

WE'LL NOW MOVE TO OUR FOURTH
AND FINAL CASE ON TODAY'S
DOCKET.

THE FLORIDA BAR VERSES BRIAN
DOUGHERTY.

GOOD MORNING JUSTICES, MAY
IT PLEASE THE COURT, I'M
BRIAN DOUGHERTY, I'M THE
RESPONDENT TODAY HERE IN
THIS MATTER AND I WANT TO
THANK THE COURT FOR
SCHEDULING ORAL ARGUMENT IN
THIS PROCEEDING SO THAT I
CAN COME HERE AND DISCUSS
WITH YOU THE MATTERS THAT
ARE BEFORE US AND WHY THE
REFREES RECOMMENDATION
SHOULD NOT BE ENDORSED --
I'VE MADE SOME MISTAKES
HERE.

>> DID YOU TELL YOUR CLIENT
THAT WHEN SHE WAS GOING TO
BE BUYING THESE ANNUITIES
THAT YOU WOULD BE MAKING A
COMMISSION ON THE ANNUITIES?

>> I HAD A SUBSTANTIAL
RELATIONSHIP WITH THIS WOMAN

--

>> I'M ASKING YOU THIS ASK,
DID YOU TELL HER THAT YOU
WERE FINANCIALLY BENEFITING
IN DIFFERENT WAYS FROM THE
TWO ANNUITIES YOU WERE
SUGGESTING TO HER?

>> IN CANDOR, YOUR HONOR, I
DON'T KNOW SPECIFICALLY WITH
REGARD TO THOSE ANNUITIES
WHETHER I DID.

MY ATTEMPT --

>> AND WE CERTAINLY KNOW
THAT YOU DIDN'T PUT IN
WRITING THIS FINANCIAL
INTEREST IN THESE
TRANSACTIONS?

THAT'S UNDISPUTED.

YOU WERE SAYING THAT YOU
MADE A NUMBER OF MISTAKES.

WHAT WOULD YOU --

WHAT WERE YOUR BIGGEST
MISTAKES IN THIS CASE?

>> YOUR HONOR, IT'S CLEAR
THEY VIOLATED THE GENERAL
CONFLICT OF INTEREST RULES
OF THE RULES REGULATING THE
FLORIDA BAR, THAT'S SECTION
1.7, I NEGLIGENTLY FAILED TO
APPRECIATE HOW WEARING THESE
MULTIPLE HATS CREATED THE
PERCEPTION OF A CONFLICT OF
INTEREST, AND HOW THAT COULD
CREATE CONFUSION IN THE MIND
OF THE CLIENT AND THAT
CERTAIN HARM COULD RESULT
FROM THAT.

THERE'S NO QUESTION THEY DID
VIOLATE THAT --

>> LET ME ASK YOU THAT, AS
FAR AS THAT IS CONCERNED,
IT'S MY UNDERSTANDING AND
CORRECT ME IF I'M WRONG,
THAT YOU REPRESENTED THIS
CLIENT AND HER HUSBAND
BEFORE THE HUSBAND DIED?
YOU REPRESENTED THEM AS A
LAWYER, AND YOU REPRESENTED

THEM AS A FINANCIAL ADVISOR?

>> YES, MA'AM.

>> AND THEN YOUR CAPACITY AS

A FINANCIAL ADVISOR, WERE

YOU BUYING THESE KINDS OF

ANNUITIES AND THINGS FOR

THEM AT THAT POINT?

PRIOR TO THE HUSBAND'S

DEATH?

>> YES, MA'AM.

MY ORIGINAL RELATIONSHIP

WITH MR. AND MRS. SMITH

BEGAN MANY, MANY YEARS AGO

WHEN I WORKED ON BEHALF OF A

FINANCIAL SERVICES COMPANY

AND WAS NOT PRACTICING LAW.

AND ADMITTEDLY, THAT CREATES

SOME OF THE PROBLEM HERE IF

I WAS FUNCTIONED IN A LEGAL

CAPACITY OR AS AS FINANCIAL

ADVISOR.

>> WAS THAT IN THE TIME THAT

YOU WERE SUSPENDED FOR TWO

YEARS FROM THE PRACTICE OF

LAW HERE?

>> IT PREDATES THAT, YOUR
HONOR, I BEGAN WORKING IN
THE FINANCIAL SERVICES
INDUSTRY IN 1994, AND I WAS
NOT SUSPENDED UNTIL 1999.

>> IN TERMS OF SAYING YOU
NEGLIGENTLY DID SOMETHING,
YOU'RE JUST ADMITTING THAT
YOU HAVE SUBSTANTIAL
BACKGROUND IN THE FINANCIAL
SERVICES INDUSTRY, AND YOU
HAVE BEEN A LAWYER FOR A
LONG TIME, IT'S --
YOU KNOW, IT'S --
I HAVE --

IT SEEMS TO BASIC THAT IF
YOU'RE GOING TO BE ADVISING
SOMEBODY ON THEIR FINANCIAL
NEEDS, BUT YOU'RE ACTUALLY,
AND AGAIN, YOU ARE MAKING A
COMMISSION ON EACH OF THOSE
TRANSE ACTIONS, AND YOU'RE
ALSO SERVING AS A LAWYER,
THAT THERE IS A INHERENT
CONFLICT OF INTEREST THAT

