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Florida Board of Bar Examiners v. Allan Barry Marks

SC06-524

WE'RE GOING TO MOVE TO OUR
THIRD CASE ON THE CALENDAR
THIS MORNING, AND PASS OVER
THE SECOND CASE FOR THE TIME
BEING.

SO OUR NEXT CASE WILL BE THE
FLORIDA BOARD OF BAR
EXAMINERS v. ALLAN BARRY
MARKS.

MR. BLYTHE, YOU GOING TO
START OFF?

>> MAY IT PLEASE THE COURT.
I'M DEPUTY GENERAL COUNSEL
OF THE FLORIDA BAR EXAMINERS
AND I AM HERE THIS MORNING
ARGUING TO SUPPORT THE
BOARD'S RECOMMENDATION THAT
ALLAN MARKS BE READMITTED TO
THE FLORIDA BAR.

THIS CASE IS IN FRONT OF THE
COURT IN A SOMEWHAT UNUSUAL
POSTURE.

THE ABKNT RESIGNED FROM THE
FLORIDA BAR ALMOST 17 YEARS
AGO.

HE APPLIES FOR READMISSION
AND WENT TO A FORMAL HEARING
BEFORE THE BOARD IN OCTOBER
OF 1998.

AFTER THAT, FORMAL HEARING,
THE BOARD RECOMMENDED THAT
HIS ADMISSION BE DENIED.

THE APPLICANT DID NOT
PETITION THIS COURT TO
REVIEW THE BOARD'S DECISION,
SO THE BOARD'S
RECOMMENDATION WAS THE FINAL
ACTION IN THAT CASE.

>> MR. BLYTHE, THAT IS THE
CASE.

>> WE HAVE GOT A FULL
PROCEDURAL HISTORY.
WE HAVE DONE THIS ON
MULTIPLE OCCASIONS.

IF YOU WOULD, PLEASE DIRECT
YOUR ATTENTION WITH REGARD

TO THE OUTSTANDING
OBLIGATIONS WITH REGARD TO
THE INTERNAL REVENUE
SERVICE.

IT APPEARS FROM EVERYTHING
THAT'S FILED, EVEN TO THIS
POINT AS WELL, THAT THERE
WAS AN INTENTIONAL FAILURE
TO IMPLY -- COMPLY WITH THE
LAWS OF THE UNITED STATES IN
THE FILING OF TAX RETURNS,
AND THAT CONTINUED RIGHT UP
UNTIL VERY RECENTLY, AND
THAT MATTER IS STILL
OUTSTANDING AND SO THE
POSITION IT WOULD SEEM IS
THAT THE BOARD OF BAR
EXAMINERS AS A, AS AN AGENCY
OR ARM OF THE FLORIDA
SUPREME COURT WOULD HAVE
LAWYERS PRACTICING ADMITTED
TO THE BAR THAT HAVE
INTENTIONALLY REFUSED TO
FILE INCOME TAX RETURNS, AND
IT CONTINUES WITH REGARD TO
THE OUTSTANDING
RESPONSIBILITIES OF THE DATE
WE ARE SAYING THEY SHOULD BE
MEMBERS OF THE BAR CONTRARY
TO THE LAW OF THE UNITED
STATES.

I THINK THAT'S REALLY WHERE
YOU NEED TO ADDRESS SOME OF
THE ATTENTION THIS MORNING.

>> YES, SIR.

THE ISSUE OF THE NONPAYMENT
OF TAXES CERTAINLY WAS ONE
OF THE THINGS THAT LED THE
BOARD TO DENY OR RECOMMEND
DENIAL OF THE ADMISSION
AFTER THE FIRST FORMAL
HEARING.

SUBSEQUENT TO THE HEARING,
THE BOARD -- THE APPLICANT
HAS TAKEN STEPS TO TRY, TO
TRY TO BRING HIS OBLIGATION
TO THE IRS INTO COMPLIANCE
WITH THE LAW.

THERE WERE CIRCUMSTANCES
WHERE HE FAILED TO TIMELY
PAY TAXES AFTER THAT FIRST
FORMAL HEARING, BUT HE
PROVIDED AN EXPLANATION AT
THE SECOND FORMAL HEARING AS

TO THE CIRCUMSTANCES --

>> BUT THAT -- LET'S JUST GO BACK TO THIS, BECAUSE THIS IS WHAT REALLY DISTURBS ME ABOUT THIS IS THAT HE WAS -- HE RESIGNED AND WOULD'VE BEEN DISBARRED BECAUSE OF THE MOST SERIOUS, SERIOUS OF TRUST ACCOUNT VIOLATIONS CHARGED WITH THEFT.

AFTER HE'S OUT OF THE BAR, IT'S THAT PERIOD OF TIME THAT HE WILLFULLY CHOOSES NOT TO PAY INCOME TAX, AND THE REASON GIVEN IS THAT HE MADE A CHOICE TO EDUCATE HIS CHILDREN, AND I WAS READING THE CROSS EXAMINATION BY ONE OF THE MEMBERS OF THE BOARD OF BAR EXAMINERS, I MEAN, IF MY CHILD WANTS TO GO TO HARVARD I CAN'T AFFORD IT, I JUST DON'T PAY MY TAXES. HOW DID THE BOARD DECIDE THAT THAT EXCUSE, THAT IS, I'M GOING TO EDUCATE MY CHILDREN INSTEAD OF PAYING TAXES, WAS A EXTENUATING CIRCUMSTANCE?

>> I WOULD SUBMIT THAT THE BOARD DIDN'T ACCEPT THAT AS AN EXTENUATING CIRCUMSTANCE AT THE FIRST FORMAL HEARING AND THAT'S PART OF WHAT LED TO THE BOARD'S INITIAL RECOMMENDATION THAT HE BE DENIED.

AT THE SECOND FORMAL HEARING&AND THE RECOMMENDATION OF THE BOARD BEFORE THE COURT THIS MORNING, THE BOARD WAS LOOKING AT WHAT THE APPLICANT HAD DONE SUBSEQUENT TO THAT FORMAL HEARING TO TRY TO DEAL WITH AMONG OTHER THINGS HIS OBLIGATION TO THE INTERNAL REVENUE SERVICE.

>> BEIT SEEMS TO ME AFTER THAT TIME IS WHEN HE HAD BEEN MAKING PAYMENTS ON A PAYMENT PLAN. THEN HE STOPPED MAKING THOSE PAYMENTS AND SO HOW DOES

THAT DEMONSTRATE THAT HE'S MORE FINANCIALLY RESPONSIBLE THAN HE WAS BEFORE?

WHEN HE WAS MAKING PAYMENTS?

>> THE TESTIMONY AT THE FORMAL HEARING WAS THAT HE STOPPED MAKING THOSE PAYMENTS BECAUSE ON THE RECOMMENDATION OF AN AGENT FROM THE INTERNAL REVENUE SERVICE WHO SUGGESTED TO HIM THAT HE MAKE AN OFFER AND COMPROMISE BECAUSE THE PAYMENTS HE WAS MAKING WAS AS I UNDERSTAND -- AS I RECALL THE TESTIMONY, WAS BEARICALLY COVERING THE INTEREST AND PENALTIES AND HE WAS MAKING NO PROGRESS AS FAR AS THE PAYMENT ON, ON THE, ON THE PRINCIPAL.

>> AND THEY DENIED THAT AND THEN WHAT?

THEY DENIED HIS OFFER AND COMPROMISE, RIGHT?

>> YES, MA'AM.

>> SO WHAT THEN DOES HE DO?

>> THE RECORD INDICATES THEN A SECOND OFFER AND COMPROMISE WAS MADE -- THERE WAS SOME --

>> FOR EVEN LESS?

>> YES, MA'AM AND THERE WAS SOME CONFUSION AS TO WHETHER THAT WOULD BE ACCEPTED.

