IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

THOMAS ANTHONY SOFO,

Respondent.
_____/

Case No. 84,133
[TFB Case No. 93-30,655 (10B)]

RESPONDENT'S REPLY BRIEF

A grave injustice would be perpetrated upon Respondent if this Court adopts the position advanced by the Florida Bar, hereinafter "the Bar", in its Answer. The melodramatic tone of this introduction is fully warranted since the issue presented involves the livelihood and economic survival of Respondent and his family. The one year suspension sought by the Bar would deprive Respondent and his family of its support and effectively end the legal career of Respondent. Inasmuch as Respondent has dedicated his adult life to the practice of law and the service of his clients, this Court should be willing to examine very closely the entire factual setting in which the error of judgment committed by Respondent occurred.

First and foremost, there is a fundamental misunderstanding of the nature of the conflict and Respondent's role therein. Respondent realizes that by confining this appeal to the issue of appropriate sanctions, he has waived argument with regard to the question of whether there was a conflict. This does not however relegate Respondent to the active misrepresentation of that conflict as advanced by the Bar. An accurate understanding of the conflictual context is important as it relates to the culpability of Respondent for purposes of determining the appropriate sanctions.

STATEMENT OF THE FACTS

Respondent's role as attorney for both Micro-Environmental, Inc., hereinafter "Micro", and New Earth Environmental Technologies, Inc., hereinafter "Neetco", evolved over time. The conflict, such as it was, was open, acknowledged by all the relevant client interests, each of whom was a sophisticated businessman with independent counsel or was an attorney himself, and was actively and unanimously solicited by those interests. While Respondent was initially solely the attorney for Micro, upon the acquisition of all the assets of Micro by Neetco, the principals of both corporations requested Respondent to continue in his capacity as general counsel for the resulting company, i.e., Neetco.

At this point Micro was a corporation without any assets or active function. Micro was not dissolved only because, as the holder of a series of confidentiality agreements with third parties, there was a concern as to the blanket assignability of such agreements to Neetco. Therefore, it was decided that Micro should remain in a dormant existence in the event that Neetco should need to utilize Micro to enforce any of the confidentiality agreements.

Not even the compensation to be paid by Neetco for the Micro assets was to be paid to or via Micro. The principals of Micro, including Respondent, each were individually named in the Acquisition Agreement and each individually executed that Agreement. (A copy of the Acquisition Agreement was entered in to the record at the hearing before the Referee and is included for the Court's convenience in the accompanying Appendix. See A1) In addition, paragraph 11 of the Acquisition Agreement itself provided for the employment of the Micro principals. The employment was for a period of five years and included an additional portion of the purchase price,

in excess of that set forth in the Acquisition Agreement proper, some 1.2 million additional dollars, allocated among the respective principals as bonus compensation, to be paid regardless of the circumstances of termination, even if for cause.

Whereas Micro and its principals had substantially performed, Neetco's performance under the acquisition agreement was essentially executory in nature, i.e., Neetco was to pay for the purchase of the Micro assets by paying a percentage of Neetco's adjusted gross profits to the Micro principals. Once Neetco assumed possession and operation of the Micro assets, Respondent's role as general counsel was "conflicted" to the extent that he and the other principals of Micro were still owed payment for the transfer of the Micro assets, i.e., Respondent was a creditor of Neetco. Again, this potential for conflict was open, recognized by all the parties, invited by the principals of Neetco, and essentially waived. Respondent stresses that he is not advancing the position that this was the best decision he has ever made, nor that he did not fail in recognizing the seminal conflict within which he had permitted himself to become enmeshed. The foregoing general factual background is offered to place the balance of the specific factual setting in perspective, not by way of exoneration.

During the early months of the Neetco era the arrangement was essentially harmonious. As time passed, however, Respondent and the other principals of Micro became concerned as to the ability and ultimately the intentions of Neetco to perform. Even more to the point, as far as Respondent's own participation in the endeavor is concerned, Neetco began evidencing a willingness to pursue several unethical and ultimately illegal courses of action.

