The Florida Bar v. Richard Phillip Greene

THE COURT WILL CALL THE LAST CASE FOR THIS MORNING. THE FLORIDA BAR VERSUS RICHARD PHILLIP GREENE.

MAY IT PLEASE THE COURT, GOOD MORNING, MY NAME IS KEVIN TYNAN, I'M HERE ON BEHALF OF RICHARD GREENE. MY PARTNER IS HERE AS WELL AS MY CLIENT WHO IS PRESENT IN THE COURTROOM. TO MY RIGHT, MY COLLEAGUES, ALAN PASCAL AND TONY BOGGS ON BEHALF OF THE FLORIDA BAR. WE'RE HERE TODAY TO TALK ABOUT HOPEFULLY SAVING A LAWYER FROM DISBARMENT. WHAT WE WOULD LIKE TO TALK ABOUT TODAY IS ADMIT THAT WHILE THERE MAY BE SIGNIFICANT PROCEDURAL ERRORS IN THIS CASE FROM OUR VIEW, WE KNOW THAT THERE GREENE STANDS BEFORE THIS COURT DESERVING OF SOME SANCTION. BECAUSE OF COUNT ONE IN HIS CONVICTION. WE KNOW THAT AND WE WOULD LIKE TO PREFERABLEY GET TO THE BOTTOM LINE OF THE CASE.

CHIEF JUSTICE: WHEN HE PLED GUILTY AND THE OTHER COUNTS WERE DISMISSED, DID HE -- WHAT WAS -- WHAT'S IN THE RECORD ABOUT WHETHER HE MADE THE SAME ARGUMENT THAT HE MADE BEFORE THE REFEREE THAT THIS WAS REALLY -- HE WAS KIND OF CONNED INTO THIS, HE WAS MAYBE BEING NAIVE, DID HE TRY TO MINIMIZE HIS INVOLVEMENT AT THAT TIME?

NO, I BELIEVE HE HAS BEEN CONSISTENT ALL ALONG, YOUR HONOR, THAT AND CERTAINLY THE EVIDENCE IN FRONT OF THIS REFEREE AS WELL AS IN FRONT OF THE SENTENCING COURT, AND IN OUR BRIEF WE TALK A LOT ABOUT TAPE-RECORDED TESTIMONY, AND INCLUDING STATEMENTS DIRECTLY FROM HIS CLIENT THAT RICHARD DOESN'T KNOW WHY SHOULD HE KNOW, I HAVEN'T TOLD HIM. SO HE HAS BEEN CONSISTENT.

CHIEF JUSTICE: SO ARE YOU ATTACKING THE REFEREE'S FINDING OF FACT THAT DURING THE THREE-YEAR PERIOD OF TIME RESPONDENT AGREED THAT A $250,000 UNDISCLOSED BRIBE OR KICK-BACK WOULD BE PAID TO AN UNDERCOVER FBI AGENT AND SO FORTH, WHAT'S IN PARAGRAPH 3 OF THE FINDING?

THESE THINGS HAPPEN, THOSE THINGS WERE CHARGED. IT IS MY CLIENT'S RELATIONSHIP TO ALL OF THOSE THINGS. IF YOU LOOK AT THE OVERALL INDICTMENT.

CHIEF JUSTICE: BUT YOU AGREE THAT THAT FINDING IS -- YOU ARE NOT ATTACKING THAT FINDING?

NO, THERE IS A FINDING THERE.

CHIEF JUSTICE: I MEAN THAT ALONE IS -- I DON'T KNOW HOW YOU MINIMIZE SOMETHING LIKE THAT. THAT AGREED THAT A BRIBE IS GOING TO BE PAID OR A KICK-BACK? IN ORDER TO DEFRAUD THE FUTURE STOCKHOLDERS ABOUT THE VALUE OF SHARES OF STOCK?

IT IS MY CLIENT'S KNOWLEDGE OF THOSE ACTS, YOUR HONOR, THAT WE DISAGREE WITH. THOSE THINGS HAPPENED. MY CLIENT JUST DIDN'T KNOW ABOUT THEM.

WHY WAS HE GUILTY OF SECURITIES FRAUD IF HE DIDN'T KNOW ABOUT IT? DON'T YOU HAVE TO KNOW TO BE GUILTY OF FRAUD, DON'T YOU HAVE TO HAVE KNOWLEDGE?

WHAT HE PLED GUILTY TO, YOUR HONOR, WHICH IS IN THE RECORD, CERTAINLY COUNT 5 OF THE

INDICTMENT WHICH WAS THE VEHICLE FOR THE PLEA, BUT WHAT HE EXPLAINED TO THE CENTSING JUDGE I BELIEVE IN A LETTER TO THE SENTENCING JUDGE, THAT IN PART OF MY PRESENTATION WAS GOING TO BE ABOUT THE REAL ACT THAT HAPPENED HERE, WHICH IS JANUARY 24, 2001, THERE IS A MEETING IN HIS OFFICE THAT HE WALKED OUT ON FIVE TIMES, BUT THERE IS A DISCUSSION ABOUT TOPICS THAT MADE MY CLIENT UNCOMFORTABLE THAT HE TOLD --

ARE WE SUPPOSED TO -- I GUESS MY PROBLEM WITH THIS IS WE HAVE A PLEA TO A SPECIFIC COUNT IN AN INDICTMENT, COUNT 5. COUNT 5 ALLEGES A NUMBER OF THINGS AND REALLEGES THINGS THAT WERE IN OTHER COUNTS. HE PLED GUILTY TO THAT.

RIGHT.

AND DON'T WE ACCEPT THAT AS CONCLUSIVE PROOF OF THOSE ALLEGATIONS?

FOR HIS ROLE IN THOSE THINGS, YES, YOUR HONOR.

