IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JEANETTE ELIZABETH SMITH,

Respondent.
_____/

Supreme Court Case
No. SC02-111

The Florida Bar File
Nos. 2001-70,069(11C),
2001-71,345(11C) &
2001-70,576(11C)

THE FLORIDA BAR'S ANSWER BRIEF

CARLOS ALBERTO LEÓN
Bar Counsel
TFB #0098027
The Florida Bar
444 Brickell Avenue, Suite M-100
Miami, Florida 33131
(305) 377-4445

JOHN ANTHONY BOGGS
Staff Counsel
TFB #0253847
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5600

JOHN F. HARKNESS, JR.
Executive Director
TFB #123390
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5600

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SYMBOLS AND REFERENCES

Consistent with Respondent's Initial Brief, in this Answer Brief, The Florida Bar shall be referred to as "The Florida Bar" or "the Bar." Respondent shall be referred to as Respondent as in the trial court.

Citations to the transcript of the final hearing shall be to "T." and the corresponding page number(s). Citations to the Report of Referee dated October 29, 2002, shall be to the "ROR" and the corresponding page number(s).

ISSUES PRESENTED FOR REVIEW

I. THE REFEREE'S RECOMMENDATION AS TO DISCIPLINE CARRIES A PRESUMPTION OF CORRECTNESS THAT SHOULD BE UPHELD AS IT IS SUPPORTED BY BOTH CASE LAW AND THE FLORIDA STANDARDS FOR IMPOSING LAWYER SANCTIONS.

II. THE REFEREE'S FINDINGS AND RECOMMENDATION OF GUILT ARE NEITHER ERRONEOUS NOR LACKING IN EVIDENTIARY SUPPORT.

STATEMENT OF THE CASE AND OF THE FACTS

This case presented for the trial court's review three consolidated complaints which were tried together in the interest of judicial economy. (T. at 20).

In Count I, the grievance filed by Aslam and Qamar Munim, Respondent represented the Munims in immigration matters. (T. at 20). Mr. Munim testified that he was an engineer working in a construction company and that he had hired Respondent in January of 1996 for re-certification and filing of residency. (T. at 28-29). Consequently, he had signed a retainer agreement calling for a payment of $4500 to be paid in four installments as the various stages were completed. (T. at 29). Mr. Munim paid Respondent's fees as agreed to as well as the separate filing fees as they became due. (T. at 29).

Mr. Munim then testified that for the final phase of Respondent's representation -- the filing of the residency paperwork -- he had paid a $1665 filing fee in November of 1999 and submitted to Respondent all of the required residency papers. (T. at 30). Even though Mr. Munim was led to believe that everything would be fine, he grew anxious and concerned because it took until January of 2000 to get any information from Respondent. (T. at 30-31). In

January, he was told that his residency application would be sent but he received no written confirmation of the filing. (T. at 31). As a result, for a three-month period, Mr. Munim asked Respondent to provide him with a copy of the application and a receipt as proof of filing. (T. at 31). When he did not get any response, in May of 2000, he requested a copy of the check that Respondent had issued to evidence her payment of the filing fee. (T. at 31). Respondent, even until the date of the trial, never did provide any of the proof that Mr. Munim requested. (T. at 31).

Sometime after that, Mr. Munim was told that he needed to re-file all of the paperwork and re-submit the $1665 filing fee. (T. at 32). But Mr. Munim had already decided that he wanted to "file it not through her, but separately." (T. at 32). Consequently, Mr. Mumin requested that Respondent return the filing fee that he had previously given her. (T. at 32). When Respondent, six months later, had still failed to return the fee, Mr. Munim filed his grievance with the Bar. (T. at 32). He then had to borrow money for the filing fee, duplicated all of the paperwork -- medical examinations, bank statements and records, certificates, and notarized documents -- and filed the application with the help of a friend. (T. at 32-33).

Subsequently, Respondent did return the Munim's filing fee. (T. at 33). Mr. Munim never was able to find out

if Respondent had ever filed his application. (T. at 34.) It was "very rare" that he would even speak to her in person. (T. at 43). Mr. Munim became so frustrated and the situation had such a bad effect on him and his family "that for five months [they] were completely out. [They] did not know what was going on." (T. at 43).

As a result of his dissatisfaction with her work, The Florida Bar charged Respondent with violations of 3-4.3(misconduct), 4-1.1(competence), 4-1.3 (diligence),4-1.4(communication), 4-1.15 (safekeeping a client's property), 4-8.4(a)(a lawyer shall not violate or attempt to violate the rules of professional conduct), 4-8.4(b)(a lawyer shall not commit a criminal act), 4-8.4(c)(a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation), and 5-1.1(a)(nature of money or property entrusted to an attorney). (T. at 21-22).

