DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	:
ALVIN S. BROWN, ESQUIRE,	:
Respondent	:
Member of the Bar of the District of Columbia Court of Appeals	:
Bar Number: 263681	:
Date of Admission: April 4, 1979	:

ANSWER

RESPONDANT, in answer to the Specification of Charges, filed in above-entitled case, admits, denies, and alleges as follows.

1. Agrees.
2. Agrees and alleges that New York permits attorneys from other states to represent taxpayers on New York tax matters. The instructions to New York State Power of Attorney (POA-2) states: "If the representative is not licensed in in NYS, also include the state where licensed (for example, *Florida attorney).*"
3. Agrees.
4. Agrees.
5. Agrees
6. Agrees.
7. Agrees.

8. Agrees that Bahri sought only to abate the penalties and interest on his sales tax liability. Alleges that Bahri stated repeatedly, in e-mail exchanges with Respondent, that his reason for requesting abatement of interest and penalties on his underlying sales tax liability for 2013 is that he was living outside of the United State from 2004 until 2015 and "was **unaware**" that the sales tax owed by Pure Cells Inc. was not paid. Respondent reasoned that if Bahri's rational for abatement of interest and penalties was valid, it would also be valid for the underlying sales tax assessed to him as a "responsible person" for the payment of Pure Cells 2003 sales tax liability. As a point of logic, the rationale for abatement of interest and penalties is identical to the rationale for abatement of the underlying sales tax liability. Respondent assumes that the 2003 sales tax liability of Pure Cells was assessed in 2004 when Barhri was living abroad. There are no negative implications for requesting abatement of the underlying penalty attributable to Bahri as the "responsible person" for the 2003 sales tax obligations of Pure Cells.

Alleges 20 CRR-NY 536.1(c) appears to allow full abatement of a sales tax liability for "reasonable cause," as follows:

If a person required to collect tax can establish that the failure or delay to file a return or to pay or pay over any tax was due to reasonable cause and not due to willful neglect (see section 2392.1 of this Title), all of such penalty and that portion of the interest that exceeds the amount that would be payable if such interest were computed at the underpayment rate set by the Commissioner of Taxation and Finance (see Part 2393 of this Title) pursuant to section 1142(9) of the Tax Law shall be waived.

Alleges New York Publication 220, titled "Offer in Compromise Program," permits a taxpayer, owing "trust taxes" to make an offer to settle the trust taxes if filed with a statement of the reasons for abatement along wit supporting documents even though New York does not normally accept offers for less than the amount of the trust tax owed (not including penalties and interest.) For this purpose, New York does not have a form similar to Internal Revenue Service Form 656-L, Offer in Compromise (Doubt as to Liability). Form 656-L and New York Publication 220 do not require financial data, of the kind provided in TDF-5, to settle trust fund tax liabilities. The only available option to resolve a liability issue under the New York Offer in Compromise program is to use TDF-4.1.

9. Agrees.

Alleges the following:

a) New York Publication 200 describes the New York "Offer in Compromise Program" and lists just two Offer in Compromise forms: Either DTF-4.1, Offer in Compromise (For Fixed and Final Liability or Form DTF-4, Offer in Compromise (For Liabilities Not Fixed and Final and Subject to Administrative Review). Respondent correctly selected New York OIC Form DTF-4.1 because DTF-4.1 Bahri's liability is a fixed liability.

b) Alleges DTF-5 is a "Statement of Financial Condition" requiring information about dependents, assets, liabilities, income, deductions from income and related financial data, none of which is "probative" to a determination if there is

"reasonable cause" sufficient to abate any of the sales tax liability of Bahri under 20 NYCRR § 536.1(c). Further, Publication 220 does not require DTF-5 on any issues relating to the abatement of a trust fund penalty.

c) Willful neglect has been defined as a "conscious, intentional failure or reckless indifference." "Whether a failure to file timely is due to reasonable cause and not willful neglect is a question of fact." Cunningham v. Comm'r, T.C. Memo 2009-194 (T.C. 2009). Publication 220 also has the following headings and text:

> ***What if a taxpayer owes trust taxes?***
>
> *Trust taxes currently include only withholding and* ***sales tax****. Penalties and interest).* ***We normally do not accept offers for less than the amount of the trust tax owed*** *(not including penalties and interest). However, taxpayers wishing to make such an offer should include a statement of the reasons, along with any supporting documents. We will consider whether the business is still in operation, whether the trust taxes were actually collected, and determine if the offer is in the best interest of the parties concerned.*
>
> ***What if a taxpayer is assessed as a responsible person?***
>
> *A taxpayer assessed as a responsible person liable for collecting and paying trust taxes for a business may make an offer in compromise for their liabilities, separate from the business.*

d) A summary of the preceding two paragraphs in New York Publication 220

permits the use if DTF-4.1 to address a "fixed and final" sales tax liability in with appropriate documentation to support abatement. That documentation is data that would support "reasonable cause, identified in NYCRR § 536.1(c) and not the data provided in DTF-5.

