IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant-Appellant,

Case No. SC 04-1595

v.

RICHARD PHILLIP GREENE,

Respondent-Appellee.
_____/

The Florida Bar File
No. 2003-50,230(17H)

RESPONDENT'S INTIAL BRIEF

KEVIN P. TYNAN, #710822
RICHARDSON & TYNAN, P.L.C.
Attorneys for Respondent
8142 North University Drive
Tamarac, FL 33321
954-721-7300

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PRELIMINARY STATEMENT

The Florida Bar, Appellee, will be referred to as "the Bar" or "The Florida Bar." Richard Phillip Greene, Appellant, will be referred to as "Respondent." The symbol "RR" will be used to designate the report of referee and the symbol "TT" will be used to designate the transcript of the final hearing held in this matter. Exhibits introduced by the parties will be designated as TFB Ex. __ or Resp. Ex. __.

STATEMENT OF THE CASE AND FACTS

On September 9, 2003, the Respondent entered into a plea agreement wherein he agreed to plea guilty to one count of securities fraud in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a). As a direct result of his plea, the Respondent was placed on five years probation, with a specific condition of such probation that he participate for 180 days in the home detention program (allowed to go work and certain other pre-approved locations and activities). The Respondent was also required to perform 250 community service hours and pay a fine of $10,000.00. At the time of his sentencing, all other criminal charges in the superseding indictment were dismissed.

Count I of the Bar's complaint concerns the Respondent's plea to one count of securities fraud, a felony, but also contains a claimed trust record keeping violation not related to said felony conviction (the failure to produce some deposit slips for audit). Count II of the Bar's complaint concerns matters alleged in the superceding indictment, but which matters were dismissed by the U.S. government as part and parcel of the Respondent's plea agreement and therefore did not result in a felony conviction. See paragraph 1 of the plea agreement attached to the Bar's complaint as Exhibit B.

The uncontroverted testimony adduced at trial was that the Respondent's first contact with the matters raised in the indictment (all references are to the superceding indictment) was on January 10, 2001 (See Resp. list of all recorded conversations) and ended on or about February 20, 2001 with the consummation of the transaction referenced by the government. See Indictment at page 12. Also see Respondent's testimony at TT 113.

While it is clear that the indictment alleges serious criminality, a careful review of the indictment and in particular those allegations numbered 1 through 13 and 16 through 52 form the factual predicate of both criminal charges at issue herein. An examination of these paragraphs reveals that the respondent is only mentioned by name in paragraphs 16, 17, 27, 28 29, 30, 31, 32, 44, 45, and 46 and that it is only in the last three paragraphs (44-46) that it is alleged that he actually took some specific action. Thus, it is important to look at those allegations. These allegations are contained in the section entitled overt acts and are set forth as follow:

> 44. On or about January 23, 2001, defendant Richard Greene telephoned the CWs and discussed the proposed sale of 200,000 shares of MVEO stock and an 8,000 share "test" trade.
>
> 45. On or about January 23, 2001, defendant Richard Greene caused a facsimile to be sent to the CWs regarding wiring instructions for his escrow account.

> 46. On or about January 24, 2001, defendants Walter Dorow and Richard Greene discussed methods with the UCA and CWs to conceal kickbacks to be paid to the UCA and others in exchange for the Fund's purchase of MVEO stock.

As in most cases like this, there are taped conversations. The Respondent introduced transcripts of both conversations referenced above. Nonetheless, it is this January 24, 2001, conversation that causes the Respondent to have criminal exposure. As he admitted prior to sentencing and during this proceeding, he had knowledge that the individuals who appeared in his office on January 24, 2001, were possibly engaged in criminal activity and he did nothing to either report them to the authorities or to make them leave his office at the first hint of illegality.

The Respondent testified that he believed that he was performing a legitimate business and legal function for his client (service as escrow agent for a stock transfer) and that Dorow purposefully lied to him about a continued relationship with the other individuals at the meeting. TT 103-109. In fact Dorow admits on tape, several times, that he was not telling the Respondent the truth about Dorow's business relationships. See for example the excerpts from various taped conversation wherein Dorow's duplicity is found:

1. Dorow, while discussing with Robert Schlien (a confidential informant conducting the sting) a phone call to be placed to Greene making a comment that there will be a three way phone call but that Greene would not know Schlien would be listening to the conversation. Tape 442

2. Dorow telling Schlien that Greene needs to think that he is not party to a kick back. Tape 459

3. Dorow telling Schlien that Greene is not going to do something that will get him in trouble. Tape 459

4. Dorow telling Schlien that he does not want Greene looking at the true deal and an admission that "No, Richard doesn't know. I mean this kind of stuff Richard doesn't know." Tape 561.

