IN THE SUPREME COURT OF FLORIDA
(Before a referee)

THE FLORIDA BAR,

Complainant,

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

v.

RAYMOND E. CRAMER,

Respondent.
_____/

RESPONDENT'S BRIEF

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STATEMENT OF THE FACTS

In June or July, 1990 the respondent applied for a lease through one George Masuck, agent for FNW Capital Inc., an equipment leasing company from Mount Prospect, Illinois and was rejected due to some credit problems. At the request of FNW 's agent, George Masuck, the respondent was requested to have someone else lease the equipment, then assign the lease to the respondent and allow the respondent to assume the lease obligation. This was done with the full knowledge of the bank president, James Torgenson.

In July 1990, pursuant to the above and at the request of the respondent, Duane Owen made application to FNW for a lease of certain office equipment on behalf of the respondent. The lease was approved and in September, 1990 the lease documents were signed by the respondent at the verbal request of Mr. Owen with all concerned having full knowledge of the signatures and the arrangement. A second lease was obtained under the same circumstances in November, 1990 for office equipment and computers.

The respondent disbursed from his office account $1685.88 for three months lease on the first lease at the time of the signing of the lease and $4219.35 for three months lease on the second lease at that time of that signing, prior to any funds disbursed by FNW. All subsequent payments were made by the respondent from his office account. The bank was fully aware of this arrangement and approved it through their agent, George Masuck and their president, James Torgenson.

Some of the computer equipment was not satisfactory and was returned to the vendor, Godfather Computers with the express consent of FNW's agent George Masuck. Other telephone equipment was substituted for the computer equipment for purposes of FNW's collateral. All specific information was given to FNW's agent George Masuck.

On April 15, 1991 the respondent had open heart surgery and was unable to work for a considerable amount of time and the two leases fell behind in late 1991 or early 1992. As a result of the late payment, FNW filed suit against Duane Owen and the respondent in December, 1992. Mr. Owen denied having any knowledge of the lease arrangements. As a result of that action the respondent paid an additional $25,000 and FNW obtained a consent judgment for the balance. Duane Owen was dismissed from that action after the respondent paid the $25,000 and stipulated to the judgment. FNW has not collected on the judgment so they filed the current complaint to obtain some satisfaction through the bar.

ARGUMENT OF RESPONDENT'S BRIEF

POINT I

POLK COUNTY WAS IMPROPER VENUE FOR TRIAL BY THE REFEREE

Rule 3-7.6 (c) states:

The trial shall be held in the county which an alleged offense occurred or in the county where the respondent resides or practices law or last practiced in Florida whichever shall be designated by the Supreme Court of Florida;

The respondent resides in Osceola county, practices in Osceola county and the alleged offenses occurred in Osceola county. The trial was held in Polk county, therefore the venue was improper. There is no provision in Fla Bar Rule 3-7.5(c) for selection of an alternative site by agreement of the parties, thus the attempt by bar counsel to have the respondent waive venue ("T"page 7,lines 14-25, page 8,line), is invalid. The venue is improper and must be sent back to be tried in the proper venue.

POINT II

THE REFEREE DID NOT MAKE A REPORT

Rule 3-7.6(k)(1) states:

Contents of Report. Within 30 days after the conclusion of a trial before a referee or 10 days after the referee receives the transcripts of all hearings, whichever is later, or within such extended period of time as may be allowed by the chief justice for good cause shown, **the referee shall make a report** and enter it as part of the record,-------

In this case the referee did **not** make a report, but only directed bar counsel to "prepare a proposed finding"("T", page 157, lines 24,25). Bar counsel proceeded to make the entire referee's report. The rule does not say that the referee is to request Bar counsel to prepare the referee's report, but states clearly that the referee **shall** make the report. In all procedure rules "shall" is mandatory, therefore it should be in this instance and the report should be stricken as inconsistent with these rules. It either means what it says or it does not.

POINT III

THE REFEREE'S FINDINGS OF FACTS ARE NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE

The referee reached numerous conclusions which are not supported by the facts presented at the trial, but are only conjectures based on suppositions and possibilities. There are an extraordinary amount of facts which are entirely undisputed and which the referee totally ignored. Any undisputed facts must be construed as true for the fact finder. The following facts are uncontroverted and undisputed:

1. FNW Capital Inc. had numerous dealings with George Masuck. (Mr. Ragusa's testimony at "T, page 61, line 16-17)

2. The respondent issued a check (Bar Exhibit 2) on his office account in the amount of $1685.88 payable to FNW Capital Inc., dated September 4, 1990 marked "lease on furniture" which is prior to FNW's acceptance of the lease on September 11, 1990 as shown on Bar Composite Exhibit 4, page 1, and prior to respondent receiving any funds from FNW (Bar Exhibit 3)

3. The respondent issued a check (Bar Exhibit 6) on his office account in the amount of $4219.35 payable to FNW Corp, dated November 7, 1990 marked "lease-1st, 2d & last -Duane Owen-206B" which is prior to FNW"s acceptance of the lease on November 11, 1990 as shown on Bar Composite Exhibit 5, page 1, and prior to respondent receiving any funds from FNW (Bar Exhibit 8).

