

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2594 Disciplinary Docket No. 3
: :
Petitioner : No. 56 DB 2019
: :
v. : Attorney Registration No. 62438
: :
EDWARD W. MILLSTEIN, : (Philadelphia)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 27th day of July, 2020, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is granted, and Edward W. Millstein is suspended on consent from the Bar of this Commonwealth for a period of thirty months, retroactive to May 1, 2019. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 07/27/2020

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2594 Disc. Dkt. No. 3
Petitioner :
: No. 56 DB 2019
v. :
: Atty. Reg. No. 62438
EDWARD W. MILLSTEIN, :
Respondent : (Philadelphia)

JOINT PETITION IN SUPPORT OF DISCIPLINE
ON CONSENT UNDER RULE 215(d), Pa.R.D.E.

Petitioner, Office of Disciplinary Counsel ("ODC"), by Thomas J. Farrell, Esquire, Chief Disciplinary Counsel, and by Richard Hernandez, Esquire, Disciplinary Counsel, and Respondent, Edward W. Millstein, who is represented by Ellen C. Brotman, Esquire, file this Joint Petition In Support of Discipline On Consent Under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement ("the Joint Petition") and respectfully represent that:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings

FILED
06/11/2020
The Disciplinary Board of the
Supreme Court of Pennsylvania

brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Edward W. Millstein, was born in 1962, was admitted to practice law in the Commonwealth on November 27, 1991, and resides in Philadelphia, Pennsylvania.

3. Pursuant to Pa.R.D.E. 201(a)(1) and (3), Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

4. By Order of the Supreme Court of Pennsylvania dated May 1, 2019, effective May 31, 2019, Respondent was placed on temporary suspension pursuant to Pa.R.D.E. 214(d)(2) ("the temporary suspension Order").

5. Respondent is aware that there is an open complaint file under investigation by ODC that relates to Respondent's conviction of a felony offense in the United States District Court for the Eastern District of Pennsylvania ("Eastern District Court").

6. Respondent has agreed to enter into a joint recommendation for consent discipline that encompasses the allegations of misconduct raised in the open complaint file.

SPECIFIC FACTUAL ADMISSIONS AND
RULES OF PROFESSIONAL CONDUCT VIOLATED

7. Respondent stipulates that the factual allegations set forth below are true and correct and that he violated the Rules of Professional Conduct and Pennsylvania Rule of Disciplinary Enforcement as set forth herein.

CHARGE

8. On April 11, 2017, the United States Attorney's Office filed a three-count Indictment in the Eastern District Court, said case captioned *United States of America vs. Edward Millstein and Susan Halpern*, Docket No. 2:17-cr-00189-CMR ("the federal criminal case").

9. Ms. Susan Halpern is Respondent's wife.

10. The Indictment charged Respondent with one count of violating 26 U.S.C. § 7201 (titled "Attempt to evade or defeat tax"), graded as a felony; and two counts of violating 26 U.S.C. § 7203 (titled "Willful failure to file return, supply information, or pay tax"), graded as a misdemeanor.

11. According to the Indictment, Respondent had willfully attempted to evade and defeat the payment of a large part of income tax owed by him and Ms. Halpern to the United States of America for the years 2007 through 2011, in the amount of \$444,225.53 (inclusive of interest and penalties),

by concealing and attempting to conceal assets from the Internal Revenue Service ("IRS"), making false statements to IRS agents, and placing funds and property in the names of his daughters.

- a. On January 30, 2013, Respondent called and left a message for an IRS Revenue Officer in which message Respondent falsely stated that he was securing a loan from family and friends in the amount of \$250,000.00 to pay part of the federal taxes due. In April 2013, Respondent had obtained loans totaling \$125,000.00 from his father and his brother to repay monies he owed to Manning Street Capital, LLC ("MSC").
- b. To conceal Respondent's assets from the IRS, from April 2013 through September 2013, Respondent systematically deposited checks approximating \$80,000.00 he received in his capacity as a partner at Sacks, Weston Diamond, LLC ("the SWD firm") into two bank accounts he had previously opened for his two minor daughters. Respondent also began a pattern of transferring monies from his

checking and savings accounts at Wells Fargo to his daughters' bank accounts, and then moving the monies back into the accounts at Wells Fargo in order to avoid IRS levies.

- c. Respondent set up a limited liability company and in November 2013, opened a bank account for that entity. Beginning in 2014 and continuing through 2015, Respondent deposited the checks he received from SWD into the bank account for the limited liability company. In 2014, the deposits totaled \$147,717.98, and in 2015, the deposits totaled \$115,384.56. Respondent failed to disclose this account to the IRS Revenue Officer; consequently, this account was not subject to an IRS levy.