Mr. Nolan, the initial individual complainant in this action, himself a member of the Florida Bar, and the sole witness at the hearing before the Referee, instructed

Respondent to file fraudulent tax returns (IRS Form 941) indicating that Neetco had no employees. Not only were there several ongoing employment contracts initiated via the Acquisition Agreement, there were at various times 4-7 additional employees in the Michigan office alone! When Respondent refused to file such a fraudulent statement with the IRS, Nolan, as respondent later learned, executed and submitted the form himself. (A copy of that IRS 941, entered into the record at the hearing before the Referee, is included in the accompanying Appendix. See A2.)

In similar duplicitous fashion, Neetco prepared and tendered to potential investors a private placement memorandum using financials supplied by Mr. Nolan. The financials were grossly inaccurate, failing to even mention the nearly two million dollar outstanding obligation of Neetco to yet pay for the assets.

There were other instances which cumulatively convinced Respondent that his advice would not be followed, nor his warnings heeded, and that he was dealing with scoundrels. Again, the purpose in providing the above examples is not to have this court revisit the question of conflict as Respondent cedes that the point has been resolved against him. Rather, these specific episodes are included to provide the contextual orientation immediately preceding the composition of the fateful letters of August 31, 1992.

As the Summer of 1992 progressed, Respondent wrote the principals of Neetco more than two dozen letters setting forth his concerns with regard to Neetco's compliance with certain tax and securities laws, a number of other executory contracts to which Neetco was a party, as well as concerns over Neetco's performance on its contract to pay for the assets it had acquired from Micro. Any general counsel would have needed to address the numerous festering situations inasmuch as they all

presented legal exposure to the company, regardless to whom performance was owed. This correspondence is all in the possession of the Bar and this Court may take further judicial notice of it as it was included as exhibits to the pleadings in the civil case between the parties. AWT, NEETCO, et al. vs. MICRO, et al. vs. Chapman, et al., Case No.: GC-G-92-2625, Tenth Judicial Circuit, Polk County.

During this same time frame, Neetco attempted to renegotiate its contract with the principals of Micro. Respondent was the spokesperson for Micro in these negotiations, just as he had been in the initial negotiations leading up to the Acquisition Agreement. The conflict at this late juncture of the relationship continued to be open, invited, and accepted by all concerned.

None of the actual or potential conflicts described above was included as the subject of this case. It was only the letters of August 31, and apparently the second of those two letters, that triggered the cry of "foul" from Nolan and ultimately the Bar. (See Appendix, A3 and A4.) Respondent indeed erred in presenting the Micro ultimatum, i.e., the first letter of August 31, 1992, to Neetco on Neetco stationery. Respondent was so accustomed to writing internally to the Neetco principals on the Neetco letterhead, even during the contract renegotiations, that he inadvertently signed the first letter of August 31, 1992 as it was presented to him by his secretary, even though it should more appropriately have gone out on Micro or personal stationery. Respondent however believes that the Bar and the Referee make too much of what was essentially a scrivener's error. The mechanical mistake of using the Neetco letterhead prejudiced no one inasmuch as the letter was only sent to the Neetco principals, there were no other recipients of the first letter.

The second of the two August 31, 1992 letters was sent out on Micro stationery, not Neetco letterhead as claimed by the bar in its Answer brief. (See line 7, page 6 of The Florida Bar's Answer Brief; but cf. A4.) The letter was copied to the Neetco Board of Directors, our patent attorney (John McGarry), and entities on a "Distribution List". This action was taken with notice to all the parties and was in no way secretive or concealed.

As the record reflects, the rationale for the second letter was that it was by then abundantly clear that Neetco had not only committed anticipatory breaches of the executory Acquisition Agreement but had gone so far as to repudiate it as well. The decsion by the principals of Micro to rescind was a fait accompli by time any third parties were tendered a copy of the second August 31st letter in the days that followed.

