IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant/Appellee

v.

KEITH MARTIN KRASNOVE,

Respondent/Appellant.

Supreme Court No. 86,666

The Florida Bar File No. 95-50,144(17G)

ANSWER BRIEF OF THE FLORIDA BAR

On Appeal from
A Report of Referee

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THE FLORIDA BAR'S SUPPLEMENT TO APPELLANT'S STATEMENT OF THE CASE

The Florida Bar essentially concurs with respondent's recitation of the statement of the case. However, as there are a few areas of disagreement, and because some salient facts have been omitted, the bar supplements respondent's statement of the case as follows:

After a referee was assigned to this case (on November 1, 1995), and respondent filed his answer (on or about December 28, 1995), the parties engaged in extensive discovery. The cause was originally set for trial on April 9, 1996, but respondent moved for, and was granted, a continuance to June 13, 1996. Respondent filed a second motion for continuance on April 23, 1996, which was denied on June 4, 1996. Pursuant to timely notice, the final hearing went forward on June 13, 14 and 17, 1996. The bar was represented by Lorraine C. Hoffmann; respondent was represented by Richard A. Greenberg and Jeffrey S. Weiner.

Eight (8) days after the conclusion of the final hearing, the bar filed a notice of withdrawal of partial exhibit. The effect of such filing was to concede that consideration of respondent's private reprimand was inappropriate for purposes of aggravation.

Such discipline, however, would be appropriately noted in a report of referee, pursuant to the clear language of 3-7.6(k)(1)(D).

The referee entered her report on July 15, 1996. While respondent's statement of the case contains a basic recitation of said report, said recitation is fraught with errors and omissions. Initially, it should be noted that, as to Count I, the referee found that as of December 9, 1993 (not November 9, 1993, as respondent stated), respondent had misappropriated to his own uses all of his client Candace Holiday's funds (which had been entrusted to him for payment of her health care providers). Indeed, the referee found that within fifteen (15) days of depositing respondent's $4,576.40 into his operating account, respondent's operating account balance had dropped to $4.30. By the sixteenth day, the balance was a negative $12.13. The referee also found that, at all times relative to these proceedings (when respondent had such funds), respondent maintained personal funds in the subject operating account. Report of referee, p. 3.

With regard to findings of guilt, respondent has correctly cited the rule violations as set forth in the report of referee. As to Count I, the referee found respondent guilty of: commingling, misappropriation and conversion of client funds to himself, conduct involving dishonesty, fraud, deceit or misrepresentation, and use

of client funds for other than their intended purpose. As to Count 11, she found respondent guilty of failing to prepare, execute and distribute a closing statement to his client. As to Count III, the referee found respondent guilty of failing to abide by his clients's decisions regarding the representation, failing to keep her informed of his conduct and the status of her case, and (by virtue of his theft of her funds) dishonesty, fraud, deceit and misrepresentation. In Count IV, the referee found respondent guilty of a series of trust accounting violations. Report of referee, pp. 6-9.

In considering respondent's statement that the referee considered restitution, it is important to note the referee's specific finding that such restitution was made *after* the bar disciplinary action had been initiated, but before the bar's final complaint was filed in the Supreme Court of Florida. Report of referee, p. 10.

THE FLORIDA BAR'S SUPPLEMENT TO APPELLANT'S STATEMENT OF THE FACTS

As respondent's eighteen (18) page statement of the facts inappropriately mixes large portions of respondent's testimony, selectively presented and shamelessly couched as fact, the bar is compelled to set forth a statement of the facts, as required by Rule 9.210(c), Fla.R.App.P.:

In March of 1993, respondent undertook the representation of Candace Holiday in a product liability/personal injury matter. See Respondent's exhibit 6. Respondent had represented respondent, in other matters, in the past. Respondent settled Holiday's case in November **1993** for **$13,460.** It was agreed between them (although it was respondent's suggestion - - see final hearing transcript Volume II, p. 225) that each of them would take 33% ($4,441.80) of the total settlement proceeds, reserving 34% ($4,576.40) for the payment of Holiday's health care providers. Report of referee, **p.** 2.

