IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

WILLIAM BEDFORD WATSON, III,

Respondent.
_____/

Case No. SC09-2022

TFB File Nos. 2008-00,715(8B)
2009-00,113(8B)
2009-00,116(8B)
2009-00,142(8B)

# RESPONDENT'S ANSWER BRIEF

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## PRELIMINARY STATEMENT

Complainant, The Florida Bar, will be referred to as Complainant or the Bar. Respondent will be referred to as such or as Mr. Watson.

References to the transcript of the Final Hearing (Bar Exhibits 33 and 34) will be by the designation TR followed by the appropriate page number. References to the transcript of the Sanctions Hearing will be by the designation TRS and references to the transcript of the Emergency Hearing will be by the designation TRE, each followed by the appropriate page number.

Respondent will use the references to the parties' exhibits in the same manner the Referee set forth in his INDEX OF RECORD-TRIAL EXHIBITS. References to the Bar's exhibits will be CEX followed by the exhibit number. Respondent's exhibits will be REX followed by the appropriate number.

Bar Exhibit 1 was the entire record of the grievance committee hearing. References to that composite exhibit will be CEX 1 followed by the exhibit number used at committee. For example, Exhibit 73 at the grievance committee hearing will be designated CEX 1-73.

References to the Report of Referee will be by the symbol RR and to the Report of Referee (Sanction Phase) will be by the symbol RRS.

## JURISDICTIONAL STATEMENT

This is a case of original jurisdiction pursuant to Article V, Section 15, of the Constitution of the State of Florida.

## STATEMENT OF THE CASE

The Bar's Statement of the Case is accurate as stated. It must, however, be supplemented.

Respondent's objection to costs was granted in part and denied in part. The Referee reduced the Bar's costs from $13,716.21 to $10, 266.49. The Bar has not appealed that reduction.

On June 16, 2010, Respondent filed with the Referee a letter of apology to the undersigned received from Bar Counsel's superior.

A related case to the instant proceedings is relevant to Issue II because the Referee referred to it in his sanctions report. In Florida Bar v. William B. Watson III, Case No. SC09-1507, filed August 21, 2009, the Bar sought and obtained the emergency suspension of Mr. Watson. This Court granted the Bar's petition on September 1, 2009, effective October 1, 2009 (the date the 90-day suspension recommended in the instant case is to begin). Respondent subsequently filed a motion to dissolve or amend the emergency suspension. The same Referee that presided over the instant proceedings heard Respondent's motion to dissolve on

September 29, 2009. On October 5, 2009, the Referee recommended denial of the motion to dissolve and Respondent did not appeal that recommendation.

## STATEMENT OF THE FACTS

Respondent cannot accept the Bar's statement of facts as written. In it the Bar asserts as fact issues that Respondent denied and which the Referee found not to be true. Much of the Bar's statement of facts is its theory of the case rather than the facts as found by the referee.

There are four transactions relevant to this case: (1) the Navin/Meyer transaction (with two subparts); (2) the Hooks/Meyer transaction (with a follow-up transaction); (3) the Brown, Reid and Bury/Navin/Walton transaction; and (4) the loan of $250,000 to Mr. Meyer from a relative, Angela M. Nielsen. All will be discussed below.

In the first three paragraphs of section B. of his findings of fact, RR 2, 3, the Referee introduces Phil Walton and Jason Meyer, Respondent's clients, and Navin Subramaniam-Xavier (Navin), a central figure in the Brown/Reid/Bury transaction. The Referee found:

> Phil Walton ("Walton") resides in Florida. He makes his living through commercial transactions, usually assisting individuals in obtaining financing for projects. Walton first hired Watson to handle some legal affairs for him in 2002 or 2003, and has used Watson's services for legal matters several times thereafter, probably in 10 to 15 different transactions.

> Jason Meyer ("Meyer") is a developer. In 2007 and 2008, Walton assisted Meyer in obtaining standby letters of credit, a financing device that Meyer was using to fund development projects. Because Meyer was having difficulty getting a standby letter of credit accepted or funded by a bank, Walton suggested that he contact Watson for assistance, so that Meyer could have a lawyer "pay master" involved. Watson had experience handling international transactions, transactional funding, and large real estate projects. In January, 2008, Meyer contacted Watson to represent him in this matter and, in particular, to assist him obtain standby letters of credit. Watson and Meyer never personally met, and all of their contact was by telephone or e-mail. Watson got involved, and determined that a standby letter of credit had been issued but not funded.

(1) Navin/Meyer transaction:

This transaction did not result in a grievance.

In late 2007 Navin was contacted by two friends, Tracy and Sam, with an investment opportunity with Meyer. Navin has worked as a mortgage broker, is a sophisticated businessman and has a Ph.D. TR 26. The friends introduced Navin to Meyer and the two of them entered into an arrangement in which Navin, using his uncle's money, would invest $400,000 into one of Meyer's projects. The return on the investment was to be $300,000 within 48 hours. January 14, 2008, Navin and Meyer signed a contract (CEX 12) that Navin had prepared (with the assistance of Karl Brown, a member of The Florida Bar since 1991 and a friend for about ten years. Navin had been Brown's mortgage broker on occasion and Brown

had represented Navin on occasion.) TR 80. The Referee found that Respondent "played no part in the negotiation or preparation of the contract." RR 3.

The contract Navin and Brown prepared specifically provided that Navin's funds were to be held in Respondent's trust account.

At Navin's request, Brown researched Respondent's background. He determined that Respondent had an AV rating, was held in high esteem by his fellow lawyers and had a good reputation with bankers. TR 28.

