

>>>THE NEXT CASE ON THE DOCKET
IS THE FLORIDA BAR V.
JOSE CARLOS MARRERO.
COUNSEL?

>> GOOD AFTERNOON, YOUR HONORS.
IF IT PLEASE THE COURT, MY NAME
IS JENNIFER FALCONE, I'M
REPRESENTING THE FLORIDA BAR IN
THIS MATTER.

EXCUSE ME.

THIS CASE COMES TO YOU WITH A
UNIQUE PROCEDURAL POSTURE.
AS YOU'VE ALREADY HEARD THE
FIRST APPEAL IN THIS CASE
REGARDING THE GUILT PHASE,
YOU'VE ALREADY MADE SPECIFIC
FINDINGS AND FACTUAL
DETERMINATIONS REGARDING THE
INTENTIONAL NATURE OF
MISCONDUCT, THE DISTRIBUTE
OMISSIONS-- DELIBERATE
OMISSIONS, THE
MISREPRESENTATIONS THAT WERE
MADE THROUGHOUT THE COURSE OF
THE UNDERLYING PROCEEDINGS.

>> WELL, BUT WE DID NOT, I
UNDERSTAND, YOU KNOW, WE SEE
CASES WHERE LAWYERS ARE STEALING
FROM THEIR CLIENTS AND THOSE
KINDS OF THINGS.

THAT'S NOT SOMETHING WE HAVE
DECIDED IN THIS CASE, IS IT?

>> NO, YOUR HONOR.

>> OKAY.

SO WE HAVE A LAWYER WHO HAS, MAY
HAVE DONE, INTENTIONALLY DONE
CERTAIN THINGS IN PROCESSING
LOANS AND THAT TYPE OF THING AND
SENT THE MONEY OUT BEFORE ALL
THE PAPERWORK IS ALL CLEARED AND
THAT KIND OF THING.

BUT WE'RE NOT INTO A
SITUATION-- AND I DON'T TAKE
THIS AS A SITUATION WHERE IT'S A
LAWYER STEALING FROM HIS
CLIENTS.

I MEAN, THE ACTS MAY HAVE BEEN
INTENTIONALLY DONE, BUT WE
HAVEN'T PLACED THIS IN THE WORST
OF THE WORST CATEGORIES, HAVE

WE?

>> YOUR HONOR HAS MADE-- YOUR HONORS HAVE MADE FACTUAL FINDINGS REGARDING THE INTENTIONAL AND DELIBERATE NATURE OF THE UNDERLYING CONDUCT.

>> RIGHT.

>> IN PRIOR CASES YOU'VE DETERMINED THAT THIS CONDUCT, THE EXACT TYPE OF CONDUCT THAT WAS ENGAGED IN HERE, IS VERY SERIOUS AND REQUIRES VERY SERIOUS DISCIPLINE.

THE FLORIDA BAR'S ASKING THIS COURT TO ENFORCE ITS PRIOR CASE LAW AND HOLD RESPONDENT TO THE SAME STANDARD YOU'VE PREVIOUSLY HELD OTHER RESPONDENTS.

IN ADDITION, THE--

>>-- CASES A GREAT DEAL MORE EGREGIOUS THAN THIS ONE.

>> THERE ARE MANY CASES MORE EGREGIOUS THAN THIS.

THE FLORIDA BAR IS NOT SUGGESTING THERE ARE NOT WORSE FACTUAL SCENARIOS.

WHAT WE'RE SAYING IS THE ON-POINT PRECEDENT, THE WATSON CASE, WHICH IS THE MOST ON POINT, SPECIFICALLY SAYS THAT THIS IS AT LEAST, AT A MINIMUM, WORTH A THREE-YEAR SUSPENSION.

AND OUR POSITION IS THAT RESPONDENT'S ACTIONS WERE SIGNIFICANTLY WORSE THAN THE ACTIONS IN THE WATSON CASE--

>> WELL, LET'S TALK ABOUT WHAT THE ACTIONS WERE, BECAUSE IT'S NOT A TRUST ACCOUNT VIOLATION. BUT WAS THIS TRANSACTION, THERE'S A SUGGESTION THAT IT WAS TO PERPETUATE A FRAUD ON COUNTRYSIDE?

IN OTHER WORDS, THIS WAS A SITUATION WHERE IT WAS THAT THE BORROWER DID NOT-- BORROWER DID NOT, THOUGHT THAT-- I MEAN, THE LENDER THOUGHT THEY ALREADY OWNED THE PROPERTY--

>> GONZALES.

>> AND MRS. GONZALES, AND THE MORTGAGE WASN'T RECORDED FOR SIX MONTHS.

SO IS THERE A FINDING-- THIS WASN'T, AGAIN, WE SAID IT WAS INTENTIONAL, BUT THIS IS NOT JUST, OH, I DID THIS TO HELP THIS PERSON.

WHAT IS THE FINDING AS TO WHETHER THIS WAS TO PERPETUATE A FRAUD ON COUNTRYSIDE?

>> THE FINDINGS ARE THAT HE DELIBERATELY DRAFTED A DOCUMENT THAT CONTAINED THE INHERENT MISREPRESENTATION THAT THE BORROWERS OWNED THE PROPERTY AT THE TIME THAT HE DRAFTED THE DOCUMENT.

>> NOW YOU'RE REALLY STATING THE FACTS.

