IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

THE FLORIDA BAR,

Complainant,

v.

PETER DAVID TICKTIN,

Respondent.
_____/

Supreme Court Case No. SC07-369

The Florida Bar File No. 2005- 50,263(15F)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The Florida Bar's formal Complaint in this cause was filed on February 28, 2007. Thereafter, the undersigned was appointed to preside as referee in this proceeding by order of the Chief Judge of the Seventeenth Judicial Circuit. Final hearing in the case was held on February 18, 2008 and February 19, 2008.

During the course of these proceedings, respondent was represented by Kevin P. Tynan, Esq. The Florida Bar was represented by Michael David Soifer, Bar Counsel.

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

COUNT I

1. Respondent is, and at all times hereinafter mentioned was, a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme

Court of Florida.

2. Beginning in 2001, respondent provided legal representation in various personal and business matters to Paul R. Johnson (Johnson), including matters related to Link Express Delivery Solutions, Inc. [LEDS], Silver State Vending d/b/a Pony Express a/k/a Pony Express [Silver State] and Link Worldwide Logistics (LWL). These were companies started by Johnson in which he held executive authority until January 2002, and had an ownership interest that continued thereafter.

3. When respondent became Johnson's attorney in 2001, LEDS had already dissolved but respondent represented Johnson individually and as trustee for LEDS in litigation matters. One matter involved a lawsuit filed by respondent against two individuals, Marangos and Kuzontkoski, who also had been affiliated with LEDS. Respondent filed the civil complaint on or about August 28, 2001 and continued to represent Johnson and LEDS in the matter until the court granted respondent's Motion to Withdraw on September 24, 2002. Respondent also represented Johnson and LEDS in litigation filed by NEC America, Inc., in which his firm served an Answer and Affirmative Defenses on August 8, 2001, and continued to represent LEDS and Johnson through at least May 15, 2002, when respondent's law firm filed a Motion to Withdraw.

4. After LEDS dissolved, Johnson started LWL. Respondent provided legal representation to Johnson and LWL in 2001 when LWL purchased the Florida, Southern Georgia, and Southern Alabama operations of Pony Express Delivery Solutions, Inc., at a bankruptcy proceeding in Atlanta, Georgia. Respondent's firm also represented Johnson and LWL in a lawsuit filed by Vanderbilt Capital Corporation. Respondent's law firm served an Answer and Affirmative Defenses in that matter on March 8, 2002, and remained as attorney of record in that case until August 12, 2002. It is also noted that in the lawsuit filed by NEC America, Inc., discussed in Paragraph 3 hereinabove, LEDS was also named as d/b/a Link Worldwide.

5. After Johnson and LWL acquired Pony Express at the Atlanta Bankruptcy proceeding, LWL entered into an asset sale transaction with Silver State Vending Corp. [Silver State], a Nevada public shell corporation. Silver State purchased LWL's assets, which consisted of the Pony Express business, and LWL became the majority shareholder in Silver State. Through on or about January 7, 2002, Johnson and Richard Bee [Bee] were the only directors of LWL, but Johnson made all the decisions for both LWL and Silver State, and was Bee's boss.

6. In the fall of 2001, The Securities and Exchange Commission (SEC) brought a civil action against Paul Johnson concerning the LEDS company. Respondent served his Notice of Appearance for Johnson in that matter on

December 19, 2001, and served an Answer and Affirmative Defenses, and Demand For Jury Trial on behalf of Johnson on January 15, 2002. Respondent served a Motion to Withdraw from that representation April 8, 2002, which was granted on April 24, 2002.

7. Sometime after the SEC civil suit was filed, but before January 5, 2002, Johnson learned that criminal charges in connection with LEDS were going to be filed against him. Respondent testified that he dealt with the Assistant U.S. Attorney, on behalf of Johnson, concerning the imminent criminal charges, and advised Johnson concerning his appearance before the Grand Jury. Respondent also appeared at Johnson's initial arraignment because it occurred during a court hearing involving the SEC civil matter. Respondent suggested the name of a criminal attorney to Johnson, but did not enter his own appearance in the criminal case.

