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)

AMENDED REPLY BRIEF

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ARGUMENT

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).

Respondent would have the Court believe that the Brown case does not mean what it says.

In the recent case of The Florida Bar v. Shankman, 41 So.3d 166 (Fla. 2010), this Court very recently ruled that the Referee erred when he required the Bar to establish dishonesty, misrepresentation, fraud or deceit in order to prove intent. The Court cited The Florida Bar v. Fredericks, 731 So.2d 1249 (Fla. 1999), for the proposition that in order to satisfy the element of intent, it must only be shown that the conduct was deliberate or knowing.

Respondent cites The Florida Bar v. Neu, 597 So.2d 266, 269 (Fla. 1992), and The Florida Bar v. Lumley, 517 So.2d 13, 14 (Fla. 1987), to show that the Bar must, in addition to "deliberate and knowing," prove wrongful intent. Neither the Neu case, supra, nor the Lumley case, supra, say any such thing. The Referee in this case required the Bar to prove a specific intent in order to establish a violation of Rule

4-8.4(c). That is error. The Referee did find that the misconduct was not deliberate. (RR 5) The Bar disagrees. But, even if so, it was <u>knowing</u>. The law is "deliberate <u>or</u> knowing. Either one will suffice.

The misconduct was knowing because (1) Respondent signed the 5 letters and (2) Respondent, at the time he signed the 5 letters, <u>knew</u> that neither Toyer or Ramelize had invested. Respondent controlled his trust account and knew what was in it. The letters were false when he signed them, regardless of what he may or may not have instructed Navin to do with them. Ms. Reid testified that she relied on all 5 letters in deciding to invest. (TFB #33, 138)

Respondent's conduct was clearly knowing. He has violated Rule 4-8.4(c).

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

At page 19 of his Answer Brief, Respondent alleges that, in the Complaint, the Bar alleged that the letters were sent "directly to Reid" in an attempt to convince her to invest. Paragraph 26 of the Complaint does not say "directly to Reid." It says "Respondent sent to Marion Reid two letters…." He sent them indirectly, via Navin.

Regardless of whether or not Ms. Reid received Respondent's letters from him directly or through Navin, the fact remains that Ms. Reid relied on the contents of the letters in making her decision to invest $100,000 with Respondent. (TFB #33, 138)

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

In the Formal Complaint, it is true that the Bar did not "charge" Respondent with a Ponzi scheme. It did not have to do so, as Respondent was charged with a rule violation. The Ponzi scheme was one of the ways that he violated Rule 5-1.1(b) and he was put on notice of the Ponzi scheme by the auditor's flow charts which were delivered to him prior to the final hearing. Respondent did not conduct discovery concerning that issue. Since the Respondent was put on notice of the facts, the Referee was free to find a Ponzi scheme method of violating that rule or another rule. See, The Florida Bar v. Mowacki, 697 So.2d 828, 832 (Fla. 1997).

The evidence does establish a Ponzi scheme. The Bar's expert, although employed by the Bar, was not shown to be biased. Respondents are found guilty of trust account violations all the time by virtue solely of the testimony of the Bar's auditors. The uncontroverted expert testimony established that Navin's uncle was paid out of the money belonging to Steven Hooks, a subsequent investor. (TFB #33, 124-125) That is a Ponzi scheme.

Respondent says that one payment is not sufficient to establish a Ponzi scheme. It is true that Bar Counsel could find no case that says that one payment is sufficient. However, Bar Counsel could also not find any case holding that more than one is

required. It appears that the issue is a case of first impression for this Court in Bar discipline cases. It makes sense that only one payment is required, as the scheme has to start somewhere. No case that Bar Counsel could find holds that "tiers of investors" are required.

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

Respondent's failure to provide an accounting is dishonest conduct. Rule 5-1.1(b) makes it a conversion for failure to provide it to a client. Although that rule does not specifically extend that to third parties, the same basic principle of fairness and honesty, however, should apply to a violation of Rule 4-8.4(c).

