IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR, Complainant, v. NOAH DANIEL LIBERMAN Respondent, _____/	SUPREME COURT CASE No.: SC06-1874 THE FLORIDA BAR FILE No.: 2007 -70,245 (11N)

SECOND SUPPLEMENTAL REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The Florida Bar's formal complaint in this cause was filed on or about September 22, 2006. Thereafter, the Honorable Catherine Pooler was appointed to preside as Referee in this proceeding by order of the Chief Judge of the Eleventh Judicial Circuit. After the filing of an initial Report of Referee, as well as a Supplemental Report of Referee, Judge Pooler recused herself from this matter.

The undersigned referee was appointed to preside as Referee in this proceeding by order of the Chief Judge of the Eleventh Judicial Circuit on July 23, 2009. Pursuant to such order, this Referee has reviewed all prior pleadings and submissions as well as the transcript of an evidentiary hearing held on this matter on January 10, 2008. The pleadings, and all other papers previously filed in this

cause, which are forwarded to the Supreme Court of Florida with this second supplemental report, constitute the entire record.

The following attorneys appeared as counsel for the parties:

For The Florida Bar:	William Mulligan The Florida Bar 444 Brickell Avenue Suite M-100 Miami, FL 33131
For Respondent:	Richard Baron 501 NE 1st Avenue Suite 201 Miami, Florida 33132

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH RESPONDENT IS CHARGED:

Based upon the Second Unconditional Guilty Plea And Consent Judgment For Discipline ("Second Consent Judgment"), my findings of fact are as noted below.

A) The Underlying Criminal Activities and Misconduct.

Respondent, Noah Daniel Liberman, was a young attorney who was primarily, if not exclusively, involved in civil litigation. He also had an illness; he was a drug addict and was severally addicted to the drugs methamphetamine and M.D.M.A. (ecstasy). For years prior to his arrest, drugs controlled his life.

The use of the drugs led to he and his friends pooling their funds to purchase the drugs in greater quantity for a volume discount and then the drugs being distributed among his friends. During this time period one of his friends, a fellow addict, was arrested for a drug offense and began working undercover for Coral Gables Police Department in conjunction with the Miami Beach Police department and the Drug Enforcement Administration (DEA) unbeknownst to Respondent.

For a period of approximately six weeks in 2004, this "confidential source" purchased small quantities of either methamphetamine or M.D.M.A. from Respondent on four (4) occasions as follows:

(1) On February 16, 2004, 1 gram of methamphetamine.

(2) On February 24, 2004, 2 grams of methamphetamine and 2 M.D.M.A. Ecstasy pills.

(3) On March 9, 2004, 1 gram of Methamphetamine

(4) On April 5, 2004, 2 grams of Methamphetamine.

The "confidential source" then requested that Respondent obtain an amount of the drug M.D.M.A. that far exceeded that which was usual or customary for Respondent to have in his possession. Once the "confidential source" was confident that Respondent had the requested drugs in his possession, the police

were notified and raided Respondent's home finding a trafficking amount of the drug M.D.M.A.

Subsequently, Respondent entered into a plea agreement with the Office of the State Attorney and pled guilty. On or about March 30, 2006, Respondent was adjudicated guilty of one felony count of Phenethylamine/Ecstasy/Trafficking of 10 Grams or more but less than 200 Grams. (A certified copy of the Judgment and Orders of Supervision in the State of Florida v. Liberman, case no. F04-010724 in the Eleventh Judicial Circuit Court, in and for Miami-Dade County are attached to the Complaint of The Florida Bar as Composite Exhibit "A"). Since that time he has cooperated with authorities, served a short sentence in county jail over weekends only, served six months on community control, and successfully completed his probation.

B. Evidentiary Hearing of January 10, 2008.

On October 1, 2007, the prior Referee submitted to the Supreme Court an Unconditional Guilty Plea and Consent Judgment for Discipline ("First Consent Judgment") and Report of Referee recommending that the Supreme Court approve the First Consent Judgment and impose a three year suspension nunc pro tunc to June 2, 2006. In response to the above, on December 21, 2007, this Honorable Court entered the following order:

> Upon consideration of the referee's report and the Unconditional Guilty Plea and Consent Judgment for Discipline filed in the above-styled cause, the case is remanded back to the referee for further proceedings. The referee is to provide a supplemental report that contains factual findings elaborating on Respondent's underlying criminal activities and disciplinary misconduct. The referee should explain why she found trafficking in illegal drugs to be "minor misconduct," and she should provide an analysis as to how a three-year suspension, rather than disbarment, is an appropriate discipline for a felony conviction of illegal drug trafficking. The referee is allowed to and including February 19, 2008, in which to submit a supplemental report consistent with this order.

