store or permit any toxic or hazardous material anywhere on the Premises. Tenant shall keep the Premises free of debris, dangerous, noxious, or offensive items, fire hazards, and undue vibration, heat or noise.

TFB EXH. 1

In the Tenant's use of the Premises, Tenant shall not obstruct or permit the obstruction of the sidewalks, driveways, entrances, passages, lobby, corridors, stairs, or elevators of the Building. Tenant may not move Tenant's furniture, equipment, supplies, or other personal property or permit deliveries of such items through the common areas except at such hours and upon such conditions as Landlord may reasonably require from time to time. Tenant shall reimburse Landlord within ten (10) days after Landlord's demand for any damage or injury to persons or property resulting from Tenant's movement of such items or delivery to Tenant of such items through the common areas.

7. Utilities and Services. Landlord shall furnish the following utilities and services to the Building and the Premises as reasonably required in connection with Tenant's use of the Premises in the proper season, Monday through Friday, 7:00 a.m. to 7:00 p.m.:

   (a) Janitorial services during non-business hours Monday through Friday.

   (b) Periodic trash removal.

   (c) Personnel elevator service and freight elevator service in common with other tenants.

   (d) Electricity for standard lights, air-conditioning and heating, and standard office equipment. Electricity for extraordinary office equipment and additional air-conditioning required in connection with computers or other extraordinary office equipment shall be separately metered and shall be available to Tenant only with Landlord's prior written approval. Landlord is not responsible to Tenant for any interruption in utility and other services unless caused by Landlord's negligence or willful misconduct.

8. Appurtenant Rights. During the Term, Landlord grants Tenant a non-exclusive right to use the common areas, including the right of ingress and egress to the Premises. This right may be exercised by Tenant, its agents, employees, invitees, and customers, subject to similar rights granted by Landlord from time to time to other parties, and subject to the Rules and Regulations attached to this lease as "Exhibit C", as they may be reasonably amended by Landlord from time to time. The term "common areas" means all portions of the Building and the real property used or intended to be used by Tenant in common with Landlord, other tenants and their respective employees, agents, licensees, and invitees, except as may be set forth in paragraph 5 of this lease, as to parking.

9. Right of Access. Landlord, and others authorized by Landlord, may enter the Premises at reasonable times for purposes reasonably related to Landlord's ownership and operation of the Building, including inspection, maintenance and repair, emergencies, and showing the Premises to prospective tenants or purchasers. During alterations or repairs Landlord may temporarily close doors, entry ways, corridors in the Building, and temporarily interrupt or suspend services and facilities without abatement of rent or affecting Tenant's obligation hereunder.

10. Maintenance, Repair and Replacement. Tenant shall, at Tenant's sole expense, promptly repair any injury or damage to the Building, the parking facility serving the Building, or the real property caused by Tenant's unauthorized use of the Premises or by the fault or neglect of Tenant, Tenant's employees, customers, invitees, and others permitted on the Premises by Tenant. If Tenant does not promptly and adequately perform its obligations under this paragraph after written notice from Landlord specifying the nature of Tenant's failure, in addition to any other remedy Landlord may have under this lease or pursuant to law, Landlord may perform Tenant's obligations on Tenant's behalf and Tenant shall, upon demand, reimburse Landlord for the reasonable costs and expenses so incurred. Landlord shall maintain, repair, and replace all other elements of the Building, the parking facility serving the building, and the real property, including plumbing, lighting, HVAC service, plate glass, and structural components. All repairs maintenance, and replacements by Landlord and Tenant shall be performed in a good workmanshiplike manner, in compliance with all applicable governmental laws,

regulations, ordinances, rules, and codes, and shall incorporate materials and techniques equal to or exceeding the quality of the items repaired, maintained, and replaced.

11. Leasehold Improvements. Tenant may (but is not required to) make alterations, additions and improvements within the Premises (the "leasehold improvements") necessary or desirable in connection with Tenant's business, provided however, that all leasehold improvements must have prior written approval from Landlord, which approval may be denied for any reason whatsoever.

