

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v.

JOSEPH BERNSTEIN,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2016-50,300(17A)FES

_____/

PETITION FOR EMERGENCY SUSPENSION

This petition of The Florida Bar seeks emergency relief and requires the immediate attention of the Court pursuant to R. Regulating Fla. Bar 3-5.2. The Florida Bar seeks the emergency suspension of Joseph Bernstein, Attorney No. 228397, from the practice of law in Florida based on facts that establish clearly and convincingly that Joseph Bernstein appears to be causing great public harm as will be shown by facts supported by the affidavit of Carl Totaro, CPA, Florida Bar Branch Staff Auditor, attached hereto as **The Florida Bar Exhibit “A,”** as follows:

AS TO ALL COUNTS

1. The filing of this Petition for Emergency Suspension has been authorized by the Executive Director of The Florida Bar.

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2. Respondent, Joseph Bernstein, is and at all times hereinafter mentioned, was a member of The Florida Bar and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

3. Respondent is currently the subject of a Bar disciplinary matter which has been assigned The Florida Bar file number 2016-50,300(17A).

4. The Bar's investigation of this matter has indicated that respondent has misappropriated at least \$164,000.00 in funds that should have been held in trust and applied to other purposes. Thereafter, the respondent paid restitution totaling \$40,000.

5. The enclosed affidavit of Carl Totaro, CPA, Florida Bar Branch Staff Auditor, was used by the Bar to support this Petition for Emergency Suspension.

6. After receiving a complaint of misappropriation of funds, The Florida Bar conducted a compliance audit of respondent's trust account from the period of January 1, 2015 through October 31, 2015. The trust accounts examined were as follows: Joseph L. Bernstein P.A. Trust account number ending in #9059 at Bank of America; Joseph L. Bernstein P.A. Trtee Real Estate Trust Account number ending with #5582 at Bank of America.

COUNT I (REAL ESTATE CLOSING NUMBER ONE)

7. Respondent served as an escrow agent for a real estate closing for Las Olas Investments and Holdings, Inc. (Seller)/Husman Khan and Joan Khan (Borrower).

8. On April 2, 2015, a check from Husman Khan in the amount of \$10,000.00 was deposited into trust account #9059 regarding the closings.

9. On April 17, 2015 a wire transfer from the Joan Khan Declaration of Trust in the amount of \$157,632.86 was deposited into trust account #9059 for the real estate transaction.

10. As of April 17, 2015, respondent was holding a total of \$167,632.86 in trust for the Las Olas/Khan closing.

11. As part of the closing, the HUD-1 Settlement Statement showed that respondent was to pay off a Fort Lauderdale City lien in the amount of \$19,751.22 and certain real estate taxes in the amount of \$3,291.00 using a portion of the monies held in trust.

12. As of the date of the closing, April 17, 2015, trust account #9059 had a balance of \$505,776.74 and trust account #5583 had a balance of \$161,255.50.

13. Respondent failed and refused to pay off the Fort Lauderdale City lien and the real estate taxes.

14. As respondent failed to pay the lien and taxes as required, respondent should have been holding both sums, totaling \$23,042.22, in trust.

15. As of October 31, 2015, the end of the audit period, trust account #9059 had a balance of \$9,775.74 and trust account #5582 had a balance of \$991.83.

16. The evidence is clear and convincing that respondent misappropriated the \$23,042.22 that were payments for the Fort Lauderdale City lien and the real estate taxes relating to the Las Olas/Khan closing.

17. Respondent had a fiduciary duty to exercise reasonable skill and ordinary diligence in holding and delivering possession of the escrowed property.

18. Respondent had to disburse the escrow funds in strict accordance with the principals' agreement. Respondent failed to apply the money entrusted to him for the specific purpose for which it was intended.

19. Due to respondent's failure to pay the amounts as required, Old Republic Nation Title Insurance Agency was forced to pay the outstanding lien and the real estate taxes in order to remove any cloud from the title of the property.

20. By the conduct set forth above, respondent violated R. Regulating Fla. Bar 3-4.2 [Violation of the Rule of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 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 within or outside the State of Florida and whether or not the act is a felony or misdemeanor may constitute a cause for discipline.]; 4-1.15 [A lawyer shall comply with The Florida Bar Rules Regulating Trust Accounts.]; 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(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.]; and 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.].

