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## **The Florida Bar v. Domenic L. Massari, III**

CHIEF JUSTICE: FINAL CASE ON THE ORAL ARGUMENT CALENDAR THIS MORNING IS FLORIDA BAR VERSUS MASS ARI. MR. WEISS.

THANK YOU, SIR. MAY IT PLEASE THE COURT. MY NAME IS JACK WEISS. I REPRESENT THE RESPONDENT IN THIS PROCEEDING, DOMENIC MASSARI IN THE COURTROOM TODAY. WE ASK THE COURT TO CONSIDER TWO ISSUES TODAY, FIRST BEING IS THE THRESHOLD OF CLEAR AND CONVINCING EVIDENCE REACHED IN THIS CASE, AND THIS IS SIGNIFICANT, BECAUSE THE PRIMARY WITNESS AGAINST MY CLIENT AND THE PERSON WHO PUT FORTH THE OVERWHELMING MAJORITY OF THE EVIDENCE, IS A PERSON UNWORTHY OF BELIEF. AND I HAVE DETAILED, BOTH IN MY INITIAL BRIEF AND IN OUR REPLY BRIEF, NUMEROUS INSTANCES OF EITHER DECEPTION, OR MISREPRESENTATION THAT THE COMPLAINING WITNESS RONALD MARTINEZ ENGAGED IN.

DID YOU ADVISE HIM THAT HE SHOULDN'T BE ABLE TO DO THIS? THAT HE SHOULDN'T TRY TO TAKE THIS POSITION WITH THE GOVERNMENT?

I AM SORRY, SIR.

DID YOUR CLIENT, YOU ARE TAKING THE POSITION THAT WE SHOULD NOT PUT MUCH CREDENCE IN THE TESTIMONY OF THE MAIN WITNESS.

YES, SIR.

BECAUSE HE TRIED TO SWINDLE THE GOVERNMENT, IN EFFECT, HIMSELF.

THAT WAS ONE OF THE MANY INCIDENTS, SIR.

BUT DID YOUR CLIENT, DID YOUR CLIENT, THE LAWYER, TELL HIM THAT THIS IS ILLEGAL, YOU SHOULDN'T DO THIS?

MY CLIENT DIDN'T COME ON BOARD, JUSTICE SHAW, UNTIL AFTER THE LITIGATION HAD ALREADY COMMENCED. AND THE DEED WAS DONE, AND THE RECORD DID NOT REVEAL, AUTHOR DO I KNOW, WHAT ANY PRIVILEGED ATTORNEY/CLIENT CONVERSATIONS HAD OCCURRED BETWEEN MR. MARTINEZ, THE COMPLAINANT, AND MR. MASS ARI, MY CLIENT -- MASSARI, MY CLIENT, TOOK PLACE, AND THE SECOND IS THE DISCIPLINE TO BE IMPOSED. THE REFEREES RECOMMENDED A DISBARMENT, AND OUR POSITION IS THAT, IN AN ISOLATED INCIDENT LIKE THIS, A LAWYER WITH 25 YEARS' PRACTICE WITHOUT ANY BLEMISHES IN HIS CAREER AND WHERE RESTITUTION WAS MADE PRIOR TO DISCIPLINARY PROCEEDINGS EVEN BEING INITIATED, THAT DISBARMENT IS OVER QUILL. -- IS OVERKILL. I WOULD LIKE TO GET BACK TO THE CREDIBILITY ISSUE.

COULD YOU, ON THE SECOND ISSUE.

YES, MA'AM.

WHAT MITIGATION WAS FOUND BY THE REFEREE?

I BELIEVE THE ONLY MITIGATION THE REFEREE FOUND IN THIS PARTICULAR CASE, JUSTICE PARIENTE, WAS PRIOR, NO PRIOR RECORD, MA'AM. THE RECORD IS, I WANT TO SAY, PRETTY

CLEAR. IT IS NOT ABSOLUTELY CLEAR, BUT PRETTY CLEAR THAT THE MONEY WAS PAID BACK, WITH INTEREST, PRIOR TO MY CLIENT, PRIOR TO THE BAR EVEN WRITING MY CLIENT A LETTER. THERE WAS A LITTLE BIT OF DISPUTE ON THAT BUT NOT MUCH.

WHAT PRESIP DATE TAITED HIM -- WHAT PRECIPITATED HIM GIVING THE MONEY BACK?

BASICALLY MY CLIENT WAS PRESSUREURED BY MR. MARTINEZ, TO GIVE THE MONEY BACK. THE PRESSURE WAS THROUGH THE FIRST AMERICAN TITLE CONVERSATIONS, AND MR. MARTINEZ HOUNDING MY CLIENT, FOR WANT OF A BETTER WORD. JUSTICE PARIENTE, THERE WAS --

BUT IF WE ACCEPT THE FINDINGS THAT THERE WAS, ALSO, A FRAUDULENT DOCUMENT THAT WAS PREPARED BY YOUR CLIENT, DOESN'T THAT, DO WE, THEN, NOT ONLY HAVE MISAPPROPRIATION BUT WE, ALSO, HAVE A VERY, VERY SERIOUS ADDITIONAL PROBLEM.

JUSTICE PARIENTE, THERE IS NO EVIDENCE IN THE RECORD THAT SHOWS THAT MY CLIENT PREPARED A FRAUDULENT DOCUMENT. THERE IS AN INFERENCE IN THE RECORD.

THE REFEREE FOUND THAT. DID THE REFEREE FIND THAT?

THE REFEREE SAID THE DOCUMENT HAD A SIGNATURE TRANSPOSED ON IT AND ONLY MY CLIENT HAD A MOTIVE TO DO IT.

