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)

INITIAL BRIEF

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<u>TABLE OF CONTENTS</u>

TABLE OF CONTENTS ii
TABLE OF CITATIONS iii
PRELIMINARY STATEMENT 1
STATEMENT OF THE CASE 3
STATEMENT OF THE FACTS 5
SUMMARY OF ARGUMENT 15
ARGUMENT 16
ISSUE I 18
THE MISCONDUCT WAS DELIBERATE OR KNOWING. 18
A. THE LETTERS WHICH RESPONDENT WROTE TO LASHON TOYER AND AZIM RAMLIZE ON FEBRUARY 1, 2008, WERE FALSE AND DISHONEST. 18
B. THE EVIDENCE ESTABLISHING A PONZI SCHEME SHOWS DELIBERATE OR KNOWING MISCONDUCT. 19
C. RESPONDENT FAILED TO PROVIDE REQUESTED ACCOUNTINGS FOR THE MONEY 20
D. RESPONDENT ASSURED HOOKS THAT THE MONEY WOULD STAY IN HIS TRUST ACCOUNT. HE TRANSFERRED THE MONEY OUT OF THE TRUST ACCOUNT WITHOUT AUTHORIZATION FROM HOOKS. THE MISCONDUCT WAS DELIBERATE OR KNOWING, AND WAS A MISREPRESENTATION. 20
ISSUE II 23
THE REFEREE'S RECOMMENDED DISCIPLINE OF A 90-DAY SUSPENSION AND 3 YEARS PROBATION IS NOT IN ACCORDANCE WITH THE FLORIDA STANDARDS FOR IMPOSING LAWYER SANCTIONS NOR IS THERE A REASONABLE BASIS FOR IT IN EXISTING CASE LAW. 23
CONCLUSION 27
CERTIFICATE OF SERVICE 28
CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN 29

TABLE OF CITATIONS

Page No.

Cases

The Florida Bar v. Barrett, 897 So.2d 1269, 1276 (Fla. 2005) 24
The Florida Bar v. Berman, 659 So.2d 1049 (Fla. 1995)..25
The Florida Bar v. Brown, 905 So.2d 76 (Fla. 2005) 18
The Florida Bar v. Joy, 679 So.2d 1165 (Fla. 1996)..16
The Florida Bar v. Martinez-Genova, 959 So.2d 241 (Fla. 2007) 25
The Florida Bar v. Rodriguez, 959 So.2d 150 (Fla. 2007)..17
The Florida Bar v. Travis, 765 So.2d 689 (Fla. 2000) 25
The Florida Bar v. Vining, 707 So.2d 670, 672 (Fla. 1998) 16
The Florida Bar v. Weiss, 586 So.2d 1051, 1053 (Fla. 1991)..................................26
The Florida Bar v. Whigham, 525 So.2d 873 (Fla. 1988)..................................25, 26

Rules Regulating The Florida Bar

Rule 4-8.4(c)...13, 15, 16, 18, 19, 20, 22, 27
Rule 5-1.1 21
Rule 5-1.1(b) 13, 15, 16, 21

Florida Standards for Imposing Lawyer Sanctions

Standard 4.11...23
Standard 4.12...23

PRELIMINARY STATEMENT

The Complainant, The Florida Bar, is seeking review of a Report of Referee recommending that Respondent receive a 90-day suspension and probation for trust account violations which resulted in harm to four people who lost approximately $420,000 because Respondent transferred their money out of his trust account for an unintended purpose. Most of the money is missing.

Complainant will be referred to as The Florida Bar, or as the Bar. William Bedford Watson, III, Respondent, will be referred to as Respondent, or as Mr. Watson throughout this brief.

References to the Report of Referee shall be by the symbol RR. The Referee did not number the pages, so the Bar will refer to them as if they were numbered, starting with the page entitled Report of Referee as page 1 and including thereafter the other pages (e.g., RR, 3). The Referee submitted a separate Report of Referee for the Sanction Phase, which will be referred to by the symbol RRS, followed by page numbers assigned as if they had been numbered by the Referee (e.g., RRS, 2), starting with the first page entitled Report of Referee (Sanction Phase).

The Grievance Committee transcript and its exhibits were admitted into evidence as TFB #1. References to this transcript will be by symbol TFB #1, followed

by the appropriate page number (e.g., TFB #1, 30). References to exhibits to the transcript shall be by symbol Ex. followed by the number (e.g., TFB #1, Ex. 14).

