DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	:	
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BRYAN S. ROSS,	:	
	:	**Disciplinary Docket Nos. 2023-D085**
Respondent.	:	**and 2023-Dl62**
	:	
A Member of the District of Columbia Court of Appeals	:	
	:	
(Bar Registration No. 263863)	:	
	:	

PETITION FOR NEGOTIATED DISCIPLINE

Disciplinary Counsel and Respondent Bryan S. Ross agree to this petition for negotiated discipline pursuant to D.C. Bar R. XI, § 12.1 and Board Rule 17. Disciplinary Counsel opened an investigation of Respondent Ross pursuant to D.C. Bar R. XI, §§ 6(a)(2), 8(a), and Board Rule 2.1.

I. STATEMENT OF THE NATURE OF THE MATTERS THAT WERE BROUGHT TO DISCIPLINARY COUNSEL'S ATTENTION

These matters were brought to Disciplinary Counsel's attention by an anonymous complainant who forwarded the May 23, 2023 Memorandum Opinion in *In re Tigist Kebede*, Case No. 18-12086-KHK (Bankr. E.D. Va), and a referral by the United States Department of Justice, Office of the Trustee, alleging that Respondent engaged in misconduct in multiple bankruptcy cases.

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II. STIPULATION OF FACTS AND RULE VIOLATIONS

1. Respondent Bryan S. Ross was admitted to the Bar of the District of Columbia Court of Appeals on April 9, 1979, and assigned Bar number 263863.

2. Respondent has served as counsel in numerous bankruptcy matters, including before the United States Bankruptcy Courts for the District of Columbia, the District of Maryland, and the Eastern District of Virginia.

3. Respondent also served on the panel of trustees of the Office of the United States Trustee in the District of Columbia for more than 40 years until he resigned in June 2023.

4. In 2013, Respondent entered into an agreement with Fox & Associates Partners, Inc. T/A Tranzon Fox (Tranzon or Tranzon Fox), a company which auctions real estate and acts as a real estate broker for debtors and trustees in bankruptcy matters in D.C., Maryland, and Virginia.

5. Tranzon receives a commission for its auction and brokerage services. To obtain business, the company enters into referral arrangements under which it pays a percentage of the commission to the source of the referral.

6. Respondent's agreement with Tranzon provided that the company would pay Respondent a percentage of its commission for transactions referred by Respondent. After making the referral, Respondent would consult with Tranzon about the transaction.

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7. Between 2014 and 2021, Respondent made referrals that resulted in other trustees or debtors (through their counsel) retaining Tranzon in six bankruptcy cases in D.C., 11 bankruptcy cases in Maryland, and one bankruptcy case in the Eastern District of Virginia. Tranzon paid Respondent fees in all but one of these 18 cases. The exception was one D.C. case which was dismissed before the sale of the applicable property. In those 18 cases, the debtor was required to file an application with the bankruptcy court for authority to employ Tranzon, supported by a verified statement from Tranzon. In the verified statements, Tranzon's principal declared that neither he nor Tranzon had any connection with the debtor, the creditor, other parties in interest, their attorneys or accountants, the U.S. Trustee or anyone employed by the U.S. Trustee. Tranzon knew that Respondent served as a panel trustee.

8. In the employment applications and supporting declarations in the 18 cases in which Respondent had been the source of the referral, Tranzon and Respondent did not disclose to the court or the U.S. Trustee anything about Respondent's involvement or the referral fees that Tranzon had agreed to pay Respondent.

9. Tranzon and Respondent also did not make any disclosure about Respondent's involvement or fee in the subsequent motions to approve the sale and the report of sale that were filed with the bankruptcy courts.

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10. Tranzon's principal, Jeff Stein, later testified that Respondent never told him he had a duty to disclose information about their arrangement and the fees Tranzon was paying him in the referred matters, and that Tranzon relied on Respondent to advise Tranzon of any disclosure requirements.

