IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

SC Case No. SC07-2398

v.

TFB File No. 2007-31,452(05B)

JOHN VERNON HEAD

Respondent.

_______________________________________/

INITIAL BRIEF

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SYMBOLS AND REFERENCES

Complainant will be referred to as The Florida Bar, or as the bar. John Vernon Head, Respondent, will be referred to as respondent throughout this brief. References to the Report of Referee shall be by the symbol ROR followed by the appropriate page number of the Appendix (e.g. ROR A1). References to specific pleadings will be made by title. Reference to the transcript of the final hearing held on May 13, 2008, are by symbol T, followed by the volume, followed by the appropriate page number (e.g., T III p. 289). References to the sanction hearing held on June 17, 2008, are by symbol T, followed by the appropriate page number (e. g. T p. 100). References to bar exhibits shall be by the symbol B-Ex. followed by the appropriate exhibit number (e.g. B-Ex. 1). References to bar exhibits that incorporated documents also contained in the bar's motions for the referee to take judicial notice shall be referred to by the appropriate composite exhibit number followed by the Tab number and the document number that was assigned by the bankruptcy court as well as being referred to by the judicial notice exhibit notebook Tab number (e. g. composite B-Ex. 1, Tab A, document 324; Tab 53 judicial notice exhibit). References to respondent's exhibits shall be by the symbol R-Ex. followed by the appropriate exhibit number (e.g., R-Ex. 1 p. 10).

STATEMENT OF THE CASE AND FACTS

The Fifth Judicial Circuit Grievance Committee "B" voted to find probable cause in this matter on October 25, 2007. The bar served its Complaint on December 21, 2007. By order dated December 28, 2007, this Court directed the Chief Judge of the Tenth Judicial Circuit to appoint a referee. The referee was appointed on January 2, 2008. The final hearing was held on May 13, 2008. The sanction hearing was held on June 17, 2008. On June 18, 2008, the bar moved, on behalf of the referee, for an extension of time to file the Report of Referee. On June 25, 2008, this Court granted the extension of time until August 29, 2008. The Report of Referee was served on August 26, 2008. At its meeting ending October 3, 2008, the Board of Governors of The Florida Bar voted to seek review of the referee's recommendation of a 60 day suspension and instead seek a three year suspension with proof of rehabilitation. The bar served its Petition for Review on October 6, 2008.

Respondent purchased a law practice in 2003 and became counsel of record for Clayton J. Hackney and Linda J. Hackney, existing Chapter 13 bankruptcy clients of the firm (ROR A2). The Hackneys' primary asset was a piece of real property encumbered by a mortgage from George Randall Turner that had been foreclosed (ROR A2). The Hackneys paid the initial fee to the original law firm handling their

bankruptcy case and respondent was not paid any additional fees for the bankruptcy matter (ROR A3). Respondent also represented the Hackneys and/or their corporation in various other legal matters that arose during the pendency of the bankruptcy case, including a federal wage and hour claim for unpaid overtime, a felony charge against Mr. Hackney, and a back child support claim against Mr. Hackney for which respondent testified he received two $1,000.00 cost retainers (ROR A3). Respondent was not paid any additional fees for these matters (ROR A4).

The Hackneys wanted to be rid of Mr. Turner as a creditor (ROR A6), in part because of the acrimonious relationship between them and in part because they were having difficulty in making their Chapter 13 Plan payments (ROR A3, A5). As a result, they needed to refinance the Turner mortgage in order to pay it off (ROR A4, A6). A lender was located in 2005 and the Hackneys spoke to respondent's office about paying respondent the fees owed for services he had performed on their behalf from the loan proceeds (ROR A4). Because Mr. Turner refused to cooperate in determining the payoff figure, respondent's office undertook the responsibility for calculating the figure and transmitting it to the closing agent (ROR A5). The payoff figure respondent's office provided to the closing agent included $10,000.00 for fees respondent alleged he was owed supported only by an invoice that was not annotated (ROR A4-A5). Although the Hackneys questioned this figure, they went through with

the closing and respondent was paid $10,000.00 (ROR A5). The funds paid to Mr. Turner were not sufficient to fully satisfy his mortgage, which was the prime objective of the refinancing (ROR A5-A6).