NEEDS TO BE DISCLOSED AND
FULLY EXPLORED AND, YOU
KNOW, PROBABLY THE BETTER
PART OF IT IS TO MAKE SURE
THEY COMPLETELY UNDERSTAND
AND SAY NO, NO, WE WANT OUR
FINANCIAL SERVICES PERSON TO
BE OUR LAWYER SO YOU'LL KNOW
THE WHOLE PICTURE?
BUT TO SAY --
SO GOING BACK TO HOW YOU
FIRST --
AND JUST --
THAT'S JUST MY THOUGHT IS
THAT IT SHOWS THAT YOU
REALLY, IT'S HARD TO
BELIEVE, AND I DON'T --
I DON'T THINK NEGLIGENCE
WOULD APPLY TO YOU WHEN YOU
WERE IN THIS INDUSTRY A LONG
TIME, BUT YOUR RELATIONSHIP
WENT BACK WITH THEM A LONG
TIME AND IT STARTED AS A
FINANCIAL SERVICES
RELATIONSHIP, CORRECT?

AND I ASSUME THEY KNEW YOU
WERE MAKING COMMISSIONS ON
WHAT YOU WERE SELLING TO
THEM?

>> THAT'S CORRECT.

>> WERE YOU ALSO CHARGING A
FEE OR JUST MONEY BASED ON
THE COMMISSIONS?

>> INITIALLY AS I WORKED ON
THEIR BEHALF FOR THE
FINANCIAL SERVICES COMPANY,
IT WAS ONLY COMMISSION BASED
COMPENSATION.

>> AND THEN YOU GET INTO, AT
SOME POINT, A SITUATION
WHERE YOU HAVE THESE CHARGE
BACKS AND YOU HAVE THIS
\$80-90,000 DEBT THAT MAY
HAVE MOTIVATED YOU IN YOUR
DOUBLE DEALING WITH
MRS. SMITH WHO NOT ONLY JUST
LOST HER HUSBAND, BUT SHE,
HERSELF, IS DIEING OF
CANCER, YOU SEE WHERE THAT
MAY MAKE US LOOK AT THIS AS

YOU'RE NOW DEALING WITH NOT
JUST A VULNERABLE CLIENT,
BUT AN ESPECIALLY VULNERABLE
CLIENT?

>> I UNDERSTAND YOUR
OBSERVATIONS, YOUR HONOR,
BUT LET ME RESPOND BY SAYING
WHY THIS WAS A NEGLIGENT
VIOLATION.

IT ILLUSTRATES AND TIES
TOGETHER I BELIEVE ALL OF
THESE ISSUES.

I HAD A VERY COMPREHENSIVE
RELATIONSHIP WITH THE SMITH
FAMILY.

AND AS TIME WENT ON, SHE
SOUGHT ADVICE FROM ME AND
INPUT IN ALL DIFFERENT
AREAS.

SHE ALSO HAD A DIFFERENT
FAMILY SITUATION IN TERMS OF
NOT HAVING ANYBODY AROUND
WHO WAS AN OBVIOUS FIDUCIARY
FOR HER, AND THIS IS WHERE I
MADE MY BIGGEST ERROR.

SHE WAS ORIGINALLY FROM
ENGLAND, TWO DAUGHTERS, ONE
OF WHOM EXPRESSED SHE WOULD
BILLION RETURNING TO
ENGLAND, AND ANOTHER WITH
WHOM HER RELATIONSHIP WAS
TROUBLING, SO SHE HAD NO
OBVIOUS FIDUCIARY TO FULFILL
THE ROLE OF TRUSTEE AND
PERSONAL REPRESENTATIVE.
SHE ASKED ME TO DO IT.
AND QUITE FRANKLY I SHOULD
HAVE APPRECIATED THE
SITUATION BETTER THAN SAY,
THEN JUST SAY TO HER,
BECAUSE OF OUR RELATIONSHIP,
AND BECAUSE I UNDERSTAND
YOUR CIRCUMSTANCES, I CAN DO
THIS FOR YOU.
I SHOULD HAVE SPENT MORE
TIME THINKING ABOUT IT,
THAT'S WHY I SAY THAT
VIOLATION WAS NEGLIGENT, IT
WASN'T MY INTENTION TO
ENGAGE IN ANYTHING IMPROPER

AND THERE WAS, IN FACT,
REALLY, THERE WAS NO DOUBLE
DEALING HERE.

>> YOU CHARGED HER FOR THE
LEGAL TRANCE AXES, THAT
WASN'T INADVERTENT, IT
WASN'T LIKE YOU SAID I'M
GOING TO GIVE YOU A PACKAGE
DEAL, I'LL BE YOUR FINANCIAL
ADVISOR, AND I'M GETTING A
GOOD AMOUNT FROM THOSE
COMMISSIONS, SO I WILL SERVE
AS YOUR --

AS YOU DO THESE OTHER
TRUSTS, AND I'M NOT GOING TO
CHARGE YOU FOR THOSE, YOU'RE
NOT DOING THAT, YOU CHARGE
--

>> DO THAT WOULD HAVE BEEN
EXPLICITLY IMPROPER UNDER
FLORIDA LAW, BECAUSE UNDER
FLORIDA LAW, IT'S A
VIOLATION TO INDUCE SOMEBODY
A CONTRACT BY OFFERING THEM
SOMETHING.

