

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

The Florida Bar v. Arthur James Springer

MAY IT PLEASE THE COURT. SCOTT TOZIAN ON BEHALF MR. SPRINGER. THE ISSUE BEFORE THE COURT TODAY IN THIS SERIOUS DISCIPLINARY CASE IS, REALLY, WHETHER A LENGTHY SUSPENSION WILL BE IMPOSED OR WHETHER THE DISBARMENT WILL BE IMPOSED.

THE REFEREE HAS RECOMMENDED DISBARMENT.

YES, HE HAS, AND AS YOU KNOW THE COURT STANDARD IS WHETHER OR NOT REHABILITATION IS HIGHLY IMPROBABLE. IN THOSE CASES WHERE REHAB IS HIGHLY IMPROBABLE, DISBARMENT IS IMPOSED. TO SUSTAIN THE REFEREE'S RECOMMENDATION, THOUGH, THERE MUST BE A REASONABLE BASIS IN EXISTING CASE LAW. WE BELIEVE THERE IS NO SUCH REASONABLE BASIS. IF YOU REVIEW THE REPORT OF REFEREE, THERE IS NO CASE SUPPORT GIVEN FOR HIS RECOMMENDATION.

IN TERMS OF THE POSSIBILITY OF REHABILITATION, THE REFEREE HEARD MR. SPRINGER. WAS HE REPRESENTED BY HIMSELF?

YES, HE WAS REPRESENTED BY HIMSELF THAT DAY.

DID HE HAVE ANY CHARACTER WITNESSES OR ANYTHING OF THAT NATURE?

HE HAD TWO OF THE REPRESENTATIVES FROM CAMELOT CONDOMINIUMS, WHO WERE WHICH WAS --

WAS THE BOARD OR THE MANAGER, WAS SPRINGER ON THE BOARD?

THERE WAS SOMEONE FROM THE BOARD AT CAMELOT --

WAS SPRINGER ON THE BOARD?

I DON'T BELIEVE HE WAS AT THAT TIME.

HE SAID MORE EGREGIOUS IS THE DEFECT HE REFERS TO IS ONE OF PERSONALITY. IT IS MORE A DEFECT IF NOT ABS OF HONESTY INTEGRITY AND ETHICAL JUDGMENT. NOW, IN, WHAT, WHAT THE REFEREE IS SAYING IS THAT, LOOKING AT THIS WHOLE FACTUAL SITUATION, IS THAT THIS IS NOT A LAWYER WHO HAD A SUBSTANCE ABUSE PROBLEM OR AN ADDICTION OR A MENTAL ILLNESS. THIS WAS A PERFECTLY FUNCTIONING HUMAN BEING THAT JUST SOMEHOW FELT, AS A MATTER OF HIS PRACTICE, THAT HE COULD DO THESE KINDS OF THINGS AND DID THEM OVER A LENGTHY PERIOD OF TIME. NOW, WHAT IS, WHAT IS YOUR RESPONSE TO THAT?

I DON'T BELIEVE THE RECORD SUPPORTS THAT. I AGREE THAT THAT IS WHAT THE REFEREE SAYS. MR. DeBERG ON, BEHALF THE BAR, POINTED OUT DURING THE HEARING, HE TOUCHED ON SOMETHING THAT I THINK WASN'T DEVELOPED, BUT I THINK IT IS CERTAINLY REFERENCED IN THE RECORD. AS HE WAS RECOMMENDING, AS MR. DeBERG FOR THE BAR WAS RECOMMEND AGO TWO-YEAR SUSPENSION, HE SAID -- RECOMMENDING A TWO-YEAR SUSPENSION, IN PAGE 98 OF THE RECORD, HE SAID I WOULD ENCOURAGE HIM AS PART OF REHABILITATION, TO GET INTO SOME TYPE OF PROGRAM, BECAUSEION WHAT THE UNDERLYING PROBLEM IS, AND IF YOU LOOK AT THE RECORD IN THIS CASE, WHAT IS CLEAR IS YOU HAVE A LAWYER BEFORE YOU WHO HAS

PRACTICED FOR TWELVE YEARS, WHO HAS NO RECORD OF MISREPRESENTING THINGS TO CLIENTS. NOW, IN THIS CASE THERE WERE NUMEROUS MISREPRESENTATIONS AS YOU KNOW.

THERE WAS MORE THAN MISREPRESENTATIONS IN THERE. THERE WERE NUMEROUS DEFAULTS HERE, WITH REFERENCE TO HIS OBLIGATION TO SAY HIS CLIENT.

CERTAINLY. CERTAINLY.

THAT CERTAINLY WAS JUST AS OR MORE SERIOUS THAN THEM MISREPRESENTING TO HIS CLIENT, THAT HE HAD DONE THESE THINGS, AND IN FACT HE HAD NOT DONE. IT IS NOT DOING THESE THINGS ON BEHALF OF THE CLIENTS THAT ENDED UP DAMAGING THEM, THAT IS CERTAINLY PROBABLY EVEN MORE SERIOUS THAN TO CHARACTERIZE THIS AS SIMPLY A MISREPRESENTATION TO CLIENTS, I THINK, IS JUST LOOKING AT THE TIP OF THE ICEBERG.

I CERTAINLY DIDN'T --

I AM CONCERNED, WE ALWAYS, THESE THINGS ARE FACT DRIVEN, AND SO I WISH YOU WOULD ADDRESS THE, REALLY, THE VIOLATIONS THAT ARE INVOLVED HERE, AS FAR AS THE FACTS, STARTING WITH THE UNDERLYING CONDUCT THAT, THIN, OBVIOUSLY -- THAT, THEN, OBVIOUSLY LED TO THE MISREPRESENTING.

