

IN THE SUPREME COURT OF THE STATE OF FLORIDA

THE FLORIDA BAR  
Complainant

vs.

ARTHUR NATHANIEL RAZOR  
Respondent

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Supreme Court Case  
Number: SC 06 – 11

The Florida Bar File  
No. 2004 – 51,249 (17F)

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RESPONDENT'S INITIAL BRIEF

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Submitted by:

Arthur N. Razor, Esq. #251003  
Co-counsel for the Respondent  
3900 Hollywood Blvd., Ste 302  
Hollywood, Florida 33021  
Telephone: (954) 986 – 8630

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## STATEMENT OF FACTS AND NATURE OF THE CASE

On or about March 1<sup>st</sup>, 2004 the former Roslyn Nash consulted with a Dr. Steven Wigdor for a follow up visit in Dade County, Florida concerning some contact lenses that Dr. Wigdor had previously prescribed for Ms Nash. Dr. Wigdor at all times represented to Ms Nash that he and his entire staff were properly trained and that any procedures that would be performed on her eyes that day were completely safe, proper, necessary and painless. Dr Wigdor proceeded to have his employee/assistant, a technician by the name of Jay Velez remove her contact lenses. As a direct and proximate result of the negligence and carelessness of Dr Wigdor and his staff, Ms Nash received a painful injury to her left eye which directly caused her eye to bleed and become totally red. (TT page 6, lines 23 - 25; page 64, lines 23 & 24; page 7, lines 6 - 7) Despite the obviousness of the injury to her eye, Dr Wigdor attempted to down play the seriousness of the injury. Ms Nash later sought treatment from another local Doctor, Dr. Harvey Zalaznick who confirmed that her left eye had indeed suffered a scratch on the cornea and directed her to begin taking antibiotics to prevent any infection to her eye that could, if left untreated, lead to even more serious consequences including possibly losing sight in that eye. This medical advise from Dr

Zalaznick directly contradicted Dr Wigdor's attempts to mislead Ms Nash concerning the seriousness of her injury.

Subsequently, the former Ms Nash executed a written contract with the Respondent, to have the Respondent represent her in a lawsuit against Mr Wigdor for damages and the pain and suffering that she endured as a direct and proximate result of the negligence involved in treatment and advice that she received on that day from Dr Wigdor and his staff in Dade County, Florida. See Bar exhibit "F".

Ms Nash was at that time living in Dade County, Florida with her finance, Mr Walter Leibowitz (TT page 67, lines 6-7). Mr Leibowitz was foreign attorney who was a member of the California and Washington D.C. Bars. (See TT page 66, lines 16 & 17) Prior to becoming a member of the California Bar Mr Leibowitz had been suspended from the Florida Bar as a result of a felony conviction which took place over a quarter of a century ago, (see TT, page 64, lines 2-8). In addition, Mr Leibowitz is a licensed real estate agent and mortgage broker. ( TT page 66, lines 7&8) In order to comply with the regulations of real estate agents, Mr Leibowitz had received the approval of Jim Caris who owned and operated the Caris Business Center located at 2630 Hollywood Boulevard in Hollywood, Florida and the

Respondent who operated a business known as Hollywood Executive Suites at the same address, permission to put a sign meeting the requirements of the regulations for real estate agents on the door of an empty storeroom in the back part of the area that was sublet by Mr Caris to the Respondent for use as the Hollywood Executive Suites. (TT page 65, lines 22 - 25) Mr Caris continued to have his law offices in another part of the building.

Mr Leibowitz inquired from the Respondent if it would be possible for him to enter into any suit that might be filed in Dade County, Florida as co-counsel with the Respondent on a pro hac vice basis. The Respondent agreed that *if* the local Dade County Court authorized him to act as co-counsel, then at that point and only at that point, could Mr Leibowitz enter into the lawsuit as co-counsel with the Respondent. (TT page 76, lines 4-11; page 80, lines 15 - 17) However, under the circumstances, the Respondent did not feel comfortable having Ms Nash drive with her eye injury, so the Respondent did suggest that Mr Leibowitz could assist the Respondent and Ms Nash by acting as her chauffeur/driver and take her to any appointment that might be needed for further treatment of her injuries or trips to meet with the Respondent, etc. (TT page 80, lines 9 - 11)