ACCORDING TO THE RECORD WE HAVE BEFORE THE COURT NOW, THE STATUS, HIS STATUS WITH THE INTERNAL REVENUE SERVICE IS THEY'RE BASICALLY WAITING TO SEE WHETHER HE'S READMITTED TO THE BAR BECAUSE THAT WILL INFLUENCE THEIR DECISION AS TO HOW MUCH THEY ARE WILLING TO ACCEPT IN AN OFFER OF COMPROMISE.

>> HOW MUCH WERE THE PAYMENTS THAT WERE BEING MADE?

>> I DO NOT RECALL THE EXACT AMOUNT, YOUR HONOR?

>> HOW WAS THE AMOUNT OF PAYMENT DETERMINED?

WAS IT BY MUTUAL AGREEMENT
OR WAS IT JUST MR. MARKS
SAYING I'LL PAY THIS MUCH.
>> IT'S MY UNDERSTANDING
THAT IT WAS AN AMOUNT
ACCEPTING TO THE IRS AT THE
TIME, AND THEN HE WAS
APPROACHED BY AN AGENT FROM
THE IRS WHO, I GUESS TOOK
OVER HIS FILE AND THAT AGENT
SUGGESTED YOU KNOW YOU ARE
NOT MAKING ANY PROGRESS
TOWARDS THIS --

>> I AGREE IT MAY HAVE BEEN
ACCEPTABLE, BUT, YOU KNOW,
IRS ISN'T GOING TO CARE IF
IT NEVER GETS PAID OFF AS
LONG AS IT'S GETTING PAID
BECAUSE THEY ARE BASICALLY
EARNING INTEREST ON THE
MONEY -- MONEY.

SO HOW WAS IT UNDERSTOOD
THAT THIS PAYMENT WAS
REASONABLE IN THE LIGHT OF
THE CHOOSING TO EDUCATE A
CHILD AT THE EXPENSE OF THE
UNIVERSITY AS OPPOSED TO
PAYING YOUR TAX OBLIGATION?

>> I GUESS WHAT I WOULD
SUGGEST IS THOSE ARE KIND OF
TWO DIFFERENT, TWO DIFFERENT
ISSUES.

THE ISSUE OF CHOOSING NOT TO
PAY THE TAXES IN ORDER TO
EDUCATE YOUR CHILDREN GOES
TO THE, THE MISCONDUCT THAT
LED TO THE BOARD'S INITIAL
RECOMMENDATION.

NOW HE'S GOT THAT DEBT TO
THE IRS.

HE'S GOT TO DEAL WITH IT
BASED ON HIS FINANCIAL
CIRCUMSTANCES AT THE TIME,
AND THAT WAS -- THAT WAS
WHAT THE IRS DETERMINED
WOULD BE THE, THE
APPROPRIATE PAYMENT SCHEDULE
AS OPPOSED TO WHAT CAUSED
HIM TO NOT PAY THE TAXES IN
THE FIRST INSTANCE.

>> WHEN DID THE CHILD
GRADUATE FROM --

>> I KNOW THE OLDER CHILD
GRADUATED, I BELIEVE, IT WAS

IN THE MID TO LATE 90s, AND THEN HIS YOUNGER CHILD I BELIEVE WAS IN THE EARLY 2000s.

AND CERTAINLY THERE WERE INDICATIONS THAT THE NONPAYMENT OF TAXES CONTINUED BEYOND THE POINT OF THESE CHILDREN GRADUATING FROM COLLEGE.

BUT, AGAIN, I GO BACK TO THE -- THE BOARD'S RECOMMENDATION THAT'S BEFORE THE COURT NOW HAS TO DO WITH WHAT THE APPLICANT HAS DONE SUBSEQUENT TO HIS LAST FORMAL HEARING TO TRY TO DEAL WITH THIS STATUS AS -- DEAL WITH HIS DEBT AS OPPOSED NOT TO DIMINISH NOT PAYING THE TAXES IN THE FIRST PLACE.

>> SO OTHER THAN COMMUNITY SERVICE HOURS, WHAT HAS BEEN DONE IN.

>> ON THE ISSUE OF THE IRS, HE'S BEEN IN CONSTANT COMMUNICATION, THE UNPAID TAXES, HE'S BEEN IN CONSTANT COMMUNICATION WITH THE INTERNAL REVENUE SERVICE. HE'S BEEN TRYING TO DEAL WITH THEM TO TRY 32 COME UP WITH SOME SORT OF A SETTLEMENT CONSIDERING HIS FINANCIAL SITUATION.

AND, AND ACCORDING TO HIS RESPONSE BRIEF, APPARENTLY, THE IRS IS NOW IN A POSITION WHERE THEY ARE GOING TO WAIT AND SEE WHETHER HE GETS READMITTED TO THE BAR BEFORE DECIDING WHETHER TO ACCEPT A PARTICULAR OFFER AND COMPROMISE.

>> HOW WAS THAT EVIDENCE? FROM THE IRS? DID THE AGENT TESTIFY? WAS THERE ANY LETTERS FROM THE IRS OR ANYTHING?

>> NO, SIR.

IT WAS BY THE APPLICANT'S TESTIMONY.

>> JUST AS WELL.

>> IN THAT PROBLEM IS THAT THE BOARD'S COMING HERE WITH WHAT APPEARS TO ME TO BE KIND OF A PARTIAL RECORD. AT LEAST I WANT TO KNOW, I WANT TO KNOW WHAT FROM THE GOVERNMENT'S STANDPOINT AND FROM THE APPLICANT'S STANDPOINT THE APPLICANT HAS DONE OF RECORD IN RESPECT TO THE IRS FROM THE DATE THAT HE WAS SUSPENDED UP UNTIL TODAY.

AND WHETHER HE'S FILED HIS RETURN, WHAT DAY -- WHAT THE IRS'S POSITION IS AND WHAT HIS POSITION IS.

AND IT SEEMS TEE ME, THAT'S SOMETHING THAT WE CAN'T DEPEND UPON AN APPLICANT THAT WE DISBARRED FOR THESE CHARGES OR WHO TANTAMOUNT TO DISBARMENT, I DON'T THINK THE BOARD CAN, CAN REST ON THAT.

>> YOUR HONOR, I MEAN, SOME OF THE EARLY DEALINGS WITH THE IRS ARE DOCUMENTED IN THE RECORD.

BUT, YOU KNOW, THE --

>> I'M CONCERNED ABOUT THE MORE, ABOUT THE FACT THAT THIS HAS GONE ON POST-THAT PERIOD.

THAT'S MY CONCERN.

>> YES, SIR, AND I MEAN CERTAINLY, IT'S A SITUATION WHERE IF, IF THE COURT FEELS THAT THERE'S AN INADEQUATE RECORD, TO DECIDE ON THE BOARD'S RECOMMENDATIONS, CERTAINLY, YOU KNOW, IT'S WITHIN THE COURT'S PURVIEW TO REMAND THE CASE BACK --

>> DOES HE HAVE OTHER SUBSTANTIAL FINANCIAL OBLIGATIONS THAT HAVE NOT BEEN RESOLVED?

>> THE ONLY OTHER OBLIGATION THAT'S DOCUMENTED IN THE RECORD, YOUR HONOR, IS A, A DEBT THAT I BELIEVE WAS \$90,000 TO A TRUST ACCOUNT. THE APPLICANT HAS EXECUTED A

PROMISSORY NOTE THAT'S ACCEPTABLE TO THE TRUSTEES OF THE TRUST ACCOUNT THAT INDICATES THAT HE WILL BEGIN MAKING PAYMENTS.

HE'S OBLIGATED TO MAKE PAYMENTS ON THAT, ON THAT DEBT UPON HIS ADMISSION TO THE BAR.

>> WELL, IT'S STRANGE TO SAY THAT -- I MEAN IT'S STRANGE BECAUSE I'M LOOKING AT THE SCHEDULE.