The emergency suspension hearing transcript was admitted into evidence as TFB #2. References to this transcript will be by symbol TFB #2, followed by the appropriate page number (e.g., TFB #2, 17). References to exhibits to that transcript shall be by symbol Ex. followed by the number (e.g., TFB #2, Ex. 7).

The transcripts of the final hearing (guilt phase) were admitted into evidence as TFB #33 and TFB #34. References to those transcripts shall be by symbol TFB #33 or TFB #34 followed by the appropriate page number (e.g., TFB 33, 6). References to exhibits to those transcripts shall be by symbol TFB #33 or TFB #34, followed by Ex., followed by the number (e.g., TFB #33, Ex. 13).

References to specific pleadings will be made by title.

References to the transcript of the sanction phase of the final hearing shall be by symbol TRS, followed by the appropriate page number (e.g., TRS, 4).

STATEMENT OF THE CASE

The Florida Bar filed its Complaint and Request for Admissions on November 18, 2009.

The Referee was appointed on November 16, 2009.

Respondent filed his Answer to the Complaint and a Motion to Strike Request for Admissions on November 18, 2009, and a Motion to Disqualify Referee on November 25, 2009. The Florida Bar filed its responses to the Motion to Strike and the Motion to Disqualify on November 30, 2009, and December 3, 2009, respectively.

On December 16, 2009, the Referee entered an Order denying Respondent's Motion to Disqualify.

A Case Management Conference was held on December 30, 2009, at which time Respondent waived the 90-day rule and venue and agreed to hold the final hearing in Tavares, Florida. Respondent filed the Notice of Waiver of Venue and Ninety-Day Requirement on February 8, 2010.

A telephonic hearing was held on February 8, 2010, on Respondent's Motion to Strike Request for Admissions. The Referee granted the motion and an Order was entered on February 10, 2010.

On March 17, 2010, the Supreme Court entered an Order granting the Referee's Motion for Extension of Time to and including June 15, 2010.

A Pre-Trial Conference was held on March 18, 2010, and the Referee entered an Order setting discovery cutoff and the parties exchange of exhibits for April 20, 2010.

The Final Hearing as to guilt was held on April 27, 2010, and April 28, 2010, and the sanction phase hearing was held on June 11, 2010.

The Florida Bar filed its Affidavit of Costs on June 14, 2010.

Respondent filed an Objection to Payment of The Florida Bar's Costs on June 17, 2010, and The Florida Bar filed its Response on June 21, 2010.

On June 22,2 010, the Supreme Court of Florida entered an Order granting an Agreed Motion for Extension of Time to and including July 12, 2010.

The Referee filed his Report of Referee (Sanction Phase) on June 24, 2010. The Referee did not desire proposed reports from counsel, so none were submitted.

STATEMENT OF THE FACTS

The facts of this case are extremely complicated. Therefore, the following abbreviated "in a nutshell" version is submitted for ease of review:

Respondent assured potential investors in real estate development projects that, if they invested by putting their money into his trust account, that it would stay there. He provided one of the investors with a written assurance of that fact. The purpose of the money was to act as collateral to convince a bank to issue a standby letter of credit. The investor's money would be returned with huge interest to them in a short period of time. Respondent drafted and signed two letters containing false statements in order to convince another of the investors to participate. Four investors sent a total of $492,000 to Respondent's trust account. Respondent, although he had a fiduciary duty to them, transferred the money out without their permission, paid a prior investor from the funds of one of the four, lied to them about the whereabouts of the money, and refused to provide an accounting for the money. Most of the money has disappeared.

