

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
THIRD DEPARTMENT**

Matter of Halbfish

144 A.D.3d 1263 (3d Dep't 2016) · No. D-61-16 · Decided November 3, 2016

SUMMARY

The New York Supreme Court, Appellate Division, Third Department granted the Attorney Grievance Committee's motion to impose reciprocal discipline on Michael D. Halbfish following his disbarment in New Jersey. The court disbarred Halbfish in New York, struck his name from the roll of attorneys, and ordered him to cease practicing law.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Per Curiam; McCarthy, J.P.; Egan Jr., J.; Rose, J.; Clark, J.; Mulvey, J.
JURISDICTION	New York
DECIDED	November 3, 2016
DOCKET	D-61-16
DISPOSITION	other
PROCEDURAL POSTURE	The Attorney Grievance Committee moved to impose New York discipline on respondent based on his disbarment by the Supreme Court of New Jersey. Respondent did not oppose the motion or raise any available defenses.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Attorney Grievance Committee for the Third Judicial Department v. Michael D. Halbfish

TOPICS

administrative law appellate procedure agency adjudication

PRACTICE AREAS

legal ethics attorney discipline reciprocal discipline professional responsibility

QUESTIONS PRESENTED

1. Whether respondent's failure to respond to the Attorney Grievance Committee's motion waived the available defenses to reciprocal discipline.
2. Whether respondent should be disbarred in New York based on his disbarment and serious professional misconduct in New Jersey.

HOLDINGS

1. A respondent who fails to reply to a disciplinary motion or otherwise raise available defenses waives those defenses.
2. Respondent should be disbarred in New York based on his New Jersey disbarment, serious and unrepentant professional misconduct, and failure to participate in the New York proceeding.

KEY QUOTATIONS

“Under all of the circumstances presented – including the serious and unrepentant nature of respondent's considerable professional misconduct in New Jersey – we conclude that respondent should be disbarred in this state” (144 A.D.3d at 1264)

“respondent has evinced a disregard for his professional responsibilities and a disinterest in his fate as an attorney in this state by not responding to the instant motion or otherwise appearing in this proceeding” (144 A.D.3d at 1264)

FACTUAL BACKGROUND

Michael D. Halbfish was admitted to practice law in New York and New Jersey. New Jersey censured him in 2010 for misconduct including negligent misappropriation of client trust funds, and New York consequently suspended him for six months. New Jersey disbarred him in 2015 for gross neglect of client matters and failure to cooperate with disciplinary authorities. Halbfish did not respond to the New York disciplinary motion or otherwise appear.

PROCEDURAL HISTORY

Respondent was admitted to practice in New York in 1997. After New Jersey censured him in 2010, the New York Appellate Division suspended him for six months; the suspension remained in effect because he never sought reinstatement. New Jersey later disbarred him in 2015. The Attorney Grievance Committee then moved for reciprocal discipline in New York, and the Appellate Division granted the motion and disbarred respondent.

DISPOSITION

other

CASES CITED

- Matter of Dasent, 130 A.D.3d 1315 (2015)
- Matter of Lewis, 132 A.D.3d 1017 (2015)

- Matter of Morin, 131 A.D.3d 799, 800 (2015)
- Matter of Hock Loon Yong, 130 A.D.3d 1428, 1429 (2015)
- Matter of Felli, 116 A.D.3d 1335, 1335 (2014)

OPINION

PER CURIAM.

State of New York Supreme Court, Appellate Division Third Judicial Department Decided and Entered: November 3, 2016 D-61-16 _____ In the Matter of MICHAEL D. HALBFISH, a Suspended Attorney. MEMORANDUM AND ORDER ON MOTION (Attorney Registration No. 2823904) _____ Calendar Date: October 17, 2016 Before: McCarthy, J.P., Egan Jr., Rose, Clark and Mulvey, JJ. _____ Monica A. Duffy, Attorney Grievance Committee for the Third Judicial Department, Albany (Sarah A. Richards of counsel), for Attorney Grievance Committee for the Third Judicial Department. _____ Per Curiam.

Respondent was admitted to practice by this Court in 1997. That same year, he was also admitted to practice in New Jersey, where he maintained an office for the practice of law. Following respondent's 2010 censure by the Supreme Court of New Jersey due to, among other misconduct, negligent misappropriation of client trust funds (203 NJ 441 [2010]), this Court, by order entered November 4, 2010, suspended respondent from the practice of law for six months (78 AD3d 1320 [2010]).

Respondent has not applied for reinstatement and said suspension remains in effect. Thereafter, in February 2015, respondent was disbarred by the Supreme Court of New Jersey on the basis of, among other things, his gross neglect of client matters and his failure to cooperate with disciplinary authorities (220 NJ 463 [2015]).

The Attorney Grievance Committee for the Third Judicial Department (hereinafter AGC) now moves to impose discipline upon respondent in this state as the result of his disbarment in New Jersey. Respondent has not replied to AGC's motion or otherwise -2- D-61-16 raised any available defenses (see Uniform Rules for Attorney Disciplinary Matters [22 NYCRR] § 1240.13 [b]); therefore, these defenses are waived (see Matter of Dasent, 130 AD3d 1315 [2016]; Matter of Lewis, 132 AD3d 1017 [2015]), and we grant AGC's motion.

Turning to the issue of an appropriate disciplinary sanction, we note that respondent has evinced a disregard for his professional responsibilities and a disinterest in his fate as an attorney in this state by not responding to the instant motion or otherwise appearing in this proceeding (see Matter of Morin, 131 AD3d 799, 800 [2015]).

Under all of the circumstances presented – including the serious and unrepentant nature of respondent's considerable professional misconduct in New Jersey – we conclude that respondent should be disbarred in this state (see e.g. *Matter of Hock Loon Yong*, 130 AD3d 1428, 1429 [2015]; *Matter of Felli*, 116 AD3d 1335, 1335 [2014]). McCarthy, J.P., Egan Jr., Rose, Clark and Mulvey, JJ., concur.

ORDERED that the motion of the Attorney Grievance Committee for the Third Judicial Department is granted; and it is further ORDERED that respondent is disbarred and his name is stricken from the roll of attorneys and counselors-at-law of the State of New York, effective immediately; and it is further ORDERED that respondent is commanded to desist and refrain from the practice of law in any form, either as principal or as agent, clerk or employee of another; and respondent is hereby forbidden to appear as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority, or to give to another an opinion as to the law or its application, or any advice in relation thereto; and it is further -3- D-61-16 ORDERED that respondent shall comply with the provisions of the Uniform Rules for Attorney Disciplinary Matters regulating the conduct of disbarred attorneys (see Uniform Rules for Attorney Disciplinary Matters [22 NYCRR] § 1240.15).

ENTER: Robert D. Mayberger Clerk of the Court