5. Dorow telling Schlien that "Richard doesn't know anything. Why should he? I haven't told him." Tape 624.

6. Dorow telling Schlien: "No body knows. Nobody, but me knows that you guys are on the other end of the transaction. I'm the only one that knows." Tape 624.

While Dorow's acts of concealment explain the Respondent's conduct, the Respondent pled guilty to one count of a federal indictment and understands that a sanction is warranted.

On or about August 11, 2004, The Florida Bar filed a two count complaint against the Respondent. The Respondent served his answer and also moved to dismiss Count II of the Complaint (and the trust accounting charge contained in Count I) of the Complaint and as grounds therefore asserted that the Bar had failed to secure a finding of probable cause by a grievance committee. On November 24, 2004, the Referee denied the motion to dismiss and after having heard argument of counsel on the Bar's motion for summary judgment as to both counts of the Bar's

complaint, granted summary judgment in favor of The Florida Bar as to all rule violations plead in the Bar's complaint by Order dated December 17, 2004.

The case proceeded to trial on January 28, 2005 and the only issue argued therein were mitigation, aggravation and the appropriate sanction that should be imposed. The Referee served her Report of Referee on February 10, 2005. This Report outlines the misconduct at issue but does not make detailed factual findings. As a sanction, the Referee at page three of her Report, without explanation or reference to any precedent, recommends that the Respondent be disbarred, with no recommendation on any credit for the time already served under this Court's felony suspension.

The Respondent seeks review of (1) the denial of his motion to dismiss those portions of the Bar's complaint filed without a grievance committee finding of probable cause or an exception thereto; (2) the granting of summary judgment in the Bar's favor as to Count II and the trust accounting allegation of Count I and (3) the sanction recommendation. It is the Respondent's position that he has demonstrated that he can be rehabilitated and should be suspended for two years for his actions resulting to his plea to one felony.

SUMMARY OF THE ARGUMENT

In January 2001, the Respondent met with his client, an Art Dorow, and two other individuals in his office and discussed the funding of a business venture for Dorow. The evidence presented at trial indicated that the Respondent left that conversation on five distinct occasions because he was troubled by the content of conversation and believed that the funding proposals by these other individuals were inappropriate. After the meeting the Respondent informed his client that he would not work with these other individuals. Despite assuring the Respondent to the contrary, Dorow used these other individuals to fund a business transaction and hid this fact from his lawyer, the Respondent.

More than two years after completing the first part of the business transaction, the Respondent, Dorow and others were arrested for among other things, securities fraud. It was later discovered by the Respondent that the other individuals who came to his office in January of 2001 were government informants and had in fact engaged in business with Dorow.

The Respondent accepted responsibility for his limited role and entered into a plea agreement with the government wherein he admitted to one count of securities fraud with all other charges being dismissed. As a sentence the

Respondent was placed on probation for five years with a special condition of 180 days of home confinement and the completion of 250 community service hours. He was also fined.

Under existing case law a Referee needs to determine the gravity of the criminal act and decide if the felony is "minor" or "serious." The referee made no such determination in this case. It is the Respondent's position that his criminal actions should be considered "minor" under the existing case law and that suspension, rather than disbarment, is the correct sanction in this case when due consideration is given to the mitigation that is present in this case.

The Respondent also seeks review of the Referee's failure to dismiss Count II of the Bar's complaint. Under existing case law and rule, the Bar needed to secure a grievance committee finding of probable cause to file Count II as there was no felony conviction for same and the trust accounting violation contained in Count I also failed to meet any exception set forth in the R. Regulating Fla. Bar. The Referee also committed reversible error in granting summary judgment on these two charges, as there were material facts still in dispute or not supported by the evidence in the case and that this necessitated a denial of the motion for summary judgment.