Contrary to the express wishes and understanding that the Respondent thought he had with Mr Leibowitz regarding the matter, shortly afterwards, Mr Lebowitz, as a consequence of his fiancée's impatience and contrary to the directions of the Respondent, sent a letter to put the potential defendant, Mr Wigdor on notice that Ms Nash was contemplating a possible lawsuit against him. This letter was prepared by Mr Leibowitz on his own from his apartment in Dade County, Florida with the letterhead styled " Law Offices of Lebowitz and Razor" and indicated that Mr Lebowitz was a member of the California Bar only and gave his address of 12555 Biscayne Boulevard #924, Miami, Florida 33181 and a Dade County, Florida telephone and fax number that did not belong to the Respondent. See TT page 70, lines 1 - 8 and Bar's composite exhibit "A".

Subsequently, Mr Wigdor complained that he felt he was being subjected to "extortion". See Bar's composite exhibit "A". This in turn eventually led to the Florida Bar filing a complaint against the Respondent alleging that the Respondent had violated the Bar rules by entering into a partnership with Mr Lebowitz. See copy of the Bar's formal complaint and the Bar letter to Respondent dated June 16, 2005. Despite the fact that Mr Lebowitz was a foreign attorney properly licensed in the State of California,

and Washington D.C., the Bar chose to repeatedly mis-characterize Mr Lebowitz as a “non-attorney or non-lawyer” rather than as a foreign attorney. (TT page 11, line 22 and the formal complaint) After the formal complaint was filed, Supreme Court Justice Pariente chose to assign the formal complaint to the Fifteenth Judicial Circuit contrary to the express venue provisions of the Florida Bar rules, the normal rules of Florida civil procedures, Florida case law and the constitutional rights of the Respondent to due process under the Florida Constitution, despite that fact that even the most cursory review of the Bar’s complaint shows that none of the events in question transpired outside of Dade or Broward County, Florida. When the Respondent, through counsel objected to the venue, the Florida Bar argued that venue was proper in Palm Beach County, Florida despite the plain language of Bar Rule 3-7.6(d) as the Bar was doing the Respondent a “favor” by bringing the matter up outside of the normal venue and that it was also proper because it was akin to a probation proceeding whereby it is customary to bring an action for violation of probation back before the initial judge who placed the Respondent on probation. How this can be akin to a violation of probation when the Respondent has not been charged or accused of any violation of probation has never been explained. This argument by

the Florida Bar effectively established the Alice in Wonderland nature of the proceedings against the Respondent. The Respondent was not on probation at the time of the events alleged in the complaint and the Respondent is not currently on probation. Faced with this dilemma the Referee chose to ratify the violation of the Respondent's due process rights by transferring the location of the hearing to Broward County, Florida but illegally and improperly retaining his control as the referee over the matter. (See the Order by the Referee on the Respondent's venue motion) The Respondent, seeing the unmistakable bias of the Referee, objected and moved for the Referee to remove himself for bias. (See the Respondent's motion for Disqualification of Referee.) So strong was the Referee's prejudice against the Respondent along with the Referee's desire to punish the Respondent even before the final hearing could be heard that the Referee denied the motion to recuse himself. (See Order on the Respondent's motion to disqualify Referee)

During the pre-trial phase of the proceedings, the Respondent's co-counsel served the Bar counsel with various interrogatories in an attempt to clarify the charges against the Respondent and exactly what act or acts on

behalf of the Respondent the Bar was alleging violated the Bar rules. (See the various discovery interrogatories to the Bar) The Bar responded through it's counsel, Juan Carlos Arias who answered in writing, under oath before a notary public for the State of Florida, that it felt the Respondent was in violation of the bar rules by two actions:

[1] *“The act of creating a partnership by agreeing to “collaborate” with a non-lawyer to assist a person in a legal matter.*

[2] *The act of participating in the drafting and sending of a letter to the possible defendant in a legal matter implying association with a non-lawyer.”* (See response to first set of interrogatories # 7)

These responses to the Respondent's interrogatories were signed by Juan Carlos Arias and dated August 1<sup>st</sup>, 2006. These responses are consistent with the Bar's initial formal letter dated June 16, 2005 which outlined for the first time, the Bar's allegations against the Respondent.

