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## **The Florida Bar v. Patricia Del Pino**

**SC05-734**

THE SEX BATTERY WITHOUT  
VIOLENCE STOOD IN BETWEEN  
LEWD AND LASCIVIOUS AND  
SIMPLE BATTERY AND  
UNDERSTAND THE RULES SIMPLE  
BATTERY WOULD HAVE BEEN A  
NECESSARY LESSER FOR LEWD  
AND LASCIVIOUS CONDUCT.  
IT WOULD NOT HAVE HAD  
ANYTHING IN BETWEEN IT.  
THEY SHOULD NOT HAVE BEEN  
TOLD THAT THERE WAS -- THAT  
THESE WERE LESSERS WHEN THEY  
WERE NOT.

AND THAT'S -- AND THAT'S  
WHERE I'M COMING WITH MY PER  
SE EVIDENCE.

>> THEY WERE LESSER TO THE  
MAIN OFFENSE.

>> YEAH.

>> BUT MAYBE NOT LESSERS TO  
EACH OTHER.

>> RIGHT.

>> THANK YOU VERY MUCH.  
WE'LL TAKE THE CASE UNDER  
ADVISEMENT.

THANK YOU VERY MUCH.

>> THE SUPREME COURT OF  
FLORIDA.

PLEASE BE SEATED.

THE NEXT CASE ON OUR  
CALENDAR THIS MORNING IS THE  
FLORIDA BAR/dEL PINO.

GOOD MORNING.

MAY IT PLEASE THE COURT MY  
NAME IS JACK WEISS. I  
REPRESENTATIVE THE  
RESPONDENT IN THIS CASE.  
MY CLIENT IS SITTING TO MY  
LEFT.

WE HAVE ASKED THIS COURT TO  
REVIEW THE REFEREE'S REPORT  
IN THIS MATTER IN WHICH THE  
REFEREE RECOMMENDED

DISBARMENT.

WE SUBMIT THERE ARE TWO ERRORS IN THAT REPORT THAT WANT THIS COURT'S CONSIDERATION. IN REVIEW IN THE FIRST IS THE REFEREE'S FINDING THAT MY CLIENT PARTICIPATED IN THE AVENTURRA CONDO CLOSING ON OCTOBER THE 4th,2001 WITH THE INTENT TO BENEFIT FROM THE CLOSING, THAT SHE AND HER ESTRANGED HUSBAND WERE GOING TO LIVE IN THE CONDOMINIUM, THAT IS CONTRARY TO THE EVIDENCE, AND THAT IS AN EGREGIOUS AND MATERIALLY ERRONEOUS FACTUAL FINDING. THE SECOND IS THAT WE SUBMIT THE REFEREE GAVE UNDUE WEIGHT TO THAT FACTORING IN AGGRAVATION, GAVE NO WEIGHT IN MITIGATION TO THE FACT THAT MY CLIENT'S OFFENSES OCCURRED OUTSIDE THE PRACTICE OF LAW WHICH MATERIALLY MITIGATING FACTOR.

>> COULD YOU EXPLAIN THE AVENTURRA CIRCUMSTANCE AS IT WAS PRESENTED TO THE REFEREE.

>> I WILL DO MY BEST, JUSTICE PARIENTE.

>> I AM REALLY TRYING TO UNDERSTAND IT.

IT CLEARLY WAS APPARENTLY THE HUSBAND -- HUSBAND COULDN'T GET FINANCING BECAUSE HE WAS --

>> YES, MA'AM.

THE HUSBAND AND MY CLIENT WERE ESTRANGED.

THEY HAD BEEN SEPARATED.

AFTER THEY SEPARATED HE PUT DOWN AN OPTION TO WHY THE AVENTURRA CONDO FOR, I BELIEVE, IT WAS \$600,000.

BY THE TIME OF THE TRANSACTION IT APPRECIATED TO 1.2 MILLION.

MR. ARIAS HAD BEEN INDICTED IN PENNSYLVANIA FOR MEDICAID FRAUD.

HE HAD AN \$800,000  
RESTITUTION FIGURE THAT HE  
HAD TO COME UP WITH.  
RATHER THAN LOSING THE  
BENEFIT OF HIS OPTION  
BECAUSE HE COULD NOT GET  
FINANCING --HE'S NOW BEEN INDICTED AND  
FINANCING WAS NOT AVAILABLE  
TO HIM.