11. Respondent also retained Tranzon in two matters in which Respondent was serving as the Chapter 7 trustee, one case that was filed in 2015 and the other filed in 2016. In his applications to retain Tranzon in these two cases, Respondent included a footnote stating that they had a consulting arrangement dating back to 2013 for which Tranzon paid him for "certain designated functions." Respondent further represented in the footnote that his agreement with Tranzon did not extend to cases in which Respondent was the trustee, and that Tranzon would not pay Respondent for the transaction in that case.

12. In or around July or August of 2020, the U.S. Trustee learned that Respondent was involved in a D.C. case on behalf of Tranzon after reviewing the time records of the debtor's counsel in that case, *In re 1006 Webster, LLC*, Case No. 20-00302-ELG (Ch. 11). The time records reflected multiple discussions between the debtor's counsel and Respondent on behalf of Tranzon.

13. The U.S. Trustee sought and obtained court permission to examine the principal of Tranzon, Jeff Stein, pursuant to Federal Rule of Bankruptcy Procedure 2004. Based on Stein's testimony and Tranzon's production of documents, the U.S.

Trustee learned of the arrangement between Tranzon and Respondent, including the fees Tranzon had paid to Respondent in multiple bankruptcy cases. As stated, none of these fees had been disclosed to the bankruptcy courts or the U.S. Trustee.

14. The U.S. Trustee notified the D.C. Bankruptcy Court of its concerns with respect to the adequacy and completeness of Tranzon's disclosures pursuant to Bankruptcy Rule 2014 in seeking to be retained under Bankruptcy Code Section 327, specifically, Tranzon's failure to disclose its relationship with Respondent and their fee arrangement. The U.S. Trustee also alleged that the compensation awarded and received by Tranzon under Code Section 330 had been inappropriately shared with Respondent in violation of Code Section 504 which prohibits fee sharing.

15. In the *1006 Webster* case, Tranzon and the U.S. Trustee entered into a settlement agreement in which Tranzon agreed to pay the bankruptcy estate $32,400 – the amount Tranzon paid to Respondent as his share of the commission – and to file an amended declaration in support of Tranzon's application for approval of employment in which Tranzon disclosed Respondent's involvement and the fee he was to receive.

16. In September 2022, after the D.C. Bankruptcy Court approved the settlement between the U.S. Trustee and Tranzon in the *1006 Webster* case, the Bankruptcy Court in the Eastern District of Virginia reopened *In re Tigist Kebede*, Case No. 18-12086-KHK (Ch. 11), to determine whether Tranzon and Respondent

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should be required to disgorge their fees in that case.

17. On December 15, 2022, the Bankruptcy Court in the Eastern District of Virginia issued a show cause order in the *Kebede* case.

18. The court scheduled an initial hearing, at which counsel for Respondent, counsel for Tranzon, and the U.S. Trustee appeared. On October 24, 2023, the court scheduled a further hearing and directed Tranzon and Respondent to show cause why they should not be sanctioned in connection with the undisclosed referral fee between them in the *Kebede* case.

19. In response to the show cause order, Respondent described his relationship with Tranzon and his receipt of $9,150 from Tranzon's $64,050 commission in the *Kebede* case.

20. Respondent falsely represented to the court that he "played no role in the preparation or filing of the *Tranzon Application* [for employment] or the *Verified Statement*, and [he] did not receive a copy of either document for review prior to their filing."

21. The U.S. Trustee filed a response to Respondent's brief, advising the *Kebede* court that Respondent had been involved in the preparation and review of the application. The U.S. Trustee provided the court copies of some of the emails between Tranzon and Respondent – which Tranzon previously produced to the U.S. Trustee in the D.C. case – refuting Respondent's statements. The emails also showed that

Respondent had provided advice on how to address the U.S. Trustee's objection to the employment application in the case. These emails were exchanged approximately three- and one-half years prior to the show cause hearing.

22. Prior to the show cause hearing, Tranzon and the U.S. Trustee entered into a settlement agreement.

23. At the show cause hearing, Respondent, through his counsel, admitted that Respondent had been involved in the application process. Respondent agreed to disgorge his $9,150 fee from Tranzon in the *Kebede* case.

