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The Florida Bar v. Steven Ray Brownstein

SC04-2460

HEAR YE, HEAR YE, HEAR YE.

> >THE SUPREME COURT OF FLORIDA IS
> >NOW IN SESSION.
> >ALL WHO HAVE CAUSE TO PLEA, DRAW
> >NEAR, GIVE ATTENTION, AND YOU
> >SHALL BE HEARD.
> >GOD SAVE THESE UNITED STATES,
> >THE GREAT STATE OF FLORIDA, AND
> >THIS HONORABLE COURT.
> >LADIES AND GENTLEMEN, THE,,
> > LADIES AND GENTLEMEN, THE
> >FLORIDA SUPREME COURT.
> >PLEASE BE SEATED.,,
> > GOOD MORNING, FRIENDS.
> >WELCOME TO THE FLORIDA SUPREME
> >COURT AND OUR ORAL ARGUMENT
> >CALENDAR FOR FRIDAY, DECEMBER 8.
> >THE FIRST CASE ON OUR CALENDAR
> >IS THE FLORIDA BAR VERSUS
> >BROWNSTEIN.
> > MAY IT PLEASE THE COURT, GOOD
> >MORNING YOUR HONOR, I HAVE THE
> >PRIVILEGE OF REPRESENTING THE
> >FLORIDA BAR.
> >YOUR HONOR, TO MITIGATE OR NOT
> >TO MITIGATE, THAT IS THE
> >QUESTION PRESENTED IN THIS CASE.
> >IT IS OUR POSITION THAT THE
> >REFEREE IMPROPERLY MITIGATED
> >MR. BROWN STEIN'S DISCIPLINE,
> >WHILE AT THE SAME TIME FAILING
> >TO CONSIDER SIGNIFICANT
> >COMPELLING AGGRAVATING
> >CIRCUMSTANCES PRESENTED IN THE
> >CASE.
> > NOW, HERE'S THE ISSUE I HAVE.
> >USUALLY, IT'S THE RESPONDENT
> >GETTING UP HERE AND CONTESTING
> >THE REFEREE'S DETERMINATION AND
> >RECOMMENDATION AND THE FLORIDA
> >BAR GETS UP HERE AND SAYS,
> >SUBSTANTIAL COMPETENT EVIDENCE,
> >WE HAVE TO RESPECT THE REFEREE'S
> >DETERMINATION, AND HE'S

> >RECOMMENDED THIS, AND NOW YOU'RE
> >ON THE OTHER SIDE OF THE COIN.
> >WHY SHOULDN'T WE ACCEPT THE
> >REFEREE'S FINDING?
> > ABSOLUTELY, JUSTICE.
> >WHEN THE RECORD CONTAINS
> >COMPETENT, SUBSTANTIAL EVIDENCE
> >TO SUPPORT GENERALLY AND THE
> >FLORIDA BAR GENERALLY IS IN A
> >POSITION TO RECOMMEND THAT THAT
> >SENTENCE -- THAT RECOMMENDATION
> >BE UPHELD, HOWEVER, THE POSTURE
> >WE FIND OURSELVES IN THIS CASE
> >IS A LITTLE BIT DIFFERENT.
> >IT IS OUR POSITION THAT DESPITE
> >OVERWHELMING AND COMPELLING
> >AGGRAVATING CIRCUMSTANCES THAT
> >WERE ADDUCED AND ADMITTED TO BY
> >MR. BROWNSTEIN, THE REFEREE
> >REASONOUSLY IGNORED SOME OF
> >THOSE MATTERS AND WE COME BEFORE
> >YOU TO RESPECTFULLY ASK THAT THE
> >COURT CORRECT THE ERRORS.
> > DO YOU AGREE -- WOULD YOU
> >CATEGORIZE OR WOULD YOU
> >CHARACTERIZE THE MITIGATION AS
> >COMPELLING?
> > YES, JUSTICE, ABSOLUTELY
> >THINK THERE'S COMPELLING
> >MITIGATION HERE.
> >I THINK THE QUESTION THOUGH IS
> >ABOUT, AS THIS COURT IS WELL
> >AWARE, THERE IS A LINE OF CASES
> >THAT HOLDS THAT THE MITIGATION
> >RISES TO A SUFFICIENT LEVEL AND
> >THEREFORE REBUTTS THE
> >PRESUMPTION OF THE BAR AND THEN
> >THERE IS OPPOSITE LINE OF CASES
> >WHICH HOLDS THE REVERSE, THAT
> >DESPITE COMPELLING MITIGATION,
> >IT IS INSUFFICIENT TO RISE TO
> >THE LEVEL TO REBUT --
> > WELL, IF WE FIND THAT THERE
> >IS -- REFEREE IS JUST WRONG,
> >THAT THERE'S GOT TO BE A SELFISH
> >MOTIVE IN WHAT HAPPENED HERE,
> >WHAT I'D LIKE YOU TO EXPLAIN TO
> >ME, AND WE SEE THIS SOMETIMES IN
> >THESE BAR CASES WHERE WE KNOW
> >THERE'S BEEN TRUST ACCOUNT
> >VIOLATIONS AND SOMEWHAT SERIOUS
> >TRUST ACCOUNT VIOLATIONS, BUT
> >THERE'S NO CLIENT INJURY, THERE
> >WAS JUST STEALING FROM THE TRUST

> >ACCOUNT, BUT SOMEHOW THINGS WERE
> >MADE UP AND SO EXCEPT FOR THE
> >ONE MATTER, WHERE MONEY HAD TO
> >BE BORROWED, THAT THERE'S NO
> >INJURY TO THE CLIENT.
> >DO YOU AGREE THAT THERE WERE NO
> >INJURIES TO THE -- INJURY TO THE
> >CLIENT, BUT THEREFORE TELL US IN
> >TERMS OF THE TRUST ACCOUNT
> >VIOLATIONS, WHY, LOOKING AT,
> >ALTHOUGH THERE WERE SERIOUS
> >VIOLATIONS, TO ME IT'S SOMEWHAT
> >DIFFERENT THAN IF, YOU KNOW,
> >THERE WAS \$50,000 MISSING
> >BECAUSE HE USED IT TO TAKE A
> >TRIP SOMEPLACE AND THEN, YOU
> >KNOW, IT'S STILL OUTSTANDING.
> > JUSTICE, IN THIS CASE, THERE
> >IS NO RECORD EVIDENCE THAT ANY
> >CLIENT, IN FACT, THE RECORD IS
> >TO THE CONTRARY.
> >THE RECORD SHOWS THAT MR.
> >BROWNSTEIN WOULD TAKE TRUST
> >MONEYS ON AN AS NEEDED BASIS AND
> >THEN WOULD PROMPTLY REPLACE
> >THEM.
> >SO YOU'RE RIGHT, TO THE EXTENT
> >THAT THERE IS NO CLIENT INJURY,
> >THAT DOESN'T APPEAR TO BE A
> >PROBLEM, BUT WE THINK THE
> >PROBLEM IS MUCH DEEPER THAN
> >THAT.
> >IT IS THE VERY ACTIVE TAKING
> >FROM THE TRUST ACCOUNT,
> >REPEATEDLY, CONSISTENTLY AND
> >OVER A LONG PERIOD OF TIME THAT
> >IS THE ISSUE.
> >I THINK THIS COURT NEEDS TO SEND
> >A MESSAGE, AS IT HAS PREVIOUSLY,
> >THAT DESPITE A LAWYER'S PROBLEM,
> >STEALING FROM THE TRUST ACCOUNT,
> >EVEN IF THAT MONEY IS REPLACED,
> >IS INAPPROPRIATE.
> > WELL, LET ME ASK YOU ON THAT
> >ISSUE OF EVIDENCE, DID YOU EVER
> >RECEIVE FULL DOCUMENTATION?
> > ABSOLUTELY NOT, JUSTICE BELL.
> >IN FACT, MR. BROWNSTEIN WAS
> >SERVED DURING OUR PRELIMINARY
> >INVESTIGATION, HE FAILED TO
> >COMPLY WITH THAT SUBPOENA,
> >RESULTING IN THIS COURT'S
> >SUSPENSION OF HIM FOR THAT VERY
> >REASON, SO WHAT WE HAVE IS