8. Due to his imminent arrest, Johnson met with respondent on or about January 5, 2002, to discuss who could replace Johnson as CEO of Silver State. Johnson suggested some people he thought might be suitable, including Matthew Sosonkin, an attorney who was employed by respondent. Respondent told Johnson that he did not think Sosonkin was suitable. I do believe respondent's testimony that, at this time, Johnson tricked or conned respondent into suggesting himself to Johnson as a suitable replacement. Respondent discussed the opportunity with

lawyer Harvey Scholl with whom he shared his legal business operation under the firm name of Scholl, Ticktin & Associates. Both respondent and Scholl viewed it as an opportunity. Respondent and Scholl met with Johnson and Bee on January 7, 2002, at respondent's law office where the announcement was made to Bee that respondent would replace Johnson as CEO and Chairman of Silver State. Scholl was named as Chief Financial Officer. Bee's testimony was that he considered Johnson to be the CEO and his boss at the meeting on January 7, 2002. Bee's understanding was that after that meeting, Johnson was no longer his boss at Silver State and respondent was his new boss.

9. Inasmuch as the respondent's position in Silver State replaced Johnson's executive role in Silver State and respondent made it known that he did not intend to be Johnson's "puppet," respondent's interest thereby became adverse to that of Johnson. Respondent did not prepare a written document to Johnson or Silver State fully disclosing and transmitting the terms of the transaction or the terms on which respondent acquired the interest in Silver State, as required by [former] Rule 4-1.8(a)(1), Rules Reg. Fla. Bar. The adverse positions between respondent and Johnson became stark by April of 2002, when respondent decided he needed Johnson to be completely out of the business if it was to succeed. Respondent had also invested his own money in the business, thus giving him another basis for self interest.

10. In considering the credible evidence, I did not find merit to respondent's claim that a press release purportedly prepared by Johnson satisfied the requirement of [former] Rule 4-1.8(a)(1), Rules Reg. Fla. Bar. At respondent's deposition on June 14, 2007, respondent testified there were no terms to the deal he made to take over Johnson's executive authority in the business. The press release was discovered the night before Richard Bee's deposition, which took place on July 26, 2007. Bee had found a copy of it on his computer hard drive. Respondent and Bee both testified that the December 17, 2001 date on the release was incorrect and that it was actually disseminated in early January. The relevant portions of the press release state that respondent accepted the position of Chairman and CEO, Scholl accepted the appointment of CFO, and Johnson, the founder and major shareholder was to remain as primary consultant. The press release did not state that Johnson was resigning the company. The press release also did not state that Johnson waived any conflict of interest. Furthermore, respondent testified that the portion of the press release pertaining to Johnson remaining as a primary consultant was not one of the terms of the deal.

11. I find that this "press release" does not satisfy the requirement of Rule 4-1.8(a)(1), Rules Reg. Fla. Bar. First, it was not prepared by the respondent and does not fully disclose the terms of the transaction to Johnson. Second, it does not contain the oral waiver of conflict and confidentiality respondent claims he

obtained from Johnson at the January meetings. Respondent stated in paragraph 12 of his Affidavit (Bar Exhibit 13) that the waivers of confidentiality and conflict were "two major concerns" he had in replacing Johnson. Thus, these major concerns were essential terms that were not disclosed in writing nor consented to in writing by Johnson or Silver State.

12. Respondent testified he obtained at the January meetings, an oral waiver of conflict and confidentiality from Johnson, only as it pertained to Silver State. Respondent admitted he did not have waivers of conflict or confidentiality from Johnson pertaining to LWL. Respondent also admits that he did not have a waiver of conflict or confidentiality pertaining to Johnson from Silver State (Pony Express). Rule 4-1.7(a), Rules Reg. Fla. Bar require that all the affected clients consent to the conflict of interests between them. There was no evidence to show that Johnson understood the meaning or extent of any oral conflict or confidentiality waiver claimed by respondent. The evidence showed that in April 2002, when respondent tried to set forth the extent of the purported oral waiver in writing, Johnson did not agree to such waiver because he refused to sign it. It is the responsibility of respondent to obtain the written consent of the client concerning issues of conflict, and consent from all the clients must be obtained before the conflicting representation. The Florida Bar v. Dunagan, 731 So.2d 1237, 1241 (Fla. 1999).

13. After the January 7, 2002 meeting, respondent began taking over Johnson's position in Silver State. Respondent's testimony that he did not start the position right away was not credible. On February 13, 2002, Silver State filed an application, signed by respondent as Chairman, to the Florida Division of Corporations for authority to transact business in Florida. (Bar Exhibit 1). On February 26, 2002, respondent, in the capacity of CEO/Chairman of Silver State d/b/a Pony Express, sent a letter to potential shareholders wherein he stated that he "took over as CEO and Chairman approximately 8 weeks ago." (Bar Exhibit 2).

