

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

STEVEN MESSNER,

Attorney-Respondent,

No. 3122711.

Commission No. 2021PR00094

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Richard Gleason, pursuant to Supreme Court Rule 753(b), complains of Respondent, Steven Messner (“Respondent”), who was licensed to practice law in Illinois on November 24, 1978, and alleges that Respondent has engaged in the following conduct which subjects him to discipline pursuant to Supreme Court Rule 770:

COUNT I

(Assisting a client in committing tax fraud by disguising \$421,306.48 of personal income as a corporate expense, and in order to avoid paying taxes on \$421,306.48 in personal income)

1. At all times alleged in this complaint, Respondent was the sole owner of Steven Messner & Associates, a law firm which was located in Northbrook, and was the sole attorney operating and providing services as part of that entity. Respondent practiced primarily in divorce, criminal defense, and corporate litigation matters. Respondent was also a certified public accountant, and provided bookkeeping and tax services to his clients who desired those services.

2. At all times alleged in this complaint, Downes Swimming Pool Company (“DSPC”) was a company located in Arlington Heights and engaged in the business of installing and servicing swimming pools. Luis Downes (“Luis”) was the owner and sole shareholder of the

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company, and Christine Downes (“Christine”) was Luis’s wife.

3. Dating back to at least 2000 and through 2018, Respondent annually prepared the federal and Illinois tax returns for DSPC and Luis, and filed the tax returns on their behalves. Respondent executed each of the tax returns Respondent filed on behalf of DSPC and Luis, and in doing so stated under penalty of perjury that he had examined the tax return and, to the best of his knowledge, the tax return was true, correct, and complete.

4. In 2012, Christine filed dissolution of marriage proceedings against Luis in Lake County. The Clerk of the Court docketed the case 2012 D 1892 (“the marriage dissolution case”). Respondent appeared on behalf of Luis in the marriage dissolution case.

5. Throughout the marriage dissolution case, Respondent represented DSPC in responding to subpoenas from Christine’s lawyers, and continued to prepare and file the corporate tax returns on behalf of DSPC, and the personal tax returns on behalf of Luis. Respondent also communicated with Luis’s lawyers and with Christine’s lawyers on Luis’s behalf as Luis’s personal attorney.

6. One of Christine’s claims in the marriage dissolution case was that DSPC was a marital asset, and that she was entitled to half of the value of DSPC. Another of Christine’s claims was that she was entitled to maintenance payments based on Luis’s income and the valuation of DSPC. As a result of Christine’s claims, both the valuation of DSPC and Luis’s income were matters at issue in the marriage dissolution case.

7. In 2012, while the dissolution or marriage proceedings were pending, Luis told Respondent that he was tired of his personal finances being scrutinized, and asked Respondent to provide him an American Express credit card on Respondent’s American Express account. Respondent agreed, and provided Luis with Luis’s own American Express credit card linked to

Respondent's American Express account, ending in the six digits 0-71009 ("the AMEX card" and "the AMEX account").

8. Between January 18, 2012 and August 14, 2017, DSPC provided Respondent \$1,013,500 on Luis's behalf for Respondent to deposit in Respondent's IOLTA account at ByLine Bank, with an account number ending in the last four digits 1392 ("Account 1392"). Respondent deposited those funds in Account 1392. Luis and Respondent intended for these corporate funds to pay for Luis's future personal and legal fees.

9. Luis and Respondent agreed that Respondent would bill DSPC for "service fees" for these expenses, and then draw checks for those amounts from Account 1392 against the funds DSPC deposited with Respondent for the benefit of Luis. Luis and Respondent agreed that these personal expenses would be disguised as DSPC expenses so that Luis would not have to pay personal income taxes for the funds DSPC provided on his behalf, and so DSPC could claim those funds as business expenses for tax reporting purposes.

10. Between January of 2012 and November of 2017, Luis made a total of \$219,308.48 in charges on the AMEX card. All of the charges were for Luis's own personal purposes. When Respondent received each month's AMEX account statements, Respondent paid the outstanding balance with a check he drew on Account 1392 against the funds DSPC provided him and which he had previously deposited into Account 1392, as described in paragraph eight, above.