The standard for disbarment is that the lawyer should never have been admitted to the Bar or that he/she is beyond redemption. No such finding has been

made in this case. To the contrary the evidence indicates that this lawyer is a valuable member of the community and that he should be given the opportunity to show that he is rehabilitated in a reinstatement proceeding.

ARGUMENT

I. A LENGTHY SUSPENSION FROM THE PRACTICE OF LAW IS THE APPROPRIATE DISCIPLINARY SANCTION FOR A LAWYER WHO ENGAGES IN "MINOR" CRIMINAL ACTIVITY AND WHO HAS ESTABLISHED COMPELLING MITIGATING FACTORS.

The lawyer in this disciplinary action comes before this Court having plead guilty to having engaged in felonious criminal activity as a result of having represented a client on a business transaction, wherein the client and others were involved in very serious criminal violations. The Respondent herein had a very brief interaction with the individuals who were engaged in this activity and the time line discussed at trial was that the Respondent's role lasted no more than the period commencing on January 10, 2001 and ending on February 6, 2001. TT 113. The overall criminal scheme lasted for several years and resulted in numerous individuals being sentenced to much more serious sentences than that imposed against the Respondent herein.

At issue in this appeal is not whether a lawyer should be disciplined. Rather it is the severity of the sanction and the grounds therefore that is at issue herein. The Referee, without any explanation, is recommending that the Respondent be disbarred. It is the Respondent's belief that he had demonstrated clearly and convincingly that the felony at issue should be considered "minor" under existing

case law and that he has presented numerous compelling mitigating factors that are unrebutted in the record. It is the Respondent's position that disbarment is too draconian a sanction under the facts of this case and that a lengthy rehabilitative suspension is appropriate. See for example The Florida Bar v. Davis, 379 So. 2d 942 (Fla. 1980) [Disbarment is an extreme penalty and should be imposed only in cases where rehabilitation is improbable.].

It is well settled that a referee's findings of fact and guilt are presumed to be correct and the appealing party has the burden to demonstrate that these findings are "clearly erroneous and lacking in evidentiary support." The Florida Bar v. Canto, 668 So.2d 583 (Fla. 1996); The Florida Bar v. Porter, 684 So.2d 810 (Fla. 1996). However, this Court has consistently held that it has a broader discretion when reviewing a sanction recommendation because the responsibility to order an appropriate sanction ultimately rests with the Supreme Court. The Florida Bar v. Thomas, 698 So. 2d 530 (Fla. 1997).

1. The denial of the motion to dismiss.

Of necessity the discussion will follow the chronological progression of the case. At the outset of this case, the Respondent filed a motion to dismiss Count II and a portion of Count I of the Bar's complaint as the Bar failed to secure a finding of probable cause as to the matters at issue in the motion to dismiss.

Count I of the Bar's complaint primarily concerns the Respondent's plea to one count of securities fraud, a felony, but also contains a claimed trust record keeping violation not related to said felony conviction.[1] The Bar never put the Respondent on notice of such charge and did not secure a finding of probable cause for the alleged violation.

Count II of the Bar's complaint concerns matters alleged in the superceding indictment attached to the complaint as Exhibit A, but which matters were dismissed by the U.S. government as part and parcel of the Respondent's plea agreement and therefore did not result in a felony conviction. See paragraph 1 of the plea agreement attached to the Bar's complaint as Exhibit B. In particular, Count II asserts that the Respondent also engaged in mail fraud in violation of three disciplinary rules.[2] The Bar did not present these charges and allegations to a grievance committee and further did not give the Respondent any opportunity to be heard prior to the direct filing of these charges in a formal complaint.

One of the most basic principals of Florida lawyer regulation is the requirement of a finding of probable cause prior to the filing of any formal

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[1] In particular the Court's attention is drawn to allegations numbered 18, 19 and 20 of the Bar's complaint and the alleged rule violation of R. Regulating Fla. Bar 5-1.2(b)(2).

[2] R. Regulating Fla. Bar 3-4.3, R. Regulating Fla. Bar 4-8.4(b) and R. Regulating Fla. Bar 4-8.4(c).

complaint except in very limited circumstance. See R. Regulating Fla. Bar 3-3.2(b); The Florida Bar v. G.B.T., 399 So. 2d 357 (Fla. 1981) [Necessity of a finding of probable cause to file a complaint under prior rules.]. While the direct filing of a complaint based upon a felony conviction is one of these exceptions, the remainder of the Bar's complaint does not fit these criteria. R. Regulating Fla. Bar 3-7.2(i)(2) states that a judgment or a determination of guilt, as defined by R. Regulating Fla. Bar 3-7.2 (a), is conclusive proof of the felony and that the Bar can directly file a complaint on these criminal charges without the necessity of a finding of probable cause. The rationale for such a rule is that the judgment or determination of guilt and the presumption of correctness should not have to be litigated before a grievance committee.

