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**The Florida Bar v. Elizabeth Martinez-Genova
SC04-2365**

PLEASE RISE.

>> GOOD MORNING.

GOOD MORNING.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> OKAY.

WE'RE READY ON THE NEXT
CASE, THE THIRD CASE, THE
FLORIDA BAR VERSUS ELIZABETH
MARTINEZ-GENOVA.

>> GOOD MORNING.

MY NAME IS BARNABY MIN AND I
REP SEN THE FLORIDA BAR.

THREE-YEAR SUSPENSION
INSTEAD FOR TWO REASONS:
NUMBER ONE, A FINDING OF IN
TEXTALING MISAPRORTION OF
TRUST FUND.

THERE IS PRESUMPTION.

>> I KNOW USUALLY WE ARE
KNOWLEDGEABLE ABOUT THE
FACS, BUT I WOULD LAKE TO
UNDERSTAND EXACTLY, THE
TRUST FUND VIOLATION WERE
TAKING OTHER CLIENT'S MONEY
OR WAS BECAUSE THE
ALLEGATION IS A PART OF THE
SCAM THAT WAS BEING
PERPETRATED BY OUR CLIENT.

>> IT WAS BOTH, YOUR HONOR.

>> WHAT HAPPENED IS, THIRD-PARTY
RESPONSE WITH OPERATING
COUNTS BUT IT WAS SUPPOSED
TO BE A TRUST.

SHE WAS SUPPOSED TO HOLD AN
TRUST AND APPLY TO FEES
DURING THE ADDITIONAL LEN
AKBRAEMENT.

HOLDING THE FUN AND TRUST,
RESPONDER WOULD IMMEDIATELY
DISPERSE THOSE FUNDS BUT
ALSO TO CLIENT AND ALSO TO

OTHER PARTIES.

THOSE FUNDS TO REIMBURSE THEM
SO IT TO BE SELFISH TAKING
THE MONEY AS WELL AS
PARTICIPATING IN THIS SCAM.

>> THE AMOUNT INVOLVED?

WHAT THE BAR ALLEGES WITH A
SCHEME HERE.

HELP US FLUSH OUT, THIS IS
ONE OF THOSE CASES THAT WE
ARE FAMILIAR.

>> JUDGE, THE MAIN THING WAS
HE STATED HIS HIS COMPANY
TRANSFERRED \$50,000 TO
RESPOND APT FOR FOLDING
TRUST FOR THE LEN AGREEMENT.
AS SOON AS THEY RECEIVED THE
\$50,000.

IT GOES TO THE BANK TO MAKE
WIRE TRANSFERS TO TWO OTHER
PARTIES THAT HAD THEIR
FUNDS, MADE CASH
WITHDRAWALS, SUBSTANTIAL
CASH WITHDRAWALS AN \$8,000
AND THEN RESPONDER WOULD USE
REMAINING FUNDS BY GOING TO
ATM WITHDRAWAL, WALGREEN'S,
ECKERD, TAKING THE MANY
WITHOUT THE PERMISSION OF
THE THIRD PARTY.

THE THIRD PARTY SIGNED AN
ACTUAL AGREEMENT, RECEIVED
LETTERS SAYING THEY WERE TO
BE HELD, WERE TO BE APPLIED
TO THE FEES, THEY STATED THE
FEES WITHIN A DAY OR TWO
RESPONDED IMMEDIATELY.

>> IS IT CORRECT, THIS BANK
ACCOUNT WAS SET UP BY IN
CONJUNCTION -- NO, YOUR
HONOR.

I BELIEVE THE FACTS SHOWED
THE BANK ACCOUNT WAS
ALREADY, IT WAS AN OPERATING
ACCOUNT THAT SHE HAD WELL
BEFORE SHE KNEW HIM.

>> OKAY.

WHAT FUNDS DID IT HAVE IN IT
AT THAT POINT?

>> IT IS VERY MINIMAL.

THE EVIDENCE SHOWED THAT HIS
FIRST AUDIT IN OCTOBER OF
2003 SHOWED THERE WAS MAYBE
\$18 OR SO AS THE STARTING

BALANCE.

RECEIVED \$15,000 IMMEDIATELY
DISBERSED THOSE FUNS TO
RECEIVE ANOTHER \$8,000 TO
DISPERSE THOSE FUNDS
RECEIVED ANOTHER \$52,000.

>> THE \$15,000 OUT OF THIS
KEEP IT -- ACCOUNT, WAS IT
DESIGNATED, WAS IT A
PERSONAL ACCOUNT?

AN ESCROW ACCOUNT?
HOW IS IT DESIGNATED?

>> IT WAS AN OPERATING
ACCOUNT.

>> IT WAS OPERATING?

>> CORRECT.

>> DID SHE HAVE AN OFFICE?

>> AN FIS.

>> PHYSICAL OFFICE?

>> MY UNDER STANDING IS THE
HAD AN OFFICE THAT SHE
WORKED OUT OF, SHE HAD
LETERHEAD, IT SHOWS THE
RESPONDENT SENT LETTERS TO
COME PLAY AIN'T WITH THE
ADDRESS ON IT CONFIRMING THE
AGREEMENT THAT THE
COMPLAINANT HAD.

THE AGREEMENT SPECIFICALLY
STATED THE FUNDS SHOULD BE
HELD IN TRUST.

>> GO AHEAD.

