

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
PETER B. SKELOS
RUTH C. BALKIN, JJ.

2010-00760

OPINION & ORDER

In the Matter of Russell G. Cheek, a suspended attorney.

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

(Attorney Registration No. 1653245)

Application by the petitioner, Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts, pursuant to 22 NYCRR 691.3, to impose discipline on the respondent based upon disciplinary action taken against him by the Supreme Court of New Jersey. The respondent was admitted to the Bar at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on January 9, 1980.

Diana Maxfield Kears, Brooklyn, N.Y. (Diana J. Szochet of counsel), for petitioner.

PER CURIAM.

The Grievance Committee for the Second, Eleventh, and Thirteen Judicial Districts (hereinafter the Grievance Committee) has submitted a notice pursuant to 22 NYCRR 691.3 informing the respondent of his right to file, within 20 days of service, a verified

June 8, 2010

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statement setting forth any of the enumerated defenses to the imposition of reciprocal discipline based on an order of the Supreme Court of New Jersey, dated May 15, 2008, disbarring him on consent from practicing law in that state.

The respondent previously was the subject of a reciprocal disciplinary proceeding which resulted in an opinion and order of this Court, dated July 12, 2004, suspending him from practice in New York based on an order of the Supreme Court of New Jersey dated November 21, 2003, suspending him from practice in that State for three months effective December 29, 2003. This Court made a finding that the patterns of neglect, failure to cooperate, and misrepresentations exhibited by the respondent warranted his suspension from the practice of law for one year. He has never applied for reinstatement and remains suspended in New York.

With respect to the present matter, the misconduct for which the respondent was disbarred by the Supreme Court of New Jersey is set forth in the formal complaint filed by the New Jersey Office of Attorney Ethics (hereinafter the OAE) dated November 2, 2007. The respondent was temporarily suspended from the practice of law in the State of New Jersey by order of the Supreme Court of New Jersey dated May 22, 2007, based on his failure to comply with an order of that court dated March 20, 2007, directing him to provide the OAE with certain records. He was charged with knowing misappropriation and conduct involving dishonesty, fraud, deceit, or misrepresentation arising from his administration of the Estate of Grace Armeit.

On March 18, 1994, the decedent's real property in Lakehurst, New Jersey, was sold and the HUD-1 Settlement Statement required that \$7,000 be held in escrow pending the filing of a New Jersey Inheritance Tax Waiver. Letters dated March 18, 1994, and March 21, 1994, from the respondent to the settlement agent memorialized the respondent's obligation to hold \$7,000 in his trust account and release it after the tax waivers were received. The deposit was recorded on March 21, 1994. The tax waivers were not received by the respondent from the New Jersey Division of Taxation until January 12, 1999. The respondent's services were terminated in or about March 1999 and Scott W. Kenneally was retained to complete the administration of the estate. Despite demands from Mr. Kenneally between June 6, 2001, and August 30, 2002, for the return of the \$7,000, the respondent failed to do so until April 12, 2005. The respondent's bank balances during the interval between deposit and disbursement indicate daily balances below \$7,000.

The respondent revealed to the OAE that he removed the \$7,000 in 2001 or 2002, considering it to be his fee, and replaced it in 2004 with personal funds. Bank account statements do not support that explanation.

The respondent is also charged with failure to cooperate with New Jersey disciplinary authorities demanding his appearance on October 16, 2006, for an audit of his books and records for the period from October 1, 1993, to April 12, 2005. The audit was rescheduled three times at the respondent's request. The respondent requested a fourth adjournment which was denied by the OAE. On April 11, 2007, the respondent appeared for an audit but failed to bring any of the requested records. He has not complied with the request of the OAE for books and records. He was temporarily suspended from the practice of law in the State of New Jersey by order of the Supreme Court of New Jersey on May 22, 2007, for failure to provide the OAE with the requested records.

Although the respondent was personally served on August 18, 2008, with the notice pursuant to 22 NYCRR 691.3, he has not asserted any of the enumerated defenses nor demanded a hearing. Accordingly, there is no impediment to the imposition of reciprocal discipline upon the respondent at this juncture.

In view of the respondent's prior history and the serious nature of his more recent misconduct, the Grievance Committee's application to impose reciprocal discipline upon him is granted, and, effective immediately, he is disbarred in New York based upon his disbarment in New Jersey.

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

ORDERED that the petitioner's application is granted; and it is further,

ORDERED that pursuant to Code of Responsibility 22 NYCRR 691.3, effective immediately, the respondent, Russell G. Cheek, is disbarred and his name is stricken from the roll of attorneys and counselors-at-law; and it is further,

ORDERED that the respondent, Russell G. Cheek, 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, the respondent, Russell G. Cheek, is commanded to continue to desist and refrain from (l) 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.

ORDERED that if the respondent, Russell G. Cheek, 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:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court