



THE FLORIDA BAR

CYPRESS FINANCIAL CENTER, SUITE 900
5900 NORTH ANDREWS AVENUE
FT. LAUDERDALE, FL 33309

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

954/772-2245
WWW.FLABAR.ORG

October 22, 2004

Thomas D. Hall, Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399

Re: Eliot I. Bernstein and P. Stephen Lamont v. The Florida Bar
Supreme Court Case No. SC04-1078

Dear Mr. Hall:

Enclosed for filing please find the Response To Petition Of Eliot I. Bernstein And P. Stephen Lamont.

Sincerely yours,

Eric Montel Turner
Chief Branch Discipline Counsel

EMT/es

Enclosure

cc: Eliot I. Bernstein & P. Stephen Lamont

IN THE SUPREME COURT OF FLORIDA

ELIOT I. BERNSTEIN

And

P. STEPHEN LAMONT

Case No. SC04-1078

Petitioners,

v.

THE FLORIDA BAR,

Respondent.

_____ /

**RESPONSE TO PETITION OF ELIOT I. BERNSTEIN
AND P. STEPHEN LAMONT**

COMES NOW, The Florida Bar, by and through undersigned counsel, and files this response to Petitioners' Petition for Injunctive Relief.

1. The Petitioners seek to require The Florida Bar to institute disciplinary proceedings against their former attorney, Christopher Wheeler.
2. The Bar initiated review of the complaint on February 27, 2003.
3. Bar Counsel determined insufficient evidence of misconduct existed and advised petitioners as required under R. Regulating Fla. Bar 3-7.3(d).
4. Petitioners were unhappy with the decision by bar counsel and sought further review.

5. Under Bar policy, a complainant may request review of a decision not to prosecute by writing to the Chief Branch Discipline Counsel. If the matter was reviewed by Bar Counsel, it will be reviewed by the Chief Branch Discipline Counsel. The review may continue with the case being referred to the chair of a grievance committee with final authority resting in the Board of Governors.

6. The petitioners' complaint was reviewed by Bar Counsel, Chief Branch Discipline Counsel, chair of the grievance committee and a Board member. Each decided the Bar should not institute proceedings against Christopher Wheeler.

7. The petitioners were advised in writing as to the outcome of each review. (Attached are exhibits A – F advising petitioner of the review at each stage.)

8. This court has previously held in Tyson v. The Florida Bar, 826 So.2d 565 (Fla. 2003), that complaining witnesses can not demand The Bar file charges. Further, the court held mandamus relief was not appropriate in the attorney discipline procedure as no private rights of the complaining witness were affected.

9. In the case at hand, petitioners requested the Bar to review their civil lawsuit as they did not have funds for an attorney to press their claim.

10. The Court has on numerous occasions held disciplinary actions can not be used as a substitute for private civil actions. *See* The Florida Bar v. Smith,

866 So. 2d 41 (Fla. 2004), The Florida Bar v. Della Donna, 583 So. 2d 307 (Fla. 1989), The Florida Bar v. Neale, 384 So. 2d 1264 (Fla. 1980), and The Florida Bar v. Winn, 208 So. 2d 809 (Fla. 1968).

11. After being informed that the Bar would not take action, the petitioners requested The Bar maintain their complaint for five years so that they might bring their civil action later.

12. The petitioners were informed Bar policy required destruction of the records 12 months after the file was closed without a find of misconduct pursuant to policy established in light of Judicial Branch Records Retention Schedule adopted under Florida Rules of Judicial Administration 2.076.

13. The Bar offered the petitioners an opportunity to obtain the file rather than have it destroyed. (See Exhibit G, 07/02/2004 email from Kenneth L. Marvin to Eliot Bernstein) Rather than retrieving the file, petitioners filed this proceeding seeking to obtain attorney work product.

14. After receiving a full review of their complaint, petitioners continue to demand The Bar take extraordinary action to sanction Mr. Wheeler without regard for Mr. Wheeler's right to be treated like other attorneys. They would have The Bar and this Court overturn well established law and essentially bring a malpractice action on their behalf.