>>REALLY PRELIMINARY INFORMATION.
>>THE RECORD IS NOT AS COMPLETE AS
>>IT COULD HAVE BEEN HAD
>>MR. BROWNSTEIN SUPPLIED THE
>>RECORD.
>> WELL, IF HE IS SUPPOSEDLY --
>>HE'S ABLE TO COOPERATE, WHY WAS
>>IT, DID YOU EVER --
>>[INAUDIBLE]
>> DIFFICULT QUESTION FOR ME TO
>>ANSWER.
>>I WAS NOT BAR COUNSEL AT THE
>>TIME.
>>I'M TAKING OVER AT THIS POINT.
>>MY UNDERSTANDING IS HE NEVER
>>PRODUCED A SINGLE PIECE OF PAPER
>>THROUGHOUT THE ENTIRE
>>PROCEEDING, DESPITE HIS APPARENT
>>LATER COOPERATION.
>>HE JUST NEVER PRODUCED ANYTHING
>>TO US, SO WHAT WE WERE ABLE TO
>>GLEAN FROM A SUBPOENA TO THE
>>BANK, OUR AUDITOR WAS NOT ABLE
>>TO DO AS COMPLETE AN AUDIT AS WE
>>WOULD HAVE LIKED OR SHOULD HAVE
>>DONE, BUT WE DO HAVE
>>MR. BROWNSTEIN'S ADMISSIONS IN
>>THIS MATTER.
>> LET ME ASK YOU A QUESTION
>>ABOUT THE TAX MATTER.
>> YES, SIR.
>> I KNOW IN THE BRIEF, THE BAR
>>IS MAKING A STATEMENT ABOUT THE
>>FACT THAT FAILURE ON THE
>>WITHHOLDING, THE FAILURE TO FILE
>>INCOME TAX RETURN, BUT THAT WAS
>>NOT PART OF THE CHARGE HERE, WAS
>>IT?
>> THAT'S CORRECT.
>>THAT WASN'T -- THAT WASN'T KNOWN
>>TO US AT THE TIME WHEN THE
>>COMPLAINT WAS FILED.
>> THAT WAS THE MATTER THAT CAME
>>OUT IN THE EVIDENCE.
>> YES, SIR.
>>THAT WAS A MATTER THAT WE ARGUED
>>IN AGGRAVATION.
>>WE FEEL IT'S PART AND PARCEL OF
>>HIS MISCONDUCT AND THEREFORE A
>>MATTER THAT THE REFEREE AND
>>THEREFORE THIS COURT SHOULD
>>CONSIDER.
>> NOW AS REGARDS THE -- IT
>>SEEMS TO ME THAT AT LEAST FOR A

>>TWO MONTH PERIOD OF TIME THAT
>>MR. BROWNSTEIN SEEMED TO HAVE
>>BEEN USING HIS TRUST ACCOUNT AS
>>SORT OF A SHORT-TERM LOAN KIND
>>OF SITUATION.
>>HE'D TAKE THE MONEY OUT AND USE
>>IT AND THEN PUT MONEY BACK IN,
>>TAKE MONEY OUT, AND THAT SEEMED
>>TO HAVE GONE ON, AT LEAST FOR A
>>TWO MONTH PERIOD.
>>ARE THERE OTHER PERIODS OF TIME
>>THAT THIS TOOK PLACE OR WAS IT
>>JUST DURING THAT PERIOD IN 2004?
>> WITH ALL CANDOR, JUSTICE
>>QUINN, IT SEEMS THAT THAT PERIOD
>>IN QUESTION WAS ACTUALLY SHORTER
>>THAN TWO MONTHS AND I BELIEVE
>>THE RECORD EVIDENCE WAS IT WAS
>>NOT A TRUST ACCOUNT BUT TWO
>>VARIOUS OPERATING ACCOUNTS FROM
>>WHICH HE WOULD FLOAT CHECKS FROM
>>ONE TO THE OTHER.
>> BUT NO TRUST ACCOUNT WAS
>>INVOLVED IN THAT, HIS OWN
>>PERSONAL ACCOUNT?
>> THAT'S RIGHT.
>>AS FAR AS WHAT WE'RE DISCUSSING.
>>THE \$20,000 WAS A TRUST ACCOUNT
>>MATTER, BUT THE CHECK HIDING
>>WERE FROM A DIFFERENT SOURCE.
>> LET ME FINISH ON THE TAX
>>QUESTION.
>>WERE THE BACK WITHHOLDING TAXES
>>EVER PAID?
>> TO MY KNOWLEDGE, THEY WERE
>>NOT TO THIS DATE PAID.
>> HAS THERE BEEN ANY CHARGES BY
>>THE I.R.S.?
>> TO MY KNOWLEDGE, NO, SIR.
>> HOW ABOUT FAILURE TO FILE
>>RETURNS, HAS THAT BEEN FOLLOWED
>>UP BY THE GOVERNMENT?
>> THAT I'M AWARE OF, NO, SIR.
>> WHAT IS THE -- TO ME, THERE'S
>>A POTENTIAL IN -- YOU'VE GOT THE
>>TRUST ACCOUNT VIOLATIONS, BUT
>>YOU ALSO HAVE AS JUSTICE BELL
>>WAS COMMENTING, THE FAILURE TO
>>PRODUCE THE RECORDS AND
>>SOMETIMES THAT ALONE IS PRETTY
>>SERIOUS VIOLATION.
>> ABSOLUTELY.
>> BUT I'M ALSO CONCERNED ABOUT
>>THESE INCOME TAX ISSUES.