On January 15, 2008, Navin transferred $400,000 into Respondent's trust account. Because the contract between Navin and Meyer specifically stated that the funds would remain in trust, later that day Respondent called Navin and asked for his permission to transfer the funds out of trust. Navin gave permission and the funds were disbursed by Respondent according to his client's (Meyer) instructions. CEX 13, 14.

About ten days later Navin was contacted by Meyer and given the opportunity to reinvest the principal and the return with Meyer. Navin and his uncle agreed to do so. Navin received $125,000 from Meyer and the balance was reinvested. TR 93. About one year later, Navin received an additional $150,000 from Meyer for his uncle. TR 84.

In addition to his uncle's reinvestment, Navin invested $150,000 of his own money with Meyer. CEX 1, GCTR 179.

At a later date Navin received $75,000 from Meyer as a commission for Tracy and Sam. $11,000 of that sum went to Navin either as a commission, CEX 1, GCTR 189, or as repayment of a loan that Navin had made to Sam. TR 95. Navin received the commission at about the same time he received the $125,000 initial return (i.e., about ten days after the $400,000 investment on January 15, 2008). TR 95.

(2) The Hooks transaction (Count I):

Steven Hooks has a bachelor's degree and has been an investor and financial consultant in Texas for 14 years. He has operated numerous businesses. TR 56, 57. He considers himself "pretty much" a sophisticated businessman. TR 58.

Starting on page 4 and continuing through page 6 of his report the Referee made the following findings:

> Steven Hooks ("Hooks") is an investor and financial consultant in Texas. In early January, 2008, he was introduced to Meyer through a mutual friend. Hooks understood that Meyer was in the process of securing funds for a development project in Arizona. Hooks and Meyer had numerous telephone conferences, some including Watson, although the terms of the deal were negotiated by Hooks and Meyer, not Watson. Hooks understood from Meyer that for his investment of $300,000.00, he would receive a return of $600,000.00 within 48 hours. Hooks believed that Watson was an independent escrow agent and not Meyer's lawyer, although Watson made no such representation. He also understood that his funds would remain in Watson's trust account, and not be disbursed without his permission.

> Watson denies telling Hooks anything about the funds remaining in his trust account, nor did he hear Meyer say that. Watson asserts that he always understood that the funds would be disbursed as Meyer, his client, instructed.
>
> Watson wrote a letter to Hooks on January 8, 2008, summarizing the transaction [CEX 3]. The copy of the letter is not signed, and Hooks denies receiving it. Watson wrote another letter to Hooks on January 16, 2008 [CEX 4], which he called a "disbursement letter." Watson said that he prepared that letter based on his understanding of the transaction from Hooks. This letter was transmitted by e-mail to Hooks, with copies to Meyer and Walton. Hooks received that letter, and believed that it accurately reflected his understanding of the transaction, particularly concerning the funds being held in Watson's trust account. Within hours after receiving the letter, Meyer made handwritten changes to it and transmitted it by e-mail to Hooks, with a copy to Watson [CEX 1-73; CEX 5]. Hooks denies receiving the changed version. Although Watson received his copy, he did not communicate with Hooks regarding the corrected letter.
>
> On January 22, 2008, Hooks transferred $300,000.00 into Watson's trust account. The next day, Watson, acting upon Meyer's instructions, disbursed those funds from his trust account.

Hooks testified that the $300,000 he invested with Meyer was money from his saving account.

In May, 2009, Hooks entered into another business deal with Meyer in which Hooks would get a commission for finding investors for Meyer’s projects. The deal ended, however, on June 18, 2009. TR 67, 68. At the same time, Hooks

and Meyer entered into a repayment agreement, which resulted in Hooks receiving directly from Meyer the sum of $72,500. TR 69.

(3) The Brown, Reid, Bury Transaction (Counts II, III and IV):

In January, 2008, Navin was introduced telephonically to Walton by Meyer. The next day, January 28, 2008, Navin visited Walton to discuss additional investment opportunities. Walton was trying to put together a new standby letter of credit for Meyer and was looking for funders. Navin called Walton later that day and said he had found some investors and he needed a written document to show to them. Walton then sent an email to Navin, REX 1, TR 184, 185. The email called for a $500,000 investment within 48 hours. Walton characterized the investment as being "risk free". The email did not indicate that the funds would remain in Respondent's trust account. Both Respondent, TR 209, and Walton, TR 186, denied telling investors that the funds would never leave trust.

Walton was working with Don Coddington, of Colorado Springs, to get the Meyer letter funded. TR 185. Mr. Coddington's sister, Kathleen Gullege, was the lawyer to whom the funds from this investment were to be sent.

Navin testified that he was to get a commission of 10% of the return on the investment. In an effort to collect that commission he contacted Karl Brown, who had assisted him on the successful transaction discussed as transaction (1) above, and Navin's good friend Richard Lawson, the son of Marian Reid. Brown in turn

contacted Brandon Bury, Azim Ramlize and Lashon Toyer. The latter two individuals declined to invest in the transaction.

Respondent did not speak with either Reid (or her son, Lawson) or Bury before they made their investments. Brown claims that he spoke to Respondent in the two days between the time Navin got Walton's email on January 28th and his deposit on January 13, 2008. Brown testified he was assured that the money would never leave trust. Respondent denied making any such statement. TR 209. The Referee did not decide specifically who was telling the truth. He did, however, find that Respondent was not guilty of violating Rule 4-8.4(c), prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation as to Count II (Brown's count) and he further found that Respondent made no false statements to the Referee (Respondent testified before the Referee on three occasions, the hearing on the emergency suspension on September 29, 2009, the final hearing on April 28, 2010 and the sanctions hearing on June 11, 2010).

There were no written agreements between any of the parties regarding this transaction.