THE UNDERLYING CONDUCT WAS THAT HE FAILED TO DO THE THINGS, IN MANY INSTANCES, FOR WHICH HE WAS RETAINED. HE FAILED TO FOLLOW UP ON FORECLOSURES FOR WHICH HE WAS RETAINED AND HE FAILED TO DO A LOT OF THE WORK, BUT I THINK AN UNDERLYING COMPONENT OF THAT, IS IT APPEARS THAT THE ONLY PERSON WITH WHOM HE HAD THIS PROBLEM OF FOLLOWING UP WAS THIS MR. MITCHELL. IF YOU LOOK CLOSELY AT THE FACTS, A LOT OF THE MISREPRESENTATION WAS FOR, QUOTE, CAMELOT. THE CONTACT PERSON IS MR. MITCHELL.

IS MR. MITCHELL IN GEORGIA?

NO. HE WAS HERE. HE HAD A CASE, HE HAD A PIECE OF PROPERTY IN GEORGIA. THERE WAS A PARTITION ACTION IN GEORGIA THAT MY CLIENT FAILED TO PROPERLY HANDLE AS YOU KNOW. HE FAILED TO FILE A NOTICE OF APPEARANCE OR BE ADMITTED PRO HOC VICI.

AND THOSE PROCEEDINGS WENT WITHOUT OPPOSITION, IS THAT CORRECT?

THEY ABSOLUTELY, DID YES, SIR. THAT'S CORRECT.

AND OVER HOW LONG A PERIOD OF TIME WAS YOUR CLIENT INVOLVED IN THAT, IN TERMS OF, IN OTHER WORDS, WHEN DID HE FIRST AGREE TO TAKE ON THAT REPRESENTATION, AND THEN FOR HOW LONG A PERIOD OF TIME DID HE REPRESENT TO HIS CLIENT THAT HE WAS ACTIVELY REPRESENTING HIM IN THOSE PROCEEDINGS?

SPECIFICALLY WITH REGARD TO THE GEORGIA PARTITION ACTION, I BELIEVE IT WAS ABOUT A YEAR. I THINK HE GOT INVOLVED IN LATE, I WANT TO SAY '97, SOMETIME IN JANUARY OF THE FOLLOWING YEAR HE MISSED THE FINAL HEARING. HE RECEIVED A COPY OF THE ORDER IN FEBRUARY.

YOU SAY HE MISSED THE FINAL HEARING. DID HE DO ANYTHING IN THE GEORGIA PROCEEDINGS ON BEHALF OF HIS CLIENT?

NOTHING THAT WAS PRODUCT I HAVE, BECAUSE HE FILED AN ANSWER AND HE -- NOTHING THAT WAS PRODUCTIVE. BECAUSE HE FILED AN ANSWER AND FILED ANSWER TO INTERROGATORIES THAT WAS NEVER SERVED UPON THE COURT. WAS SERVED UPON OPPOSING COUNSEL AND HE NEVER TODAY NOTICE OF APPEARANCE, SO FOR ALL THE WORLD, HE HADN'T DONE ANYTHING,

BUT HE HAD CONTACT WITH OPPOSING COUNSEL.

YOU WERE GOING DOWN THE PATH OF TALKING ABOUT HOW MOST OF THESE THINGS SEEMED TO HAVE HAPPENED WITH HIS ASSOCIATION WITH MR. HOWARD MITCHELL.

YES, MA'AM.

AND I SEE THAT AS A PART OF THIS CASE, BUT HOW DOES THAT RELATE TO THE FACT THAT WHAT BOTHERS ME MOST, IS THE FACT THAT YOUR CLIENT ACTUALLY FALSIFIED ALL 24, IN 24 FORECLOSURE CASES, THE CERTIFICATES OF TITLE. I MEAN, I DON'T THINK THAT, HOW DOES MR. MITCHELL'S INVOLVEMENT RELATE TO YOUR CLIENT MAKING THESE FALSE DOCUMENTS?

I WOULD LIKE TO KNOW THAT. I MEAN, I THINK THAT, AS A CONDITION OF REINSTATEMENT, A PSYCHOLOGICAL EVALUATION AND FOLLOW-UP TREATMENT WOULD BE HELPFUL. I MEAN, YOU HAVE A LAWYER WHO PRACTICED LAW FOR TWELVE YEARS.

FOLLOW-UP TREATMENT FOR WHAT? IN OTHER WORDS TELL US, THEN, WHAT, ORDINARILY A REFEREE AND THIS COURT PROBABLY WOULD CONSIDER AS MITIGATING, IF IT TURNS OUT THAT IT IS LIKE WE HAVE HAD CASES WHERE A LAWYER HAS BEEN GOING THROUGH A DIVORCE PROCEEDING, AND HE HAS BEEN DRINKING OR HE HAS HAD A NERVOUS BREAKDOWN OR WHATEVER, AND SO THAT IS ALL BROUGHT OUT DURING THE -- SO WHAT WAS BROUGHT OUT DURING THE COURSE OF THESE PROCEEDINGS, THAT PROVIDES THE REFEREE OR THIS COURT WITH SOME MITIGATION OF OTHER THAN JUST BLATANT MISCONDUCT ON THE PART OF THE LAWYER?

THE MITIGATION THAT THE REFEREE RECOGNIZED WAS HIS COOPERATION IN THE PROCESS, STIPULATING TO ALL OF THE FACTS AND HIS REMORSE FOR WHAT HAD HAPPENED.

HE HAD STATED REMORSE AT ONE TIME BEFORE TO MR. MITCHELL, ADMITTED TO IT AND SAID I WILL STRAIGHTEN IT OUT AND THEN IMMEDIATELY STARTED LYING AGAIN ABOUT THE PROCESS, SO WHICH REMORSE DO WE START BELIEVING?

