IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

RAYMOND E. CRAMER,

Respondent.
_____/

Case No. 84,716
[TFB Case No. 94-30,052(09A)]

THE FLORIDA BAR'S ANSWER BRIEF

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SYMBOLS AND REFERENCES

In this brief, the complainant, The Florida Bar, shall be referred to as "The Florida Bar" or "the bar."

The transcript of the final hearing held on June 2, 1995, shall be referred to as "T," followed by the cited page number.

The Report of Referee dated July 18,1995, will be referred to as "ROR," followed by the referenced page number(s) of the Appendix, attached. (ROR-A p.____).

The bar's exhibits will be referred to as B-Ex.___, followed by the exhibit number.

The respondent's exhibits will be referred to as R-Ex. _____, followed by the exhibit number.

STATEMENT OF THE CASE

The Ninth Judicial Circuit Grievance Committee "A" voted to find probable cause in this matter on June 29, 1994, and the bar filed its complaint on November 15, 1994. The referee was appointed on December 5, 1994, and the final hearing was initially set for March 10, 1995, at the Polk County Temporary Courthouse in Bartow, Florida. Respondent's motion for continuance was granted and the final hearing was held on June 2, 1995. The referee entered his report on July 18, 1995, recommending the respondent be found guilty of violating rules 3-4.3 for committing an unlawful act that was contrary to honest and justice, 4-4.1(a) [the bar would note there is a typographical error in the referee's report where this rule was written as 4-1.4(a)] for making false statements of material fact to a third person for the respondent's own financial gain, 4-8.4(b) for committing criminal acts which reflected adversely on his honesty, trustworthiness or fitness as a lawyer in other respects, 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit and misrepresentation, and 4-8.4(g) for failing to respond, in writing, to a disciplinary agency or The Florida Bar

when the agency was conducting an investigation into the respondent's conduct. The respondent filed an objection to said report on July 26, 1995. Respondent alleged that the findings set forth in the report, except paragraphs 28 through 32, did not reflect the referee's oral findings made at the hearing. The referee denied the motion on July 31, 1995.

The Board of Governors of The Florida Bar considered the referee's report at its September, 1995, meeting and voted not to seek an appeal. The respondent served his notice of appeal on October 5, 1995. On October 24, 1995, he sought an extension of 30 days to file his initial brief. This court granted the respondent an extension until and including December 13, 1995, to file said brief. He served his initial brief on the bar on December 13, 1995.

STATEMENT OF THE FACTS

Unless otherwise noted, the following facts are derived from the referee's report.

FNW, Capital, Inc. (hereinafter referred to as FNW), was a wholly owned Illinois bank subsidiary authorized to conduct business in Florida (ROR-A p. 1). Among other things, FNW was involved with financing and leasing office equipment (ROR-A p. 1). Respondent was one of several local attorneys who represented FNW (ROR-A p. 1).

George Masuck, through one or more of his corporations, sought persons or entities interested in purchasing office equipment and would arrange for a vendor to provide the needed equipment to the purchaser/lessee (ROR-A p. 2). Thereafter, Mr. Masuck would apply to FNW for financing and the terms typically required FNW to purchase the particular equipment and then lease it to the purchaser/lessee (ROR-A p. 2). FNW occasionally agreed to provide financing when Mr. Masuck, acting either as a broker or a vendor, was selling office equipment to third parties (ROR-A

p. 2).

Mr. Masuck and FNW engaged in business dealings concerning lease numbers 206 A and 206 B (ROR-A p. 2). In these two transactions, Mr. Masuck held himself out as being the vendor of the office equipment being leased/purchased when in fact he was only the broker (ROR-A p. 2). He told FNW that it would be buying the equipment, which he represented as being new, for the benefit of Duane S. Owen (ROR-A p. 2). In actuality, the equipment subject to lease number 206 A was used as was some of the equipment subject to lease number 206 B (ROR-A p. 2). After arranging the financing for the two leases, Mr. Masuck executed a bill of sale that purported to transfer the equipment to FNW and he represented and warranted to FNW that one of his corporations was the absolute owner of the equipment, the equipment was free of all encumbrances and he was authorized to sell it and execute the bill of sale (ROR-A p. 2). Mr. Masuck procured for FNW's benefit all necessary lease documents from the lessee or purchaser/borrower and after receiving these and the security agreements, FNW funded to Mr. Masuck all the money needed to buy the equipment (ROR-A p. 2). FNW was told that the respondent was

acting as Mr. Owen's attorney and agent in connection with the execution and operation of the two leases and all of FNW's communications were with the respondent (ROR-A p. 3).

At some point before August, 1991, FNW became concerned about the number of leasing/financing transactions Mr. Masuck was brokering and learned that the respondent and his firm was representing both FNW and Mr. Masuck (ROR-A p. 3). On August 21, 1991, FNW asked that the respondent transfer all of his existing files to another law firm (ROR-A p. 3).

On September 4, 1990, Mr. Owen purportedly executed an agreement for lease number 206 A for the rental of the named equipment (ROR-A p. 3). According to the lease terms, he was to pay FNW $561.96 per month for 60 months beginning on September 4, 1990 (ROR-A p. 3). On order to fund the lease, FNW issued check number 1892 for $22,089.59 to National Office Products, one of Mr. Masuck's corporations (ROR-A p. 3). FNW believed that Mr. Masuck/ National Office Products was the vendor when in fact they were only the brokers (ROR-A p. 3). The respondent signed Mr. Owen's name to the lease documents as his agent but did not indicate this in any manner and the referee found this omission

would lead a reasonable person to believe Mr. Owen personally signed the lease documents (ROR-A p. 3). On September 4, 1990, the respondent paid FNW $1,658.88 by check number 5174 as a deposit on lease number 206 A (ROR-A p. 3). On September 11, 1990, National Office Products issued check number 1119 in the amount of $19,300.00 to the respondent which he deposited the next day (ROR-A p. 3). The respondent made all the payments to FNW for the lease from his office account rather then his trust account (ROR-A p. 3). The respondent only made partial payments and the lease went into default on March 3, 1992, due to Mr. Owen's failure to make the installment payment due on that date and all subsequent payments (ROR-A p. 3). At the time of the default, FNW was owed $20,675.79 as a result of the breach of lease number 206 A (ROR-A p. 3).

