

IN THE SUPREME COURT OF PENNSYLVANIA

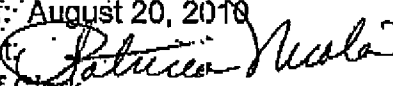
OFFICE OF DISCIPLINARY COUNSEL, : No. 1630 Disciplinary Docket No. 3
Petitioner :
v. : No. 97 DB 2010
: Attorney Registration No. 48848
JAMES LAWRENCE PAZ, :
Respondent : (Allegheny County)

ORDER

PER CURIAM:

AND NOW, this 20th day of August, 2010, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated July 8, 2010, 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 James Lawrence Paz is suspended on consent from the Bar of this Commonwealth for a period of one year and one day and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola
As of: August 20, 2010
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

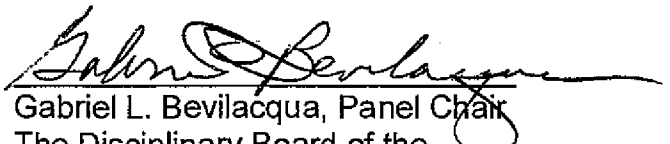
OFFICE OF DISCIPLINARY COUNSEL : No. 97 DB 2010
Petitioner :
v. : Attorney Registration No. 48848
JAMES LAWRENCE PAZ :
Respondent : (Allegheny County)

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 Gabriel L. Bevilacqua, Albert Momjian and Carl D. Buchholz, III, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on June 10, 2010.

The Panel approves the Joint Petition consenting to a one year and one day suspension 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.


Gabriel L. Bevilacqua, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: 7/8/10

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :

Petitioner : No. 97 DB 2010
: (Complaint File #C4-09-724)

v. :

JAMES LAWRENCE PAZ, :

Attorney Registration No. 48848

Respondent : (Allegheny County)

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

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

Mark G. Weitzman
Disciplinary Counsel
Suite 1300, Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 565-3173

and

John E. Quinn, Esquire
Counsel for Respondent
Portnoy & Quinn, LLC
1 Oxford Centre, 36th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 765-3800

FILED

JUN 10 2010

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

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :

Petitioner : No. ____ DB 2010
: (Complaint File #C4-09-724)

v. :

JAMES LAWRENCE PAZ, :

Respondent : Attorney Registration No. 48848
: (Allegheny 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 Mark G. Weitzman, Disciplinary Counsel, and Respondent, James Lawrence Paz, by his counsel, John E. Quinn, Esquire, file this Joint Petition In Support Of Discipline On Consent Under Rule 215(d), Pennsylvania Rules of Disciplinary Enforcement (Pa.R.D.E.) and respectfully represent as follows:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P. O. Box 62485, Harrisburg, Pennsylvania 17106-2485, is invested, pursuant to Rule 207, Pa.R.D.E., with the power and the 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 brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, James Lawrence Paz, was born on February 11, 1961 and he was admitted to practice law in the Commonwealth of Pennsylvania on May 7, 1987. Respondent's attorney registration mailing address is 1020 Norwood Drive, Brackenridge, PA 15014. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

SPECIFIC FACTUAL ADMISSIONS AND
RULES OF PROFESSIONAL CONDUCT VIOLATED

3. Respondent hereby admits that the following factual assertions are true and correct and that he violated the referenced Rules of Professional Conduct.

4. On September 15, 2008, Respondent represented Barry Maskowitz and Kelley Nestor at a closing regarding their purchase of real estate from the Estate of John H. Maurer located in White Oak Borough, Allegheny County, Pennsylvania for \$48,000.

5. At the closing, Mr. Maskowitz gave Respondent a Treasurer's Check in the amount of \$49,861.50, made payable to Respondent. The Settlement Statement reflects that this was the amount due from the "Borrower."

6. On September 15, 2008, the balance in Respondent's PNC Bank IOLTA Account was \$269.73.

7. On September 16, 2008, Respondent deposited the proceeds of the Treasurer's Check into his IOLTA Account. After the deposit, the balance was \$48,951.23, as a check in the amount of \$1,180, payable to a real estate broker for the real estate transaction, cleared the account that day.