>>WE HAD A CASE THE OTHER DAY
>>WHERE THAT WAS ONE OF THE
>>CHARGES WAS FILING FOR AN
>>EXTENSION AND IT WAS A -- IT LED
>>TO A FELONY.
>>DOES THE BAR IN THIS SITUATION
>>GO BACK AND FILE THOSE CHARGES
>>AGAINST, BECAUSE IT SEEMS TO ME
>>WITH THOSE CHARGES ADDITIONALLY
>>FOUND THAT THAT WOULD PLACE IT
>>IN A DIFFERENT CATEGORY OR CASE?
>> JUSTICE, THAT'S NOT AN OPTION
>>WE'VE AVAILED OURSELVES OF YET,
>>BUT IT IS PERHAPS A MATTER THAT
>>WE WILL DISCUSS INTERNALLY SOME
>>MORE.
>>WE COME BEFORE YOU TODAY ON A
>>DIFFERENT MATTER.
>>THE TRIAL WAS CONCLUDED, IT IS
>>OUR POSITION THAT THE REFEREE
>>ERRED AND REAR ASKING THE COURT
>>TO RESPECTFULLY CORRECT THE
>>ERRORS.
>> HAS THE FAILURE TO FILE THE
>>INCOME TAX AND THE WITHHOLDING
>>AGGRAVATION IN THIS CASE, IF IT
>>WASN'T PLEAD?
>> YOUR HONOR, BECAUSE IT'S PART
>>AND PARCEL OF A PATTERN OF
>>MISCONDUCT, LYING, CHEATING AND
>>STEALING, AND THAT'S WHAT WE
>>THINK AGGRAVATES THIS CASE
>>SUFFICIENTLY TO THE POINT, WHERE
>>THE MIST GAGES WHICH WAS
>>PRESENTED AND UNREBUTED, SHOULD
>>NOT BE SIGNIFICANT ENOUGH TO
>>OBVIATE THE NEED FOR DISBARMENT.
>>THAT IS PRECISELY OUR ARGUMENT
>>HERE.
>> WAS THERE ANY EVIDENCE ABOUT
>>WHY HE DID NOT PRODUCE THE
>>RECORD, WAS IT DISORGANIZATION
>>OR INTENTIONAL REFUSE HALL IT.
>> I DON'T BELIEVE THE RECORD
>>SHOWS DISORGANIZATION.
>>I BELIEVE WHAT THE RECORD SHOWS
>>IS MEDICAL TESTIMONY FROM THE
>>DOCTOR THAT THAT WAS DURING ONE
>>OF THE CLINICAL PERIODS OF
>>DEPRESSION AND THERE
>>MR. BROWNSTEIN FELT IMMOBILIZED
>>AND SIMPLY DID NOT RESPOND.
>>NOT A PHYSICAL INABILITY, MORE
>>OR LESS A MENTAL INABILITY.

> > DOES THE BAR REBUT THAT
> > EVIDENCE THROUGH
> > CROSS-EXAMINATION OR ITS OWN
> > EXPERT?
> > THE BAR COUNSEL AT THE TIME
> > DID CROSS-EXAMINE THE DOCTOR AND
> > I THINK SHE SCORED A COUPLE OF
> > SIGNIFICANT POINTS.
> > THE THE DOCK!!!!!!!!!!!! DOCTOR'S OPINION WAS
> > BASED ON THE SELF-REPORTING OF
> > MR. BROWNSTEIN, THERE WAS NO
> > EXTERNAL CHECKING, THERE WAS NO
> > ATTEMPT TO VERIFY THE FACT.
> > IN OUR OPINION, IT IS VERY
> > CONVENIENT AND BAR COUNSEL
> > ARGUED THIS AT THE TIME TO STEAL
> > FROM YOUR TRUST ACCOUNT, LIE AND
> > CHEAT ABOUT IT AND THEN COME
> > BACK BEFORE THE COURT WHEN YOU
> > WERE CAUGHT AND SAY, OH, I'M
> > SORRY, I WAS DEPRESSED AND
> > THAT'S WHY I DID IT.
> > I UNDERSTAND THAT, BUT AGAIN,
> > WE'RE HERE BEFORE THE COURT, THE
> > BAR IS SEEKING REVIEW HERE.
> > WHAT WE'RE -- THE -- WHAT WERE
> > THE JUDGE'S FINDING IN THAT
> > REGARD, DID THE JUDGE GIVE
> > CREDIBILITY TO THE DOCTOR AND
> > HIS OPINION?
> > ABSOLUTELY, JUDGE.
> > THE REFEREE IN THIS MATTER GAVE
> > GREAT SIGNIFICANCE TO THE
> > MEDICAL.
> > TESTIMONY AND INDEED, THAT WAS
> > WHY SHE FOUND THE MITIGATION TO
> > BE SUFFICIENT TO REBUT THE
> > PRESUMPTIVE SANCTION OF
> > DISBARMENT.
> > LET ME GO BACK TO THE CHECK
> > KITING OR -- AS YOU WILL.
> > SINCE YOU SAY THERE WAS NO TRUST
> > ACCOUNT INVOLVED IN THIS, SHOULD
> > WE TREAT THIS DIFFERENTLY, SINCE
> > THIS WAS HIS PERSONAL ACCOUNT
> > VERSUS A TRUST ACCOUNT THAT
> > WOULD HAVE BEEN INVOLVED CLIENT
> > FUNDS?
> > JUSTICE QUINCE, I THINK THERE
> > IS A DIFFERENCE.
> > A TRUST ACCOUNT IS VERY
> > SACROSANCT.
> > THIS DID NOT INVOLVE A TRUST
> > ACCOUNT BUT IT WAS NEVERTHELESS

> >A SIGNIFICANT VIOLATION OF THE
> >LAW.
> >IT IS CLEARLY ILLEGAL AND
> >PROHIBITED TO WRITE CHECKS,
> >KNOWING THERE ARE NO FUNDS WITH
> >THE EXPECTATION THAT YOU WILL
> >SOMEHOW PUT THOSE FUNDS IN THE
> >BANK LATER ON.
> >MR. BROWNSTEIN ADMITS TO DOING,
> >ON A NUMBER OF OCCASIONS.
> >SO WHILE IT IS DIFFERENT, AT THE
> >END OF THE DAY IT REALLY ISN'T
> >ALL THAT DIFFERENT.
> > HELP US WITH IN A LOT OF
> >THESE KINDS OF CASES, WE SEE
> >SOME UNDERLYING FINANCIAL
> >PROBLEMS.
> >THAT IS SOMEBODY HAS ESTABLISHED
> >A LIFESTYLE THAT THEY CAN'T
> >SUPPORT OR GOTTEN THEMSELVES
> >HEAVILY INTO DEBT, THERE'S
> >SOMETHING GOING ON, AND THAT
> >THIS TURNS OUT TO BE THE
> >SYMPTOM, YOU KNOW, THAT THIS IS
> >HOW THEY COVER THAT.
> >AND FOR LACK OF A BETTER WORD,
> >I'LL USE MOTIVE AS WE SEE IN
> >CRIMINAL CASES OR WHATEVER.
> >WHAT WAS THE EVIDENCE HERE IN
> >TERMS OF WHETHER OR NOT THE
> >RESPONDENT WAS IN SERIOUS
> >FINANCIAL DIFFICULTY OR
> >SOMETHING THAT WOULD CAUSE HIM
> >TO ACT LIKE THIS, TO GAIN SOME
> >TEMPORARY FINANCIAL ADVANTAGE?
> > THERE IS EVIDENCE IN THIS
> >RECORD, JUSTICE, OF A CHANGE OF
> >CIRCUMSTANCES.
> >THE RECORD SHOWS THAT FOR A
> >PERIOD OF TWO, THREE YEARS
> >IMMEDIATELY PRIOR TO THE ACTS
> >PLEAD, MR. BROWNSTEIN WAS DOING
> >EXTREMELY WELL AND EARNING IN
> >THE NEIGHBORHOOD OF \$600,000 A
> >YEAR.
> >SUBSEQUENTLY, FOR AN UNKNOWN
> >REASON, HIS INCOME DROPPED FOR A
> >PERIOD OF YEARS TO \$150,000.
> >A FOURTH OF WHAT HE WAS
> >PREVIOUSLY EARNING.
> >WHILE THAT IS A SUBSTANTIAL
> >CHANGE IN CIRCUMSTANCES, YOUR
> >HONOR, LET'S NOT KID OURSELVES.
> >\$150,000 IS STILL A SIGNIFICANT