HE ENTERED INTO THIS RUESE  
AT THE HEALTH CLINIC AND SHE  
QUALIFIED FOR THE FINANCING.  
SHE WAS GOING TO BE THE  
PURCHASER BUT IN REALITY HE  
WAS GOING TO BE THE OWNER  
AND HE WAS GOING TO LIVE  
THERE WITH HIS GIRLFRIEND.

>> WELL, WHAT WAS THE  
DOCUMENT THAT YOUR CLIENT  
HAD TO SIGN A WAIVER OF  
HOMESTEAD?

WHY DOES THAT HAVE TO  
BE --

>> THAT'S OUR EXHIBIT 1.  
IT'S THE WARRANTY DEED IN  
RETROSPECT IT APPEARS THAT  
IT DIDN'T HAVE TO BE SIGNED.  
THAT WASN'T IN THE RECORD,  
THOUGH, AND I'M NOT -- FRANKLY  
I'M NOT A REAL ESTATE  
LAWYER.

I'M NOT SURE IF THAT'S  
ACCURATE OR NOT.  
BUT SHE INSISTED ON  
THAT WARRANTY DEED THAT,  
THAT SHE NOTED THAT SHE IS  
SIGNING THIS SOLEY FOR THE  
PURPOSE OF WAIVING HOMESTEAD  
AND SHE IS NOT THE GRANTOR.

>> BUT SHE KNEW THAT THIS  
WAS A FRAUDULENT  
TRANSACTION?

>> YES, MA'AM.

AND FOR THAT SHE PLED GUILTY.

>> SO THE ISSUE IS WHETHER  
SHE WAS -- WHAT YOU ARE  
SAYING THIS DOESN'T -- THAT  
THE EVIDENCE DOESN'T SUPPORT  
THAT SHE WOULD BENEFIT  
BECAUSE SHE AT THAT POINT  
WAS NOT LIVING WITH HIM AND  
HE WAS LIVING WITH SOMEONE  
ELSE. IS THAT THE EVIDENCE?

>> EXACTLY.

EXACTLY.

WE DID NOT GO BEFORE THE REFEREE SAYING MY CLIENT WAS NOT GUILTY OF THE TWO CRIMES THAT SHE PLED TO.

THE MAIL FRAUD COUNT THAT SHE PLED TO WAS -- IT'S OUR POSITION THAT IT WAS FAILING TO STOP THE FRAUDULENT TRANSACTION.

THE REFEREE MATERIALLY CONSIDERED THIS FACTOR, HIS ERRONEOUS IMPRESSION SHE WOULD LIVE THERE.

HE STATED TWICE ON PAGE 4 AND THEN PAGE 7 HE CONSIDERED THIS AN AGGRAVATING FACTOR.

THE BASIS FOR JUDGE TRAY COMING TO THE CONCLUSION -- >> YOU WOULD AGREE IF SHE WERE GOING TO LIVE THERE AND PARTICIPATE IN THAT WAY, THAT, THAT WOULD BE A -- CONSTITUTE A SELFISH MOTIVE.

>> YES, MA'AM.

>> OKAY.

>> YES, MA'AM.

I WOULD.

IF SHE DID WITH THIS INTENT OF HAVING A HOME FOR HER AND HER ESTRANGED HUSBAND I SUBMIT IT WOULD BE AN AGGRAVATING FACTOR BUT SUCH WAS NOT THE CASE.

>> WHAT IF THE PROCEEDS WERE USED TO PAY FOR THE RESTITUTION, THAT WOULD ALLEVIATE THE NEED TO USE OTHER MARITAL ASSETS TO ACCOMPLISH THE SAME GOAL; CORRECT?

>> THERE'S NOTHING IN THE RECORD TO INDICATE JOINT MARITAL ASSETS.

SHE HAD NO INTEREST IN THIS CONDOMINIUM WHATSOEVER. THERE'S NOTHING IN THE RECORD TO INDICATE THAT ANYTHING THAT SHE OWNED OR SHE HAD WOULD HAVE BEEN USED TO PAY MR. ARIAS' RESTITUTION.

>> WHOSE BURDEN IS THAT TO PUT THAT IN THE RECORD, THE BARS OR YOURS?

>> THE BAR, YOUR HONOR.

>> EVEN THOUGH SHE PLED TO THE FELONY.

EVEN THOUGH SHE'S PLED TO THE FELONY, THAT'S CORRECT, YOUR HONOR.

>> IT'S YOUR POSITION IT WOULD BE THE BAR'S POSITION TO GET INTO HER FINANCES AND WHETHER SHE WAS RECEIVING ANY MONEY FROM --

>> SHE TESTIFIED.