WHAT WAS THE-- IS THERE-- WHAT IS THE BIGGER PICTURE OF THIS? HE DIDN'T DO IT TO BENEFIT, TO TAKE THE MONEY FOR HIMSELF. HE DID IT FOR, IT WAS AT THAT POINT HE WAS CO-OWNER OF THIS TITLE COMPANY, RIGHT?

>> THAT'S CORRECT.

>> SO HE DID IT TO DO, WHAT'S THE REASON IT WOULD HAVE BEEN DONE?

>> TO BENEFIT THE CRONIES OF HIS--

>> HOW IS THERE A BENEFIT?

>> THE BENEFIT IS THAT THEY WERE ABLE TO OBTAIN A HOME WITHOUT PUTTING--

>> SO A FRIEND OF HIS?

THEY WERE FRIENDS OF HIS?

>> THE FINDINGS THAT YOUR HONORS MADE, THEY ALL KNEW EACH OTHER. THIS WAS THE EMPLOYEE OF HIS PARTNER.

>> OKAY.

SO THAT ALTHOUGH IT OCCURRED-- BUT IT OCCURRED IN 2005.

WE'RE NOW IN 2014-- WHAT ARE WE IN, '16.

>> '16.

[LAUGHTER]

>> ELEVEN YEARS LATER.

IS THERE EVIDENCE THAT THIS WAS SOMETHING THAT HE DID OTHER THAN ON THIS ONE OCCASION?

AND I'M NOT UNDERMINING THAT IT'S NOT BAD, BUT JUST TRYING TO FIGURE OUT WHETHER IT WARRANTS DISBARMENT OR NOT.

IS THERE ANY EVIDENCE--

>> IN SPECIFIC RESPONSE TO YOUR HONOR'S QUESTION, THERE WERE OTHER ALLEGATIONS--

>> NO, I ASKED WHETHER-- WHERE IS THAT?

>> DID NOT AMOUNT TO CONVICTIONS, YOUR HONOR, AND, THEREFORE, THEY HAVE NOT BEEN PRESENTED TO THE COURT. BUT, YES, ADDITIONAL ALLEGATIONS OF THIS TYPE HAVE BEEN MADE IN OTHER SITUATIONS.

>> WELL, I MEAN, THEY'RE NOTHING.

THAT'S LIKE SPITTING ON A WALL AND SAYING YOU'RE DIRTY BECAUSE I SPIT ON THE WALL.

I MEAN, THAT'S--

>> I UNDERSTAND.

I WAS RESPONDING TO THE SPECIFIC QUESTION, YOUR HONOR.

>> OKAY.

SO THERE'S NOTHING, THERE'S NO CONVICTION, THERE'S NO, NOTHING ON THE-- NO CONTINUING INVESTIGATION ON BEHALF OF THE BAR.

IS THAT--

>> NOT AT THIS MOMENT, NO.

>> WAS THERE FINANCIAL HARM?

>> YES, YOUR HONOR.

THERE WAS FINANCIAL HARM TO THE GONZALES' WELL TO COUNTRYWIDE BECAUSE, INEVITABLY, THE REASON THEY DON'T DO THESE TYPES OF LOANS IS BECAUSE THERE'S NO MONEY AT STAKE SO PEOPLE CAN WALK AWAY.

AND HERE THEY HAD TO HAVE A FORECLOSURE.

MS. GONZALES, BECAUSE SHE WAS IN SECOND PLACE AND THE HOME WAS NO LONGER WORTH WHAT THE FIRST PLACE MORTGAGE UNDER THE RECORDINGS WAS FOR, BECAUSE OF THAT SHE LOST EVERYTHING THAT SHE HAD PUT IN.

>> SO IS IT THE WHOLE 200,000 OR SOMETHING LESS?

>> THERE HAD BEEN ABOUT A YEAR OF PAYMENTS ON THE LOAN, SO IT WOULD HAVE BEEN LESS THAN THE 200,000.

>> HAS THERE BEEN RESTITUTION MADE?

>> NO, YOUR HONOR.

>> IS THAT BEING REQUESTED HERE OR IN SOME OTHER PROCEEDING?

>> YOUR HONOR, IT'S CERTAINLY BEING ADDRESSED AS ONE OF THE AGGRAVATING FACTORS HERE.

WE WOULD ASK, IF THIS COURT FINDS IT APPROPRIATE, TO MAKE RESTITUTION TO MS. GONZALES.

>> BUT THAT'S NOT REQUESTED IN YOUR PETITION.

>> NO, YOUR HONOR.

>> THIS IS A PRETTY-- I MEAN, THAT GOES, THAT'S A VERY SUBSTANTIAL HARM.

I MEAN, THIS IS NOT NOW-- I SAID COUNTRYSIDE, COUNTRYWIDE. HOW DID THEIR-- THEY, HOW WERE THEY HARMED BY IN THIS.

>> COUNTRYWIDE MADE IT VERY CLEAR IN THE INSTRUCTIONS IT GAVE TO THE RESPONSIBILITY AS THE CLOSING AGENT THAT IT WOULD, IT WANTED TO ABSOLUTELY STOP A CLOSING IF, IN FACT, THERE WAS ANY INDICATION THAT THE CASH BROUGHT TO THE TABLE FOR CLOSING WAS NOT WHAT WAS REPRESENTED IN THE DOCUMENTS THAT WERE PRESENTED DURING THE CLOSING OR IF THERE WAS EVIDENCE OF A SILENT SECOND MORTGAGE.