> >AMOUNT OF MONEY FOR
> >MR. BROWNSTEIN TO BE EARNING.
> >MOREOVER, THIS COURT HAS
> >REPEATEDLY SAID A MERE CHANGE IN
> >YOUR LIFE CIRCUMSTANCES, THAT
> >FACT THAT YOU'RE HAVING PROBLEMS
> >IS NOT A SUFFICIENT REASON TO
> >PERMIT YOU TO STEAL FROM YOUR
> >CLIENT.
> > YOU'RE WELL INTO YOUR
> >REBUTTAL.
> >YOU CERTAINLY MAY USE YOUR TIME
> >AS YOU WISH.
> > I WOULD LIKE TO SAVE MY
> >REBUTTAL TIME.
> >THANK YOU, YOUR HONOR.
> > GOOD MORNING, CHIEF JUSTICE,
> >JUSTICES OF THE SUPREME COURT.
> >MY NAME IS RICHARD BARREN AND I
> >REPRESENT THE RESPONDENT, STEVEN
> >BROWNSTEIN, WHO IS PRESENT
> >BEFORE THE COURT.
> >I WAS TESTIFY TRIAL AND LET ME
> >TELL YOU FIRST THAT WHILE I HAVE
> >THE HIGHEST REGARD FOR MR. LEEON
> >HE DID MAKE A MISSTATEMENT TO
> >THE COURT WHEN HE SAID THIS WAS
> >OVER A LONG PERIOD OF TIME.
> >THE TRUST ACCOUNT VIOLATION WAS
> >ONE VIOLATION, WHICH WAS MADE
> >GOOD WITHIN A SIX MONTH PERIOD.
> > LET ME, IN THE -- THE TRUST
> >OUT OF BALANCE IS LISTED IN THE
> >ORDER, THE REPORT OF THE
> >REFEREE, CORRECT?
> > THE REPORT OF THE REFEREE
> >MADE A FINDING, YOUR HONOR, THAT
> >THERE WAS ONE VIOLATION OF A
> >TRUST ACCOUNT, WHERE \$20,000
> >THAT SHOULD HAVE BEEN HELD IN
> >TRUST WAS TAKEN BY MY CLIENT,
> >AND THAT \$20,000 WAS REPAID.
> >WHAT WAS BASICALLY GOING ON WAS
> >THAT MY CLIENT HAD EXPECTATION
> >OF FEES COMING IN, AND IN
> >ANTICIPATION OF THOSE FEES,
> >BECAUSE THE REFEREE FOUND
> >THERE'S A HISTORY OF MONEY
> >MAKING BY MY CLIENT, THAT HE
> >WOULD TYPE CHECKS, -- TITHE
> >CHECKS, AND TITHING IS WRONG --
> > WELL, KITING ACTUAL LITTLE
> >WAS WHAT WENT ON HERE,
> >REGARDLESS OF WHERE THE SOURCE

> >OF THE MONEY WAS, THERE WAS A
> >WRITING FROM ONE ACCOUNT,
> >REGARDLESS OF WHOSE ACCOUNT THAT
> >WAS, IN ORDER TO BE ABLE TO
> >WITHDRAW FROM ANOTHER ACCOUNT,
> >ISN'T THAT RIGHT?
> > THAT'S RIGHT.
> > WITHOUT THERE BEING ANY MONEY
> >IN IT.
> >NOW THAT IS A KITE.
> > THAT IS KITING.
> >BUT THE TRUE DEFINITION OF
> >KITING IS THERE'S FRAUDULENT
> >INTENT AND THAT THERE'S SOMEONE
> >STUCK AT THE END AND IN THIS
> >CASE, BOTH BANKS TOLD
> >MR. BROWNSTEIN AT THE TIME OF
> >HIS SUSPENSION, THEY WERE BOTH
> >DEALING WITH BOTH BANKS AND THE
> >BANKS WERE NOT HARMED,
> >EVERYTHING WAS COVERED.
> >IF THE KITING SCHEME IF YOU
> >RECALL WAS DONE WITH AN
> >ANTICIPATION OF FUNDS COMING IN
> >AND MANY TIMES FUNDS DID COME
> >INTO COVER THE CHECKS.
> > I UNDERSTAND THE ARGUMENT
> >THAT'S MADE IN THE BRIEF HERE.
> >THAT NO CLIENT RECEIVED ANY LESS
> >MONEY BY REASON OF THE TRUST
> >ACCOUNT WITHDRAWALS WHICH
> >APPEARED TO HAVE BEEN OVER ABOUT
> >A SIX WEEK PERIOD.
> > IT WAS A SHORT PERIOD OF
> >TIME, CORRECT.
> > HOWEVER, THE FACT THAT NO
> >CLIENT LOST ANY MONEY ON AN
> >UNAUTHORIZED DEDUCTION FROM A
> >TRUST ACCOUNT, HOW IS THAT ANY
> >DIFFERENT THAN THE TELLER OVER
> >AT SUN TRUST TAKING MONEY OVER A
> >SIX WEEK PERIOD BUT GETTING IT
> >BACK BEFORE SOMEONE NOTICED?
> > JUSTICE, THERE IS NO
> >DIFFERENCE.
> > THAT'S RIGHT.
> > TAKING MONEY OUT OF AN
> >ACCOUNT IS WRONG, WHETHER IT'S
> >ONE TIME OR 10,000 TIMES.
> > NOW IS THERE ANY CONTENTION
> >THAT MR. BROWNSTEIN DIDN'T KNOW
> >RIGHT FROM WRONG?
> > IT WASN'T A MATTER OF NOT
> >KNOWING RIGHT FROM WRONG.