8. Between September 16, 2008 and October 24, 2008, Respondent did not make any other deposits into his IOLTA Account and various checks Respondent issued, consistent with the Settlement Statement, cleared that account. These checks included a payment of \$39,290.39 to the Estate for the balance of the funds owed to it as the seller of the property, a payment of \$146.94 for a garbage bill, and a check for \$300 payable to Respondent for his legal fees.

9. As a result, on October 24, 2008, Respondent was entrusted with \$3,953.06 of the proceeds from the real estate transaction, \$3,000 held as an "Inheritance Tax Escrow," \$453.06 from \$600 held as a "Water/Sewage/Garbage Escrow" (\$600 minus the \$146.94 paid for a garbage bill), and \$500 due to the attorney for the Estate for attorney's fees.

10. Between November 14, 2008 and January 16, 2009, six checks that Respondent issued to himself, totaling \$3,960, cleared his IOLTA Account. Respondent was not entitled to receive any of these proceeds.

11. On December 19, 2008, the balance in Respondent's IOLTA Account first fell below the \$3,953.06 entrusted to him regarding the real estate transaction, when the balance was \$3,334.60.

12. From December 19, 2008 through April 22, 2009, the balance in Respondent's IOLTA Account remained below the \$3,953.06 entrusted to him regarding the real estate transaction.

13. From January 16, 2009 through February 4, 2009, the balance in Respondent's IOLTA Account was \$374.60, which was \$3,578.46 less than the amount entrusted to him regarding the real estate transaction.

14. On February 5, 2009, Respondent deposited \$3,200 of his own funds into his IOLTA Account. By doing so, Respondent commingled his own funds with entrusted funds in his IOLTA Account.

15. From February 5, 2009 through April 22, 2009, the balance in Respondent's IOLTA Account was \$3,574.60, which was \$378.46 less than the amount entrusted to him regarding the real estate transaction.

16. Thereafter, entrusted funds for two other real estate transactions for other clients were deposited into Respondent's IOLTA Account, \$9,986.60 deposited on April 23, 2009, \$97,402.56 wire-transferred on May 6, 2009, and \$91,821.22 deposited on May 7, 2009. Respondent properly disbursed most of those entrusted funds by a wire-transfer and by several checks.

17. In addition, in May 2009, Respondent deposited into his IOLTA Account \$1,583 paid to him by two other clients for earned fees. By doing so, Respondent commingled his own funds with entrusted funds in his IOLTA Account.

18. Between April 7, 2009 and May 29, 2009, ten checks issued by Respondent, totaling \$6,625, and made payable to Respondent, cleared his IOLTA Account. Respondent was not entitled to receive all of the \$6,625.

19. As a result of the above deposits and disbursements, on May 29, 2009, the balance in Respondent's IOLTA Account was a negative \$44.38.

20. However, as Respondent had already misappropriated \$3,578.46 of the \$3,953.06 entrusted to him regarding the real estate transaction by January 16, 2009, when the account balance was \$374.60, by the account having a negative balance on May 29, Respondent had merely misappropriated the remaining \$374.60.

21. Respondent's IOLTA Account had a negative balance from May 29, 2009 until June 17, 2009, when Respondent deposited \$500 in cash into his IOLTA Account. On June 19, 2009, Respondent deposited \$3,300 in cash. The \$500 and \$3,300 were Respondent's personal funds.

22. The \$3,800 was deposited so that Respondent's check, dated June 25, 2009, made payable to the Estate of John H. Mauer, in the amount of \$3,453.06, could clear his IOLTA Account. The check proceeds represented the

\$3,000 escrowed for payment of inheritance tax and the remaining \$453.06 of the \$600 escrowed for the water, sewage and garbage bills.

23. After the check in the amount of \$3,453.06 cleared Respondent's IOLTA Account on July 2, 2009, Respondent was still entrusted with the \$500 due the attorney for the Estate for attorney's fees. However, the balance in Respondent's IOLTA Account was \$302.56 on July 2, 2009 and remained below \$500 through August 31, 2009, the date of the last bank statement obtained by Petitioner, except for July 21, 2009 through July 26, 2009, due to a deposit and disbursement of \$68,581.05 entrusted to him on behalf of a client.