If a lawyer holds anyone's money in trust and they demand an accounting or ask for their money back, an honest lawyer should either account for the money or give it back. If he will not even confirm the location of the money, something is wrong. The entire sequence of Respondent's actions regarding the status of the money is composed of untruths, stonewalling and deception. Mr. Hooks sent his $300,000 to Respondent's trust account on January 22, 2008. (TFB #20) After that, Respondent would not take telephone calls from Hooks. (TFB #2, 94; TFB #33, 50) Hooks, therefore, flew from Houston to Orlando and rented a car to drive to Gainesville to find out what happened to his money. Respondent continued to avoid Mr. Hooks' phone calls so Hooks went into his office and sat in the reception area.

Respondent eventually agreed to see him. During their brief meeting, Respondent told Hooks that he no longer had the money but would not tell him where it had been sent. (TFB #33, 50-52)

Bury's money was deposited in Respondent's trust account on January 30, 2008, Brown's money on January 3, 2008, and Reid's money on February 1, 2008. All of that money was transferred out on February 4, 2008. After that, Respondent told Reid that the money was still there. (TFB #1, 279) Several months later, Respondent told Brown that he could not tell him where the money went but could tell him that it went out. (TFB #1, 262) Respondent then told Reid that he could not tell her where the money was and that Phil Walton was telling him what to do. (TFB #1, 286) Both Respondent and Phil Walton told Brown that they would not give him the peoples' names because they did not want Brown to start calling them. (TFB #2, 77). If Respondent was not involved in this scheme, why did he go to such lengths to cover it up?

On page 23 of his Answer Brief, Respondent says that the Bar has argued that Respondent's duty to third party investors is superior to the duty owed to his client. The Bar's position is that Respondent has a fiduciary duty to both. Respondent, on the other hand, testified that he had no fiduciary duty to Mr. Brown, Ms. Reid or Mr. Bury. (TFB #34, 256)

It is impossible to locate the missing money belonging to Steven Hooks. We know that $125,000 went to Navin's uncle in Singapore. The remainder of Hooks' money allegedly was stolen from a man named "Justin." (TFB #33, 198)

The Bar is not required, nor do we have the resources, to find all the missing money. It is missing from the trust account, where it all should have been kept. As soon as the money was sent out, Rule 5-1.1(b) was violated.

The combined omissions of findings by the Referee on issues relating to the Bar's position points to a basic misconception of the evidence and is error, just as is the requirement that the Bar prove the intent as though it were a specific intent in a criminal case.

Respondent's conduct was deliberate and knowing and he should be found guilty of violating Rule 4-8.4(c) (engaging in dishonest conduct).

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.

Respondent states that the Referee, in finding that a 90-day suspension was appropriate discipline, concluded that the misconduct was the result of negligence and was "*without improper motive*." Other than finding in mitigation that Respondent did not have a dishonest or selfish motive, nowhere in the Report of Referee is Respondent's "motive" discussed. Respondent either does not understand the difference between motive and intent, or is attempting to confuse this Court by indicating that motive is an element necessary for The Florida Bar to prove a violation of Rule 4-8.4(c). This is not the case. Motive is relevant only to mitigation, not to the finding of guilt.

In The Florida Bar v. Smith, 866 So.2d 41 (Fla. 2004), the Court states:

> Smith is correct that the element of intent must be shown to find a violation of Rule 4-8.4(c). However in The Florida Bar v. Fredericks, 731 So.2d 1249 (Fla. 1999), this Court stated that "in order to satisfy the element of intent it must only be shown that the conduct was deliberate or knowing." Id. at 1252. See also, The Florida Bar v. Barley, 831 So.2d 163, 169 (Fla. 2002). In Fredericks, this Court noted that the motive behind the attorney's action was not the determinative factor. Rather, the issue was

> whether the attorney deliberately or knowingly engaged in the activity in question.

There is no question that Respondent's actions were knowing and deliberate. He knew he was accepting money into his trust account and he knew he was disbursing that some money out of his trust account without the permission of the investors, to whom he had a fiduciary duty.