HE, YOU KNOW, THIS BANKRUPTCY THAT WAS FILED IN 1997, AND THERE'S ALMOST A HALF A MILLION DOLLARS IN DEBT.

90,000 IS ONE, BUT THERE IS A PERSONAL LOAN THAT WAS REDUCED JUDGMENT MYRON MARKS OF \$83,000, AN UNSECURED PERSONAL LOAN FROM UNITED NATIONAL BANK FOR 75,000, THEN HE SAYS HE PAID THE \$671 TO CON AND GUTTER.

THERE IS A -- SO WERE THERE THESE OTHERS IN BANKRUPTCY? SO IN OTHER WORDS, THOSE WERE SOME OF THESE CAME ABOUT IN THE EARLY -- IN THE SAME PERIOD OF TIME THAT HE WAS DISBARRED.

SO WHAT'S THE STATUS OF ALL THOSE --

>> THERE ARE SOME DEBTS THAT WERE DISCHARGED IN THE BANKRUPTCY THAT HAVE BEEN PAID OFF ACCORDING TO THE RECORD.

THE RECORD IS NOT CLEAR THAT ALL OF THE DEBTS THAT WERE DISCHARGED TO THE BANKRUPTCY HAVE BEEN PAID OFF.

>> AND THAT'S TO ME, THAT'S ANOTHER ISSUE THAT THESE WERE -- THIS WAS PART OF WHAT HAPPENED BECAUSE HE WAS ABUSING HIS POSITION AS A LAWYER.

HE WAS LIVING BEYOND HIS MEANS.

AND IN ORDER TO THEN WHAT DOES HE DO?

SUBSEQUENTLY?

HE DISCHARGES DEBTS IN BANKRUPTCY AND HE DOESN'T PAY HIS INCOME TAX RETURNS. YEN MEAN, I DON'T SEE HOW -- YOU BE, NORMALLY WE HAVE SOMEBODY THAT MIGHT DO ONE KIND OF ACTION OR ANOTHER, BUT I DON'T KNOW WHAT THE MESSAGE IS TO THE LAWYERS AND THE PEOPLE OF FLORIDA TO ADMIT SOMEBODY WITH THIS TYPE OF OUTSTANDING FINANCIAL SITUATION.

>> I MEAN, CERTAINLY I'M NOT HERE TRYING TO ARGUE THAT THOSE AREN'T SIGNIFICANT CONCERNS.

AND I THINK IF YOU LOOK AT THE, AT THE WAY THAT THE BOARD HAS DEALT WITH THIS CASE, THEY CERTAINLY HAVEN'T RUSHED, RUSHED THE JUDGMENT TO DECIDE TO ADMIT THE APPLICANT, READMIT THE APPLICANT, AND THOSE WERE CERTAINLY CONCERNS THAT WERE REFLECTED IN THE BOARD'S FINDINGS OF FACT AFTER THE FIRST FORMALLING.

THE BOARD IN THE SECOND FARMING HEARING AFTER LISTENING TO THE APPLICANT'S TESTIMONY ABOUT WHAT HE HAD DONE TO TRY TO DEAL WITH ALL OF THESE DEBTS THAT HE HAD, DETERMINED THAT HE HAD MADE -- HE HAD BEEN RESPONSIBLE IN TRYING TO DEAL WITH THESE

--

>> WELL SUBSTANTIVELY THOUGH, AS YOU HAVE OUTLIBED IT, HE HASN'T DONE ANYTHING, HAS HE?

IN OTHER WORDS, YOU SAID, WHICH APPEARS TO BE ALMOST SHOCKING, THAT THE WAY HE'S RESOLVED THE \$90,000 DEBT OWED TO THE TRUSTEE IS BY MAKING AN AGREEMENT THAT IF I GET READMITTED TO THE BAR, I'LL REPAY YOU.

IS THAT CORRECT?

>> YES, YOUR HONOR --

>> AND IS THAT PRETTY MUCH THE SAME PICTURE WITH THE IRS?

>> WELL, WITH THE IRS --

>> WAIT AND SEE WHETHER HE GETS READMITTED TO THE BAR BEFORE DEALING WITH HIM ON THE REPAYMENT OF THESE --

>>.

COULD YOU GIVE OSTHUMBNAIL SKETCH OF HIS FINANCIAL PICTURE INN INSO' FAR AS HIS INCOMES AND ASSETS.

WHAT ARE HIS ASSETS AS OF THE TIME OF THE LAST HEARING?

>> MY UNDERSTANDING OR MY RECOLLECTION FROM THE RECORD IS THAT THAT, AS FAR AS, YOU KNOW --

>> DOES HE HAVE A RESIDENCE? HOORENTS A RESIDENCE. I BELIEVE OWNS A COUPLE OF PARS.

BASICALLY, HIS ASSETS ARE, ARE NOT PARTICULARLY SIGNIFICANT.

>> HOW ABOUT THE INCOME PICK THRTURE?

-- PICTURE?

>> HE'S WORKING FOR A LAW FIRM 3D WITH YOU ADD THAT INTO JUSTICE ANSTEAD -- IN YOUR ANSWER, PLEASE.

>> YES, SIR, CERTAINLY, THERE WERE SEVERAL YEARS WHERE THE, THE COMBINED INCOME OF THE APPLICANT AND HIS, AND HIS WIFE WELL EXCEEDED \$100,000 A YEAR.

TO BE PERFECTLY HONEST WITH YOU, I DON'T KNOW WHAT HIS PRESENT FINANCIAL SITUATION IS.

YOU KNOW, AS WE STAND HERE TODAY BECAUSE, KROUN HIS JOB SITUATION CHANGED AND THERE WAS A, A JOB THAT HE HAD WHERE HE GOT SIGNIFICANT INCOME THAT HE, THAT HE LOST THAT EMPLOEMENTPLOYMENT, AND I DON'T KNOW WHAT THE, YOU KNOW, WHAT HE --

>> SO WHAT'S THE WORK

HISTORY BEEN?

HOW MANY HOURS A WEEK.

I MEAN A LOT OF PEOPLE IN THIS SITUATION, MILLIONS ACROSS THIS COUNTRY TAKE TWO JOBS AND THEY ARE WORKING 60s, 70 HOURS A WEEK TO GET OVER THE HUMP THAT THEY WERE CAUSE BIDE THEIR ACTIONS.

HOW -- WHAT EVIDENCE DO WE HAVE IN THIS RECORD THAT THIS MAN DID THAT?

>> CERTAINLY THERE WAS -- THERE IS EVIDENCE THAT THE AFTER HE RESIGNED FROM THE BAR, HE BEGAN WORKING AS A LAW CLERK FOR ONE ATTORNEY. WAS APPROACHED BY ANOTHER LAW FIRM TO HELP THEM. SET UP A PROBATE DIVISION IN THEIR LAW FIRM SO HE WORKED THOSE TWO JOBS FOR A SIGNIFICANT AMOUNT OF TIME. I MEAN, THE RECORD DOES REFLECT THAT THE APPLICANT DID WORK SEVERAL JOBS.

HIS WIFE SOUGHT EMPLOYMENT. APPARENTLY, SHE DIDN'T HAVE BEFORE ALL THIS HAPPENED.

>> SEVERAL JOBS AT THE SAME TIME?

>> YES, SIR.

>> FOR WHAT PERIOD OF TIME ARE WE TALKING ABOUT?

>> AGAIN, SPEAKING FROM, FROM MEMORY FROM THE RECORD I BELIEVE IT WAS INTO THE EARLY 2000s, THEN THIS ONE FIRM, THE FIRM HE WAS WORKING FOR, THEY GAVE HIM A SUBSTANTIAL INCREASE IN, IN INCOME, AND AT THAT POINT, I BELIEVE HE MAY HAVE JUST FOCUSED HIS EFFORTS WITH THAT ONE LAW FIRM.