> > DID THE PSYCHOLOGIST TESTIFY
> > THAT HE DIDN'T KNOW RIGHT FROM
> > WRONG?
> > THE PSYCHIATRIST TESTIFIED,
> > AND IT WAS ACCEPTED BY THE COURT
> > BELOW, THAT MR. BROWNSTEIN
> > SUFFERED FROM SEVERE CHRONIC
> > REPETITIVE DEPRESSION AND THAT
> > DOESN'T MEAN HE WAS INSANE --
> > IT WOULD NOT BE A DEFENSE TO
> > THE TELLER IF THE TELLER AT SUN
> > TRUST WAS CHARGED WITH
> > EMBEZZLEMENT, WOULD IT?
> > THE SAME WAY IT'S NOT A
> > DEFENSE HERE.
> > IT'S BEING ASKED TO LOOK AT IN
> > MITIGATION.
> > AND IF I CAN ADDRESS ONE ISSUE
> > THAT YOU'VE RAISED THAT I FEEL
> > VERY STRONGLY ABOUT, AND THAT IS
> > I'M VERY FAMILIAR WITH YOUR
> > DISSENT.
> > I TRIED THE CASE AND I WAS
> > RESPONDENT'S CASE IN THE CASE,
> > WHERE A DISTINCTION WAS MADE
> > THAT YOU FOUND TO BE A
> > DISTINCTION WITHOUT A
> > DIFFERENCE, AND I AGREE WITH
> > YOU, AND YOUR BASIC PREMISE WAS
> > THE BREED HOLDING, THAT IF YOU
> > STEAL MONEY FROM A TRUST
> > ACCOUNT, WE GAVE NOTICE TO THE
> > BAR, THAT'S UNACCEPTABLE, BUT
> > WHAT'S HAPPENED OVER THE YEARS
> > IS THAT BREED -- THE COURT HAS
> > SAID WE WILL LOOK IN TO AND
> > ISOLATE THE CIRCUMSTANCES OF THE
> > MISAPPROPRIATION OF FUNDS, TO
> > DETERMINE IF THERE'S MITIGATION
> > THAT WILL EXPLAIN THAT TYPE OF
> > BEHAVIOR, SO THAT THERE IS A
> > REBUTTAL TO THE PRESUMPTION.
> > LET ME -- WHAT IS THE
> > SITUATION WITH THE I.R.S.?
> > THIS WAS -- THIS CAME OUT
> > DURING THE PEND!!!!!!!!!!!! PENDENCY OF THE
> > TRIAL.
> > WITHHOLDING TAXES?
> > IT WAS WITHHOLDING TAXES.
> > HAS IT BEEN PAID?
> > I DON'T BELIEVE IT'S BEEN
> > PAID.
> > BUT I WILL TELL YOU THIS, THAT
> > IS NOW A CIVIL ISSUE.

>>THE SECRETARY WAS NOT -- SHE GOT
>>CREDIT FOR THE TAX PAYMENT.
>>MR. BROWNSTEIN HAS A DEBT TO THE
>>I.R.S. OF THOSE YEARS OF
>>WITHHOLDING TAXES.
>> DID HE NOT FILE TAX RETURNS
>>FOR FIVE YEARS?
>> NO, HE FILED THE TAX RETURNS.
>>DIDN'T PAY THE WITHHOLDING.
>> I THOUGHT THERE WAS SOME
>>ALLEGATION HERE THAT HE DIDN'T
>>FILE HIS PERSONAL RETURNS.
>> I'M NOT AWARE OF THAT, YOUR
>>HONOR.
>>THAT MAY BE, BUT I JUST DON'T
>>RECALL TO BE HONEST WITH YOU.
>> ONE OF THE MITIGATIONS FOUND
>>BY THE REFEREE WAS A FULL AND
>>FREE DISCLOSURE TO THE
>>DISCIPLINARY BOARD --
>>[INAUDIBLE]
>>IN THE PROCEEDING.
>>HOW CAN THAT BE SO IF HE NEVER
>>FULLY COMPLIED WITH THE
>>DISCLOSURE OF DOCUMENTS?
>> THAT'S AN EXCELLENT QUESTION
>>AND THE ANSWER IS WHEN
>>MR. BROWNSTEIN WAS SUSPENDED,
>>WHEN THE SUBPOENAS WERE ISSUED,
>>HE WAS AT THE HEIGHT OF SEVERE
>>DEPRESSION, SUICIDAL, AND HE WAS
>>INCAPABLE OF GETTING THOSE
>>RECORDS TOGETHER.
>>AND IT'S IN THE RECORD, SO I
>>WILL SHARE THIS WITH YOU.
>>MR. BROWNSTEIN CALLED ME AS A
>>REFORM ATTORNEY BECAUSE HE KNOWS
>>I DO BAR WORK AND HE SAID I HAVE
>>A REFERRAL FOR YOU.
>>WE WENT BACK AND FORTH TORE
>>WEEKS BECAUSE HE WAS IN THE
>>AVOIDANCE MODE.
>>I DIDN'T REALIZE MR. BROWNSTEIN
>>WAS THE ACTUAL CLIENT BEING
>>REFERRED AND I FINALLY LEFT HIM
>>A MESSAGE I SAID STEVE, SIX
>>WEEKS HAVE GONE BY, I GUESS YOU
>>FOUND ANOTHER ATTORNEY TO REFER
>>YOUR MATTER TO, THANK YOU FOR
>>THINKING OF ME AND THAT DAY HE
>>CALLED ME AND SAID I'M THE
>>REFERRAL, HE CAME INTO SEE ME
>>AND AT THAT MOMENT HE BROKE
>>DOWN -- I'M NOT A PSYCHOLOGIST

> >OR PSYCHIATRIST, BUT I'VE HAD A
> >LOT OF EXPERIENCE IN DEALING
> >WITH PEOPLE'S EMOTIONS AND I
> >JUST SAW HIM, I SAID STEVE, YOU
> >ARE EXTREMELY DEPRESSED.
> >HAVE YOU SOUGHT HELP?
> >YOU NEED TO GO SEE A DOCTOR.
> >AND IT WAS FROM THAT POINT, FROM
> >THAT MOMENT, THAT HE SOUGHT
> >HELP, STARTED WORKING WITH
> >THERAPY, HIS HEALTH TURNED
> >AROUND, AND THEN HE GOT INVOLVED
> >IN ADMITTING ALL THE ALLEGATIONS
> >AND COOPERATING WITH THE BAR,
> >AND THE STATEMENT MADE BY
> >COUNSEL THAT HE DIDN'T ADHERE TO
> >THE SUBPOENA IS TIEWTLY
> >ACCURATE.
> >HE DID NOT.
> >BUT THE BAR GOT ALL THE
> >INFORMATION THAT THEY WOULD HAVE
> >GOTTEN FROM MR. BROWNSTEIN
> >ABSENT CLIENT LEDGER CARD.
> >THEY GOT THE BANK RECORDS, THE
> >CHECKS.
> >THEY DID THE RECONCILIATION, SO
> >THE BAR WAS FULLY ADVISED AS TO
> >WHAT THE CIRCUMSTANCES WERE.
> >AND THE CIRCUMSTANCES WERE A
> >TRUST FUND VIOLATION, NOT TRYING
> >TO MINIMIZE JUSTICE WELLS, AND
> >STEALING FROM THE TRUST ACCOUNT
> >IS WRONG, BUT WHAT WAS PRIMARILY
> >GOING ON WAS THE SITUATIONS
> >BETWEEN TWO BANK ACCOUNTS.
> > SECOND AND LAST QUESTION.
> >AGGRAVATING FACTORS.
> >HOW CAN IT NOT BE THAT THE
> >AGGRAVATING FACTORS
> >SUBSTANTIALLY --
> >[INAUDIBLE]
> > BECAUSE IN BROOM, YOU FOUND
> >THE SAME THING.
> >THAT YOU DON'T HAVE TO CONSIDER
> >THE LONG-TERM PRACTICE OF LAW
> >WHERE THERE'S EXPLANATION OF
> >MENTAL HEALTH ISSUES AND THAT'S
> >WHAT WE HAVE HERE.
> >WE HAVE A -- THE BAR HAS NEVER
> >COME FORWARD AND CONFRONTED THE
> >ISSUE THAT BASICALLY THE
> >FINDINGS MADE BY THE REFEREE
> >WERE BASED UPON MR. BROWNSTEIN'S
> >MENTAL CONDITION.

