>> PLEASE RISE.
>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE BE SEATED.
>> THE NEXT CASE ON OUR DOCKET
IS THE FLORIDA BAR VERSUS
PATRICK MIRK.
>> MAY IT PLEASE THE COURT, I
AM PATRICK MIRK.
I REPRESENT MYSELF THIS
MORNING.
>> AND THE MONEY.
THAT WAS OR THAT IS IN DISPUTE
OR IN QUESTION, WAS RECEIVED BY
YOU AS A LAWYER IN CONNECTION
WITH THE DIFFERENT MATTER, IS
THAT A FACTUALLY CORRECT
STATEMENT?
>> THAT'S CORRECT.
>> SO WITH THOSE TWO STATEMENTS
AND THIRDLY, THAT THE MONEY WAS
REMOVED FROM THE ACCOUNT, AND
PLACED EITHER, PLACED IN YOUR
ACCOUNT OR USED BY YOU?
IS THAT A FAIR STATEMENT?
>> THAT'S CORRECT.
>> WITH THOSE STATEMENTS, WHY
ISN'T THE REST OF IT, YOU KNOW,
I HAVE, I HAVE AN UNDERSTANDING
WHEN THERE'S A FEE DISPUTE
BETWEEN LAWYERS AND CLIENTS.
I UNDERSTAND THE REAL WORLD.
BUT WE HAVE A REFEREE'S FINDING
AS TO WHAT THE FACTS ARE.
SO THEN IT COMES DOWN TO WHAT
WE HAVE TO DEAL WITH IS FINDING

ALREADY BY THE TRIER OF FACT,
NO WRITTEN FEE AGREEMENT EXCEPT
THE TESTIMONY OF THE OTHER SIDE
AND THAT MONEY WAS REMOVED FROM
AN ACCOUNT.
IT WAS NOT AUTHORIZED.
THAT'S WHAT WE MUST DEAL WITH
AND WHETHER SOMEBODY DISCUSSED
OR DIDN'T DISCUSS THE $40,000
FEE IS TOTALLY IRRELEVANT IN
THIS MOTION TO DISMISS.
>> I'M AFRAID I HAVE TO
DISAGREE, YOUR HONOR, IT
CERTAINLY IS RELEVANT.
MR.^BRAGANO TESTIFIED IN THE
DEPOSITION IN STATE COURT
ACTION PENDING IN HILLSBOROUGH
COUNTY, THAT HE CAME FORWARD AS
THE PROMOTER OF THE NEW
COMPANY --
>> AND DISCUSSED IT.
AND DISCUSSED IT.
>> OFFERED --
>> SIR, I READ THE DEPOSITION.
I OUTLINED THE ENTIRE
DEPOSITION.
HE CONFRONTED YOU AND TOLD YOU
TO STOP LYING.
THAT IS WHAT HE SAID IN THE
DEPOSITION.
AND WHETHER I AGREE WITH IT OR
DON'T AGREE WITH IT, I READ THE
DEPOSITION.
AND IT DOESN'T SAY THAT HE
AGREED TO A $40,000 FEE.
>> HE SAID HE OFFERED A $40,000

FEE.
>> SO WHAT IS THERE TO DISCUSS?
>> I ACCEPTED IT AND I
PROCEEDED ON AND EVERYTHING
THAT HAS HAPPENED IN THIS CASE
SINCE THAT DAY IS CONSISTENT
WITH THERE BEING A $40,000 FLAT
FEE AGREEMENT FOR MONTPELIER.
EVERYTHING IS CONSISTENT.
>> THAT WAS TO FORM AN LLC?
>> THAT WAS THE FIRST THING WAS
TO FORM AN LLC.
TO PREPARE THE OPERATING
AGREEMENT FOR THE LLC.
DO THE DUE DILIGENCE FOR A $200
MILLION BOND OFFERING AND TO DO
THE JOINT VENTURE AGREEMENT
WITH THE CORPORATION THAT WAS
GOING TO PROVIDE THE $10
MILLION BRIDGE LOAN TO GET IT
STARTED.
>> THE PROBLEM IS, AND THE REAL
WORLD HAPPENS OUT THERE AND
PEOPLE GET INTO DISPUTES AND
WHEN THERE IS NO WRITTEN
AGREEMENT TO PLACE THAT
MEMORIALIZED WHAT THE AGREEMENT
IS SUPPOSED TO BE.
WE'VE GOT A REFEREE'S FINDING
TO THE CONTRARY.
>> THE REFEREE'S FINDING WAS
MADE WHEN MR.^BRAGANO SAID
THERE WAS NO FEE AGREEMENT,
THAT IT WAS NEVER DISCUSSED.
THAT IT WAS SOME KIND OF A
PERCENTAGE AGREEMENT THAT NEVER

COULD BE EXPLAINED.
THAT'S WHAT HE SAID AT THE
TRIAL.
BUT IN THE DEPOSITION, IN THE
STATE COURT ACTION HE SAID
EXACTLY THE OPPOSITE.
>> I'M SORRY, SIR, I KNOW YOU'D
LIKE TO CHARACTERIZE THAT.
THAT IS A VERY SERIOUS MOMENT.
IT IS VERY DIFFICULT TIME BUT
THAT'S NOT WHAT IT SAYS IN THAT
DEPOSITION.
>> ON PAGE 17, LINE 18, IF
SAYS, ON THE DAY YOU BROUGHT ME
THIS PROJECT IN ORDER TO GET ME
TO DO ALL THE WORK YOU OFFERED
ME A FEE, CORRECT?
>> ANSWER, CORRECT.
AND THE FEE WAS TO BE 40,000
PER BOND FOR FOUR PROJECTS
CORRECT?
ANSWER, CORRECT.
>> READ THE REST OF IT, SIR.
>> I HAVE --
>> READ THE NEXT LINES.
AND THEN THE COMPANY HAS GOT
GOING I WOULD HAVE TO
COORDINATE THEM AND OPERATING
THE PROJECTS, THAT IS THE TV
STATIONS, ET CETERA I WOULD BE
PAID $100,000 A YEAR ONCE THOSE
GOT GOING PER PROJECT.
ANSWER, YEAH, BUT I JUST WANT
TO MAKE IT KNOWN, NOW BECAUSE I
THINK I KNOW WHERE YOU'RE
LEADING SO I WANT THIS TO GO ON

