



UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

March 15, 2019

PRESS RELEASE

The Chief Judge of the United States Tax Court announced today that the following practitioners have been suspended or disbarred by the United States Tax Court for reasons explained in an order issued in the case of each practitioner, and a memorandum sur order issued with respect to Lyndsey M. Heller.

Copies of the orders and the memorandum sur order are attached.

1. Scott M. Cantor
2. Bruce Alan Cole
3. Lyndsey M. Heller
4. Paul Francis Smith

Attachments

UNITED STATES TAX COURT
WASHINGTON, DC 20217

In re: Scott M. Cantor

ORDER OF SUSPENSION

On October 24, 2018, the Court issued an Order To Show Cause to Mr. Cantor, 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 and to appear at a hearing on December 19, 2018, concerning his proposed discipline. The Order To Show Cause was based upon the following information:

- By Order Approving Conditional Guilty Plea Agreement, filed September 29, 2015, the Supreme Court of Nevada suspended Mr. Cantor from the practice of law in Nevada for six months and one day, execution of which was stayed, subject to conditions. In re Cantor, No. 68044, 2015 Nev. Unpub. LEXIS 1184 (Nev. 2015).
- By Order Approving Panel Recommendation, filed November 23, 2016, the Supreme Court of Nevada suspended Mr. Cantor from the practice of law in Nevada for three years, execution of which was stayed, subject to conditions. In re Cantor, No. 70937, 2016 Nev. Unpub. LEXIS 970 (Nev. 2016).
- By order filed September 5, 2017, the Supreme Court of California suspended Mr. Cantor from the practice of law in California for one year, execution of which was stayed, and placed him on probation for one year subject to conditions, including that he be actually suspended for the first 60 days of probation. Cantor on Discipline, No. S242702, 2017 Cal. LEXIS 7057 (Cal. 2017).

On November 10, 2018, Mr. Cantor filed a response to the Court's Order To Show Cause. Mr. Cantor expressed his regret for failing to notify the Court of his disciplinary proceedings in Nevada and California, but did not provide any response regarding whether this Court should reciprocally suspend, disbar, or otherwise discipline him as a result of those proceedings. Mr. Cantor additionally did not notify the Court of an intention to appear at the hearing scheduled on December 19, 2018.

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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 disciplinary proceedings against Mr. Cantor by the Supreme Court of Nevada and the Supreme Court of California. We follow the disciplinary actions of those courts, unless we determine, from an intrinsic consideration of the records of the prior disciplinary proceedings that one or more of the following factors appears: (1) that Mr. Cantor was denied due process in the form of notice and an opportunity to be heard in the prior proceedings; (2) that there was such an infirmity of proof in the facts found to have been established in those proceedings as to give rise to a clear conviction that we cannot accept the conclusions in those proceedings; or (3) that some other grave reason exists which convinces us that we should not follow the discipline imposed in those proceedings. 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. Cantor bears the burden of showing why, notwithstanding the discipline imposed in Nevada and California, 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 (3rd 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).

As Mr. Cantor did not discuss in his response the appropriateness of the discipline imposed upon him in Nevada and California in the light of the above-described factors, Mr. Cantor has not shown good cause why he should not be suspended, disbarred, or otherwise disciplined. We conclude that we should give full effect to the discipline imposed by the Supreme Court of Nevada and the Supreme Court of California and that, under Rule 202, Tax Court Rules of Practice and Procedure, the appropriate discipline in this case is suspension.

Upon due consideration of the entire record in this matter, it is

ORDERED that the Court's Order To Show Cause, issued October 24, 2018, is made absolute in that, under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Mr. Cantor 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. Cantor is prohibited from holding himself out as a member of the Bar of the United States Tax Court. It is further

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

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

ORDERED that Mr. Cantor 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) Maurice B. Foley

Maurice B. Foley
Chief Judge

Dated: Washington, D.C.
March 15, 2019

UNITED STATES TAX COURT
WASHINGTON, DC 20217

In re: Bruce Alan Cole

ORDER OF DISBARMENT

The Court issued an Order of Interim Suspension and Order to Show Cause to Mr. Cole on October 1, 2018, affording him the opportunity, on or before October 31, 2018, to show cause why he should not be suspended or disbarred from practice before this Court, or otherwise disciplined and to attend a hearing on December 19, 2018, concerning his proposed discipline. The Court's Order was based on an order of the Supreme Court of California, filed May 9, 2018, which disbarred Mr. Cole from the practice of law in California as a result of his conviction in the State of Missouri of three felonies involving stealing by deceit and securities fraud. Cole on Discipline, No. S246170, 2018 Cal. LEXIS 3444 (2018).