24. On about May 20, 2010, Respondent, through his counsel, John E. Quinn, paid the attorney for the Estate the remaining \$500 still entrusted to Respondent regarding the real estate transaction.

25. As a result of his conduct as described in paragraphs 4 through 24, Respondent violated the following Rules of Professional Conduct in effect during the time period in question:

(a) Rule of Professional Conduct 1.15(b) (A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded);

(b) Rule of Professional Conduct 1.15(e) (Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person

any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property;

(c) Rule of Professional Conduct 1.15(h) (A lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying service charges on that account, and only in an amount necessary for that purpose; and,

(d) Rule of Professional Conduct 8.4(c) (It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation).

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

26. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension from the practice of law for a period of one year and one day.

27. 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 and including the mandatory acknowledgements contained in Rule 215(d)(1), through (4), Pa.R.D.E.

28. Pennsylvania disciplinary case law has generally held that due to the breach of trust involved, a lawyer's misappropriation of entrusted funds requires the imposition of public discipline, ranging from a suspension for one year and one day to disbarment, depending, in large part, on the totality of the facts, the gravity of the misconduct, a consideration of any mitigating and aggravating factors, and a review of similar disciplinary cases. Cases have held that a minimum suspension of one year and one day is necessary because it requires that the lawyer undergo the reinstatement process before the Supreme Court will issue an Order allowing the lawyer to again practice law.

A. Summary of Respondent's misconduct

29. Respondent admits that he knowingly misappropriated the \$3,953.06 entrusted to him from the proceeds of the real estate transaction in question because he was behind in child support payments and had other bills.

30. Respondent acknowledges he did not have a drug, alcohol, or psychological problem that was a causal factor in his misappropriation of these entrusted funds.

31. Respondent admits that on two occasions, as described above, he commingled his personal funds with entrusted funds in his IOLTA Account. Respondent also admits he did not pay the remaining \$500 entrusted to him from the real estate transaction due the attorney for the Estate for attorney's fees until about May 20, 2010.

B. Mitigating Factors

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

(a) Respondent has admitted engaging in the above-described misconduct and violating the above-cited Rules of Professional Conduct;

(b) Respondent has cooperated with Petitioner throughout its investigation, as evidenced by his admissions herein, his supplying Petitioner with bank records and other records and documents, and his consent to receiving a suspension for one year and one day;

(c) Respondent accepts responsibility for his misconduct as is evidenced by his consent to receiving a suspension for one year and one day;

(d) Respondent is remorseful for his misconduct;

(e) Respondent has made restitution for the entrusted funds he misappropriated; and,

(f) Respondent has no record of prior discipline.

C. Pennsylvania Disciplinary Case Law

33. A suspension for one year and one day would be consistent with the discipline imposed in the following Pennsylvania disciplinary cases involving a lawyer who misappropriated entrusted funds, after consideration of mitigating and aggravating factors and case law.

34. *In Office of Disciplinary Counsel v. Mackarey*, No. 115 DB 2006, No. 1209 Disciplinary Docket No. 3, an unreported case¹, Mr. Mackarey was suspended by Order of the Supreme Court dated December 21, 2006, for one year and one day, pursuant to a Joint Petition In Support Of Discipline On Consent. At Mr. Mackarey's request in late March 2003, his hospitalized client signed several checks in blank so he could pay her bills. On about April 2, 2003, Mr. Mackarey made one check payable to himself in the amount of \$10,000, negotiated the check, and used the proceeds for his own purposes. The client passed away on April 8, 2003. On several occasions, the client's son asked Mr. Mackarey about the \$10,000 check. He initially told the son he knew nothing about the check, but later stated that he used the money to pay her bills. Still later, he stated to the son and in a court filing on November 24, 2004, that she gave him the \$10,000 as a gift. On March 2, 2006, the Pennsylvania Lawyers Fund for Client Security approved the son's \$10,000 claim against Mr. Mackarey.

¹ To access an unpublished Disciplinary Board Report go to <http://www.pacourts.us>.