THAT'S CORRECT. I MEAN, I THINK THAT IS PROBABLY THE MOST PROBLEMATIC PART OF THIS CASE, QUITE HONESTLY.

BUT YOU ARE TALKING ABOUT PSYCHOLOGICAL COUNSELING OR SOMETHING LIKE THAT. THERE WAS NOTHING PRESENTED HERE, WAS THERE, TO SHOW THAT HE HAS GOT SOME PROBLEM THAT HE COULDN'T CONTROL, ADDICTION OR DIVORCE OR NERVOUS BREAKDOWN TLCHT IS NOTHING IN THIS RECORD TO -- OR NERVOUS BREAKDOWN. THERE IS NOTHING IN THIS RECORD TO SHOW --

I SUGGEST THAT THERE IS NOT AND NOTHING IN CASE LAW TO SUPPORT DISBARMENT.

LET ME ASK YOU THAT QUESTION. IT BECOMES SOMEWHAT PROBLEMATIC. WE HAVE BEEN DOING THIS KIND OF THING, ALL OF US, IN THIS THING WE CALL THE PRACTICE OF LAW, FOR A NUMBER OF YEARS.

YES, SIR.

AND I CAN'T REMEMBER EVER SEEING ANYTHING LIKE THAT THIS OCCUR AND I PRACTICE LAW IN A PRETTY FAST COMMUNITY IN DADE COUNTY, AND TO SAY SIMPLY THAT NOBODY HAS EVER DONE THIS BADLY OR ENGAGED IN THIS, BECAUSE YOU WOULD NEVER CONCEIVE THAT A LAWYER WOULD DO THIS, THAT THAT IS THE BASIS. I AM HAVING TROUBLE WITH THAT LEGAL ARGUMENT, BECAUSE NOBODY ELSE HAS BEEN HAD THIS WAY, SO THEREFORE YOU CAN'T DISBAR THEM. IT SEEMS TO ME THE PUBLIC WOULD LOOK AT THIS AND SAY THAT'S WHAT IS WRONG WITH THE LEGAL PROFESSION, YOU LET PEOPLE LIKE THAT CONTINUE WORKING.

I AM SIMPLY SUGGESTING THAT THERE IS NO CASE LAW TO SUPPORT DISBARMENT AND THAT IS THE STANDARD THAT IS APPLIED. BUT I AM ALSO SUGGESTING TO YOU THAT THE OTHER STANDARD TO CONSIDER IS THE FACT THAT DISBARMENT IS WARRANTED ONLY IN CASES WHERE REHABILITATION IS IMPROBABLE. AND BAR COUNSEL STOOD --

DID THE STANDARDS, THE STANDARDS FOR IMPOSING DISCIPLINE, DO THEY SUGGEST A DISBARMENT IN THESE KINDS OF CASES, WHERE A LAWYER HAS -- A DISBARMENT IN THESE KINDS OF CASES, WHERE A LAWYER HAS MADE, I GO BACK TO THESE FALSE CERTIFICATES OF TITLE THAT PEOPLE WERE SUPPOSED TO USE AND, IN FACT, STARTED USING, TO RESELL THESE TIME SHARES TO OTHER PEOPLE.

THERE IS NO QUESTION IT IS EGREGIOUS CONDUCT, BUT IF YOU LOOK AT THE CLAUSNER CASE UPON WHICH THE BAR RELIES, MR. CLAUSNER LIED TO THE COURT ABOUT IT WHEN THE COURT QUESTIONED HIM ABOUT DISCREPANCIES IN AFFIDAVITS, LIED TO THE STATE ATTORNEYS OFFICE, WHEN HE WAS QUESTIONED UNDER OATH ABOUT IT, BLAMES HIS DAD, WHO FOR HEAVEN SAKES PROBABLY PAID FOR HIS LAW SCHOOL EDUCATION, WAS PROSECUTED FOR FELONIES AND ADJUDICATION WAS WITHHELD AND GOT A THREE-YEAR SUSPENSION. AND THIS COURT HAS HELD A STANDARD THAT MISREPRESENTATION TO COURTS ARE MORE EGREGIOUS THAN THOSE TO OTHER PARTIES, SO BASED ON THAT, I AM NOT BEFORE YOU HEAR, SAYING MR. CHIEF JUSTICE

THE MARSHAL REMINDED YOU THAT YOU ARE IN YOUR REBUTTAL TIME. I DON'T WANT TO CLOSE YOU OUT, BUT YOU MIGHT SAVE THAT. GOOD MORNING.

GOOD MORNING, YOUR HONOR. MAY IT PLEASE THE COURT. MY NAME IS TOM DeBERG. I AM HERE ON BEHALF OF THE FLORIDA BAR.

ONE OF THE THINGS THAT SOMEWHAT CONCERNS ME IS THAT CERTAINLY THE BAR IS THE ENTITY THAT LOOSE TO SEE WHAT IS THE -- THAT LOOKS TO SEE WHAT IS THE RIGHT SANCTION FOR EACH CASE, AND AS I UNDERSTAND IT, IN THIS CASE, THE BAR WAS SEEKING A TWO-YEAR SUSPENSION PLUS A TWO-YEAR PROBATIONARY PERIOD, AND YOU KNOW, THEN CERTAINLY THE REFEREE ENDS UP SAYING, NO, I THINK THAT THIS GUY IS NOT CAPABLE OF PRACTICING AGAIN, AND YOU KNOW, AND DISBARS HIM. HOW DOES THE BAR, YOU KNOW, AND HERE YOU HAVE AN ATTORNEY WHO IS REPRESENTING HIMSELF, IS ASSUMING THAT WHAT THE BAR IS GOING FOR IS A TWO-YEAR SUSPENSION, NOT THAT THAT IS A LIGHT KIND OF THING. HE HAS NOW BEEN PRACTICING FOR, WHEN DID THIS PROCEEDING START IS HE STILL PRACTICING RIGHT NOW, MR. SPRINGER? I BELIEVE SO BUT I AM NOT SURE.