IF THERE WAS ANY FRAUD IN THE TRANSACTION, THEY WERE TO STOP THE CLOSING, AND THEY WERE TO

GET PERMISSION--

>> AND SO THAT'S WHY THE MORTGAGE NOT BEING RECORDED FOR SIX MONTHS IS SO SIGNIFICANT.

>> ABSOLUTELY.

BECAUSE IT HID, COUNTRYWIDE THROUGH ITS OWN DUE DILIGENCE COULD NOT HAVE DISCOVERED THAT FACT ON ITS OWN.

>> AND IT DIDN'T LIST, AS I UNDERSTAND, IN THE CLOSING PAPERS IT DID NOT LIST THIS \$200,000 AS A LOAN TO THE BORROWERS.

>> NO.

IT WAS NOT LISTED ANYWHERE, YOUR HONOR.

AND IT WAS NOT ALSO INCLUDED IN THE TITLE INSURANCE POLICIES AS AN ENCUMBRANCE UPON THE PROPERTY.

IT WAS OMITTED FROM EVERY SINGLE DOCUMENT THAT WAS CONNECTED WITH THIS CLOSING.

>> WHAT WERE TO AGGRAVATING FACTORS?

>> THE AGGRAVATING FACTORS THAT WERE FOUND BY THE COURT WERE DISHONEST OR SELFISH MOTIVE AND INDIFFERENCE TO MAKING RESTITUTION.

THE BAR IS URGING THIS COURT TO FIND MANY ADDITIONAL FACTORS, INCLUDING--

>> WELL, WHERE DID THE RESTITUTION ISSUE COME INTO PLAY?

BECAUSE I THOUGHT THE BAR DIDN'T ASK FOR RESTITUTION, SO WHY WAS, WHY WOULD THERE BE A FINDING OF INDIFFERENCE TO RESTITUTION?

>> THE FINDING WAS THAT HE'S MADE NO EFFORTS TO RECTIFY THE WRONG CONDUCT THAT HE ENGAGED IN THAT RESULTED IN HARM TO THE, A MEMBER OF THE PUBLIC, A THIRD PARTY.

>> SO WHAT, YOU'RE ASKING US-- IS YOUR PRIMARY REQUEST DISBARMENT?

AND THE BAR IS ASKING FOR
DISBARMENT, BUT AT A MINIMUM,
YOUR HONOR, AT LEAST A
THREE-YEAR SUSPENSION.
THE WATSON CASE, MISAPPLIED THE
FACTS AS WELL AS THE LAW.
FOR INSTANCE, THE REFEREE
SUGGESTED IN WATSON WHEN SHE WAS
COMPARING WATSON TO THE PRESENT
CASE THAT WATSON HAD HAD TWO
PRIOR CONVICTIONS FOR
DISCIPLINARY ACTIONS, AND THAT
RESULTED IN THE THREE-YEAR
SUSPENSION THAT YOU IMPOSED UPON
WATSON.

HOWEVER, THE WATSON CASE ON PAGE
922 MAKES IT VERY CLEAR A
MITIGATING FACTOR IN THAT CASE
WAS NO PRIOR DISCIPLINE WHICH IS
THE SAME AS WHAT WE HAVE HERE.
THERE ARE OTHER FACTORS THAT SHE
MISAPPLIED AS WELL.

>> WELL, IN WATSON, HOW MANY
SPECIFIC ACTS OF WRONGDOING WERE
INVOLVED?

THIS IS ONE-- THIS IS A
TRANSACTION THAT INVOLVED MAYBE
MULTIPLE ACTS OF WRONGDOING, BUT
IT'S A SINGLE TRANSACTION.

>> WELL, THAT WOULDN'T BE
CORRECT, YOUR HONOR.
IT WOULD AT LEAST BE TWO
TRANSACTIONS BECAUSE YOU HAVE
TWO SEPARATE--

>> OKAY, I'LL GIVE YOU THAT.

>> THERE ARE MORE INSTANCES--

>> HOW MANY DIFFERENT
TRANSACTIONS DO WE HAVE--

>> THE SPECIFIC FINDING IN
WATSON AS AN AGGRAVATING FACTOR
WAS THERE WERE TWO TRANSACTIONS
AND FOUR VICTIMS.

HERE WE HAVE AT LEAST TWO
TRANSACTIONS AND TWO VICTIMS.

>> HOW MANY?

SORRY?

>> IN WATSON, TWO TRANSACTIONS,
FOUR VICTIMS.

HERE, TWO TRANSACTIONS AT A
MINIMUM IF WE'RE JUST TALKING

ABOUT TRANSACTIONS AND NOT
SEPARATE INSTANCES OF
DISHONESTY, TWO TRANSACTIONS AND
TWO VICTIMS, COUNTRYWIDE AS WELL
AS MS. GONZALES.

>> AND THE MORTGAGE THAT
COUNTRYSIDE FINANCED WAS
FORECLOSED ON.

>> THAT'S CORRECT.

>> COUNTRYWIDE WAS GOING TO HAVE
THAT NO MATTER WHO PAID THE
\$170,000, RIGHT?

IS THAT WHAT IT WAS?

WHATEVER THE LOAN AMOUNT WAS.

>> WELL, COUNTRYWIDE WOULDN'T
HAVE BEEN IN A POSITION TO FUND
THE LOAN IF IT HAD KNOWN THE
BORROWERS WEREN'T BRINGING
ANYTHING TO THE TABLE.

>> THEIR SECURITY WAS IMPAIRED.

