IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

THE FLORIDA BAR,
Complainant,

Case No. SC12-484

v. **TFB File No. 2011-10,033 (6C)**

AARON J. SLAVIN,
Respondent.
_____/

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On March 12, 2012, the Florida Bar filed a Notice of Determination or Judgment of Guilt pertaining to Respondent. Specifically, the notice stated that Respondent violated 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), due to his conviction for trafficking in controlled substances. The Supreme Court of Florida suspended Respondent on March 13, 2012, in response to the notice.

Additionally, the Court designated the Honorable Manuel Menendez, Chief Judge of the Thirteenth Judicial Circuit of Florida, to appoint a referee for the Court. On March 23, 2012, Chief Judge Menendez appointed the undersigned to be referee. A sanctions hearing in this matter was conducted on June 18, 2012.

All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

The following attorneys appeared as counsel for the parties:
For The Florida Bar: Leonard Evans Clark, Esquire
For The Respondent: Scott Kevork Tozian, Esquire

II. FINDINGS OF FACT

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

B. Narrative Summary: Aaron J. Slavin, Respondent, became the subject of an undercover investigation by the Pinellas County Sheriff's Office, in June, 2010. It is alleged that the Sheriff's office learned through confidential sources that Respondent accepted controlled substances as a form of payment for legal services. On July 7, 2010, law enforcement arrested Respondent at his law office for trafficking in oxycodone. Specifically, law enforcement arrested Respondent and his wife after Respondent accepted Two Hundred Fifty-one (251) 30-miligram pills of oxycodone to satisfy a debt owed to him by a former client of Respondent.

On November 8, 2010, the State Attorney's Office charged Respondent with trafficking in illegal drugs (oxycodone) 28 grams or more, but less than 30 kilograms, a first degree felony (Fla. Statute 893.135(1)(c)1.c.). Respondent filed a Uniform Plea, Acknowledgment and Waiver of Rights Form on January 23, 2012 in Case No. 11-CF-001855, in the Thirteenth Judicial Circuit, Hillsborough County. The State Attorney's Office waived the 25 year minimum mandatory sentence applicable to the trafficking charge. As a result, on March 5, 2012, the trial judge adjudicated Respondent guilty and sentenced Respondent to three (3) years imprisonment followed by five (5) years of Drug Offender Probation.

C. Findings of Fact: After considering all of the pleadings, testimony and evidence before me, as well as the arguments of counsel on behalf of Respondent and The Florida Bar, I find and set forth the facts as follows:

After the death of his mother in 2008, Respondent began using oxycodone without a physician's prescription, and became addicted to the painkiller. On July 7, 2010, Respondent was arrested for accepting two hundred and fifty-one (251) oxycodone pills (30 mg) and charged with trafficking in illegal drugs, a first degree felony, to which he entered a Uniform Plea on January 23, 2012. On March 5, 2012, Respondent was adjudicated guilty and sentenced to three (3) years

imprisonment followed by five (5) years of drug offender probation. On March 12, 2012, The Florida Bar filed a Notice of Determination or Judgment of Guilt. On March 13, 2012, the Supreme Court of Florida ordered that Respondent be suspended pursuant to Rule 3-7.2(f), based on the Judgment of Guilt.

At the sanctions hearing conducted on June 18, 2012, five (5) witnesses testified on behalf of Respondent. In addition, the Respondent testified by telephone from Lake Butler Correctional Institution, where he is currently incarcerated. Those witnesses included three (3) members of The Florida Bar and two (2) mental health professionals associated with Florida Lawyers Assistance, Inc. (hereinafter "FLA, Inc."). Lawyers Doug Greenberg, Frank McDermott and Frank Russo testified on the Respondent's behalf. All of these attorneys knew Respondent when he was an Assistant State Attorney for the Sixth Judicial Circuit (from 2003 to 2008) and thereafter, when he operated a private criminal defense practice. The lawyers variously described Respondent as professionally competent, fair and a zealous advocate for his clients and always prepared. Mr. Russo testified that in the recent past, Respondent took over a case initially handled by Mr. Russo's office. Mr. Russo reported that Respondent thereafter succeeded in obtaining a not guilty verdict in a difficult case. Mr. Greenberg also testified that he referred cases to Respondent.