WE DON'T HAVE A SITUATION WHERE MY GOD, AND WHAT YEAR DID THE PROCEEDINGS START?

I BELIEVE THE COMPLAINT WAS FILED SOMETIME AROUND 1999.

SO WE NOW HAVE FOUR YEARS OF LETTING A GUY THAT IS SO AWFUL THAT WE HAVE GOT BETTER DISBAR HIM FROM PRACTICING LAW AND PRESUMABLY HE IS NOT DOING IT, IS THAT IS MY -- SO THAT IS MY, SO A LAWYER WHO IS NOT REPRESENTED DOESN'T PUT ON THE KIND OF WITNESSES THAT MAYBE MR. TOZIAN WAS THERE, MIGHT HAVE PUT ON. WHAT IS THE BAR SAYING TO THAT AND I GUESS, MAYBE THAT IS A FAIRNESS THING MORE THAN YOU KNOW, IN THIS CASE THAT DOES CONCERN ME.

YES. I UNDERSTAND THAT CONCERN AND I HAVE A SIMILAR CONCERN. LET ME MAKE IT VERY CLEAR TO THE COURT FIRST OF ALL, THAT I WAS THE ATTORNEY THAT REPRESENTED THE BAR IN THE UNDERLYING PROCEEDING, NOT AT THE GRIEVANCE COMMITTEE LEVEL BUT AT THE REFEREE LEVEL. ALSO ON MANY OCCASIONS, I ADVISED THE RESPONDENT THAT HE SHOULD OBTAIN COUNSEL. IN FACT, I CONTACTED A NUMBER OF INDIVIDUALS, SUGGESTED THAT THEY PERHAPS TALK WITH HIM AND ENCOURAGE HIM TO GET COUNSEL. AT NO POINT WAS MR.

SPRINGER LED TO BELIEVE THAT THERE WAS A FIXED AMOUNT OF DISCIPLINE THAT I WOULD BE SEEKING AND ALTHOUGH WE WERE CORDIAL, THAT THIS WAS AN ADVERSARY PROCEEDING, AND WHEN WE ALL WALKED IN THAT COURTROOM --

THESE WERE ALL OFF-THE-RECORD.

BUT THE QUESTION WAS, I THINK, ADDRESSING THINGS THAT WERE NOT ON THE RECORD.

I THINK WE HAVE TO LIMIT OURSELVES HERE.

BUT THE BAR SOUGHT A TWO-YEAR SUSPENSION.

IF YOU TAKE A LOOK AT THE RECOMMENDATION, YOUR HONOR, WHEN I MADE THAT RECOMMENDATION TO THE COURT, FIRST OF ALL, THE RECOMMENDATION WAS MADE PRIOR TO HIS CLOSING STATEMENT, AND THAT CLOSING STATEMENT, FROM OUTSIDE APPEARANCES, WOULD SEEM TO BE MR. SPRINGER'S ATTEMPTS TO CONVINCING THE REFEREE THAT HE SHOULD BE DISBARRED. HE MADE A NUMBER OF STATEMENTS -- HE MADE A NUMBER OF STATEMENTS THAT WERE OF GREAT CONCERN. IN ADDITION, I MADE IT VERY CLEAR TO THE REFEREE --

WHAT DO YOU MEAN? WHAT WAS THE STATEMENT THAT SHOULD MOST TURN US?

IT WAS IN HIS CLOSING STATEMENT THAT HE INDICATED TO THE COURT THAT HE IS AN HONEST MAN, THAT THIS IS AN ABERRATION, AND THIS WAS A CHARACTER FLAW. AND THAT HE FURTHER INDICATED THAT THIS CONDUCT THAT HAD OCCURRED AS A MATTER OF EXPEDIENCY. IN ADDITION, THAT WAS THE FIRST TIME THAT THE REFEREE AND IN THAT MATTER THAT THE -- THAT THE REFEREE AND IN THAT MATTER THE BAR HAD OBSERVED MR. SPRINGER. YOU HAVE ALL KINDS OF NONVERBAL CUES AND ALL OF THE THINGS THAT GO TO THE REFEREE MAKING A FINDING OF FACT.

BUT THE PROBLEM IS, WHEN SOMETHING LIKE THAT HAPPENS, IT WOULD BE INCUMBENT ON THE REFEREE TO SET FORTH FACTS AS TO WHAT WAS, IN OTHER WORDS, ARE YOU SAYING THAT THIS IS SOMEBODY THAT IS SERIOUSLY MENTALLY ILL AND THAT WAS WHAT WAS BEING CONVEYED BY THE, OR JUST THAT HE IS JUST A, YOU KNOW, A BAD PERSON, WAS BAD FROM BIRTH AND THIS IS AN EXAMPLE OF IT? IN OTHER WORDS, IT HAS GOT TO BE SOMETHING FOR US TO BE ABLE TO REVIEW, IF THE REFEREE SAW SOMETHING THAT WE CAN'T SEE.

WELL, THAT IS ONE OF THE PROBLEMS, AND I THINK, PERHAPS ONE OF THE REASONS THAT JUSTICE QUINCE HAS PREVIOUSLY POINTED OUT THAT THIS COURT IS -- POINTED OUT THAT THIS COURT IS NOT IN A POSITION THAT THE REFEREE IS, WITH RESPECT TO -- IN A POSITION THAT THE REFEREE IS, WITH RESPECT TO MAKING THOSE KINDS OF CALLS.