Based upon the representations made by Bar counsel in the Bar's answers to the interrogatories, Respondent's co-counsel prepared and filed a written motion for summary judgment. Despite the fact that the

Respondent's motion for summary judgment was legally sound and based upon the Respondent's affidavit and the sworn testimony of Walter Lebowitz from his deposition *with no opposing affidavits presented by the Florida Bar*, the Referee denied the motion for summary judgment. (See Referee's Order on motion for summary judgment).

As a part of the Bar's responses to the Respondent's request for discovery information that he is entitled to under the Bar Rules so that the Respondent would have access to any exculpatory evidence available to the Bar, the Respondent's counsel spoke with Bar counsel in a good faith attempt to get the cooperation of the Bar in the discovery process. Bar counsel Juan Carlos Arias flatly refused to permit himself to be deposed even though he was the individual who responded, under oath, on behalf the Bar to the Respondent's interrogatories and the fact that Mr Arias had responded to numerous interrogatories by indicating that the Florida Bar did not have the information requested at that time. (See the Bar's responses to interrogatories). Respondent's counsel subsequently made a formal written motion to have the referee compel the Bar to permit the Respondent's counsel to depose Mr Juan Carlos Arias. (See Respondent's motion to compel) Based upon the Referee's willful disregard for the Respondent's

due process rights to discovery and his personal bias against the Respondent, the Referee refused to compel the Bar to participate further in the discovery process that may have allowed the Respondent to uncover additional pertinent, exculpatory evidence to support his position and rebut the numerous errors of the Bar's position against the Respondent.

On November 2<sup>nd</sup>, 2006 the Referee proceeded to trial in Broward County, Florida, ostensibly upon the formal written complaint of the Florida Bar against the Respondent but in typical Alice in Wonderland fashion, the Referee who has no jurisdiction over the merits of the pro se lawsuit filed in Dade County, Florida by Ms Nash against Mr Wigdor, decides instead to pass judgment on the merits of that lawsuit without having any notice to either Ms Nash or the Respondent that the merits of her pro se lawsuit were going to be reviewed, weighed or determined by the Referee; without any opportunity to cross examine Mr Wigdor or present expert witnesses and concludes that Ms Nash did not suffer any painful injury, did not have any constitutional right to seek the redress of her grievances through a peaceful access to the courts of her county and concludes that if Mr Wigdor were to testify that he would be credible and Ms Nash would not be credible and any attempt by Ms Nash to exercise her constitutional right to have access to the

courts of Florida for redress of her legitimate grievances against Mr Wigdor is merely an attempt on her part to “....shake down someone for money.” Transcript page 104, lines 24 - 25. Consequently, the Referee concludes that the Respondent is guilty of various violations of the Bar rules such as 3-4.2, 3-4.3, 4-5.3B, 4-5.5 B and 4-8.4D, not based upon the allegations contained in the complaint as supplemented by the Bar’s sworn answers to interrogatories concerning what act or acts the Respondent committed, but because “...he [the Respondent] *created an environment that permitted Mr. Lebowitz to use his name....*” emphasis added at lines 23- 25 of the Transcript. The Referee then held a sanctions hearing on December 13, 2006 and filed his report on or about February 1, 2007. The Respondent filed his notice of request for formal review with the Supreme Court on or about March 1, 2007.

