

**IN THE SUPREME COURT OF FLORIDA**

<b>THE FLORIDA BAR,</b>	)	
	)	
<b>Petitioner-Appellant,</b>	)	<b>Supreme Court</b>
	)	<b>No. 94,099</b>
<b>v.</b>	)	
	)	<b>The Florida Bar File</b>
<b>DOMENIC LEONARD GROSSO,</b>	)	<b>No. 98-50,994(15F)</b>
	)	
<b>Respondent- Appellee.</b>	)	
_____	)	

**THE FLORIDA BAR'S REPLY BRIEF**

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## **TABLE OF CASES AND CITATIONS**

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**CERTIFICATION AS TO FONT SIZE AND STYLE**

Pursuant to this court's Administrative Order In Re: Brief Filed in the Supreme Court of Florida, the undersigned bar counsel hereby certifies that this reply brief is produced in a font that is 14 point proportionately spaced Times New Roman style.

## ARGUMENT

### **POINT I - NEITHER THE BAR NOR THE REFEREE ADDED CHARGES OR FOUND VIOLATIONS NOT ENCOMPASSED IN THE BAR'S COMPLAINT.**

Respondent complains that his due process rights were violated by the addition of a finding of perjury, an allegation not specified in the bar's complaint. Respondent is confused. The bar never charged respondent with perjury. The only rules violations reported by the referee were those specifically recited in the bar's complaint. The reference to perjury occurs in the report of referee in the referee's assessment of aggravating factors where he addressed respondent's false testimony that occurred during the course of the final hearing. Florida Standards For Imposing Lawyer Sanctions expressly define as an aggravating factor the submission of false evidence, false statements, or other deceptive practices during the disciplinary process [Standard 9.22(f)]. See also The Florida Bar v. Nunes, 661 So.2d 1202 (Fla. 1995) where the referee found the respondent's differing and inconsistent explanations to constitute the submission of false evidence, false statements or other deceptive practices during the disciplinary proceedings [page 1204]. It is respectfully submitted that a referee's express finding that a respondent has "testified falsely, under oath" as recited by the referee in the case at bar [Report of Referee, page 11] constitutes a legitimate basis upon which the bar may urge the imposition of a sanction consistent with such finding.

**POINT II - ENTRUSTMENTS OF PROPERTY TO AN ATTORNEY TO BE HELD FOR A SPECIFIC PURPOSE MUST BE ADHERED TO IN STRICT CONFORMITY TO THE RULES REGULATING THE FLORIDA BAR REGARDLESS OF WHETHER THE ATTORNEY RECEIVING SUCH ENTRUSTMENT DOES SO AS A FAVOR TO HIS CLIENT.**

It appears to be respondent's position that an attorney can accept an entrustment for a specific purpose but not be responsible for adhering to the Rules Regulating The Florida Bar if such entrustment is accepted as a favor. Here, it is undisputed that respondent represented Mr. Cusick in connection with the domestic battery case. Respondent concedes such to be the case at page 3 of his brief where he states:

There is no issue as to respondent's representation of Mr. Cusick reference the domestic case nor the domestic battery case.

Respondent accepted the entrustment in issue during the course of such representation. He explains at page 4 of his brief that the subject came up at the plea conference when the respondent agreed to accept the responsibility for his client's firearms collection. Respondent seems to suggest that the fact that he volunteered to accept the entrustment under the circumstances stated should somehow dispense with his responsibilities to safeguard, account and turn over the property upon the conclusion of his client's probation. His attitude as evidenced by his actions was that he was free to deal with the entrustment as he pleased and upon his terms. Such attitude is perhaps best summed up by his "candid" expression to the court:

To be quite candid with the court, it was becoming frustrating receiving call after call after call when Mr. Cusick was advised that when the weapons

were located, they would be returned [Respondent's brief, pg.6].

One can only speculate as to whether respondent gave any heed to the frustration of his client who had the temerity to ask for the return of his property.

It is respectfully submitted that most entrustments are accepted by attorneys as favors for their clients. Attorneys representing sellers customarily accept purchase deposits for safekeeping in trust accounts as accommodations to their clients. The court would brook no countenance with the attorney who regarded a client's persistence in securing such purchase deposit, when due, as a frustrating nuisance. One can only imagine the consequences for such attorney upon telling his client - "Ill get you your money when I find it." Respectfully, the consequences to respondent should not be measured by a different standard.

**CONCLUSION - RESPONDENT'S BREACH OF HIS TRUST RESPONSIBILITIES TO HIS CLIENT, COUPLED WITH THE AGGRAVATING FACTORS OF HIS PERJURY TO THE REFEREE AND HIS EXTENSIVE PRIOR BAR RECORD WARRANT HIS SUSPENSION FOR A PERIOD OF 91 DAYS.**

All of which is respectfully submitted.

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of this brief has been served upon the respondent by U.S. Mail addressed to him at 900 North Federal Highway, Boca Reflections, Suite 420, Boca Raton, FL 33432 on this 20th day of October, 1999.

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David M. Barnovitz