



UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

December 16, 2016

PRESS RELEASE

The Chief Judge of the United States Tax Court announced today that the following practitioner has been suspended by the United States Tax Court for reasons explained in an order and memorandum sur order issued in the case of the practitioner.

A copy of the order and memorandum sur order are attached.

1. Brian R. Wutz

Attachments

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re: Brian R. Wutz

ORDER OF SUSPENSION

The Court issued an Order to Show Cause to Mr. Brian R. Wutz on September 7, 2016, affording him the opportunity to show cause, if any, why he should not be suspended or disbarred from practice before this Court, or otherwise disciplined. The Order to Show Cause was predicated on discipline imposed by the Attorney Discipline Board of the State of Michigan, by order filed April 22, 2016, suspending him from the practice of law in the State of Michigan for a period of 180 days effective May 14, 2016. Mr. Wutz failed to inform the Chair of this Court's Committee on Admissions, Ethics, and Discipline of the filing of the April 22, 2016 order by the Attorney Discipline Board of the State of Michigan within 30 days, as required by Rule 202(b), Tax Court Rules of Practice and Procedure.

The Order to Show Cause instructed Mr. Wutz to submit a written response to the Order on or before October 7, 2016 and notify the Court in writing on or before October 7, 2016 of his intention to appear, in person or by counsel, at a hearing concerning his proposed discipline scheduled before the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217, at 10:00 a.m. on October 26, 2016.

In response to the Order to Show Cause, Mr. Wutz submitted a Response to Order To Show Cause ("response"), timely received by the Court on October 7, 2016, setting forth his written response to the Court's Order to Show Cause. The response did not include notification to the Court of whether respondent intended to appear at the hearing on October 26, 2016. The response included correspondence between respondent and the Michigan Attorney Grievance Commission and documents from the proceeding before the Attorney Discipline Board of the State of Michigan. Mr. Wutz did not appear at the hearing on October 26, 2016.

Upon due consideration of Mr. Wutz's written response to the Court and for reasons set forth more fully in the attached Memorandum Sur Order, it is

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ORDERED that the Court's Order to Show Cause, issued September 7, 2016, is hereby made absolute in that, under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Mr. Wutz is suspended from practice before the United States Tax Court, until further order of the Court. See Rule 202(f), Tax Court Rules of Practice and Procedure, for reinstatement requirements and procedures. It is further

ORDERED that, until reinstated, Mr. Wutz is prohibited from holding himself out as a member of the Bar of the United States Tax Court. It is further

ORDERED that Mr. Wutz's practitioner access to case files maintained by the Court in electronic form, if any such access was given to him, is hereby revoked. It is further

ORDERED that the Court will file orders to withdraw Mr. Wutz as counsel in all pending cases in which he appears as counsel of record. It is further

ORDERED that Mr. Wutz shall, within 20 days of service of this order upon him, surrender to this Court his certificate of admission to practice before this Court.

By the Court:

(Signed) L. Paige Marvel

L. Paige Marvel
Chief Judge

Dated: Washington, D.C.
December 16, 2016

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re Brian R. Wutz

MEMORANDUM SUR ORDER

On September 7, 2016, the Court issued an Order to Show Cause to Mr. Brian R. Wutz, a member of the bar, affording him the opportunity to show cause, if any, why he should not be suspended or disbarred from practice before this Court, or otherwise disciplined. The Order to Show Cause was predicated on Mr. Wutz's suspension from the practice of law in the State of Michigan for a period of 180 days, effective May 14, 2016, by Order of the Attorney Discipline Board of the State of Michigan (Attorney Discipline Board), filed April 22, 2016. See Rule 202(c), Tax Court Rules of Practice and Procedure. The Order to Show Cause was also predicated on Mr. Wutz's failure to inform the Chair of this Court's Committee on Admissions, Ethics, and Discipline of the filing of the April 22, 2016 Order of the Attorney Discipline Board within 30 days, as required by Rule 202(b), Tax Court Rules of Practice and Procedure.

The Order to Show Cause instructed Mr. Wutz to submit a written response on or before October 7, 2016, and to notify the Court therein of his intention to appear, in person or by counsel, at a hearing concerning his proposed discipline scheduled before the Court on October 26, 2016, at 10:00 a.m.

The Court received Mr. Wutz's Response to Order to Show Cause ("response") on October 7, 2016, wherein he did not notify the Court of his intention to appear at the hearing on October 26, 2016. Accordingly, Mr. Wutz waived his right to appear before the Court at a hearing concerning the Order to Show Cause. Attached to his response was correspondence between Mr. Wutz and the Michigan Attorney Grievance Commission and copies of documents from the proceeding before the Attorney Discipline Board.

