IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant/Appellee

Supreme Court No. SC97019

v.

The Florida Bar File No. 2000-50,426(17C)

STEVEN EVAN WOLIS,

Respondent/Appellant.
_____/

ANSWER BRIEF OF THE FLORIDA BAR

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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.

SUMMARY OF THE ARGUMENT

The Report of Referee is complete, accurate and correct. The discipline recommended by the referee is reasonable and follows precedent set by this Court. Respondent should be disbarred.

ISSUE

DISBARMENT IS WARRANTED FOR CONVICTION OF FELONY INVOLVING DISHONESTY

This cause came before the referee for final hearing on sanctions after an admission of guilt. The referee recommended disbarment after considering the offense and the mitigation offered by the respondent.

This Court has stated the review of the discipline recommendation does not receive the same deference as the guilt recommendation because this Court has the ultimate authority to determine the appropriate sanction. The Florida Bar v. Grief, 701 So.2d 555 (Fla. 1997) and The Florida Bar v. Wilson, 643 So.2d 1063 (Fla. 1994). This Court has further stated it will not second guess a referee's recommended discipline if it has a reasonable basis in law and in the Standards for Imposing Lawyer Discipline. The Florida Bar v. Feinberg, 760 So.2d 933 (Fla. 2000), The Florida Bar v. Sweeney, 730 So. 2d 1269 (Fla.1998), The Florida Bar v. Lecznar, 690 So. 2d 1284 (Fla.1997).

This Court has long held a felony conviction creates a rebuttable presumption of disbarment. Grief, at 556. The evidence as determined by the referee indicated the respondent was convicted of the felony of obstruction of justice in violation 18

U.S.C. section 1505. (A-2) The respondent was found to have filed false reports and made false statements under oath to the Securities and Exchange Commission. (A-5)

The case most similar to the respondent's is The Florida Bar v. Levine, 571 So.2d 420 (Fla. 1990). The attorney involved was found to have violated the securities laws by failing to register the securities of his employer, who defrauded investors in an oil business. Id at 421. The attorney was responsible for the filing of various legal documents and registration with the states of Florida and Oklahoma related to the business. Id. He did not own any interest in the business, unlike the respondent who owned 35,000 shares in the business for which he submitted the filings. (A-4)

Like the attorney in Levine, the respondent was not a participant in the design of the illegal securities scheme, but he was the lawyer who was responsible for the filings with the appropriate regulatory agencies. The respondent worked for The Keith Group from March 1987 through November 1995, during which time he became solely reponsible for the quarterly and annual SEC filings. (A-3,4)

The respondent relies upon The Florida Bar v. Stahl, 500 So.2d 540 (Fla. 1987), however, the facts indicate the case dealt with the failure of the attorney to correct misapprehensions based on review of the attorney's file. The findings of

fact show Stahl submitted his file, containing records which showed the ownership of the Amity Yacht Center by Gulf Investments, A Grand Cayman corporation which was owned by Rafael Rodriguez-Echevarria, under grand jury subpoena. Stahl knew the records in his file were misleading and not the true evidence of ownership of the Amity Yacht Center. Stahl was not appealed by either party. The case at bar concerns the preparation and filing of documents over a number of years rather than a single submission like in Stahl.

The respondent further cites The Florida Bar v. Schwed, 717 So.2d 541 (Fla. 1998) to support his position that a three year suspension is appropriate. In Schwed, the attorney failed to turn over to the SEC two audio tapes that were subpoenaed. (A-18) It was found to be a single isolated act. (A-19) There was no participation by Schwed in the company under investigation nor was he required to prepare documents which contained false information like the respondent.

The referee found the respondent failed to rebut the presumption of disbarment after considering the five mitigating factors found, abscence of a prior disciplinary record, cooperative attitude towards the proceedings, otherwise good character, imposition of other penalties and remorse. These mitigating factors were balanced against the aggravating factors of dishonest or selfish motive, substantial

experience in the practice of law, and multiple offenses based upon the predicate acts charged in count to which the respondent pleaded guilty.

The respondent challenges the referee's finding as to the aggravating factors found, but fails to demonstrate that no basis existed for the recommendation.

The referee found the respondent had a dishonest or selfish motive based upon the evidence before him. The evidence showed the respondent was vice president of the company and sold shares in the company in addition to receiving 35,000 shares under a bonus plan. (T-79) The respondent chose to continue to work in his position because of the compensation he received regardless of the ethical implications. The respondent knew he was being asked to prepare filings for the SEC over the eight years he was employed by the company as an attorney, although he had no training and took no classes to make himself competent in the practice area. (T-66, 68)

The respondent further takes issue with the finding that multiple acts were committed. The respondent pleaded guilty to count 64 of the superceding indictment. The count included the predicate acts committed by the respondent, to wit: assisting and filing false reports to the SEC and making false statements under oath while the SEC was investigating the Keith Group. (A-4,5)

CONCLUSION

As the referee in this cause made findings of fact based on competent, substantial evidence, and because his recommendation as to discipline is appropriate under the case law and the Florida Standards for Imposing Lawyer Discipline, the referee's report should be approved and the respondent should be disbarred.

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 Andrew S. Berman, Attorney for Respondent/Appellant, Young, Berman, Karpf & Gonzalez, P.A., 17071 West Dixie Highway, North Miami Beach, Florida 33160 on this 11th day of September, 2000.

_____

ERIC M. TURNER