The Order of Interim Suspension and Order to Show Cause was mailed by both certified and regular mail to Mr. Cole's address of record, the address in his profile on the State Bar of California's official website, and an address submitted by Mr. Cole on July 30, 2018, to the Court of Appeals for the Ninth Circuit in the case of SEC v. Cole, No. 17-56196. The copy of the Order mailed by regular mail to Mr. Cole's address of record was returned to the Court by the United States Postal Service (USPS), the envelope marked "Return to Sender – No Such Number – Unable to Forward." Neither of the other copies of the Order that were mailed by regular mail have been returned to the Court by the USPS. The copy of the Order mailed by certified mail to Mr. Cole's address of record was returned to the Court by the USPS, the envelope marked "Return to Sender – Attempted – Not Known – Unable to Forward." The copy of the Order mailed by certified mail to Mr. Cole's address on the State Bar of California's website has not been returned to the Court by the USPS. The tracking information on the USPS website is: "Delivered – October 4, 2018 at 12:55 pm – Delivered, Capistrano Beach, CA 92624." The copy of the Order mailed by certified mail to the address that Mr. Cole submitted to the Ninth Circuit has not been returned to the Court by the USPS. The tracking information on the USPS website is: "Delivered – October 4, 2018 at 12:55 pm – Delivered, Capistrano Beach, CA 92624." The Court has received no response from Mr. Cole, nor did the Court receive any notice of Mr. Cole's intention to appear at the scheduled hearing.

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Upon due consideration and for cause, it is

ORDERED that the Court's Order of Interim Suspension and Order to Show Cause, issued October 1, 2018, is made absolute in that, under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Mr. Cole is disbarred from practice before the United States Tax Court. It is further

ORDERED that Mr. Cole's name is stricken from the list of practitioners who are admitted to practice before the United States Tax Court, and Mr. Cole is prohibited from holding himself out as a member of the Bar of the United States Tax Court. It is further

ORDERED that Mr. Cole'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. Cole as counsel in all pending cases in which he appears as counsel of record. It is further

ORDERED that Mr. Cole 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) Maurice B. Foley

Maurice B. Foley
Chief Judge

Dated: Washington, D.C.
March 15, 2019

UNITED STATES TAX COURT
WASHINGTON, DC 20217

In re: Lyndsey M. Heller

ORDER OF DISBARMENT

On October 24, 2018, the Court issued to Ms. Heller an Order to Show Cause, affording her the opportunity to show cause, if any, why she should not be suspended or disbarred from practice before this Court or otherwise disciplined, and to appear at a hearing on December 19, 2018, concerning her proposed discipline.

Upon due consideration of Ms. Heller's written responses which the Court received on November 8, 2018, and for the reasons set forth more fully in the attached Memorandum Sur Order, it is

ORDERED that the Court's Order to Show Cause issued October 24, 2018, is made absolute in that, under the provision of Rule 202, Tax Court Rules of Practice and Procedure, Ms. Heller is disbarred from practice before the United States Tax Court. It is further

ORDERED that Ms. Heller's name is stricken from the list of practitioners who are admitted to practice before the United States Tax Court, and Ms. Heller is prohibited from holding herself out as a member of the Bar of the United States Tax Court. It is further

ORDERED that Ms. Heller's practitioner access to case files maintained by the Court in electronic form, if any such access was given to her, is revoked. It is further

ORDERED that the Court will file orders to withdraw Ms. Heller as counsel in all pending cases in which she appears as counsel of record. It is further

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ORDERED that Ms. Heller shall, within 20 days of service of this Order upon her, surrender to this Court her certificate of admission to practice before this Court.

By the Court:

(Signed) Maurice B. Foley

Maurice B. Foley
Chief Judge

Dated: Washington, D.C.
March 15, 2019

UNITED STATES TAX COURT
WASHINGTON, DC 20217

In re: Lyndsey M. Heller

MEMORANDUM SUR ORDER

On October 24, 2018, the Court issued to Ms. Heller an Order to Show Cause, affording her the opportunity to show cause, if any, why she should not be suspended or disbarred from practice before the Court or otherwise disciplined, and to attend a hearing on December 19, 2018, concerning her proposed discipline. The Order to Show Cause was based on Ms. Heller's disciplinary record with respect to her practice of law in the State of California. On November 8, 2018, Ms. Heller filed a written response to the Court's Order and notified the Court that she did not intend to appear at the scheduled hearing.

BACKGROUND

Following submission of a Stipulation re Facts, Conclusions of Law and Disposition, by order filed April 11, 2014, the Supreme Court of California suspended Ms. Heller from the practice of law in California for one year, execution of which was stayed, and placed her on probation for two years subject to conditions. The court's action was based on Ms. Heller's violation of the California Business and Professions Code and the California Rules of Professional Conduct in connection with several client matters. The conditions imposed on Ms. Heller required, among other things, that she be actually suspended for the first 60 days of probation, that she pay \$21,450 plus interest in restitution to five clients, and that she provide proof she had passed the Multistate

Professional Responsibility Examination (MPRE) within one year of the effective date of the order. Heller on Discipline, No. S216208, 2014 Cal. LEXIS 6188 (Cal. 2014).