COUNT II (REAL ESTATE CLOSING NUMBER TWO)

21. Respondent served as escrow agent for a real estate closing for Carla Cameron (Seller)/Jennifer E. Revilla (Borrower).

22. On April 29, 2015, a credit from Capital One, N.A. in the amount of \$5,000.00 was received into trust account #9059. On June 2, 2015, a cashier's check from Capital One in the amount of \$41,040.00 was deposited into trust account #9059. Finally, on June 15, 2015 a wire transfer from National Bank of Kansas City in the amount of \$341,767.43 was deposited into trust account #9059. All three deposits were for the Cameron/Revilla closing.

23. As of June 15, 2015, the date of the closing, a total of \$387,807.43 was deposited into trust for the Cameron/Revilla closing.

24. The HUD-1 Settlement statement indicated a "payoff of first mortgage loan" in the amount of \$243,416.67.

25. This figure was extracted from a Wells Fargo Home Mortgage Payment statement dated June 10, 2015.

26. Respondent failed to pay off the mortgage loan as required.
27. A second Wells Fargo Home Mortgage payment statement dated June 18, 2015 for the property relating to this real estate closing indicated that the total amount due through July 1, 2015 was \$242,318.12.
28. The evidence demonstrates that another payment was made relating to the mortgage after the June 15, 2015 closing date.
29. On July 9, 2015, a wire transfer in the amount of \$100,000.00 was disbursed from trust account #5582 to Wells Fargo Bank N.A.
30. This wire transfer was a principal down payment for the Cameron/Revilla mortgage that was to have been paid off after the June 15, 2015 closing.
31. Again, respondent failed to pay off the mortgage in full as required.
32. Since respondent failed to pay off the mortgage as required, respondent should have been holding \$143,416.67 in trust for the Cameron/Revilla matter.
33. As of the date of the closing, June 15, 2015, trust account #9059 had a balance of \$194,781.75 and trust account #5582 had a balance of \$51,156.53.
34. As of October 31, 2015, the end of the audit period, trust account #9059 had a balance of \$9,775.74 and trust account #5582 had a balance of \$991.83.

35. The evidence is clear and convincing that respondent misappropriated at least \$141,371.88 that he should have been holding in trust for the Cameron/Revilla matter.

36. Respondent had a fiduciary duty to exercise reasonable skill and ordinary diligence in holding and delivering possession of the escrowed property.

37. Respondent had to disburse the escrow funds in strict accordance with the principals' agreement. Respondent failed to apply the money entrusted to him for the specific purpose for which it was intended.

38. Based upon respondent's failure to remit the funds to pay off the mortgage, Old Republic National Insurance Company disbursed a wire transfer to Wells Fargo Bank N.A. in the amount of \$141,371.88 to satisfy the payoff of the first mortgage loan in the Cameron/Revilla matter.

39. By the conduct set forth above, respondent violated R. Regulating Fla. Bar 3-4.2 [Violation of the Rule of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; 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 within or outside the State of Florida and whether or not the act is a felony or misdemeanor may constitute a cause for discipline.]; 4-1.15 [A lawyer shall comply with The Florida Bar Rules Regulating Trust Accounts.]; 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(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.];

and 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.].

COUNT III (COMMINGLING RESPONDENT'S OWN FUNDS WITH CLIENTS' FUNDS)

40. The audit further determined that respondent commingled personal funds with trust funds.

41. On February 18, 2015, an online banking transfer from the Joseph L. Bernstein P.A. Operating account number ending in #8778 in the amount of \$23,000.00 was deposited into trust account #9059.

42. On February 19, 2015 check #1367 in the amount of \$1,000.00 was issued from trust account #5582 to trust account #9059. On February 20, 2015, check # 1367 was deposited into trust account #9059. Such check was labeled "fees-Old Willow/Blue904 reimburse 9059."

43. On September 15, 2015, an online banking transfer from the Joseph L. Bernstein P.A. Operating account #8778 in the amount of \$400.00 was deposited into trust account #9059.

44. By placing either personal funds and/or earned fees and/or operating account funds into his trust account, respondent commingled funds.

