IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Complainant,

v.

PETER DAVID TICKTIN,

Respondent.
_____/

Supreme Court Case
No.: SC 07-369

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

RESPONDENT'S ANSWER BRIEF
and
INITIAL BRIEF ON CROSS APPEAL

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TABLE OF CONTENTS

Page(s)

TABLE OF CITATIONS ii

INTRODUCTION 1

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 22

ARGUMENT ON APPEAL 27

POINT I - - THE REFEREE WAS CORRECT IN RECOMMENDING THAT THE RESPONDENT RECEIVE AN ADMONISHMENT AS A DISCIPLINARY SANCTION AS A SUSPENSION IS NOT APPROPRIATE IN THIS MATTER 27

1. The Referee was correct in recommending an Admonishment assuming that the Respondent Knowingly Engaged in a Conflict of Interest 27

2. The Referee was correct in Minimizing the Respondent's Violation of Former Rule 4-1.8(a) as a "Technical Violation" 29

3. The Referee was correct by finding Justification for the Respondent's Misconduct 30

4. The Referee was correct in his Application of Mitigating and Aggravating Factors 31

5. The Applicable Case Law Supports an Admonishment 35

POINT II - - THE COMPETENT SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORTS THE REFEREE'S FINDING THAT THE RESPONDENT WAS NOT GUILTY OF VIOLATING THE RULE THAT PROHIBITS REVEALING CONFIDENTIAL INFORMATION TO THE CLIENT'S DETRIMENT WITHOUT THE CLIENT'S CONSENT 38

CROSS APPEAL

POINT III - - THE REFEREE ERRED IN FINDING THE RESPONDENT GUILTY OF VIOLATING CONFLICT OF INTEREST RULE AND BUSINESS INTEREST RULE.....41

CONCLUSION.....43

CERTIFICATE OF COMPLIANCE WITH FONT STANDARDS.....44

CERTIFICATE OF SERVICE.....44

TABLE OF CASES AND CITATIONS

Cases Page(s)

The Florida Bar v. Black, 602 So. 2d 1298 (Fla. 1992) 36

The Florida Bar v. Canto, 668 So.2d 583 (Fla. 1996).....30

The Florida Bar v. Cosnow, 797 So. 2d 1255 (Fla. 2001) 36

The Florida Bar v. Dunagan, 731 So. 2d 1237 (Fla. 1999) 35

The Florida Bar v. Haggland, 373 So. 2d 76 (Fla. 1979) 36, 37

The Florida Bar v. Kramer, 593 So. 2d 1040 (Fla. 1992).....37

The Florida Bar v. Mastrilli, 614 So. 2d 1081 (Fla. 1993) 35

The Florida Bar v. Porter, 684 So.2d 810 (Fla. 1996).....30

The Florida Bar v. Temmer, 753 So. 2d 555,558 (Fla. 1999) 35

The Florida Bar v. Thomas, 698 So. 2d 530 (Fla. 1997).....35

INTRODUCTION

The Respondent adopts the allocations assigned by The Florida Bar in its Preliminary Statement. References to the Petitioner's Initial Brief shall be designated by the symbol "IB."

STATEMENT OF THE CASE AND FACTS

Although most of the points stated by The Florida Bar are technically correct, there are matters that require correction. Also, there is a spin, which requires that the facts be presented in a more fair approach. Hence, the Respondent is presenting his own Statement of the Case and Facts, below:

This is an unusual case in which a well seasoned trial lawyer, who has an exemplary record of ethical conduct, has been prosecuted zealously for an alleged ethical violation that The Florida Bar agrees included no dishonesty.

After the Referee heard two days of exhaustive cross-examination,[1] character evidence, and argument, his Honor determined:

> 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. (RR 25.)

[1] The Bar Counsel cross examined the Respondent repetitiously and accusingly, over 2 days for hours on end, that are reflected in 287 pages of the transcript. (TR I, II, III, IV.)

Prior to his moving to Florida, the Respondent had practiced law in Ontario, Canada. There, the Respondent had been under the jurisdiction of the Ontario bar association, The Law Society of Upper Canada, which had jurisdiction over law students as well as lawyers, from the time he commenced law school in 1967. (TR V, 688 - 689.)

To achieve admission to The Florida Bar, the Respondent again attended law school at the University of Miami, and ultimately was admitted to The Florida Bar in 1991. From the time that he commenced law school in Canada to the present, in more than 41 years, he had never been disciplined by any bar association or any court. (RR 23 - 25.)

The Respondent called character witnesses of attorneys who spanned all his years of practice in Florida, and they were all consistent as to the Respondent's good and honest character. (RR 23- 25.)

In comparison, the individual who initiated the Complaint, Paul Johnson, is a convicted felon, a con artist, who defrauded numerous investors in his corporation, Link Express Delivery Solutions, Inc. ("LEDS") out of more than $20 million. For his crimes, he is presently serving a 20 year sentence in a federal prison. (TR III, 418)

This matter stems from the Respondent's representation of Mr. Johnson, the previously dissolved LEDS, and two other corporations, Link Worldwide

Logistics, Inc. ("LWL") and Silver State Vending Corporation ("Silver State"), a public Nevada corporation, which were under Mr. Johnson's control in 2001 and early 2002. The Respondent does not dispute that at all relevant times he represented LWL, Silver State, and Mr. Johnson (personally and as trustee of LEDS).

Prior to the Respondent's representation of Mr. Johnson, after LEDS had failed and was dissolved, Mr. Johnson learned that he could purchase the one remaining remnant of the operations of a Georgia corporation in bankruptcy, Pony Express Delivery Services, Inc. To effectuate this purpose, Mr. Johnson needed funding and a new investment vehicle. He formed LWL,[2] reviving the name "Link" to suggest a perpetuation of LEDS, in order to attract new investments from the people who previously invested in LEDS. (TR I, 63.)

Mr. Johnson then offered a new plan to the same investors who had invested in LEDS, and who had lost their entire investments. Mr. Johnson, as CEO of LWL, offered to give "gift shares" to the former LEDS shareholders, and offered that he would give them three times those "gift" shares if they invested more money in LWL. (TR II, 217 - 219; TFB Ex. 8.)

Subsequently, the Respondent briefly assisted LWL in the purchase of the Florida operation of the Pony Express in early 2001. He represented Mr. Johnson

[2] Although Mr. Johnson created LWL, he apparently never took delivery of any of its shares.

and LEDS (through its Trustee) by defending minor collection matters. The Respondent also assisted Mr. Johnson regarding an SEC action against him, and offered advice regarding Mr. Johnson's testimony before a Grand Jury. He also assisted Mr. Johnson in communicating with the Assistant U.S. Attorney on potential charges against Mr. Johnson. (TR I, 61.)

