

TO: Lisa Lashley, Esq.
FROM: Gizella Weisshaus
DATE: May 18, 2009
RE: My "whitewashed" complaints at the NYC DDC

Fax: 718-649-7661
TEL: 718-387-0026

***** Ms. Lashly, I want to publicly testify !! *****

1. I am a 79-year-old Holocaust survivor, and a citizen of the United States, who has been fighting to recover my father's stolen assets since shortly after my entire family was exterminated during the Holocaust. I was the person who first filed the historic "Swiss Banks" lawsuit in 1996, against various Swiss banks, for the looting of my family's assets. My case eventually became a so-called "class action" suit, and that action was settled on behalf of Holocaust survivors for \$1.25 billion in 1998. I opted out of the settlement because involved attorneys were paying themselves millions of dollars when, in fact, some Holocaust survivors and class plaintiffs had not received a penny, and while others had only received a few thousand dollars.

2. The people at the Manhattan Grievance Committee individually, and in concert with each other, "whitewashed" my complaints of serious attorney misconduct against attorneys Feder, Urbach and Fagan, and, subsequently, Hal R. Lieberman.

3. I learned that Fagan and Urbach participated in a scheme to perpetrate a fraud upon the court involving a document purporting to be a 1997 "amended complaint" in the Swiss Banks action, but was actually a document backdated and improperly manufactured in or about 2000.

4. In addition, Fagan committed gross attorney misconduct regarding conversion of an escrow account in the amount of \$82,583.04 in another matter involving me as a fiduciary in The Estate of Jack Oestreicher. (NY ignored this complaint, but New Jersey did not!)

5. Also, attorney Feder defrauded me when he lied to me and the court in failing to establish an escrow account for \$112,500.00 in another matter involving a Sol Mermelstein and others.

6. The DDC "stonewalled" and "whitewashed" each and every complaint I filed with the DDC against Feder and Fagan. This occurred even while the State of New Jersey, where Fagan is also

admitted to practice law, in or about January of 2008, concluded that Fagan should be disbarred from the practice of law in New Jersey for reasons including his acts of misconduct in New York against me. I would like to note that when I was interviewed by the New Jersey agency investigator, she furnished copies of the 1998 and 2000 New York State grievances, upon which the New Jersey agency thereupon took appropriate action, unlike their New York State counterparts at the DDC.

Mr. Fagan was ultimately disbarred in New York but only after the DDC ignored my complaints about him which were obviously true.

DDC Complaints in 1998

7. In 1998, I filed with the DDC an attorney ethics complaint against Fagan and Feder. In a letter dated May 6, 1998, referencing File No. 1811, then Attorney Disciplinary Committee Chief Counsel, Hal R. Lieberman, Esq., wrote to me to advise that since my complaint against attorney Fagan had involved an "ongoing criminal proceeding," his office would await the outcome of that proceeding before concluding their disciplinary investigation. **Then Chief Counsel Lieberman** also advised me that his New York State ethic's office, the DDC, had requested a written answer to my complaint from the respondent Fagan. Fagan would then soon hire his own lawyer. (See attached **Exhibit "A"** - dated May 6, 1998, a one-page letter from NY State Attorney Disciplinary Committee **Chief Counsel Hal R. Lieberman** to Mrs. Gizella Weissshaus re: Edward D. Fagan.)

8. Approximately nine weeks after I filed my complaint against Fagan, on or about July 15, 1998, a formal answer to the charges against Fagan was submitted to the DDC. That 6-page denial of the various charges made by me was filed by Fagan's then-newly-retained attorney, Hal R. Lieberman, who, in a nine-week period of time had left his position as Chief Counsel of the DDC to join the law firm of Beldock Levin & Hoffman, LLP. (See attached **Exhibit "B"** - dated July 15, 1998, a six-page Answer to Complaint from the now private attorney Hal R. Lieberman to Mrs. Gizella Weissshaus re: Edward D. Fagan.)

9. The DDC knew of the gross conflicts of interest:

a. Lieberman, acting as DDC Chief Counsel on May 6, 1998, acknowledges receipt of my grievance against Fagan, and advises me that Fagan had been requested to file a written response.

b. Then, lo and behold, no less than nine weeks later, on July 15, 1998, Lieberman files the response on behalf of Fagan, not as Chief Counsel, but as a private attorney! (See Exhibit "B" above.)