AND SO NOW WHAT YOU ARE TRYING TO TELL US IS HE DIDN'T HAVE A ROLE IN IT ALTHOUGH HE PLED GUILTY?

HE PLED GUILTY TO COUNT 5 OF THE INDICTMENT THAT'S THERE BUT WHAT I AM TRYING TO SAY IS, YES, THESE ACTS DID OCCUR BUT OTHER PLAYERS IN THE CONSPIRACY BUT MY CLIENT'S ROLE IN THIS WAS BASED ON A LACK OF KNOWLEDGE, EXCEPT FOR THIS INITIAL MEETING WHERE HE KNEW THAT THERE WAS DISCUSSIONS ABOUT A LEGALITY THAT HE WALKED OUT AND TOLD HIS CLIENT HE WANTED NOTHING TO DO WITH THESE PEOPLE BUT HIS CLIENT CONTINUED WITH THEM NOT KNOWING --

WHAT ABOUT THE ISSUE OF THE FAILURE TO PROVIDE THE TRUST ACCOUNT DOCUMENTATION?

GOOD QUESTION, YOUR HONOR, BECAUSE THERE ARE -- THERE IS NOT A LOT OF INFORMATION IN THE RECORD. THERE WAS A SUMMARY JUDGMENT AGAINST MY CLIENT ON THAT COUNT. AND ALL YOU HAVE IS AN AFFIDAVIT IN THE RECORD FROM MY CLIENT THAT HE PROVIDED EVERYTHING TO HIS BELIEF. THAT HE HAD NOT BEEN ASKED TO PROVIDE ANY MORE, AND THAT WHILE THE BAR WAS CONTESTING THERE WERE NOT DEPOSIT SLIPS, CERTAIN DEPOSIT SLIPS PRODUCED BUT HE DID PRODUCE ITEMS FOR DEPOSIT, THE ACTUAL CHECKS, SO THE BAR HAD THE INFORMATION BUT, AGAIN, A RECORDKEEPING VIOLATION NOT NORMALLY IS GOING TO RESULT IN A DISBARRMENT. WHEN THE BAR INVESTIGATES THE CASE THEY ARE ENTITLED TO RECEIVE WHAT THEY WANT FOR THEIR INVESTIGATION.

WHAT WAS THE CHARGE IN COUNT 5?

COUNT 5, YOUR HONOR.

WHAT ARE THE ALLEGATIONS IN COUNT 5?

LET ME GET THAT ONE SECOND.

IT SEEMS TO ME WE'VE GOT YOUR --.

CHIEF JUSTICE: WE'VE GOT THAT IN THE RECORD. I MEAN JUSTICE ANSTEAD IS JUST I THINK --

LET ME ASK YOU, YOU CLAIM ALTHOUGH HE PLED GUILTY HE THEN SAYS HE DIDN'T KNOW ABOUT IT, BUT DOESN'T THAT EXPRESSLY CONTRADICT COUNT 5 WHICH SAYS AMONG OTHER THINGS WALTER DORROUGH, TIM RICE AND RICHARD GREENE KNOWINGLY AND WILLFULLY EMPLOYED A DEVICE, SCHEME AND ARTIFICE TO INDUCE FRAUD AND OMIT MATERIAL FACTS AND

ENGAGE IN ACTS, PRACTICES AND COURSE OF BUSINESS WHICH WOULD AND DID OPERATE AS A FRAUD AND DECEIT UPON OTHERS. SO ISN'T HE NOT ABLE TO SAY HE DIDN'T KNOW ABOUT IT?

YOUR HONOR, IF THERE WAS JUST ONE NAME THERE, MR.^GREENE, I WOULD HAVE NO EQUIVOCATION WITH YOU WHATSOEVER. I THINK YOU CAN READ INTO THAT SEVERAL PEOPLE MADE SEVERAL STATEMENTS AND FROM THE RECORD THAT'S PRODUCED BELOW IN THIS CASE, THE TAPED TRANSCRIPTS MY CLIENT HAD A LACK OF KNOWLEDGE OF KEY IMPORTANT FACTS BUT HE IS NOT DENYING --

IF YOUR CLIENT HAD A LACK OF KNOWLEDGE THEN HE WOULD NOT BE QUILT OF SECURITIES FRAUD.

EXCEPT HE HAD SOME KNOWLEDGE EARLY ON IN THIS CASE THAT HE BELIEVED AND THAT'S WHY HE SETTLED, THAT HE BELIEVED HE HAD EXPOSURE TO THE CHARGE AND FELT IT APPROPRIATE TO SETTLE WITH THE GOVERNMENT.

WAS THERE SOME TYPE OF DRY RUN OR TEST RUN THAT WAS INVOLVED HERE, SOME EXCHANGE OF MONEY THAT DID, IN FACT, GO INTO A TRUST ACCOUNT AND WHAT IS THAT AS YOU SEE THAT?

GOOD POINT, YOUR HONOR, BECAUSE THERE ARE REALLY TWO THINGS THEY TALK ABOUT IN THE INDICTMENT. THE OVERALL WHAT THESE PEOPLE WERE PLANNING TO DO THEN A COUPLE OF THINGS THAT ACTUALLY OCCURRED. NOW, AGAIN FROM MY CLIENT'S PERSPECTIVE HE BELIEVED AND HE HAS BEEN CONSISTENT THROUGH THIS CASE IN SAYING HE THOUGHT HE WAS DOING A LEGITIMATE BUSINESS TRANSACTION, BUT HERE ARE THE ACTS THAT HE DOES DO. HE ACCEPTS MONEY, MAKES A DEPOSIT IN HIS TRUST ACCOUNT, SENDS THE MONEY WHERE HIS CLIENT DIRECTS HIM TO SEND IT, ALL WITHOUT ANY MONEY COMING TO HIM. HE RECEIVES SOME STOCK CERTIFICATES AND TRANSMITS THEM WHEN THEY ARE SUPPOSED TO BE TRANSMITTED. THOSE ARE THIS TEST RUN THAT THEY ARE TALKING ABOUT, AND SO, YES, CLEARLY HE DID THE MONEY IN THE TRUST ACCOUNT, MONEY OUT OF THE TRUST ACCOUNT, IN, OUT, NOTHING TO HIM, AND SECONDARILY TRANSFERRED THE STOCK AT THE DIRECTION OF THE CLIENT. JUSTICE WELLS, I KNOW YOU ARE LOOKING TO GET IN THERE.