After LWL purchased the Pony Express operation in February of 2001, with no involvement by the Respondent, Mr. Johnson hired other attorneys, Ronald Fieldstone and Stephen Heller, to assist him in a 'reverse merger,' in which LWL sold its Pony Express operation to Silver State in exchange for almost all of the outstanding shares of Silver State.

Ultimately, it became apparent that Mr. Johnson's felonious past was going to catch up to him, which meant that he was going to have to step down as the President of both LWL and Silver State. He needed someone to take over, and the Respondent met with Mr. Johnson on January 5, 2002, to help him pick a successor. When the two could not find one, the Respondent suggested himself, and Mr. Johnson jumped at the idea.[3] (TR I, 74-75, 80.)

There was only one term to the deal, and that was that the Respondent would take over as the CEO of Silver State, with Mr. Johnson's appointee, Richard Bee and the Respondent's former partner, Harvey Scholl as board members. It was

[3] The Referee found that "Johnson tricked or conned respondent into suggesting himself to Johnson as a suitable replacement." (Page 4 TFB Exhibit 8.)

also made clear, during conversations between the Respondent and Mr. Johnson, that Mr. Johnson would waive all conflicts of interest with Silver State, and waive all attorney-client communications where necessary. (TR I, 98, 104, 110.)

Mr. Johnson then prepared and issued a press release with the terms that the Respondent was taking over Silver State as CEO and Chairman of the Board of Directors, and that Richard Bee and Harvey Scholl, would serve on the Board of Directors, and that Mr. Scholl would be the CFO. (TR III, 430 - 431, TFB Ex 12.)

At approximately that same time, Mr. Johnson also resigned as an officer and director from LWL, leaving Mr. Bee as the only director and only officer of LWL.

On January 7, 2008, the Respondent met with a number of employees of Silver State, and was introduced as Silver State's CEO.

After the Respondent accepted the position of CEO, with the exception of the night that Mr. Johnson got married, the Respondent could not locate Mr. Johnson, who had disappeared. He was not able to memorialize any terms of the transfer of the position of CEO to the Respondent, effectively thwarting any of the Respondent's attempts at documenting Mr. Johnson's decisions. (TR I, 102 - 103.)

However, there was a document which did state the essential terms that the Respondent was taking over as the CEO, and that Mr. Scholl was to become the CFO and that the new Board was to be composed of the Respondent, Mr. Bee, and

Mr. Scholl. This writing was prepared by Mr. Johnson in the form of a press release immediately after the Respondent replaced Mr. Johnson as CEO. The writing did not specify that Mr. Johnson had or would resign, nor did it explain that Mr. Johnson waived any conflict of interest with Silver State. (TFB Ex. 14.)

Ultimately, Mr. Johnson returned to Florida to attend a hearing regarding the SEC litigation, where he was then arrested in April, 2002. The Respondent attended that hearing, representing Mr. Johnson in the suit by the SEC. (TR I, 103.)

Shortly after Mr. Johnson was arrested, the Respondent appeared as a witness at a bail hearing before U.S. Magistrate Judge Snow. He testified, among other things that Mr. Johnson was not a flight risk. The Respondent knew that Mr. Johnson had returned to Florida from Windsor, Ontario, knowing that he was going to be arrested, and drew upon this to form his opinion. (TR II, 210.)

Magistrate Judge Snow found that Mr. Johnson was a flight risk and did not grant him bail.

Mr. Johnson then sought review of Judge Snow's ruling.

During this period of time, the Respondent made frequent trips to the Broward Jail, where Mr. Johnson was being held. The main purpose of the visits was to get Mr. Johnson to sign a document that memorialized his waiver of privileged or confidential communications and of any conflict of interest that Mr.

Johnson may have had with Silver State. Also, the Respondent was attempting to negotiate and memorialize an agreement that would have given Mr. Johnson shares in return of his total exit from Silver State. (TR II, 201 - 204.)

Mr. Johnson kept agreeing to terms and he kept changing his mind, but it appeared that he was willing to sign an agreement that would have cut him out of Silver State, as the investors were not willing to invest any further in the company if Mr. Johnson had any involvement. (TR I, 165 - 166.)

At one of those meetings where the Respondent visited Mr. Johnson in the Broward Jail, Mr. Johnson advised the Respondent that if he is found guilty, he would not be sent to minimum security prison, but rather medium to maximum security prison because he is a foreign national, and would have been automatically classified as a flight risk. When Mr. Johnson explained this to the Respondent, by Mr. Johnson's expressions, it was obvious to the Respondent that if Mr. Johnson were ever released, he would run. This was not specifically stated by Mr. Johnson, but it was clear to the Respondent, and at that point in time, the Respondent's previously held opinion, that Mr. Johnson was not a flight risk, changed. (TR I, 148; II, 204 - 207.)

Some time later, the Respondent had an occasion to have a telephone conversation with the Assistant U.S. Attorney who was in charge of the prosecution of Mr. Johnson. In that conversation, the Respondent mentioned that

he would probably not testify at the next bail hearing, which the Respondent incorrectly believed was to have been a hearing de novo. (TR 1, 149.)

At that time, the Assistant U.S. Attorney advised the Respondent that there was not going to be a hearing, but that U.S. District Court Judge Wilke Ferguson was going to rule, based on a reading of the transcript of the original bail hearing. (TR III, 440 - 441.)

It just so happened that the Respondent was a personal friend of the late Judge Ferguson. They knew each other socially, and the Respondent had frequently appeared before him at the Third District Court of Appeal. Accordingly, the Respondent had a reasonable belief that Judge Ferguson would give high credence to any testimony by the Respondent. (TR III, 442.)

From the Respondent's perspective, he was put in an untenable position. If he advised the Court that his opinion had changed, and that he now thought that Mr. Johnson was a flight risk, Mr. Johnson would surely see that this was done. Any chance of obtaining a written agreement with Mr. Johnson would be dashed. On the other hand, if the Respondent failed to advise the Court that he changed his opinion, he would knowingly have let his incorrect testimony stand before a judge who easily could have relied on it. (TR III, 443-444.)