Brown invested $46,000 on January 31, 2008, three days after Walton's January 28, 2008 email to Navin. Bury invested $50,000 on January 30, 2008. Reid invested $100,000 on February 1, 2008. CEX 23.

On February 4, 2008 Respondent wired the $196,000 received from the investors to the trust account of lawyer Cathleen Cullege, the sister of Coddington. Reid testified that she was reluctant to enter into the transaction. TR 148. Both her son and Navin pressured her to do so. Apparently, one or both of them told her that a judge (Brown) was investing and that her funds were going into Respondent's trust account. On February 1, 2008 Navin sent an email to Lawson (CEX 17) which set forth the terms of the agreement and which attached, without Respondent's knowledge or consent, five letters (CEX 15) Respondent had prepared to five investors who had, according to Navin, already invested funds. Those letters were to Brown for $46,000 (which he had already invested), to Bury for $100,000 (who had already invested $50,000), to Lawson (Reid's son) for $100,000 (which was, in fact, the amount Reid invested that day) and to Ramlize for $69,000 and to Toyer for $25,000, neither of whom invested. After talking to Navin, literally on the way to the bank, Reid agreed to use her line of credit on her house to draw down $100,000 to invest. TR 143, 145.

When the investment did not pan out, all three investors tried desperately to get their money from Respondent, as opposed to from Navin, Coddington or Meyer. Brown threatened grievance proceedings if Respondent did not return his money. REX 2.

The grievance committee found probable cause for a violation of Rule 4-8.4 (c) for allegedly telling Reid subsequent to the investment (he never spoke to her until after the investments were made) that her investment never left his trust account and for creating the two letters to Toyer and Ramlize. Those allegations were included in Count III of the Bar's complaint. After hearing Respondent testify on those issues, and after hearing Reid testify, the Referee found as to Count III that Respondent did not violate Rule 4-8.4(c).

(4) The Nielsen Transaction

This transaction did not result in a complaint.

On March 19, 2008, Angela M. Nielsen, Meyer's relative, deposited into Respondent's trust account the sum of $250,000. CEX 24. It was a loan to Meyer, not an investment. Pursuant to Meyer's instructions, Respondent disbursed $25,000 to Walton, $150,000 to Cullege (Coddington), $50,000 to Meyer (3H) and $25,000 to Respondent (6115). Respondent testified that the $25,000 was for fees earned on the first transaction that he handled for Meyer, i.e., getting the first letter of credit funded. Those fees did not arise out of the Hooks or the Brown/Reid/Bury transactions.

The Referee found that Respondent "received no financial benefit from the monies invested." RR 9.

The Bar's auditor examined Respondent's trust account. CEX 19. He found Respondent's trust account to be in substantial compliance with the Bar's trust accounting rules. He could not opine as to whether Respondent's conduct regarding the issue of maintaining the complainants' funds in trust was improper because it was a swearing contest. TR 121.

The auditor acknowledged that Respondent and his staff cooperated fully in the examination of the trust account.

After the sanctions hearing the Referee found the following aggravating and mitigating factors:

> (a) There were a total of four victims in two separate transactions.
> (b) Although admitting that he should have done things differently to avoid the same results, the Respondent has not acknowledged any wrongdoing.
> (c) The Respondent has substantial experience in the practice of law. He has practiced for over forty years, and has expertise in handling commercial transactions.
> (d) Two of the victims had little or no investment experience, although the Respondent has no direct contact with them. The two victims that the Respondent communicated with, and the non-victim third parties involved in these transactions, had significant investment experience or were not particularly vulnerable.
> (e) There is no evidence that the Respondent submitted false statements during these proceedings, as asserted by the Bar.
> The Referee makes the following findings as to mitigating factors:
> (a) The Respondent has no prior disciplinary record.

> (b) The Respondent did not have a dishonest or selfish motive; he acted negligently or carelessly, but did not intend to steal the victims' monies.
> (c) The Respondent did make an effort to get the victim's funds returned.
> (d) The Respondent did cooperate with the Bar's audit of his trust account, and had a cooperative attitude toward these proceedings.
> (e) The Respondent has an outstanding legal and personal character and reputation. He has served on a grievance committee in the past.

## SUMMARY OF ARGUMENT

Respondent asks this Court to uphold the Referee's finding that Respondent's conduct did not constitute a violation of Rule 4-8.4(c) as charged in Counts I and III of the Bar's complaint. The Referee's findings are supported by competent, substantial evidence. The Bar's request that this Court reweigh the evidence and substitute its judgment for the Referee is contrary to this Court's long-standing policy. Florida Bar v. Head, 27 So.3d 2, 7 (Fla. 2010). The Bar cannot meet its burden of proving error on the Referee's part merely by pointing to contradictory evidence in the record. Head, p. 7.

The Referee properly recommended that Respondent receive a 90-day suspension, retroactive to October 1, 2009 (the date his emergency suspension began) to be followed by three years' probation. Both the Standards for Imposing Lawyer Discipline and Florida case law support his recommendation. This Court has repeatedly stated that it will not second-guess a Referee's recommended

discipline if it has a reasonable basis in the Standards and with this Court's prior decisions. Head, p. 8. The Referee's recommendation meets both of those criteria. The discipline that he recommended should be imposed.

## ARGUMENT

Simply put, the Bar did not meet the burden imposed on it by this Court to prove a violation of Rule 4-8.4 (c) by clear and convincing evidence. Florida Bar v. Rayman, 238 So.2d 594 (Fla. 1970). This Court has defined clear and convincing as:

> [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. *The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.* (Emphasis supplied.)

Inquiry Concerning a Judge, No. 93-62, Re: Kevin Davey, 645 So.2d 398, 404 (Fla. 1994).