14. Johnson was arrested and a bond hearing was conducted in early March 2002, wherein respondent testified that he did not consider Johnson to be a flight risk. Johnson then appealed the adverse decision of the bond hearing.

15. Thereafter, while Johnson was being held in jail, respondent decided that he needed to get Johnson completely out of Silver State because he believed he would not be able to obtain investors as long as Johnson was affiliated with the company. Johnson had been issued 14.5 million shares in LWL, making him the majority shareholder, and LWL was the majority shareholder in Silver State. Bee testified that the certificate for Johnson's LWL shares, though issued to Johnson, had never been delivered to him. After Johnson's arrest, Bee was the sole remaining director in LWL, but according to Bee's testimony, Bee only held approximately 40,000 to 50,000 shares in LWL that had been previously gifted to

him by Johnson. Although Bee became the boss at LWL, respondent was Bee's boss with respect to Silver State. The evidence demonstrates that respondent and Bee both took the position that Johnson's failure to take delivery of the shares provided a means for each to obtain their mutual objective of getting Johnson out of the company.

16. During April of 2002, respondent made visits to Johnson in jail. The purpose of the visits was to get Johnson to sign an agreement that offered him 2.5 million shares of Silver State from LWL in return for his releasing any potential claim he might have for the cancellation of his 14.5 million shares. (Bar Exhibits 4 and 5). Included with the agreement was the written waiver of conflict respondent wished Johnson to sign. Johnson did not sign the agreements or the conflict waiver.

17. During the same period of time when respondent was attempting to have Johnson sign the agreement and waiver, Bee approached respondent for advice about how to deal with Johnson's 14.5 million shares in LWL with respect to removing Johnson from the company. Respondent professed to Bee that to give such advice would be a conflict of interest for him since he had no conflict or confidentiality waiver from Johnson respecting LWL. On respondent's suggestion, Bee sought advice as to how to cancel Johnson's shares from other attorneys. After the consultation, Bee informed respondent that he had received advice that

Johnson's shares could be cancelled. Bee accompanied respondent to one of the visits to Johnson at the jail. Though Bee testified that the decision to cancel Johnson's shares was his own, he acknowledged discussing it with respondent who told Bee to do whatever Bee thought was necessary. Bee then took action to cancel Johnson's shares in LWL. Around the time those shares were cancelled, Bee sought counsel from Bruce Chaimowitz, who was an attorney employed by respondent and also the lawyer for Silver State. Chaimowitz prepared a letter on Pony Express letterhead, for Bee's signature, dated May 1, 2002. (Bar Exhibit 6). The letter, which enclosed the agreement and conflict waiver prepared by respondent, was sent to Dominic Grosso, who although an attorney, was not Johnson's attorney. The letter states that Johnson's shares in LWL have been nullified and gives Johnson one more chance to sign the agreement and waiver. Bee discussed the contents of the letter with respondent before it was sent. The latest version of the agreement enclosed with the letter lowered the Silver State shares offered to Johnson from 2.5 million to 1.7 million shares.

18. Johnson did not sign that latest version of the agreement or waiver that was sent on May 1, 2002, enclosed with Bee's letter. Thereafter, on May 16, 2002, respondent sent a letter to Pony Express shareholders and potential shareholders. That letter demonstrates that respondent was taking an adverse position against Johnson's shares of stock in LWL, notwithstanding his

acknowledgement that Johnson had a claim to those shares. It also relates the efforts to get Johnson to cooperate in relinquishing his shares in LWL and his failure to so cooperate, which resulted in Bee's action to cancel Johnson's shares. It also demonstrates that respondent's law firm prepared releases for the shareholders to sign in order to accomplish the stock transfer. In the letter, respondent stated in pertinent part (Bar Exhibit 8):

At Page 9:

> We were advised that the present administration of Link Worldwide and Silver State may have no obligation to the original shareholders of LEDS. Perhaps this is true. However, after careful consideration and consultation, Mr. Bee (on behalf of Link World wide) and I (on behalf of Silver State) believe that Paul Johnson, by making promises coupled with his seeking funding, has caused at least a potential liability to Link Worldwide.
>
> In any event, irrespective of whether there is a legal duty…. We are determined to make Paul Johnson's promises of gift come true… Please understand that this is Richard Bee's, Harvey Scholl's and my unanimous decision.