In mitigation, it was submitted that Mr. Mackarey admitted in engaging in the misconduct, he had cooperated with Disciplinary Counsel throughout the investigation, he was 79 years old and in poor health, he had voluntarily ceased the practice of law and registered as inactive, and he was remorseful for his misconduct and understood that he should be disciplined.

As an aggravating factor, it was submitted that Mr. Mackarey had a prior suspension of three months imposed by the Supreme Court by Order dated March 11, 2002. While acting as an approved attorney for a title insurance company in 1995 and 1996, Mr. Mackarey handled three residential real estate transactions and collected title insurance premiums and commissions totaling about \$3,700. He then commingled these funds with his own funds in his only bank account and converted these funds for his own use. He reimbursed the title insurance company in 1999.

35. ***In Office of Disciplinary Counsel v. Galfand***, No. 25 DB 2004, No. 1083 Disciplinary Docket No. 3, an unreported case, Mr. Galfand was suspended by Order of the Supreme Court dated February 7, 2006, for one year and one day for misappropriating entrusted funds and related misconduct in two matters.

As to the first matter, Mr. Galfand received a check in the amount of \$18,000 in settlement of his clients' case, deposited the check proceeds into his Trust Account on December 6, 2002, failed to tell the clients that he received the

settlement money, and did not distribute any funds to the clients until January 21, 2003, after being contacted by another lawyer on their behalf. Between December 6 and December 27, 2003, Mr. Galfand misappropriated his clients' money and deceived them into believing that he did not receive the funds. He then used non-fiduciary funds to satisfy his fiduciary obligation to the clients on January 21, 2003.

In the second matter, Mr. Galfand engaged in a pattern of commingling and conversion during a period of not less than fifteen months regarding several clients and at least \$30,000 of entrusted funds. He repeatedly used fiduciary funds belonging to one or more clients to satisfy his fiduciary obligations to other clients and to pay his personal expenses. Mr. Galfand also did not deposit into his Escrow Account fiduciary funds he received on behalf of another client.

The Disciplinary Board stated that a review of recent case law established that the range of discipline in misappropriation cases is a suspension of not less than one year and one day to disbarment, as these sanctions require a reinstatement proceeding and future proof of fitness. The Board found that although Mr. Galfand testified that he suffered from hearing loss and other physical ailments, no causal connection was made between the hearing loss and physical ailments and his misconduct. The Board stated that Mr. Galfand's long legal career without discipline qualified as a mitigating factor.

The Board stated that a review of the record and applicable precedent persuaded the Board that a suspension of one year and one day was sufficient to address Mr. Galfand's misconduct. The Board concluded that such a suspension necessitates a reinstatement hearing if Mr. Galfand desires to practice law in the future and at that time his hearing loss and physical health may be addressed, as such issues are relevant to his competence and fitness to practice law.

36. *In Office of Disciplinary Counsel v. Delaney*, Nos. 79 DB 1995 and 159 DB 1995, No. 323, Disciplinary Docket No. 3, an unreported case, Mr. Delaney was suspended by Order of the Supreme Court dated May 12, 1997, for one year and one day for commingling and converting entrusted funds on behalf of three clients and misrepresenting to clients that he did not receive the funds on their behalf.

On about January 28, 1994, Mr. Delaney deposited into his Escrow Account \$3,000 entrusted to him on behalf of a client regarding a real estate transaction. Thereafter, he misappropriated the \$3,000, as the balance in his Escrow Account fell below \$3,000 on numerous occasions and by February 28, 1994, the account had a negative balance. The funds were not paid to the client until February 1995, about thirteen months after he received the funds. Between January 1994 and February 1995, he placed his own personal funds into the Escrow Account as a shield against attachment by the IRS.

As to a second client, on September 1, 1994, Mr. Delaney deposited into his Escrow Account \$3,000 entrusted to him by the client to make a loan payment to a bank on the client's behalf no later than October 6, 1994. Instead, Mr. Delaney misappropriated the \$3,000, for his own purposes, as on September 27, 1994, the account had a negative balance. Mr. Delaney made misrepresentations to the client that he had sent the \$3,000 to the bank. In November 1994, the client paid the bank directly and Mr. Delaney subsequently paid the client back in full.

