

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1974 Disciplinary Docket No. 3
Petitioner :
v. : No. 68 DB 2013
: Attorney Registration No. 4072
STEVEN M. LIPSCHUTZ, :
Respondent : (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 24th day of October, 2013, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated August 15, 2013, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that Steven M. Lipschutz be subjected to public censure by the Supreme Court.

A True Copy Patricia Nicola
As Of 10/24/2013

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Steven M. Lipschutz, was admitted to the practice of law on November 16, 1964.

3. Attorney registration records state that Respondent maintains an office for the practice of law at 1800 JFK Boulevard, 5th Floor, Philadelphia, PA 19103.

4. Pursuant to Pa.R.D.E. 201(a)(1), Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

II. FACTUAL ADMISSIONS AND VIOLATIONS OF RULES OF PROFESSIONAL CONDUCT

Charge: Improper Solicitation

5. At all relevant times, Respondent was the principal of Steven M. Lipschutz & Associates.

6. PCH Consulting (PCH) was an independent, non-lawyer, business entity that offered marketing services for doctors and medical providers.

7. PCH also solicited legal services for lawyers.

8. PCH employed Paul C. Hopkins, John Bradford, Mike Winn, and Brendan Collins to solicit legal services for lawyers.

9. PCH was employed or retained by or was associated with Respondent.

10. Under Pennsylvania Rule of Professional Conduct (RPC) 7.3(a), it is misconduct for an attorney or an intermediary to solicit the attorney's employment from a prospective client by telephone or through in-person contact.

a. Solicitation occurs when the attorney or intermediary initiates a verbal exchange about employing an attorney.

11. Respondent knew that soliciting professional employment in person or by telephone through an intermediary was prohibited by the Rules of Professional Conduct.

12. From on or about December 2008 through August 2, 2010, not less than 1,103 persons in the Philadelphia Metropolitan area were involved in personal injury accidents.

13. From on or about December 31, 2008, to on or about August 11, 2010, PCH employees called on the telephone no less than 1,103 persons involved in personal injury accidents.

14. From time to time, the PCH employees;

- a. visited the homes of the 1,103 persons involved in the personal injury accidents;
- b. gave the 1,103 persons involved in personal injury accidents a copy of Respondent's contingent fee agreement; and
- c. had the 1,103 persons involved in personal injury accidents sign Respondent's contingent fee agreement retaining Respondent as their attorney in their personal injury matter.

15. Respondent had no family, close personal, or prior professional relationship with the 1,103 accident victims that PCH employees solicited.

16. A significant motive for PCH employees to solicit the accident victims was for Respondent's personal pecuniary gain.

17. Respondent's agents solicited the persons involved in personal injury accidents in violation of RPC 7.3(a).

18. From at least January 2, 2009, through August 2, 2010, PCH sent Respondent invoices for signing up 1,103 persons involved in personal injury accidents.

19. PCH charged Respondent between \$55 and \$110 for its "sign up" services.

20. Many of the PCH invoices stated that they were for "sign up" services.

21. From time to time, Respondent would send PCH a check for its "sign up" services.

22. From January 15, 2009, to August 13, 2010, Respondent paid PCH a total of \$117,245 to "sign up" the 1,103 persons involved in personal injury accidents.

23. If this matter were to proceed to a hearing, Respondent's position would be:

- a. Doctors and medical providers paid PCH to market their medical services to accident victims;
- b. Respondent knew that PCH employees were having telephone and in-person contact with accident victims;
- c. Respondent had instructed PCH employees that when having telephone and in-person contact with accident victims, to provide Respondent's name, contact information, and contingent fee agreement only after an accident victim asked the PCH employee for a recommendation of a lawyer;

- d. Respondent was unaware that PCH employees were initiating conversations with accident victims about employing a lawyer; and
- e. had Respondent known that PCH employees were engaged in in-person solicitation of potential clients, he would not have consented to having PCH employees provide Respondent's name, contact information and contingent fee agreement.

24. As a partner or lawyer who possesses comparable managerial authority in the law firm of Steven M. Lipschutz, P.C., Respondent failed to make reasonable efforts to ensure that Respondent's firm had in effect measures giving reasonable assurance that the conduct of nonlawyers employed by, retained by, or associated with Respondent was compatible with the professional obligations of a lawyer.