On November 24, 1993, respondent secured Holiday's signature on the settlement check and deposited such check in his operating account. Respondent knew that such funds should have been deposited in his trust account. Final hearing transcript, Volume I, p. 24, 32, 47, 151. On that same day, respondent issued

operating account check number 1413 to Holiday, in the amount of $4,441.80. She cashed this check on November 26, **1993.** Report of referee, p. 2. Respondent neither prepared nor maintained a closing statement reflecting an itemization of the costs, expenses and legal fees, nor the remittance to Holiday. Report of referee, p. 4, final hearing transcript Volume I, p. 29. The balance of Holiday's settlement proceeds remained in respondent's operating account. Although he had signed no letters of protection in favor of Holiday's health care providers (see final hearing transcript, Volume I, p. 26), respondent advised Holiday that he could not give her the health care providers' portion of her settlement proceeds. He told her that he had to make distribution to them, through his trust account and pursuant to an anticipated reduced schedule. Final hearing transcript Volume I, p. 151, Volume 11, pp. 220, 226, 228.

On November 24, **1993,** the **date** on which respondent deposited the Holiday settlement check, his pre-deposit operating account balance was $1,403.59. Final hearing transcript, Volume II, p. 309. Within fifteen (15) days, without having paid a single one of Holiday's health care providers, respondent's operating account balance was reduced to $4.30. The next day, respondent's balance was a negative $12.13. Report of referee, p. 3. Immediately upon

depositing Holiday's funds in his operating account, respondent commingled his funds with those of his clients. Final hearing transcript, Volume II, pp. **330-331.** Within fifteen **(15)** days, Respondent had stolen and spent Holiday's funds for his own purposes, such purposes having no nexus to Holiday's case. Final hearing transcript, Volume 11, pp. 317-318.

Between November 1993 and August 1994, Holiday was dunned by the health care providers who were to receive (but had not received) payment from respondent from the $4,576.40 specifically entrusted to him for payment of such providers. Holiday, in turn, called respondent's office to learn the status of her funds. Final hearing transcript, Volume I, pp. **153-156,** report **of** referee, p. 4. When respondent failed to respond to Holiday, and also failed to pay the subject health care providers, Holiday filed a complaint with The Florida Bar. It was only after August **9, 1994,** the date **on** which respondent received a copy of Holiday's bar complaint, that respondent began to pay any of Holiday's health care providers. Four (4) such providers were paid, via cashier's check or operating account check, on September 12, **1994.** The remaining two (2) were paid in November and December, **1994.** Report of referee, p. 5.

Respondent paid these health care providers with funds other than those which had been entrusted to him by Holiday, as he had misappropriated and expended those funds, for his own purposes, by December 9, 1993. Final hearing transcript, Volume II, p. 326; Volume III, p. 413. Nonetheless, respondent falsely testified that, for safekeeping, he took Holiday's money out of his operating account on December 22, 1993 - - moving it to a personal money market margin account. See final hearing transcript, Volume I, p.112. There is no doubt as to respondent's intent in misappropriating and expending Holiday's funds as respondent is the ***only*** person authorized to sign both operating and trust account checks, as well as the only person who is authorized to have any contact with any of these accounts. Final hearing transcript, Volume I, p. 118, Volume III, p. 476.

Finally, upon examination of respondent' trust account, the bar's auditor found a series of violations of the Rules Regulating Trust Accounts. Report of referee, p. 5-6.

SUMMARY OF THE ARGUMENT

The report of referee is complete, accurate and correct. The referee's recommendation that respondent be suspended from the practice of law for a period of three years, and continuing thereafter until he demonstrates rehabilitation, is well supported by the facts, the evidence, and the relevant case law. The report of referee should be approved.