In the case at bar the Referee had the advantage of observing Respondent's testimony on three occasions. He also observed the testimony of Karl Brown on two occasions, the testimony of Steven Hooks twice, and the testimony of Marian Reid once. The Referee, in such situations, is in the favored position to judge the credibility of the witnesses. After reviewing all the exhibits, and after gauging the

credibility of the witnesses, he found that Respondent was not guilty of violating Rule 4-8.4(c), conduct involving dishonesty, fraud, deceit or misrepresentation as charged in Counts I (Hooks) and III (Reid). Respondent was not charged with violating that rule as to Counts II (Brown) and IV (Bury). Obviously, the grievance committee did not believe Brown's story that Respondent told Brown that his money would never leave Respondent's trust account or the committee would have found probable cause for a violation of Rule 4-8.4(c) as to Brown. Respondent did not speak with Bury before the transaction and, accordingly, no such accusation could be made. To the extent that the testimony of Hooks and Reid was inconsistent with that of Respondent's, the Referee chose to believe the latter. His resolution of the conflicting evidence should not be disturbed by this Court. See, Florida Bar v. Head, 27 So.3d 2, 7 (Fla. 2010):

> The Court has a long-established and clear standard regarding a referee's credibility findings: The Court defers to the referee's assessment and resolution of conflicting testimony because the referee is in the best position to judge the credibility of the witnesses. Fla. Bar v. Batista, 846 So.2d 479 (Fla. 2003).

## ISSUE I

RESPONDENT'S CONDUCT WAS NOT DELIBERATE OR KNOWING

The Bar misstates the law when it says that a finding of conduct involving dishonesty, fraud, deceit or misrepresentation can be found by "merely" showing deliberate or knowing misconduct. The Bar must still prove wrongful intent. And, it must do so by clear and convincing evidence. Florida Bar v. Neu, 597 So. 2d 266, 269 (Fla. 1992); Florida Bar v. Lumley, 517 So. 2d 13, 14 (Fla. 1987).

Conduct that is deliberately done is not necessarily conduct done with a wrongful motive. Bar Counsel's conduct at final hearing is a case in point. At final hearing Bar Counsel unequivocally stated that the Bar never received Respondent's discovery. He was emphatic:

> The deadline was the 20th. It was over a week ago. And he did not comply….he says that he hand-delivered the documents to the Bar. Perhaps someone he thought did but no one did. Since we have not received these documents previously, we object to their introduction.

TR 181, 182.

Counsel deliberately and knowingly made those statements to the Referee at final hearing. As his superior's letter of apology dated June 11, 2010 (subsequently filed with the Referee) made clear, those statements were wrong. Under the standard the Bar asks the Court to adopt, his conduct violated Rule 4-8.4(c)

because he deliberately made inaccurate statements. Respondent argues, however, that the analysis must go one step further: were those statements made with wrongful intent? Of course not! Counsel was mistaken. Mistakes, or misunderstandings, occur in life. A wrongful statement, or confusion over an issue, does not automatically equate to dishonesty or fraud or deceit or misrepresentation.

**A. <u>The letters Respondent wrote to Lashon Toyer and Azim Ramize on February 1, 2008 were not false or dishonest</u>.**

The Bar incorrectly states that Respondent was actively involved in soliciting investors. No such evidence exists and the Referee made no such finding. Respondent did not have anything to do with bringing Hooks to the table with Meyer. Nor did he bring Brown, Reid, or Bury to the table for the Walton/Meyer investment that they made. Indeed, Respondent never even spoke to Reid or Bury. Brown and Bury had already invested their funds before Respondent authored the five February 1, 2008 letters. CEX 15. Only Reid was shown the letters before she invested. And, she received those letters from Navin, who was trying to make a commission and who was pressuring her and her son, Lawson, into investing in the deal.

Respondent's testimony about the letters is uncontroverted. He was told by Navin that the five investors, Brown, Bury, Lawson/Reid, Ramlize and Toyer

investments were guaranteed. Relying on Navin's word, clearly a mistake, Respondent authored the five letters. He emailed them to Navin with the specific understanding that Navin would not deliver them until the deposit was made. The Brown letter was accurate in all respects. Bury had invested but Navin had the figure wrong—it was $50,000 rather than the $100,000 Navin relayed.

Lawson/Reid were, indeed, contemplating the investment of $100,000. As we now know, neither Ramlize or Toyer invested.

The five letters, unbeknownst to Respondent, and contrary to Respondent's directions, were emailed to Lawson in an attempt by Navin to get a recalcitrant Reid to invest. The letter that had the most impact on her, Judge Brown's, was exactly accurate.

It cannot be said that Respondent's authoring two letters that turned out to be inaccurate (out of a group of five) constitutes dishonest conduct when Respondent emailed them to Navin with the specific instruction that he hold on to them until the investment is met. Most importantly, there is no evidence that any of the letters other than the Lawson letter was ever intended to go to Reid. In fact, Respondent was told that her son, Richard Lawson, was the investor.

The Bar is simply wrong in its argument that the letters were designed to get Reid to invest. Why would the two inaccurate letters be the deciding factor rather

than the two accurate letters? Contrary to the Bar's argument, Reid did not testify that the Ramlize and the Toyer letters "convinced her" to invest.

Finally, the allegation of dishonest conduct as to Brown, Bury and Reid was limited to the latter's count, Count III. The charging document, the Bar's Complaint, alleges that the letters were sent directly to Reid in an attempt to convince her to invest. That allegation is untrue. The letters were given to her by her son, who received them from Navin.

In retrospect, Respondent should have waited for confirmation of the investments before he sent the letters to Navin. His doing so can hardly be deemed dishonest when he was gave specific directions that they were not to be sent out by Navin until the funds were deposited.