25. PCH employees operated with no supervisory oversight and control by a lawyer or Respondent.

26. Respondent or a lawyer-designee did not meet or communicate with PCH principals and employees on a regular basis to ascertain that they were complying with the requirements of RPC 7.3(a).

27. Respondent should have known that PCH employees were not complying with the restrictions of RPC 7.3(a).

28. Respondent's conduct was willfully blind.

29. By Respondent's paying all of PCH's invoices without scrutinizing the process that generated the invoices, Respondent ratified PCH's improper conduct.

30. Respondent's state of mind in paying PCH \$117,245 for its "sign up" services was not less than reckless.

31. On July 20, 2010, Ms. Charlotte J. Mears filed a complaint against Respondent with ODC.

a. Ms. Mears' complaint exemplifies the relationship between PCH and Respondent.

32. On April 7, 2010, Ms. Mears was involved in an automobile accident.

33. On April 28, 2010, PCH employees Mike Winn and John Bradford made repeated telephone calls to Ms. Mears regarding her automobile accident matter, during which times Messrs. Winn and Bradford informed Ms. Mears that they could help her to obtain medical and legal assistance.

34. Mssr. Winn's and Bradford's offer to assist Ms. Mears with obtaining Respondent's legal services was a solicitation in violation of RPC 7.3(a).

35. Respondent had no family or prior professional relationship with Ms. Mears.

36. On April 29, 2010, PCH employee Brendan Collins went to Ms. Mears' house.

37. During Mr. Collins' meeting with Ms. Mears, Mr. Collins presented Ms. Mears with:

- a. a written contingent fee agreement for Respondent's law firm to handle her personal injury matter;
- b. a letter from Respondent instructing Ms. Mears to refer all calls and letters regarding her case to Respondent;
- c. an Authorization for Disclosure of Protected Health Insurance Information; and
- d. a Verification stating that: "he/she is the plaintiff in the foregoing matters, duly authorized to make this verification and contends that the statement [sic] contained in the foregoing pleading are true and correct to the best of his/her knowledge, information and belief." (emphasis added)

38. Ms. Mears signed the following documents and dated them April 29, 2010:

- a. Verification;
- b. Authorization for Disclosure of Protected Health Information; and

c. Contingent Fee Agreement.

39. Prior to Mr. Collins' presenting to Ms. Mears the documents described in the two preceding paragraphs, Ms. Mears had never requested the assistance of a lawyer.

40. Respondent's agents solicited Ms. Mears in violation of Rule of Professional Conduct 7.3(a).

41. Ms. Mears signed and dated the Verification without having first reviewed the purported pleading she was verifying to be true.

a. By Respondent's giving PCH employees a Verification for a client to sign, without first providing the client with a pleading to review, Respondent engaged in conduct involving deceit and misrepresentation through the acts of the PCH employees.

42. On April 30, 2010, PCH sent Respondent an invoice for having "signed up" Ms. Mears.

43. On May 7, 2010, Respondent paid PCH's invoice.

44. By his conduct as alleged in paragraphs 5 through 43 above, Respondent violated the following Rules of Professional Conduct:

a. RPC 5.3(a), which states that with respect to a nonlawyer employed or retained by or associated with a lawyer: a partner and a

lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

- b. RPC 7.3(a), which states that a lawyer shall not solicit in-person or by intermediary professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted is a lawyer or has a family, close personal, or prior professional relationship with the lawyer. The term "solicit" includes contact in-person, by telephone or by real-time electronic communication, but, subject to the requirements of Rule 7.1 and Rule 7.3(b), does not include written communications, which may include targeted, direct mail advertisements;

- c. RPC 7.7(a), which states that a lawyer shall not accept referrals from a lawyer referral service if the service engaged in communication with the public or direct contact with prospective clients in a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer;
- d. RPC 8.4(a), which states that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; and
- e. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

III. JOINT RECOMMENDATION FOR DISCIPLINE

45. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a Public Censure.

46. Respondent hereby consents to the discipline being imposed by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Pa.R.D.E. 215(d), stating that he consents to the recommended discipline and including the mandatory acknowledgements contained in Pa.R.D.E. 215(d)(1) through (4).

47. Petitioner and Respondent respectfully submit that there are the following mitigating factors:

- a. Respondent has no discipline of record in 48 years of practicing law; and
- b. Respondent fully cooperated with ODC's investigation and voluntarily provided the voluminous documents requested by ODC.