11. In addition, from 2012 until 2017, Luis incurred legal fees for services rendered to him personally, and not to DSPC, from three different law firms and an appraisal company as a result of the pending dissolution of marriage proceedings. The total of these legal and professional fees rendered to Luis personally was \$161,143.50. Respondent paid those fees by drawing checks on Account 1392 against the DSPC funds Respondent deposited in Account 1392, as described in

paragraphs eight and nine, above.

12. In addition, between 2012 and 2017, Respondent provided personal legal services to Luis personally, and not to DSPC, as part of Luis's dissolution of marriage proceedings. Respondent's charges for these services totaled \$40,855. Instead of billing Luis for these services he had rendered to Luis and not to DSPC, Respondent billed DSPC for "professional services" for those fees, and then paid himself by drawing checks on Account 1392 against the funds DSPC previously provided Respondent, as described in paragraphs eight and nine, above.

13. For each year from 2012 until 2017, on company ledgers and federal and state tax returns, Respondent, on DSPC's behalf, categorized Luis's charges on the AMEX card described in paragraph 10, above, and his personal legal and professional fees, described in paragraphs 11 and 12, above, as business expenses.

14. Respondent's statements on the tax forms, described in paragraph 13, above, were false, because the expenses were personal expenses of Luis, not business expenses. From 2012 through 2017, the claimed business expenses for DSPC, as described in paragraph 13, above, totaled \$421,306.98, which had the effect of decreasing DSPC's taxable income for those years by a total of \$421,306.98, and resulted in Luis avoiding paying taxes on \$421,306.98 of income.

15. At the time Respondent filed the corporate tax returns on behalf of DSPC each year from 2012 through 2017, Respondent knew that DSPC had paid for Luis's personal expenses charged to the AMEX account, and had paid Luis's personal legal and professional fees relating to the dissolution of marriage proceedings.

16. Respondent further knew that DSPC's claimed business expenses for Luis's AMEX account charges and Luis's personal legal and professional fees relating to the dissolution of marriage proceedings violated federal or state law tax laws, because the claimed business expenses

were Luis's personal expenses and not DSPC's business expenses. Respondent further knew that for each year DSPC claimed as a business expense Luis's personal expenses charged to the AMEX account and Luis's personal legal and professional fees relating to the dissolution of marriage proceedings, DSPC's taxable income would decrease in the amount of those claimed expenses.

17. Respondent further knew that DSPC's funds provided on behalf of Luis personally constituted taxable income for Luis, and that by not declaring that income on Luis's tax returns, Luis was avoiding paying income taxes on those funds in violation of federal and state tax laws.

18. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. assisting a client in conduct the lawyer knows to be criminal or fraudulent, by conduct including assisting Luis and DSPC to violate federal and state tax laws, in violation of Rule 1.2(d) of the Illinois Rules of Professional Conduct (2010);
- b. making a false statement of fact to a third party, by conduct including certifying to the Illinois Department of Revenue from 2012 through 2017 that the corporate tax returns he prepared and filed on behalf of DSPC were true and accurate to the best of his knowledge, when he knew that the tax returns were false, in violation of Rule 4.1(a) of the Illinois Rules of Professional Conduct (2010);
- c. making a false statement of fact to a third party, by conduct including certifying to the Internal Revenue Service from 2012 through 2017 that the corporate tax returns he prepared and filed on behalf of DSPC were true and accurate to the best of his knowledge, when he knew that the tax returns were false, in violation of Rule 4.1(a) of the Illinois Rules of Professional Conduct (2010); and
- d. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including preparing and filing corporate tax returns he knew were false, and by certifying with his signature that those filed tax

returns were accurate and truthful, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT II

(Lack of candor toward the tribunal and false statements to Luis's attorney)

19. The Administrator realleges the allegations contained in paragraphs one through 17, above.

20. At all times alleged in this complaint, Lake County Court Local Rule 11.02 required parties in a divorce proceeding in the Lake County Circuit Court to exchange Comprehensive Financial Affidavits, a form prescribed the Supreme Court, which listed income, expenses, assets and liabilities. Rule 11.02 further required that each party of record file a certifying that the Comprehensive Financial Affidavit had been completed, and setting forth the date the completed Comprehensive Financial Affidavit was served on the opposing party.