We note that on November 10, 2016, after the Order to Show Cause had been issued, the Supreme Court, Appellate Division, Fourth Department of the State of New York suspended Mr. Wutz from the practice of law in that state for a period of 180 days as reciprocal discipline based upon his suspension from the practice of law in the State of Michigan. See In re Wutz, ___ N.Y.3d ___ (2016), 2016 WL 6650382.

BACKGROUND

Mr. Wutz's suspension from the practice of law in the State of Michigan was based upon allegations in a formal complaint filed by the Grievance Administrator of the State of Michigan on May 22, 2015, that Mr. Wutz had failed to act with reasonable diligence and promptness in representing two clients, had failed to communicate adequately with those clients, and had failed to refund unearned legal

fees or surrender other property to which the clients were entitled. After Mr. Wutz failed to answer the formal complaint, on July 1, 2015, the Attorney Discipline Board entered a default, deeming the allegations in the formal complaint to be admitted.

After he was held in default, on July 20, 2015, Mr. Wutz was represented by counsel at a sanction hearing. Mr. Wutz filed a Verified Motion to Set Aside Default, Dismiss Formal Complaint, and for Stay of Proceedings dated July 22, 2015, asserting that he did not receive notice of the formal complaint of default until July 16, 2015, that service of the formal complaint and default was inadequate, and that he had evidence refuting the allegations.

On October 6, 2015, the Attorney Discipline Board denied the motion. In the Misconduct Report of Tri-County Hearing Panel #6, filed on October 6, 2015, the Attorney Discipline Board noted that Mr. Wutz had changed his address with the State Bar of Michigan to a post office box in Murdock, Florida sometime in February 2015; copies of the formal complaint were sent via certified and regular mail to the Murdock, Florida address in May 2015; and none of those mailings were returned. The Attorney Discipline Board also noted that, because an attorney had appeared on behalf of Mr. Wutz at the sanction hearing, the Chairperson ruled that any defects with regard to service of the formal complaint were waived, the

panel would accept the default as filed, and the allegations in the formal complaint were admitted.

By Order of the Attorney Discipline Board, filed April 22, 2016, Mr. Wutz was suspended from the practice of law in the state of Michigan for a period of 180 days and ordered to pay restitution to the former clients.

DISCUSSION

As true in the case of every reciprocal discipline case, the order of the Attorney Discipline Board suspending Mr. Wutz from the practice of law in Michigan for a period of 180 days raises a serious question about his character and fitness to practice law in this Court. The landmark opinion of the United States Supreme Court in Selling v. Radford, 243 U.S. 46 (1917), in effect, directs that we recognize the absence of “fair private and professional character” inherently arising as the result of the action of the Attorney Discipline Board, and that we follow the disciplinary action of that court, unless we determine, from an intrinsic consideration of the record of the Attorney Discipline Board proceeding that one or more of the following factors should appear: (1) that Mr. Wutz was denied due process in the form of notice and an opportunity to be heard with respect to the Attorney Discipline Board proceeding; (2) that there was such an infirmity of proof in the facts found to have been established in the proceeding as to give rise to a

clear conviction that we cannot accept the conclusions of the Attorney Discipline Board proceeding; or (3) that some other grave reason exists which convinces us that we should not follow the discipline imposed by the Attorney Discipline Board. See, e.g., Selling v. Radford, 243 U.S. at 50-51; In re Squire, 617 F.3d 461, 466 (6th Cir. 2010); In re Edelstein, 214 F.3d 127, 131 (2d Cir. 2000).

Mr. Wutz bears the burden of showing why, notwithstanding the discipline imposed by the Attorney Discipline Board, this Court should impose no reciprocal discipline, or should impose a lesser or different discipline. See, e.g., In re Roman, 601 F.3d 189, 193 (2d Cir. 2010); In re Sibley, 564 F.3d 1335, 1340 (D.C. Cir. 2009); In re Surrick, 338 F.3d 224, 232 (3d Cir. 2003); In re Calvo, 88 F.3d 962, 967 (11th Cir. 1996); In re Thies, 662 F.2d 771, 772 (D.C. Cir. 1980). We have given Mr. Wutz an opportunity to present, for our review, the record of the disciplinary proceeding in Michigan, and to point out any grounds to conclude that we should not give effect to the action of the Attorney Discipline Board. See Selling v. Radford, 243 U.S. at 51-52 (“an opportunity should be afforded the respondent * * * to file the record or records of the state court * * * [and] to point out any ground within the limitations stated which should prevent us from giving effect to the conclusions established by the action of the supreme court of Michigan which is now before us * * *”).

Mr. Wutz argues that the Court should deviate from the 180-day suspension from the practice of law imposed by the Attorney Discipline Board. Mr Wutz also requests that if the Court does suspend him from practice before this Court, that he be automatically reinstated to practice before this Court upon his reinstatement to the practice of law before any state court.