All leasehold improvements shall be completed in a good and workmanshiplike manner by contractors approved in advance by Landlord, in full compliance with all applicable laws, plans and specifications approved in advance by Landlord. Landlord may refuse to approve Tenant's plans and specifications if Landlord determines, in the Landlord's sole discretion, that the leasehold improvements are not consistent in design or in quality of construction or installation with the standards of interior finish for the building established from time to time by Landlord.

All leasehold improvements left in or about the Premises on the termination of this lease are Landlord's property and Landlord may, at its option, either retain the leasehold improvements or dispose of them at Tenant's expense. Tenant shall reimburse Landlord upon demand for all Landlord's costs and expenses incurred in removing the leasehold improvements and repairing and restoring any damage to the Premises caused by such removal. This covenant shall survive the termination of this lease.

12. Indemnification. Tenant shall indemnify and defend Landlord from, and hold Landlord harmless against a ny claim, suit, liability, loss, damage, cost, and expense in connection with any construction work, additions, alterations, or improvements by Tenant in and about the Premises, or in connection with loss of life, personal injury, or damage to property arising from tenant's use or occupancy of the Premises, but not to the extent caused by the willful misconduct of Landlord, its agents of employees. This indemnity shall survive the termination of this Lease.

13. Subordination. This Lease and Tenant's right, title and interest in the Premises shall be subject and subordinate to the Lien of any mortgage now or hereafter encumbering the Premises, the Building or real property. Tenant shall, upon Landlord's request, execute, acknowledge and deliver to Landlord all documents Landlord may reasonably require confirming Tenant's subordination of its interest in the Premises to the interest of any holder of a mortgage encumbering the Premises, Building or real property. Tenant also agrees that it will recognize and honor any assignment of this Lease by the Landlord or assignment of the rentals hereunder by the Landlord as security or otherwise. However, nothing in this paragraph shall operate to disturb the occupancy of Tenant, as long as it is not in default in any of the terms of this Lease.

14. Assignment. Tenant shall not assign this Lease or encumber or sublet the Premises without Landlord's pri or written consent. Such consent may be granted upon such terms or conditions as the Landlord may impose and shall in no way operate to waive this covenant as to subsequent assignees. In the event of any assignment or subletting with consent of Landlord, Tenant shall remain bound and liable unto the Landlord for the full performance of the terms, covenants and conditions of this Lease, including the payment of rent.

15. Estoppel Certificate. Tenant shall, upon Landlord's request, execute, acknowledge and deliver to Landlord a written statement certifying that this Lease is in full force and effect, that it is unmodified (or specify the modifications) specifying the date through which all periodic payments required under this Lease have been paid and specifying any defaults of this Lease known to the Tenant.

16. Injuries and Loss. Landlord shall not be liable for any injury or damage to persons or property caused by or resulting from steam, electricity, gas, water, falling plaster or ceiling board, or any latent defects in the Building, or from any injury or damage resulting or arising from any other cause or happening whatsoever not due to the negligence of the Landlord, its agents, servants or employees; nor shall the Landlord or its agents

be liable for any such damage caused by other tenants or persons in the Building. Landlord shall not be liable for loss of property, including money, jewelry, securities or personal property of any kind or nature by theft or otherwise.

17. Mechanics' Liens. Tenant is not required or obliged under this Lease to make alterations or improvements to the Premises, and nothing in this Lease shall be construed as a consent by Landlord to subject Landlord's reversionary interest in the Premises to liability under the Florida Mechanics' Lien Law. If, as a result of the installation of Tenant's leasehold improvements on the Premises or Tenant's maintenance and repair of the Premises, a claim of lien is filed against the Premises, the Building or the real property, within ten (10) days after it is filed, Tenant shall either satisfy the claim of lien or transfer it to a bond as permitted by Chapter 713 of the Florida Statutes. If Tenant fails to do so within the 10-day period, Landlord may transfer the lien to a bond as permitted by Chapter 713 of the Florida Statutes, and Tenant shall reimburse Landlord for all Landlord's costs and expenses (including reasonable attorneys' fees) incurred in connection therewith.

