IN THE SUPREME COURT OF FLORIDA

IN RE: PETITION FOR REINSTATEMENT OF ALAN R. HOCHMAN,	**Supreme Court Case No. SC03-707**
Petitioner.	**The Florida Bar File No. 2003-71,336(11B-MRE)**

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REPLY BRIEF OF THE FLORIDA BAR

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I. THE REFEREE IMPROPERLY EXCLUDED EVIDENCE OF PETITIONER'S DRUG USE AND CRIMINAL CONDUCT DURING THE SUSPENSION.

The burden of establishing rehabilitation is exclusively held by the petitioner, Hochman. The Bar is charged with the duty of investigating the petitioner and opposing the reinstatement, if evidence exists to do so. Theoretically, the petitioner must establish rehabilitation and the Bar could remain silent. In the instant case, the petitioner admitted that his theft from clients occurred since he was a drug addict. During the Bar's investigation Hochman sought to hide information held by F.L.A. The referee's December 15, 2003 order gave him a choice. He would only be permitted to introduce evidence of substance abuse rehabilitation if he released information to the Bar. Apparently, Hochman's desire to hide whatever information F.L.A. possessed about him, outweighed any risk of being unable to establish he was no longer a drug addict.

In a shocking and unexpected turn of events, at the final hearing of this cause, the referee announced that if the Bar presented evidence, from petitioner's own admissions that he had returned to taking drugs, including illegally buying prescriptions

for oxycontin, re-entering an inpatient treatment facility and testing positive for methadone after his release, the door would be opened for the introduction of substance abuse rehabilitation evidence by the petitioner. The referee's rationale, as referenced in the Bar's initial brief was not sound. The December 15, 2003 order had no application to the Bar. It was the petitioner who was attempting to have his "cake and eat it" by revealing only what looked good and hide what did not.

Thus, the referee's statement to the Bar that it was "opening the door" was tantamount to excluding highly relevant evidence. The Bar was suddenly placed by the referee in the untenable position of being responsible for permitting the petitioner to argue that he was no longer a drug addict when he refused to release information, pursuant to the December 15, 2003 order.

II. PETITIONER HAS NOT ACTED WITH UNIMPEACHABLE CHARACTER DURING THE PENDENCY OF THE SUSPENSION.

The petitioner has not presented a shred of evidence to establish that he is no longer a substance abuser. Rather, he has provided this Court with a wealth of evidence that was not introduced at the final hearing. The appendix to petitioner's brief contains four (4) depositions that were taken by the petitioner for proffer purposes only, containing testimony precluded by the referee's December 15, 2003 order, in the event that the petitioner would need to seek review. As the referee recommended reinstatement, the petitioner could not seek review. Nevertheless, in an effort to present as evidence, what the referee prohibited, those depositions were included in the appendix of petitioner's brief. The filing of those depositions either with the referee or this Court does not place them into evidence. Neal v. State, 697 So.2d 903 (Fla.2nd DCA 1997).

Additionally, petitioner has included in his appendix, his own deposition, a transcript of a pre-trial hearing, a news article, statements not part of any record, and testimony from a previous hearing. None of the foregoing was introduced into evidence. This Honorable Court may not consider these items as they are not part of the trial record. Coca-Cola Bottling Company v. Clark, 299 So.2d 788 (Fla.1st DCA 1974)[1]. Moreover, petitioner takes the position that neither his consent judgment or

The Rules Regulating The Florida Bar mandate that he establish he is no longer a drug addict, despite that admission in the consent judgment. The burden is on the petitioner to establish that he is entitled to resume the privilege of practicing law without restrictions. Re: Petition of Dawson, 131 So. 2d 472 (Fla. 1961). Hochman is required to establish that he is no longer a drug addict and thus can practice without restrictions. The referee's recommendation of the imposition of the strict conditions to monitor Hochman's potential alcohol and drug usage, in and of itself, establishes he is unable to practice law without restrictions.

Additionally, the Bar relied on Hochman's acceptance of the compilation of figures as set forth in petitioner's Exhibit 1, the Bar's April 16, 2003 letter, which is attached as App. 1 to this brief. (TR 265). Much of petitioner's testimony regarding "other or different "restitution payments are belied by that letter. Hochman's monitor paid his victims directly. The letter contains a listing of those payments designated as

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[1] These improper actions, among other things, are the subject of the Bar's Motion to Strike Hochman's Answer Brief filed in this Court on January 13, 2005.