ARGUMENT

THE REFEREE'S RECOMMENDATION THAT RESPONDENT BE SUSPENDED FROM THE PRACTICE OF LAW "FOR A PERIOD OF THREE YEARS AND THEREAFTER UNTIL **[HE] SHALL PROVE REHABILITATION" IS CORRECT** AND SHOULD, **THEREFORE,** BE APPROVED BY THE COURT

In presenting his argument to the Court, respondent began with ***The Florida Bar v. Anderson,*** 538 So. 2d 852 (Fla. 1989), reminding the Court that it has "broad latitude" in reviewing a referee's recommendation for discipline. A close review of ***Anderson*** however, in light of the facts and circumstances of this case, as well as its well-reasoned report of referee, makes it abundantly clear that the "broad latitude" which respondent urges the Court to apply does not stretch so far ***as*** to permit the Court to reach respondent's conclusions as to appropriate discipline. Indeed, in ***Anderson,*** the Court stated that:

> In reviewing a referee's recommendations for discipline, our scope of review is somewhat broader than that afforded to findings of facts because, ultimately, it is our responsibility to order an appropriate punishment. ***The Florida Bar in re Inglis, 471*** So.2d 38, 41 (Fla. 1985). Discipline must be fair to the public and to the respondent and "*must* ***be severe enough to deter others who might be prone or tempted to become involved in like*** *violations.*" ***The Florida Bar v. Lord,***

433 So.2d 983, 986 (Fla. 1983) (emphasis in original).

Anderson, at 854.

The italiced language is important because respondent also began his argument by suggesting that the referee failed to properly apply the Court's three-pronged test for the appropriateness of attorney discipline, as defined by The ***Florida Bar v. Pahules, 233*** So.2d 130 (Fla. 1970) and its progeny. ***See The Florida*** **Bar v.** ***Lord,*** 433 So.2d 983 (Fla 1983) and ***The Florida*** **Bar v.** Neu, **597 So.** 266 (Fla. 1992). A cursory review of the report of referee, however, reveals that the referee did give careful consideration to each of the three elements set forth by the Court in this important line of cases:

> In conclusion, I find the mitigating factors rebut the presumption for disbarment. I am satisfied that the recommended disciplinary measure is necessary to meet the Court's criterion for appropriate sanctions: attorney discipline must protect the public from unethical conduct and have a deterrent effect while still being fair to Respondent. ***The Florida Bar v. Pahules, 233*** So.2d 130 (Fla. ***1970)*** . *Any lesser discipline than that recommended would not sufficiently protect the public and have the necessary deterrent effect.* [Emphasis provided.]

Report of Referee, pp. 10-11.

Respondent's argument then moves, on page 29 of his initial brief, to an admission of guilt, stating that "he mishandled payment of Ms. Holiday's health care providers." He goes on to misrepresent, even at this late date, that he "placed the funds in his operating account instead of his trust account in order to accommodate Ms. Holiday's need for immediate funds." This statement is blatantly, alarmingly, and astonishingly false. In truth and in fact, respondent placed Ms. Holiday's funds in his operating account instead of his trust account to accommodate his own need for immediate funds. As Ms. Holiday testified, again and again, she did not suggest or devise the plan for the division, deposit and distribution of her settlement funds; respondent did. She never asked respondent to hold her funds and pay her health care providers for her; respondent told her that was mandatory:

> **MS. HOFFMANN:** Tell the Referee, if you would, please, Ms. Holiday, what happened between you and Mr. Krasnove after the check was received by him.
>
> MS. HOLIDAY: Mr. Krasnove called me and said that he had received a check and he needed my signature because both of our names were on it. I agreed to come down to Coral Springs where his office is. We drove together to the bank and I signed the check in front of the tellers and showed them my I.D.
>
> MS. **HOFFMANN:** What did you get, if anything?

MS. HOLIDAY: I believe that day I possibly received a check, if not, two to three days later. It's a long time ago, but I do remember that Mr. Krasnove had given me a check.

MS. **HOFF-:** Was there a meeting in Mr. Krasnove's office before you went to the bank as to how this check would be distributed between you and him?