I JUST WANT TO -- BECAUSE TO
ME, WHAT THE BAR IS SAY,
WHAT THIS ESTABLISHES IS
TRUE, THIS IS FAR WORSE THAN
VIOLATIONS WE HAD WHERE
SOMEBODY HAD QUESTION OF
TIMING AM THEY ARE TRYING TO
LEVERAGE.

THESE FUNDS WHICH YOU ARE
SAYING, THEY HAVE NEVER
GOING TO BE HEARD TO HAVE
ANY PART OF THE FEE.
THEY WERE ALL TO BE, THEY
WERE PUT IN OPERATING
ACCOUNT OR ESCROW ACCOUNT OR
TRUST ACCOUNT, THEY WERE
THERE TO BE HELD TO DO
SOMETHING WITH ONCE THE LOAN
WAS APPROVED.

IS THAT THE CONDITION?

>> CORRECT.

>> CORRECT.

>> YES.

THE FEES TO BE HELD IN TRUST
AN ACCREDITED TO THE CLOSING
FEES.

24R WAS ALSO TESTIMONY THAT
IF THE PERSON SEEKING THE
LOAN HAD DEFAULTED THEN IT
COULD BE FORFEITED IF HE HAD
FORFEITED AND NOT OBTAIN THE
FEES, REFUNDED BACK TO THE
COME PLANT ANT OR THE
CLIENT.

>> AS WE LOOK AT THIS CASE,
IT REALLY APPEARS THAT IT IS
CLEAR THAT THE MONEY SHOULD
HAVE BEEN PLACED IN TRUST
AND MANAGED IN A DIFFERENT
WAY.

IT ALMOST APPEARS TO BE
ADMISSION OF REMORSE FOR
WHAT HAS OCCURRED.

IT IS EGREGIOUS.

I THINK REALLY THE ISSUE
THAT WE ARE GOING TO HAVE TO
STRUGGLE WITH TODAY IS GOING
TO BE THE OVERLAY OF DRUG
USE, DRUG CONSUMPTION, THOSE
KIND OF THINGS, IT SEEMS, OR
DO YOU DISAGREE WITH THAT?

THIS IS WHAT IT SEEMS THIS
CASE IS REALLY ABOUT.

DOES THAT MITIGATE WHAT
WOULD NORMALLY HAPPEN IF
WITH HEA NOD DRUGS, THIS
WOULD BE VERYK VERY CLEAR.

I AGREE WITH YOU, YOUR
HONOR.

>> THE QUESTION REALLY
BECOMES:

HOW DO WE USE THAT IN
MITIGATION?

DO WE USE IT IN MITIGATION?

DOES THAT TRANSFORM WHAT MAY
BE SOME KIND OF SUSPENSION?

THAT IS WHAT I THINK WE NEED
TO HONE IN ON PLEASE.

>> ABSOLUTELY THIS COURT HAS
CONSIDERED MITIGATING
FACTORS IN DETERMINING
WHETHER THIS IT HAS BEEN
OVERCOME.

HOW THE MAJORITY OF CASES,
THIS COURT HAS STATED,
RESPONDENT SHOULD BE

DISBARED FROM THE TRUST
FUND.

I TURN YOUR HONOR'S
ATTENTION TO THE CASE.
THAT ATTORNEY MISAPPROPRIATE
TRUST FUND.

THIS COURT FOUND THAT ONE OF
THE MAIN REASONS, THE
UNDERLYING REASONS WAS
BECAUSE OF SUBSTANCE ABUSE
PROBLEM.

AFTER MITIGATING FACTORS IN
ADDITION TO THE SUBSTANTIAL
ABUSE, THE FACT NO PAYBACK
HAD NO PRIOR DISCIPLINE.
NEVERTHELESS, EVEN THOUGH IT
WAS THE MAIN FACTOR IN THE
FRUNS, THIS COURT FINING
THAT RESPONDENT PARTICIPATED
OR MISAPPROPRIATED TRUST
FUNDS OVER A SUBSTANTIALLY
PERIOD OF TIME AND STILL
ABLE TO FUNCTION AS AN
ATTORNEY.

THAT IS WHAT WE HAVE ON THE
PRESS EATEN CASE.

THE ATTORNEY MISS MARTINEZ-
GENOVADIS M APPROPRIATE FUND
OVER SUBSTANTIAL PERIOD OF
TIME AND FOUND THAT TO BE
ONE OF THING A GRATEth VAING
FACTORS THAT RESPONDENT THE
FUND OVER I BELIEVE A YEAR
PERIOD.

TENS OF THOUSANDS OF DOLLARS
OVER AN OVER AGAIN.

ADDITIONALLY, EVEN THOUGH
MISS MARTINEZ GENOVA DID
HAVE A DRUG PROBLEM, SHE WAS
ABLE TO FUNCTION AS AN
ATTORNEY.

THE RESPONDENT WAS ABLE TO
HANDLE A NUMBER OF COMPLEX
CASE, COME IN, TESTIFY
DURING THE FINAL HEARING THE
RESPONDENT WAS A CONFIDENT
ATTORNEY WHO HANDLED
JUDGMENT ISSUES WAS ABLE TO
FIND LITIGATION CASES WHO
WAS ABLE TO PAY HER BILLS
AND RUN A LAW OFFICE AND WAS
ABLE TO BE SUCCESSFUL
ATTORNEY.