e) Respondent submitted the Form DTF-4.1 requesting abatement of Bahri's sales tax liability with all of the documentation received from Bahri to support the fact that Bahri lived abroad in 2004 and 2015, in full conformity with the mandatory procedure described in New York Publication 220.

f) Publication 220, deals with the abatement of New York "sales tax" by a "responsible person" but makes no reference to the need for the financial data provided in DTF-5. Similarly, NYCRR § 536.1(c) has outlined legal and factual standards for abatement of the tax liability of a person using examples that are unrelated to the wealth of the "responsible person."

g) 20 CRR-NY 536.1(c), dealing with abatement, makes no reference the financial data supplied in Publication 5.

h) 20 CRR-NY 2392.1 contains the regulations for ascertaining "reasonable cause" for penalty abatement and makes no reference to the financial data supplied in Publication 5.

Alleges that the New York Offer in Compromise Unit erred by not processing the DTF-4.1 on the basis of the data supplied that included the documentation provided by Bahri that he lived abroad from 2004 to 2015 along with the argument made by Bahri which he believed

represented "reasonable cause" to justify abatement of all or part of his sales tax liability under the authority of New York Publications and New York Regulations 20 CRR-NY 2392.1 and 20 CRR-NY 536.1(c). The financial data required in TDF-5 is not probative to the issues dealing with abatement of Bahri's trust fund assessment as well as the penalties and interest on that assessment and contrary to New York law dealing with abatement of Bahri's sales tax liability and the issue of reasonable cause that might justify abatement.

10. Agrees.

11. Agrees.

Alleges the following:

a) Respondent initially states that there were ***many extenuating circumstances*** to support abatement all additions to his underlying assessment for the trust fund penalty before he received his Engagement Agreement. Thereafter, Bahri used one argument to support his request for abatement: that he "**was not aware**" of the additions to his initial trust fund assessment because lived outside of the United States from 2004 through most of 2015. Respondent excuse of 'not being aware" of additional assessments and interest is self-serving and therefore not probative as "reasonable cause" sufficient to abate any part of the penalties and interest he wanted to be abated. The fact of "not being aware" of additional interest and penalties is also "willful neglect" (i.e., conscious, intentional failure to ascertain additional assessments or reckless indifference). Bahri could have ascertained additional assessments with a telephone call or a letter to the New York Department of Finance and he

could have requested a transcript of his account with the New York Department of Finance.

b) Respondent asked Bahri for additional reasons to justify abatement: in the Engagement Agreement dated February 19, 2016 , an e-mail dated August 9, 2016, and an e-mail dated October 25, 2016. On each occasion, Bahri replied with data to support he was living abroad from 2004 until 2015 and claimed he was not aware of any additions to his trust fund penalty as the "responsible person." In an e-mail received from Bahri on October 25, 2016, Bahri threatened to file a Bar Complaint if Respondent did not send in the Form DTF-4.1 New York Offer in Compromise with the existing data and argument. Respondent immediately mailed the Offer in Compromise with all of the attachments provided by Bahri to prove that he lived abroad from 2004 until 2015, and Respondent used Bahri reasonable cause statement that Bahri was not aware of any of the assessments of additions to his trust fund liability.

c) Respondent believed that the "not aware" argument is not only self-serving, it is also ineffective under New York law. 20 CR-NY 2392.1 which deals with "reasonable cause" sufficient to abate penalties. Grounds for "reasonable cause" under these regulations include: death, illness or absence; destruction of place of business or business records; inability to timely assemble information and, most importantly: *Any other ground for delinquency which would appear to a person of ordinary prudence and intelligence as*

reasonable cause for delay and which clearly indicated an absence of willful neglect may be determined to be reasonable cause.

Alleges that Respondent took no further action on Bahri's Offer in Compromise for the following reasons:

a) Bahri's rationale to support the abatement he advocates is self-serving, not probative and comes within the definition of "willful neglect" under New York law;

b) 20 CRR-NY 2392,1(c)(2)(iii) requires payment of the balance of the underlying tax liability. The underlying tax liability has not been paid.

Accordingly, Respondent believes .that there was no factual or legal basis to refile the form TDF-4.1 with or without TDF-5.

12. Agrees for the same reason provided in Specification 11.

13. Agrees.

14. Agrees

15. Disagree with all of the "charges."

Respectfully submitted,

Alvin S. Brown
575 Madison Ave., Room 1006
New York, NY 10022-2511

Date: May 31, 2019

Date: May 31, 2019

Disciplinary Docket No. 2017-D242

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing ANSWER was served on Disciplinary Counsel on May 31, 2019, by Express Mail, addressed as follows:

Hamilton P. Fox, III
Disciplinary Counsel
Office of Disciplinary Counsel
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Building A, Room 117
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May 31, 2019

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