

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

PAUL LABINER, MINDY LABINER
and SAM BALLEEN,

CIVIL DIVISION
CASE NO.: 50-2022-CA-009283 AH

Plaintiffs,

vs.

BRANDON S. LABINER, and
FIDELITY BROKERAGE SERVICES,
LLC, a Delaware limited liability company,

Defendants.

PLAINTIFFS' MOTION TO VACATE FINAL ORDER OF DISMISSAL DATED MAY 8, 2023

Plaintiffs Paul Labiner, Mindy Labiner and Sam Ballen, file this Motion to Vacate Final Order of Dismissal and state the following:

1. The matter at bar involves the theft of more than \$450,000.00 by Brandon while he was acting as Trustee of a Spousal Lifetime Access Trust ("SLAT") Trust established for the benefit by Plaintiff Paul Labiner for the benefit of his wife Plaintiff Mindy Labiner.

2. Defendant continues to deny any wrongdoing despite clear and convincing evidence to the contrary. The matter is set for trial on the Court's September 18-October 27, 2023 jury trial docket.

3. On May 8, 2023 the undersigned received a Final Order of Dismissal with Prejudice dismissing this action ("Order"), a copy of which is attached hereto.

4. The Order states in pertinent part,

"THIS CAUSE having come before this Court upon the Plaintiffs' Voluntary Dismissal with Prejudice dated May 6, 2023..." (Bold added).

5. However, the Plaintiffs adamantly deny having filed the Voluntary Dismissal with Prejudice ("Dismissal"). Plaintiffs believe that Brandon fraudulently filed the Dismissal on the 15th Circuit OLS and intentionally misled the Court into thinking that it was filed by the Plaintiffs. In any event, someone other than Plaintiffs filed the Dismissal that resulted in the Order being entered.

6. Brandon is currently unrepresented by counsel after his attorneys withdrew from this case last month.

7. Brandon was a personal injury lawyer who is now suspended from the practice of law as more fully described hereinbelow. However, Brandon still has access to the e-filing portal and 15th Circuit OLS.

8. On many occasions Brandon has attempted to hack into Paul Labiner's ("Paul") email, bank, and credit card accounts for the purpose of stealing additional funds, purchasing items on credit, and obtaining Paul's confidential information such as passwords. In fact, because of Brandon's actions, Paul has been forced to repeatedly open/close accounts and change numerous passwords. These breaches of Paul's accounts have been documented with both The Florida Bar and the Palm Beach Sheriff's Office.

9. In further support of this Motion, Plaintiffs offer the following:

a. As of even date, the Dismissal has not been filed on the Florida Courts E-Filing Portal as the undersigned's office never received a Notice of Service of Court Documents regarding the Dismissal as is typically received when e-filing on the portal. One would think that such an important document would be e-filed correctly;

b. In fact, documents filed by the Plaintiffs on May 8, 2023 now appear on the docket while the "mystery" Dismissal dated May 6, 2023 still does not;

c. The undersigned's associate Sam Ballen, who is responsible for the filing of all documents on the e-filing portal did not file the Dismissal either. An Affidavit in Support of the Motion is attached hereto;

d. On May 8, 2023 the undersigned directed Sam Ballen from his office to file the Exhibit and Witness Lists that were due pursuant to the Order Setting Jury Trial, Pretrial Conference and Directing Pretrial and Mediation Procedures dated April 17, 2023; and

e. Said Exhibit and Witness Lists were filed minutes before the undersigned received the email from the Court with the Final Order of Dismissal attached.

10. Upon receipt of the Order, the undersigned contacted the support department for the

Florida Courts E-Filing Portal to dispute the filing. The response from Deborah of the support department (update@myhelpsupport.com) shows the filing was from the Paul Steven Labiner portal with an IP Address of 73.57.110.110. A copy of the email is attached hereto.

11. At one time, Brandon worked out of the undersigned's office. After an altercation that Brandon had with the undersigned he was asked to leave in June 2022. At that time, a new portal account using "Law Office of Paul Labiner" was opened. The undersigned no longer uses "Paul Steven Labiner" and in fact believed that the portal account had been closed.