THE RECORD ALL OF THIS WERE TO
BE PAID IF IT WAS SUCCESSFUL.
>> YES, SIR.
>> AND ON AND ON AND ON.
THEN AGAIN, THE QUESTION, AND
THAT $40,000 WAS REFLECTING THE
ANTICIPATED PAYMENT TO ME FOR
STARTING UP THE COMPANY?
ANSWER, PAGE 21, PROVIDING THAT
WE WERE A SUCCESS.
YOU KNOW, I UNDERSTAND THAT
THERE IS THIS DISPUTE
STILL GOING ON.
BUT I THINK IT IS EVEN MORE
DIFFICULT TO MISREPRESENT THE
DEPOSITION.
WE HAVE THEM.
>> WELL, IDENTIFIED IN THE
DEPOSITION, AND AT THE TRIAL
WAS THE FUNDING COMMITMENT THAT
THE TESTIMONY THAT I PLACED
INTO EVIDENCE AT THE TRIAL WAS
THAT A BOND APPROVAL, THE
$40,000 FEE, WAS PAYABLE AND
THAT WE ANTICIPATED IT WOULD BE
PAID AT CLOSING, WHICH IS
TRADITIONAL IN THIS INDUSTRY
ALONG WITH ALL THE OTHER
EXPERTS AND, BROKERS AND
ACCOUNTANTS AND ET CETERA.
>> YOU FEEL HE SOLD THAT OUT
FROM UNDER YOU AND GOT RID OF
IT AND CUT YOU OUT OF YOUR FEE
ON THAT.
>> THAT'S EXACTLY WHAT
HAPPENED.

>> BELIEVE ME, I UNDERSTAND, I
UNDERSTAND THE REAL WORLD BUT
THE REFEREE DIDN'T FIND THAT.
>> WELL THE REFEREE WAS WRONG
AND THAT'S CLEAR FROM THE FACT
THAT HE SAID, AS A THRESHOLD,
THAT HE FOUND THAT THERE WAS
NEVER A $40,000 VERBAL FLAT FEE
AGREEMENT FOR THE MONTPELIER
BOND BECAUSE ALL THE TESTIMONY
AT THE TRIAL WAS IT WAS NEVER
DISCUSSED, THAT THERE WAS NO
SUCH AGREEMENT.
THAT HE WOULD NEVER HAVE AGREED
TO IT.
HE SAID NO, NO, AND ABSOLUTELY
NOT WHEN HE WAS ASKED ABOUT IT
AT THE -- QUESTIONED ABOUT IT
AT THE TRIAL.
HE COMES THE CASE WHERE HE HAS
TO PAY THE REST OF THE MONEY,
YES, THAT IS WHAT WE DISCUSSED.
THAT IS 180 DEGREE DIFFERENT
TESTIMONY.
>> BUT, IS DISCUSSING IT THE
SAME AS YOU ACTUALLY HAVING AN
AGREEMENT THAT YOU WERE GOING
TO GET PAID, THIS 40,000?
>> IN ORDER TO HAVE AN
AGREEMENT YOU HAVE TO HAVE AN
OFFER, AND ACCEPTANCE WHICH
THEN FORMS THE AGREEMENT AND
THERE HAS TO BE CONSIDERATION.
HE OFFERED ME $40,000.
IT IS IN THE NOTES THAT I WROTE
AT THE TIME, WHICH ARE IN

EVIDENCE THAT HE OFFERED
$40,000 PER BOND.
I THEN PROCEEDED ON, ON THE
ASSUMPTION THAT THERE WOULD BE
$40,000 PER BOND, SENT A NOTICE
TO THE BOND COMPANY TO PAY MY
FEE OF 40,000 AT CLOSING.
INVOICED MONTPELIER FOR
$40,000.
TOOK $31,000 AND APPLIED IT
AGAINST THE $40,000 --
>> THAT'S THE REAL QUESTION, IS
THE TAKING OF THE $31,000.
AND WHAT IS YOUR AUTHORITY FOR
TAKING $31,000 THAT WE KNOW
CAME FROM ANOTHER, KIND OF CASE
THAT WAS NOT, YOUR MONEY TO
TAKE, AND APPLYING IT, EVEN IF
YOU HAD A DISPUTE, EVEN IF YOU
COULD DEMONSTRATE THAT YOU WERE
OWED $40,000, WHERE IS THE
AUTHORITY TO TAKE THE $31,000
THAT WAS GENERATED FROM ANOTHER
CASE AND A CHECK WAS ACTUALLY
ISSUED TO SOMEONE FOR THAT
30,000, $31,000?
>> THE AUTHORITY COMES FROM THE
SUPREME COURT OF FLORIDA IN THE
CASE OF MONES VERSUS SMITH
WHICH IS A CASE ALMOST
IDENTICAL IN THE FACTS IN THIS
CASE.
IN MONES, THE ATTORNEY
REPRESENTED MR.^SMITH IN
SEVERAL MATTERS OVER A LONG
PERIOD OF TIME JUST AS I DID.

THEY HAD SEVERAL CASES GOING
THAT HAD FEES ACCUMULATING AT
THE TIME OF THE INCIDENT.
THE ATTORNEY HAD REACHED A
SETTLEMENT FOR WHICH HE GOT A
CHECK ON BEHALF OF THE CLIENT
THAT WENT INTO HIS TRUST
ACCOUNT FOR $37,000.
HE DISPERSED SOME OF IT TO THE
CLIENT AND THE REST OF IT HE
KEPT IN AND RETAINED UNDER A
RETAINING LANE FOR HIS UNPAID
FEES IN ANOTHER CASE.
>> SO HERE'S MY PROBLEM WITH
WHAT YOU DID, EVEN ASSUMING AS
JUSTICE QUINCE SAYS THERE WAS
THIS OTHER AGREEMENT.
YOU HAD INTENDED TO DISPERSE
THAT MONEY AND IN FACT DID
DISPERSE IT TO THIS PARTICULAR
CLIENT FOR THIS OTHER MATTER.
IF THE CLIENT WHO THOUGHT IT
WAS SAFE TO NOT HAVE TO CASH IT
HAD CASHED IT WOULD HAVE BEEN
DONE AND OVER.
WHEN YOU FOUND OUT IT HADN'T
BEEN CASHED, DID YOU ASSERT,
DID YOU NOTIFY AND SAY LISTEN I
NOW REALIZE WE HAVE THIS
$40,000 AGREEMENT, I'M GOING TO
RETAIN THE 31,000 IN PAYMENT?
DID YOU ADVISE THE CLIENT YOU
WERE GOING TO DO THAT?
NO.
WHEN NEW ATTORNEYS TAKE THE
OATH OF OFFICE, WE SAY THAT NO