The reference in the second letter to a "distribution list" was to the former customers of Micro. Respondent could not have sent the letter to anyone other than Respondent's own former customers since Neetco never shared its customer list with the Michigan office. (See also Affidavit of Michael Skrzycki, especially paragraphs 9-11, an exhibit at the hearing before the Referee and included in the Appendix herein, A5.) It may well be true that during the Micro association with Neetco this group of Micro contacts were also considered to be potential customers of Neetco and this seems to have troubled the Referee. It is also the basis for Respondent's ultimate acquiescence in accepting the finding of conflict below. Nevertheless, it is at the crux of the matter concerning the de minimis nature of Respondent's infraction that this subset of potential Neetco customers never lost their characterization as former customers of Micro. Micro was entitled to inform its prior customers that it had withdrawn from the Neetco arrangement and had resumed business. The fact that

Respondent authored the letter is no more the practice of law than if Respondent gave one of those customers a demonstration on the use of the products.

As to the timing of the letter to customers, the Referee erred. The employment contracts were clearly a part of the Acquisition Agreement. (See paragraph 11 of that Agreement in the attached Appendix, A1.) Upon receiving the second letter of August 31, 1992, revoking the underlying contract which was the source of that employment, no one at Neetco could have possibly considered Respondent to be still employed by Neetco. Without the Acquisition Agreement there was no employment! A further "resignation" would have been redundant. And since the customers to whom the second letter was subsequently copied received it on Micro letterhead, not Neetco letterhead as the Bar erroneously claims, there was no attempt to mislead third parties with some apparent authority derived from Neetco.

It was clear to all the principals that they were in an adversarial posture at the close of business on August 31, 1992, and it was at this juncture that Respondent officially severed his representation of Neetco. The conflict was now actual, sides were chosen, and eventually the entire matter was litigated. In reviewing this matter with Boyd A. Henderson, Esq., the former Chairman of the Ethics Committee of the Michigan Bar for nearly a decade, Henderson was incredulous that the letter to former customers has drawn such fire. In his expert opinion, the letter itself did not constitute the practice of law falling within the Canons. Respondent was not providing legal counsel to two opposing parties after it was apparent they had become adversaries and did not have common interests. The letter itself was a business announcement which could just as easily have emanated from any of the other principals of Micro.

When it became obvious to the remaining principals of Neetco that Micro and Respondent intended to fully air their grievances before the IRS and the Florida Department of Banking and Finance, and to pursue those principals personally in a civil suit, Respondent was contacted by various Neetco principals to apply pressure to forestall the above. Respondent was warned that Neetco would move against his license if he maintained his course of action. When Respondent proved unresponsive to the threats, this matter was initiated by Mr. Nolan, a Neetco principal.

SUMMARY OF ARGUMENT

In light of the background circumstances giving rise to the conflict, the recommendation of a one year suspension is onerous and inappropriate. Respondent has demonstrated that he understands the difficulty with assuming the representational responsibility he undertook even though invited by all concerned to do so. Micro was assumed to be dormant and simply awaiting the performance of Neetco. Respondent should have anticipated that such a situation would have only worked if there had been no problems whatsoever. Respondent also has learned the hard way of the difficulties presented in undertaking a business relationship with entities that presume to also be clients at various times.

Micro's former customers were copied with the revocation letter only after it became clear that Neetco would not act responsibly and the brewing conflict among the principals had resulted in the cessation of joint operations. It simply announced that Micro was back in business without Neetco, a true statement. The statement was and is simply descriptive of the Micro business venture and in itself employed no confidential information from or about Neetco.

Against this background, a conflict which was created through no active intention of Respondent and from which he extricated himself as soon as he realized that the situation was untenable, are a series of factors in mitigation to which the Bar either gives too little weight or ignored altogether. Concurrently there is the spectre of real injustice emanating from this very same factual setting in imposing such a harsh sanction on Respondent when other members of the Bar, i.e., Nolan, are not sanctioned at all for more egregious conduct.