>> WE HAVE BEEN SENDING THE

MAYBE A WRONG MESSAGE THROUGH CASES SUCH AS MASON, THOSE TYPES OF CASES BECAUSE BOTH OF THOSE CASES, THERE WERE TRUST ACCOUNT VIOLATION, MAYBE NOT TO THE EXTENT HERE, BUT, I MEAN, THERE IS CERTAINLY A VIEW THAT TRUST ACCOUNTS AND THEFT FROM TRUST ACCOUNTS CANNOT BE TOLERATED UNDER ANY CIRCUMSTANCES AND THEN, THERE MAY BE ANOTHER VIEW THAT, WELL, MAYBE, MAYBE CERTAIN THINGS MAY MITIGATE SOMEWHAT, WHAT IS YOUR VIEW WITH REGARD TO OUR STATUS OF OUR LAW IN THIS AREA?

>> THAT IS THE DOCUMENT, YOUR HONOR.

THIS COURT IMPOSE SANCTIONS. IT DOES CONCEIVE THOSE CASES ARE DISTINGUISHABLE ABOUT FROM THE PRESS ACCEPT CASE. IT WAS UNINTENTIONAL VIOLATION, THAT WAS DUE TO ACCOUNTING ERRORS, NOW, THAT WAS ISOLATED UNITED STATES DEFENDANT IN WHICH IT SPENT A CONSIDERABLE AMOUNT OF TIME. THAT IS NOT WHAT WE HAVE IN THE CASE.

IN THE CASE, IT IS NOT AN ACCOUNTING ERROR, IT IS A SCHEME THAT THE DEFENDANT TURNED INTO IT.

>> ADDITIONAL IF I REMEMBER CORRECTLY, THERE HAD BEEN RESTITUTION.

>> HERE THERE HAS BEEN NO RESTITUTION.

>> CORRECT.

THEY FOUND THAT TO BE AN AGGRAVATED FACTOR. THE DEFENDANT MADE NO ATTEMPTS.

>> WHAT DOES THE RECORD TELL US ABOUT WHAT HAPPENED TO HIM IN TERMS OF ANY CRIMINAL PROSECUTION OR OTHER -- DOES THE RECORD TELL US ANYTHING?

>> THE RECORD IS SEE YOU LEN.

WHAT DOES THE RECORD TELL US

IN TERMS OF HIS INVOLVEMENT
AND MANIPULATION OF THIS
SITUATION?

>> YOUR HONOR, THE
RESPONDENT ARGUED TO SHE WAS
SCAMMED JUST LIKE THE OTHER
THIRD PARTIES.

TESTIMONY IN THE CASE IS NOT
CREDIBLE.

RESPONDENT KNEW WHAT SHE WAS
DOING, WILLFULLY IGNORED BY
ACCEPTING THE THIRD PARTY
FUNDS WHICH WERE SUPPOSED TO
BE HELD AND RATHER THAN HOLD
THUS, DISPERSE THOSE FUNDS
AND IN FACT ENGAGED WITH
THE QLIP.

>> DID SHE SAY THAT IN HER
DEFENCE, I MEAN, SHE WAS
REFORCEFUL, DID SHE
ACKNOWLEDGE THAT THOSE FUNDS
WERE NEVER HEARD TO ACCEPT,
IN OTHER WORDS, GAIN, IT IS
AN ISSUE, WELL, YOU TOOK
TRUST FUNDS.

IT IS A QUESTION OF THE
TIMING OF IT.

IS IT HER POSITION THAT
THESE WERE FEES THAT WERE
DUE FOR THE TRANSACTION IN
QUESTIONS?

>> THEY ARGUED DURING THE
FINAL HEARING WAS.

THE FEES BELONG TO THE
CLIENT.

THERE IS EVIDENCE IN THE
RECORD NUMBER 1 AND NUMBER
3.

THEY WROTE LETTERS TO THE
THIRD PARTY STATING THE
FUNDS WERE GOING TO BE HELD
IN TRUST SO RESPONDENT BY
SIGNING THE LETTER STATING
THAT THE FUNDS WILL BE HELD
IN TRUST PURSUANT TO THE
LOAN AGREEMENT KNEW THOSE
WERE SUPPOSED TO BE HELD IN
TRUST AND IGNORED
RESPONSIBILITY BY THE FUND.

>> ADMITTED TO THE BAR IN
2,000.

AS SOLO PRACTITIONER,
ANYTHING IN THE RECORD AS TO
HER AGE, WAS THIS A SECOND

CAN I REAR?

CAREER?

WHAT THE CIRCUMSTANCES WERE?

I KNOW SHE HAD A SON THAT --
SON THAT SHE LOST AS A
RESULT -- NOT LOST IN TERMS
OF DIED, BUT LOST CUSTODY OF
AS A RESULT OF THE DRUG HAN
ABOUT IT.

>> THE RESPOND ENT DID
TESTIFY CONCERNING HER PAST.
SHE WENT TO LAW SCHOOL.
SHE WORK AS LEGAL SECRETARY.
SHE WORKED AS PARALEGAL FOR
VARIOUS FIRMS AN TEMPORARY
AGENCY, SHE DID HAVE A
PROBLEM PASSING THE BAR EXAM
THE FIRST TIME DUE TO A
NUMBER OF PROBLEMS BUT
DELAYED HER BEING ADMITTED
UP UNTIL 2,000 WHEN SHE
GRADUATED FROM LAW SCHOOL
PRIOR TO THIS.