WHEREFORE, it appears Petitioners are not entitled to have The Florida Bar institute discipline procedures against Christopher Wheeler as review of the petitioners' complaint has occurred and the file has been offered to the petitioners, The Bar requests the Court dismiss the petition and allow The Bar to destroy the records which were scheduled to be destroyed on July 1, 2003, if petitioners do not obtain them within 10 days of this court's order.

Respectfully submitted,



ERIC MONTEL TURNER
Bar Counsel
The Florida Bar
5900 North Andrews Avenue, Suite 900
Fort Lauderdale, Florida 33309
(954) 772 2245
Florida Bar No. 37567

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Response to Petition of Eliot I. Bernstein and P. Stephen Lamont was delivered by U. S mail to Eliot I Bernstein, 10158 Stonehenge Circle, Suite 801, Boynton Beach, Florida 33437; and a copy has been furnished by First Class mail to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300 this 22 day of October, 2004.



ERIC MONTEL TURNER



THE FLORIDA BAR

CYPRESS FINANCIAL CENTER, SUITE 835
5900 NORTH ANDREWS AVENUE
FT. LAUDERDALE, FL 33309

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

954/772-2245
WWW.FLABAR.ORG

July 1, 2003

PERSONAL/FOR ADDRESSEE ONLY

Mr. Eliot Bernstein
10158 Stonehenge Circle #801
Boynton Beach, Florida 33437

Re: Your complaint against Christopher Clark Wheeler
The Florida Bar File No. 2003-51,109(15C)

Dear Mr. Bernstein:

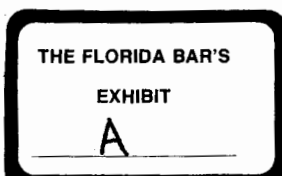
I have completed my review of your complaint, Mr. Wheeler's response, your letter of rebuttal and Mr. Wheeler's response thereto. I have also reviewed the banker's box of civil pleadings and orders, deposition transcripts, legal billing statements and other materials you submitted with the foregoing. Based on this review, I have found no basis for a bar investigation at this time.

Apparently, you retained Mr. Wheeler's law firm in 1998 to handle matters on behalf of your corporation, Iviewit.Com, Inc. In 2001, the firm sued your company for non-payment of legal bills in excess of \$369,000. Thereafter, your company filed a counterclaim for damages, alleging the same misconduct set forth in your bar complaint, including malpractice. Significant discovery has taken place (and continues), and your case has been set for trial on July 29-31, 2003 (*Proskauer Rose LLP v. Iviewit*, Case No. CA01-04671 AB) in Circuit Court in Palm Beach County, Florida.

Accordingly, the matter you present is a civil dispute which may not be resolved by the intervention of The Florida Bar. This is not to say that The Florida Bar has considered and determined the veracity of Mr. Wheeler's position as to the validity of your specific charges. Rather, because Mr. Wheeler has advanced a viable position, the Bar has deferred its consideration of the matter until a determination has been made, on the merits, by the civil court before which the matter is currently pending.

Based on the foregoing, and absent any basis for further ethical inquiry, I have dismissed your complaint and directed that The Florida Bar's file on this matter be closed. This determination does not preclude you from refileing this matter for further bar consideration, after the civil trial is concluded.

Please note that a copy of this file will be retained by The Florida Bar for one (1) year, at which time it will be destroyed. It is suggested to you and the attorney who is the subject of your complaint to maintain a complete copy of this file for future reference, if needed.

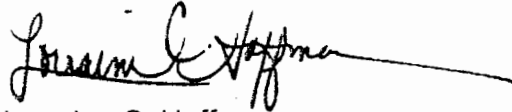


PUBLIC RECORD

Mr. Eliot Bernstein
Page 2
July 1, 2003

On behalf of The Florida Bar, I thank you for the opportunity to review and respond to your complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Lorraine C. Hoffmann", with a long horizontal line extending to the right.

