

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

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E/cb

A. GAIL PRUDENTI, P.J.
WILLIAM F. MASTRO
REINALDO E. RIVERA
ROBERT A. SPOLZINO
PETER B. SKELOS, JJ.

2009-02975

DECISION & ORDER ON MOTION

In the Matter of Stanley E. Gelzinis,
an attorney and counselor-at-law.

Grievance Committee for the Tenth
Judicial District, petitioner;
Stanley E. Gelzinis, respondent.

(Attorney Registration No. 3937521)

Motion by the Grievance Committee for the Tenth Judicial District for an order: (1) suspending the respondent from the practice of law, pursuant to 22 NYCRR 691.4(l)(1)(ii) and/or (iii), upon a finding that he is guilty of professional misconduct immediately threatening the public interest in that he has committed acts of professional misconduct and based upon other uncontroverted evidence of professional misconduct; (2) authorizing it to institute and prosecute a disciplinary proceeding based upon the allegations set forth in a petition dated March 26, 2009; (3) directing the respondent to answer the petition; and (4) referring the issues raised to a Special Referee to hear and report. 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 28, 2001.

Upon the papers submitted in support of the motion and the papers submitted in opposition thereto, it is

ORDERED that the motion is granted; and it is further,

ORDERED that pursuant to 22 NYCRR 691.4(l)(1)(ii) and (iii), the respondent, Stanley E. Gelzinis, is immediately suspended from the practice of law in the State of New York, pending further order of the court; and it is further,

July 2, 2009

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MATTER OF GELZINIS, STANLEY E.

ORDERED that the respondent, Stanley E. Gelzinis shall promptly 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, during the period of suspension and until further order of this court, the respondent, Stanley E. Gelzinis, is commanded 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 the Grievance Committee for the Tenth Judicial District is hereby authorized to institute and prosecute a disciplinary proceeding in this court, against Stanley E. Gelzinis, based on the petition dated March 26, 2009; and it is further,

ORDERED that Rita E. Adler, Chief Counsel, Grievance Committee for the Tenth Judicial District, 150 Motor Parkway, Suite 102, Hauppauge, N. Y. 11788, is hereby appointed as attorney for the petitioner in such proceeding; and it is further,

ORDERED that within 20 days after service upon him of a copy of this order, the respondent, Stanley E. Gelzinis, shall serve an answer upon the petitioner and the Special Referee, and shall file the original answer with this court; and it is further,

ORDERED that the issues raised by the petition and any answer thereto are referred to the Honorable Herbert A. Posner, a retired Judge of the New York State Supreme Court, Queens County, 1118 Bay 24th Street, Bayswater, N.Y. 11691, as Special Referee to hear and report, together with his findings on the issues, and to submit a report within 60 days after the conclusion of the hearing or the submission of post-hearing memoranda; and it is further,

ORDERED that if the respondent, Stanley E. Gelzinis, 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).

We find, prima facie, that the respondent is guilty of professional misconduct immediately threatening the public interest based upon substantial admissions he has made under oath that he has committed acts of professional misconduct and other uncontroverted evidence of professional misconduct.

The investigation by the Grievance Committee for the Tenth Judicial District emanated from a complaint dated August 25, 2006, by John F. Pereira advising that he had retained the respondent in connection with the sale of certain real property, that the sale was consummated on May 10, 2005, that the respondent had agreed to maintain \$10,000 (from a \$20,000 down payment) in his escrow account pending issuance of a Certificate of Occupancy, and that despite the fact that

the Certificate of Occupancy was issued on June 7, 2005, the respondent failed to release the \$10,000 to Mr. Pereira.

By letter dated September 5, 2006, the Grievance Committee forwarded a copy of the complaint to the respondent and requested an answer to the complaint.

