

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 3075 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 27 DB 2024
	:	
v.	:	Attorney Registration No. 61615
	:	
STEVEN OSTROFF,	:	(Philadelphia)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 1st day of November, 2024, 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 Steven Ostroff is suspended on consent from the Bar of this Commonwealth for a period of one-year. Respondent shall comply with 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 Nicole Traini
As Of 11/01/2024

Attest: *Nicole Traini*
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 27 DB 2024

Petitioner :

v. :

: Atty. Reg. No. 61615

STEVEN OSTROFF, :

Respondent : (Philadelphia)

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

Petitioner, Office of Disciplinary Counsel ("ODC"), by Thomas J. Farrell, Chief Disciplinary Counsel, and Harriet R. Brumberg, Disciplinary Counsel, and Respondent, Steven Ostroff, Esquire, and Respondent's counsel, Samuel C. Stretton, Esquire, file this Joint Petition In Support of Discipline on Consent under Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), and respectfully represent that:

I. PARTIES TO DISCIPLINE ON CONSENT

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, by Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), with the power and duty to investigate all matters involving alleged misconduct of an

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The Disciplinary Board of the
Supreme Court of Pennsylvania

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 of Disciplinary Enforcement.

2. Respondent, Steven Ostroff, was born in 1962 and was admitted to practice law in the Commonwealth in 1991.

3. Respondent has an office address of 3745 Midvale Lane, Huntingdon Valley, PA 19006.

4. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court pursuant Pa.R.D.E. 201(a)(1).

II. FACTUAL ADMISSIONS AND VIOLATIONS OF RULES OF PROFESSIONAL CONDUCT

5. Respondent specifically admits to the truth of the factual allegations and conclusions of law contained in paragraphs 6 through 59 herein.

A. Background

6. Respondent owns real property located at 8016 Frankford Avenue, Philadelphia, PA (Frankford Avenue property).

7. Christopher Moynihan owned CW Kitchen, LLC, (CW).

8. On January 28, 2014, Respondent and CW entered into a commercial lease for the Frankford Avenue property commencing

February 1, 2014. See *CW Kitchen LLC v. Steven Ostroff, et al.*, No. 2017-22420, FOF ¶ 3, Court of Common Pleas of Montgomery County. (Montco Opinion 12/7/2020)

9. CW Kitchen, LLC (CW):

- a. operated a pizza restaurant at the property under the trade name Commonwealth Kitchen (Montco FOF ¶ 4);
- b. installed its own pizza ovens and dough mixer (*id.* at ¶ 5); and
- c. made improvements to the property. (*id.* at ¶ 5)

10. On May 8, 2015, Respondent filed a Landlord and Tenant Complaint against CW for nonpayment of its rent, No. LT-15-05-08-3780.

11. On June 9, 2015, Respondent and CW entered into a Judgment by Agreement for back rent and possession of the property. (Montco FOF # 9)

12. The Court of Common Pleas of Philadelphia County (*Steven Ostroff v. CW Kitchen*, No. 958 January Term 2018, Court of Common Pleas, Philadelphia County (Phila Opinion 10/15/2020), found CW paid the balance of rent owed for June, July, and August 2015, as follows:

- a. for June 2015, CW paid \$2,100 in cash (*id.* at FOF ¶¶ 3, 4);
- b. for unpaid rent through August 2015, CW applied the \$2,450 security deposit (*id.* at FOF ¶ 5); and
- c. for August 2015, CW applied the \$2,100 prepaid as the last month's rent. (*id.* at FOF ¶ 6)

13. Thereafter, Respondent ended its lease with CW. (Phila FOF ¶ 9, COL ¶¶ 14, 16)

14. On June 22, 2015, Respondent filed an Affidavit of Breach of Agreement and served it on CW. (Montco FOF # 10)

15. On July 1, 2015, the Municipal Court issued a Writ of Possession to Respondent.

16. On August 12, 2015, upon Praecipe filed by Respondent, the Municipal Court issued an Alias Writ of Possession. (Montco FOF ¶ 12)

17. No later than August 20, 2015, CW ceased operations and vacated the property, but did not remove its equipment. (Montco FOF ¶ 13)