In response to this order, on January 10, 2008, the prior Referee conducted a full evidentiary hearing to ensure a full record was available for this Court to review the factual underpinnings of the recommended sanction. A transcript of this hearing was previously filed with this Court. The transcript of the hearing indicates that the following witnesses testified at the evidentiary hearing and their testimony is summarized as follows:

NOAH DANIEL LIBERMAN

Respondent, Noah Daniel Liberman, testified that he started using drugs at age 13 or 14 and the drug use took its expected path of progression from marijuana and alcohol to cocaine and finally crystal methamphetamine ("crystal meth"). At the time of his arrest, Respondent had been using crystal meth for four (4) months straight. At the time of the events that led to his arrest, he was totally impaired and heavily addicted.

As to the trafficking aspect of the charges, Respondent testified that he was the one who would purchase the drugs for himself and his friends as a type of buyers' cooperative to get the benefits of volume discount on the drugs. Respondent testified that he was only dealing drugs to cover the costs of his addiction.

As to the volume of the drugs recovered at the time of his arrest, Respondent testified that the amount of the drugs was dictated by the requests made by the confidential informants working with police. Respondent testified that he was earning approximately $80,000.00 a year practicing law at the time of his arrest and that he came from a family of means and that he has never been in need of money.

Respondent testified as to his sincere remorse for his actions and of the many steps that he took in treatment of his addiction. Respondent testified that as of the date of the hearing (January 10, 2008), he had been in successful recovery for three years and nine months. Finally, Respondent testified as to his participation in outpatient treatment, his involvement with AA/NA/Florida Lawyers Assistance, Inc. ("F.L.A.") meetings, and as to the substantial time he has devoted to community service.

MICHAEL J. MARRERO, ESQ.

Mr. Marrero has been a friend of Respondent since high school and testified that Respondent is a good person and was aware of his drug use but not the extent. Mr. Marrero testified that Respondent always had money available to him and had no financial motive to sell drugs. Mr. Marrero further testified that there is a marked difference in the present Respondent and the Respondent of 4 years past.

LISA LEHNER, ESQ.

Ms. Lehner was a former prosecutor and a practicing attorney and "Of Counsel" at the firm at which Respondent was employed as an attorney at the time of the arrest. Ms. Lehner testified that Respondent was an excellent young attorney that showed great promise and who could get along and share interests with everyone regardless of who they were. Ms. Lehner had no idea that Respondent had a drug problem and was shocked when she found out. Ms. Lehner further stated that Respondent is a changed person. She also opined that it would be unfortunate if Respondent, at this young age, was not given a second chance and that the legal community would benefit from his eventual return.

ANDRÉS RIVERO, ESQ.

Mr. Rivero testified that he is a former employer of Respondent and a former Federal Prosecutor. Mr. Rivero testified that he had a good working

relationship and friendship with Respondent and that Respondent was a very good young attorney. Mr. Rivero stated that his firm does complicated litigation and not every attorney has the mind to handle the complexities, but that Respondent is very smart and analytical and could do the work.

Mr. Rivero stated that he did not know Respondent was using drugs. After Respondent's arrest, Respondent apologized to Mr. Rivero and showed remorse for his actions and how it may have affected Mr. Rivero and the firm. After the events, Respondent kept in touch with Mr. Rivero and they still have a friendship. Mr. Rivero testified that there has been a marked change in Respondent since the events and that he has seen a growth and maturity in Respondent as a result of the events. Mr. Rivero testified that he believes that Respondent deserves a second chance and would hire him again, if or when, he is re-licensed.

JOHN EUSTACE, M.D.

Dr. Eustace is a renowned and experienced addiction expert. Dr. Eustace testified as to Respondent's drug use history and diagnosed him as methamphetamine dependent. Dr. Eustace opined that Respondent would not have sold drugs if he was not seriously impaired and addicted, and that but for the impairment and addiction, the arrest in its current form would not have occurred. Dr. Eustace further testified that it is common and typical of drug addicts/users to pool money and share drugs, and that that is not what they consider a "trafficker" in the addiction treatment medical community. Dr. Eustace testified that Respondent's prognosis is excellent and that the bar, the court and the public can have some comfort that Respondent won't repeat his behavior.

GUELSY HERRERA

Ms. Herrera testified that she had been a community control officer for nine years in Miami-Dade County, Florida. Ms. Herrera supervised Respondent for his first 6 months of community control when Respondent went to jail on weekends. Tellingly, Ms. Herrera testified that in her experience, Respondent was the first client that ever took responsibility for his acts and told Ms. Herrera that he made a mistake and just wanted to do what he could do to make it right.