In Count II, the grievance filed by Liasse Kebab, Mr. Kebab hired Respondent to represent him in immigration matters as well. (T. at 22). Mr. Kebab testified that he had hired Respondent around "1995, '96" and that he had used her services "two or three times." (T. at 46). On the final occasion, "a few years ago," when he hired Respondent to remove his conditional residency, he paid her $800, and then started experiencing difficulty with Respondent. (T. at 46-47). Mr. Kebab testified that he "couldn't reach Ms. Smith by phone, or by mail, or even going to the office. [He]

just couldn't reach her. . . . she disappeared on me." (T. at 47). Two or three months after Respondent's disappearance, Mr. Kebab was able to speak with Respondent's brother who told Mr. Kebab that his case was going well and to just continue waiting while INS processed his case. (T. at 47-48).

Then, after five months of being unable to reach Respondent, ". . .it was by the summer or the spring of 2001because [he] had to go to leave the country, and [he] was waiting for his papers," Mr. Kebab went to INS himself to determine the status of his case. (T. at 48). INS informed Mr. Kebab that his case had never been filed. (T. at 49). He started to panic. (T. at 49). He started to call Respondent "like four times a day leaving messages. [He] tried to reach her in the office because [he] was illegal at the moment." (T. at 49). Mr. Kebab testified that if INS had inspected at his place of work, "[he] could lose his job." (T. at 49). He could not have told them "[n]o, my lawyer is working on it. They don't care. If they need to deport me, that's it. It was not my fault that I was illegal because the process was not done properly." (T. at 49). Later, when he was laid off, Mr. Kebab was unable to collect unemployment "because [he] didn't have a legal paper to show them. [He] couldn't look for a job either because [he] didn't have [his] papers." (T. at 49-50).

Nevertheless, whenever Mr. Kebab was able to reach Respondent, she would tell him ". . . you just have to wait and see what's going on. . . . it's been sent to Texas . . ." (T. at 50). But INS confirmed that they had never received the case. (T. at 50). Then, on July 29, 2001, Mr. Kebab met with Respondent. (T. at 50). At that meeting, Respondent confessed that she had done "something wrong." (T. at 50). Respondent asked Mr. Kebab to withdraw his complaint if he wanted her to complete the case. (T. at 51). Mr. Kebab did not withdraw his complaint. (T. at 51). Instead he submitted a sworn statement to The Florida Bar detailing the meeting with Respondent. (T. at 53). Mr. Kebab's statement was later admitted as The Florida Bar's exhibit number 2. (T. at 57). He feared that Respondent was "blackmailing" him. (T. at 63). Despite knowing that Respondent had experienced medical problems, Mr. Kebab still felt that she had an obligation to finish his case or to get another attorney to do so. (T. at 66-68).

As a result of his dissatisfaction with her work, The Florida Bar charged Respondent with violations of 4-1.1(competence), 4-1.3(diligence),4-1.4(a&b) (communication), 4-1.16 (declining or terminating representation), 4-3.2(expediting litigation), 4-4.1 (truthfulness in statements to others) 4-8.4(a)(a lawyer shall not violate or attempt to violate the rules of professional conduct), and 4-8.4(c)(a lawyer shall not engage in conduct involving dishonesty, fraud,

deceit or misrepresentation). (T. at 23-24).

In Count III, the grievance filed by Steve Berger on behalf of Nationwide, Respondent's check, made out to pay for her answering service, was dishonored twice and then referred to Nationwide for collection. (T. at 24). The documents comprising this portion of the trial were received in evidence as The Florida Bar's exhibit 4. (T. at 69). As a result of The Florida Bar's audit of Respondent's operating account, it became obvious that Respondent had been financially irresponsible. (T. at 24). In support of this contention, The Florida Bar offered into evidence the affidavit and supporting documentation of Mr. Carlos Ruga, Branch Auditor, who had reviewed Respondent's financial records. (T. at 69-70). That affidavit was received by the court as The Florida Bar's exhibit number 5. (T. at 76).