On November 7, 1990, Mr. Owen purportedly executed lease documents pertaining to lease number 206 B for office equipment, including furniture and computers (ROR-A p. 4). The respondent signed Mr. Owen's name to the documents as his agent without so indicating (ROR-A p. 4). The referee found this omission would lead a reasonable person to believe Mr. Owen had executed the

documents himself (ROR-A p. 4). The lease terms called for Mr. Owen to pay FNW $1,406.45 per month for a period of 60 months beginning on November 7, 1990 (ROR-A p. 4). In consummating the deal, allegedly on behalf of Mr. Owen, the respondent paid FNW $4,219.35 by check number 5264 issued from his office account (ROR-A p. 4). The check contained a notation that the payment was for the first, second and last month's payments due under the lease contract (ROR-A p. 4). On November 9, 1990, FNW issued check number 180 to National Office Products in the amount of $57,688.70 for the equipment listed in lease number 206 B (ROR-A p. 4). On November 15, 1990, FNW issued another check, number 1669, in the amount of $31,931.19 made payable to Duane Owen and/or the respondent (ROR-A p. 4). The copy of the check indicated it was endorsed by Mr. Owen and deposited by the respondent on November 21, 1990 (ROR-A p. 4). The lease went into default on January 14, 1992, due to Mr. Owen's failure to make the payment due on that date and all subsequent dates (ROR-A p. 4). At the time of the default, FNW was owed $58,232.52 as a result of the breach of the lease (ROR-A p. 4).

The respondent wrote FNW on January 8, 1991, one year prior

to the defaults, and advised that all future payments, correspondence, billings and other documents pertaining to the two leases should be sent to the respondent's office (ROR-A p. 4). He wrote FNW again on November 1, 1991, and enclosed a personal financial statement and an assumption/assignment agreement between he and Mr. Owen (ROR-A p. 4). The agreement provided that Mr. Owen would assign the two leases to the respondent and it attempted to transfer all liability from Mr. Owen to the respondent (ROR-A p.p. 4-5). FNW declined to accept the assumption/assignment agreement (ROR-A p. 5).

in November, 1992, FNW's attorney sent demand letters to both the respondent and Mr. Owen by certified mail, return receipt requested (ROR-A p. 5). In response to the letter sent to Mr. Owen, his attorney, John R. McDonough, advised FNW by letter dated November 30, 1992, and again by letter dated December 4, 1992, that Mr. Owen denied having executed the lease documents and having received any of the office equipment (ROR-A p. 5). Mr. McDonough confirmed that the respondent had represented Mr. Owen in legal matters (ROR-A p. 5). When the respondent was confronted with the issue of the lease defaults,

he contacted Mr. Owen and assured him that he would resolve the matter quickly and that he had been in contact with FNW (ROR-A p. 5). The respondent contacted FNW on December 2, 1992, in response to its demand letter to him and advised he was working on a transaction with a client that would allow him to pay off both leases entirely and the deal would close sometime on or after Christmas, 1992 (ROR-A p. 5). He asked FNW to delay taking any further action against him until December 31, 1992 (ROR-A p. 5). The respondent insisted that FNW had orally allowed him to assume the leases immediately after their execution but acknowledged that FNW never indicated in writing that it would allow his assumption (ROR-A p. 5). The respondent again contacted FNW's attorney on December 16, 1992, and acknowledged Mr. Owen did not sign any of the lease documents or receive any of the money or equipment (ROR-A p. 5). He advised that Mr. Owen had allowed the respondent to use his name on the two leases as a favor to the respondent and Mr. Owen's signatures on the documents were not forgeries because Mr. Owen had given him an oral power of attorney to execute documents on Mr. Owen's behalf (ROR-A p.p. 5-6). Mr. Owen denied he gave the respondent any authority to use his name or signature on any of the lease

documents nor did he give the respondent an oral power of attorney (ROR-A p. 6). The referee, after considering the conflicting testimony, found that the evidence showed Mr. Owen was aware and approved of the respondent's actions (ROR-A p. 6).

FNW sued the respondent and Mr. Owen (ROR-A p. 6). The respondent asked that FNW take no further action in the matter until December 21, 1992, at which point he would make a $25,000.00 payment in partial satisfaction of the obligations owed pursuant to the leases (ROR-A p. 6). The respondent further advised he would pay the balance on or before December 25, 1992 (ROR-A p. 6).

On December 12, 1992, Mr. Masuck gave FNW a number of documents associated with lease number 206 B (ROR-A p. 6). Included was a letter from an employee of Godfather's Computer Syndicate (hereinafter referred to as Godfather's) which purportedly was the true vendor of the computer equipment (ROR-A p. 6). This letter from Godfather's indicated that the respondent was returning FNW's computer equipment to Godfather's for a credit against the outstanding amounts he owed pursuant to

lease number 206 B (ROR-A p. 6). Two days later, FNW contacted an employee of Godfather's and discussed her knowledge of the two leases (ROR-A p. 6). She forwarded to FNW documents concerning Godfather's business transactions with the respondent which indicated that Godfather's was the true vendor of all the computer equipment associated with lease number 206 B (ROR-A p. 6). This was in contravention to the bill of sale provided by Mr. Masuck (ROR-A p. 6). Godfather's invoices showed the equipment sent to the respondent was the same as that purportedly paid for and secured by FNW (ROR-A p. 6). The communications between the respondent and Godfather's showed that he was to have paid Godfather's directly for the computer equipment it had already delivered to him (ROR-A p. 6). However the respondent failed to pay Godfather's any money other than the one $5,000.00 payment made to partially offset his outstanding obligation to the company (ROR-A p. 6). During January and February, 1991, the respondent negotiated the return of some of FNW's computer equipment in exchange for credit against his outstanding obligation (ROR-A p.p. 6-7). Godfather's was aware the respondent was receiving funds from FNW to purchase the equipment and had previously given an inventory of all the computer

equipment delivered to and installed in the respondent's office (ROR-A p. 7). A comparison of the inventory prepared by FNW and the inventory attached to lease number 205 B showed that much, if not all, of the computer equipment purportedly bought from Godfather's was identical to that which supposedly was paid for and secured by FNW (ROR-A p. 7). The referee found the respondent received funding from FNW to purchase equipment from Godfather's but, with the exception of the one partial payment of $5,000.00, he did not pay Godfather's for the computers and eventually returned some of the equipment that belonged to FNW to the vendor for a credit against his outstanding balance (ROR-A p. 7).

On December 21, 1992, FNW and the respondent entered into negotiations to resolve the lawsuit (ROR-A p. 7). FNW offered to dismiss the action in exchange for a total payment of $81,512.82 which was inclusive of outstanding principal, costs, and fees (ROR-A p. 7). The respondent accepted the terms and indicated he would immediately pay the amount set forth in the offer (ROR-A p. 7). He failed to make the payment (ROR-A p. 7). Instead, he repeatedly told FNW that he expected to have the funds he needed

to make the payment delivered from a foreign bank into his account at any time (ROR-A p. 7). After FNW failed to receive any payments by January 11, 1993, it advised the respondent it was going to proceed with the suit (ROR-A p. 7). The next day, the respondent told FNW's counsel he would make a partial payment in order to satisfy his outstanding obligations to the company (ROR-A p. 7). He proposed paying $25,000.00 initially and then a final payment of $56,512.82 shortly thereafter (ROR-A p. 7). FNW would hold the initial payment until he made the final one (ROR-A p. 7). Thereafter, the respondent authorized FNW to negotiate the $25,000.00 payment on or before February 2, 1993, and agreed to file an answer or responsive pleadings to the civil action on or before that date (ROR-A p. 8). On January 14, 1993, he mailed a check in the amount of $25,000.00 to FNW's attorney but failed to make the final payment of $56,512.82 that was due on or before February 2, 1993 (ROR-A p. 8). Thereafter, with notice to the respondent, FNW negotiated the partial payment (ROR-A p. 8). On March 23, 1993, the respondent asked FNW to extend the time in which he had to obtain the remainder of the funds due and was willing to stipulate to the entry of a judgment for the remaining outstanding settlement funds in the amount of $56,512.82 (ROR-A