THEY CAN'T OFTEN FREE LEGAL SERVICES IF YOU BUY AN NURSE POLICY.

MRS. SMITH UNDERSTOOD THAT THE PREPARATION OF LEGAL DOCUMENTS WOULD IN FACT INVOLVE THE ASSESSMENT OF A LEGAL FEE AND BECAUSE OF HER RELATIONSHIP WITH ME AND PASS DEALINGS, SHE HAD TO KNOW, IN FACT, I KNOW SHE KNEW, THAT WHEN SHE BOUGHT AN INSURANCE POLICY FROM ME THAT I GOT A COMMISSION.

SO, I THINK IT'S IMPORTANT FOR THE COURT TO UNDERSTAND AND I WANT THE COURT TO AG I RECOGNIZE THE 1.7 VIOLATION AND THE BAR WAS PERFECTLY JUSTIFIED IN PURSUING THAT ASPECT AGAINST ME, NO QUESTION ABOUT THAT.

THE SAME COURSE OF CONDUCT, ONE OR TWO, THE QUESTION IS WHAT DO YOU SAY PUTS YOU IN

A SITUATION THAT IS NOT JUST

--

WHY YOU SHOULD NOT BE

DISBARRED FOR WHAT YOU DID?

WHICH IS WHAT THE REFEREE

RECOMMENDED.

ARE YOU STILL PRACTICING

LAW?

>> NO.

>> DID YOU VOLUNTARILY

SUSPEND YOUR PRACTICE?

>> I HAVE RECENTLY RELOCATED

TO ANOTHER STATE IN WHICH

I'M NOT LICENSED TO

PRACTICE.

AND AM NOT --

>> HAVE YOU THOUGHT OF MAYBE

JUST VOLUNTARILY VENDING

YOUR LICENSE HERE SO YOU

DON'T HAVE TO BE FACED WITH

WHATEVER IS GOING TO HAPPEN

IN YOU'RE NO LONGER

PRACTICING.

WE'RE HERE TO BE FRANK AND

YOU'RE BEING CANDID ABOUT

SOME OF THIS, AND ISN'T THAT
THE BETTER WAY TO GO IN SOME
OF THIS?

>> I APPRECIATE THE SUGGEST,
BUT I GUESS EVERYTHING IS
UNDER CONSIDERATION IN THAT
REGARD.

I APPRECIATE THE OPPORTUNITY
TO RESPOND TO THE \$64,000
QUESTION, WHY SHOULDN'T I BE
DISBARRED?

I SHOULDN'T BE FOR SEVERAL
REASONS, THE MOST IMPORTANT
ONE IS THAT I DON'T THINK IT
ADVANCES THE ATTORNEY
DISCIPLINE SYSTEM.

FIRST OF ALL, THERE WERE TWO
REASONS FOR THE ATTORNEY
DISCIPLINE SYSTEM.

ONE IS TO ASSURE COMPLIANCE
WITH THE RULES, AND I CAN
REPRESENT TO THIS COURT THAT
I UNDERSTAND THE RULES
BETTER NOW THAN EVER, EVER
BEFORE.

BUT THE SECOND REASON IS TO
PROTECT THE PUBLIC.

I SUBMIT TO YOU, I MEAN --

I DON'T BELIEVE WHAT HAS
TRANCE TRANCE --

THAT I'M A DANGER TO THE
PUBLIC.

>> HE WAS SUBJECT TO
DISCIPLINARY PROCEEDINGS AND
SUSPENSION.

IN FACT, HE APPLIED FOR
REINSTATEMENT.

FIRST, HE WAS REINSTATED IN
MASSACHUSETTS AND THEN FLORIDA.

HE WAS REINSTATED IN MARCH OF
2001 IN FLORIDA.

IN JUNE OF 2001, MASSACHUSETTS
DID THEIR OWN INVESTIGATION AND
FOUND THAT THERE HAD BEEN A
PATTERN OF CONCEALMENT OF THE
TAX LIENS AND OF THE PRIOR
DISCIPLINARY INVESTIGATION AND
DENIED REINSTATEMENT.

AND IN THAT OPINION, THEY WROTE
AN OPINION WHICH IS IN EVIDENCE.

THAT COURT, WELL, LET'S START
OFF.

THE MASSACHUSETTS COURT SAID
THAT MR. DOHERTY DISPLAYED A
PATTERN OF LACK OF CANDOR, IF
NOT DOWN RIGHT DISHONESTY.

>> AT THAT TIME DID THE FLORIDA
BAR SEEK TO REVOKE HIS LICENSE?

>> THAT FLEW UNDER THE RADAR.

>> WE DIDN'T KNOW THAT.

HE WASN'T CHARGED.

IN THIS COMPLAINT, HE WASN'T

CHARGED DIRECTLY WITH

MISREPRESENTING THE STATUS OF

TAX LIENS OR HIS SUSPENSION?

DID THAT COME IN AGGRAVATION?

>> IT CAME IN IN AGGRAVATION.

>> LET ME JUST -- I THINK THE

PRIOR DISCIPLINE IS A BIG ISSUE,

SO I AGREE IT AGGRAVATES THE

DISCIPLINE.

IN TERMS OF WHAT ACTUALLY

HAPPENS HERE, THE -- IS IT

CORRECT THAT MR. SMITH, AND

MR. SMITH HAD A LONG-TERM

DEALING WITH THE RESPONDENT?