MONEY SHALL BE TAKEN FROM CLIENTS ACCEPT WITH THEIR APPROVAL AND THERE WAS NO NOTICE.
SO TO ME THAT, IF YOU HAD, AT THE POINT THAT THE $31,000 WAS RECEIVED, HAD SAID IT IS IN MY TRUST ACCOUNT BUT I WOULD LIKE YOUR PERMISSION TO USE THAT MONEY IN PAYMENT OF THIS OTHER FEE, MAYBE WE WOULD HAVE A DIFFERENT CASE.
DID YOU DO ANYTHING LIKE THAT WITH REGARD TO THIS CLIENT OF YOURS.
WELL, FIRST THE MONEY WAS GENERATED FROM THE SETTLEMENT OF AN UNRELATED CASE AND ISSUED IN A CHECK IN JUNE OF '04.
I ALWAYS KNEW, MR.^BRAGANO HADN'T CASHED A CHECK BECAUSE I WAS ALSO HANDLING HIS IRS CLAIM AT THE TIME.
THAT'S WHY HE WANTED THAT CHECK TO BE UNCASHED BECAUSE HE WAS WORRIED HE WOULD HAVE TO DISCLOSE IT AND THAT MATTER WASN'T FINISHED UNTIL DECEMBER.
HE DIDN'T OWE ME ON THE ATTORNEY FEES IN THE NEW CASE IN JUNE BECAUSE IT HADN'T STARTED YET.
THE PROJECT HADN'T COME.
>> YOU COLLUDED WITH THE CLIENT NOT TO CASH A CHECK SO THE IRS WOULDN'T KNOW ABOUT IT?

>> ABSOLUTELY NOT.
>> YOU SAID HE KNEW ABOUT HE OWED MONEY TO THE IRS AND HE WASN'T GOING TO CASH THE CHECK BECAUSE HE DIDN'T WANT THE IRS TO KNOW ABOUT IT.
>> HE WAS CONFRONTED WITH HAVING TO FILE AN IRS DISCLOSURE FORM WITH HIS ACCOUNTANT WHO WAS HANDLING THE TRANSACTION ALONG WITH ME.
I ADVISED HIM THAT IF HE FILED THAT FORM, HE WOULD HAVE TO DISCLOSE THE PAYMENT.
SO HE CHOSE TO NOT TO CASH THE CHECK AND TO NOT FILE THE FORM AND JUST GO ON AND NEGOTIATE WITH THE IRS, WHICH HE DID AND WHICH WAS SUCCESSFUL AND THE $90,000 CLAIM WAS REDUCED TO LIKE 3,000 OR SOMETHING.
>> BUT THE QUESTION STILL COMES DOWN TO, DID YOU EVER DISCLOSE TO YOUR CLIENT THAT YOU WERE GOING TO TAKE THE $31,000 THAT WAS IN THE TRUST ACCOUNT THAT BELONGED TO HIM AND USE IT TO PAY WHAT YOU CONSIDERED TO BE OTHER MONEYS THAT HE OWED YOU?
>> NOT UNTIL THE DECEMBER LETTER.
>> WHAT DID YOU USE THAT MONEY FOR?
>> TO PAY FEES AND EXPENSES.
>> THE FACT THAT YOU WERE, THAT YOU WERE, YOU OWED, WHAT DID

YOU OWE THE UNITED STATES
TREASURY $7,000 FOR?
IS THAT PERSONAL TAX?
>> NO, THAT WAS PAYROLL TAXES.
>> SO IT SAYS, PAYROLL TAXES.
WHAT ELSE DID YOU OWE?
I MEAN YOU WERE USING THIS TO
SATISFY OBLIGATIONS THAT WERE
NOT RELATED TO HIS --
>> NO, THAT'S NOT CORRECT.
THESE CHECKS, IF YOU NOTICE,
WERE TAKEN OUT IN VARIOUS
AMOUNTS THAT WERE USED TO PAY
FOR TRAVEL AND EXPENSES THAT
WERE RELATED TO THE CASE, THAT
HAD BEEN ACCRUED AND CHARGED
OVER THESE SEVERAL MONTHS AND
HADN'T BEEN REIMBURSED YET.
AND, PLUS THE FEE HADN'T BEEN
PAID.
SO I APPLIED THEM AS I NEEDED
BECAUSE I KNEW I HAD TO SAVE
SOME OF THE MONEY FOR THE
DECEMBER TRIP TO GO TO LONDON.
I WAS SURE I WAS GOING TO HAVE
TO PAY MY SHARE BECAUSE I KNEW
THEIR MONEY WAS GONE.
>> WHERE IS THIS DOCUMENTED,
THAT'S WHAT WAS GOING ON?
AND AGAIN, BUT MR.^BRAGANO
DIDN'T KNOW THAT?
>> HE DIDN'T KNOW I HADN'T
TAKEN THE MONEY OUT YET BECAUSE
I HADN'T TOLD HIM.
>> YOU'RE DOWN NOW TO TWO
MINUTES.