SUBSEQUENT TO LOSING THAT JOB, AND THAT WAS THE, THE LUCRATIVE JOB I WAS REFERING TO EARLIER THAT HE LOST, SUBSEQUENT TO THAT JOB, HE'S BEEN DOING CONTRACT WORK WITH VARIOUS ATTORNEYS THAT HE HAD, THAT HE KNOWS IN THE MIAMI AREA.

I CAN'T GIVE YOU AN EXACT NUMBER OF FIRMS OR NUMBER OF ATTORNEYS THAT HE'S WORKED WITH BUT THE INDICATION IS THAT HE WORKS WITH SEVERAL ATTORNEYS THAT HE KNOW BOTH

--

>> WELL, THERE ARE PARALEGALS IN THIS AREA THAT ARE MAKING OVER 1 HB,000 A YEAR, 60, 70, 80, \$100,000 A YEAR.

WHAT IS HIS INCOME?

WHAT ARE WE SHOWING HERE DURING THIS PARALEGAL TYPE WORK?

>> I DON'T KNOW WHAT HIS INCOME IS SUBSEQUENT TO LEAVING THE ROBELUS FIRM. I DON'T THINK THERE IS A CLEAR DELINEATION IN THE RECORD AS TO WHAT HIS INCOME WAS.

>> LET ME MAKE ONE CLARIFICATION HERE.

ON THIS SCHEDULE OF THE BANKRUPTCY SCHEDULE, THERE IS A LINE ITEM HERE FOR TAXES FROM 1990, 19 KBIFB, -- 1985, 1989, AND 1992 THAT TOTALS \$146,000.

WAS THAT DISCHARGED IN BANKRUPTCY?

>> MY RECOLLECTION IS THAT THE TESTIMONY AT THE FIRST FORMAL HEARING WAS THAT THAT THOSE OLDER OBLIGATIONS TO THE IRS WERE SATISFIED, AND THAT WHAT WAS, WHAT WAS --

>> SATISFIED AS OPPOSED TO DISCHARGED IN BANKRUPTCY?

>> YES, MA'AM.

>> AND SATISFIED IN WHAT WAY?

>> MY UNDERSTANDING IS THEY WERE PAID OFF, AND THAT WAS PART OF WHAT WAS CAUSING THE PROBLEMS PARENTLY WITH PAYING THE SUBSEQUENT TAXES IS HE WAS FOCUSING A LOT OF HIS RESOURCES ON PAYING THE BAX TAXES HE OWED NOT HIS EXCUSE FOR PAYING THE UP-TO-DATE TAXES.

>> SO WHAT DOES THE RECORD AS FAR AS HOW MUCH WAS THE \$146,000 WAS PAID?

WAS IT COMPROMISES AS MANY OF THESE THINGS ARE?

>> I HONESTLY DON'T RECALL WHETHER IT WAS THE FULL 140,000 WAS PAID OR WHETHER THERE WAS SOME SORT OF, OF, YOU KNOW, REDUCED VALUE THAT WAS SETTLED.

>> LET ME PARAPHRASE BUT SEE FIVE THE BOARD'S POSITION CORRECTLY ON THE ORIGINAL VIOLATION, THAT IS THAT IT APPEARS FROM WHAT WE HAVE THAT THERE WAS A QUARTER OF A MILLION DOLLARS TAKEN FROM THE TRUST ACCOUNT ORIGINALLY.

IN OTHER WORDS, STEALING A QUARTER OF A MILLION DOLLARS.

FROM VARIOUS CLIENTS.

IS IT THE BOARD'S POSITION THAT ALL \$250,000 WAS PAID BACK?

>> THE RECORD INDICATES THAT THE DIRECT VICTIMS OF THAT WERE PAID BACK.

THAT THAT MONEY CAME IN MANY CIRCUMSTANCES FROM LIKE PERSONAL LOANS AND THINGS OF THAT NATURE THAT THE APPLICANT TOOK FROM FRIENDS AND, AND VARIOUS SOURCES.

IN THE FIRST FINDINGS FROM THE BOARD, ONE OF THE CONCERNS, AND ONE OF THE REASONS THAT THE BOARD RECOMMENDED HE NOT BE ADMITTED WAS THAT HE HAD NOT REPAYED OR MADE ARRANGEMENTS TO REPAY ALL OF THESE WHAT ARE DESCRIBED AS INDIRECT VICTIMS OF HIS THEFT OF CLIENT FUNDS.

AND REFERENCE WAS MADE TO A, A \$20,000 LOAN THAT --

\$20,000 THAT WAS LEFT ON A PERSONAL LOAN THAT HAD BEEN MADE TO HIM AND HIS STATED INTENTION OF REPAYING THE TRUST OF HAVING NOT EXECUTED

ANY DOCUMENTS THAT OBLIGATED TO HIM TO REPAY THE TRUST BECAUSE THAT DEBT HAD BEEN DISCHARGED IN BANKRUPTCY. AND SUBSEQUENT TO THAT FIRST FORMAL HEARING, HE HAS PAID OFF THE \$20,000 DEBT. HE HAS EXECUTED THE DOCUMENTS THAT DO OBLIGATE HIM TO REPAY THE TRUST, ALLBEIT QUALIFIED WITH BEING READMITTED TO THE BAR.

>> THAT'S THE \$90,000?

>> YES, SIR.

>> AND THAT WAS ONE OF THE ORIGINAL -- THAT WAS PART OF THE ORIGINAL QUARTER OF A MILLION DOLLARS?

>> IT WAS MONEY THAT WAS BORROWED FROM AN AUNT TO HELP REPAY THE MONEY THAT, THAT HAD BEEN TAKEN FROM THE CLIENT TRUST ACCOUNT.

SO IT WAS, IT WAS INDIRECTLY ASSOCIATED WITH THE CLIENT TRUST ACCOUNT MONEY.

IT WAS NOT A CLIENT THAT, THAT HE, YOU KNOW, --

DIRECTLY OWED THAT \$90,000 TO AT THAT POINT.

IT WAS SOMEONE HE BOROED THE MONEY FROM.

>> AND THAT'S STILL OUTSTANDING?

>> YES, SIR.

>> AND THE SAME CATEGORY WITH THOSE DISCHARGED IN BANKRUPTCY?

WERE THEY IN THE SAME CATEGORY AS THE FAMILY TRUST?

>> MY RECOLLECTION IS THAT GENERALLY SPEAKING, THE MAJORITY OF THE DEBTS THAT WERE DISCHARGED IN BANKRUPTCY WERE DEBTS ASSOCIATED WITH GETTING MONEY TO, TO, TO --

>> MR. BLYTHE I MUST TELL YOU AS WE LOOK AT THE SITUATION THERE ARE MANY MEN AND WOMEN WHO LIVE IN FLORIDA WHO DON'T HAVE THE PRIVILEGE OF BEING A LAWYER

AND UNTIL WE AS A BAR
REQUIRE PEOPLE TO PLAY BY
THE RULES I DON'T KNOW HOW
WE CAN EXPECT THE BAR AND
THE JUDICIAL SYSTEM TO HAVE
THE RESPECT THAT IT OUGHT TO
HAVE.

THIS, DISCUSSION IS GOING TO
SCHOOLS, IT'S GOING TO
PLACES THROUGHOUT THIS
STATE.

AND WHAT YOU HAVE EXPLAINED
THIS MORNING IT SEEMS TO ME
IS SOMEONE WHO HAS REFUSED
TO PLAY BY THE RULES AT
EVERY LEVEL.

EVERY LEVEL.

THE IRS EARLY ON, AND THEN I
WON'T PAY THEM LATER, I
WON'T PAY THEM FOR THE PAST,
TAKING MONEY FROM OTHER
PEOPLE TO TO PAY OFF DEBTS
FROM CLIENTS, AND THOSE
THINGS ALL STILL OUTSTANDING
YET OUR BOARD OF BAR
EXAMINERS SAYS THIS IS WHAT,
THIS IS THE CATEGORY THAT WE
SHOULD ALLOW FOLKS TO HAVE
THE PRIVILEGE OF BEING A
LAWYER.