SHE TESTIFIED SHE HAD ABOUT \$250,000 IN ASSETS AND THERE'S NOTHING IN THERE IN THE RECORD WHATSOEVER WHEN SHE TESTIFIED ABOUT ASSETS IN -- INDICATING THEY WERE JOINT ASSETS.

>> AND THEN SHE TESTIFIED SHE WAS SOLELY INDEPENDENT AS FAR AS HER INCOME WAS NOT RELYING UPON HIM FOR ANY BENEFIT?

>> I THIS THE REPORT IS SILENT IN THAT REGARD. I'M CONCERNED.

IF THIS -- THESE PROCEEDING WOULD BE USED TO PAY THIS RESTITUTION, I WOULD FREE UP -- IF SHE WAS DEPENDENT UPON HIM OR PARTIALLY DEPENDENT OR CODEPENDENT OR WHATEVER USING HIS INCOME AND NOT INDEPENDENT OF THEM THERE WOULD BE SOME BENEFIT OF HER PARTICIPATING IN THIS. BUT THEY ARE NOT?

>> IF THE RECORD SHOWS THERE WERE JOINT ASSETS AND THAT THEY WERE GOING TO BE -- USE THE RECORDS SHOWS NOTHING.

SHE WAS LIVING ENTIRELY INDEPENDENT OF HIM.

>> THAT'S MY QUESTION. AND SO I THINK THAT'S IN THE RECORD.

>> GIVE US A LITTLE FUNDAMENTAL SKETCH OF THAT. BECAUSE THE RECORD

DEMONSTRATES THAT BACK AND FORTH RELATIONSHIP BETWEEN THE TWO OF THEM -- WHEN DID THIS TRANSACTION TAKE PLACE?

>> IT TOOK PLACE ON OCTOBER THE 1st, 2004.

THEY HAD BEEN SEPARATED AND -- I'M SORRY.

2001.

I APOLOGIZE JUSTICE ANSTEAD. THEY HAD BEEN SEPARATED AT LEAST SIX TIMES DURING THAT TIME FRAME AT THE POINT OF THE TRANSACTION THEY WERE SEPARATED. HE WAS LIVING WITH HER GIRLFRIEND.

>> NOW, DID THEY GET BACK TOGETHER AFTER THIS TRANSACTION?

>> THERE WAS AT LEAST A TWO-MONTH PERIOD IN 2004 AFTER HE GOT OUT OF JAIL THAT THEY MOVED -- HE MOVED BACK IN WITH HER.

THAT'S THREE YEARS LATER.

>> BUT, WELL, WHAT DOES THE INTERVAL SHOW?

>> IN OTHER WORDS --

>> JUSTICE ANSTEAD, I'M AS CONFUSED AS YOU ARE.

THAT'S PART OF THE DIFFICULTY I'M HAVING AND YOU ARE SAYING THEY ARE ESTRANGED AND SEPARATED, OKAY.

ON THIS RECORD IT APPEARS THAT THIS WAS CONSTANT. THAT IT IS THAT THEY WERE TOGETHER, AND THEN THEY WERE SEPARATED.

>> I DON'T THINK THERE'S ANYTHING IN THE PATTERN -- THE PATTERN CONTINUED AFTER THIS TRANSACTION; DID IT NOT?

>> I DON'T THINK THERE'S ANYTHING INDICATING THEY LIVED TOGETHER AFTER 2001 UNTIL 2004.

BUT I'M NOT SURE OF THAT JUSTICE ANSTEAD.

I WANTED TO CLARIFY SOMETHING AS FAR AS WHO HAS THE BURDEN OF PROOF ON THIS

ISSUE.

THIS ISSUE IS SOMETHING THAT  
YOU CLAIM THE TRIAL -- THE  
REFEREE ERRED IN FINDING IN  
AGGRAVATION NOT IN DECLINING  
TO FIND MITIGATION.

>> CORRECT.

CORRECT.

WE'RE NOT -- WE'RE NOT  
FLUSHING OVER WHOSE FAILURE  
TO LIST AS A MITIGATING  
FACTOR NO DISHONEST MOTIVE.  
WE SUBMIT WE HAVE SUFFICIENT  
MITIGATION EXCLUSIVE OF THAT  
TO SHOW THAT THIS MATTER  
SHOULD BE REDUCED DOWN FROM  
DISBARMENT THE ULTIMATE  
DISCIPLINE, THE DEATH  
PENALTY IF YOU WILL OF A  
DISCIPLINARY PROCEEDINGS.