Lorraine C. Hoffmann
Assistant Staff Counsel

LCH/dm

cc: Christopher Clark Wheeler



THE FLORIDA BAR

CYPRESS FINANCIAL CENTER, SUITE 900
5900 NORTH ANDREWS AVENUE
FT. LAUDERDALE, FL 33309

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

954/772-2245
WWW.FLABAR.ORG

January 20, 2004

PERSONAL/FOR ADDRESSEE ONLY

Eliot Bernstein
10158 Stonehenge Circle, #801
Boynton Beach, Florida 33437

RE: Your complaint against Christopher Clark Wheeler, Esq.
The Florida Bar File No. 2003-51,109(15C)

Dear Mr. Bernstein:

Your request to reopen the investigation against Christopher Wheeler is denied for the following reasons. Your complaint was essentially an action for malpractice. The Florida Bar does not determine civil claims. The violation of any ethical rule does not and should be assumed to demonstrate the violation of any legal duty. Your failure to fully prosecute your civil claim does not require The Florida Bar to otherwise consider your complaint.

The evidence before us indicates your company was represented by patent attorneys from Meltzer, Lippe, Goldstein & Schlissel and Foley and Lardner, not Mr. Wheeler or other Proskauer Rose attorneys, to state your claims to patents for the technology. Mr. Wheeler and his firm may have acted as general counsel, however, the ethical duty imposed upon them did not include filing the patent applications.

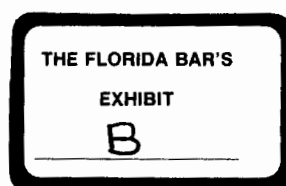
This file remains closed.

We can not honor your request to maintain records for five years. The Florida Bar destroys records of complaints where no discipline is imposed at one year after closing. This file will be destroyed on July 1, 2004.

Sincerely yours,

Eric Montel Turner
Chief Branch Discipline Counsel

EMT/es



PUBLIC RECORD

CONFIDENTIAL

Memorandum

To: Lorraine Hoffman
From: Joy Bartmon
Re: Complaint of Elliot I. Bernstein/Christopher Wheeler
Date: May 20, 2004

I have reviewed the Complaint against Christopher Wheeler, made by Elliot I. Bernstein and P. Stephen Lamont of I View It Technologies, Inc. I have reviewed the attorney's responses to the complaint and the several replies and responses that went back and forth.

Distilled to its base, the complaint alleges that Wheeler (1.) Had a conflict of interest in that he represented both I View It and Warner Bros. to whom I View It's technology was offered, and (2.) Wheeler and his firm failed to handle competently certain patent work for I View It.

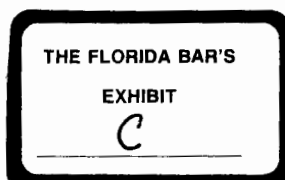
As to the first part, I do not see a conflict of interest. It appears to me that Wheeler's firm put together two clients. The I View It technology was not the only technology of its kind in the market and I View It was in competition with others. Warner Bros. declined to enter into a deal with I View It.

As to the second part, Wheeler's claim that his firm was not hired to do the patent work, and did not do the patent work, is supported by their written retainer contract. I do not see any support for the claim that Wheeler's firm breached an ethical duty with regard to the patent applications. For example, I do not see correspondence wherein Wheeler or his firm promise to do the patent applications, or speak to that at all. I do not see any correspondence or documentation that Wheeler or anyone working with him mislead I View It regarding the progress of the patents.

The claim that Wheeler referred the patent work to an attorney with whom a prior client had an issue regarding unethical conduct without disclosing same, does not prove a breach of any rule of professional conduct.

I do not see anything in the complaint upon which the Bar could base a prosecution of Christopher Wheeler to successful conclusion.

CONFIDENTIAL





THE FLORIDA BAR

CYPRESS FINANCIAL CENTER, SUITE 900
5900 NORTH ANDREWS AVENUE
FT. LAUDERDALE, FL 33309

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

954/772-2245
www.FLABAR.ORG

May 21, 2004

PERSONAL/FOR ADDRESSEE ONLY

Eliot I. Bernstein
Iviewit Holdings, Inc.
10158 Stonehenge Circle, Suite 801
Boynton Beach, FL 33437

RE: Complaint against Christopher Wheeler
The Florida Bar File No. 2003-51,109(15C)

Dear Mr. Bernstein:

I am writing to advise you the review by the committee chair. The chair found there was no conflict of interest and Mr. Wheeler's firm did not agree to handle your patent work. Further, the chair found the referral to other counsel for patent work, without disclosing his prior claims of unethical conduct, was not unethical.