Additionally, Mr. Fairlie Brinkley and Ms. Jodi DeSciscio, licensed mental health professionals associated with FLA, Inc., testified as to Respondent's addiction to painkillers and his efforts in recovery from his addiction. Both witnesses described the Respondent's diagnosis as being complex personality disorder, major depressive disorder, general anxiety disorder and opiate dependency. In late July, 2010, Mr. Brinkley established a treatment plan of individual counseling and peer group counseling for Respondent, post arrest. Respondent attended weekly, and according to the witness, Respondent responded well to the treatment plan. Prognosis was described as good, based on Respondent being "clean" for over a year.

Mr. Brinkley testified that Respondent admitted using alcohol since the age of 14 or 15, but because of bad hangovers, Respondent did not drink "much". Respondent further admitted to Mr. Brinkley that he had been a regular user of other drugs, but "not to the point of not functioning". The lingering last illness and death of Respondent's mother some three years earlier was attributed by

Respondent as being the cause of his increased use of drugs. Respondent also told Mr. Brinkley that at the time of his arrest, his wife was undergoing a difficult pregnancy. Mr. Brinkley testified that Respondent told him that he planned to use the oxycodone to help his wife systematically wean herself from using drugs during her pregnancy. Mr. Brinkley acknowledged that this "weaning" was not presented to her obstetrician, and that this decision represented "horrifically bad judgment".

Ms. Jodie DeSciscio is a psychotherapist in private practice, whose first contact with Respondent was in August, 2011. She saw him on a regular basis in group and in individual therapy sessions, until his incarceration in April, 2012. She described him as a valuable member of the group, and further described Respondent as "embracing recovery". She opined that his prognosis for continued sobriety was very good and he demonstrated a likelihood of long term recovery.

According to the testimony of Respondent, he first began using pain killers in 2008, in order to help him deal with his mother's death. His wife has a drug problem as well which pre-dated his addiction. She had previously received treatment at Shands Medical Center at some prior time. Respondent testified that he and his wife were using oxycodone together.

According to the testimony of Respondent, on several occasions (which he described as "less than five") prior to the incident resulting in his arrest, Respondent received pills from former drug case clients in lieu of payment on their respective accounts. On a "handful" of occasions, he would obtain pills on his own. In addition, two former clients provided pills to his wife. He also testified that on most occasions ("95-97% of the time"), his wife would obtain pills for both of them, either "off the street" or from pain clinics. He explained that he never went to pain clinics because he knew that he could get caught.

Respondent further testified that prior to the incident of July 7, 2010, he and his wife had expended approximately $50,000.00 for fertility treatments and, at the time of the subject incident, his wife was pregnant with triplets. Respondent testified that he had "pretty much" stopped using drugs several weeks prior to this incident, but his wife was still addicted. She was taking 7-8 oxycodone pills a day when they learned of the pregnancy. He testified that he planned on using the 250 oxycodone pills to set up a systematic weaning of his wife from the addiction to these pills. Respondent admitted that both he and his wife consumed one pill each

after accepting these pills, and further acknowledged that he would have taken "his fair share" of them, if he had the opportunity to do so. Upon inquiry by the undersigned, Respondent stated that, notwithstanding his wife's pregnancy, they never consulted her obstetrician concerning the use of oxycodone during the pregnancy or the proper and safe manner of her being weaned from such medication. Respondent stated that he and his wife did not consult her obstetrician because they were fearful that DCF would become involved and take the children. Ultimately, healthy twins were born of this pregnancy.

Respondent is currently incarcerated and presumably will remain so for the balance of his three year sentence. Throughout this proceeding, Respondent displayed remorse. Shortly after his arrest, Respondent entered into treatment with Florida Lawyers Assistance, Inc. and has been successful in his interim rehabilitation. He apologized to the Court and to the Bar for what he had done.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

4-8.4(b); to wit, 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. STANDARDS FOR IMPOSING LAWYER SANCTIONS

Important factors considered by this referee in recommending a disciplinary sanction are the duties violated, the lawyer's mental state at the time, the potential or actual injury caused by the misconduct and also aggravating and mitigating factors. I have reviewed those standards and heard argument of counsel, with the bar arguing that Respondent fits within Standard 5.11 and should be disbarred. Conversely, Respondent has urged this Referee to recommend a three (3) year suspension as the appropriate sanction in this case, and in support, suggests Standard 5.12 and 10.3.