18. Condemnation. If all of the Premises or the Building (or such a substantial portion of the Premises or the Building that the Premises are no longer suitable for Tenant's permitted use) are taken by the power of eminent domain (or are conveyed to the condemning authority under threat of condemnation), this Lease shall terminate on the date the condemning authority takes possession, and all periodic payments required of Tenant under this Lease shall be equitably adjusted. If a portion of the Premises of the Building is taken by the power of eminent domain (or conveyed to the condemning authority under threat of condemnation, and the Premises are not unsuitable for Tenant's permitted use, this Lease shall continue in full force and effect. To the extent possible following the taking, Landlord shall repair and restore those portions of the Premises and the Building originally provided by Landlord within 120 days of the date the condemning authority takes possession. During the period of repair and restoration, all periodic payments required of Tenant under this Lease shall abate in an amount bearing the same ratio to the total periodic payments otherwise due for such period as the usable portion of the Premises from time to time bears to the entire Premises, and all periodic payments required of Tenant under this Lease shall be equitably adjusted as of the date the condemning authority takes possession to reflect any permanent reduction in the useable portion of the Premises. Tenant agrees that all proceeds of condemnation (or of a conveyance to the condemning authority under threat of condemnation) are Landlord's, and Tenant shall not share in any such proceeds. Nothing in this paragraph shall prevent Tenant from pursuing any claim for business damages or moving expenses against the condemning authority, so long as the award paid to Tenant does not reduce the award or proceeds otherwise payable to Landlord.

19. Damage By Fire and Other Casualty. Tenant shall give Landlord prompt notice of any damage to the Premises by fire or other casualty. If the Premises or the Building are totally destroyed, this Lease shall terminate as of the date of the casualty, and all periodic payments required of Tenant under this Lease shall be equitably adjusted.

If either the Premises or the Building are so substantially damaged that they are wholly unsuitable for Tenant's permitted use this Lease shall not terminate. Within 120 days after the date of casualty, Landlord shall repair and restore those portions of the Premises and the Building originally provided by Landlord to substantially the condition existing immediately before the casualty. During the period of repair and restoration, all periodic payments required of Tenant under this Lease shall abate until the repair and restoration of the Premises is substantially complete and the Premises are suitable for Tenant's purpose.

If the Premises or the Building are damaged, but not so substantially as to be wholly unsuitable for Tenant's permitted use, this Lease shall not terminate. Within 120 days of the date of casualty, Landlord shall repair and restore those portions of the Premises and the Building originally provided by Landlord to substantially the same condition existing immediately before the casualty. During the period of repair and restoration, all periodic payments required to Tenant under this Lease shall abate in an amount bearing the same ratio to the total periodic payments otherwise due for such period as the unusable portion of the Premises from time to time bears to the entire Premises.

20. Default. Time is of the essence with regard to the performance of the Tenant's and the Landlord's obligations under this lease. Any of the following constitutes a default of this lease by Tenant:

(a) Should any installment of rent hereunder remain unpaid for a period of ten (10) days after written notice to Tenant that same is delinquent, the Landlord may at its option consider the Tenant as a tenant-at-will and may re-enter upon and repossess itself of the Premises, or may declare the entire rent for the unexpired term hereof as immediately due and payable and proceed to recover the same by appropriate legal proceedings. Tenant expressly gives to Landlord a special lien on all tangible personal property of the Tenant on the leased Premises for the payment of any sum due the Landlord hereunder for rent or otherwise.

(b) Failure to cure any other default of Tenant's obligations under this lease for a period of thirty (30) days after written notice to Tenant specifying the nature of the default; provided, however, that if the default is determined by Landlord to be one that cannot reasonably be cured within thirty (30) days, Tenant shall have a reasonable amount of additional time to cure the default, provided Tenant institutes action to cure the default within the thirty (30) day period and Tenant proceeds with reasonable diligence to cure the default.

(c) Abandonment of the Premises for a period of seven (7) consecutive days.

(d) Tenant files a voluntary petition of bankruptcy or is adjudicated insolvent or bankrupt, or makes an assignment for the benefit of creditors, or files a petition for relief under any applicable bankruptcy law, or consents to the appointment of a trustee or receiver of all or any substantial part of its property.

(e) Any involuntary petition under any applicable bankruptcy law is filed against Tenant and is not vacated within 60 days.

21. Landlord's Remedies. Upon Tenant's default and the expiration of any applicable grace period, Landlord may, at Landlord's option, take any one or more of the following actions without further notice or demand.

(a) Declare all rent for the entire remaining portion of the term immediately due and payable.