12. Furthermore, the IP address for the undersigned's office is 96.88.102.225.

13. Clearly, the Dismissal was sent from a computer outside of the office that had nothing to do with the undersigned.

14. Finally, an email was sent by counsel to the Civil Division E-file section of the Clerk of Court for Palm Beach County, Florida requesting that the Dismissal be rejected on the grounds that it was not sent from the normal e-filing User-Name of "Law Office of Paul Labiner" but from what was thought to be a canceled account that somehow (probably due to Brandon's manipulations) remained open but that until now has been inactive for some time.

15. The Clerk of Court has agreed that something is a foul and has rejected the filing of the Dismissal. A copy of the email string is attached hereto.

16. These most recent brazen acts of fraud, misrepresentation and misconduct are typical of the prior acts of fraud and dishonesty that Brandon has exhibited towards the Plaintiffs, The Florida Bar, and this honorable Court in connection with his misappropriation of funds from the SLAT.

17. On April 12, 2023 a Petition for Emergency Suspension was filed in the matter of *The Florida Bar v. Brandon Scott Labiner*, Lower Tribunal Case No. 50, 125 (15C), Florida Supreme Court Case No. SC-2023-0525 ("Petition"), a copy of which is attached hereto.

18. The Petition describes various acts of dishonesty committed by Brandon that are very similar to the fraud Brandon has most recently conducted against the Plaintiffs and this Court as described hereinabove. Specifically, the Petition alleges that Brandon:

- a. Misappropriated funds from the SLAT in the amount of \$451,219.58;
- b. Provided forged documents to The Florida Bar in response to Paul Labiner's

Complaint; and

- c. Made misrepresentations to the Probate Court (Judge Burton) in trustee removal proceedings as filed in Palm Beach Circuit Case No. 50-2022-CP-003031, *Paul Labiner v. Brandon S. Labiner as Trustee, Labiner SLAT*.

19. On April 18, 2023 the Florida Supreme Court granted the relief requested in the Petition filed by The Florida Bar and issued an emergency suspension of Brandon for the acts described herein.

20. Fla. R. Civ P. 1.540 (b) states that “**On motion and upon such terms as are just, the court may relieve a party or a party’s legal representative from a final judgment, decree, order, or proceeding for the following reasons:**

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;” (Bold added).

21. A trial court has broad discretion in evaluating a Fla. R. Civ. P. 1.540(b) motion seeking relief from final judgment. Such motion should not be summarily dismissed without an evidentiary hearing unless its allegations and accompanying affidavits fail to allege a colorable entitlement to relief. See *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*, 20 So.3d 952 (Fla. 4th DCA 2009).

22. The allegations contained herein support the notion that Brandon committed extrinsic fraud which is defined by the Court in *Coleman* as “fraud which prevents a party from trying an issue before the court, and the prevention itself becomes a collateral issue to the cause.” See *Coleman* at 957. Clearly, Brandon’s fraudulent conduct was intended to prevent the Plaintiffs from moving forward with their case-in-chief.

23. In *DeClaire v. Yohanan*, 453 So. 2d 375 (Fla. 1984), the Court held that “Only extrinsic fraud may constitute fraud on the court.

24. Brandon has perpetrated other acts of fraud upon this Court, all of which will be dealt with at another time.

25. Nevertheless, it is clear from Brandon's recent history in both the probate case before Judge Burton and this Court that Brandon will resort to any act of dishonesty and fraud to try and stay one step ahead of being held accountable for his actions.

26. While Plaintiffs firmly believe that it was Brandon who engaged in extrinsic fraud, misrepresentation, and other misconduct as described herein, it is indisputable that someone other than the Plaintiffs filed the Dismissal that precipitated the entry of the Order of Final Dismissal with Prejudice.

27. In any event, the Order should be vacated based on fraud and misconduct that was perpetrated by someone, which at some point will likely turn out to be Brandon.

28. Given the serious nature of the underlying action and Brandon's egregious conduct, Plaintiffs have never entertained the notion of walking away from a \$450,000.00 theft by Brandon of trust funds by dismissing this action absent a resolution that makes the SLAT whole again.

29. Based on the foregoing Plaintiffs request that this Court (a) find that Plaintiffs did not file the Voluntary Dismissal with Prejudice, (b) find that Brandon Labiner or some unknown person, engaged in fraud, misrepresentation and/or other misconduct to obtain the Final Order of Dismissal with Prejudice dated May 8, 2023 and (c) vacate said Order of Final Dismissal.

WHEREFORE, Plaintiffs move for the entry of

- A. An Order that vacates the Final Order of Dismissal dated May 8, 2023; and
- B. Any other relief the Court may deem appropriate.