>> THEY DID HAVE A LONG-TERM
RELATIONSHIP.

>> AND IT STARTED AS A FINANCIAL
ARRANGEMENT, A FINANCIAL
SERVICES ARRANGEMENT?

>> YES.

>> AND THERE'S NOTHING IN TERMS
OF THE LEGALITY OF OFFERING
PRODUCTS AND TAKING A COMMISSION
WHEN YOU SELL THOSE PRODUCTS?

>> NOT AS TO LEGALITY AS FAR AS
TAKING THE COMMISSION.

>> OKAY.

IT'S ONLY -- SO IF HE HAD
CONTINUED TO DO THAT BUT DIDN'T
BECOME MR. SMITH'S LAWYER, THERE
WASN'T ANYTHING ABOUT WHAT HE
DID VIS-A-VIS THE PRODUCTS THAT
HE WAS OFFERING THAT WERE -- OR
WAS THERE?

>> WELL, WITHOUT OFFERING ALL
THE ESTATE PLANNING CHANGES
WHICH HE DID AS A LAWYER AND ALL
THE ADVICE HE GAVE AND GIVING

HIMSELF SOLE DISCRETION TO,
BASICALLY, TO TURN ANNUITIES
INTO REAL ESTATE TRUST WHERE HE
COULD ONLY SET HIMSELF UP AS A
TRUSTEE --

>> I MEAN, THAT'S WHAT WOULD
HAVE HAPPENED IF HE HAD BEEN
ALLOWED TO STAY AS TRUSTEE, HE
COULD HAVE JUST KEPT ON SELLING
AND BUYING ANNUITIES?

>> YES.

AND HE WAS ONLY -- IT WAS
LIMITED TO ANNUITIES WHICH
HAPPENS TO BE WHAT HE'S LIMITED
TO SELL.

>> SO I JUST WANT -- SO THE
CONFLICT ISN'T JUST THAT HE
DIDN'T TELL HER THAT HE WAS
GOING TO HAVE HER WAIVE THE
CONFLICT, THE PROBLEM WAS THAT
HE SET HIMSELF UP TO DO
SOMETHING THAT WAS GOING TO BE
FINANCIALLY LUCRATIVE TO HIM AND
NOT NECESSARILY IN THE INTEREST
OF THE, OF THE TRUST?

>> THAT'S CORRECT.

THERE WERE ALL THESE FACTORS
THAT THE REFEREE TALKED ABOUT,
THE DEBT -- BEING OVERSHADOWED
BY DEBT, DELAYING THE PAYMENT OF
THAT BY SELLING THIS COMMISSION
SO HE COULD PAY DOWN THE DEBT.

>> WELL, LET ME ASK YOU THIS.

YOU SAID THAT HE WAS ONLY
QUALIFIED TO SELL ANNUITIES.

>> AND LIFE INSURANCE.

>> AND SO DID --

[INAUDIBLE]

IS THAT THE NAME OF THE CLIENT?

>> YES.

>> DID THEY KNOW, THEY KNEW THAT
PRIOR TO ALL OF THIS?

>> THEY DID KNOW IT, BUT --

>> I'M SORRY, THEY DID?

>> THEY DID.

YES, THEY DID.

BUT WE ONLY HAVE MR. DOHERTY'S
WORD TO SAY THAT THEY KNEW ABOUT
COMMISSION.

LOUISE MOORE, THE DAUGHTER, WHO

TESTIFIED AT TRIAL SAID THAT
AUDREY SMITH ON HER DEATH BED
DID NOT KNOW THERE WAS
COMMISSION, AND SHE SAT IN
ALMOST ALL THE CONVERSATIONS.

>> WELL, YOU THINK THEY THOUGHT
HE WAS DOING THIS FOR NOTHING?
AS THEIR FINANCIAL ADVISER, HE
WAS GETTING COMMISSIONS ON
PRODUCTS THAT THEY BOUGHT,
CORRECT?

AND THEY WERE NOT, AT THAT
POINT, PAYING HIM ANYTHING
BEYOND THOSE COMMISSIONS, IS
WHAT I, WHAT I THOUGHT I
UNDERSTOOD HIM TO SAY UNTIL HE
STARTED REPRESENTING THEM IN A
LEGAL BASIS.

SO I GUESS MY QUESTION IS, DO
YOU THINK THE SMITHS THOUGHT HE
WAS JUST DOING THIS
GRATUITOUSLY?

>> WELL, HE WASN'T DOING IT
GRATUITOUSLY, HE CHARGED AND WAS
PAID \$29,000 IN LEGAL FEES --

>> I'M TALKING ABOUT JUST THE
FINANCIAL PRODUCTS.

>> WELL, WE DON'T KNOW PRIOR, WE
DON'T KNOW BECAUSE THERE'S ONLY
MR. DOHERTY'S WORD ON THAT.

>> WELL, I MEAN, WE KNOW COMMON
SENSE THAT NOBODY WAS GOING TO
BE WORKING FOR FREE, AND
BEFORE -- THERE WAS NOTHING
THAT, AGAIN, I THINK IT'S
CORRECT BEFORE HE BECAME THE
LAWYER FOR THE SMITHS THAT IS
BEING, RECEIVING A COMMISSION ON
PRODUCT IS, THAT'S THE WAY THESE
THINGS WORK, CORRECT?

I MEAN --

>> THAT'S CORRECT.