At page 10:

> …We are anxious to get this done. Therefore, in the weeks to come, you will be getting a letter from Bruce Chaimowitz of Scholl Ticktin & Associates, my law firm, on behalf of Richard Bee with an enclosed release. The release will forgive any potential claims by the shareholder against Silver State, Link Worldwide, and its present officers and directors. My law firm will ask you to return the Release and a reasonable administrative legal fee….

At page 11:

> …Moreover, as a note of interest, Richard Bee (the Board of Directors of Link Worldwide) nullified the share certificate purported to grant Paul Johnson the 14.5 million shares….He [Johnson] acted in ways that were detrimental to the company. Also, it was those shares that were used to make the settlements for his promises.

On November 12, 2002, respondent sent another letter to those shareholders who had signed the releases, enclosing their stock certificates.

19. I find that respondent represented adverse interests when he simultaneously represented Johnson, LWL, and Silver State. Respondent admits he did not have the consent of each client nor Johnson's waiver for matters related to LWL. The evidence clearly demonstrated that Silver State and LWL were inextricably linked. Respondent was Bee's boss at Silver State, Bee was the boss at LWL, and respondent's law firm provided legal advice to Bee on LWL matters. Respondent was privy to confidential information of all the parties involved and owed a duty of loyalty and confidentiality to each of those parties. Respondent's letter of May 16, 2002, to shareholders clearly demonstrated that he was acting in concert with Richard Bee against Johnson's interests. An attorney may not represent conflicting interests in the same general transaction no matter how well meaning the attorney's motive or however slight such adverse interest may be, absent exceptional circumstances. The Florida Bar v. Moore, 194 So.2d 264 (Fla. 1966); The Florida Bar v. Della-Donna, 583 So. 2d 307 (Fla. 1989). Moreover,

Rule 4-1.7 does not require the conflict to be related to the same transaction when it pertains to a current client. A lawyer is also prohibited from representing a client where that client's interests are adverse to another client the lawyer represents in another matter. The Florida Bar v. Dunagan, 731 So.2d 1237, 1240 (Fla. 1999).

In this case, respondent was representing the interests of Johnson, LEDS and LWL contemporaneous with his efforts and the efforts of his law firm to resolve potential and legally questionable claims, which were being made against Silver State and LWL by former LEDS shareholders. In taking steps to resolve those claims, he acted adversely against Johnson's ownership interest in LWL.

20. I find that respondent's exercise of independent judgment in representing Johnson and LWL, was clearly limited by his own self interest, and the interests of Silver State. Instead of seeking appropriate legal means in which to act to protect Johnson's ownership interest in LWL as Johnson's attorney, respondent acted adversely against Johnson's interest. Respondent's own personal interest and his duty to Silver State was paramount to Johnson's interests as respondent tried to get him to sign the agreement to relinquish his shares, and when that failed, participated in the adverse action to extinguish Johnson's ownership interest in LWL, which ultimately was designed to extinguish Johnson's involvement in Silver State. Respondent could not reasonably believe that his

representation of Johnson was not adversely affected by the actions in which he and his law firm participated.

21. I find that respondent did not perform the requisite consultation and obtain the necessary written consent when he represented multiple parties in the action to extinguish Johnson's interest in LWL and Silver State. The consultation is a necessary prerequisite to the representation of all the parties agreeing to the multiple representation, so that the parties have full knowledge of the potential risks and advantages involved. The Florida Bar v. Dunagan, 731 So.2d 1237 (Fla. 1999).

COUNT II

22. In February or March of 2002, shortly after Mr. Johnson was arrested, there was a bail hearing before Magistrate Judge Snow. At that time, the Respondent, who witnessed that Mr. Johnson had returned to Florida, knowing that he was going to be arrested, had formed the opinion that Mr. Johnson was not a flight risk, and he testified as to his beliefs as well as to other issues, such as the fact that the Pony Express was a real business.

23. Subsequently, in late April of 2002, in one of their meetings, Mr. Johnson advised the Respondent that he had just learned that if he were to be convicted, he would not be going to a minimum security facility, but rather to a medium or maximum security prison.. According to the unrefuted testimony of Mr. Ticktin, he could see the fear in Mr. Johnson's eyes, and his opinion changed as to whether Mr. Johnson was a flight risk. He testified that he had no doubt that Mr. Johnson was a flight risk, based on that conversation and Mr. Johnson's expressions, as well as his words.