> >IT WAS -- IT'S UNREBUTED, THEY
> >KNEW ABOUT IT IN MY PLEADINGS,
> >THEY KNEW ABOUT IT WHEN
> >MR. BROWNSTEIN'S DEPOSITION WAS
> >TAKEN, THEY DIDN'T BRING IN
> >EXPERT TESTIMONY, THEY DIDN'T
> >BRING IN AN EXPERT WITNESS TO
> >REBUT MR. BROWNSTEIN'S
> >DEPRESSION, AND THE EXPLANATION,
> >NOT EXCUSE, NO ONE IS SEEKING AN
> >EXCUSE FOR MR. BROWNSTEIN'S
> >BEHAVIOR, BUT THE EXPLANATION IS
> >HE WAS SEVERELY DEPRESSED, HE
> >WAS MORBIDLY DEPRESSED, HE WAS
> >SUICIDAL AT A PERIOD IN HIS LIFE
> >AND THAT HELPS EXPLAIN WHY AN
> >OTHERWISE 31 YEAR HISTORY WITH
> >ONE POLICEMEN BLEMISH 11
> >YEARS -- ONE BLEMISH 11 YEARS
> >PRIOR TO THIS, RELATIVELY MINOR,
> >I DON'T EVEN KNOW WHAT IT WAS,
> >MINOR 31 YEAR CAREER, THE
> >PRESIDENT OF THE FLORIDA BAR
> >CAME TO TESTIFY ON BEHALF OF
> >MR. BROWNSTEIN, HIS REPUTATION
> >IN THE COMMUNITIES, THE FORMER
> >PRESIDENT OF THE FLORIDA BAR
> >TELLING THE REFEREE THIS IS THE
> >MAN WHO HAD A WONDERFUL
> >REPUTATION, WHO COULD TRY CASES
> >BEFORE THIS COURT, WHO WAS WELL
> >KNOWN IN THE COMMUNITY AND WHAT
> >HAPPENED WAS, HE FELL IN TO THIS
> >BLACK UGLY HOLE, AND WHEN HE WAS
> >ASKED TO RESPOND TO SUBPOENAS,
> >WHEN HE WAS ASKED TO DO THINGS
> >THAT THE BAR WANTED HIM TO DO,
> >IT WASN'T A PURPOSEFUL THUMBING
> >HIS NOSE AT THE BAR, IT WAS AN
> >INABILITY TO DEAL WITH
> >DEPRESSION AND THE BAR NEVER
> >EVER ADDRESSES THAT ISSUE.
> >THAT'S HOW THE MITIGATION CAME
> >UP OF NO DISHONEST MOTIVE.
> > WHAT ABOUT THE -- HIS OWN
> >TESTIMONY THAT HE HAD DONE THE
> >SAME THING IN THE 1990'S?
> > YOU KNOW, THAT'S A DOUBLE
> >EDGED SWORD.
> >IT SHOWS TO ME THAT HE WAS
> >RECOVERING AT THE TIME TO BE
> >ABLE TO COME FORTH AND MAKE AN
> >ADMISSION AGAINST HIS INTEREST
> >IN THE HEARING THAT WAS NOT

> > KNOWN TO OR CHALLENGED OR AWARE
> > OF BY THE FLORIDA BAR AND IN HIS
> > HONESTY, AND ONE OF THE KICK
> > TAILS HE GOT FROM ME IS WHEN
> > YOU -- DICTATES HE GOT FROM ME
> > IS WHEN YOU GO BEFORE THAT
> > REFEREE, YOU BE HONEST, AND HE
> > VOLUNTEERED THAT INFORMATION.
> > IT WASN'T I DON'T BELIEVE, I
> > DON'T HAVE A CLEAR RECOLLECTION,
> > BUT I DON'T BELIEVE IT WAS A
> > QUESTION THAT WAS ASKED, HE
> > VOLUNTEERED.
> > YOU SAID THIS HAPPENED IN A
> > VERY SHORT PERIOD OF TIME IN A
> > BLACK HOLE TIME IN HIS LIFE.
> > AND I'M REALLY WONDERING
> > WHETHER, HOW, WHETHER IT'S BEING
> > HONEST ABOUT IT AND THE BAR
> > MIGHT NOT HAVE FOUND OUT, THAT
> > SOMEBODY THAT HAD REALLY DONE
> > THIS IN THE PAST, WHETHER THIS
> > IS IN FACT SOLELY OUT OF THE
> > INABILITY OF A PERSON TO
> > FUNCTION AND I'M STILL I GUESS
> > I'M HAVING PROBLEM WITH HOW
> > THE -- DEPRESSION I CAN
> > UNDERSTAND THAT, MEANING MAYBE
> > YOU DON'T SHOW UP IN THE OFFICE,
> > YOU KNOW, YOU'RE DOING THE
> > THINGS THAT THE SECRETARY NOTED,
> > BUT THEN STEALING FROM THE TRUST
> > ACCOUNT, I'M NOT SURE I
> > UNDERSTAND HOW THAT'S A PRODUCT
> > OF DEPRESSION.
> > I THINK WE KIND OF START TO
> > CHEAPEN SOME OF THESE VERY
> > SERIOUS MENTAL ILLNESSES WHEN WE
> > JUST THROW THESE DIAGNOSES OUT.
> > I THINK THE ANSWER TO THAT
> > QUESTION IS THE DOCTOR TESTIFIED
> > AS A RESULT OF THIS MORBID,
> > SUICIDAL SEVERE DEPRESSION THERE
> > WAS A LACK OF JUDGMENT.
> > WHERE DO WE HAVE EVIDENCE
> > THAT HE WAS SUICIDAL?
> > IS THAT IN SELF-REPORTING?
> > IN THE DOCTOR'S TESTIMONY.
> > BUT THAT'S FROM
> > SELF-REPORTING.
> > THAT'S FROM SELF-REPORTING.
> > NOT ANYTHING HE SOUGHT, UNTIL
> > YOU GOT INVOLVED IN THE CASE AND
> > YOU'VE BEEN HONEST ABOUT THIS,