The bar would have this Court extend R. Regulating Fla. Bar 3-7.2(i)(2) to matters not defined as a determination or judgment of guilt of a felony, presumably as long as there was some reference to the matter in the criminal prosecution or the Bar's investigation of same. Most respectfully, this interpretation of the rule is flawed and the Bar should not have been allowed to file a complaint without a finding of probable cause by a grievance committee as to the trust accounting violation plead in Count I and the alleged criminal activity in Count II.

2. The motion for summary judgment.

The Florida Bar filed a motion for summary judgment concerning all matters referenced in its complaint against the Respondent. There were three distinct issues contained in that motion. They were:

1. Whether the Respondent should be found guilty of certain rule violations set forth in the Bar's complaint at Count I due to the Respondent's felony conviction;

2. Whether the Respondent should be found guilty of certain record keeping violations as plead in Count I of the Bar's complaint; and

3. Whether the Respondent should be found guilty of the rule violations set forth in Count II of the Bar's complaint relative to the criminal charge of mail fraud which was dismissed by the U.S. government and which has not resulted in a finding or determination of guilt of a felony.

As will be discussed below, the Respondent did not contest summary judgment as to the rule violations that flow from issue number one (his felony conviction) but did contest the entry of summary judgment on all other matters as there were substantive and material facts in dispute concerning the other issues referenced above. See the December 2, 2004 Affidavit of Richard P. Greene included in the record from the Summary Judgment Hearing.

a. The legal effect of a felony conviction.

Prosecution of a lawyer, after a felony conviction, is governed by R. Regulating Fla. Bar 3-7.2. Of particular importance to this discussion is subpart (i)(3) which provides in pertinent part that "a determination or judgment of guilt" of a felony charge "constitutes conclusive proof of the criminal offense(s)." In essence if a lawyer is convicted of a felony the Bar only needs to introduce the "determination of guilt or judgment of guilt" and the Bar prevails on the facts of the case. Also see The Florida Bar v. MacGuire, 529 So. 2d 669 (Fla. 1988). The phrases "judgment of guilt" and "determination of guilt" are defined by R. Regulating Fla. Bar 3-7.2(a) as follows:

> (1) *Judgment of Guilt*. For the purposes of these rules, "judgment of guilt" shall include only those cases in which the trial court in the criminal proceeding enters an order adjudicating the respondent guilty of the offense(s) charged.
>
> (2) *Determination of Guilt*. For the purposes of these rules, "determination of guilt" shall include only those cases in which the trial count in the criminal proceeding enters an order withhold of adjudication of the respondent's guilt of the offenses(s) charged.

The rule also goes on to define the term "convicted attorney" as someone who has either a "judgment of guilt" or a "determination of guilt". R. Regulating Fla. Bar 3-7.2(a)(3). What is not included in this rule is a discussion of lawyers charged with crimes but found not guilty of same, except to the extent that a conviction

overturned on appeal (and ultimate acquittal) will result in the termination of any felony suspension and expunction. See R. Regulating Fla. Bar 3-7.2(h).

In the case at hand, there is a judgment of guilt as to one count of securities fraud and in particular concerns count 5 of the superceding indictment. Thus, for purposes of this case this one count of securities fraud is conclusively proven and the Respondent was not allowed to re-litigate his guilt as to this particular charge. However, all other matters plead by the Bar, inclusive of all of Count II of the Bar's complaint are not subject to this automatic presumption of guilt and as such the Bar needed to prove same by clear and convincing evidence.

b. The alleged trust accounting violation.