## SUMMARY OF ARGUMENT

The proceedings below have not met the fundamental requirements of due process under Florida law. The initial assignment of this matter by Justice Pariente to the Fifteen Judicial Circuit violates of the rules of venue under the Florida Constitution, the Bar Rules, the Florida Rules of Civil Procedure and Florida Case Law. During the proceedings, the Bar counsel even objected on the record to the Respondent being afforded any presumption of innocence that would force the Bar to produce competent evidence to support its allegations. Despite the Referee's recognition of the improper venue and Florida case law on venue, the Referee refused to relinquish control over the case. The Respondent's legitimate motion for recusal of the Referee for prejudice and bias was denied to allow the Referee to remain on the case in violation of Florida law. Despite the obligation of the Florida Bar to participate in good faith in the discovery process, the Florida Bar's counsel replied to at least ten discovery interrogatories that Bar counsel did not have sufficient first hand knowledge or simply that the Bar does not have the requested information at this time. When for example, Respondent's counsel attempted to narrow the issues by serving the Bar with

interrogatories regarding the status of Mr Walter Lebowitz as a foreign attorney who is a member of the California bar, the Florida Bar feigned ignorance and would not address the issue. No one at the Florida Bar seems to know anything about the Rules of Judicial Procedure regarding foreign attorneys or how they might have applied to this case. Both the Florida Bar and the Referee repeatedly referred to Mr Lebowitz throughout the proceedings as a “disbarred attorney” when in fact, he was not disbarred at the relevant time when he sent out the offending correspondence. This is just one example of a conscious, willful mis-characterization of a material fact by the Bar. When the Respondent’s counsel finally requests that Mr Juan Arias who signed the Bar’s responses to the Respondent’s interrogatories under oath, appear for a deposition to clarify his responses or more accurately, his lack of responses, Mr Arias flatly refuses. Any attempt by the Respondent’s counsel to secure compliance with discovery from the Florida Bar through a motion to compel discovery, was summarily denied by the Referee. Despite the fact that Mr Lebowitz repeatedly and sincerely admits his mistakes and accepts full responsibility for his actions, the Referee, reacting through the prism of his own personal bias and prejudice, concludes that everyone involved is simply “...just trying to avoid

responsibility.” Frustrated with the overwhelming evidence that the Respondent did not commit the violations as alleged by the Bar in its complaint, the Referee decides to find the Respondent guilty based upon some kind of nebulous “*environmental*” sins such as exercising his constitutional right to religious freedom in attending Mr Lebowitz’s Jewish wedding, or other constitutionally protected conduct such as assisting Mr Lebowitz in getting approval from Jim Caris, the landlord of the Hollywood Executive Suites, to have a sign on the storeroom door so that Mr Lebowitz can meet the lawful requirements in the State of Florida for licensed real estate agents. The Referee, who apparently recognizes no limitations whatsoever on his jurisdiction, boldly decides that he has jurisdiction over the merits of the Dade County negligence action filed by Ms Nash and concludes that rather than exercising her constitutional right to use the state courts to seek a redress of her injury against her former optician, (even when the Bar admits on the record that she suffered an injury to her eye), the Referee concludes that everyone ( including the Respondent who had an unambiguous written retainer agreement with Ms Nash for his professional services), was just trying to “shake someone down for money”. Never mind that the Dade Circuit Judge in Ms Nash’s case ruled that the ever impatient

Ms Nash had simply filed her case prematurely and could re-file her case after the appropriate statutory time period for notice to the Defendant had been met. The Referee attempts to put a gloss of legality on his rulings by trying to equate the present case to the case of the Florida Bar v Flowers. The facts of the Flowers case have no application to the facts of this case. No where in the evidence is there anything to suggest that the Ms Nash was ever confused by any signs or misunderstood who she was contracting with to act as her attorney. Unlike the Flowers case where the Court noted both the color of the attorney's sign and even the color of the door as well as the exact verbiage the attorney had employed in his sign, no evidence regarding the Respondent's sign was ever introduced. But then why should the Bar attempt to introduce any evidence of the Respondent's Hollywood Executive Suite sign when the Bar was not accusing the Respondent of any violation based upon any principal from the Flowers case in its complaint. Why bother to introduce evidence that would only contradict the allegations of your complaint? Why even bother to attempt to introduce evidence when its clear that the Referee has already made up his mind? The offending correspondence involved was drafted and mailed by Mr Lebowitz from Dade County with a Dade County address and telephone number that did not

