IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

LEONARD MARK DACHS,

Respondent.
_____/

Supreme Court Case No.: SC01-251

The Florida Bar File No.: 2001-70,693(11A)

REPORT OF REFEREE

I. Summary of Proceedings:

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, a hearing was held on Wednesday, July 25, 2001.

The following attorneys appeared as counsel for the parties:
For The Florida Bar: Randi Klayman Lazarus
For The Respondent: Stephen J. Bronis

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent is charged:

The Respondent in this cause is charged with a complaint filed by The Florida Bar on February 1, 2001, alleging in part:

1. That on or about July 13, 2000, the Respondent plea guilty to one count of information filed in the United States District Court for the Southern District of Florida in the case styled United States of America vs. Leonard Mark Dachs, Case Number 99-583- CR-Seitz. The count which Respondent plead to was (1) one count of obstruction of justice in violation of Title 18 United States Code Section 1503.

The information alleged that between October 15,1991 and March 12, 1996, the Respondent Leonard Mark Dachs did corruptly endeavor to influence, obstruct and impede the administration of justice in the case of United States vs. Falcon and Magluta, Case Number 91-6060, CR-Moreno, then pending in the United States District Court for the Southern District of Florida, in that the Respondent, Leonard Mark Dachs, knowingly and willfully received, without the prior approval of the Court, approximately $1.8 million dollars

in proceeds obtained from the distribution of controlled substances by Mr. Falcon and Mr. Magluta, knowing that such funds represented property subject to the Protective Order that The Honorable Frederick Moreno entered in Case Number 91-6060, all of which is in violation of title 18 United States Code Section 1503 and 2.

2. On July 13, 2000 the Respondent entered a plea of guilty to the above felony and was sentenced to serve a term of six months imprisonment followed six months detention. A copy of the sentencing paperwork and Judgment are attached as Exhibit A.

3. On July 13, 2000 the Respondent, Leonard Mark Dachs was adjudicated guilty and sentenced by The Honorable Patricia J. Seitz. A copy of the plea agreement and transcript of the plea and sentencing are attached as Exhibit B.

4. The Respondent was suspended from the practice of law by the Florida Supreme Court on or about September 2000, pursuant to notification that the Respondent had been convicted of a Felony.

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty:

A Partial summary judgment was entered into in favor of The Florida Bar after a hearing on June 23, 2001 before the Referee. The Referee recommends that the Respondent be found guilty of violating the rules regulating the Florida Bar as follows:

- Rule 4-8.4(b) (A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects);

- Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation);

- Rule 4-8.4(d) (A lawyer shall not engage in conduct in connection with the
practice of law that this prejudicial to the administration of justice) of the Rules of Professional Conduct and,

- Rule 3-4.3(... The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline);

- Rule 3-4.4 (Criminal Misconduct) of the Rules of Discipline.

The sole remaining issue for determination by this Referee was the appropriate discipline to be recommended against the Respondent in this cause. On July 25, 2001 a hearing was held. The Respondent argued that a three year suspension was appropriate discipline. The Florida Bar seeks disbarment of the Respondent.

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend that the Respondent be disbarred from the practice of law in Florida.

During the course of the evidence presented, the Referee heard testimony from Albert Krieger, Esquire, Jeffrey Weiner, Esquire, Vincent Flynn, Esquire and the Respondent. Based on the testimony and case law and precedent, the Referee recommends that the Respondent be disbarred from the practice of law, for a period of (5) five years from the date of the original suspension date. The Respondent may apply for re-admission at the end of the (5) five years provided that he successfully completes the Florida Bar examination and shows by clear and convincing evidence his rehabilitation and fitness to practice law. Since a felony conviction is by itself not grounds for disbarment, the Referee must look to other factors in determining discipline.

The aggravating and mitigating circumstances which were taken into consideration by the Referee in accordance with standards 9.2 and 9.3 are as follows:

Aggravating Factors:

1. Dishonest or Selfish Motive: The Respondent, Leonard Mark Dachs, worked for Magluta and Falcon for several years before this incident. He knew of their employment, that is drug dealing, to make a living. The Respondent admitted at the time of the guilty plea that he knowingly and willfully received without prior approval of the court approximately $1.8 million in attorney's fees. He also admitted knowing that these fund represented property subject to the Protective Order entered by the Honorable Frederick Moreno and that the monies were proceeds from the distribution of controlled substances.

2. Pattern of Misconduct: The evidence was that the Respondent Leonard Mark Dachs participated in the activities to which he plea guilty from on or about October 15, 1991 through on or about March 12, 1996**.** The Respondent had knowledge of the Protective Order, even as he accepted the monies. He violated the Protective Order on several occasions during the (5) five years covered in the information.

