

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 2822 Disciplinary Docket No. 3
Petitioner :
 : No. 115 DB 2021
 :
v. : Attorney Registration No. 312476
 :
 : (Delaware County)
JOSHUA LOUIS THOMAS, :
Respondent :
 :
 :

ORDER

PER CURIAM:

AND NOW, this 1st day of October, 2021, 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 Joshua Louis Thomas is suspended on consent from the Bar of this Commonwealth for a period of two years. 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 10/01/2021


Attest:
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No.	Disciplinary Docket 3
Petitioner	:		
	:	No. 115	DB 2021
	:		
	:	File Nos.	C2-20-407, C2-20-497
	:	and	C2-20-540
v.	:		
	:	Attorney Reg. No.	312476
JOSHUA LOUIS THOMAS,	:		
Respondent	:		(Delaware County)

**JOINT PETITION IN SUPPORT OF DISCIPLINE ON CONSENT
PURSUANT TO Pa.R.D.E. 215(d)**

Petitioner, the Office of Disciplinary Counsel (“ODC”) by Thomas J. Farrell, Esquire, Chief Disciplinary Counsel, and Dana M. Pirone, Esquire, Disciplinary Counsel, and Respondent, Joshua Louis Thomas (“Respondent”), respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement (“Pa.R.D.E.”) 215(d), and in support thereof state:

1. ODC, whose principal office is situated at Office of Chief Disciplinary Counsel, Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, 17106,

FILED
08/11/2021
The Disciplinary Board of the
Supreme Court of Pennsylvania

is invested, pursuant to 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 brought in accordance with the various provisions of the aforesaid Enforcement Rules.

2. Respondent was born on October 19, 1985, and was admitted to practice law in the Commonwealth on November 10, 2011. Respondent is on active status and his last registered address is 225 Wilmington-West Chester Pike Suite 200, Chadds Ford, PA 19317. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court (the “Disciplinary Board”).

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

I. FILE NOS. C2-20-407 AND C2-20-497

3. File Nos. C2-20-407 and C2-20-497 arise from Respondent’s misconduct before the United States District Court for the Eastern District of Pennsylvania in the two related matters of *James Everett Shelton v. FCS Capital LLC d/b/a Funding Capital Source d/b/a Business Debt Experts f/k/a Business Debt Relief LLC, Emil Yashayev, Barry Shargel, Jacovetti Law, P.C., and Robert C. Jacovetti*, No. 2:18-cv-3723 (E.D.Pa.) (the “Shelton Matter”) and *Jacovetti Law P.C., Robert C. Jacovetti, FCS Capital, LLC,*

Barry Shargel, and Emil Yashayev v. James Everett Shelton, Final Verdict Solutions, and Dan Boger, No. 2:20-cv-00163 (the “Jacovetti Matter”), which culminated in U.S. District Judge Joshua D. Wolson imposing a Formal Reprimand on Respondent by Order and Memorandum dated March 27, 2020 (the “Sanctions Order”).

4. The Sanctions Order stated, *inter alia*,:

In light of Mr. Thomas’s consistent failure to comply with this Court’s deadlines and Orders, and more generally for his failure to comply with the Court’s expectations for professionalism by lawyers before it, Mr. Thomas is **FORMALLY REPRIMANDED**.

5. The Court’s Memorandum stated, *inter alia*,:

The Court recognizes that the sanctions it is imposing here are significant. Lighter sanctions do not seem to have made the point with Thomas, though. Thus in the Court’s view, these sanctions are the lightest sanctions that will convey to Thomas the seriousness of his conduct and therefore, hopefully, have the appropriate deterrent effect. The Court is aware that Thomas has other cases pending in the Eastern District of Pennsylvania. Hopefully, his conduct will improve.

A. THE SHELTON MATTER

6. On August 30, 2018, James Shelton filed a Complaint in the United States District Court Eastern District of Pennsylvania against Respondent’s clients (Jacovetti Law P.C., FCS Capital, LLC, Barry Shargel and Emil Yashayev) alleging violations of the Telephone Consumer

Protection Act.

7. Respondent entered his appearance in the Shelton Matter on October 23, 2018.

8. Shelton filed an Amended Complaint on November 13, 2018.

9. Respondent failed to file a timely Answer to the Complaint, resulting in a default being entered against his clients.

10. Respondent filed a Motion to Vacate the Default on January 7, 2019.

11. After the Court granted the Motion to Vacate, Mr. Shelton served discovery requests for Respondent's clients to answer.