>> YES.

>> I MEAN, THE CIRCUMSTANCES
WERE THAT COURSE OF CONDUCT I
DON'T, I WON'T ANALYZE IT IN
THIS CASE, BUT THE THING SIMILAR
TO THIS HAPPENED, THAT'S A
FEDERAL CRIME.

IT'S WIRE FRAUD.

A WHOLE PANOPLY OF FEDERAL
CRIMES INVOLVED IN
MISREPRESENTING WHERE THE
MONEY'S COMING FROM FOR A
CLOSING.

>> THAT'S CORRECT, YOUR HONOR.
AND ADDITIONALLY, THE COURT
MISUNDERSTOOD AND THE REFEREE
MISUNDERSTOOD WHEN SHE WAS
MAKING HER ANALYSIS NOT ONLY
THERE WERE NO PRIOR CONVICTIONS
ON BOTH WATSON AND HERE, SHE
SAID THAT THERE WERE MORE
MITIGATING FACTORS AND LESS
AGGRAVATING FACTORS.

BUT THAT WAS THE SAME IN WATSON
AS WELL.

IN WATSON THE COURT SAID HE HAD
NO PRIOR DISCIPLINE.

SAME HERE.

IN WATSON THE COURT SAID HE DID
NOT HAVE A DISHONEST OR SELFISH

MOTIVE.

OUR RESPONDENT WAS FOUND TO HAVE
OF A DISHONEST AND SELFISH
MOTIVE.

>> SOMETIMES WITH DEATH CASES WE
TRY TO COMPARE.

THE BOTTOM LINE IS THIS
RESPONDENT WAS ONLY PRACTICING
LAW FOR, WHAT, TWO YEARS?

>> COUPLE OF YEARS.

>> I WOULD EXPECT THAT THERE
WOULDN'T BE PRIOR DISCIPLINE.

I MEAN, HE BARELY GOT OUT OF LAW
SCHOOL.

BUT THAT DOESN'T EXCUSE IT.

AND THE OTHER ISSUE OF DISHONEST
MOTIVE, MAKING \$300 IS REALLY
DOESN'T EVEN BEGIN TO COVER WHAT
REALLY WAS THE FACTOR HERE WHICH
IS FRAUD ON BOTH THE GONZALES,
MRS. GONZALES AND FRAUD ON
COUNTRYWIDE.

SO I, I WOULD-- I'D HAVE TO
LOOK BACK, AND WHAT DID WE DO
WITH WATSON?

>> WATSON YOU SAID THREE YEARS.
AND WATSON ALSO HAD MADE SOME
EFFORT TO REFUND THE MONIES TO
THE INVESTORS.

HERE THERE'S BEEN ABSOLUTELY NO
EFFORT MADE TO MAKE THE
SITUATION RIGHT.

WATSON ALSO HAD COOPERATIVE,
COOPERATION WITH THE BAR AND
OUTSTANDING CHARACTER AND
REPUTATION EVIDENCE.

HERE WE ACTUALLY HAVE WORSE
FACTORS FOR OUR RESPONDENT THAN
WE HAVE FOR WHAT WAS THE CASE IN
WATSON.

IN WATSON WHAT I FIND OR VERY
INTRIGUING IS THAT THIS COURT
BARELY MENTIONED THE AGGRAVATING
AND MITIGATING FACTORS.

IN THIS COURT'S ANALYSIS AS YOU
WENT THROUGH THE CASE, THE ONLY
TIME THE AGGRAVATING AND
MITIGATING FACTORS ARE PRESENTED
IS EARLY ON WHEN YOU'RE DOING
THE BACKGROUND OF THE CASE.

IN YOUR ANALYSIS SAYING THAT THIS IS A THREE-YEAR SUSPENSION, YOU SAID THIS IS SERIOUS MISCONDUCT WHICH REQUIRES SERIOUS DISCIPLINE.

AND IT WAS BASED SOLELY ON THE CONDUCT.

YOU NEVER ONCE MENTIONED THE AGGRAVATING AND MITIGATING FACTORS.

THE CONDUCT HERE IS EXACTLY THE SAME IN TERMS OF-- SORRY, YOUR HONOR.

>> HOW LONG HAD THEY BEEN IN THE TITLE INSURANCE BUSINESS?

>> I DON'T KNOW THE ANSWER TO THAT QUESTION, BUT I CAN FIND OUT FOR YOUR HONOR.

IT WAS IN THE RECORD.

>> I THOUGHT IN THE BAR IT WAS TWO AND A HALF YEARS, BUT HE'D BEEN IN THE TITLE INSURANCE BUSINESS, I MEAN, THAT'S HIS EXPERTISE, THESE TRANSACTIONS IN TERMS OF LOANS AND CHAIN OF TITLES AND ETC.

>> THAT'S CORRECT.

AND HIS SOLE AREA OF PRACTICE--

>> THAT WOULD MITIGATE AGAINST--

>>-- AND HE ALSO SAID THAT HE WAS CALL ANYTHING TO ASSIST IN CONFLICTS CLOSINGS TO PROVIDE LEGAL ADVICE TO COMPLEX CLOSINGS.

AND THE IDEA, AND YOUR HONORS FLATLY REJECTED THIS WAS A LACK OF COMPETENCY.

YOU FOUND DELIBERATE, INTENTIONAL CONDUCT IN HIS PARTICIPATION IN THE FRAUDULENT SCHEME THAT WAS TAKING PLACE IN THIS MATTER.

