

BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF
THE SUPREME COURT OF OHIO

In re:

Complaint against

Fred Phillip Schwartz, Esq.
Attorney Registration No. 0007494
PO Box 181487
Cleveland Heights, OH 44118,

Respondent,

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411,

Relator.

FILED

FEB 17 2015

BOARD OF PROFESSIONAL CONDUCT

No. _____

15 - 009

COMPLAINT AND CERTIFICATE

(Rule V of the Supreme Court Rules for
the Government of the Bar of Ohio.)

RECEIVED

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BOARD OF PROFESSIONAL CONDUCT

Now comes the relator and alleges that Fred Phillip Schwartz, an attorney-at-law, duly admitted to the practice of law in the state of Ohio, is guilty of the following misconduct:

1. Respondent, Fred Phillip Schwartz, was admitted to the practice of law in the state of Ohio on November 20, 1978. Respondent is subject to the Code of Professional Responsibility, the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

COUNT I

2. Prior to August 2011, respondent represented 3M Development LLC, 3M Realty LLC and Hickory Court LLC (the "LLCs") along with one of the owners of the LLCs, Eli Mann, in several matters before the Cuyahoga County Court of Common Pleas.
3. On August 19, 2011, JHB Hotel LLC entered into an agreement to purchase the LLCs from Mann and the other owners.

4. Respondent represented Mann in the negotiation and completion of the Ownership Acquisition Agreement (the "Agreement"). Attorneys Robert J. Binns and D. Jeffrey Rengel represented JHB Hotels.
5. One of the terms in the Agreement required JHB Hotels to pay respondent \$19,400, presumably attorney fees for services previously rendered by respondent to the LLCs and Mann.
6. On January 23, 2013, respondent sent Binns an email correspondence and threatened the following, "Kindly let your client know that if by [sic] bill to be paid at the closing and the bill for defending Eli are not paid with interest at the legal rate by Monday, I plan to revive the allegations of Mr. Schlachet (which I helped him draft) and add some additional allegations. The result will not be a settlement at 80% and I will not be my own attorney. Eli has told you and demonstrated why he should be paid. Failure to pay him will cost your clients."
7. On February 14, 2013, Eli Mann filed a civil lawsuit against JHB Hotel for failing to comply with the terms of the agreement and seeking to enforce the agreement. *Eli Mann v. JHB Hotels, LLC, et al.*, Cuyahoga County Court of Common Pleas, Case No. CV-13-801488. Attorney Eric Zagrans represented Mann in the matter.
8. On February 10, 2013, just prior to Mann initiating his lawsuit against JHB Hotel, respondent sent a second email to Binns stating, "I suggestion [sic] Eli's litigation counsel to him, as I wanted him to have the best. I have seen Eric in action and your clients should very seriously consider his offer if their time and their money is important to them."

9. On February 19, 2013, Binns wrote to respondent, former legal counsel to the LLCs, and requested the case files relating to respondent's previous representation of the LLCs in any matters, including eight specifically identified in the letter. JHB Hotel, as the owner of the LLCs, was entitled to receive the files and needed the files to properly defend the charges filed against it by Mann. Respondent did not provide the requested files.
10. On March 5, 2013, Binns wrote respondent a second letter requesting the case files relating to respondent's representation of the LLCs in any matters. Respondent still did not provide the requested files.
11. On March 6, 2013, Rengel sent an email communication to respondent, attempting to confirm that respondent would provide the case files for each matter where respondent had represented the LLCs.
12. On April 3, 2013, Fred Harris, a manager of JHB Hotels, submitted a grievance to relator seeking, among other things, a return of the LLCs case files. Respondent timely replied to relator's letter of inquiry relating to the Harris grievance.
13. On May 2, 2013, respondent emailed Rengel and explained that the purchase of the LLCs was currently in litigation and, as such, he would not provide the documents to Rengel until Rengel agreed to return the documents to Mann, should Mann be determined to still be the owner of the LLCs, and until respondent provided Mann's counsel in the lawsuit time to object to his giving the files to Rengel.
14. Rengel replied to respondent's email that same day, explaining that he had requested all documents in respondent's possession that related to his representation of the LLCs and that respondent's continuing refusal to comply with the disciplinary rules was noted.