BUT AT THAT POINT, SEEING SOMETHING, WOULDN'T WE THEN BE WANTING TO IMMEDIATELY SUSPEND THIS PERSON THAT HAS SOMETHING IN HIM THAT IS GOING TO CONTINUE TO DO THE SAME THING IN THE FUTURE? AND WHY ISN'T A SUBSTANTIAL SUSPENSION, THREE-YEAR SUSPENSION, ADEQUATE, AND WITH A PROBATIONARY PERIOD OF SUPERVISION, ADEQUATE TO FULFILL THE THREE PURPOSES OF THE YOU KNOW, DISCIPLINE?

DEFERENCE TO FINDINGS OF FACT BY THE REFEREE -- THIS COURT GIVES DEFERENCE TO FINDINGS OF FACT BY THE REFEREE, AND ONE OF THE REASONS THAT I WOULD SUGGEST THAT A SHORT OR LONG-TERM SUSPENSION IS INADEQUATE, IS FAIRLY WELL LAID OUT BY THE REFEREE IN HIS FINDINGS, AND THAT IS WHERE HE SAYS BASICALLY THAT HE NOTES THAT COOPERATION WITH THE FLORIDA BAR, HE NOTES THE REMORSE, BUT THESE ARE OUTWEIGHED BY OTHER FACTORS, AND HE GOES ON TO SAY THAT, MORE EGREGIOUS IS THE DEFECT HE REFERS TO AS ONE OF PERSONALITY. IT IS MORE. IT IS A DEFECT, IF NOT AN ABSOLUTE ABSENCE OF HONESTY, INTEGRITY AND ETHICAL JUDGMENT. I HAVEN'T SEEN THAT KIND OF STATEMENT IN MANY CASES.

I THINK THE LAST ONE I SAW WAS PROBABLY THE F. LEE BAILEY CASE, AND THAT IS ONE OF THE FINDINGS OF THE REFEREE THAT DISTINGUISHES THIS CASE FROM THOSE CASES SUCH AS THE CASE WHERE THE YOUNG MAN FALSIFIED REAFFIRMATIONS OF DEBT, PRESENTED IT --

BASICALLY WE WOULD BE SAYING THAT, IF SOME LAWYER DOES THINGS LIKE THIS OVER A PERIOD OF TIME, AND DOESN'T HAVE TESTIMONY TO SHOW THAT WHAT GAVE RISE TO THIS WAS SOME TYPE OF, AGAIN, LIFE EVENT, LIKE A DIVORCE, AS JUSTICE ANSTEAD MENTIONED, OR DEPRESSION OR ADDICTION, AND SO HE DOESN'T SEEK HELP THROUGH FLAW INC., THAT SINCE WE CAN'T EXPLAIN IT THROUGH THOSE OTHER THINGS, IT MUST BE A CHARACTER FLAW THAT, THEN, MUST LEAD TO DISBARMENT, BECAUSE WE CAN'T AFFORD TO HAVE A PERSON THAT WE CAN'T FIGURE OUT HOW TO REHABILITATE, YOU KNOW, AND THE CONCERN I HAVE IS I AM NOT SURE HOW YOU QUANTIFY. I MEAN IT IS CERTAINLY NOT A DSM DIAGNOSIS, A PERSON WITH A CHARACTER FLAW. THERE IS NOTHING THAT THE BAR SHOWED THAT THIS IS A GUY THAT, THROUGHOUT LAW SCHOOL OR HE HAS GOT SOME HISTORY IN LAW SCHOOL, IN HIS LIFE THAT, HE KILLED ANIMALS, YOU KNOW, IS AN ANTISOCIAL PERSON OR SOMETHING, AND SO THAT CONCERNS PEE ABOUT THE PRECEDENT WE ARE SET -- CONCERNS ME, ABOUT THE PRECEDENT WE ARE SETTING TO DISBAR THIS PERSON. I SHARE THE CONCERN THAT WHAT HAPPENED HERE IS TERRIBLE AND THE LYING AND ALL OF THIS, BUT HIM JUST CONCERNED FOR HOW WE -- BUT I AM JUST CONCERNED FOR HOW WE QUANTIFY THIS ABS OF HONESTY, INTEGRITY AND ETHICAL JUDGMENT, BECAUSE IT SEEMS TO ME THAT WE COULD SAY THAT ABOUT A WHOLE LOT OF LAWYERS THAT WE HAVE GIVEN LENGTHY SUSPENSIONS IT TO.

THERE ARE MANY CASES IN WHICH THAT KIND OF DISHONESTY IS REFLECTED, BUT AS THE JUSTICE NOTED, THERE AREN'T MANY QUESTIONS WHERE IT IS SEEN TO THIS EXTENT THIS. IS A CASE WHERE MR. SPRINGER WENT IN FRONT OF THE BOARD, AFTER HIS FALSIFYING OF THE CERTIFICATES OF TITLE WERE DEFECTED -- DETECTED, AND HE WENT AND EXPRESSED GREAT REMORSE, AND HE TURNED RIGHT AROUND AND HE LIED IN OTHER CASES. HE, PRIOR TO THAT HAD MET WITH MR. MITCHELL AND EXPRESSED HIS REMORSE TO MR. MITCHELL. HE EVEN SIGNED A DOCUMENT, SAYING THAT HE WOULD EXPEDITE CORRECTING THE PROBLEMS.

BUT ISN'T THE FACT THAT THIS, WHO WAS THE CLIENT THAT CAME AND SAID THAT THEY TN CONTINUED TO KEEP HIM ON -- THAT THEY CONTINUED TO KEEP HIM ON AS THEIR ATTORNEY. ANOTHER BOARD DECIDED TO KEEP E KEEP HIM ON AS THEIR ATTORNEY. THERE WAS A NEW -- DECIDED -- TO KEEP HIM ON AS THEIR ATTORNEY. HE SEND THE ASSURANCES BY MR. SPRINGER.