WHAT WE ARE SAYING IS THAT  
HIS USING THIS MOTIVE OF  
LIVING IN THE CONDITION  
MINIMUM AS A SUBSTANTIALLY  
AGGRAVATING FACTOR IS  
COMPLETELY INAPPROPRIATE.

>> AND AS TO THAT YOUR  
POSITION IS THAT THE BAR HAS  
THE BURDEN OF PROOF AS TO  
AGGRAVATION.

>> THE BAR HAS THE BURDEN OF  
PROOF AS TO AGGRAVATION.  
WE HAVE THE BURDEN OF PROOF  
AS TO MITIGATION.

[AUDIO DIFFICULTIES]

[AUDIO DIFFICULTIES]

>> WHICH I THINK IS A VERY  
GOOD CASE YOUR HONOR.

I DON'T THINK THERE'S ANY  
DOUBT THAT HAD THIS BEEN A  
CASE INVOLVING ALCOHOL ABUSE  
OR COCAINE ABUSE THAT THERE  
WOULD BE A REDUCTION FROM  
DISBARMENT THE ULTIMATE  
SENTENCE DOWN.

[AUDIO DIFFICULTIES]

>> I CERTAINLY AGREE WITH  
THAT, YES, MA'AM.

[AUDIO DIFFICULTIES]

>> I THINK I CITED SEVERAL.  
SOMBERS IS ONE OF THEM I  
BELIEVE.

WELLS, SUMBERS- YES,  
MA'AM.

[AUDIO DIFFICULTIES]

YES, MA'AM.

[AUDIO DIFFICULTIES]

>> I THINK PART WAS STEALING FROM THE TRUST ACCOUNT.

YES, MA'AM, ABSOLUTELY.

WE'RE LUMPING MY CLIENT IN WITH THOSE LAWYERS WHO STEAL FROM TRUST ACCOUNTS, WHO RUN DRUGS, GET CONVICTED FOR DRUG RUNNING AND I ASK THE COURT TO VIEW THESE CASES AND I GUESS A HIERARCHY AND WHY SHOULD CONGRESSMAN SMITH GET OFF WITH A THREE-YEAR SUSPENSION FOR CONDUCT THAT I SUBMIT TO THE COURT IS WORSE AND MY CLIENT GET DISBARRED FOR VIRTUALLY -- I MEAN FOR LESS SERIOUS CONDUCT.

THERE'S TWO THINGS THAT I THINK JUDGE TRAY --

[AUDIO DIFFICULTIES]

>> I THINK THE JUDGE HAD NO REASONABLE BASIS FOR THIS RECOMMENDATION, MA'AM.

AND --

>> YOU ARE WELL INTO YOUR REBUTTAL.

YES, SIR.

I UNDERSTAND.

AND THE TWO FACTORS MATERIAL FACTOR AND THE IMPROPER AGGRAVATION ON THE OWNERSHIP OF THE CONDOMINIUM AND NO CREDIT FOR THE FACT THAT THIS MISCONDUCT TOOK PLACE OUTSIDE THE PRACTICE OF LAW. NO CLIENT WAS HARMED AND I POINT TO -- HELLINGER CASE FOR THAT PROPOSITION WHERE MR. HELLINGER GOT TWO YEARS.

THANK YOU.

I WILL SAVE MY REMAINING TIME FOR REBUTTAL.

MAY IT PLEASE THE COURT I'M RANDY LAZARUS ON BEHALF OF THE BAR.

LET'S FIRST ADDRESS

MR. WEISS'S FIRST POINT WITH REGARD TO THE OWNERSHIP OF THE CONDOMINIUM, WHO

WAS SUPPOSED TO HAVE CONTROL OF THE CONDOMINIUM WHETHER IT BE MISS dEL PINO AND HER HUSBAND OR HER CURRENT HUSBAND.

THE REFEREE SPECIFICALLY FOUND HER AS AN AGGRAVATOR THAT THE PROCEEDS FROM THE AVENTURRA CLOSING WOULD BE USED TO ASSIST MR. ALIAS TO PAY THE RESTITUTION IN HIS CRIMINAL CASE.

THE ISSUE OF WHO WAS TO HAVE CONTROL OF THIS CONDOMINIUM HAD ABSOLUTELY NOTHING TO DO WITH THE AGGRAVATING CIRCUMSTANCE THAT THE REFEREE FOUND IN THIS STATE.