24. In the days that followed, in a conversation with the Assistant U.S. Attorney, Mr. Ticktin, who was under the belief that there was to be a trial de novo on the bail issue, advised the Assistant U.S. Attorney that he would probably not be called upon to testify by Mr. Johnson in the trial do novo, as the Respondent was not of the same mind as he was at the bail hearing.

25. At that time, the Assistant U.S. Attorney advised, the Respondent that the trial judge, the late District Court Judge, Wilkie Ferguson, was going to read the materials the very next day, and that they wanted an affidavit as to what changes had occurred. The Respondent agreed to send a letter, and did send a letter that withdrew his testimony.

26. The Respondent was faced with a dilemma of sorts. He was a personal friend of Judge Ferguson, and believed that Judge Ferguson would give

more weight to his testimony than he would to the words of an attorney who he did not know. The Respondent's letter simply withdrew his testimony and indicated that he believed in his testimony at the time that he testified, but has now had reason to change his mind. At no time did the Respondent reveal any of his communications, nor did he indicate which portion of his testimony he no longer believed.

27. R. Regulating Fla. Bar 4-3.3(a)(4) provides that if a lawyer "has offered material evidence and thereafter comes to know of its falsity, the lawyer shall take reasonable remedial measures." Although the Respondent did not know as a fact whether Mr. Johnson was a flight risk, he knew as a fact that his opinion had changed. If he had not withdrawn his testimony, he would have been in violation of Rule 4- 3.3(a)(4).

28. R. Regulating Fla. Bar 4-1.6 (c) (5) provides that an attorney "may reveal such information to the extent the lawyer reasonably believes necessary… to comply with the Rules of Professional Conduct." As such, the Respondent acted appropriately when he sent his letter to the Assistant U.S. Attorney, withdrawing his previous testimony which he knew was no longer his true opinion.

III. RECOMMENDATION AS TO WHETHER RESPONDENT SHOULD BE FOUND GUILTY OR NOT GUILTY:

GUILTY AS TO COUNT I

By the conduct set forth above, respondent violated R. Regulating Fla. Bar, former Rule 4-1.7(a) [A lawyer shall not represent a client if the representation of that client will be directly adverse to the interests of another client, unless (1) the lawyer reasonably believes the representation will not adversely affect the lawyer's responsibilities to and relationship with the other client; and (2) each client consents after consultation.]; former Rule 4-1.7(b) [A lawyer shall not represent a client if the lawyer's exercise of independent professional judgment in the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest unless (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation.]; 4-1.7(c) [When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.]; former Rule 4-1.8(a) [A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possesory, security or other pecuniary interest adverse to a client, except a lien granted by law to secure a lawyer's fee or expenses, unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing

to the client in a manner that can be reasonably understood by the client; (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and (3) the client consents in writing thereto.];

NOT GUILTY AS TO COUNT II

I find that the respondent did not violate former Rule 4-1.6(a) [A lawyer shall not reveal information relating to a representation of a client except as stated in subdivision (b), (c), and (d), unless the client consents after disclosure to the client]; and former Rule 4-1.8(b) [A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation, except as permitted or required by rule 4-1.6.].

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

As they did in the factual side of this case, the parties present vastly different views as to an appropriate sanction. The Bar suggests that a 60 day suspension is appropriate and the Respondent explains that the most minimal sanction, an admonishment would be appropriate.

The Bar has presented me with argument in which it presented cases which were not exactly on point. The great majority of the Bar's cases are for significantly worse conduct than that found in this case and the sanction is much harsher than that necessary in this case. In fact the suspension cases presented by

the Bar are significantly distinguishable from the facts of this case. For example, in *The Florida Bar v. Mastrilli*, 614 So. 2d 1081 (Fla. 1993), the lawyer intentionally filed suit against his own client. In that case, the attorney's explanation of a negligent mistake was not credible, and a 6 month suspension was appropriate where there was no mention of any mitigating factors. Likewise, the lawyer, in *The Florida Bar v. Dunagan*, 731 So. 2d 1237 (Fla. 1999), intentionally used information against a former client, the wife in a divorce proceeding, to her disadvantage. Unlike the present circumstance, Mr. Dunagan, who received a 91 day suspension had been disciplined on two previous occasions for other occasions where he committed misconduct involving a conflict of interest.

