

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1212 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 101 DB 2006
v.	:	
	:	Attorney Registration No. 68805
SCOTT LEONARD FELDMAN,	:	
Respondent	:	(Bucks County)

ORDER

PER CURIAM:

AND NOW, this 21st day of December, 2006, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated October 17, 2006, 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 Scott Leonard Feldman be subjected to public censure by the Supreme Court.

A True Copy Patricia Nicola

As of: December 21, 2006

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

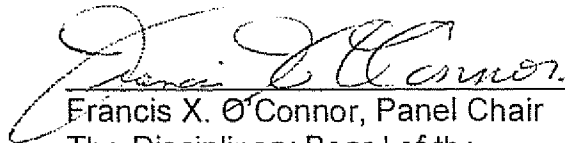
OFFICE OF DISCIPLINARY COUNSEL	:	No. 101 DB 2006
Petitioner	:	
	:	
v.	:	Attorney Registration No. 68805
	:	
SCOTT LEONARD FELDMAN	:	
Respondent	:	(Bucks County)

RECOMMENDATION OF THREE-MEMBER PANEL
OF THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members Francis X. O'Connor, Mark S. Baer and Robert C. Saidis, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on September 27, 2006.

The Panel approves the Joint Petition consenting to a Public Censure and recommends to the Supreme Court of Pennsylvania that the attached Petition be Granted.

The Panel further recommends that any necessary expenses incurred in the investigation and prosecution of this matter shall be paid by the respondent-attorney as a condition to the grant of the Petition.


Francis X. O'Connor, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: October 17, 2006

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 101 DB 2006
Petitioner	:	
	:	
v.	:	Attorney Reg. No. 68805
	:	
SCOTT LEONARD FELDMAN,	:	
Respondent	:	(Bucks County)

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

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and Suzy S. Moore, Disciplinary Counsel, and Respondent, Scott Leonard Feldman, by his counsel James C. Schwartzman, Esquire, file this Joint Petition in Support of Discipline on Consent under Rule 215(d) Pa.R.D.E. and respectfully represent that:

1. Petitioner, whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent, Scott Leonard Feldman, was born on December 2, 1961, and was admitted to practice law in the Commonwealth on November 22, 1993. Respondent maintains his office at 103 Mechanics Street, Doylestown, Pennsylvania 18901.

FILED

SEP 27 2006

Office of the Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

3. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

4. On June 6, 2006, the Office of Disciplinary Counsel filed a Petition for Discipline.

5. On July 10, 2006, Respondent, through counsel, James C. Schwartzman, Esquire, filed an Answer to the Petition for Discipline.

6. On August 24, 2006, the parties attended a prehearing conference in this matter. The hearing is scheduled for September 29, 2006.

7. The Respondent has no prior history of discipline.

**SPECIFIC FACTUAL ADMISSIONS AND RULES
OF PROFESSIONAL CONDUCT VIOLATED**

8. Respondent stipulates that the following factual allegations that were contained in the Petition for Discipline and additional factual allegations as set forth are true and correct and that he violated three Rules of Professional Conduct as set forth in paragraphs 43 and 44 herein.

9. In August 2004, the Honorable Robert J. Mellon presided over a trial in the Bucks County Court of Common Pleas in a case filed by Southern Medical Supply Co. ("Southern Medical") against defendants Margaret Schultz-Myers, Paul F. Myers, Alpha Watch, Inc. ("Alpha Watch"), Micro Design and Development, and Alpha Technology, Inc., filed to docket number 2000-6418-13-2. The case proceeded to trial against Alpha Watch, Inc. and Margaret Schultz, only, as the other three defendants were dismissed in 2002. The lawsuit involved a claim under the Pennsylvania Fraudulent Transfer Act.

10. Jane E. Leopold-Leventhal, Esquire, and Andrew Joshua Blady, Esquire, represented Southern Medical.

11. Respondent represented Margaret Schultz-Myers and Alpha Watch.

12. On August 10, 2004, Southern Medical filed a petition for a preliminary injunction in a case filed to docket number 2004-5148 to prevent the sale, transfer or diminishment of any assets and property transferred from Alpha Watch to Stroll Control, Inc. ("Stroll").