>> YOU'RE INTO YOUR REBUTTAL TIME.

>> THANK YOU, YOUR HONORS.

>> THANK YOU.

>> MAY IT PLEASE THE COURT, CHIEF JUSTICE LABARGA, ASSOCIATE JUDGES OF THE SUPREME COURT, MY

NAME IS RICHARD MARX.
I REPRESENT THE RESPONDENT WHO
SITS AT THE END OF THE TABLE,
JOSE MARRERO.
RIVERA IS THE NAME OF MY
ASSOCIATE WHO'S SITTING HERE,
JOSEPH RIVERA GARCIA.
I GOT IT RIGHT.
I GOT IT RIGHT.
I'M GOING TO MAKE IT BRIEF
BECAUSE I DON'T THINK THIS IS
GOING TO REQUIRE A LOT OF
COMMENT OTHER THAN THE FACT THAT
THE FLORIDA BAR HAS THE BURDEN
OF PROOF.
THEY HAVE THE BURDEN TO
DEMONSTRATE THAT THE REFEREE'S
REPORT IS EITHER ERRONEOUS, UP
LAWFUL OR UNJUSTIFIED, AND THEY
HAVE NOT DONE THAT AT ALL.
>>-- WHAT THE SANCTIONS SHOULD
BE WHICH YOU WOULD AGREE IS A
MUCH BROADER FINDING.
WE CAN'T JUST-- DO YOU AGREE
WITH THAT, THAT THERE'S A
DIFFERENCE?
>> YES, I CERTAINLY DO, AND I
CERTAINLY UNDERSTAND BASED UPON
THE COURT'S ORIGINAL DECISION
WHICH SET ASIDE THE FIRST REPORT
OF THE REFEREE THAT A PUNISHMENT
IS CALLED FOR.
AND I BELIEVE IN THE TRIAL ON
THE ISSUE OF PUNISHMENT I TALKED
ABOUT SOMEWHERE FROM A PUBLIC
REPRIMAND TO A SHORT-TERM
SUSPENSION.
BUT LET ME, IF I MAY, JUST
INDICATE TO THE COURT WHAT
HAPPENED HERE.
BECAUSE THE FLORIDA BAR DID NOT
PUT ON A CASE.
NOW, COUNSEL STANDS UP AND GIVES
YOU A LOT OF INFORMATION THAT IS
OUTSIDE THE RECORD, FRANKLY.
BUT NEVER, NEVER DID ANYTHING AT
TRIAL.
NOW, I THINK IT'S IMPORTANT TO
READ FROM THE TRIAL TRANSCRIPT
WHERE AT THE HEARING ON THE

DISCIPLINE AFTER THIS COURT SENT IT BACK TO THE REFEREE AND SAID TO THE REFEREE, HOLD A HEARING ON AGGRAVATED AND MITIGATING FACTORS, THE COURT-- THE FLORIDA BAR SAYS AS FOLLOWS: THE BAR DOESN'T HAVE ANY EVIDENCE TO PRESENT EXCEPT THE AFFIDAVIT OF COSTS.

AND FURTHER ON, ON PAGE 7, OTHER THAN THAT WE ARE GOING TO BE RELYING ON THE EVIDENCE DEDUCED AT THE FINAL HEARING IN 2012. THE BAR NEVER INTRODUCED OR ATTEMPTED TO INTRODUCE THE TRANSCRIPT OF THE 2012 HEARING. BAR DID NOTHING.

>> WELL, LET ME ASK YOU THIS--
>> SURE.

>> THE LOAN CLOSED JANUARY 11, 2006, RIGHT?

>> YES.

>> AND \$200,000 WAS HANDED OVER.

>> CORRECT.

>> AND THE MORTGAGE ITSELF WAS NOT RECORDED UNTIL APPROXIMATELY SIX MONTHS LATER.

>> CORRECT.

>> WHAT ELSE DO THEY NEED TO PROVE?

>> THEY HAVE TO ESTABLISH THE AGGRAVATING AND MITIGATING FACTORS ACCORDING TO THIS COURT'S ORDER.

NOW, THEY DIDN'T DO THAT--

>> OKAY.

WELL, WHY WAS THIS NOT RECORDED UNTIL SIX MONTHS LATER?

>> THERE IS PROOF IN THE RECORD BY THE RESPONDENT HIMSELF WHO STATED IN THE RECORD THAT HE DIDN'T RECORD IT-- AND I KNOW IT SOUNDS A LITTLE BIT LUDICROUS FOR SEASONED LAWYERS AND JUDGES-- HE SAID HE DIDN'T HAVE THE MONEY TO RECORD IT.

AND HE WAITED UNTIL HE GOT THE MONEY TO GO AHEAD AND RECORD IT.

>> HOW MUCH MONEY DID IT TAKE TO RECORD IT?

>> I, AT THIS POINT, I'M NOT SURE.

I DON'T KNOW.

THAT'S WHAT I SAID, IT'S A LITTLE BIT FAR-FETCHED FOR THE COURT TO ACCEPT THAT AS AN ANSWER, BUT THE REFEREE ALSO DIDN'T ACCEPT IT REALLY AS AN ANSWER.

OBVIOUSLY, ANYBODY WHO'S HAD SOME EXPERIENCE PRACTICING LAW WOULD HAVE GOTTEN IT DONE QUICKLY.