The specific facts are as follows:

In January 2008, Respondent agreed to help Jason Meyer ("Meyer"), a Minneapolis developer, by using his trust account as a repository for funds solicited from third party investors to obtain standby letters of credit, a financing device that

Meyer was using to fund real estate development projects. (RR, 2) Respondent had experience in handling international transactions, transactional funding, and large real estate projects. (RR, 3) Respondent and Meyer never personally met, and all of their contact was by telephone or email. (RR, 3)

Phil Walton ("Walton") lives in Florida. He makes his living through commercial transactions, usually assisting individuals in obtaining financing for projects. Respondent had known him since approximately 2002 or 2003. (RR, 2)

In an effort to obtain the necessary funding, Meyer asked Walton to get assistance from Navin Subramaniam-Xavier ("Navin"), who was also in Florida working as a commodity trader and investor. Meyer had known Navin since the end of 2007. (RR, 3)

Meyer introduced Navin to Respondent during a telephone conference call. Navin and Respondent had many telephone conversations in January, 2008. Navin said that Respondent told him he had done these transactions many times before and that they were secure. Navin also asked his friend, Karl Brown ("Brown"), a general magistrate in Dade County and member of The Florida Bar since 1991, for advice about the investment. Navin had acted as a mortgage broker for Brown, and they had been friends for 10 years. (RR, 3)

Navin was able to obtain $400,000.00 from his uncle to assist in funding Meyer's project. Brown reviewed some documents that Navin had prepared for his uncle's transaction. At Navin's request, Brown also investigated Respondent. Brown determined that Respondent was an AV rated lawyer with a good reputation. (RR, 3)

On January 14, 2008, Navin and Meyer signed the contract that Navin had prepared. Respondent played no part in the negotiation or preparation of the contract. The agreement specifically provides that Navin's funds are to be held in Respondent's trust account. For this investment, Navin and his uncle were to be repaid the principal plus $300,000.00, within 48 hours. (RR, 4)

On January 15, 2008, Navin transferred his uncle's $400,000.00 into Respondent's trust account. Respondent wrote a letter to Navin the same day, acknowledging the agreement. Respondent and Navin had telephone conversations that day concerning the funds. Navin agreed that the funds could be released from Respondent's trust account and disbursed according to Meyer's instructions, which was confirmed by e-mail messages between Respondent and Navin. (RR, 4)

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 Respondent, although the terms of the deal were negotiated by Hooks and Meyer, not Respondent. Hooks understood from Meyer that for his investment of $300,000.00, he would receive a return of $600,000.00 within 48 hours. He also understood that his funds would remain in Respondent's trust account, and not be disbursed without his permission. Respondent denies telling Hooks anything about the funds remaining in his trust account, nor did he hear Meyer say that. (RR, 5)

However, Respondent wrote a letter to Hooks on January 8, 2008, summarizing the transaction. The copy of the letter is not signed, and Hooks denies receiving it. Respondent wrote another letter to Hooks on January 16, 2008, which he called a "disbursement letter." Respondent 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 Respondent'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 Respondent. Hooks denies receiving the changed version. Although

Respondent received his copy, he did not communicate with Hooks regarding the corrected letter. (RR, 5)

On January 22, 2008, Hooks transferred $300,000.00 into Respondent's trust account. The next day, Respondent, acting upon Meyer's instructions, disbursed those funds from his trust account. The $300,000 sent to Respondent on January 22, 2008, by Hooks was transferred out the next day – January 23, 2008. Of the $300,000, $125,000 was transferred to HSBC Bank in Singapore to Emerald International, the company owned by Navin's uncle, a prior investor. (TFB #33, 121-125, TFB #33 Ex. 20, 21, 22) The Florida Bar's expert trust account auditor testified that, in his opinion, this was a Ponzi scheme, as the definition of that scheme is use of subsequent investor's funds to pay previous investors. (TFB #33, 125) Respondent has admitted that, at the time he transferred the $125,000 to Navin's uncle, he realized that Navin's uncle was a prior investor. (TFB #34, 239) When he later learned that the money was gone, Hooks made an effort to recover his funds, both through Respondent and Meyer. He said that Meyer has repaid him about $72,000.00, but not the balance. Respondent was actively involved in Meyer's scheme. (TFB #2, 46-50; TFB #2, Ex. 62; TFB #33, 43, 44)

Navin continued to contact other individuals about investing with Meyer. He requested Walton to send him an e-mail, so that he would have something in writing to show proposed investors. Walton did so on January 28, 2008. Walton's e-mail message to Navin states, in part, "This is an excellent opportunity for an investor no risk and Watson & Watson will provide a letter of undertaking to the lender that payment will be effected from the first disbursement from the transaction that is being funded." (RR, 6)