**B. <u>The evidence did not establish a Ponzi Scheme</u>.**

There is no Ponzi scheme. One payment, only one, was used to pay a prior investor. There are no tiers of investors. There is no evidence of a scheme.

The Bar's auditor's status as an expert was challenged because he is a biased witness, i.e., he works for the Bar. He supports his employer's position. No neutral authority came forth to opine that paying one investor, not a series of investors but ONE investor, with the proceeds of another loan is a Ponzi Scheme.

The Bar points to no authority to establish that one payment is sufficient to establish a scheme.

The facts are that $175,000 of Hooks' $300, 000 went to Meyer; $196,000 of the Brown/Reid/Bury money went to lawyer Cullege's trust account for the benefit of Coddington, Meyer's agent. There is no pattern, no scheme.

The Florida Bar in Count I (Hooks) did not charge Respondent with engaging in a Ponzi Scheme. They raised it for the first time at final hearing. The Referee rejected their arguments.

**C. <u>Respondent's failure to provide an accounting is not dishonest conduct</u>.**

This argument is so vague and of such a slap-dash manner that Respondent is having difficulty responding to it. Without citing a case or a rule the Bar claims that refusing to provide an accounting to a nonclient is dishonest conduct and, somehow, a violation of Rule 4-8.4(c). While such a failure might possibly be a violation of Rule 5-1.1(b), it is not under the circumstances of the instant case a violation of Rule 4-8.4(c).

**D. <u>The Referee rejected the Bar's arguments that Respondent's conduct as to the Hooks transaction involved dishonesty, fraud, deceit or misrepresentation</u>.**

Hooks is a sophisticated investor who entered into a deal with Meyer independent of Respondent. He was blinded by the opportunity to get a 100% return on his investment in 48 hours. Apparently, this sophisticated investor and financial consultant believed that a 100% return on $300,000 in 48 hours was

"risk-free". That is preposterous. No transaction with that kind of return is risk free and Hooks knew it.

Hooks testified that Respondent told him Hooks' funds would stay in trust. Respondent denied it. The Referee, who had the opportunity to observe both men on the stand on two occasions, did not find that Respondent violated Rule 4-8.4(c). To challenge the Referee's findings in this regard the Bar:

> must show that there is a lack of evidence in the record to support such findings or that the record clearly contradicts the referee's conclusions; this burden cannot be met merely by pointing to contradictory evidence when there is substantial competent evidence in the record supporting the referee's findings. Fla. Bar v. Glueck, 985 So.2d 1052, 1056 (Fla. 2008).

Florida Bar v. Head, 27 So.3d 3 (Fla. 2010) at page 7.

Documentary evidence supports Respondent's version of his conversations with Hooks. CEX 3, 5; CEX 1-73. Accordingly, there is "competent, substantial evidence in the record,…" supporting the Referee's findings and the Court "will not reweigh the evidence and substitute its judgment for that of the referee." Florida Bar v. Head, supra, page 7.

The Bar's only pointing to CEX 4 as support for its argument is somewhat misleading to this Court. There was a previous email from Respondent to Hooks on January 8, 2008. CEX 3. There was also a corrective letter emailed to Hooks by Meyer within 90 minutes of CEX 4 going out. CEX 5, CEX 1-73. While

Hooks has acknowledged receiving CEX 4, which supports his position, he denied receiving CEX 3, 5 and CEX 1-73. The latter three exhibits clearly contradict Hooks' position and support Respondent's.

The first letter, CEX 3, was sent to Hooks by Respondent on January 8, 2008. It states in material part:

> This transaction is a short term unsecured loan for the benefit of Jason Myers (sic)….
>
> Mr. Meyer will utilize the loan proceeds in a financial transaction with one of his banks.

Subsequently, Respondent and Hooks had telephone conversations during which Hooks stated that it was his understanding that his funds would stay in trust. Because Respondent was not part of the negotiations between Hooks and Meyer, Respondent took Hooks' word as true, wrote CEX 4 and emailed it to Hooks at 11:50 a.m. on January 16, 2008. Less than 90 minutes later Respondent received a corrective email letter from Meyer with the language about Hooks' funds staying in trust being crossed out and substituting contrary language. CEX 5. Hooks says he got CEX 4 but denies getting CEX 5. The email string for CEX 3 and 4 was presented to the grievance committee as evidence. It is admitted into these proceedings as CEX 1-73. It clearly shows Respondent's email to Jason and Steve at 11:50 a.m. and Meyer's correction at 1:18 p.m. on the same day. Both Respondent's and Meyer's emails use the correct email address for Hooks, i.e.,

hookshomes@yahoo.com. Hooks only admits getting the first letter. He offered no explanation why the second letter from Meyer, sent to the same address as the first letter, did not arrive. The Referee could well have relied on this discrepancy in deciding to believe Respondent and not Hooks. As a trained jurist, he also could have relied on body language, gestures, hesitation and other means of gauging credibility that simply are not apparent to this Court during judicial review of these proceedings.

The Bar has argued throughout these proceedings that a lawyer's responsibility to third party investors is superior to his duty to his client. The Bar at one point argued that Respondent had a duty to warn the investors that he had never met his client (a rather ludicrous position to take in this age of interstate clients and electronic communications). The Bar seems to take the position that Respondent had the duty to warn these investors seeking pie in the sky returns (Hooks getting 100% return on a 48-hour investment and Brown/Reid/Bury getting 25% return on two weeks) that their investments might not be wise. That is not the rule. Nor should it be.

On page 22 of its brief, the Bar states that it cannot locate much of the money not returned to the investors. How hard did it try? There is no evidence it contacted Meyer or Coddington or Coddington's lawyer, into whose trust account the entire corpus of the Brown/Reid/Bury funds went. The auditor's flow charts,

CEX 22, 23 and 24, showed exactly where the funds went. There is no factual basis for the Bar's statement about missing money.