The Respondent believed that this was no choice, at all, and he advised the Assistant U.S. Attorney that the fact that Judge Ferguson was going to read and

rely on the record caused a major problem and explained only that the Respondent had changed his mind as to his opinion, and gave no explanation of which opinion or why. The Assistant U.S. Attorney requested an affidavit from the Respondent explaining his change of mind, but the Respondent offered only a letter which advised simply that he had changed his mind. (TR II, 207, 213 - 214, 224; III, 444.)

Later on that date, a letter was faxed to the Assistant U.S. Attorney, who then sent a copy to Mr. Johnson and to Judge Ferguson. The letter stated only that the Respondent wished to withdraw his testimony in that he had changed his mind. It explained that the Respondent believed in his testimony at the time he testified, but had subsequently changed his mind. (TFB Ex. 7.)

The Respondent never even explained to anyone that Mr. Johnson had conferred with him, or that Mr. Johnson had a fear of going to medium to maximum security. In fact, no words or thoughts of Mr. Johnson were mentioned. The letter did not even mention which part of the Respondent's prior testimony he no longer believed. (TR II, 208 - 209, 213; III, 445 - 446; TFB Ex. 7.)

Shortly after the letter was sent, Mr. Johnson received a copy of it, and, as was anticipated, that caused the relationship between the Respondent and Mr. Johnson to immediately fall apart. The Respondent advised Mr. Bee that his last

meeting with Mr. Johnson was hostile by Mr. Johnson, and that there would be no signing of any agreement.

Mr. Bee, who was the only officer of LWL, then asked the Respondent for advice as to how he should proceed to eliminate Mr. Johnson from LWL. (TB I, 147.)

The Respondent understood that for him to then help LWL would have been a conflict of interest and he refused to help Mr. Bee. Instead, the Respondent recommended that Mr. Bee consult with other attorneys, and suggested that he consult with Ronald Fieldstone and Stephen Heller, the attorneys who assisted LWL when Mr. Johnson orchestrated a reverse merger with Silver State. The Respondent told Mr. Bee to do whatever he felt was necessary, without advising or hinting as to what action should be taken. Mr. Bee, who testified at the final hearing confirmed this fact. (TR I, 152 - 153; II, 265, 268.)

The Respondent, believing that there would have been a conflict of interest between LWL and Mr. Johnson, refused to help either side or to be involved in any decisions as to how LWL was going to go forward. (TR I, 176; II, 265.)

Ultimately, Mr. Bee cancelled Mr. Johnson's shares of LWL on the basis that they were never delivered to Mr. Johnson, and on the basis that Mr. Johnson obtained his right, if any, to his shares, for fraudulent purposes. The Respondent had nothing to do with Mr. Bee's cancellation of Mr. Johnson's shares. He did not

get involved in Mr. Bee's decision. (TR I, 149 - 151; II, 293 - 294, 296, 298 - 299.)

Subsequent to Mr. Bee's cancellation of Mr. Johnson's shares, Mr. Bee was threatened by a former LEDS' shareholder who wanted his 'gift' shares of LWL that Mr. Johnson had promised. Mr. Bee believed that the LEDS investor had a point, and that LWL was obligated to honor Mr. Johnson's promise. He understood that by Mr. Johnson, as CEO of LWL, promising shares to the LEDS' shareholders, Mr. Johnson caused LWL to be bound. (TR II, 225; IV 507.)

These decisions by Mr. Bee had an impact on Silver State, as LWL shares were to be converted to Silver State shares. Hence, the Respondent, as CEO of Silver State, agreed with Mr. Bee and Mr. Scholl, that for all of the shares that Mr. Bee had converted to LWL, rather than send certificates of LWL, and then, later, convert the certificates of LWL to Silver State, that Silver State Certificates would be issued and provided.

Hence, in subsequent letters to the Silver State shareholders, who would have their shares diluted, along with his own, the Respondent stated that he agreed with Mr. Bee and Mr. Scholl, that Mr. Johnson's promise would be fulfilled and that the Silver State shares should be issued. This was not the same as agreeing to cancel Mr. Johnson's shares. The cancellation had already occurred. (TR II, 225.)

At the trial, the Respondent argued that he had not violated any ethical rules by providing the letter to the Assistant U.S. Attorney that rescinded his testimony, because he never revealed any confidences of Mr. Johnson and that to have not acted would have been tantamount to his misleading a tribunal.

The Respondent argued that there was an exception to Rule 4-1.6's requirement that an attorney not reveal confidential information. He raised Rule 4-1.6(c)(5) which provides that a lawyer may reveal information to the extent that he believes necessary "to comply with the Rules of Professional Conduct." In this regard, Rule 4-3.3(a)(4), which states, in part: "If a lawyer has offered material evidence and thereafter comes to know of its falsity, the lawyer shall take reasonable remedial measures."

The Referee agreed with the Respondent's position.

Unfortunately, in its Initial Brief, in seeking a reversal of the finding that the Respondent was not guilty of releasing confidential information, the Bar completely omitted the Respondent's position.

The Respondent also argued that he was not guilty of acting in violating Rule 4-1.8(a) which then stated:

> **Business Transactions With or Acquiring Interest Adverse to Client.** A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership; possessory, security, or other pecuniary interest adverse to a client except a lien granted by law to secure a lawyer's fee or expense, unless:

> (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed 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.

The Respondent testified that his arrangement of January of 2002 was not adverse to the Client, as the Client knew that he needed to step down as CEO of Silver State, and even if it was adverse to the Client, the general terms, which were all that had been agreed, were basically stated in the Client's own writing, as the Client was the one who prepared a press release with that information. (TR I, 105, 111.)

The Referee found that the Respondent was guilty of violating Rule 4-1.8, in that the press release was insufficient and because the Respondent, not his Client, was required to prepare the writing required by Rule 4-1.8(a)(1). (RR 6)

The Respondent further argued that he was not guilty of acting in violation of Rule 4-1.7 of acting with a conflict of interest.

The Respondent maintained that at any time prior to the date that he sent the letter to the Assistant U.S. Attorney, withdrawing his testimony at the Bail hearing, there was no conflict. All the while, the Respondent was negotiating with Mr.

Johnson and reducing the proposals to writing for Mr. Johnson to take to his other attorneys.

Upon Mr. Johnson obtaining a copy of the Withdrawal letter, the relationship broke down, and the Respondent, realizing that there would then be a conflict of interest, fundamentally withdrew and the issues between Mr. Johnson and LWL (Mr. Bee) were handled in the absence of the Respondent.