Navin spoke with Brown about this deal. Navin explained to Brown that the funds would remain in Respondent's trust account, so there was little risk. Since Brown had previously checked out Respondent, and being familiar with a lawyer's responsibilities with a trust account, he felt comfortable in investing in the transaction. Brown said that he did speak with Respondent by telephone prior to investing his money, to explain his concerns. He was worried about getting involved in an illegal scheme and about the money being released to Walton. Brown said that Respondent told him not to be concerned, that he had handled many of these transaction before, and that Brown's funds would be kept in his trust account. Respondent denies ever having any conversations with Brown about Brown's funds until after they were disbursed. (RR, 6-7)

Since Brown anticipated earning a 25% profit on his investment in a very short time, with little risk, Brown spoke with his friends, Richard Lawson ("Lawson") and Brandon Bury ("Bury") about this deal. Brown gave the names of possible investors to Navin, who passed them on to Walton. Respondent was provided with the information about potential investors and, at either Walton or Navin's request, Respondent prepared letters to five possible investors. These letters were on Respondent's letterhead, signed by him, dated February 1, 2008, and were addressed to Brown, Bury, Lawson, Azim Ramlize, and Lashon Toyer. Respondent sent these letters by e-mail to Navin. Respondent said that he understood that the letters would not be given to the addressees until after they had invested funds into his trust account. (RR, 7) Respondent admitted that, at the time he signed the letters, he had not received any money from Lashon Toyer. (TFB #34, 245) The letters were dishonest and a misrepresentation. Respondent was actively involved in Walton's scheme.

Marion Reid ("Reid") is Lawson's mother. She is a registered nurse. Lawson spoke with her about the investment. Reid was initially hesitant. Lawson explained to her that the transaction was secure, as Navin assured him that the funds would remain in Respondent's trust account. Lawson showed her the five letters, and after seeing

them, she believed that all of the other addressees were investing. Reid understood that she would receive a profit of 25% on her investment. (RR, 7)

Bury is self-employed in a swimming pool chemical business. He discussed the investment with Brown, and understood that the funds were to remain in Respondent's trust account. Bury also understood that he would receive a 25% return on his investment. (RR, 7-8)

Bury deposited $50,000.00 into Respondent's trust account on January 30, 2008. Brown deposited $46,000.00 into Respondent's trust account on January 31, 2008. Reid deposited $100,000.00 into Respondent's trust account on February 1, 2008. Respondent disbursed all of those funds from his trust account on February 4, 2008, acting on Meyer's instructions. Respondent did not seek permission from Brown, Reid or Bury before sending the monies from trust, because, in his opinion, the funds belonged to Meyer once they were deposited into the trust account. (RR, 8)

Respondent sent a letter to Brown on February 6, 2008, saying the same thing as the February 1, 2008, letter. On February 29, 2008, Respondent wrote letters to Brown and Reid, acknowledging a delay in the transaction. After some time passed, Brown contacted Respondent to ask about the transaction, and learned that the funds had been transferred from Respondent's trust account. (RR, 8)

The Referee found that Respondent has violated Rule 5-1.1(b), Rules Regulating The Florida Bar. (RR, 14) The Referee concluded that Respondent's misconduct was not deliberate and intentional. He acted in a negligent manner. (RRS, 5) thus, the Referee recommends that Respondent be found not guilty of violating Rule 4-8.4(c), Rules Regulating The Florida Bar. The Florida Bar disagrees.

The Florida Bar cannot locate the missing money. Respondent did receive $25,000 of it, which he claims were legal fees.

The facts become clear when the focus is on Respondent and the alleged rule violations. The abbreviated "in a nutshell" version of the facts are repeated here:

Respondent assured potential investors in real estate development projects that, if they invested by putting their money into his trust account, that it would stay there. He provided one of the investors with a written assurance of that fact. The purpose of the money was to act as collateral to convince a bank to issue a standby letter of credit. The investor's money would be returned with huge interest to them in a short period of time. Respondent drafted and signed two letters containing false statements in order to convince another of the investors to participate. Four investors sent a total of $492,000 to Respondent's trust account. Respondent transferred the money out without their permission, paid a prior investor from the funds of one of the four, lied to them about

the whereabouts of the money, and refused to provide an accounting for the money.

Most of the money has disappeared.