SHE GRADUATED FROM LAW
SCHOOL, SHE WORKED FOR
HERSELF, SHE WORKED WITH HER
HUSBAND.

SHE WORKED FOR --

>> DID SHE HAVE A DRUG HABIT
BEFORE SHE WENT TO LAW
SCHOOL?

WAS THERE TESTIMONY ABOUT
LONG-TERM DRUGS ADDICTION?

>> YES, YOUR HONOR.

I BELIEVE THE TESTIMONY
SHOWS THE RESPONDENT STARTED
USING DRUGS AT THE AGE OF 18
THE TESTIMONY ALSO SHOWS DUE
THE CHARACTER WITNESSES THAT
SHE HAD SIG CAN DRUG
ADDICTION FOR THE PAST TEN
YEARS.

>> THE REASON I AM ASKING
THESE QUESTIONS, PRANKLY,
THAT WE ARE ALWAYS
STRUGGLING WITH THESE ISSUES
OF HAVING TO PREVENT
SOMETHING LIKE THIS FROM
HAPPENING TO BEGIN WITH.

DOES SHE KNOW SHE WAS
ADMITTED TO THE BAR?

SHE WAS NOT.

RESPOND ENT TO THE ACTUAL
HEARING WITH THE EXAMINERS

WHERE SHE PRESENTED EVIDENCE TO THE EXAMINER SHE WAS FIT TO BECOME AL LAWYER AND SHE WAS ADMITTED.

>> THE EXAM KNEW SHE HAD THIS DRUG PAST DRUG USE?

>> NO.

RESPONDENT MISREPRESENTED UNTHINK APPLICATION SHE HAD A PRIOR DRUG PROBLEM.

RESPONDENT SAID SHE DID NOT THINK SHE HAD A PROBLEM WHICH IS WHY SHE LIE ON THE BAR APPLI CAUTION, THE FACT OF THE MATTER IS, SHE WAS ABDUCTED TO DRUGS ON THE BAR APPLICATION, SHE STATED, I AM NOTED A DICKED TO DRUG, I DON'T HAVE A DRUG PROBLEM.

>> YOU ARE MOVING INTO REBUTTAL.

YOU CAN PROCEED IF YOU WANT. YOU ARE DOWN INTO THE REBUTTAL TIME.

>> YOUR HONOR, BECAUSE SHE HAS BEEN FOUND OF MISAPPROPRIATING TRUST TUND AND FOUND GUILTY OF COMMITTING CRIMINAL OFFENSE, THE PUNITIVE IS THE APPROPRIATE PENALTY AND ANY MITIGATING FACTORS DO NOT OVERCOME THAT PRESUMPTIVE PUNITIVE TIMOR THE AGGRAVATING FACTORS THAT HAVE BEEN FOUND.

THANK YOU.

>> THANK YOU.

>> MISS WEAR.

>> THANK YOU.

MAY IT PLEASE THE COURT, MANSY WEAR.

I AM APPEARING PRO BONO, YOUR HONOR.

FIRST OF ALL, I WANT TO SAY, AN I HAD NOTIFIED THE BAR AS WELL.

MISS GEN NOVEMBER VAE GENOVA CONTINUES TO PARTICIPATE IN THE PROGRAM FULLY ATTENDS 6 MIGHTING AS WEEK, 3 AA, THREE NA, SHE HAD VISITATION TO HER SON RESTORED TO HER. SHE HAS HIM OVERNIGHT, OVER

OTHER WEEKEND.

SHE WOIS WORKING AS VOL LUP TIER, AND SHE IS WORKING FOR A LAW FIRM IN A PARALEGAL CAPACITY.

I ALSO WANTED TO NOTE THAT AFTER THE BAR FILED AN AMENED AFFIDAVIT ASKING FOR AN ADDITIONAL \$3,000 BEYOND WHAT HAS BEEN ORDERED BY THE REFEREE AS I READ THE RULE AND THERE SEEMS TO BE NO CASES, 7.6, THAT ADDITIONAL AMOUNT WOULD BE --

>> WELL, COSTS ARE SORT OF THE LEAST OF YOUR CLIENT'S PROBLEMS HERE.

I UNDERSTAND.

VIEW A VERY LIMITED AMOUNT OF TIME AND IT SEEMS TO ME THAT YOU COULD USE YOUR TIME TRYING TO DEMONSTRATE TO THIS COURT WHY WE SHOULD NOT DISBAR YOUR CLIENT ON THE FACE OF THESE SERIOUS CHARGES?

>> FIRST OF A UL, YOUR HONOR, AND I APPRECIATE THE OPPORTUNITY TO EVEN HAVE AN OPPORTUNITY TO COME HERE AN ADDRESS YOU.

THE REFEREE HEARD ALL OF THE WITNESSES AND SAW ALL OF THE EVIDENCE AND THOUGHT ABOUT THIS VERY CAREFULLY AND SHE FOUND OF COURSE THE AGGRAVATEORS THAT SHE DID FIND.

SHE FOUND 9 MIT GITORS. IT APPEARS PROBABLY THAT MR. GENOVA WAS SO DEEPLY INTO DEPRESSION AND DRUGS THAT WHEN HE MET HER, HE RECOGNIZED HER AS POTENTIAL LOSS FOR HIS TEAM.