To this, the Referee found that the Respondent was guilty as he owed a duty to protect Mr. Johnson. In fact, the Report of Referee stated:

> 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... (Emphasis added.) (RR 13)

All that occurred thereafter involved the Respondent writing letters to the investors of LEDS to whom Mr. Johnson had promised the gift shares. He did not write that he had anything to do with Mr. Bee's decision to cancel Mr. Johnson's shares. He simply explained that Mr. Bee made that decision and that Mr. Bee, Mr. Scholl, and Mr. Ticktin all agreed that the shares would be converted to Silver State shares, which was changing its name to Pony Express USA, Inc., and that the former LEDS investors were going to get those shares, as Mr. Johnson had promised. (TR IV, 511 - 514.)

The Respondent differs from the Statement of Facts as laid out by the Bar, in the following ways:

On Page 6, The Florida Bar states that the Respondent acted adversely to Mr. Johnson by making it known that he would not be Mr. Johnson's "puppet." It is The Florida Bar's argument, not a position of fact that this was "adverse to Johnson's executive role in Silver State." This defies logic, as Mr. Johnson had no "executive role" in Silver State after the Respondent took over. Moreover, it was explained that this was in Mr. Johnson's best interest, as well, as there was no other way that Silver State could proceed. (TR V, 665 - 667.)

At the bottom of Page 6, The Florida Bar states that both Mr. Bee and the Respondent 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." All the evidence is consistent that the Respondent had nothing to do with the cancellation of Mr. Bee's shares. In that regard, Mr. Bee saw other counsel: Mr. Fieldstone, Mr. Heller, Mr. Rose, and Mr. Gritter.

On Page 8, The Florida Bar states: "Though Bee testified 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." In fact, the testimony was:

> Q. And did you tell Mr. Ticktin about what those attorneys advised you to do?

A. Yes.

Q. When did you tell him?

A. After the meeting with the attorneys.

Q. And what did Mr. Ticktin say?

A. Mr. Ticktin suggested that I think about what I was going to do.

Q. What did he mean by that?
A. Well, the decision was not Peter's to make; it was mine. (TR II, 268.)

The Florida Bar's implication that the Respondent had done something wrong because he "was aware of Bee's plans to let LWL administratively dissolve after Johnson's LWL shares were transferred" "Despite not having the waiver from LWL," (Initial Brief P. 8) is not fair, as it was clear that the Respondent consistently avoided steering Mr. Bee when Mr. Bee would attempt to discuss the issue with the Respondent.

The bottom line was that any decision that was to be made as to Mr. Johnson's ownership of shares of LWL was made by Mr. Bee and his own attorneys, other than the Respondent.

After Mr. Bee decided to cancel Mr. Johnson's shares, the Respondent participated in advising Silver State shareholders that the shares that Mr. Bee was

using would be converted into Silver State shares and that they would be used to honor Mr. Johnson's promise.

At the time, it was prior to Mr. Johnson's trial, and it seemed that this would actually be helpful to Mr. Johnson who then could show that he had helped the LEDS investors recoup some of the funds that he took from them.

Put simply, the point is that the Respondent had nothing to do with canceling Mr. Johnson's shares. However, as CEO of Silver State, he was required to distribute the "gift" shares to the investors, and stated that he was in agreement to do so. This was at a personal cost to the Respondent, whose own shares were greatly diluted by this effort. The Respondent was just trying to do the right thing for everyone.

On Page 15 of its Initial Brief, The Florida Bar quotes the Referee that the:

> Respondent had invested considerable sums of his own money in the business, thus giving him another basis for self interest. (RR. 5) Instead of seeking appropriate legal means in which to act to protect Johnson's ownership interest in LWL as Johnson's attorney, respondent acted against Johnson's interest by trying to get Johnson to sign the agreement to relinquish his shares, and when that failed, participating in the adverse action to extinguish Johnson's ownership interest in LWL, which ultimately was designed to extinguish Johnson's involvement in Silver State. (RR 13)

Again, there are several inaccuracies, here. First, the Respondent did invest considerable sums of his own money and his family's money in Silver State, but

that was long after all of the issues regarding Mr. Johnson had transpired. There is no evidence in the record that indicates that the Respondent had invested any of his own money at the time that the incidents considered, here, occurred, as he had not. (TR IV, 518.)

Moreover, the Respondent argued that there was nothing improper about his negotiating with Mr. Johnson for Mr. Johnson to relinquish his ownership of shares or involvement in Silver State. Mr. Johnson had his own attorneys at the time, and there is nothing wrong with offering a business deal to a client which the client rejects. If it had been accepted, the requirements of Rule 4-1.8 would have had to be met, but one cannot memorialize an agreement with a client unless it is first negotiated. (TR V, 678-680.)

Also, as to whether the Respondent had "participated in adverse action to extinguish Johnson's ownership interest in LWL," the only evidence was that the Respondent refused to participate with that decision. It was clear at the time that the Respondent recognized that any such participation would have been a conflict of interest, and he required that Mr. Bee seek other counsel. (TR V. 681.)

The only evidence from which an inference could have been made that the Respondent participated in the decision was that after the fact, he participated and agreed and announced his agreement to distribute Silver State shares to the LEDS investors to honor Mr. Johnson's promise. (TR 681 - 686.)

The Respondent maintained that he had no duty to "protect Mr. Johnson's ownership interest in LWL," any more than he had a duty to LWL to act against Mr. Johnson's interest in those shares. He argued that he had a conflict of interest which required him to back out, completely, and not take one side or another.

The crux of the ruling by the Referee as to the Rule 4-1.8 claim was:

> I find that this "press release" does not satisfy the requirements 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. (Emphasis added.) (Page 7 TFB Exhibit 8.)

Moreover, the crux of the ruling by the Referee as to the Rule 4-1.7 claim of a conflict of interest was:

> 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 attorneys motive or however slight such adverse interest may be, absent exceptional circumstances. (Page 12 TFB Exhibit 8.)

* * *

> 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. (Page 13 TFB Exhibit 8.)

Lastly, the Bar has raised the fact that the Respondent stated:

> And if I am suspended, basically it's not going to hurt me to be on vacation nearly as much as it's going to hurt my clients and the attorneys that are working for my firm.