The Bar in Count I of the complaint asserts that the Respondent was asked to produce certain trust account records and failed to deliver "deposit slips or some form of deposit record." See TFB Motion at paragraph G. The Bar provided no affidavit or other evidence to support this claim. While the Respondent initially admitted that he did not provide the Bar with actual deposit slips, the Respondent voluntarily produced several years' worth of trust records and these records included client ledger cards and various reconciliations that tied all deposits to a particular client transaction. The Bar has provided no evidence to contradict this point. Further examination of the correspondence between the prior defense counsel on this matter and The Florida Bar that deposit slips and items of deposit

(this is better evidence of what was actually deposited) were also provided to the Bar. See Composite Exhibit B attached to the Response to the Bar's Motion for Summary Judgment.

As there was a material factual issue in dispute (was there compliance with a request for specific documentation) summary judgment should not have been granted as to an alleged violation of R. Regulating Fla. Bar 5-1.2(b)(2).

c. **The dismissed criminal charges.**

In Count II of the Bar's complaint it is alleged that the Respondent is guilty of certain rule violations because it is alleged that, notwithstanding the dismissal of these charges by the U.S. government that the Respondent engaged in mail fraud. As there was no conviction on these charges, the Bar is unable to use the conclusive proof issue described above and must therefore prove these charges independently by clear and convincing evidence. The Bar attempts to do this by noting the factual predicate to the felony conviction is similar to the factual predicate set forth in the superceding indictment relative to the mail fraud charge. As such an analysis of the indictment is necessary.

The indictment references that allegations numbered 1 through 13 and 16 through 52 form the factual predicate of both charges. If one was to examine these paragraphs one would discover that the respondent is only mentioned in paragraphs 16, 17, 27, 28 29, 30, 31, 32, 44, 45, and 46 and that it is only in the last three

paragraphs (44-46) that it is alleged that he actually took some action. Thus, it is important to look at those allegations. These allegations are contained in the section entitled overt acts and are set forth as follow:

> 44. On or about January 23, 2001, defendant Richard Greene telephoned the CWs and discussed the proposed sale of 200,000 shares of MVEO stock and an 8,000 share "test" trade.
>
> 45. On or about January 23, 2001, defendant Richard Greene caused a facsimile to be sent to the CWs regarding wiring instructions for his escrow account.
>
> 46. On or about January 24, 2001, defendants Walter Dorow and Richard Greene discussed methods with the UCA and CWs to conceal kickbacks to be paid to the UCA and others in exchange for the Fund's purchase of MVEO stock.

As in most cases like this, there are taped conversations. Introduced at the summary judgment hearing was Respondent's composite exhibit C which was the transcripts of both conversations referenced above. These records indicate that at all times material hereto the Respondent believed that he was performing a legitimate business and legal function for his client and that while Dorow and the confidential informants and confidential witnesses discussed potential criminal activity, Mr. Greene either was not in the room or reminded the participants of the conversation that the transaction needed to be done legally. The Respondent's affidavit that was introduced at the summary judgment hearing also points out that

at all times material he believed he was completing a legitimate business transaction for his client and that the client, Dorow, was knowingly lying to Greene and hiding the "true" facts of the transaction from him. Explicit evidence of Dorow's duplicity is found in the excerpts of certain transcripts attached to Mr. Greene affidavit, which include the following:

1. Dorow, while discussing with Robert Schlien (a confidential informant conducting the sting) a phone call to be placed to Greene making a comment that there will be a three way phone call but that Greene would not know Schlien, who Greene refused to talk to, would be listening to the conversation. Tape 442

2. Dorow telling Schlien that Greene needs to think that he is not party to a kick back. Tape 459

3. Dorow telling Schlien that Greene is not going to do something that will get him in trouble. Tape 459

4. Dorow telling Schlien that he does not want Greene looking at the true deal and an admission that "No, Richard doesn't know. I mean this kind of stuff Richard doesn't know." Tape 1561.

5. Dorow telling Schlien that "Richard doesn't know anything. Why should he? I haven't told him." Tape 624.

6. Dorow telling Schlien: “No body knows. Nobody, but me knows that you guys are on the other end of the transaction. I’m the only one that knows.” Tape 624.

Without the requisite knowledge or scienter, there is no mail fraud. It is the Respondent's position that the foregoing evidence demonstrates that there is an issue of material fact (intent) that prevents the issuance of a summary judgment in this case.

It is the Respondent's position that summary judgment as to that portion of Count I that discusses his conviction of one count of securities fraud was proper. However, since the Bar presented no evidence as to the trust accounting violation and because the issue of intent was in dispute as to Count II, material factual disputes existed that prevented the granting of summary judgment.