BUT YOUR CLIENT CONSENTED -- BUT YOUR CLIENT PRESENTED THAT DOCUMENT TO THE BAR.

YES, MA'AM. YES, MA'AM. A COPY OF THE DOCUMENT. YES, MA'AM. BUT JUSTICE QUINCE, JUSTTIS PARIENTE -- JUSTICE PARIENTE, THIS WHOLE CASE RISES AND FALLS ON A PERSON UNWORTHY OF BELIEF.

DID HE ENDORSE THE CHECK?

I AM SORRY?

DID HE ENDORSE THE CHECK?

MY CLIENT DID, YES, SIR. MY CLIENT ENDORSED THE CHECK. THAT IS NOT IN DISPUTE. THE CHECK THAT HE RECEIVED --

DENOTIFY THE CLIENT?

MY CLIENT SAYS HE DID. MR. PARIENTE, OOPS, SORRY. MR. MARTIN E -- MARTINEZ SAYS THAT HE WAS NOT SO NOTIFIED. EVERYTHING IN THIS CASE IS "MR. MARTINEZ SAYS".

WELL, HE MADE THESE DISBURSEMENTS, INTENTION TALE MADE THESE DISPERSEMENTS. THERE IS NO QUESTION ABOUT THAT T.

IF THE FEBRUARY 14 DOCUMENT WAS SIGNED BY MR. MARTINEZ, WHICH IT WAS, THEN EVERYTHING THAT MY CLIENT DID, ACCEPTING THE MONEY FROM THE TITLE INSURANCE COMPANY ON, I BELIEVE IT WAS MARCH 13, DEPOSITING IT AND DISPERSING THE MONEY TO HIMSELF, WAS NOT IMPROPER, JUSTICE WELLS.

THEN WHY DID HE GIVE IT BACK?

BECAUSE IT HAD A JUNE 30 END DATE. THE LOAN WAS FOR A SPECIFIC PERIOD. FROM WHENEVER THE MONEY WAS RECEIVED, WHICH WAS MARCH 13, UNTIL JUNE 30. ON JUNE 13, MY CLIENT PAID THE MONEY BACK, WITH INTEREST. HE WOULD HAVE PAID IT BACK ON JUNE 30. THE AGREEMENT ENDED ON JUNE 30. FOR WHATEVER REASON, MR. MARTINEZ WANTED THE MONEY BACK EARLY,

OR HE WANTED TO GET MY CLIENT INTO TROUBLE, ONE WAY OR THE OTHER, AND THIS FEBRUARY 14 AGREEMENT IS THE CRUX OF THE CASE.

MAKE SURE THAT I HAVE THE FACTS, AND PLEASE CORRECT ME IF I DO NOT UNDERSTAND.

YES, SIR.

BUT IT APPEARS THAT THE LAWYER GAVE HIS ENTIRE FILE TO MR. MARTINEZ, AND THAT IS THE REASON THAT WE HAVE ONLY A COPY OF A DOCUMENT THAT APPARENTLY, THAT HAS ALLEGEDLY HAS SOME TYPE OF TRANSFERRED SIGNATURE?

NOT QUITE. NOT QUITE.

COULD YOU GIVE ME AN EXPLANATION. WHY DO WE NOT HAVE --

THE ORIGINAL DOCUMENT WAS GIVEN BY MY CLIENT TO MR. MARTINEZ, ON FEBRUARY 14. HE WAS THE LENDER. HE WANTED THE ORIGINAL DOCUMENT. MY CLIENT HAD COPIES, IN HIS FILE, ON TWO SEPARATE OCCASIONS. MR. MARIEZ TOOK THE FILE HOME WITH HIM.

TOOK YOUR, THE LAWYER GAVE THE CLIENT THE LAWYER'S FILE, AND THAT IS THE EXPLANATION TO THAT. TOOK IT HOME.

YES, SIR. MRS. ADAIR TESTIFIED THAT THIS IS NOT A COMMON POLICY, BUT WITH A LONG STANDING CLIENT, IF HE SAYS CAN I BORROW MY FILE FOR A LITTLE WHILE, HE DOES IT, BUT LET'S GET BACK TO THE NIGHT OF FEBRUARY 14, BECAUSE I SUBMIT THIS IS THE CRUCIAL NIGHT OF THE ENTIRE CASE.

CHIEF JUSTICE: A QUESTION.

ARE YOU TALKING ABOUT THE SANCTION OR ARE YOU TALKING ABOUT THE EVIDENCE?

I AM TALKING ABOUT THE EVIDENCE, NOW, SIR.

HOW DO WE, THERE IS CONFLICTING EVIDENCE. YOU SAID ON EVERY ISSUE.

YES, SIR.

WE HAD A REFEREE HEAR IT, AND THE REFEREE MADE FINDINGS OF FACTS, AND HOW, HOW DO WE COME IN, NOW, ON A COLD RECORD, AND SAY YOU WERE WRONG TO BELIEVE THIS WITNESS OVER THAT WITNESS?

