



UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

July 1, 2015

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. Daniel Gary Gass

Attachments

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re: Daniel Gary Gass

ORDER OF SUSPENSION

By order of the Supreme Court of Florida, in Florida Bar v. Gass, 153 So. 3d 885 (Fla. 2014) (per curiam), entered December 18, 2014, Mr. Gass was suspended from the practice of law in the State of Florida for a period of one year. During proceedings before this Court, the Florida case was referred to as Florida Supreme Court Case No. SC12-937.

The Court issued an Order to Show Cause to Mr. Gass on March 21, 2014,¹ an Order on July 15, 2014,² and a Supplemental Order to Show Cause on January 21, 2015,³ affording Mr. Gass the opportunity to show cause, if any, why he should not be suspended or disbarred from practice before this Court, or otherwise disciplined as a result of the misconduct at issue in Florida Bar v. Gass, 153 So. 3d 885 (Fla. 2014), and other matters. The Order to Show Cause and the Order of July 15, 2014, both afforded Mr. Gass the opportunity to appear for a scheduled hearing.

¹ The Order to Show Cause, issued March 21, 2014, was predicated on three matters other than Florida Bar v. Gass, 153 So. 3d 885 (Fla. 2014), which other matters we do not consider or reach in this order of suspension, but which we reserve for possible future consideration.

² The Order issued on July 15, 2014, was predicated on Mr. Gass' conduct in Florida Bar v. Gass, *supra*, and on another unrelated matter which we do not consider or reach in this order of suspension, but which we reserve for possible future consideration.

³ The Supplemental Order to Show Cause issued on January 21, 2015, was predicated on Mr. Gass' suspension from practice of law in Florida by the Supreme Court of Florida in Florida Bar v. Gass, *supra*, entered December 18, 2014, and on other unrelated disciplinary matters which we do not consider or reach in this order of suspension, but which we reserve for possible future consideration.

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On April 22, 2014, the Court received Mr. Gass' Notice of Intent to Appear at the hearing, together with his unsigned response to the Order to Show Cause. Thereafter, on or about July 15, 2014, an attorney representing Mr. Gass submitted an Entry of Appearance and Mr. Gass' Supplemental Response to the Court's Order to Show Cause, with Exhibits. Mr. Gass and his counsel appeared at a hearing before a panel of Judges of the Court on August 20, 2014.

On January 9, 2015, the Court received Daniel Gary Gass' Notice of Supplemental Development With Respect to the Florida Bar Proceedings. Mr. Gass attached to his notice a copy of an opinion and order entered December 18, 2014, by the Supreme Court of Florida, per curiam, in Florida Bar v. Gass, *supra*, suspending him from the practice of law in the State of Florida for a period of one year, effective 30 days after issuance of the order.

The Court issued a Supplemental Order to Show Cause on January 21, 2015, affording Mr. Gass another opportunity to appear for a hearing scheduled on March 31, 2015. Mr. Gass submitted a written response to the Supplemental Order to Show Cause and therein waived his appearance, in person or by counsel.

Upon due consideration and for the reasons set forth in the attached Memorandum Sur Order, it is hereby

ORDERED that the Court's Order to Show Cause, issued March 21, 2014, as supplemented January 21, 2015, is hereby made absolute in part in that under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Mr. Gass is forthwith suspended from further practice before the United States Tax Court, until further order of the Court. The matters raised in the Order to Show Cause, as supplemented, other than Florida Bar v. Gass, 153 So. 3d 886 (Fla. 2014), are reserved for possible future consideration. A practitioner who has been suspended may apply for reinstatement. See Rule 202(f), Tax Court Rules of Practice and Procedure, for reinstatement procedures. It is further

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

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

ORDERED that Mr. Gass 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) Michael B. Thornton