3. Multiple Offenses: The Referee is allowed to look at other behavior by the
attorney. The Respondent gave a deposition to the Florida Bar attorney on June 14, 2001. In that deposition, he admitted that he knew his clients Mr. Falcon and Mr. Magluta were drug traffickers, that he had seen drugs in there possession, and that he had used cocaine with them "at points in his life". (Deposition of Leonard Mark Dachs, pp 61-70.) Each time the Respondent used cocaine, he was guilty of the third degree felony of possession of cocaine, another criminal act.

4. Substantial Experience in the Practice of Law: Respondent was admitted to practice in Florida in 1978, so at the outset of the activity described in the information, he had been a practicing attorney for thirteen years. Testimony of character witnesses
indicated that he had extensive experience in Federal Criminal Courts as a criminal defense attorney.

5. Submission of False Evidence, False Statements, or other Deceptive Practices during the Disciplinary Process: During the guilty plea and sentencing hearing conducted in the criminal case before the Honorable Patricia J. Seitz, Respondent entered a plea of guilty to "knowingly and willfully receiving, without the prior approval of the court, approximately $1.8 million in proceeds obtained from the distribution of controlled substances by Mr. Falcon and Mr. Magluta, the Respondent in that case (91-6060) and knowing that such funds represented property subject to the Protective

Order that the Honorable Frederick Moreno entered in case 91-6060." page 10 of Exhibit 1. At another point (page 24) he was asked by the Honorable Patricia J. Seitz, and answer:

> Q. Mr. Dachs, why are you pleading to this information?
>
> A. There is a variety of reasons, but, I think the one that best answers your question, I committed a crime, the crime that is described in the information, that is why I am pleading guilty.

Again, on page 35, asked by the Honorable Patricia J. Seitz, and answered by the Respondent.

> Q. Mr. Dachs, how do you plead to the charge in the information that during the period of time of October 15, 1991 through March 12, 1996 you
> did corruptly endeavor to obstruct justice in Case Number 91-6060, (Criminal, Moreno) by knowingly and willfully receiving without prior approval of the Court approximately $1.8 million in proceeds obtained from the distribution of controlled substances by Mr. Falcon and Mr. Magluta, guilty or not guilty?
>
> A. Guilty, your honor.....

At the time of the Summary Judgment hearing, Respondent submitted an affidavit (attached as Exhibit 3) on July 2, 2001, in which he stated under oath "while certain factors led me to believe that I was paid with monies that were outside the scope of the Protective Order, I also engaged in deliberate ignorance with respect to certain facts which caused or should have caused me to question whether my legal fees fell within the scope of the Protective Order". (par. 7). Nowhere does he state, as he did at the time of the plea, that he willfully and knowingly violated the order. The plea was a plea of guilty, not an Alford plea, and there is no protestation of his innocence during the plea.

During his testimony before the Referee, Respondent again stated that he looked the other way, he should have investigated the source of the monies, but he did not. He stated that he engaged in willful blindness and deliberate ignorance. These statements, under oath, are materially inconsistent with those made during the plea and sentencing. The Referee finds them to be false statements and deceptive practices done by the
Respondent to minimize his actions and mislead the Referee. Accordingly, they are

found to be an aggravating circumstance for purposes of discipline. Clearly the Respondent would like the Referee to see a standard less than willful and knowing in his taking the $1.8 million in violation of Judge Frederick Moreno's Protective Order.

Mitigating Factors:

1. Absence of any prior disciplinary record: The Respondent in this cause has no prior disciplinary record for 22 years as a member of the Florida Bar since his admission in 1978.

2. Full and free disclosure to the Disciplinary Board or Cooperative Attitude toward proceedings: With regard to the underlying information in which the Respondent was charged with obstruction of justice in Federal Court, the Respondent entered into a plea agreement and fully resolved the criminal matter without the necessity of a trial. In addition, the Respondent has cooperated fully in the disciplinary proceedings, including but not limited to admitting the facts at issue and giving his deposition to the Florida Bar attorney on June 14, 2001.