I THINK THERE COMES A THRESHOLD, JUSTICE HARDING. THAT IS WHY WE HAVE THE CLEAR AND CONVINCING EVIDENCE THRESHOLD, AND THE COURT MUST, AT TIMES, SAY WOE. THIS THRESHOLD WAS NOT MET. THE COURT MUST GIVE SOME DEGREE OF GUIDANCE, AT TIMES, TO THE REFEREES, ON EVIDENTIARY QUESTIONS. BEAR IN MIND, JUSTICE HARDING, I WAS IN YESTERDAY, LISTENING TO THE RULES OF THE ARGUMENTS ON THE RULES OF EVIDENCE. I WAS COMPLETELY BEWILDERED, BECAUSE IN MY PRACTICE, EX-CLUES I FEEL IN DISCIPLINARY, THE DISCIPLINARY FIELD OF BOARD OF BAR EXAMINERS, WE DON'T HAVE THE RULES OF EVIDENCE. IF IT IS REMOTELY RELEVANT, IT GETS INTO THE RECORD. NOW, THE RULE THE COURT HAS SET FORTH IS, IF THERE IS ANY EVIDENCE IN THE RECORD WHATSOEVER, THEN THE REFEREE'S RECOMMENDATION WILL BE UPHELD. WELL, WHAT IF THAT IS JUST BLATANT HEARSAY THAT WOULD BE INADMISSIBLE IN ANY OTHER PROCEEDING? WHAT WE HAVE HERE, TODAY, IS WE HAVE A WITNESS, MR. MARTINEZ, WHO, ON NO LESS THAN TWELVE OCCASIONS, HAD MISREPRESENTATIONS OR DECEPTIONS IN THE FILE, AND I AM ASKING THIS COURT TO SAY, IN THIS CASE THE THRESHOLD OF CLEAR AND CONVINCING EVIDENCE WAS NOT MET, BECAUSE FOR

ALL INTENTS AND PURPOSES, THE ONLY SUBSTANTIVE TESTIMONY IN THE RECORD WAS FROM MR. MARTINEZ, A PERSON UNWORTHY OF BELIEF.

AND WHAT IS YOUR CLOSEST AUTHORITY TO SUPPORT THAT?

WE HAVE THE RAYMOND CASE, YOUR HONOR, WHICH IS CITED IN VIRTUALLY EVERY EVIDENTIARY CASE THAT COMES BEFORE THE COURT. CLEAR AND CONVINCING EVIDENCE. FREE OF SUBSTANTIAL DOUBTS AND INCONSISTENCIES.

DO WE HAVE IN THE CASES THAT HAVE INTERPRETED THAT?

WELL, I, AS I STAND HERE RIGHT NOW, I CAN POINT TO NO CASES IN WHICH THE COURT HAS SAID THIS CLEAR AND CONVINCING THRESHOLD WAS NOT MET IN THIS PARTICULAR CASE, BUT WE HAVE CASES THAT ARE SIMILAR. FOR EXAMPLE THE FLORIDA BAR V THOMPSON, WHICH I CITED IN MY BRIEF, IN WHICH THE ACCUSING WITNESS WAS, HAD A PENCHANT FOR PERJURY, I BELIEVE THE REFEREE FOUND, AND THEY THREW OUT THE CON VISION THERE.

BUT -- THE CONVICTION THERE.

BUT, MR. WEISS, A CRIMINAL CONVICTION CAN BE BASED BEYOND A REASONABLE DOUBT ON A DEFENDANT ON A PRIOR FELON WHO HAS A LONG CRIMINAL HISTORY. THE JURY IS FREE TO EITHER CONVICT OR NOT CONVICT, AND WE ROUTINELY WOULD NOT SAY, JUST BECAUSE THAT PERSON HAS BEEN I AM PREACHED, THAT -- HAS BEEN IMPEACHED, THAT WE ARE GOING TO SUBSTITUTE OUR JUDGMENT AND SAY THIS PERSON IS NOT WORTHY OF BELIEF, SO I AM CONCERNED ABOUT THE RULE OF LAW THAT YOU AE EVEN ADVANCING.

I THINK AT TIMES THERE IS EVEN A MOTION FOR JUDGMENT OF ACQUITTAL THAT IS GRANTED UNDER SITUATIONS LIKE THIS.

YOU CANNOT SAY THIS GUY IS NOT AS CREDIBLE AS THE JURY FOUND.

WHEN YOU HAVE A SITUATION, JUSTICE PARIENTE, WHERE YOU HAVE AN INDIVIDUAL SAYING I WAS NOT THERE ON FEBRUARY 14, I WAS NOT IN THE OFFICE, AND YOU HAVE FOUR WITNESSES, TWO OF WHOM ARE NEUTRAL, WHO ARE SAYING THAT IS A LIE, AND THEN WHEN YOU YOU HAVE THAT COUPLED WITH THE FACT THAT THE MAN HAS A, ADMITTED FREE THAT HE WILL LIE FOR PERSONAL GAIN, WHEN HE LIES TO THE FLORIDA BAR ABOUT WHETHER HE GAVE A LETTER TO A POLICE OFFICER, WHEN HE SIGNS A LETTER UNDER OATH AND SAYS IT IS TRUE, AND THEN TWELVE DAYS LATER, HE GIVES IT TO A POLICE OFFICER IN A CRIMINAL INVESTIGATION AND SAYS, WELL, I SIGNED IT UNDER OATH, BUT NOT EVERYTHING IN HERE IS TRUE. THIS IS A PERSON COMPLETELY UNWORTHY OF BELIEF. THIS IS A PERSON WHO CANNOT MEET THE THRESHOLD OF CLEAR AND CONVINCING. JUSTICE PARIENTE, I AM NOT ON TOP OF CRIMINAL LAW. OBVIOUSLY. PERHAPS I SHOULD BE. BUT IF YOU HAVE A SITUATION WHERE ALL OF YOUR NEUTRAL WITNESSES AND ALL OF YOUR WITNESSES AND, ARE CONTRARY TO A SINGLE PERSON WHO IS A KNOWN LIAR, I SUBMIT IF THAT IS BEYOND AND TO THE EXCLUSION, IT SHOULDN'T BE, BUT IT CERTAINLY ISN'T CLEAR AND CONVINCING IN THE CASE AT BAR.