The Bar relies also on *The Florida Bar v. Cosnow*, 797 So. 2d 1255 (Fla. 2001) in which an attorney acted in paterenity and guardianship proceedings for a minor child's mother where it was clear that that representation was directly in conflict with his former client, the grandmother's interests. In that case, the attorney received a 60 day suspension. That case is easily distinguished from the present matter, in that, unlike the Respondent, here, Mr. Cosnow had an extensive history of ethical violations and his misconduct for which he received a 60 day suspension also included incompetent representation of his client.

The Bar's last case, upon which it relies, where the attorney received a 60 day suspension, is *The Florida Bar v. Black*, 602 So. 2d. 1298 (Fla. 1992). In that

case, the lawyer borrowed funds from his client, left that client unsecured, and failed to advise that client of his right to separate representation. He promised to pay an usurious rate of interest, which was an illegal transaction, and never advised the client of the fact that the transaction was not legal. In that case, Mr. Black took an unfair advantage of an unsophisticated client. Other than the fact that the attorney took advantage of his superior position, there were significant mitigating factors which the Supreme Court considered in reducing the 91 day suspension that the Referee recommended to 60 days.

In the case at bar, it is apparent that the Client, Paul Johnson was a very sophisticated client who was the CEO of publicly traded corporations which he used to defraud investors out of vast sums. He was convicted of defrauding investors out of twenty million dollars, for which he received a 20 year sentence in a federal penitentiary.

The Respondent, here, failed to obtain a proper writing of the terms of the business transaction between himself and Mr. Johnson, and there was evidence of Mr. Johnson making himself unavailable, making such a writing difficult after the fact. However, it was possible for Mr. Ticktin to have obtained a written document prior to his acceptance as CEO of Silver State Vending Corporation, and he should have done so. As to Mr. Ticktin's failure to prepare a written document explaining the terms of the transaction, the failure was more technical than substantive.

However, Mr. Ticktin also acted in a conflict of interest position, in that he failed to assure that Mr. Johnson, who was incarcerated awaiting trial, was protected from Mr. Bee's cancelling of Mr. Johnson's shares in Link Worldwide Logistics, Inc. Mr. Ticktin knew that there was a conflict of interest, as he refused to act directly and recommended that Mr. Bee seek other counsel. However, after Mr. Bee cancelled the shares, Mr. Ticktin accepted that fact and supported it.

Although this was more serious than a technical violation, it is apparent that Mr. Ticktin was attempting to do the right thing for the investors of Silver State Vending Corporation as its CEO. Also, he got himself involved in Silver State due to the manipulations of Mr. Johnson, and once he was in that position, as CEO, there was little that he could do to avoid the conflict where Mr. Bee's actions were condoned by Mr. Ticktin, Mr. Bee's employer.

It is apparent that Mr. Ticktin was to some extent in a 'Catch 22" situation, where he had no good options. Certainly, the cases that were presented by the Bar do not reflect this type of circumstance.

Moreover, the Respondent presented me with multiple cases where a public reprimand was appropriate for an attorney who acted with a conflict of interest, and counsel for Mr. Ticktin was able to distinguish those cases as the mitigating factors in the present case were far greater, and the aggravating factors, here, are far less. The Respondent has presented *The Florida Bar v. Kramer*, 593 So. 2d

1040 (Fla. 1992) in which an attorney had business dealings with a client and failed to properly advise the client of the nature of the transaction between them. In fact, Mr. Kramer took a deed from his client when the client thought that he was getting a mortgage. Due to the attorney's conduct, the client lost the property. The Referee recommended a private reprimand, which now would be an admonishment. The Supreme Court held that under the circumstances, a public reprimand was appropriate.

The Respondent next relied on *The Florida Bar v. Brennan*, 377 So. 2d 1181 (Fla. 1979), in which the attorney loaned money to his client and in return participated in her business. He was paid unknown amounts on his loan, and ultimately, when the business was defunct, he advised his client that he was foregoing payment on his loan. Subsequently, years later, when the client's mother died, at the request of the client, he visited her. Prior to the visit, he determined that he was going to bring suit on the debt, and yet, he counseled her to not respond to his suit and obtained information about her financial position. He then brought suit and obtained a Default and a Default Judgment based on a false affidavit that indicated that he had received no payments. There were then efforts to levy on that judgment.

Notwithstanding the reprehensible conduct of executing and filing a false affidavit, obtaining an improper judgment, and acting against his client who he

continued to advise, the majority of the Supreme Court held that the appropriate penalty was a public reprimand.