I UNDERSTAND THE BAR IS THAT SHE SHOULD HAVE BEEN SOME KIND OF CRIMINAL BACKGROUND CHECK.

>> HOW ABOUT THE REFEREE? DID THE REFEREE FIND YOUR CLIENT WAS JUST ANOTHER VICTIM?

>> I THINK THAT THE -- I

THINK THAT THE MITIGATEORS
ALSO THE DISCUSSION THE
REFEREE'S REPORT INDICATES
SHE WAS AWARE OF THAT.
I THINK SHE -- I THINK THAT
SHE MADE THE FACT SHE DID.
WE UNDERSTAND THAT THERE IS
A REVERSAL ON THOSE.

>> HERE, LET ME STATE MY
CONCERN.

THIS HAPPENED IN 2004 AND
THIS WAS NOT AN
UNINTENTIONAL ACT ON THE
PART OF YOUR CLIENT, IN FACT,
THE EXHIBIT IN THE RECORD
DEMONSTRATES ON FEBRUARY
19th, 2004, SHE SIGNED A
LETTER THAT WAS SENT TO
MR. HIM PLEASE BE ADVISED
THE RECEIPT IN THE AMOUNT OF
\$52,000, GROUNDS WILL BE
APPLIED TO A PAYMENT TO A
LOAN COMMITMENT FEE.
THE BANK RECORDS INDICATE
THAT ON FEBRUARY 23rd, 4
DAYS LATER, SHE WITHDRAW \$8,000.

>> GAVE IT TO HIM.

>> OF THAT MONEY THAT WAS
PAYABLE TO HER, TO ELIZABETH
GENOVA.

AND SO THE PROBLEM THAT WE
HAVE HERE IS THAT WITH
LAWYERS REP ACCEPT TRUST
REPRESENT TRUST TO THE
PUBLIC THAT WE HAVE A
RESPONSIBILITY, ALL THE
LAWYERS IN THIS STATE HAVE A
RESPONSIBILITY TO SAY THAT
IF YOU DO THAT KIND OF ACT,
YOU CAN'T BE A LAWYER
ANYMORE.

>> YOUR CONCERNS, OF COURSE,
ARE ALL OUR CONCERNS.

THE RECORD SHOWS THAT SHE,
SHE REPEATEDLY TOLD MICHAEL,
SHE DID NOT HAVE A TRUST
ACCOUNT.

SHE WAS NOT HOLDING FUNDS IN
TRUST.

SHE REPEATEDLY ASKED FOR
REASSURENESS AS WHICH SHE
GOT FROM THEM?

SHE DIDN'T HAVE
RESPONSIBILITY TO HIM.

SHE HAD RESPONSIBILITY TO TELL THIS PERSON SHE REPRESENTED TO THE FACT TO GET THE \$52,000 SENT TO HER.

>> OKAY.

THE COURT IS CLEAR, THAT -- THE COURT IS CLEAR ON THAT. YOUR POSITION IS THAT AS A THIRD PARTY, SHE HAD THAT RESPONSIBILITY --

>> WHEN SHE REPRESENTED TO HIM --

>> RIGHT.

>> THAT IS WHAT THAT MONEY WAS GOING TO BE USED FOR. THERE CAN'T BE ANY QUESTION. THAT IS WHAT IT HAD TO BE USED FOR.

BUT ON THE MATTER OF THE REFEREE, YOU KNOW, WE HAVE AN ABUNDANCE OF CASE LAWS. WE HAVE A LOOP WHICH SAYS THAT TAKE MONEY OUT OF TRUST WHETHER IT BE DETONATED A TRUST ACCOUNT, AN OPERATING ACCOUNT OR ANY KIND OF AN ACCOUNT, IF THE LAWYER TAKES IT OUT THE PRESUMED DISCIPLINE IS DISBARMENT. THE REFEREE DIDN'T DEAL WITH THAT.

DIDN'T SHOW HOW IT WAS THIS PRESUMPTION.

>> I THINK SHE FOLLOWED THE RELATIVELY RECENT CASE OF BEHRMAN WHICH IS LIKE THIS CASE SIMILAR A SCHEME, SIMILARLY SOMEBODY WAS TAKEN I BY A PERSON WHO WAS CLOSER TO HIM AND THE PEOPLE WHO WERE, WHO WERE DISADVANTAGED WITH THIRD PARTY, ALL OF THAT IS THE SAME.

AT, WITH MUCH MORE MONEY.

>> WELL MR. BEHRMAN, I UNDERSTAND YOUR POSITION ON THAT, MR. BEHRMAN WAS 7 YEARS OLD, IT WAS AN ISOLATED INCIDENT INVOLVING MR. BEHRMAN.

IT WAS NOT -- THE FACTS OF MR. BEHRMAN'S SITUATION WERE DIFFERENT.

SINCE HIM, WE HAVE HAD SERIES OF CASES WHICH WE HAVE MADE IT VERY CLEAR THAT TALKING FROM A TRUST ACCOUNT IS PRESUMED TO BE A DISBARMENT.

>> THAT IS CORRECT, YOUR HONOR.

>> THEN THERE IS ALSO MASON WHO IS ADVERTISING, PETITIONING FOR REIN STAMENT. SHE PURPOSELY WROTE MACHINE MANY CHECKS TO HERSELF AN USED THEM TO PAY BILLS. SHE WAS INVOLVED IN THE REMOVAL OF QUITE A LOT OF MONEY SHE WAS SUSPENDED FOR TWO YEARS.