ARGUMENT

THE REFEREE'S RECOMMENDATION OF A ONE YEAR SUSPENSION IS TOO SEVERE A SANCTION AND A REPRIMAND IS WARRANTED IN THIS CASE

Respondent accepts the finding of conflict and has limited this appeal to the question of sanctions. Respondent has been stupid in allowing himself to become embroiled in this unfortunate mess. Respondent does wonder, however, if the original complaint was concerned with Respondent's use of Neetco information in an adversarial context, why other arguably more adversarial conduct of Respondent was not the subject of the complaint in this matter. No motion was ever made to remove Respondent as counsel in the civil case that ensued between the parties. Respondent also wonders why that fact was also omitted from the instant case as well as why the present complaint failed to take issue with Respondent's report to the Florida Division of Banking and Finance; Respondent's call to the one investor via the Neetco private placement memorandum of whom he was aware concerning its inaccuracies; and Respondent's report to the IRS concerning the fraudulent tax filings by Neetco. These actions were clearly adverse to Neetco but did not draw complaint. Respondent does not raise the question simply for its rhetorical effect but to illustrate a point. This Court too should be interested in knowing why. It is because in each of these other instances, the conduct of Bar member Nolan, the initial individual complainant and the Bar's only witness, would have come under scrutiny which it could not withstand.

As the former head of the commercial division at Montgomery, Searcy, and Denny and later with Montgomery and Larmoyeaux, both of West Palm Beach, in the

late '80's Respondent presided over approximately 30 cases in litigation which ultimately led to the collapse of First American Bank of Palm Beach, Florida's largest commercial banking failure as of that date. During that same time frame, Respondent was also heavily involved in the defense of the officers of Royal Palm Savings, the second largest thrift failure within Florida up to that date. These experiences made Respondent keenly aware of the duty of lawyers to the public trust and the potential liability for participating in the type of fraudulent activities which Neetco was intent on pursuing. As Respondent noted in one of his earliest submissions in this case, the lawyers and firms in the Keating savings and loan case learned the hard way that they would and could be held complicit for their participation in questionable financial transactions. Respondent refused to participate in the fraud being pursued by Neetco, when he realized his efforts to prevent or remedy the situation were falling on deaf ears, he removed himself and resumed his former business.

MITIGATING FACTORS

The Bar has alleged that Respondent acted with a "selfish motivation". (See page 13 of the Bar's Answer Brief.) Nothing could be further from the truth. The rescission of the contract left Respondent immediately unemployed and heavily in debt with less than $200 in the bank and a family of three to support. Respondent had put all his resources into Micro. Respondent was left with no way to make his house payments, car payments, obtain health insurance, etc. If Respondent had been self-interested he would have played along, received his salary and a fair portion of the ill-gotten investment money which was to be used to pay off his interest in Micro. How dare the Bar attempt to characterize the actions of Respondent as selfish. Many people believe that they would do the right thing and walk away from even their livelihood if necessary in order to maintain their ethical principles. Fortunately most people do not have to face that type of challenge with any regularity. Respondent did,

the author of the Bar's Answer probably has not. To characterize Respondent's actions as motivated by selfishness adds insult to the injury already caused by this review and is frankly unconscionable. Indeed, Respondent as well as Micro were bankrupt as a result of their decision to withdraw from the arrangement with Neetco, which was their sole means of support. Respondent alone knows his motivation for taking such a difficult step. If anything, the Bar should be supportive not critical.

The "financial situation" of Respondent to which the Bar makes repeated reference is also apparently misunderstood. It was referred to by Respondnet only in passing, for the purposes of explaining why independent counsel was not obtained to pursue any of the issues described above. Respondent and Micro simply could not afford to retain counsel. Respondent's financial position was not tendered by Respondent by way of excuse or explanation for the course respondent pursued, but rather to point out that Respondent did not have the means to have such actions pursued on his behalf by independent counsel as he would have preferred.