MS. HOLIDAY: **Yes.** He was to get one third of the full amount and he would take out eighty percent of the medical bills. He told me the doctors would settle for eighty percent of what's due to them and that I would get the rest.

MS. HOFF-: Did you ask him to settle with your health care providers for you?

MS. HOLIDAY: No, he told met that he wanted to guarantee the money to get paid to the doctors that he took the money because he didn't trust me to pay the doctor bills.

MS. HOFFMANN: Did he ever tell you that you had a right to the money?

MS. HOLIDAY: No, ma'am.

MS. HOFFMANN: Did you intend to pay your doctor bills?

MS. HOLIDAY: Yes, I did.

MS. HOFFMANN: Did Mr. Krasnove ever tell you **hat you could** negotiate with your health care providers?

MS. HOLIDAY: He told me that the doctors and hospitals will settle for eighty percent of what their bill is.

MS. HOFFMANN: Did he ever expressly tell you that he had to put the money in his trust account?

MS. HOLIDAY: Yes.

* * *

THE REFEREE: He said it has to be or that he would put it in the trust account?

MS. HOLIDAY: No, that it had to be. I did not know that me, as a client, had a right to pay the bills myself. That's not the way I was informed by Mr. Krasnove.

Final hearing transcript, Volume I, pp. 150-151.

And, on cross-examination:

MR. WEINER: But I don't mean just paying Mr. Krasnove, which I'm sure you didn't like having to pay him even though he got you that spectacular settlement, but my question is: You knew that if Mr. Krasnove took your settlement money, took a third out for himself, paid all the doctors and other health care providers, that there wouldn't be much left for you; correct?

MS. HOLIDAY: Correct.

MR. WEINER: And you did not like that scenario, did you?

MS. HOLIDAY: I didn't care for it, but that's the way it worked out.

MR. WEINER: And it was for those reasons that you told Mr. Krasnove about the sad time you were having in your life and how you were desperate and broke and that you wanted money

> and that the doctors could wait for their money; true or false?
>
> MS. HOLIDAY: False. You're putting words in my mouth.
>
> MR. WEINER: I'm just asking questions.
>
> MS. HOLIDAY: Completely false. Mr. Krasnove told me if -- he brought up the subject and he told me that the doctors would settle for eighty percent. Doctors usually don't get paid in lawsuit cases a hundred percent of their bills; that they settle for eighty percent.
>
> * * *
>
> MS. HOLIDAY: It was his idea to give me more money that what was coming to me.
>
> MR. WEINER: It was his idea?
>
> **MS.** HOLIDAY: Yes, it was.

Final hearing transcript, Volume II, pp. 224-225.

Indeed, it was respondent (rather than Ms. Holiday) who was in need of immediate funds. As the bar's auditor testified, respondent's operating account balance immediately preceding the deposit of Holiday's settlement funds was $1,403.59. Final hearing transcript, Volume II, p. 309. Less than twenty (20) days after the deposit of the Holiday settlement funds, respondent's account had achieved a negative balance of $12.13. No health care provider had been contacted, and no health care provider had been

paid a single cent. Report of Referee, pp. 3 and 5. Notwithstanding the clear reality of the foregoing, as established by an audit of his banking records, respondent lied to the referee, testifying that he placed the subject, nonexistent funds into a personal Schwab money market margin account in December 1993, to keep the funds from being "dissipated," even though he admitted that he was the only authorized signatory on his operating account. See final hearing transcript, Volume I, p. 108-110, 118.