After having reviewed Respondent's records, Mr. Ruga concluded that Respondent had deposited Mr. Munim's $1665 filing fee into her operating account and not into her trust account. (T. at 70; *see also*, The Florida Bar's exh. 5). Respondent admitted that she had deposited the Munim's check into her operating account. (T. at 181). Additionally, Mr. Ruga was able to determine that that money had been used to satisfy personal obligations not related to the client. (T. at 70; *see also*, The Florida Bar's exh. 5). As for the twice-returned check that was the subject of

Count III, Mr. Ruga was able to determine that Respondent had been financially irresponsible and that the check had "bounced" because there was no money in the account. (T. at 70; *see also*, The Florida Bar's exh. 5). Respondent even admitted that her accounts "were a mess then . . . .[and] that many other checks had bounced as well." (T. at 177, 182).

Consequently, given Respondent's financial irresponsibility, The Florida Bar charged Respondent with a violation of 4-8.4(c)(a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation). (T. at 24).

In her own defense, Respondent argued that her half-sister was in charge of mailing her documents but that after "personal problems," she had left abruptly and they did not speak anymore so Respondent had been unable to verify if the documents had been mailed. (T. at 104-05). Respondent also testified that she worked alone for a long period of time because of a lack of financial resources. (T. at 146). Finally, Respondent testified about her ill health. (T. at 148, 154, 167-76). Respondent also testified that she had already contacted FLA, Inc., and was working with them. (T. at 160-63).

The Bar did not dispute that Respondent had had some serious medical problems that had affected her practice.

(T. at 25, 198, 228, 245). However, the Bar's position was that those problems did not and could not obviate her ethical breaches of conduct. (T. at 25, 228, 245, 246-251).

In conclusion, the parties argued their respective positions on the applicable case law and standards and the matter was concluded. (T. at 226-261). Subsequently, in the Report of Referee dated October 9, 2002, the court made the following recommendations: as to Count I, that Respondent be found guilty of violating 3-4.3(misconduct), 4-1.3 (diligence),4-1.4(a)(communication), 4-1.15 (safekeeping a client's property), 4-8.4(a)(a lawyer shall not violate or attempt to violate the rules of professional conduct), 4-8.4(c)(a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation), and 5-1.1(a)(nature of money or property entrusted to an attorney); as to Count II that Respondent be found guilty of violating 4-1.3(diligence),4-1.4(communication), 4-1.16 (declining or terminating representation), 4-3.2(expediting litigation), and 4-8.4(a)(a lawyer shall not violate or attempt to violate the rules of professional conduct); as to Count III, that Respondent be found guilty of violating 4-8.4(c)(a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation). (ROR at 11-12).

Consequently, the referee recommended that Respondent be suspended for two years followed by two years

of probation. (ROR at 12). The referee also recommended that during the two-year suspension, Respondent obtain the services of LOMAS, have her accounts audited quarterly, certify quarterly her good health to practice as documented by her physician, obtain a mentor to monitor her caseload and disposition of cases quarterly, and finally pay restitution to the Munim's in the amount of $2997. (ROR at 12).

SUMMARY OF THE ARGUMENT

This Court has consistently held that a referee's findings of fact carry a presumption of correctness that should be upheld if supported by substantial, competent evidence and in the case at bar, the referee's findings are amply supported by competent, substantial evidence. Moreover, as will be apparent, Respondent's arguments have no merit as they are not well-grounded in either law or fact and thus this Court should decline to substitute its own judgment for that of the referee. Additionally, the evidence adduced at trial amply supports a finding of guilt. Finally, the referee's recommended discipline is supported both by the standards for imposing lawyer discipline and by the existing case law.

ARGUMENT

I. THE REFEREE'S RECOMMENDATION AS TO DISCIPLINE CARRIES A PRESUMPTION OF CORRECTNESS THAT SHOULD BE UPHELD AS IT IS SUPPORTED BY BOTH CASE LAW AND THE FLORIDA STANDARDS FOR IMPOSING LAWYER SANCTIONS.

This Court has consistently held that bar disciplinary proceedings must serve three purposes: first, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer; second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation; and third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. *See, The Florida Bar v. Niles*, 644 So. 2d 504 (Fla. 1994), *The Florida Bar v. Lord*, 433 So.2d 983, 986 (Fla.1983); *The Florida Bar v. Pahules*, 233 So.2d 130, 132 (Fla.1970).

Additionally, this Court has held that in reviewing a referee's recommendations for discipline, the scope of review is broader than that afforded to findings of fact because it is the Supreme Court's responsibility to order the appropriate punishment. *The Florida Bar v. Niles*, 644 So. 2d 504, 506-07 (Fla. 1994), *The Florida Bar v. Anderson*, 538 So.