COULD YOU RESPOND TO THAT TO
THE PEOPLE OF FLORIDA?

>> YES, SIR.

I BELIEVE THEBOARD'S
RECOMMENDATION AFTER THIS
SECOND FORMAL HEARING BEFORE
THE BOARD IS REFLECTS THE
BOARD'S ANALYSIS THAT THE
APPLICANT HAS TAKEN A--
AFFIRMATIVE STEPS TO TRY TO
DEAL WITH THE DEBTS THAT HE
HAS.

IT'S A SITUATION WHERE WE
ARE TALKING ABOUT A LOT OF
MONEY, AND, AND THE
FINANCIAL RESOURCES THAT ARE,
THAT ARE AVAILABLE TO HIM
WITHOUT BEING ABLE TO
PRACTICE AS AN ATTORNEY MAY
LIMIT HIS ABILITY TO, TO
REPAY THOSE DEBTS SO HE HAS
-- HE HAS CREATED A
SITUATION WHERE HE IS SET,
HE IS OBLIGATING HIMSELF TO

TRY -- TO TRY TO RESPONSIBLY
DEAL WITH THESE DEBTS AND HE
CERTAINLY HAS DONE WHAT HE
CAN WITH THE IRS AND THE IRS
HAS BASICALLY SAID WE ARE
NOT GOING TO DO ANYTHING
WITH YOU TO TRY TO SET
SETTLE THIS SITUATION SHORT
OF PAYING ALL THE TAXES THAT
AROSE UNTIL YOU ARE ADMITTED
TO THE BAR OR NOT.

>> THANK YOU.
COUNSEL?

>> THANK YOU, YOUR HONOR.
MAY IT PLEASE THE COURT.
MY NAME IS -- AND I
REPRESENT MR. MARKS.

FIRST LET ME EXPLAIN THE
ISSUE OF THE MARK.

IT IS NOT \$250,000.

OVER THE COURSE OF TIME,
MR. MARKS USED \$250,000 FOR
PERSONAL USES OUT OF THE
TRUST ACCOUNT BUT THE TOTAL
AMOUNT OF THE -- WAS SHORT
OF \$100,000, ABOUT 90 TO
\$100,000.

WHICH HE BORROWED FROM A
FAMILY MEMBER TO REPAY THE
CLIENTS.

>> WAS THAT ESTABLISHED IN
ANY KIND OF A HEARING OR OR,
WAS THERE A FINDING OF A
REFEREE OR THE BOARD OR IN
OTHER WORDS, BY SOME FACT
FINDING BODY WAS THAT ADJUD!!!!!!!!!!!!
ADJUDICATED?

>> I BELIEVE THAT'S THE
TESTIMONY IN THE NOVEMBER
4th AND, I BELIEVE IT'S ALSO
IN THE PRIOR HEARINGS BEFORE
THE BAR.

SO MR. MARKS TESTIMONY IS
THAT THE \$250,000 WAS USED
OVER A COURSE OR DURING A
PERIOD OF TIME BUT THE
ACTUAL AMOUNT, THE TOTAL WAS
APPROXIMATELY \$100,000.
THAT'S WHY THE BAR FOCUSED
ON THAT REPAYMENT.

>> COULD YOU ANSWER JUSTICE
ANSTEAD'S QUESTION.

WAS THAT EVER ESTABLISHED?

>> I BELIEVE BY A REFEREEANE

HEARING IN SOME FASHION,
SOME FACT FINDING IS THAT
JUST THE TESTIMONY OF THE
CLIENT?

>> I BELIEVE THAT'S THE
TESTIMONY OF THE CLIENT.
AND I THINK IT WAS
INCORPORATED IN THE BOARD'S
RECOMMENDATION AND ORDER BUT
I WOULD HAVE TO LOOK AT THAT
SPECIFICLY --

>> WELL THIS IS TO BE --
FROM THE BOARD'S BRIEF BY
MR. MARKS' OWN TESTIMONY, HE
MISAPPROPRIATED
APPROXIMATELY A QUARTER OF A
MILLION DOLLARS IN 12 TO 15
WITHDRAWALS OVER A PERIOD OF
A YEAR OR MORE, AND HE
WITHDREW THE MONEY FOR HIS
PERSONAL USE.

SMOIMS HE WOULD PAY IT BACK,
WITHDRAW MORE SO THERE IS A
PATTERNT.

SO MAYBE IN THE END --

>> THAT IS CORRECT.

>> WE DISBAR LAWYERS THAT DO
THIS, AND IS ALL PAID BACK.
IN THIS SITUATION, NOT ONLY
WAS ALL THIS MONEY TAKEN
OVER NUMEROUS PERIODS OF
TIME WITH NUMEROUS TRUST
ACCOUNTS VIOLATIONS BUT
THERE WAS AN ACTUAL THEFT
AND THEN TO REPAY THAT
ACTUAL THEFT, HE BORROWS
MONEY WHICH HE HASN'T
REPAID.

AND ON TOP OF THAT, AND LET
ME JUST, BECAUSE THIS IS THE
THING IS THAT OKAY THAT'S
BAD ENOUGH IN THE EARLY 90s
THAT HE DOES THIS.

SO WHAT DOES HE DO THEN TO
MAKE SURE THAT HE LIVES A
LIFE THAT IS BEYOND
REPROACH?

HE GOES AHEAD AND FOR
SEVERAL YEARS DOESN'T PAY
HIS INCOME TAXES.

I DON'T KNOW HOW MANY
LAWYERS IN THIS STATE ARE
NOT PAYING THEIR INCOME
TAXES, BUT IF WE HAVE THEM,

I DON'T UNDERSTAND HOW WE'RE ALLOWING THEM TO PRACTICE LAW.

AND AND WHAT DOES HE DO IT FOR?

I THINK IT'S A PRETTY FLIMSY EXCUSE SAYING I'M SENDING MY KIDS TO COLLEGE.

ONE WENT TO CERECUSE ONE WENT TO UNIVERSITY OF FLORIDA YOU THINK AGAIN SOMEONE SHOULD HAVE THE PRICKOLOG OF PRACTICING LAW AFTER BEING DISBARRED GO AAHEAD AND WILLFULLY REFUSES TO PAY TAXES FOR A PERIOD OF SEVERAL YEARS WHILE HE IS MAKE AGSIGNIFICANT INCOME.

>> I THINK THE COMPLETE PICTURE THERE IS FIRST HE FILED TAX RETURNS AS EVERY -- DURING EVERY YEAR.

HE'S FILELOAD HIS RETURNS. HE DIDN'T HAVE THE ABILITY TO PAY ALL HIS TAXES AND AT THIS POINT, HE HAS CONSISTENTLY MADE ARRANGEMENTS WITH THE IRS TO MAKE THOSE PAYMENTS.

IN FACT, DURING THE ONE-YEAR PERIOD AFTER THE BOARD'S RECOMMENDATION, THE REQUIREMENT WAS THAT HE CONTINUED TO MAKE THOSE EFFORTS, AND WHAT HAS HAPPENED DURING THAT PERIOD OF TIME IS THAT HE MADE THE CONTACT WITH THE IRS, MADE THE ARRANGEMENTS, ACCEPTED WHAT THE IRS OFFERED OF A \$30,000 PAYMENT, THE IRS WENT UP THE LADDER TO, TO SUPERVISORS WHO THEN HAVE RETURNED A RESPONSE SAYING WE WANT TO WAIT UNTIL WE KNOW WHETHER YOU'RE EMPLOYABLE AS A LICENSED ATTORNEY OR NOT BEFORE WE ACCEPT THAT.

>> WELL, THAT'S FROM THE IRS THAT THAT'S NOT ACCEPTABLE TO THIS COURT THOUGH THAT THE IRS USES A LICENSE TO PRACTICE LAW AS A TICK FRT

-- FOR REPAYMENT.