15. On May 17, 2013, respondent emailed to Rengel records relating to a single matter, *Kohrman, Jackson & Kranz, PLL v. 3M Development, LLC, et al.*, Case No. CV-10-727757, where he had represented the LLCs before the Cuyahoga County Court of Common Pleas.
16. On May 29, 2013, Rengel replied to respondent's email, indicating that respondent had still failed to produce all of the records for the Kohrman, Jackson matter as well as the records relating to his representation of the LLCs in several other matters.
17. On September 25, 2013, relator requested that respondent provide the client files for each matter identified in Binns' February 19, 2013 letter to relator. When respondent did not reply to relator's letter, relator sent another letter to respondent on October 23, 2013.
18. Respondent provided the client files to relator on November 7, 2013. Relator subsequently forwarded the files to Harris.
19. Respondent's actions, by failing to return the LLCs client files to JHB Hotels as requested, violated the Ohio Rules of Professional Conduct, specifically, Rule 1.16 (d) [as part of the termination of representation, a lawyer shall deliver to the client all papers and property to which the client is entitled. Client papers and property shall be promptly delivered to the client]; and, Rule 8.4 (d) [an attorney shall not engage in conduct that is prejudicial to the administration of justice].
20. Respondent's actions, threatening his former clients, violated Rule 8.4 (h) [an attorney shall not engage in any other conduct that adversely reflects his fitness to practice law].

COUNT II

Kohrman, Jackson & Kranz, PLL v. 3M Development, LLC, et al.

21. The Agreement included the following provision:
- (l) To Sellers actual knowledge, each of the LLCs has good and marketable title to the property, subject only to the following:
...
 - (iv) Foreclosure actions of the Cuyahoga County Treasurer as disclosed in the Title Commitment issued by Surety Title Company to Buyer dated as of October 5, 2010 and Kohrman, Jackson and Illuminating Company lawsuits.
 - (n) To Sellers actual knowledge, there is no suit, proceeding, or litigant pending, or to the Sellers' actual knowledge threatened, against or relating to any of the LLCs or the Property except as set forth in Section 4(1)(iv) ...
22. On May 26, 2010, Kohrman, Jackson & Kranz initiated a lawsuit against 3M Development LLC, 3M Realty LLC, Hickory Court LLC and Eli Mann as well as several other defendants. *Kohrman, Jackson & Kranz, PLL v. 3M Development, LLC, et al.*, Case No. CV-10-727757. This lawsuit was disclosed in Section 4(1)(iv) of the acquisition agreement.
23. Following the purchase of the LLCs, respondent purported to continue representing the LLCs before the Cuyahoga County Court of Common Pleas without the knowledge of or authority from JHB Hotel in the *Kohrman, Jackson* matter.
- a. On or about August 23, 2011, respondent represented the defendants, including the LLCs, at the court-ordered mediation hearing.
 - b. On September 19, 2011, respondent filed an answer to the plaintiff's motion in limine on behalf of all of the defendants, including the LLCs.

- c. On September 19, 2011, respondent filed the Defendant's Trial Brief on behalf of all of the defendants, including the LLCs.
- d. On September 19, 2011, respondent appeared for the trial on behalf of all of the defendants, including the LLCs. The court continued the trial until November 30, 2011.
- e. On December 1, 2011, respondent entered into a settlement agreement with the plaintiffs, agreeing that the defendants, including the LLCs, would pay the plaintiffs \$50,000.
- f. On March 26, 2012, respondent filed an Opposition to Motion for Forcible Entry with Locksmith on behalf of 3M Development LLC.
- g. On May 4, 2012, respondent filed a Motion for Submission of Appraisal, Consent to Plaintiff's Motion for Appointment of Appraiser on behalf of all of the defendants, including the LLCs.
- h. On May 7, 2012, respondent filed a Consent in Part to Plaintiff's Motion for an Injunction on behalf of all of the defendants, including the LLCs.
- i. On May 18, 2012, respondent filed an Opposition to Motion for Extension of time on behalf of 3M Development LLC and 3M Realty LLC.
- j. On November 26, 2012, respondent filed a Motion to File Instantly on behalf of 3M Development LLC.
- k. On November 26, 2012, respondent filed an Answer on behalf of all of the defendants, including the LLCs.

24. Kohrman, Jackson released its judgment lien in this matter on March 8, 2013.

25. Following the purchase of the LLCs by JHB Hotel, the LLCs and Mann had adverse interests that precluded respondent's representation of both.
26. Respondent's actions, in continuing to represent the LLCs without the knowledge of or authority from JHB Hotel, violated the Ohio Rules of Professional Conduct, specifically, Rule 1.1 [a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation]; Rule 1.4 (a)(3) [a lawyer shall keep the client reasonably informed about the status of the matter]; Rule 1.7 (a)(2) [a lawyer's continuation of representation of a client creates a conflict of interest if there is substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client]; and , Rule 8.4 (d) [an attorney shall not engage in conduct that is prejudicial to the administration of justice].

COUNT III

Adam Pollack v. Elozor Mann, et al.