Michael B. Thornton
Chief Judge

Dated: Washington, D.C.
July 1, 2015

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re Daniel Gary Gass

MEMORANDUM SUR ORDER

On December 18, 2014, the Supreme Court of Florida found Mr. Daniel Gary Gass, a member of the bar of this Court, guilty of violating Florida Bar Rules 4-1.3 (Diligence), 4-1.4(a)(3), and 4-1.4(a)(4) (Communication; Informing Client of Status of Representation), and 4-8.4(d) (Misconduct), and it suspended him from the practice of law in the State of Florida for one year. Florida Bar v. Gass, 153 So. 3d 886 (Fla. 2014) (per curiam). The discipline imposed by the Florida Supreme Court in that case grew out of Mr. Gass' representation of a married couple in a civil case involving an outstanding debt that the clients and their company owed to a third party. The Florida Supreme Court found that Mr. Gass' failure to diligently act on behalf of his clients and to keep them informed as to the status of their case, justified a one-year suspension, considering the harm his actions caused to the clients, which included their arrest and incarceration. Florida Bar v. Gass, supra. We refer to that disciplinary case as Supreme Court Case No. SC12-937.

This disciplinary proceeding involves an Order to Show Cause issued to Mr. Gass on March 21, 2014, an Order issued on July 15, 2014, and a Supplemental Order to Show Cause issued on January 21, 2015. Those orders commenced

disciplinary proceedings before the Court in six separate disciplinary matters, including Florida Supreme Court Case No. SC12-937. The orders are discussed in greater detail below.

In the Order issued on July 15, 2014, and the Supplemental Order to Show Cause issued on January 21, 2015, the Court directed Mr. Gass to show cause, if any, why he should not be suspended or disbarred from practice before the Court or otherwise disciplined as a result of the misconduct at issue in Supreme Court Case No. SC12-937, and other matters. See Rule 202(c), Tax Court Rules of Practice and Procedure. In response, Mr. Gass and his attorney addressed Mr. Gass' Supreme Court Case No. SC12-937 in (1) Daniel Gary Gass' Supplemental Response to Court's Order to Show Cause received by the Court August 15, 2014, (2) Daniel Gary Gass' Notice of Supplemental Development with Respect to the Florida Bar Proceedings received by the Court on January 9, 2015, and (3) Daniel Gary Gass' Response to the Court's Supplemental Order to Show Cause, received by the Court on March 3, 2015. Mr. Gass and his counsel also appeared at a hearing before a panel of Judges of the Court on August 20, 2014.

The Court has decided to dispose of the matter referred to as Supreme Court Case No. SC12-937, in which Mr. Gass was suspended from the practice of law for one year by the Florida Supreme Court. As stated above, this is a separate

reciprocal disciplinary matter and is unrelated to the other disciplinary matters involving Mr. Gass that are pending before the Court. We need not, and we do not, reach or consider the other matters raised in the Order to Show Cause issued on March 21, 2014, the Order issued on July 15, 2014, and the Supplemental Order to Show Cause issued on January 21, 2015. The other matters are reserved for possible future consideration.

BACKGROUND

The Order to Show Cause issued on March 21, 2014, was predicated upon the following three separate disciplinary matters:

(1) the order of the Supreme Court of Florida dated July 13, 2011, in which the Supreme Court of Florida approved Mr. Gass' Conditional Guilty Plea for Consent Judgment and publicly reprimanded him in Florida Bar v. Daniel Gary Gass, Supreme Court Case No. SC11-1087;

(2) the Order Granting Complainant's Motion for a Decision by Default, issued by an Administrative Law Judge on August 30, 2013, in a disciplinary proceeding entitled Hawkins v. Gass, No. IRS 2013-00006 (Docket No. 13-IRS-0003), by which Mr. Gass was disbarred from practice before the Internal Revenue Service; and

(3) Mr. Gass' failure to report to the Chair of this Court's Committee on Admissions, Ethics, and Discipline, within 30 days, as required by Rule 202(b), Tax Court Rules of Practice and Procedure, the entry of the July 13, 2011, order of the Supreme Court of Florida, or of the August 30, 2013, Order Granting Complainant's Motion for a Decision by Default issued in Hawkins v. Gass, supra.