The original HUD Settlement Statement failed to show the payment to respondent and instead incorrectly reflected all the loan proceeds were paid to Mr. Turner (ROR A5). On September 2, 2005, respondent filed a second motion with the bankruptcy court to modify the Hackneys' Chapter 13 Plan in which he stated that Mr. Turner's claim had been paid in full (ROR A6). Respondent attached a payoff worksheet showing attorney's fees of $8,999.00 owed to Mr. Turner from his foreclosure litigation that were a part of his creditor claim (ROR A6). Respondent did not advise the bankruptcy court of his receipt of $10,000.00 in fees from the loan proceeds (ROR A6). In fact, respondent did not reveal his receipt of these fees to the court until a January 24, 2006 hearing when an evaluation of the HUD Settlement Agreement and the Turner disbursement check brought the $10,000.00 discrepancy to light (ROR A6). The parties stipulated that Mr. Turner was owed an additional $7,200.00 (ROR A6).

In the second amended motion to modify the Chapter 13 Plan, respondent correctly stated Mr. Turner was paid $143,184.82, rather than the amount of $153,184.82 shown on the HUD Settlement Statement (ROR A7). Respondent did not

advise the court of his receipt of the $10,000.00 in fees because he believed he had no obligation to do so (ROR A7). Respondent did not attempt to mislead the bankruptcy court by showing that $153,184.82 had gone to Mr. Turner (ROR A7). The Bankruptcy Trustee sought disgorgement of respondent's $10,000.00 fee, although she admitted respondent was due at least some remuneration for the work he had done (ROR A7-A8).

After hearing, the bankruptcy court found that respondent's statements in pleadings filed with the court were disingenuous, his request for and receipt of the fee was intentional and contrary to his statutory and ethical duties as counsel for the debtors, his receipt of the funds created a conflict of interest between he and his clients that disqualified him from representing them further, and he violated fundamental Bankruptcy Code and Rule provisions governing the conduct of attorneys (ROR A8). The court found respondent was required by §329 and Rule 2016 to disclose to the court the receipt of both the $10,000.00 from the loan closing proceeds and an additional $2,000.00 he had received directly from the Hackneys (ROR A8-A9). The court specifically found respondent had not been candid with it (ROR A9). Respondent filed a Motion for Reconsideration and, after conducting an evidentiary hearing, the court granted respondent's motion to the extent the amount ordered to be

disgorged was reduced from $12,000.00 to $10,000.00 (ROR A9). Although respondent filed an appeal, it was ultimately dismissed (ROR A9).

Thereafter, respondent filed a suggestion of bankruptcy for his professional association but never filed a petition for bankruptcy (ROR A9). As a result, the bankruptcy court entered an order to show cause against respondent (ROR A10). After the hearing, the bankruptcy court found respondent falsely represented to the court that his firm had filed for bankruptcy protection and that the automatic stay was in effect (ROR A10). The court found respondent willfully abused the judicial process by filing the suggestion of bankruptcy and that he violated R. Regulating Fla. Bar 4-3.3 and Bankruptcy Rule 9.011(b) (ROR A10). The bankruptcy court sanctioned respondent for misconduct by prohibiting him from practicing before it for a period of 90 days (ROR A10).

The referee found respondent guilty of violating the following Rules Regulating The Florida Bar: 4-1.7(b) (prior to May 22, 2006) for representing clients where his exercise of independent professional judgment was materially limited by his responsibilities to another client, to a third person, or by his own interests; 4-3.1 (after May 22, 2006) for bringing or defending a proceeding, or asserting or controverting an issue therein where there was no basis in law or fact for doing so that was not frivolous; 4-3.3(a)(1) for knowingly making a false statement of fact or law to a

tribunal; 4-4.1(a) for knowingly making a false statement of material fact or law to a third person in the course of representing a client; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and 4-8.4(d) for engaging in conduct that was prejudicial to the administration of justice.

The referee found respondent not guilty of violating the following Rules Regulating The Florida Bar: 4-1.5(a) for charging an excessive fee and 4-3.4(a) for unlawfully obstructing another party's access to evidence or for unlawfully altering, destroying or concealing a document or other material he knew, or reasonably should have known, was relevant to a pending or reasonably foreseeable proceeding.