2d 852, 854 (Fla.1989). However, a referee's recommendation on discipline is afforded a presumption of correctness unless the recommendation is clearly erroneous or not supported by the evidence. *See, The Florida Bar v. Lipman*, 497 So. 2d 1165, 1168 (Fla.1986); *The Florida Bar v. Poplack*, 599 So.2d 116 (Fla.1992).

In this case, Respondent contends that the referee's reliance on *The Florida Bar v. Farbstein*, 570 So. 2d 93(Fla. 1990), *The Florida Bar v. Schiller*, 537 So. 2d 992 (Fla. 1992), *The Florida Bar v. Kassier*, 711 So. 2d 515 (Fla. 1998), and *The Florida Bar v. Tunsil*, 503 So. 2d 1230(Fla. 1986) was misplaced because these cases all dealt with misappropriation of client funds from trust accounts and that did not occur in this case. Based on this argument, it is not clear if Respondent is arguing that the distinction is that in this case no misappropriation occurred or that misappropriation did occur but that it was from Respondent's operating account.

In any event, however, Respondent's hyper-technical argument misses the point entirely. If Respondent is arguing that the misappropriation in this case was from Respondent's operating account and thus the cited cases are distinguishable, the fact remains that Respondent misappropriated the Munim's filing fee. What account the money was deposited into is irrelevant. Indeed, the very fact that Respondent deposited the money into her operating account

is itself a violation of the rules.

If Respondent is arguing that no misappropriation occurred in the first place, then that argument is not well-grounded in fact as the referee specifically found that on "January 13, 2000, the balance in Respondent's operating account was an overdraft of $101.25, or $1766.25 short to cover her obligation for the Munims." (ROR at 4, ¶ 6). Therefore, to the extent that Respondent argues that the referee did not find misappropriation, her argument is inconsistent with the court's findings of fact.

Thus, without question, while the four cited cases do deal with misappropriation from trust accounts, the issue is still misappropriation! In the case at bar, Respondent, for whatever reason, deposited the Munim's filing fees in her operating account and then used that money to satisfy personal obligations entirely unrelated to the Munim's case. Thus, ineluctably, the misappropriation occurred regardless of whether Respondent was nefariously or negligently motivated.

Moreover, the referee noted that the four cited cases imposed between one- and three-year suspensions based on misappropriation and diligence issues. Therefore, because the referee recommended a two-year suspension in this

matter, the recommendation falls squarely in the middle of the range provided for in the existing case law.

Additionally, the referee specifically found that Respondent's reliance on *The Florida Bar v. Cramer*, 643 So. 2d 1069(Fla. 1994) and *The Florida Bar v. Moran*, 273 So. 2d 379(Fla. 1973) was inapposite "because factually they seemed much less egregious." (ROR at 13). Even the most cursory review of those cases shows that to be the case.

As for the referee's reliance on the Florida Standards for Imposing Lawyer Discipline, the court specifically found that 9.2(c)(pattern of misconduct) and 9.22(d)(multiple offenses) applied. (ROR at 13-14). The referee also found that several mitigating factors applied -- 9.32(b)(absence of dishonest or selfish motive), 9.32(g)(good character and reputation); 9.32(h)(physical/mental disability or impairment); 9.32(i)(interim rehabilitation), and 9.32(l)(remorse). Thus the court clearly considered the various applicable standards urged by the parties, rejecting some and relying on others.

In reaching her determination, the referee noted that

> [t]hroughout these proceedings Ms. Smith exhibited a pattern of excuse-making and blame-shifting that does not assure me that these types of transgressions will not occur again without specific training and supervision. Further, the evidence regarding her illness does not become compelling until her collapse in March, 2000, well after the subject of the Munim's complaint began.

Given the foregoing, the referee concluded by finding that

> [b]alancing all of this, I believe Jeannette Smith does possess the intellect and commitment to properly serve the public as an attorney. Her pro bono "style" is commendable and has had great weight in this recommendation. **However, her breaches of conduct have been serious, and have had serious consequences to her clients, both in financial terms and in terms of needless anxiety**. (Emphasis added).

Thus it is clear that the referee considered all of the evidence and weighed that evidence carefully in light of the guidance provided by both the Florida Standards for Imposing Lawyer Discipline and the existing case law. Respondent's argument to the contrary is simply not grounded in the law or the facts of this case.