Indeed, on July 15, 1998, then-private attorney Lieberman was responding to himself as the former DDC Chief Counsel, to his own May 6, 1998 letter. Lieberman, as the New York state-employed Appellate Division, First Department Ethics Chief Counsel had advised me of the request for a written answer from me and, who as it turned out would be Lieberman, as a private attorney, now representing his new client, Fagan.

10. The complaint against Fagan was, without due process, summarily dismissed.

11. On or about September 1, 2000, an expanded complaint was prepared and filed with the DDC, and given File No. 3324. That complaint was also summarily dismissed.

12. The current Chief Counsel, Mr. Friedberg, continues to ignore his duty when he chooses not to report or take any action against the conflict of interest involving Lieberman as a state-employed Chief Counsel and as a subsequent private attorney—in the very same proceeding before the DDC, which he had received and acknowledged as the current Chief Counsel.

13. I have been denied my right to fair proceedings, and have been improperly and permanently denied my rights, as state employee-Lieberman, who oversaw the intake and initiation of the 1998 grievance against Fagan, would soon become Fagan's own retained attorney.

14. If not for the improper influence over the affairs of the DDC by certain favored people, I would have been afforded due process and a fair and impartial adjudication of my complaints. The involved members of the DDC, and former members and current attorneys, have purposely and knowingly acted to improperly influence the DDC by their own self-dealing for personal, political and financial gain. To date, and only as a result of sham DDC proceedings and coverups, my DDC complaints have never been resolved or even properly addressed as required by law.

15. The continuing improper actions by the DDC has been most recently advanced by the substantive inaction, dereliction of duty, and failings of the current Chief Counsel Alan W. Friedberg (See attached **Exhibit "C"** – a one-page certified letter to Friedberg dated June 23, 2008, and a four-page follow-up letter dated June 24, 2008)

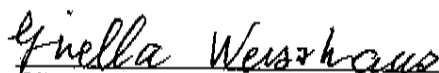
16. The DDC is a division of the New York State Supreme Court, Appellate Division, First Judicial Department, and is therefore part of the New York State court system. As part of the New York State court system, the DDC is obligated and duty-bound to administer justice in a fair, honest and lawful manner. They have failed this obligation and in doing so have, and continue to, violate my rights. I have a Constitutional right to a fair, lawful and honest judicial system, free from corruption, oppression, self-dealing and bias, with impartial arbiters of the law. Through the conduct of the DDC, I have been denied access to fair, honest and lawful court proceedings. My children, grand-children and future generations have also been harmed; but I am a survivor, and I am fighting for justice!

17. I have suffered and continue to suffer extreme losses of confidence in the Legal System and Judicial Process, emotional pain and suffering, loss of enjoyment of life, and loss of trust of attorneys who are charged with the duty to uphold ethical standards within the legal system and in the Court system. As a client of Feder, Urbach and Fagan and of all of their related legal entities, they owed me basic fiduciary duties of good faith, loyalty, and care. The DDC should hold all attorneys accountable for any improper actions, regardless of their political connections.

18. I support the clean-up of the ethics committees in the NYS court system and I would like to testify.

Dated: Brooklyn, New York
May 18, 2009

Respectfully submitted,


GIZELLA WEISSHAUS
203 Wilson Street
Brooklyn, New York 11211
(718) 387-0026

DEPARTMENTAL DISCIPLINARY COMMITTEE
SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT

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COMMITTEE MEMBERS

May 6, 1998

PERSONAL AND CONFIDENTIAL

Gizella Weisshaus
203 Wilson Street
Brooklyn, NY 11211

Re: Matter of Edward D. Fagan, Esq.
Docket No. 98.1811

Dear Ms. Weisshaus:

This office has received your complaint regarding the above-named attorney.

It is the function of this Committee to conduct investigations in order to determine whether or not attorneys have engaged in conduct which warrants professional discipline. Since your complaint involves an ongoing criminal proceeding, we will await the outcome of that proceeding before concluding our investigation. In the interim, a copy of your complaint will be sent to the above-named attorney. We have requested a written answer when these proceedings are concluded and it will be forwarded to you for written comments. We regret that we cannot provide detailed status reports during this investigation. You will, of course, be notified of the Committee's final disposition of the matter.

All inquiries concerning this matter should be addressed to Judith N. Stein.