13. Judge Mellon scheduled a hearing on the petition for preliminary injunction for August 13, 2004.

14. In August 2004, the following bankruptcy petitions were filed in the United States Bankruptcy Court for the Eastern District of Pennsylvania ("Bankruptcy Court") on behalf of Margaret Shultz, Alpha Watch and Stroll:

- a. Filed August 12, 2004: Chapter 13 Petition for Bankruptcy on behalf of Margaret J. Myers filed by Ellis Klein, Esquire;
- b. Filed August 15, 2004: Chapter 11 Petition for Bankruptcy on behalf of Alpha Watch filed by Michael Bowen;
- c. Filed August 15, 2004: Chapter 7 Petition for Bankruptcy on behalf of Stroll filed by Michael Bowen.

15. On August 12, 2004, Mr. Klein sent a letter to Ms. Leopold-Leventhal with a copy to Judge Mellon, advising that he had filed a Chapter 13 Bankruptcy for Ms. Schultz-Myers.

16. On August 13, 2004, Judge Mellon:

- a. entered a verbal order providing *inter alia*, that a receiver shall be appointed for Alpha Watch and requested the parties to submit suggested names of a receiver; and
- b. in announcing his decision from the bench on the record of the Alpha Watch trial, Judge Mellon stated: "I shall appoint a receiver and give instructions to the receiver in my written order" (Findings of Fact, P. 12, lines 17-19).

17. On August 14, 2004, Mr. Myers withdrew over \$7,000.00 from the bank account of Alpha Watch and Stroll without Respondent's knowledge or approval. Respondent received a cash payment of \$1,500.00 for legal services on August 16, 2004. Mr. Myers admitted during his testimony in the bankruptcy matter presided over by Judge Raslavich on September 7, 2004, that he withdrew \$7,184.10 from bank accounts held by Alpha Watch and Stroll by cashing two checks. Those checks were made payable to Mr. Myers. After cashing those checks, Mr. Myers paid cash for legal fees as follows:

- a. Michael Bowen, Esquire - \$2,000 on August 15, 2004 for future legal fees;
- b. Respondent - \$1,500 on August 16, 2004;
- c. Honorable David Scholl - (successor counsel to Mr. Klein) \$2,000; and
- d. Ellis Klein, Esquire - \$1,500 for his court appearance at the August 16, 2004 contempt hearing before Judge Mellon. (N.T. pp. 89-90).

18. By letter dated September 13, 2004, Ms. Leopold Leventhal "as counsel to James Lyle", wrote to Mr. Feldman, Michael G. Bowen, Esquire, David A. Scholl, Esquire and Ellis Klein, Esquire, requesting that each attorney return to the receiver "all monies that you received from Margaret Schultz/Myers and/or Paul Myers and/or Alpha Watch, Inc. and/or Stroll Control, Inc. on either August 13, 14, 15 or 16, 2004, for legal services past present or future". Ms. Leopold-Leventhal based her demand upon the following:

We believe you were aware or should have been aware, at the time of your receipt of those funds, that they were improperly withdrawn, in violation of the Court Orders.

and imposed a deadline of September 15, 2004 at 5:00 p.m. Mr. Feldman had no knowledge of the source of the payment which he received on August 16, 2004. Mr. Feldman telephoned the Pennsylvania Bar Association ethics hotline. Louise Lamoreaux advised him that an Attorney in this Commonwealth has no obligation to inquire as to the source of funds received as payment from its client, with the possible exception of receipt of cash in an amount in excess of \$10,000.00.

19. Mr. Feldman subsequently determined that the source of the funds were the corporate bank accounts belonging to Alpha Watch, Inc. and Stroll Control, Inc. and that Mr. Myers had withdrawn the funds with the knowledge and consent of his bankruptcy attorney, Michael Bowen, Esquire.

20. Upon the specific advice of Mr. Feldman, Mr. Myers redeposited the \$7,184.10 to the corporate bank accounts on September 17, 2004, four days after receiving Ms. Leopold-Leventhal's demand.

21. On August 15, 2004, Mr. Bowen filed a Chapter 11 Bankruptcy on behalf of Alpha Watch.

22. On August 16, 2004:

- a. Respondent met with Judge Mellon, Mr. Bowen and Ms. Leopold-Leventhal, Mr. Klein, and Mr. Blady, in Judge Mellon's chambers; and
- b. Judge Mellon appointed James Lyle as the receiver for Alpha Watch.