The fact that the referee chose to rely on case law that was more adverse to the Respondent than her own proffered cases is not tantamount to a finding that the referee's recommendation as to discipline does not have any reasonable basis. Clearly, the referee heard the evidence, evaluated the testimony, and made a decision on the case law and standards that she found to be most applicable to the facts at bar. Respondent has utterly failed to meet her burden in showing otherwise. In this case, the referee's recommendation as to discipline is neither clearly erroneous nor unsupported by the evidence.

II. THE REFEREE'S FINDINGS AND RECOMMENDATION OF GUILT ARE NEITHER ERRONEOUS NOR LACKING IN EVIDENTIARY SUPPORT.

A referee's findings of fact regarding guilt carry a presumption of correctness that should be upheld unless clearly erroneous or without support in the record. *See, Florida Bar v. Vining*, 761 So. 2d 1044, 1047 (Fla. 2000); *Florida Bar v. MacMillan,* 600 So. 2d 457, 459 (Fla.1992); *Florida Bar v. Vannier,* 498 So. 2d 896, 898 (Fla. 1986).

If the referee's findings are supported by competent, substantial evidence, this Court is precluded from re-weighing the evidence and substituting its judgment for that of the referee. *See, MacMillan,* 600 So. 2d at 459. The party contending that the referee's findings of fact and conclusions as to guilt are erroneous carries the burden of demonstrating that there is no evidence in the record to support those findings or that the record evidence clearly contradicts the conclusions. *See, Florida Bar v. Miele,* 605 So. 2d 866, 868 (Fla.1992).

Additionally, a party does not satisfy his or her burden of showing that a referee's findings are clearly erroneous by simply pointing to the contradictory evidence where there is also competent, substantial evidence in the record that supports the referee's findings. *See, Florida Bar v. Schultz,* 712 So. 2d 386, 388 (Fla.1998); *Florida Bar v. de la Puente,* 658 So. 2d 65, 68 (Fla.1995).

In the instant case, Respondent first argues that "[t]his case is about client neglect resulting from Smith's illness, it is not about misappropriation of client trust funds." However, as previously noted, the referee specifically found that on "January 13, 2000, the balance in Respondent's operating account was an overdraft of $101.25, or $1766.25 short to cover her obligation for the Munims." (ROR at 4, ¶ 6). Therefore, to the extent that Respondent argues that the referee did not find misappropriation, her argument is inconsistent with the court's findings of fact.

Respondent's next flawed argument is that the "Referee's findings however do not take into consideration Respondent's illness, or the fact that her conduct was the direct result of her medical condition." However, once again, Respondent's argument is not well-grounded in the facts of this case as the referee did make specific findings as to Respondent's medical condition -- first, in the findings of fact (*see*, ROR at 6, ¶ 16), and then in mitigation (9.32(h)(physical/mental disability or impairment). Thus it cannot be fairly said that the referee failed to take Respondent's medical condition into consideration. In fact, as the referee noted

> [t]hroughout these proceedings Ms. Smith exhibited a pattern of excuse-making and blame-shifting that does not assure me that these types of transgressions will not occur again without specific training and supervision. Further, the evidence regarding her illness does not become compelling until her collapse in March, 2000, well after the subject of the Munim's

complaint began.

For her next argument, Respondent contends that the discipline recommended is this case is too severe. However, this argument is of the same tenor as in the previous section related to discipline and does not belong in this section dealing with Respondent's contention that the Referee's findings and recommendation of guilt were clearly erroneous or lacking in evidentiary support. Nevertheless, in response, as previously noted, it is not enough for Respondent to merely point to other case law that inures to her benefit if the recommended discipline has a reasonable basis in the exiting case law and standards.

Respondent then argues that the referee found Respondent guilty of having violated 4-8.4(c) as to all three counts. However, that is not correct. The referee only found that violation as to Counts I and III. Nevertheless, Respondent supports this argument by claiming that the found violation cannot stand because the referee found that Respondent had not acted with nefarious intent and that her conduct was the result of extraordinary sloppiness and culpable negligence and thus there was no clear and convincing evidence of the violation.