The conduct throughout this case, the number of character witnesses that were called, and the overall seriousness that the Respondent displayed was in stark contrast to the flippant appearance of the word "vacation" when it is pulled out of context. In the moment that he used the word, "vacation," the Respondent was obviously searching for a word to avoid repetition to suspension. With his Canadian background, it is reasonable to deduce that he used the word "vacation" as the dictionary defines it, which is a recess, leave or respite from duty. It was not intended or stated any more flippantly than every other word in the proceeding, below. It was not intended to be confused with a holiday. Holidays do not generally hurt anyone at all, least 'not nearly as much' as anything else. In this regard, moments before the word "vacation" was used, the Respondent, in objecting to all of Bar counsel's incessant interruptions, stated: "This is one of the most important things that has gone on in my life, is what's going on in this room right now." The Respondent was never flippant. (TR V, 671.)

The Referee, after considering all of the evidence at testimony concluded that the Respondent should be found guilty of Count I of the Bar's complaint and not guilty of Count II. As a sanction, the Referee, who believed that the Respondent's ethical lapse was minor, entered a recommendation that the

Respondent receive and Admonishment for Minor Misconduct. The Florida Bar has appealed the not guilty finding and the Referee's proposed sanction. In his cross appeal, the Respondent seeks this Court to find him not guilty of Count I of the Bar's complaint.

SUMMARY OF THE ARGUMENT

In the event that this Court should not reverse the finding of Guilt which is the subject of the Cross Appeal, below, the recommendation of Admonishment was appropriate under the circumstances of this case.

Here, the Respondent is a well seasoned litigator with an exemplary record who was basically fooled or conned into becoming a CEO of a company which was in total disarray. It had no records or even a bank account.

The supposed victim is a convicted felon who put the Respondent in the midst of a nightmare, in which the Respondent did his best to find a good compromise. Ultimately, when a true conflict arose, the Respondent sent Mr. Bee to other counsel in order to avoid the conflict of which he is presently accused.

The Referee heard the evidence and understood that the violation of Rule 4-1.7 was a technical violation. Mr. Johnson was a sophisticated businessman who surely understood what he was doing when he resigned and made the Respondent the CEO of Silver State Vending Corp. It was not as though he did not know exactly what he was doing. If technically, the Respondent, and not Mr. Johnson should have prepared a writing that reflected the terms of the arrangement, or if technically, the writing should have also contained information that reflected the fact that there was a waiver of privilege and confidentiality, these were clearly

technical violations, as there is no evidence that Mr. Johnson did not have a full understanding of these issues.

Moreover, the violation of the Respondent acting against Mr. Johnson's interest regarding his shares was after the fact. It was after Mr. Bee made his decision to cancel Mr. Johnson's shares. All that the Respondent did was to agree to the fact that the shares that Mr. Bee was taking should be applied as Silver State shares to honor Mr. Johnson's promise. This was contrary to the interests of the Respondent, as it diluted his own shares. It was done because it was the right thing to do, and it caused no harm to Mr. Johnson, whose shares had already been frozen (to be seized) by the federal court and canceled by Mr. Bee.

Furthermore, the Referee was correct by finding justification for the Respondent's misconduct (assuming *arguendo* that there was misconduct).

Also, the Referee was correct in his Application of Mitigating and Aggravating Factors. The applicable case law does support an Admonishment.

As to Point II of the Appeal, the competent substantial evidence in the record supports the Referee's finding that the Respondent was not guilty of violating the rule that prohibits revealing confidential information to the client's detriment without the client's consent.

The Bar failed to raise any discussion as to the defenses that were raised. There was no dispute as to the facts alleged by either side. There is no question

that the Respondent changed his mind as to whether Mr. Johnson was a flight risk, and then, to assure that his previous testimony was not used to mislead a judge who was a friend of the Respondent, the Respondent withdrew all of his testimony, without indicating which aspect of it he no longer believed. Also, the Respondent never revealed any communication nor advised that there was any communication with Mr. Johnson, least what was communicated.

In fact, the Referee made mistakes that led to a conclusion of guilt, when there should have been a finding of no guilt.

With regard to the violation under Rule 4-1.8, the Referee was of the opinion that the writing that is required under Rule 4-1.8(a)(1) had to be prepared by the Respondent, himself. This should make no difference. The Rule provided that the writing had to be provided to the client, so from a strict point of view, the Referee is correct. However, the result would be absurd in any case where the client should provide the writing. To say that an attorney is guilty of violating the rule due to the fact that the client provided the written document to him or her, rather than the other way around, would cause an absurd result.

Moreover, the deal truly was simple, that the Respondent was taking over Silver State Vending Corporation as its CEO. The fact that Mr. Johnson was to resign was not discussed, though it was understood, as the Respondent could not became the CEO if Mr. Johnson was to remain as the CEO.

Granted, the writing would have been better if the extra thoughts as to waiver of privilege and confidentiality were mentioned, but they were collateral to the deal, not truly a part of it.

Also, this was a case where Mr. Johnson became unavailable to sign any document memorializing the deal. As soon as possible, the Respondent made numerous trips to the jail to visit Mr. Johnson to get him to sign a written waiver of confidentiality and privilege to which he had previously agreed verbally.

As to the Conflict of Interest, the Referee made vital mistakes. First, his Honor was under the belief that the Respondent was guilty because he should have protected Mr. Johnson's interest in LWL from being taken from him.

In fact, the Respondent had a duty to LWL to not help Mr. Johnson, just as he had a duty to Mr. Johnson to not help LWL. The Respondent had a duty to completely withdraw from the issue, as he, in fact, did.

Telling Mr. Bee to do whatever he would do was simply the Respondent's way of keeping out of the discussion. He knew to back away, and he did.

A problem is that The Florida Bar tended to confuse all the issues from before and after that time. First, there was the stage where the Respondent attempted to work out all the possible problems of getting Mr. Johnson out of Silver State, by offering an appropriate quid pro quo. This was not against Mr.

Johnson's interest. It was simply a negotiation that never amounted to an agreement.

Second, when the negotiations fell apart due to the withdrawal of the Respondent's testimony, and Mr. Bee was continuing to push to exclude Mr. Johnson from his company, LWL, the Respondent completely isolated himself from that whole issue.

Third, after Mr. Bee decided to cancel Mr. Johnson's shares in LWL, and after the shares were cancelled, the Respondent did accept the responsibility to honor Mr. Johnson's promise to the LEDS shareholders at a cost to himself, as that seriously diluted the Respondent's shares.

There was no act committed that was a conflict of interest in any stage. It was by missing the time frames and accusing the Respondent of negotiating a deal to get Mr. Johnson out of the company together with the fact that Mr. Bee cancelled his shares while being told by the Respondent to do whatever he had to do, and tying in the fact that the Respondent announced his agreement to give the gift shares, that it seemed that something was done wrong.

