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BOARD OF COMMISSIONERS  
ON GRIEVANCES & DISCIPLINE

BEFORE THE BOARD OF COMMISSIONERS  
ON GRIEVANCES AND DISCIPLINE OF THE  
SUPREME COURT OF OHIO

IN RE:

CASE NO. 14-085

COMPLAINT AGAINST:

KENNETH R. DONCHATZ  
(BAR NO. 0062221)  
4313 SMOTHERS ROAD  
WESTERVILLE OHIO 43081,

COMPLAINT

Respondent,

v.

CLEVELAND METROPOLITAN BAR  
ASSOCIATION,  
1375 EAST NINTH STREET, FLOOR 2  
CLEVELAND, OH 44114-1785

Relator.

Relator Cleveland Metropolitan Bar Association ("Relator"), by and through counsel, for its Complaint against Respondent Kenneth R. Donchatz ("Respondent"), states as follows:

INTRODUCTION

1. This action arises out of Respondent's conduct in connection with his *pro se* representation in a civil matter and in connection with the representation of a client and an undocumented loan transaction with that client, which has resulted in violations of the Ohio Rules of Professional Conduct. As a result of Respondent's conduct and other aggravating factors, Relator requests that the Board discipline Respondent in a manner that is fair and just and in accordance with the Ohio Rules of Professional Conduct and the Rules of the Government

of the Bar of Ohio.

### **BACKGROUND FACTS**

2. Respondent received a juris doctorate in 1993 from Rutgers University School of Law.

3. The Supreme Court of Ohio admitted Respondent to the practice of law in 1993.

4. Respondent's Attorney Registration Number is 0062221.

5. Respondent is currently a partner with Anspach Meeks Ellenberger LLP.

6. At Anspach Meeks Ellenberger LLP, Respondent markets himself as "a legal ethicist, practicing in the areas of legal ethics, professional responsibility and complex commercial litigation." (See [www.anspachlaw.com/attorney-profiles/columbus,-oh/kenneth-r-donchatz/](http://www.anspachlaw.com/attorney-profiles/columbus,-oh/kenneth-r-donchatz/).)

7. Respondent is a former Assistant Disciplinary Counsel with the Office of Disciplinary Counsel for the Supreme Court of Ohio.

### **COUNT ONE – Davey Tree**

#### **A. Respondent's Misconduct During Davey Tree Litigation**

8. The Davey Tree Expert Company ("Davey Tree") was hired by Respondent to perform work and services at his home in 2008.

9. After Respondent did not pay the invoice for the work performed, Davey Tree initiated an action in Franklin County Municipal Court, Case No. 2009 CVF 048480 ("Davey Tree Matter") in November 2009.

10. Service of the Complaint was attempted via certified mail, but it was returned "UNCLAIMED, UNABLE TO FORWARD." The Complaint was then served on December 1, 2009 via ordinary mail service.

11. After Respondent failed to respond to the Complaint, default judgment was entered on January 25, 2010 for \$2,180.92 plus interest at 4% annum from January 13, 2009.

12. In April 2010, after Respondent failed to pay his judgment, Davey Tree garnished his bank account and received \$536.68. Respondent did not contact Davey Tree or file a motion with the Court following the garnishment. The remainder of the judgment went unsatisfied until May 2, 2014.

13. Nearly two years after Respondent's bank account was garnished, in February 2012, Respondent filed a Satisfaction of Judgment in the Davey Tree Matter despite the fact: (1) the full judgment had not been paid by him; (2) Respondent had no evidence of it being paid by anyone else; and (3) Davey Tree had not authorized Respondent to file the Notice of Satisfaction.

14. Kevin String, the attorney for Davey Tree, contacted Respondent by email and informed him the Satisfaction of Judgment was "entirely inappropriate." He requested Respondent "withdraw the [S]atisfaction and make payment of the balance . . . or produce proof of payment." Respondent did neither.

15. As a result of Respondent's refusal to withdraw the Notice of Satisfaction, Davey Tree filed a Motion to Vacate the Satisfaction of Judgment in April 2012. Respondent did not oppose the motion, and the Court granted it on May 1, 2012.

16. Nearly 18 months later and over three years after default judgment was entered, on October 15, 2013, Respondent filed a Motion to Reconsider the Default Judgment. In that motion, Respondent argued that the Complaint was not served on him and that he had no knowledge of the Complaint until after default judgment was entered. He also argued that third parties, not he, were legally responsible for payment of the invoice.

17. On February 4, 2014, the Court denied Respondent's Motion, holding that there

had been proper service and that Respondent was legally obligated to pay the debt to Davey Tree. The Court also sanctioned Respondent \$400, finding the Respondent's motion to be frivolous and without merit.

**B. Respondent's Conduct Violated the Rules of Professional Conduct**

18. By filing an unsupported Satisfaction of Judgment and then failing to withdraw it after learning that it was improper, Respondent violated Prof. Cond. Rules 3.1, 3.3(a)(1), 3.4(c), 8.4(c) & (d).

19. By filing a court-declared frivolous and sanctionable Motion to Reconsider the Default Judgment over three years after default judgment was entered and 18 months after filing an improper Notice of Satisfaction, Respondent violated Prof. Cond. Rules 3.1, 3.3(a)(1), 3.4(c), 8.4(c) & (d).