"from Ms. Poirier's trust account". Mr. Hochman's representation to the referee and this Court that he had no responsibility for payments, since the Bar made all payments from

monies forwarded by his monitor is a complete fabrication. Hochman knew exactly how much money he sent to his monitor Marcelle Poirier and to whom, and in what amount each victim was paid by his monitor, not The Florida Bar.

Hochman never provided the Bar with any proof of payment other than those set forth in the April 16, 2003 compilation. At the final hearing, Hochman's testimony, pulled from thin air of "other payments" was presented without any supporting back-up data.

One of the most amazing statements in petitioner's brief, contained on page 70 is set forth below:

> **If Tammy Mendez has not been paid, the fault does not lie with Mr. Hochman.**

That statement alone should convince this Court of Hochman's unworthiness to be reinstated to this Honorable profession. Hochman stole $43,000.00 from a woman whose husband and baby were killed in a car accident that he handled, so that Hochman could feed his drug habit while at the same time maintaining his upscale lifestyle. His reference to Ms. Mendez as "poor" Tammy Mendez evidences the height of his callousness and indifference to the victims.

Astonishingly, instead of lauding and appreciating The Florida Bar and its membership for compensating his victims to the tune of $182,767.35 from its Client

Security Fund, Hochman says it was The Florida Bar's responsibility to compensate victims, including Tammy Mendez.

While the Bar paid victims $182,767.35 Hochman failed to make restitution and continued to earn an excellent income, last known to be in excess of $104,000.00 per year as well as depositing more than three quarters of a million dollars in his bank accounts over three years. Although, bankruptcy is a legal means to get rid of debt – Hochman managed to escape his creditors and persons he lent money to as well, using that means.

The Court should take note of all of Hochman's excuses for each one of his wrongdoings. On page 72 of his Answer brief, Hochman even blames a car dealer, when he failed to qualify for a lease and gave them bad checks. Of course, it is the Bar's fault that he did not qualify due to his expenses connected with his criminal matter and Bar representation because the Bar influenced the police, victims and State Attorney of Dade County to prosecute Hochman for his thefts! None of this happened since Hochman stole $321,056.87 from his clients and was or is a drug addict.

Levi Gardner, a member in good standing of The Florida Bar, worked for Hochman for years. Hochman was actually paid by an insurance company for these services and did not compensate Gardner. Hochman owes Gardner $48,000.00. During two encounters with Gardner, Hochman blamed him for his troubles and used foul language. Hochman

alleges he was still drug addicted during those encounters. As of the July 2004 date of the final hearing Hochman has never expressed an iota of remorse or apology to Levi Gardner. Rather, he discharged those monies in bankruptcy. Dennis Koltun, Hochman's friend, lent him monies, even though Hochman lied about the reason. Hochman promised Koltun that if he declared bankruptcy he would not include that debt. The debt was included in the 1998 bankruptcy without apology or explanation to Koltun, to date. In his answer brief, in continuance of his belligerent and self righteous stance, Hochman refers to Levi Gardner, his former associate and Dennis Koltun, his former friend as "these two disgruntled lawyers".(Answer brief, page 27)

Hochman's brief is filled with a venomous tone of righteous indignation. With this Honorable Court's independent review of the record, in its proper and accurate form, and not as petitioner has presented it, this Court must conclude that the referee wrongly recommended reinstatement. Hochman takes no responsibility for his actions, blames everyone but himself, shows no real remorse, and has only made minimal efforts at restitution to save his own skin. Alan Hochman is not worthy of being invited to join the Bar as a member in good standing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original Reply Brief of The Florida Bar was forwarded Via Airborne Express airbill # 3370023425 to **Thomas Dale Hall**, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927, and a true and correct copy was mailed to Leslie Rothenberg, Attorney for Petitioner, Steel Hector & Davis, 200 South Biscayne Boulevard, Suite 4000, Miami, Florida 33131,

on this 20th day of January, 2005.

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RANDI KLAYMAN LAZARUS
Bar Counsel

COMPLIANCE WITH RULE 9.210(a)(2)

The undersigned herby certifies that the foregoing Reply Brief complies with Fla.R.App.P.9210(a)(2) and that it was prepared using 14 point proportionately spaced Times New Roman font.

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RANDI KLAYMAN LAZARUS
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