Ms. Herrera further testified that Respondent was a model probationer, was always where he was supposed to be, always checked in, paid all fines/fees on time and did community service. Respondent was tested numerous times for drug use with all tests negative. Interestingly, she testified that Respondent would ask

for additional tests. Finally, Ms. Herrera testified that she does not believe that Respondent will ever use drugs again and that she would hire him as her attorney if he got his license back.

RONALD LOWY, ESQ.

Mr. Lowy is Respondent's F.L.A. Monitor as well as a former employer. Mr. Lowy testified that Respondent is fully compliant with his F.L.A. contract and goes to more meetings than required and is an active participant. As to the Respondent's compliance Mr. Lowy stated that Respondent would do things that Respondent did not agree with because he was told to do them and that Respondent was unique because he would voice his opinion and then do it anyways.

Mr. Lowy testified that as an employee Respondent was very hard working, very bright, and helped make new law with some of his research, writing and creative legal arguments. Mr. Lowy testified that he would definitely rehire Respondent. Mr. Lowy further opined that Respondent should be given a second chance because he would make an excellent attorney and would benefit the legal community.

MYER J. COHEN, ESQ.

Respondent moved the affidavit of Myer J. Cohen, the Executive Director for F.L.A. (dated August 31, 2007), into evidence at the evidentiary hearing. In said affidavit, Mr. Cohen stated that:

> [M]r. Liberman first contacted F.L.A. in 2004 after his arrest . . . Since his initial contact, Mr. Liberman has been candid and willing to follow F.L.A. suggestions and recommendations. He self-reported his arrest to The Florida Bar, despite the fact that bar rules only required reporting upon *conviction* of a felony at that time . . . .
>
> Since entering into the F.L.A. contract, Mr. Liberman's compliance has been exemplary. He has attended the meetings called for in the contract, has met with his monitor as often or more than required, has appeared for all random tests . . . within the requisite time period with all results being negative for controlled substances, and successfully completed The Village outpatient program as called for.

> Based on the above, it is the opinion of F.L.A. that Mr. Liberman has addressed the behavior which led to his arrest, and that so long as he maintains the recovery and support system he has instituted, he is unlikely to repeat any similar behavior…..

JANE GROSS

Ms. Gross is Respondent's mother and she testified that Respondent was always a good child and that due to the financial circumstances of the family had no financial incentive to sell drugs. She testified that she suspected that something was different about Respondent in the time preceding the arrest but thought it was work and life stress. Ms. Gross was unaware that it was drug addiction. She stated that she feels guilty for not recognizing the problem, but that Respondent is now a different person.

EDWARD ALAN MARTINEZ. ESQ.

Mr. Martinez (now a private attorney) was the Assistant State attorney who prosecuted Respondent in Miami-Dade Circuit Court and handled the case for the State Attorney from the time of arrest until Respondent's plea. Mr. Martinez was deposed and the following excerpts from his deposition were read into the record in lieu of live testimony.

> Page 4:
>
> *Q.* So as an attorney in the Specialized Unit of Narcotics, did you come across any defendant in a case by the name of Noah Liberman?
>
> *A.* Yes, I did.
>
> *Q.* And what was your involvement in Mr. Liberman's case?
>
> *A.* I was the prosecutor on his case.
>
> *Q.* So you worked the case from the very beginning.
>
> *A.* Correct, right from the arrest.
>
> Page 6:

Q. And the case ultimately did resolve by a plea of Mr. Liberman, correct?

A. Absolutely. What I can say is this, from the very beginning Mr. Liberman was not going to contest the charges. And that as a prosecutor shows a lot to me. One of the things that I'm concerned with is remorse, pain, acceptance for responsibility. That wasn't the issue. The issue was whether or not I was correct in my assessment of the case.

Page 9-16:

Q. Did you since learn that he was a drug addict?

A. Oh yes, absolutely. As a matter of fact one of the things that we do when people get arrested, since drug is so prevalent in this community and in other communities, that's how we have confidential informants. The original confidential informant herself, I believe was arrested. I may be wrong, but I believe she was arrested and charged and that's why she became a confidential informant.

However, Mr. Paulus and myself and Kathy Fernandez Rundle, the office policy is we do not use confidential informants if we believe that their drug habit could lead them to continue to do drugs or violate.

If they become confidential informants they sign a contract. One of the things that they agree to in their contract is that they will not do drugs, and that they will be routinely tested for drugs. If we believe that they are drug addicts, putting them back into that culture could be too tempting, so we don't like to use them if they're drug addicts.

And I can say that with all honesty that in all the time that I was a narcotics prosecutor, which was almost three years, Mr. Liberman was one of the more severe drug addicts. I would refuse to use him as a CI because he was. In fairness to him, he recognized that himself, and I believe he went into treatment from the very beginning.

Q. So there came a time for Mr. Liberman plea out the case, correct?

A. Correct. He always wanted to plead it out from the very beginning. In fairness to him, he was not contesting it. He was accepting culpability, responsibility for what he did.

