SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

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In the Matter of Jonathan R. Steinberg,
(admitted as Jonathan Roger Steinberg),
an attorney and counselor-at-law:

Attorney Grievance Committee
for the First Judicial Department,

Petitioner,

Jonathan R. Steinberg,
(OCA Atty. Reg. No. 1946235),

Respondent.

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MEMORANDUM OF LAW IN SUPPORT OF THE COMMITTEE'S MOTION TO AFFIRM THE REPORT OF REFEREE JAMES T. SHED

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PRELIMINARY STATEMENT

"[T]he only sanction which should be awarded by the Court is that I should be paid damages."[1] These are, of course, the very words uttered by respondent Jonathan R. Steinberg (respondent)–a lawyer privileged to practice law in two countries over four decades–at his sanction hearing summation. These words also evidence a troublesome pathology manifested in respondent's treatment of the court and the people that serve it. Having adopted an approach of relying on ad hominem rather than analysis, respondent has relentlessly assaulted the integrity, credibility, and competence of two highly regarded trial court judges and the grievance committee. Indeed, the victims of respondent's attacks have been re-victimized by the way this case has been defended. The attacks, however, are not gratuitous. But rather a transparent attempt to effect outcomes that were disfavorable to respondent. As demonstrated throughout the underlying disciplinary matter, respondent's lack of remorse is matched only by his cavalier claims: claims that lack color, claims that do not support mitigation, and claims that show significant aggravation supporting the referee's recommendation that respondent be suspended from the practice of law for two years.

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[1] Exhibit-B p. 100:10-12.

BACKGROUND

Originally a barrister-at-law in England in the 1970s, respondent successfully applied for admission without examination in 1983 to the Appellate Division, Third Judicial Department. (Exhibit-A, Staff-23). Respondent, thereafter, has been a solo practitioner with an office in New York county. (Exhibit-A, Staff-1 ¶¶ 2-3; Staff-1(c) pp. 17-19). Though currently registered as "retired" with the Office of Court Administration, respondent maintains an active professional website, LinkedIn profile, and has acknowledged a desire to be retained in the future. (Exhibit-A, Staff-1 ¶ 2; Staff-1(c) pp. 225-31; Staff-25; Staff-26).

I. THE PETITION

The underlying petition emanates from respondent's involvement in two actions pending in New York State Supreme Court and New York City Civil Court, County of New York. (Exhibit-A, Staff-1 ¶ 4). The first matter involved respondent, as a pro se plaintiff, in an action styled *Steinberg v. Queen's Import Motors*, No. 114728-1999 (N.Y. Sup. Ct.), before the Honorable Shirley W. Kornreich, J.S.C. (*Id.* ¶ 5; *see also* Exhibit-1, Staff-A). In a decision and order dated 11 February 2010 Justice Kornreich observed respondent engaged in "frivolous conduct" and referred the action to a referee for a hearing on attorney's fees and costs. (Exhibit-A, Staff-1

¶ 6).

The parties appeared before Referee Leslie Lowenstein for a hearing who recommended a $5,000 sanction and $35,100 in attorney's fees to respondent's adversary. (*Id.*; *see also* Staff-31; Staff-32). Justice Kornreich ultimately affirmed the $5,000 sanction against respondent and reduced the attorney's fee award to $28,600. (Exhibit-A, Staff-1 ¶ 7). Respondent unsuccessfully challenged the sanction order by way of an appeal and Article 78 proceeding. (*Id.*, Staff-1(a)). At his examination under oath (EUO), respondent acknowledged his failure to comply with the sanction order and his continued refusal to do so because the sanction order was "illegal as an ex parte without notice of hearing" and an "illegal order which is contrary to the Code of Ethics and the Code of Conduct[.]" Respondent's refusal to comply with the sanction order violated Rules 8.4(d) and 8.4(h) of the Rules of Professional Conduct (Rules). (Exhibit-A, Staff-1 ¶ 18).