In making my recommendation, I have also taken into consideration the three purposes of discipline. The sanction must be fair to society, fair to respondent and severe enough to deter others who might similarly violate the rules regulating The Florida Bar. Florida Bar v. Lord, 433 so. 2d 983 (Fla. 1983).

I considered the following Standards prior to recommending discipline:

5.0 Violations of Duties Owed to the Public
5.1 Failure to Maintain Personal Integrity

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

5.11 Disbarment is appropriate when:

(a) lawyer is convicted of a felony under applicable law; or

(c) a lawyer engages in the sale, distribution or importation of controlled substances; or

(e) a lawyer attempts or conspires or solicits another to commit any of the offenses listed in sections (a)-(d).

5.12 Suspension is appropriate when a lawyer knowingly engages in criminal conduct which is not included with Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

10.0 Standard for Imposing Lawyer Sanctions in Drug Cases

10.3 Absent the existence of aggravating factors, the appropriate discipline for an attorney found guilty of felonious conduct as defined by Florida state law, involving the personal use and/or possession of a controlled substance who has sought and obtained assistance from F.L.A., Inc., or a treatment program approved by F.L.A., Inc. as described in paragraph 10.1, would be as follows:

(a) a suspension from the practice of law for a period of 91 days or 90 days if rehabilitation has been proven; and

(b) a three- year period of probation, subject to possible early termination or extension of said probation, with a condition that the attorney enter into a rehabilitation contract with F.L.A., Inc., prior to re-instatement.

10.4 The provisions of discipline enumerated in paragraphs two and three above would not be applicable to:

(b) an accused attorney involved in conduct covered by Standard 5.11; and/or

(c) an accused attorney where aggravating factors as defined below (referring to Standard 9.22 and 12.0) are found to exist.

Counsel for Respondent candidly argues for a 3 year suspension with probationary conditions, rather than a 91 day suspension or 3 year probation.

V. CASE LAW

The following cases were argued in support of the position of the Respondent and considered by the undersigned:

The Florida Bar v. Stewart, 66 So. 2d 304 (Fla. 2011). A ninety-one (91) day suspension was ordered for Stewart, for possession of Oxycodone, a third degree felony; driving with a suspended or revoked driver's license, a third-degree felony; and a violation of an injunction against domestic violence, a first-degree misdemeanor; and operating an unregistered vehicle, a misdemeanor. He was sentenced to one year of community control with residential drug treatment and his probation was re-instated.

The Florida Bar v. Clark, 582 So. 2d 620 (Fla. 1991). A three-year (3) suspension was upheld for Clark, who assisted his childhood friend with the importation of three hundred pounds of marijuana into St. Petersburg, Florida and was sentenced to three years imprisonment after pleading guilty to federal felony drug charges. This appeared to be an isolated incident and Clark's only involvement in criminal activity.

The Florida Bar v. Rosen, 495 So. 2d 180 (Fla. 1986). A three-year (3) suspension was upheld for Rosen, who was adjudicated guilty on federal felony charges of knowingly and intentionally possessing cocaine with intent to distribute.

The Florida Bar v. Pettie, 424 So. 2d 734 (Fla. 1982). A one-year (1) suspension was imposed for Pettie who was "involved in a criminal conspiracy to import approximately 15,000 pounds of cannabis." Id. at 735. Pettie knowingly allowed conspiracy meetings to take place at his law offices; he formed a corporation to hold title to an airplane to be used for the conspiracy; he purchased a residence to house the drugs; he purchased a truck for use in the conspiracy; and the conspirators were originally legitimate clients of the respondent. Id. at 735-36. The Court observed, however, that absent the cooperation of Mr. Pettie with law enforcement authorities, his direct and knowing participation in serious felonies warrant disbarment. Id. at 736.

The Florida Bar v. Jahn, 509 So. 2d 285, 286 (Fla. 1987). A three-year (3) suspension was imposed for Jahn, who pled nolo contendere and was adjudicated guilty of delivery of cocaine to a minor, a first-degree felony, and possession of cocaine, a third-degree felony. Jahn was intravenously injecting a fifteen-year-old girl with cocaine in a drugstore bathroom in the former charge; he was arrested for intravenously injecting a nineteen-year-old girl with cocaine regarding the latter charge.

The Florida Bar v. Cohen, 919 So. 2d 384 (Fla. 2005). A ninety-day (91) suspension was imposed after Cohen pleaded nolo contendere to felony possession of marijuana, driving under the influence, reckless driving in wrong direction on interstate highway, fleeing and eluding officers, and resisting arrest without violence. He was adjudicated guilty on the driving under the influence charge, but adjudication was withheld on all other charges. The Court's 91 day suspension was increased from a 30 day suspension recommendation.