WHO CAME TO THE HEARING? DID SOMEONE CAME TO THE HEARING AND SAY STILL, EVEN AFTER HE HAD DONE THIS AGAIN, THAT THEY DECIDED TO STILL KEEP HIM ON AS THEIR ATTORNEY?

AND HE IS STILL THERE, AND THAT INDIVIDUAL WAS A MAN BY THE NAME OF TREAD MORE, WHO IS THE CURRENT HEAD OF THE BOARD, AND -- PREDMORE, WHO IS THE CURRENT HEAD OF THE BOARD, AND I THINK THAT IF YOU TAKE A LOOK AT MR. PREDMORE'S TESTIMONY, HE STATED, I HAD NO IDEA ABOUT THE FALSE CERTIFICATES OF TITLE. HE DID KNOW THAT THEY WERE CORRECTING SOME TYPE OF MULTIPLE OWNERSHIP SITUATION AND THAT THEY GAVE THE INDIVIDUALS WHO HAD BEEN GIVEN THE FALSE CERTIFICATES, OTHER UNITS.

HE DIDN'T KNOW ABOUT THAT UNTIL HE CAME TO THE HEARING?

WELL, IT WAS VERY CONFUSING, AND IT IS UNFORTUNATE THAT YOU ARE NOT ABLE TO WATCH HIS TESTIMONY, BECAUSE WELL, AGAIN, I WOULD HAVE TO GO OUTSIDE THE RECORD, BUT THE REFEREE OBSERVED MR. PREDMORE AND GAVE WEIGHT TO WHAT HE SAID, BUT HIS STATEMENT WAS --

REFRESH US AS TO HOW THIS ALL ENDED UP, AS FAR AS DAMAGE TO THE CLIENTS. WAS THE CLIENT IN THE GEORGIA PROCEEDINGS, WAS THERE RESTITUTION MADE IN THAT CASE?

NO. THE TESTMONY -- THE TESTIMONY OF MR. WILLIAMS, REGARDING THAT CASE, WAS THAT, IN HIS OPINION, HE LOST THE RIGHT TO CLAIM OVER \$20,000-SOME INTEREST IN THE PROPERTY OR RATHER THAT HIS CORPORATION D.

AND THERE WAS NO RESTITUTION.

NO. THERE WAS NO RESTITUTION AND THERE WAS NO ULTIMATE DETERMINATION WITH RESPECT TO THAT CASE. BUT THAT WASN'T AN ISOLATED INCIDENT. IN THE CONDOMINIUM CASES, THERE MAY OR MAY NOT HAVE BEEN DAMAGE IN TERMS OF THE ACTUAL CONDOMINIUM, ITSELF, BECAUSE THEY GAVE ALTERNATE, THERE WERE TIME SHARES, THEY GAVE ALTERNATE TIME SHARES TO THE INDIVIDUALS WHO HAD GOTTEN THE FALSE CERTIFICATES.

WHAT CASES DO YOU CITE THAT, WHERE WE HAVE IMPOSED DISBARMENT UNDER SIMILAR CIRCUMSTANCES?

I FOUND NO CASE OF SIMILAR CIRCUMSTANCES.

WHAT DO YOU SAY ABOUT CLAUSENER, WHICH DOES SOUND LIKE THAT IS PRETTY EGREGIOUS, MAY BE MORE EGREGIOUS THAN, ALTHOUGH IT IS, AGAIN, HARD, WHEN YOU GETTING INTO THESE KINDS OF THINGS, TO MAKE THESE RELATIVE JUDGMENTS, BUT WHAT ABOUT CLAUSENER?

YES. I THOUGHT MR. TOZIAN DID AN EXCELLENT JOB OF ARGUING THAT MR. CLAUSENER SHOULD HAVE BEEN DISBARRED. BUT WHAT MR. CLAUSENER DID WAS HE WAS A DEBT COLLECTOR. AND HE HAD SOME REAFFIRMATIONS OF DEBT, AND HE NEEDED TO PROVIDE THOSE TO THE COURT, IN ORDER FOR THE CASES TO NOT BE ABATED. HAD THEY BEEN ABATE THEED -- ABATED, HE COULD HAVE GONE BACK AND GOTTEN THE REAFFIRMATIONS BUT THERE WOULD HAVE BEEN ADDITIONAL COSTS, SO HE DUMB I HAD UP THE SIXTH, AND -- DUMMYED UP THE SIGNATURES, AND WHEN THE COURT FIRST ASKED HIM ABOUT THE SIGNATURE, HE DENIED IT AND THE STATE ATTORNEY INVESTIGATOR CAME TO HIM AND HE DENIED IT AGAIN, AND THEN THEY CAME TO HIM AND SHOWED HIM EVIDENCE FROM A HANDWRITING EXPERT, AND HE THEN ADMIT WHAT HAD HE HAD DONE. HE WAS CHARGED. HE PLED TO MISDEMEANORS, BUT THIS WAS ALL ONE ISOLATED INCIDENT, AND I WOULD SUGGEST THAT A GREAT DIFFERENCE WAS THE DEGREE OF REMORSE AND THE FACT THAT HE DID NOT REPAY, REPEAT THAT TYPE OF BEHAVIOR.

LET ME ASK YOU THIS, NOW, WE HAVE GOT A SITUATION HERE, AS I UNDERSTAND THE RECORD, THAT THE MISCONDUCT WHICH THE BAR CLAIMED IN THIS CASE OCCURRED FROM 1997 UP AND THROUGH 2000, CORRECT?