The second matter involved respondent, as defense counsel, in an action styled *Washington v. Manhattan Automobile Repair, Inc.*, No. CV-028891-2012 (N.Y. Civ. Ct.) before the Honorable Gerald Lebovits, J.C.C. (*Id.* ¶ 11). Following a hearing where respondent's client was found in contempt, respondent sent an e-mail to Judge Lebovits where he acknowledged the possible ex parte nature of the communication and demanded the court vacate its prior ruling while attacking and criticizing the

court on multiple grounds. (*Id.* ¶¶ 14-16). For example, in the e-mail respondent alleged Judge Lebovits "intentionally blind[ed]" himself to the evidence, in part, because of the court's "irritation at [respondent's] client having terminal cancer." (*Id.* ¶ 15(e)). Respondent's conduct here violated Rules 3.3(f)(2), 3.5(a)(2), 8.4(d), and 8.4(h). (*Id.* ¶¶ 14-16, 19-20).

II. THE PROCEDURAL HISTORY

Respondent initially failed to answer the petition. Thereafter, on the Committee's initiative, the parties agreed to extend respondent's time to answer nunc pro tunc. (Exhibit-F). In lieu of an answer and in violation of the stipulation, respondent moved for panel-wide disqualification and the transfer of this matter to the Third Department. (Exhibit-A, Staff-20). The court properly denied respondent's motion, deemed the charges in the petition admitted, and assigned James T. Shed as referee over the sanctions portion of the case. (Exhibit-A, Staff-17). Respondent sought a concomitant stay and appeal to the Court of Appeals which, by order dated 16 January 2018 was, respectively, denied and dismissed. (Exhibit-A, Staff-19).

After multiple defaults by respondent for conferences before the referee (Staff-27), the parties appeared before Referee Shed for a sanction hearing on 8 March 2018. The Committee called Justice Lebovits as its only witness. Respondent called himself as a witness and offered narrative direct testimony. True to his history,

respondent's ad hominem attacks and baseless accusations of inappropriate conduct by the judges and the Committee continued. At the conclusion of the hearing, the Committee requested a minimum two year suspension. (Exhibit-B, p. 117). An indignant respondent demanded to Referee Shed that "the only sanction which should be awarded by the Court *is that I should be paid damages*." (*Id.*, p. 100 (emphasis added)).

By report on sanction dated 27 April 2018 Referee Shed recommended that respondent receive a two year suspension with reinstatement predicated on satisfaction of the $5,000 sanction and attorney's fee award in *Queen's Import Motors*. (Exhibit-C p. 8). In his report, Referee Shed observed that respondent had a "golden opportunity to express remorse" during Justice Lebovits's testimony but rather, "aggravated this situation by attacking Justice Lebovit[s] . . . [and] rais[ing] his voice to the Justice in an unprofessional and unsuccessful attempt to intimidate him." (*Id.* p. 5). The report on sanction also properly noted that respondent, in summation, "reiterate[d] his accusations of corruption" in the court and disciplinary system. (*Id.*).

ARGUMENT

I. STANDARD OF REVIEW

The court applies a fair preponderance of the evidence standard of review in determining whether to affirm a referee's report and recommendation. *In re Zappin*,

160 A.D.3d 1, 7 (1st Dep't 2018); 22 NYCRR § 1240.8(b). "In presenting arguments on the issue of appropriate discipline for misconduct, the parties may cite any relevant factor, including but not limited to the nature of the misconduct, aggravating and mitigating circumstances, the parties' contentions regarding the appropriate sanction under the American Bar Association's Standards for Imposing Lawyer Sanctions . . . . [T]he court may impose discipline or take other action that is authorized by law and, in the discretion of the court, is appropriate to protect the public, maintain the honor and integrity of the profession, or deter others from committing similar misconduct." 22 NYCRR § 1240.8(b)(2).

II. REFEREE SHED'S RECOMMENDATION OF A TWO YEAR SUSPENSION IS SUPPORTED BY A FAIR PREPONDERANCE OF THE EVIDENCE

A) First Department Authority Supports A Two Year Suspension

The failure to acknowledge "wrongdoing and lack of remorse are certainly aggravating factors which should be taken into account when considering the imposition of an appropriate sanction." *In re Cohen*, 40 A.D.3d 61, 65 (1st Dep't 2007). A respondent's conduct during the pendency of a disciplinary proceeding can constitute aggravation. *In re Fruitbine*, 233 A.D.2d 61, 65 (1st Dep't 1997). For example, proffering false statements to a hearing panel (or its current analogue the referee), *In re Collins*, 225 A.D.2d 181, 183 (1st Dep't 1996), and a lack of candor constitute factors in aggravation, *In re Moore*, 197 A.D.2d 254, 256 (1st Dep't 1994).