3. The Respondent presented character evidence from three respected and experience member of the defense bar.

a) Albert Kreiger, Esquire, stated that Respondent was "well beyond fit to practice law". He testified that Mr. Dachs' reputation was honest and highly skilled in the practice of law.

b) Jeffrey Weiner, Esquire, stated that he has known the Respondent for about twenty years. He felt that Mr. Dachs was a leader in knowledge of facts and details and his work on the Falcon & Magluta case allowed other lawyers to work more efficiently. Mr. Dachs was described as a "beloved member of the Bar" and that people care about him. Mr. Weiner, characterized the Respondent as an honest, decent, caring and truthful individual. He opined that the Mr. Dachs is fit to practice law.

c) Vincent Flynn, Esquire, gave character evidence that the Respondent is competent, has always been honest and compassionate and that the Mr. Dachs is fit to practice law.

4. Remorse: The Respondent testified as to his remorse for the conduct in

question. He wanted to make certain that he stated that he was embarrassed, sorry and remorseful for his conduct. He was not sure that he had articulated that at the plea and sentencing hearing, since it was such a stressful time for him. He apologized to the Referee, calling his behavior "improper and stupid". He stated that he has tried to make things right. He expressed sorrow for the negative impact of this behavior on his wife and his two children.

V. Personal History and Past Disciplinary Record:

After finding of guilt and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(K)(1)(A), I considered the personal history and lack of prior disciplinary record of the Respondent.

VI. Discussion:

The Referee has listened to a Partial Summary Judgment, as well as a full day of trial including evidence, argument and case law. The precedent of the case of Florida Bar v. Richard L. Martinez, Supreme Court, Case No.: SC00-2221, has been cited as precedent. Mr. Martinez was Mr. Dachs co-defendant in the criminal case. In that case the appointed Referee Honorable Henry Leyte-Vidal recommended a (5) five year disbarment for the Respondent, Mr. Martinez. While the precedent has some persuasive weight, each case needs to stand by itself. It is interesting to note that Mr. Martinez, who pled to a virtually identical information (except for the amount of his fees being approximately $1 million less than Mr. Dachs) had less aggravating factors and more mitigating factors than Mr. Dachs. Disbarment is the extreme sanction, and the standards suggest that it is an appropriate discipline under certain circumstances. Under standard 5.11(a) of the standards for imposing lawyer sanctions disbarment is appropriate when a lawyer is convicted of a felony.

Standard 5.11(b) states that disbarment is appropriate when a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice. Standard 5.11(f) states that disbarment is appropriate when a lawyer engages in conduct involving dishonesty, fraud, deception, misrepresentation that seriously adversely reflects on the lawyer's fitness to practice. Standard 6.21 states that disbarment is appropriate when a lawyer knowingly violates a court order or rule with intent to obtained and causes serious injury or potentially serious or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding. Standard 7.1 states that disbarment is appropriate when a lawyer intentionally engages in conduct that is a

violation of a duty owed as a professional with intent to obtain a benefit for the lawyer or another and causes serious or potentially serious injury to a client, public or legal system.

Both parties have submitted numerous cases to the Referee concerning discipline to attorneys. In same cases, attorneys are disbarred, and in same a lesser discipline is imposed, even with a felony conviction.

After reviewing many cases of Florida Bar discipline that it is not always the underlying offense which determines the discipline. Instead, it is the weighing of aggravating and mitigating factors to determine the appropriate outcome. In the Florida Bar v. James L. Diamond 548. So. 2d 1107 (Fla. 1984), one of the strongest mitigating factors for Mr. Diamond, was the testimony of the Honorable Edward C. Davis, the Federal Judge who had heard the trial in which Mr. Diamond was convicted. Because there were multiple co-defendants, the Judge of the trial was in the unique position of being able to give the Referee a clear overview of Mr. Diamond's participation in the criminal act. The Judge
felt it was a lesser participation and spoke against disbarment. In the case at hand, we have the opposite scenario. The Judge in Mr. Dachs' case is the Honorable Patricia J. Seitz, a recent former president of the Florida Bar. In a post sentencing hearing, she states the following to Mr. Dachs:

> Let me very direct with you, Mr. Dachs. The practice of law is a privilege, and one has choices in life, and you either honor the oath or you choose not to honor the oath. Once you choose not to honor the oath, you have given it up, you have made your choice and with that it is difficult for me to ever trust you again or that anyone else should be willing to trust you if you were willing to poison the system that you took an oath to uphold.
>
> You obviously have a different interpretation of that. It is just that I feel that one's word should be their bond. And part of your oath that you took at the time you were admitted to the Florida Bar was that you would uphold the law. (page 29)

The Honorable Patricia J. Seitz, further states:

> I tried to balance the various competing interests here, and to look at what is the appropriate punishment for the crime of an officer of the Court who admits to

obstructing justice. That is such a fundamental violation of one's oath as an officer of the Court. (page 12)

Discipline is to serve three purpose. First it must be fair to society, to protect the public from unethical conduct and not to deny the public the services of a qualified lawyer as a result of too harsh penalty. Second, the discipline must be fair to the attorney being sufficient to punish a breach of ethics while also encouraging reform and rehabilitation. Lastly, the discipline must be severe enough to deter others who might be prone or tempted to become involved in like violations. The Florida Bar v. Maynard, 672 So. 2d 530 (Fla. 1996). The Respondent has cited several other cases where an attorney has been suspended rather than disbarred. In all of these cases, there were strong mitigating factors, including abundant character testimony which justifies the suspension rather than disbarment.