belong to the Respondent. The simple, undeniable fact is that the offending correspondence had no connection what so ever with the executive suites located in Hollywood, Florida. Ms Nash came to the Respondent because of her social contact with the Respondent who had socialized with her and attended her wedding, not because of any signs in any location. Mr Lebowitz admitted on numerous occasions (including under oath at the final hearing) that he sent the offending correspondence without the Respondent's knowledge, consent or approval; that it was a mistake which he sincerely regretted, and it was against the express wishes of the Respondent for Mr Lebowitz to do anything more than assist in driving Ms Nash for medical appointments, etc until such time as a pro hac vice motion could be granted by the local Dade County Court. The Respondent testified that he personally admonished Mr Lebowitz after he became aware of the offending correspondence and was assured by Mr Lebowitz that no further correspondence would be sent. The Bar produced no evidence what so ever that these remedial efforts by the Respondent were ineffectual. The Bar repeatedly argued that the Respondent must be guilty despite all the evidence to the contrary, since the Respondent did not utilize his powers of ESP to expressly deny the allegations prior to the Bar making the

allegations or even informing the Respondent that he was being investigated and after all, the Respondent was previously sanctioned by this very same Referee in the past, so there's no doubt that the Respondent must be guilty of all charges no matter what the evidence shows.

HAVE THE PROCEEDINGS BELOW COMPLIED WITH THE DUE  
PROCESS REQUIREMENTS OF FLORIDA LAW?

Article One, Section Nine of the Florida Constitution provides that “No person shall be deprived of life, liberty or property without due process of law,....” Article One of the Florida constitution also contains other important provisions including Section Two regarding the basic rights of all Florida citizens to be treated equally before the law and to have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property. Other sections of Article One cover subjects such as Religious Freedom (section three); Freedom of Speech and Press (section four); the right to assemble (section five); the right to have open access to the state's courts for redress of any injury (section twenty-one), and the right

to privacy (section twenty-three) which provides that every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein.

While there is no single, inflexible test by which our courts decide whether the requirements of procedural due process have been met, fundamentally it has been defined by the Courts to mean a structure of laws and procedures that hears before it condemns and proceeds upon inquiry and renders a judgment after trial. See Watson v. Pest Control Commission of Florida, 199 So2nd 777( 4<sup>th</sup> DCA, 1967). The constitutional guarantee of due process extends to every type of legal proceeding (see Pelle v. Dinners Club, 287 So2nd 737, (Fla. DCA 3<sup>rd</sup> Dist 1974); Tomayko v. Thomas, 143 So2nd 227 (Fla. 3<sup>rd</sup> DCA, 1962); State ex rel. Barancik v. Gates, 134 So2nd 497 (Fla. 1961); Williams v. Kelly, 133 Fla. 244, 182 So. 881 (1938). It cannot be simply ignored by labeling the proceedings as merely "quasi-judicial" or administrative. Nor can it be merely colorable or illusory. See Ryan's Furniture Exchange v. McNair, 120 Fla 109, 162 So. 483 (1935). Nor can it be a mere sham or pretense, Robbins v Robbins, 429 So2nd 424, 3<sup>rd</sup> DCA (1983). As outlined in the case of Neff v. Adler, 416 So2nd 1240

at 1242-43 (Fla 4<sup>th</sup> DCA 1982) the fundamentals of procedural due process include a hearing before an impartial decision-maker, after fair notice of the charges and allegations with a fair opportunity to present one's own case. Fundamental due process includes the duty of the individual presiding over the hearing to apply a correct principle of law or rule, see State v. Smith, 118 So2nd 792\_(Fla.1st DCA, 1960). Unfortunately, none of these fundamental requirements were met in the underlying proceedings.

HAS THE COURT VIOLATED THE RESPONDENT'S  
VENUE RIGHTS UNDER FLORIDA LAW?

Pursuant to its rule making authority for the administration of the judiciary, the Courts have adopted various rules regulating the Florida Bar including rule 3-7.6(a) & (d) regarding venue. Subsection (a) provides that "The chief justice shall have the power to appoint referees to try disciplinary cases and to delegate to a chief judge of a judicial circuit the power to appoint referees *for duty in the chief judge's circuit*. (Emphasis added) Subsection (d) of this rule provides that venue for disciplinary actions shall be in the county where the alleged offense occurred or the county wherein the respondent attorney practices. Even the most cursory

review of the allegations in the Bar's complaint reveal that the Fifteen Judicial Circuit is not the proper venue for this matter. Thus the assignment from the Honorable Pariente to the chief judge of the Fifteen Judicial Circuit was a clear violation of the venue provisions of the Bar rules and the Respondent's fundamental due process rights under the Florida constitution.