Certificate of Service

I certify that a copy of the foregoing has been electronically served this 10th day of May 2023 to all registered participants via the Florida Courts e-Filing Portal pursuant to Fla.R.Jud.Admin. 2.516(b)(1) and to Brandon Labiner, brandon@pialawcenter.com.

/s/ Paul S. Labiner

Paul S. Labiner, Esq.

Pro se and Attorney for Plaintiffs

Fla. Bar No: 956686

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Boca Raton, FL 33487

Phone: (561) 998-2362

Paul@PLabinerEsq.com

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

PAUL LABINER, MINDY LABINER
and SAM BALLEEN,

CIVIL DIVISION
CASE NO.: 50-2022-CA-009283 AH

Plaintiffs,

vs.

BRANDON S. LABINER, and
FIDELITY BROKERAGE SERVICES,
LLC, a Delaware limited liability company,

Defendants.

FINAL ORDER OF DISMISSAL WITH PREJUDICE

THIS CAUSE having come before this Court upon the Plaintiffs' Voluntary Dismissal with Prejudice dated May 6, 2023, and the Court being fully advised, it is:

ADJUDGED that this action is dismissed with prejudice, with each party to bear its own costs and attorneys' fees.

DONE AND ORDERED in Chambers, Palm Beach County, Florida.

FINAL DISPOSITION FORM
(Fla. R. Civ. P. Form 1.998)

THE CLERK IS DIRECTED TO CLOSE THIS
FILE MEANS OF FINAL DISPOSITION

Disposed by Judge

502022CA009283XXXXMB 05/08/2023
Samantha Schosberg Feuer Circuit Judge

502022CA009283XXXXMB 05/08/2023
Samantha Schosberg Feuer
Circuit Judge

Copies furnished to:

Paul S. Labiner, Esq., 5499 North Federal Highway, Ste. K, Boca Raton, FL 33487

Brandon Labiner, 23322 La Vida Way, Boca Raton, FL 33432

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

PAUL LABINER, MINDY LABINER
and SAM BALLEEN,

Plaintiffs,

CIVIL DIVISION
CASE NO.: 50-2022-CA-009283 AH

vs.

BRANDON S. LABINER, and
FIDELITY BROKERAGE SERVICES,
LLC, a Delaware limited liability company,

Defendants.

**AFFIDAVIT OF SAM BALLEEN IN SUPPORT OF PLAINTIFFS' MOTION TO VACATE FINAL
ORDER OF DISMISSAL DATED MAY 8, 2023**

STATE OF FLORIDA
COUNTY OF PALM BEACH

Before me, a person authorized to take oaths personally appeared Sam Ballen who states the following:

1. I am Co-Trustee of the Labiner Spousal Lifetime Access Trust and as such, am a party Plaintiff to this action.
2. Paul Labiner is a party Plaintiff, and he is also representing the Plaintiffs in this action.
3. I am also employed by the Law Office of Paul Labiner ("Firm).
4. In my capacity of employee of the Firm, I am responsible for filing all documents online for all portals including but not limited to the Florida Courts E-Filing Portal and the Online Services Portal for the 15th Judicial Circuit, In and For Palm Beach County, Florida.
4. I did not file a Voluntary Dismissal with Prejudice with Division AH on May 6, 2023 or any other date for that matter, using the Online Services Portal. I also did not prepare or submit a proposed Final Order of Dismissal to the Court via any means whatsoever.
5. I did not file a Voluntary Dismissal with Prejudice dated May 6, 2023 or any other date for that matter, using the Florida Courts E-Filing Portal.

6. Until the Order of Final Dismissal with Prejudice was received from the Court, none of the Plaintiffs had any knowledge that a Voluntary Dismissal with Prejudice had been filed.

7. On May 8, 2023 Mr. Labiner directed me to file the Exhibit and Witness Lists that were due pursuant to the Order Setting Jury Trial, Pretrial Conference and Directing Pretrial and Mediation Procedures dated April 17, 2023.

8. In fact, said Exhibit and Witness Lists were filed minutes before I received the email from the Court with the Final Order of Dismissal attached.

9. This office has never received a Notice of Filing of Court Documents with respect to the Voluntary Dismissal with Prejudice as is typically received upon filing with the Florida Courts E-Filing Portal.