>> AND SO, BUT I THOUGHT WHAT
YOU SAID, AND I DIDN'T REALLY
PICK THIS UP AS PART OF THE
CONFLICT, IS THAT THE TRUST HE
THEN SET UP WHICH HE HAD AS A
SET-UP TRUST, HE COULD HAVE AS
TRUSTEE, IF A PERSON BECOMES A
TRUSTEE, THEY'RE GOING TO LOOK

AT ALL THE DIFFERENT INVESTMENTS
THAT ARE AVAILABLE TO HAVE BOTH
RISK-FREE, SECURE, GOOD RETURN
ON THE INVESTMENT.

YOU SHOULD NEVER BE RESTRICTED
TO JUST AN ANNUITY OR JUST THIS
OR JUST THAT.

I MEAN, THAT TRUST ITSELF
BENEFITED HIM IN A CONFLICT OF
INTEREST WAY, IS THAT WHAT
YOU'RE SAYING?

>> YES, YOUR HONOR.

ESPECIALLY THE REAL ESTATE TRUST
WHICH HE WAS REQUIRED TO SELL AS
THE SUCCESSIVE TRUSTEE TO SELL
THE CONDOMINIUM AND TO TAKE
THOSE PROCEEDS AND INVEST THEM
IN ANNUITIES.

AND IT WAS SPECIFICALLY LIMITED
TO ANNUITIES IN HIS DISCRETION,
AND THERE WAS NOTHING TO LIMIT
HIS ABILITY TO TURN THOSE.

>> THAT'S A BLATANT CONFLICT OF
INTEREST.

>> THAT'S THE POSITION OF THE

BAR.

>> UNLESS SOMEHOW WE HAVE THE AGREEMENT THAT THE CLIENTS KNEW THAT THIS TRUST WAS GOING TO BE SO LIMITED TO REALLY HER DETRIMENT BECAUSE YOU'VE GOT TO HAVE FLEXIBILITY TO, YOU KNOW, BE ABLE -- IF YOU'RE GOING TO HAVE A TRUST, TO DECIDE WHERE YOU'RE GOING TO PUT THE MONEY.

>> IN THIS SITUATION MR. DOHERTY KNEW GOING IN THAT THERE WAS A PERCEPTION OF UNDUE INFLUENCE.

HE ACKNOWLEDGED THAT.

HE THOUGHT THERE WAS GOING TO BE LITIGATION BECAUSE ONE OF THE CHILDREN OF MR. SMITH WAS BEING DISINHERITED.

HE KNEW THERE WAS A DAUGHTER HE HAD PROBLEMS WITH.

>> HE JUST THOUGHT THIS IS TOO GOOD TO BE TRUE.

I'VE GOT THE \$2 MILLION -- IS THAT HOW MUCH THERE WAS?

>> A MILLION DOLLARS.

>> A MILLION DOLLARS, I'M IN
DEBT 100,000, I HAVE A CHANCE TO
MAKE IN THE ALL BACK.

>> WELL, HE COULD HAVE FOLLOWED
THE RULE, AND THE RULE IS
DESIGNED PRECISELY FOR THIS TYPE
OF SITUATION.

THIS WOMAN WAS SOON TO BE
SILENT, AND THE RULE WAS YOU PUT
IT IN WRITING, YOU GET ALL THE
DISCLOSURES, AND YOU GET THE
RISK.

AND WE'RE NOT HERE LISTENING TO
MR. DOHERTY'S VERSION ONLY WHICH
IS ALL WE HAVE.

AND HE KNEW THAT THERE WAS A
SITUATION HERE THAT CALLED OUT
FOR ATTENTION TO DETAIL HERE FOR
DISCLOSING THE RISKS, AND NOW WE
HAVE THE SITUATION THAT IT ENDED
UP, BASICALLY, WHAT EVOLVED OUT
OF THIS SINCE THE FAMILY WAS
DESTROYED, THERE WAS A CAVEAT,
VERY BITTER LITIGATION THAT WAS
FINALLY RESOLVED.

>> YEAH.

BUT I GUESS WHAT NOW YOU'VE PUT
IN THIS MIX WHICH CONCERNS ME
IS, YOU KNOW, IT MAY BE THAT IN
DEALING WITH YOUR LAWYER, AGAIN,
YOU WANT SOMEBODY TO HANDLE ALL
YOUR TRANSACTIONS.

SO THE IDEA THAT THEY'RE GOING
TO GET A COMMISSION AS WELL AS
REPRESENT YOU SHOULD BE,
CERTAINLY, DISCLOSED.

BUT THE MORE INSIDIOUS PART IS
IT'S A, APPARENTLY, DID THE
REFEREE FIND THAT WAS SET UP IN
A WAY THAT WAS REALLY ADVERSE TO
THE INTEREST OF THE TRUST?

>> HE DID NOT FIND ADVERSE
INTEREST, BUT HE SAID THAT THE
STRUCTURE WAS RESTRICTIVE AND
MANIPULATIVE, OVERSHADOWED BY
DEBT AND IT CREATED THIS
OPPORTUNITY --

>> OKAY.

I THINK THAT'S ABOUT THE SAME
THING.

