

**IN THE SUPREME COURT OF FLORIDA
(Before a Referee)**

THE FLORIDA BAR,

Complainant,

v.

**Supreme Court Case
No. SC08-32**

**The Florida Bar File No.
2008-50,253(17J)**

MARTIN JAMES HANNA,

Respondent.

_____ /

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The Florida Bar filed its complaint in this cause with the Supreme Court of Florida on or about January 4, 2008. Thereafter, the undersigned was appointed to preside as referee in this proceeding by order of the Chief Judge of the Fifteen Judicial Circuit. A Default Judgment in this case was entered April 8, 2008, and a final hearing on sanctions was held April 25, 2008. The pleadings, and all other papers filed in this cause, which are forwarded to the Supreme Court of Florida with this report, constitute the entire record.

During the course of these proceedings, respondent failed to appear despite receiving appropriate notice of all proceedings and The Florida Bar was represented by Juan Carlos Arias.

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT WITH WHICH RESPONDENT IS CHARGED:

My findings of fact are as follows:

1. In 2005, complainant Yves Dor hired respondent to represent him in a dissolution of marriage matter, In Re: The Marriage of Islande Dor, Petitioner/Wife and Yves Dor, Respondent /Husband, 05-4380(37)(90), Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida.

2. During the course of the dissolution proceedings, respondent failed to accompany Mr. Dor to a meeting regarding child support.

3. Respondent also failed to pay the joint debts to creditors from the proceeds of the sale of marital property, as agreed and detailed in the Final Judgment of Dissolution of Marriage.

4. Additionally, respondent failed to disburse the marital property sale proceeds to his client, as agreed.

5. Respondent received fees but failed to provide the required legal services.

6. Respondent failed to communicate with Mr. Dor who was attempting to contact respondent to obtain the status of his case.

7. After receiving the bar complaint, The Florida Bar requested from the respondent a response to the complaint in a letter dated August 23, 2007.

8. No response was received from respondent.

9. A second letter, dated September 17, 2007, was sent by the bar via regular and certified mail to respondent's record bar address requesting a response.

10. Both envelopes were returned by U.S. Postal Service as "not deliverable as addressed, unable to forward."

III. RECOMMENDATION AS TO WHETHER RESPONDENT SHOULD BE FOUND GUILTY:

By the conduct set forth above, respondent has violated the following Rules Regulating The Florida Bar: **3-4.2** [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline]; **3-4.3** [The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. 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]; **3-7.11(b)** [Every member of The Florida Bar is charged with notifying The Florida Bar of a change of mailing address or military status. Mailing of registered or certified papers or notices prescribed in these rules to the last mailing address of an attorney as shown by the official records in the office of the executive director of The Florida Bar shall be sufficient notice and service unless this court shall direct otherwise.....]; **4-1.2(a)** [Subject to subdivisions (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, shall reasonably consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.]; **4-1.3** [A lawyer shall act with reasonable diligence and promptness in representing a client.]; **4-1.4(a)** [A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about

the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law]; **4-1.4(b)** [A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.]; **4-1.15** [A lawyer shall comply with The Florida Bar Rules Regulating Trust Accounts.]; **4-8.1(b)** [An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by rule 4-1.6;]; **4-8.4(a)** [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another]; **4-8.4(c)** [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional

misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule]; **4-8.4(g)** [A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made: (1) within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or board of governors; (2) within 10 days of the date of any follow-up written investigative inquiries by bar counsel, grievance committee, or board of governors; (3) within the time stated in any subpoena issued under these Rules Regulating The Florida Bar (without additional time allowed for mailing); (4) as provided in the Florida Rules of Civil Procedure or order of the referee in matters assigned to a referee; and (5) as provided in the Florida Rules of Appellate Procedure or order of the Supreme Court of Florida for matters pending action by that court. Except as stated otherwise herein or in the applicable rules, all times for response shall be calculated as provided elsewhere in these Rules Regulating The Florida Bar and may be extended or shortened by the inquirer upon good cause shown.]; **5-1.1(b)** [Money or other property entrusted to an attorney for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to

that purpose. Money and other property of clients coming into the hands of an attorney are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be deemed a conversion.]; and **5-1.1(e)** [Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.].

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that respondent be permanently disbarred. In arriving at the foregoing disciplinary recommendation, consideration was given to various factors which are set forth below:

A. Respondent has prior disciplinary offenses, has shown a dishonest or selfish motive, engaged in repeated bad faith obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the disciplinary agency, has substantial experience in the practice of law, and demonstrated indifference to making restitution. Therefore, I find these aggravating factors

pursuant to Florida Standards for Imposing Lawyer Sanctions 9.22 (a), (b), (e), (i) and (j).