12. Respondent failed to respond to these discovery requests.

13. Shelton filed a Motion for Summary Judgment on September 17, 2019 (the "SJ Motion").

14. Respondent did not file a Response to the SJ Motion by the October 1, 2019 deadline.

15. On October 8, 2019:

a) Respondent filed a Motion requesting a two-week extension until October 22, 2019 to respond to the SJ Motion, and represented that he would not need any further extension;

b) The Court struck the SJ Motion for non-compliance with the

Court's policies and procedures; and

c) Plaintiffs' counsel, Bryan Reo, Esquire corrected the non-compliant SJ Motion by filing Plaintiffs' (Second) Motion for Summary Judgment (the "Second SJ Motion").

16. Defendants' deadline for responding to the Second SJ Motion was October 22, 2019.

17. On October 22, 2019, Respondent filed a Motion for Extension of Time to respond to the Second SJ Motion ("Motion for Extension").

18. By Order dated October 22, 2019, the Court denied the Motion for Extension stating "Defendants' delay in seeking this extension is consistent with their pattern of inattentiveness to this litigation" and "[the Defendants] have been on notice of the issues to be raised and the diligence to be done to prepare a response to the Plaintiff's Motion for Summary Judgment for over a month, as Plaintiff first filed a motion on September 17, 2019."

19. Respondent did not file a timely Corporate Disclosure Statement for FCS Capital LLC as required under Fed.R.Civ. P. 7.1(a).

20. Respondent belatedly filed a Corporate Disclosure Statement on October 24, 2019, in response to an Order to Show Cause.

21. On December 11, 2019, the Court issued an Order granting the

Second SJ Motion in part by entering judgment in favor of Mr. Shelton and against Defendants FCS Capital LLC, Emil Yashayev, and Barry Shargel in the amount of \$27,000.00 as to Counts I and II, and III-VIII of the Amended Complaint.

22. Respondent had no legitimate explanation for missing any deadline in connection with the Shelton Matter.

23. Respondent did not file a timely Motion for Reconsideration within 14 days of the December 11, 2019 Order, but did file a Motion for Reconsideration on January 27, 2020 and a second Motion for Reconsideration on June 1, 2020.

24. The January 27, 2020 Motion for Reconsideration was denied two days after the motion had been filed, with no opposition submitted and no hearing.

25. The second Motion for Reconsideration was denied June 17, 2020, 16 days after the motion had been filed.

26. A Timely Notice of Appeal was filed on June 29, 2020.

27. The Appeal was ultimately withdrawn because FCS Capital LLC, Emil Yashayev, and Barry Shargel, after speaking with their subsequent counsel, requested the appeal be withdrawn.

B. THE JACOVETTI MATTER

28. On January 9, 2020 Respondent filed a Complaint in the United States District Court for the Eastern District of Pennsylvania on behalf of Plaintiffs Jacovetti Law P.C. et al., alleging violations by the Defendants of the Racketeer Influenced and Corrupt Organizations Act (“RICO”).

29. Respondent did not file timely Corporate Disclosure Statements for Jacovetti Law P.C. and FCS Capital, LLC as required under Fed.R.Civ. P. 7.1(a).

30. On January 27, 2020, the Court Ordered Respondent to comply with Fed. R. Civ. P. 7.1(a) within seven days of the January 27, 2020 Order.

31. Respondent did not comply with the Order of January 27, 2020.

32. By February 11, 2020, Mr. Reo had filed the Defendants’ Answer to the Complaint and a Motion for Judgment on the Pleadings.

33. On February 14, 2020, the Court issued an Order to Show Cause why it should not sanction Respondent’s clients for their failure to comply with the Court’s Order of January 27, 2020.

34. Respondent had seven days from the date of the February 14, 2020 Order, that being February 21, 2020, to file a response.

35. Respondent did not comply with the February 14, 2020 Order to Show Cause.

36. Respondent did not file a Response to the Motion for Judgment on the Pleadings.

37. On February 24, 2020, instead of filing a Response to the Motion for Judgment on the Pleadings, Respondent filed a Motion for Extension of Time to Respond to the Order and a Motion for Extension of Time to Respond to the Order to Show Cause (the “Motions for Extension”) explaining that, if permitted, he would file an Amended Complaint that would address the issues raised in the Defendants’ Motion for Judgment on the Pleadings.

38. Respondent did not explain why he waited three days after the February 21, 2020 deadline to file the Motions for Extension.

39. On February 25, 2020, the Court granted the Motions for Extension making February 28, 2020 the revised deadline for Respondent to file Corporate Disclosure Statements and a response to the Order to Show Cause.

40. Respondent did not file a Response to the Motion for Judgment on the Pleadings.

41. On February 27, 2020, the Court granted the unopposed Motion for Judgment on the Pleadings and dismissed Plaintiffs’ claims against Defendants Shelton and Final Verdict Solutions with prejudice.