SUMMARY OF ARGUMENT

The referee found respondent guilty of a serious act of misconduct – making a misrepresentation to a court by filing a frivolous suggestion of bankruptcy in his client's bankruptcy case. Misrepresentation is one of the most serious acts of misconduct an attorney can commit. In addition, respondent was found guilty of additional acts of misconduct including engaging in a conflict of interest with his clients by receiving a fee payment from their loan refinancing, filing a frivolous pleading by filing the suggestion of his professional association's bankruptcy without having filed a petition for bankruptcy, making a misrepresentation to a third person by filing the suggestion of bankruptcy in response to the Bankruptcy Trustee's efforts to enforce the court's disgorgement order, engaging in conduct involving dishonesty, fraud, deceit or misrepresentation by misrepresenting to the court that he had filed, or would file, a petition for bankruptcy on behalf of his professional association, and engaging in conduct prejudicial to the administration of justice by being less than forthcoming about his receipt of $10,000.00 from his clients' loan refinancing resulting in additional, unnecessary proceedings before the bankruptcy court. Respondent's actions resulted in the expenditure of resources by the bankruptcy court, the Bankruptcy Trustee, and the Hackneys' major creditor, George Turner, a delay in

the Hackneys' Chapter 13 bankruptcy case being resolved, and a delay in the Hackneys' achieving their prime objective of removing Mr. Turner as a creditor. The case law and Standards for Imposing Lawyer Sanctions clearly support a three year suspension. The referee misapplied *The Florida Bar v. Hagendorf*, 921 So. 2d 611 (Fla. 2006), to support his recommendation of a 60 day suspension in the instant case. Although the Nevada court imposed a 60 day suspension for the conduct engaged in by Hagendorf, this Court found his misconduct warranted a harsher sanction and suspended him for 2 years. Thus, the referee's reliance on, and application of, a sanction imposed by the Nevada court, which is not controlling in this state, was erroneous. Respondent's serious misconduct, his additional violations, his prior disciplinary history for filing a frivolous lawsuit, and his substantial experience in the practice of law warrant the imposition of a long term suspension of 3 years.

ARGUMENT

ISSUE

THE REFEREE'S RECOMMENDATION OF A 60 DAY SUSPENSION IS NOT SUPPORTED BY THE CASE LAW WHICH SUPPORTS A SUSPENSION WITH PROOF OF REHABILITATION

The referee found respondent guilty of making a misrepresentation to the bankruptcy court by filing a suggestion of bankruptcy without ever filing the required petition for bankruptcy (ROR A13; T II pp. 2-210 - 2-211). Respondent filed the Notice of Suggestion of Bankruptcy in response to the court's order that he disgorge the fee he received from the proceeds of his clients' loan closing (T II p. 2-211).

This Court's scope of review of a referee's recommendation as to discipline is greater than that afforded to the referee's findings of fact because this Court has the ultimate responsibility for ordering the appropriate disciplinary sanction, although, generally speaking, this Court will not second guess a referee's recommendation as to discipline if it has a reasonable basis in case law and the Florida Standards for Imposing Lawyer Sanctions. *The Florida Bar v. Glueck*, 985 So. 2d 1052, 1058 (Fla. 2008). Here, it appears the referee based his recommendation of a 60 day suspension, in part, on a misapplication of *The Florida Bar v. Hagendorf*, 921 So. 2d 611 (Fla. 2006).

In his report, the referee noted that, although this Court suspended Hagendorf for 2 years, the State of Nevada, where the misconduct occurred, imposed a lesser suspension of 60 days (ROR A15). The referee improperly gave greater weight to the Nevada court's decision than to this Court's decision.

In *Hagendorf*, The Florida Bar commenced reciprocal disciplinary proceedings after the accused attorney was disciplined for misconduct by the Nevada Bar pursuant to a plea agreement for a 2 month suspension for having filed a frivolous quiet title suit and making misrepresentations to the court in order to secure a default judgment. The referee in The Florida Bar's disciplinary proceeding found that the attorney engaged in bad faith obstruction of the Nevada Bar disciplinary proceeding by filing a frivolous lawsuit against it and that he was indifferent to making restitution. The referee recommended a 2 year suspension.

