IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

RONALD LEON BLOOM,

Respondent.
_____/

CASE NO.: SC06-1025

TFB File Nos. 2004-01,412(4A); 2005-00,002(4A); 2005-00,737(4A); 2005-00,874(4A); 2006-00,472(4A); 2006-00,514(4A); 2006-00,559(4A); and 2006-00,950(4A)

RESPONDENT'S REPLY BRIEF

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STANDARDS FOR IMPOSING LAWYER SANCTIONS

SYMBOLS AND REFERENCES

ROR.	=	Report of Referee.
T.	=	Transcript of Final Hearing before Referee on October 16, 2007; Volumes I and II.
T2.	=	Transcript of Final Hearing before Referee on October 17, 2007.
A.B.	=	The Florida Bar's Answer Brief, filed March 27, 2007.
Complaint	=	Complaint of The Florida Bar, filed May 30, 2006.

ARGUMENT

I. The Referee Erred in Finding Respondent Guilty of Violating Rules Regulating The Florida Bar 5-1.2(b) and 5-1.2(c).

The Bar concedes that it had abandoned its allegation that Mr. Bloom failed to maintain minimum trust accounting records or failed to follow minimum trust accounting procedures. Accordingly, the Rule 5-1.2(b) and 5-1.2(c) violations should be dismissed.

II. The Referee Did Not Appropriately Find or Weigh the Mitigating Factors.

A. The Referee failed to find and apply all mitigating factors.

The Bar agrees that the record supports the following three additional mitigating factors: (1) physical or mental disability; (2) reputation or character; and (3) cooperative attitude, in conjunction with the mitigating factors of remorse and rehabilitation found by the Referee in his Report. (A.B. 14-15; ROR 24). The Bar argues that the Referee's failure to include these three additional mitigating factors did not prejudice Mr. Bloom because the Referee's Report repeatedly cites to the facts supporting each of the missing mitigators. The Bar's argument would be well taken if the Referee had not found any mitigating factors and merely generally described all the mitigating circumstances. However, the Referee's selective findings of remorse and rehabilitation as the only mitigating factors show that

these factors were the only mitigators he considered before recommending disbarment.

Most significantly, the Referee did not appropriately weigh the mitigating factor of physical or mental disability. Although the Referee found that Mr. Bloom's "way of thinking and logic was strictly driven by an impaired mind and recklessly unsound judgment" caused by his addiction, the Referee did not take the next recognized step of evaluating whether Mr. Bloom's addiction "casts doubt on the knowing and intentional nature of his or her misconduct," which would justify a lesser sanction. (ROR 13); Florida Bar v. Martinez-Genova, 2006 WL 3627012 (Fla.). Instead, the Referee took the unprecedented step of recommending disbarment solely for the purpose of promoting his recovery from chemical dependency. See ROR at 22 (concluding that "Mr. Bloom's focus in the near and distant future needs to be directed towards a complete change of lifestyle and overcoming addiction."). As a result, the Referee turned the recognized mitigator of chemical dependency into an aggravating factor justifying disbarment. The Bar acknowledges that no authority supports the Referee's analysis. The Referee's failure to appropriately weigh all applicable mitigating factors, as required by Florida Standard for Imposing Lawyer Sanctions 3.0, greatly undermines the disbarment recommendation.

B. The Referee's analysis supporting his disbarment recommendation is erroneous.

The Bar attempts to support the Referee's finding that disbarment would be beneficial to Mr. Bloom's recovery from chemical dependency. (A.B. 18). Not only is the Referee's analysis irrelevant to any recognized standard for considering lawyer sanctions, none of the evidence established or even suggested that disbarment was necessary to maintain Mr. Bloom's recovery. Dr. Greenfield testified that a loss of Mr. Bloom's license could potentially be detrimental to his recovery while Mr. Bloom's sponsor through Alcoholics Anonymous, Mr. James Sullivan and Ms. Virginia Thomas, an employee of Mr. Bloom's residential rehabilitation program, opined that Mr. Bloom would pursue recovery even without his license. (T. 118, 127).