42. On February 28, 2020, Respondent filed a Second Motion for Extension of Time to Respond to the Order and the Order to Show Cause (the “Second Motion for Extension of Time”), asking for additional time until March 9, 2020 to file the responses.

43. Respondent did not explain or provide a reason why he filed the Second Motion for Extension of Time after the February 28, 2020 deadline.

44. On March 1, 2020, Defendants filed a Motion for Sanctions under 28 U.S. C. § 1927 alleging, *inter alia*, that Respondent had:

- a) unreasonably and vexatiously brought forth and litigated Plaintiff’s claims against Defendants in the Jacovetti Matter;
and
- b) flagrantly violated RPC 1.1 and 1.3.

45. By Order dated March 2, 2020, the Court cancelled the March 12, 2020 Pretrial Conference and scheduled a hearing to be held on March 12, 2020 for the purpose of addressing Defendants’ Motion for Sanctions and Plaintiffs’ Second Motion for Extension of Time.

46. The Court directed Respondent to file his response to the Motion for Sanctions no later than March 6, 2020 at 5:00 p.m. EST.

47. On March 6, 2020, Respondent filed:

- a) a Response in Opposition to the Motion for Sanctions and

Counter-Motion to Reopen the Jacovetti Matter and File an Amended Complaint and a Motion to Reopen the matter pursuant to Fed. R. Civ. P. 60(b); and

b) Corporate Disclosure Statements for Jacovetti Law, P.C. and FCS Capital, LLC.

48. At the March 12, 2020 hearing, the Court outlined four sanctions it was considering and provided Respondent one week, until March 19, 2020, to respond to the proposed sanctions.

49. Respondent did not file a response by the March 19, 2020 deadline.

50. The Sanctions Order dated March 27, 2020 required Respondent to within:

- a) 14 days, pay a sanction of \$50.00 for each day he had failed to comply with the Court's Order from January 27, 2020 (February 2, 2020 through March 6, 2020) or \$1,600.00 to the Court's registry;
- b) 2 days, order the transcript from the March 12, 2020 hearing;
- c) 7 days of Respondent's receipt of the transcript, provide the Sanctions Order, Memorandum, and transcript of the hearing (collectively referred to as the "Formal Reprimand

Documents”) to every disciplinary committee of every state bar and federal court where Respondent is admitted to practice, submit a Statement Under Oath and proof that the Formal Reprimand Documents had been delivered;

- d) 7 days of Respondent’s receipt of the transcript, provide the Formal Reprimand Documents to the court handling *Edwards v. Wells Fargo Bank National Association et al.*, Civ. No. 9-14409 (D.NJ); and
- e) 7 days of Respondent’s receipt of the transcript, provide the Formal Reprimand Documents to his clients.

51. The Sanctions Order also provided that if Respondent intended to continue to represent his clients, he was to first provide to the Court a written statement signed by each client establishing that the client:

- a) intends to continue with Respondent as his lawyer; and
- b) had received the Formal Reprimand Documents and discussed them with Respondent.

52. In the Court’s Memorandum dated March 27, 2020, the Court noted Respondent’s “long history of running afoul of courts in the Third Circuit” and discussed six other federal cases involving Respondent’s representation which resulted in sanctions or the case being dismissed due

to his failure to comply with procedural requirements, lack of subject matter jurisdiction and/or for lack of prosecution and Respondent's disregard of court orders:

- a) In *Bounasissi v. New York Life Ins. and Annuity Corp.*, Civ. A. No. 15-7585, 2016 WL 4697333 (D.NJ. Sept. 6, 2016), U.S. District Judge Jerome B. Simandle granted the opposing counsel's motion to dismiss with prejudice the amended complaint filed by Respondent, explaining that Judge Simandle had "brought Plaintiff's pleading deficiency to the parties' attention...yet Plaintiffs' counsel, Joshua Thomas, Esq., failed to even attempt to cure the deficiency" and that it was "the third time Mr. Thomas has ignored his basic obligations under the Federal Rules of Civil Procedure in this case.";
- b) In *Akinsanmi v. Nationstar Mortgage*, Civ. A. No. 16-7721, 2017 WL 2960579 (D.NJ May 25, 2017), U.S. District Judge Michael A. Shipp granted the Defendants' Motion to Dismiss the Complaint filed by Respondent after noting Respondent's "history of delays and failing to comply with the Court's orders.";

