

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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A. GAIL PRUDENTI, P.J.
WILLIAM F. MASTRO
REINALDO E. RIVERA
ROBERT A. SPOLZINO
STEVEN W. FISHER, JJ.

2008-00296

OPINION & ORDER

In the Matter of Philip Dale Russell, a suspended attorney.

Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts, petitioner; Philip Dale Russell, respondent.

(Attorney Registration No. 2033454)

DISCIPLINARY proceeding instituted by the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts. The respondent was admitted to the Bar at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on February 27, 1985. By decision and order on motion of this Court dated May 9, 2008, the respondent was immediately suspended pursuant to Judiciary Law § 90(4)(f) as a result of his conviction of a serious crime, the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts was authorized to institute and prosecute a disciplinary proceeding against him, and the issues raised were referred to the Honorable Herbert Posner, as Special Referee to hear and report.

April 7, 2009

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Diana Maxfield Kearsse, Brooklyn, N.Y. (Mark F. DeWan of counsel), for petitioner.
Arthur Russell, New York, N.Y., for respondent.

PER CURIAM. The Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts (hereinafter the Grievance Committee) served the respondent with a petition dated May 13, 2008, containing one charge of professional misconduct. After a hearing on July 8, 2008, the Special Referee sustained the charge. The Grievance Committee now moves to confirm the report of the Special Referee and to discipline the respondent as the Court deems appropriate under the circumstances. The respondent's counsel has submitted an affirmation in support of the Grievance Committee's motion.

Charge one alleges that the respondent is guilty of professional misconduct in that he has been convicted of a serious crime, in violation of Code of Professional Responsibility DRs 1-102(a)(3), (4), and (7) (22 NYCRR 1200.3[a][3], [4], [7]).

On or about September 27, 2007, the respondent was convicted of the federal felony of misprision of a felony, in violation of 18 USC § 4, upon his plea of guilty in the United States District Court for the District of Connecticut. He was sentenced, on or about December 17, 2007, to a term of probation of one year, confined to his home with electronic monitoring for a period of six months, ordered to pay a fine in the sum of \$25,000 and a special assessment in the sum of \$100, directed to perform 20 hours per week of community service while on probation, and ordered to participate in a mental health treatment program.

Inasmuch as the facts are undisputed, the Grievance Committee's motion to confirm the Special Referee's report is granted.

In determining an appropriate measure of discipline to impose, the Grievance Committee notes that the respondent has no disciplinary history in New York. The respondent concedes that he should have recused himself in this situation which underlies his conviction due to his family ties to the church and his personal familiarity with the church's music director. The respondent acknowledges that the mistake clouded his judgment concerning disposition of the music director's computer.

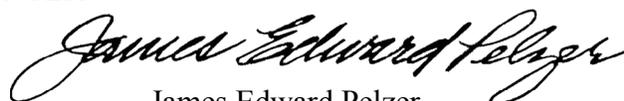
In view of the respondent's total cooperation with the Grievance Committee, his expressed remorse, his strict adherence to the terms of his suspension and federal probation, his meticulous record keeping, and the fact that he has been automatically reinstated in the State of Connecticut upon the expiration of his federal probation on December 17, 2008, the respondent is suspended for a period of six months with credit for the time already elapsed under his interim suspension.

PRUDENTI, P.J., MASTRO, RIVERA, SPOLZINO and FISHER, JJ.

ORDERED that the petitioner's motion to confirm the report of the Special Referee is granted; and it is further,

ORDERED that the respondent, Philip Dale Russell, is suspended from the practice of law for a period of six months, commencing May 9, 2008, with leave to apply for reinstatement immediately, upon furnishing satisfactory proof that during said period he: (1) refrained from practicing or attempting to practice law, (2) fully complied with the order dated May 9, 2008, and with the terms and provisions of the written rules governing the conduct of disbarred, suspended, and resigned attorneys (*see* 22 NYCRR 691.10), (3) complied with the applicable provisions of 22 NYCRR 691.11(c)(4); and (4) otherwise properly conducted himself.

ENTER:



James Edward Pelzer
Clerk of the Court