No witness addressed how a three-year suspension, requiring clear and convincing proof of rehabilitation before reinstatement, would benefit Mr. Bloom's long term recovery. Certainly, a lengthy suspension followed by the opportunity to prove rehabilitation would provide a strong incentive to this lawyer, who maintained an excellent reputation for over thirty years, to doggedly pursue his stringent recovery program. This Court should not adopt the Referee's belief that Mr. Bloom should be disbarred in order to promote his recovery from addiction.

III. The Appropriate Sanction is a Three-Year Suspension Followed by Probation if Mr. Bloom is Reinstated.

The Bar agrees that Mr. Bloom's criminal charges and Mr. Bloom's improper loans from his client would not by themselves warrant disbarment. (A.B. 20). However, the Bar asserts that Mr. Bloom's breach of his two advanced fee agreements with Cybersettle Financial Services ("CFS") carries a presumptive sanction of disbarment. (A.B. 21).

There is very little record evidence regarding the nature of the agreement through which Cybersettle Financial Services ("CFS") lent money to Mr. Bloom. The contracts between Mr. Bloom and CFS were not entered into evidence at the hearing. The Complaint alleged, in pertinent part, "The advance fee agreements between CFS and Respondent state that Respondent acknowledged that the transaction was an absolute transfer and assignment of the assigned amount and is not to be deemed a loan by CFS to be repaid out of the assigned amount." (Complaint, para. 6A). It appears that CFS contracted to obtain collateral (through an assignment of attorney's fees which would be awarded to Mr. Bloom in a pending legal matter) in order to secure repayment of funds CFS lent to Mr. Bloom. While these two transactions were not simply unsecured loans, neither was Mr. Bloom's breach of these agreements conduct warranting disbarment.

The Bar did not distinguish, in any meaningful manner, Mr. Bloom's failure to preserve CFS's security interest from the conduct described in Florida Bar v.

Brown, 905 So. 2d 76, 79-80 (Fla. 2005). In Brown, the Court found the attorney had "double pledged" a $420,000 certificate of deposit it had offered as "full cash collateral" to an insurance company in order to obtain a bond. Id. Because the attorney had also pledged the certificate of deposit to its own law firm, the insurance company had competing claims to the certificate and ultimately entered into a settlement resulting in a "net loss of $148,110.32." Id. at 80. The Court found Mr. Brown's misconduct to be serious and imposed a severe sanction of a six-month suspension. Id. at 84. Nonetheless, the Court did not characterize Mr. Brown's failure to preserve the assigned collateral as conduct justifying a presumptive sanction of disbarment. Similarly, Mr. Bloom's use of the assigned attorney's fees does not warrant a presumptive sanction of disbarment.

After considering the rule violations and all of the mitigating factors, including Mr. Bloom's severe drug addiction, a sanction less than disbarment is appropriate. While the Bar initially argues that the Referee's factual findings should be given great deference, the Bar inconsistently attacks the Referee's finding that Respondent's mental status was severely compromised by his chemical dependency. (A.B. 23-24). The Bar references Mr. Bloom's testimony out of context to support its position that Mr. Bloom had enough control to maintain his law practice. (A.B. 24). Mr. Bloom did explain that he had repeatedly pursued short-term treatment for drug addiction while maintaining his

practice prior to 2004. (T2. 10). However, Respondent further testified that his addiction became much more severe in 2004. (T2. 10). The misconduct charged in the Complaint occurred between January 2004 and January 2006, during the time that the Referee found Mr. Bloom's drug abuse began to "spiral out of control." (Complaint; ROR 12).

By 2004, Mr. Bloom had lost his ability to function and his behavior affected not only himself and his family, but also his clients. (T2. 11). Even counsel for CFS confirmed that Mr. Bloom's conduct became bizarre and that his legal abilities were greatly compromised, even though she had previously observed his superior legal skills in the past. (ROR 18). The Referee repeatedly noted Respondent's impaired mental status and contrasted it with his previously excellent reputation as attested by eight members of the judiciary. See ROR at 11 (noting that Mr. Bloom had for thirty years "enjoyed a thriving law practice and excellent reputation" and that Mr. Bloom "was a well respected and a strong advocate for injured individuals"); ROR at 17 (finding drug addiction was the only "patent explanation for Mr. Bloom's behavior"); ROR at 13 (determining that Mr. Bloom's "way of thinking and logic was strictly driven by an impaired mind and recklessly unsound judgment."). The Bar has not demonstrated that the Referee's findings in this regard are clearly erroneous or lack evidentiary support. Florida Bar v. Batista, 846 So. 2d 479, 482 (Fla. 2003) (A referee's factual findings are