>> WHAT ABOUT SOMEBODY THAT HAD EXPERIENCE AS A TITLE INSURANCE PERSON, WOULDN'T THEY HAVE EXPERIENCE ALSO?

>> I'M NOT SURE I UNDERSTAND THE QUESTION.

>> A PERSON WHO HAS EXPERIENCE IN TITLE INSURANCE AND CLOSINGS, WOULDN'T THEY HAVE THAT SAME EXPERIENCE THAT A LAWYER MIGHT HAVE?

KNOWING THAT YOU HAVE TO RECORD IT IN A TIMELY MANNER IN ORDER TO, YOU KNOW--

>> HE HAD A TITLE COMPANY THAT WAS OPERATING WITH EXPERIENCED PERSONNEL.

AND I'M NOT SAYING THIS JUSTIFIES IT.

HE RELIED ON THOSE PEOPLE TO DO THE ACTUAL WORK.

HE-- AND, BY THE WAY, THAT WAS A COUNT IN THE ORIGINAL COMPLAINT, SUPERVISION, IT WAS COUNT THREE IN THE FIRST, IN THE ORIGINAL TRIAL, AND THE BAR ABANDONED THAT.

THEY DIDN'T EVEN WANT TO GO AFTER SUPERVISION WHICH, TO ME, WOULD HAVE BEEN A LOGICAL ATTACKING UNDER THE FACTS OF THIS CASE.

>> HE'S THE ONE WHO SIGNED THE DOCUMENTS, RIGHT?

>> HE SIGNED--

>> AND HE'S RESPONSIBLE FOR WHAT HE HAS SIGNED AND WHAT HE,

WHAT'S SAID ON THOSE DOCUMENTS.

>> JUSTICE QUINCE, NO QUESTION ABOUT THAT.

>> OKAY.

>> NO QUESTION.

>> WAS HE THE ONE AT THE CLOSING TABLE?

DID HE CLOSE THIS LOAN?

>> YES.

YES.

LET ME, IF I MAY--

>> YOU WERE TALKING ABOUT AGGRAVATING AND MITIGATING CIRCUMSTANCES, BUT CAN'T YOU FIND THE AGGRAVATORS AND MITIGATORS IF THAT'S THE CASE FROM WHAT IS ALREADY IN THE RECORD?

YOU DON'T, YOU KNOW, ISN'T THAT TRUE?

>> YES, YOU CAN.

>> THE BAR ARGUED THESE AND THE COURT ACTUALLY FOUND THEM, RIGHT?

>> CORRECT.

CORRECT.

I NEED TO CORRECT SOMETHING THAT COUNSEL DID SAY.

THE REFEREE ON A DISCIPLINARY TRIAL FOUND THAT WATSON, WATSON ONE WAS APPLICABLE TO THIS CASE. BAR COUNSEL REALLY DID NOT CORRECTLY STATE WATSON ONE. WATSON ONE, ONE OF THE REASONS THAT WATSON ONE IS DISTINGUISH IS HE HAD PRIOR, TWO PRIOR DISCIPLINARY VIOLATIONS THAT DISTINGUISHED THE CASE FROM THIS CASE.

AND THE REFEREE, THE REFEREE FELT THAT THEY WERE CLOSE, THEY WERE CLOSE.

ERREN BACH AND WATSON WERE CLOSE TO THIS CASE.

BUT THE FACT OF THE MATTER IS, AND I KNOW THE COURT IS AWARE OF THIS, THAT IT'S LIKE WE'RE TRYING TO FIGURE OUT HOW MANY ANGELS DANCED ON THE HEAD OF A PIN WHEN WE'RE TRYING TO

DISTINGUISH ONE CASE FROM ANOTHER.

AND APPLY DISCIPLINE AS A RESULT.

BUT ONE OF YOU JUSTICES SAID AT THE BEGINNING OF THIS THE ONE THING THAT'S LEFT AT THE END OF THE DAY IN THIS CASE, WHY DID THIS HAPPEN?

WHY DID THIS HAPPEN?

EVEN THOUGH THERE ARE SUPREME COURT CASES THAT SAY MOTIVE ISN'T IMPORTANT, IT'S STILL UNANSWERED.

WHY DID HE DO THIS?

WHY DID HE DO THIS?

>> CAN YOU TELL US THEN WHY THE \$200,000 LOAN WAS NOT INCLUDED IN THE CLOSING PAPERS?

>> BECAUSE IT WAS PREPARED BY HIS TITLE COMPANY, IT WAS PREPARED BY AN INDIVIDUAL BY THE NAME OF MAGGIE AZOY WHO WAS VERY SEASONED--

>> AND YOU DON'T READ WHAT IS PUT BEFORE YOU.

>> NO, NO.

HERE WAS THE DICHOTOMY OF THE SITUATION.

MAGGIE AZOY WASN'T AWARE OF THE \$200,000.

SO SHE PREPARED THE CLOSING PAPERS FOR THE MORTGAGE FOR COUNTRYWIDE WITHOUT MENTIONING THE \$200,000 LOAN.

MY CLIENT, UNAWARE OF THE PAPERS THAT HE WAS SIGNING, WENT AHEAD AND SIGNED THEM WITHOUT READING THEM.

AND THERE'S-- HE TESTIFIED TO THAT AT TRIAL.

I MEAN, HE MADE ERRORS GALORE. BUT--

>> YOU KNOW, AGAIN, I THINK NOW WE'RE GOING BACK TO YOUR CLIENT'S INTENT.