Respondent takes strong exception to the Bar's argument that information concerning Respondent's history, good character, and general reputation "should not be considered upon this review". (See page 14 of Bar 's Answer Brief.) Bar Counsel himself, upon his receipt of The Report of the Referee, dated April 26, 1995, stated to Respondent that Bar Counsel was "surprised" disciplinary measures were recommended at that particular juncture since the typical procedural path in such matters would take up the subject of discipline <u>after</u> Respondent was allowed the opportunity to submit such evidence. Respondent too, as noted in the introduction to its Petition for Review, was under a similar impression. Thus, the March 31, 1995 hearing was mainly confined to the presentation of facts and argument directed to the underlying conflict issue.

For the Bar to take the position that information the Bar as well as Respondent thought was to be presented at a later stage should not now be considered by the court is a low blow. In fact, if this Court is of a mind to ignore as irrelevant a 20 year career of legal and civic accomplishment in its review of the appropriate sanctions, you may set this Reply down at this point, read no further, and accept my resignation forthwith. Respondent is shocked that Bar counsel would make such an argument, especially in light of his previous statement to Respondent. The Rules may permit Bar counsel to advance such a position, but it is inherently facetious and ultimately unjust.

The Bar is flippant in its dismissal of the expense and toll of the extensive civil litigation which followed on the heals of the divorce of the two companies and the losses incurred as a result of the settlement of that litigation. It is hard to understand why the Bar, of all entities, does not understand the "cost" of more than a thousand hours of legal work, repeated trips to Florida, the human toll, etc. I assume this is because the author of the Answer does not litigate at the trial level. This does not include the sanction of the effective the loss of the technology. Respondent's life savings were utilized in pursuing the development of the Micro products, which, if nothing else, were ostensibly unique. The net result of the Neetco episode was that the proprietary information was conveyed to outsiders, i.e., the non-Micro principals of Neetco, and the Micro principals did not receive one cent of the purchase price nor did they receive their guaranteed compensation under their employment contracts with Neetco. The Bar's failure to appreciate the severity of the losses already suffered by Respondent arising out of this situation is difficult to fathom.

The Bar's Answer makes passing reference to Nolan's testimony to the effect that the net result of Respondent's action on Neetco was that "it destroyed the

company". (See page 24 of Bar's Answer Brief.) What Mr. Nolan did not say is that the Order of the Polk County Circuit Court, dated June 24, 1993, required the principals of Neetco to cease doing business in the name of Neetco and resume operations in its former name, Gulf States Environmental. (See paragraph 6 of that Order which is included in the accompanying Appendix, A6.) In addition, judicial notice should be given to the Gulf States listing on the "Miscellaneous Oil Spill Control Agents" portion of the *National Contingency Plan Product Schedule* issued by the United States Environmental Protection Agency, the sine qua non for use of the Micro products in open environments. (See Appendix, A7.) That listing indicates that Gulf States reappeared on the list in December of 1993, more than one full year after than the events complained of, a vital corporation doing business in the products The Neetco principals immediately regrouped, renamed their effort, and began offering the same products under different names. (See composite exhibit in Appendix, A8, obtained from the EPA via FOIA .)

In recent months Respondent has received multifold copies of the current Neetco/Gulf States marketing materials and promotional materials as the former Neetco gang rides again. They have even represented to potential customers that they have a half dozen new products pending review before the EPA and scheduled for imminent approval. A check with the EPA reveals no such submissions. The Bar's sole witness has perjured himself on more than one occasion in this process and does so again with impunity through lack of candor on this point. More about that later. Suffice it to say, Respondent was not prepared at the hearing to contest such far ranging misrepresentations and has only himself to blame for not anticipating the scope of duplicity he would confront.

CASE LAW DISTINGUISHED

The cases cited by the Bar in its Answer are all distinguishable from the present matter on at least one level. The conduct of the attorney in each cited case was more egregious than that of Respondent, usually involving a conflict plus some other malfeasance or nonfeasance.