CHIEF JUSTICE: THANK YOU.

THANK YOU, SIR.

MAY IT PLEASE THE COURT. MY NAME IS TOM DeBERG. I AM HERE REPRESENTING THE FLORIDA BAFERMENT THE POSITION OF THE BAR, WITH RESPECT TO THE FACTS, IS -- BAR. THE POSITION OF THE BAR, WITH RESPECT TO THE FACTS, IS THAT THE REFEREE IS IN A BETTER POSITION TO EVALUATE THE WITNESSES. HE IS CERTAINLY IN A BETTER POSITION THAN THIS COURT WOULD BE, TO WATCH THEM AS THEY TESTIFY, TO LOOK AT THE CONSISTENCY OF THEIR TESTIMONY,

AND, ALSO, TO CONSIDER THE MOTIVATIONS.

YOUR OPPONENT SAYS THAT THE FINDINGS OF THE REFEREE ARE BASED SOLELY ON THE TESTIMONY OF ONE WITNESS. IS THAT A CORRECT CHARACTERIZATION?

NO, THAT IS NOT CORRECT. I WAS GOING TO GET TO THAT. MR. MARTINEZ INDICATES, AS THE RECORD SHOWS, THAT THE CASE WAS SETTLED FOR \$30,000. MR. MARTINEZ, THEN, CONTACTED THE RESPONDENT. HE ASKED THE RESPONDENT ABOUT GETTING THE MONEY. HE SAYS HE WAS TOLD, BY THE RESPONDENT, THAT THEY WERE, THAT THE RESPONDENT WAS AWAITING A COURT ORDER. SUBSEQUENTLY, AN ATTORNEY BY THE NAME OF REARDON TESTIFIED THAT HE WAS CONTACTED BY THE COMPLAINING PARTY, MR. MARTINEZ, AND ASKED WHY IT WOULD BE NECESSARY TO GET A COURT ORDER, IN ORDER FOR HIM TO GET HIS FUNDS, OR, PERHAPS, HE WAS ASKING WHAT WAS THE DELAY. MR. MARTINEZ TESTIFIED THAT HE, THEN, WENT TO THE TITLE COMPANY, THE ESCROW AGENT, AND THE ESCROW AGENT VERIFIES THAT, THAT MR. MARTINEZ WENT TO THE ESCROW AGENT, AND SAID WHAT IS HOLDING UP MY FUNDS? NOW, PRIOR TO GOING, A WEEK PRIOR TO GOING, HE, ALSO, CALLED THE ESCROW AGENT, AND THE INDIVIDUAL HE SPOKE TO AT THE ESCROW AGENT, VERIFIED THAT THE CALL OCCURRED, VERIFIED THAT HE WAS ASKED WHY THE FUNDS HAD NOT BEEN RELEASED, AND INDICATED THAT HE TOLL MR. MARTINEZ THAT -- THAT HE TOLD MR. MARTINEZ THAT HIS ACCOUNT WAS VOOER OWED OUT. IN OTHER WORDS -- WAS ZEROED OUT. IN OTHER WORDS THAT THE FUNDS HAD BEEN RELEASED. WHEN HE WENT BACK TO THE AGENCY, HE SPOKE TO THE HEAD CLERK AT THE AGENCY, THE TITLE COMPANY, AND ASKED HER ABOUT THE FUNDS. AT THAT POINT, SHE TESTIFIED. SHE SHOWED HIM THE CHECK AND HE SAID THAT IS NOT MY SIGNATURE, AND THE HANDWRITING EXPERT HAS VERIFIED THAT THAT WASN'T HIS SIGNATURE. THEN HE WAS SHOWN THE SATISFACTION AND RELEASE OF LIEN AND HE, ALSO, ADVISED HER THAT HE DID NOT SIGN THAT DOCUMENT. AFTER THAT, THE TITLE COMPANY CALLED THE RESPONDENT, AND THEIR TESTIMONY WAS THAT HE TOLD THEM THAT THE MONEY COULD NOT BE RELEASED, UNTIL THERE WAS A COURT ORDER.

DID THE RESPONDENT TESTIFY IN THIS CASE?

YES, HE DID TESTIFY.

WITH REFERENCE TO THE RELEASE DOCUMENT THAT WAS BEGIN TO THE ESCROW AGENT THAT THE HANDWRITING EXPERT TESTIFIED WAS A FORGED SIGNATURE, DID THE RESPONDENT, HERE, TESTIFY THAT THAT WAS THE SIGNATURE OF HIS CLIENT?

ON THE RELEASE?

THE RELEASE HE TOOK TO THE ESCROW AGENT, IN ORDER TO GET --

WHAT HE TESTIFIED WAS THAT THE DOCUMENT HAD BEEN SIGNED BY, WELL, I HAVE TO BE A LITTLE CAREFUL HERE. ON ONE OF THE TWO DOCUMENTS IN QUESTION, HE TESTIFIED THAT HE WITNESSED THE SIGNATURE. ON THE OTHER DOCUMENT, HE TESTIFIED THAT IT WAS SIGNED IN HIS PRESENCE, BUT THEN NOTARIZED OUTSIDE HIS PRESENCE.

WHAT I AM TRYING TO GET AT IS THAT, AS FAR AS THE SIGNATURE THAT THE HANDWRITING EXPERT TESTIFIED WAS A FORGERY AND NOT MR. MARTINEZ'S SIGNATURE, DID THE LAWYER IN THIS CASE TESTIFY, UNDER OATH, THAT HE WITNESSED THAT SIGNATURE BEING APPLIED BY MR. MARTINEZ, AND THAT IT WAS MR MR. MARTINEZ'S SIGNATURE THAT HE TOOK TO THE ESCROW AGENT AND GOT THE CHECK?