AND MY CONCERN IS THAT WE HAVE A NUMBER OF CASES IN WHICH WE HAVE SAID THAT WE ARE NOT GOING TO LOOK BEHIND THE FELONY CONVICTION, AND WHERE A LAWYER IN FLORIDA IS CONVICTED OF A FELONY, THAT IS -- THAT LAWYER IS GOING TO BE DISBARRED UNLESS THERE IS SOME EXCEPTIONALAL CIRCUMSTANCE THAT IS INVOLVED IN -- THAT WOULD MITIGATE THE LAWYER NOT ON THE BASIS THAT HE IS NOT GUILTY OF THE CRIME BECAUSE HE HAS COMMITTED -- HE HAS EITHER BEEN CONVICTED OR ADMITTED IT. HERE HE HAS ADMITTED IT. SO I THINK IF THERE IS SOME THING THAT I HAVEN'T SEEN THAT IS EXCEPTIONAL AS FAR AS THIS LAWYER WAS CONCERNED, THEN I THINK YOU OUGHT TO TALK ABOUT THAT.

THANK YOU, AND I REALLY DO WANT TO TALK ABOUT SOME OF THE CASE LAW AND THE MITIGATION THAT'S PRESENT IN THIS CASE. AS WE ALL KNOW, THIS COURT HAS HELD THAT IT IS PRESUMED DISBARRMENT IN A PENALTY CONVICTION CASE AND THAT PRESUMPTION CAN BE OVERCOME BY EVIDENCE OF REHABILITATION, MITIGATION. WE ALSO KNOW THAT AS RECENTLY AS LAST WEEK THAT NOT ALL FELONY CONVICTION CASES RESULT IN DISBARRMENT. THERE WAS A 90-DAY SUSPENSION HANDED OUT BY THIS COURT IN A COMPLETELY DIFFERENT TYPE OF FELONY. THAT ALSO IF YOU LOOK AT --.

CHIEF JUSTICE: LET'S MAKE SURE WHAT KIND OF FELONY WAS THAT, WAS THAT A DRUG RELATED?

A DRUG-RELATED CONVICTION, PERSONAL USE WITH A DUI THAT CHARGED INJURY. I AM USING THAT AS AN EXAMPLE THAT THIS COURT DOES NOT ALWAYS DISBAR ON A FELONY CONVICTION. WHAT THIS COURT HAS DONE OVER THE YEARS IS LOOK AT AND I HATE TO USE THE WORD

QUALITY OF THE FELONY BUT HOW SERIOUS THIS WAS. IS IT MINOR? IS IT MAJOR? IS IT IN THE STANLEY COHEN CASE AND EVEN IF IT IS MAJOR YOU STILL GO BACK AND LOOK AT THE STANDARD FOR DISBARRMENT. CAN THIS PERSON BE SAVED? IS HE ABLE TO BE REHABILITATED AND IS THIS SOMEONE THE CASE LAW SAYS SHOULD NEVER HAVE BEEN A LAWYER IN THE FIRST PLACE AND IN THE RECORD BELOW THERE IS SUBSTANTIAL MITIGATING TESTIMONY AND THE CHARACTER WITNESSES IN THIS CASE THAT KNEW MY CLIENT ON AN AVERAGE OF MORE THAN 12 YEARS.

WELL, HOW DOES IT PLAY INTO THIS THAT I THINK THAT THE REFEREE FOUND AS AN AGGRAVATING CIRCUMSTANCE THAT YOUR CLIENT HAD A PREVIOUS ADMONISHMENT AND THAT'S ALSO INVOLVED SOME SECURITY ISSUES, AS I RECALL.

A CONFLICT OF INTEREST, YOUR HONOR, A CONFLICT OF INTEREST.

BUT IN THE SECURITIES CONTEXT?

AS I UNDERSTAND THE PRIOR RECORD, IT WAS A CONFLICT OF INTEREST NOT TO HAVE MADE A DISCLOSURE TO A CLIENT ABOUT SOME OWNERSHIP IN A COMPANY THAT HAD CHANGED NAMES. AND AGAIN IT IS MINOR MISS DEDUCT -- MISCONDUCT, A MINIMAL VIOLATION BACK SIGNIFICANTLY BEFORE THIS ACT.

SO WE DO HAVE AGGRAVATION IN THIS CASE?

THE REFEREE FOUND TWO AGGRAVATING FACTS, A PRIOR RECORD AND A DISHONEST SELF MOTIVE. THAT'S WHAT THE REFEREE FOUND, YOUR HONOR, BUT IT IS OUR OPINION WHEN YOU LOOK AT THE RECORD THERE ARE SUBSTANTIALLY MORE. IN MY BRIEF I OUTLINE THEM FOR YOU ON PAGE 27 AND RATHER THAN BELABOR THE POINT WE BELIEVE THAT THERE ARE SEVERAL, CERTAINLY THE INTERIM REHABILITATION OF MY CLIENT OVERWHELMING CHARACTER TESTIMONY THAT'S PRESENTED THAT THIS IS A BASICALLY GOOD AND HONEST AND DECENT PERSON.

