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**IN THE SUPREME COURT OF FLORIDA
(Before a Referee)**

THE FLORIDA BAR,

Complainant,

v.

JOHN EMIL MARKE,

Respondent.
_____ /

**Supreme Court Case No. 84,377
TFB Case No. 94-50,964(15E)**

REPLY BRIEF OF RESPONDENT JOHN EMIL MARKE

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF CITATIONS ii

ARGUMENT 2-6

MR. MARKE IS APPROPRIATELY
DISCIPLINED BY A PUBLIC REPRIMAND.
..... 2-6

CONCLUSION 6

CERTIFICATE OF SERVICE 7

TABLE OF CITATIONS

<u>Cases</u>	<u>Page(s)</u>
<u>The Florida Bar v. Wasserman</u> , 20 Fla. L. Weekly S183 (Fla. April 20, 1995)	4

ARGUMENT

MR. MARKE IS APPROPRIATELY DISCIPLINED BY A PUBLIC REPRIMAND.

Mr. Marke did not recognize a conflict of interest existed based upon his continued representation of Rahim. He now sees he was negligent in not recognizing the conflict and understands he should receive a public reprimand.

Mr. Sadik-Ogli hired Mr. Marke to incorporate Rahim in February of 1983. (T 39, 154.) Thereafter, Mr. Marke acted as Rahim's registered agent and continued in that capacity through the events giving rise to the Complaint. He signed annual reports from time to time. (T 213.) Mr. Sadik-Ogli and his wife held Mr. Marke out to the Intourist delegation as Rahim's company lawyer. Mr. Marke was listed as Rahim's lawyer on a list of Rahim's names and positions as of June 1, 1992. (T 172-73, 259-62) (Marke Ex. 3.) Mr. Sadik-Ogli knew Mr. Marke was Rahim's lawyer during the summer of 1993. See, e.g., (T 109.)

Mr. Sadik-Ogli wanted to be terminated by Rahim, asked Mr. Marke if he could be terminated by Rahim, and he was. His only gripe with the three letters he received in June was that the 75% owners of Rahim decided to place him second in command to Mr. Mesiatsev. In fact, he was only second in command for two days. (He was in Asia prior thereto.) When Mr. Sadik-Ogli received the termination letter, he was pleased. Upon receipt, he called Mr. Marke and thanked him for releasing him from his position with Rahim. (T 70, 74, 103-06, 210, 217.) Mr. Marke made a comment to Mr. Sadik-Ogli that the termination letter was written in his unmistakable style. (T 70.) Mr. Sadik-Ogli was not angry with Mr. Marke. Rather, he "was so happy that [he] went back in one week to give

him two more assignments." (T 130-31.) Mr. Sadik-Ogli's "shock" at seeing the termination letter on John Marke's letterhead occurred well after the fact, in or around his May 1994 unemployment compensation hearing, and after he filed his complaint with The Florida Bar.

In short, Mr. Marke did not appreciate what was happening between Mr. Sadik-Ogli and Intourist. He thought they could resolve any misunderstanding. (T 237-38.) If he had perceived a real conflict, he "would have bailed out on everybody." (T 200, 237-39.)

Then too, Mr. Marke regrets sending his September 15th letter to Mr. and Mrs. Sadik-Ogli. As of that time, Mr. Sadik-Ogli was a former client. As noted by the Bar, he allowed his personal pique to cloud his judgment but, at the time, he was personally offended by Mr. Sadik-Ogli's conduct and he got carried away. (T 230-32.) It was an emotional letter which should not have been sent. (T 232-33.) As an aside, Mr. Sadik-Ogli received all that Rahim promised to pay him except for approximately \$4,000 which arose out of a dispute between Mr. Sadik-Ogli and Rahim as to whether he was entitled to be reimbursed for his June/July, 1993 trip to Asia. Importantly, the Referee noted in requesting counsel to address the harm issue, "it's undisputed he [Mr. Sadik-Ogli] did receive everything from an economic standpoint that the three agreements promised him." (T 286.)

Mr. Marke recognizes and so advised the Referee that he should not have represented Rahim at Mr. Sadik-Ogli's unemployment compensation hearing in May of 1994. (T 243-44.) He was "troubled by this thing" the weekend before or the day before the hearing. He procrastinated on his decision and he "just kind of let it happen because [he] felt that [he] was going to go there and [he] wasn't going to be a witness. [He] was

going to be a representative [of] Rahim." (T 243.) He realized that "he should not have gone to that hearing." However, he may have been negligent in not determining whether a conflict of interest existed whereby he was representing the interests of Rahim contrary to the position espoused by his former client, Mr. Sadik-Ogli.