p. 8). FNW's attorney prepared such a stipulation and sent it on or before April 12, 1993, to the respondent for his review and voluntarily dismissed Mr. Owen from the suit without prejudice (ROR-A p. 8). That same month, Mr. Owen executed an affidavit stating that he did not sign any of the lease documents and his signature on those papers were forgeries (ROR-A p. 8). The respondent advised opposing counsel on or about April 28, 1993, that he would submit the joint stipulation to the court that same week but failed to do so (ROR-A p. 8). Counsel for FNW sent a facsimile letter to the respondent reminding him that more than two months had passed since he had received the joint stipulation (ROR-A p. 8). On June 17, 1993, the court entered a final judgment against the respondent in the amount of $56,512.82 (ROR-A p. 8).

The referee found there was no evidence that FNW was aware of or a party to the scheme nor was there evidence that Mr. Masuck was an agent for FNW (ROR-A p. 9). He found there was no evidence the former president of FNW, Mr. Torgerson, was involved in the deception and even if he had been, this would not have exonerated the respondent from his actions of having secured

loans that under the bank's rules should not have been granted (ROR-A p. 9). He further found that Mr. Owen was aware of what was being done and allowed his signature to be used as a favor even though he may not have signed any of the documents himself (ROR-A p. 9). Regardless of whether or not Mr. Owen was aware that his acquiescence in this matter constituted an act of misrepresentation, the respondent, by virtue of his training as an attorney, knew he was acting improperly by signing Mr. Owen's name to the lease documents because it meant he was perpetrating a fraud on FNW for the purpose of obtaining the leases (ROR-A p. 9). The referee found the respondent's testimony that he did not know the proper way to sign a document as an agent to be less than credible given the fact he has practiced law for approximately 20 years and presumably is capable of giving competent legal advice (ROR-A p. 9).

The bar received the grievance in this matter on July 9, 1993, and on July 23, 1993, wrote the respondent and asked that he reply to the allegations (ROR-A p. 8). He failed to do so and the bar wrote him on September 15, 1993, again seeking a response (ROR-A p.p. 8-9). After the respondent failed to answer either

letter, the bar forwarded the matter to the grievance committee for appropriate disposition (ROR-A p. 9).

In making his recommendation as to discipline, the referee considered the respondent's mitigating evidence concerning his serious health problems, cooperative attitude during the final hearing, and his admission of the uncontested allegations (ROR-A p. 10). He also recognized the misconduct occurred during the same time frame as the misconduct for which he received his prior suspension (ROR-A p. 10). In aggravation, he considered the fact that this was the third time the respondent had engaged in similar misconduct involving financial matters, he did not cooperate with the bar at the outset of the investigation, and he exhibited no indication that he understood what he had done was wrong even if his testimony concerning the complicity of a bank officer in the scheme was taken as being true (ROR-A p. 10).

SUMMARY OF THE ARGUMENT

The respondent attempts now to argue that Polk County was not the proper venue for the final hearing in this matter. He is correct in that the proper venue was Osceola County. However, the respondent and his counsel both waived venue at the final hearing (T. p.p. 7-8). Furthermore, the respondent, or his counsel, had ample opportunity prior to the final hearing to request that it be held in Osceola County but never did so, despite the fact that the final hearing was continued once at the respondent's request and at that time he and his counsel were aware it was set to be held in Polk County, Florida.

The bar submits the respondent's argument that the referee did not make a report because he did not type it himself but rather asked the bar to prepare it for him is totally devoid of any merit. It is a common practice, not only in bar proceedings but in civil proceedings as well, to have the counsel for one of the parties prepare the court's orders for its signature. That is what the bar did here, as directed by the referee. The bar submitted a copy of the proposed report to the respondent's

counsel and presumably he reviewed it. The referee was free to make whatever changes he deemed necessary to the proposed report before finalizing it. He executed the report and filed it with this court, along with the record in this case. Therefore, there is a report of referee in this matter.

The respondent also seeks to attack the referee's findings of fact, which the bar submits are well supported by the evidence. The referee considered the conflicting testimony, as evidenced by his report, and found that even if the respondent's version of the events was taken as being true, it still would not exonerate him from having violated the rules governing our profession (ROR-A p. 9). The respondent has failed to meet the burden imposed upon him of proving the referee's findings of fact are clearly erroneous or not supported by the evidence.

The referee's recommendation of a disbarment is appropriate given the facts of this case and the respondent's prior disciplinary history. Further, the other aggravating factors warrant a severe discipline and the mitigating factors, all of which the referee considered, do not lessen the need for a

disbarment here.

ARGUMENT

POINT I
VENUE WAS WAIVED BY RESPONDENT.

In his initial brief, the respondent attempts to now argue that because the venue for the final hearing was improper, the matter should be remanded to the referee for a new trial. The bar submits his argument is totally devoid of any merit.

The final hearing notice was originally sent on January 12, 1995, and clearly showed it was scheduled to be held at the temporary courthouse in Polk County. The respondent's counsel received this notice and at no time did either he or the respondent object to the matter being held in that county. Furthermore, the respondent sought a continuance of this final hearing and at that time could have challenged the venue but did not. The final hearing was continued and the amended notice was sent on March 10, 1995. Again, neither the respondent nor his attorney raised any objection to the matter being held in Polk County. At the final hearing held on June 2, 1995, both the respondent and his counsel, for the record, waived venue (T. p.p. 7-8).

Had the respondent insisted, the final hearing could have been held in Osceola County but it would have resulted in additional costs being assessed against him if he was found guilty. Rule 3-7.6(o)(1)(G) provides that costs include the referee's travel and out-of-pocket expenses.

POINT II

THE REFEREE MADE A REPORT.

The respondent's argument as to this point is devoid of merit. Clearly the referee made a report in this matter. The referee requested bar counsel, John B. Root, Jr., to "prepare a proposed finding" and submit a copy to opposing counsel and the original to the court (T. p.p. 157-158). This was done. Bar counsel prepared a proposed report of referee, as is often done in bar cases, and mailed it to the referee and opposing counsel on June 26, 1995. The referee reviewed said report and was free to make any changes he deemed appropriate, including rejecting the entire draft and authoring his own. Neither the respondent nor his counsel objected to the proposed report until after the referee signed it. Respondent's counsel then filed on July 26, 1995, an objection to the report based upon the argument that the written findings of fact, with the exception of paragraphs 28-32, did not comport with the oral findings he made at the final hearing. The referee denied the respondent's motion on July 31, 1995. In his order, the referee stated that he never intended his oral pronouncements made at the final hearing to be copied

verbatim into the record and reserved the right to refine and to add and subtract from said pronouncements after reflection upon the matter. He merely intended for his oral pronouncements to give the parties a fair indication of his rulings and some of the more important foundation of those rulings. Furthermore, the bar submits the referee's oral pronouncements (T. p.p. 146-149) do indeed match the written findings contained in his report.