SUMMARY OF ARGUMENT

The Referee's recommendation that Respondent's misconduct was negligent is clearly erroneous. It was deliberate and knowing, which satisfies the intent requirement of Rule 4-8.4(c). Respondent was involved in the solicitation of a client, refused to provide accountings for the missing money, signed false letters, and participated in a Ponzi scheme. That cannot be negligent. The recommended findings should be approved regarding Rule 5-1.1(b), but disapproved regarding Rule 4-8.4(c). Respondent is guilty of violating Rule 4-8.4(c).

The sanction recommendation of a 90-day suspension and 3 years probation does not have a reasonable basis in existing case law nor in the Florida Standards for Imposing Lawyer Sanctions. This misconduct is extremely egregious and must be strongly deterred. Disbarment is the appropriate sanction.

ARGUMENT

The Referee's conclusion of law and findings of fact with regard to Rule 5-1.1(b) should be approved. The Referee's findings of fact and conclusions of law with regard to Rule 4-8.4(c) are clearly erroneous and the Court should find Respondent guilty of violating that rule.

The Referee's fact findings are presumptively correct and should not be overturned unless clearly erroneous or lacking in evidentiary support. The Florida Bar v. Vining, 707 So.2d 670, 672 (Fla. 1998). In this case, the referee's findings are clearly erroneous.

The Supreme Court's scope of review in attorney discipline actions is broader for legal conclusions than it is for the factual findings. The Florida Bar v. Joy, 679 So.2d 1165 (Fla. 1996). In this case, the referee erred in failing to find guilt of Rule 4-8.4(c).

In reviewing a referee's recommended discipline against an attorney, the Supreme Court's scope of review is broader than that afforded to the referee's findings of fact because it is the Court's ultimate responsibility to order the appropriate sanction. Generally speaking, the Supreme Court will not second-guess the referee's recommended discipline against an attorney as along as it has a reasonable basis in

existing case law and the Florida Standards for Imposing Lawyer Sanctions. The Florida Bar v. Rodriguez, 959 So.2d 150 (Fla. 2007). In this case, the recommended discipline does not have a reasonable basis in existing case law or the Florida Standards for Imposing Lawyer Sanctions.

ISSUE I

THE MISCONDUCT WAS DELIBERATE OR KNOWING.

The intent element required for a finding of guilt of Rule 4-8.4(c) can be satisfied merely by showing that the conduct was deliberate or knowing. The Florida Bar v. Brown, 905 So.2d 76 (Fla. 2005).

A. The letters which Respondent wrote to Lashon Toyer and Azim Ramlize on February 1, 2008, were false and dishonest.

Respondent was actively involved in soliciting investors. He prepared letters on his letterhead, signed by him, dated February 1, 2008, and they were addressed to Brown, Bury, Lawson, Azim Ramlize, and Lashon Toyer. Respondent sent these letters by email to Navin. (RR, 7) The letter to Azim Ramlize was a letter of undertaking indicating that Ramlize had invested $69,000 in the project. (TFB #33, Ex. 15; TFB #1, Ex. 72) Ramlize had not invested any money in the project and Respondent, at the time he signed the letter, knew that Ramlize had not done so. (TFB #34, 243) His letter was dishonest.

The letter to Lashon Toyer was a letter of undertaking that Toyer had invested $25,000 in the project. Toyer had not invested any money in the project and Respondent, at the time he signed the letter, knew that Toyer had not invested. (TFB

#34, 245; TFB #1, Ex. 71) The letter was designed to convince Reid to invest. It was dishonest.

When these letters were given to Reid, she believed that Ramlize and Toyer had invested, and this convinced her to invest her own money in the amount of $100,000, taken from a line of credit on her home (TFB #33, 136-138). Neither Ramlize nor Toyer ever invested any money in the project. (TFB #34, 211)

Respondent's misconduct in signing and sending these letters was deliberate and knowing, and he has therefore violated Rule 4-8.4(c).

B. The evidence establishing a Ponzi scheme shows deliberate or knowing misconduct.

The Florida Bar's expert trust account auditor testified at the final hearing. He opined that Respondent's transfer of $125,000 of Hook's money to Navin's uncle constituted a payment of a previous investor from subsequent investor's funds and was therefore a Ponzi scheme. (TFB #33, 124-125; TFB #33, Ex. 20, 21, 22) Respondent knew that Meyer was going to repay Hooks out of another transaction. (TFB #34, 238) At the time Respondent transferred the $125,000, he intended to transfer it to Navin's uncle, whom he knew was a previous investor. (TFB #34, 239) Respondent presented no evidence to rebut the expert testimony other than his own statement that it was not a Ponzi scheme because it was a "loan to Jason Meyer" and there is no "train" of getting

new money and sending it to old investors. Respondent presented no authority to support his contention that there must be a "train," and Bar Counsel has been unable to find any such authority. One payment is sufficient to establish a Ponzi scheme.