Respondent's counsel filed a motion for change of venue to which the Florida Bar's counsel tried to counter with the argument that these proceedings were akin to a violation of probation proceedings and thus it was proper to have the matter heard before the same Referee that had presided over a previous matter involving this respondent. However, again even a cursory review of the matter reveals that these proceedings are not alleging any violation of any probation and any such argument by the Bar's counsel is clearly disingenuous. Recognizing that under Florida law when there is insufficient basis for the Bar's choice of venue, the trial court must either dismiss or transfer the case, (see for instance, Symbol Mattress of Florida Inc v. Royal Sleep Products, Inc. 832 So.2<sup>nd</sup> 233 (Fla 5<sup>th</sup> DCA, 2002) the Referee allegedly "granted" the Respondent's motion for a change of venue. The problem is that because of the Referee's personal bias against the respondent, the Referee did not want to relinquish control over the matter

and contrary to Florida law, insisted that he remain as the Referee on the case even after he had “transferred” the matter to Broward County.

Florida law is very clear on matters of venue. Courts cannot transfer venue in a cause and rule on the merits of the issues as well. See City of North Port v. Ronald Faust, et al, 489 S2nd 45 (Fla 2nd DCA 1986) and Ven-Fuel v. Jacksonville Electric Authority, 332 So2d 81 (Fla. 3d DCA 1975). See also The Church of Scientology of California, Inc v. Gabriel Cazares and Margaret Cazares, 401 So2d 810 (Fla 2d DCA 1981) which stands for the proposition that you can not merely transfer the trial to another county. Probably the most succinct expression of this principal was in the case of Richard Bertram & Co. v. Bernard M. Barrett, 155 So 2<sup>nd</sup> 409, (Fla. App. 1<sup>st</sup> Dist. 1963) where the appeals court stated that “*Venue is not a vehicle that rolls around on wheels...*” nor is it some kind of “*sack of potatoes*” that can be hauled from county to county. (Emphasis added, Id at page 412.)

Nothing in the Florida constitution, gives Mr Colbath the authority to conduct hearings outside of his circuit absence a properly declared state of public emergency. The referee’s refusal to relinquish control over the matter after acknowledging that the venue was improper, not only

demonstrates the referee's personal bias and animus against the Respondent, but also highlights the referee's complete lack of respect for the Florida Constitution and the laws of our state and constitutes a serious violation of his oath of office when he swore to uphold our constitution which is the very foundation of our laws.

HAS THIS COURT VIOLATED THE RESPONDENT'S DUE  
PROCESS RIGHT TO AN IMPARTIAL DECISION MAKER?

The Respondent is entitled as a matter of due process to have a decision maker that is impartial. See for instance the case of Hayslip v Douglas, 400 So2d 553 (Fla 4<sup>th</sup> DCA 1981). This Referee was anything but impartial and the Respondent made a valid motion pursuant to the Bar rules such as Rule 3-7.6(h)(B)(8) to have the Referee disqualified. As indicated in the motion to recuse, the Respondent had a sincere, well founded conviction that the Referee was biased and prejudiced against him and would not be able to set aside his personal bias in this matter. The record documents the unmistakable effects of the Referee's prejudice throughout the proceedings. This motion should have been granted but was not

because of the preconceived bias of the Referee against the Respondent and the Referee's personal interest in retaining control over the proceedings.

HAS THIS COURT VIOLATED THE RESPONDENT'S RIGHT  
TO DUE PROCESS BY A FAILURE TO PROVIDE REASONABLE  
NOTICE TO THE RESPONDENT OF THE CHARGES?