Mr. Gass' unsigned letter dated April 21, 2014, submitted in response to the Order to Show Cause, disclosed the fact that a referee had found him guilty of violations of the Florida Ethics Rules and had "sentenced" him to a 60-day suspension. Mr. Gass described that matter as follows:

The second matter, involved a debtor client who was in a post judgment collection position and needed to either respond to the post-judgment discovery or file bankruptcy to avoid the escalating order to show cause and writ of bodily attachment. The clients fired me in October of 2010 regarding their bankruptcy and hired a different bankruptcy attorney who failed to file a bankruptcy on their behalf. They were served with the writ of bodily attachment and failed to purge themselves by either complying with the post-judgment discovery or the filing of a bankruptcy. Ultimately, in late February of 2011, the clients were arrested and held in local jails for 2-3 days. At that time, I filed Emergency Motions to lift the capias and a skeletal bankruptcy petition which convinced the judge to release them due to the Stay on creditor collection activity imposed by the filing of their bankruptcy. After they were released, the clients terminated my services in favor of the attorney they had hired in October of 2010. Once they were discharged from bankruptcy, they pursued a bar complaint and malpractice suit against me.

Mr. Gass stated that both the Florida Bar and he had appealed the decision of the referee to the Florida Supreme Court in Supreme Court Case No. SC12-937. Mr. Gass also submitted the following documents from the record of Supreme Court Case No. SC12-937:

1. Respondent's Answer Brief;
2. Initial Brief [of Bar Counsel];
3. Report of Referee, dated October 29, 2013;
4. Letter dated May 18, 2011, by Mr. Gass to the Florida Bar re John and Georgiann Bria;
5. Letter dated April 26, 2011, from Shaneé L. Clark, Bar Counsel, to Mr. Gass, re John and Georgiann Bria; Florida Bar File No. 2011-51,529 (17B); and
6. Letter dated April 26, 2011, from Shaneé L. Clark, Bar Counsel, to Mr. John and Georgiann Bria, re Florida Bar File No. 2001-51,529 (17B).

By Order dated July 15, 2014, the Court directed Mr. Gass to file a supplement to his response to the Order to Show Cause on or before August 15, 2014, in which he showed cause, if any, why he should not be suspended or disbarred from practice before the Court or otherwise disciplined. In response, Mr. Gass' attorney filed Daniel Gary Gass' Supplemental Response to Court's Order to Show Cause, received by the Court on August 15, 2014. In that supplemental response, Mr. Gass' attorney advised the Court that Supreme Court Case No. SC12-937 "is still pending and awaits a date for a decision on the matter." He also submitted the following additional documents from the record of Florida Bar v. Gass, Supreme Court Case No. SC12-937:

1. The case docket sheet as of August 14, 2014;
2. The index to record from the case; and
3. The transcript of the proceedings held on September 9, 2013, before the referee, the Honorable Laura Johnson.

Mr. Gass' supplemental response did not address the merits of Supreme Court Case No. SC12-937.

In the supplemental response, Mr. Gass' attorney also disclosed two additional pending disciplinary matters: (1) Florida Department of Business and Professional Regulation v. Gass, Case No. 2014-00527, regarding Mr. Gass' license as a Certified Public Accountant, and (2) Florida Department of Business and Professional Regulation v. Accounting, Tax and Business Solutions, P.A., Case No. 2014-000530.

During Mr. Gass' hearing before this Court on August 20, 2014, Mr. Gass' attorney referred to Supreme Court Case No. SC12-937 and stated as follows:

* * * the Court was interested in the status of the Florida Bar v. Gass, which is the SC12-937 matter. We've laid out the response to that. We've supplied the briefs and the report, and related correspondence, and it's still pending in the pending status awaiting final decision.

During his testimony at the hearing, Mr. Gass generally described his position regarding the facts of the case. He said that both he and the Florida Bar had

appealed the case to the Florida Supreme Court and the case would be decided in due course.

On January 9, 2015, the Court received Respondent Daniel Gary Gass' Notice of Supplemental Development with Respect to the Florida Bar Proceedings in which Mr. Gass notified the Court that on December 18, 2014, the Florida Supreme Court had issued its opinion in Supreme Court Case No. SC12-937 approving the recommendations of the referee that Mr. Gass be found guilty of violating Bar Rules 4-1.3 (Diligence), 4-1.4(a)(3), and 4-1.4(a)(4) (Communication, Informing Client of Status of Representation), and 4-8.4(d) (Misconduct), and concluding that a one-year suspension was appropriate.