18. CW's pizza ovens and mixer remained at the property. (Montco COL ¶ 5)

19. On August 24, 2015, Respondent retook possession of the Frankford Avenue property. (Montco FOF ¶ 14)

20. Following Respondent's retaking possession of the Frankford Avenue property, Respondent and CW unsuccessfully negotiated for CW to sell to Respondent CW's kitchen equipment that remained at the property. (Montco FOF ¶ 16)

B. Respondent's Sale of CW Kitchen, LLC

21. In or about April 2015, Mr. Moynihan began looking for a buyer of CW Kitchen, LLC. (Montco FOF ¶ 17)

22. In or about April 2015, Mr. Moynihan retained Respondent as counsel for the sale of his business. (Phila FOF ¶ 10)

23. Respondent drafted a form asset purchase agreement (APA) for at least two potential buyers. (Montco FOF ¶ 19)

24. On or about September 11, 2015, CW obtained an offer from Julette and Adrian Zamichieli to purchase CW's business for \$40,000 and notified Respondent of the offer. (Montco FOF ¶ 21)

25. Respondent prepared an APA, dated September 16, 2015, that provided (Montco FOF ¶ 22):

- a. the APA was between Respondent, as Seller, and the Zamichielis, as buyers;

- b. the purchase price was \$40,000, to be paid with a down payment of \$15,000 and weekly installments;
- c. stated that Respondent was the owner of the pizza business operating at the Frankford Avenue property and trading as CW Kitchen, LLC;
- d. represented that Respondent would sell the Zamichiellis, "all the Seller's right, title, and interest in all of the said pizzeria business"; and
- e. the Zamichiellis would enter into a lease for the Frankford Avenue property.

26. Respondent and the Zamichiellis signed the APA to consummate the transaction. (Montco FOF ¶ 23)

27. The Court of Common Pleas of Montgomery County found Respondent's recitals in the APA that Respondent was "the owner of the CW Kitchen business were knowingly false." (Montco FOF ¶ 29)(See also Phila FOF ¶13, COL ¶15).

28. Respondent engaged in conduct involving misrepresentation when he drafted the APA that provided Respondent was the owner of CW Kitchens, LLC.

29. Respondent received the \$15,000 down payment and one installment of \$1,500 from the Zamichiellis. (Montco FOF ¶ 25)

30. Respondent did not pay the money he received from the Zamichielis to Mr. Moynihan.

31. The Court of Common Pleas of Montgomery County found Respondent converted CW's pizza ovens and mixer. (Montco COL ¶ 7)

32. When Respondent drafted the APA with himself as Seller, Respondent knew that the Zamichielis had already made an offer to CW Kitchen.

33. The APA gave Respondent a property interest in CW.

34. Respondent entered into a business transaction with the Zamichielis and failed to obtain CW's informed consent to draft the APA with Respondent as Seller of CW's pizza business.

35. As a result of the foregoing, Mr. Moynihan did not sell CW to the Zamichielis.

C. Respondent's Philadelphia Civil Action

36. On January 4, 2018, Respondent filed a Confession of Judgment against CW Kitchen, LLC, in the Court of Common Pleas of Philadelphia County. *Steven Ostroff v. CW Kitchen LLC.*, No. 958 January Term 2018.

37. In Respondent's Philadelphia County civil action, Respondent sought unpaid rent and late fees allegedly due.

38. On September 15, 2020, a bench trial was held before the Honorable Gary Glazer, during which time both Respondent and Mr. Moynihan testified.

39. On October 15, 2020, following the submission of proposed findings of fact and conclusions of law, Judge Glazer:

- a. found that Respondent "usurped the sale of assets of CW Kitchen, LLC by falsely representing himself to be the owner of [CW], thereby depriving [CW] of the sale opportunity" and "signed an asset purchase agreement dated September 16, 2015, as the purported owner of [CW] with the buyer procured by [CW]" (Phila FOF ¶ 13);
- b. reasoned that "[b]y virtue of [Respondent's] conduct, including accepting funds from [CW] in consideration of terminating the lease, terminating [CW's] lease and usurping the business opportunity involving the sale of [CW's] business by falsely representing himself as owner of CW Kitchen, LLC and accepting a new tenant, [Respondent] released [CW] from any liability associated with the lease" (Phila COL ¶ 15); and
- c. concluded CW was not responsible for any late fees or rent deficiencies because the lease was terminated. (Phila COL ¶¶ 14, 16)

40. Respondent did not file any post-trial motions following Judge Glazer's order finding in favor of CW and against Respondent.