4. The respondent made all payments on the leases from his office account (Mr. Ragusa's testimony, "T", page 22, line 18-21)

5. George Masuck represented himself as an agent for FNW Capital Inc.(Mr. Miller's testimony, "T" page 68, line 24-25, page 69 line 1-2, Respondent's testimony "T" page 89, line 15-17, page 93, lines 4-7, page 119, lines 1-9, page 133, lines 5-12.)

6. There was an exchange of collateral on the computers from Godfather's Computers for a telephone channel bank and FNW was informed through their agent, George Masuck. (Respondent's testimony "T" page118, lines 18-

24, page119, lines 1-9, page 127, lines 15-21, page 132, lines 17-25, page 133, lines 1, 5-12)

7. Torgenson, president of FNW had full knowledge of the transaction involving the respondent and Owen and approved it. (Miller's testimony, page 75, lines 10-21

8. FNW's agent, George Masuck,who had done numerous leases for FNW, and James Torgenson, president of FNW had full knowledge that the respondent was signing the leases on behalf of Duane Owen. (Miller's testimony, "T" page 75, lines 10-21,page 80, lines 3-8, Respondent's testimony page 92, lines 13-25, page 93, lines 1-7.)

All of the referee's findings are based on facts which are not in the record and contrary to the above undisputed and uncontroverted facts. There were no misrepresented facts to anyone in this transaction. This allegation was conjured up by FNW after the lease was not paid. Owen perjured himself in an attempt to avoid a money judgment which he was legally obligated for and one which the respondent was obligated to him and which was the reason that he was dismissed from the civil action.

The referee refers to the transaction as a scheme, this was not any scheme at all, but was an above board lease transaction with all parties fully aware of all the facts and circumstances.

There is ample undisputed evidence to show clearly that the bank knew about the entire transaction in addition to the above testimony. First, the initial lease payments which accompanied the lease documents (Bar Exhibits 2 & 6) were written by the respondent on his office account specifically stating lease payments, so FNW knew that the respondent was paying the lease payments. Second, the lease documents were accepted by James Torgenson, president of FNW, 2 days later on lease 206A and 4 days later on lease 206B, with the respondents checks as part of the lease package. He had knowledge of the respondent's involvement and he accepted it. Third, the respondent made all of the lease payments from his office account and FNW had no problem crediting the proper account. All indicating that FNW had full knowledge of this transaction.

Even the referee had some problem with this area as he indicates by saying that this court may find otherwise regarding FNW's knowledge. ("T" page 148, lines 5-23)

This complaint is an outrageous attempt by a large law firm to impress some out of state bank client by spending an enormous amount of time in an area of

absolutely no merit. There was no fraud or misrepresentation regarding these lease agreements. It was merely a business transaction where the bank suggested that someone else obtain the lease on your behalf, they were given all the information and the lease was done. The only problem was that the respondent had heart surgery and did not pay the lease payments.

It is well settled that intent is a requirement to prove this violation,The Florida Bar v. Neu, 597 So. 2d 266 (Fla. 1992). There is absolutely no factual basis showing any intent on behalf of the respondent. The entire transaction was initiated by the agent for the bank, Mr. Masuck and the president, Mr. Torgenson. It seems ironic that the actions of the bank controlled the entire transaction, but now they are the complainant to their own actions.

POINT IV

THE REFEREE'S RECOMMENDATIONOF DISBARMENT IS INAPPROPRIATE GIVEN THE FACTS OF THIS CASE

If this Court adopts the absurd factual findings of the referee which are baseless, then his recommendation may be appropriate, however, the transcript and facts set out in such clearly will not support any such recommendation. The only violation the respondent is guilty of is failing to answer in **writing** the original complaint which the respondent admitted and not obtaining a written power of attorney to sign Mr. Owen's name to the lease documents. All other violations are not supported by any facts at the trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies (7) of the foregoing brief have been furnished by U. S. Mail to The Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927: a copy to staff counsel, 880 North Orange Avenue, Orlando, Fla.,32801 this 13 th day of December, 1995.

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