12. The Indictment further alleged that while Respondent and Ms. Halpern resided as a married couple in Philadelphia, they had willfully failed to pay income taxes due in 2011 and 2012, in that they:

- a. received taxable income in the amount of \$266,588.00 in 2010, for which they owed to the United States of America an income tax in the amount of \$143,473.75, payable on or

before April 15, 2011; and

- b. received taxable income in the amount of \$317,140 in 2011, for which they owed to the United States of America an income tax in the amount of \$153,560.69, payable on or before April 15, 2012.

13. The maximum penalty for a violation of 26 U.S.C. § 7201 is a term of imprisonment of not more than five years and a fine of not more than \$100,000.00.

14. The maximum penalty for a violation of 26 U.S.C. § 7203 is a term of imprisonment of not more than one year and a fine of not more than \$25,000.00.

15. On November 5, 2018, Respondent pled guilty before the Honorable Cynthia M. Rufe, Judge of the United States District Court for the Eastern District of Pennsylvania, to one count of 26 U.S.C. § 7201; the United States Attorney's Office agreed to dismiss the two counts involving 26 U.S.C. § 7203.

16. On April 4, 2019, Judge Rufe sentenced Respondent to:

- a. probation for five years;
- b. six months of home confinement, with certain specified conditions, including conditions

- related to location monitoring;
- c. pay restitution in the amount of \$344,225.53 (Ms. Halpern was required at her sentencing to pay \$100,000.00 toward restitution; Respondent had paid \$101,000.00 toward restitution prior to pleading guilty), with restitution payments to be paid in monthly installments of no less than \$750.00;
 - d. 250 hours of supervised community service, in blocks of 50 hours per year;
 - e. conditions that required Respondent, *inter alia*, to provide full disclosure and accurate financial information and records to his probation officer, to fully cooperate with the IRS by filing all delinquent or amended tax returns and by timely filing all future tax returns while he is under supervision, and to fully cooperate by paying all taxes, interest, and penalties due; and
 - f. pay court costs.

17. In accordance with Pa.R.D.E. 214(a), Respondent reported his conviction to the Office of Disciplinary Counsel.

18. By his conduct as alleged in paragraphs 8 through 17 above, Respondent violated the following Rules of Professional Conduct and Pennsylvania Rule of Disciplinary Enforcement:

- a. RPC 8.4(b), which states that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- b. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and
- c. Pa.R.D.E. 203(b)(1), which states that a conviction of a crime shall be grounds for discipline.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

19. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension of thirty months, to be made retroactive to May 1, 2019, the date of the temporary suspension Order.

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

21. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that there are several mitigating circumstances:

- a. Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct and Pennsylvania Rule of Disciplinary Enforcement;
- b. Respondent has cooperated with Petitioner, as is evidenced by Respondent's admissions herein and his consent to receiving a thirty-month suspension;
- c. Respondent is remorseful for his misconduct and understands he should be disciplined, as is evidenced by his consent to receiving a thirty-month suspension;

- d. Respondent has no record of discipline in Pennsylvania since his admission to practice law twenty-eight years ago; and
- e. Respondent had engaged in significant pro bono activities during the period he maintained a license to practice law, in that Respondent and his former firm were not reimbursed attorney fees for the time that Respondent had expended, over several years, in obtaining reparations for Holocaust victims and the victims' families. In 1999, as a result of the efforts undertaken by Respondent and a team comprised of other attorneys, a settlement was reached to compensate an estimated 1.5 to 2 million survivors who had been forced to work under inhuman conditions in concentration and labor camps for German corporations by the Third Reich during World War II. More than \$5 billion in payments were ultimately made to Holocaust victims and the victims' families.

22. Disciplinary cases involving a conviction for tax evasion have resulted in discipline ranging from a public censure to a suspension of three years. See, e.g., *In re Anonymous (Thomas L. McGill, Jr.)*, No. 87 DB 1993 (D.Bd. Rpt. 1/7/95) (S.Ct. Order 2/27/95) (public censure with a two-year period of probation and conditions; Respondent McGill was convicted of two counts of failure to pay \$30,906.93 in income tax and one count of tax evasion in the amount of \$1,593.00); *Office of Disciplinary v. Mark Anthony DeSimone*, No. 11 DB 2002 (D.Bd. Rpt. 10/20/03) (S.Ct. Order 2/3/04) (suspension of two years and eight months; Respondent DeSimone pleaded guilty to one count of income tax evasion for having evaded payment of income tax of \$85,000); and *Office of Disciplinary Counsel v. John A. Havey*, No. 42 DB 2006 (Recommendation of the Three-Member Panel of the Disciplinary Board 2/8/08) (S.Ct. Order 3/19/08) (three-year suspension on consent; Respondent Havey was found guilty of three counts of tax evasion, which caused a tax loss to the federal government of \$205,532.00).