3. The sanction recommendation.

The Supreme Court of Florida has consistently held that disbarment is an extreme measure of discipline that should be used only when that lawyer "has demonstrated an attitude or course of conduct that is wholly inconsistent with approved professional standards" and therefore there must be a showing that this person "should never be at the bar." The Florida Bar v. Moore, 194 So. 2d 264, 271 (Fla. 1967). In fact, this Court has even stated that disbarment is reserved for those individuals who are "beyond redemption." The Florida Bar v. Turk, 202 So. 2d 848 (Fla. 1967).

Disbarment is the presumed sanction when a lawyer is found guilty of a felony. The Florida Bar v. Grief, 701 So. 2d 555, 556 (Fla. 1997). However,

conviction of a felony does not automatically require disbarment as the Supreme Court continues to analyze each lawyer discipline case on their individual merits. The Florida Bar v. Jahn, 509 So. 2d 285 (Fla. 1987). As such this Court, in felony conviction cases, first examines whether the felony was a "serious or minor" felony and then balances that determination with the mitigation and aggravation that is present in that particular case. The Florida Bar v. Cohen, 583 So. 2d 313 (Fla. 1991).

Thus, the first question for determination is whether or not the Respondent's criminality was "serious" as defined by Cohen and its progeny. Unfortunately the Court in Cohen did not provide much guidance on the difference between a serious and a minor felony. However, they did provide an example by comparing The Florida Bar v. Pavlick, 504 So. 2d 1231 (Fla. 1987) [minor felony of being an accessory after the fact to a felony involving the importation of marijuana resulting in a two year suspension] and The Florida Bar v. Isis, 552 So. 2d 912 (Fla. 1989)[conviction for organized fraud was serious felony warranting disbarment.]. Also see The Florida Bar v. Fertig, 551 So. 2d 1213 (Fla. 1989) [assisting in money laundering for a drug dealer resulted in a 90 day suspension.].

There has been no ultimate determination if mail fraud or securities fraud is a serious or minor felony. There are cases that have resulted in disbarment and

there are cases that have resulted in suspension. Therefore, it is important to examine several of these cases closely.

The Bar urges that disbarment is appropriate and points to that sanction being imposed in The Florida Bar v. Wolis, 783 So. 2d 1057 (Fla. 2001). In Wolis, the lawyer plead guilty to one count of obstructing justice but the factual background of the case was a 64 count indictment for securities law violations, perjury, false statements and the obstruction of justice violation. Id. The Court, in its opinion, went into great detail on the multiple criminal acts taken by Wolis, inclusive of SEC filings to overstate the worth of a corporation in which Wolis owned 35,000 shares. Id. at 1058. However, what tipped the scales in this case was the obstruction of justice charge which went "to the very essence of the legal profession" and this was found to be a very serious felony. Id. at 1058-1059. There is no obstruction of justice charge in the case at hand and this Respondent had only minimal involvement in the overall criminality for no financial gain, where Wolis was intimately involved, had full knowledge that what he was doing was criminal and financially benefited by his crimes. Id.

A mail fraud case has also resulted in disbarment, but in that case the lawyer was convicted of 14 felony charges inclusive of filing false tax returns and one count of mail fraud. The Florida Bar v. Hosner, 536 So. 2d 188 (Fla. 1989). Likewise in The Florida Bar v. Bustamante, 662 So. 2d 687 (Fla. 1995), a lawyer

was disbarred for wire fraud with the underlying conduct involving acts of misrepresentation, fraud, embezzlement and the diversion of funds.

The Respondent urges that mitigation in this case is similar to The Florida Bar v. Diamond, 548 So. 2d 1107 (Fla. 1989). In Diamond the lawyer was found guilty of six counts of mail and wire fraud in relation to a fraudulent scheme to defraud investors in oil and gas lease investments. Diamond testified that he did not know of the fraudulent conduct being engaged in by employees of a company that he was running. Id., at 1109. The Court was also impressed by the significant character testimony that was presented in mitigation and therefore imposed a three year suspension. Id.