D. CW Kitchen, LLC's Montgomery County Civil Action

41. On September 13, 2017, Mr. Moynihan filed a civil complaint against Respondent in the Court of Common Pleas of Montgomery County alleging tortious interference with a business opportunity, conversion, breach of contract, and legal malpractice. ***CW Kitchen, LLC v. Steven Ostroff***, No. 2017-22420.

- a. Mr. Moynihan subsequently withdrew the charges for breach of contract and legal malpractice. (Montco FOF ¶ 33)

42. On October 9, 2018, Respondent filed an Answer and a Counterclaim against CW and Mr. Moynihan seeking unpaid rent and late charges purportedly due under the lease. (Montco FOF ¶ 35)

43. On November 18, 2020, a nonjury trial was held before the Honorable Jeffrey S. Saltz, during which time both Respondent and Mr. Moynihan testified.

44. By Opinion dated December 7, 2020, Judge Saltz concluded as a matter of law that:

- a. Respondent had engaged in tortious interference with prospective contractual relations between CW and the Zamichiellis resulting in CW incurring damages of \$16,500 (Montco COL ¶ 2);

- b. Respondent converted CW's pizza ovens and mixer (*id.* at COL ¶ 6);
- c. Respondent's counterclaim against CW was precluded by Respondent's Philadelphia civil action (*id.* at ¶ COL 10); and
- d. Respondent's counterclaim against Mr. Moynihan failed as it was derivative of Respondent's claim against CW. (*id.* at COL ¶ 11)

45. On December 7, 2020, Judge Saltz found in favor of CW and against Respondent and awarded \$16,500 to CW. (Montco Opinion, p. 8)

46. Judge Saltz capped the judgment against Respondent at \$16,500, as Mr. Moynihan had not introduced any evidence to demonstrate the value of the pizza oven and dough mixer.

47. On January 6, 2021, Respondent filed a Motion for Post Trial Relief Pursuant to Pa.R.Civ.P. 227.1 with the trial Court.

48. On January 6, 2021, Respondent filed two appeals to the Superior Court from Judge Saltz's December 7, 2020 decision. Case Nos. 355 EDA 2021 & 264 EDA 2021.

49. On January 8, 2021, Judge Saltz denied Respondent's post-trial motion as untimely.

50. On January 8, 2021, Respondent filed a Motion for Reconsideration of the denial of Respondent's post-trial motion; on January 20, 2021, Judge Saltz denied Respondent's motion for reconsideration.

51. On May 17, 2021, the Superior Court quashed No. 264 EDA 2021 as being interlocutory because Respondent's post-trial motion was being litigated before the trial court at the time the appeal was taken.

52. On June 4, 2021, the Superior Court *sua sponte* dismissed No. 355 EDA as being duplicative of No. 264, which it had quashed.

53. On December 14, 2022, the Court of Common Pleas of Montgomery County entered final judgment against Respondent.

54. Respondent's lawsuit in Philadelphia County, counter-claim in Montgomery County, and Superior Court appeals needlessly expended the limited time and resources of the court system and were prejudicial to the administration of justice.

55. By Order dated August 22, 2023, the Disciplinary Board rescinded its order of February 26, 2019, which deferred ODC's investigation of Respondent's conduct pending resolution of the civil actions in Philadelphia and Montgomery County.

56. In Respondent's Answer to the Petition for Discipline, Respondent admitted he had "made a mistake" in drafting the asset purchase agreement and claimed Mr. Moynihan never picked up his pizza oven and dough mixer.

57. By letter to the Pennsylvania Lawyers Fund for Client Security sent in response to Mr. Moynihan's Statement of Claim, Respondent wrote that he was "prepared to pay CW Kitchen LLC the amount of \$12,183.00 (\$16,500 -4,317.00)[the amount of the judgment minus the purported amount due for unpaid rent and late fees]."