However, what is abundantly clear is that the referee specifically found that on "January 13, 2000, the balance

in Respondent's operating account was an overdraft of $101.25, or $1766.25 short to cover her obligation for the Munims." (ROR at 4, ¶ 6). Thus, when Respondent deposited the Munim's check in her operating account, she defrauded them as that money could only have been deposited into her trust account and held in trust to pay their filing fees. Moreover, the referee found that "Ms. Smith did submit copies of checks she wrote, however, on January 13, 2000 to INS for the various filing fees." (ROR at 4, ¶ 8). But there was no money in the account at that point. Such conduct constitutes both fraud and deception. Additionally, the referee found that "on August 10, 2000, Ms. Smith issued a check for $100.00 to satisfy a bill from her answering service. This check was returned for insufficient funds twice." (ROR at 8, ¶ 24). Based on this finding, the referee found a violation of 4-8.4(c) because the only logical inference is that writing a check from an account that one knows or should know has no money in it is both fraudulent and deceptive. Thus the referee's finding of a violation of 4-8.4(c) is amply supported by the evidence presented and found by the court. As this Court noted in *The Florida Bar v. Poplack*, 599 So. 2d 116 (Fla. 1992)

> [w]e find it 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. *See* Rules Regulating The Florida Bar 4-3.3 (candor toward the tribunal), 4- 3.4 (fairness of opposing party and counsel), 4-4.1 (truthfulness in statements to others), 4-8.4 (lawyer misconduct), and *Ideals and Goals of Professionalism*, Fla.B.J., Sept. 1991, at 138 (a lawyer's word should be his or her bond).

In the case at bar, Respondent failed on many occasions to be honest and candid in dealing with others.

Respondent's fifth argument is that the referee's reliance on the aggravating factors was inappropriate because there was no evidence to support those findings. Although this argument is, again, a restatement of Respondent's previous section dealing with the recommended discipline allegedly not being supported by the case law or standards, the reality is that the referee did make a specific finding as to these aggravating factors:

> [t]his [the aggravating factors] is evidenced by the fact that three separate individuals made complaints to the Bar, and that within their complaints there is some duplication of issues. (Count I and Count II with a lack of diligence primarily, while Counts I and III deal with financial issues.)

Thus, the referee considered the evidence and made appropriate findings based on that evidence.

For her sixth argument, Respondent contends that the referee erred in ordering restitution to the Munims in the amount of $2,997 because "the issues as framed by the pleadings did not encompass restitution." However, Mr. Munim

testified that he had incurred additional expenses as a result of Respondent's failure to appropriately file his paperwork and he provided a break-down of the costs. The referee considered this testimony and found that restitution was indeed appropriate given the facts and circumstances at bar. There is no paucity of evidence to support this recommendation. However, The Florida Bar does concede that the amount of the restitution that Respondent was ordered to pay should reflect that she has already refunded the Munim's $1665 filing fee.

For her final argument, Respondent argues that the recommended discipline in this case "serves no legitimate purpose." While it is impossible to understand how this argument belongs in this section dealing with the alleged clearly erroneous/lack of evidentiary support to support the referee's findings and recommendation of guilt, the response has already been provided above in the preceding sections-- the referee's findings of facts and recommended discipline are clearly supported by the record, the evidence adduced at trial, the existing case law, and the standards for imposing lawyer discipline. Respondent's appeal to this Court's emotions is not sufficient to carry her burden in overturning the report of referee in this matter.

CONCLUSION

Based upon the foregoing reasons and citations of authority, The Florida Bar respectfully submits that the Report of Referee should be approved and Respondent be suspended for two years followed by two years of probation during which time Respondent must obtain the services of LOMAS, have her accounts audited quarterly, certify quarterly her good health to practice as documented by her physician, obtain a mentor to monitor her caseload and disposition of cases quarterly, and finally pay restitution to the Munim's in the amount of $1332.

CARLOS ALBERTO LEÓN, Bar Counsel
TFB No. 0098027
The Florida Bar
444 Brickell Avenue, Suite M-100
Miami, Florida 33l3l
Tel: (305) 377-4445

JOHN ANTHONY BOGGS, Staff Counsel
TFB No. 253847
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
Tel: (850) 56l-5600

JOHN F. HARKNESS, JR.,
Executive Director
TFB No. 123390
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
Tel: (850) 56l-5600

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of this Complainant's Answer Brief was forwarded Via Airborne Express (# 3370017825) to **Honorable Thomas D. Hall**, Clerk, Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida, 32399-1927, and a true and correct copy was mailed to **Richard B. Marx**, Attorney for Respondent, at Concord Building, 2nd Floor, 66 West Flagler Street, Miami, Florida, 33130, on this ___ day of June, 2003.

_____

CARLOS ALBERTO LEÓN
Bar Counsel

CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN

I HEREBY CERTIFY that the Brief of The Florida Bar is submitted in 14 point proportionately spaced Times New Roman font, and that the computer disk filed with this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

_____

CARLOS ALBERTO LEÓN
Bar Counsel