

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
RUTH C. BALKIN, JJ.

2008-01264

OPINION & ORDER

In the Matter of Daniel D. Tartaglia, admitted as
Daniel David Tartaglia, a suspended attorney.

Grievance Committee for the Ninth Judicial District,
petitioner; Daniel D. Tartaglia, respondent.

(Attorney Registration No. 1738798)

DISCIPLINARY proceeding instituted by the Grievance Committee for the Ninth Judicial District. The respondent was admitted to the Bar at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on July 29, 1981, under the name Daniel David Tartaglia. By decision and order on motion of this Court dated April 15, 2008, as amended by decision and order on motion dated May 2, 2008, the Court, on its own motion, suspended the respondent as a result of his conviction of a serious crime, pursuant to Judiciary law § 90(4)(f), authorized the Grievance Committee to institute and prosecute a disciplinary proceeding against him, and referred the issues raised to the Honorable William D. Friedmann, as Special Referee to hear and report.

Gary L. Casella, White Plains, N.Y. (Glenn E. Simpson of counsel), for petitioner.

Timothy J. Brennan, White Plains, N.Y., for respondent.

PER CURIAM. The Grievance Committee for the Ninth Judicial District (hereinafter the Grievance Committee) served the respondent with a petition containing two charges of

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professional misconduct. After a preliminary conference and a hearing before Special Referee William D. Friedmann, at which a stipulation admitting the factual evidence was submitted by the parties, both charges were sustained. The Grievance Committee now moves to confirm the Special Referee's report and to impose such discipline as the Court may deem just and proper. The respondent does not oppose the conclusion of the Special Referee that the charges have been sustained by a fair preponderance of the credible evidence, but requests that any sanction take into consideration the mitigation offered by him at the hearing.

Charge one alleges that the respondent has been convicted of a serious crime within the meaning of Judiciary law § 90(4)(d) and 22 NYCRR 691.7(b), and has thereby engaged in illegal conduct that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer, in violation of 22 NYCRR 1200.3(a)(3) [Code of Professional Responsibility DR 1-102(a)(3)].

On January 29, 2008, the respondent entered a plea of guilty to a single count of failure to file a New York State tax return, a class A misdemeanor, in violation of Tax Law § 1801(a), in satisfaction of felony charges alleged in Westchester County Superior Court Information 0833/2007. The respondent has thereby been convicted of a serious crime.

Charge two alleges that the respondent has engaged in conduct prejudicial to the administration of justice, in violation of 22 NYCRR 1200.3(a)(5) [Code of Professional Responsibility DR-102(a)(5)], based on the allegations of charge one.

Based on the admissions set forth in the respondent's answer and the stipulation, the Special Referee properly sustained both charges and 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 has submitted copies of the March 16, 1987, admonition issued to the respondent for neglect and misrepresentation of the status of an appeal, as well as Letters of Caution dated April 10, 1989 (neglect of three assigned counsel matters), June 28, 1995 (failure to cooperate with the Grievance Committee and failure to pay the biennial registration fee), and March 28, 1997 (for failing to notify the Office of Court Administration of his change of office address).

The respondent asks that the Court consider the numerous letters on his behalf from members of the community attesting to his good character, as well as his cooperation with the Grievance Committee, the absence of any personal gain or any loss to any client, and his ultimate payment of his tax liability. The respondent further asks the Court to take into consideration that the

conduct resulting in his criminal conviction was a result of his underlying mental illness and that he is presently in therapy and is receiving medication to deal with those issues.

While the Grievance Committee does not explicitly challenge the opinions of the respondent's medical expert, it notes that the respondent's so-called "avoidance behavior" was demonstrated only with regard to his obligations to file tax returns and pay his taxes.

The respondent is suspended for a period of one year, with credit for the time elapsed under his interim suspension, and is granted leave to apply for reinstatement immediately.

PRUDENTI, P.J., MASTRO, RIVERA, SPOLZINO and BALKIN, JJ., concur.

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

ORDERED that the respondent, Daniel D. Tartaglia, admitted as Daniel David Tartaglia, is suspended from the practice of law for a period of one year, commencing immediately, and continuing until the further order of this Court, with credit for time elapsed since the date of his interim suspension, with leave to the respondent to apply for reinstatement immediately upon furnishing satisfactory proof that during the said period he (a) refrained from practicing or attempting to practice law, (b) fully complied with this order and with the terms and provisions of the written rules governing the conduct of disbarred, suspended, and resigned attorneys (22 NYCRR 691.10), (c) complied with the applicable continuing legal education requirements of 22 NYCRR 691.11(c)(3); and (d) otherwise properly conducted himself; and it is further,

ORDERED that pursuant to Judiciary Law § 90, during the period of suspension and until the further order of this court, the respondent, Daniel D. Tartaglia, admitted as Daniel David Tartaglia, shall continue to desist and refrain from (1) practicing law in any form, either as principal or agent, clerk or employee of another, (2) appearing as an attorney or counselor-at-law before any court, Judge, Justice, board, commission or other public authority, (3) giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) holding himself out in any way as an attorney and counselor-at-law; and it is further,

ORDERED that if the respondent, Daniel D. Tartaglia, admitted as Daniel David Tartaglia, has been issued a secure pass by the Office of Court Administration, it shall be returned forthwith to the issuing agency and the respondent shall certify to the same in his affidavit of compliance pursuant to 22 NYCRR 691.10(f).

ENTER:



James Edward Pelzer
Clerk of the Court