In short, the respondent challenged the referee's report at the trial level and lost. He now seeks to challenge it by arguing that the referee did not make a report because he signed one the bar prepared for him rather than authoring his own. The respondent's argument is ludicrous.

POINT III

THE REFEREE'S FINDINGS OF FACT ARE SUPPORTED BY THE EVIDENCE.

In bar proceedings, a referee's findings of fact are presumed to be correct and this court will not reweigh the evidence and substitute its judgment for that of the referee as long as the findings are not clearly erroneous or lacking in evidentiary support, The Florida Bar v. Bustamante, 20 Fla. L. Weekly S474 (Fla. Sept. 21, 1995). The party seeking to challenge the referee's findings of fact carries the burden of showing those findings are clearly erroneous or without support in the evidence, The Florida Bar v. Neu, 597 So. 2d 266 (Fla. 1992). This is a heavy burden to meet because the referee, as this court's fact finder, is in the best position to evaluate the evidence and credibility of the witnesses, The Florida Bar v. Marable, 645 So. 2d 438 (Fla. 1994). The bar submits the respondent has failed to prove the referee's findings, that the respondent made misrepresentations to FNW in order to obtain loans he would not otherwise have qualified to receive and that FNW was not aware of the respondent's arrangement with Mr. Owen to use him to obtain the loans, were not supported by clear and

convincing evidence. In fact, even if the respondent's contention that FNW was fully aware of what he was doing is taken to be fully accurate, the respondent still engaged in fraudulent conduct by using another person's identity and credit rating in order to acquire financing he himself did not qualify for and had been denied (T. p. 88). That the bank, Mr. Owen and Mr. Masuck might also have committed fraudulent acts does not excuse the respondent's conduct. The referee merely chose not to believe the respondent's testimony and found it to be less than credible with respect to not knowing the proper method of executing a document as an agent (ROR-A p. 9). The bar submits the referee's findings of fact are fully supported by the evidence and testimony and, where there were conflicts, he resolved those discrepancies based upon his evaluation of credibility.

The referee's findings in paragraphs one and two of his report, which are not material to the findings the respondent engaged in fraudulent behavior, are supported by the testimony of Mark Ragusa, the attorney who represented FNW (T. p.p. 10-13). Paragraph three is supported by Mr. Ragusa's testimony (T. p.p. 13, 15, 20). Paragraph 4 is supported by B-Ex. 1, B-Ex. 22, B-

Ex. 4, B-Ex. 5, and Mr. Ragusa's testimony (T. p.p. 15-16, 18-19). Paragraph number five is supported by Mr. Ragusa's testimony (T. p.p. 37-38), and B-Ex. 10. Paragraph number six is supported by Mr. Ragusa's testimony (T. p.p. 16) and the respondent's answer to the bar's requests for admission.

Paragraphs number seven through eight concern lease number 206 A and are supported by B-Ex. 1, B-Ex. 4, Mr. Ragusa's testimony (T. p.p. 18-20) the respondent's testimony (T. p.p. 91-96), B-Ex. 2, B-Ex. 3, Mr. Ragusa's testimony (T. p.p. 22-23), and the respondent's testimony (T. p.p. 104).

Paragraphs number nine through eleven concern lease number 206 B and are supported by B-Ex. 5, the respondent's testimony (T. p.p. 93-96), B-Ex. 6, Mr. Ragusa's testimony (T. p. 27), B-Ex. 7, B-Ex. 8, Mr. Ragusa's testimony (T. p. 28), B-Ex. 9, and Mr. Ragusa's testimony (T. p. 31).

Paragraphs twelve through nineteen are supported by B-Ex. 10, B-Ex. 11, Mr. Ragusa's testimony (T. p.p. 35-39, 41), B-Ex. 12, Steve Miller's testimony (T. p.p. 70-73, 76), and the

respondent's testimony (T. p.p. 88-94). Paragraphs twenty through twenty-one are supported by Mr. Ragusa's testimony (T. p.p. 41-45), the respondent's testimony (T. p.p. 105-108, 127-129, 132), B-Ex. 20, and B-Ex. 21. Paragraphs twenty-two through twenty-five are supported by Mr. Ragusa's testimony (T. p.p.47-50, 55-56), the respondent's testimony (T. p.p. 108-109), B-Ex. 14 and B-Ex. 12. Paragraphs twenty-eight through twenty-nine are supported by B-Ex. 18, the respondent's testimony (T. p.p. 86-87, 118, 95-96).

The bar submits the referee's legal conclusions drawn from the evidence and testimony are fully supported and warranted. Although the respondent makes much of Mr. Torgerson's alleged knowledge and approval of the respondent's conduct, the referee's conclusion that even if FNW knew the respondent was using Mr. Owen's superior credit rating to qualify for the loan he had earlier been denied it does not excuse the respondent's actions. Mr. Owen was not the person receiving the office equipment or any of the money. It was always intended to be for the respondent's benefit and he did not qualify for the loan. Apparently FNW's initial decision to deny him the equipment financing was a sound

one in light of the fact he ultimately defaulted. There is absolutely no evidence he ever advised Mr. Owen as to the possible consequences he could face if the respondent defaulted on the two leases. The respondent engaged in fraudulent conduct because he used another person's credit to obtain the leases and the lender's alleged complicity in the scheme would not make the actions any less deceitful.

POINT IV

THE REFEREE'S RECOMMENDATION OF DISBARMENT WAS APPROPRIATE GIVEN THE FACTS OF THIS CASE AND RESPONDENT'S PRIOR DISCIPLINARY HISTORY.

The respondent engaged in serious misconduct and it was not the first time he has violated the Rules Regulating The Florida Bar. The bar submits the facts of this case, the case law and the Florida Standards for Imposing Lawyer Sanctions all support a disbarment. The referee did not make his recommendation lightly. He considered the mitigating and aggravating factors and determined the latter called for the harsher penalty.

The respondent made a misrepresentation to a financial institution so as to obtain financing for office equipment and used a long time acquaintance (T. p. 87) with no regard for his potential liability in case the respondent defaulted. As an attorney, he knew or should have known that his conduct was wrong. What the other persons involved, all of whom were nonlawyers, knew, believed, and did or did not do is irrelevant as to whether the respondent's actions violated the rules regulating the profession he has chosen to follow. As an

attorney, he is held to a higher standard of conduct than the average person. It would appear the respondent has attempted to excuse his conduct based upon the actions of others in approving of it. This is analogous to the argument an accused lawyer put forth in The Florida Bar v. Calvo, 630 So. 2d 548 (Fla. 1993), where he assisted a client in engaging in securities fraud. He argued the client was never charged with any crime and therefore he should not have been subjected to discipline. This court found the argument to be meritless and noted that it was irrelevant whether or not the client subsequently was charged. "Far too much criminal activity in today's society goes uncharged, and this fact alone does not excuse attorneys from failing to honor their obligations to the public at large. It is especially incumbent upon attorneys to use their legal expertise to discourage rather than further the type of flagrant fraud on the public involved in this case." At page 550.