>> THEN I WILL SAVE THE REST
FOR REBUTTAL.
>> MAY IT PLEASE THE COURT, I'M
HENRY PAUL AND I REPRESENT THE
FLORIDA BAR.
IN THIS CASE THE REFEREE LOOKED
AT A WIDE RANGE OF EVIDENCE
HERE.
MR.^MIRK HAS PORTRAYED IT
SIMPLY RELYING ON THE TESTIMONY
OF FRANK BRAGANO BUT IT WAS
MUCH MORE THAN THAT.
THERE WAS ANOTHER PARTNER,
MR.^LYNCH, WHO ALSO TESTIFIED
AT THE TRIAL.
MR.^LYNCH SAID THAT HE HAD
CONVERSATIONS WITH MR.^MIRK AND
THAT THE FEE AGREEMENT WAS TO
THE BE A PERCENTAGE OF THE
PROFITS.
IN FACT THE INVOICES DATED
BEFORE OCTOBER THEY HAD, DID
NOT INCLUDE THE $40,000.
AND, THEY WERE ALSO ADDRESSED
TO MR.^MIRK'S LAW OFFICE.
MR.^MIRK IN ESSENCE CREATED
INVOICES THAT WERE SAID TO BE
SENT TO HIS OWN OFFICE.
>> COULD YOU JUST CLARIFY WHAT
THE MONEY WAS USED FOR?
BECAUSE, TO ME, MAYBE, BECAUSE
WE'RE LOOKING AT REALLY HERE
WHETHER DISBARMENT IS
APPROPRIATE VERSUS A
SUBSTANTIAL SUSPENSION OR, YOU
MIGHT THINK, BUT, IT IS WHERE I

AM AS FAR AS MAKING SURE
DISBARMENT IS APPROPRIATE.
WHAT WAS THE, WHAT WAS THE
$31,000 USED FOR BY MR.^MIRK?
>> THOSE, THE FIRST
DISPERSEMENT WAS IN AUGUST.
THAT WAS TAKEN OUT FOR THE COST
OF FILING THESE FOUR LLCs.
>> SO IT IS CORRECT HE USED IT
IN CONNECTION WITH COSTS.
WAS THAT SUPPOSED TO BE, COSTS
THAT WERE REIMBURSED TO HIM?
>> HE SENT A MEMO OUT A DAY
AFTER MAKING THAT FIRST
DISPERSEMENT.
THAT WAS ONLY $31,000.
ASKING ALL THE MEMBERS TO PAY
HIM.
NOTABLY IN THAT EXHIBIT, HE
DIDN'T ASK FOR A $40,000 FEE.
>> OKAY, SO HE USED THE FIRST
1,000 FOR SOMETHING TO DO WITH
THE MERIDIAN PROJECT?
>> THEN IN OCTOBER AFTER HE
FOUND OUT THAT MR.^BRAGANO HAD
STOPPED PAYMENT, FIVE DAYS,
THERE WERE SUPPOSED TO BE THE
POSSIBILITY OF USING SOME OF
THOSE FUNDS TO HELP MR.^CRAIG
GREEN OUT AND IT TURNED OUT
THAT THAT ENDED IN OCTOBER
20th.
ON THE 25th, THERE WAS A STOP
PAYMENT AND IMMEDIATELY THERE
AFTER HE STARTED A COURSE OF
DISPERSING ALMOST ALL THE

FUNDS, OCTOBER, NOVEMBER,
DECEMBER.
>> TO WHAT?
FOR WHAT PURPOSE?
>> RUNNING HIS OFFICE.
TO PAY THE IRS.
TO HIMSELF.
>> I DON'T KNOW IF THIS
MATTERS, WERE THEY USED, HOW
MUCH OF THE REST OF THE MONEY
WAS USED FOR THE MERIDIAN
PROJECT?
>> I DON'T THINK THERE IS ANY
EVIDENCE WAS USED FOR THE
MERIDIAN PROJECT.
THERE WERE PAYROLL TAXES,
MR.^MIRK TESTIFIED THOSE TAXES,
SOME OF THOSE TAXES WERE
INCURRED BECAUSE HE HAD TO
BRING ON ANOTHER STAFFER BUT
THAT'S ALL THE EVIDENCE THERE
IS ABOUT --
>> BUT THEY WERE USED FOR
RUNNING HIS LAW OFFICE?
>> THAT IS MY UNDERSTANDING AND
TO PAY HIS PAYROLL TAX.
>> DID HE EVER HAVE, OTHER THAN
THIS PARTICULAR SITUATION,
WHICH IS SUBSTANTIAL, BUT IS
THERE ANY OTHER PATTERN THAT HE
HAD USED CLIENTS TRUST ACCOUNT
MONIES THROUGHOUT HIS LAW
PRACTICE FOR ANY OTHER PURPOSE?
THE AUDIT, OR ARE ABLE TO DO AN
AUDIT TO SEE IF THERE WERE
CHRONIC UNDERFUNDING OF THE

TRUST ACCOUNT?
>> THE BAR DID DO AN AUDIT FINALLY AFTER THIS COURT SUSPENDED MR.^MIRK AND THERE WAS NO INDICATION OF ANY OTHER TRUST ACCOUNT IRREGULARITIES, EXCEPT FOR THE LYLES CASE WHICH IS COUNT ONE OF THIS CASE, WHERE HE TOOK MONEY, DID NOT PUT IT IN TRUST FOR FUTURE SERVICES.
>> $750?
>> EXCUSE ME?
>> THAT WAS THE $750?
>> YES.
>> TELL US BECAUSE THERE IS ALL SORTS OF STEALING AND THERE IS ALL SORTS OF MISCONDUCT AND WE GENERALLY HAVE A PRESUMPTION OF DISBARMENT, CORRECT, FOR SOMETHING LIKE THIS.
WHAT DOES HE NEED TO DO TO OVERCOME THE PRESUMPTION OF DISBARMENT?
>> I DON'T THINK HE CAN OVER COME THE PRESUMPTION OF DISBARMENT.
THERE WAS ONLY ONE MITIGATING FACTOR.
IN THE CASES --
>> WHAT WAS THE MITIGATION?
>> THAT HE HAD DISPLAYED CHARACTER AND REPUTATION AND WHAT THE REFEREE SAID THAT HE HAD ABOVE AVERAGE LEGAL SKILL.
HE HAD SOME JUDGES COME IN AND