10. As of the date of this Affidavit, the Voluntary Dismissal with Prejudice does not appear on the Clerk's docket.

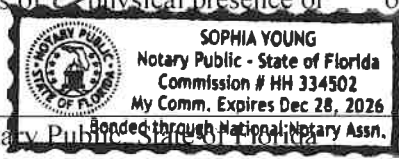
11. None of the plaintiffs have ever authorized Paul Labiner, Esq. to file a dismissal of any type with the Court in this matter.

12. Paul Labiner did not file a Notice of Voluntary Dismissal with Prejudice.

Under penalty of perjury, I swear or affirm that I have read the foregoing Affidavit and swear or affirm that the facts stated herein are true to the best of my knowledge.

Sam Ballen

Sworn to and subscribed before me by means of physical presence or online notarization this 10 day of May, 2023.



My commission expires: December 28, 2026

Personally known to me
 Produced Identification

FLA DL# B450-784-57-305-0
Type of Identification

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v.

BRANDON SCOTT LABINER,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2023-50,125(15C)

PETITION FOR EMERGENCY SUSPENSION

This petition of The Florida Bar (the bar) seeks emergency relief and requires the immediate attention of this Court under Rule 3-5.2 of the Rules Regulating The Florida Bar. The bar seeks the emergency suspension of Brandon Scott Labiner, Attorney No. 123868 (respondent), from the practice of law in Florida based on facts set forth in the affidavit of the bar's Lead Auditor, Carl Totaro, attached as Exhibit A, that establishes clearly and convincingly that Brandon Scott Labiner has caused, or is likely to cause, immediate and serious harm to clients or the public 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.

2. Respondent, Brandon Scott Labiner, is and, at all times the relevant conduct occurred was, a member of The Florida Bar subject to the jurisdiction and disciplinary rules of this Court.

3. Respondent is currently the subject of a bar disciplinary matter which has been assigned Florida Bar file number 2023-50,125(15C).

4. The enclosed affidavit of Carl Totaro supports this Petition for Emergency Suspension.

5. The bar's investigation indicates that during the period of June 7, 2022 through August 24, 2022, respondent misappropriated at least \$451,219.58 of Mindy Labiner's funds from the Labiner SLAT Trust for his personal benefit, not for the purpose intended by Mindy Labiner.

6. Respondent forged bank documents to make it appear that Paul Labiner (Paul), his father, unlawfully transferred funds from respondent's bank accounts and provided the documents to the bar in support of his false allegations that Paul stole funds in the amount of \$454,727.01 from respondent's bank accounts.

7. Respondent made the same false statements to the civil court in a probate case and falsely denied removing the funds from the Labiner SLAT in another related civil matter.

8. Respondent engaged in misrepresentations to the bar by failing to disclose the bank account he deposited 94% of the said misappropriated funds and by falsely alleging he deposited the funds in two other accounts.

Count I
Respondent Misappropriated Funds

9. On or about December 21, 2021, Paul Labiner created the Labiner SLAT, an irrevocable Spousal Lifetime Access Trust, for the benefit of his wife, Mindy Labiner.

10. Respondent served as the sole Trustee of the Labiner SLAT.

11. As Trustee, respondent opened a trust account at Fidelity Investments (hereinafter "Fidelity Trust Account ending in #2438") and a number of securities were deposited for the benefit of Mindy Labiner's lifetime.

12. Respondent was a signer on the Fidelity Trust Account ending in #2438.¹ See Exhibit 9, page 24 of Exhibit A.

13. During the period of June 7, 2022 though August 24, 2022, respondent made the following 16 disbursements for his personal benefit from Fidelity Trust Account ending in #2438:

¹ Paul was also a signer on the account.