In The Florida Bar v. Reed, 644 So. 2d 1355 (Fla. 1994), the attorney inserted her name as grantee and took title to the property without tendering consideration. In addition, attorney Reed wrote checks on an escrow account even though she knew funds were in dispute. Thus, in addition to having a conflict, the attorney apparently flirted with forgery, conversion, and misappropriation of escrow funds. Respondent had a conflict and wrote his former customers a letter announcing Micro's departure from Neetco. There was no other malfeasance.

In The Florida Bar v. Mastrilli, 614 So. 2d 1081 (Fla. 1993), the attorney had an obvious actual conflict from the beginning, not an incipient one such as initially presented in the present matter. Mastrilli actually sued one of his clients on behalf of another client. Respondent was named as a party by Neetco in the ensuing litigation, but that litigation in which the parties engaged was subsequent to Respondent's departure. The fact that Respondent's defense and countersuit were applicable to Micro as well is not the equivalent of suing a present client on behalf of another existing client.

The attorney in The Florida Bar v. Jameison, 426, So. 2d 16 (Fla. 1983), is acknowledged by the Bar as having had a primarily selfish purpose to acquire seed money for his own personal foundation and failed to advise the client to seek

independent counsel. In addition Jameison's apparently dishonest failure to inform client of a "lost certificate" of deposit was deemed grossly negligent. Respondent was not grossly negligent in his handling the affairs of Neetco. Each of the principals of Neetco had independent counsel or, in the case of Nolan, was an attorney himself.

In the Florida Bar v. Pahules, 334 So. 2d 23 (Fla. 1976), the attorney was also guilty of putting into place an addendum which "grossly benefited" his corporation without revealing its existence to investors in an affiliated subsidiary corporation for which he sought investors. As in Reed, supra, there was also mismanagement of escrow funds. Thus, Pahules, in addition to his conflict, apparently engaged in stock fraud as well as negligent fiduciary conduct as it related to the management of the escrow account entrusted to him.

Lastly, in The Florida Bar v Moore, 194 So. 2d 264 (Fla. 1966), the attorney failed to inform the trustees of their duty to the trust remainderman, thereby running the risk that the remainderman's interest be prejudiced. In the present case there is no allegation that any party was not fully and appropriately advised. Respondent was thorough in his detailed advice to Neetco during the Summer of '92 as he played out various possible scenarios confronting Neetco across a wide range of issues.

THE FLORIDA BAR

Respondent's sense of justice compels him to state for the record that the Bar disciplinary process is greatly flawed. While Respondent accepts and understands the particular course of events that brings him before this Court, his experience with the Bar convinces him that the review process is either terribly inefficient or woefully corrupt. When Respondent filed an extensively documented complaint against Mr. Nolan, the initial complainant and the Bar's sole witness in this matter, the Bar did not

contact even one of the many supporting witnesses identified in Respondent's complaint.

For example, in alleging that Nolan had falsified the IRS 941 report by stating that Neetco had no employees, Respondent tendered not only the several employment contracts described earlier in this Reply and the signed form evidencing Nolan's uncontested signature (See A2.), Respondent also provided the name and phone number of every employee Neetco had in its Michigan offices during the relevant reporting period. The Bar did not contact any of the employees to confirm the allegations of Respondent, nor did it even try!

Can the failure be because active tax fraud to line one's own pockets is permissible as long as their is no conflict? Or is it because the Bar did not want to have its chief witness impeached? Or is it because the entire process at its lowest levels is thwarted by the pervasive cronyism emanating out of the Lakeland/Polk County district. An example of the latter is the Order of Recusal, dated February 1, 1993, by the initial trial judge assigned to the civil litigation which followed on the heals of the Neetco/Micro venture. The Order of Recusal was prompted by the court itself and not the result of any motion although the court acknowledged at an oral argument on a pending motion to dismiss that it was familiar with Mr. Nolan from having conducted some real estate transactions with him. Nevertheless, on the same day as the judge recused himself for bias, he rules against Micro and Respondent and in favor of Nolan on a motion to dismiss! (Both Orders are included in the Appendix, A9 and A10.)