THAT THAT, THAT THEY'RE
PUTTING THIS -- YOUR CLIENT
IN A MORE DIFFICULT
SITUATION.

PLUS, THIS IDEA THAT THE
\$90,000 DEBT ALSO IS
CONTINGENT ON WHETHER HE
BECOMES A PRACTICING LAWYER.

I MEAN, IS IT THE MESSAGE
THAT, THAT THE, THAT
PRIVILEGE OF PRACTICING LAW
IS, IF IS A SUPERMEAL
TICKET?

IF WE GRANT THE
REINSTATEMENT IN THIS CASE?

>> YOUR HONOR, WE ARE AWARE
THAT THEY ARE SEND AGBAD
MESSAGE BY DOING THAT BUT
MR. MARKICIZE SENDING THE
CORRECT MESSAGE BY GOING
CONSISTENTLY IN SPITE OF
EVERYTHING ELSE TO THE IRS
AND MAKING EVERY RESPONSIBLE
ARRANGEMENT THAT HE CAN
WITHIN HIS MEANS TO MAKE --

>> YOU INCLUDED YOUR ANSWER
TO JUSTICE PARIENTE'S
QUESTION THAT HE FILED HIS
INCOME TAX RETURN BUT THAT
HE DIDN'T HAVE THE ABILITY
TO PAY THE TAX.

NOW I HAVE SOME DIFFICULTY
WITH THAT ANSWER.

HE WAS EARNING A CERTAIN
AMOUNT OF INCOME CERTAINLY
AS A NORMAL CITIZEN THAT
EVEN ON THE HYPHENED BASIS
OF BEING A LAWYER, HE IS
AWARE, I'M SURE, OF
APPROXIMATELY WHAT HIS
INCOME TAX OBLIGATION WOULD
BE ON THE AMOUNT THAT HE WAS
EARNING.

WHERE DOES THIS RECORD
DEMONSTRATE THAT HE DIDN'T
HAVE THE ABILITY TO PAY
THOSE TAXES?

>> WELL, THE ARRANGEMENTS
THAT, THAT HE HAS MADE WITH
THE IRS I CAN SPEAK TO --

>> I'M ASKING YOU THE
QUESTION.

YOU SAID IN YOUR ANSWER TO

JUSTICE PARIENTE, HE FILED THE TAX RETURNS, BUT HE DIDN'T HAVE THE FINANCIAL ABILITY TO PAY HIS TAXES. NOW, WHERE IN THE RECORD DOES IT DEMONSTRATE THAT HE DIDN'T HAVE THE FINANCIAL ABILITY TO PAY HITAXES?

>> I THINK THE RECORD INDICATES THAT WHEN HE LOST HIS LICENSE TO PRACTICE LAW, AND HE LOST HIS EMPLOYMENT, AND HE HAD --

>> THE TAXES ARE BASED ON THE INCOME THAT HE'S CURRENTLY MAKING.

IS THAT CORRECT?

>> WELL, THERE WAS --

>> ROUGHLY SOME, YOU KNOW, SOME PERCENTAGE OF THAT.

LET'S SAY IT'S 10%.

ALL RIGHT SO IF HE EARNS \$100,000, OKAY, THEN IMPLICIT IN THAT IS THAT HE'S GOT \$10,000 IN THERE TO PAY HIS INCOME TAXES.

DOES HE NOT?

I GUESS I'M -- THIS IS A AROUND THIS THING OF, THAT APPARENTLY HIS TESTIMONY WAS THAT I CHOSE INSTEAD TO PROVIDE I CHOSE TO PROVIDE MY CHILDREN WITH A -- I COULD'VE AFFORDED TO PAY MY TAXES BUT MY DECISION WAS TO LOOK OUT FOR MY CHILDREN AND PROVIDE THEM WITH A FIRST CLASS HIGHER EDUCATION.

DOES THE, DOES THE RECORD SHOW WHAT, WHAT AMOUNTS HE DID PAY?

YOU KNOW FOR HIS CHILDREN'S EDUCATION?

DURING THOSE YEARS?

HE WAS CHOOSING NOT TO PAY HIS TAXES?

I BELIEVE IT DOES AND I DON'T THINK IT WAS THE FULL AMOUNT OF A COLLEGE SCHOLARSHIP AS COLLEGE TUITION AS I RECALL BUT I DON'T RECALL.

>> YOU KNOW HOW MUCH WAS IT FOR EACH CHILD PER YEAR?

>> YOUR HONOR, I DON'T
RECALL.

I JUST DON'T.

>> DOES THE RECORD SHOW
THAT?

>> THE EXACT AMOUNTS, I
DON'T THINK SO.

>> BUT WOULD YOU GRAY THAT
THAT WAS HIS TESTIMONY.

>> THAT WAS HIS TESTIMONY.

>> I COULD'VE PAID THE
TAXWISE THAT MONEY THAT I
CHOSE TO PAY FOR MY
CHILDREN'S HIGHER EDUCATION.

>> MY RECOLLECTION.

NOT MAKING ANY JUDGMENT
ABOUT THAT.

>> I UNDERSTAND, YOUR HONOR,
AND I, I BELIEVE THAT THAT
TESTIMONY IS ACCURATE.

BUT IN CONTEXT, IT WAS THAT
HE HAD CHOICES TO MAKE IN
TERMS OF ALL OF HIS PAYMENTS

--

>> FOLLOWING UP ON JUSTICE
LEWIS'S QUESTION, HOW MANY
OF OUR CITIZENS OUT THERE
WOULD THINK THAT THEY COULD
TELL THE IRS, HEY, I'LL TAKE
CARE OF YOU SOMETIME DOWN
THE ROAD BECAUSE IN THE
MEANTIME, I'VE GOT TO PUT MY
KIDS THROUGH COLLEGE.

AND THAT'S WHAT I'M GOING TO
DO.

AND YOU JUST, YOU CAN SIT ON
IT.

OKAY.

HOW MANY OF OUR CITIZENS DO
YOU THINK WOULD GET AWAY
WITH THAT?

>> I THINK, I DON'T KNOW,
BUT I THINK THAT ANOTHER
INTERESTING QUESTION IS, HOW
MANY OF OUR CITIZENS WOULD
WORK THROUGH REHABILITATION
TO THE POINT OF TODAY BEING
ABLE TO WALK INTO THE IRS
AND SAYING I'VE OVERPAID
THIS 14 -- MADE THIS \$14,000
PAYMENT THAT THEY HAVEN'T
YET APPLIED CORRECTLY.

I'VE --

>> I'M CONCERNED THAT YOU

HAVE SAID THAT THE AMOUNT REALLY THAT WAS INVOLVED WAS \$100,000 OR LESS, AND THAT HE ACTUALLY BORROWED THE MONEY, THIS IS YEARS AGO,, YOU KNOW, THAT HE WAS ALLEGED TO HAVE DONE THAT. HE BORO -- BORROWED THE MONEY FROM A FAMILY TRUST TO PAY THAT THEN, AND THAT HE STILL OWES THAT SAME AMOUNT OF MONEY TODAY.

TO THAT FAMILY TRUST.

SO THE APPEARANCE AT LEAST SUPERFICIALLY IS IS THAT HE HASN'T REDUCED THAT, THE AMOUNT OF MONEY THAT HE STOLE FROM HAD TRUST ACCOUNT OR WHATEVER BY, BY ANYTHING. THAT THAT, THAT DEBT IS STILL OUTSTANDING.

IS THAT A, A CORRECT READING OF WHAT THIS RECORD SHOWS?

>> THAT'S BEEN THE CHOICE OF THE, THE TRUST AND ALSO THE IRS.