Hagendorf challenged the recommendation, arguing that this Court should impose the same disciplinary sanction as the Nevada court. However, this Court disagreed, citing that it was free to impose a more severe sanction than that imposed by another jurisdiction. This Court found the 2 year suspension was supported by the case law and Florida Standards for Imposing Lawyer Sanctions, even without the aggravating factors found by the referee.

Further, this Court noted that violations of R. Regulating Fla. Bar 4-8.4(d) are serious and it has not hesitated to impose lengthy suspensions for similar misconduct and that in recent years, this Court "has moved towards stronger sanctions for attorney misconduct" and that "basic, fundamental dishonesty is a serious flaw which cannot be tolerated. . . ." *The Florida Bar v. Hagendorf*, 921 So. 2d at 614. This Court found that it might have ordered disbarment had it not been for the fact that the bar agreed with the referee's recommendation of the 2 year suspension.

Like Hagendorf, respondent was less than forthcoming with the bankruptcy court concerning his receipt of $10,000 in fees from the Hackneys' loan closing. More importantly, however, is the respondent's outright misrepresentation to the court by filing a suggestion of bankruptcy on behalf of his professional association without filing a petition for bankruptcy. Moreover, respondent's frivolous filing of the suggestion of bankruptcy in the Hackneys' bankruptcy case was in response to the court's ruling that he needed to disgorge the fees. Respondent testified at the final hearing that he filed the suggestion of bankruptcy because he wanted the bankruptcy judge to know that if he issued the order of disgorgement, respondent would not be able to comply (T II p. 2-212).

Most recently in *The Florida Bar v. Varner*, 33 Fla. L. Weekly S731 (Fla. Sep. 25, 2008), this Court stated that the "profession of the practice of law requires lawyers

to be honest, competent, and diligent in their dealings with clients, other lawyers, and courts. Clients expect no less from their lawyers and place great trust in lawyers in their times of need. Lawyers trust each other to accurately represent their clients' interests and courts trust lawyers to do the same."

Varner was suspended for 1 year for taking a voluntary dismissal of a client's case without the client's knowledge or consent and for misrepresenting to the court that the client was seeking the dismissal through his counsel. Varner then testified falsely before the referee in the bar disciplinary proceedings that his partner had communicated the client's authorization to seek the dismissal. In addition, Varner failed to ascertain that the statute of limitations had run on the client's claim and the dismissal could harm the client's ability to further pursue the cause of action. In aggravation, similar to the respondent in the instant case, Varner was a long time practitioner with two prior disciplines consisting of a private reprimand in 1987 and a 90 day suspension in 2001.

In Varner's prior suspension case, *The Florida Bar v. Varner*, 780 So. 2d 1 (Fla. 2001), he received the 90 day suspension, which did not require proof of rehabilitation prior to reinstatement, for making an error in representing a client then, rather than admitting the error, developing a scheme of deception to cover up the error so that it would go undetected. Varner erroneously stated to an insurer in a personal injury case

that he had named the insurer as a defendant. Thereafter, he negotiated a settlement with the insurer based on the unintentional misstatement. After Varner discovered he had not filed the suit, rather than admitting the mistake and taking corrective action, he fabricated a case number and prepared a notice of voluntary dismissal which he then sent to the insurer. Varner was found guilty of engaging in dishonest conduct by knowingly making a false statement of material fact to a third party.

Unlike respondent's case, Varner's false statement was not made to the court. Unlike respondent's case, there were no aggravating factors and several mitigating factors, including a good faith effort at restitution and correcting the consequences of his misconduct. Further, Varner had a good reputation and good character. This Court distinguished Varner's misconduct from an intent to defraud, which would have warranted the imposition of a harsher sanction such as a 91 day suspension. Nevertheless, this Court also rejected the referee's recommendation of a 30 day suspension because the misconduct was so contrary to the most basic fundamental requirement of candor that a short term suspension could not be countenanced.