AND THE BAR MAKES A PRETTY STRONG CASE THAT THE CONSEQUENCES OF WHAT HAPPENED HERE WERE FAR REACHING IN THAT

THE LENDER, MRS. GONZALES,
THOUGHT SHE WAS LENDING MONEY
FOR A HOME REPAIR.
AND WHO MADE-- AND INSTEAD THE
MONEY WAS BEING LENT SO THEY
COULD PURCHASE THIS HOUSE.
YOU KNOW, THIS WAS AT THE TIME,
2005, WHEN I DON'T KNOW WHY MORE
LAWYERS ACTUALLY NEVER GOT
CAUGHT UP IN THIS WHERE HORRIBLE
THINGS WERE HAPPENING IN THE
HOUSING MARKET.
AND IF LAWYERS HAD ANYTHING TO
DO WITH EVEN ONE PART OF IT, YOU
KNOW, SHAME ON THEM.
AND IT LOOKS TO ME LIKE THIS IS,
MAYBE THERE'S OTHER CASES AND WE
DON'T KNOW ABOUT IT, BUT THIS IS
VERY BAD.
AND I DON'T KNOW HOW YOU'RE
MINIMIZING BY SAYING HE DIDN'T
LOOK AT THE CLOSING PAPER.
IT WAS, IT'S NOT A \$10,000 LOAN,
IT WAS A \$200,000 LOAN.
AND THEY DIDN'T OWN THE
PROPERTY.
SO HE MISREPRESENTED THE VERY
PURPOSE OF THE LOAN TO SOMEBODY
THAT HE DID HAVE A RELATIONSHIP
WITH?
THAT WAS A FRIEND?
MS. GONZALES?
DID HE KNOW HER?
>> NO.
WELL, HE KNEW HER, SHE HAD DONE
BUSINESS THEM ON SEVERAL
LOPES--
>> THEY MISREPRESENTED THE
PURPOSE OF THE LOAN TO SOMEBODY
THEY HAD A RELATIONSHIP SO THEY
COULD HELP THESE BORROWERS GET A
HOUSE.
AND THEN, WHAT, THEY JUST WAIT
SIX MONTHS TO RECORD THE
MORTGAGE JUST SORT OF, OH,
BECAUSE I'M A NEW LAWYER, I
DIDN'T KNOW I WAS SUPPOSED TO
RECORD THE MORTGAGE RIGHT AWAY?
>> NO, JUSTICE PARIENTE, THAT'S
NOT EXACTLY THE FACTS THAT WERE

ILLUMINATED AT TRIAL.
HE DID NOT KNOW ANYTHING ABOUT
THOSE, THAT \$200,000.
HE WAS NOT A PARTY TO IT.
ALL HE DID, ALL HE DID WAS TAKE
THE \$200,000, PUT IT IN HIS
ESCROW ACCOUNT, AND THE NEXT DAY
AT THE CLIENT'S ORDER SENT THE
MONEY TO THE BORROWER BECAUSE
GONZALES HAD A PRACTICE OF
WANTING TO EARN MONEY FROM THE
IMMEDIATE DAY THE MONIES WERE
DEPOSITED.

>> WELL, BUT HE ALSO KNEW IT WAS
TO BE SECURED BY A SECOND
MORTGAGE.

>> THAT NOTICE IN THE RECORD--
NOT IN THE RECORD, JUSTICE
CANADY.

>> IT'S NOT?

>> HE WASN'T A PARTY TO IT.

>> WHO PREPARED THE MORTGAGE?

>> HE ULTIMATELY DID WHEN HE WAS
TOLD LATER.

>> MR. MARX, WHAT ARE YOU ASKING
OF THIS COURT?

WE KNOW THE BAR HAS SAID THEY
WANT DISBARMENT OR AT THE VERY
MINIMUM SUSPENSION.

WHAT ARE YOU ASKING?

>> I BELIEVE THAT THIS COURT
SHOULD AFFIRM THE DECISION OF
THE REFEREE.

HASN'T BEEN EFFECTIVELY
CHALLENGED BY THE BAR.

WE RECOGNIZE THE SERIOUSNESS.
WE ALSO KNOW THAT THE MITIGATING
FACTORS THAT TESTIMONY, THE
CHARACTER WITNESS THAT WERE
PRODUCED, THE CIVIL WORK THAT
THIS RESPONDENT HAS DONE, THE
CASE, THE LAW COURSES THAT HE
HAS SUBSEQUENTLY TAKEN IS, THAT
THIS IS A CANDIDATE FOR
REHABILITATION.

>> WHAT ABOUT RESTITUTION,
\$200,000?

>> THE ISSUE OF RESTITUTION WAS
NEVER MADE A SUBJECT OF THE
COMPLAINT.

AND, I CAN'T SPEAK FOR HIM AS TO WHAT EFFORTS HE CAN MAKE TO MAKE RESTITUTION.

>> DOES THE CLIENT APPLY TO THE BAR FOR FUNDS FROM THE FLORIDA BAR, CLIENT, WHATEVER IT IS, MISS GONZALEZ, DID SHE GET MONEY FROM, IS THAT IN THIS RECORD?

>> NO.

NO.

PARENTHETICALLY, MISS GONZALEZ SUED ALL THE OTHER PEOPLE IN THIS CASE OTHER THAN THE RESPONDENT.

SHE SUED THEM CIVILLY FOR DAMAGES.

BUT NOT FOR, NOT FOR MR. MARRERO.