Mr. Delaney settled a third client's personal injury case for \$2,500, deposited the settlement funds into his Escrow Account on about January 17, 1995, and misappropriated the \$1,600 due the client, as by January 31, 1995, the account had a negative balance. On several occasions, Mr. Delaney misrepresented to the client that he had not received the settlement check. Mr. Delaney paid the \$1,600 due the client in March 1995.

As mitigating factors, the Board considered that Mr. Delaney had no prior discipline of record, the commingling and conversion in two of the cases lasted for a few months at most, and he reimbursed all of his clients in full.

As aggravating factors, the Board found that that Mr. Delaney used his Escrow Account for purposes not permitted under the Rules of Professional Conduct by depositing his personal funds in his Escrow Account so that the IRS could not attach those funds. The Board also found that he displayed a poor

attitude concerning the second client's request for the \$3,000 three months after she gave the funds to him to pay the bank and after she paid the bank directly. Mr. Delaney testified that "I just didn't like the idea of having the woman show up and say give me this money." The Board found that such testimony revealed a distorted perspective of fund ownership, as the money in fact was his client's property, and that the balance of the record establishes that Mr. Delaney struggles to completely understand his obligation with regard to his client's funds.

The Board determined that an examination of all these supporting facts, balanced by a review of the relevant case law in the area of commingling and conversion, led the Board to recommend that Mr. Delaney be suspended for a period of one year and one day. The Board concluded that the dangers to the public were too immediate to allow for a lesser period of suspension and that this sanction required Mr. Delaney to petition for reinstatement and demonstrate with particularity that he understands the concepts involved in handling client monies if he desires to practice law in Pennsylvania.

WHEREFORE, Petitioner and Respondent respectfully request that, 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 suspending Respondent from the practice of law for a period of one year

and one day and directing him to comply with all the provisions of Rule 217,
Pa.R.D.E.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

By Mark G. Weitzman
Mark G. Weitzman
Disciplinary Counsel

and

By James Lawrence Paz
James Lawrence Paz
Respondent

and

By John E. Quinn
John E. Quinn, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :

Petitioner : No. ____ DB 2010
: (Complaint File #C4-09-724)

v. :

JAMES LAWRENCE PAZ, :

Attorney Registration No. 48848

Respondent : (Allegheny County)

VERIFICATION

The statements contained in the foregoing Joint Petition In Support Of Discipline On Consent Under Rule 215(d), Pa.R.D.E. are true and correct to the best of my 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 3, 2010

Date

Mark G. Weitzman

Mark G. Weitzman
Disciplinary Counsel

June 1, 2010

Date

James Lawrence Paz

James Lawrence Paz
Respondent

June 1, 2010

Date

John E. Quinn

John E. Quinn, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
: Petitioner : No. _____ DB 2010
: (Complaint File #C4-09-724)
v. :
: Attorney Registration No. 48848
JAMES LAWRENCE PAZ, :
: Respondent : (Allegheny County)

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

Respondent, James Lawrence Paz, hereby states that he consents to the imposition of a suspension from the practice of law for a period of one year and one day, as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition In Support Of Discipline On Consent pursuant to Rule 215(d), Pa.R.D.E. Respondent 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 counsel in connection with the decision to consent to discipline;

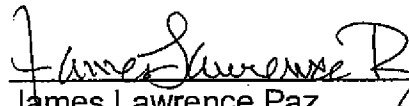
2. He is aware that there is presently pending a proceeding involving allegations that he is guilty of misconduct as set forth in the Joint Petition;

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

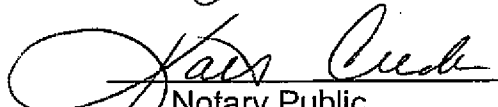
4. He consents because he knows that if charges were to be prosecuted, he could not successfully defend against them.

It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S.A. §4904 (relating to unsworn falsification to authorities).

Signed this 1 day of June 2010.


James Lawrence Paz
Respondent

Sworn to and subscribed
before me this 1
day of June, 2010.


Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notaria Seal
Kathleen A. Cuda, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires Jan. 22, 2014
Member, Pennsylvania Association of Notaries