A legitimate and lawful hearing can only be held after a fair notice of the charges against the Respondent. The Bar, through its own counsel, represented under oath in response to the Respondent's interrogatories, that the alleged acts of the Respondent that were at issue in the case involved the alleged knowledge by the Respondent and/or direct participation by the Respondent in the drafting of the offending letter and the act of "creating a partnership" with Mr Lebowitz. (See answers to Respondent's first set of interrogatories number #7) The evidence clearly shows that the Respondent did not know of or participate in the drafting of the offending letter. (Even the Referee declined to make such a finding) but due to the Referee's overweening bias against the Respondent and the Referee's desire to cleanse the bar, (see Transcript page 104, lines 17 - 18) the Referee finds instead that the Respondent is some kind of "environmental" sinner that

somehow “permitted” Mr Lebowitz “to try to shake down someone for money” (see Transcript page 104, lines 23 - 25). See also paragraph number #20 of the Referee’s Report.

In other words, the Referee finds that the Respondent, by exercising his constitutional right to freedom of religion and association by way of having the audacity to actually attend in person , Mr Lebowitz’s Jewish wedding to Ms Nash or his constitutional right to engage in other non-legal business with Mr Lebowitz such as allowing Mr Lebowitz to comply with the lawful requirements for real estate agents to have a place to store his records and place a sign that complies with the regulations of real estate agents on the storeroom door that identified Mr Lebowitz as a licensed real estate agent, or to enter into a written contract with Ms Nash in her efforts to exercise her constitutional right under Article 1, Section 21 of the Florida Constitution to have unfettered access to the state’s courts for the redress of her legitimate grievances against a tortfeasor, are all impermissible violations of the Bar rules because, hey, the Bar rules trump the Florida constitution any day!

Ignoring the constitution, the Referee attempts to justify and give some superficial patina to his recommended sanctions against the

Respondent by citing the case of The Florida Bar v. Flowers , 672 So.2nd 526 (Fla. 1996). Only someone with a unmistakable bias against the Respondent would think that the facts in the Flowers case are analogous to the facts in this case. The “Flowers” case as it has come to be known, involved a situation where the sign identifying the office building was painted in white capital letters on a red door identifying the premises as the law offices of the attorney, Ralph L. Flowers. Setting aside for the moment the fact that nowhere in the complaint has the Florida Bar alleged or accused the Respondent of any signage violations [which the most fundamental elements of due process would require before the Respondent could be taxed with any such violation,] a review of the transcript reveals no evidence of any kind regarding any sign anywhere that refers to the Respondent’s law practice. In addition, the Florida Bar has never taken the position that the Florida Bar (and by extension, the Florida Supreme Court), has jurisdiction over the regulation of real estate agents or mortgage brokers such as Mr Lebowitz and the signs that they are required use in the field of real estate). Thus, the mere fact that at some point in time Mr Lebowitz put his name on a storeroom in the back of the Hollywood Executive Suites (a subsection of the Caris Business Center located in Hollywood, Florida) is

outside of the jurisdiction of this Court . Unlike the Flowers case, no one is suggesting that Ms Nash paid any money to anyone or that there was any confusion in her mind or anyone's mind for that matter, about the terms of her written contact with the Respondent. The Referee even admits on the record that his assessment is based upon his *speculation* (which is another word for prejudice) and not based upon any competent evidence. See transcript page 103, lines 4 - 8. How this can in anyway be analogous to the Flowers case where the Court held that due to the fact that Mr Flowers had *his* sign describing the office as his law office on the outside door and this led to the impression that by giving money to someone inside the premises they were retaining Mr Flowers is completely incomprehensible. Keep in mind that Ms Nash was the fiancé of the Mr Lebowitz. She lived with Mr Lebowitz. There is no evidence that she or anyone else in her situation, could suffer any confusion similar to the Flowers case what so ever. There is no evidence that she was not satisfied with the Respondent. There is no evidence that the Respondent failed to properly represent her or any co-guardian for three minor children as in the Flowers case. There is no evidence that the Respondent in this case ever failed to respond to any order

to show cause or inquiries from the Florida Bar all of which are central to the Flowers case.