48. Attorneys engaged in the improper solicitation of clients have received a range of discipline spanning from private discipline to a five-year suspension. Relevant factors to be considered in determining the quantum of discipline to be imposed include an attorney's direct involvement in the solicitation, commission of wrongdoing

in addition to the improper solicitation, and cooperation with the disciplinary authority's investigation of the improper solicitation.

In a reciprocal discipline case, the Pennsylvania Supreme Court imposed a three-month suspension on an attorney who engaged in telephone and in-person solicitation. *Matter of Clark W. Pease*, 695 Disc. Dkt. No. 3 (Pa. S.Ct. Order 10/11/2001). Pease would obtain the name and contact information of accident victims from a tow truck driver. Thereafter, Pease would telephone the accident victims, mention that the tow truck operator had provided Pease with the victims' contact information, and set up an appointment to have the accident victims sign a retainer agreement. Pease would then pay the tow truck operator shortly after an accident victim signed the retainer agreement. In addition, Pease loaned money to one of the clients referred by the tow truck driver. The New Jersey Supreme Court had imposed a three-month suspension as original discipline. *In the Matter of Clark Pease, an Attorney at Law*, 167 N.J. 597, 772 A.2d 913 (2001).

See also *Office of Disciplinary Counsel v. Joseph D. Lento*, No. 5 DB 2013, D.Bd. Rpt. 4/23/2013 (S.Ct. Order 7/17/2013) (Discipline on Consent) (Lento received a one-year suspension followed by one year of probation with a

practice monitor for offering to pay a Philadelphia Criminal Justice Center employee to solicit potential clients for his law firm and for offering other court employees a "mutually beneficial business relationship" for providing contact information of potential clients); *In re Harry J. Oxman*, 437 A.2d 1169 (Pa. 1981) (Oxman received an eighteen-month suspension for soliciting clients through a paid "investigator" employee, filing contingent fee agreements with the court that falsified referral sources in an effort to conceal his unethical solicitations, and counseling and requesting clients and former clients to testify falsely before the investigating judge of the Special Judicial Investigation tasked with investigating unethical solicitation practices by attorneys), reinstatement granted, 28 Pa. D.&C.3d 40 (1983); *In re Ralph S. Levitan*, 437 A.2d 1169 (Pa. 1981) (companion case with Oxman; one-year suspension imposed); and *In re Norman Shigon*, 329 A.2d 235 (Pa. 1974) (Shigon was suspended for five years for engaging in unethical solicitation practices, impeding the Special Judicial Investigation, knowingly submitting inflated medical claims, and filing of false retainer agreements with the court), reinstatement granted, 23 Pa. D.&C.3d 259 (1982).

49. The misconduct of the attorneys in *Shigon*, *Levitan*, and *Oxman*, which in addition to the use of runners, involved the reprehensible conduct of attempting to suborn perjury and the knowing filing of false documents with the court, is profoundly more serious than the misconduct of Respondent. Furthermore, Respondent's cooperation with ODC's investigation into the use of runners stands in sharp contrast to the conduct of *Shigon*, *Levitan*, and *Oxman*, who affirmatively impeded the government's investigation into the use of runners.

Lento, unlike *Shigon*, *Oxman*, and *Levitan*, cooperated with investigations into improper solicitation. Yet Lento's conduct of attempting to corrupt court employees by offering to pay them to solicit or to assist him in soliciting potential clients is more serious misconduct than Respondent's employment of a business entity to solicit potential clients. In addition, Lento's misconduct burdened the efficient operation of the Criminal Justice Center, and the court system's investigation into the improper solicitation consumed the limited resources of the First Judicial District.

The misconduct of the attorney in *Pease* is also more serious than the misconduct of Respondent. In *Pease*, the tow truck driver simply presented the names and contact

information of accident victims to Pease. Thereafter, Pease made the personal choice to directly solicit potential clients. In contrast to Respondent, Pease called each of the accident victims, met with the victims either at his office or their home, and presented the victims with his fee agreement. The direct evidence clearly established that Pease had actual knowledge of improper solicitation, as Pease himself was doing the soliciting. Pease's personal involvement with his clients extended to loaning money for "necessary living expenses" to one of the accident victims.

Admittedly, the amount of money Respondent paid to PCH, the number of accident victims PCH contacted, and the length of time the PCH runners were employed is not insignificant. Nonetheless, the weighty mitigating factors of Respondent's extensive cooperation in ODC's exhaustive investigation, Respondent's unblemished disciplinary record spanning nearly five decades, and the absence of any aggravating factors tip the balance away from imposing a period of suspension.