Q. Now, the three year minimum mandatory requirement was dropped in this case; was it not?

A. Correct. Well, it was reduced, correct.

Q. It was reduced. And in fact he was sentenced to six months of house arrest and six months of jail by weekends only, correct?

A. Correct.

Q. Is that the typical sentence a drug trafficker would get?

A. No, it's usually much harsher even if they cooperate.

Q. So why did he get such a reduced sentence in this particular case?

A. Well, again, one of the things that we looked at in the Unit, Mr. Paulus and myself, is if they accept responsibility first and foremost. If you come in as soon as you're arrested and throw yourself on the mercy of the prosecutor and say I'm not going to contest it, I'm telling you we're not going to go to trial, we're not filing any motions, I did do what I did and I want to accept responsibility for it, we look at that.

The other issue becomes why did they do this. Were they doing this strictly for profit? You would be surprised how often it occurs that they do this because they want to -- at first they do it to pay their drug habit. Well, like everything else, after a while you start getting a little bit of a profit and you figure well, why not, let me make, you know, a couple hundred bucks on this and a couple hundred bucks over there. But that doesn't necessarily mean that you are the, you know, quote unquote street drug trafficker because usually these guys, what they do is they end up selling to their acquaintances. They sell it to their friends, their friend's friends. They're not out there soliciting business, or they don't have a drug hole. They don't have a pipeline to narcotics.

The other issue is that that's the thing about Mr. Liberman as well, is that he did not have a network of drug users. We knew where he was getting his supply. I knew that that's the only place he was getting his supply.

And without saying more, I can say that we also knew that he was not going to be able to cooperate against his supplier. And it was also our office policy not to necessarily request or force people to cooperate against the type of supplier that he had.

It didn't seem to us like he was a street trafficker. He accepted responsibility. He went into rehab immediately. He was drug tested routinely and was always negative.

Q. So he wasn't your typical drug dealer who was in this for a profit, who was corrupting the system, who was corrupting people, who was -- who had an access to drugs all around the County and could get whatever he wanted. He was a very limited guy, wasn't he?

A. Correct. Correct.

Q. It was basically limited to people, to his friends and friends of his friends.

A. Right. And it was limited also to drugs that it appeared to us that he used, which is another thing we look at. A drug dealer is in it for profit. Whatever will make them money is what they make. They may not necessarily use Crystal Meth, but they'll sell it. They may not necessarily use Ecstasy, but they'll sell it.

When Mr. Liberman was arrested there was evidence that pretty much anything that he sold, there was also residue on personal items that showed that he actually used the drug himself, which is another indication that they're just doing it to fuel their own drug habit.

Q. And you're comfortable that that was the case with Mr. Liberman?

A. Yes.

Q. Did you make the final recommendation as to his sentence?

A. Yes, I did.

Q. And again, it was a very unusual sentence, wasn't it, for a drug trafficker?

A. Absolutely. Absolutely. It was a lesser sentence than probably even if he had cooperated. We worked out a situation where Mr. Liberman did cooperate anyway by providing substantial assistance in the form of donations for fighting crime, to help with the Coral Gables Police Department to refund their expenses on his case and any other case that they do for narcotics.

Q. Do you have an opinion one way or the other whether Mr. Liberman should be disbarred?

A. Well, not -- this is not my area of expertise.

Q. I'm talking as a prosecutor.

A. Yeah, I'm talking as a prosecutor and as a citizen of Dade County. Do I think he should be suspended? Absolutely. Indefinitely? I don't know. And this is now my personal opinion, as a prosecutor I can't tell you, but I don't think, from what I've seen from Mr. Liberman, if he can stay clean. Whatever he may have done, whatever the ultimate -- even if my opinion of why he was dealing drugs is incorrect, I can say that I firmly believe, truly believe that this all started because of his drug habit. I don't think Mr. Liberman went into this to be a drug dealer. I think Mr. Liberman started as a drug user and his own habit became too expensive.

So I think if he is suspended and he is clean and he stays away from the drugs, I don't think that he is going to have a problem being a drug dealer. We're not ever going to see Mr. Liberman, in my opinion, be a drug dealer again as long as he doesn't use drugs. He has got a way to make a living. He is also very young.

> And on a personal level, I would hate to see it take somebody's livelihood away from them indefinitely, but I do believe Mr. Liberman needs to make amends for what he has done, make amends to the legal community, make amends to all of us as lawyers who have studied, taken the Bar, go out of way to sacrifice ourselves to do what's right and uphold what is right as a lawyer and the oath that we took, he needs to pay that back and show that he is remorseful for what he has done.
>
> I think ultimately, if it was up to me, my recommendation would be not an indefinite suspension.

