

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

D24462  
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A. GAIL PRUDENTI, P.J.  
WILLIAM F. MASTRO  
REINALDO E. RIVERA  
ROBERT A. SPOLZINO  
CHERYL E. CHAMBERS, JJ.

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2008-06697

OPINION & ORDER

In the Matter of James G. Kalpakis, a suspended attorney.

Grievance Committee for the Tenth Judicial District, petitioner; James G. Kalpakis, respondent.

(Attorney Registration No. 2276053)

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DISCIPLINARY proceeding instituted by the Grievance Committee for the Tenth Judicial District. By decision and order on application of this Court dated October 9, 2008, the Grievance Committee for the Tenth Judicial District was authorized to institute and prosecute a second disciplinary proceeding against the respondent based on a petition dated July 15, 2008, and the issues raised were referred to the Honorable Lewis L. Douglass, as Special Referee to hear and report. The petition contains 14 charges of professional misconduct, including multiple acts of neglect, submitting false affidavits to the Supreme Court in Queens and Kings counties, misleading a client about the status of her matter, failing to obtain court permission to withdraw as counsel in a pending litigation, and failing to promptly notify a client of the receipt of a settlement check, which was not deposited into the respondent's attorney trust account for approximately one year after its receipt. By opinion and order of this Court dated April 11, 2005, the respondent was suspended for

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a period of two years as a result of a prior, unrelated disciplinary proceeding involving charges of conversion and breaching his fiduciary duty by failing to preserve client funds entrusted to him (*see Matter of Kalpakis*, 18 AD3d 73). He has not applied for reinstatement. The respondent, who was admitted to the Bar at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on July 19, 1989, has now submitted an affidavit of resignation dated April 21, 2009, as amended May 15, 2009.

Rita E. Adler, Hauppauge, N.Y. (Robert H. Cabbie of counsel), for petitioner.

Edwin J. Mulhern, Carle Place, N.Y., for respondent.

PER CURIAM.

In his affidavit, the respondent acknowledges his inability to successfully defend himself on the merits of any of the disciplinary charges which have been initiated against him by the Grievance Committee for the Tenth Judicial District (hereinafter the Grievance Committee) as described in the petition. The Grievance Committee informed the respondent that additional allegations of professional misconduct are under investigation and would be prosecuted in a disciplinary proceeding to be recommended to the Court.

The respondent acknowledges that the opinion and order of this Court dated April 11, 2005, directed him, inter alia, to “desist and refrain” from practicing law in any form (*Matter of Kalpakis*, 18 AD3d 73, 80). Other than a decision and order on motion of this Court dated June 24, 2005, which extended the effective date of his suspension to June 30, 2005, the Court has not issued any order permitting the respondent to engage in the practice of law or modifying the order of suspension. The respondent has, nevertheless, practiced law after the effective date of his suspension by holding himself out as an attorney in connection with real estate transactions and by appearing as an attorney for the plaintiff in an action in the Supreme Court, Nassau County, on or about June 4, 2008, under Index Number 010269/08.

The respondent concedes that based upon those three instances of practicing law after the effective date of his suspension, he is in contempt of this Court’s order dated April 11, 2005, in violation of Judiciary law §§ 750(a)(3), (b), and 753(a)(4). He acknowledges his inability to successfully defend himself on the merits of any of the disciplinary charges which would be initiated against him by the Grievance Committee based upon his contempt. The respondent further avers that

his resignation is freely and voluntarily tendered and that he is not being subjected to coercion or duress by anyone. He has discussed his decision to resign with his attorney as well as others whose advice and counsel he respects, and is fully aware of the implications of its submission, including being barred by Judiciary Law § 90 and the Rules of the Appellate Division from seeking reinstatement for a period of at least seven years.

The respondent avers that his resignation is submitted subject to any application which could be made by the Grievance Committee for an order directing that he make restitution and that he reimburse the Lawyers' Fund for Client Protection, pursuant to Judiciary Law § 90(6-a). He acknowledges the continuing jurisdiction of the court to make such an order, which could be entered as a civil judgment against him, and he specifically waives the opportunity afforded him by Judiciary Law § 90(6-a)(f) to be heard in opposition thereto.

The Grievance Committee recommends acceptance of the proffered resignation.

Inasmuch as the amended affidavit of resignation complies in all respects with the requirements of 22 NYCRR 691.9, it is accepted and, effective immediately, the respondent is disbarred, and his name is stricken from the roll of attorneys. The disciplinary proceeding authorized by the decision and order on application of this Court dated October 9, 2008, must be discontinued in light of this resignation.

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

ORDERED that the resignation of James G. Kalpakis is accepted and directed to be filed; and it is further,

ORDERED that pursuant to Judiciary Law § 90, effective immediately, James G. Kalpakis is disbarred and his name is stricken from the roll of attorneys and counselors-at-law; and it is further,

ORDERED that James G. Kalpakis shall continue to comply with this court's rules governing the conduct of disbarred, suspended, and resigned attorneys (*see* 22 NYCRR 691.10); and it is further,

ORDERED that pursuant to Judiciary Law § 90, effective immediately, James G. Kalpakis is commanded to continue to desist and refrain from (1) practicing law in any form, either as principal or as 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 James G. Kalpakis 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); and it is further,

ORDERED that the disciplinary proceeding authorized by decision and order on application of this Court dated October 9, 2008, is discontinued.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court