THE MORE RECENT CASE WHICH I SUPPLEMENTED WITH WHERE WE DIDN'T EVEN, WE DIN EVEN HOPE FOR A REDUCTION IN THE AMOUNT OF SUSPENSION, BUT HIS WAS REDUCED FROM 3 YEARS TO A 2-YEAR SUSPENSION.

THE FACT IN THAT CASE APPEARS, AT LEAST THE READER, I HAVEN'T SOON THE BRIEF, IT SEEMS TO ME FAR MORE EGREEMINGOUS AS THESE ARE.

AS WELL, YOU KNOW, --

>> DIDN'T WE SAY IN THAT CASE THAT THAT WAS NEGLIGENT CONDUCT AS OPPOSED TO INTENTIONAL CONDUCT? THAT IS TRUE, CORRECT? YES.

ABSOLUTELY.

THE COURT DID SAY THAT.

>> HOW CAN YOU EVEN COMPARE THAT TO THE FACT THAT -- WHAT DID YOUR CLIENT THINK SHE WAS DOING?

WHEN SHE WAS TAKING MONEY FROM ONE PERSON AND THEN DOLLING IT OUT TO HERSELF AND OTHERS?

>> SHE WAS ASSUREDED RIGHTLY OR WRONGLY, SHE WAS ASSURED, SHE BELIEVED THAT, THAT HIS ASSURANCES THAT THIS WAS, THIS WAS THE APPROPRIATE THING TO DO.

THIS WOMAN DIDN'T EVEN HAVE

A CHECKING ACCOUNT?
THAT IS WHY SHE WE TO THE
BANK AND TOOK OUT THE CASH.
SHE HAD NOTHING TO WRITE
CHECKS ON.

>> THESE TRANSFERS WERE MADE
TO AN AN ACCOUNT?

>> EXACTLY.

THEY HAD TO EITHER GET A
BANK CHECK OR GET OUT THE
CASH.

THERE IS, BY THE WAY, NO
DISPUTE THAT WAS A 3% WHICH
IS \$1800 OUT OF THE THANK
TRANSE ACTION.

SHE WAS NOT --

>> BUT IF YOUR CLAYIENT GETS
A LETTER OR SOME INDICATION
THAT THE PERSON WHO SENDS
THE MONEY BELIEVES THAT IT
IS GOING TO BE HELD IN TRUST
UNTIL SUCH TIME AS THE LOAN
IS EITHER GIVEN OR NOT GIVEN
AND THEN ON THE SAME DAY GO
TO THE BANK AND GIVES MONEY
TO A THIRD PARTY, HOW IN THE
WORLD CAN THAT NOT BE
INTENTIONALLY CONDUCT?
UNDERSTANDING THAT SHE WAS
SUPPOSED TO BE HOLDING THE
MONEY FOR A SPECIFIC
PURPOSE.

>> BECAUSE SHE NEVER SAW THE
CONTRACT.

SHE ONLY KNEW WHAT HE WAS
TELLING HER AND AS, SHE WAS
DEEPLY MOO THESE OTHER
THINGS.

I MEAN, OBVIOUSLY, IF ANY OF
US WOULD HAVE KNOWN, LISTEN,
CLOSE.

>> HOW DID SHE -- SHE
MAINTAINED A PUBLIC OFFICE?

>> AIM MOT SURE SHE HAD A
PHYSICAL OFFICE.

SHE HAD A DESK SOMEWHERE.

I DON'T KNOW WHAT THE
ARRANGEMENT WAS.

>> WHAT WAS HER HUSBAND
FEDERALLY PROSECUTED FOR AT
THE TIME HE WAS ARRESTED ON
DUI?

>> HE WAS BANKRUPTCY COURT.
HE WENT TO PRISON FOR THAT.

HE IS OUT OF PRISON.
HE HAS DONE WHAT HE NEEDED
TO DO TO MAKE RESTITUTION AN
SO FORTH.
THEY WERE NOT WORKING
TOGETHER.
DRUG RELATED AT ALL HIS
ACTIVITIES?

>> OH, YES, OH, YES.

HE, YES.

>> SO SHY AN HUSBAND WERE
DEEPLY INVOLVED IN DRUGS?

>> ON THE USE OF THEM NOT
THE SALE OF THEM.

BY THE WAY, ALLEGATIONS SHE
WAS USING THIS MONEY TO BUY
DRUGS, NO, PEOPLE WOULD GIVE
THEM TO HER AND THEY WOULD
SHARE THEM, YOU KNOW?

IT IS AWFUL.

IT IS AWFUL IN HUMAN TERMS
NOT AWFUL IN THE TERMS OF
PEOPLE SITTING DOWN AND
TRYING TO STEAL FROM PEOPLE.

>> I GUESS MY CONCERN IS, WE
ARE NOT TALKING ABOUT A 22,
23, 25-YEAR-OLD.

HE WITH TALKING ABOUT A
41-YEAR-OLD LAWDIE WHO HAS
HAD A LONG HISTORY OF
SUBSTANCE ABUSE.

WE HAVE RESPONSIBILITY TO
PROTECT THE PUBLIC AND HOW
CAN WE BE ASSURED THAT CAN
BE DONE IN A CASE LIKE THIS?