By Supplemental Order to Show Cause dated January 21, 2015, the Court specifically referred to the opinion of the Florida Supreme Court issued on December 18, 2014, and gave Mr. Gass a further opportunity to show cause why he should not be suspended or disbarred from practice before the Court or otherwise disciplined, and gave him another opportunity to appear before the Court at a hearing on March 31, 2015, to further show cause why he should not be suspended, disbarred, or otherwise disciplined.

On March 3, 2015, the Court received Daniel Gary Gass' Response to Court's Supplemental Order to Show Cause. In that response, Mr. Gass waived

further hearing on the disciplinary matters set out in the Supplemental Order to Show Cause. As to the opinion of the Florida Supreme Court in Supreme Court Case No. SC12-937, and other disciplinary matters, Mr. Gass' response stated as follows:

Gass has explained the circumstances with respect to the aforementioned disciplinary matters in his initial response to the March OSC, his Supplemental Response to the March OSC, and appearance before the Court. As there are no additional matters to report, Gass has no further circumstances to provide the Court.

DISCUSSION

As described above, Mr. Gass was suspended from the practice of law in the State of Florida for one year by opinion and order of the Supreme Court of Florida, filed December 18, 2014. Florida Bar v. Gass, 153 So. 3d 886 (Fla. 2014) (per curiam). While this opinion and order of the Supreme Court of Florida suspending Mr. Gass from the practice of law is entitled to respect in this Court and will normally be followed, it is not conclusively binding on us. E.g., In re Ruffalo, 390 U.S. 544, 547(1968); Theard v. United States, 354 U.S. 278, 282 (1957); Selling v. Radford, 243 U.S. 46, 50 (1917).

As true in the case of every reciprocal discipline case, the opinion and order of the Florida Supreme Court suspending Mr. Gass from the practice of law in the State of Florida raises a serious question about Mr. Gass' character and fitness to

practice law in this Court. The landmark opinion of the United States Supreme Court in Selling v. Radford, *supra*, in effect, directs that we recognize the absence of “fair private and professional character” inherently arising as the result of the action of the Florida Supreme Court, and that we follow the disciplinary action of that court, unless we determine, from an intrinsic consideration of the record of the Florida proceeding, that one or more of the following factors should appear: (1) that Mr. Gass was denied due process in the form of notice and an opportunity to be heard with respect to the Florida proceedings; (2) that there was such an infirmity of proof in the facts found to have been established in the proceedings as to give rise to a clear conviction that we cannot accept the conclusions of the Florida proceedings; or (3) that some other grave reason exists which convinces us that we should not follow the discipline imposed by the Supreme Court of Florida. *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. Gass bears the burden of showing why, notwithstanding the discipline imposed by the Supreme Court of Florida, 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. Gass more than one opportunity to present, for our review, the record of the disciplinary proceedings in Florida, and to point out any grounds to conclude that we should not give effect to the action of the Supreme Court of Florida. 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”).

We do not sit as a court of review with respect to the proceedings before the Supreme Court of Florida. See Selling v. Radford, 243 U.S. at 49-50; In re Sibley, 564 F.3d at 1341. To the contrary, as mentioned above, we are required to follow the action of the Supreme Court of Florida unless, from an intrinsic consideration of the record before that Court, we can conclude that (1) Mr. Gass did not receive notice or an opportunity to be heard in that proceeding, (2) that there was an infirmity of proof as to the factual basis for the discipline, or (3) that there was some other grave reason not to follow the action of the Supreme Court of Florida. Selling v. Radford, 243 U.S. at 51.

In this proceeding, Mr. Gass has not shown any of these three factors identified by the Supreme Court in Selling v. Radford. He was given a full opportunity to be heard by the Florida referee and the Supreme Court of Florida, and, thus, there was no “want of notice or opportunity to be heard” in the Florida proceeding. Mr. Gass has not shown that there was any infirmity of proof, as the basic facts disputed in that case. Finally, Mr. Gass has not shown any “other grave reason” not to give effect to the action of the Supreme Court of Florida. See Selling v. Radford, 243 U.S. at 51. Accordingly, we will give full effect to the suspension of Mr. Gass by the Supreme Court of the State of Florida.

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

The Committee on Admissions,
Ethics, and Discipline

Dated: Washington, D.C.
July 1, 2015