The practice of law is a privilege, not a right and membership in the bar is burdened with conditions, The Florida Bar v. Massfeller, 170 So. 2d 834, 839 (Fla. 1964). As this court stated in Massfeller:

> A fair private and professional character is one of them. Compliance with that condition is essential at the moment of admission; but it is equally essential afterwards. (Citations omitted). Whenever the condition is broken the privilege is lost. To refuse admission to an untrustworthy applicant is not to punish him for past offenses. The examination into character, like the examination into learning, is merely a test of fitness. To strike the unworthy lawyer from the roll is not to add to the pains and penalties of the crime. The examination into character is renewed; and the test of fitness is no longer satisfied.

In The Florida Bar v. Dubow, 636 So. 2d 1287 (Fla. 1994), an attorney was disbarred due to his involvement in a check kiting scheme and negligently obtaining a forged signature to a warranty deed. He was hired by a client to prepare the deed and found it necessary to travel to another country to obtain a signature that he notarized. Due to his negligence, the signature was forged and he fraudulently notarized it. He then recorded the deed conveying the property to his client. He later was named as a third party defendant in the resulting civil action to quiet title. A summary judgment was entered against him that, at the time of the final hearing in the bar matter, he had not satisfied. The accused attorney also failed to timely answer the bar's requests for admission and the referee deemed them

admitted. In her report, the referee noted there appeared to be a pattern of misconduct in that he was fined by the bankruptcy court for lying to it and tried to offer into evidence in the bar case a satisfaction of judgment he knew or should have known was a fraud. He also misrepresented to the referee his employment status. In mitigation, he had no prior disciplinary history. This court found his fraudulent conduct to be as serious as his theft of client funds, an offense deserving of the most severe sanction.

A lawyer was ordered disbarred in The Florida Bar v. Crabtree, 595 So. 2d 935 (Fla. 1992), for engaging in a conflict of interest and fraud. He was hired by a client to repatriate a large sum of money without disclosing the source of the funds. There was no evidence that what he was employed to do was illegal. The lawyer involved another of his clients in the transactions to accomplish the objectives but advised neither person that he was representing both sides. He acquired a personal interest in the matter by taking fees and an interest in the transactions and failed to fully disclose this to the two clients. He then wrote letters that were designed to mislead

anyone who might look into the transactions. He had a prior disciplinary history.

A 20 year disbarment was found to be warranted in The Florida Bar v. Cooper, 429 So. 2d 1 (Fla. 1983). The accused was involved in several fraud schemes. In one, he and other persons incorporated a nonexistent bank and used cashier's checks drawn on it which he deposited to another, legitimate bank. He then made withdrawals against the fraudulent deposits. In the ensuing civil suit concerning the scheme, he attempted to mislead the court by testifying falsely under oath concerning his involvement in the scheme. In another instance, he acted as the agent for an alleged client and was given foreign currency he was to have exchanged for U.S. dollars. He gave the foreign citizen checks drawn on a nonexistent bank. In a third matter, he was involved in the purchase of a substantial amount of diamonds that were paid for by a check drawn on the nonexistent bank. In a fourth matter, he represented a client in a divorce action and an immigration matter. The client gave him a substantial amount of money to invest but received nothing in return. Another dissolution client paid him $2,500.00 in legal fees with the

understanding she would receive a full refund if her husband was ordered to pay her legal fees. Despite being paid $2,000.00 by the husband, the lawyer refused to refund to the client any of the money she had previously paid him. In yet another check scheme, he deposited a check to his personal account and made two substantial withdrawals against it. He then closed the account and disappeared. The deposit was later found to be fraudulent. Finally, in letters written to foreign law firms, he asserted he could influence public officials. Although the lawyer had no prior history of discipline, the cumulative nature of his misconduct and the fact that his actions violated the trust and confidence placed in him as a lawyer warranted an immediate disbarment.

The Florida Standards for Imposing Lawyer Sanctions also support a disbarment. Standard 4.31(a) calls for disbarment when a lawyer represents a client knowing his interests are adverse to those of the client with the intent to benefit himself or another and causes serious or potentially serious injury to the client. Standard 4.31(b) calls for disbarment where an attorney simultaneously represents clients he knows have adverse interests

with the intent to benefit himself or another and causes serious or potentially serious injury to the client. Standard 4.31(c) calls for a disbarment when a lawyer represents a client in a matter substantially related to a matter in which the interests of another client, either present or former, are materially adverse and knowingly uses information relating to the representation of a client with the intent to benefit himself or another and causes serious or potentially serious injury to a client. Here, the respondent represented the lender, FNW, and Mr. Masuck in other matters and represented Mr. Owen, as his agent, in this matter while intending to benefit himself.

Standard 4.61 calls for disbarment when a lawyer knowingly or intentionally deceives a client with the intent to benefit himself or another regardless of injury or potential injury. The respondent knowingly deceived FNW, a client (ROR-A p. 1), so as to obtain office equipment loans from it.

The following aggravating factors are applicable in this case: 9.22(a) the existence of a prior disciplinary history; 9.22(b) the existence of a dishonest or selfish motive; 9.22(c) a

pattern of misconduct; 9.22(g) refusal to acknowledge the wrongful nature of the misconduct; and 9.22(i) substantial experience in the practice of law.

It is well settled that cumulative misconduct, which includes prior actions even if they occurred close in time to the charged offense regardless of when the sanction was imposed, warrants the imposition of a harsher discipline than would otherwise be imposed, The Florida Bar v. Golden, 566 So. 2d 1286 (Fla. 1990). The respondent has two prior discipline offenses. In 1985 in The Florida Bar v. Cramer, TFB case number 09A83C79, he was privately reprimanded, without the necessity of a board appearance, for engaging in an improper business transaction with a client. He represented a woman in defending a foreclosure and lost the case. In order to cover the judgment, she needed to obtain a loan but could not due to her poor credit rating. The respondent, in a fashion reminiscent of the pending charges, agreed to take title to the real property and use it as collateral to obtain the loan in his name. He was to reconvey the property to the client as soon as he got the loan. He became personally liable on a note held by a bank with the property as

collateral. The client gave the respondent cash to satisfy the judgment against her and paid him additional money in consideration for his legal services and for executing the note. However, the respondent failed to immediately reconvey the property to her because he recognized his own precarious position in the matter. She made several payments on the mortgage through him but eventually defaulted. The respondent was faced with many delinquent payments and after taking out other notes to cover the mortgage payments, he remortgaged the property against his client's wishes. He then used these funds to satisfy the original mortgage, the money owed to him for previous mortgage payments and his fees. He then reconveyed the property to his client subject to the new mortgage that had payments almost double those of the original.

