



**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY**

In the Matter of :
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JAMES M. LOOTS, ESQUIRE : **Disciplinary Docket No.**
 : **2021-D196**
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Respondent, :
 :
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A Member of the Bar of the :
District of Columbia Court of Appeals. :
Bar Number: 384763 :
Date of Admission: December 7, 1984 :
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SPECIFICATION OF CHARGES

The disciplinary proceeding instituted by this petition is based upon conduct that violates the standards governing the practice of law in the District of Columbia as prescribed by D.C. Bar. R. X and XI, § 2(b). Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar. R. XI. Pursuant to D.C. Bar R. XI, § 1(a), jurisdiction is found because:

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on December 7, 1984, and assigned Bar number 384763. Respondent is also an active member of the Bar of the Supreme Court of Maryland.

The facts giving rise to the charges of misconduct are as follows:

2. At all relevant times herein, Respondent was a solo practitioner who maintained his law office in the District of Columbia.

Background

3. On May 3, 2018, Matthew Shkor, on behalf of Potomac Construction Lowell LLC, executed a Promissory Note for a \$400,000 loan extended to the LLC by William and Farleigh Cunningham. Mr. Shkor is the sole member and manager of the LLC, and the loan was to be used for the renovation of a residential property on Lowell Street N.W. in Washington, D.C., which the LLC owned. Repayment of the loan was due within one year. Mr. Shkor, on behalf of the LLC, secured the loan by executing a Deed of Trust against the Lowell Street property in favor of the Cunninghams. Furthermore, Mr. Shkor personally guaranteed this loan.

4. The Cunninghams did not record the Deed of Trust with the D.C. Recorder of Deeds until several years later, as detailed below.

5. Neither the LLC nor Mr. Shkor made payments on the loan. As a result, the loan was not satisfied in full by its maturity date.

6. Prior to defaulting on the Cunningham loan, Mr. Shkor and his LLC obtained a loan from the Stephen G. Stein Employee Benefit Trust. This loan was secured by a Deed of Trust against the Lowell Street property in favor of Mr. Stein's Trust. Mr. Shkor also personally guaranteed this loan. Mr. Shkor and his LLC

eventually defaulted on this loan as well, and the LLC provided Mr. Stein's LLC with a Deed in Lieu of Foreclosure. Unaware of the Cunningham loan, Mr. Stein recorded the Deed in Lieu of Foreclosure on July 21, 2020.

7. On August 26, 2020, the Cunninghams hired Respondent to represent them regarding collection of the money owed to them by Mr. Shkor and his LLC.

8. On September 8, 2020, Respondent sent a Notice of Default and demanded payment in full on the Cunningham loan from Mr. Shkor and his LLC. Respondent also recorded the Cunninghams' Deed of Trust. This clouded title on the Lowell Street property. Counsel for Mr. Stein then demanded that the Cunninghams release their Deed of Trust. Negotiations between Respondent and counsel for Mr. Stein ensued. The Cunninghams agreed to release their Deed of Trust and any claim or interest in the Lowell Street property. Mr. Stein agreed to sell the Lowell Street property after renovations were completed, and then interplead half of the net profits into a contemplated civil suit by the Cunninghams against Mr. Shkor and his LLC. This agreement was memorialized in writing on October 22, 2020.

9. On December 16, 2020, Respondent filed a civil complaint on behalf of the Cunninghams against Matthew Shkor and his LLC. *Cunningham et al. v. Shkor et al.*, No. 2020 CA 005018 B (D.C. Super. Ct.). The complaint alleged breach

of promissory note, unjust enrichment, fraudulent inducement to contract, fraud, and civil conspiracy. The Cunninghams sought damages in excess of \$645,000 on all claims, along with “punitive and exemplary damages” of \$1,000,000 on the fraud and civil conspiracy claims.

10. On February 5, 2021, before an answer was due in the D.C. Superior Court action, Mr. Shkor filed a petition for Chapter 7 individual bankruptcy. *In re Matthew Edward Shkor*, No. 21-00041-ELG (Bankr. D.D.C.). Pursuant to 11 U.S.C. § 362(a), the D.C. Superior Court action was stayed upon filing of the bankruptcy petition.