50. Upon consideration of applicable precedent as well as Respondent's not personally soliciting potential clients, Respondent's not committing serious misconduct in addition to his employment of an intermediary to solicit

potential clients, and Respondent's claim that he instructed PCH not to provide accident victims with his contact information until the accident victim asked for a lawyer, a Public Censure would be the appropriate quantum of discipline in this matter. The humbling experience of Respondent standing before the Pennsylvania Supreme Court with an audience of Respondent's peers should be sufficient punishment for Respondent's misconduct and a deterrent to other attorneys who may be tempted to improperly pursue potential clients.

WHEREFORE, Petitioner and Respondent respectfully request that:

- a. Pursuant to Pa.R.D.E. 215(e) and 215(g), the three-member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file its recommendation with the Supreme Court of Pennsylvania recommending that the Supreme Court enter an Order that Respondent receive a Public Censure; and
- b. Pursuant to Pa.R.D.E. 215(i), the three-member panel of the Disciplinary Board enter an Order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of

this matter as a condition to the grant of the
Petition, and that all expenses be paid by
Respondent before the imposition of discipline
under Pa.R.D.E. 215(g).

Respectfully and jointly submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

7/25/2013
Date

By Harriet R. Brumberg
Harriet R. Brumberg, Esquire
Disciplinary Counsel

7/30/13
Date

By Steven M. Lipschutz
Steven M. Lipschutz, Esquire
Respondent

7/30/13
Date

By James C. Schwartzman
James C. Schwartzman, Esquire
Respondent's Counsel

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. 68 DB 2013
v. :
: Atty. Reg. No. 4072
STEVEN M. LIPSCHUTZ, :
Respondent : (Philadelphia)

VERIFICATION

The statements contained in the foregoing Joint
Petition In Support Of Discipline On Consent Under
Pa.R.D.E. 215(d) are true and correct to the best of our
knowledge, information and belief and are made subject to
the penalties of 18 Pa.C.S. §4904, relating to unsworn
falsification to authorities.

7/25/2013

Date

By

Harriet R. Brumberg
Harriet R. Brumberg, Esquire
Disciplinary Counsel

7/30/13
Date

By

Steven M. Lipschutz
Steven M. Lipschutz, Esquire
Respondent

7/30/13
Date

By

James C. Schwartzman
James C. Schwartzman, Esquire
Respondent's Counsel

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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 Petitioner :
 : No. 68 DB 2013
 v. :
 : Atty. Reg. No. 4072
STEVEN M. LIPSCHUTZ, :
 Respondent : (Philadelphia)

AFFIDAVIT UNDER RULE 215(d), Pa.R.D.E.

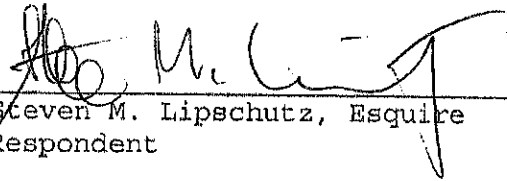
Respondent, Steven M. Lipschutz, Esquire, hereby states that he consents to the imposition of a Public Censure, as jointly recommended by Petitioner, Office of Disciplinary Counsel (ODC), and Respondent in the Joint Petition in Support of Discipline on Consent, and further states that:

1. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting the consent; and he has consulted with James C. Schwartzman, Esquire, in connection with the decision to consent to discipline;

2. He is aware that there is presently pending a formal proceeding involving allegations that he has been guilty of misconduct as set forth in the Joint Petition.

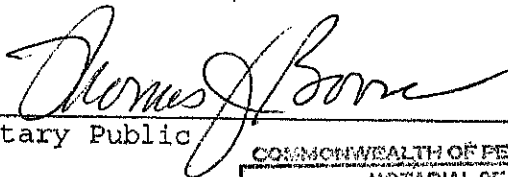
3. He acknowledges that the material facts set forth in the Joint Petition are true; and

4. He consents because he knows that if the charges pending against him continue to be prosecuted in the pending proceeding, he could not successfully defend against them.



Steven M. Lipschutz, Esquire
Respondent

Sworn to and subscribed
before me this 30th
day of July, 2013.



Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
THOMAS J. BOOSE, Notary Public
Bristol Twp., Bucks County
My Commission Expires May 21, 2017