Lawyers in other serious felonies have also convinced the Court that they were worthy of rehabilitation notwithstanding the seriousness of their crimes. For example in The Florida Bar v. Clark, 582 So. 2d 620 (Fla. 1991) the lawyer was suspended for three years despite the finding of a serious felony (federal drug charges) because the criminality was an "isolated act" and that he was "not the promoter of the importation scheme." Also see The Florida Bar v. Klausner, 721 So. 2d 720 (Fla. 1998) [multiple forgery of court documents with less mitigation present in this case.]

Based upon all of the foregoing, and in particular the Respondents minimal involvement in the criminality and his client's deceit in hiding the true nature of

the transaction from the Respondent, the Respondent's felonious conduct should be consider "minor" under the Cohen and the cases that follow. However, in order to reach a just resolution of this matter, the Court must consider aggravating and mitigating factors.

Based upon the evidence presented the following aggravation from the Florida Standards for Imposing Lawyer Sanction is present:

1. Standard 9.22 (d) - multiple offenses (two felony charges);
2. Standard 9.22 (i) - substantial experience in the practice of law.

Prior to listing the mitigation present in this case, the compelling and heartfelt character testimony that was presented in this case must be highlighted. The Respondent presented six character witnesses - three lawyers, a police officer, his long time secretary and a businessman. Each of these individuals knew the Respondent for many years (one since high school), they lived through the Respondent's arrest, the resulting publicity, his criminal plea and this case. Yet each of them strongly professed the Respondent's honesty, his personal integrity, and the fact that they remain close friends or business associates or an employee because they know that his conviction was an isolated act and not a true measure of the Respondent's character.

For example, Craig Roberts, a Broward County Sheriff, has known the Respondent for 35 years, intimately understood the facts and circumstances of his arrest and conviction and when questioned about whether the criminal charge has

changed the Respondent, Officer Roberts stated: "No I don't believe he did. I know he's devastated over it, but I don't believe he's changed. He's still honest. He's still ethical." TT15, l.6-9. Mark Dearman, Esquire, who considers himself a close friend of the Respondent's family gave a telling story about the Respondent's honesty and desire to tell the truth and concluded the story with these comments:

> And I could tell Richard was - - he wasn't upset, but he put his arm around me and he said, you know, you need to be very careful what you do in front of your children. And you need to - - by example, you need to lead. And I know that was a small fib to you. But both of the kids since then have asked me, are we going into the hotel. And what am I going to tell them?
>
> So it was a - - it might sound trivial. But to me, it was an - - it spoke volumes about Richard. And I don't think I have ever met somebody as honest as Richard.

Mr. Dearman went on to conclude his comments by noting that he believed the Respondent "would be an asset to The Florida Bar" and his community. TT 28, l.8-9. As an example of his complete trust in the Respondent, Dearman mentioned that should something ever happen to him and his wife, he and his wife had designated the Respondent and the Respondent's wife as the individuals to have custody over his children.

The next lawyer to testify, Mark Perry, has shared office space with the Respondents for approximately 17 years. Perry testified that the Respondent was:

> A competent lawyer. He knows what he is doing. He's very good with clients. The clients like him. He seems to get his work done

> fairly quickly. He knows what he's doing in the area that he works in. He's - - I think he's an honest attorney. TT 36, l. 15-21.

Perry also commented on the Respondent's honesty and his belief that he is "a very honest, trusting person." TT 40, l.13-14. On the question of whether or not the Respondent should be given a chance and placed on suspension, Perry testified that:

> I think whatever lesson there was to be learned from this, I think he's learned it; no doubt about it. I think he's a credit to the profession as an attorney, and I think he still would be. It's unfortunate that this took place. But I don't think it changes fundamentally that he's an honest, good lawyer. TT 41, l.10-17.[3]

The next witness was Theresa Pike, a classmate from law school and a close personal friend of the family for approximately twenty years, who stated that she felt that she clearly knew "him better than the unfortunate set of circumstances that . . presented themselves at the time." TT 64, l. 9-11. Like Mr. Dearman above, Ms. Pike's trust for the Respondent and his abilities, includes naming the Respondent and his spouse as the potential guardian of her minor child should something happen to her and her husband. TT 62.