23. On September 2, 2004, Mr. Bowen filed a Motion for Contempt against the firm of Eastburn and Gray, P.C., Ms. Leopold-Leventhal and Mr. Blady, and Mr. Lyle in the Bankruptcy Court.

24. On September 3, 2004, Respondent submitted to Paul Myers an affidavit to be used in Bankruptcy Court.

25. Respondent knew that the affidavit was to be used in Bankruptcy Court actions involving Stroll and Alpha Watch.

26. When Respondent submitted his affidavit Respondent made the following representations in paragraph number 5 (b) and paragraph number 6 of the affidavit as follows:

- a. Paragraph 5 (b): [In referring to Judge Mellon's findings of fact and conclusions of law] P. 8, lines 8-25. The evidence was undisputed that although the parties were legally married in Kissimmee, Florida on April 19, 1999, a wedding and reception attended by family and friends subsequently took place in Hellertown, Pennsylvania on

October 16, 1999. Judge Mellon's comments that the witness' initial failure to mention the earlier marriage is "deliberately, shamefully and willfully testif(ying) falsely...on material and important facts affecting the outcome of this case" is gross hyperbole and unsupported by the record of this case; and

- b. Paragraph 6: [In referring to Judge Mellon's findings of fact and conclusions of law] As further indicated in said findings of fact as well as in the Court's written Order, a receiver for Alpha Watch, Inc. was not appointed until August 16, 2004, one day after Alpha Watch, Inc. filed its petition in bankruptcy.

27. On September 7, 2004, The Honorable Stephen Raslavich of the Bankruptcy Court Dismissed with prejudice the bankruptcies of Alpha Watch and Stroll, and the Motions for Contempt that had been filed by Mr. Bowen.

28. On September 9, 2004, Mr. Feldman sent the following e-mail to Mark Heuckeroth, an employee of Alpha Watch, Inc.:

We had the occasion to meet several times over the course of the never-ending litigation brought by Jim Lyle against Paul and Margaret. I spent all day with them today in Bankruptcy court. I feel compelled to suggest to you that the possibility of working with Jim Lyle (or for that matter even voluntarily cooperating with him or his attorneys) is an absolute black and white issue and would be nothing less than a complete betrayal of Paula and Margaret. There is no middle ground. They have declared war on your former employers and friends and unfortunately they are winning big.

You owe it to yourself to end any discussions with Lyle, et al. by informing him immediately that you are uninterested in his proposals.

You are welcome to respond or to call me at (215) 230-8800 to discuss further. Paul and Margaret need to know that their support, financial and otherwise, of you and your family for all these years was not in vain.

29. On September 15, 2004, Ms. Leopold-Leventhal filed a Motion for Contempt against Ms. Schultz-Myers, Mr. Myers, Mr. Bowen and Respondent for *inter alia* his failure to comply with court orders regarding the receivership and his acceptance of his fee from Mr. Myers after Judge Mellon (verbally) ordered "all assets...to be frozen in their present location."

30. On September 20, 2004, Judge Mellon held a contempt hearing wherein he found Respondent in contempt of court and ordered Respondent to pay \$4,000.00 to counsel for Southern Medical.

31. On September 27, 2004, Respondent paid \$4,000.00 into court on the advice of his counsel, Samuel C. Stretton, Esquire.

32. On September 21, 2004, Judge Fox of the Bankruptcy Court dismissed the bankruptcy action filed on behalf of Ms. Schultz-Myers.

33. On September 24, 2004, Mr. Stretton, on Respondent's behalf, filed a Motion to Reconsider Judge Mellon's September 20, 2004 finding of contempt against Respondent.

34. On October 15, 2004, Mr. Stretton filed an appeal of Judge Mellon's order to the Superior Court of Pennsylvania to No. 2899 EDA 2004.

35. On October 26, 2004, Mr. Stretton filed with the Bucks County Court of Common Pleas, a Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. 1925(b).

36. On December 9, 2004, Judge Mellon entered an opinion.

37. By Memorandum filed September 1, 2005, the Superior Court affirmed Judge Mellon's opinion.

38. Respondent did not file a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania.

39. Respondent appreciates that he should not have used the language that he used in the affidavit he submitted to be used in the bankruptcy court and that his conduct was prejudicial to the administration of justice.

40. Respondent appreciates the inappropriateness of the conduct with regard to Judge Mellon.

41. Respondent appreciates the inappropriateness of the content of his e-mail to Mark Heuckeroth.

42. Respondent appreciates the inappropriateness of his conduct in failing to cooperate with the court appointed receiver.

