

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
DANIEL D. ANGIOLILLO, JJ.

2010-07821

OPINION & ORDER

In the Matter of Joseph K. LoBue, admitted as
Joseph Kimball LoBue, a suspended attorney.

Grievance Committee for the Second, Eleventh,
and Thirteenth Judicial Districts, petitioner;
Joseph K. LoBue, respondent.

(Attorney Registration No. 2080786)

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 March 18, 1987, under the name Joseph Kimball LoBue.

Diana Maxfield Kearse, Brooklyn, N.Y., for petitioner.

PER CURIAM. By decision and order of this Court dated November 23, 2010, as amended December 1, 2010, the respondent was immediately suspended pursuant to 22 NYCRR 691.4(l)(1)(i), (ii), and (iii), the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts (hereinafter the Grievance Committee) was authorized to institute and

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prosecute a disciplinary proceeding against the respondent based on a petition dated August 12, 2010, the respondent was directed to submit an answer to the petition within 20 days after service upon him of a copy of the decision and order, and the issues raised were referred to the Honorable Stella Schindler, as Special Referee, to hear and report.

The Grievance Committee now moves to impose discipline against the respondent upon his default in failing to timely submit an answer to the petition within the time frame set forth in this Court's decision and order dated November 23, 2010.

The petition contains eight charges of professional misconduct, including allegations that the respondent misappropriated funds entrusted to him as a fiduciary, incident to his practice of law; failed to promptly release or deliver escrow funds entrusted to him as a fiduciary when demanded by purchasers pursuant to the terms of the parties' agreement; failed to pay a judgment entered against him; failed to maintain proper bookkeeping records for his escrow account; and engaged in a pattern of failing to cooperate with legitimate investigations of complaints of professional misconduct against him by the Grievance Committee and failing to comply with the Grievance Committee's lawful demands, in violation of Code of Professional Responsibility DR 9-102(a), (c)(4), DR 1-102(a)(5), DR 9-102(d)(2) (22 NYCRR 1200.46[a]; [c][4]; 1200.3[a][5]; 1200.46[d][2]), and rule 8.4(d) and (h) of the Rules of Professional Conduct (22 NYCRR 1200.0). The respondent admitted under oath that he used client funds to pay for office expenses.

On August 17, 2010, a copy of the Grievance Committee's order to show cause, which included a copy of the petition, was personally served on the respondent. He did not answer, nor did he request additional time in which to do so.

On December 8, 2010, the respondent was personally served with a copy of the Court's order dated November 23, 2010. He failed to submit an answer to the petition within the time frame allotted pursuant to that order, or request additional time in which to do so.

On January 24, 2011, the respondent was personally served with a copy of the "Notice of Motion to Adjudicate Respondent in Default." His response was due on March 4, 2011. An extension of time was granted until March 16, 2011, to submit a response. To date, the respondent has failed to submit a response to the motion or an answer to the petition.

Accordingly, the Grievance Committee's motion is granted, the charges in the petition are deemed established and, effective immediately, the respondent is disbarred upon his default, and his name is stricken from the roll of attorneys and counselors-at-law.

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

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

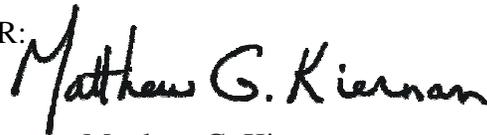
ORDERED that, pursuant to Judiciary Law § 90, effective immediately, the respondent, Joseph K. LoBue, admitted as Joseph Kimball LoBue, is disbarred upon his default and his name is stricken from the roll of attorneys and counselors-at-law; and it is further,

ORDERED that the respondent, Joseph K. LoBue, admitted as Joseph Kimball LoBue, 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, the respondent, Joseph K. LoBue, admitted as Joseph Kimball LoBue, is commanded to 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, Joseph K. LoBue, admitted as Joseph Kimball LoBue, 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 that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court