- c) In *Hood v. Victoria Crossing Townhouse Ass'n*, Civ. A. No. 18-12259, 2019 WL 3336132 (D.NJ July 25, 2019), U.S. District Judge Robert B. Kugler, dismissed a case filed by Respondent for lack of subject matter jurisdiction, and after a hearing, sanctioned Respondent by barring Respondent from filing any new lawsuits in the District of New Jersey without prior leave of Court, noting dismissals of cases filed by Respondent in other matters for similar reasons;
- d) In *Wright v. JP Morgan Chase Bank, N.A.*, Civ. No. 18-8311, 2019 WL 5587262 (D.NJ Oct. 30, 2019) After dismissing the fifth complaint filed by Respondent for *inter alia*, asserting claims that were not cognizable, U.S. District Judge Renee Marie Bumb issued a judicial reprimand; ordered Respondent to attend a continuing legal education program discussing the Rules of Professional Conduct; precluded Respondent from filing matters without prior leave of court and imposed a sanction upon Respondent of \$500.00;
- e) In *Edwards v. Wells Fargo Bank. N.A.*, Civ. No. 19-14409 (D.NJ), U.S. District Judge Noel L. Hillman issued an Order to Show Cause why Respondent should not be referred to the

Chief Judge of the District of New Jersey for disciplinary action, after receiving information from a Plaintiff in a Civil Complaint filed by Respondent that the Plaintiff knew nothing about the case and had never met Respondent¹; and

f) In *In re Thomas*, 612 B.R. 46, 69 (Bankr. E.D.Pa. 2020), after dismissing with prejudice the amended complaint filed by Respondent, United States Bankruptcy Judge Eric L. Frank barred Respondent “from filing a claim for [Respondent’s] services”; required Respondent to “pay \$1,000.00 to the chapter 7 Trustee for the benefit of the Debtor’s estate;” and referred the matter for further disciplinary proceedings.

53. Respondent timely complied with the March 27, 2020 Court Order.

54. On April 1, 2020 and April 6, 2020, respectively, Respondent’s lawyer, Matthew B. Weisberg, filed his Notice of Appearance in the Jacovetti Matter and a Motion for Enlargement of Time to File a Motion for Reconsideration of the Order dated March 27, 2020.

55. On April 27, 2020, Judge Wolson issued an Order and

¹ On July 7, 2021, Respondent appeared before Judge Hillman for a hearing on a Rule to Show Cause why the Court should not sanction Respondent under Rule 11 and refer Respondent for further disciplinary proceedings. The matter is currently pending.

Memorandum regarding the Court's decision to deny in part and grant, in part, Respondent's Motion to Re-open the Jacovetti Matter and to Amend the Complaint under Fed. R. Civ. P. 60.

56. The Court allowed Respondent to file an Amended Complaint on behalf of Mr. Jacovetti and Mr. Jacovetti's firm alleging claims under RICO and Wire Fraud, requiring Respondent, *inter alia*, to file the Amended Complaint and RICO Case Statement by May 11, 2020.

57. On May 4, 2020, Respondent filed an Amended Complaint in the Jacovetti Matter.

58. On May 5, 2020, Mr. Weisberg filed *inter alia*, a Memorandum of Law in Support of Respondent's Motion for Reconsideration of Sanctions Order and Cross-Motion to Partially Vacate Enlargement Order.

59. On May 15, 2020, Respondent provided the Formal Reprimand Documents to the Disciplinary Board.

60. By Order dated May 20, 2020, Judge Wolson denied Respondent's Motion for Reconsideration of Sanctions Order and Cross-Motion to Partially Vacate Enlargement Order.

61. In its Memorandum dated May 20, 2020, the Court wrote that Respondent:

- a) demonstrated bad faith;

- b) willfully disregarded the Court's Orders to file a Rule 7.1 disclosure statement; and
- c) "doubled down and lied to the Court" in that when Respondent had the opportunity to explain his failure to file the disclosure statements, he lied about not having "the necessary information" to file the disclosure statement.

62. On May 21, 2020, the Defendants filed a Motion for Dismissal in the Jacovetti Matter.

63. On June 4, 2020, Respondent filed a Response to the Defendants' Motion for Dismissal (the "Response").

64. On June 5, 2020, the Court struck the Response for failure to comply with Section I.C.1 of Judge Wolson's Policies and Procedures, but gave Respondent until the close of business on June 5, 2020 to resubmit a compliant filing. Respondent complied.

65. On September 1, 2020, the Court granted the Defendants' Motion to Dismiss the Amended Complaint with Prejudice.

66. The Court stated in its Memorandum dated September 1, 2020, that:

- a) Civil RICO might be the "litigation equivalent of a thermonuclear device," but this case is a dud. The Jacovetti

Parties have not alleged predicate acts to support their RICO claim.”;

- b) The RICO Case Statement filed on May 11, 2020, asserts claims for violations of 18 U.S. C. § 1962(a) and 18 U.S. C. § 1962(d), when the Amended Complaint asserts claims arising under 18 U.S. C. § 1962(a) and 18 U.S. C. § 1962(c); and
- c) Despite inaccurate reference to 18 U.S. C. § 1962(d), the Amended Complaint failed to allege basic facts demonstrating a racketeering activity.