And conduct during a disciplinary proceeding–though independently chargeable–can be considered in aggravation. *See In re Chiofalo*, 78 A.D.3d 9, 17 (1st Dep't 2010) (finding "[r]espondent was not charged with contempt of the disciplinary proceeding for his renewed actions during the pendency of the matter, but at the very least, his conduct demonstrated a failure to appreciate the seriousness of his actions.").

A "repeated violation of court orders and failure to pay a judgment frequently warrants disbarment, especially when the misconduct is egregious and *demonstrates a disregard for the judicial process*." *In re Davey*, 111 A.D.3d 207, 212 (1st Dep't 2013) (emphasis added); *accord In re Fagan*, 58 A.D.3d 260, 266 (1st Dep't 2008) (holding "[d]isbarment is an appropriate sanction for attorneys who . . . have made deliberate misrepresentations to a court. . . . [and] is similarly appropriate where an attorney has repeatedly violated court rulings."). The lesser, though still significant, sanction of a two year suspension has been applied where a disregard of a court order is joined with a lack of remorse but in the absence of a deliberate misrepresentation. *Davey*, 111 A.D.3d at 211.

Applying these principles here, Referee Shed's two year suspension is the minimum appropriate sanction applicable under the facts here. For example, respondent's failure to satisfy the Kornreich sanction is as undisputed as respondent's contention that he will *not* comply with the order:

> [Q] Other than the fact that you disagree with Judge Kornreich's order, have there been any other reasons why

> the order has not been satisfied given the amount of years that have passed since the Appellate Division affirmed it?
>
> [A] What other reasons do *I need if you have an illegal order which is contrary to the Code of Ethics and the Code of Conduct*? How many more reasons do you need?
>
> [Q] Well, that's what I want to know. *Is that, in fact, your only reason*?
>
> [A] *Yes*.

(Exhibit-A, Staff-1(c) p. 242 (emphasis added)). Given that respondent's appeal and Article 78 proceeding concerning this sanction were unsuccessful, this testimony comes against the backdrop that the sanction order is final and non-appealable. Likewise, respondent has never filed any motion with the nisi prius court seeking a reduction of the sanction or attorney's fee award on the basis of pauperis status. Nor has respondent made such claims in this proceeding. Perhaps more importantly, respondent has used the judicial process to harass and frustrate his underlying adversary from satisfying the attorney's fee component of the sanction order by commencing a federal lawsuit.

In a decision dated 17 November 2016 the Court of Appeals for the Second Circuit dismissed respondent's fraudulent conveyance action seeking damages against his *Queen's Import Motors* adversary for taking steps to satisfy its judgment from the award of attorney's fees. (Exhibit-A, Staff-18). The Second Circuit found:

> QIM's sale of a DB5 [vehicle] was plainly not a fraudulent conveyance . . . . QIM's sold Steinberg's DB5 –pursuant to

> an auction held by the Sheriff. . . to satisfy a judgment that it had obtained against Steinberg for $30,000 in legal fees. Steinberg cannot challenge that sale by inaccurately characterzing it as a fraudulent conveyance.

(*Id.*). Consistent with this, respondent displayed a continued lack of remorse in his aggressive posture with Justice Lebovits during the hearing and his claim, in opening, that "[Chair Charlotte Moses] Fischman has brought this petition . . . based on zero circumstances." (Exhibit-B p. 24).

Dovetailing this is significant other aggravation based on the American Bar Association's (ABA) aggravating factors. Each applicable factor is discussed in turn.