Here, are a great number of aggravating circumstances, which greatly outweigh the mitigating factors:

1. Dishonest or Selfish Motive
2. Pattern of Misconduct
3. Multiple Offenses
4. Substantial experience in the practice of law
5. Submission of false evidence, false statements or other deceptive practices during the disciplinary process.

It is important to note that the Assistant U.S. Attorney, Mr. Sullivan, gave a factual basis for the charges against Mr. Dachs and the plea agreement. While some of the matters were disagreed with by Mr. Bronis, the following were not contested at the time of the plea.

Mr. Dachs know of the restraining order. He acted within the intent to obstruct justice by taking the restrained assets as a fee.

Mr. Dachs represented Mr. Magluta and Mr. Falcon for a number of years prior to 1991. He was well aware that they were drug traffickers, not people with legitimate businesses. In 1991 Mr. Dachs hired a woman named Marilyn Bonachea as a paralegal. This allowed her access to Mr. Falcon and Mr. Magluta, who were them incarcerated. Mr. Dachs knew that Bonachea had access to the drug proceeds, and that she was distributing them. Ms. Bonachea had close contact with Mr. Dachs from 1991 til 1996, and was able to visit Mr. Malguta regularly during that time. Mr. Dachs had knowledge

of some of the money moved to other countries and bought back in by wire transfer by Bonachea as well as others. Mr. Dachs is clearly not innocently receiving monies which is the subject of the Honorable Frederick Moreno's restraining order, nor did the recitation of unrefuted facts show willful ignorance or deliberate blindness. (See plea, pages 25 to 35).

Conclusion:

The Florida Bar, is seeking discipline for lawyers charged with ethical violations or wrong doing, must seek the penalties which appropriate to what is charged. To take the repeated violation of a court order, done in a knowing an wilful manner, for selfish motives, and seek a penalty less than disbarment would give the public a view of the Florida Bar as an agency which does not police it's members. Public confidence in the Florida Bar would decrease.

The Florida Bar v. Wilson 425So. 2d (2) (Fla. 1983), the court states "that if the discipline does not measure up to the gravity of the offense, the whole disciplinary process because of shame to the attorneys who are regulated by it". There can be no other appropriate, just, and proper discipline for the actions of Mr. Dachs than disbarment.

VII. Statement of Costs:

The Florida Bar moved without opposition, to have the reasonable incurred costs of the case paid by the Respondent.

The Costs are as follows: Administrative fee:

Rule 3-7.6(o)(1)(I) $750.00

Attendance of Court Reporter at deposition of
Albert J. Krieger on May 31, 2001 ..... $ 60.00

Original and one (1) copy of transcript
of Albert J. Krieger's deposition $369.60

Attendance of Court Reporter at deposition
of Vincent Flynn and Leonard Mark Dachs Part I
on June 1, 2001 ..... 60.00

Original and one (1) copy of transcript of

Vincent Flynn on June 1, 2001.....	172.80

Original and one (1) copy of transcript of Part I deposition of Leonard Mark Dachs on June 12, 2001	201.60
Attendance of Court Reporter at deposition of Jeffrey Weiner and Part II of deposition of Leonard Mark Dachs on June 14, 2001	70.00
Original and one (1) copy of transcript of Leonard Mark Dachs' and Jeffrey Weiner's depositions on June 14, 2001	120.00
Attendance of Court Reporter at July 9, 2001 hearing before Judge Catherine M. Pooler	60.00
Attendance of Court Reporter at July 25, 2001 trial before Judge Catherine M. Pooler	180.00
Staff Investigator's costs	191.47
Bar Counsel's costs	24.39
Delivery costs	8.90
Total	$ 2,610.76

It is recommended that all of the above costs be charge to the Respondent. Additionally, if the transcript of the disciplinary hearing is typed, that cost will be paid by the Respondent.

Respectfully submitted this 7th day of September, 2001.

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The Honorable Catherine M. Pooler
Referee

cc: Randi Klayman Lazarus, Esquire
Stephen J. Bronis, Esquire