By letter dated September 21, 2006, the respondent apologized for his delay in releasing the funds and advised that he had released the \$10,000 from his escrow account, forwarding a check dated September 20, 2006, made payable to Mr. Pereira. The respondent explained that the delay was due to the fact that his law practice was “at an awkward stage of growth” whereby he had a tremendous workload, but was unable to afford to hire help. The respondent also claimed not to have been aware of the issuance of the Certificate of Occupancy until he was notified of such by the purchaser’s attorney in a letter dated July 25, 2006.

A review of the respondent’s bank records for his attorney escrow account at Bank of America, shows that between May 10, 2005, and September 2006, when the respondent should have maintained in his escrow account a total of at least \$10,000, his balance fell below the \$10,000, as follows:

Date	Balance
12/6/05	\$8,450
1/9/06	\$7,250
1/13/06	\$6,350
1/18/06	\$5,720
2/28/06	\$4,720
3/34/06	\$3,220
4/26/06	\$2,020
5/04/06	\$1,220
5/23/06	\$770
5/30/06	\$370
6/13/06	\$270

On September 25, 2005, the respondent deposited two checks, totaling \$10,000, from Kristin Mirando. In the memo section of those checks were written “retainer.” With that money, the respondent reimbursed Mr. Pereira.

The respondent appeared at the Grievance Committee’s offices on January 15, 2009. The respondent was questioned regarding his failure to release the \$10,000 to Mr. Pereira in July 2006 when he received authorization from the buyer’s attorney to do so. The respondent admitted under oath that he did not have the money in his escrow account at that time. He admitted that he had misappropriated funds entrusted to him as a fiduciary by withdrawing funds from his escrow account for personal use by issuing escrow checks either made payable to himself or to cash. Furthermore, he would on the memo section of some checks falsely list the name of a client when,

in fact, the check was used to pay personal expenses. For instance, the respondent admitted that check No. 1042 dated December 6, 2005, in the amount of \$2,800, which caused his balance to fall to \$8,450, was made out to cash and was used to pay personal rent, food, and utilities. The respondent testified that at the time his business had completely dropped off and he had no income. He admitted that it was wrongful. The respondent issued check No. 1048 dated February 22, 2006, to himself in the amount of \$1,000. Although the memo section had written on it "Cannon," the respondent testified that it was probably for personal expenses. Likewise, check No. 1049 written out to himself on March 23, 2006, in the amount of \$1,500 had written on it "Cannon," but was used to pay for personal expenses.

The bank records showed that on September 25, 2006, two checks in the amount of \$7,000 and \$3,000 from Kristin Mirando were deposited into the respondent's escrow account. The respondent testified that Ms. Mirando, his wife now (then fiancé), provided him this money from her credit card so he could pay Mr. Pereira. Written on the memo section of the checks was "retainer." Asked if it was the Grievance Committee's investigation which prompted him to pay Mr. Pereira, the respondent testified that it wasn't just the Grievance Committee's investigation. He knew that he absolutely owed the money to Mr. Pereira.

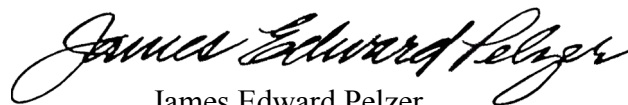
Submitted with the Grievance Committee's motion papers is a petition dated March 26, 2009, containing five charges of professional misconduct against the respondent.

In opposition, the respondent disputes the contention that he constitutes an immediate threat to the public inasmuch as any client money that he has ever held as a fiduciary has always been returned, and that presently he is holding no client funds in his escrow account. The respondent points out that in the two years since Mr. Pereira's complaint no further complaints have been made. He underscores the fact that he has been candid and cooperative with the Grievance Committee in its investigation. He acknowledges that his mistake was a "horrible lapse in judgment."

Based on the foregoing, the Grievance Committee's motion is granted, the respondent is immediately suspended from the practice of law, pursuant to 22 NYCRR 691.4(l)(1)(ii) and (iii), pending further order of this court, the Grievance Committee is authorized to institute and prosecute a disciplinary proceeding against him, and the matter is referred to a Special Referee to hear and report.

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

ENTER:



James Edward Pelzer
Clerk of the Court