The undersigned finds the following cases to be persuasive under the facts of this case:

Florida Bar v. McKeever, 766 So.2d 992 (Fla. 2000). The Court held in part that the presumptive penalty for a felony conviction is disbarment.

Florida Bar v. Liberman, 43 So.3d 36 (Fla. 2010). The Court held in part that Disbarment of an attorney convicted of a serious felony offense cannot be interpreted as unfair to him. Illegal behavior involving moral turpitude demonstrates intentional disregard for the very laws an attorney is bound to uphold. Disbarment under these circumstances also serves best to encourage rehabilitation and to protect the public in that it ensures respondent may be readmitted only upon full compliance with the rules and regulations governing admissions to the Bar. Finally, the Court concluded that only disbarment can measure up to the gravity of a conviction for illegal drug trafficking and serve as a sufficient deterrent for others who might be tempted to engage in similar illegal activity.

VI. REFEREE'S APPLICATION OF CASE LAW

Respondent's drug addiction might have contributed to his committing the felony offense, but that was not enough to overcome the presumption of disbarment for violating Rule 4-8.4(b) of the Rules Regulating the Florida Bar. Here, as in *Liberman*, there has been no showing that Respondent was essentially incapacitated by his addiction, so the presumption for disbarment still applies. Respondent, much like Mr. Liberman, was not incapacitated by his addiction. Respondent continued to practice law in spite of his addiction. Respondent was arrested in his office exchanging legal representation for controlled substances, conduct in which by his own admission, he had engaged several times before. His standing and experience as a former prosecutor and criminal defense attorney underscores his knowing participation in repeated criminal activity.

Additionally, that his stated reasons for obtaining the subject quantity of oxycodone was for the purpose of "weaning" his pregnant, addicted wife from these pills, and doing so without consulting her obstetrician for fear of having DCF advised, is a significant aggravating factor. It demonstrates that Respondent knowingly acted in his own self-interest over the well-being of others, and specifically demonstrated his reckless disregard for the safety of the unborn fetuses as well as the safety of his wife.

Accordingly, despite the existence of some mitigation, serious aggravating factors cannot be overcome. Therefore the presumption of disbarment for his felony drug trafficking conviction is conclusive. Thus, disbarment would be an appropriate resolution to this case.

VII. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

It is recommended that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

A. Disbarment.

B. Payment of The Florida Bar's costs in these proceedings.

VIII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following:

A. Personal History of Respondent:
Age: 35
Date admitted to the Bar: September 17, 2002

B. Aggravating Factors:

9.22(c) a pattern of misconduct;
9.22(h) vulnerability of victim (in this case, his wife and multiple fetuses); and
9.22(i) substantial experience in the practice of law, with emphasis in criminal law.

Mitigating Factors:

9.32(a) absence of a prior disciplinary record;
9.32(c) personal or emotional problems;
9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
9.32(j) interim rehabilitation;
9.32(k) imposition of other penalties or sanctions; and,
9.32(l) remorse.

IX. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

It is recommended that The Florida Bar's Motion to Assess Costs be granted. I find the following costs were reasonably incurred by The Florida Bar:

Administrative costs pursuant to Rule 3-7.6(q)(1)(I)	$1,250.00
Bar Counsel Costs (mileage, parking)	
6-18-12 Sanctions Hearing	$12.77
Court Reporters' Fees	
6-18-12 Sanctions Hearing	$225.00
Investigative Expenses	$32.00
Investigative Costs	$251.00
TOTAL	**$1,770.77**

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses, together with the foregoing itemized costs, be charged to the respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case become final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 2nd day of August, 2012.

/s/_____
Honorable Herbert M. Berkowitz
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 U.S. Mail to Respondent's Counsel, , Scott Kevork Tozian, at Smith Tozian & Hinkle P.A., 109 N Brush St Ste. 200 Tampa, FL 33602-4157, Kenneth L. Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; Leonard Evans Clark, Bar Counsel, The Florida Bar, Tampa Branch Office, 4200 George J. Bean Parkway, Suite 2580,Tampa, Florida 33607-1496; on this 2nd day of August, 2012.

_____

Herbert Mattis Berkowitz
Referee