TESTIFY THAT HE WAS VERY
QUALIFIED LAWYER.
>> WHAT'S HIS EXPERTISE IN,
BUSINESS?
>> MOSTLY BUSINESS LITIGATION.
YOUR HONOR, I THINK THAT MAKES
IT WORSE, HERE IS A LAWYER WHO
IS SKILLED, WHOSE JOB WAS TO
PUT ALL THE PAYMENTS TOGETHER,
ALL THE DOCUMENTS, EVERYTHING
THAT WAS REQUIRED AND THEN
SUDDENLY DOES NOT HAVE THE ONE
THING THAT MATTERED MOST TO
HIM, THE FEE AGREEMENT.
AND HE WENT THROUGH THIS
PROCESS, MR.^BRAGANO SAID, THAT
WHAT HE DID, HE TRIED TO
BLACKMAIL MR.^BRAGANO TO GET
THE PERCENTAGE UP.
IF YOU LOOK AT HIS FIRST
LETTER, THE DECEMBER 20th,
AFTER MR.^BRAGANO FOUND OUT
THIS MONEY HAD BEEN DISPERSED,
HE WRITE AS LETTER, MR.^MIRK
WRITE AS LETTER, BY THE WAY I
STOPPED PAYMENT ON YOUR CHECK.
THAT HAD BEEN DONE IN OCTOBER.
HAD NOT GIVEN HIM ANY OTHER
PRIOR NOTICE.
WHEN ASKED ABOUT THAT AT TRIAL,
WHY THE REFEREE ASKED THE SAME
QUESTIONS YOU ASKED, JUSTICE
PARIENTE, WHY DIDN'T YOU PICK
UP THE PHONE, WHY DIDN'T YOU
CALL HIM?
HE RESPONDED AT ONE POINT, I

DIDN'T WANT TO STIR UP A
HORNETS NEST.
THE REFEREE FOUND THAT HE
ACTIVELY CONCEALED THESE
DISPERSEMENTS.
>> HIS PRIOR DISCIPLINE, HE HAD
ADMONISHMENT IN 2003.
OTHER THAN THAT, NO OTHER, JUST
HISTORY OF DISCIPLINE?
INTO THAT'S CORRECT, YOUR
HONOR.
>> THAT'S CORRECT, YOUR HONOR.
HE LOOK AT CONDUCT.
HE DECIDED I NEEDS THE MONEY.
HE MAKES THE DISPERSEMENTS.
INTENTIONALLY CONCEALS IT FROM
THE CLIENT.
WHEN HE GETS DISCOVERED HE
WRITES SELF-SERVING AFTER THE
FACT LETTERS.
THAT IS ALL --
>> DO WE GET INTO WHAT THE
RESPONDENT WAS MAKING PER YEAR?
WAS HE A SUCCESSFUL BUSINESS
ATTORNEY?
>> WE DID NOT GET INTO THAT.
WE KNOW HE HAD A ESTABLISHED
PRACTICE.
>> I'M JUST LOOKING FOR SORT
OF, THERE'S AN EXPLANATION FOR
WHY SOMEBODY WHO IS, IF THERE
IS NO EVIDENCE THAT THIS WAS A
PATTERN ON HIS BEHALF AND
NOTHING, YOU KNOW WE HAVE HAD
CASES WHERE SOMEONE USES, TO
TAKE A TRIP OR THEY HAVE A DRUG

HABIT OR THEY'RE CHRONICALLY
STEALING FROM THEIR CLIENTS BUT
SOMEBODY HAS A SUCCESSFUL
PRACTICE AND THEY'RE A
COMPETENT LAWYER, WHY WOULD
YOU, WHY RISK WHAT THIS IS FOR
WHAT IS SUBSTANTIAL SUM
CERTAINLY BUT NOT MAYBE IN THE
SCHEME OF HIS PRACTICE?
ANY EXPLANATION ON THAT?
>> YOUR HONOR, I THINK HE GOT
BLINDED BY THE HOPE OF FUTURE
RICHES BLINDED BY THE HOPE OF
GOLD.
>> WHERE WAS THE GOLD?
>> WELL THIS, THIS INVESTMENT
PLATFORM THAT THEY WERE WORKING
ON WAS SUPPOSED TO BRING THE
LLC, AS MUCH AS $18 MILLION.
AND MIRK, MR.^MIRK, AS
MR.^BRAGANO SAID, TRIED TO
RATCHET UP HIS PERCENTAGE TO
10%.
>> WHY WOULD HE DO THAT, WITH
STEALING FROM THE CLIENT
HELPING YOU GET THIS $18
MILLION?
>> THE PROBLEM IS, THE
TESTIMONY IS THAT HE SPENT TIME
NONSTOP FROM THE END OF JUNE,
JULY, AUGUST, SEPTEMBER,
OCTOBER, WORKING ON ALMOST
NOTHING ELSE BUT THIS PROJECT.
HE BECAME DESPERATE BECAUSE HE
SPENT SO MUCH TIME IN THE HOPE
FOR RICHES HERE.

>> SO THERE WAS NO, AGAIN, WE SAID THERE IS NO AGREEMENT WHAT THE 40,000 WAS.
THERE WAS NO AGREEMENT, EVEN ABOUT THAT HE WAS GOING TO GET A PERCENTAGE OF THE PROFITS?
>> THERE WAS AGREEMENT.
BOTH MR.^LYNCH AND MR.^BRAGANO SAID THAT THERE WAS A 10% AGREEMENT.
>> NO WRITTEN AGREEMENT?
>> THERE WAS WRITTEN AGREEMENTS ON SOME OF THE INVESTMENT PLATFORMS.
MR.^BRAGANO TESTIFIED, THERE WAS ALL SORTS OF COMPANIES AND CONTINUED TO CHANGE, AND MORPH THROUGH THE SUMMER.
MR.^BRAGANO SAID THERE WAS A WRITTEN AGREEMENT ON THE MONTPELIER ONE BUT THERE WERE ALSO, THAT WAS NOT INTRODUCED INTO EVIDENCE.
MR.^BRAGANO SAID HE COULDN'T FIND IT.
BUT MR.^MIRK WAS KEEPER OF THE DOCUMENTS.
HE DID PRODUCE DOCUMENTS ON OTHER CORPORATIONS AND MR.^BRAGANO TESTIFIED THAT THE DEAL WAS, WHATEVER CAME IN, HE WAS GOING TO GET A PERCENTAGE OF THE PROFITS.
>> LET ME ASK A HYPOTHETICAL SITUATION.
HYPOTHETICAL.