45. By the conduct set forth above, respondent violated R. Regulating Fla. Bar 5-1.1(a) [A lawyer must hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's

possession in connection with a representation. All funds, including advances for fees, costs, and expenses, must be kept in a separate bank or savings and loan association account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person and clearly labeled and designated as a trust account except: (A) A lawyer may maintain funds belonging to the lawyer in the lawyer's trust account in an amount no more than is reasonably sufficient to pay bank charges relating to the trust account; and (B) A lawyer may deposit the lawyer's own funds into trust to replenish a shortage in the lawyer's trust account. Any deposits by the lawyer to cover trust account shortages must be no more than the amount of the trust account shortage, but may be less than the amount of the shortage. The lawyer must notify the bar's lawyer regulation department immediately of the shortage in the lawyer's trust account, the cause of the shortage, and the amount of the replenishment of the trust account by the lawyer.].

COUNT IV (TRUST ACCOUNT VIOLATIONS)

46. Respondent did not maintain minimum trust accounting records required by Rule 5-1.2(b) of the Rules Regulating The Florida Bar as follows:

A. Deposit slips (originals or clearly legible copies) for trust account #9059 and #5582 [Rule 5-1.2(b)(2)];

B. Cancelled checks (originals or clearly legible copies) for trust account #5582 [Rule 5-1.2(b)(3)] for the period of January 1, 2015 through June 30, 2015;

C. Other documentary support for all disbursements and transfers from the trust account for trust account #9059 and #5582 [Rule 5-1.2(b)(4)];

D. Cash receipts and disbursements journals related to trust account #9059 and #5582 [Rule 5-1.2(b)(6)];

47. The audit further revealed that respondent did not follow minimum trust accounting procedures required by Rule 5-1.2(d) of the Rules Regulating The Florida Bar in that:

E. Monthly bank reconciliations for trust accounts #9059 and #5582 [Rule 5-1.2(d)(1)(A)] for the period of January 2015 through September 2015; and

F. Monthly comparisons for trust accounts #9059 and #5582 [Rule 5-1.2(d)(1)(B)] for the period of January 2015 through September 2015.

48. By the conduct set forth above, respondent violated R. Regulating Fla. Bar 4-1.15 [A lawyer shall comply with The Florida Bar Rules Regulating Trust Accounts.]; 5-1.2(b)(2) [The following are the minimum trust accounting records that must be maintained: (2) original or clearly legible copies of deposit slips if the copies include all data on the originals and, in the case of currency or coin, an

additional cash receipts book, clearly identifying the date and source of all trust funds received and the client or matter for which the funds were received.];

5-1.2(b)(3) [The following are the minimum trust accounting records that must be maintained: (3) original canceled checks or clearly legible copies of original

canceled checks for all funds disbursed from the trust account, all of which must:

(A) be numbered consecutively; (B) include all endorsements and all other data and tracking information; and (C) clearly identify the client or case by number or

name in the memo area of the check.]; 5-1.2(b)(4) [The following are the minimum

trust accounting records that must be maintained: (4) other documentary support

for all disbursements and transfers from the trust account including records of all

electronic transfers from client trust accounts, including: (A) the name of the

person authorizing the transfer; (B) the name of the recipient; (C) confirmation

from the banking institution confirming the number of the trust account from

which money is withdrawn; and (D) the date and time the transfer was

completed.]; 5-1.2(b)(6) [The following are the minimum trust accounting records

that must be maintained: (6) a separate cash receipts and disbursements journal,

including columns for receipts, disbursements, transfers, and the account balance,

and containing at least: (A) the identification of the client or matter for which the

funds were received, disbursed, or transferred; (B) the date on which all trust funds

were received, disbursed, or transferred; (C) the check number for all

disbursements; and (D) the reason for which all trust funds were received, disbursed, or transferred.]; 5-1.2(d)(1)(A) [The minimum trust accounting procedures that must be followed by all members of The Florida Bar (when a choice of laws analysis indicates that the laws of Florida apply) who receive or disburse trust money or property are as follows: (1) The lawyer is required to make monthly: (A) reconciliations of all trust bank or savings and loan association accounts, disclosing the balance per bank, deposits in transit, outstanding checks identified by date and check number, and any other items necessary to reconcile the balance per bank with the balance per the checkbook and the cash receipts and disbursements journal.]; and 5-1.2(d)(1)(B) [The minimum trust accounting procedures that must be followed by all members of The Florida Bar (when a choice of laws analysis indicates that the laws of Florida apply) who receive or disburse trust money or property are as follows: (1) The lawyer is required to make monthly: (B) a comparison between the total of the reconciled balances of all trust accounts and the total of the trust ledger cards or pages, together with specific descriptions of any differences between the 2 totals and reasons for these differences.].