This Court imposed a 91 day suspension in *The Florida Bar v. Lathe*, 774 So. 2d 675 (Fla. 2000), for intentionally misrepresenting to a judge, on two separate occasions, that he was unable to attend a deposition and for his refusal to comply with an order to pay costs until the judge ordered him incarcerated. After Lathe and his

client failed to appear for a deposition and failed to comply with a request for production of documents, the court held a hearing on the matter. Lathe falsely advised the court that the failure to appear was due to his calendar conflict created by another judge who called a pretrial conference on short notice. Lathe reiterated his misrepresentation in a letter to the court. The court eventually discovered the falsehood and sanctioned Lathe by ordering him to pay the opposing party's attorney's fees. Lathe failed to pay the ordered amount, falsely arguing he had insufficient funds to comply, until after the court held him in contempt and ordered his incarceration.

In making his recommendation for a 91 day suspension, the referee emphasized that this type of sanction was necessary in order to make Lathe realize that honesty and candor in dealing with others was part of the foundation upon which respect for the profession was based. Lathe's misconduct demonstrated the utmost disrespect for the court and was destructive to the legal system as a whole. Furthermore, his actions, like the actions of respondent in the instant case, resulted in the expenditure of an extraordinary amount of time and expense to the opposing party.

In approving the referee's recommendation in *Lathe*, this Court noted that it repeatedly had imposed 91 day suspensions where attorneys had made misrepresentations to courts because such misconduct creates an erosion of the judiciary and public's confidence in the honesty of attorneys. In mitigation, Lathe,

unlike respondent, had no prior disciplinary history. Despite this fact, this Court found such blatant misconduct warranted a harsh sanction because of the threat it posed to the integrity of the judicial system.

Respondent obtained payment of a fee from his clients' loan closing without advising the bankruptcy court. Similarly, respondent was not forthcoming with either the bankruptcy court or the Bankruptcy Trustee about his receipt of these funds. After the Bankruptcy Trustee discovered the payment, respondent compounded his misconduct by engaging in a course of conduct that resulted in significant unnecessary litigation in the Hackneys' bankruptcy case and culminated in respondent making a blatant misrepresentation to the bankruptcy court by filing the suggestion of bankruptcy without filing the petition for bankruptcy. Respondent made no attempt to withdraw the suggestion of bankruptcy, even after the Chapter 13 Bankruptcy Trustee advised him to do so. Ultimately, the bankruptcy court sanctioned respondent by prohibiting him from filing any documents before it for a period of 90 days. In its order (composite B-Ex. 1, Tab A, document 324; Tab 53 judicial notice exhibit), the bankruptcy court specifically found respondent "willfully abused the judicial process by filing the Suggestion." Respondent's actions clearly demonstrated an ongoing disrespect for the court and were destructive to the legal system as a whole.

In *The Florida Bar v. Vining*, 707 So. 2d 670 (Fla. 1998), an attorney was suspended for 3 years for violating his duty to his client in his effort to collect fees allegedly owed and making fraudulent misrepresentations to the court when he sought funds in the court registry. Vining's conduct caused financial injury to his client. Vining did not have a prior disciplinary history, suffered from serious health problems, and had an "indicia of entitlement" to the disputed fees.

Vining represented a client in a protracted dissolution of marriage case where he failed to inform the court that he had been paid for the original proceeding prior to the appellate court's remand on the fee issue. The trial court entered an order awarding fees that were secured by a supersedeas bond. When the check was issued payable to Vining and the client jointly, the client refused to endorse the check based on her belief that her prior payment covered all the services and that Vining was not entitled to further payment. The client hired new counsel to resolve the fee dispute.

Vining, however, filed an action against the bank where the funds were on deposit seeking release of the money without advising the bank that he no longer represented the co-payee, the client, or that the client was making an adverse claim against the same funds. He negotiated a stipulation for payment and presented same to the court without advising the client. Based upon Vining's misrepresentation, the

court entered the order releasing the funds to him. The client filed suit against Vining and was awarded damages for conversion and civil theft.

This Court found that Vining's multiple acts of serious misconduct warranted the imposition of a harsher discipline than might otherwise be warranted. Like Vining, respondent engaged in multiple acts of serious misconduct by filing a frivolous suggestion of bankruptcy, knowingly making a false statement of material fact to the bankruptcy court, making a false statement of material fact to the Bankruptcy Trustee, engaging in conduct that was prejudicial to the administration of justice, and engaging in a conflict of interest with his clients. Although respondent initially may have believed he had a valid claim for fees, the course of action he chose to pursue resulted in harm to the clients and to the court system. Respondent wasted court resources, resources of the Bankruptcy Trustee's office, resources of Mr. Turner, and resources of the Hackneys in resolving the matter of his fees.