Similarly, the Respondent provided the Bar with the Neetco private placement memorandum in which the flagrantly inaccurate financials supplied by Nolan appear.

Respondent even tendered the fax receipts and cover letter from Nolan to prove that he was the individual who supplied the data. Those financials purposefully understate the actual debt of Neetco by nearly $2,000,000.00. Nolan did want potential investors to realize that their new money was essentially going to be used to finance the acquisition of the assets for Neetco that had as yet not been paid for. Respondent's complaint on this point should resonate regardless of whether a portion of the stated debt was owed to Respondent or to others. It is simply fraudulent conduct. The Florida Office of the Comptroller agreed and initiated an investigation into the matter. (See Appendix A11.) The Bar, again, did nothing!

A numbrer of equally flagrant situations, too numerous to fully describe here, also occurred. They included instructions to lie to potential investors concerning the existence and contents of a marketing plan, revisions of conveyance documents to purposefully deceive and mislead, attempts to suborn trespass, attempted fraud on the trial court by tendering irrelevant releases from other litigation, forgery of official EPA signatures, etc. All the allegations were extensively documented and identified additional witnesses beyond Respondent, none of whom were ever contacted. All the allegations passed muster with the Bar which purported to have conducted a diligent and impartial analysis and found not even the "appearance"of an ethical violation. And the Bar wonders why it has such a low image in the eyes of the public and other professionals. We have much of which to be ashamed.

CONCLUSION

This Court may well determine that the last section of Respondent's Reply is not strictly germane to the issue before it concerning Respondent's conduct. And although the Court would be technically correct in such a determination, it would be doing an injustice to Respondent and the system as a whole to simply ignore the abuses which have occurred. Respondent includes the additional material not just to inform the Court of the basis for Respondent's skepticism nor as a petty "tit for tat" equivocation of a malcontent. Rather, the Bar's handling of this matter does an injustice to Respondent if the initial complainant and star witness is allowed to depart from this episode with nary a question raised after violating state and federal laws for his own profit, while Respondent possibly loses his livelihood and ends his legal career in ignominy.

Justice is an ideal that in reality often involves the balancing of various interests. In striking that balance this Court should consider the injustice of removing Respondent from the legal profession while permitting Nolan to remain. It would not be just to take Respondent's livelihood after he has worked for subsistence wages for nearly five years, invested his life savings, and moved his family twice in an effort to develop and market products which, in the end, were obtained by Neetco without it ever paying any of the purchase price.

This Court should consider that the balance between the harm to Respondent and the harm to Neetco is already overwhelmingly tilted in favor of Neetco. In a larger sense Respondent was the victim of Neetco in a more far-reaching and serious manner than Neetco was ever prejudiced from its association with Respondent. All the principals of Neetco retained their other and former employments. Respondent

was, however, completely exposed to the success or failure of efforts to market the Micro products. Respondent's involvement with Neetco has already cost him dearly while Neetco and its successors have obtained for free what Respondent achieved through his own blood, sweat and tears. The latter statement is no exaggeration as the respondent worked long hours in the production and warehouse end of the operation to make the project a success.

Respondent trusts that this Honorable Court will give due regard for the magnitude of the issue as it relates to Respondent., seriously weighing all the above considerations, and through its decision in some way redress the judicial and practical imbalance which has pervaded this matter.

Respectfully submitted

THOMAS A. SOFO
Respondent/Pro Se
4320 Tarpon Lane
Alexandria, VA 22309
(703)360-5700
Attorney No.: 0832316

Thomas A. Sofo
THOMAS A. SOFO, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original of the foregoing Reply has been furnished by regular U. S.. Mail to Sid J. White, Clerk of Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399-1927, and a copy of same to John B. Root, Jr., Bar Counsel, at 880 North Orange Avenue, Suite 200, Orlando, FL, 32801 and to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL, 32399-2300, this 30th day of August, 1995.

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APPENDIX INDEX