IT IS ITS RESPONSE TO OVERCOME DISBARMENT.

[AUDIO DIFFICULTIES]

[AUDIO DIFFICULTIES]

>> WELL, FIRST OF ALL IT DOESN'T HELP HER.

SHE PARTICIPATED IN A FRAUD.

>> AND THEY ADMIT THAT.

>> THEY ADMIT THAT.

SHE PARTICIPATED IN A FRAUD. THIS DOCUMENT SIGNED ON OCTOBER 4th, 2001.

SHE HAD NOT BEEN LIVING WITH HER HUSBAND FOR QUITE SOME TIME.

AND I WANT TO BRING SOMETHING ELSE TO YOUR ATTENTION.

THERE IS SEMI -- TESTIMONY THAT IN SEPTEMBER OF 2001 THE IRS KNOCKS ON MISS dEL PINO'S DOOR AND MADE HER AWARE SHE WAS UNDER INVESTIGATION FOR THE OFFENSE COMMITTED ON APRIL 19th, 1999.

IN OCTOBER THE TESTIMONY WILL SHOW THAT THEY RECEIVED THE SUBPOENA FOR THE PAYROLL RECORDS.

SHE WAS AWARE SHE WAS UNDER INVESTIGATION AT THAT TIME.

[AUDIO DIFFICULTIES]

>> THAT'S CORRECT.

>> HOW DOES THAT BENEFIT HER? IT BENEFITS -- WELL, IT

DOESN'T BENEFIT HER.  
IT DOES NOT -- IT DIDN'T  
PERSONALLY BENEFIT HER.  
IT WAS NOT HER RESTITUTION.  
HOW DOES SHE HAVE SELFISH  
MOTIVE.

SHE WAS ASSISTING HER  
HUSBAND.

SHE WAS MARRIED TO THE MAN.  
SHE WASN'T DOING -- SHE WAS  
DOING FOR HER HUSBAND.

>> YES, YOUR HONOR.

I SUBMIT THAT'S THE  
SUFFICIENT MOTIVE FOR  
SOMEBODY TO ASSIST A FAMILY  
MEMBER.

IS THERE ANY EVIDENCE WITH  
REGARD TO OWNERSHIP ON  
MARITAL PROPERTY IF THEY ARE  
STILL MARRIED.

ANY EVIDENCE OR ISSUES WITH  
REGARD TO THAT?

>> WITH THE REGARD TO  
AVENTURRA PROPERTY.

>> SHE DIDN'T OWN THAT  
PROPERTY.

THAT'S WHY THE WARRANTY DEED  
SAID SHE WAS SIGNING FOR THE  
BEHAVIOR OF HOMESTEAD  
PURPOSES NOT AS A GRANTOR.  
SO IS THE BAR CLAIMING THE  
ONLY ASPECT OF THE SELFISH  
MOTIVE AGGRAVATOR IS THAT  
SHE WAS DOING THAT FOR A  
FAMILY MEMBER.

>> YES, YOUR HONOR.

>> BUT NOT RECEIVING ANY  
FINANCIAL BENEFIT.

>> THERE'S NO EVIDENCE THAT  
SHE RECEIVED ANY FINANCIAL  
BENEFIT.

AND LET'S NOT FORGET THAT  
NOT ONLY DO WE HAVE THE  
AVENTURRA CLOSING.

WE HAVE A TAX EVASION CHARGE  
AND THE REFEREE FOUND THERE  
WAS A SELFISH MOTIVE FOR HER  
TO COMMIT THE TAX EVASION  
CHARGE.

[AUDIO DIFFICULTIES]

>> ONE THING ,YOUR HONOR, I  
BELIEVE YOU POINTED OUT --

>> THE REEFREE AND SMITH DID  
NOT RECOMMEND.

THAT'S ONE FACT THAT YOU  
HAVE TO CONSIDER AND WHETHER  
OR NOT IN THIS CASE OUR  
REEFREE HAD A REASONABLE  
BASIS IN EXISTING CASE  
LAW --

[AUDIO DIFFICULTIES]

>> LET ME TELL YOU WHAT I  
SEE -- ARE YOU SAYING  
THAT --

[AUDIO DIFFICULTIES]

PARTICULARLY AS TO FEDERAL  
ELECTION OFFENSE IT WAS  
STATED IN THIS OPINION THAT,  
THAT WAS AN -- THAT  
PROCEEDING OR INFRACTION IS  
NORMALLY AN ADMINISTRATIVE-TYPE  
MATTER.

