

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

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REINALDO E. RIVERA, J.P.
MARK C. DILLON
DANIEL D. ANGIOLILLO
ANITA R. FLORIO
PLUMMER E. LOTT, JJ.

2011-09344

OPINION & ORDER

In the Matter of Shmuel B. Klein, admitted as
Shmuel Berel Klein, a suspended attorney, resignor.

(Attorney Registration No. 2205763)

Resignation tendered pursuant to 22 NYCRR 691.9 by Shmuel B. Klein, who was admitted to the Bar at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on June 29, 1988, under the name Shmuel Berel Klein. By opinion and order of this Court dated June 30, 1997, Mr. Klein was suspended from the practice of law for a period of five years (*see Matter of Klein*, 231 AD2d 232, *cert denied* 524 US 953). By decision and order on motion of this Court dated July 30, 1997, Mr. Klein's motion, inter alia, for leave to reargue or to appeal to the Court of Appeals was denied, and, on this Court's own motion, the effective date of his suspension was adjourned to August 13, 1997. Mr. Klein subsequently moved in the Court of Appeals for leave to appeal to that Court, which motion was denied on September 23, 1997, and for renewal or reargument, which motion was denied on December 22, 1997. He then petitioned the United States Supreme Court for a writ of certiorari, which petition was denied on June 26, 1998. Mr. Klein's first application for reinstatement was denied as premature by decision and order on application of this Court dated April 26, 1999. By a subsequent decision and order on application

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of this Court dated April 23, 2002, Mr. Klein's second application for reinstatement was denied, with leave to renew upon the submission of a proper application duly served on both the Grievance Committee for the Ninth Judicial District and the Lawyers' Fund for Client Protection. Mr. Klein's third application for reinstatement was deemed withdrawn, and he attempted to resign from the Bar at that time. By decision and order on application of this Court dated February 14, 2003, the purported resignation was rejected, with leave to submit an affidavit in proper form. A second resignation was rejected by decision and order on application of this Court dated April 2, 2003, on the same ground. By decision and order on motion dated October 17, 2011, the Grievance Committee for the Ninth Judicial District was authorized, on this Court's own motion, to institute and prosecute a further disciplinary proceeding against Mr. Klein based upon his conviction of a serious crime, and the matter was referred to the Honorable Kenneth Rudolph, as Special Referee to hear and report. By decision and order on motion dated April 20, 2012, this Court, on its own motion, relieved the Honorable Kenneth Rudolph as Special Referee and reassigned the matter to Nicholas Leo, Jr., as Special Referee to hear and report.

Gary L. Casella, White Plains, N.Y. (Gloria J. Anderson of counsel), for the Grievance Committee for the Ninth Judicial District.

Shmuel B. Klein, Spring Valley, N.Y., resignor pro se.

PER CURIAM.

Shmuel B. Klein, admitted as Shmuel Berel Klein, has submitted an affidavit dated May 29, 2012, wherein he tenders his resignation as an attorney and counselor-at-law (*see* 22 NYCRR 691.9). Mr. Klein was admitted to the Bar at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on June 29, 1988, under the name Shmuel Berel Klein.

Mr. Klein is the subject of pending charges of professional misconduct, including that he was convicted after trial of a "serious crime" within the meaning of Judiciary Law § 90(4)(d) and 22 NYCRR 691.7(b), and that he failed to reregister as an attorney with the Office of Court Administration. He acknowledges that he cannot successfully defend himself against the charge that he failed to maintain his attorney registration following his suspension from the practice of law, and further acknowledges that he was convicted of "a misdemeanor."

Mr. Klein further acknowledges that his resignation is freely and voluntarily rendered, that he is not being subjected to coercion or duress by anyone, and that he is fully aware of the implications of submitting his resignation, including the fact that he is barred from applying for reinstatement as an attorney for at least seven (7) years.

Additionally, Mr. Klein avers that his resignation is submitted subject to any application which could be made by the Grievance Committee for the Ninth Judicial District (hereinafter 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 further acknowledges the continuing jurisdiction of the Court to make such an order, which could be entered as a civil judgment against him pursuant to Judiciary Law § 90 (6-a)(d), and he specifically waives his opportunity pursuant to Judiciary Law § 90 (6-a)(f) to be heard in opposition thereto.

The Grievance Committee recommends that the Court accept Mr. Klein's resignation from the Bar and that his name be stricken from the roll of attorneys and counselors-at-law.

Inasmuch as the proffered resignation substantially complies with the requirements of 22 NYCRR 691.9, it is accepted, and, effective immediately, Mr. Klein is disbarred, and his name is stricken from the roll of attorneys and counselors-at-law.

RIVERA, J.P., DILLON, ANGIOLILLO, FLORIO and LOTT, JJ., concur.

ORDERED that the resignation of Shmuel B. Klein, admitted as Shmuel Berel Klein, is accepted and directed to be filed; and it is further,

ORDERED that pursuant to Judiciary Law § 90, effective immediately, Shmuel B. Klein, admitted as Shmuel Berel Klein, is disbarred and his name is stricken from the roll of attorneys and counselors-at-law; and it is further,

ORDERED that Shmuel B. Klein, admitted as Shmuel Berel Klein, 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, Shmuel B. Klein, admitted as Shmuel Berel Klein, 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 Shmuel B. Klein, admitted as Shmuel Berel Klein, has been issued a secure pass by the Office of Court Administration, it shall be returned forthwith to the issuing agency, and he shall certify to the same in his affidavit of compliance pursuant to 22 NYCRR 691.10(f).

ENTER:


Aprilanne Agostino
Clerk of the Court