- A. June 7, 2022, \$4,552.74 via PayPal Echeck (See Exhibit 9, page 57 of Exhibit A.);
- B. June 8, 2022, \$509.76 via PayPal Echeck (See Exhibit 9, page 57 of Exhibit A.);
- C. June 9, 2022, \$70,000.00 via wire transfer to Brandon S. Labiner's bank account ending in #9390 at Bank of America (See Exhibit 9, pages 57 & 26 of Exhibit A.);
- D. June 10, 2022, \$100,000.00 via wire transfer to Brandon S. Labiner's bank account ending in #9390 at Bank of America (See Exhibit 9, pages 57 & 28 of Exhibit A.);
- E. June 13, 2022, \$100,000.00 via wire transfer to Brandon S. Labiner's bank account ending in #9390 at Bank of America (See Exhibit 9, pages 57 & 30 of Exhibit A.);
- F. June 23, 2022, \$74,000.00 via wire transfer to Brandon S. Labiner's bank account ending in #9390 at Bank of America (See Exhibit 9, pages 57 & 32 of Exhibit A.);
- G. June 28, 2022, \$78,975.00 via wire transfer to Brandon S. Labiner's bank account ending in #9390 at Bank of America (See Exhibit 9, pages 57 & 34 of Exhibit A.);
- H. June 29, 2022, \$10,000.00 via PayPal Retry PYMT (See Exhibit 9, page 57 of Exhibit A.);
- I. July 29, 2022, \$3,013.08 via Venmo Payment (See Exhibit 9, page 71 of Exhibit A.);
- J. August 2, 2022, \$503.00 as Cash Advance ATM (See Exhibit 9, page 85 of Exhibit A.);²

² The transaction occurred on July 29, 2022 and posted on August 2, 2022.

- K. August 2, 2022, \$273.00 as Cash Advance ATM (See Exhibit 9, page 85 of Exhibit A.);³
- L. August 5, 2022 \$4,000.00 via PayPal Echeck (See Exhibit 9, page 83 of Exhibit A.);
- M. August 8, 2022, \$650.00 via Venmo Payment (See Exhibit 9, page 83 of Exhibit A.);
- N. August 11, 2022, \$343.00 as Cash Advance ATM (See Exhibit 9, page 85 of Exhibit A.);⁴
- O. August 15, 2022, \$2,500.00 via Venmo Payment (See Exhibit 9, page 83 of Exhibit A.);
- P. August 24, 2022, \$1,900.00 via Venmo Payment (See Exhibit 9, page 83 of Exhibit A.);

14. These transactions were not authorized by Mindy Labiner and were not used for the intended purpose designated by the Labiner SLAT.

15. Respondent misappropriated **\$451,219.58** from the Labiner SLAT that was to be used for the benefit of Mindy Labiner.

16. Wherefore, by reason of the foregoing, respondent violated the following Rules Regulating The Florida Bar: 3-4.3 [The standards of professional conduct to be observed by members of the Bar are not limited

³ The transaction occurred on July 31, 2022 and posted on August 2, 2022.

⁴ The transaction occurred on August 10, 2022 and posted on August 11, 2022.

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.; 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(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.]; 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.]; 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

Respondent Provided Forged Documents

17. In response to the bar complaint submitted by Paul, respondent admitted to taking \$451,219.58 and stated, "Upon discovering that Paul Labiner withdrew \$454,727.01 from my law firm accounts, I acted prudently in exercising my discretionary powers as Trustee under Articles XV and XVI of the Labiner SLAT account to reimburse the stolen funds by Paul from the PIA⁵ firm trust and operating accounts." See Exhibit 7, page 12 of Exhibit A.

⁵ "PIA" refers to respondent's law firm Personal Injury & Accident Law Center P.A. and will be referred to as PIA throughout this petition.

18. Attached to respondent's response to the bar, he provided bank documents to support his allegations that Paul stole a total of \$454,727.01 from respondent's bank accounts.

19. The bar subpoenaed First Citizens Bank and obtained official certified bank records from the bank as to all the accounts involved, which indicate the bank documents respondent provided were forged and none of the alleged unauthorized transfers by Paul occurred. See Exhibit 8, pages 4, 25, 60, 82, 91, and 104 of Exhibit A.

20. The bank's records indicate that respondent was a signer on bank accounts endings in #5651 and #5766 and could have verified the truth about these transactions at any time. See Exhibit 8, pages 3 and 54 of Exhibit A.

21. Respondent provided forged bank documents from First Citizens Bank listing a transfer on May 26, 2022, from respondent's PIA Trust Account ending in #5651 to Paul's operating account ending in #5758, in the amount of \$372,927.39. See Exhibit 7, pages 21, 40, 87 of Exhibit A.

22. Respondent provided forged bank documents from First Citizens Bank listing a transfer on June 1, 2022, from respondent's PIA

Operating Account ending in #5766⁶ to Wealth Preservation LLC's account ending in #5782,⁷ in the amount of \$76,799.61. See Exhibit 7, pages 38, 85 of Exhibit A.