Very truly yours,

Hal R. Lieberman

Hal R. Lieberman

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HAL R. LIEBERMAN
CHIEF COUNSEL

BARBARA S. GILLERS
FIRST DEPUTY CHIEF COUNSEL

RICHARD M. MALTZ
DEPUTY CHIEF COUNSEL

INDRAL N. BRATTON
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COUNSEL
HAL R. LIEBERMAN

TEL: (212) 490-0400

FAX: (212) 557-0555

REF: 5986

July 15, 1998

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DEPARTMENTAL
DISCIPLINARY
COMMITTEE

Judith Stein, Principal Attorney
Departmental Disciplinary Committee
41 Madison Avenue, 39th Floor
New York, New York 10010

Re: Complaint of Gizella Weisshaus; Docket No. 98.1811

Dear Ms. Stein:

I represent Edward D. Fagan, Esq., the attorney for the above referenced complainant in several legal matters and the respondent hereto. Mrs. Weisshaus's complaint was filed with the Departmental Disciplinary Committee (DDC) on or about April 8, 1998. Initially, let me express my appreciation, on behalf of my client, for your courtesy in extending until July 15, 1998 the deadline for answering the complaint.

Regarding its merits, Mr. Fagan emphatically denies that he has in any way acted improperly or engaged in any actions that are contrary to Mrs. Weisshaus's best legal interests. Briefly, by way of background, Mr. Fagan has represented Mrs. Weisshaus for about five years, and has handled a number of matters for her -- some on a pro bono basis. There have been successes and one or two failures (for example, Mr. Fagan was unable to reopen a case that was concluded before he even got involved). But Mr. Fagan has always zealously advocated for Mrs. Weisshaus, has been available to make last minute courtesy court appearances and requests for extensions of time for her when other lawyers failed to appear or discharge their duties, and he is prepared to continue as her lawyer in certain matters notwithstanding the

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Judith Stein, Principal Attorney
July 15, 1998
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misunderstandings that led to this complaint.

In essence, Mrs. Weissshaus complains about four separate cases in which Mr. Fagan has been involved. We will address each of them as follows:

1. The Swiss banks case. Mrs. Weissshaus is a 67 year old Holocaust survivor, the only one out of 56 relatives to survive. She is a devoutly religious orthodox woman from the Satmar sect in Williamsburg, Brooklyn. She is one of the lead plaintiffs, i.e. class representative, in the well known lawsuit filed by Holocaust victims and their heirs against certain private Swiss banks. Despite Mrs. Weissshaus's current accusations, Mr. Fagan has great sympathy and respect for her. She has suffered losses that are unimaginable to most people, and some of her family members suffer from emotional conditions which are related to the Holocaust and the difficulties which Mrs. Weissshaus and her family experienced as a result of those horrors. At the beginning of the case when Mrs. Weissshaus explained that one of the reasons she brought the case was so she could help establish a school for high functioning autistic children of Orthodox parents, Mr. Fagan pledged some of the monies he might earn in fees from the Swiss banks case and his time to help her in this endeavor.

As one profound consequence of Mrs. Weissshaus's Holocaust experiences, she is understandably suspicious and mistrusting, and of course the world of secular lawyers, judges, courts and laws is alien to her religious orientation and her normal life experiences. Her general suspicion and distrust of lawyers has led, Mr. Fagan believes, to the complaint against him related to the Swiss banks case.

The Swiss banks case actually involves several class

Parentetically, Mrs. Weissshaus has at least six different lawsuits going on in which she is claiming that she has been defrauded by adversaries, rabbis, former lawyers, or others. She has had at least five different lawyers that we know of and is currently being represented in some of these matters by a paralegal who appears to be giving her legal advice and who attends court with her.

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Judith Stein, Principal Attorney
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action suits by Holocaust survivors against certain Swiss private banks to recover monies that the banks accepted and profited from but which were looted assets that in fact belonged to Holocaust victims. The lawsuit, originally brought by Mrs. Weisshaus with Mr. Fagan as her lawyer, has been joined by several other lawsuits filed and/or promoted by certain Jewish organizations, including the World Jewish Congress, the World Jewish Restitution Organization, the Claims Conference, the Simon Wiesenthal Center, a Satmar related organization, the HDL, and other organizations which claim to be involved in Holocaust victims' restitution or related matters.