NO, YOUR HONOR. WHAT HE TESTIFIED WAS THAT THE CLIENT HAD SIGNED THAT DOCUMENT, NOT THAT THE SIGNATURE -- I AM SORRY.

THAT HE HAD SIGNED THAT DOCUMENT IN HIS PRESENCE?

BUT NOT THAT THAT DOCUMENT THAT WAS SUBSEQUENTLY PRESENTED WAS NECESSARILY THE SAME DOCUMENT THAT THE CLIENT HAD SIGNED.

SO I AM HAVING, I AM A LITTLE BIT CONFUSED. IF I UNDERSTAND IT, THE RESPONDENT LAWYER TOOK THIS DOCUMENT TO THE ESCROW AGENT.

THAT'S CORRECT.

AND HAD THE FUNDS RELEASED. IS THAT CORRECT?

THAT'S CORRECT.

AND WHAT WAS THE LAWYER'S TESTIMONY ABOUT THE DOCUMENT, WITH ITS SIGNATURE, THAT HE TOOK TO THE ESCROW AGENT? HOW DID HE SAY HE OBTAINED THAT? AND GOT IT TO BE ABLE TO USE IT, TO GO GET THE CHECK FROM THE ESCROW AGENT?

THAT DOCUMENT WAS IN HIS FILE.

HE DIDN'T SAY HE KNEW ANYTHING ABOUT HOW IT GOT SIGNED SIGNED?

I DON'T RECALL WHETHER HE TESTIFIED THAT HIS SECRETARY TESTIFIED THAT IT WAS SIGNED IN HER PRESENCE OR REAFFIRMED IN HER PRESENCE AND THAT, IN FACT, SHE NOTARIZED THE ORIGINAL. THE POSITION WAS, THEIR POSITION WAS THAT THE DOCUMENT WHERE THE FOLDER HAD BEEN TAKEN OUT OF THE OFFICE, AND THAT SOMEHOW THIS VERY SOPHISTICATED CLIENT SUBSTITUTED A DOCUMENT WITH A SIGNATURE THAT WAS NOT HIS, IN ORDER THAT HE COULD, ONE OF THE POINTS WAS, CREATE TROUBLE FOR MR. MASSARI AND HIS WIFE, BECAUSE THIS FELLOW WAS INTERESTED IN --

THERE ARE TWO DIFFERENT DOCUMENTS THAT WERE ALLEGEDLY ALTERED, AND ONE WAS THE LATER OR ONE WAS THE DOCUMENT ABOUT GREG TO A LOAN OR?

YEAH -- ABOUT AGREEING TO A LOAN?

YES. THE SECOND DOCUMENT WAS ONE THAT WAS BAKERY A CARTE BLANCHE PERMISSION TO USE THE MONEY ANY WAY THAT THE RESPONDENT WANTED, HAD ON IT A PHOTOCOPY OF THE SIGNATURE ON THE CONTRACTOR'S, WHAT WAS IT, RELEASE OF LIEN OR ONE OF THE CONTRACTOR --

SOME OTHER DOCUMENT.

YEAH. AND IT WAS A PHOTOCOPY.

AND WHAT WAS THE RESPONDENT LAWYER'S EXPLANATION FOR --

THE EXPLANATION WAS THAT THAT DOCUMENT HAD BEEN REMOVED FROM THE OFFICE BY THE CLIENT, AND THERE WAS SOME SUGGESTION THAT HE OR SOMEBODY MUST HAVE PHOTO COPIED THE SIGNATURE ON TO THE ESCROW AGREEMENT.

BUT DID THE RESPONDENT LAWYER TESTIFY THAT ORIGINALLY, HE HAD WITNESSED --

NO, HE DID NOT.

-- THE CLIENT SIGN THAT LOAN DOCUMENT?

NO, HE DID NOT. HE TESTIFIED THAT HE DRAFTED --

HOW DID HE SAY HE GOT THE LOAN DOCUMENT?

HE TESTIFIED THAT HE DRAFTED THE ESCROW AGREEMENT, THAT THAT AGREEMENT, THEN, WAS TAKEN OUT, AND THAT THE SECRETARY, HIS SECRETARY, NOTARIZED IT IN THE OTHER ROOM.

NOW, IS THE ESCROW AGREEMENT THE SAME DOCUMENT THAT WE ARE TALKING ABOUT, WHICH IS THE DOCUMENT THAT AUTHORIZED THE LAWYER TO USE THE FUNDS?

YES. THAT IS THE ESCROW INSTRUCTIONS.

SO THE LAWYER SAID THAT HE DIDN'T HAVE ANYTHING TO DO WITH THAT DOCUMENT?

YES. HE SAID THAT HE HAD NOTHING DO -- NOTHING TO DO WITH THAT DOCUMENT. HE ORIGINALLY DICTATED IT. IT WAS TAKEN OUT INTO THE OTHER ROOM. THE SECRETARY, AS BEST AS HE KNOWS, NOTARIZED IT, AND THEN IT ENDED UP IN THE FILE.

AND DID THE SECRETARY TESTIFY IN BEING SHOWN, SHE TESTIFIED OBVIOUSLY. A YES, SHE DID.

DID SHE TESTIFY THAT SHE WITNESSED HIM SIGN THIS DOCUMENT?