This misconduct is deliberate and knowing. Respondent is guilty of violating Rule 4-8.4(c), as his conduct was dishonest. There is no such thing as a negligent Ponzi scheme.

C. Respondent failed to provide requested accountings for the money.

Some time after the money was transferred out of Respondent's trust account, the investors asked Respondent where their money was, but he would not tell them. Reid hired a lawyer who sent Respondent a written demand for an accounting. Respondent admittedly failed to provide an accounting for the funds. (TFB #34, 246, 247; TFB #34, Ex. 29) That failure was deliberate or knowing. Respondent is guilty of violating Rule 4-8.4(c) because it was dishonest.

D. Respondent assured Hooks that the money would stay in his trust account. He transferred the money out of the trust account without authorization from Hooks. The misconduct was deliberate or knowing, and was a misrepresentation.

Hooks is an investor and financial consultant in Texas. In early January 2008, he was introduced to Meyer, who was soliciting funds for a development project in Arizona. (RR, 4) Meyer told Hooks that for investing $300,000, he would receive a

return of $600,000 within 48 hours. Hooks testified that Respondent verbally assured him that the money would remain in his trust account, but Respondent denies that. (RR, 5)

However, Respondent wrote a letter to Hooks on January 16, 2008, (TFB #33, 47, 48; TFB #33, Ex. 4), which clearly states that the money was to remain in his trust account. The Referee found that Respondent was obligated to hold the funds in his trust account, but failed to do so, and that failure violates Rule 5-1.1(b). (RR, 13)

The Comment to Rule 5-1.1 states "a lawyer must hold property of others with the care required of a professional fiduciary." The Comment further lists situations involving "clients or third persons."

Respondent has denied that he has any fiduciary duty to Hooks, Brown, Reid, or Bury. (TFB #34, 255, 256; TFB #2, 67) He says that it is "none of his business." (TFB #2, 68) During the final sanction phase, Respondent made an excuse for that opinion by saying that the client fiduciary duty takes precedence over the duty to third parties. (RRS, 31) Respondent's callous attitude toward third party investors cannot be tolerated.

Respondent has refused to provide an accounting to Reid even though her attorney demanded it in writing. (TFB #34, 246; TFB #33, Ex. 29) Likewise, he has

refused to account for the whereabouts of the funds when asked by other investors. (TFB #2, 98; TFB #33, 19, 20; TFB #33, 55)

Much of the money is missing and cannot be located by The Florida Bar. Respondent admits receiving $25,000 of it, which he says was for legal fees.

Respondent's acts in writing the January 16, 2008, letter, and in his verbal assurances, were deliberate or knowing. He knew that he had promised to keep the money in his trust account and he deliberately transferred the money out. The January 16, 2008, letter, in and of itself, is a misrepresentation in violation of Rule 4-8.4(c).

The Referee found that Respondent's conduct was "negligent." (RRS, 5) That is clearly erroneous based upon the foregoing. The misconduct was deliberate or knowing. Respondent should be found guilty of violating Rule 4-8.4(c) (A lawyer shall not engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation.) The record evidence clearly contradicts the Referee's erroneous conclusions.

ISSUE II

THE REFEREE'S RECOMMENDED DISCIPLINE OF A 90-DAY SUSPENSION AND 3 YEARS PROBATION IS NOT IN ACCORDANCE WITH THE FLORIDA STANDARDS FOR IMPOSING LAWYER SANCTIONS NOR IS THERE A REASONABLE BASIS FOR IT IN EXISTING CASE LAW.

The Referee recommended that Respondent (a) serve a 90-day suspension, retroactive to October 1, 2010, which is on or about the effective date of Respondent's emergency suspension (Case No. SC09-1507), and (b) be placed on probation for a period of 3 years following the suspension. (RRS, 6)

The recommendation of probation contains no conditions of the probation and is a nullity, as nothing can be enforced.