Mr. Fagan, and the team of lawyers that he helped to recruit to handle the Swiss banks case, are committed to seeing that the survivors get their money, and have been working very hard for several years to that end. Nonetheless, when Mrs. Weisshaus sees news stories or reads the papers and sees quotes from World Jewish Congress officials or from one of the other involved organizations, or learns of statements by other lawyers in other of the consolidated cases (three separate survivors' lawsuits were consolidated in the Eastern District), she incorrectly concludes that the organizations have either "sold out" or are trying to take the survivors' money. She further thinks that Mr. Fagan has either abandoned her or made a deal with the World Jewish Congress.

Nothing could be further from the truth although again it must be emphasized that Mr. Fagan understands the source of Mrs. Weisshaus's suspicion and anxiety and does not fault her for her mistrust. But the fact is, and there is ample demonstrable evidence to prove it, Mr. Fagan has advocated zealously only for Mrs. Weisshaus and the class, and intends to continue to fight for their rights. Attached as Exhibit "A" are recent news articles which reflect Mr. Fagan's clear devotion to Mrs. Weisshaus and the individual survivors' rights and their individual/collective cause, even to the point of potentially antagonizing some Jewish organizations so as to ensure that the survivors get their money first. Enclosed as Exhibit "B" are copies of several communications from Mr. Fagan to Mrs. Weisshaus which belie her contentions, as well as letters or notes from other members of the class attesting to Mr. Fagan's efforts and commitment on their behalf. In fact, there is not a shred of

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Judith Stein, Principal Attorney
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evidence that Mr. Fagan has been in any way disloyal to Mrs. Weissshaus or the class in the Swiss banks litigation, or does not place their interests first and foremost. The Swiss banks class action lawsuits are complicated, protracted, and very high profile, and Mr. Fagan has never done anything to undermine the legitimate interests of the survivors.

2. The Estate of Jack Oestreicher. Mrs. Weissshaus claims that Mr. Fagan is withholding \$82,583.04 that belongs to her. In point of fact, the money is in escrow and must stay there until a hearing is held by the Surrogate's Court to determine the validity of a third party lien.

Briefly, Mrs. Weissshaus is the executrix (or administratrix) of the estate of a deceased cousin. Following Mr. Oestreicher's death, the County Department of Social Services claimed that it had provided many tens of thousands of dollars in medical and support services to the decedent and asserted a lien (in fact in excess of the value of the estate assets) on the estate. It should be noted that Mr. Fagan was the third lawyer involved with this case for Mrs. Weissshaus and there has been another lawyer who made an appearance and then declined further representation since Mr. Fagan. The funds are still in Mr. Fagan's trust account (see attached bank statement, Exhibit "G"), and these funds must remain in trust, and cannot be distributed to Mrs. Weissshaus or to any other heir, until the Court decides the validity and extent of the lien. Mr. Fagan is certainly prepared to transfer the funds to the Court, upon its direction, but despite requests for guidance or direction there has been no such turnover or Court deposit order or directive. Nor can he transfer the funds to the escrow account of successor counsel, since Mrs. Weissshaus has not retained a new lawyer and has instead notified the Court that she has retained a paralegal to handle this case and they will appear pro se.

3. The case entitled Weissshaus v. Gandl (Index No. 42451/91, Supreme Court, Kings County)

Before Mr. Fagan became acquainted with Mrs. Weissshaus, she lost this case in the Jewish Court (Beth Din) and then could not prevent the Beth Din's decision from being converted into a civil judgment against her for in excess of \$110,000. When Mr.

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Judith Stein, Principal Attorney
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Fagan got involved, he was unable to convince the New York Supreme Court (Justice Shaw) to reopen the case based upon alleged fraud and misrepresentation. An action was commenced in U.S. District Court on behalf of Mrs. Weisshaus for alleged violations of her civil rights and for fraud. However, Judge Cote dismissed the action in large part because she found that the New York Supreme Court had disposed of the central issues (res judicata). Although Mrs. Weisshaus largely blames other parties and their lawyers for their misconduct and fraud in procuring the 1991 judgment against her, she is also angry with Mr. Fagan for his inability to rectify the situation by getting the Court to agree to set aside the seven year old decisions/orders. Now matter how much Mr. Fagan would like to provide a remedy for Mrs. Weisshaus, there is no realistically available remedy at this point (see March 1998 letter of Robert Dinerstein, Esq., attached hereto as Exhibit "D", a lawyer who recently declined to take Mrs. Weisshaus's cases). In any event, Mr. Fagan has done nothing improper in attempting to rescue what was probably a lost cause before he ever became involved in the Gandl case.