B. Standards 4.1, 4.4, 4.5, and 7.0 of the Florida Standards for Imposing Lawyer Sanctions, best fit the misconduct described. Standard 4.11 states that disbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury. Standard 4.41 states that disbarment is appropriate when the lawyer abandons the practice and causes serious or potentially serious injury to a client; or knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client. 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 the intent to obtain a benefit for the lawyer or another, and causes injury or potential injury to a client, the public, or the legal system.

C. Respondent misappropriated proceeds of the sale of his client's property and used the property of others for his own benefit, failed to accompany his client to a meeting regarding child support, and received fees to handle a legal matter for a client but disappeared without having performed any work. Furthermore, respondent's failure to respond to Bar inquiries, his failure to respond

to The Florida Bar's complaint, his failure to appear at the hearing on The Florida Bar's Motion for Judgment on Default, coupled with his failure to appear at the Final Hearing warrants permanent disbarment. The Supreme Court held in The Florida Bar v. Horowitz that an attorney who violated trust accounting rules, engaged in a pattern of neglecting clients, and who failed to respond to communications from the Bar warranted disbarment. The Court also found in The Florida Bar v. Valentine-Miller that an attorney who neglected client matters, failed to communicate with clients, violated trust accounting rules, and who failed to respond to the Bar, warranted disbarment. Similarly, in The Florida Bar v. Spear held that an attorney who converted client funds must overcome the presumptive sanction of disbarment. Moreover, in The Florida Bar v. Turk this court held that permanent disbarment is warranted when the conduct of a respondent indicates that he is beyond redemption. (This case law is annexed hereto as Attachment "A")

D. This case indicates that even the disbarment I recommended February 12, 2008, and that the Supreme Court of Florida approved in case SC07-2155, has failed to impress upon the respondent that certain behavior is not tolerable. He has continued engaging in the same pattern of behavior that led in part to my recommendation of disbarment, namely ignoring the disciplinary process. Respondent shows absolutely no remorse or indication he will ever deviate from

his course of conduct. I understand that permanent disbarment is an extreme and rarely used sanction reserved only for those who show no hope of redemption. Respondent fits this criteria.

E. I am satisfied that the imposition of permanent disbarment is necessary to meet the Court's criteria for appropriate sanctions: attorney discipline must protect the public from unethical conduct and have a deterrent effect while still being fair to respondents. The Florida Bar v. Pahules, 233 So.2d 130,132 (Fla. 1972).

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

After finding respondent guilty but prior to making my disciplinary recommendation, I considered the following personal history and prior disciplinary record of respondent, to wit:

Age: 54

Date Admitted to The Florida Bar: April 3, 1981

Prior to disciplinary convictions and disciplinary measures imposed therein:

Respondent received a Public Reprimand on November 21, 2001, in The Florida Bar File Number 2001-50,832(17E). Respondent was disbarred on April 24, 2008, in SC07-2155.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

I find that The Florida Bar has incurred reasonable costs in the matter and that same should be assessed against the respondent, as follows:

A.	Grievance Committee Level Costs:	
1.	Court Reporting Costs	\$ -0-
2.	Bar Counsel Travel Costs	\$ -0-
B.	Referee Level Costs:	
1.	Court Reporting Costs	\$ -0-
2.	Bar Counsel Travel Costs	\$ -0-
C.	Administrative:	\$ 1,250.00
D.	Miscellaneous Costs:	
1.	Investigators Expenses	\$ -0-
2.	Witness Fees	\$ -0-
3.	Copy Costs	\$ -0-
4.	Auditor Costs	\$ -0-
	TOTAL ITEMIZED COSTS:	<u>\$ 1,250.00</u>

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within thirty days of said judgment becoming final, respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this _____ day of _____, 2008.

ROBIN ROSENBERG, REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were mailed by regular mail to the following: STAFF COUNSEL, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; and JUAN C. ARIAS, Bar Counsel, The Florida Bar, 5900 North Andrews Avenue, Suite 900, Fort Lauderdale, Florida 33309-2366; and to MARTIN JAMES HANNA, respondent, 1515 North University Drive, Coral Springs, FL 33071-6032, on this _____ day of _____, 2008.

ROBIN ROSENBERG, REFEREE