On October 13, 1994, the respondent was ordered suspended for 90 days in The Florida Bar v. Cramer, 643 So. 2d 1069 (Fla. 1994). As noted by the referee in his report, the misconduct occurred close in time the current allegations. In 1990, he began experiencing serious health problems and was unable to work for a period of time. As a result, he failed to pay employee

taxes and the Internal Revenue Service began taking steps to levy his funds. Because he feared his operating account being garnished, he commingled earned fees in his trust account in an attempt to circumvent any garnishment of his office account. He also deposited to the trust account money under the name of a corporation he owned. Also during this time, he represented a client in a civil matter that was settled. The client gave him the funds necessary to satisfy the settlement but the respondent deposited the money to the operating rather than trust account. He later deposited personal funds to the trust account to cover the client obligation. A review of his trust account by the bar showed numerous technical violations and checks returned due to insufficient funds. This court found the respondent's actions in depositing personal funds to his trust account was done with the intent to mislead the IRS.

The bar submits the respondent's pattern of deceptive conduct warrants a disbarment. As this court stated in The Florida Bar v. Poplack, 599 So. 2d 116, 118 (Fla. 1992), it is "troubling when a member of the Bar is guilty of misrepresentation or dishonesty, both of which are synonymous for

lying. Honesty and candor in dealing with others is part of the foundation upon which respect for the profession is based. The theme of honest dealing and truthfulness runs throughout the Rules Regulating The Florida Bar and the Florida Bar's Ideals and Goals of Professionalism." The bar submits the respondent has shown he has failed to adhere to the high standards imposed on this profession, not once but three times, and his privilege to be a member of the bar should be revoked. Poor health does not excuse consistently poor judgment.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's findings of fact and recommendation of disbarment and payment of costs in the amount of $1,632.69 and approve same.

Respectfully submitted,

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By: Jan Wichrowski

Jan Wichrowski
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Answer Brief and Appendix have been sent by regular U.S. Mail to the Supreme Court of Florida, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished by regular U.S. Mail to the respondent, Raymond E. Cramer, 220 E. Irlo Bronson Hwy. #106, Kissimmee, Florida 34744-4268; and a copy of the foregoing has been furnished by regular U.S. Mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 3rd day of January, 1996.

Respectfully submitted,

Jan Wichrowski
Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. 84-716
[TFB Case No. 94-30,052(09A)

v.

RAYMOND E. CRAMER,

Respondent.
_____/

APPENDIX TO COMPLAINANT'S ANSWER BRIEF

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APPENDIX INDEX

PAGE

IN THE SUPREME COURT OF FLORIDA
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Respondent.
_____/

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar, a hearing was held on June 2, 1995. The pleadings, notices, motions, orders, transcripts and exhibits, all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar — John B. Root, Jr.

For The Respondent — William B. Barnett

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent Is Charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented on below, I find:

1. Prior to August 29, 1991, the respondent was one of the local counsel representing FNW, Capital, Inc., a wholly owned subsidiary of a bank located in Illinois and which was authorized to transact business in the State of Florida. FNW was in the business of, among other things, financing and leasing office equipment.

2. George W. Masuck was an entrepreneur who, through one or more of the corporations of which he was a shareholder and director, sought individuals or entities interested in purchasing office, computer or other equipment. He would arrange for a vendor to provide such equipment to the purchaser/lessee. Thereafter, he would apply to FNW for financing. Although the terms of this financing varied, the typical transaction required FNW to buy the equipment and then lease it to the purchaser/lessee. Mr. Masuck corroborated such purchases from the vendors and coordinated the leasing/financing of the equipment for the purchaser/lessee. He received commissions from the purchaser/lessee paid from funds received from the FNW's financing. At various times, FNW agreed to provide financing upon certain terms and conditions for office, computer and other types of equipment which Mr. Masuck was selling to third parties as either a broker or a vendor.

3. In the business dealings between FNW and Mr. Masuck with respect to lease numbers 206 A and 206 B, Mr. Masuck held himself out to be the vendor of the leased/purchased equipment when, in fact, he was only the broker. Mr. Masuck advised FNW that the equipment was being purchased by it for the benefit of Duane S. Owen. Mr. Masuck led FNW to believe that the equipment, which it would hold as collateral, was new. In reality, with respect to lease number 206 A, and with respect to some of the equipment subject to lease number 206 B, the equipment was used.

4. After arranging the financing for both leases, Mr. Masuck executed a bill of sale that purported to transfer the subject equipment to FNW. In the bill of sale for the leases, he represented and warranted to FNW that one of his corporations was the absolute owner of the equipment, that the equipment was free and clear of all liens, charges and encumbrances, and that his corporation had full right, power and authority to sell said equipment and to execute the bill of sale. He also procured for the benefit of FNW sufficient lease documents and security agreements executed by the leasee or the purchaser/borrower. After receiving the documents and security agreements, FNW funded to Mr. Masuck all sums necessary to purchase the equipment pursuant to the leases.

5. At all times material to the execution and operation of both leases, FNW was informed that the respondent was acting as the attorney/agent for Mr. Owen. All of FNW's communications were with the respondent. At no time was Masuck an employee or agent of FNW.

6. At some point prior to August, 1991, FNW became concerned about the number of leasing/financial transactions brokered by Mr. Masuck. In addition, FNW became aware that the respondent and his law firm had been representing both FNW and Mr. Masuck at the same time. On or about August 21, 1991, FNW requested that the respondent and his law firm transfer all of his existing files to a new firm in Tampa.

7. On or about September 4, 1990, Mr. Owen purportedly executed an agreement of lease (lease number 206 A) for the rental of the equipment named therein. Pursuant to the terms of that lease, Mr. Owen was to pay FNW the sum of $561.96 per month for 60 months beginning on September 4, 1990. In order to fund the lease, on September 7, 1990, FNW issued check number 1892 in the amount of $22,089.59 to National Office Products, one of Mr. Masuck's corporations. FNW believed Mr. Masuck and/or National was the vendor of the equipment when in fact they were actually only the brokers. Testimony showed the respondent signed Mr. Owen's signature as his agent but did not indicate this in any manner on the lease. This omission would lead a reasonable person to believe Mr. Owen personally signed the lease.

8. On or about September 4, 1990, the respondent issued check number 5174 in the amount of $1,685.88, payable to FNW as the deposit on lease number 206 A. On or about September 11, 1990, National issued check number 1119 in the amount of $19,300.00 made payable to the respondent. A copy of the check indicated that the respondent deposited the funds the next day. All of the payments to FNW with respect to lease number 206 A were issued by the respondent from his business account and not his trust account. Only partial payments were actually made and lease number 206 A went into default on or about March 3, 1992, due to Mr. Owen's failure to make the installment payment due on that date and all subsequent payments. At that time FNW was owed the amount of $20,675.79 as a result of a breach of lease number 206 A.