(b) Bring an action against Tenant to collect all rent or other sums due and owing the Landlord, or to enforce any other term or provision of this lease.

(c) Terminate this lease by three days written notice to Tenant. In the event of termination, Tenant agrees to immediately surrender possession of Premises. If Landlord terminates this lease, Landlord may recover from Tenant all damages Landlord incurs by reason of Tenant's default, including reasonable attorney's fees.

(d) Landlord may pay or perform, or cause to be paid or performed, any obligation of Tenant under this lease, for Tenant's account, and Tenant shall promptly reimburse Landlord, upon demand, for all Landlord's costs and expense (including reasonable attorney's fees) so incurred.

(e) Relet the Premises for Tenant's account without terminating this lease. All sums received by Landlord from reletting shall be applied first to Landlord's reasonable costs and expenses incurred in reletting (including reasonable attorney's fees, advertising costs, brokerage commissions, and repairs to the Premises), then to payment of all sums due under this lease. Upon Landlord's demand, Tenant shall pay any deficiency to Landlord as it arises.

Landlord's remedies in this paragraph are cumulative and in addition to any other remedies available at law or in equity.

22. Attorney's Fees and Costs. In any legal action (including appellate proceedings) filed with respect to this lease, the prevailing party shall receive reimbursement from the other party for its costs and expenses, including reasonable attorney's fees.

23. Condition of Premises. Tenant acknowledges that the tenant has inspected the Premises and that the Premises are suitable for Tenant's use. Tenant accepts the Premises "as-is". Landlord makes no warranties or representations as to the condition of the Premises or their suitability for Tenant's use except as stated herein.

24. Landlord's Exculpation and Tenant's Attornment. If Landlord sells the Building or the Property, Landlord shall be released from any future obligation or liability to Tenant under this Lease. This Lease shall not be affected by the sale, and tenant shall, upon request, attorn to the purchaser.

25. Surrender. Upon the expiration or the termination of this Lease, Tenant shall remove all Tenant's personal property and trade fixtures from the Premises, and Tenant shall surrender possession of the Premises to Landlord in as good condition as existed when Tenant took possession, reasonable wear and tear and insured casualty damages excepted. All wear and tear and insured casualty damages excepted. All personal property or trade fixtures not removed by Tenant shall, upon the expiration or termination of this Lease, become Landlord's property, and Landlord may, at its option, either retain the personal property or trade fixtures or dispose of them at Tenant's expense. Tenant shall reimburse Landlord on demand for all Landlord's expenses incurred in connection with disposing of Tenant's personal property and trade fixtures. This obligation of tenant shall survive the expiration or termination of this Lease.

26. Hold Over. If Tenant holds over after the expiration of this Lease, Landlord shall be entitled to collect Re nt at a rate equal to 200% of the rate in effect at the time of expiration or termination.

27. Quiet Enjoyment. Landlord covenants that he has good right and authority to lease said Premises. If Ten ant pays the Rent and performs all of the terms, covenants and conditions required of Tenant under this Lease, Landlord covenants that Tenant may peaceably and quietly have, hold and covenants that Tenant may peaceably and quietly have, hold and enjoy the Premises during the Term, subject to the rights of all existing and future lessees of the entire Building, and all existing and future lenders holding mortgages encumbering the Premises, Building, or the real property.

28. Recording. It is mutually agreed that this Lease shall be withheld from record in the Public Records of Hillsborough County, Florida.

29. Tenant's Insurance. Tenant shall at all times during the Term hereof, at Tenant's sole expense, maintain comprehensive general liability insurance, insuring the Landlord and the Premises with a combined single limit coverage of not less than $500,000.00, with a reputable insurance underwriter reasonably acceptable to Landlord. All policies shall name Landlord as an additional insured; and all policies shall name Landlord as an additional insured; and all policies shall include a provision that the coverage may not be reduced or cancelled without thirty (30) days prior written notice to Landlord. The Certificates of Insurance required by this Lease upon request, shall be delivered to the Landlord as evidence of the compliance with the terms and conditions herein.