[LAUGHTER]

>> WELL, HE DIDN'T FIND ADVERSE INTERESTS UNDER 418, BUT, YES, HE WAS CONCERNED --

>> I MEAN, HE DIDN'T -- IT CERTAINLY SEEMS TO ME THAT IN TERMS OF LOOKING HOW BAD THIS IS, THAT, TO ME, REFLECTS IT'S WORSE THAN IF IT WAS JUST, OKAY, HE'S GETTING A COMMISSION JUST LIKE EVERYONE ELSE WOULD, AND IT WAS THE BEST ANNUITY AT THE TIME, AND SO THERE'S NOT REALLY, YOU KNOW, SOMEBODY ELSE COULD GET IT OR HE'D GET IT, BUT -- SO HE'S DOING THAT AS WELL AS THE LEGAL WORK.

>> YOUR HONOR, I'D ALSO LIKE TO ADD THAT WHEN MR. DOHERTY -- AND THIS IS IN THE RECORD -- WORKED FOR AMERICAN EXPRESS IN THE '90s, HE WAS PROHIBITED FROM PRACTICING LAW AND SELLING ANNUITIES.

HE KNEW THAT THERE WAS A

PROBLEM, AND THE REFEREE, UM,
WHEN WE GOT TO THE SANCTIONS
HEARING, WE DID NOT SEEK TO
INTRODUCE THE ERROR AND
OMISSIONS POLICY.

MR. DOHERTY HAD SAID THAT HE HAD
LEARNED A LESSON AFTER THE
MASSACHUSETTS SITUATION WHEN HE
WAS DENIED REINSTATEMENT AFTER
THE COURT SAID THAT HE WAS,
LACKED CANDOR IF IT WAS NOT
OUTRIGHT DISHONESTY.

HE, A MONTH LATER, MADE AN
APPLICATION TO THE FLORIDA
DEPARTMENT OF BANKING TO BECOME
A REGISTERED INVESTMENT ADVISER,
AND HE FAILED TO DISCLOSE THE
TAX LIEN.

>> BUT YOU SAID THAT WASN'T --
HE SAYS THAT'S NOT IN EVIDENCE.

>> THAT IS IN EVIDENCE.

>> SO WHAT IS THE PART -- SO,
AGAIN, WAS THAT CHARGED AS A
SEPARATE ACT THAT IS --

>> IT WAS NOT CHARGED AS A

SEPARATE ACT --

>> BUT HE WAS ON NOTICE THAT YOU
WERE GOING TO INTRODUCE THAT IN
AGGRAVATION?

>> ALL THE EXHIBITS WERE IN
THERE, AND AS FAR AS --

>> ALL OF THE EXHIBITS WERE IN
WHERE?

>> WERE PRODUCED TO THE FLORIDA
BAR AND THE GRIEVANCE COMMITTEE.
AT THE GRIEVANCE COMMITTEE
LEVEL, IT WAS NOT NOTICED THAT
THAT QUESTION WAS ANSWERED IN
THAT WAY.

SO IT WAS NOT UNTIL THE TRIAL
LEVEL THAT THE BAR RECOGNIZED
THAT THESE QUESTIONS WERE
ANSWERED INAPPROPRIATELY.

WE PUT THESE EXHIBITS INTO
EVIDENCE, UM, AND HE WAS GIVEN
NOTICE OF IT IN THAT WAY.

WE DID NOT HAVE ANY PLEADINGS
THAT SPECIFICALLY ADDRESSED THAT
ISSUE.

>> WHAT ABOUT THE ERRORS AND

OMISSIONS POLICY?

THAT WAS NOT IN EVIDENCE.

>> THOSE WERE PUT INTO EVIDENCE,
AND FOOTNOTE TWO SPECIFICALLY
SAYS THAT EXHIBITS 19S, T AND U,
I BELIEVE THEY WERE, WERE PUT
INTO EVIDENCE --

>> LET'S GET A BELIEF VERSUS --
BECAUSE MR. DOHERTY'S SAYING
THEY WEREN'T.

>> IF YOU LOOK AT THE FOOTNOTE,
THE LAST SENTENCE SAYS, "THEY
ARE IN EVIDENCE."

>> WAS THERE SOME DISCUSSION
EARLIER ABOUT PARTS OF THEM
BEING IN EVIDENCE?

THAT'S WHAT I THOUGHT THE
ARGUMENT WAS, THAT REALLY THE
REFEREE ONLY ADMITTED PARTS OF
THESE EXHIBITS INTO EVIDENCE.

>> THE FOOTNOTE TWO EXPLAINS
THAT, AND IN THE RECORD THERE'S
DISCUSSION OF IT.

WHAT THE REFEREE SAID IN THE
FOOTNOTE AND IN THE FINAL

HEARING WAS THAT IT WILL BE
ADMITTED, THEY ARE ADMITTED,
FIRST OF ALL, AND THERE WAS
DISCUSSION ABOUT LIMITING THEM
TO THE TESTIMONY OF FACTS OF
HISTORICAL NATURE.

IF YOU LOOK AT WHAT IS DISCUSSED
BY THE REFEREE, THOSE ARE FACTS
OF HISTORICAL NATURE.

AND THE DISCUSSION, THE
QUESTIONING REGARDING THESE
ERROR AND OMISSIONS POLICIES WAS
PRETTY WIDE RANGING.

SO, FIRST OF ALL, THE REFEREE
CLEARLY SAYS THAT THEY WERE IN
EVIDENCE.