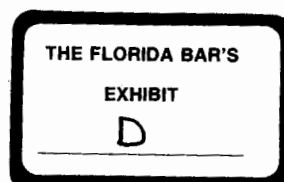
This file remains closed. It will be destroyed in accordance with our records policy on July 1, 2004.

Sincerely yours,

Eric Montel Turner
Chief Branch Discipline Counsel

EMT/es

GACBDC REVIEWcbdc chair review\bernstein wheeler close.wpd



PUBLIC RECORD

BOOSE CASEY CIKLIN LUBITZ MARTENS MCBANE & O'CONNELL

A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

JOSEPH L. ACKERMAN, P.A.
LINDA DICKHAUS AGNANT, P.A.
BRUCE G. ALEXANDER, P.A.
JERALD S. BEER, P.A.
WILLIAM R. BOOSE, III, P.A.
JOHN D. BOYKIN, P.A.
JESSICA M. CALLOW
PATRICK J. CASEY, P.A.
RICHARD R. CHAVES
PATRICIA M. CHRISTIANSEN, P.A.
ALAN J. CIKLIN, P.A.
ROBERT L. CRANE, P.A.
RONALD E. CRESCENZO, P.A.
KENT B. FRAZER
JEFFREY M. GARBER
JASON S. HASELKORN, P.A.
CHRISTINE M. HOKE

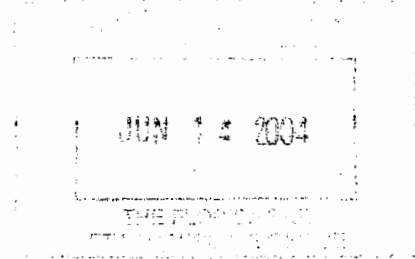
RICHARD A. JAROLEM
BRIAN B. JOSLYN, P.A.
GREGORY S. KINO, P.A.
M. DANIEL LOGAN
CHARLES A. LUBITZ, P.A.
JASON C. MAIER
RICHARD L. MARTENS, P.A.
BRIAN M. O'CONNELL, P.A.
PHIL D. O'CONNELL, P.A.
CHARLES L. PICKETT
MATTHEW N. THIBAUT
DEAN VEGOSEN, P.L.
GARY WALK, P.A.
JONATHAN WASSERMAN
BERNARD WILLIAMS, JR.
JOHN R. YOUNG, P.A.

PHILLIP D. O'CONNELL, SR. (1907-1987)
LOUIS R. MCBANE (RETIRED)

OF COUNSEL
W. JAY HUNSTON, JR., P.A.
MICHAEL J. KENNEDY, P.A.
JOHN L. REMSEN
LEONARD G. RUBIN

515 NORTH FLAGLER DRIVE, SUITE 1900
WEST PALM BEACH, FLORIDA 33401-4343
P.O. BOX 4626
TELEPHONE: (561) 832-5900
FACSIMILE: (561) 833-4209

June 9, 2004



Eric Montel Turner, Esq.
Chief Branch Discipline Counsel
The Florida Bar
Cypress Financial Center
5900 N. Andrews Ave. - Suite 900
Ft. Lauderdale, FL 33309

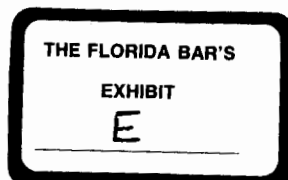
Re: Florida Bar File No. 2003-51,109(15C)

Dear Mr. Turner:

Thank you for your recent correspondence and enclosures regarding the above captioned. I have reviewed the materials you provided to me.