II. FILE NO. C2-20-540

67. File C2-20-540 concerns Respondent’s misconduct before United States District Court for the District of New Jersey in the matter captioned *Cary W. Drake v. Wells Fargo bank, N.A., Jeremy Doppelt and Powers Kirn*, No. 16-8797 (the “Drake Action”).

68. On November 28, 2016, Cary W. Drake, filed a *pro se* complaint in the United States District Court for the District of New Jersey in the matter captioned *Cary W. Drake v. Wells Fargo Bank, N.A., Jeremy Doppelt and Powers Kirn*, No. 16-8797 (the “Drake Action”).

69. Mr. Drake filed the Drake Action after a June 29, 2013 judgment for \$573,067.00 was entered against him in the mortgage foreclosure matter

captioned *Wells Fargo Bank, N.A. v. Drake*, Superior Court of New Jersey, Union County, Chancery Division, Docket No. F-8363-10 (the “State Court Action”) to regain possession of his former home from Wells Fargo Bank, N.A. (“Wells Fargo”) or from the successor bidder at a sheriff’s sale as well as for other damages he incurred.

70. On May 4, 2016, Jeremy Doppelt Realty Management, LLC (“Doppelt Realty”) purchased Mr. Drake’s former home at a sheriff’s sale.

71. After May 4, 2016, there was no significant communication between Jeremy Doppelt Realty Management, Mr. Drake, or their representatives.

72. Several months later, Mr. Drake obtained an expert report in which the expert opined that the mortgage documents Wells Fargo had filed in the State Court Action were not authentic and had been produced through forgeries and fraudulent methods.

73. Mr. Drake did not serve the Defendants in the Drake Action with the Summons and Complaint before retaining Respondent in 2018.

74. On July 12, 2018, Respondent filed his Notice of Appearance in the Drake Action as Mr. Drake’s Counsel and by letter to the Court requested sixty (60) additional days to file a Second Amended Complaint.

75. On July 13, 2018, the Court granted Plaintiff’s request and

directed the Plaintiff to file the Second Amended Complaint and to have it served on all Defendants within 60 days of the Order.

76. The 60-day deadline for Respondent to file and serve the Second Amended Complaint was September 12, 2018.

77. Respondent filed the Second Amended Complaint on September 11, 2018, but did not have it served on or before September 12, 2018.

78. The caption for the Second Amended Complaint identifies three Defendants, Wells Fargo, Doppelt Realty and Powers Kirn, LLC ("Powers Kirn") (collectively the "Defendants").

79. The Second Amended Complaint includes allegations against a fourth Defendant, Altisource Solutions, Inc. ("Altisource"), an entity which had no involvement with the mortgage at issue in the State Court Action.

80. On December 12, 2018, Respondent filed a Third Amended Complaint without the consent from opposing counsel and without leave of Court as required by Fed. R. Civ. P. 15(a)(2).

81. The Third Amended Complaint omits any reference to Defendant Altisource.

82. Footnote 1 of the Third Amended Complaint states Respondent's reason for filing the second amended complaint, which was "not for substantive purposes and only to correct some spelling and grammatical

errors that were caught after the filing.”

83. Respondent did not serve the Third Amended Complaint and Summons prior to March 21, 2019.

84. On March 21, 2019, the Court issued a (third) Notice of Call for Dismissal Pursuant to Fed.R.Civ.P. 4(m) notifying Respondent that the *Drake Action* “will be dismissed on 3/29/2019, for failure to effect service of the summons and complaint within said 90 days by filing of the complaint, unless [Respondent] establish[es] that service was effected within said 90 days, by filing proof of service with the Clerk of the Court before the return date of this notice.”

85. On March 28, 2019, Respondent filed a letter asking the Court for a seven (7) day extension of the March 29, 2019 dismissal date so that he could file updated affidavits.

86. On April 18, 2019, Powers Kirn filed its Answer, Affirmative Defenses, Motion to Dismiss the Third Amended Complaint, and Brief, alleging Respondent had done a “cut and paste from another filing” noting Respondent’s reference to:

- a) cross-plaintiffs when there were none;
 - b) two foreclosure actions instead of just the State Court Action;
- and

c) the owners and holders of the debt in dispute as being Blue Water and US Bank as Trustees, entities which were never parties to the State Court Action.