11. Generally, a Chapter 7 bankruptcy results in a discharge, which releases the individual debtor from personal liability for most of his debts. However, discharge is not an absolute right. The Bankruptcy Code allows the bankruptcy trustee or a creditor to object to discharge on various grounds. 11 U.S.C. § 727. The Bankruptcy Code also enumerates certain debts that cannot be discharged. 11 U.S.C. § 523. Some of those enumerated debts are automatically excepted from discharge (*e.g.*, past due alimony and child support), while others will be discharged unless the court determines that they are excepted following an adversarial hearing requested by the creditor to whom the debt is owed (*e.g.*, debts obtained by fraud). *Id.*

12. Mr. Shkor listed the Cunninghams on the schedule of unsecured creditors attached to his bankruptcy petition, alleging that he owed them \$645,000.00 as guarantor of a business loan.

Respondent's Misconduct in the Bankruptcy Action

13. On February 5, 2021, Respondent filed a Notice of Appearance in the bankruptcy case on behalf of the Cunninghams.

14. On February 8, 2021, the bankruptcy court issued a Notice of Chapter 7 Bankruptcy Case that, *inter alia*, set May 10, 2021, as the deadline to file objections to discharge and/or challenges to the dischargeability of individual debts.

15. On April 7, 2021, Respondent filed a Proof of Claim on behalf of the Cunninghams, alleging that Mr. Shkor owed them \$675,000.00 based on a “Personal Guaranty on Promissory Note and Fraud.” Respondent calculated the amount of this claim as the sum of the original loan amount, accrued interest, and attorney fees and costs, while noting that the amount did not include “amounts claimed for fraud and other damages” in the stayed D.C. Superior Court case. Respondent forwarded a copy of this filing to the Cunninghams.

16. On May 16, 2021, six days after the deadline, Respondent filed a Motion to Extend Time to Object to Discharge and to Object to Dischargeability of Debt on behalf of the Cunninghams. The next day, Respondent wrote to the

Cunninghams by email that he had “filed the papers to synchronize our filing of objection to discharge with those of the [United States] trustee” and another creditor. Respondent did not explain that the Motion had been filed out of time, and he had not previously discussed with the Cunninghams whether to file out of time or the propriety of doing so.

17. On June 7, 2021, Mr. Shkor filed an Opposition arguing that Respondent’s Motion was untimely. Respondent did not inform the Cunninghams of this filing.

18. On June 15, 2021, Respondent filed a Response, but did not inform the Cunninghams of his doing so.

19. Fed. R. Bankr. P. 4004(b) permits the court to extend the deadline to object to discharge, but only if a motion requesting an extension is “filed before” the expiration of the original deadline. Similarly, Fed. R. Bankr. P. 4007(c) permits the court to extend the deadline to challenge whether individual debts are dischargeable, but only if a motion requesting an extension is “filed before” the expiration of the original deadline. Rule 4004(b) contains a limited – and inapplicable – exception for untimely motions. Rule 4007(c) contains no exception.

20. On June 17, 2021, the court held a hearing on Respondent’s Motion. Respondent was present, but he had not informed the Cunninghams of the hearing.

Respondent acknowledged at that hearing that he had filed his Motion late and explained that that he had overlooked filing it on time. The court ruled that Fed. R. Bankr. P. 4004(b) and 4007(c) deprived it of discretion to grant Respondent's Motion and therefore denied it. As a result, the Cunninghams lost both their ability to object to discharge and their ability to challenge the dischargeability of the debt Mr. Shkor owed them. Respondent did not inform the Cunninghams of the court's decision or its implications.

21. Respondent met with Mr. Cunningham on June 22, 2021. He did not inform Mr. Cunningham during this meeting that the court had denied the Motion. Respondent did not explain to the clients why he filed it late.

22. Respondent provided no updates to the Cunninghams following this meeting, despite multiple requests from Mr. Cunningham over the course of several weeks.

23. On or about August 19, 2021, Respondent and the Cunninghams terminated his representation of them. However, Respondent did not move to withdraw his appearance from the bankruptcy action until January 25, 2022. The court allowed his withdrawal on January 31, 2022. Respondent did not provide the Cunninghams with any updates on the bankruptcy matter, and he did not forward them any e-filing notifications, during this time.