THAT, YOU WOULD HAVE TESTIMONY, EXPERT TESTIMONY, THAT IT IS CUSTOMARY IN THE PRACTICE OF LAW IN THE PROFESSION THAT FEES WOULD BE TAKEN AT THE TIME OF BONDS WERE UNDERWRITTEN AND LET'S HYPOTHETICALLY SAY, THAT A CLIENT TOOK ACTION.
THAT PRECLUDED, BEHIND THE SCENES, PRECLUDED THE LAWYER FROM RECEIVING THAT $40,000, AND THOSE WERE THE FACTS IN THIS CASE.
IT IS FOUND BY THE REFEREE.
THE LAWYER THEN PROCEEDS TO TAKE MONEY OUT OF THIS OTHER ACCOUNT.
WHAT WOULD BE THE RESULT IN THAT CASE?
>> WELL, YOUR HONOR, THOSE WEREN'T THE FACTS BUT --
>> I UNDERSTAND.
JUST ASKING A QUESTION.
WHAT WOULD BE THE BAR'S POSITION WOULD BE THE FACTS UNDER THAT SCENARIO?
>> STILL THINK THAT IT WAS ANOTHER MATTER.
THERE WERE DIFFERENT PARTIES INVOLVED.
THE FUNDS WERE FOR A SPECIFIC PURPOSE AND THE MONES REQUIREMENTS WOULD NOT HAVE BEEN MET.
YOU STILL HAVE THE THREE SITUATIONS.

YOU DON'T HAVE THE IDENTITY OF PARTIES.
>> OKAY.
NEED TO KNOW WHAT THE BAR'S POSITION WOULD BE IF THAT WERE THE CASE.
>> SO AFTER MR.^MIRK GETS FOUND OUT HERE, IT IS JUST AS IMPORTANT TO LOOK AT WHAT HE DID.
AND THIS IS PART OF WHAT THE REFEREE RELIED ON, LOOKING HOW HE RESPONDED TO THIS.
HE CREATES AN AFTER THE FACT DEFENSE.
EVEN THOUGH IT WAS HIS JOB TO DOCUMENT FEES AND PAYMENTS AND COMMISSIONS, NOTHING HAD BEEN DONE.
HE,  AT LEAST, TOWARDS THE TOWARDS THE 40,000 AND THEN HE WRITES THESE SELF-SERVING LETTERS AND CONTINUES TO TRY AND CREATE A DEFENSE AFTER THE FACT.
>> LET ME ASK YOU THIS ON THAT.
THE LETTERS THAT SUPPOSEDLY WERE DOCUMENTING THE $40,000 FEE, WERE THESE WRITTEN AFTER HE HAD USED THE $31,000.
>> ALL BUT $900.
ALL OF THE 31,000 BUT FOR $900 ABOUT HAD BEEN DISPERSED BY THE TIME HE WAS DISCOVERED IN DECEMBER.
>> BY THE TIME HE STARTED

WRITING THE LETTERS?
>> YES.
>> AND EVEN THOUGH, AND EVEN THOUGH THERE HAD BEEN A LETTER WRITTEN AND HE WAS CLEARLY UNDER THE KNOWLEDGE THAT MR.^BRAGANO DID NOT AGREE WITH HIM TAKING THE MONEY AND OBJECTED TO IT STRENUOUSLY, HE THEN MADE ANOTHER DISPERSEMENT, THE LAST DISPERSEMENT IN APRIL.
>> DOES A LAWYER HAVE A RETAINING LIEN ON ANY FUNDS ANY TIME?
>> YOU HAVE TO LOOK TO MONES IN RELATION TO THAT.
IN THIS CASE THERE WAS NO AGREEMENT, NO FEE AGREEMENT AND NO IDENTITY OF THE PARTIES AND THE FUNDS WERE OUT THERE FOR A SPECIFIC PURPOSE.
HE HAD WRITTEN THE CHECK.
SO THERE WAS A SPECIFIC PURPOSE TO THOSE FUNDS WERE DEDICATED.
>> THERE WOULD BE RECOGNIZED UNDER FLORIDA LAW RETAINING LIEN CONCEPT IN.
>> UNDER MONES IN SOME CIRCUMSTANCES.
>> IF A LAWYER RELIES ON A CASE AND ASSERTS RETAINING LIEN IN DISPETE OVER FEES BUT LATER ON DETERMINED THERE WAS NO RETAINING LIEN, ASSUME THAT HYPOTHETICALLY, WHAT'S THE RESULT IN THIS CASE?

>> I THINK HE STILL, YOU BETTER
BE RIGHT IF YOU ASSERT IT.
>> OKAY.
>> AND HE WAS NOT RIGHT.
HE, MR.^MIRK CITED A CASE,
HOOPER, WHERE THERE WAS ISSUE
OF A MECHANIC'S LIEN.
THAT WAS '82 CASE, THAT LAWYER
WAS SUSPENDED 18 MONTHS EVEN
THOUGH THERE WAS MISTAKEN
BELIEF A MECHANICS LIEN COULD
HAVE BEEN ASSERTED.
I WANT TO POINT OUT --
>> SHOULD A MISTAKEN BELIEF IN
THIS CASE, SO HE IS WRONG AND
DIDN'T HAVE A LIEN ON THAT
CASE, DOES THAT IMPACT THE
DISCIPLINE?
>> YOUR HONOR, IN THIS CASE --
HE WAS NOT MISTAKEN.
HE NEVER ASSERTED A RETAINING
LIEN UNTIL AFTER HE HIRED
COUNSEL,
UNTIL HE ANSWERED THE
COMPLAINT.
THAT WAS AN AFTER THE FACT
DEFENSE.
>> OKAY.
>> I WOULD LIKE TO POINT OUT
THAT EVEN UNDER MR.^MIRK'S
VERSION OF, HE WAS SUPPOSED TO
GET $40,000 PER BOND CLOSING,
IT STARTED OUT PER BOND CLOSING
ON DIRECT AND CROSS-EXAMINATION.
ON REDIRECT, IT BECAME, WELL,
IT IS MORE LIKE DUE DILIGENCE.