> > UNTIL YOU GOT INVOLVED IN THE
> > CASE, HE DID NOT SEEK ANY MENTAL
> > HEALTH ASSISTANCE, CORRECT?
> > DON'T KNOW THE ANSWER TO
> > THAT.
> > WELL, YOU WOULD HAVE PUT ON
> > IT IF THERE WERE --
> > THE ANSWER TO YOUR QUESTION,
> > I DON'T KNOW.
> > WELL YOU AS A LAWYER WOULD
> > HAVE ASKED HIM AND YOU WOULD
> > HAVE PUT THOSE RECORDS INTO
> > EVIDENCE, WOULDN'T YOU?
> > YES.
> > JUSTICE WELLS.
> > I'M CONCERNED ABOUT THE -- ON
> > PAGE 11 OF THE BAR'S BRIEF, THEY
> > SAY RESPONDENT KNEW HE HAD AN
> > OBLIGATION TO PREPARE, FILE AND
> > PAY HIS PERSONAL INCOME TAXES,
> > AND THAT FAILURE TO DO SO MAY BE
> > A CRIME, BUT YEAR AFTER YEAR, HE
> > CHOSE NOT TO DO IT.
> > NOW YOU DIDN'T RESPOND TO THAT
> > IN YOUR BRIEF, AND I'D LIKE TO
> > KNOW IF YOU WISH TO RESPOND TO
> > THAT, OR WHAT THE STATUS OF THAT
> > IS.
> > AS TO THE STATUS, I'M NOT
> > AWARE OF THE STATUS,
> > MR. JUSTICE.
> > AS TO MY RESPONSE, I WOULD SAY
> > THE FOLLOWING.
> > THAT WAS NOT CHARGED BY THE
> > FLORIDA BAR.
> > BUT WE HAVE AN OBLIGATION TO
> > THE PUBLIC HERE, AS FAR AS THE
> > LAWYERS, AND JUST AS ONE MEMBER
> > OF THIS COURT, I WOULD -- YOU
> > WANT TO FILE SOMETHING THAT
> > ANSWERS THAT, I WOULD LIKE TO
> > HAVE IT FILED.
> > BECAUSE I WANT TO KNOW WHAT THE
> > ANSWER IS TO WHETHER HE PAID HIS
> > TAXES.
> > AND WHETHER HE FILED HIS RETURN.
> > ALL RIGHT, MR. JUSTICE.
> > LET ME ASK YOU ABOUT THE LACK
> > OF SELFISH MOTIVE.
> > DID THE REFEREE FIND A LACK OF
> > SELFISH MOTIVE?
> > YES.
> > AND HOW IS THERE COMPETENT
> > SUBSTANTIAL EVIDENCE TO SUPPORT

>> THAT GIVEN THE FACT THAT HE TOOK
>> FROM HIS TRUST ACCOUNT, I GUESS
>> FOR HIS OWN BENEFIT?
>> IT WAS PRIMARILY BECAUSE OF
>> THE MENTAL HEALTH ISSUES,
>> MR. JUSTICE.
>> IT WAS THAT THERE WAS NO SELFISH
>> MOTIVE, IT WAS A LACK OF
>> JUDGMENT, IT WAS NOT -- HE
>> DIDN'T DO IT BECAUSE HE DIDN'T
>> KNOW HE WOULD BE PAYING IT BACK.
>> THE TRUST ACCOUNT -- INCIDENT
>> WITH THE TRUST ACCOUNT, HE TOOK
>> \$20,000 THAT WAS SUPPOSED TO BE
>> GOING TO A TRUSTEE, USED IT AND
>> PAID IT APPROXIMATELY SIX MONTHS
>> LATER.
>> THE FINDING WAS THAT THAT WAS
>> DURING THE HEIGHT OF HIS
>> DEPRESSION, AND THAT WAS THE
>> EXPLANATION AS TO WHY THERE WAS
>> NO SELFISH MOTIVE OR DISHONEST
>> MOTIVE.
>> IS THERE ANY FINDING THAT HE
>> USED IT TO PAY DEBTS OR ANYTHING
>> LIKE THAT, WHAT HE USED THAT
>> MONEY FOR?
>> THERE WAS NO SUCH FINDING.
>> YOU HEARD ME ASK THE QUESTION
>> BEFORE FROM BAR COUNSEL WITH
>> REFERENCE TO UNDERLYING MOTIVE.
>> WOULD YOU -- IT APPEARS THAT
>> THESE FUNDS WERE REPAID IN A
>> RELATIVELY SHORT PERIOD OF TIME.
>> TO COVER THESE WITHDRAWALS.
>> WAS THERE EVIDENCE AND REALLY,
>> IT PROBABLY RELATES TO THE
>> INCOME TAX QUESTIONS THAT
>> JUSTICE WELLS HAS ASKED TOO, WAS
>> THERE EVIDENCE HERE ABOUT
>> WHETHER OR NOT THERE WERE ANY
>> FINANCIAL ISSUES WITH THIS
>> RESPONDENT, THAT IS, WAS HE IN
>> FINANCIAL STRAITS OR WAS HE AT
>> ALL TIMES COMPLETELY FINANCIALLY
>> SOLVENT, OR GIVE US -- BUT WAS
>> THERE EVIDENCE GOING TO THAT --
>> TO DEMONSTRATE, HE REALLY DIDN'T
>> NEED TO DO THIS, BUT WE'VE HAD
>> AN OUTLINE HERE OF HIS
>> SUBSTANTIAL INCOME, OVER AND
>> INCLUDING, REALLY, THIS PERIOD
>> OF TIME.
>> SO WAS THERE EVIDENCE THAT, YOU