TO NOT ACCEPT THE, THE PAYMENTS UNTIL SOMETHING HAPPENS WITH RESPECT TO HIS LICENSE, BUT --

>> THE TRUST HAS CHOSEN NOT TO ACCEPT PAYMENTS FROM HIM?

>> IN TERMS OF THE AGREEMENTS THAT HE HAS OFFERED, THAT'S WHERE IT STANDS RIGHT NOW.

THAT THEY WANT TO WAIT UNTIL HIS LICENSING BEFORE THEY KNOW WHO THE OWNER --

>> DON'T YOU THINK THAT THE ESANCE OF SHOWING REHABILITATION IS FIRST TO TAKE CARE OF THESE PROBLEMS OR THESE ISSUES THAT WERE OUTSTANDING AND THAT CAUSED ME TO HAVE TO RESIGN IN THE FACE OF DISBARMENT PROCEEDINGS AND FELONY CHARGES ABOUT THESE THINGS?

WOULDN'T THE FIRST OBLIGATION BE THAT I'VE GOT TO TAKE CARE OF THOSE THINGS.

THAT IS THE FIRST THING THAT

THE COURT OR THE BOARD IS GOING TO LOOK AT THAT I TAKE CARE OF THOSE THINGS THAT GOT ME INTO THIS POSITION TO BEGIN WITH?

>> AND I THINK THAT WITH WHAT THE BOARD SAW WAS A MAN WHO WAS CONSISTENTLY DEALING WITH THOSE ISSUES TRYING TO WORK OUT AN ARRANGEMENTS, NOT AVOIDING THEM AT ALL. AND I DIDN'T MEAN TO DIMINISH THE IMPORTANCE OF THE AMOUNT WLRX IT'S 250,000 OR 100,000 I WAS JUST TRYING TO CLASSIFY WHY THAT AMOUNT IS THE AMOUNT THAT'S OUTSTANDING.

>> MY CONCERN IS THAT IF YOU ARE ACCURATE, IF IT'S JUST \$100,000 AMOUNT AND HE HAD BORROWED MONEY, YOU KNOW, TO COVER THOSE THINGS, AND THAT THOSE THINGS ARE STILL OUTSTANDING -- WHAT, WHAT YEAR WAS IT THAT ALL THIS OCCURRED AND THAT HE RESIGNED?

>> THIS WAS 17 YEARS AGO, 91?

>> SO LET ME ASK YOU. IT WAS 1990 ACTUALLY WHEN HE FILED THE PETITION TO RESIGN SO IT WOULD HAVE OCCURRED BEFORE THAT.

THIS \$90,000, LET ME SEE IF I UNDERSTAND THE NATURE OF THE TRUST.

THIS WAS A TRUST SET UP BY THE AUNT FOR A DISABLED SON S THAT CORRECT?

>> THERE IS SOME HISTORY AS TO THAT.

THIS IS A VERY WEALTHY AUNT, FAMILY MB, AND SOME OF THE TRUST MONEY WAS USED FOR DISABLED SON.

AND AFTER THE, THE LOAN, THEN THE, BY INTERVENTION OF AN UNCLE, THE TRUST WAS, WAS CHANGED IN SOME WAY.

BUT ESSENTIALLY, YOUR HONOR'S CORRECT.

>> BUT BASICALLY, HE GOES TO

AN AUNTS WHO HAS SOME MONEY
AND SAYS LOOK, I'M IN
TROUBLE HERE.
I'VE STOLE AN BUNCH OF
MONEY.

HELP ME OUT.

SHE HAS MONEY SET ASIDE FOR
A DISABLED SON.

SHE BOW O-- BORROWED Y. MEAN
WHAT IS A FAMILY MEMBER
GOING TO DO?

AND SHE'S BEEN WAITING 17
YEARS TO GET ANY PAYMENT
BACK ON THIS MONEY.

>> SMOOSOMETIMES MORE
FAMILY'S MORE DIFFICULT TO
DEAL WITH THAN NONFAMILY AND
I THINK --

>> BUT WASN'T IT DISCHARGED
IN BANKRUPTCY?
WASN'T THIS DEBT DISCHARGED
IN BANKRUPTCY?

>> IT COULD'VE BEEN
DISCHARGED IN BANKRUPTCY BUT
I BELIEVE HE STILL --

>> WELL WHAT IS THE NATURE
OF THE AGREEMENT THEN IF, IF
HE'S MADE AN AGREEMENT
DESPITE THE DISCHARGE OF
THIS IN BANKRUPTCY, AND WE
KEEP HEARING THAT ANY
PAYMENT IS CONTINGENT ON HIM
GETTING BACK IN THE BAR, DO
WE ACTUALLY HAVE A COPY IN
THIS RECORD OF WHATEVER
AGREEMENT HE'S MADE WITH
THIS TRUST?

>> HE'S MADE PAYMENTS ON THE
TRUST.

HE MADE INTEREST ONLY
PAYMENTS FOR A NUMBER OF
YEARS.

AND.

>> BUT MY QUESTION IS, DO WE
HAVE A COPY OF AN AGREEMENT
THAT HE HAS SIGNED THAT
OBLIGATES HIM TO PAY BACK
THIS \$90,000 EVEN THOUGH IT
WAS DISCHARGED IN
BANKRUPTCY?

>> I DON'T THINK THE RECORD
HAS THAT AT THIS POINT, NO.

>> SO IN ESSENCE, THIS
REALLY ISN'T SOMETHING THAT

HE HAS TO PAY BACK?

BECAUSE IT'S BEEN

DISCHARGED.

>> I DON'T THINK IT HAS BEEN

DISCHARGED.

WHAT I SAID THAT HE HAD THE

TO DISCHARGE IT IN

BANKRUPTCY BUT HE CHOSE NOT

TO --

>> WELL IT WAS ON HIS

SCHEDULE.

>> IT WAS ON THE SCHEDULE

BUT IF HE CHOSE TO REAFFIRM

THE DEBT AND CONTINUE TO

MAKE PAYMENTS AT THIS POINT,

I THINK THAT ALSO --

>> I GUESS I WANT TO -- I'M

INTERESTED IN DO WE HAVE THE

DOCUMENTS THAT SHOWS HE'S

REFIRMED THIS DEBT?

>> I WOULD HAVE TO LOOK AT

THE RECORD BUT I DON'T KNOW

IF, IF THERE'S AN EXISTING

DOCUMENT TODAY REFLECTING

THAT.

>> JUSTICE PARIENTE.

>> I WOULD LIKE TO GO TO THE

TIMING OF THE FILING OF THE

PETITION FOR DISCHARGE IN

BANKRUPTCY WHICH WAS 1997.

SO UP TO THAT TIME AGAIN IT

APPEARS TO BE THAT HE HAD

THESE DEBTS LISTED IN THE

SKEFRNAL.

MYRON MARKS \$83667.

WAS THAT DISCHARGED IN

BANKRUPTCY AND NEVER REPAID?

>> THE FINAL ORDER OF THE

BANKRUPTCY I THINK

DISCHARGED ALL THE DEBTS

THAT HE SCHEDULED.

MY UNDERSTANDING IS THAT

THAT DEBT, AND I'M USING THE

WORD LOOSELY, IT WAS

REAFFIRMED.

>> WAS REAFFIRMED?

>> I BELIEVE THAT HE HAS

MADE COMMITMENTS TO THE

TRUST TO CONTINUE MAKING

THAT PAYMENT.

>> THAT'S ANOTHER -- THAT'S

MYRON MARKS.

THAT'S DIFFERENT THAN GENIE

MARKS.

AS I SAID, THERE WAS HALF A MILLION DOLLARS IN 1997 THAT HE OWES AND FROM WHAT I AM UNDERSTANDING IT APPEARS THERE WAS A SELECTIVE DECISION AS TO WHICH DEBTS WERE GOING TO BE REAFFIRMED FOR EXAMPLE UNITED NATIONAL BANK \$75,000.

WAS THAT MONEY REPAID, REFINANCED?