However, in reality, the Respondent did back out of any conflict as soon as one arose.

ARGUMENT

POINT I - - THE REFEREE WAS CORRECT IN RECOMMENDING THAT THE RESPONDENT RECEIVE AN ADMONISHMENT AS A DISCIPLINARY SANCTION, AS A SUSPENSION IS NOT APPROPRIATE IN THIS MATTER.

1. The Referee was correct in recommending an Admonishment assuming that the Respondent Knowingly Engaged in a Conflict of Interest

Under the circumstances of the facts of this case, if there was a Conflict of Interest, the Referee was correct in giving the lowest penalty permitted. Certainly, a suspension would be far too harsh of a penalty.

Here, the Respondent is a well seasoned litigator with an exemplary record who was basically fooled or conned into becoming a CEO in a company where there were no records, total disarray, and not even a bank account.

Here, the Referee found, there is no question as to the Respondent's honesty. Even the Bar conceded that there was not dishonest intent. After an in depth cross examination, the Referee found that the Respondent is of high moral character and reputation.

It takes a lifetime to form a reputation and only an instant to destroy it. In his 41 years as a barrister and an attorney, as a law student, and through his life endeavors, even through the building and failure of the publicly traded Pony Express this Respondent maintained the highest level of conduct which never impinged on his current reputation of high integrity.

In comparison, the supposed victim here is a convicted felon who defrauded innocent investors out of $20 million, sometimes their life savings. Mr. Johnson also was the one who put the Respondent into the midst of the potential conflict, and for whom the Respondent did his best to find a good compromise. Ultimately when a true conflict of interest arose, the Respondent withdrew and sent Mr. Bee to other counsel in order to avoid the conflict of which he is now accused.

The Referee properly understood that the violation he then perceived of Rule 4-1.7 was a technical violation. Mr. Johnson was a sophisticated businessman who surely understood what he was doing when he resigned and made the Respondent CEO of Silver State Vending Corp. It is untenable to suggest that Mr. Johnson did not know exactly what he was doing. If technically, the Respondent, and not Mr. Johnson should have prepared a writing that reflected the terms of the arrangement, or if technically, the writing should have also contained information that reflected the fact that there was a waiver of privilege and confidentiality, these were clearly technical violations. There was no evidence that Mr. Johnson was harmed by this omission or that he did not have a full understanding of these issues.

Moreover, the violation of the Respondent acting against Mr. Johnson's interest regarding his shares was after the fact. It was after Mr. Bee made his decision to cancel Mr. Johnson's shares. All that the Respondent did was to agree to the fact that the shares that Mr. Bee had already cancelled should be applied as

Silver State shares to honor Mr. Johnson's promise. This was contrary to the interests of the Respondent, as it diluted his own shares. It was done because it was the right thing to do, as the Respondent believed at the time.

Also, it should not be forgotten that Mr. Johnson became unavailable to sign any document memorializing the deal. As soon as possible, the Respondent made numerous trips to the jail to visit Mr. Johnson to get him to sign a written waiver of confidentiality and privilege to which he had previously agreed verbally.

2. The Referee was correct in Minimizing the Respondent's Violation of Former Rule 4-1.8(a) as a "Technical Violation"

The Referee was not suggesting that all violations of Rule 4-1.8 are technical rather than substantive. His Honor's comments were clearly confined to the case at hand where there was a writing which technically was given to the attorney from the client rather than the other way around.

Moreover, the fact that the written press release failed to indicate that Mr. Johnson was going to resign or that he was waiving potential conflicts of interest or confidentiality were not truly substantive where there were no conflicts of interest between Mr. Johnson and Silver State, and the Respondent never had any incident where any communication had to be revealed.

If the deal where the Respondent was to take over Silver State as its CEO was unfair, or if there were any suggestion that Mr. Johnson did not understand all

of the provisions, then, it would be said that the problem was substantive. Here, though, there were no misunderstandings, no harm to the client, and no problem with the failure of the Respondent to reduce the deal to writing, which the client already put on paper to make a press release, until the Bar, in analyzing the case realized that the Respondent technically breached 4-1.8 in his failure to produce and give the writing to Mr. Johnson.

Clearly, the matter was more technical than substantive.

3. The Referee was correct by finding Justification for the Respondent's Misconduct

The Referee was correct by finding justification for the Respondent's misconduct (if, indeed, there was misconduct).

The Referee sat as a neutral observer of the facts. It is well settled that a Referee's findings of fact and guilt are presumed to be correct and the appealing party has the burden to demonstrate that these findings are "clearly erroneous and lacking in evidentiary support." See *The Florida Bar v. Canto*, 668 So.2d 583 (Fla. 1996); *The Florida Bar v. Porter*, 684 So.2d 810 (Fla. 1996). It is evident that the Bar's Initial Brief has failed to meet this burden. In fact, in his original findings, the Referee accepted that Mr. Johnson had manipulated the Respondent into offering himself as a replacement CEO.

Below, in the Cross Appeal, the Respondent takes issue with the Referee's finding that the Respondent had a duty to protect Mr. Johnson, as the duty of the Respondent was not to protect Mr. Johnson, but rather, to back away and out of the conflict, all together.

However, assuming *arguendo* that the Respondent should have protected Mr. Johnson, that failure to act was immersed in circumstances that showed justification for the Respondent's actions.

The Referee accepted the fact that the Respondent did acknowledge and avoid Mr. Bee's actual cancellation of Mr. Johnson's shares. Fault was found for the Respondent dealing with those shares after they were cancelled.

In any event, the Referee did find that what was in the best interests of the shareholders and that the Respondent was in a Catch 22 situation. This was exactly what had transpired, and it was most certainly open for the Referee to find these facts and apply them.

Certainly, there was substantial competent evidence to support the finding.

4. The Referee was correct in his Application of Mitigating and Aggravating Factors

Also, the Referee was correct in his Application of Mitigating and Aggravating Factors. The applicable case law does support an Admonishment.

The Referee realized that the Respondent was caught in a situation where he was in over his head. He found that the Respondent made a technical mistake in failing to deliver the proper writing to Mr. Johnson, and he made more than a technical mistake in approving Mr. Bee's cancellation of Mr. Johnson's shares, but that this all part and parcel of the entire venture that cost him all of his life savings and more.

The Respondent is 62 years old and has had to start all over again. This is a major punishment in its own right for not rejecting Mr. Johnson in the first place.