In terms of aggravation I find one aggravating factor: Standard 9.22(1) substantial experience in the practice of law. The Bar has acknowledged that there was no dishonesty, but has urged that I find under Standard 9.22(b) that there was a selfish motive. Although there may have been an element of this, it is not sufficient to find an aggravation. Although the Respondent could have theoretically succeeded with Silver State Vending Corporation, his failure to assure that Mr. Johnson's shares were not cancelled primarily benefitted victims of Mr. Johnson.

The Respondent has been an attorney since his admission to the Bar in Ontario, Canada in March of 1972, and he has been under the jurisdiction of either the Law Society of Upper Canada (the Ontario bar association) or The Florida Bar since he entered law school in Ontario in 1967, 41 years ago. It was made clear that the Respondent is well versed with the rules and with that much experience, the aggravating factor of his experience is clear.

The Respondent presented significant character testimony from seven witnesses (Laurence Wanshel, Esq.; Peter Spindel, Esq.; Jamie Sasson, Esq.; Robin Sommers, Esq.; Andrew Rose, Esq.; Jessica Ticktin, Esq.; and Debra Ticktin), who each represented that they knew the Respondent well and knew him to be a good

and ethical attorney. These witnesses each worked with the Respondent and spoke well for his consistent high degree of integrity through his time as an attorney in Florida. The Court accepts that any misconduct found in this case was aberrational. These witnesses and other testimony in this case support the following mitigating factors:

1. Standard 9.32 (a) – absence of a prior disciplinary record;

2. Standard 9.32 (b) – absence of a dishonest motive;

3. Standard 9.32 (e) – full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

4. Standard 9.32 (g) – other wise good character and reputation;

5. Standard 9.32 (k) – imposition of other penalties or sanctions;[1] and

6. Standard 9.32 (l) – remorse.

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1 There was uncontroverted testimony concerning the great financial loss that was incurred by the Respondent and his family relative to the Respondent's relationship with Johnson.

The same as the extreme length of the Respondent's membership of the bars of Ontario and Florida are aggravating factors regarding his experience, the length of time that he has practiced law is a mitigating factor in that he was never disciplined in all of his 41 years of being answerable to the courts and one bar association or another.

As to Mr. Ticktin's character and reputation, there is no question in this matter as to his honesty. The Bar concedes that there was no dishonest intent, and it is clear that Mr. Ticktin is of high moral character and reputation.

I find that there were other natural consequences to the Respondent's actions, which may not be technically "penalties" or "sanctions," but which have harmed the Respondent greatly. Moreover, it is apparent that the list of mitigating factors is not all inclusive. The language of the Standards indicates: "Mitigating factors include:" The use of the word includes implies that the list does not exhaust all such factors. Moreover, there is another section of factors which should not be considered as either aggravating or mitigating factors. That list includes factors that are not listed as aggravating or mitigating factors. If the list of mitigating factors was intended to be all encompassing, it would make no sense to list other factors that should not be considered, as they would not be able to be considered in any event. Hence, I find that Mr. Ticktin's loss of millions of dollars of his and his

family's money, and the fact that he was forced into bankruptcy and continues to honor debts that he incurred as a matter of honor is a mitigating factor.

Moreover, I do find that simply a finding of guilt is greatly embarrassing to the Respondent, and may well be costly as to his practice and client base. In fact, I accept that the embarrassment, alone, is a greater punishment to this Respondent than any other sanction that would be imposed in a case such as this.

Although I find that there is remorse, I do not give it much weight, as the Respondent regrets only his failure to properly put the terms of his arrangement with Mr. Johnson in writing. Nevertheless, I am convinced that the Respondent will be more careful in regard to any potential conflicts in the future.

A comment should also be made concerning the issue of harm to Mr. Johnson, as this is a key factor in determining the disciplinary measure to be applied. The uncontroverted testimony in this case showed that Mr. Johnson was the author of his own misfortune. In fact, any property that he owned, including any shares in Link Worldwide Logistics, Inc., had been seized and eventually forfeited to the federal government. This was all caused by Mr. Johnson's criminal activity and had nothing to do with the Respondent.

The Supreme Court in *The Florida Bar v. Pahules*, 233 So. 2d 130 (Fla. 1970), stated that in selecting an appropriate discipline certain precepts should be followed. They are:

> First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. Id.