>> NO, I DO NOT BELIEVE.

>> SO HOW IS THAT EVIDENCE OF REHABILITATION?

SOMEBODY SEEKING TO DISCHARGE DEBTS THAT THEY'VE -- WERE, WERE, OCCURRED YEARS BEFORE WHEN THEY'RE TRYING TO SEEK READMISSION BECAUSE THAT'S WHEN ABOUT HE TRIED TO SEEK READMISSION BY TRYING TO DISCHARGE THESE DEBTS IN BANKRUPTCY?

>> I DON'T THINK HE WAS SEEKING TO DISCHARGE THE DEBTS ARISING FROM THE --

>> BUT THAT'S --

>> UNSECURE PERSONAL LOAN 1989.

\$75,000.

IT WAS ALL BECAUSE DURING THAT TIME PERIOD HE WAS LIVING BY HIS OWN ADMIRATION WAY BEYOND HIS MEANS.

>> RIGHT.

>> SO HE WAS STEALING MONEY FROM CLIENTS, HE WAS STEALING MONEY FROM THE TRUST ACCOUNT, HE WAS THEN TAKING LOANS FROM WHEREVER HE COULD GET THEM AND INSTEAD OF TRYING TO REPAY THEM, HE SOUGHT TO DISCHARGE THEM IN BANKRUPTCY.

I DON'T SEE HOW THAT'S FINANCIALLY RESPONSIBLE.

>> I THINK THE, THE WHOLE HISTORY OF THE PAST 16 OR 17 YEARS OF HIS DEALING WITH THE IRS AND ESPECIALLY WHERE HE HAS ARRIVED TODAY IN TERMS OF THE FACT THAT HE'S PAID AND THE FACT THAT HE'S

MADE MORE PAYMENTS THAN,
THAN THAT THEY SHOW AND THAT
HE'S MADE THE ARRANGEMENTS
SPEAK, SPEAK TO HIS
CHARACTER, AND WHETHER OR
NOT HE CHOSE TO FILE FOR
BUSINESS BANKRUPTCY AT THAT
TIME, I THINK IS ONLY ONE OF
THE THINGS THAT, THAT THE
COURT CAN LOOK AT.

THE ENTIRE HISTORY OF WHAT
HE HAS DONE WITH ALL OF HIS
DEBTS AND WITH THE IRS AND
PARTICULARLY THE, THE LEVEL
OF COMMUNITY SERVICE
COMMITMENT THAT, THE LEVEL
OF EVERYTHING ELSE THAT HE
HAS DONE SPEAK MORE TO HIS
CHARACTER THAN JUST THIS ONE
EVENT OF HAVING FILE

ADBANKRUPTCY OR THE TAX --
>> I WAS JUST PUTTING THAT
ON IF WE WERE LOOKING TO SAY
WELL, HE'S -- NOT WE WERE
NOT GOING TO ADMIT PEOPLE
BACK TO THE BAR THAT HAVE
OUTSTANDING FINANCIAL
ISSUES.

AND WE GO, WELL HERE, HE
DOESN'T HAVE ALL THAT MUCH
BUT IF HE DOESN'T HAVE ALL
THAT MUCH BECAUSE HE
DISCHARGED THOSE DEBTS IN
BANKRUPTCY, I'M NOT SURE
THAT SAYS MUCH AND THAT WAS
THE ONLY REASON I ADDED THAT
ON IS TO TRY TO UNDERSTAND,
WHICH I STILL DON'T HAVE AN
UNDERSTANDING OF WHICH DEBTS
WERE DISCHARGED, WHICH DEBTS
WERE PAID, AND WHICH DEBTS
ARE STILL OUTSTANDING.

>> THE RECORD I THINK IS WE
NEED TO HAVE SOMETHING IN
THE RECORD IN TERMS OF WHICH
DEBTS ARE STILL OUTSTANDING
THAT WERE PART OF THAT
SCHEDULE.

MY UNDERSTANDING HERE THOUGH

--

>> AS WE SAID EARLIER REALLY
ISN'T COMPLETE ENOUGH.
IT LEAVES THIS COURT, AT
LEAST THOSE THAT ARE, I

SPEAK FOR MYSELF AND YOU'VE HEARD QUESTIONS FROM MANY OF THE JUSTICES, REALLY NOT SURE ABOUT THIS APPLICANT. AND I CAN -- I'M NOT, YOU KNOW, YES HE'S DONE SOME COMMUNITY SERVICE BUT I COULD POINT TO, YOU KNOW, A HOPEFULLY MANY, MEMBERS OF THE BAR WHO ARE FINE OUTSTANDING MEMBERS OF THE BAR THAT DO THIS TYPE OF COMMUNITY SERVICE, SO I DON'T, YOU KNOW, I DON'T SEE THAT AS GOING ABOVE AND BEYOND.

>> YOUR HONOR, IN TERMS OF THE COMMUNITY SERVICE, I KNOW THAT WE'RE FOCUSING ON THE FINANCIAL ISSUE, AND SKPSHTHS COURT HAS ELECTED TO LOOK AT THAT -- WITH SCRUTINY BUT IN TERMS OF THE COMMUNITY SERVICE, IT'S MUCH MORE SIGNIFICANT THAN WHAT THE AVERAGE PERSON DOES&I CAN SPEAK TO THAT AS WELL. HOWEVER, I DON'T WANT TO SHY AWAY FROM THE FINANCIAL ISSUE.

AND THE ONLY THING I CAN SAY ABOUT THAT IS THAT IF DURING BANKRUPTCY HE HAD AN OPPORTUNITY TO DISCHARGE ALL THESE DEBTS BUT HE HAS ELECTED TO MAKE GOOD ON THOSE LOANS WHICH ARE DIRECTLY INVOLVED WITH THE DEFALCATION AND NOT JUST BUSINESS DEBTS ACCUMMULATION.

>> WE DON'T EVEN KNOW REALLY THAT.

ON THIS RECORD, WE DON'T REALLY KNOW THAT HE HAS CHOSEN TO REFORM ANY OF THESE.

THERE IS NOTHING IN HERE OR MAYBE I'M MISSING IT, THAT REALLY DEMONSTRATES THERE'S NO AGREEMENT THAT DEMONSTRATES THAT HE HAS REAFFIRMED THESE.

>> THERE IS TESTIMONY OF IN

NOVEMBER 2004 OF THE
WITNESSES AND OF MR. MARKS
THAT SPEAK TO THE DEBTS HE
WAS ATTEMPTING TO RESOLVE AT
THAT TIME, AND THAT'S THE
RECORD THAT I HAVE.

>> COULD HE DISCHARGE IN
BANKRUPTCY THE \$90,000 HE
TOOK OUT OF THE TRUST
ACCOUNT?

>> COULD HE HAVE -- AT THAT
POINT, IF IT WAS A LOAN MADE
TO HIM --

>> BUT IT WASN'T A LOAN MADE
TO HIM.

IT WAS A DEFALCATION.
FROM WHAT YOU HAVE
INDICATED.

>> AT THAT PARTICULAR POINT,
THOUGH LTHAT WAS BEING DEALT
WITH WAS A PERSONAL LOAN TO
HIM BECAUSE THE MONEY THAT
HE BORROWED WAS USED TO
REPAY THE AMOUNT OF --

>> BUT THE AMOUNT OF MONEY
THAT YOU WOULD AGREE THAT
THE MONEY -- AMOUNT OF MONEY
THAT HE ACTUALLY TOOK OUT OF
THE TRUST EKT WOULD NOT BE
DISCHARGEABLE?

>> THAT IS CORRECT.
THAT IS CORRECT.

ARE THERE ANY FURTHER
QUESTIONS?

IF NOT, --

>> THANK YOU FOR YOUR
ASSISTANCE.

WE'LL TAKE THE CASE UNDER
ADVISEMENT.

THE COURT WILL TAKE ITS
MORNING RECESS.