HE WAS NOT SUED.

>> SHE MAY HAVE TWO MALPRACTICE ACTIONS.

>> THANK YOU VERY MUCH.

>> THANK YOU.

>> AS YOUR HONORS HAVE INDICATED THE RECORD CLEARLY DEMONSTRATES THE SERIOUSNESS OF THIS OFFENSE AND SERIOUS SANCTION IS REQUIRED.

RESPONDENT INDICATES THAT I MISREPRESENTED TO YOU SOMEHOW THE FACTOR IN WATSON I, THAT THERE WERE TWO PRIOR DISBARMENTS.

THIS IS THE CASE, YOUR HONOR. AT PAGE 922.

THERE IS NO PRIOR DISCIPLINE IN WATSON.

THEY ARE SIMILARLY SITUATED IN THAT CASE.

>> TALKING ABOUT THE EXPERIENCE, AM I TO UNDERSTAND THIS LAWYER HAD TWO YEARS LEGAL, I MEAN LAWYER EXPERIENCE?

>> THAT'S CORRECT, YOUR HONOR.

>> AND HOW MUCH, I'M CONFUSED A LITTLE BIT ABOUT THIS TITLE COMPANY.

DID HE OWN THE TITLE COMPANY FOR SUBSTANTIAL PERIOD BEFORE THAT

TWO YEARS?

>> YOUR HONOR, I DON'T KNOW HOW LONG HE OWNED THE TITLE COMPANY FOR.

I WILL LOOK IN THE RECORD TO SEE IF THAT NUMBER EXISTS.

I CAN SIMPLY MEANT IT SO THE COURT--

>> THAT'S ALL RIGHT.

>> SAYS HE DIDN'T RECORD IT BECAUSE HE DIDN'T HAVE THE MONEY.

HIS TESTIMONY AT TRIAL HE DIDN'T RECORD IT BECAUSE HE DIDN'T HAVE INSTRUCTIONS TO RECORD IT.

ANY ATTORNEY KNOWS THEY HAVE TO RECORD THE MORTGAGE TO SECURE THE INTEREST.

THERE WAS NO--

>> I'M SORRY.

HE DIDN'T RECORD IT BECAUSE?

>> HE DIDN'T HAVE INSTRUCTIONS FROM ANYBODY TO DO SO.

>> BUT I THOUGHT HE WAS THE LAWYER IN CHARGE OF THIS.

>> EXACTLY.

YOUR HONOR.

THAT IS THE BAR'S POINT.

THERE NEVER WAS A COUNT THREE.

THE BAR NEVER EVER, ALLEGED THIS IS LACK OF SUPERVISION CASE AND THAT'S WHAT WE TOLD THE REFEREE WHEN SHE TRIED TO MAKE A FINDING REGARDING FAILURE TO SUPERVISE.

WE DIDN'T ABANDON THAT CLAIM.

WE NEVER MADE THAT CLAIM.

THAT IS NEVER WHAT THIS CASE WAS.

>> WHY DO YOU THINK THE REFEREE, 90-DAY SUSPENSION.

NOT EVEN REHABILITATIVE SUSPENSION.

TRIAL JUDGE SAW THE PARTIES.

EXPERIENCED WITH THIS.

WHY DID THE TRIAL JUDGE--

>> I THINK SHE MISUNDERSTOOD YOUR HONORS PRONOUNCEMENTS IN YOUR OPINION TO HER.

HER STATEMENT WAS THAT YOU FOUND HIS LACK OF COMPETENCE TO BE

INTENTIONAL WHICH SHOWS THAT SHE DIDN'T REALLY UNDERSTAND THAT YOUR HONORS WERE FINDING THAT HE ENGAGED IN INTENTIONAL FRAUDULENT CUBBING IN COURSE OF CONDUCT THAT DEFRAUDED TWO INSTITUTIONS.

THE FACT THAT GONZALEZ SUED EVERYONE BUT RESPONDENT THERE, IS EVIDENCE OF THAT IN THE RECORD.

SHE INDICATED SHE HAD NO IDEA THAT THIS HAD HAPPENED THE WAY IT HAPPENED.

SHE BELIEVED AT ALL TIMES HER MONEY WAS GIVEN FOR A SECOND MORTGAGE TO A PROPERTY THEY ALREADY OWNED.

SHE BELIEVED AT ALL TIMES THAT THE MONEY WAS NOT GIVEN UNTIL CLOSING OCCURRED.

THAT IS HER TESTIMONY IN THE RECORD.

THAT'S THE TESTIMONY THAT YOUR HONORS ACCEPTED IN THE UNDERLYING PROCEEDINGS.

YOU COMPLETELY DISREGARDED ALLEGATION THAT SHE TOLD HIM TO SEND THE MONEY RIGHT AWAY.

THAT WAS NEVER, EVER, UNCONTRADICTED IN THE RECORD.

SHE TESTIFIED TO IT AND MR. DUARTE, STAR AUDITOR TESTIFIED THEY REVIEWED PRIOR TRANSACTIONS SHE ENGAGED IN, IN PRIOR TRANSACTIONS MONEY WAS NOT DISPERSED UNTIL CLOSING OCCURRED CORROBORATING WHAT SHE TOLD THE REFEREE AND YOUR HONORS WILL KNOW.

>> YOU'RE PAST YOUR--

>> THANK YOU, YOUR HONORS.

THANK YOU.

>> CORD WILL BE IN RECESS UNTIL TOMORROW.