

**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 :
_____ :

Disciplinary Docket No. 2017-D242

SPECIFICATION OF CHARGES

The disciplinary proceedings instituted by this petition are based upon conduct that violates the standards governing the practice of law in the District of Columbia as prescribed by D.C. Bar Rule X and D.C. Bar Rule XI, § 2(b).

Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar Rule XI. Pursuant to D.C. Bar Rule XI, § 1(a), jurisdiction is found because:

1. Respondent Alvin S. Brown is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on April 4, 1979, and assigned Bar Number 263681.

The conduct and standards that Respondent has violated are as follows:

2. Respondent practices tax law from his home in New York, but he is not a member of the Bar of New York. The State of New York permits persons who are not admitted to the Bar of that state to represent taxpayers before its Department of Taxation and Revenue if they are enrolled as agents to practice before the Internal Revenue Service.

3. Ali (Pascal) Bhari resides in the United States as a Lawful Permanent Resident.

4. In 2003, Mr. Bahri submitted a sales tax return to the State of New York as the

president of a corporation, Purecells, Inc. Under New York law, he was the “responsible person” who must pay the corporate sales tax if the corporation did not do so. For 2003, Purecells, Inc. did not pay approximately \$14,600 of sales tax that it owed New York.

5. Between 2004 and 2015, Mr. Bahri lived outside the United States. He returned to the United States in 2015. In February 2016, New York billed him more than \$68,000 in taxes, penalties, and interest on the unpaid 2003 sales taxes owed by Purecells, Inc.

6. Mr. Bahri engaged Respondent to seek relief from the penalties and interest that the State of New York had assessed against him. By letter dated February 19, 2016, Respondent agreed to “endeavor to get your sales tax liability settled.”

7. In that letter, Respondent agreed to undertake the representation of Mr. Bahri for a flat fee of \$4,000, paid in four monthly installments. He required Mr. Bahri to submit to him four checks in the amount of \$1,000 each, three of which were post-dated for the months of March, April, and May of 2016. Mr. Bahri submitted the four checks, and Respondent cashed them when the payments came due.

8. By letter dated October 16, 2016, Respondent made an Offer in Compromise to the New York Department of Taxation and Finance based on “no liability.” Mr. Bahri sought only to avoid the penalties and interest and did not dispute owing the actual sales tax that had been assessed for 2003. The letter also mistakenly stated that Mr. Bahri was a naturalized citizen when he was a Permanent Resident.

9. By letter to Respondent dated October 26, 2016, the New York State Department of Taxation and Finance acknowledged receipt of the offer in compromise and requested a number of documents and forms (federal and state tax returns, bank statements, and credit card receipts). Among them was a completed form DTF-5, a “Statement of Financial Condition and Other

Information.” Under New York law, an offer in compromise may be accepted by the State only if the taxpayer cannot pay or if payment would be an undue hardship. The Department of Taxation and Finance enclosed a Form DTF-5 with its October 26 letter.

10. The October 26 letter also informed Respondent that if the DTF-5 and the other requested documents were not received by November 15, 2016, “**your offer will not be considered.** You may reapply when you have **ALL** the required documentation (emphasis original).”

11. Respondent did not respond to the October 26 letter and took no steps to follow up with the Department of Taxation and Finance to address the issue of how he could resolve Mr. Bahri’s tax problem.

12. Respondent took no further steps to resolve Mr. Bahri’s tax liability and ceased communications with him. Mr. Bahri’s last attempt to learn the status of his matter was by an email that he sent to Respondent on March 31, 2017, to which he obtained no response.

13. On April 29, 2017, Mr. Bahri filed a complaint with the New York First Judicial Department Attorney Grievance Committee. Because Respondent is not a member of the New York Bar, the Attorney Grievance Committee referred the complaint to the District of Columbia Office of Disciplinary Counsel.