Respondent's next fraudulent statement to the court (at the bottom of page 29) comes window-dressed as a contrite admission of guilt: he concedes (even though he was not so charged) that "he failed to properly supervise his office staff." That is why, respondent argues, Ms. Holiday's health care bills were not paid for more than a year. Once again, respondent seeks to hoodwink the Court with a convoluted argument which has no basis in fact. Respondent did not fail to supervise his staff. Simply and quite apparently, respondent purposefully did not instruct his staff to endeavor to negotiate with Ms. Holiday's health care providers because had stolen and spent the monies entrusted to him for that purpose. It was only after Ms. Holiday complained to the bar, and after it became clear to him that he would be unable to make her complaint disappear [See final hearing transcript Volume I,

pp. 129-130[1], 157-158 that Volume 2 pp. 253-256 [2], that respondent began to negotiate with and pay Holiday's health care providers.

Moving then to a discussion of applicable case ***law,*** respondent directs the Court's attention to a recent decision in The ***Florida Bar*** v. Barrett, No. 88,103 (Fla. October 17, 1996). Respondent's reliance on this case in inappropriate for two reasons: first, Ms. Barrett was not charged with (nor found guilty of) theft of client funds or property as she had a colorable claim of title to the property at issue. Secondly, that case was resolved via a consent judgement. It has long been the policy of this Court to regard reliance upon a consent judgment, for purposes of precedent, as misplaced. Respondent next attempts to draw a parallel between the instant case and ***The Florida Bar v. Barbone***, 679 So. 2d 1179 (Fla. ***1996).*** Again, his argument is ineffectual because the facts of that case bear no relevance to the case at bar. Mr. Barbone was neither charged nor found guilty of theft of client funds. As the bar's charges was strictly addressed to violation of trust accounting rules, a six month suspension was an appropriate

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'Respondent testified that he had hoped that bar counsel would, as "other screeners" had done before her, dismiss the Holiday complaint.

[2] Ms. Holiday testified that respondent prepared a letter for her signature, withdrawing her bar complaint. She further testified that respondent manipulated her to sign and submit such letter, which he drafted for her, in order to get her health care providers paid.

sanction. In stretching the ***Barbone*** canvas to fit the frame of the instant case, respondent reminds the Court that his "trust account had absolutely no shortages and absolutely no misappropriation of funds." That is true. Respondent deposited and then misappropriated Ms. Holiday's funds from his operating account. Respondent earns no merit awards as a result of this distinction.

While the foregoing cases are of little assistance, there is no dearth of cases to guide the Court in its evaluation of this case. As the Court stated in ***The Florida Bar v. Dubow, 636 So.*** 2d 1287 (Fla. 1994):

> This Court has consistently held that misuse of trust account funds is among the most serious infractions a lawyer can commit. *The Florida Bar v. MacMillan, 600* So.2d 457 (Fla. 1992) ; *The Florida Bar v. Farbstein,* 570 So.2d 933 (Fla. 1990); *The* ***Florida Bar v.*** *Breed,* 378 So.2d 78 (Fla. 1979).

Dubow, at 1289.

In that case, the respondent was found guilty of commingling, check-kiting, and misuse of client funds. He was disbarred. In ***The Florida Bar*** v. Graham, 605 So. 2d 53 (Fla. 1992), respondent (among other acts of misconduct) commingled and misappropriated funds from a client's settlement proceeds. Despite his lack of prior discipline and efforts to correct his trust account shortages, the Court disbarred him, finding that "the mitigating

factors in the instant case do not outweigh the presumption that disbarment is the appropriate discipline." ***Graham,*** at 56, In rejecting respondent's argument in favor of suspension, the Court stated, quoting from ***The Florida Bar v. Shanzex, 572 So.*** 2d 1382, 1383 (Fla. 1991):