4. The Ginzberg case. This matter is related to the Gandl case. Rabbi Ginzberg was the Rabbi of the Beth Din that ruled against Mrs. Weisshaus in the Gandl case. Mrs. Weisshaus wanted to sue Rabbi Ginzberg and all others involved in the Gandl case. The defendants were served but affidavits of service could not be found in the Court file. Accordingly, and with Mrs. Weisshaus's full knowledge, consent and involvement (note: Mrs. Weisshaus's hand written entry of the 1998 Index #), Mr. Fagan refiled the case and it is an ongoing action. There has been no prejudice to Mrs. Weisshaus and, again, Mr. Fagan has done nothing that is improper or otherwise contrary to Mrs. Weisshaus's interests.

In conclusion, Mr. Fagan has been actively representing Mrs. Weisshaus in a number of legal matters and has bent over backwards to advocate for her and to keep her informed. However, she appears to be so angry and frustrated with the legal system on account of the cases she has lost, or thinks she has lost (or is in the process of losing), that she is now taking that anger out on her last lawyer, Mr. Fagan. There is simply no merit to

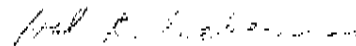
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Judith Stein, Principal Attorney
July 15, 1998
Page 6

her complaint. But in spite of the complaint, Mr. Fagan intends to keep fighting for her rights. In that regard, while we submit that the instant complaint against Mr. Fagan should clearly be dismissed, as an alternative Mr. Fagan is willing to have the matter referred to the DDC's Complaint Mediation Panel as a possible way of repairing the breach of trust and communications gap that has apparently occurred between Mrs. Weisshaus and Mr. Fagan.

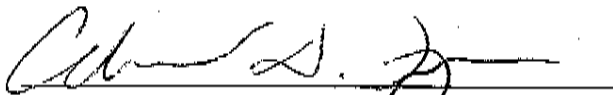
Thank you for your consideration of this answer. Please let me know if you require any additional information.

Very truly yours,



Hal R. Lieberman

Read and adopted by:


Edward D. Fagan, Esq.

HRL/ja
Enclosures

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GIZELLA WEISSHAUS
203 Wilson Street
Brooklyn New York 11211
Tel:[718] 387-0026 Fax: [718] 387-6370

By Certified Mail:

June 23, 2008

Departmental Disciplinary Committee
Supreme Court, Appellate Division
First Judicial Department
61 Broadway
New York N. Y. 10006

Attention Chief Counsel: **ALLAN FRIEDBERG**

IN RE: Edward D. Fagan

On April 30, 2008 I filed a Federal lawsuit Docket # 08cv4053 against the State of New York, The office of Court Administration of the Unified Court System; Thomas J. Cahill, Judith Stein, Hal R. Lieberman, Edward D. Fagan and John and Jane Does Exi.[1]

Enclosed is a copy of the January 30, 2008 Decision of the New Jersey Office of Attorneys Ethics v Edward D. Fagan Esq. Docket No. XIV-2000-0135E Recommending Disbarment. More than 30 days have passed since the issuance of the decision and Mr. Fagan has failed to file a notice of appeal.

For your information, the complaint which I joined in 2004 in New Jersey was identical To the one which your agency dismissed in New York several years ago.

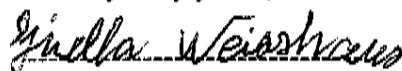
Index no: 1998. 1811 & Index no:2000. 3324

For certain reasons I couldn't file with you till now.

Based on reciprocity between the states, I request that you immediately initiate disbarment in New York. Mr. Fagan is harassing people like Betsey Combier and others with fraudulent claims in the Courts. Her Federal case filed in the Southern District Index 08cv5534 Teachers 4 Action v Edward D. Fagan and Elizabeth Silver.

I also had 3 other cases that were dismissed by your committee. Docket # 95-2477 Exi. 2 Accepted by Hal Lieberman and Dismissed by Lieberman. Edward Fagan related. Matter of Saul E. Feder, Esq. Docket No. 98-1978 accepted by Jeremy S. Garber Dismissed by Thomas J. Cahill. Exhibit [3] Matter of Burt Neuborne, Esq Docket No. 2006-2755 dismissed by Thomas J. Cahill exhibit [4]. The above cases I hope to file in future. All Fagan related.