THAT'S CORRECT.

THE MACK CASE OCCURRED IN 1999, RIGHT?

WHICH CASE ARE YOU REFERRING TO? THE CLAUSENER?

THE DUI. NO. THE PUBLIC REPRIMAND.

YES. THAT WAS PERHAPS '99, '98, I AM NOT SURE.

OKAY. NOW, THIS PERSON HAS BEEN OUT THERE PRACTICING LAW, WITHOUT BEING SUSPENDED. THERE HAS BEEN NO ATTEMPT TO GET AN EMERGENCY SUSPENSION. HE HAS BEEN UNDER A REFEREE'S ORDER OF DISBARMENT SINCE FEBRUARY. NO EMERGENCY SUSPENSION SOUGHT BY THE BAR. HAS THERE BEEN ANYTHING IN THIS RECORD THAT SHOWS THAT, SINCE 2000, THAT HE HAS BEEN IN VIOLATION OF THE RULE? HAS THERE BEEN ANY GRIEVANCE FILED SINCE THEN?

NO. SO SINCE 2000, WE HAVE NO BASIS, EVEN THOUGH HE HAS BEEN OUT THERE PRACTICING LAW

FOR ALMOST THREE YEARS, THEN, THERE HAS BEEN NO EVIDENCE OF ANY FURTHER GRIEVANCES. IS THAT --

THAT'S CORRECT. THERE IS NO MISCONDUCT THAT HAS BEEN BROUGHT TO OUR ATTENTION.

YOU WERE SAYING EARLIER, THAT YOU DIDN'T FIND A CASE WITH SIMILAR CIRCUMSTANCES, BUT WE HAVE DISBARRED ATTORNEYS IN THE PAST. CORRECT? WE HAVE ISSUED OPINIONS ON THOSE DISBARMENT CASES, RIGHT?

YES.

SO WHAT DISBARMENT CASE IS MOST LIKE THIS CASE WOULD BE, OR ALL OF THEM JUST TOTALLY DIFFERENT?

I DID A GREAT DEAL OF RESEARCH. I FOUND NO CASE THAT WAS SIMILAR TO THIS. I FOUND NO CASE WHERE ANYONE EXPRESSED THAT DEGREE OF REMORSE AND THEN CONTINUED TO MAKE MISREPRESENTATIONS. IT WAS A FALSIFIED DOCUMENT, NOT ONLY IN THE CONDOMINIUM SITUATION, BUT THEY, ALSO, DRAFTSED UP FALSE DOCUMENTS TO SHOW TO THEIR CLIENT IN OTHER SITUATIONS, WHERE THEY CLAIMED, FOR EXAMPLE, THAT THEY HAD OBTAINED A GARNISHMENT, A JUDGMENT, WHEN IN FACT, THEY HADN'T FILED SUIT.

BUT, AGAIN, WE HAVE DISBARRED MANY LAWYERS.

MANY LAWYERS, AND I KNOW OF NONE LIKE THIS.

BUT I GUESS THOSE LAWYERS HAVE DONE THINGS THAT ARE MORE AWFUL, APPARENTLY, THAN SOME OF THE CONDUCT HERE. THEY HAVE PERJURED THEMSELVES, ISN'T THAT CORRECT?

WELL --

THEY HAVE --

INDIVIDUALS HAVE BEEN DISBARRED FOR A VARIETY OF REASONS.

UNLAWFUL KICKBACK SCHEMES, THEFT OF FUNDS FROM THE CLIENT. TRUST ACCOUNTS.

ABANDONING PRACTICE, REPRESENTATIVE OFF EBZ. -O-OFFENSES.

LIING IN COURT.

YES.

THE MARCH HALL HAS INDICATED THAT -- THE MARSHAL HAS INDICATED THAT WE HAVE CONSUMED YOUR TIME.

THANK YOU VERY MUCH.

CHIEF JUSTICE: HOW MUCH TIME LEFT ON REBUTTAL? COUNSEL.

JUSTICE QUINCE, IN ANSWER TO YOUR QUESTION ABOUT THE STANDARDS, YOU SAY THE STANDARDS SUPPORT DISBARMENT. THE STANDARDS ALSO SUPPORT SUSPENSION. IF THE STANDARD 442 SAYS SUSPENSION IS APPROPRIATE WHEN A LAWYER KNOWINGLY FAILS TO PERFORM SERVICES FOR A CLIENT AND CAUSE INJURY OR POTENTIAL INJURY TO A CLIENT.

UP HERE, WHEN WE ARE UP HERE, WE ARE HERE TO DETERMINE WHETHER THE REFEREE WAS CORRECT IN IMPOSEING DISBARMENT, SO IF THE STANDARDS SUPPORT DISBARMENT, THEN DON'T

WE HAVE TO APPROVE THE ORDER?

I DON'T THINK YOU DO, BECAUSE THE CASE LAW SAYS IT HAS TO BE BASED UPON THE REASONABLE BASIS FOR THE DISCIPLINE HAS TO BE BASED UPON EXISTING CASE LAW.

RIGHT, BUT YOU ARE TALKING ABOUT THE STANDARDS, THOUGH, WHEN YOU ARE SPECIFICALLY TALKING ABOUT THE STANDARDS, IF THE STANDARDS SUPPORT DISBARMENT, THEN WE DON'T LOOK AT THAT PRONG ANYMORE. NOW WE HAVE GOT TO GO TO THE CASE LAW, BUT THE STANDARDS DO SUPPORT IT, SO UNDER THE STANDARDS, WE WOULD HAVE TO APPROVE THE ORDER.

HAVING DONE THIS FOR MANY, MANY YEARS, I DON'T FIND THE STANDARDS TO BE PARTICULARLY HELPFUL MYSELF. I THINK THEY ARE HELPFUL TO JUDGE THAT IS DON'T HANDLE THESE CASES EVERYDAY.