14. Penalties and interest on Mr. Bahri’s sales tax liability have continued to be incurred.

THE CHARGES

15. Respondent’s conduct violated the following District of Columbia Rules of Professional Conduct:

- a. Rule 1.1(a), failing to provide competent representation to a client;

- b. Rule 1.3(a), failing to represent a client zealously and diligently;
- c. Rule 1.3(b)(1), intentionally failing to seek the lawful objectives of a client;
- d. Rule 1.3(c), failing to act with reasonable promptness in representing a client;
- e. Rule 1.4(a), failing to keep a client reasonably informed about the status of a matter and promptly complying with reasonable requests for information; and
- f. Rule 1.5(a), charging an unreasonable fee, in that it was unreasonable to charge and collect the full \$4,000 flat fee when not completing the agreed-upon representation or providing \$4,000 worth of services to the client;

Alternatively, if the fee is determined to be reasonable, by converting to his own use the entire fee before performing the full services for which he was engaged,

- g. Rule 1.15(e), failure to treat an advanced fee as property of the client until it was earned; and
- h. Rule 1.16(d), failure to return the unearned portion of an advanced fee that was not earned.

Respectfully submitted,



Hamilton P. Fox, III
Disciplinary Counsel

OFFICE OF DISCIPLINARY COUNSEL
515 Fifth Street, N.W.
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VERIFICATION

I do affirm that I verily believe the facts stated in the Specification of Charges to be true.

Hamilton P. Fox
Hamilton P. Fox, III
Disciplinary Counsel

Subscribed and affirmed before me in the District of Columbia this 11th day of April 2019.

My Commission Expires:



AC Thornton
Notary Public

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PETITION INSTITUTING FORMAL DISCIPLINARY PROCEEDINGS

A. This Petition (including the attached Specification of Charges which is made part of this Petition) notifies Respondent that disciplinary proceedings are hereby instituted pursuant to Rule XI, § 8(c), of the District of Columbia Court of Appeals’ Rules Governing the Bar (D.C. Bar R.).

B. Respondent is an attorney admitted to practice before the District of Columbia Court of Appeals on the date stated in the caption of the Specification of Charges.

C. A lawyer member of a Hearing Committee assigned by the Board on Professional Responsibility (Board) pursuant to D.C. Bar R. XI, § 4(e)(5), has approved the institution of these disciplinary proceedings.

D. Procedures

(1) **Referral to Hearing Committee** - When the Board receives the Petition Instituting Formal Disciplinary Proceedings, the Board shall refer it to a Hearing Committee.

(2) **Filing Answer** - Respondent must respond to the Specification of Charges by filing an answer with the Board and by serving a copy on the Office of Disciplinary Counsel within 20 days of the date of service of this Petition, unless the time is extended by the Chair of the Hearing Committee. Permission to file an answer after the 20-day period may be granted by the Chair of the Hearing Committee if the failure to file an answer was attributable to mistake, inadvertence, surprise, or excusable neglect. If a limiting date occurs on a Saturday, Sunday, or official holiday in the District of Columbia, the time for submission will be extended to the next business day. Any motion to extend the time to file an answer, and/or any other motion filed with the Board or Hearing Committee Chair, must be served on the Office of Disciplinary Counsel at the address shown on the last page of this petition.

(3) **Content of Answer** - The answer may be a denial, a statement in exculpation, or a statement in mitigation of the alleged misconduct. Any charges not answered by Respondent may be deemed established as provided in Board Rule 7.7.

(4) **Mitigation** - Respondent has the right to present evidence in mitigation to the Hearing Committee regardless of whether the substantive allegations of the Specification of Charges are admitted or denied.

(5) **Process** - Respondent is entitled to fifteen days' notice of the time and place of hearing, to be represented by counsel, to cross-examine witnesses, and to present evidence.

E. In addition to the procedures contained in D.C. Bar R. XI, the Board has promulgated Board Rules relating to procedures and the admission of evidence which are

applicable to these procedures. A copy of these rules is being provided to Respondent with a copy of this Petition.

WHEREFORE, the Office of Disciplinary Counsel requests that the Board consider whether the conduct of Respondent violated the District of Columbia Rules of Professional Conduct, and, if so, that it impose/recommend appropriate discipline.

OFFICE OF DISCIPLINARY COUNSEL

BY: Hamilton P. Fox, III
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