Mr Wutz asserts that he was denied due process in the form of notice and an opportunity to be heard with respect to the Attorney Discipline Board proceeding because the formal complaint was not served on him at his address in Burns, Tennessee. Mr. Wutz asserts that he told the Grievance Administrator of the State of Michigan nine months prior to the mailing of the formal complaint not to use the Murdock, Florida address. Mr. Wutz also asserts that, at least four months prior to the mailing of the formal complaint, Mr. Wutz told the Grievance Administrator of the State of Michigan to send any correspondence to his address in Burns, Tennessee and, as early as March 27, 2015, the State Bar of Michigan was sending mail to his Burns, Tennessee address. Mr. Wutz asserts that he did not receive the formal complaint until July 16, 2015, 15 days after the entry of default. Mr. Wutz also asserts that the New York Bar permits an attorney's address to remain private and his address was updated to the Burns, Tennessee address with the New York

Bar. Mr. Wutz states, “The State Bar of Michigan insists on violating the privacy rights of attorneys who no longer have office locations separate from their homes.”

Mr. Wutz also argues: (1) there is insufficient proof that Mr. Wutz committed the violations set forth in the formal complaint, (2) the Attorney Discipline Board did not have proper jurisdiction over this matter, (3) the Attorney Discipline Board failed to issue a special directive to take jurisdiction and venue of Mr. Wutz’s proceeding in violation of Michigan’s Court rules, (4) procedural irregularities raise serious questions regarding the integrity of the Grievance Commission’s conduct during the hearing, and (5) the imposition of discipline would be unjust as there exist other grave reasons why this Court should not follow the discipline imposed by the Attorney Discipline Board. Despite Mr. Wutz’s complaints about the disciplinary process before the Attorney Discipline Board, Mr. Wutz agreed to stipulate to the six month suspension and restitution of the former clients that was the discipline in the Order of Suspension and Restitution filed by the Attorney Discipline Board on April 22, 2016.

Mr. Wutz has not shown any of the three factors identified by the Supreme Court in Selling v. Radford. First, Mr. Wutz has not shown a “want of notice or opportunity to be heard” with respect to the Attorney Discipline Board proceeding. See Selling v. Radford, 243 U.S. at 51. Mr. Wutz changed his address with the

State Bar of Michigan to a post office box in Murdock, Florida sometime in February 2015. Mr. Wutz does not allege that he changed his address with the State Bar of Michigan to his Burns, Tennessee address prior to the issuance of the formal complaint. Mr. Wutz was aware that the Grievance Commission was investigating claims by his clients against him, but merely told the Grievance Administrator of the State of Michigan to send any correspondence to his address in Burns, Tennessee instead of changing his address with the State Bar of Michigan. Mr. Wutz admits that he updated his address with the New York State Bar to his Burns, Tennessee address. Mr. Wutz's statements in his response imply that he chose not to change his address with the State Bar of Michigan due to privacy concerns. In addition, despite the fact that copies of the formal complaint were sent to Mr. Wutz's Murdock, Florida address instead of his Burns, Tennessee address, an attorney appeared on behalf of Mr. Wutz at the sanction hearing. Under these circumstances, we conclude that Mr. Wutz has not shown a "want of notice or opportunity to be heard" with respect to the Attorney Discipline Board proceeding.

Second, Mr. Wutz has not shown any infirmity of proof as to the facts in his disciplinary proceeding before the Attorney Discipline Board. See Selling v. Radford, 243 U.S. at 51. Mr. Wutz failed to answer the formal complaint. The

panel accepted the default as filed. The allegations in the formal complaint were admitted. Therefore, Mr. Wutz has not shown any infirmity of proof as to the facts in his disciplinary proceeding before the Attorney Discipline Board.

Finally, Mr. Wutz has not shown any “other grave reason” not to give effect to the action of the Attorney Discipline Board. See *Selling v. Radford*, 243 U.S. at 51. Although Mr. Wutz raises issues regarding the disciplinary proceeding before the Attorney Discipline Board, he consented to the discipline in the Order of Suspension and Restitution filed by the Attorney Discipline Board on April 22, 2016, when he agreed to stipulate to a six month suspension and restitution to his former clients. We conclude that Mr. Wutz has not shown any “other grave reason” not to give effect to the action of the Attorney Discipline Board. Accordingly, we will give full effect to Mr. Wutz’s suspension by the Attorney Discipline Board.

Considering the entire record in this matter, we conclude that Mr. Wutz has not shown good cause why he should not be suspended, disbarred or otherwise disciplined. We further conclude that, under Rule 202 of the Tax Court Rules of Practice and Procedure, the appropriate discipline in this case is suspension.

The Committee on Admissions,
Ethics, and Discipline

Dated: Washington, D.C.
December 16, 2016