"presumed correct and will not be overturned unless they are clearly erroneous or lacking in evidentiary support."). Accordingly, the Bar's attempt to overturn the Referee's findings concerning Respondent's compromised mental status should be rejected.

The cases the Bar relies upon to support the disbarment recommendation are distinguishable from the present matter. The Bar argues that Florida Bar v. Shanzer, 572 So. 2d 1382 (Fla. 1991), stands for the proposition that disbarment is still warranted even when the attorney suffers from depression. To the contrary, the Court in Shanzer carefully explained that "mental problems as well as alcohol and drug problems may impair judgment so as to diminish culpability. However, we do not find that the referee abused his discretion in not finding this to be one of those cases." Shanzer at 1384. (*emphasis added*). While the opinion only briefly mentions the basis for Mr. Shanzer's claim of depression (economic and marital problems), the Shanzer referee did not find the responding lawyer's condition was sufficiently severe so as to impact his culpability. On the other hand, the Referee in the present matter found that Mr. Bloom's mental status was greatly impaired. Unfortunately, the Referee in this case did not consider the appropriate standard of whether his "impaired mind and recklessly unsound judgment" diminished his culpability. See Florida Bar v. Martinez-Genova, 2006 WL 3627012 (Fla.); Shanzer at 1384.

The Bar's reliance on Florida Bar v. Shuminer, 567 So. 2d 430 (Fla. 1990), and Florida Bar v. Knowles, 500 So. 2d 140 (Fla. 1986), is also misplaced. Shuminer and Knowles pertain to lawyers who have asserted chemical dependency as mitigation for trust account theft, but who were unable to show that their disability casted doubt on the knowing and intentional nature of their actions. As the Bar points out, the attorney in Shuminer "continued to work regularly without diminished income" and the attorney in Knowles "used a significant portion of the [stolen] funds on a luxury automobile." (A.B. at 25). In contrast, the record in this case, as demonstrated by the Referee's Report, clearly established that Mr. Bloom's practice was decimated by his addiction and in two years, he lost everything he had worked for during his lucrative and successful thirty-year practice. See ROR at 12-13 (finding "Mr. Bloom lost just about everything he owned; his home by the sea, his car, and all of his possessions. By March of 2006, he had nothing left."). These uncontested facts demonstrate the devastating consequences of Mr. Bloom's struggle with drug addiction and show that Mr. Bloom legitimately suffered a debilitating condition that impacted all aspects of his life, including his judgment and reasoning as described in the Complaint.

The Bar urges this Court to disbar Mr. Bloom by asserting that there is "no guarantee" that Mr. Bloom will continue to pursue his rehabilitation. (A.B. 27). While no one can "guarantee" future conduct, a three-year suspension would

guarantee that Mr. Bloom would not be able to practice unless this Court finds he clearly and convincingly established his rehabilitation after his term of suspension. Moreover, if Mr. Bloom were ever reinstated, a probationary period with an extended monitoring contract would require him to continue to prove his abstinence and adherence to his recovery program.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing Respondent's Reply Brief has been furnished by FedEx overnight delivery and electronic submission via e-file@flcourts.org to the Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1926 and a true and correct copy has been furnished by U. S. Mail to James N. Watson, Jr., Esquire, The Florida Bar, 651 Jefferson Street, Tallahassee, Florida 32399-2300 and Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, on this 10th day of April, 2007.

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GWENDOLYN H. HINKLE, ESQUIRE

CERTIFICATION OF FONT SIZE AND STYLE

The undersigned counsel does hereby certify that this brief is submitted in 14 point proportionally spaced Times New Roman font.

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GWENDOLYN H. HINKLE, ESQUIRE