9. On or about November 7, 1990, Mr. Owen purportedly executed an agreement of lease (lease number 206 B) for the lease of the equipment named therein, which included office furnishings and computer equipment. Testimony showed the respondent again signed this signature as Mr. Owen's agent but did not indicate on the lease this fact. This omission would lead a reasonable person to believe Mr. Owen personally signed the lease. Pursuant to the terms of this lease, Mr. Owen was to pay FNW the sum of $1,406.45 per month for a period of 60 months beginning on November 7, 1990. In consummating the deal, allegedly on behalf of Mr. Owen, the respondent issued check number 5264 from his office account, made payable to FNW in the amount of $4,219.35. A note on the check indicated that this payment was the first, second and last month's payment under lease number 206 B to Mr. Owen.

10. In order to fund the lease/financing arrangement, on or about November 9, 1990, FNW issued check number 180 made payable to National in the amount of $57,688.70. This was for the equipment listed in lease number 206 B. On or about November 15, 1990, National issued check number 1669 in the amount of $31,931.19 to Duane Owen, general contractor, and/or Ray Cramer, Esquire. A copy of the check indicated it was endorsed by Mr. Owen and the respondent then deposited it on or about November 21, 1990.

11. Lease number 206 B went into default on or about January 14, 1992, due to Mr. Owen's failure to make the payment due on that date and all subsequent payments. At the time of the default, FNW was owed the sum of $58,232.52 as a result of the breach of lease number 206 B.

12. On or about January 8, 1991, the respondent wrote to FNW and indicated that all future correspondence, billings, and other documents with respect to the two leases should be sent to his office. The letter also indicated that future payments would be sent from his office.

13. The respondent wrote FNW on November 1, 1991, and enclosed a personal financial statement and an assumption/assignment agreement between Mr. Owen and the respondent. This agreement indicated that Mr. Owen was assigning all right, title and interest in the two leases to the respondent. The agreement also

attempted to transfer all liability from Mr. Owen to the respondent.

14. FNW acknowledged receipt of the respondent's personal financial statement and the agreement by letter dated November 4, 1991. FNW advised the respondent in writing that it was not accepting the assignment of Mr. Owen's leases to the respondent by accepting his personal financial statements.

15. In November, 1992, counsel for FNW sent demand letters via certified mail, return receipt requested, to both the respondent and Mr. Owen. Both letters were accepted.

16. In response to the demand letter sent to Mr. Owen, Mr. Owen's attorney, John R. McDonough, advised FNW on November 30, 1992, and again by correspondence on December 4, 1992, that Mr. Owen denied having executed or signed any of the lease documents with respect to lease numbers 206 A and 206 B. Further, Mr. McDonough informed FNW that Mr. Owen denied ever receiving any money or equipment related to those leases. He confirmed the respondent had represented Mr. Owen in legal matters. When respondent was confronted with the issue of a default on the leases, he contacted Mr. Owen and assured Mr. Owen that he would be resolving the matter quickly and that he had been in contact with FNW.

17. The respondent contacted FNW on December 2, 1992, in response to the demand letter he had received. He advised FNW that he was working on a deal or transaction with a client that would allow him to pay off both leases entirely and that the deal would close sometime on or after Christmas, 1992. He asked that FNW hold off on taking any action against him until December 31, 1992. He insisted that FNW had orally allowed him to assume the leases immediately after execution. He acknowledged, however, that FNW never indicated in writing that it would allow the assumption of the leases.

18. On December 16, 1992, the respondent again contacted counsel for FNW and acknowledged and Mr. Owen did not sign any of the lease documents associated with the two leases. He also acknowledged that Mr. Owen did not receive any of the money or equipment from the two leases and stated that Mr. Owen allowed

his name to be used on the leases as a favor to the respondent. He explained that the signatures were not forgeries because he had an oral power of attorney to execute documents on Mr. Owen's behalf. Mr. Owen specifically denied that he gave the respondent any authority to ever use his signature or sign his name to any of the lease documents. At no time did he give the respondent an oral power of attorney. I find, however, the evidence showed Mr. Owen was aware of and approved the respondent's actions.

19. FNW filed suit against the respondent and Mr. Owen. The respondent requested that FNW take no further action on the matter until December 21, 1992, at which point he would make a payment of $25,000.00 in partial satisfaction of his obligations under the leases. He advised that he could make full payment of the outstanding indebtedness on or before December 25, 1992.

20. On or about December 12, 1992, Mr. Masuck provided FNW with a number of documents with respect to lease number 206 B. Among these items was a letter from an employee of Godfather's Computer Syndicate that purportedly was the computer equipment vendor for FNW lease number 206 B. This letter indicated that the respondent was returning FNW's equipment to Godfather's for credit for the outstanding amounts due and owing from the respondent pursuant to lease number 206 B. Two days later, FNW contacted the employee of Godfather's and discussed her knowledge of the two leases. The employee forwarded to FNW documents concerning Godfather's business transactions with the respondent. These documents indicated that Godfather's was the actual vendor for all of the computer equipment subject to lease number 206 B. This was in contravention to the bill of sale provided by Mr. Masuck. Godfather's invoices showed that the equipment shipped to the respondent was the same equipment that was purportedly paid for and secured by FNW. The communications and correspondence between Godfather's and the respondent demonstrated that the respondent was to have paid Godfather's directly for the computer equipment it had previously delivered. However, contrary to the respondent's agreement with Godfather's, he never paid the company for the equipment, especially not from funds which he received from FNW in order to purchase the equipment. The respondent did make one $5,000.00 payment to partially offset his outstanding obligation to the company. These documents demonstrated that during January and February,

1991, the respondent negotiated the return of some of FNW's equipment to Godfather's in exchange for credit against his outstanding obligation. Godfather's was aware the respondent was receiving funding from FNW for the equipment it was delivering. The company had previously provided an inventory of all the equipment delivered and installed in the respondent's office as of January 31, 1991. A comparison of that inventory to the inventory in FNW's lease number 206 B revealed that much, if not all, of the equipment purportedly purchased from Godfather's was identical to that which was supposedly paid for and secured by FNW.

21. With respect to the majority of the equipment subject to lease number 206 B, the respondent received funding from FNW in order to purchase equipment from Godfather's. However, with the exception of a partial payment, the respondent failed to pay Godfather's for the equipment and eventually returned some of FNW's equipment to Godfather's as a credit against his outstanding balance.

22. On or about December 21, 1992, FNW and the respondent entered into negotiations to resolve the law suit filed by FNW against the respondent and Mr. Owen. FNW offered to voluntarily dismiss its suit in exchange for a total payment of $81,512.82. The offer included outstanding principal, court costs and attorney's fees. In response, the respondent advised FNW that he accepted the terms of its settlement offer and indicated that payment would be made immediately. Despite this promise, he failed to make the payment.