Also testifying at the final hearing was Eileen Booth, the Respondent's long time secretary (14 years), who also knew Dorow and many of the events prior to

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[3] Perry also discussed his own personal knowledge of Dorow as a "secretive person, a need-to-know kind of person" (TT42, l.1-3) and his personal knowledge of the main confidential informant, a Robert Schlein, who had significant criminal difficulties and the government "rewarded him for his cooperation." (TT38, 1.9-25).

there being any criminal charges. Despite full knowledge of the Respondent's conviction, Booth continues to work for the Respondent today because she "believes him to be an honest and good person." TT 76, l. 9-10.

The last witness to testify was Paul Aucello, a close family friend for more than 12 years. Mr. Aucello testified that the Respondent:

> . . . is a man of high integrity, a good Christian man. We've developed our friendship over the years. I guess the simplest way to put it would be that Rich is the kind of friend that if I called him at any time, at any hour, that he would be there for us or our family. . . . And from my wife and my family's point of view, we would trust Rich and Regina implicitly with our children. And I think that's probably the highest compliment you can pay a friend. TT 86, l. 16 to TT87, l. 3.

The testimony in this case has clearly and convincingly established the following mitigating factors found in the Florida Standards for Imposing Lawyer Sanctions:

1. Standard 9.32 (b) - absence of a dishonest or selfish motive;

2. Standard 9.32 (e) - cooperation with The Florida Bar;

3. Standard 9.32(g) - compelling evidence of good character and reputation (the Referee agreed with this finding);

4. Standard 9.32(j) - interim rehabilitation;

5. Standard 9.32(k) - imposition of other penalties (criminal sanctions);

6. Standard 9.32 (l) - a true sense of remorse.

The Supreme Court in The Florida Bar v. Pahules, 233 So. 2d 130 (Fla. 1970), stated that in selecting an appropriate discipline certain precepts should be followed. They are: 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 as a result of undue harshness in imposing penalty. 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. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. Id.

Based upon all of the testimony presented during the final hearing, and consideration of the relevant precedent and authorities, it is the Respondent's position that he be suspended from the practice of law for two years nunc pro tunc the effective date of the automatic felony suspension previously entered by the Supreme Court. This is less that the three year suspension meted out in Diamond; Clark; and Klausner as the Respondent's criminality was of less severity than that found in those cases as well as more compelling character testimony and mitigation was present in this case. Lastly, the Bar has failed to demonstrate that the Respondent is beyond redemption or rehabilitation. On the contrary, after his suspension period has run and the Respondent is reinstated to the practice of law, he will be fully rehabilitated and will not be seen in the disciplinary process again.

CONCLUSION

The Referee without any real comment or explanation has submitted a Report of Referee recommending that the Respondent be disbarred. The Report is devoid of any discussion of the relevant case law that establishes the criteria for the proper evaluation of this case. As such the Court must make its own finding on whether the Respondent's failure to discover that, despite assurances to the contrary, his client had used an illegal source of funding for what facially appeared as a legitimate business transaction is a "minor felony" rather than a "major" felony. Further, this Court must balance the severity of the criminal charges against the overwhelming character evidence and other mitigation in this case. It is respectfully contended that when the Court takes the measure of the Respondent, Richard Greene, they will find that this is a person that can be rehabilitated and is worth a second chance through a suspension from the practice of law, rather than the disbarment urged by the Bar.

WHEREFORE the Respondent, Richard Phillip Greene, respectfully requests that the Court dismiss Count II of the Bar's complaint or in the alternative find that summary judgment should not be granted as to Count II and remand the case back to the Referee for further proceedings and if the Court does not grant either request then to order a two years suspension from the practice of law, nunc pro tunc the effective date of the automatic felony suspension previously entered

by this Court (April 1, 2004), and grant any other relief that this Court deems reasonable and just.

Respectfully submitted,

RICHARDSON & TYNAN, P.L.C.
Attorneys for Respondent
8142 North University Drive
Tamarac, FL 33321
954-721-7300

By: _____
KEVIN P. TYNAN, ESQ.
TFB No. 710822

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via hand delivery on this ____ day of May, 2005 to Eric Montel Turner, Bar Counsel, The Florida Bar, 5900 N. Andrews Avenue, Suite 900, Fort Lauderdale, FL 33309 and via U.S. mail to John A. Boggs, Staff Counsel at 651 E. Jefferson Street, Tallahassee, FL 32399-2300.

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

Undersigned counsel does hereby certify that this Brief 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 McAfee.

_____
KEVIN P. TYNAN