YES. SHE TESTIFIED THAT SHE WITNESSED THE SIGNATURE ON BOTH OF THE DOCUMENTS IN QUESTION, THAT MR. MARTINEZ DID, IN FACT, SIGN THOSE DOCUMENTS. THIS IS THE SECRETARY THAT HAD BEEN WITH MR. MASSARI FOR A LITTLE OVER EIGHT YEARS AND, OF COURSE, SOMEONE WHO FACED THE POSSIBILITY OF GETTING IN TROUBLE FOR NOTARIZING FRAUDULENT DOCUMENTS. WE HAVE TALKED A LITTLE BIT, AND I AM SORRY TO JUMP, BUT THERE IS ANOTHER FACTUAL QUESTION THAT BECOMES VERY INTERESTING. THERE IS AN INDIVIDUAL BY THE NAME OF BRAD MUELLER. AND BRAD MUELLER IS ONE OF THOSE WHO SAID THAT, ON THE 14th, WHEN MR. MARTINEZ SAID HE WASN'T INSIDE OF MR. MASSARI'S OFFICE, IN FACT MR. MARTINEZ WAS LYING, AND MR. WEISS SAID THAT THERE WERE TWO NEUTRAL PARTIES THAT TESTIFIED THAT DAY. AND CONTRADICTED MR. MARTINEZ'S TESTIMONY. I WOULD SUGGEST TO YOU THAT MR. MUELLER IS NOT A NEUTRAL PARTY, FOR A FEW REASONS. NUMBER ONE, MR. MASSARI OWES, ACCORDING TO MR. MUELLER'S TESTIMONY OR DID AT THAT TIME, OWED HIM \$200,000, SO CERTAINLY HE WOULDN'T WANT MR. MASSARI TO NOT BE ABLE TO PRACTICE AND PAY HIM BACK. IN ADDITION, THEY WERE PARTNERS IN SOME KIND OF AUTO RACING VENTURE. FURTHER, MR. MASSARI WAS INFORMING MR. MUELLER OF VARIOUS CLIENTS WHO WERE IN BANKRUPTCY, AND THERE WAS AN ARRANGEMENT WHERE MR. MUELLER WOULD PURCHASE INVENTORY IN THIS ONE PARTICULAR CASE, FOR \$100,000, THAT INCONVENIENT, THEN, WOULD BEGIN TO -- THAT INCONVENIENCE INCONVENIENT, THEN, WOULD BE GIVEN TO THE INDIVIDUAL IN BANKRUPTCY AND THEY WOULD PAY MR. MUELLER 1 PERCENT PER WEEK, WITH THE PAYMENTS BEING MADE ON A WEEKLY BASIS. CERTAINLY MR. MUELLER HAD AN INCENTIVE, ALSO IN THAT RESPECT, TO KEEP MR. MASSARI IN PRACTICE, SO HE WOULD HAVE A RESOURCE FOR HIS RATHER LUCRATIVE LOANS.

WHAT WAS THE RESPONDENT'S EXPLANATION FOR WHY HE WAS GOING TO BORROW MONEY FROM A CLIENT? IN OTHER WORDS WHY HE WAS GOING TO USE THESE, THE PROCEEDS?

HIS EXPLANATION WAS THAT MR. MARTINEZ HAD SPOKEN WITH MR. MUELLER AND EXPRESSED AN INTEREST IN THIS 1 PERCENT PER WEEK VENTURE, AND INVESTING IN ONE-STOP AUTO, WHICH AT THAT TIME WAS IN BANKRUPTCY. AND THAT LATER, WHILE THAT WAS THE REASON FOR THE AGREEMENT, THE ESCROW AGREEMENT, BUT IN ADDITION, SAYS MR. MASSARI, THEY AGREED THAT, IF THAT WEREN'T AVAILABLE, THEN MR. MASSARI COULD BORROW THE MONEY AND USE IT FOR HIMSELF, AND HE WOULD BE RESPONSIBLE FOR 1 PERCENT PER WEEK INTEREST. WHEN YOU TAKE A LOOK AT WHEN THE MONEY WAS TAKEN, IT WAS VERY SHORTLY AFTER IT WAS

RECEIVED, MARCH 13 THE MONEY WAS RECEIVED FROM THE TITLE COMPANY. MARCH 16, HE TOOK HIS FEE OUT OF THAT MONEY. THREE DAYS LATER, HE TOOK \$4500. SUBSEQUENTLY HE TOOK OVER \$9,000 AND HE USED THAT MONEY TO REPLENISH THE MONEY IN THE TRUST ACCOUNT, SO THAT HE COULD REIMBURSE A CLIENT FOR SOME OTHER FEES. THAT ACCOUNT WAS ZEROED OUT WITHIN 90 DAYS. DURING THIS TIME PERIOD, ACCORDING TO MR. MARTINEZ, HE WAS ASKING ABOUT THE MONEY. HE WAS TOLD THAT IT COULDN'T BE RELEASED. NOW, MR. MASSARI EXPLAINS THAT MR. MARTINEZ WAS DEMANDING A COURT ORDER, EVEN THOUGH THERE HAD BEEN A DISMISSAL WITH PREJUDICE, AND EVEN THOUGH THE MONEY HAD BEEN PRESENTED TO THE TITLE COMPANY. THAT WAS HIS EXPLANATION FOR NOT GIVING IT TO THE CLIENT.

DID MR. MARTINEZ HAVE A CRIMINAL RECORD?

NOT THAT I AM AWARE OF.

AMERICAN TITLE INSURANCE COMPANY. WHAT WAS THEIR TESTIMONY, RELATIVE TO WHAT HAPPENED HERE?