87. On April 18, 2019, Powers Kirn filed a Third-Party Complaint against Respondent alleging that Respondent had, *inter alia*:

- a) failed to serve Defendants with the Second Amended Complaint by the September 12, 2018 deadline;
- b) misled the Court by stating the Third Amended Complaint was not filed for substantive reasons and filed only to “correct some spelling and grammatical errors”;
- c) intentionally prolonged the proceedings to increase the costs of litigation; and
- d) used a “business model” where “the client advances a flat fee that is followed by an agreed upon monthly charge that continues so long as [Respondent] continues to delay the matter.”

88. On April 18, 2019, Respondent was served with the Third-Party Complaint.

89. On May 6, 2019, Respondent filed a Motion to Extend the filing deadlines to May 31, 2019 for Mr. Drake’s response to the Motions to

Dismiss filed by Powers Kirn and Wells Fargo, and his Answer to the Third-Party Complaint.

90. On May 8, 2019, the Court granted Respondent's Motion and extended the deadlines until May 31, 2019.

91. Respondent did not file any documents until July 7, 2019, when he responded to Powers Kirn's Request for Entry of Default Judgment dated July 3, 2019, a Certification and an Answer and Affirmative Defenses the Third-Party Complaint (collectively the "July 3, 2019 Responses").

92. The July 7, 2019 Responses were filed thirty-seven (37) days after the May 31, 2019 deadline without the consent of opposing counsel and without leave of Court.

93. On July 24, 2019, Powers Kirn filed a Motion to Strike Respondent's Answer to the Third-Party Complaint (the "Motion to Strike").

94. On August 8, 2019, Respondent filed a motion asking the Court for a twenty-one day extension, until August 29, 2019, for responding to the Motion to Strike and Wells Fargo's Motion to Dismiss.

95. On August 12, 2019, the Court granted Respondent's Motion for Extension of Time, stating "no further extensions will be granted."

96. On August 29, 2019, Respondent filed a Consolidated Memorandum in Opposition to Defendants' Motions to Dismiss and Motion

to Strike Answer to Third-Party Complaint.

97. By Order and letter Opinion dated November 26, 2019, the Court dismissed the Third Amended Complaint and Third-Party Complaint because:

- a) Under *Rooker–Feldman*, it did not have subject matter jurisdiction to address 12 of the 16 counts as doing so would have required the Court to review and reject the foreclosure judgment;
- b) Since the New Jersey’s Entire Controversy Doctrine bars piecemeal litigation, Mr. Drake’s claims for violations of the Truth-In-Lending Act and RESPA should have been asserted in the State Court Action;
- c) Mr. Drake’s claim under RESPA was time-barred;
- d) Three counts failed to state a claim on which relief may be granted;
- e) The RICO Claim in Count One failed to plead predicate RICO acts with particularity and the presence of a RICO enterprise;
- f) The Defamation Claim and Claim for violations under Fair Credit Reporting Act (“FCRA”) (Counts Four and Fourteen) failed to plead that a defamatory statement was made to a

third party and failed to recognize that there is no private cause of action by an individual for violations under FCRA; and

- g) Mr. Drake failed to allege that he notified a credit reporting agency of a dispute and anyone regarding him as a consumer.

**SPECIFIC RULES OF PROFESSIONAL CONDUCT AND
RULES OF DISCIPLINARY ENFORCEMENT VIOLATED**

98. By his conduct as set forth in paragraphs 3 through 97, Respondent violated the following Rules:

- a. RPC 1.1, which states that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation;
- b. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- c. RPC 3.1, which states that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law;

- d. RPC 3.2, which states that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client;
- 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; and
- f. RPC 8.4(d) which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

JOINT RECOMMENDATION FOR DISCIPLINE

99. Respondent hereby consents to the discipline being imposed upon him by the Supreme Court of Pennsylvania. Attached to this Petition as Exhibit A is Respondent's executed Affidavit required by Pa.R.D.E. 215(d)(1) through (4) for a two-year suspension.

100. ODC and Respondent respectfully submit that the following are aggravating circumstances:

- a) Respondent has a history of discipline in Pennsylvania for violations of RPC 1.1, RPC 1.3, RPC 3.1, RPC 3.3(a)(1), RPC 8.4(c), and RPC 8.4(d). On October 10, 2018, Respondent received an informal admonition in File Nos. C2-17-501 and

C2-17-671. In File No. C2-17-501, Respondent filed two meritless Chapter 13 cases for a client, did not know basic bankruptcy procedure or the law to support his client's claims, provided inaccurate and/or misleading information to the bankruptcy court and failed to diligently represent the client. In File No. C2-17-671, Respondent filed a meritless state court appeal, filed frivolous documents which contained alleged inaccurate factual allegations in addition to the wrong rule of law, and accused the trial judge of bias and fraud, even though his client gave Respondent a certified document stating the statements made by the judge were accurate.