The Bar erroneously implies that the $25,000 in fees Respondent received from the Nielsen $250,000 loan to Meyer on March 19, 2008 (seven weeks after the Brown/Reid/Bury investment) to her relative Jason Meyer is part of the so-called missing funds. That is not true. There is no evidence even remotely suggesting that Respondent's $25,000 fee came from the four complainants' funds. And, that fee was for Respondent's efforts to get Mr. Meyer's first letter of credit funded.

Basically, Issue I, parts A, B, C, and D, are nothing more than expressions of disagreement with the Referee's finding that Respondent did not violate Rule 4-8.4(d). His findings are based on substantial competent evidence. The Referee wrote an extremely well-thought out report and alluded to the evidence he thought was material. He had all four complainants before him and considered their testimony. As to conduct involving dishonesty, fraud, deceit and misrepresentation (only charged in Counts I and III), he found for Respondent. The Bar has not met the burden imposed on it by Rule 3-7.6(c)(5) to demonstrate that the Referee's findings as to Rule 4-8.4(c) are erroneous, unlawful or unjustified. There is abundant evidence to support the Referee's findings and recommendations.

## ISSUE II

### THE REFEREE'S RECOMMENDED DISCIPLINE OF A 90-DAY SUSPENSION AND THREE YEARS PROBATION IS JUSTIFIED

Respondent has now been suspended for 13 months for conduct that the Referee who originally upheld Respondent's emergency suspension has now concluded merits no more than a 90-day suspension retroactive to the beginning of that suspension. After having heard all the evidence, and after hearing Respondent's testimony, under oath, on three occasions, this Court's Referee has concluded that the misconduct was the result of negligence and was without improper motive. This Court should adhere to its long-standing policy that it:

> will not second-guess the 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 Fla. Bar v. Temmer, 753 So.2d 555, 558 (Fla. 1999).

Florida Bar v. Head, 27 So.3d 2, 8 (Fla. 2010).

The Referee's recommended discipline, indeed, is justified by the facts before him, by existing case law, and by the Standards.

When the conflicting evidence is winnowed down to what the Referee found, after observing the testimony of the witnesses and after considering the documentary evidence in light of the conflicting testimony, it is apparent that Respondent was guilty only of bad judgment, not of bad motive. Four investors,

one a career financial advisor and investor (Hooks), another a magistrate and a member of The Florida Bar since 1991, invested large sums of money with dreams of making huge returns in a very short time. Respondent brought none of them to the table. Hooks entered into his deal with Meyer directly. Brown was brought into the Walton/Meyer deal by Navin. Brown, in turn, brought in Bury and tried to bring in Ramlize and Toyer. Navin brought in Reid. In fact, Respondent did not even speak to Reid and Bury before they invested.

When the deals did not bring in the returns the investors expected they turned to the Bar to collect their money. Obviously, Brown, Reid and Bury have coordinated their stories. Brown and Navin have also; they rode from Miami to Gainesville and back for the grievance committee meeting. Hooks conveniently seized on one erroneous letter authored by Respondent, CEX 4, as the basis for his Bar complaint. He claims that he never got a corrective letter from Meyer 90 minutes later, CEX 5, CEX 1-73, that was sent to the very same email address.

The Referee rejected the claims of dishonest conduct by the two groups of investors as echoed by the Bar. In Section V of the Report of Referee (Sanction Phase) the Referee stated the following:

> The Referee has recommended that the Respondent be found guilty of four counts of violating Rule 5-1.1(b), Rules Regulating the Florida Bar. The Respondent's conduct was not deliberate and intentional. He acted in a negligent manner. The Respondent did not use the

> victim's funds for his own benefit. Instead, he was careless in disbursing those funds. There is no clear and convincing evidence that the Respondent was guilty of dishonesty, deceit, misrepresentation, or fraud. The Respondent's conduct did, however, result in significant financial damages to the victims, and he has not replaced the funds. There are both aggravating and mitigating circumstances, as described above. It is unlikely, given the Respondent's exemplary history, that this conduct will ever occur in the future

In Section V the Referee found, based on the competent, substantial evidence before him, that Respondent was "negligent" and "careless in disbursing those funds." The Respondent "did not use the victim's funds for his own benefit." He found that "given the Respondent's exemplary history, [it is unlikely] that this conduct will ever occur in the future."

The Referee's recommended discipline is consistent with the Florida Standards for Imposing Lawyer Sanctions (the Standards). The Referee specifically considered Standard 4.11 in Section I of his Sanction report. The Bar disagrees with the Referee's obvious rejection of the Bar's position that Standard 4.11 applies to the case at Bar. The Referee was right in doing so.

First, Standard 4.0 is not applicable to this case. It is captioned "Violations of Duties Owed to Clients." None of the complainants were Respondent's clients. While the Bar opines that Standard 4.0 should apply to nonclients, it offers no authority to support its position. This Court should not favorably respond to the

Bar's efforts to retroactively rename this Standard and to retroactively dramatically expand its scope.

Standard 4.11 would not be applicable even if the complainants' funds were client funds. The Standard is very precise in its language:

> Disbarment is appropriate when a lawyer intentionally or knowingly converts client property….

The Referee specifically and unambiguously found that "Respondent's conduct was not deliberate and intentional." That finding, particularly when it is coupled with his subsequent finding that Respondent was "negligent" and "careless" and did not use the funds for his own benefit, removes this case from the ambit of Standard 4.11.

If any Standard is applicable from Standard 4.0 it would be Standard 4.12. That Standard says in material part:

> Suspension is appropriate when a lawyer knows or should know that he is dealing improperly with client property….