> This Court has repeatedly asserted that misuse of client funds is one of the most serious offenses a lawyer can commit and that disbarment is presumed to be the appropriate punishment. ***The Fla. Bar v. Farbstein,*** 570 So.2d 933 (Fla. 1990); ***The Fla. Bar v. Newman,*** 513 So.2d 656 (Fla. 1987). In some cases we have found that presumption rebutted by mitigating evidence, and we imposed the slightly lesser discipline of suspension. See *e.g.,* ***The Fla. Bar v.*** *Schiller,* 537 So.2d 992(Fla. 1989). In the overwhelming number of recent cases, we have disbarred attorneys for misappropriation of funds notwithstanding the mitigating evidence presented. See ***The Fla. Bar v. Shuminer,*** 567 So.2d 430 (Fla. 1990); ***The Fla. Bar*** v. ***Golub, 550*** So.2d 455 (Fla. 1989); ***The Fla.*** Bar ***v. Fitzgerald,*** 541 So.2d 602 (Fla. 1989); ***The*** *Fla.* ***Bar v.*** *Gillis,* ***527*** so.2 818 (Fla. 1988); ***The Fla. Bar v. Newhouse,*** 520 So.2d 25 (Fla. 1988); ***The*** *Fla.* ***Bar v.*** *Bookman,* 502 So.2d 893 (Fla. 1987); ***The Fla. Bar v. Knowles,*** 500 So.2d 140 (Fla. 1986); ***The*** *Fla.* ***Bar v. Rodriguez,*** 489 So.2d 726 (Fla. 1986); ***The Fla. Bar v. Ross,*** 417 So.2d 98 (Fla. 1992).

Graham, at 55-56.

The Court reached a similar conclusion in ***The Florida Bar v. Nunn,*** 596 So. 2d 1053 (Fla. 1992). In that case, respondent appropriated

to his own use, much as the instant respondent did, funds received in payment of medical costs for a personal injury client. Because he failed to make restitution before the date of the final hearing, and despite the substance abuse problem and efforts at rehabilitation, the Court disbarred Mr. Nunn. Other instructive ***cases,*** resulting in disbarment orders, include ***The Florida*** Bar ***v. Solomon, 589 So.*** 2d 286 (Fla. 1991) and ***The Florida Bar v. Loebl,*** 526 So. 2d 65 (Fla. 1988).

The Court may also be guided by a review of those cases where the presumption of disbarment ***was*** rebutted by various acts of mitigation, In ***The Florida Bar v. Farbstein***, 570 So. 2d 933 (Fla. 1990), respondent misappropriated client funds, failed to comply with mandatory trust accounting procedures, neglected legal matters, and failed to communicate with his clients. He made restitution of the misappropriated funds and evidenced recovery from the substance abuse that contributed to his misconduct. Based on this mitigation, the Court (by a narrow majority) imposed a three (3) year suspension in lieu of disbarment. In ***a*** strong dissent, the minority argued:

> Long ago, this Court stated that "misuse of clients' funds is one of the most serious offenses a lawyer can commit" and gave notice to the legal profession of this state that henceforth the Court would "not be reluctant

> to disbar an attorney for this type of offense even though no client is injured." ***The Fla. Bar v. Breed, 378*** So.2d 783, 785 (Fla. 1979).

Farbstein, at 937.

Another such ***case*** is ***The Florida Bar v. Schiller, 537 So.*** 2d 992 (Fla. 1989). In that **case,** the respondent misappropriated client funds but replaced all such funds once the deficit was found. The Court found the presumption of debarment to be rebutted, **and** imposed a three (3) year suspension. In **a** dissent to the appropriateness of the sanction, however, one member of the Court recommended disbarment, noting that: "It seems to me that the Court is continuing to temporize with errant members of the bar who steal." ***Schiller,*** at 993-994.

In the instant case, the referee found that respondent misappropriated client funds. She also found the presumption of disbarment to be rebutted by the mitigation which respondent presented. This mitigation included remorse, disclosure to the disciplinary board, restitution and character or reputation.

In his initial brief, respondent urged the Court to "closely consider the testimony of the many character witnesses who appeared on behalf of Respondent at the final hearing." Such a close review reveals that not one of respondent's non-employee character witnesses had, prior to the moment of cross-examination, a clear

idea of respondent's actual misconduct. Upon the revelation of such misconduct, only one character witness (Kenneth Manfredi) indicated that his positive assessment of respondent would remain intact.