SOMETHING THAT PERHAPS HAD  
HE NOD -- NOT HAD THE TAX  
EVASION CHARGE IT  
WOULDN'T HAVE BEEN ADDRESSED  
THIS HARSHLY HERE.

[AUDIO DIFFICULTIES]

I AM NOT MINIMIZING IT.

BUT WITHIN THE SAME OPINION  
THERE'S ALSO A REFERENCE TO  
THAT HAVING NORMALLY BEEN  
HANDLED IN AN ADMINISTRATIVE  
MANNER.

ALSO, IN THIS -- IN THE  
SMITH CASE THE COURT -- THE  
REFEREE FOUND THAT MR. SMITH  
WAS HAVING FINANCIAL  
DIFFICULTY.

NOT THAT WAS AN EXCUSE FOR  
WHY HE COMMITTED THE OFFENSE  
HE DID BUT THAT WAS A REASON  
FOR HIM TO UNDERSTAND WHAT  
HAPPENED THERE.

AND THAT THERE WAS NOT A  
FINDING OF A SELFISH MOTIVE  
BY MR. SMITH AS OPPOSED TO  
THIS REEFREE --

[INAUDIBLE]

>> YOUR HONOR THAT WAS THE  
FINDING OF THE REFERENDUM  
AND THIS COURT UPHELD IT.

>> AS A BAR COUNSEL AND  
OFFICER OF THIS COURT HOW  
THAT COULD NOT BE A SELFISH  
MOTIVE AND WE ARE ASKING FOR  
AN EXTENSION OF TIME TO FILE  
THE TAX RETURN.

[INAUDIBLE]

I COULD SEE IT BEING VIEWED  
BOTH AS A SELFISH MOTIVE.  
BUT I ALSO HAVE TO LOOK AT  
THE OPINION AND THE FINDING  
OF THE REFEREE AND WHETHER OR  
NOT THEY WERE UPHELD.  
AND IN THIS CASE THERE WAS  
ADDITIONALLY EVIDENCE FROM  
MISS DEL PINO THAT AT THE  
TIME THAT SHE WROTE ZERO ON  
THE -- I THINK IT'S A 4868  
FORM SHE HAD NET WORTH OF  
ALMOST \$250,000.  
THAT WAS ANOTHER FACTOR TO  
CONSIDER.

[AUDIO DIFFICULTIES]

[AUDIO DIFFICULTIES]

>> RIGHT.

[AUDIO DIFFICULTIES]

>> I AGREE WITH YOU 100%  
THAT THIS IS A -- WAS A VERY  
SAD SET OF CIRCUMSTANCES.  
IT WAS SAD LISTENING TO IT.  
IT'S SAD BEING HERE.  
BUT THE REFEREE DID NOT  
MINIMIZE THE MITIGATION THAT  
WAS PRESENTED AND WHAT HE  
DID IN THE FACE OF THESE TWO  
SERIOUS FELONY CONVICTION HE  
ALLOWED THERE TO BE A NUNC  
PRO TUNC OF THE DISBARMENT  
AND HE IS GIVING THIS  
RESPONDENT AN OPPORTUNITY TO  
SUBMIT FOR READMISSION TO  
THE FLORIDA BAR EXAMINERS AT  
LEAST TWO YEARS AHEAD OF THE  
TIME THAT SHE WOULD  
OTHERWISE HAVE HAD TO MAKE  
THIS COURT RULE.  
HE DID CONSIDER THE  
MITIGATION.  
AND SMITH IS NOT THE ONLY  
CASE OUT THERE.  
YOU HAVE THE CASE OF HOSNER  
WHICH INVOLVE MAIL FRAUD AND  
FILING TAX RETURNS.  
YOU HAVE CASES IN WHICH  
THERE WERE VERY SERIOUS  
CRIMINAL CONVICTION BUT THE  
OTHER WAS MITIGATING  
CIRCUMSTANCE AND THE COURT  
DID FIND DISBARMENT.  
YOU ALSO HAVE TO KEEP IN

MIND HERE THAT -- THERE IS THE TESTIMONY THAT MISS DEL PINO WAS PERFORMING QUITE WELL DURING THE PERIOD THAT ALL OF THESE THINGS WERE GOING ON.