The Referee implicitly adopted Standard 4.12 in his recommendation of a 90-day suspension. (The Referee's finding that Respondent is unlikely to engage in such conduct again eliminates the necessity of proof of rehabilitation before reinstatement.)

Before any discipline is imposed a Referee should consider aggravation and mitigation as required by Standard 9.1. The Referee did so and specifically set out the factors that he deemed applicable. Of note in the aggravation section is the Referee's findings in section (d) and (e):

> (d) Two of the victims had little or no investment experience, although the Respondent [had] no contact with them. The two victims that the Respondent communicated with, and the non-victim third parties involved in these transactions, had significant investment experience or were not particularly vulnerable.
>
> (e) There is no evidence that the Respondent submitted false statements during these proceedings, as asserted by the Bar.

The latter finding was the result of the Bar's urging that the Referee find that Respondent lied during his testimony—thereby invoking aggravating Standard 9.22(f). The Referee emphatically rejected that argument by his findings throughout his two reports and by specifically rejecting it in item (e) quoted above. The Referee's findings as to mitigation are clear and significant. He found:

> (a) The Respondent has no prior disciplinary record.
> (b) The Respondent did not have a dishonest or selfish motive; he acted negligently or carelessly, but did not intend to steal the victims' monies.
> (c) The Respondent did make an effort to get the victim's funds returned.
> (d) The Respondent did cooperate with the Bar's audit of his trust account, and had a cooperative attitude toward these proceedings.

> (e) The Respondent has an outstanding legal and personal character and reputation. He has served on a grievance committee in the past.

Under Section IV, Respondent's personal history, the Referee also found that:

> The Respondent is 69 years old. He was admitted to The Florida Bar on November 4, 1966. He has no prior disciplinary record.

The Referee's recommended discipline has a firm basis in the Standards.

There are few cases to draw upon in determining the appropriate discipline in this case. The Bar insists on pointing to cases involving theft from the trust account. Those cases, however, do not even remotely apply to the facts before the Court today.

Respondent did not steal or convert client funds. He did not steal or convert nonclient funds. He did not use the subject funds for his own benefit. He acted only in a negligent and careless manner. He did not engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Given his 43 years of practice without a blemish, it is unlikely that any such conduct will be duplicated. These are all findings made by the Referee that are supported by the evidence presented to him. Cases cited by the Bar that are inconsistent with these facts are not applicable to Respondent's case and should be ignored by this Court.

The first three cases cited by the Bar in its brief, Florida Bar v. Travis, 765 So.2d 689 (Fla. 2000), Florida Bar v. Martinez-Genova, 959 So.2d 241 (Fla. 2007),

and Florida Bar v. Berman, 659 So. 2d 1049 (Fla. 1995), all involve intentional misconduct. They were all considered by the Referee and appropriately rejected as a basis for discipline. Mr. Travis was disbarred subsequent to a finding that he intentionally used at least $38,800 of client's trust funds for his personal use over a two year period. Some of the money was used to pay for a daughter's trip abroad. In short, he intentionally used client's trust funds for personal gain. Disbarment was appropriate in his case.

Ms. Martinez-Genova was disbarred after she was found guilty of violating Rule 4-8.4(c) and of intentionally misusing trust funds for her own benefit. She misappropriated funds from third parties and she "knew what she was doing was wrong". Unlike the case at Bar, there was a specific finding that she deliberately, not negligently or carelessly, used trust funds for her own benefit. In short, she stole money.

Mr. Berman received a six-month suspension after deliberately and improperly disbursing to himself $19,000 of $40,000 of a third party's trust funds and for serving 49 nights in jail for contempt of court. He was found guilty of conduct involving dishonesty, fraud, deceit and misrepresentation as well as engaging in conduct prejudicial to the administration of justice.

If nothing else, Berman serves as the upper limit of the discipline that can be imposed in the instant case. In his case the Bar sought a three-year suspension and

this Court rejected it, imposing a six-month suspension instead. Respondent in the case at Bar, however, was not found to have committed the wrongs done by Berman. There is no finding of intentional misconduct, no finding of conduct involving dishonesty, fraud, deceit or misrepresentation, and there certainly was no contempt of court.

The Bar's reference to Florida Bar v. Whigham, 525 So.2d 873 (Fla. 1988), is closer to the mark than the aforementioned three cases but it is still not on point. Mr. Whigham was publicly reprimanded and put on three years probation for trust account recordkeeping violations in 1985. He immediately failed to comply with his probation and was audited. It was found that notwithstanding his prior discipline, he was bouncing trust fund checks, was not keeping the requisite records, and at times had unexplained shortages in his trust account. Apparently, Mr. Whigham was incapable of maintaining a trust account, thereby putting his clients at risk. The Referee recommended a three-year suspension. Mr. Whigham did not contest that recommendation. The Bar, however, sought disbarment. The Supreme Court, while recognizing that Mr. Whigham was guilty of "gross negligence" and was not guilty of "willful misappropriation", rejected the Bar's position.

One must wonder what the Court would have decided had the Referee recommended a lower discipline or had Mr. Whigham cross-appealed. That, however, is a moot question.

The Respondent in the instant proceedings was audited by the Bar and his trust account was excellently maintained. The Bar's auditor found that he was in substantial compliance with the Bar's rules. CEX 19.