What should have been a simple matter to resolve turned into a two year odyssey through the court system because respondent usurped the bankruptcy court's discretion in determining the amount of the fee to which respondent was entitled. By taking money from the loan closing proceeds, respondent essentially helped himself to funds that other secured creditors may have had entitlement to claim. It was for the bankruptcy court, not respondent, to make this determination.

The Florida Standards for Imposing Lawyer Sanctions also support a suspension in this case. Under Standard 4.32, suspension is appropriate where a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. Respondent's involvement, either directly or indirectly through his employee, presented a clear conflict of interest in the loan closing given his intent to seek payment of the fees he was owed from the closing proceeds.

Although less egregious than respondent's total misconduct, a case on point related to the conflict of interest engaged in by respondent is *The Florida Bar v. Dunagan*, 565 So. 2d 1327 (Fla. 1990), where an attorney was suspended for 60 days for engaging in similar misconduct. Dunagan charged a client usurious interest on fee balance owed and attended a loan closing to represent his own interests in obtaining payment of his fee while purporting to represent the interests of the client. He did not advise the client to seek independent counsel, did not obtain the client's consent to payment of his fees from the loan proceeds, gave no notice prior to the closing of his intent to seek payment of fees from the loan proceeds, and did not advise the client of the potential for a conflict of interest.

Standard 6.12 calls for a suspension when lawyer knows that false statements or documents are being submitted to the court or that material information is improperly

being withheld, and takes no remedial action. Respondent admitted that, at the time he filed the suggestion of bankruptcy, which affirmatively stated that he was giving "notice of the filing of bankruptcy by the Firm, John Vernon Head, P.A." on February 20, 2007 (composite B-Ex. 1, Tab A, document 311; Tab 47 judicial notice exhibit), that he had not filed a petition for bankruptcy on behalf of his law firm (T II pp. 2-211 – 2-212). Moreover, respondent never withdrew the suggestion of bankruptcy, even though he never pursued the filing of the petition.

Standard 6.22 calls for a suspension when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. Respondent knew, or reasonably should have known, that his failure to seek court approval for the payment of funds from the Hackneys' loan closing, his failure to disclose his receipt of the $10,000.00 fee and his filing of the suggestion of bankruptcy without filing an accompanying petition for bankruptcy violated the bankruptcy rules and code. To argue otherwise suggests respondent was not competent to handle the Hackneys' case and should have referred them to other counsel.

If respondent was so inexperienced in handling Chapter 13 bankruptcies, the reasonably prudent course of action would have been to file a motion seeking

payment of the fees from the loan closing or, in the alternative, respondent could have conferred with the Bankruptcy Trustee in order to determine the best course of action to take. Presumably, however, given the fact the loan amount was not sufficient to pay both Mr. Turner's claim in full and respondent's fee, respondent's request may have been denied by the court. Instead, respondent intentionally circumvented the judicial process and obtained his payment directly from the closing agent. Had Mr. Turner not complained to the Bankruptcy Trustee (T I p. 50), and then filed a motion with the court (T I p. 52), respondent's actions would not have come to light.

In aggravation, respondent previously received a minor misconduct for engaging in similar misconduct for filing a frivolous document with the court [Standard 9.22 (a)]. This Court deals more harshly with cumulative misconduct than with isolated instances. *The Florida Bar v. Germain,* 957 So. 2d 613, 624 (Fla. 2007). Respondent also has substantial experience in the practice of law [Standard 9.22(i)]. Although respondent was not admitted to The Florida Bar until 1990, he testified that he has practiced law for 35 years in various state and federal courts (T II pp. 2-142 – 2-144).

The referee found only two mitigating factors: timely good faith effort to make restitution [Standard 9.32(d)]; and good character or reputation [Standard 9.32(g)].

Neither is sufficient to mitigate respondent's misconduct from a suspension requiring proof of rehabilitation to a suspension with automatic reinstatement.