B) The ABA's Factors In Aggravation

Under 22 NYCRR § 1240.8(b)(2) the court can consider "the parties' contention regarding the appropriate sanction under the American Bar Association's Standards for Imposing Lawyer Sanctions." Aggravation is defined by the ABA as "any considerations or factors that may justify an increase in the degree of discipline to be imposed." ABA Standards for Imposing Lawyer Sanctions Standard 9.21. And the ABA identifies eleven such factors: (a) prior discipline; (b) dishonest or selfish motive; (c) pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of disciplinary proceeding by failing to comply with court rules and orders; (f) submission of false evidence or statements or deceptive practices; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; (i) substantial experience in the practice of law; (j) indifference to making restitution; and (k) illegal

conduct. (*Id.* Standard 9.22). To varying degrees of weight, there is evidence supporting nine out of the eleven factors. The factors are addressed sequentially. (Factors -h and -k are inapplicable here.)

i. *Prior discipline*

Respondent was suspended by the Appellate Division, First Judicial Department, on or about 25 January 1999 for failure to file a registration statement. (Exhibit-A, Staff-14). Respondent was reinstated on 25 September 2008. (Exhibit-A, Staff-16).

ii. *Dishonest or selfish motive*

As the court is aware, respondent has refused to comply with Justice Kornreich's sanction order. His basis for refusal is, as discussed, frivolous: the order is "illegal" notwithstanding the dismissal of respondent's appeal. Likewise, respondent's frivolous and punitive federal court action seeking to frustrate efforts by his adversary to satisfy a judgment from the sanction order demonstrates a total disregard for the court's authority and the judicial process. Respondent's own, deliberate, actions demonstrate dishonest and selfish motivation in his failure to satisfy, and attempts to undo the consequences of, Justice Kornreich's order.

iii. *A pattern of misconduct*

True to his history, respondent relies on ad hominem attacks following any negative outcome in a case. For example, after Justice Kornreich issued her sanctions

decision, respondent alleged that the court "entered into an illegal conspiracy" and held a "wholly illegal private conference." (Exhibit-A, Staff-7). After Judge Lebovits issued his order finding respondent's client in contempt of court, respondent alleged that the court "intentionally blind[ed] yourself to the facts because of your irritation at my client having terminal cancer." (Exhibit-A, Staff-1 ¶ 15(e)).

Thereafter, respondent, after being informed of the Committee's decision to bring formal charges, alleged that Chair Fischman was motivated by "*curry[ing] favour* with [Justice Kornreich] by acceding to a plainly illegal and grotesquely unethical order entered into as a result of a plain conspiracy." (Exhibit-A, Staff-10 (emphasis added)). Respondent also questioned the integrity of this office, by alleging that its former Chief Counsel Tom Cahill, had also conspired with Justice Kornreich years before to prejudice respondent: "[the Committee's] petition mandating that the victim of a quasi-criminal conspiracy to extort entered into between Kornreich J (Cohen/Cahill) and Michael should pay tens of thousands of dollars for trying to obtain redress . . . is unconscionable." (Exhibit-A, Staff-12); *see also id.* Exhibit-A, Staff-20 p. 16)).

These predicate of facts demonstrate, beyond cavil, that respondent will resort to unsubstantiated and scandalous claims after any negative ruling in order to effectuate a change in the outcome of the case by proliferating bombast.

iv. Multiple offenses

As the court is aware, the Committee's petition alleges two independent acts of misconduct from different cases separated by many years. (Exhibit-A, Staff-1 ¶¶ 18-20).

v. Bad faith obstruction of the disciplinary process by intentionally failing to comply with court rules and orders

Respondent failed to appear for two telephone conferences before Referee Shed. Respondent's e-mail demonstrates that such failure was likely deliberate. (Exhibit-A, Staff-27).

vi. Submission of false evidence or statements or deceptive practices during the disciplinary process

In an attempt to militate against his inexcusable failure to comply with Justice Kornreich's final and non-appealable order, respondent advances the scurrilous claim that he was sanctioned as a result of an "illegal conspiracy" between the court and respondent's adversary that resulted in an ex parte, "private conference," giving rise to the order. (Exhibit-A, Staff-4 p. 2; Staff-5 p. 3; Staff-6 p. 1; Staff-7 p. 1; Staff-8 p. 1; Staff-9 p. 1). Indeed, respondent has taken the unequivocal posture that Justice Kornreich:

> *lie[d]* to the Appellate Division . . . that the reason she held a private hearing with the defendant was *because I had failed to respond to the underlying motion!*

(Exhibit-A, Staff-7 p. 1; *see also* Exhibit-A, Staff-5 p. 3 (claiming court found motion

unopposed) (emphasis added)). The uncontroverted evidence, however, demonstrates that respondent's defense to non-compliance is false.