WOULD YOU AGREE THAT, IT LOOKS LIKE IF YOU LOOK AT HOROWITZ OR SOME OF THESE CASES THAT DON'T INVOLVE, NECESSARILY, THEFT OF TRUST ACCOUNTS, IT SEEMS THAT THEIR COMMON THEME IS THERE WAS A PRIOR DISCIPLINARY ACTION, A SUSPENSION, AND THEN THEY DID THIS AGAIN. WOULD THAT BE THE DISTINCTION THAT YOU WOULD MAKE, BETWEEN SOMETHING LIKE HOROWITZ AND THIS CASE?

YES. IN OUR CASE, EVEN THOUGH WE HAVE A PRIOR DISCIPLINE AREA ACTION, IT DOESN'T -- A PRIOR DISCIPLINARY ACTION, IT DOESN'T DEAL WITH THE --

WHAT HAPPENED IN THIS CASE, THOUGH, IS 1997, '98 WENT ON AND THE BAR FOUND OUT ABOUT IT AT THAT TIME AND BROUGHT THE ACTION, AND THERE WAS A REPRIMAND, AND THEN THESE OTHERS CAME TO LIGHT. WOULD YOU AGREE AT THAT POINT, UNDER OUR CASE LAW, THAT THERE WOULD BE --

THAT WOULD AND MUCH MORE SERIOUS SITUATION.

IS THAT, SO, YOU DON'T EQUATE THE FACT THAT HE EXPRESSED REMORSE AND SAID HE WOULDN'T DO IT AGAIN TO THE BOARD, AND DID IF, TO SAYING -- AND DID IT, ON TO SAYING TO THE COURT -- TO SAYING TO THE COURT AND TO --

I WOULDN'T --

I DIDN'T MEAN IT, AND I GUESS, YOU KNOW, IN THIS CASE, HE STIPULATED TO EVERYTHING IN TERMS OF THE GUILT, CORRECT?

I AM SOIRT.

HE STIPULATED TO HIS GUILT -- I AM SORRY?

HE STIPULATED TO HIS GUILT.

YES, HE DID.

SO TELL ME THE STINGS BETWEEN WHAT MR. DeBERG IS MAKING -- THE DISTINCTION BETWEEN WHAT MR. DeBERG IS MAKING A POINT THAT, AFTER HE WAS CAUGHT HE TOLD THEM I WOULDN'T DO IT AND THEN HE PROCEEDS TO DO IT AGAIN. WHY ISN'T THAT THE SAME AS TELLING THE BAR AND THE, YOU KNOW, THE REFEREE I WON'T DO IT AGAIN AND THEN DOING IT AGAIN?

WELL, IN THIS IS HE NOT TOURION CASE -- IN THE CENTURION CASE, HE HAD A SITUATION WHERE HE TOLD THE BAR HE WOULDN'T DO SOMETHING AND HE DID IT AGAIN, BUT IT IS THE HAMMER

OF THE BAR, AND UNTIL THIS COURT COMES DOWN ON THE LAWYER, IT DOESN'T HAVE THE SAME IMPACT. SO HE GOT CAUGHT EARLIER. HE SAID I WILL STRAIGHTEN THIS OUT AND HE DIDN'T FOLLOW-UP, AND MY RESPONSE TO THAT --

DOES IT HAVE THE SAME IMPACT?

I AM SORRY.

YOU SAID IT DOESN'T HAVE THE SAME IMPACT, BUT ISN'T THE CLIENT, REALLY, STILL JUST AS AFFECTED? I MEAN, WHAT ARE WE GOING TO SANCTION HIM, HE CAN MAKE THESE MISREPRESENTATION ANSWER LIE TO HIS CLIENT, BUT --

YEAH. THE CLIENT IS JUST AS AFFECTED. I AM SAYING THE IMPACT UPON THE LAWYER, HIMSELF, IN TERMS OF THE PENALTY THAT IS IMPOSED. THERE IS NO PENALTY OR THERE WAS NO PENALTY, I PRESUME, WHEN HE CAME CLEAN WITH THEM THE FIRST TIME, BECAUSE THEY OFFERED TO LET HIM TO FIX THINGS AND TO CONTINUE ON AS COUNSEL.

DOES THE RECORD SHOW HERE, AS FAR AS THE DAMAGE TO HIS CLIENTS IS CONCERNED, WHETHER THERE HAS BEEN ANY REMEDY FOR THAT?

THE ONLY REFERENCE TO A RESTITUTION CLAIM, I BELIEVE, IS IN THAT GEORGIA CASE, WHERE THE NUMBER IS \$28,000 OR \$29,000. I DON'T BELIEVE THE RECORD ADDRESSES A LOSS, WITH REGARD TO THE CERTIFICATES OF TITLE.

HAVE ALL OF THE TITLES BEEN CLEARED ON THOSE UNITS?

I BELIEVE AT THE TIME OF THE HEARING, THERE WAS TESTIMONY THAT THEY HAD BEEN. THAT THEY HAD BEEN CLEARED UP. THERE WERE APPARENTLY TWO PEOPLE THAT HAD GOTTEN SUBSTITUTE UNITS FOR THE UNITS THAT THEY HAD PURCHASED THAT THERE WASN'T CLEAR TITLE TO.

CHIEF JUSTICE: ALL RIGHT. WE HAVE TO TAKE IT FROM HERE. THANK YOU BOTH, VERY MUCH. THE COURT IS GOING TO TAKE ITS MORNING 15-MINUTE RECESS AT THIS TIME, BEFORE WE HEAR THE LAST TWO CASES. WE WILL STAND IN RECESS.