23. Instead, he repeatedly advised FNW that he expected the remaining settlement funds to be delivered from a foreign bank into his account at any time. When FNW failed to receive any payment by January 11, 1993, it advised the respondent that it was going to proceed with the suit.

24. On or about January 12, 1993, the respondent advised counsel for FNW that he would make a partial payment in order to satisfy his outstanding obligations to the company. He proposed making an initial $25,000.00 partial payment and a final payment of $56,512.82 shortly thereafter. FNW would hold the initial payment until such time that the respondent made the final one.

Subsequent to that time, the respondent authorized FNW to negotiate the $25,000.00 payment on or before February 2, 1993, and agreed to file an answer or responsive pleading to the company's complaint on or before that same date. The respondent then sent a certified check in the amount of $25,000.00 made payable to FNW's counsel's trust account on January 14, 1993. However, the respondent failed to make the remaining payment which was due on or before February 2, 1993. Therefore, after notice to the respondent, FNW negotiated the partial payment. On or about March 23, 1993, he asked that FNW extend the time in which he had to obtain the remaining settlement funds and that he was willing to stipulate to the entry of a judgment for the remaining outstanding settlement funds in the amount of $56,512.82.

25. Counsel for FNW prepared a joint stipulation for entry of a final judgment, forwarded it to the respondent on or before April 12, 1993, and voluntarily dismissed Mr. Owen from the suit without prejudice. The respondent advised counsel for FNW on or about April 28, 1993, that he would submit the joint stipulation for final judgment to the court that week. He failed to follow through with his promise and, on June 11, 1993, counsel for FNW sent a facsimile letter reminding the respondent that more than two months had passed since he had received the joint stipulation. On or about June 17, 1993, the circuit court entered a final judgment against the respondent in the amount of $56,512.82, the remaining outstanding balance of the settlement funds.

26. In April, 1993, Mr. Owen executed an affidavit indicating that he did not sign any of the documents which were the subject of the lawsuit between FNW and the respondent and that his signature on those lease documents were forgeries.

27. There was no evidence FNW was aware of or a party to the scheme nor was there evidence Mr. Masuck was an agent for FNW.

28. On or about July 9, 1993, The Florida Bar received a complaint concerning the respondent's conduct in this matter. On July 23, 1993, the respondent was asked to reply to the bar concerning the allegations. The respondent made no reply. On September 15, 1993, the matter was again brought to the

respondent's attention by the bar. Again, no response was forthcoming. As a result, the matter was forwarded to the grievance committee for review.

29. I find that Mr. Owen was aware of what was being done and allowed his signature to be used as a favor even though he may not have signed any of the documentation. Regardless of whether or not Mr. Owen knew this constituted a misrepresentation, the respondent, by virtue of his training as an attorney, knew he was acting improperly by signing Mr. Owen's name to the lease documents because it meant a fraud was being perpetrated on FNW for the purpose of procuring the leases. I find the respondent's argument that he did not know the proper way to sign a document as an agent to be less than credible given the fact that he has practiced law for some twenty (20) years and presumably is capable of providing competent legal advice.

30. I further find that that the respondent, even though I accept that Mr. Owen knew this deception was going on and permitted the respondent to sign his name, was acting improperly, that he knew it, that he meant to misrepresent the facts to the bank, and that the representation was false, known to be false by him and was done for the purpose of procuring the lease.

31. I also find that FNW was not aware of or part of this scheme. Although the respondent alleges that Mr. Masuck was an agent for the bank, there is no proof of such.

32. I also find that even if Mr. Torgerson, the former president of FNW, was involved in the deception here represented, the securing of a bank loan that could not otherwise be secured, one that was improper under the rules of the bank, would not make the respondent's actions right and such actions would still be unethical conduct. However, having said that, I am not finding as a fact that Mr. Torgerson was involved or had knowledge of the actions depicted here.

III. Recommendations as to Whether or Not the Respondent Should Be Found Guilty: I recommend the respondent should be found guilty and specifically be found guilty as to violating the following Rules Regulating The Florida Bar: 3-4.3 for committing an unlawful act that was contrary to honesty and justice; 4-

1.4(a) for making false statements of material fact to a third person for the respondent's own financial gain; 4-8.4(b) for committing criminal acts which reflected adversely on his honesty, trustworthiness or fitness as a lawyer in other respects; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit and misrepresentation; and 4-8.4(g) for failing to respond, in writing, to a disciplinary agency or The Florida Bar when the agency was conducting an investigation into the respondent's conduct.

IV. Rule Violations Found: 3-4.3; 4-4.1(a); 4-8.4(b); 4-8.4(c); and 4-8.4(g).

V. Recommendation as to Disciplinary Measures to Be Applied: I recommend the respondent be disbarred from the practice of law. I do not make this recommendation lightly. In arriving at my decision, I considered in mitigation the respondent's continuing serious health problems that were a factor in his prior suspension case as well as his cooperative attitude during the final hearing and his admission of uncontested allegations. Further, his misconduct here occurred during the same general time frame as his misconduct that resulted in his prior suspension. However, the aggravating factors here outweigh those in mitigation. This is his third offense and all have followed the same pattern of subterfuge in money matters. One need not suffer professional discipline to know such conduct is ethically wrong. Despite his cooperative attitude at the final hearing, at the beginning of these proceedings he refused to respond to the bar which, in and of itself, is an offense and one of several with which he is charged. He exhibited absolutely no indication that he felt he had done something wrong. Even if this referee had accepted the proposition that one of the bank officers knew of the respondent's actions, it still is simply wrong for the respondent to proceed to misrepresent matters to the bank. The fact that a bank officer is in collusion with the perpetrator does not make the perpetrator's actions right. The respondent does not seem to have any idea that, even if his version of the facts was correct, although he might be convicted of fewer rule violations, what he did would still be wrong.

VI. Personal History and Past Disciplinary Record:

Age: 57
Date admitted to bar: May 10, 1974
Prior disciplinary convictions and disciplinary measures imposed therein:

The Florida Bar v. Cramer, Case No. 09A83C79. Private reprimand with an appearance before the board of governors for engaging in an improper business transaction with a client.

The Florida Bar v. Cramer, 643 So. 2nd 1069 (Fla. 1994). Ninety day suspension for misusing his trust account in an attempt to avoid an Internal Revenue Service levy and improperly depositing client funds to the office account.

VII. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar.

A.	Grievance Committee Level Costs	
1.	Transcript Costs	$ -0-
2.	Bar Counsel Travel Costs	$ -0-
B.	Referee Level Costs	
1.	Transcript Costs	$ 583.45
2.	Bar Counsel Travel Costs	$ 53.24
C.	Administrative Costs	$ 750.00
D.	Miscellaneous Costs	
1.	Investigator Expenses	$ 216.00
2.	Copy Costs	$ 30.00
	TOTAL ITEMIZED COSTS:	$1,632.69

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the respondent, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 18 day of July, 1995.

/s/ E. RANDOLPH BENTLEY

Referee

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

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