The Bar also suggests that Mr. and Mrs. Sadik-Ogli suffered harm. Answer Brief at 11-12. There has been no finding of any violation of a disciplinary rule as to Mrs. Sadik-Ogli as the Referee found "that the evidence did not rise to the level of clear and convincing that Mrs. Sadik-Ogli was a client of respondent's at the time that the letter was prepared. Therefore, I declined to find that there was a conflict on this point." (ROR at 7, para. III.D.) Any claim of harm to Mrs. Sadik-Ogli is unfounded. Nevertheless, Mr. Marke submits that Mr. Sadik-Ogli did not suffer any material harm because of his representation of Rahim.

The Bar makes reference to The Florida Bar v. Wasserman, 20 Fla. L. Weekly S183 (Fla. April 20, 1995). (Answer Brief at 10.) Wasserman is distinguishable. Wasserman ultimately received a 60-day suspension, instead of a public reprimand recommended by the referee, because he consulted with a potential client about a child custody matter, agreed to represent the client, and accepted a \$1,000 retainer after being notified that he was suspended for failing to pay costs imposed in an unrelated disciplinary proceeding. The Bar urged this Court to impose a 60-day suspension "because of Wasserman's disciplinary history and the significant potential for harm to a client, another person, or the court system." 20 Fla. L. Weekly at S184. This Court found that while he did not cause any harm, "there was potential for great harm. In addition, his actions were intentional and deliberate:

Wasserman said he continued to practice even after he was notified of his suspension because he did not believe the Bar was justified in suspending him. Yet he did not take any steps to challenge his suspension, such as filing a petition for review with this Court." Id. This Court concluded the 60-day penalty was appropriate based upon all of these factors. Conversely, Mr. Marke has no prior disciplinary record, nor did he knowingly and intentionally violate any disciplinary rule. Mr. Marke acknowledges his mistakes. Furthermore, Circuit Court Judge Catherine Marie Brunson and lawyer F. Gregory Barnhart testified, based upon personal observations of Mr. Marke in a professional setting, that Mr. Marke is an ethical and conscientious and dedicated attorney and a caring person. See Initial Brief at 24-26.

Notwithstanding, Mr. Sadik-Ogli did not suffer actual or potential harm. No confidences or secrets were revealed during Mr. Marke's representation of Rahim. Mr. Sadik-Ogli was not harmed by the termination letter as he requested Mr. Marke if he could not be terminated. In fact, Mr. Sadik-Ogli was happy with Mr. Marke and decided, in August of 1993, to ask him to represent him in other matters. Then too, Mr. Sadik-Ogli, as noted by the Referee, received "everything from an economic standpoint that the three agreements promised him." (T 286.) Mr. Sadik-Ogli could have pursued a claim against Rahim to be paid approximately \$4,000 for his trip. But he chose not to do so. (T 96, 250.) Finally, Mr. Marke acknowledges that he should not have been involved in representing Rahim during Mr. Sadik-Ogli's unemployment compensation hearing. Nevertheless, Mr. Sadik-Ogli was awarded unemployment compensation.

In the last analysis, the record indicates Mr. Marke is a decent person who has no

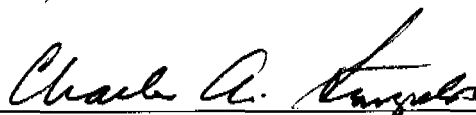
prior disciplinary history. His character witnesses attest to his good moral character and standing as a lawyer in the community. A public reprimand would be fair to society, both in terms of protecting the public from his conduct, but at the same time would not deny the public the services of Mr. Marke. A public reprimand would be fair as these proceedings have already encouraged his reformation and rehabilitation. Finally, a public reprimand is severe enough to deter others who might be prone or tempted to become involved in similar situations.

CONCLUSION

Based upon the foregoing, Mr. Marke requests this Court to reject the Referee's recommendation of a 30-day suspension and to order a public reprimand.

Respectfully submitted this 27th day of August, 1995.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 29th day of August, 1995, by U.S. Mail to: Ronna Friedman Young, Bar Counsel, The Florida Bar, 5900 N. Andrews Avenue, #835, Ft. Lauderdale, Florida 33309, John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, and John A. Boggs, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300.



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