101. ODC and Respondent respectfully submit that the following are factors to consider in mitigation:

- a) Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;
- b) Respondent has cooperated with Petitioner, as is evidenced by Respondent's admissions herein and his consent to receiving a two-year suspension;
- c) Respondent is remorseful for his misconduct and understands that he should be disciplined with a sanction that requires him

to establish his fitness prior to being re-instated to the practice of law as is evidenced by his consent to receiving a two-year suspension;

- d) After timely reporting the Formal Reprimand to ODC, Respondent made changes in the operation of his firm. He hired a paralegal/administrative assistant to assist him in keeping track of deadlines and calendaring court appearances and accepts fewer representations, which he limits to practices areas with which he is most familiar; and
- e) Respondent acknowledges that, if he is reinstated in the future, he should not practice law as a sole practitioner.

102. The parties believe that their recommendation for a two-year suspension is consistent with disciplinary case law involving a lawyer who lacks competence and engages in meritless litigation. Lawyers have been suspended for two years when, in addition to lacking competence, the lawyer files or pursues meritless litigation spanning years and where sanctions have not stopped the behavior. *Office of Disciplinary Counsel v. Matthew T. Croslis*, 171 DB 2018 (S.Ct. Order 4/1/5/19) (Consent Discipline) (Sanctions did not correct lawyer's prolific pattern of missing deadlines in 13 cases. Croslis did not participate in the disciplinary process until agreeing to consent

discipline and seeking treatment for alcohol abuse). In *Office of Disciplinary Counsel v. Thomas Peter Gannon*, 123 DB 2017 (S.Ct. Order 12/21/18) (Sanctions did not deter Gannon from engaging in vexatious litigation stemming from his steadfast refusal to accept that he did not prevail for his client against a condominium association over roof repairs of \$8,500.00. Moreover, Gannon failed to prevail in any of his 50 or more attempts to re-litigate the case in the state court system and federal court system, ignored dozens of sanctions orders some awarding fees and costs for his pursuit of vexatious litigation and precluding him from further representing the client over the dispute. Gannon did not have a history of discipline, but refused to accept responsibility.)

103. Suspensions of more than two years have been imposed when the lawyer, a meritless filer, is undeterred by sanctions, is not genuinely remorseful, and fails to appreciate the severity of his misconduct. In *Office of Disciplinary Counsel v. Donald P. Russo*, 111 DB 2015 (S.Ct. Order 4/25/19), Russo engaged in frivolous filings and the pursuit of baseless motions in the course of litigating two federal court cases. Russo was ultimately sanctioned in each case for violating Federal Rule of Civil Procedure 11. The Board found as aggravating factors Russo's history of three instances of professional discipline and that in his testimony before the

Committee “he refused to consider he did anything wrong, and would not accept responsibility for his actions.” 12/12/18 D.Bd. Rpt. at 44. Declining the Board’s recommendation for a three-year suspension, the Court suspended Russo for five years. *See also, Office of Disciplinary Counsel v. Edward Charles Malloy, III*, 178 DB 2014 (S.Ct. Order 6/30/2016) (Five-year suspension for filing and pursuing meritless litigation over an eight-year period in which Malloy attempted to re-litigate a breach of contract action. Malloy did not have a history of discipline, but refused to accept responsibility and was not remorseful.)

104. The parties believe that based on precedent and the specific facts of this case, a two-year suspension is an appropriate and just resolution. Respondent has a history of discipline in Pennsylvania for neglect and incompetent representation. His misconduct in multiple representations before various Federal Courts as described in this Petition demonstrates his current unfitness to practice law. However, by agreeing to enter into consent discipline and foregoing a disciplinary hearing, Respondent has demonstrated remorse, acceptance of responsibility and a willingness to accept a lengthy suspension requiring him to petition for reinstatement and demonstrate his fitness prior to being re-instated. This clearly distinguishes him from respondents such as Malloy and Russo, who

refused to accept any responsibility at every stage of their protracted and contested disciplinary proceedings.

WHEREFORE, Respondent and Petitioner jointly respectfully request that this Honorable Board:

- a. Approve this Joint Petition; and File a recommendation for a two-year suspension and this Joint Petition with the Supreme Court of Pennsylvania.