Based on the materials provided, I come to a similar conclusion as did the Chair of the Grievance Committee as well as Bar Counsel. Notwithstanding the allegations of possible malpractice, this is clearly a case for the civil courts. A dispute over fees and a counterclaim for malpractice are not matters The Florida Bar will generally consider under its grievance program. Further, it has been my experience that even an isolated issue of malpractice is not a grievanceable offense. However, if a pattern of malpractice arises, then that shifts the focus to The Florida Bar's obligation to prevent unqualified lawyers from causing harm to the public. Until such time as a pattern of malpractice can be demonstrated, I think even an isolated issue of malpractice is a non-issue for The Florida Bar's grievance system.

Furthermore, by virtue of the underlying allegations, it is problematic that the Complainant is apparently attempting to use the "leverage" of the Bar to help influence the outcome of the civil litigation. That is something the Bar should not participate in. If and when a civil determination has been made regarding the underlying issues, The Florida Bar is then free to review its file in light of those additional findings. However, even in the absence of a pattern of malpractice, I would surmise that there would be no material change in the findings of The Florida Bar.



CONFIDENTIAL

Eric Montel Turner, Esq.

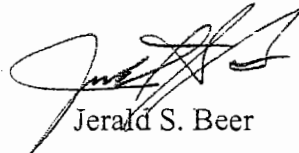
June 9, 2004

Page 2

In conclusion, I concur with the results previously reached. If there is information that I have somehow misperceived and you feel that I need to review the entire file, please let me know.

Best regards.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerald S. Beer", written in a cursive style.

Jerald S. Beer

JSB/ka



THE FLORIDA BAR

CYPRESS FINANCIAL CENTER, SUITE 900
5900 NORTH ANDREWS AVENUE
FT. LAUDERDALE, FL 33309

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

-954/772-2245
WWW.FLABAR.ORG

June 14, 2004

PERSONAL/FOR ADDRESSEE ONLY

Eliot I. Bernstein
Iviewit Holdings, Inc.
10158 Stonehenge Circle, Suite 801
Boynton Beach, FL 33437

RE: Complaint against Christopher Wheeler
The Florida Bar File No. 2003-51,109(15C)

Dear Mr. Bernstein:

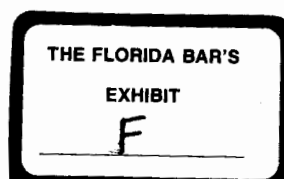
Your complaint was referred to the designated reviewer pursuant to our policy. He has advised me the case will not be referred to the Board of Governors for further proceedings. This case is now final under our rules after having been reviewed by bar counsel, chief branch discipline counsel, grievance committee chair and designated reviewer.

This will constitute our final correspondence regarding the above complaint. The file will be destroyed pursuant to our file review policy.

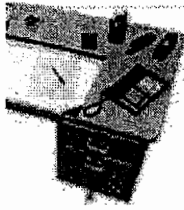
Sincerely yours,

Eric Montel Turner
Chief Branch Discipline Counsel

EMT/es



PUBLIC RECORD




Kenneth L. Marvin/The
Florida Bar

07/02/2004 08:22 AM

To <iviewit@adelphia.net>

cc Eric M Turner/The Florida Bar@FLABAR

Subject Complaint against E Turner and retention of file 

Mr. Bernstein:

I have reviewed the "complaint" that you filed against Eric Turner. Your allegations concern job performance and do not concern violations of The Rules Regulating The Florida Bar, and therefore I will treat those allegations as a personnel matter, and will not be opening a disciplinary file.

I have decided to deny your request that The Florida Bar retain the closed file concerning the complaint that you filed against Mr. Wheeler until some other agency has completed its investigation. We have a long-standing file retention policy that a closed file not resulting in discipline is kept for one year after closure. It is necessary for us to adhere to this policy. I have previously offered to give you our original file, and after speaking with Mr. Turner, we have agreed to maintain the closed file for the month of July. If you wish to pick up the file at the Ft. Lauderdale office any time during this month, please call them and the file will be given to you. If you do not retrieve the file, it will be destroyed on Monday, August 2, 2004.

THE FLORIDA BAR'S

EXHIBIT

G