CHRISTI SHEROUSE, ESQ.

Ms. Sherouse provided an affidavit which states in material part, that in 2006, she met Respondent through a mutual friend, Lisa Lehner, Esq., who advised her that she had worked with Respondent when he was an attorney. Ms. Lehner advised Ms. Sherouse that although Respondent had gone through some difficulty in the past, that if Ms. Sherouse was willing to give him a chance, he would do an excellent job. At his interview, Respondent impressed Ms. Sherouse with his candor. He was upfront about his criminal issues and past drug addiction. He discussed both areas openly. Respondent began working for Ms. Sherouse and the firm on November 6, 2006. Ms. Sherouse affirmed that Respondent is intelligent, knowledgeable, diligent, responsible and hard working.

Ms. Sherouse also got to know Respondent outside of the office as he had become involved in the Camillus House Young Leaders ("CHYL"), a charitable organization of which Ms. Sherouse is currently the Chair. Ms. Sherouse stated that Respondent is now in charge of the CHYL tutoring group, which brings tutors to Camillus House to assist with GED preparation and other educational needs. Notably, since Respondent was put in charge, CHYL had its first member successfully pass the exam and receive his GED. Ms. Sherouse stated that she is aware of Respondent's past and that it does not appear that he is the same man today. Ms. Sherouse opined that Respondent has learned from his mistakes and that in her opinion he will never repeat the unfortunate acts of his past.

III. RECOMMENDATION AS TO WHETHER RESPONDENT SHOULD BE FOUND GUILTY OF MISCONDUCT JUSTIFYING DISCIPLINARY MEASURES:

The undersigned recommends that the Second Consent Judgment be approved by the Supreme Court of Florida as a final resolution of all matters referenced herein. Accordingly, based upon the Consent Judgment, it is recommended that Respondent be found guilty of violating the following disciplinary rules: Rule 3-4.3 (Misconduct and Minor Misconduct) of the Rules of Discipline and Rule 4-8.4(b) (A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects) of the Rules of Professional Conduct.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

The undersigned Referee acknowledges that when an attorney has been convicted of a felony, disbarment is the presumptively correct discipline, *Fla. Std. Imposing Law. Sancs.* 5.11, and that the burden is upon the attorney to prove that something less than disbarment is warranted by the circumstances. However, neither the rule nor case law mandates disbarment for all attorneys who are convicted of a felony. *The Florida Bar v. Pavlick*, 504 So.2d 1231 (Fla. 1987). When substantial mitigation is present, a suspension may be appropriate in the case of a felony conviction. *The Florida Bar v. Del Pino*, 955 So.2d 556 (Fla. 2007) [1]

[1] This Honorable Court in *Del Pino* stated: "We are also mindful of those cases in which a respondent's drug addiction caused or contributed to the felonious conduct and resulted in suspension instead of disbarment. *See Fla. Bar v. Hochman,* 815 So.2d 624 (Fla. 2002) (suspending attorney for three years, effective, nunc pro tunc, on the date of his felony

(Referee's recommendation of disbarment overruled and three-year suspension from practice of law was appropriate sanction for attorney's misconduct of participating in fraudulent transfer of condominium, which transfer led to conviction for mail fraud, and preparing and signing false and fraudulent application for extension of time to file and pay her federal income taxes, which led to her conviction for tax evasion.)

As addressed very recently in *Del Pino*, it is respectfully suggested that the misconduct herein, when viewed in conjunction with the evidence of addiction and other mitigating factors, and further examined in light of Supreme Court precedent, warrants a lengthy suspension rather than disbarment.

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suspension after he pled no contest to felony grand theft where mitigating evidence included drug and alcohol addiction); *The Fla. Bar v. Marcus,* 616 So.2d 975 (Fla.1993) (suspending attorney for three years after conviction of felony for misappropriating client funds where attorney's cocaine addiction was directly and causally linked to misconduct); *The Fla. Bar v. Corbin,* 540 So.2d 105 (Fla.1989) (suspending attorney for three years; while acting as a circuit judge, the attorney was convicted of attempted sexual activity with a child twelve years of age or older, but less than eighteen years of age, with whom he stood in a position of familial or custodial authority; substantial mitigation included voluntarily entering and completing a residential alcohol treatment program); *The Fla. Bar v. Jahn,* 509 So.2d 285 (Fla.1987) (suspending attorney for three years after he was found guilty of delivery of cocaine to a minor and possession of cocaine where the attorney's drug addiction was one of several mitigating factors); *Fla. Bar v. Rosen,* 495 So.2d 180 (Fla.1986) (suspending an attorney for three years after he was convicted of knowingly and intentionally possessing cocaine with the intent to distribute); *see also Fla. Bar v. Clark,* 582 So.2d 620 (Fla.1991) (suspending attorney for three years after felony conviction on federal drug charges where substantial mitigating factors included the fact that the attorney was operating a law partnership with his father, who suffered from a drinking problem, and was attempting to carry his fathers caseload as well as his own)." *Id.* at 563.