Respectfully submitted,
OFFICE OF DISCIPLINARY COUNSEL
Thomas J. Farrell
Chief Disciplinary Counsel
Attorney Reg. No. 48976

8/9/21 8/11/2021
Date

By:

Dana M. Pirone
Dana M. Pirone, Esquire
Disciplinary Counsel
Attorney Reg. No. 57221
District II Office
820 Adams Avenue, Suite 170
Trooper, PA 19403
(610) 650-8210

8/9/21
Date

By:

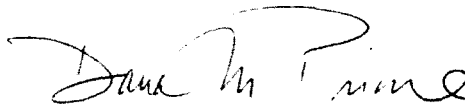
Joshua Louis Thomas
Joshua Louis Thomas
Respondent
Attorney Reg. No. 312476

VERIFICATION

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

8/11/2021

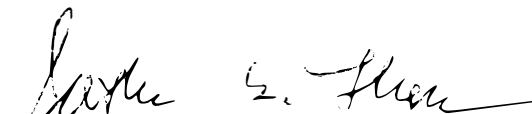
Date



Dana M. Pirone, Esquire
Disciplinary Counsel
District II Office
Attorney Reg. No. 57221

8/9/21

Date



Joshua Louis Thomas
Respondent
Attorney Reg. No. 312476

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No.	Disciplinary Docket 3
Petitioner	:		
	:	No.	DB 2021
	:		
	:	File Nos.	C2-20-407, C2-20-497
	:	and	C2-20-540
v.	:		
	:	Attorney Reg. No.	312476
JOSHUA LOUIS THOMAS,	:		
Respondent	:		(Delaware County)

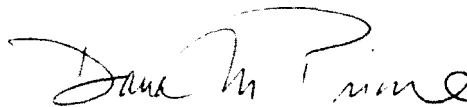
CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing documents upon the persons and in the manner indicated below which service satisfied the requirements of Pa.R.A.P. 121 as follows:

Service by Overnight Delivery

Joshua Louis Thomas, Esquire
225 Wilmington-West Chester Pike, Suite 200
Chadds Ford, PA 19317

August 11, 2021.



Dana M. Pirone, Esquire
Disciplinary Counsel
District II Office
Attorney Reg. No. 57221
820 Adams Avenue, Suite 170
Trooper, PA 19403
(610) 650-8210

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No.	Disciplinary Docket 3
Petitioner	:		
	:	No.	DB 2021
	:		
	:	File Nos.	C2-20-407, C2-20-497
	:	and	C2-20-540
v.	:		
	:	Attorney Reg. No.	312476
JOSHUA LOUIS THOMAS,	:		
Respondent	:	(Delaware County)	

ORDER

PER CURIAM:

AND NOW, this _____ day of _____, 2021, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated _____, 2021, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), and it is

ORDERED that Joshua Louis Thomas is suspended on consent from the Bar of this Commonwealth for a period of two years and he shall comply with all the provisions of Pa.R.D.E. 217.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No.	Disciplinary Docket 3
Petitioner	:		
	:	No.	DB 2021
	:		
	:	File Nos.	C2-20-407, C2-20-497
	:		and C2-20-540
	:		
v.	:		
	:	Attorney Reg. No.	312476
JOSHUA LOUIS THOMAS,	:		
Respondent	:		(Delaware County)

**RESPONDENT'S AFFIDAVIT UNDER RULE 215(d) OF THE
PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT**

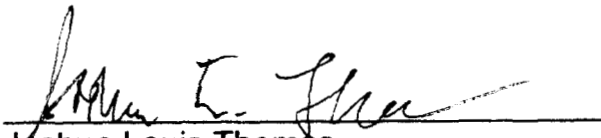
I, Joshua Louis Thomas, Respondent in the above-captioned matter, hereby consent to the imposition of a Suspension of two years, as jointly recommended by the Petitioner, Office of Disciplinary Counsel, and myself, in a Joint Petition in Support of Discipline on Consent and further state:

1. My consent is freely and voluntarily rendered; I am not being subjected to coercion or duress; I am fully aware of the implications of submitting the consent;

2. I am aware there is presently an investigation into allegations that I have been guilty of misconduct as set forth in the Joint Petition;

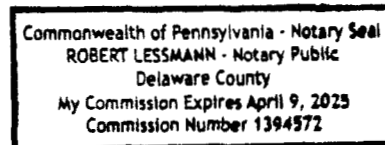
3. I acknowledge that the material facts set forth in the Joint Petition are true;

4. I consent because I know that if the charges against me were prosecuted I could not successfully defend against them; and I acknowledge that I am fully aware of my right to consult and employ counsel to represent me in the instant proceeding. I have not retained, consulted and acted upon the advice of counsel in connection with this decision to execute the within Joint Petition.


Joshua Louis Thomas
Respondent
Attorney Reg. No. 312476

Sworn to and Subscribed
before me this ^{9th} day
of August, 2021.



Notary Public



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: Dana M. Pirone

Attorney No. (if applicable): #57221