AND I ASK YOU TO LOOK TO THE CASES WHICH TALK ABOUT THE FACT THAT CLIENTS ARE NOT EFFECTED AND WHETHER THE LEVEL OF THE ADDICTION ROSE TO A -- WHETHER THE ADDICTION OR WHATEVER THE PROBLEM WAS DID NOT RISE TO A SUFFICIENT LEVEL OF IMPAIRMENT TO OUTWEIGH THE SERIOUSNESS OF THE OFFENSES. THE OFFENSES ARE QUITE SERIOUS HERE.

YOU HAVE MISS DEL PINO AS I STATED EARLIER IN APRIL 15th OF 1999 WHEN SHE IS A PARTNER IN A MAJOR LAW FIRM SITTING IN HER OFFICE, HER HUSBAND -- AND I DON'T MINIMIZE THE ABUSE -- BUT SHE WAS SITTING IN HER OFFICE BY HERSELF.

THAT'S WHAT SHE TESTIFIED ON APRIL 15th, 1999.

AND WHEN THE REST OF US ARE ASKING FOR EXTENSION OR SENDING IN MONEY OR WHATEVER WE ALL DO LEGALLY SHE WAS WRITING ZERO WHEN EARNING \$122,000 A YEAR.

[AUDIO DIFFICULTIES]

MY QUESTION IS WITHOUT THERE BEING HARM IN ADDITION TO THE CRIME --

[INAUDIBLE]

>> IT SHOULD BE A DISBARMENT BECAUSE THERE'S A PRESUMPTION OF DISBARMENT FOR ONE FELONY.

THAT'S WHAT THIS COURT UPHELD.

THAT'S WHAT THE FLORIDA STANDARDS FOR LAWYER SANCTIONS SAY.

THIS COURT HAS SAID THAT IT IS FOR THE RESPONDANT TO OVERCOME THE PRESUMPTION OF DISBARMENT.

THE REFEREE HEARD THE TESTIMONY, THIS COURT SHOULD DEFER TO THE REFEREE.

WHO AS AN ACT OF UNDERSTANDING THIS QUITE EXTENSE TENSESIVE MITIGATION DID FIND THAT --

>> LET ME SEE IF I UNDERSTAND THE FELONY IN RESPECT TO THE TAX FILING. SHE WAS PAID \$122,000 BY THE AKERMAN FIRM.

DUD THE RECORD REFLECT, DID THEY PAY BIRTH -- WITHHOLDING.

>> THERE WAS NO WITHHOLDING SHE WAS A PARTNER YOUR HONOR.

SHE BECOME A PARTNER IN 1995.

AND I BRING TO YOUR ATTENTION THAT AS ANOTHER AGGRAVATING FACTOR THIS REFEREE FOUND THAT ANOTHER --

>> SO IN THE THREE YEARS THAT SHE DIDN'T FILE A RETURN THE AKERMAN DIDN'T CHARGE WITHHOLDING.

>> THERE WAS NO WITHHELDING. SHE ALSO DIDN'T FILE TAX RETURNS FOR '96, '97, '98 AND '99.

THAT WAS THE ENTIRE TIME SHE WAS A PARTNER.

IT'S THE BAR'S POSITION, YOUR HONOR, THAT THE REFEREE SAT THERE AND LISTENED TO EVERYTHING.

HE PREPARED A 17-PAGE REPORT.

HE GAVE DEFERENCE TO THE MITIGATING CIRCUMSTANCES THAT OCCURRED AND THERE'S NO REASON TO SET ASIDE THIS REFEREE'S REPORT BECAUSE IT HAS -- THE DISCIPLINE HAS BEEN A BASIS IN THE EXISTING CASE LAW.

THANK YOU VERY MUCH.

>> REBUTTAL.

>> THANK YOU.

>> CAN I ASK YOU ASSUMING WE AGREE WITH YOU ON THE ISSUE

OF THE AGGRAVATION AND  
NEVERTHELESS THE PRESUMPTIVE  
DISCIPLINE IN THIS CASE IS  
DISBARMENT.

>> THAT'S CORRECT, YOUR  
HONOR.

>> HOW HAVE YOU OVERCOME  
THAT PRESUMPTION AND CAN  
YOU DISTINGUISH OUR CASES IN  
McCEEVER AND FORBES WHICH  
SEEM ANALOGUOUS TO THIS CASE.

>> FORBES HAD A DEVELOP DEAL  
THAT WAS FALLING TO PIECES.  
IT WAS GO TO HELL IN A HAND  
CART.

HE DUMMIED UP CONTRACTS.

HE DUMMIED UP SPECKS.