23. Respondent provided forged bank documents from First Citizens Bank listing a transfer on or about May 31, 2022 or June 1, 2022, from the Meltzer and Taylor IOTA Trust account ending in #5854⁸ to the P. Labiner LLC account ending in #5790⁹ in the amount of \$5,000.01. See Exhibit 7, pages 39 and 86 of Exhibit A.

24. Respondent forged and provided these fraudulent bank documents to the bar to support his false allegations that Paul stole funds from him.

25. Respondent forged and provided these fraudulent bank documents to the bar to excuse his misappropriation from the Labiner SLAT.

⁶ Both respondent and Paul were authorized signers of the account and at all times had access to this account. See Exhibit 8, page 54 of Exhibit A.

⁷ The bank records indicate Paul was the only signer on this account. See Exhibit 8, page 76 of Exhibit A.

⁸ The bank's records show that Paul was the only signer on the account ending in #5854. See Exhibit 8, page 90 of Exhibit A.

⁹ The bank records indicate Paul was the only signer on this account. See Exhibit 8, page 100 of Exhibit A.

26. Even if Paul had stolen said funds from these accounts, which he did not, same would not constitute a defense to respondent's misappropriation from the Labiner SLAT.

27. As of the filing of this petition, respondent maintains his false allegations that Paul stole \$454,727.01 from his bank accounts.

28. Wherefore, by reason of the foregoing, respondent violated the following Rules Regulating The Florida Bar: 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.]; 4-8.1 [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: (a) knowingly make a false statement of material fact; (b) 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; or (c) commit an act that adversely reflects on the applicant's fitness to practice law.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct...]; 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.]; and 4-8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation].

Count III

Respondent Made Misrepresentations

Misrepresentations to the Probate Court

29. Paul filed a petition in probate court to remove respondent as Trustee of the Labiner SLAT, in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, styled *Paul Labiner v. Brandon S. Labiner as Former Trustee, Labiner SLAT*, Case No. 50-2022-CP-003031 (the "probate case").

30. On September 8, 2022, respondent filed Respondent, Brandon Labiner (as Former Trustee of the Labiner SLAT) Reply in Opposition to

Petitioner's Motion for Relief Dated September 6, 2022 ("Reply"). A copy of the Reply is attached hereto as Exhibit B.

31. In the Reply, respondent falsely stated that Paul made the following bank transfers from respondent's PIA accounts:

- A. Melter Trust Account: \$5,000.01
- B. PIA Trust Account: \$372,927.39
- C. PIA Checking Account: \$76,799.61

See page 4 of Exhibit B.

32. The bar's investigation indicates that those transactions never occurred.

33. By making this statement to the probate court, respondent made a misrepresentation to the probate court.

Misrepresentations to the Civil Court

34. Paul filed a civil lawsuit against respondent, relating to the misappropriation, in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, styled *Paul Labiner, et al. v. Brandon S. Labiner, et al.*, Case No. 50-2022-CA-009283 (the "related litigation").

35. Despite admitting in the bar proceeding to taking funds from the Labiner SLAT "to reimburse the stolen funds by Paul," on February 9, 2023, in the related litigation, respondent filed Defendant Brandon S.

Labiner' s Verified Answers to Plaintiffs' First Interrogatories (“Sworn Interrogatory Response”) denying he made the transactions subject to the Labiner SLAT misappropriation and stating, “I did not remove \$445,198.53 from the Fidelity SLAT account.” See Exhibit 10, pages 3-8 of Exhibit A.

36. By making these statements in the Sworn Interrogatory Response, respondent made sworn false statements to the civil court.

Misrepresentations to the Bar

37. On January 27, 2023, the bar sent an inquiry to respondent requesting he “Provide the name of the account(s), the full bank account numbers, and the name of bank(s) relating to the bank accounts that you deposited the \$451,219.58 into.” See Exhibit 6, page 7 of Exhibit A.

38. On February 16, 2023, in response to the January 27, 2023 inquiry, respondent provided Bank of America account ending in #3131 and UMB account ending in #2438. See Exhibit 7, page 89 of Exhibit A.

39. The certified bank documents received from Fidelity show that \$422,975.00, 94% of the funds respondent misappropriated from the Labiner SLAT, were wired to Bank of America account ending in #9330. See Exhibit 9, pages 26, 28, 30, 32, 34, and 57 of Exhibit A.

40. Respondent intentionally omitted Bank of America account ending #9330 in his response to the bar's inquiry regarding where the misappropriated funds were deposited.