43. Respondent has, by his conduct as set forth hereinabove, in Paragraphs 8 through 39, inclusive, violated the following Rules of Professional Conduct:

- a. RPC 3.4(a) – prohibiting a lawyer from unlawfully obstructing another party's access to evidence or unlawfully altering, destroying or concealing and document or other material having potential evidentiary value or assisting another person to do any such act;
- b. RPC 3.4(d) – prohibiting a lawyer from requesting a person other than a client to refrain from voluntarily giving relevant information to another party; and
- c. RPC 8.4(d)- stating that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

44. Petitioner and Respondent stipulate that Petitioner withdraws the charges of violations of RPC 3.3(a)(1) (prohibition against knowingly making a false statement of material fact or law to a tribunal), RPC 3.3(a)(4) (prohibition against offering evidence that the lawyer knows to be false), RPC 4.1(a) (prohibits knowingly making a false statement of material fact or law to a third person in the course of representing a client) and RPC 8.4(c) (stating that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation).

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

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

46. 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, Pa.R.D.E., stating that he consents to the recommended discipline and which includes the mandatory acknowledgments required by Rule 215(d)(1) through (4), Pa.R.D.E.

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

- a. Respondent has no prior disciplinary history;
- b. Respondent has admitted engaging in misconduct by violating three Rules of Professional Conduct;
- c. Respondent has cooperated with Petitioner by his consent to receive a Public Censure;

- d. As ordered by the Court, Respondent paid \$4,000.00 to Eastburn & Gray;
- e. Respondent has expressed appreciation of the wrongfulness of his misconduct;
- f. Respondent has apologized for his misconduct and expressed remorse;
- g. The misconduct was an aberration;
- h. A public censure is within the range of public discipline imposed in similar matters, or matters of a similar serious nature in Pennsylvania.
- i. In Pennsylvania, there is no per se discipline for a particular type of misconduct, but instead each case is reviewed individually as established in the case of *Office of Disciplinary Counsel v. Lucarini*, 417 A.2d 186 (1983).
- j. In *Office of Disciplinary Counsel vs. Robert G. Young*, No. 6 DB 2001, the Respondent converted \$5,955.52 from his escrow account. He was charged with violations of RPC 1.15(a) and 8.4(c). A conversion of client's funds is a significantly more serious violation than what occurred in the instant case. A public censure was determined to be the appropriate penalty.

In *Office of Disciplinary Counsel vs. Clyde Middleton*, No. 106 DB 2002 (2004), the Respondent failed to finish work on several cases, failed to return clients' files and failed to refund a fee

paid in advance. He was initially assessed an informal admonition, but failed to appear for it or comply with the conditions attached to it. Formal charges were filed against Respondent. He agreed to accept a private reprimand after the formal charges, but failed to appear for it. The matter was then referred to the Supreme Court, who directed that the Respondent appear for a public censure. He did appear for the public censure. Contempt for the Disciplinary Board at two different levels is a more serious violation than what occurred in this case. As stated above, a public censure was imposed.

In *Office of Disciplinary Counsel vs. William Watkins*, No. 38 DB 2000 (2002), the Respondent was convicted of leaving the scene of an accident involving personal injury, as well as a 1994 conviction for DUI. In at least one of the matters, it appears that the Respondent was not truthful with law enforcement. Respondent failed to report either of his convictions to the Secretary of the Disciplinary Board, as required by Pa. R. D. E. 214(a). In this matter, even though there was an apparent lack of truthfulness to law enforcement as well as failure to report the convictions, a public censure was imposed.

In *Office of Disciplinary Counsel vs. Charles Aliano*, No. 25 DB 2003 (2005), the Respondent was found to have violated R.P.C. 1.7(a), R.P.C. 1.7(b) and R.P.C. 8.4(d). In summary,

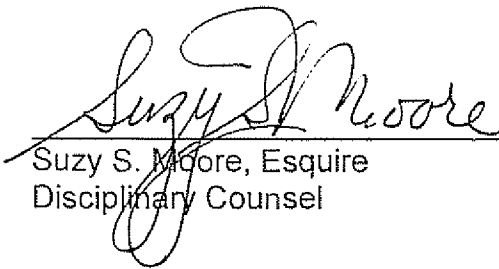
Respondent, a District Attorney, was found to have dropped criminal charges against a Defendant while simultaneously representing that Defendant's wife in Protection From Abuse matter. He was also charged with advising a client to tape record personal conversations with his wife during a course of a marital dispute without the wife's consent. Again, these are charges that are significantly more serious than those in this instant case. It was ordered that Respondent be subjected to a public censure.

