

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

D33693
W/prt

_____AD3d_____

WILLIAM F. MASTRO, A.P.J.
REINALDO E. RIVERA
PETER B. SKELOS
MARK C. DILLON
DANIEL D. ANGIOLILLO, JJ.

2010-03891

OPINION & ORDER

In the Matter of Frantz Metellus,
a suspended attorney.

Grievance Committee for the Second, Eleventh,
and Thirteenth Judicial Districts, petitioner;
Frantz Metellus, respondent.

(Attorney Registration No. 4121414)

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 November 19, 2003. By decision and order on motion dated July 6, 2010, this Court suspended the respondent from the practice of law pursuant to Judiciary Law § 90(4)(f), authorized the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts to institute and prosecute a disciplinary proceeding against him based on his conviction of a serious crime, directed the respondent to submit an answer to the petition, and referred the issues raised to the Hon. Jerome M. Becker, as Special Referee to hear and report.

February 21, 2012

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Diana Maxfield Kearse, Brooklyn, N.Y. (Mark F. DeWan of counsel), for petitioner.
Frantz Metellus, Brooklyn, N.Y., respondent pro se.

PER CURIAM. The Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts (hereinafter the Grievance Committee) served the respondent with a petition dated July 13, 2010. Following a hearing held on September 1, 2010, the Special Referee sustained the charge. The Grievance Committee now moves to confirm the report of the Special Referee and for imposition of such discipline as the Court deems just and appropriate. The respondent has submitted a “Memorandum in Support of Suspension,” wherein he argues that a suspension of one year is the appropriate discipline.

Charge one alleges that the respondent violated rules 8.4(b), (c) and (h) of the Rules of Professional Conduct (22 NYCRR 1200.0), based on his conviction of a serious crime.

On March 20, 2009, the respondent pleaded guilty in the United States District Court for the Eastern District of New York, before United States Magistrate Judge Steven M. Gold, to the crime of conspiracy to commit wire fraud and bank fraud, in violation of 18 USC § 1349, a class B felony. On March 16, 2010, United States District Court Judge Jack B. Weinstein sentenced the respondent to a term of imprisonment of six months, plus three years of postrelease supervision. He was directed to pay restitution in the amount of \$5,166,900, jointly and severally with all codefendants, payable at the rate of \$100 per month, beginning one year after his release from prison. An assessment of \$100 was also imposed.

Based on the uncontroverted evidence and the respondent’s admissions, the Special Referee properly sustained the charge. Accordingly, the Grievance Committee’s motion to confirm the report of the Special Referee is granted.

In determining the appropriate measure of discipline to impose, the respondent asks that the Court consider the fact that he was not the mastermind of the underlying mortgage fraud scheme, but just one of its participants; that he allegedly did not share in the ill-gotten profits and only received his customary legal fees for conducting the necessary closings; that he is remorseful; and that his conduct was allegedly the product of a relatively naive, inexperienced attorney.

Notwithstanding the fact that the respondent was not the mastermind of the fraud, he was a knowing participant in an on-going fraudulent scheme which lasted three years, and resulted

in substantial losses to the victims, as reflected in the restitution amount of \$5,166,900. Moreover, he caused his associate, a young novice attorney, to become a member of the conspiracy (*see Matter of Gayle*, 2010 NY Slip Op 87198[U] [2d Dept 2010]). We do not find the respondent's professed naivete to be credible.

Under the circumstances of this case, effective immediately, the respondent is disbarred.

MASTRO, A.P.J., RIVERA, SKELOS, DILLON and ANGIOLILLO, JJ., concur.

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

ORDERED that, effective immediately, the respondent, Frantz Metellus, is disbarred, and his name is stricken from the roll of attorneys and counselors-at-law; and it is further,

ORDERED that the respondent, Frantz Metellus, 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, Frantz Metellus, shall 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 the respondent, Frantz Metellus, 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:


Aprilanne Agostino
Clerk of the Court