58. After the scheduling of a formal hearing in this matter, Respondent reimbursed \$16,500 to Mr. Moynihan.

59. By his conduct as alleged in Paragraphs 5 through 58 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.7(a)(2), which states, except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer;
- b. RPC 1.8(a), which states, a lawyer shall not enter into a business transaction with a client or knowingly acquire an

ownership, possessory, security or other pecuniary interest adverse to a client;

- c. RPC 1.8(i), which states, a lawyer shall not acquire a proprietary interest in a cause of action that the lawyer is conducting for a client;
- d. RPC 1.15(b), which states, 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;
- f. RPC 8.4(c), which states, it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and
- g. RPC 8.4(d), which states, it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

III. JOINT RECOMMENDATION FOR DISCIPLINE

60. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a one-year suspension.

61. Respondent hereby consents to the discipline being imposed by the Disciplinary Board of the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Pa.R.D.E. 215(d), which states that he consents to the recommended discipline and the mandatory acknowledgements contained in Pa.R.D.E. 215(d)(1) through (4).

62. Petitioner and Respondent respectfully submit that there are the following mitigating factors:

- a. Respondent has no record of discipline;
- b. Respondent has recognized his wrongdoing and reimbursed \$16,500 to Mr. Moynihan;
- c. Respondent has expressed remorse;
- d. Respondent has cooperated with ODC and entered into a Joint Petition for Discipline on Consent; and
- e. Respondent's wrongdoing was an isolated incident limited to a single matter.

63. Generally, attorneys who engage in conduct that involves a financial conflict of interest with their client receive discipline ranging from an Informal Admonition to a suspension of two-years.

Attorneys who receive discipline that does not require the attorney to apply for reinstatement and establish their fitness to resume the practice of law have recognized their wrongdoing and undertaken efforts to remedy their improper conflicts. See e.g., (C2-17-279)(Informal Admonition imposed on an attorney who refunded \$10,000 he received to draft a long-term care plan for his 64-year-old wheelchair bound nephew after the attorney failed to obtain his nephew's informed consent to not deposit his retainer fee into a Trust Account); *Office of*

Disciplinary Counsel v. Richard G. Scheib, No. 159 DB 2021 (D.Bd. Order 12/27/2021)(Public Reprimand imposed on Scheib, who renounced his testamentary share under the Will he drafted for his client that improperly named Scheib and his longtime paralegal as beneficiaries and wrongly named Scheib as the executor of the estate and his paralegal as an alternate executor); ***Office of Disciplinary Counsel v. William E. Gericke***, No. 154 DB 2022 (S.Ct. Order 3/20/2023)(on consent)(Gericke, who recognized his wrongdoing and paid SEC's fine for engaging in insider trading based on material nonpublic information he received as a result of his legal employment, received a one-year suspension on consent).

But where an attorney abuses the trust of a client solely for the attorney's financial benefit, does not recognize his or her wrongdoing, and has not undertaken remedial action, the attorney may receive a suspension of least one year and one day, which will require the attorney to petition for reinstatement and establish their fitness to practice law. See ***Office of Disciplinary Counsel v. Mary Ellen Tomasco***, No. 111 DB 2004 (D.Bd. Rpt. 1/22/2005)(S.Ct. Order 3/10/2006) (Tomasco received a suspension of one year and one day

for withdrawing money from the bank account she managed for her mentally incompetent client, and without recognizing her wrongdoing and obtaining proper consent, Tomasco used the money she withdrew to purchase real estate for herself), *reinstatement denied, In the Matter of Mary Ellen Tomasco*, No. 111 DB 2004 (D.Bd. Rpt. 3/13/2009)(S.Ct. Order 7/8/2009)(Tomasco, who failed to withdraw from being power of attorney over the finances of her mentally incompetent client after she received discipline for having a financial conflict of interest with the client, was denied reinstatement); and *Office of Disciplinary Counsel v. Richard S. Ross*, No. 189 DB 2020 (D.Bd. Rpt. 1/11/2022)(S.Ct. Order 3/8/2022) (Ross, who had a record of public discipline, received a two-year suspension for accepting one-half of the settlement proceeds from his client's legal matter pursuant to a security agreement without first advising his client in writing of the desirability of seeking independent legal advice and then failed to reimburse his client for the settlement proceeds he wrongfully received; the Pennsylvania Lawyers Fund for Client Security awarded \$71,232.95 to Ross's client).