THEIR TESTIMONY WAS THAT MR. MASSARI CALLED THEM ABOUT A WEEK BEFORE THE MONEY WAS RELEASED. WAS PRETTY PERSISTENT ABOUT GETTING THE MONEY AS SOON AS POSSIBLE. THAT HE BROUGHT, TO THEM, THE SATISFACTION AND RELEASE OF LIEN. THEY GAVE HIM THE \$30,000 CHECK. THE \$30,000 CHECK WAS NEGOTIATED ON ABOUT MARCH 13. WHEN MR. MARTINEZ WENT AND TALKED TO THEM AND ASKED THEM ABOUT THE MONEY, THEY CONTACTED THE RESPONDENT. HE TOLD THEM HE COULDN'T RELEASE IT, BECAUSE HE DIDN'T HAVE A COURT ORDER. SUBSEQUENTLY, THIS IS IN THE EVIDENCE BUT I DON'T RECALL IT. IT WAS TESTIFIED TO. BUT THEY CONTACTED OPPOSING COUNSEL AND EVENTUALLY OPPOSING COUNSEL AND A POLICE OFFICER FILED A GRIEVANCE WITH THE BAR. MR. MARTINEZ'S POSITION WAS THAT HE DID NOT WANT THE RESPONDENT TO RECEIVE ANY SANCTIONS. HE DID NOT WANT THE POLICE ACTION AGAINST THE RESPONDENT. HE WAS PRETTY ANGRY ABOUT NOT GETTING HIS MONEY AND THE DELAY, BUT THERE WAS SOME QUESTION ABOUT WHY HE DOESN'T, DIDN'T REACT EARLIER, ONCE HE REALIZE THE MONEY HAD BEEN RELEASED. HE DESCRIBES HIMSELF AS A REAL MILQUETOAST THAT HAD A HARD TIME STANDING UP TO PEOPLE. HE REALLY TRUSTED MR. MASSARI. HE THOUGHT THAT MR. MASSARI WOULD CONTACT HIM AND TELL HIM THE MONEY --

HOW LONG WAS THE ATTORNEY/CLIENT RELATIONSHIP?

I DON'T KNOW THAT, YOUR HONOR.

YOU STARTED TO SAY WHAT THE RESPONDENT SAID WOULD HAVE BEEN MR. MARTINEZ'S MOTIVATION FOR WANTING TO ACCUSE, SET HIM UP.

IT IS VERY INTERESTING. IT MAKES A GREAT SOAP BOX OPERA AND IT IS QUITE CREATIVE. ACCORDING TO MR. MASSARI, MR. MARTINEZ HAD BEEN WORKING ON MASSARI'S HOUSE, AND HE WOULD HAVE BREAKFAST WITH THE RESPONDENT AND MR. MASSARI, AND THEN WHEN MR. MASSARI LEFT, HE WOULD STILL BE THERE, CONSULTING WITH THE WIFE. HEAVENLY DAYS, WHO KNOWS WHAT IS GOING ON, AND THEN THEY MET A COUPLE OF TYPES, TO DISCUSS SOME OTHER CONSTRUCTION THAT MIGHT BE DONE ON THE MASSARI HOUSE, AND ACCORDING TO MR. MASSARI, MR. MARTINEZ WAS TRYING TO STIR UP SOME TROUBLE IN THE FAMILY, BECAUSE HE HAD A ROMANTIC INTEREST IN THE WIFE. MR. MUELLER COMES UP WITH A VERY INTERESTING TELEPHONE CALL THAT HE SAYS HE GOT FROM MR. MARTINEZ. MR. MARTINEZ, WHO SAYS HE NEVER MET MASSARI, NEVER TALKED TO HIM ABOUT INVESTING, CERTAINLY NEVER CALLED HIM, BUT THIS PHONE CALL, ALSO, FITS VERY WELL WITH THE SCENARIO THAT WAS DEVELOPED, TO GET OUT OF THIS TROUBLE, BECAUSE IN THE PHONE CALL, SUPPOSEDLY, MR. MARTINEZ SAID, TO THIS FELL OLD HE SAID HE DOESN'T EVEN KNOW HAD MET, PERHAPS, ONCE UNDER THEIR SCENARIO, THAT HE HAD AN INTEREST IN MRS. MASSARI, SO THAT PROVIDES A LITTLE BACK UP FOR THEIR STORY, AND, ALSO, THAT HE WAS VERY SORRY, IN SOME VAGUE STATEMENT ABOUT

THEY MADE ME SIGN, IT AND I HAVE NEVER FIGURED OUT WHAT IT WAS THEY MADE HIM SIGN. BUT THIS SCENARIO, I AM SORRY. I HAVE GOT A RED LIGHT HERE. I WOULD BE GLAD TO --

CHIEF JUSTICE: THANK YOU. I THINK WE UNDERSTAND THE BAR'S POSITION.

THANK YOU, YOUR HONOR.

CHIEF JUSTICE: MR. WEISS.

MR. WEISS, THE CHECK THAT WAS GIVEN BY THE TITLE COMPANY, WHO WAS THAT CHECK MADE OUT TO?

IT WAS JUST TO MR. MARTINEZ. I AM NOT EXACTLY SURE, BUT THERE HAS NEVER BEEN ANY DOUBT MY CLIENT --

WHO SIGNED IT?

MY CLIENT SIGNED IT. THERE HAS NEVER BEEN ANY DISPUTE THAT MY CLIENT SIGNED IT. HE NEVER SAID OTHERWISE.

WHAT NAME -- IN OTHER WORDS THERE HAS NEVER BEEN ANY DISPUTE THAT HE SIGNED MR. MARTINEZ'S NAME.

YES, SIR.

OKAY.

ON THE BACK OF THE CHECK.

SO HE CONCEDES THAT HE FALLSLY ENDORSED THAT CHECK.