The last case cited to this Court by the Bar is Florida Bar v. Weiss, 586 So.2d 1051 (Fla. 1991). Harvey Weiss, a New Jersey practitioner with a Florida Bar membership, received a six-month suspension in that state for trust fund shortages in three different client accounts. No client complained (the shortages were discovered after a random audit under that state's random audit rule) and there was no evidence of intentional misconduct. He advised The Florida Bar that he would accept the same discipline in Florida and did not attend the Florida final hearing or send counsel to appear for him. At final hearing the Referee found intentional misconduct and recommended disbarment. This Court rejected the findings as to willful misconduct and imposed the same discipline as did New Jersey. In so doing it stated that its:

> case law suggests a clear distinction between cases where the lawyer's conduct is deliberate or intentional and cases where the lawyer acts in a negligent or grossly negligent manner.

The case law is the same today as it was in 1991. The Referee in the case before the Court today found no deliberate misconduct and found negligence and carelessness. None of the Bar's cases should convince this Court that the Referee's recommended discipline should be rejected.

The Referee's recommended discipline has a firm basis in existing case law. Among those cases is Florida Bar v. Lumley, 517 So.2d 13 (Fla. 1987). Mr. Lumley "used funds held in trust for clients for purposes other than those intended by the clients." Id., 14. At times "there were deficits in the accounts of money held in trust,…." Id., 14. Although the Referee in that case found no intent, the Court found the Referee's findings "implicitly show that respondent knowingly used entrusted funds for his own purposes." Relying on the Referee's finding, however, that there was no wrongful intent, the Court imposed a public reprimand. (The Court also declined to order probation because "no purpose would be served by probation….")

Another case supporting the Referee's recommendation is Florida Bar v. Cramer, 643 So.2d 1069 (Fla. 1994). Mr. Cramer was found to have engaged in intentional misconduct involving dishonesty, fraud, deceit and misrepresentation by leaving earned fees in trust in an attempt to mislead the IRS and for depositing funds received for the benefit of a client into Cramer's operating account. After finding much of his conduct was the result of negligence, and after considering

extensive mitigation (including a heart attack that led to many of Cramer's problems), the Court ordered a 90-day suspension.

In disciplining Cramer the Court referred to Florida Bar v. Scott, 566 So.2d 765 (Fla. 1990). Mr. Scott received a 91-day suspension for conduct more serious than that before the Court today. In essence, he received three pieces of property from a friend for no consideration as an attempt by the friend to avoid creditors. Mr. Scott was to return the property to the friend upon request. After the friend died, Mr. Scott hid from the heirs the existence of the properties and claimed ownership for himself. The heirs found out and grieved him. Although the Referee found that Mr. Scott's testimony was not "entirely truthful" the Supreme Court only suspended him for 91 days.

Respondent's misconduct is not nearly as egregious as Mr. Scott's. While the Court found there was no attorney-client relationship between Mr. Scott and his friend, he still received the three properties in trust. He tried to take them, was found out, and then was not "entirely truthful" in his testimony to the referee. By no stretch of the imagination should Respondent receive a discipline equal to, let alone harsher than, that which Mr. Scott received.

In Florida Bar v. Grosso, 760 So.2d 940 (Fla. 2000), the accused lawyer received a 90-day suspension for failing to keep safely in trust property entrusted to him. After finding that Mr. Grosso was "negligent to the point of

incompetence…" the Court ordered a nonrehabilitation suspension. It should be noted that Mr. Grosso had previously been disciplined on four separate occasions: twice by admonishments for minor misconduct, a public reprimand and a ten-day suspension. Yet, he was not given a suspension requiring proof of rehabilitation.

Lumley, Cramer, Scott and Grosso, and to a lesser extent the Berman case alluded to by the Bar, are all support for the Referee's recommended discipline in the instant proceedings. Accordingly, his recommendation should be upheld. The cases cited to by the Bar are cases involving far more serious different misconduct and, therefore, were rejected by the Referee.

Respondent suggests that there is yet another factor which lends support to the Referee's recommendation; the fact that Respondent has already been suspended for 13 months on an emergency basis for conduct not involving a violation of Rule 4-8.4(c). His reputation has been destroyed, his practice of 43 years was shut down on 30 days notice and he has suffered the devastating effects of having his only means of making a livelihood destroyed. The Referee's recommendation that the suspension be effective nunc pro tunc to the onset of the emergency suspension is, Respondent submits, a tacit recognition of the unfairness of the emergency suspension being entered in the first place.

The Referee's recommended discipline in this case is consistent with the facts, the Standards, and this Court's prior ruling. It should be accepted and imposed by this Court without modification.

## CONCLUSION

The Referee properly found that Respondent did not violate Rule 4-8.4(c) as alleged in Counts II and IV. There is competent, substantial evidence in the record to support those findings. They must, therefore, be upheld and the Bar's appeal of those findings should be rejected.

The discipline recommended by the Referee, a 90-day suspension nunc pro tunc October 1, 2009 followed by three years' probation, is consistent with the facts before him, with the Standards for Imposing Lawyer Sanctions and with this Court's past decisions. That recommendation should be accepted by this Court.

Respondent asks this Court to reject the Bar's challenges to the Referee's findings and recommendations. He further asks that those findings and recommendations be adopted by this Court.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing Reply Brief were hand-delivered to The Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399, and that copies were mailed to James A. G. Davey, Jr., Bar Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, and to Kenneth L. Marvin, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, on this 9th day of November, 2010.

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John A. Weiss

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

Undersigned counsel does hereby certify that the Reply Brief filed in the matter of The Florida Bar, Complainant, v. William Bedford Watson, III, Respondent, Case No. SC09-2022, TFB File Nos. 2008-00,715(8B), 2009-00,113(8B), 2009-00,116(8B), 2009-00,142(8B), is submitted in 14-point proportionately spaced Times New Roman font, and that the brief has been sent as an attachment in Word format to an email to the Supreme Court Clerk's office which was scanned and found to be free of viruses, by Norton Anti-Virus for Windows.

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Counsel for Respondent