30. Notices. All notices given in connection with this Lease shall be in writing, and shall be considered delivered when delivered by hand or when mailed by United States Mail, registered or certified, return receipt requested, postage prepaid, to the parties at the addresses below:

Landlord	Tenant
Joseph M. Bartholomew	H. Eugene Johnson
7500 North Nebraska Avenue	715 E. Bird Street, Suite 409
Tampa, Florida 33604	Tampa, FL 33604

31. Taxes: Immediately after the end of each lease year hereof, Tenant shall pay as additional rental, a sum equal to .0225 percent of the amount if any) by which the real estate taxes payable during the calendar year that ended immediately preceding or concurrently with the end of such lease year exceeds such real estate taxes payable during the calendar year of 1989. The percentage of payment is determined by taking the total square footage of the leasable Building (50,000 sq. ft.) and dividing same into the total square footage leased to Tenant. The term "real estate taxes" shall be deemed to mean all real estate taxes and assessments levied against the entire Building and all land and improvements used in the connection therewith. Such additional rental shall be paid by Tenant within 30 days after Tenant's receipt of written demand thereof by Landlord.

32. Broker's Fees. Landlord and Tenant warrant to each other that no broker was a procuring cause of this Lease. Landlord and Tenant shall indemnify, defend, and hold each other harmless from all claims, losses, suits, damages, costs, and expenses (including attorney's fees) that the indemnified party may suffer in connection with an assertion by a broker or other finding agent other than the broker specified in this paragraph that he or she assisted or otherwise dealt with the indemnifying party with respect to the negotiation or execution of this Lease.

33. Entire Agreement. This Lease and the attached exhibits, addendums, and riders (if any) constitute the entire agreement between the parties. No subsequent alteration, amendment, or addition to this Lease will bind the Landlord or the Tenant unless it is in writing and signed by the party to be bound.

34. Counterparts. This Lease may be executed in two or more identical counterparts, each of which shall be treated as an original.

IN WITNESS WHEREOF, the parties have executed and delivered this Lease on the dates set forth with their signatures.

Witnesses:

As to Landlord

JOSEPH M. BARTHOLOMEW
Landlord

Dated: 9/15/89

Witnesses:

As To Tenant

Tenant

Dated: 9/15/89

Exhibit B

Rent Schedule

Year	Rate	Sq. Ft.	Monthly	Yearly Rental
1.	$ 8.00	1,127	$ 751.33	$ 9,016.00
2.	10.00	1,127	939.17	11,270.00
3.	10.00	1,127	939.17	11,270.00
4.				
5.				

For the term of 3 years the total rental (plus applicable rental tax) shall be:

$ 33,449.36.

Tenant

Landlord

TENANT'S AFFIDAVIT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

BEFORE ME, the undersigned authority, personally appeared H. EUGENE JOHNSON (hereinafter referred to as Tenant), who being first duly sworn deposes and says:

1. Tenant has personal knowledge of all matters alleged herein.

2. Tenant presently is the Lessee of certain premises of approximately 1127 square feet in The North Tampa Center, 715 East Bird Street, Tampa, Florida, pursuant to that certain Lease dated SEPT 15, 1989 between Tenant and Joseph M. Bartholomew, Owner/Landlord.

3. This Lease has not been assigned by Tenant, amended or modified, and said Lease constitutes the entire agreement between Tenant and Landlord with respect to said premises.

4. Any and all conditions of an enducement nature contained in the Lease have been performed or have occurred to Tenant's satisfaction.

5. Landlord is not in default to Tenant with respect to any obligation under said Lease, and Tenant does not have any defenses, counterclaims or set-offs against Landlord under this Lease.

6. Tenant has made no improvements or repairs to said premises during the ninety (90) day period immediately preceding the date of this Affidavit; and there are no unpaid bills of any nature for labor or materials used in improving said premises.

7. Pursuant to the terms of said Lease, Tenant is obligated to pay monthly the rental payment (exclusion of taxes) of $ 751.33. Tenant is current in its rent due Landlord.

8. Tenant does hereby acknowledge that this Affidavit is given to the benefit of The Village Bank Of Florida, pertaining to said Bank's relationship with Landlord.

TENANT

Sworn to and subscribed to before me this 12th day of January, 1990.

Notary Public State of Florida
My Commission Expires: Notary Public, State of Florida My Commission Exp. Sept. 13, 1993

TFB EXH. 2