41. Respondent's omission is a misrepresentation.

42. The bar subpoenaed and received bank documents, from Bank of America for account ending in #3131 and UMB bank for account ending in #2438, showing none of the Labiner SLAT misappropriated funds were deposited into these accounts. A copy of the official bank documents received in response to the bar's subpoenas to Bank of America and UMB bank are attached hereto as Composite Exhibit C.

43. Respondent's statement to the bar, that the misappropriated Labiner SLAT funds were deposited into Bank of America account ending in #3131 and UMB account ending in # 2438, are misrepresentations.

44. Wherefore, by reason of the forgoing, respondent violated the following Rules Regulating The Florida Bar: 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.]; 4-8.1 [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: (a) knowingly make a false statement of material fact; (b) 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; or (c) commit an act that adversely reflects on the applicant's fitness to practice law.]; 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....]; and 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....].

The above facts show that respondent has caused, or is likely to cause, immediate and serious harm to clients or the public and immediate action must be taken to protect respondent's clients and the public.

Therefore, under Rule 3-5.2, the bar respectfully requests this Court issue an order suspending respondent from the practice of law until further order of this Court and ordering the respondent to:

A. Immediately:

- accept no new clients from the date of this Court's order of emergency suspension;
- initiate no litigation on behalf of clients from the date of this Court's order of emergency suspension;
- provide a copy of this Court's order of emergency suspension to all courts, tribunals, or adjudicative agencies before which Brandon Scott Labiner is counsel of record; all state, federal, or administrative bars of which respondent is a member; all clients; all co-counsel; and all opposing counsel, as required by Rule 3-5.1(h);
- cease withdrawing or disbursing any money from any trust account or other financial institution account holding funds of clients or third parties in respondent's possession in connection with legal

representation or funds of third parties in connection with respondent's service as a fiduciary including, but not limited to, personal representative, guardian, or trustee, 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 Rule 1-3.8;

- not transfer any ownership of any real or personal property purchased in whole or in part with funds of clients or third parties in connection with legal representation or with funds of third parties in connection with respondent's service as a fiduciary including, but not limited to, personal representative, guardian, or 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 Rule 1-3.8;
- deposit any fees or other sums received in connection with the practice of law or employment as a personal representative, guardian, or trustee, by the respondent on or after the date of this Court's order of emergency suspension into a specified trust account from which withdrawal may only be made by 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 Rule 1-3.8;

- provide a copy of this Court's order of emergency suspension to all banks and financial institutions where the respondent maintains any account holding funds of clients or third parties in respondent's possession in connection with representation or funds of third parties in connection with respondent's service as a fiduciary including, but not limited to, personal representative, guardian, or trustee;
- comply with, and provide all documents and testimony responsive to, a subpoena from the bar for trust account records and any related documents necessary for the bar to conduct a trust account audit;
- authorize any referee appointed in these proceedings to determine entitlement to funds in any trust accounts frozen as a result of an order entered in this matter; and
- turn over to any successor the complete financial records of any estate, guardianship, or trust in which respondent served as a fiduciary on the successor's appointment;

- cease holding yourself out as a Florida Bar member or lawyer and eliminate all indicia of respondent's status as a Florida Bar member or lawyer on websites, email, social media, telephone listings, stationery, checks, business cards, office signs, email address, and any other indicia of respondent's status as a Florida Bar member or lawyer; and

B. Within 30 days from the date of this Court's order of emergency suspension:

- cease all practice of law in Florida;
- withdraw from representation of all clients;
- wind down all pending matters;
- cease acting as a fiduciary, including, but not limited to, personal representative for any estate, guardian for any ward, and trustee for any trust;
- provide Staff Counsel with an affidavit listing all of the following that respondent notified of this Court's order of emergency suspension: all courts, tribunals, or adjudicative agencies of which respondent is a member; all state, federal, or administrative bars of which respondent is a member; all clients; all co-counsel; and all opposing counsel.

- provide bar counsel in this case with an affidavit listing each bank or financial institution respondent provided with a copy of this Court's order of emergency suspension; and
- notify bar counsel in this case of the receipt and location of any fees or other sums received in connection with the practice of law or in connection with respondent's service as a fiduciary, including, but not limited to, personal representative, guardian, or trustee, received by respondent after issuance of this Court's order of emergency suspension.