The recommendation that Respondent serve a 90-day suspension is not in accordance with the Florida Standards for Imposing Lawyer Sanctions. The Referee considered Standard 4.11 (RRS, 2) but failed to apply it properly. By erroneously concluding that the misconduct was negligent, he may have been thinking of Standard 4.12, but did not say that. Standard 4.11 calls for disbarment and that is the appropriate discipline in this case. It is true that it applies to clients but is silent concerning third party victims. Standard 4.11 should be applied to third parties also as a matter of public policy. The rules are designed to protect the public, and third party

victims are just as much "the public" as are clients. Respondent was using his position as an attorney and his trust account to solicit their investments and the funds were placed in his trust account.

The Referee considered the three purposes of discipline as set forth in The Florida Bar v. Barrett, 897 So.2d 1269, 1276 (Fla. 2005). First, the judgment must be fair to society. Second, the judgment must be fair to the respondent. Third, the judgment must be severe enough to deter others.

The recommended discipline is not fair to society. It condones diversion of trust funds from their intended purpose. The public will not be able to trust lawyer's trust accounts. The recommended discipline will not deter others and will weaken respect for lawyers. What lay person would think this is fair?

The Referee considered the case law, but once again made the wrong choice. Because he erroneously found that the conduct was negligent, he followed that line of cases. It is true that lesser discipline has been imposed for negligent misuse of client funds. Admittedly, there is no case that exactly fits this case. The case law at times also treats third party investors as deserving less protection than clients, but that is bad public policy and should not be followed. They are also members of the public and should not be treated as if they are less worthy of protection. If the victims had been

clients, there is no question that Respondent would be disbarred. Because they were not, should the Court abandon its public protection role?

Disbarment is the presumed appropriate discipline for misuse of trust funds. The Florida Bar v. Travis, 765 So.2d 689 (Fla. 2000).

If the conduct was intentional, third party victims have sometimes been protected. One such case reflects the sanction that should be applied in this case. The Florida Bar v. Martinez-Genova, 959 So.2d 241 (Fla. 2007), involves misuse of third party trust funds. The misconduct was intentional and the lawyer used the funds for her own benefit. Disbarment was imposed.

Another case involving intentional misuse of third party trust account funds resulted in a 6-month suspension. The Florida Bar v. Berman, 659 So.2d 1049 (Fla. 1995). The Court rejected the referee's recommendation of a 90-day suspension, pointing out that rehabilitation must be shown prior to reinstatement.

Rehabilitation must be shown in this case if Respondent is not disbarred because he is a danger to the public. He cannot be trusted.

If the Court accepts the Referee's conclusion that the misconduct was negligent, then a 3-year suspension is appropriate. The Florida Bar v. Whigham, 525 So.2d 873 (Fla. 1988). In that case, the respondent commingled trust funds and violated

recordkeeping rules. Whigham admitted all allegations even though no client complained. No money was missing and there was no financial injury. He had one prior discipline for similar misconduct. The instant case involves great injury to four investors and approximately $420,000 is missing. The instant case is far more egregious than Whigham.

Gross negligence by failing to supervise accountant's work where there was no harm to clients warrants a 6-month suspension. The Florida Bar v. Weiss, 586 So.2d 1051, 1053 (Fla. 1991). The instant case is far more egregious than Weiss.

There is no case law suggesting that the Referee's recommendation of a 90-day suspension is appropriate. Not even the case law he has cited in his Report of Referee. There is no reasonable basis for it in existing case law.

The egregious nature of this misconduct clearly outweighs the mitigation. Disbarment is the appropriate sanction.

CONCLUSION

The Court should reject the Referee's conclusion of fact that the misconduct was negligent and find that it was deliberate and knowing and should find Respondent guilty of violating Rule 4-8.4(c). Further, the Court should reject the Referee's recommended discipline of a 90-day suspension and instead disbar Respondent.

<u>CERTIFICATE OF SERVICE</u>

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief regarding Supreme Court Case No. SC09-2022, TFB File Nos. 2008-00,715(8B), 2009-00,113(8B), 2009-00,116(8B), 2009-00,142(8B), has been mailed by certified mail #7008 1830 0000 4285 6949, return receipt requested, to John A. Weiss, Counsel for Respondent, 2937 Kerry Forest Parkway, Suite B-2, Tallahassee, Florida 32309, on this 15th day of September, 2010.

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

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

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