21. On or about April 23, 2013, James Quigley ("Quigley"), who was representing Luis in the pending dissolution of marriage proceedings, asked Respondent to prepare the Comprehensive Financial Affidavit on behalf of Luis. Respondent prepared the affidavit, but omitted from the affidavit that Luis's income was understated as a consequence of DSPC having paid AMEX fees and attorneys' fees on his behalf, as described in paragraphs seven through 14, above. Respondent did not inform Quigley that the Comprehensive Financial Affidavit was false, in that omitted the AMEX and legal fees payments DSPC made on Luis's behalf. On November 7, 2013, Quigley filed notice with the Court in the marriage dissolution case that the Comprehensive Financial Affidavit had been tendered to Christine's lawyers.

22. Respondent knew when he tendered the Comprehensive Financial Affidavit to Quigley that it was false, and that Quigley would rely on the accuracy of the affidavit, provide it to opposing counsel, and then file a notice with the Court that the affidavit had been tendered in

accord with Rule 11.02.

23. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. knowingly offering false evidence, by conduct including providing Quigley a false Comprehensive Financial Affidavit which Respondent prepared and which was executed by Luis, knowing Quigley would tender the affidavit to opposing counsel and then notify the court that the affidavit had been tendered, in violation of Rule 3.3(a)(3) of the Illinois Rules of Professional Conduct (2010);
- b. failing to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, by conduct including failing to disclose to Quigley that the Comprehensive Financial Affidavit that Respondent prepared and which was executed by Luis was false, in violation of Rule 4.1(b) of the Illinois Rules of Professional Conduct (2010); and
- c. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including preparing the Comprehensive Financial Affidavit which he knew was false and then failing to disclose to Quigley or the court that the affidavit was false, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT III

(False Statements to Christine's Lawyer)

24. The Administrator realleges the allegations contained in paragraphs one through 17, above.

25. On December 22, 2015, Christine's lawyer Peter Wifler ("Wifler") filed a Petition for Rule to Show Cause in the marriage dissolution case in which he sought, among other things, that Luis be required to show cause as to why he should not be held in contempt of court for having failed to produce his 2014 tax return.

26. On January 5, 2016, Respondent wrote a letter to Wifler in response to the pending

Petition for Rule to Show Cause. In the letter, Respondent wrote:

“...In the past couple of years when you needed a document or funds from Lou you contacted me directly and I resolved your requests. I am quite surprised at this motion and I find the means and method that you use very unprofessional. A simple request, as in the past, would have achieved the same results, without unnecessary legal costs. Accordingly, please find enclosed the 2014 tax return....”

27. When he provided Luis’s 2014 tax return to Wifler, Respondent knew that the tax return understated Luis’s income as a consequence of DSPC having paid AMEX fees and attorneys’ fees on Luis’s behalf, as described in paragraphs seven through 14, above, but did not disclose that fact to Wifler.

28. When he provided Luis’s 2014 tax return to Wifler, Respondent knew that Wifler would rely on the tax return as evidence in the pending dissolution of marriage proceedings with respect to any determination of the amount of maintenance payments due Christine.

29. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. unlawfully obstructing another party’s access to evidence, by conduct including providing Luis’s 2014 income tax returns to Wifler during the course of the marriage dissolution proceedings when Respondent prepared the income tax returns and knew that the income tax returns misstated Luis’s income, in violation of Rule 3.4(a) of the Illinois Rules of Professional Conduct (2010); and
- b. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including providing the 2014 tax returns to Wifler when her prepared the tax returns and knew was false, and then failing to disclose to Wifler that the tax returns were false, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully Submitted

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Richard Gleason
Richard Gleason

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