Perhaps the Bar is correct in that technically, this loss is not a penalty or a sanction in the strict sense of the word, but it is a factor that could be considered, nonetheless.

The factor of embarrassment is one that should not be denied. Here, the Respondent is a senior member of the Bar. He has a reputation in the community, both the legal community and the general population for high integrity, and now, he has to explain how he was found guilty of unethical conduct.

This is especially true where the names of members of The Florida Bar are now available on the Bar's website, and it indicates any disciplinary findings.

The Bar did not let the opportunity escape it to point out the fact that the Respondent referred to a suspension as a "vacation." In a way, these words came out on paper far different that the way they were spoken or meant in open court.

The Respondent is fighting awfully hard to avoid a suspension, as it will be devastating to him, and, to his associates, and to the many clients who are counting on him.

Although the point was poorly expressed, it was a good point. It was that in comparison to his simply being forced away from his work, the suspension will work a hardship to innocent clients and the attorneys who are working in his law firm. It was clear from the evidence that he has a number of associates who work under him and who rely on his guidance. The Respondent's meaning was clear at the time, as it was obvious that the Respondent is of a high character who cares about those others who are potentially harmed more than he was concerned about himself.

The point was that a suspension which works a hardship for some would be warranted if it acted as a deterrent to encourage others to not go the route that the Respondent went. However, in this case, the Respondent was manipulated into a situation by a con artist. A suspension would not act a deterrent to others to not be manipulated into a bad situation. As such, there is no benefit to anyone to suspend the Respondent. Quite to the contrary, a suspension will only cause harm.

The Respondent feels remorseful. Surely, he now knows to make sure that whenever he gets involved in any future business deals with any clients, he will reduce it to writing and is sorry that he did not do so. As to the Conflict of Interest,

the Respondent understands, as did the Referee, that he was in a ‘Catch 22' situation and that he did what he could to back out of the situation where shares were being taken from Mr. Johnson.

Naturally, the Respondent is remorseful to the extent that one could possibly expect under these circumstances. However, when one adds the agony that he must go through every time that he realizes that at his age, all of his life savings are gone, it is difficult to comprehend the level of remorse or simple despair that he must feel. His family’s funds were depleted as well as his own due to the fact that Mr. Johnson, a convicted con artist, manipulated him into the position that caused such a financial disaster to him and his family. It is difficult to imagine how anyone could expect him to have remorse to Mr. Johnson, especially when Mr. Johnson suffered no loss by the Respondent, whatsoever.

Nevertheless, the Respondent, as a man who truly loves our system of law does have remorse for his failing to make sure that the rules of ethics were not only met, but carried out to an extreme that would have left no question as to his actions.

The Bar wants this Court to find that the Referee erred by not applying aggravating factors of multiple offenses and a pattern of misconduct. In this respect, it is difficult to see any actual pattern or multiple offenses. There may have been more than one facet of events that took place, but there truly was only

one issue of failing to provide a written document pursuant to Rule 4-1.8 and for accepting Mr. Bee's cancellation of Mr. Johnson's shares, which the Referee found to be a violation of Rule 4-1.7.

5. The Applicable Case Law Supports an Admonishment

This Court has consistently held that it has broader discretion when reviewing a sanction recommendation because the responsibility to order an appropriate sanction ultimately rests with the Supreme Court. *The Florida Bar v. Thomas*, 698 So. 2d 530 (Fla. 1997). However, the Court does not second-guess a referee's recommended discipline as long as it has a reasonable basis in existing case law and The Florida Standards for Imposing Lawyer Sanctions. See for example *The Florida Bar v. Temmer*, 753 So. 2d 555, 558 (Fla. 1999). The sanction recommendation made by the Referee has a reasonable basis in existing case law and should be upheld.

The Bar relies on *The Florida Bar v. Mastrilli*, 614 So. 2d 1081 (Fla. 1993), which is easily distinguished from the case at bar. *Mastrilli* actually filed suit against his own client. It is difficult to imagine a more blatant conflict.

The Bar also relies on *The Florida Bar v. Dunagan*, 731 So. 2d 1237 (Fla. 1999) In *Dunagan*, the attorney not only had a conflict in a business situation, but the attorney later sued, taking an adverse position to the client to that former client's disadvantage.

In *The Florida Bar v. Cosnow*, 797 So. 2d 1255 (Fla. 2001), on which the Bar further relies, and in which the attorney was suspended for 60 days, there was not only a lack of competence, but there was a previous disciplinary record where Mr. Cosnow received two prior reprimands and also a ten day suspension. This is a far cry from the instant case where the Respondent has an exemplary record.

Lastly, the Bar relies on *The Florida Bar v. Black*, 602 So. 2d 1298 (Fla. 1992). There, Mr. Black took advantage of an unsophisticated client when he seized on an opportunity to take an emergency loan when he could not borrow elsewhere.

All of those cases are easily distinguished from the case at bar.

On the other hand, *The Florida Bar v. Haggland*, 373 So. 2d 76 (Fla. 1979) is more illuminating. In that case, Mr. Haggland's acts were far more egregious than were those of the Respondent. Mr. Haggland loaned money to his client and eventually managed her business, against which he ran up attorney's fees. That business failed, and the attorney had intentions of pursuing his client for payment for services never rendered. Over four years later, when his client's mother died, and she was going to inherit a house, Mr. Haggland decided to bring suit against her. Nevertheless, he visited her as an attorney to discuss the estate of her mother. After obtaining information that he could use to collect, he brought suit against her and compounded his unethical conduct by filing a false Affidavit of Proof.

The Referee in *Haggland* recommended a two month suspension and voided any judgment that he obtained from his client. Yet, this Court, upon understanding the circumstances in totality, lowered the punishment to a public reprimand.

When one considers how much more egregious Mr. Haggland's conduct was, the Referee in the case at bar, was correct in ordering an admonishment.

In *The Florida Bar v. Kramer*, 593 So. 2d 1040 (Fla.1992), this Court held that an admonishment is appropriate in cases where the Court finds the attorney's conduct to be "minor." In *Kramer*, though, the attorney loaned money to a client and took a deed back on real property when the client who could not read well understood that he was providing a mortgage.

As that kind of conduct can never be "minor," this Court increased the penalty to a public reprimand.

The case at bar is so much less serious than the Kramer case that the case at bar is a perfect example of where an admonishment should be applied. Here, the attorney did nothing that involved a lack of honesty. There was no harm done to the client. There was no misunderstanding by the client.

Fundamentally, if an admonishment should ever be applied, this is the case for such a punishment.