SO WHAT WAS THE FACT THAT HE IS A BASICALLY GOOD AND HONEST DECEMBER PERSON IS INTERIM REHABILITATION?

NO, I'M SAYING THERE IS MORE THAN ONE FACTOR. INTERIM REHABILITATION IS A SEPARATE ONE, REMORSE, OTHER PERSONALITIES.

AND REHABILITATION IS WHAT?

THAT HE CERTAINLY ACCEPTED RESPONSIBILITY.

CHIEF JUSTICE: I HAVE A HARD TIME WITH, AND THIS IS ALWAYS DIFFICULT WHETHER IT IS THE LAWYER OR THE CLIENT. THIS DOESN'T QUITE SOUND TO ME LIKE WE ARE HEARING TODAY THAT HE HAS ACCEPTED RESPONSIBILITY.

MY CLIENT HAS ACCEPTED RESPONSIBILITY.

CHIEF JUSTICE: I JUST WAS SORT OF TURNING MY -- I KNEW SOMETHING BAD WAS GOING ON, I KNEW THEY WERE USING MY TRUST ACCOUNT BUT I KIND OF JUST SORT OF JUST WALKED OUT OF THE ROOM AND LET THEM USE ME AND TO ME THAT DOESN'T SOUND LIKE OWNING UP TO THE RESPONSIBILITY OF THE SERIOUSNESS OF THE ALLEGATIONS THAT HE PLED TO.

INTERESTINGLY IN THIS CASE, YOU HAVE THE ACTUAL CONVERSATIONS HE WAS INVOLVED IN. THEY ARE IN THE RECORD. YOU CAN SEE EXACTLY WHAT WAS TOLD TO HIM. WHAT HE KNEW, WHEN HE KNEW IT AND REALLY IF YOU LOOK AT WHILE THE INDICTMENT READS AND TALKS

ABOUT AN EXTENSIVE PERIOD OF TIME HIS INVOLVEMENT WAS LESS THAN 30 DAYS.

CHIEF JUSTICE: I HAD INTERRUPTED JUSTICE ANSTEAD WHEN HE WAS ASKING YOU ABOUT COUNT 5 SPECIFICALLY.

JUSTICE CANTERO THEN ACTUALLY READ TO YOU, YOU KNOW, THE ALLEGATIONS.

YES, HE DID.

SO THAT'S BEEN TAKEN CARE OF. THANK YOU VERY MUCH.

IN THE PLEA IN THIS CASE WAS NOT NO CONTEST. IT WAS GUILTY.

YES, YOUR HONOR. AND CERTAINLY MY CLIENT HAS NEVER DENIED THAT HE HAD INVOLVEMENT. WHAT HE HAS BEEN SAYING AND CERTAINLY I'VE BEEN TRYING, I GUESS MAYBE NOT IN A SUCCESSFUL FASHION, THAT HE ACCEPTED RESPONSIBILITY FOR WHAT HE DID BUT THE RECORD HERE BEFORE YOU AND NORMALLY IF IT WASN'T FOR THE FACT THAT THERE WAS A COUNT TWO IN THIS CASE THESE OTHER DOCUMENTS WOULDN'T BE IN FRONT OF YOU. BECAUSE I FORGOT WHO ASKED ME, MAYBE IT WAS JUSTICE WELLS, ABOUT CONCLUSIVE PROOF THAT, YOU KNOW, IT IS WHAT IT IS AND THERE ARE LOTS OF CASES THAT SAY WE CAN'T GO BEHIND THE CONVICTION. I'M NOT TRYING TO DO THAT. I'M TRYING TO EXPLAIN THE SEVERITY OF HIS ACTIONS.

DID YOU OFFER THE PRESENTENCE INVESTIGATION REPORT AS FOR THE REFEREE FOR MITIGATION, ANYTHING THAT WAS CONTAINED IN THERE?

I DO NOT BELIEVE SO, YOUR HONOR, I DO NOT BELIEVE THAT WAS INTRODUCED INTO EVIDENCE.

CHIEF JUSTICE: YOU ARE SUBSTANTIALLY INTO YOUR VERY SHORT REBUTTAL TIME.

I'M GOING TO HAVE A SEAT AND MY HONORED COLLEAGUE COME FORWARD.

CHIEF JUSTICE: THAT'S VERY NICE OF YOU.

MAY IT PLEASE THE COURT, MY NAME IS ALAN PASCAL, AND I'M APPEARING HERE ON BEHALF OF THE FLORIDA BAR. WHAT THE FLORIDA BAR AND OUR POSITION IN THIS CASE IS THAT WE ASKED THIS COURT TO NOT ONLY AFFIRM AND ADOPT THE FINDINGS BASED ON THE JUDGMENT OF GUILT, BUT ALSO THE GUILTY PLEA THAT THE RESPONDENT ENTERED, THAT BEING SECURITIES FRAUD.

CHIEF JUSTICE: COULD YOU, THOUGH, EXPLAIN BECAUSE I REREAD THE BRIEFS LAST NIGHT AND WE HAVE AS ALWAYS SOMETIMES JUSTICE LEWIS TALKS ABOUT LAWYER TALK, WE ARE HERE FOR THE PUBLIC TO UNDERSTAND WHAT IS THE NATURE OF WHAT THIS LAWYER DID? IN THE POINT OF VIEW OF THE FLORIDA BAR TO EARN -- NOT TO EARN, TO REQUIRE A DISBARRMENT.

THE DISBARRMENT IN THIS CASE FOLLOWS A LINE OF CASES.

CHIEF JUSTICE: THE FACTS. IN OTHER WORDS THE FACTS. THE FACTS IN QUESTION.