Respondent's first non-employee character witness was the Honorable J. Leonard Fleet, of the Circuit Court in and for Broward County, Florida. Judge Fleet testified as follows:

> **MS. HOFFMANN:** Are you familiar with the charges that have been filed against Mr. Krasnove in this matter?
>
> **JUDGE FLEET:** Only as explained to me by Keith.
>
> **MS.** HOFFMANN: What do you understand the charges to be, sir?
>
> **JUDGE FLEET:** In essence, he commingled funds, trust account funds with office operating funds.
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> * * *
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> **MS. HOFFMANN:** If the Bar were to prove, Your Honor, that Mr. Krasnove misappropriated client funds under relevant case law, would that change your opinion in any way?
>
> **JUDGE FLEET:** Misappropriated or misapplied?
>
> MS. **HOFFMANN:** Misappropriated client funds under relevant case law.
>
> **JUDGE FLEET:** If you were to establish for me a fact pattern that showed that Keith, with knowledge, took money for himself that

belonged to someone else, then I would impose disciplinary action, yes.

Final hearing transcript, Volume II, p. 285.

Respondent's next character witness was his rabbi, who testified as to respondent's charitable acts and contributions to his synagogue. However, the rabbi had no clear idea of respondent's misconduct, and conceded that, if it were proven, it would change his assessment of respondent:

> MS. **HOFFMANN:** What do you think this case is about?
>
> RABBI FRIEDMAN: What I was told is that certain funds were not put in the exact account where they're supposed to be, but they were in other accounts.
>
> MS. HOFFMANN: The bar has charged Mr. Krasnove with using money that belonged to a client, taking money that wasn't his and using it. If that were proven, would that change your perspective in any way?
>
> RABBI FRIEDMAN: Again, I -- knowledge of Keith is that he would never do something like that.
>
> * * *
>
> MS. **HOFFMANN:** My question, sir, is: If it were proven, would it change your perspective in any way?

> **RABBI FRIEDMAN:** If it **was** proven that he did something wrong, yeah, then I would say he's not honest.

Final hearing transcript, Volume II, pp. 344-345.

The rabbi was followed by the Honorable Steven D. Merryday, United States District Judge for the Middle District of Florida. Judge Merryday's complete knowledge of respondent **was** gleaned during the course of a single trial in 1985. As was the case with the aforementioned character witnesses, Judge Merryday had no actual knowledge of the scope of respondent's misconduct. Also, once such misconduct was revealed, Judge Merryday was not a helpful character witness for respondent:

> **MS. HOFFMANN:** Do you know the issues of this case, Your Honor?
>
> JTJDGE MERRYDAY: No. I know that it involves somebody that he represented who has made some allegations affecting his honesty or something. He mentioned it to me, but that's all.
>
> * * *
>
> MS. **HOFFMANN:** If it were proven that Mr. Krasnove used client funds for his own purposes, would that change your view on his character?
>
> **JUDGE MERRYDAY:** Well, I have difficulty thinking of a circumstance, although I don't exclude the possibility, that that could be inadvertent or not aggravated. I generally tend to take the position the Supreme Court

takes in ***The Florida Bar v. Breed*** on that subject, but it probably would.

Final hearing transcript, Volume II, pp. 355-356.

Thereafter, respondent took testimony from a former client, Nurit Elstein, who testified telephonically from Israel. Ms. Elstein readily admitted she knew nothing about the bar's case. Final hearing transcript, Volume II, p. 367. Ms. Elstein was followed by Jeffrey Wasserman, Esq., who testified as follows upon cross-examination:

> MS. **HOFFMANN:** So its your understanding that the client money was held intact in a separate account until such time the health care providers were paid?
>
> MR. WASSERMAN: That was my understanding.
>
> ***MS.*** **HOFFMANN:** If it were proven that did not happen, but, in fact, Mr. Krasnove spent the money and then put it back after ***a*** Bar complaint was filed, would that change your perspective on Mr. Krasnove's character?
>
> MR. WASSERMAN: Well, from the standpoint of his character as opposed to his conduct?
>
> MS. HOFFMANN: Well, I believe you're offered as ***a*** character witness, Mr. Wasserman.
>
> MR. WASSERMAN: I understand that. From the standpoint of his character, I would really want to question all of the circumstances of what occurred. It that's, in fact, what happened, yeah, I'd be a little surprised that that is what occurred based upon what he indicated to me.