**COUNT TWO – Cracknell Representation and Loan**

**A. Respondent Takes Advantage of His Relationship with the Cracknells**

20. Respondent was introduced to Bob and Lin Cracknell through a friend and would see them at social and family functions. Over time, the Cracknells developed a relationship with Respondent as a family friend.

21. Mrs. Cracknell was involved in a contentious family dispute involving dissolution of a family partnership. In 2007, Mrs. Cracknell was frustrated that her then-attorney did not seem to be making any progress in resolving the dispute.

22. Hearing of her dissatisfaction and frustration, Respondent suggested that he take on Mrs. Cracknell's representation in the dissolution of the family partnership. Mrs. Cracknell agreed to the representation.

23. Respondent never presented a written engagement letter to Mrs. Cracknell and

never communicated to her what his fee would be during the representation.

24. During the course of the representation, Respondent provided Mrs. Cracknell with invoices that always showed a zero balance.

25. Approximately two years into the representation, in September 2009, Respondent approached Mrs. Cracknell about a loan. Mrs. Cracknell agreed to loan Respondent \$100,000, and the parties verbally agreed to 10% annual interest.

26. Respondent drafted a promissory note evidencing the loan, but Respondent never presented the promissory note to Mrs. Cracknell and it was never executed.

27. Respondent never communicated to Mrs. Cracknell in writing that it was desirable for her to seek advice of independent counsel in connection with the loan and did not give her the opportunity to do so.

28. Respondent did not seek informed consent from Mrs. Cracknell in writing or otherwise regarding the essential terms of the loan transaction.

29. Respondent did not inform Mrs. Cracknell of his role in the loan transaction, failing to inform her whether he was representing her in the loan transaction.

30. When the parties met to exchange the cashier's check in September 2009, Respondent was heard to have said, "I didn't think it would be so easy," as he left with the money.

31. By early 2011, Respondent had only repaid approximately \$17,000. No additional amounts have been repaid.

**B. Respondent's Conduct Violated the Rules of Professional Conduct**

32. Respondent's conduct in failing to communicate the full nature and scope of his representation of Mrs. Cracknell, including not providing her the basis or rate of his fees for

which she would be responsible, violated Prof. Cond. Rule 1.5(b).

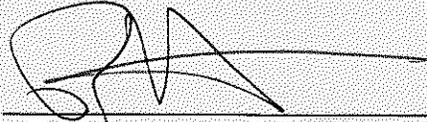
33. Respondent's conduct in obtaining a loan from Mrs. Cracknell violated Prof. Cond. Rule 1.8(a).

**PRAYER FOR RELIEF**

WHEREFORE, Relator requests that the Board discipline Respondent in a manner that is fair and just and in accordance with the Ohio Rules of Professional Conduct and the Rules of the Government of the Bar of Ohio.

Dated: 10/22, 2014

Respectfully submitted,



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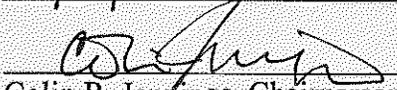
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*Attorneys for Relator Cleveland Metropolitan  
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**CERTIFICATE**

The undersigned, **COLIN R. JENNINGS, CHAIRPERSON**, of the **CLEVELAND METROPOLITAN BAR ASSOCIATION'S CERTIFIED GRIEVANCE COMMITTEE**, hereby certifies that **ROBERT J. HANNA and SARAH L. BUNCE** are duly authorized to represent Relator in the premises and have 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: 10/21/14

  
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Colin R. Jennings, Chairperson  
Certified Grievance Committee

**(Rule V of the Supreme Court Rules for the Government of the Bar of Ohio)  
Section (4)**

(4)(I)(8) The Complaint; Where Filed; By Whom Signed. A complaint shall mean a formal written complaint alleging misconduct or mental illness of one who shall be designated as the Respondent. Six (6) copies of all such complaints shall be filed in the office of the Secretary of the Board. Complaints filed by a Certified Grievance Committee shall not be accepted for filing unless signed by one or more members of the Bar of Ohio in good standing, who shall be counsel for the Relator, and supported by a certificate in writing signed by the President, Secretary or Chairman of the Certified Grievance Committee, which Certified Grievance Committee shall be deemed the Relator, certifying that said counsel are duly authorized to represent said Relator in the premises and have accepted the responsibility of prosecuting the complaint to conclusion. It shall constitute the authorization of such counsel to represent said Relator in the premises as fully and completely as if designated and appointed by order of the Supreme Court of Ohio with all the privileges and immunities of an officer of such Court. The complaint may also, but need not, be signed by the person aggrieved.

Complaints filed by the Disciplinary Counsel shall be filed in the name of Disciplinary Counsel as Relator.

Upon the filing of a complaint with the Secretary of the Board, Relator shall forward a copy thereof to Disciplinary Counsel, to the Certified Grievance Committee of the Ohio State Bar Association, to the local bar association and to any Certified Grievance committee serving the county or counties in which the Respondent resides and maintains his office and for the county from which the complaint arose.