NOT AT ALL, SIR.

HELP ME WITH THAT. IN OTHER WORDS, HOW --

I NEED TO GO BACK TO THE THREE DOCUMENTS FIRST, BECAUSE THERE WAS SOME CONFUSION ON THAT.

BEFORE YOU GO BACK TO THE THREE DOCUMENTS, I WANT TO SPECIFICALLY GET AN EXPLANATION FOR HE RECEIVED A CHECK THAT WAS MADE OUT TO HIS CLIENT.

CORRECT.

AND HE SIGNED THE CLIENT'S NAME.

CORRECT.

ON THERE, IS THAT CORRECT? JUST -- AND HE SIGNED THE CLIENT'S NAME.

CORRECT.

ON THERE, IS THAT CORRECT? JUST CLIENT'S NAME.

MAYBE MR. MARTINEZ AND CONSTRUCTION. CORRECT.

TELL ME HOW THAT TOOK PLACE. ANOTHER FEBRUARY 14 DOCUMENTS INSTRUCTIONS

PEIFICALLY AUTHORIZED MR. MASSARI TO DO ANYTHING NECESSARY TO FURTHER MR MR. MARTINEZ'S ACTIONS, CAUSE.

DO YOU THINK THAT WAS AN AUTHORIZATION TO SIGN SOMEBODY ELSE'S NAME TO A CHECK?

YES, SIR. YES, SIR. YES, SIR.

AND YOU THINK THAT IS THE LAW LAW.

I AM NOT WILLING TO SAY THAT IS THE LAW, JUSTICE ANSTEAD. BUT I THINK, WHEN WE HAVE A SPECIFIC AUTHORIZATION FROM A CLIENT ON A CHECK COMING IN, WITH THAT CHECK BEING SPECIFICALLY --

YOU SAY SPECIFIC AUTHORIZATION ON A CHECK COMING IN.

YES, SIR.

OKAY. I AM HAVING A LITTLE DIFFICULTY WITH THAT. WITH REFERENCE TO SIGNING THIS CHECK --

HE WAS GIVEN THE AUTHORITY TO DO WHAT NEEDED TO BE DONE, JUSTICE ANSTEAD.

WHAT NEEDED TO BE DONE FOR WHAT?

WITH THE UPCOMING SETTLEMENT PROCEEDS, IN TERMS OF DEPOSING IT THEM INTO THE CHECK, USING -- DEPOSITING THEM INTO THE CHECK, USING THEM AS AN INVESTMENT OR USING THEM FOR MY CLIENT'S LOAN.

YOU ARE SAYING THAT THAT DOCUMENT AUTHORIZED YOUR CLIENT TO SIGN ANY CHECKS RECEIVED.

YOUR HONOR, THE DOCUMENT IS IN EVIDENCE, AND I FORGET FRANKLY SPECIFICALLY WHETHER IT SAID THAT OR NOT.

BUT YOU BELIEVE THAT A FAIR READING OF THAT, THAT THE IMPLICATION WOULD BE THAT HE WAS AUTHORIZED TO SIGN A CHECK.

YES, SIR. YES, SIR. AND THAT IS THE DOCUMENT THAT MY CLIENT LITERALLY READ TO MR. MARTINEZ, READ THE DOCUMENT TO HIM, AND MR. MARTINEZ, I REMEMBER THE TESTIMONY, SIGNED THAT IN FRONT OF MY CLIENT, THEN TOOK IT OUT TO MRS. ABER, THE SECRETARY, SAID THIS IS MY SIGNATURE, AND SHE NOTARIZED IT. THAT IS THE FIRST DOCUMENT. THE SECOND DOCUMENT, THE MARCH 8 SATISFACTION AND RELEASE OF LIEN IS THE ONE THAT MY CLIENT TOOK TO FIRST AMERICAN TITLE. MY CLIENT WAS NOT PRESENT, WHEN MR. MARTINEZ SIGNED THAT DOCUMENT. MRS. ABER TESTIFIED THAT MR. MARTINEZ SIGNED IT IN FRONT OF HER AND SHE NOTARIZED IT WHILE HE WAS SITTING ON THE COUCH OUT IN THE LOBBY.

AND SHE LOOKED AT THAT DURING THIS HEARING AND SAID, AND IDENTIFIED THAT OR SWORE THAT THAT WAS MARTINEZ'S SIGNATURE.

YES, SIR.

AND THIS IS THE ONE THAT THE HANDWRITING EXPERT SAID WAS NOT HIS SIGNATURE.

ONE OF TWO. THE HANDWRITING EXPERT SAID THE FEBRUARY 14 DOCUMENT HAD A TRANSPOSED SIGNATURE.

I UNDERSTAND THAT, BUT I AM NOW TALKING ABOUT THE RELEASE.

AND HE IS SAYING, BASED ON HIS REVIEW OF A SMALL NUMBER OF CHECKS WRITTEN IN THE SAME TIME FRAME, THAT THAT WAS A FORGERY ON THE MARCH 8 DOCUMENT. AND HE IGNORED, AS IRRELEVANT, A LARGE GROUP OF INVOICES THAT MR. MARTINEZ HAD SIGNED THAT WE PRESENTED TO HIM, THAT SHOWS MR. MARTINEZ'S SIGNATURE ALL OVER THE PLACE, AND HE SAID THAT WAS IRRELEVANT.

CHIEF JUSTICE: THANK YOU, MR. WEISS. I THINK YOUR TIME IS UP.

ALL RIGHT. THANK YOU VERY MUCH. MR. CHIEF JUSTICE

THANK YOU, COUNSEL. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE. THE COURT WILL BE IN RECESS.