At the time of the closing, respondent knew, or reasonably should have known, that the proceeds were insufficient to fully satisfy Mr. Turner's secured claim and that Mr. Turner had not agreed to any reduction in the amount he was owed. Respondent filed a document titled as Debtor's [sic] response to Motion to Dismiss for Failure to Maintain Timely Plan Payments (composite B-Ex. 1, Tab A, document 172; Tab 14 judicial notice exhibit) in which he stated that the Hackneys had refinanced their mortgage with Mr. Turner but that Mr. Turner was refusing to cooperate in the payoff of his debt. Respondent next filed a Motion to Modify Confirmed Chapter 13 Plan (composite B-Ex. 1, Tab A, document 173; Tabs 15, 15a, 15b, 15c judicial notice exhibit) in which he stated that the Hackneys had paid Mr. Turner's claim in full, despite the fact this was not true. Respondent then filed a Second Amended Motion to Modify Confirmed Chapter 13 Plan (ROR A6; composite B-Ex. 1, Tab A, document 188; Tabs 17, 17a, 17b, 17c judicial notice exhibit) in which he stated that Mr. Turner's claims had been paid in full and to which he attached a payoff worksheet, prepared by his office, showing attorney's fees paid out in the amount of $8,999.00 (composite B-Ex. 1, Tab A, document 188; Tabs 17, 17a judicial notice exhibit). Although respondent set out the total amount of attorney's fees Mr. Turner was owed,

in the breakdown of the payoff disbursement check, respondent did not specify the identity of the attorney or attorneys to whom the $8,999.00 was paid. Nowhere, in either the motion or the attached payoff worksheet, did respondent disclose the $10,000.00 payment to himself.

After an evidentiary hearing, the bankruptcy court entered its order on June 15, 2006 (composite B-Ex. 1, Tab A, document 245; Tab 34 judicial notice exhibit) in which it found respondent's statements in the above mentioned documents to be "disingenuous" given the fact that respondent's action in taking $10,000.00 from the loan proceeds resulted in Mr. Turner's claim not being paid in full and that the shortfall was not consented to by Mr. Turner in advance. The bankruptcy court noted that at the hearing on March 7, 2006, respondent still was not forthcoming about his receipt of the $10,000.00 because he advised the court he had disclosed his receipt of fees in the payoff worksheet he had filed as an attachment to his second amended motion to amend the Chapter 13 Plan through the $8,999.00 line item listing. Alternatively, respondent argued he was not required to disclose his receipt of the $10,000.00 because it was for non-bankruptcy related legal services. When the court ordered respondent to disgorge the fee and the Bankruptcy Trustee sought to enforce the order, respondent filed a frivolous suggestion of bankruptcy. He did not repay the $10,000.00 until after the bankruptcy court issued an order to show cause (composite

B-Ex. 1, Tab A, document 315; Tab 51 judicial notice exhibit) why he should not be sanctioned for filing a frivolous suggestion of bankruptcy and issued its judgment (composite B-Ex. 1, Tab A, document 321; Tab 52 judicial notice exhibit), both on March 5, 2007, in favor of the Bankruptcy Trustee against respondent. Only then, when he was left with no option but to do so, did respondent disgorge the $10,000.00 in fees he had taken from the loan proceeds.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's recommendation of a 60 day suspension and instead impose a suspension of 3 years with payment of costs currently totaling $9,222.80.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Brief and Appendix have been sent by regular U.S. Mail to the Clerk of the Court, The Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927; a copy of the foregoing has been furnished by regular U.S. Mail to John Vernon Head, Respondent, at 13011 Bellerive Lane, Orlando, Florida 32828-8828, a copy was also furnished by electronic mail to John Vernon Head, respondent, at jvhead1@bellsouth.net; and a copy of the foregoing has been furnished by regular U.S. Mail to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, this _____ day of November, 2008.

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

Undersigned counsel does hereby certify that the Initial Brief is submitted in 14 point proportionately spaced Times New Roman font, and that the brief has been filed by e-mail in accord with the Court's order of October 1, 2004. Undersigned counsel does hereby further certify that the electronically filed version of this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

____

JoAnn Marie Stalcup
Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

SC Case No. SC07-2398

v.

TFB File No. 2007-31,452(05B)

JOHN VERNON HEAD

Respondent.

______________________________________/

APPENDIX TO INITIAL BRIEF

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