Respectfully submitted,



Linda Ivelisse Gonzalez, Bar Counsel
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/s/

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CERTIFICATE OF SERVICE

I certify that this document has been E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Respondent, at brandon@pialawcenter.com; and that a copy has been provided by United States Mail via certified mail No. 7020 1810 0000 0813 9015, return receipt requested to Respondent, whose record bar address is 2699 Stirling Rd., Ste. B200, Boca Raton, FL 33432-2753 and via email to Linda Ivelisse Gonzalez, Bar Counsel, lgonzalez@floridabar.org, on this 12th day of April 2023.



Patricia Ann Toro Savitz, Staff Counsel
The Florida Bar
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Tallahassee, Florida 32399-2300
(850) 561-5600
Florida Bar No. 559547
psavitz@floridabar.org

NOTICE OF DESIGNATION OF PRIMARY EMAIL ADDRESS

Bar counsel in this matter is Linda Ivelisse Gonzalez, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Ft. Lauderdale Branch Office, Lake Shore Plaza II 1300 Concord Terrace, Suite 130. Sunrise, Florida 33323, (954) 835-0233 and lgonzalez@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than bar counsel and to Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300, psavitz@floridabar.org.

NOT A CERTIFIED COPY

MANDATORY ANSWER NOTICE

RULE 3-5.2(a), OF THE RULES REGULATING THE FLORIDA BAR,
PROVIDES THAT A RESPONDENT MUST ANSWER A COMPLAINT.

NOT A CERTIFIED COPY

Sam

From: update@myhelpsupport.com
Sent: Wednesday, May 10, 2023 12:39 PM
To: Sam
Cc: Paul
Subject: Incident# 10659522 - Help!!- Fraud Issue Concerning the E-Filing Portal

Hey Sam,

I left you a message on this. Currently in corrections. Please call the Clerk immediately and ask they reject the filing if done in error.

filing 172585532 information:

From the Portal account of: Paul Steven Labiner
Date: 05/06/2023
Time: 03:41:24 PM
IP address it came from 73.57.110.110

Thank you,
Deborah

NOT A CERTIFIED COPY

Sam

From: civil-efile <civil-efile@mypalmbeachclerk.com>
Sent: Wednesday, May 10, 2023 3:42 PM
To: Sam
Cc: civil-efile
Subject: RE: Request to Reject or Delete E-filing- Filing No. 172585532

Good afternoon: Sam

Upon review of the filing in question, it seems consistent with your email. This filing will be rejected back to the correction, as you requested. I review of the account which filed this shows it is from another Paul Steven Labiner account.

Portal User 85858 Paul Steven Labiner

Name/ID: Paul Steven Labiner FL 956686
Status: **Active**
Affiliation/Role: Unaffiliated Users Attorney – Florida Bar
Email Addresses: PLabinerEsq@gmail.com
Address: 5499 N Federal Hwy Suite K Boca Raton FL, 33
Phone #: 561-295-4291

You may choose to have IT E-portal Support (850) 577-4609 review this event.

Regards,

Civil E-file Mailbox

From: Sam <sam@plabineresq.com>
Sent: Wednesday, May 10, 2023 1:36 PM
To: civil-efile <civil-efile@mypalmbeachclerk.com>
Subject: Request to Reject or Delete E-filing- Filing No. 172585532

This Message Is From an External Sender

This message came from outside your organization.

Good afternoon,

We represent the Plaintiffs in Palm Beach Circuit Case No. 50-2022-CA-009283. On May 6, 2023 a Voluntary Dismissal with Prejudice was filed from the portal account of **Paul Steven Labiner, Filing 172585532**. This office does not use that portal account. We use Law Office of Paul Labiner. We have reason to believe that the Defendant Brandon Labiner hacked into the Paul Steven Labiner portal and filed the Voluntary Dismissal with the above referenced filing number.

Accordingly, we request that the filing be REJECTED or DELETED. In no way whatsoever should it be accepted and docketed. Thank you and please call me if you have any further questions.



Sam Ballen

Law Office of Paul S. Labiner
Wealth Preservation Advisors, L.L.C.
5499 North Federal Highway, Suite K
Boca Raton, Florida 33487
Tel - 561-998-2362
Fax - 561-998-2358
E-Mail: sam@PLabineresq.com
<http://www.BocaRatonEstatePlanning.com> [bocaratonestateplanning.com]

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CIRCULAR 230 DISCLOSURE. Any tax advice obtained herein is not intended or written to be used and cannot be used by a taxpayer for the purpose of avoiding tax-related penalties.