

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

THE FLORIDA BAR,

Complainant,

v.

JAY ALAN UNGER,

Respondent.

_____ /

**Supreme Court Case
No. SC09-5**

**The Florida Bar File
No. 2009-50,482(15G)FFC**

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The Florida Bar filed its Notice of Determination or Judgment of Guilt with the Supreme Court of Florida, pursuant to R. Regulating Fla. Bar 3-7.2 on or about January 8, 2009. On or about January 9, 2009, the Supreme Court of Florida entered an Order suspending respondent and referring the matter for appointment of a referee pursuant to Rule 3-7.2(h). On or about January 20, 2009, the undersigned was appointed to preside as referee in this proceeding by the Chief Judge of the Seventeenth Judicial Circuit.

The parties have presented to me a Disbarment on Consent, which has been approved by The Florida Bar Board of Governors' designated reviewer. After due deliberation, I have determined to recommend that respondent's Disbarment on Consent be approved, for the reasons set forth herein.

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 the proceedings, The Florida Bar was represented by Ronna Friedman Young and respondent was represented by Gregory W. Eisenmenger.

II. FINDINGS OF FACT:

A. Jurisdictional Statement: Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, and subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary:

1. On or about July 29, 2008, in the cases styled State of Florida v. Jay Alex[sic] Unger, in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida Case Nos. 2007-CF003424AXX and 2007-CF011320AXX, respondent was adjudicated guilty of 1) Trafficking in cocaine (28-200 grams), in violation of Florida Statute § 893.135(1)(b)(1)(a), a 1st degree felony; (2) Possession with intent to sell hydrocodone, in violation of Florida Statute § 893.135(1)(a), a 2nd degree felony; 3) Possession of Schedule III substance in violation of Florida Statute § 893.13(6)(a), a 3rd degree felony; 4) Possession of cocaine in violation of Florida Statute § 893.13(63)(a), a 3rd degree felony; and 5) Possession of Schedule IV substance, in violation of Florida Statute § 893.13(6)(a), a 3rd degree felony.

2. Respondent was sentenced to 3 years in the custody of the Florida Department of Corrections, with 268 days credit for time served. (Copies of the judgment and sentencing document were previously filed as part of the record in this case).

3. On or about September 24, 2008, in the case styled State of Florida v Jay A. Unger, in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida, Case No. 05-2005-CF-046378AXXX-XXM respondent was adjudicated guilty of: 1) Grand theft, in violation of Florida Statute § 812.014(2b), a 2nd degree felony; 2) Presenting a false or fraudulent insurance claim, in violation of Florida Statute § 817.234, a 3rd degree felony; and 3) False report of a crime, in violation of Florida Statute § 817.49, a 1st degree misdemeanor. Respondent had falsely reported the theft of an enclosed rental trailer which contained his 2 motorcycles, knowing that no crime had actually been committed. Subsequently, respondent presented a false insurance claim and received claim proceeds from his insurance company.

4. Respondent was sentenced to 3 years in the custody of the Florida Department of Corrections, to be served concurrently with the sentencing for his convictions in Palm Beach County. Copies of the judgment and sentencing documents were previously filed as part of the record in this case.

5. Respondent has admitted, for purposes of the Disbarment of Consent, that he violated R. Regulating Fla. Bar 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].

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

I recommend that respondent be found guilty of having violated R. Regulating Fla. Bar **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].

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

In the Disbarment on Consent, respondent has agreed to the following disciplinary measures and I recommend that these disciplinary measures be applied:

A. Disbarment effective nunc pro tunc, February 9, 2009, the date of respondent's felony suspension, without leave to reapply for a minimum of 5 years;

B. Payment of costs of \$1,250.00;

C. Respondent shall provide the Florida Bar with his current address for the next two years.

D. Respondent shall cooperate with the Florida Bar with any audit it needs to conduct regarding his business accounts.

When an attorney has been convicted of a felony, the presumptive discipline is disbarment. *The Florida Bar v. Cohen*, 908 So. 2d 405, 411 (Fla. 2005); *The Florida Bar v. Kandekore*, 766 So.2d 1004, 1008 (Fla. 2000).

Additionally, the Florida Standards for Imposing Lawyer Sanctions specifically speak to the appropriate discipline. Section 5.1 of the Florida Standards for Imposing Lawyer Sanctions relates to the failure of an attorney to maintain personal integrity. Standard 5.11 provides that: “Disbarment is appropriate when: (a) a lawyer is convicted of a felony under applicable law.” In addition, Standard 5.11(b) provides for disbarment when a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft.

I am satisfied that disbarment and payment of The Florida Bar’s costs 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: 49

Date Admitted to The Florida Bar: November 13, 1997

Prior disciplinary convictions and disciplinary measures imposed therein:

None.

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, respondent has agreed to pay costs as set forth below, and same should be assessed against respondent:

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
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 _____, 2009.

Dale Ross, Referee
Broward County Courthouse
201 Southeast Sixth Street
Fort Lauderdale, Florida 33301

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 furnished to THE HONORABLE THOMAS D. HALL by e-mail at e-file@flcourts.org, and that copies were mailed by regular mail to the following: STAFF COUNSEL, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; RONNA FRIEDMAN YOUNG, Bar Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise; Florida 33323 and GREGORY W. EISENMENGER, Attorney for Respondent, Law Offices of Eisenmenger, Berry & Peters, P.A., 5450 Village Drive, Viera, Florida 32955 on this _____ day of _____, 2009.

DALE ROSS, Referee