THAT'S WHEN I WAS SUPPOSED TO
GET THE 40,000.
IF YOU LOOK AT THE TESTIMONY
THAT I CITED TO, MR.^TOSIAN DID
A VERY STRENUOUS
CROSS-EXAMINATION OF
MR.^BRAGANO.
RIGHT AT THE START HE TALKS
ABOUT, WELL, YOU KNOW, ABOUT
100,000 FOR A SALARY AND
40,000.
MR.^MIRK, MR.^BRAGANO, THAT IS,
WAS IMPEACHED BECAUSE IN HIS
DEPOSITION HE SAID, WELL WE
WOULD HAVE GIVEN HIM 100,000.
AND HE ASKED HIM ABOUT THE
40,000.
FIRST HE COULDN'T REMEMBER.
THEN HE SAID I DON'T REMEMBER.
THEN HE SAID, NO, I DIDN'T TALK
ABOUT IT.
I COULD HAVE TALKED ABOUT A
COW.
WE COULD HAVE GIVEN HIM A COW
BUT HE DIDN'T DOCUMENT IT AND
THAT WASN'T THE DEAL.
THE DEAL WAS ALWAYS, HE
RATCHETED IT UP.
HE USED HIS ABILITY AND HIS
INVOLVEMENT IN ALL THESE CASES
TO TRY TO INCREASE HIS
PERCENTAGES OF THE PROFITS.
THAT MAKES THIS REALLY
EGREGIOUS IN THIS SITUATION.
IT WAS NOT SUCCESSFUL.
ANOTHER THING THAT IS EGREGIOUS

HERE, MR.^MIRK, AFTER THE FACT
TRIES TO SAY THAT MR.^BRAGANO
WAS A PROMOTER.
HE HAS GOT TO BE RESPONSIBLE
FOR THOSE $40,000 UNDER
RATTNER.
WELL, HE REPRESENTED
MR.^BRAGANO.
HE WAS, UNDER MR.^MIRK'S
POSITION, HIS PERSONAL LAWYER,
BUT DOESN'T ADVISE HIM, SAID I
WAS ACTING IN HIS BEST INTEREST
BUT DOESN'T ADVISE HIM, HEY, I
WILL HOLD YOU LIABLE FOR
$40,000.
I'M YOUR LAWYER AND I WILL NOT
TELL YOU THIS THOUGH.
HE ADMITTED THAT HE DIDN'T HAVE
THAT CONVERSATION.
THEN HE COMES BACK AFTER THE
FACT YOU'RE RESPONSIBLE FOR
THIS.
TRIES A TECHNICAL DEFENSE
CREATED UNDER RATTNER AND
MONES.
AND I WOULD SUGGEST THAT THESE
WERE ALL AFTER THE FACT
CREATIONS HERE.
THIS IS AN EGREGIOUS CASE.
IT IS UNFORTUNATE.
BUT, FRANKLY I SEE NOTHING TO
OVERCOME THE PRESUMPTION OF
DISBARMENT.
THANK YOU.
>> IF YOU WERE STARTING AGAIN,
IN TERMS OF WHAT HAPPENED HERE,

YOU WERE APPARENTLY A
SUCCESSFUL BUSINESS LAWYER,
WHAT WOULD YOU HAVE DONE
DIFFERENTLY?
>> I WOULD HAVE GONE TO FRANCE
WITH MY FAMILY INSTEAD OF
CANCELING THE TRIP TO FRANCE IN
ORDER --
>> I DON'T MEAN ANY TONGUE IN
CHEEK.
>> WHAT WOULD YOU ADVISE ANY
LAWYERS THAT MIGHT BE THINKING
OF DOING WHAT YOU WERE DOING?
>> I WOULD ADVISE THEM NOT TO
TRUST THEIR CLIENTS BASED UPON
20 YEARS OF PAST DEALING.
>> SO YOU REALLY ARE CONTINUING
TO SAY THAT THE ERROR, WHAT
DID, IF THERE WOULD HAVE BEEN A
WRITTEN FEE AGREEMENT?
WHAT ABOUT WHEN YOU DECIDED TO
TAKE THE MONEY OUT YOU MIGHT
HAVE NOTIFIED THE CLIENT THAT
YOU WERE DOING THAT BECAUSE
THERE WERE COSTS OWED?
>> THERE WAS A WRITTEN FEE
AGREEMENT FROM DAY ONE, THAT
WAS SENT UP TO NEW YORK, WHERE
I FOLLOWED IT AND SPENT JULY
3rd, 4th, AND 5th IN NEW YORK
AFTER WE HAD THIS MEETING TO
MEET ALL THE NEW PEOPLE.
BUT IT NEVER GOT SIGNED BECAUSE
THE OTHER PARTNERS IN, MEMBERS
OF THE LLC, WERE NOT WILLING TO
PERSONALLY COMMIT.

>> BUT AGREEMENTS THAT AREN'T SIGNED AREN'T AGREEMENTS.
IT WAS PROPOSED AGREEMENT.
THAT IS A DIFFERENT MATTER,
ISN'T IT?
>> MR.^BRAGANO AND I REACHED AN AGREEMENT AND THAT IS WHY I AGREED TO DO THE WORK AND GO TO THE NEW YORK.
THE OTHERS, THAT IS, THE OTHER MEMBERS WERE NOT WILLING TO BIND THEMSELVES.
THEY WERE WILLING TO BIND THE CORPORATION BECAUSE THE CORPORATION DIDN'T HAVE ANY MONEY BUT WOULD GET IT FROM THE BOND CLOSING.
BUT THEY WEREN'T WILLING TO PERSONAL GUARANTY AS MR.^BRAGANO'S CONTRACT.
AND IF YOU LOOK AT THE LETTERS, YOU WILL, ALL THE LETTERS ARE CONSISTENT.
THEY SAY IF YOU WILL JUST GET THE OTHERS TO COMMIT, AND EACH PAY YOUR PROPORTIONATE SHARE, I WILL REFUND YOU THE $31,000.
THAT IS IN THE FIRST DECEMBER, LETTER, THE SECOND DECEMBER LETTER.
IT IS IN THIS SETTLEMENT LETTER IN AUGUST OF 2005.
AND MR.^BRAGANO SAID HE WOULD GET THE OTHERS TO DO IT.
AND I SAID, FINE, I WILL REFUND YOU THE 31 WHEN I GET THE 40, I