I'M SORRY, YOUR HONOR, THE FACTS INVOLVED IN THIS CASE AND WITH THIS ATTORNEY IS THAT HE BECAME INVOLVED IN A STOCK FRAUD SCHEME WHICH WAS -- IS KNOWN AS A CLASSIC PUMP AND DUMP TYPE OF SECURITIES FRAUD. WHAT OCCURRED AT THE TIME IS THAT THE RESPONDENT'S CLIENT WAS A STOCK PROMOTER THAT SOUGHT TO SOLICIT STOCK BROKERS AND OTHERS TO INFLATE THE WORTH OF A STOCK WHICH IN THE END WAS OVERVALUED AND THERE WAS -- AT A POINT IN TIME WHICH AT THE TIME WHEN THE RESPONDENT BECAME INVOLVED HE MET WITH THE STOCK PROMOTER, HE ALSO MET WITH AN UNDERCOVER AGENT WITH THE

SECURITY AND EXCHANGE COMMISSION AND IN THERE THERE WAS THE UTILIZATION OF HIS TRUST FUND AND HE WAS GOING TO BE AN ESCROW AGENT.

CHIEF JUSTICE: THAT WAS THAT DRY RUN. BUT WHERE IN THE PARAGRAPH 3 WHERE HE AGREED THAT A $250,000 UNDISCLOSED BRIBE OR KICK-BACK WOULD BE PAID, IS THAT -- HOW IS -- THAT DIDN'T SEEM TO RELATE TO COUNT 5. SO WHAT EVIDENCE WAS THERE THAT SUPPORTS THE FINDING NOT ONLY HAVING HIS ESCROW ACCOUNT USED BUT BEING INVOLVED IN THE PAYMENT OF A KICK-BACK?

AND RELYING ON HIS PLEA AND THE ALLEGATIONS WHICH ACCORDING TO COUNT 5 ALSO WOULD INCORPORATE THE OTHER ALLEGATIONS, THE ENTIRE SCHEME TO DEFRAUD WHAT THE RESPONDENT IN PART OF THAT AS YOU READ IN THE ALLEGATIONS THAT ARE INCORPORATED AS PART OF HIS PLEA AGREEMENT IS THAT THERE WAS CONVERSATIONS THAT WITH THE RESPONDENT THERE INVOLVED AND PRESENT THAT HE WAS GOING TO BE A CONDUIT TO THIS KICK-BACK, AND THAT THIS TEST TRADE WAS IN HOPES AND ANTICIPATION THAT DOWN THE ROAD THE EXPECTANCY OF THAT LARGER TRADE OF THAT 2000 SHARES FOR THE VALUE OF A HALF A MILLION DOLLARS WAS GOING TO BE IN THE END ACCOMPLISHED.

IT IS CORRECT THAT MR.^GREENE HAS BEEN SUSPENDED SINCE APRIL OF 2004?

THAT IS CORRECT, YOUR HONOR.

WHY DIDN'T THE REFEREE FIND AS A MITIGATOR ACCEPTANCE OF RESPONSIBILITY?

AT THE TIME IN WHICH I AM NOT SURE WHY THE REFEREE DID NOT FIND THE ACCEPTANCE OF RESPONSIBILITY AS A MITIGATOR. OBVIOUSLY THE TESTIMONY OF THE RESPONDENT BEFORE THE REFEREE, HE HIMSELF WAS TRYING TO SUGGEST THAT HE DID NOT HAVE KNOWLEDGE OF THE COMPLETED SECURITIES FRAUD, UNDERSTOOD THE NATURE FOR THE GRAVITY OR THE AMOUNT OF STOCKS INVOLVED. THAT HE ALMOST PROFESSORED THAT HE HAD A WILLFUL BLINDNESS AND THAT HE WAS ONLY THERE IN A SMALL PART OF THIS ENTIRE SECURITIES STOCKS FRAUD BUT THE REFEREE WAS IN THE POSITION TO WEIGH THAT EVIDENCE, TO LISTEN TO THE TESTIMONY.

WHY SHOULDN'T THE BAR BE BOUND BY JUST AS YOU WANT THE RESPONDENT TO BE BOUND BY THE PLEA AGREEMENT AND YOU SAID THIS PLEA AGREEMENT IS CONCLUSIVE PROOF THAT YOU COMMITTED THIS CRIME. WHY ISN'T THE PLEA AGREEMENT IN WHICH THE GOVERNMENT ADMITS THAT THE SECTION OF THE GUIDELINE SENTENCE APPLICABLE TO ACCEPTANCE OF RESPONSIBILITY APPLIES AND THAT THERE SHOULD BE A TWO-LEVEL REDUCTION IN THE GUIDELINES RANGE BASED ON ACCEPTANCE OF RESPONSIBILITY. THE GOVERNMENT CONCEDES THAT IN THE PLEA AGREEMENT. WHY SHOULDN'T THE FLORIDA BAR BE BOUND BY THAT JUST AS THE RESPONDENT IS BOUND BY THE PLEA AGREEMENT?

WELL, IN THAT CASE IN WHICH THERE IS, AND PART OF WHAT I SEE AS THE PROBLEM WITH THE ARGUMENT OF WHICH THE RESPONDENT IS MAKING IS IT APPEARS THAT, AND EVEN IN RECENT DECISIONS OF COHEN, THAT THEY ARE COMING FORWARD AND TRYING TO DELINEATE THIS DIFFERENCE BETWEEN SERIOUS AND MINOR FELONIES. AND --

DIDN'T WE GIVE RESPONDENTS THAT OPPORTUNITY BY SAYING THAT NOT ALL FELONIES ARE CREATED EQUAL AND ALTHOUGH THERE IS A PRESUMPTION OF DISBARRMENT THAT PRESUMPTION CAN BE REBUTTED AND PART OF WHAT WE LOOK AT IS WHAT KIND OF A FELONY WAS THIS?