WHEREFORE, based on the aforementioned facts, the Bar asserts the respondent has caused, or is likely to cause, immediate and serious harm to clients and/or the public and that immediate action must be taken for the protection of the

respondent's clients and the public. Therefore, pursuant to R. Regulating Fla. Bar 3-5.2, The Florida Bar respectfully requests this court to:

A. Suspend respondent from the practice of law until further order of this Court.

B. Order respondent to accept no new clients from the date of this Court's order and to cease representing any clients after 30 days from the date of this Court's order. In addition, respondent shall cease acting as personal representative for any estate, as guardian for any ward, and as trustee for any trust and will seek to withdraw from said representation within 30 days from the date of this Court's order and will immediately turn over to any successor the complete financial records of any estate, guardianship or trust upon the successor's appointment.

C. Order respondent to furnish a copy of the suspension order to all clients, opposing counsel and courts before which Joseph Bernstein is counsel of record as required by Rule 3-5.1(h) of the Rules of Discipline of The Florida Bar and to furnish Staff Counsel with the requisite affidavit listing all clients, opposing counsel and courts so informed within 30 days after receipt of the Court's order.

D. Order respondent to refrain from withdrawing or disbursing any money from any trust account related to respondent's law practice until

further order of this Court, a judicial referee appointed by this Court or by order of the Circuit Court in an inventory attorney proceeding instituted under R. Regulating Fla. Bar 1-3.8, and to deposit any fees, or other sums received in connection with the practice of law or in connection with the respondent's employment as a personal representative, guardian or trustee, paid to the respondent after issuance of this Court's order of emergency suspension, into a specified trust account from which withdrawal may only be made in accordance with restrictions imposed by this Court. Further, respondent shall be required to notify Bar Counsel of The Florida Bar of the receipt and location of said funds within 30 days of the Order of Emergency Suspension.

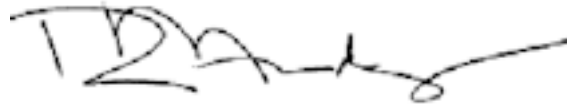
E. Order respondent not withdraw any money from any trust account or other financial institution account related to respondent's law practice or transfer any ownership of any real or personal property purchased in whole or in part with funds properly belonging to clients, probate estates for which respondent served as personal representative, guardianship estates for which respondent served as guardian, and trusts for which respondent served as trustee without approval of this Court, a judicial referee appointed by this Court or by order of the Circuit Court in an inventory attorney proceeding instituted under R. Regulating Fla. Bar 1-3.8.

F. Order respondent to notify, in writing, all banks and financial institutions where the respondent maintains an account related to the practice of law, or related to services rendered as a personal representative of an estate, or related to services rendered as a guardian, or related to services rendered as a trustee, or where respondent maintains an account that contains funds that originated from a probate estate for which respondent was personal representative, guardianship estate for which respondent was guardian, or trust for which respondent was trustee, of the provisions of this Court's order and to provide all the aforementioned banks and financial institutions with a copy of this Court's Order. Further, respondent shall be required to provide Bar Counsel with an affidavit listing each bank or financial institution respondent provided with a copy of said Order.

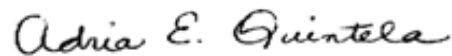
G. Order respondent to immediately comply with and provide all documents and testimony responsive to a subpoena from The Florida Bar for trust account records and any related documents necessary for completion of a trust account audit to be conducted by The Florida Bar.

H. And further to authorize any referee appointed in these proceedings to determine entitlement to funds in any trust account(s) frozen as a result of an Order entered in this matter.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that this Petition For Emergency Suspension has been Efiled with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida with a copy provided via email to James Stewart Lewis, Jr., Counsel for Respondent, at jimlewisforflorida@yahoo.com; using the Efiling Portal and that a copy has been furnished by United States Mail via certified mail No. 7014 1200 0001 2141 4998, return receipt requested, James Stewart Lewis, Jr., Counsel for Respondent, whose record Bar address is 200 SE 6th St., Suite 200, Fort Lauderdale, FL 33301-3420, and via email to Roberto Mendez, Bar Counsel, rmendez@flabar.org, on this 7th day of March, 2016.

Adria E. Quintela

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