Respondent's Misconduct in the D.C. Superior Court Action

24. When Respondent filed the Cunninghams' lawsuit against Mr. Shkor in D.C. Superior Court, the clerk scheduled an initial hearing for March 19, 2021.

25. On March 18, 2021, Respondent emailed the presiding judge to request a continuance based on a Suggestion of Bankruptcy that Mr. Shkor had previously filed.

26. Later that day, the presiding judge entered an order vacating the initial hearing and scheduling a remote status hearing for July 16, 2021. The court served its order by CaseFileXpress. Respondent did not inform the Cunninghams of the status hearing.

27. Respondent provided no updates on the D.C. Superior Court matter when he met with Mr. Cunningham at their in-person meeting on June 22, 2021.

28. Neither Respondent nor the Cunninghams appeared at the status hearing on July 16, 2021. The court entered an order dismissing the case without prejudice for want of prosecution, and it served the order on Respondent via email. Respondent did not inform the Cunninghams of the order.

29. On July 29, 2021, Respondent filed a Motion to Reinstate, arguing that he inadvertently failed to attend the status hearing two weeks prior because "[h]e was not aware" of the March 18, 2021, order scheduling the status hearing, and that

“after a comprehensive review of electronic mail archives [he] cannot locate any notification that the Order had been filed or served.” Contrary to his written representation, Respondent was in possession of an email from CaseFileXpress notifying him of the March 18, 2021, order at the time it was filed.

30. Respondent did not inform the Cunninghams that he filed the Motion to Reinstate.

31. On August 16, 2021, the court entered an order reinstating the matter and scheduling a status hearing for October 29, 2021. Respondent did not inform the Cunninghams of the status hearing. The court later rescheduled the status hearing for February 4, 2022.

32. Respondent moved to withdraw from the case on January 25, 2022. He appeared on behalf of the Cunninghams at the status hearing on February 4, 2022. The Cunninghams were not present. The court set another status hearing for May 6, 2022. Respondent did not inform the Cunninghams of what happened at this status hearing.

33. On February 18, 2022, the court allowed Respondent to withdraw. The court also postponed the status hearing until May 13, 2022.

34. The Cunninghams did not appear for the status hearing on May 13, 2022, and the court dismissed the case without prejudice for a second time for want of prosecution.

The Charges

35. Respondent's conduct violated the following Rules of the District of Columbia Rules of Professional Conduct:

- a. Rule 1.1(a), in that he failed to provide competent representation to his client;
- b. Rule 1.1(b), in that he failed to serve his client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters;
- c. Rule 1.3(a), in that he failed to represent his client zealously and diligently;
- d. Rule 1.3(c), in that he failed to act with reasonable promptness in representing a client;
- e. Rule 1.4(a), in that he failed to keep his client reasonably informed about the status of a matter and promptly comply with reasonable requests for information;

- f. Rule 1.4(b), in that he failed to explain a matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation;
- g. Rule 8.4(c), in that he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation; *and*
- h. Rule 8.4(d), in that he engaged in conduct that seriously interfered with the administration of justice.

Respectfully submitted,

s/ Hamilton P. Fox, III
HAMILTON P. FOX, III
Disciplinary Counsel

s/ Jason R. Horrell
JASON R. HORRELL
Assistant Disciplinary Counsel

OFFICE OF DISCIPLINARY COUNSEL
515 5th Street, N.W.
Building A, Room 117
Washington, D.C. 20001
202-638-1501

VERIFICATION

I declare under penalty of perjury under the laws of the United States of America that I verily believe that the facts stated in the Specification of Charges to be true and correct.

Executed on this 13th day of November, 2023.

s/ Jason R. Horrell

JASON R. HORRELL
Assistant Disciplinary Counsel

**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY**

In the Matter of

JAMES M. LOOTS ESQUIRE

Respondent

Bar Registration No. 384763

Date of Admission: December 7, 1984

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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

s/ Hamilton P. Fox, III

Hamilton P. Fox, III

Disciplinary Counsel

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