24. The *Kebede* court found that Respondent violated Bankruptcy Rule 9011 by his "ghostwriting" and advising on an employment application without signing it and without disclosing his involvement in the employment application. The court further found that Respondent made false representations about his involvement in the filing of legal documents and that he had engaged in impermissible fee sharing in violation of Section 504 of the Bankruptcy Code. The court accepted Respondent's offer of disgorgement "as a sanction" finding that "it is the only meaningful remedy to the inexcusable nondisclosure and fee sharing in this case."

25. On May 2, 2023, the *Kebede* court issued an order of disgorgement, directing Respondent to pay the estate $9,150 within 30 days.

26. On May 22, 2023, the D.C. Bankruptcy Court opened a separate miscellaneous proceeding against Respondent because it was "disturbed by the facts

and circumstances established in both the Settlement Order [in *1006 Webster* case] and the Opinion." *In re Bryan S. Ross, Chapter 7 Trustee*, Misc. Pro. No. 23-20001-ELG.

27. The D.C. Bankruptcy Court issued an order for Respondent to show cause why it should not: (1) reopen each of the cases in which Tranzon was retained; (2) reopen each Chapter 7 case in which Respondent served as trustee and Tranzon was involved; (3) reopen the cases listed in the *1006 Webster* settlement for purposes of review and disgorgement of any fees that Respondent received; and (4) remove Respondent as a Chapter 7 trustee in all pending cases for misconduct in the course of his statutory duties.

28. The court later explained that it issued the show cause order "because it was readily apparent that [Respondent] was not going to take any corrective action following entry of both the Settlement [in *1006 Webster*] and the *Kebede* Opinion, despite the clear and unqualified findings as to the insufficiencies of his disclosures in this Court."

29. In his response to the D.C. Bankruptcy Court's show cause order, Respondent notified the court that on June 8, 2023, he had resigned from the panel of bankruptcy trustees that the U.S. Trustee maintained for the District of Columbia. Respondent also repeated his offer to the U.S. Trustee to disgorge $30,010.46 – the fees received in the other four D.C. cases in which Tranzon paid him (Tranzon

already had disgorged the fee paid to Respondent in the *1006 Webster* case).

30. Respondent further responded to the court that he would defer to the court about his continued involvement in the seven Chapter 7 cases in D.C. that were designated as asset cases in which he served as trustee, many of which he expected would be resolved within a few months.

31. The D.C. Bankruptcy Court held a hearing on August 17, 2023, which Respondent attended with counsel. The court ruled that:

a. It was unnecessary to reopen all the D.C. cases in which Tranzon was retained, but it would refer its opinion to the Clerk of the Court and the bankruptcy judges in the District of Maryland;

b. It would not reopen the two cases in which Respondent served as the Chapter 7 Trustee and retained Tranzon because it was satisfied that there was no compensation shared in those two matters, but the court "nevertheless f[ound] that the disclosures in those case were entirely and completely insufficient" and reserved the right to reopen them subject to certain conditions;

c. Respondent must provide notice to all parties in interest in the other D.C. cases of (i) the court's opinion, and (ii) their right, within 60 days, to file for a distribution from the disgorged funds;

d. Respondent would disgorge $30,010.46, as he had agreed to do;

e. Despite there being "more than sufficient evidence of cause to

have removed [Respondent] under § 324 of the Bankruptcy Code," Respondent could continue to be involved in the five asset cases then pending that were close to completion; and

f. It would refer Respondent to the federal court's Committee on Judicial Conduct.

32. Respondent's conduct violated the following Rules of the District of Columbia Rules of Professional Conduct and/or the counterpart Rules in Virginia and/or Maryland:

a. Rule 8.4(c), in that Respondent engaged in conduct involving dishonesty, deceit, and/or misrepresentation; and

b. Rule 8.4(d), in that Respondent engaged in conduct that seriously interfered with the administration of justice.

III. STATEMENT OF PROMISES MADE BY DISCIPLINARY COUNSEL TO RESPONDENT

In connection with this Petition for Negotiated Disposition, Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in Section II, *supra*, other than the Rule violations set forth above, or any sanction other than that set forth below.[1]

[1] If the Court does not approve the petition for negotiated discipline, Disciplinary Counsel reserves the right to charge Respondent with additional Rule violations

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IV. AGREED-UPON SANCTION

A. Agreed Sanction

Respondent and Disciplinary Counsel have agreed that the appropriate sanction for the stipulated misconduct and rule violations in this matter is a one-year suspension.