Nor is there any evidence of the Respondent ratifying any misconduct of a non-lawyer. Setting aside for the moment the issue of Mr Lebowitz being a foreign attorney rather than a “non-attorney”, the evidence shows that after the Respondent became aware of the offending letter, he personally counseled Mr Lebowitz (see TT, page 40, line 5 ) and relayed to the Bar that Mr Lebowitz would not be sending any more offending letters (see TT, page 33, lines 16-17 ). There is no evidence anywhere to suggest that the Respondent’s remedial efforts were not effective. <sup>1</sup>

#### HAS THE RESPONDENT’S DUE PROCESS RIGHT TO DISCOVERY BEEN VIOLATED?

Under the Bar Rules, 3-7.6 (f)(2), discovery shall be available to the parties in accordance with the Florida Rules of Civil Procedure. Pursuant to the normal rules of discovery, the Respondent is entitled to discovery including taking depositions of any potential witness. When Mr Juan Arias

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<sup>1</sup> In answer to the Respondent’s interrogatory #3 of the second set of interrogatories, the Bar indicated that it felt the offending “participation “ by the Respondent occurred sometime before the letter to Mr Wigdor was sent.

answered the Respondent's interrogatories under oath, the Respondent was entitled to take his deposition to gather additional information, particularly in a case such as this where many of the responses by Mr Arias to the Respondent's interrogatories were not forthcoming. For example, in response to *ten* different interrogatories, Mr Arias replied that "The Florida Bar does not have this information at this time." In addition, he responded to at least three of the interrogatories that "Bar counsel does not have first hand knowledge of this subject matter to respond to this interrogatory." The interrogatories were directed to the Florida Bar not to Mr Juan Arias personally. If he did not have the information himself, he had a duty to consult with others at the Florida Bar in a good faith attempt to respond to the interrogatories, not simply to suggest that just because he might not have the answer off the top of his head, that no information could be produced. Indeed, when the Respondent sent interrogatories to the Bar concerning the status of Mr Lebowitz as a California attorney , the Bar feigned ignorance and effectively refused to admit or deny that Mr Lebowitz was a member in good standing with the California bar. All attempts by Respondent's counsel to get compliance with discovery from the Bar by filing a motion to compel were simply denied by the Referee.

## CONCLUSION

The Respondent's rights to due process under the Florida Constitution and the normal Bar Rules as well as the Florida Rules of Civil Procedure and numerous Florida cases have been egregiously and repeatedly violated from the start to the finish. The Honorable Colbath has completely forgotten his oath to uphold the constitution and instead prefers to engage in speculation and personal bias. Due process of law and right to meaningful discovery from the Florida Bar are simply ignored. The evidence introduced by the Bar does not support any finding against the Respondent based the case of the Florida Bar v Flowers. The Florida Bar in conjunction with the Honorable Colbath are attempting to sanction the Respondent for constitutionally protected activities such as attending the Jewish wedding of Mr Lebowitz or engaging in any form of commerce with real estate agents, however benign it may be, or simply having social friendships with others, especially should they have been in any trouble with the law over the last 30 years. The case should never have been filed and the Bar should have voluntarily withdrawn its complaint. It should now be dismissed in toto.

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Arthur N. Razor, Esq. 251003  
Co-counsel for the Respondent  
3900 Hollywood Blvd, Ste 302  
Hollywood, Florida 33021  
Tele: (954) 986 - 8630

### CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that I have mailed an original with seven true copies of the foregoing initial brief of the Respondent to the following: The Honorable Thomas D. Hall, Clerk of the Florida Supreme Court at 500 South Duval Street, Tallahassee, Florida 32399-1927 and a true copy to Staff Counsel of the Florida Bar at 651 East Jefferson Street, Tallahassee, Florida 32399-2300; and Juan Arias, Bar Counsel for the Florida Bar at 5900 North Andrews Avenue, Suite 900, Fort Lauderdale, Florida 33309-2366 on this \_\_\_\_ day of March, 2007. I further certify that this pleading has been prepared in Times New Roman size 14 font consistent with the current Florida Rules of Appellate Procedure.

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Arthur N. Razor, Esq. 251003  
Co-counsel for the Respondent  
3900 Hollywood Blvd, Ste 302  
Hollywood, Florida 33021  
Tele: (954) 986 - 8630