THINK THERE WAS SEVEN OF THEM.
FROM THE SEVEN OF YOU.
>> YOUR TIME IS UP.
I WILL GIVE YOU ANOTHER MINUTE
TO CONCLUDE.
>> WELL WE KEEP HEARING ABOUT
THIS RACE FOR THE RICHES.
THERE ARE DIFFERENT COMPANIES
FOR WHICH I DID DIFFERENT
THINGS UNDER DIFFERENT
CIRCUMSTANCES.
MONTPELIER WAS THE FIRST ONE
OUT OF THE BOX.
I DIDN'T KNOW THESE PEOPLE IN
NEW YORK.
HAD NEVER HEARD --
>> YOU'RE PUTTING ALL YOUR EGGS
IN THE BASKET THAT WE'RE GOING
TO NOT FIND THE REFEREE'S
FINDINGS CREDIBLE.
IN THE LAST 30 SECONDS,
ASSUMING WE FIND THE REFEREE'S
FINDINGS CREDIBLE, WOULD YOU
AGREE DISBARMENT IS THE
APPROPRIATE DISCIPLINE?
>> NO. THERE IS A SERIES
OF CASES THAT WERE IN OUR
MEMO TO THE REFEREE
THAT IF THE TAKING OF THE FUND
IS BASED UPON A FEE DISPUTE,
THEN THE APPROPRIATE SANCTION
WOULD BE 30 OR 60-DAY
SUSPENSION.
ON THE OTHER HAND, IF THE FUNDS
ARE JUST STOLEN, THEN,
DISBARMENT OR A LONG TWO OR

THREE-YEAR SUSPENSION IN THE
APPROPRIATE REMEDY.
>> HOW DO YOU DETERMINE A FEE
DISPUTE?
IN ORDER TO HAVE A FEE DISPUTE
IT SEEMS TO ME YOU HAVE TO PUT
THE OTHER PARTY ON NOTICE THAT
I AM CLAIMING THESE FUNDS
BECAUSE THERE IS A FEE DISPUTE.
>> WELL THAT'S WHAT I DID, IN
THE DECEMBER LETTER, I TOLD --
>> BUT THAT WAS AFTER YOU HAD
USED THE MONEY.
>> THERE NEVER WAS A DISPUTE.
MR.^BRAGANO HAS NEVER SAID THAT
THE $40,000 WASN'T OWED.
>> WAIT, WAIT, WAIT.
PLEASE, SIR, ALL OF THIS IS TO
BE PAID IF IT WAS A SUCCESS.
I MEAN THROUGHOUT, HE ALWAYS
SAYS, YOU MAY DISAGREE BUT
THAT'S WHAT HE SAID.
>> BUT IT WAS A SUCCESS.
THE BOND WAS APPROVED.
HE CHOSE NOT TO CLOSE.
I DIDN'T --
>> THAT IS THE STICKING POINT.
AND I THOUGHT THAT IT WHAT IT
WAS, YOU FEEL HE SOLD YOU OUT
AND UNDERCUT YOU AND
EFFECTIVELY STOLE YOUR FEE.
>> REMEMBER WHAT HAPPENED.
>> IS THAT YOUR BELIEF?
>> WELL HE DIDN'T STEAL MY FEE.
HE TRANSFERRED THE ESCROW
FUNDS --

>> SO YOU COULDN'T RECOVER --
>> -- TO A NEW BROKER, SO I COULDN'T GET PAID.
>> FUND WAS THERE TO PAY ME ALL ALONG AND I WAS TO BE PAID BY AMSOUTH BANK UP IN ATLANTA AT CLOSING AS WERE ALL THE OTHERS THERE WERE SEVERAL HUNDRED THOUSAND DOLLARS IN ESCROW. THOSE FUNDS WERE TRANSFERRED AWAY.
WHEN I FOUND OUT ABOUT THAT WHEN THEY ASKED ME HOW TO MAKE OUT THE CHECKS BECAUSE THEY CAME TO ME AS COUNSEL FOR THE NOW EXISTING CORPORATION, I WAS SURPRISED TO FIND THIS OUT BECAUSE I WAS UNDER THE IMPRESSION THAT THERE WAS JUST A DELAY IN THE CLOSING.
I DIDN'T KNOW THE PROJECT HAD BEEN SOLD AND I DIDN'T KNOW THAT THE ESCROW FUNDS THAT WOULD PAY ME, EVERYONE ELSE GOT PAID BUT ME.
THE OTHER ACCOUNTANTS, LAWYERS FOR AMSOUTH, EVERYONE BUT ME.
>> IS THERE A WAY --
[INAUDIBLE]
>> IF I HAD TO DO IT OVER AGAIN WHAT I WOULD HAVE DONE JUST IMPLEAD THE MONEY, THE 31,000.
IF I HAD TO DO IT OVER AGAIN I WOULD HAVE DONE THAT AND WE WOULD HAVE BEEN IN STATE COURT IN 2004.

>> THAT'S WHAT I THOUGHT I
ASKED.
>> I'M SORRY.
>> I THOUGHT I ASKED YOU --
>> CERTAINLY, THEN I WOULDN'T
HAVE BEEN IN ANY TROUBLE EXCEPT
FOR PERHAPS A SLIGHT DELAY IN
HIM GETTING HIS MONEY BUT THE
MONEY WOULD BE THERE AND SAFE.
I DIDN'T THINK TO DO THAT.
AS, I DIDN'T THINK IT WAS
GOING TO COME TO THAT.
I THOUGHT THERE WOULD BE A
CLOSING ANYWAY.
>> WERE YOU IN FINANCIAL
DISTRESS OF MONTHS OF
SEPTEMBER, OCTOBER, NOVEMBER
BECAUSE YOU WERE SPENDING ALL
YOUR TIME ON THIS, ON THESE
DEALS AND YOU DIDN'T HAVE MONEY
COMING?
>> TO SOME EXTENT.
I HAD MONEY COMING IN BUT NOT
LIKE I HAD WHEN I HAD 30
CLIENTS.
WHEN I WAS DOWN TO LIKE FOUR.
THANK YOU VERY MUCH.
>> THANK YOU.