The standards for failing to avoid a conflict of interest pursuant to Standard 4.32 provides that a suspension is appropriate in the event that the attorney knew of the conflict but did not disclose to the client the possible effect of that conflict and causes injury or potential injury to the client. In this regard, at the time that the Respondent failed to help Mr. Johnson to keep his shares in Link Worldwide Logistics, Inc., it was after the Respondent and Mr. Johnson were no longer communicating due to Mr. Johnson's refusal to permit visitation. Mr. Johnson was probably fully aware of the circumstances. Moreover, Mr. Johnson was not injured or potentially injured by Mr. Ticktin's conflict, as any rights that he had in any shares of Link Worldwide Logistics, Inc. had already been seized and forfeited to the federal government.

Standard 4.33 provides that a public reprimand would be appropriate if the attorney is negligent in determining whether the representation of a client would be materially affected by the attorney's own interests. Also, for a public reprimand, there must be injury or potential injury to the client. I find that Mr. Johnson was

too shrewd and cunning to allow the respondent to cause injury or potential injury to Mr. Johnson's property interests and if he had used his talents to do good, both he and the respondent would have been very successful in the endeavor.

Lastly, Standard 4.34 provides that Admonishment is appropriate if the attorney is negligent in determining whether the representation of a client would be materially affected by the attorney's own interests and causes little or no injury or potential injury to a client.

It is my opinion that, as there was neither injury nor potential injury to Mr. Johnson, these precepts are best met by the imposition of an admonishment administered by the Supreme Court, and payment of the Bar's costs.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

After making the foregoing findings, but prior to making my disciplinary recommendation, I considered the following personal history and prior disciplinary record of respondent, to wit:

Age: 62.

Date admitted to The Florida Bar: July 14, 1991.

Date admitted to The Law Society of Upper Canada: March 1972.

Prior disciplinary record: None.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

R. Regulating Fla. Bar 3-7.6(q) provides for the assessment of the bar's costs against the respondent when the bar is successful in whole or part. (Rule 3-7.6(q)(3). All costs listed on the Bar's affidavit are permitted as taxable costs and nothing in the record shows the costs are excessive. The Florida Bar v Carson, 737 So.2d 1069 (Fla.1999). Respondent's request for a reduction in the awarded costs because he was not found guilty of the violations charged in Count II is denied. When a respondent has been found guilty of a rule violation, it is proper to tax the full amount of costs against him and not impose a portion of the costs on the members of the bar who have not committed a rule violation. See The Florida Bar v Lechtner, 666 So.2d 892 at 894 (Fla. 1996); The Florida Bar v Miele, 605 So.2d 866 (Fla. 1992); The Florida Bar v Gold, 526 So.2d 51 (Fla. 1988). I find the following reasonable costs have bee incurred by The Florida Bar:

A.	Grievance Committee Level:		
	1.	Court Reporter Costs	$ -0-
	2.	Bar Counsel Costs	$ -0-
B.	Referee Level:		
	1.	Court Reporter Costs	$ 3,650.25
	2.	Bar Counsel Costs	$ 115.52
C.	Administrative Cost		$1,250.00
D.	Miscellaneous:		
	1.	Investigator Costs	$ 252.60
	2.	Witness Costs	$ 5.00
	3.	Copy Costs	$ 73.05
	4.	Auditor's Costs	$ -0-

TOTAL ITEMIZED COSTS $5,346.42

It is apparent that other costs have or may be incurred. It is recommended that such costs be charged to respondent and interest at the statutory rate shall accrue and should such cost judgment not be satisfied within 30 days of said judgment becoming final, respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of the Florida Bar.

Dated this ____day of _____, 2008.

_____
Honorable Barry E. Goldstein, Referee
Broward County Courthouse
201 Southeast Sixth Street
Fort Lauderdale, Florida 33301

cc: Michael David Soifer, Bar Counsel
Kevin P. Tynan, Co-Attorney for Respondent
Peter Ticktin, Co-Attorney pro se
Staff Counsel, The Florida Bar

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Report of Referee has been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were mailed by regular mail to the following: STAFF COUNSEL, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; MICHAEL DAVID SOIFER, Bar Counsel, The Florida Bar, 5900 North Andrews Avenue, Suite 900, Fort Lauderdale, Florida 33309-2366; and KEVIN P. TYNAN, attorney for respondent, Ricahrdson & Tynan, 8142 N. University Drive, Tamarac, Florida 33321 on this _____ day of _____, 2008.

_____

Honorable Barry E. Goldstein, Referee