HE SUBMITTED A KNOWING FALSE  
CONTRACT WITH THE BANK IN AN  
ATTEMPT TO GET FUNDING.

THAT'S A FAR CRY FROM  
PUTTING DOWN ZERO ON YOUR  
TAX RETURN FOR AN  
ESTIMATION.

REMEMBER WE DIDN'T -- WE  
DIDN'T FILE FRAUDULENT TAX  
RETURNS HERE LIKE LARRY  
SMITH DID.

HE LIED TO THE GOVERNMENT  
ON THREE OCCASIONS ABOUT HOW  
MUCH INCOME HE EARNED.

HERE MY CLIENT PUT  
DOWN -- DOWN ZERO.

WAIT A MINUTE.

JUSTICE WELLS, THAT'S A  
QUESTION.

>> OKAY.

YOU ARE NOT CONTENDING THAT  
IT'S WORSE TO FILE A NO  
RETURN.

I MEAN IT'S NOT -- NOTHING  
WRONG WITH FILING NO RETURN.  
THE ONLY THING THAT BAD IS  
FILING FRAUDULENT RETURN.

>> THERE'S A HIERARCHY,  
JUSTICE WELLS.

I SUBMIT THE BOTTOM OF THE  
HIERARCHY IS FAILURE TO  
FILE.

THAT'S A MISDEMEANOR.

>> DO YOU AGREE WITH THE BAR  
THAT THERE WAS NO  
WITHHOLDING PAY.

>> FAILURE TO FILE IS A

MISDEMEANOR.

FILING A 4868 WITH A ZERO IS  
A FELONY AND IT'S A CRIME.  
I SUBMIT, THOUGH, IT'S NOT AS  
BAD AS --

>> THIS LAWYER FILED A  
REQUEST IN WHICH SHE SAID NO  
TAX WAS OWED.  
CORRECT.

>> AND HAVING NOT FILE  
A TAX RETURN FOR THREE  
YEARS AND IN WHICH SHE KNEW  
THAT THERE WAS NO  
WITHHOLDING TIME.

>> FOR THAT SHE PLED YOUR  
HONOR.

THAT'S TAX EVASION.

BUT, YOUR HONOR, WHAT I'M  
SAYING IS THERE'S TAX EVASION,  
FILING FALSE AND FRAUDULENT RETURNS IN  
WHICH YOU TRY TO TELL THE  
GOVERNMENT I EARNED THIS  
MUCH WHEN IN ACTUALITY YOU  
EARNED MORE, WHICH LARRY  
SMITH DID FOR THREE YEARS  
FOR TOTAL OF \$10 -- 110,000  
WORSE THAN SOMEONE  
IN MIDST OF DEPRESSION  
PUTTING DOWN -- DOWN ZERO.

>> THERE'S STILL THE  
PRESUMPTION OF DISBARMENT.  
IS THERE NOT?

BECAUSE THERE'S A FELONY  
CONVICTION.

HOW DO YOU OVERCOME THE  
PRESUMPTION BY SAYING THAT  
THIS IS A TINY FELONY OR BY  
SAYING DESPITE THE FELONY WE  
HAVE SUBSTANTIAL MITIGATION,  
WHICH IS IT?

>> WE HAVE SUBSTANTIAL  
MITIGATION.

7 ELEMENTS OF SUBSTANTIAL  
MITIGATION.

>> IS THAT WHAT YOU HAVE TO  
DO.

>> YES, SIR.

>> TO OVERCOME THE  
PRESUMPTION.

NOT THE FACT THAT THIS  
FELONY IS NOT AS BAD AS  
FRAUDULENT TAX  
RETURN.

>> ABSOLUTELY JUSTICE

CANTERO.

I SUBMIT WE MADE THAT  
SHOWING OF MITIGATION THE  
MOST SERIOUS OF WHICH WAS  
HER OFFENSES WERE DURING A  
TIME OF DEPRESSION AND  
DEPENDENT PERSONALITY  
DISORDER WHICH IS COMMON ON  
AN ABUSED SPOUSE.

THERE'S ONE POINT.

>> WITH OUR ASSISTANCE YOU  
HAVE EXHAUSTED -- YOU HAVE EXHAUSTED  
ALL OF YOUR TIME.

>> ALL RIGHT.

>> THANK YOU VERY MUCH.

WE THANK YOU FOR THE  
PRESENTATION.

AND WE'LL TAKE THE CASE  
UNDER ADVISEMENT.

THANK YOU.