CORRECT. THIS COURT MAY CONSIDER THAT, ALTHOUGH THERE IS A TREMENDOUS AMOUNT OF STARE^DECISIS AND PRECEDENCE IN WHICH AN ATTORNEY COMMITS A CRIME OR PLEADS GUILTY TO CRIMES INVOLVING DISHONESTY OR FRAUD ALL OF THE WAY BACK FROM -- DECIDED BY THE RESPONDENT COHEN AND MOVING FORWARD INTO BUSTAMONTE AND EVEN IN GRIEF AND

MOVING FORWARD EVEN AS INTO THE RECENT COHEN DECISION AND MOST IMPORTANTLY AS WELL WOLLIS THIS COURT HAS STATED THAT THESE TYPES OF FELONY, EVEN THOUGH THE REFEREE DETERMINED THAT WHETHER HE ENTERED A PLEA OR WHETHER THAT WAS CONSIDERED BY THE FEDERAL COURT FOR THE PURPOSES OF DISCIPLINE WE SHOULD NOT ALLOW THE RESPONDENTS TO COME IN AND TO BE ABLE TO UTILIZE THE FACT OF A BENEFIT OF A LENIENT PLEA BARGAIN AS BOTH A SWORD AND A SHIELD.

DO ANY OF THOSE CASES THAT YOU CITE INVOLVE A PLEA AGREEMENT, DO YOU RECALL?

YES, THOSE CASES INVOLVE, IF THE COURT LOOKS AT PLEA AGREEMENTS THAT AGAIN THIS COURT MUST FIND, AND I BELIEVE THAT IT MAY HAVE BEEN JUSTICE ANSTEAD THAT DISCUSSED THAT THE REQUIREMENT OF SUBSTANTIAL EVIDENCE OF MITIGATION AND THESE CASES THAT HAVE BEEN CITED TO THE COURT REQUIRE THEN THE POSSIBILITY OF LESS THAN DISBARRMENT. HOWEVER, IN GRIEF I WOULD ASK THIS COURT TO LOOK AT THAT CASE IN WHICH ALSO INVOLVED A FRAUD OR AN ATTORNEY IN THAT CASE WHO WAS PLED GUILTY TO A FRAUDULENT COUNT THAT THIS COURT SAID REGARDLESS OF SUBSTANTIAL MITIGATION AND EVEN IN THE MOST RECENT CASE OF COHEN THAT WAS BEFORE THE COURT, THAT DELINEATED ALL OF THE MITIGATORS THAT SUPPOSEDLY WERE THERE AND PRESENT THROUGH THE TESTIMONY OF THE REFEREE THAT THIS COURT SAID THAT, NO, EVEN IN THIS CASE WITH DEALING WITH STACKS OF $10,000, BUNDLES THAT WERE PLACED OR STRUCTURED IN VIOLATION OF FEDERAL LAW THAT ONE WE ALLOW REFEREES TO UTILIZE COMMON SENSE BUT IT DEFIED CREDULTY BUT COHEN KNEW WHETHER THAT WAS THE BENEFIT OF AN ILLEGAL ACTIVITY OR NOT THAT THIS COURT SAID REGARDLESS AND THE NUMEROUS CASES WITH GRIEF AS ONE OF THEM AND AS THE FIRST ONE THAT WITHOUT SUBSTANTIAL MITIGATION THAT THIS COURT HAS RULED IN RECENT CASES THAT ATTORNEYS THAT COMMIT CRIMES OF FRAUD, OF DECEIT AND WHO PLEAD GUILTY AND WHO ARE CONVICTED OF THESE CRIMES AND ALSO REALLEGES THE PREDICATE ACTS AND ALL OF THESE INDICTMENTS, THAT THE APPROPRIATE SANCTION THAT'S WARRANTED IS DISBARRMENT.

WOULD YOU SPEAK TO THE TRUST ACCOUNT CONCERNS?

WITH THE TRUST ACCOUNT CONCERNS ABOUT THE DEPOSIT SLIPS AND WHEN THEY WERE PROVIDED WITHIN THE APPENDIX THAT'S BEEN PROVIDED TO THIS COURT THERE IS A SERIES OF CORRESPONDENCE OF HOW THOSE SLIPS WERE OBTAINED AND WHEN THEY WERE OBTAINED. I BELIEVE THAT MR.^TURNER WHO WAS INITIALLY INVOLVED IN THE CASE REQUESTED BACK IN AUGUST OF 2002 THOSE SLIPS AND ULTIMATELY THROUGH TWO COUNSELS WHICH IS PROBABLY WHY THE REFEREE DID NOT FIND AS PART OF THAT WAS PROFFERED BY THE RESPONDENT COOPERATION WITH THE BAR THAT IT WAS NOT UNTIL JULY OF 2004 THAT WE OBTAINED THOSE SLIPS AND THEREFORE WE WOULD ARGUE THAT THAT WAS PROBABLY REASON WHY IT WAS REJECTED BY THE REFEREE AND NOT FOUND AS A MITIGATOR AND THAT HE DID NOT COOPERATE AND COMPLY WITH THAT TRUST ACCOUNT.

CHIEF JUSTICE: YOU AGREE EVEN WITHOUT THE TRUST ACCOUNT VIOLATIONS THAT THE ARGUMENT FOR DISBARRMENT WOULD BE THE SAME?

RIGHT. THAT THAT WOULD HAVE BEEN A TECHNICAL VIOLATION WITHOUT PROVIDING ALL OF THE SLIPS ALTHOUGH IT IS IMPORTANT FOR THE COURT TO NOTE THAT THERE WAS NOT THAT -- THAT THE SLIPS WERE NOT PROVIDED ON A TIMELY BASIS AND ALMOST TWO YEARS ELAPSED BEFORE WE OBTAINED THOSE SLIPS.