In *In re Anonymous No. 85 DB 97(Alan S. Fellheimer)*, the Respondent received a public censure for misconduct in a bankruptcy matter. The conduct included *inter alia* engaging in a conflict of interest, filing frivolous and false pleadings to gain advantage for the principal of a corporate debtor over his client's interests and failing to correct a material misrepresentation to the bankruptcy court. Mr. Fellheimer entered a stipulation of fact and admitted violating at least one Rule of Professional Conduct.

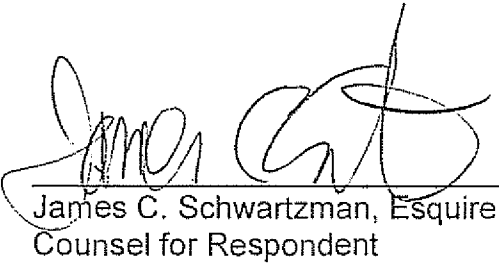
WHEREFORE, the Petitioner and Respondent respectfully request that, pursuant to Pennsylvania Rules of Disciplinary Enforcement 215(e) and 215(g), a three member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file a recommendation with the Supreme Court of Pennsylvania that Respondent receive a Public Censure and that Respondent be ordered to pay all necessary expenses incurred in the investigation and prosecution in the matter as a condition to the grant of the petition.

Joint Petition in Support of Discipline on Consent
Scott Leonard Feldman, Esquire

9/25/06
Date

BY: 
Suzy S. Moore, Esquire
Disciplinary Counsel


9/14/06
Date

BY: 
James C. Schwartzman, Esquire
Counsel for Respondent

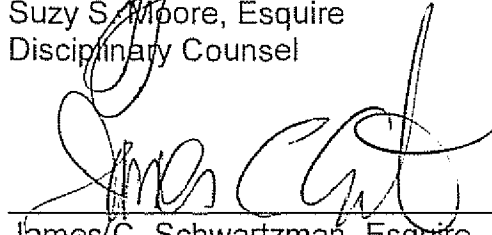
VERIFICATION

The statements contained in the foregoing Joint Petition In Support of Discipline on Consent under Rule 215(d) Pa.R.D.E. for Discipline 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.A. §4904, relating to unsworn falsification to authorities.

9/25/06
Date


Suzy S. Moore, Esquire
Disciplinary Counsel

9/14/06
Date


James C. Schwartzman, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

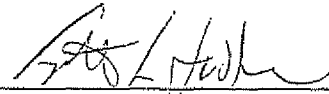
OFFICE OF DISCIPLINARY COUNSEL,	:	No. 101 DB 2006 Petitioner
Petitioner	:	
	:	
v.	:	Attorney Reg. No. 68805
	:	
SCOTT LEONARD FELDMAN,	:	
Respondent	:	(Bucks County)

AFFIDAVIT UNDER RULE 215 Pa.R.D.E.

Respondent, Scott Leonard Feldman, hereby states that he consents to a Public Censure and further states that:

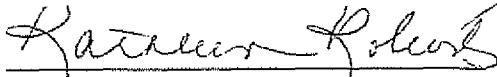
1. He is an attorney admitted to the Commonwealth of Pennsylvania, having been admitted to the bar on or about November 22, 1993.
2. He desires to submit a Joint Petition in Support of Discipline on Consent pursuant to Pa.R.D.E. 215(d).
3. His consent is freely and voluntarily rendered; he is not being subject to coercion or duress; and he is fully aware of the implications of submitting this consent.
4. He has consulted with counsel, James C. Schwartzman, Esquire, in connection with his decision to consent to discipline.
5. He is aware there is presently pending a proceeding involving allegations that he has been guilty of misconduct as set forth within the accompanying Petition.
6. He acknowledges that the material facts within the Petition are true.

7. He consents because he knows that if he continues to be prosecuted in the pending proceeding, he cannot successfully defend himself.



Scott Leonard Feldman
Respondent

Sworn to and Subscribed
before me this 19 day of
Sept, 2006.



Notary Public