On 11 July 2008 respondent's adversary in *Queen's Import Motors* filed a motion for sanctions returnable 24 July 2008. (Exhibit-A, Staff-28). In addition, respondent's adversary filed a *separate* motion to renew denial of summary judgment. (Exhibit-A, Staff-21, p. 5 Doc #62, 66). Thereafter, on the return date of the motions, respondent filed a single opposition that did *not* address the motion for sanctions. (Exhibit-A, Staff-29; *see also* Exhibit-A, Staff-21, p. 6 Doc #70 (one opposition filed)). The court held argument on the motion for sanctions on 21 August 2008 that respondent failed to appear as catalogued by the office and unofficial dockets of the case. (Exhibit-A, Staff-22 (e-COURTS and eLaw dockets); *see also* Exhibit-A, Staff-6 (claiming 21 August 2008 as the date of the "private conference"). Thereafter, on 3 September 2008 (or two weeks after oral argument) respondent filed a letter informing Justice Kornreich: "I have *just returned to New York from England.* . . . I am writing to express shock at finding that this Court decided to hold a hearing in a Motion for sanctions against me without notifying me of the date of the hearing." (Exhibit-A, Staff-30 (emphasis added)).

Here, respondent's putative defense to non-compliance with Justice Kornreich's order is demonstrably false. Respondent neither opposed the motion for sanctions nor appeared in court for oral argument that was calendared on both e-

COURTS and eLaw and available for anyone to confirm. These facts belie respondent's claim of a judicial conspiracy. Furthermore, respondent's letter to the court two weeks after oral argument indicating that he "just returned" from England supports the inference that respondent was outside the United States, unavailable to attend court on 21 August 2008, and otherwise not following the case docket.

For this and the other reasons stated, respondent's posture here is false.

vii. Refusal to acknowledge wrongful nature of conduct

Respondent's failure to pay the $5,000 sanction, his stated refusal to satisfy that component of Justice Kornreich's order based on scandalously false claims demonstrate a total refusal to acknowledge wrongful conduct. As a corollary, respondent's refusal to acknowledge the wrongful nature of his conduct in the e-mail to Justice Lebovits was highlighted during his EUO:

> [Q.] [] For what reason or purpose did you send this e-mail?
>
> [A.] Because I believe [Judge Lebovits] acted in a deplorable manner. . . .

(Exhibit-A, Staff-1(c) p. 246:3-8). Consistent with his stated belief that: Judge Lebovits acted "deplorabl[y]," Justice Kornreich's sanction order was the genesis of a conspiracy, and the Committee (through current and former members) has been motivated by an illicit scienter, respondent's summation to Referee Shed described the disciplinary proceedings as: "a corruption case . . . and that the only sanction

which should be awarded by the Court is that I should be paid damages." (Exhibit-B p. 100:4-12). The absurd nature of this claim, and others made in this case, demonstrates that respondent's refusal to acknowledge wrongdoing has become mantra.

viii. Substantial Experience in the Practice of Law

Respondent was admitted to practice on or about 1976 as a barrister in England. (Exhibit-A, Staff-23). As a barrister, respondent was "involved in hundreds of actions, both civil and criminal." (*Id.* p. 6). Respondent has been admitted in the United States since 1983. Though currently retired, respondent maintains an active website and profile in LinkedIn, a premier business networking site, with a view toward attracting future business. (Exhibit-A, Staff-1(c) p. 228:5-25, 25, 26).

ix. Indifference to making restitution

As discussed, respondent has refused to satisfy the $5,000 sanction payable to the Lawyer's Fund. Because this fine is for respondent's frivolous conduct, it is synonymous with a restitution. Respondent's posture that he will not satisfy an "illegal order" demonstrates a mens rea far more sinister than indifference. This is, of course, very consistent with respondent's frivolous and unsuccessful federal action seeking to stonewall efforts of his underlying *Queen's Import Motors* adversary to satisfy the related attorney's fee judgment. (Exhibit-A, Staff-18).

CONCLUSION

For this and the other reasons stated, Referee Shed's recommendation that respondent be suspended from the practice of law for two years should be affirmed and the court grant any other relief it deems just and proper.

Dated: June 11, 2018
New York, New York

Respectfully submitted,

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