The first Supreme Court case that involves a similar analysis of addiction *versus* criminal acts is found in *The Florida Bar v. Rosen,* 495 So.2d 180 (Fla. 1986). In *Rosen*, the Bar sought disbarment for a drug-addicted attorney who was adjudicated guilty of federal felony charges of knowingly and intentionally possessing cocaine with intent to distribute cocaine. The referee found that "[t]he respondent's involvement in the crime for which he pleaded guilty was a result of his own addiction to cocaine at the time," and that "respondent's addiction was the prime force behind his felony conviction." As a witness speaking on Rosen's behalf testified, "[his] problems, I am certain, [were] directly attached to the cocaine problem he had; it is a disease. I think ⋯ he was someone who had it very very badly."

This Court described his addiction as follows "Rosen's productivity as a member of society precipitously plummeted as he became increasingly addicted to free-base cocaine. To his credit, he quietly wound up his law practice towards the end of 1981, when he no longer felt able to adequately protect the best interests of his clients. Unfortunately, however, he had by then lost the ability to exercise such care for himself, and continued to withdraw into the nightmarish nether-world of cocaine addiction until he finally became involved in drug trafficking in 1982."

This Court held that a loss of control due to addiction may properly be considered as a mitigating circumstance in order to reach a just conclusion as to the discipline to be properly imposed and cited *The Florida Bar v. Larkin,* 420 So.2d 1080 (Fla.1982) and *The Florida Bar v. Ullensvang,* 400 So.2d 969 (Fla.1981). Rosen was given a three year suspension. [2]

Here, the undersigned Referee finds that Respondent also slid into deep and mind altering addiction and it was the addiction that caused the actions that led to his arrest.

A second relevant case is *The Florida Bar v. Jahn,* 509 So.2d 285 (Fla. 1987). In May, 1985, Jahn pled nolo contendere and was adjudicated guilty of delivery of cocaine to a minor, a first-degree felony, and possession of cocaine, a third-degree felony. The convictions were based on two separate incidents one of which occurred in May, 1984, and which involved Jahn's injecting himself and a nineteen-year-old female with cocaine. In June, 1985, Jahn was sentenced to a four-and-one half year term of incarceration in each case to run concurrently.

Jahn was suspended from the practice of law for three years. The Florida Bar sought disbarment. The Court rejected the argument of the Bar and concluded that Jahn's lack of prior disciplinary history, the fact that no clients were injured, that

[2] This Honorable Court recently upheld the rationale in *Rosen* to permit impairment due to drugs as a mitigating factor. See *The Florida Bar v Bloom,* SC06-1025 decided December 13, 2007.

Jahn's misconduct was directly related to his drug addiction and Jahn's exemplary efforts to rid himself of his chemical dependency should be considered as mitigating the discipline to be imposed.

Here, no clients were injured, Respondent's actions were directly related to his drug addiction and he has made exemplary efforts to rid himself of his chemical dependency.

Another relevant case is *The Florida Bar v. Marcus*, 616 So.2d 975 (Fla. 1993). In *Marcus*, the Bar sought disbarment for the misappropriation of client funds. Disbarment was not ordered by the Supreme Court because there was a finding that "there was a direct and causal link between the Respondent's misconduct and his narcotic addiction to cocaine." The referee heard testimony from doctors, family members, friends, and lawyers about the change that took place in Marcus' personality, conduct, and behavior during the six-month period of his addiction.

Although Marcus was able to continue practicing law, he did realize that his condition was deteriorating rapidly, recognized his need for treatment, and promptly obtained treatment. While Marcus was found to have misappropriated client funds, he was nonetheless suspended for three years due to the addiction and impairment. Similar to *Marcus*, Respondent's actions in the case at hand were directly related to drug addiction, but unlike *Marcus*, there was no client harm.

Finally, there is *The Florida Bar v. Heptner* 887 So.2d 1036 (Fla. 2004). In *Heptner,* the respondent had already been suspended for numerous violations of the rules when through an undercover narcotics trafficking investigation, Heptner had been recorded soliciting the delivery of cocaine from a client in two phone conversations. The conversations took place in May, 2001, while Heptner was suspended.

Further, Heptner had purchased cocaine from the client on a regular basis over an eighteen-month period and, at Heptner's suggestion, the client had also provided Heptner with cocaine in exchange for legal services. During Heptner's suspension from the practice of law, he continued to provide legal advice to the client regarding his dissolution of marriage case. In 2001, the client wore an audio recording device during a meeting in Heptner's office. During that meeting, Heptner again solicited the delivery of cocaine from the client. Heptner was arrested and charged with a violation of section 893.13(1)(a), Florida Statutes (2000), solicitation to deliver cocaine, a third-degree felony.