MS. HOFFMANN: If that were proven, would that be a conversion, in your mind?

MR. **WASSERMAN:** If he had utilized the funds for his own purposes?

MS. HOFFMANN: Yes, sir.

MR. **WASSERMAN:** I believe that would normally constitute a conversion.

Final hearing transcript, Volume II, p. 379.

Kenneth Manfredi, respondent's former neighbor, also offered character testimony. He admitted to no substantive knowledge of the charges against respondent but conceded that, whatever was proven, his view of respondent would not change. Final hearing transcript, Volume III, pp. 487-488. Further such testimony was offered by Sammy Perez, a former pro bono client from respondent's synagogue who had known respondent less than four (4) months, and by Tara McIntosh, a former client whom respondent represented through the entry of a plea to second degree murder and robbery--and thereafter on appeal. Neither Mr. Perez nor Ms. McIntosh had an appreciable understanding of the nature of the case. Final hearing transcript, Volume III, pp. 496. 505. Respondent's final witness was Neal Sonnett, Esq. As respondent's counsel advised the referee that Mr. Sonnett was ***not*** offered as a character witness, the bar was not permitted to cross-examine him on character issues.

Final hearing transcript, Volume III, p. 512. Accordingly, Mr. Sonnett's comments as to respondent's character must be omitted from the Court's consideration.

Finally, it is important to note that this Court has determined that in bar disciplinary proceedings, the report of referee will be upheld unless the party seeking review meets his/her burden of proving that the referee's findings are clearly erroneous or lacking in evidentiary support. ***See The Florida Bar v. Rue, 643 So.*** 2d 1080 (Fla. 1994), and ***The Florida Bar v. McClure,*** **575 So. 2d 176 (Fla. 1991).** Respondent has not met this burden of proof. The referee's conclusions in this case are based on competent, substantial evidence, as well as her evaluation of the demeanor and veracity of the witnesses who testified before her. Because her recommendation as to discipline is well supported by this evidence, as well as the under the case law and the Florida Standards for Imposing Lawyer Discipline, as set forth in The Florida Bar's trial memo of law, the referee's report should be approved and respondent should be suspended for three (3) years and thereafter until he proves rehabilitation.

CONCLUSION

This is a simple theft case. Respondent settled Ms. Holiday's personal injury case, took her health care providers' monies to hold in trust, and spent that money within fifteen (15) days. He lied to the bar about it, and he lied to the referee. In responding to the bar, respondent stated, in his first written response, that the he was waiting for the health care providers to settle with him, When that didn't close the bar's investigation, he coerced his client into signing a prepared letter of retraction, which he mailed to the bar. When that too, failed, he advised the bar that the money was owed to him, all along. At trial, respondent tried a new tact: he falsely testified, under oath, that he transferred the non-existent funds into a personal money market margin account, for safekeeping, in late December, 1994.

Respondent testified, throughout the final hearing, that he knew his conduct to be wrong. While such testimony was, no doubt, offered to bolster the mitigating factor of remorse, it must be recognized to cut both ways. And, when compounded by proof of respondent's intent (which is clearly established by virtue of respondent's admission that he was the only one authorized to utilize the operating account into which Ms. Holiday's funds were deposited and from which they were disbursed), there can be no

doubt that respondent should be severely disciplined. The referee's report should be upheld.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Answer Brief of The Florida Bar have been furnished by regular U.S. mail to Richard A. Greenberg, Attorney for Appellant, 325 West Park Avenue, Post Office Box 925, Tallahassee, FL 32302 and to John A. Boggs, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 on this 24th day of March, 1997.

LORRAINE C. HOFFMANN