By order filed October 1, 2015, in Case No. 11-O-18420, the State Bar Court, Review Department, In Bank suspended Ms. Heller from the practice of law in California, pending submission of proof that she had passed the MPRE, which was previously ordered as one of the conditions of her probation. By order filed December 16, 2015, the Supreme Court of California revoked Ms. Heller's probation and suspended her from the practice of law in California for a minimum of one year and until payment of the restitution previously ordered as a condition of her probation. Heller on Discipline, No. S216208, 2015 Cal. LEXIS 11183 (Cal. 2015).

By order filed September 1, 2017, the Supreme Court of California disbarred Ms. Heller from the practice of law in California. Heller on Discipline, No. S242407, 2017 Cal. LEXIS 7017 (Cal. 2017). The order was based on the recommendation of the State Bar Court, Hearing Department – Los Angeles, which found that Ms. Heller willfully failed to file a declaration of compliance with rule 9.20 of the California Rules of Court applicable to attorneys who have been disbarred or suspended or who have resigned.

DISCUSSION

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 actions of the Supreme Court of California. We follow the disciplinary actions of that court, unless we determine, from an intrinsic consideration of the records of the prior disciplinary

proceedings that one or more of the following factors appears: (1) that the attorney was denied due process in the form of notice and an opportunity to be heard in the prior proceedings; (2) that there was such an infirmity of proof in the facts found to have been established in those proceedings as to give rise to a clear conviction that we cannot accept the conclusions in those proceedings; or (3) that some other grave reason exists which convinces us that we should not follow the discipline imposed in those proceedings. 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).

Ms. Heller bears the burden of showing why, notwithstanding the discipline imposed by the Supreme Court of California, this Court should impose no reciprocal discipline, or 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 (3rd 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).

In her response to this Court, Ms. Heller disputes the underlying facts relevant to the California disciplinary proceedings, states that her agreement to the stipulation described above was coerced, and asserts that a permanent disability she suffers from was not sufficiently taken into account during those proceedings. However, as Ms. Heller provided no substantiation to support her claims, she has failed to carry her burden of demonstrating that any of the three factors identified by the Supreme Court in Selling v. Radford apply in this case.

After careful consideration of the entire record in this matter, we conclude that Ms. Heller has not shown good cause why she should not be suspended, disbarred, or otherwise disciplined. We further conclude we should give full effect to the discipline imposed by the Supreme Court of California and that, under Rule 202 of the Tax Court Rules of Practice and Procedure, the appropriate discipline in this case is disbarment.

The Committee on Admissions,
Ethics, and Discipline

Dated: Washington, D.C.
March 15, 2019

UNITED STATES TAX COURT
WASHINGTON, DC 20217

In re: Paul Francis Smith

ORDER OF DISBARMENT

The Court issued an Order to Show Cause to Mr. Smith on October 24, 2018, affording him the opportunity, on or before November 23, 2018, to show cause why he should not be suspended or disbarred from practice before this Court, or otherwise disciplined and to attend a hearing on December 19, 2018, concerning his proposed discipline. The Court's Order was based on an order of the Supreme Court of California, filed March 27, 2018, which disbarred Mr. Smith from the practice of law in California. Smith on Discipline, No. S246489, 2018 Cal. LEXIS 2411 (2018). Mr. Smith was disbarred for failing to comply with the conditions of his probation, which had been imposed as discipline after he reported to the State Bar of California, under penalty of perjury, that he was in compliance with Minimum Continuing Legal Education requirements when he was grossly negligent in not knowing that he was not in compliance. Mr. Smith previously had been publicly reprovved with conditions by the State Bar of California for violating the California Rules of Professional Conduct in connection with his position as trustee of a trust.

The Order to Show Cause was mailed by both certified and regular mail to Mr. Smith's address of record. Neither of the copies of the Order mailed to Mr. Smith have been returned to the Court by the United States Postal Service (USPS). The tracking information on the USPS website for the copy sent by certified mail is: "Your item was delivered to an individual at the address at 1:47 pm on October 27, 2018 in Twentynine Palms, CA 92277." The Court has received no response from Mr. Smith, nor did the Court receive any notice of Mr. Smith's intention to appear at the scheduled hearing.

Upon due consideration and for cause, it is

ORDERED that the Court's Order to Show Cause, issued October 24, 2018, is made absolute in that, under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Mr. Smith is disbarred from practice before the United States Tax Court. It is further

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ORDERED that Mr. Smith's name is stricken from the list of practitioners who are admitted to practice before the United States Tax Court, and Mr. Smith is prohibited from holding himself out as a member of the Bar of the United States Tax Court. It is further

ORDERED that Mr. Smith' 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. Smith as counsel in all pending cases in which he appears as counsel of record. It is further

ORDERED that Mr. Smith 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) Maurice B. Foley

Maurice B. Foley
Chief Judge

Dated: Washington, D.C.
March 15, 2019