This Honorable Court disbarred Heptner but in doing so noted that the referee found that "Heptner had personal or emotional problems" and a "physical or mental disability or impairment," but the referee did not identify Heptner as a drug addict. Further, although the referee stated that Heptner should receive two years of probation to ensure that he successfully completes his substance abuse

treatment and counseling, the referee did not make any findings that specifically indicated Heptner's use of drugs was due to an addiction rather than merely a recreational activity. The referee also did not make a specific finding that Heptner's illegal drug use was the cause of his misconduct.

This Court went on to cite additional reasons for disbarment, specifically that (1) Heptner involved his client in his felony misconduct; (2) Heptner violated an order of suspension by engaging in the practice of law, by holding himself out as a lawyer, and by failing to notify his clients of his suspension; (3) Heptner has been disciplined on four prior occasions; and (4) Heptner committed multiple rule violations.

Here, the facts compare very favorably when weighed against *Heptner*. Specifically, (1) Respondent's use of drugs was due to an addiction rather than merely a recreational activity; (2) Respondent's illegal drug use was the cause of his misconduct; (3) Respondent did not involve a client in his felony misconduct; (4) Respondent did not violate a suspension order, (5) Respondent has no prior discipline, and (6) Respondent's misconduct did not involve multiple violations.

Respondent, Noah Daniel Liberman, admits that he engaged in unethical and illegal activity, was incarcerated for his acts, cooperated with authorities and with The Florida Bar. Respondent's actions constitute serious misconduct and warrant a substantial disciplinary sanction. However, the Supreme Court decisions

discussed herein indicate that suspension, rather than disbarment, is the appropriate sanction under the particular facts of this case.

A. AGGRAVATING FACTORS

In reviewing the Florida Standards for Imposing Lawyer Sanctions, I find the following factor in aggravation:

9.22(c) pattern of misconduct.

B. MITIGATING FACTORS

The Florida Bar argued in its closing argument to the prior Referee that the Bar's opinion on this case changed and the discipline sought was reduced from disbarment to suspension when it became apparent that this was a case about addiction and not about drug trafficking. [3] The evidence supports the Florida Bar's position. Evidence was presented to the prior Referee by Dr. John Eustace, a well that the Respondent was suffering from a severe addiction at the time the known known and respected expert on addiction, who evaluated Respondent and opined

[3] Mr. Mulligan, counsel for the Florida Bar in this matter, informed the prior Referee that he was aware of, and believed in, the presumption of disbarment for felony cases and has been involved in many cases where there was a felony and even with substantial mitigation, still argued for disbarment. However, in this case, Mr. Mulligan stated that the Bar found there to be an overwhelming amount of mitigation such that it overcame the presumption. The Bar found it particularly persuasive that the state prosecutor in Mr. Liberman's case did not find Mr. Liberman to be a drug "trafficker" in the traditional sense and that these acts appeared to be a direct result of his addiction. The Florida Bar was further persuaded by the evidence that Respondent had not tested positive for drugs for approximately 3 years and 9 months at the time of the January 10, 2008, evidentiary hearing.

that Respondent was suffering from a severe addiction at the time the conduct began and throughout the course of the misconduct.

Due to the addiction, Respondent's impaired thinking created the sincere, though impaired, belief that he was simply buying bulk quantities of the drugs at a better price for he and his friends. Further, Respondent has been involved in treatment for his addiction and has actively been involved with F.L.A.

From ASA Martinez' testimony and that of Dr. Eustace, it is apparent that Mr. Liberman was not a "traditional" drug trafficker. He did not have a pipeline supply of narcotics and he did not have a network of users/customer, instead he had one supplier and sold exclusively to a close network of friends/users and did not appear to have the typical profit motive of your "traditional" drug trafficker. Moreover, Martinez stated that from the search of his residence it was clear that he was using everything that he was selling, emphasizing the reality of Mr. Liberman's addiction.

Additionally, Mr. Liberman's behavior since his arrest must not be ignored. While his acceptance of responsibility and cooperation with the investigation and legal process is commendable, his resolve to turn his life around is impressive. Since the day of his arrest, nearly five and ½ years ago, Mr. Liberman has remained drug free (clean date is April 7, 2004). Over the past 3 ½ years he has been a productive member of society working, continuing to contribute to the legal

industry as a paralegal. He has also been a benefit to the community, initially volunteering as a tutor at Camillus House and now supervising the tutoring program and volunteering as a member of the Board of the Camillus House Young Leaders.