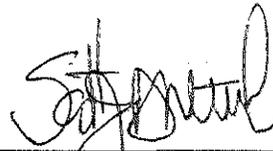
27. On May 10, 2012, following the sale of the LLCs, Adam Pollack, filed an Application for Order Confirming Arbitration Award against 3M Development LLC, 3M Realty LLC, Hickory Court LLC and Eli Mann as well as several other defendants in the Cuyahoga County Court of Common Pleas. *Adam Pollack v. Elozor Mann, et al.*, Case No. CV-12-782386. The plaintiff filed an Amended Application on July 12, 2012. JHB Hotel was unaware of the *Pollack* litigation. The underlying arbitration between Pollack and Mann had concluded on March 14, 2012, when Mann was found to be a judgment debtor to Pollack.

28. On August 12, 2012, respondent entered a notice of appearance on behalf of the defendants, including the LLCs, in the matter. Respondent did so without the knowledge of or authority from JHB Hotel.
29. On September 4, 2012, respondent filed a Motion to Vacate Judgment on behalf of all of the defendants, including the LLCs.
30. On September 6, 2012, the court confirmed the arbitration award in plaintiff's favor and ordered the defendants to pay \$41,906.64 to the plaintiff.
31. On September 28, 2012, respondent filed a Motion for Stay Pending Appeal on behalf of all of the defendants, including the LLCs, which the court denied.
32. On September 28, 2012, respondent filed a Notice of Appeal on behalf of all of the defendants, including the LLCs. *Adam Pollack v. Elozor Mann, et al.*, Case No. CA-12-099008.
33. On October 22, 2012, respondent filed a Motion by Appellants to Extend Time to File Assignments of Error and Brief. The court granted the motion, giving respondent until November 21, 2012 to file the appellants' brief. Respondent did not file the appellate brief as directed.
34. On December 4, 2012, the appellate court *sua sponte* dismissed the defendants' appeal for failure to file a brief.
35. At no time did respondent advise JHB Hotel of the Pollack lawsuit, the judgment awarded against the LLCs or the appellate court's decision to dismiss the appeal for failure to file an appellate brief.
36. Respondent's actions, in representing the LLCs without the knowledge of or authority from JHB Hotel, violated the Ohio Rules of Professional Conduct, specifically, Rule 1.1

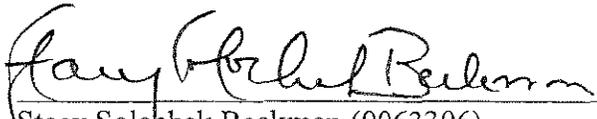
[a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation]; Rule 1.4 (a)(3) [a lawyer shall keep the client reasonably informed about the status of the matter]; and , Rule 8.4 (d) [an attorney shall not engage in conduct that is prejudicial to the administration of justice].

CONCLUSION

Wherefore, pursuant to Gov. Bar R. V, the Code of Professional Responsibility and Rules of Professional Conduct, relator alleges that respondent is chargeable with misconduct; therefore, relator requests that respondent be disciplined pursuant to Rule V of the Rules of the Government of the Bar of Ohio.



Scott J. Drexel (0091467)
Disciplinary Counsel
Relator

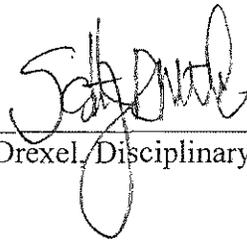


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Counsel for Relator

CERTIFICATE

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Stacy Solochek Beckman is duly authorized to represent relator in the premises and has accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: January 30, 2015



Scott J. Drexel, Disciplinary Counsel

Gov. Bar R. V (4)(I) Requirements for Filing a Complaint.

(1) Definition. "Complaint" means a formal written allegation of misconduct or mental illness of a person designated as the respondent.

* * *

(7) Complaint Filed by Certified Grievance Committee. Six copies of all complaints shall be filed with the Secretary of the Board. Complaints filed by a Certified Grievance Committee shall be filed in the name of the committee as relator. The complaint shall not be accepted for filing unless signed by one or more attorneys admitted to the practice of law in Ohio, who shall be counsel for the relator. The complaint shall be accompanied by a written certification, signed by the president, secretary, or chair of the Certified Grievance Committee, that the counsel are authorized to represent the relator in the action and have accepted the responsibility of prosecuting the complaint to conclusion. The certification shall constitute the authorization of the counsel to represent the relator in the action as fully and completely as if designated and appointed by order of the Supreme Court with all the privileges and immunities of an officer of the Supreme Court. The complaint also may be signed by the grievant.

(8) Complaint Filed by Disciplinary Counsel. Six copies of all complaints shall be filed with the Secretary of the Board. Complaints filed by the Disciplinary Counsel shall be filed in the name of the Disciplinary Counsel as relator.

(9) Service. Upon the filing of a complaint with the Secretary of the Board, the relator shall forward a copy of the complaint to the Disciplinary Counsel, the Certified Grievance Committee of the Ohio State Bar Association, the local bar association, and any Certified Grievance Committee serving the county or counties in which the respondent resides and maintains an office and for the county from which the complaint arose.