> >KNOW, HE'S GOT PLENTY OF FUNDS
> >AVAILABLE, HE DIDN'T REALLY NEED
> >TO DO THIS, AND THEREFORE IT WAS
> >JUST AN ABERRATION OR WAS THERE
> >EVIDENCE THAT NOW HE WAS IN
> >FINANCIAL TROUBLE, AND -- SO
> >HELP ME.
> > I WILL HELP YOU, MR. JUSTICE.
> >THE FINDING OF THE REFEREE WAS
> >THAT MR. BROWNSTEIN MADE
> >APPROXIMATELY \$20,000 A MONTH
> >CONSISTENTLY.
> >AND THAT THE ISSUE OF THE
> >KITING, WAS -- IN
> >MR. BROWNSTEIN'S TESTIMONY AND
> >EVIDENCE WAS IN ANTICIPATION OF
> >HIM RECEIVING FUNDS WHICH DID
> >COME IN, THOSE CHECKS WOULD BE
> >PAID.
> >THERE WAS NO EVIDENCE OF ANY
> >FINANCIAL HARDSHIP.
> >THE \$600,000 FIGURE IS AN
> >ACCURATE FIGURE, THAT'S WHAT WAS
> >TESTIFIED TO, BUT THAT WAS IN
> >1995 OR 1996.
> >INCOME HAD GONE DOWN TO \$200,000
> >LEVEL, BUT THAT WAS THE
> >LIFESTYLE THAT MY CLIENT WAS
> >LIVING IN.
> >THERE'S NO EVIDENCE OR TESTIMONY
> >THAT THIS WAS A MAN WHO IS
> >LIVING WAY BEYOND HIS MEANS AND
> >WAS BANKRUPT AND WAS USING OTHER
> >PEOPLE'S MONEY TO SUPPORT HIM.
> > I TAKE IT THERE WAS ALSO NO
> >EVIDENCE OF HIS GENERAL
> >FINANCIAL CONDITION, THAT IS,
> >THERE WASN'T EVIDENCE, THAT, YOU
> >HE KNOW, HERE'S A PERSON THAT
> >HAS MILLIONS OF DOLLARS IN
> >STOCKS AND BONDS OR HE DOESN'T
> >HAVE, OR THERE JUST WAS NO
> >EVIDENCE ABOUT IT.
> > THERE'S NO EVIDENCE OF THAT.
> >THE ONLY EVIDENCE WAS HIS
> >TESTIMONY.
> > THANK YOU, COUNSEL.
> >WITH OUR HELP, YOU'VE USED UP
> >ALL OF YOUR TIME.
> > THANK YOU VERY MUCH.
> > REBUTTAL?
> > I'LL BE VERY BRIEF IN
> >CLOSING, YOUR HONOR.
> >I JUST WANT TO LEAVE THE DORT

> > WITH ONE FINAL THOUGHT.
> > THE STATEMENT THIS COURT HAS
> > MADE ON NUMEROUS OCCASIONS --
> > COULD YOU GO BACK TO JUSTICE
> > WELLS' CONCERN BECAUSE I'M
> > CONCERNED.
> > WAS THERE A FINDING, WHAT WAS
> > THE ISSUE ON THESE INCOME TAX
> > RETURNS?
> > IT IS MY UNDERSTANDING BASED
> > ON THE RECORD THAT HE HAS NOT
> > FILED, NOT ONLY HAS HE NOT PAID,
> > HE HAS NOT FILED.
> > BUT THERE ARE NO CHARGES
> > FILED THAT THIS WAS CONSTITUTED
> > SOME VIOLATION OF THE BAR?
> > I KNOW THERE ARE NO CHARGES
> > FILED BY THE BAR AS OF YET ON
> > THAT MATTER.
> > AS FOR ANY CIVIL CRIMINAL MATTER
> > RELATED TO THAT, THE RECORD DOES
> > NOT REVEAL --
> > BUT YOU WOULD BE ASKING US TO
> > ST. PATRICK'S CATHEDRAL LATE
> > WITH REFERENCE TO WHAT THE
> > CIRCUMSTANCES ARE, WOULD YOU
> > NOT?
> > WELL, JUDGE, NO.
> > ACTUALLY, IN THE RECORD, THERE
> > IS TESTIMONY FROM MR. BROWNSTEIN
> > THAT HE HAS NOT PAID OR FILED
> > HIS TAXES, SO I DON'T BELIEVE
> > IT'S SPECULATION.
> > I BELIEVE IT'S RECORD EVIDENCE.
> > I HAVE ANOTHER QUESTION.
> > I'M HAVING -- AND YOU SAID THE
> > FIRST TIME UP THAT THIS BAR
> > DOESN'T CONTEST THE SUBSTANTIAL
> > MITIGATION.
> > WHAT I'M HAVING TROUBLE WITH IS
> > SELECTIVE DEPRESSION, WHICH IS
> > THAT IT WAS DEPRESSION THAT
> > DIDN'T -- SO THAT HE WAS
> > SCREWING UP ON HIS TRUST
> > ACCOUNT, BUT YET, HE WAS STILL
> > MAKING, I THINK MOST AMERICANS
> > WOULD CONSIDER MAKING \$20,000 A
> > MONTH OR MORE A SUBSTANTIAL
> > AMOUNT OF MONEY.
> > THIS ISN'T SOMEBODY WHO WAS JUST
> > SORT OF NOT COMING TO THE OFFICE
> > AND MAKING MONEY.
> > BUT HOW DOES THE BAR SQUARE OR
> > DID THEY TRY TO CHALLENGE THAT

>>THIS IS REALLY THE DEPRESSION,
>>YES, IT WAS THERE, BUT IT REALLY
>>WASN'T THE OVERWHELMING REASON
>>FOR THESE TRUST ACCOUNT
>>VIOLATIONS?
>> I BELIEVE CROSS-EXAMINATION
>>OF THE DOCTOR AT THE TRIAL WENT
>>TO THAT VERY ISSUE, JUDGE.
>>THE POINT IS THAT WE BELIEVE
>>THAT THERE MAY HAVE BEEN
>>DEPRESSION.
>>HOWEVER, IT IS OUR SINCERE
>>BELIEF THAT NOT ONLY DID IT NOT
>>RISE TO THE LEVEL TO MITIGATE,
>>BUT THAT IT WAS VERY SELECTIVE
>>IN HOW IT AFFECTED
>>MR. BROWNSTEIN'S BEHAVIOR.
>>HE WAS ABLE TO GET UP, HE WAS
>>ABLE TO DRESS, HE WAS ABLE TO GO
>>TO WORK.
>>ALTHOUGH THERE'S RECORD EVIDENCE
>>THAT HE WOULD SLEEP SOMETIMES
>>WHILE AT WORK, THE FACT IS
>>DURING THAT TIME, HE WAS ABLE TO
>>VERY SUCCESSFULLY NEGOTIATE THE
>>OBTAINING OF THE!!!!!!!!!!!!!! A CLIENT THAT WAS A
>>FEATHER IN MISS HAT MY BUSINESS
>>OWN ADMISSION, YET WHEN HE'S
>>DEPRESSED, HE GOES AND STEALS
>>MONEY FROM HIS TRUST ACCOUNT.
>>HE SEES FRIENDS, HE GOLFS.
>>THE DEPRESSION SOMEHOW ONLY
>>SEEMS TO AFFECT STEALING OF
>>FUNDS FROM THE ACCOUNT.
>>SO WE BELIEVE THAT THAT IS
>>EVIDENCE OF SELECTIVE
>>DEPRESSION.
>>CLEARLY SHOWS --
>> WITH OUR ASSISTANCE, YOU'VE
>>USED ALL YOUR TIME.
>>THANK YOU FOR THE PRESENTATION
>>FROM BOTH COUNSEL.
>>THE COURT WILL TAKE THE VERY
>>SERIOUS MATTER INTO
>>CONSIDERATION.
>> SINCERELY HONORED.
>>I JUST WANT TO CONGRATULATE BOTH
>>OF YOU ON YOUR CANDOR AND
>>PROFESSIONALISM BEFORE THE
>>COURT.
>> THANK YOU, JUSTICE.
>> NEXT CASE ON THE CALENDAR IS
>>NORMANDY VERSUS STATE OF FLORIDA