>> ONE OF THE THINGS THAT I
THOUGHT ABOUT WHEN I BRIEFED
THIS CASE WAS:

THE RECORD WITH RESPECT TO
DRUG AND ALCOHOL ABUSE IS
WHAT IT IS.

IT IS CONSIDERED BY THE
REFEREE, BUT IT IS FROM.

I AM PUZZLED BY HOW SHE
PASSED, SHE PASSED THROUGH
THE BAR EXAM IN THE
SPREEINGDS TO BE ADMITTED TO
THE BAR, I DIDN'T KNOW HER
THEN.

I DIDN'T THE.

IT WAS LONGSTANDING ENOUGH
SO IT SHOULD HAVE RAISED
SOME CONCERN.

I DON'T BELIEVE FOR A MOMENT

SHE MISREP ACCEPTED HERSELF ON THE APPLICATION.

I DON'T THINK SHE WAS AWARE OF IT.

I THINK IT WAS BY DEPRESSION WHICH WAS VERY REAL AND --

>> DO WE HAVE THAT KIND OF INFORMATION IN THE RECORD?

>> WITH RESPECT TO WHAT SHE USED THE MANY FOR?

>> NO, WITH HER RESPECT TO BEING DEPRESSED THAT MASKED HER, I MEAN, IS THIS YOUR TAKE ON THIS OR IS THAT EVIDENCE IN THE RECORD?

>> IT WAS IN THE RECORD.

SHE HAD BEEN IN 1992.

THEY HAVE THE YEAR WRONG.

IT IS IN THE RECORD.

I AM THINKING THAT IT MAY BE THAT IT MASKED, THAT IT MASKED SOME OF THAT, AS WELL, SHE WAS LIVING WITH HER HUSBAND WHO WAS HIMSELF USING AND LIVING A VERY FAST LIFESTYLE AT THE TIME.

YOU ARE GIVING A VERY SYMPATHETIC VIEW, YOU ARE DOING THIS PRO BONO.

I AM THE ONE WHO THINKS PEOPLE SHOULD GET SECOND OR THIRD CHANCES ESPECIALLY WITH DRUG ADDICTIONS, NOT OM DO I HAVE NO SIM PAT THINK. MY CONCERN IS THAT WE F WE DON'T DISBAR THIS INDIVIDUAL, WE ARE SENDING OUT A SIGNAL THAT SOMEHOW THIS IS GOING TO BE TOLERATED AND I DON'T AGREE.

MASON FIRST OF ALLS WITH A CLOSE VOTE BUT THE FINDING WAS THAT THERE WERE ACCOUNTING ERRORS.

THIS PERSON, YOUR QLIN, NOT ONLY DID THIS AND WAS SUPPORTING A DRUG HABIT, BUT IN HER DEFENSE, APPARENTLY, SHE SAID, WELL, SHE WAS ABLE TO DO ALL OF THE THINGS, SHE HANDLED A MATER THAT REQUIRED HER, THIS IS NOT LIKE SOMEBODY, SOME BAG LADY THAT WAS GOING FROM DAY TO

DAY.

>> JUDGE, I LOOKED THAT CASE.

TO THEENTIAL DENL I COULD FINE OUT WHAT WENT ON IN THE UNDERLYING CASE, I WAS NOT AT THE TRIAL.

I WOULD HAVE, YOU KNOW, SHE DID A COUPLE OF NICE THINGS, PEOPLE CAME IN AND SAID SOME NICE THINGS ABOUT HER.

I WOULD NOT INTERPRET THAT HAS BEING ABLE TO HANDLE ANY KIND OF CONFLICT MATTER.

>> IS IT TRUE SHE WAS DURING 2002-2004 ARRESTED THREE TIMES, TWICE FOR POSSESSION OF COCAINE, ONE FOR SALE?

YES, JUDGE.

>> ONE WAS DISMISSED.

THE OTHER TWO HAVE BEEN NO ACTION.

SHE SUCCESSFULLY COMPLETED THE DRUG.

YOUR HONOR, YOU ARE CORE REB ABOUT THAT.

SHE GOT ANOTHER CHANCE IN THE CRIMINAL JUSTICE SYSTEM?

YES, YOUR HONOR.

>> ANY OTHER CHANCE OTHER THAN TO HAVE TO BE DISBARRED IN THE CASE?

WELL, WITH THE ONE THING, YOUR HONOR, THE COURT EVEN THOUGH I UNDERSTAND YOUR REVIEW IS WIDER ON THE DISCIPLINARY PART, THE REFEREE'S RECOMMENDATION AFTER FOUR DAYS OF TRIAL WOULD BE GIVEN, WOULD BE GIVEN SUBSTANTIAL DIFFERENCE TO YOU.

THIS WASS ONLY A WELL THOUGHT-OUT REFEREE'S REPORT GIVEN CAREFUL CONSIDERATION AND CERTAINLY NOT DISREGARDING THE IMPORTANCE OF PROTEBING THE PUBLIC WHICH IS PART OF THE COURT APPOINT.