IT TALKS ABOUT THE OBJECTIONS
AND THEN SAYS AS OF HISTORICAL
INTERESTS, THOSE FACTS ARE
CLEARLY IMPORTANT.

AND HE CLEARLY RELIED ON THEM.

AND THEY WERE DISCUSSED AND
FULLY VETTED IN FRONT OF THE
REFEREE.

AND HE PLACED A GREAT DEAL OF

EMPHASIS ON THAT, AND HE LIKENED
IT BACK TO THE CONDUCT OF
MR. DOHERTY IN HIS PREVIOUS
SUSPENSION OF NOT -- AND ALSO OF
THE CONCEALMENT OF HIS TAX LIENS
OF HIS PRIOR DISCIPLINE.

>> LET ME TAKE YOU BACK TO YOUR
STATEMENT ABOUT IN THE '90s
THE AMERICAN EXPRESS COMPANY
THAT -- WHERE DID THE
PROHIBITION AGAINST SELLING
ANNUITIES AND PRACTICING LAW AT
THE SAME TIME, WHERE DID THAT
COME FROM?

>> I DON'T KNOW IF THERE'S A
PROHIBITION OF IT, BUT AS IS
STATED IN SEVERAL CASES, WHEN
YOU END UP DOING BUSINESS WITH
YOUR CLIENT, YOU REALLY HAVE TO
TREAD VERY CAREFULLY.

THERE'S FIDUCIARY OBLIGATIONS.
AND IT CAN BE DONE, BUT IT CAN
BE DONE --

>> I THOUGHT I UNDERSTOOD YOU TO
SAY THAT THERE WAS SOME KIND OF

SITUATION BACK IN THE '90s

WHERE HE WAS REPRESENTING THE
AMERICAN EXPRESS --

>> AMERICAN EXPRESS WOULD NOT
ALLOW HIM.

THE COMPANY WOULD NOT ALLOW HIM.

>> I SEE.

>> THERE WAS NO PROHIBITION.

BUT THEY WERE SO CONCERNED THAT
HE --

>> WELL, HE WAS PROHIBITED BY
THE COMPANY.

>> HE WAS PROHIBITED BY THE
COMPANY.

>> YEAH.

>> THEY UNDERSTOOD THE PITFALLS.

>> THEY CERTAINLY DID.

>> RIGHT.

THEY DIDN'T WANT THEIR PRODUCTS
BEING INVALIDATED FOR SOME
REASON.

>> OTHER POINTS I'D JUST LIKE TO
MENTION IS THAT MR. DOHERTY SAID
HE DIDN'T HAVE THE MONEY TO PAY
THE \$10,000 BACK.

HE FOUGHT IT FOR FOUR YEARS.

HE FILED AN APPEAL, AND THEN HE
FILED HIS OWN PERSONAL
BANKRUPTCY WHICH HE CLAIMED A
DISCHARGE.

MR. DOHERTY, AS THE OPINION
SAID, THE NEW HAMPSHIRE OPINION,
WAS AN EXPERIENCED BANKRUPTCY
PRACTITIONER.

HE KNEW AND THE COURT -- HE
CLAIMED NEGLIGENCE THEN.

HE DIDN'T UNDERSTAND THE LAW
BACK THEN ALSO.

COURT SAID THIS IS AN OBVIOUS
STANDARD IN A BANKRUPTCY COURT.

THERE'S NO SUCH THING THAT'S A
FEE EARNED UPON RECEIPT.

SIMILAR TYPE OF CLAIM HERE.

HE DIDN'T UNDERSTAND WHAT THE
CONFLICT RULES REQUIRED, HE
SAYS.

NEW HAMPSHIRE COURT SAID THAT
MR. DOHERTY DISPLAYED AN
UNYIELDING CONTEMPT FOR THE
JUDICIAL SYSTEM, AND THE REFEREE

ECHOED THAT SAME TYPE OF OPINION
OF MR. DOHERTY IN THIS CASE WHEN
HE SAID IN RELATION TO THE, UM,
THE MISSTATEMENTS AND THE ERRORS
AND OMISSIONS THAT IT IMPACTED
HIS FITNESS TO PRACTICE LAW, AND
HE HAD, BASICALLY, A DISDAIN FOR
THE JUDICIAL PROCESS.

THANK YOU VERY MUCH.

>> UM, YOUR HONOR, IN REBUTTAL
THERE IS SO MUCH FACTUAL ISSUES
HERE THAT ARE NOW STARTING TO
SWIRL.

PERHAPS THE COURT WILL
UNDERSTAND PART OF MY, MY PLEA
THAT, PERHAPS, THIS MATTER
SHOULD BE REMANDED FOR FURTHER
PROCEEDINGS BEFORE A NEW
REFEREE.

THERE, OBVIOUSLY, ARE ISSUES
HERE WHICH ARE NOT PROPERLY
RESOLVED, NOT PROPERLY
UNDERSTOOD.

>> DID THE MASSACHUSETTS BAR NOT
ADMIT YOU BECAUSE OF OMISSIONS,

GLARING OMISSIONS IN FILING WITH
THE SEC?

I MEAN THAT -- THEIR OPINION OR
WHATEVER IT IS IS A MATTER OF
RECORDS AND EXHIBITS.

>> A HEARING PANEL OF THE
MASSACHUSETTS BOARD OF BAR
OVERSEERS HEARD MY PETITION TO
BE REINSTATED.