64. Mr. Moynihan, who was not current on paying rent he owed to Respondent, located a potential buyer of CW and its equipment. Mr.

Moynihan then retained Respondent to draft an asset purchase agreement of Mr. Moynihan's pizza business and equipment. Respondent used the inside information about the potential buyer of CW to draft an asset purchase agreement with the potential buyer, wrongfully naming Respondent as the seller. Thereafter, Respondent obtained \$16,500 from the buyer, usurping the funds he received for himself and failing to pay the proceeds to Mr. Moynihan. Respondent has recognized his wrongdoing and reimbursed \$16,500 to Mr. Moynihan.

65. Respondent should receive a term of suspension for his misconduct. It is not necessary, however, for Respondent to receive a term of suspension that would require Respondent to go through the reinstatement process and demonstrate his fitness to practice law. Respondent has expressed remorse, reimbursed Mr. Moynihan, and does not pose a danger to the public, courts, or profession. Respondent engaged in an isolated instance of misconduct related to his real estate business.

66. Similar to the conduct of Gericke, Respondent misused business information about his client for Respondent's personal financial benefit, recognized his wrongdoing, and made reimbursement of his

financial gain. Respondent should likewise receive a one-year suspension. Respondent's receipt of a one-year suspension is appropriate and would, hopefully, deter other attorneys from engaging in similar conflicts in the future. *See Gericke, supra* at 26-27 ("a one-year suspension on consent is necessary and appropriate to put Pennsylvania attorneys on notice that insider trading is a fraudulent, impermissible activity.")

67. Based on the foregoing, Petitioner and Respondent agree that Respondent's conduct warrants a one-year suspension.

WHEREFORE, Petitioner and Respondent respectfully request that:

- a. Pursuant to Pa.R.D.E. 215(e) and 215(g), the three-member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent that Respondent receive a one-year suspension; and
- b. Pursuant to Pa.R.D.E. 215(i), the three-member panel of the Disciplinary Board enter an Order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter, and that under Pa.R.D.E. 208(g)(1), all expenses be paid by Respondent within 30 days after notice transmitted to the Respondent of taxed expenses.

Respectfully and jointly submitted,

OFFICE OF DISCIPLINARY COUNSEL

Thomas J. Farrell
CHIEF DISCIPLINARY COUNSEL

9/6/2024
Date

By Harriet R. Brumberg
Harriet R. Brumberg
Disciplinary Counsel

9/9/24
Date

By Steven Ostroff
Steven Ostroff
Respondent

9/16/24
Date

By Samuel C. Stretton
Samuel C. Stretton
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 27 DB 2024

Petitioner :

v. :

: Atty. Reg. No. 61615

STEVEN OSTROFF, :

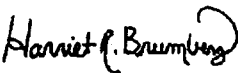
Respondent : (Philadelphia)

VERIFICATION

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

9/6/2024

Date




Harriet R. Brumberg
Disciplinary Counsel

9/9/24

Date

By


Steven Ostroff
Respondent

9/6/24

Date

By


Samuel C. Stretton
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 27 DB 2024

Petitioner :

v. :

: Atty. Reg. No. 61615

STEVEN OSTROFF,

Respondent : (Philadelphia)

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

Respondent, Steven Ostroff, hereby states that he consents to the imposition of a one-year suspension, and further states that:

1. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting the consent; and he has consulted with an attorney in connection with the decision to consent to discipline;

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

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

4. He consents because he knows that if the charges continue to be prosecuted in the pending proceeding, he could not successfully defend against the charges.

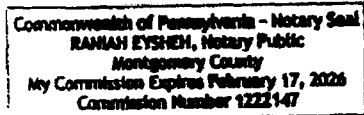


Steven Ostroff
Respondent

Sworn to and subscribed
before me this 9th
day of September, 2024.



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: Harriet R. Brumberg

Name: Harriet R. Brumberg, Disciplinary Counsel

Attorney No. (if applicable): 31032