THE OTHER THING I THINK IS THAT THIS, THAT WITH A 3 YEAR PROBATION ORDERED FOLLOWED BY A 3-YEAR

SUSPENSION POLOED BY PROBATION, WE DON'T KNOW WHETHER OR NOT SHE WOULD FIT THE CRITERIA TO BE, TO BE ALLOWED TO PRACTICE ONCE AGAIN, BUT THAT PROCESS IS RIGOROUS ENOUGH, IT IS IMPOSSIBLE TO CONCEIVE THAT SHE WOULD BE ADMITTED BACK TO PRACTICE UNLESS EVERYONE WHO NEEDED TO BE CONVINCED AND THERE WERE A LOT OF FOLKS, PERFECTLY CONVINCED THAT NOT ONLY WAS SHE CAPABLE AP SO FORTH AND SO ON, SHE ABSOLUTELY WAS FULLY, FULLY REHABILITATED. I THINK DISBARING HER, SHE IS A RELATIVELY YOUNG WOMAN, DISBARING HER ALTOGETHER TELLING HER YOU WILL NEVER BE ABLE TO BE READMITTED AGAIN, I THINK, ON THE CIRCUMSTANCE, WHEN SHE ABSOLUTELY WAS A VICTIM OF A STILL PRACTICE AND SKILLED CONMAN WHO PLUCKED HER AS A LAWYER KNOWING OF THE DRUG AND ALCOHOL INVOLVEMENT, SO HE WAS AWARE OF THAT.

YOU KNOW?

WOULD I HAVE DEALT WITH IT IN THE SAME WAY?

WOULD I HAVE PRESENED THE EVIDENCE IN A DIFFERENT WAY?

>> POSSIBLY, BUT I THINK THAT, I THINK THE REFEREE UNQUESTIONABLY HAD ALL OF THE CONCERN, ALL OF THE POLICY CONCERNS WHICH MUST CONCERN YOU FULLY, FULLY IN LINE, AND I THINK THAT SHE WAS VERY CAREFUL IN MAKING THE, THOSE REPRESENTATION AND SINCE THEY WERE WELL REASON THE COURT'S JURIES PRU DISWITHIN THE RULES FOR THE DISCIPLINE, WE WOULD HAVE THAT YOU AFFIRM THOSE RULINGS IN EVERY RESPECT.

>> THANK YOU VERY MUCH.

>> YOU HAVE EXHAUSTED YOUR TIME.

>> THANK YOU.

>> REBUTTAL.

MR. MIN.

>> THANK YOU VERY BRIEF

REBUTTAL.

THE THREE CASES OF THE
RESPONDENT ARGUED TO YOU
HONOR.

AS YOUR HONORS POINTED OUT
QUITE DISTINGUISHABLE.

IN THOSE CASES, THEY DEALT
WITH ATTORNEYS WHO
NEGLIGENTLY MISAPPROPRIATED
FUNDS IN THE CASE, THERE WAS
INTENTIONAL MISAPPROPRIATION
OF TRUST FUN.

>> WHILE YOU ARE ON THAT
SPECIFIC THING, REALIZING
YOUR LIMITED AMOUNT OF TIME.
HAS THE BAR TABULATED THE
EXACT A. FUNDS THAT WERE
MISAPPROPRIATED AND ACTUALLY
IN EFFECT STOLEN FROM THIS
CLIENT?

JUDGE, I BELIEVE THOSE FACTS
WERE ACTUALLY STIPULATED TO.

SPECIFICALLY ON PAGE 4 OF
THE REPORT, THE RESPONDENT
RECEIVED \$15,000 FROM ONE
CLIENT, ONE-THIRD PARTY,
HOWEVER, THE MUCH SHE DID
REIMBURSE THAT PARTY.

RECEIVED \$60,000, THOSE FUNDS
HAVE BEEN TOTALLY
MISAPPROPRIATED.

HE AGREED TO REFUND THOSE
FUNDS \$45,000 OF THOSE FUNDS
TO THE CLIENT TO THE THIRD
PARTY.

>> WITH DO WE KNOW WHETHER
HE GOT THESE FUNDS OR
WHETHER THE RESPONDENT GOT
THINK FUNDS OR DO WE KNOW
THAT?

>> YES, SIR.

IT IS ON PAGE 4 AND 5.

THE REPORT OF THE \$8,000 THE
RESPONDENT HE NRBLY RECEIVED
\$7,700 OF THAT WAS CASH
WITHDRAWALS, THE OTHER
REMAINING AMOUNT WAS BY THE
RESPONDENT.

THE REMAINING \$52,000
RECEIVED BY THE THIRD
PARTIES, HE WAS REIMBURSED

WITH \$15,000.

HE RECEIVED \$13,000 IN CASH
WITHDRAWALS.

IS THERE SORT OF A BOTTOM
LINE.

THIS A. MONEY, SHE M APROED
FOR HER OWN PERSONAL USE.

THIS MANY PEOPLE SHE TOOK IT
FROM?

>> UNFORTUNATELY UNCLEAR AS
FAR AS WHAT THE BOTTOM LINE
IS.

THE RESPONDENT UNCLEAR AS
FAR AS YOU HOW MUCH MONEY
SHE WITHDRAW.

THERE WERE NO RECEIPTS,
THERE IS NOTHING OF NA
NATURE.

>> MR. MIN, YOU HAVE
UTILIZED OUR TIME.

MISS WEAR, DIFFICULT
CIRCUMSTANCES THAT WERE
CREATED, BUT YOUR EFFORTS
AND PRO BONO WAY ARE
APPRECIATED BY THE COURT
BECAUSE ALL, ALL WHO HAVE
INTERESTS HERE NEED TO BE
REP SEND AND WE THANK YOU
FOR DOING THAT ON PRO BONO
BASIS.

MR. MIN, THANK YOU AS WELL.

>>