B. Relevant Precedent

The Court has imposed a range of sanctions for dishonesty and conduct seriously interfering with the administration of justice. Those sanctions have ranged from short suspensions – *see, e.g., In re Owens*, 806 A.2d 1230 (D.C. 2002) (30-day suspension where attorney made false statements under oath to an administrative law judge to cover up her attempt to eavesdrop on testimony in violation of a sequestration order) – to disbarment – *see, e.g., In re Goffe*, 641 A.2d 458 (D.C. 1994) (disbarment for repeated misconduct in forging signatures on legal documents, falsely notarizing legal documents, creating evidence, and testifying falsely). Many of the cases involving violations of Rule 8.4(c) and 8.4(d) have resulted in lengthy suspensions, some with a fitness requirement. *In re Tun (II)*, 195 A.3d 65 (D.C. 2018) (one-yar suspension for lying on motion to recuse; Tun had previous 18-month suspension, with six months stayed, for dishonesty in filing inaccurate Criminal Justice Act vouchers

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arising out of the misconduct described in Section II. Disciplinary Counsel has advised Respondent of what those additional charges might be.

(*In re Tun (I)*, 26 A3d. 313 (D.C. 2011); *In re Mayers*, 943 A.2d 1170 (D.C. 2008) (18-month suspension for presenting altered checks and making false statements about child-support payments); *In re Soininen*, 853 A.2d 712 (D.C. 2004) (six-month suspension for failing to correct earlier notices of appearance which misrepresented bar status by indicating Soininen was a member in good standing); *In re Phillips*, 705 A.2d 690 (D.C. 1998) (60-day suspension for filing false and misleading petition in federal court resulting in criminal contempt); *In re Thompson*, 538 A.2d 247 (D.C. 1987) (one-year suspension for knowingly assisting client in making false statements in an immigration application about where the client resided and worked); *In re Hutchinson*, 534 A.2d 919 (D.C. 1987) (en banc) (one-year suspension for testifying falsely before the SEC on two occasions before hiring counsel and correcting the false statements); *In re Reback and Parsons*, 513 A.2d 226 (D.C. 1986) (en banc) (six-month suspension for falsely signing and notarizing verified complaint to replace complaint that client had signed that was dismissed for failure to prosecute); *In re Sheehy*, 454 A.2d 1360 (D.C. 1983) (two-year suspension with fitness for neglecting client's matter, dishonesty toward client, and making misrepresentations to Bar Counsel that were later corrected).

Because Respondent's misconduct occurred in multiple court matters over an extended period of time, the parties agree that a fully-served suspension of one year is warranted. Because Respondent has taken responsibility for his actions, including by

entering into this petition for negotiated discipline, Disciplinary Counsel is not requesting a fitness requirement.

C. Circumstances in Aggravation and Mitigation of Sanction

A one-year suspension is justified because it is within the range of sanctions that could be imposed for Respondent's misconduct and takes into account certain aggravating and mitigating factors, including: (1) Respondent received a 30-day suspension almost 30 years ago for commingling and failing to promptly notify and pay a third party with an interest in the settlement funds, *In re Ross,* 658 A.2d 209 (D.C. 1995); (2) Respondent has disgorged the fees that Tranzon paid him in the D.C. and Virginia cases and has entered into an agreement with the U.S. Trustee to disgorge fees in one of the Maryland cases; (3) Respondent resigned his position as a panel trustee and assisted in completing the remaining cases in which he was involved; (4) Respondent has cooperated in Disciplinary Counsel's investigation, including by meeting with Disciplinary Counsel to answer questions; and (5) Respondent is accepting responsibility by entering into this petition for negotiated discipline.

WHEREFORE, Respondent and the Office of Disciplinary Counsel request that the Executive Attorney assign a Hearing Committee to review the petition for negotiated discipline pursuant to D.C. Bar Rule XI, § 12.1(c).

Respectfully submitted,

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