POINT II - - THE COMPETENT SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORTS THE REFEREE'S FINDING THAT THE RESPONDENT WAS NOT GUILTY OF VIOLATING THE RULE THAT PROHIBITS REVEALING CONFIDENTIAL INFORMATION TO THE CLIENT'S DETRIMENT WITHOUT THE CLIENT'S CONSENT

As to the Point II of the Appeal, the competent substantial evidence in the record supports the Referee's finding that the Respondent was not guilty of violating the rule that prohibits revealing confidential information to the client's detriment without the client's consent.

The Florida Bar omitted any discussion as to the defenses that were raised. There was no dispute as to the facts alleged by either side. There is no question that the Respondent changed his mind as to whether Mr. Johnson was a flight risk, and then, to assure that his previous testimony was not used to mislead a Judge who was a friend of the Respondent, the Respondent withdrew all of his testimony, without indicating which aspect of it he no longer believed. Also, the Respondent never revealed any communication nor advised that there was communication with the Respondent, least what was communicated.

It is irrefutable that the Respondent had no choice but to advise the federal court Judge that he was withdrawing his testimony or it would have been a violation of another Rule of Professional Conduct.

Unlike most other rules of ethics, Rule 4-1.6 is clear that information may be provided if the "lawyer reasonably believes" it is necessary to comply with the other Rules of Professional Conduct.

Here, the Respondent learned, or at the very least, believed, that his previous testimony, which was about to be considered by Judge Ferguson was actually not true.

Rule 4-3.3 of the Florida Rules of Professional Conduct provides in part:

> **Candor Toward the Tribunal**
>
> (a) False Evidence; Duty to Disclose. A lawyer shall not knowingly:
>
> (4) permit any witness, including a criminal defendant to offer testimony or other evidence that the lawyer knows to be false. A lawyer may not offer testimony that the lawyer knows to be false in the form of a narrative unless so ordered by the tribunal. If a lawyer has offered material evidence and thereafter comes to know of its falsity, the lawyer shall take reasonable remedial measures. (Emphasis added.)
>
> (b) Extent of Lawyer's Duties. The duties stated in subdivision (a) continue beyond the conclusion of the proceeding and apply even if compliance requires the disclosure of information otherwise protected by rule 4-1.6 (Emphasis added.)

If the Respondent had not withdrawn his testimony, once he learned or believed that it was false, he would have been in violation of Rule 4-3.3. Both Rule 4-1.6 and Rule 4-3.3 make it clear that the greater duty is to the tribunal.

This is another example of the kind of lawyer that the Respondent is. Notwithstanding that it would immediately destroy his relationship with Mr. Johnson and because it to become impossible to settle the pending issues between them, he respected his duty to the Court and his ethics.

CROSS APPEAL

POINT III - - THE REFEREE ERRED IN FINDING THE RESPONDENT GUILTY OF VIOLATING CONFLICT OF INTEREST RULE AND BUSINESS INTEREST RULE

The Referee made key mistakes that lead to a conclusion of guilt, when there should have been a finding of no guilt.

With regard to the violation under Rule 4-1.8, the Referee was of the opinion that the writing that is required under Rule 4-1.8(a)(1) had to be prepared by the Respondent, himself. This should make no difference. The Rule provided that the writing had to be provided to the client, so from a strict point of view, the Referee is correct. However, the result would be absurd in any case where the client should provide a written explanation. To say that an attorney is guilty of violating the rule due to the fact that the client provided the written document to him or her, rather than the other way around would be to cause an absurd result, and the rule should be interpreted in a way that does not cause an absurd result.

Moreover, the deal truly was simple, that the Respondent was taking over Silver State Vending Corporation as its CEO. That was the be all and end of it. The fact that Mr. Johnson was to resign was not discussed, though it was understood, as the Respondent could not become the CEO if Mr. Johnson was to remain as the CEO.

Granted, the writing would have been better if the extra thoughts as to waiver of privilege and confidentiality were mentioned, but they were collateral to the deal, no a part of it.

As to the Conflict of Interest, the Referee made a couple of vital mistakes with regard to Rule 4-1.7, as well. First his Honor was under the belief that the Respondent was guilty because he should have protected Mr. Johnson's interest in LWL from being taken from him.

In fact, the Respondent had a duty to LWL to not help Mr. Johnson, just as he had a duty to Mr. Johnson to not help LWL. The Respondent had a duty to completely withdraw from the issue, and he did.

The problem is that The Florida Bar tended to confuse all the issues from before and after that time. First, there was the stage where the Respondent attempted to work out all the possible problems of getting Mr. Johnson out of Silver State, by offering an appropriate quid pro quo. This was not against Mr. Johnson's interest. It was simply a negotiation that never amounted to an agreement.

Secondly, when the negotiations fell apart due to the withdrawal of the Respondent's testimony, and Mr. Bee was continuing to push to exclude Mr. Johnson from his company, LWL, the Respondent completely isolated himself from that whole issue.

Thirdly, after Mr. Bee decided to cancel Mr. Johnson's shares in LWL, and after the shares were cancelled, the Respondent did accept the responsibility to honor Mr. Johnson's promise to the LEDS shareholders at a cost to himself, as that seriously diluted the Respondent's shares.

There was no act taken that was conflict of interest in any stage. It was by mixing the time frames and accusing the Respondent of negotiating a deal to get Mr. Johnson out of the company together with the fact that Mr. Bee cancelled his shares while being told by the Respondent to do whatever he had to do, and tying in the fact that the Respondent announced his agreement to give the gift shares, that it seems that something was done wrong.

However, in reality, the Respondent did back out of any conflict as soon one arose.

CONCLUSION

The Respondent therefore asks that this Honorable Court reverse the finding of Guilt that was found by the Referee regarding the allegations that the Respondent acted in a conflict of interest. In the alternative, in the event that this Court should find that the Respondent is guilty, that the Court accept the Recommendations of the Referee as to punishment of an Admonition.

CERTIFICATE OF COMPLIANCE WITH FONT STANDARDS

In accordance with the requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure, this Brief is prepared in Times New Roman 14 point font.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing has been mailed this **_____ day of _____, 2008**, to **MICHAEL DAVID SOIFER, ESQUIRE**, Bar Counsel, The Florida Bar, 5900 N. Andrews Avenue, Suite 900, Fort Lauderdale, Florida 33309, and **KENNETH LAWRENCE MARVIN, ESQUIRE**, staff counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300.

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