HOW WOULD YOU DRAW AN ANALYSIS IN THIS CASE AND WITH LAWLESS?

IN WOLIS, WHICH INVOLVED A 64-COUNT INFORMATION IN WHICH ULTIMATELY THE RESPONDENT ATTORNEY PLED ONLY TO ONE COUNT OF AN OBSTRUCTION OF JUSTICE WHICH IS OBVIOUSLY A CRIME OF FRAUD. IT INVOLVED A CASE OF SEC VIOLATIONS AND FRAUD ENCOMPASSED WITH THAT AND FILING FALSE DOCUMENTS WITH THE SECURITY EXCHANGE AND HE HAD OWNERSHIP

AND HE WAS ACTUALLY MAINTAINING THE CORPORATE RECORDS AND WITHIN THAT NOT ONLY FOR JUDGMENT, WHICH IS THE GUILT SIDE OF THE DISCIPLINE, THAT IT WAS CONCLUSIVE PROOF, COMPETENT AND SUBSTANTIAL EVIDENCE OF GUILT, THE FACT THAT HE PLED TO THE ONE COUNT, BUT ALSO IT WAS ALLOWED BEFORE THIS COURT AND FOR DISCIPLINE THAT WE WOULD BE ALLOWED TO PRESENT ALL OF THE FACTS SURROUNDING THE 64 COUNTS THAT WOULD -- COULD BE PLED AND COULD BE CONSIDERED BY A REFEREE AS APPROPRIATE.

HOW WOULD YOU EVALUATE BOTH INVOLVING SECURITIES, HOW WOULD YOU INVOLVE THIS DISCUSSION THAT'S FLOWING THIS MORNING WITH REGARD TO THE SIGNIFICANCE OF PARTICIPATION, THE DEPTH OF PARTICIPATION, THAT TYPE OF THING, HOW WOULD YOU COMPARE HERE WITH REGARD TO WHAT HAPPENED IN WOLIS?

AGAIN, WITH WOLIS AND HIS INVOLVEMENT WITH THE ACTUALLY OWNING 35,000 SHARES OF STOCK, ACTUALLY PREPARING THE DOCUMENTS, LYING TO THE SECURITY EXCHANGE COMMISSION, OBVIOUSLY THE CONDUCT IN THIS CASE ALTHOUGH WE ONCE AGAIN MUST RELY ON THE GUILTY PLEA IN WHICH HE -- IF WE TAKE HIM AT HIS OWN WORD HE AGREES TO HAVE COMMITTED THE CONSPIRACY, THE MAIL FRAUD AND THE SECURITIES FRAUD AND REGARDLESS OF THE LEVEL OR THE AMOUNT OF INVOLVEMENT, AGAIN I WOULD ASK THIS COURT JUST TO RELY ON ITS FINDINGS IN OTHER CASES WHETHER IT IS ISIS,, BUSTAMONTE WHICH MENTIONS HOW THIS COURT DEEMS CRIMES OF FRAUD AND DECEIT.

CHIEF JUSTICE: MR.^GREENE WAS SAYING HE WAS THE NAIVE VICTIM AND I KNOW ONE OF THE ALLEGATIONS IN THE INDICTMENT WAS THAT MR.^GREENE WAS AN ATTORNEY WHO SPECIALIZED IN THE FIELD OF SECURITIES LAW. TO ME THAT'S SIGNIFICANT, WHICH IS, WELL, IT IS NOT LIKE HE IS A YOUNG LAWYER WHO JUST HAPPENED TO HAVE SOME CLIENTS THAT OVERDOMINATED HIM.

THE REFEREE AND AT THE REFEREE LEVEL WHEN THE RESPONDENT TESTIFIED EXPRESSED THAT HE HAD -- HE IS VERY SOPHISTICATED IN SECURITIES. IN FACT, IN THE TIME THAT HE WAS IN LAW SCHOOL HE INTERNED WITH THE SECURITIES EXCHANGE COMMISSION AND SINCE 1985, ALMOST 20 YEARS OF BEING A LAWYER, HE HAS PREDOMINANTLY HANDLED MOSTLY SECURITIES AND SECURITIES TYPE OF CASES, THEREFORE, WE ARE DEALING WITH A SOPHISTICATED ATTORNEY THAT WHEN PRESENTED WITH THIS OPPORTUNITY TO PROVIDE KICK-BACKS TO STOCK BROKERS AND TO FACILITATE IT BY USING HIS TRUST ACCOUNT, WE, THEREFORE, ARE DEALING WITH SOMEONE THAT OBVIOUSLY WAS DEALT BY THE REFEREE AS A PROPER AGGRAVATOR.

ISN'T THE REFEREE ACTUALLY FIND THAT ONE OF THE AGGRAVATORS WAS SUBSTANTIAL EXPERIENCE?

IT DID, YOUR HONOR.

IN THE LAW?

YES, THE SUBSTANTIAL EXPERIENCE AND THAT WE ARE NOT DEALING WITH A YOUNG AND IN PRIOR CASES LONG BEFORE COHEN AND IN THE '80s AT CERTAIN TIMES THIS COURT WOULD LOOK TO WHETHER OR NOT THERE WERE OTHER INSTANCES THAT WOULD REQUIRE TO DELINEATE BETWEEN A TYPE OF OFFENSE OR WHETHER IT WAS SERIOUS OR MINOR, BUT IN THESE CASES THIS COURT HAS BEEN CONSISTENT THROUGH THE EXISTING CASE LAW THAT CRIMES INVOLVING WHETHER IT IS A GUILTY PLEA, NO CONTEST PLEA, WHETHER IT IS A TRIAL IN WHICH AN ATTORNEY IS CONVICTED THAT THESE CASES INVOLVING EITHER ORGANIZED FRAUD OR ANY TYPE OF SECURITIES FRAUD OR FRAUD UPON THE IMMIGRATION COURTS OR CONSPIRACIES TO COMMIT FRAUD, THAT THIS COURT HAS BEEN CONSISTENT IN THAT THAT TYPE OF VIOLATION FOR THE PROTECTION OF THE PUBLIC IN COMPLIANCE WITH THE STANDARDS FOR THE IMPOSITION OF SANCTIONS THAT THOSE REQUIRE THAT DISBARRMENT IS APPROPRIATE.