On page 26 of this Answer Brief, Respondent alleges that Brown, Reid and Bury were in collusion regarding their testimony. He again repeats this allegation with regard to Brown and Navin. Although Messrs. Brown and Navin traveled together from their home town to the grievance committee meeting in Gainesville, there is absolutely no evidence or testimony in the record that indicates the alleged collusion. In fact, there is no evidence to suggest that Brown, Reid and Bury ever spoke together at all.

On page 27 of his Answer Brief, Respondent raises the issue that the investors were not clients and therefore were not due the same duty as would be due a client. Recently, in The Florida Bar v. Hall, 2010 WL 3339168 (Fla. 2010), the Court held that "[e]ven though Respondent was not acting in a formal attorney-client relationship, she was still a member of The Florida Bar and bound by its ethical rules. Respondent misused her status as an attorney to harm the Godwins…." The instant case is no

different. As an attorney who has been a member of the Bar for over 40 years, Respondent knows he is bound by the ethical rules. However, Respondent still misused his status as an attorney to lull investors into a false sense of security regarding the safety of placing their money into his trust account, all the while with the full knowledge that their monies would be immediately disbursed without their knowledge or consent. Respondent deliberately and knowingly withheld that information from the investors, took their money and disbursed it "at the direction of his client."

Respondent cites four cases to show that the Referee's recommendation is appropriate. The case of The Florida Bar v. Lumley, 517 So.2d 13 (Fla. 1987), involves the commingling of personal funds into an account holding client funds resulting in a deficit to the client funds. The Referee in that case found that there was no intent on the part of the respondent to deprive his clients of their property. In addition, all the missing funds were replaced in time to meet all client obligations, resulting in no client harm or loss.

The case of The Florida Bar v. Cramer, 643 So.2d 1069 (Fla. 1994), involves negligent conduct with extensive mitigation concerning the respondent's open heart surgery. Although commingling was involved, the respondent replaced all monies taken and no clients were harmed.

The Florida Bar v. Grosso, 760 So.2d 940 (Fla. 2000), involves an attorney serving as the guardian of his client's property (31 guns) during the time his client was on criminal probation. The respondent was found to be negligent to the point of incompetence for not timely returning his client's property. However, full restitution was made.

Finally, The Florida Bar v. Scott, 566 So.2d 765 (Fla. 1990), involves an attorney who accepted conveyance of three pieces of property from a friend in an attempt to avoid the friend's creditors. When the friend later died, the respondent failed to inform the heirs that the property existed and attempted to keep it for himself. He received only a 91-day suspension. This case is a perfect example of law that should not be followed. As explained in the dissent, this case discriminates against non-clients, basically giving the respondent a license to steal. "Cupidity and honesty have no proper role in the affairs of an attorney. By his acts involving moral turpitude, Mr. Scott has forfeited the privilege of being a member of our profession. Disbarment is the proper discipline."

The instant case is by far more egregious than Lumley, Cramer, Grosso, or Scott. Respondent, as an attorney, represented to third parties, both verbally and in writing, that the funds deposited to his trust account would remain there and would not be disbursed without permission. He then, immediately and without permission,

knowingly and intentionally disbursed the funds. Respondent knew, when he made those representations to the third party investors, that the funds would not remain in his trust account. Due to Respondent's dishonesty, all four third party investors suffered economic loss, which Respondent has failed to cure. The money is now gone.

None of these four cases approach the egregious nature of the instant case.

Respondent would like to have his emergency suspension expire by this Court's approval of the recommended discipline.

Respondent should be disbarred but, if not, then a 3-year suspension should be imposed. He should not practice law again for a long time, if ever.

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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Reply 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 7090, return receipt requested, to John A. Weiss, Counsel for Respondent, 2937 Kerry Forest Parkway, Suite B-2, Tallahassee, Florida 32309, on this 30th day of December, 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.

____

James A.G. Davey, Jr., Bar Counsel