I HAD BEEN REINSTATED IN NEW
HAMPSHIRE, I HAD BEEN REINSTATED
IN FLORIDA --

>> BUT YOU WOULD NOT HAVE BEEN
REINSTATED IN FLORIDA IF FLORIDA
KNEW THAT YOU HAD MADE OMISSIONS
IN APPLICATIONS THROUGH A
FEDERAL AGENCY.

OKAY, SO WHAT -- SO
MASSACHUSETTS --

>> PERHAPS.

I WENT TO THE HEARING IN
MASSACHUSETTS THINKING IT WAS
GOING TO BE VERY PERFUNCTORY.
IT WAS A VERY UGLY HEARING, I
WAS NOT PREPARED FOR IT.

THINGS DID NOT GO WELL,
ADMITTEDLY, AND THEY SAID WE
DON'T THINK YOU SHOULD BE
READMITTED, AND THAT'S HOW IT
HAPPENED.

>> BUT ARE YOU DENYING THAT THAT
OCCURRED?

>> DENYING WHAT OCCURRED?

>> THAT YOU OMITTED MATERIAL
INFORMATION IN YOUR FILING TO
THE SEC?

>> WELL, I -- YES, I AM DENYING
IT BECAUSE I JUST DO THAT.

WHAT MR. PAUL IS REFERRING TO IS
A FEDERAL TAX LIEN WHICH WAS THE
SUBJECT OF A PAYMENT AGREEMENT
AT THE TIME.

NOW, EVERYBODY SAID, WELL, HE
WANTS TO SEEM TO FORGET ABOUT
THAT.

IT WAS SUBJECT TO A PAYMENT
AGREEMENT AND HAD, IN FACT, BEEN
SATISFIED.

IT WAS A SELF-RELEASING LIEN
WHICH, BECAUSE OF THE PAPERWORK

OF THE IRS AND WHAT HAVE YOU,
HAD NOT BEEN RELEASED.
THERE WAS A PAYMENT AGREEMENT IN
PLACE.

>> HERE'S MY FINAL -- YOU'RE OUT
OF TIME.

MY OBSERVATION AS YOU LEAVE HERE
TODAY IS THIS.

WHATEVER YOU WERE WRONGLY
ACCUSED OF IN NEW HAMPSHIRE OR
MASSACHUSETTS AND WHATEVER YOU
DID IN YOUR LIFE, WHEN YOU CAME
BACK AND YOU WERE READMITTED TO
FLORIDA, IT WAS A SECOND CHANCE.

IT WAS THE SECOND CHANCE FOR YOU
TO ACT WITHOUT -- WITH REGARD TO
THE HIGHEST LEVEL OF ETHICS AND
STANDARDS BOTH AS A FINANCIAL
PLANNER AND A LAWYER.

AND IT IS WHEN WE THINK ABOUT
THOSE THAT WE READMIT AFTER
SUBSTANTIAL SUSPENSIONS, THIS IS
JUST WHAT WE FEAR, IS THAT
THERE'S GOING TO BE ANOTHER
VIOLATION THAT'S GOING TO

VIOLATE THE TRUST OF THE
CITIZENS OF THIS STATE.

AND WE CANNOT AFFORD TO HAVE
THAT IN THE LAWYERS OF OUR
STATE, MR. DOHERTY.

>> I UNDERSTAND, YOUR HONOR.

MR. CHIEF JUSTICE, COULD I HAVE
JUST 30 SECONDS MORE?

>> 30 SECONDS.

>> WHAT IS CRITICAL HERE FOR
THIS COURT TO UNDERSTAND IS THAT
IN ORDER TO ENDORSE THE
REFEREE'S RECOMMENDATIONS, UM,
HIS RECOMMENDATION HAS TO BE
REASONABLE.

I'VE ARGUED AND IT IS IN THE
BRIEF THAT MOST OF HIS
RECOMMENDATION IS BASED UPON
SOMETHING THAT IS NOT IN
EVIDENCE.

AND I SPECIFICALLY WOULD LIKE
THE COURT TO LOOK AT PAGE 80 OF
THE TRANSCRIPT WHERE HE
PRECISELY RULES ON THE
ADMISSIBILITY OF THIS KEY

DOCUMENT.

QUOTE, THE COURT: "ALL RIGHT,
I'M GOING TO ADMIT THEM IN THE
SAME VEIN THAT I DID RELATIVE TO
OTHER MATTERS, AND THAT IS 20A,
19B -- 20A, 19S, 19T AND U WILL
BE ADMITTED BECAUSE THERE'S
TESTIMONY RELATIVE TO THEM IN SO
MUCH OF THE DOCUMENT THAT HAS
BEEN TESTIFIED TO WON'T BE
ADMITTED."

THE ONLY THING THAT I TESTIFIED
TO IN THAT PROCEEDING IS THE
ONLY THING I WAS ASKED, WAS
HOW -- WHAT THE DOCUMENT WAS AND
WHETHER OR NOT I HAD COMPLETED
IT.

UM, THE --

>> THANK YOU.

>> -- RECOMMENDATION OF THE
REFEREE IS SIMPLY NOT SUPPORTED
BY THE RECORD.

THANK YOU, MR. CHIEF.

>> WE THANK YOU BOTH FOR YOUR
ARGUMENT.

COURT IS NOW ADJOURNED.

>> ALL RISE.