CHIEF JUSTICE: THIS IS REALLY IN TERMS FOR ME FOR AGGRAVATION AND MAYBE MR.^TYNAN

WANTS TO RESPOND TO IT. MAYBE THERE ARE LESSER FELONIES AND GREATER FELONIES BUT WHEN YOU ARE TALKING ABOUT FRAUD YOU ARE TALKING ABOUT THE GREATEST LEVEL AND THEN YOU ARE TALKING ABOUT A LAWYER WHO ACTUALLY SPECIALIZED IN SECURITIES LAW. TO ME THAT PUTS HIM OR HER IN AN EVEN GREATER POSITION THAT FIDUCIARY RELATIONSHIP TO THE CLIENTS AND TO THE PUBLIC TO NOT EVER FACILITATE SOMETHING LIKE THIS.

AND I BELIEVE, CHIEF JUSTICE, ENEMY TIME IS OUT, BUT JUST IN WRAPPING UP, YOU SAID IN COHEN IN THE LAST CASE WHICH YOU DECIDED, YOU DEEMED THAT THIS TYPE OF ACTIVITY IN WHICH YOU ARE DEALING WITH AN ATTORNEY THAT COMMITS THESE TYPE OF FRAUD AND DECEIT IS SOMETHING WHICH IS OF GREAT CONCERN FOR THE COURT AND WHICH WARRANTS THE APPROPRIATE SANCTION OF DISBARRMENT AND UNLESS THERE IS SUBSTANTIAL MITIGATION THAT THAT PRESUMPTION OF DISBARRMENT IS VERY DIFFICULT TO OVERCOME.

CHIEF JUSTICE: THANK YOU VERY MUCH.

THANK YOU, YOUR HONOR.

COUNSEL, LET ME ASK YOU ONE QUESTION. PARAGRAPH 4 6 OF THE --.

CHIEF JUSTICE: WHICH COUNSEL?

I'M SORRY. LET ME ASK YOU ONE QUESTION WITH REGARD TO PARAGRAPH 46 OF THE INDICTMENT. IT SAYS ON OR ABOUT JANUARY 24, '01 DEFENDANTS DORROUGH AND GREENE DISCUSSED METHODS WITH AN UNDERCOVER AGENT AND CW'S TO CONCEAL THE KICK-BACKS TO BE PAID. THIS SPEAKS OF MORE THAN JUST TURNING YOUR HEAD AND WALKING OUT OF THE ROOM AND ALLOWING A TRUST ACCOUNT TO BE USED.

YOUR HONOR, WHAT YOU CAN LOOK AT AND AGAIN THAT IS IN EVIDENCE IS THE TRANSCRIPT OF THAT CONVERSATION, OF THAT ACTUAL TAPED CONVERSATION, AND WHAT YOU WILL SEE WHEN YOU READ THAT TRANSCRIPT IS LOTS OF THINGS ARE SAID. YOU NEED TO LOOK AT THE TIMING OF WHEN THEY ARE SAID. WAS MR.^GREENE IN THE ROOM. CERTAINLY THERE WAS DISCUSSIONS ABOUT THOSE MATTERS, AND IT IS OUR OPINION ABOUT YOU LOOK AT --

I GUESS THE KEY IT IS NOT DISCUSSION ABOUT TRANSFERRING MONEY FROM TRUST ACCOUNTS. IT IS TO DISCUSSING CONCEALING THE KICK-BACKS.

AND WHAT YOU ALSO SEE IS CONVERSATIONS IN THAT VERY SAME TRANSCRIPT IS MR.^GREENE INITIALLY TRYING TO ADVISE THEM YOU CAN'T DO IT THAT WAY. IT HAS GOT TO BE ON THE UP AND UP. YOU'VE GOT TO DO IT THIS WAY AND YOU GET DISGUST HADDED WITH THEM AND WALK OUT AGAIN BUT IF I CAN, VERY, VERY SHORT TIME AND I WANT TO TRY JUSTICE CANTERO HE --.

CHIEF JUSTICE: IT IS SO SHORT. THE RED LIGHT IS ON.

ONE POINT IF I COULD AND YOUR QUESTION WAS VERY GOOD ABOUT WHAT DID HE KNOW, WHEN DID HE KNOW IT KIND OF A QUESTION AND WHY DID HE PLEA. UNDER THE JURY INSTRUCTIONS AND THE TESTIMONY AT TRIAL ON THIS, IF HE HAD SOME KNOWLEDGE, EVEN LIMITED KNOWLEDGE AND HE HAD SOME LIMITED KNOWLEDGE HE IS RESPONSIBLE FOR ALL OF THE KNOWLEDGE WHETHER HE KNEW IT DIRECTLY OR NOT AND THAT'S WHY HE PLED EVEN THOUGH HE HAD MINIMAL KNOWLEDGE. THANK YOU AND WE HOPE WHEN YOU REVIEW EVERYTHING THAT THIS IS A SUSPENSION CASE, RATHER THAN A DISBARRMENT. THANK YOU VERY MUCH FOR YOUR TIME.

CHIEF JUSTICE: THE COURT WILL BE IN RECESS.

THE MARSHAL: PLEASE RISE.