From a review of the Supreme Court cases referenced above, it is apparent that the Court, in fashioning a suitable punishment, looks to the act, the intent and the conduct following the act. Here the acts on their face are egregious, but when the acts are examined in conjunction with Respondent's addiction and impaired thinking, as well as the positive changes he has made since the arrest, the acts are substantially mitigated.

Respondent has fully cooperated in the criminal investigation, and in this proceeding has only argued mitigation and has not sought to evade a finding of guilt concerning the factual allegations.

The undersigned Referee finds that under the Standards for Imposing Lawyer Sanctions the following factors are present in this case:

9.32(a) - absence of a prior disciplinary record

Here the evidence is undisputed that Respondent has no prior disciplinary record. Therefore, Standard 9.32(a) is applicable and should mitigate in Respondent's favor.

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

Respondent's actions did not result from dishonesty, but rather addiction. There was no selfish motive and Respondent did not engage in the acts for financial gain. Therefore, Standard 9.32(b) is applicable and should mitigate in Respondent's favor.

9.32(d) - timely good faith effort to rectify consequences of misconduct;

Here the evidence is undisputed that the Respondent cooperated with authorities and assisted in the police investigation. Once confronted with the reality of his impaired thinking, Respondent made every effort possible to rectify the consequences of his misconduct. Therefore, Standard 9.32(d) is applicable and should mitigate in Respondent's favor.

9.32(e) - full and free disclosure to disciplinary board and cooperative attitude towards proceeding;

Respondent has accepted that he made a serious mistake in judgment, recognized the nature and extent of his addiction and accepted responsibility for his acts. Respondent has only presented evidence as to mitigation. Therefore, Standard 9.32(e) is applicable and should mitigate in Respondent's favor.

9.32(f) – inexperience in the practice of law;

Respondent was admitted to the Florida Bar on October 7, 2002, and at the time of his arrest was a member of the Florida Bar Young Lawyers Division. Therefore, Standard 9.32(f) is applicable and should mitigate in Respondent's favor.

9.32(g) - otherwise good reputation and character;

The evidence presented through witnesses established that Respondent is of

otherwise good character and reputation. Therefore, Standard 9.32(g) is applicable and should mitigate in Respondent's favor.

9.32(h) – physical or mental disability or impairment

Here the evidence is undisputed that Respondent suffered from a serious addiction that caused mental impairment. The evidence presented by Dr. Eustace and Respondent clearly established this mitigating factor. Therefore, Standard 9.32(b) is applicable and should mitigate in Respondent's favor.

9.32(j) - interim rehabilitation;

Here the evidence establishes that Respondent voluntarily entered into addiction treatment and counseling and has also sought addiction counseling from F.L.A. Therefore, Standard 9.32(j) is applicable and should mitigate in Respondent's favor.

9.32(k) - imposition of other penalties or sanctions;

Respondent was charged and entered into a plea agreement for the misconduct, was fined, incarcerated and placed on extended probation. Therefore, Standard 9.32(k) is applicable and should mitigate in Respondent's favor.

9.32(1) - remorse.

The undersigned Referee finds that Respondent is genuinely and sincerely remorseful. Therefore, Standard 9.32(l) is applicable and should mitigate in Respondent's favor.

11.1 Ongoing supervised rehabilitation by the attorney . . .

Additionally, under Standards for Imposing Lawyer Sanctions 11.1, Respondent is entitled to the mitigating factor (in addition to those enumerated in 9.32) of ongoing supervision under F.L.A.

For the reasons stated herein, the undersigned Referee recommends that the Second Consent Judgment be accepted and that the following disciplinary measures be instituted:

A)That Respondent be suspended for a period of three (3) years nunc pro tunc to July 3, 2006, and thereafter until he proves rehabilitation;

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Age: 33
Date Admitted to The Florida Bar: October 7, 2002
Prior Disciplinary record: In Supreme Court case no. SC06-977, The Florida Bar file no. 2006-71,176(11N-MFC), Respondent was suspended pursuant to Supreme Court order dated June 2, 2006, for the same felony conviction that is the subject of these proceedings.

VI. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED:

I find that the following costs were incurred by The Florida Bar in this proceeding:

Administrative fee Rule 3-7.6(o)(1)(I) ……	$ 1,250.00
Staff Investigator's costs……..	$ 608.22
TOTAL	**$ 1,858.22**

It is recommended that costs in the amount of $1,858.22 be assessed against Respondent. It is further recommended that execution issue with interest at the prevailing statutory rate to accrue on all costs not paid within 30 days of the entry of the Supreme Court's final order, unless time for payment is extended by the Board of Governors of The Florida Bar.

Dated this____day of September, 2009.

HONORABLE DAVID C. MILLER
REFEREE

Copies furnished to:

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