The case of *In re Anonymous (Nino V. Tinari)*, 24 Pa. D.&C.4th 279 (1994), supports Petitioner and Respondent's joint recommendation that Respondent be suspended for thirty months. In *Tinari*, Respondent Tinari pled guilty to two

counts of income tax evasion. *Id.* at 282. Respondent Tinari had failed to report \$1,235,330.74 in cash fees he received from clients, resulting in an underpayment of federal income tax in the amount of \$475,212.93. *Id.* Mitigating factors were Respondent's character evidence, his handling of criminal cases on a *pro bono* basis, and his involvement in community affairs. *Id.* at 285, 287. The Disciplinary Board also stated that aside from an informal admonition administered in 1989, Respondent Tinari did not have a record of discipline in over 25 years of legal practice. *Id.* at 287.

Tinari is similar to Respondent's disciplinary matter in that both matters involved convictions for tax evasion, the tax loss exceeded \$400,000.00, and the mitigating factors involved, *inter alia*, *pro bono* activities. Arguably, Respondent Millstein's mitigating factors are weightier than Respondent Tinari's mitigating factors because Respondent Millstein has no record of discipline and has demonstrated remorse by agreeing to be suspended for thirty months. Moreover, a distinguishing fact in Respondent Millstein's favor is that he and Ms. Halpern shared responsibility for the tax loss to the federal government, while Respondent Tinari was solely responsible for the federal government's tax loss.

Based on the foregoing, a suspension of thirty months is sufficiently lengthy to advance the goals of attorney discipline. Those goals are protecting the public, maintaining the integrity of the courts and the legal profession, and specific and general deterrence. See *Office of Disciplinary Counsel v. Keller*, 506 A.2d 872, 875 (Pa. 1986); *In re Iulo*, 766 A.2d 335, 338-339 (Pa. 2001).

WHEREFORE, Petitioner and Respondent respectfully request that:

- a. Pursuant to Rule 215(e) and 215(g), Pa.R.D.E., the Three-Member Panel of the Disciplinary Board review and approve the above Joint Petition In Support Of Discipline On Consent and file its recommendation with the Supreme Court of Pennsylvania in which it is recommended that the Supreme Court enter an Order that Respondent receive a suspension of thirty months, to be made retroactive to May 1, 2019, the date of the temporary suspension Order, and that Respondent comply with all of the provisions of Rule 217, Pa.R.D.E.; 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, and that under Pa.R.D.E. 208(g)(1) all expenses be paid by Respondent within 30 days after the notice of the taxed expenses is sent to Respondent.

Respectfully and jointly submitted,

OFFICE OF DISCIPLINARY COUNSEL

THOMAS J. FARRELL
CHIEF DISCIPLINARY COUNSEL

June 11, 2020
Date

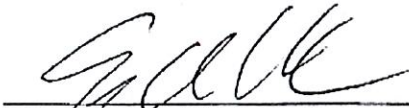
By



Richard Hernandez
Disciplinary Counsel

6/9/2020
Date

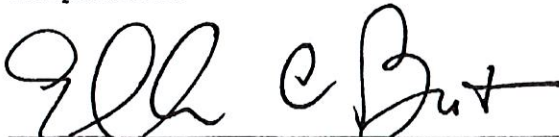
By



Edward W. Millstein
Respondent

6/9/2020
Date

By



Ellen C. Brotman, Esquire
Respondent's Counsel

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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 or
information and belief and are made subject to the penalties
of 18 Pa.C.S. §4904, relating to unsworn falsification to
authorities.


June 11, 2020
Date


Richard Hernandez
Disciplinary Counsel

6/9/2020
Date


Edward W. Millstein
Respondent

6/9/2020
Date


Ellen C. Brotman, Esquire
Counsel for Respondent

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

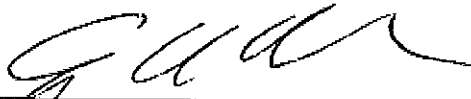
Respondent, Edward W. Millstein, hereby states that he consents to the imposition of a suspension of thirty months as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition in Support of Discipline on Consent and further states that:

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 Ellen C. Brotman, Esquire, in connection with the decision to consent to discipline;

2. He is aware that there is presently pending an investigation into 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 charges predicated upon the matter under investigation were filed, he could not successfully defend against them.



Edward W. Millstein
Respondent

Sworn to and subscribed

before me this 9th
day of June, 2020.



Notary Public Joyce I. Johnson

Commonwealth of Pennsylvania - Notary Seal
Joyce I. Johnson, Notary Public
Philadelphia County
My commission expires September 13, 2022
Commission number 1079344
Member, Pennsylvania Association of Notaries

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Office of Disciplinary Counsel

Signature:  _____

Name: Richard Hernandez, Disciplinary Counsel

Attorney No. (if applicable): 57254