Very truly yours,



Gizella Weisshaus

Handwritten initials and date: "EW" and "1 of 6"

ADENDUM

Copy

GIZELLA WEISSHAUS
203 Wilson Street
Brooklyn, New York 11211
Tel. 718-387-0026
Fax 718-387-6370

June 24, 2008

Allen W. Friedberg, Esq.
Departmental Disciplinary Committee
First Judicial Department
61 Broadway
New York, New York 10006

Roy L. Reardon, Esq.
Chairman, First Department Disciplinary Committee
c/o Sirupson Thatcher & Bartlett
425 Lexington Avenue
New York, NY 10017-3954

In Re: Edward D. Fagan

Gentlemen:

This letter is a follow-up to the complaint I filed yesterday. My complaint was based upon by the decision dated January 30, 2008 in which the Hon. Arthur Minuskin, J.S.C. (Ret.) sitting as a master by appointment of the New Jersey Supreme Court, made findings that Edward D. Fagan had misappropriated of hundreds of thousands of dollars from myself and other former clients, and recommended that he be disbarred. See Office of Attorney Ethics v. Fagan, N.J. Supreme Ct. Dkt. XIV-2000-0135E. I am seeking the entry of an Order by the First Department imposing reciprocal discipline on Mr. Fagan in the form of a temporary suspension of his right to practice in New York, pending final review, and imposition of formal discipline by the New Jersey Supreme Court on the disbarment recommendation. See DDC Rule §603.3; 22 NYCRR § 806.19. I am advised that final action by the New Jersey Supreme Court on the disbarment application should occur by the end of 2008.

The prosecution of the New Jersey matter was handled by John McGill, III, Deputy Ethics Counsel, Office of Attorney Ethics, P.O. Box 963, Trenton, New Jersey 08625, (609) 530-4325. Mr. McGill can provide you with a certified copy of the decision in the event it has not been transmitted to you previously. I understand that in New Jersey the sanction for intentional misappropriation of client funds, as found by the master, is automatic disbarment for life. In re Wilson, 81 N.J. 451, 453, 409 A. 2d 1153 (1979); In re Noonan, 102 N.J. 157, 160, 506 A. 2d 722 (1986). It is also the basis for disbarment in New York.

You will note from Judge Minuskin's decision all of the former clients involved in the matters were residents of New York and the actual misconduct in question also occurred in New York. Indeed, the misconduct directed at me was very same misconduct which was the subject of a 1998 complaint by me to the Departmental Disciplinary Committee, docketed as No. 98-1811. In responding to my complaint on May 6, 1998, then Chief-Counsel Hal Lieberman indicated action could be deferred to because it involved "an ongoing criminal investigation."

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DEPARTMENTAL
DISCIPLINARY
COMMITTEE

Alan W. Friedberg, Esq.
Roy L. Reardon, Esq.
June 24, 2008
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However, Mr. Lieberman soon thereafter left his position with the Committee and entered private practice. Curiously, Mr. Lieberman was then retained by the same Mr. Fagan to represent Fagan in responding to my pending complaint. On July 15, 1998, Mr. Lieberman filed an answer to my complaint. Thereafter, over the next 10 years, no action was ever taken by the Committee or its staff to investigate my complaint, despite the fact that as far as I am aware, no such "criminal investigation" had been pending, and the facts were easily ascertained, as indicated by the ability of the New Jersey disciplinary authorities to put together the case against Mr. Fagan beginning in 2004, and bring the matter to a hearing in 2005, despite multiple delays caused by Mr. Fagan.

I understand the DDC's failure to act on the original complaint is in no way a bar to the DDC proceeding to impose reciprocal discipline based upon the outcome in New Jersey. See in re Power, 722 N.Y.S.2d 232, 281 A.D.2d 52, reinstated 732 N.Y.S.2d 856, 287 A.D.2d 396 (1 Dept. 2001), where there was a prior dismissal by the First Department DDC based solely upon written complaint, without investigation or hearings. Power held this dismissal could not be considered a binding determination on merits, and that based upon the findings of the master, and the Disciplinary Review Board ("DRB"), the intermediate appellate panel in New Jersey, but before the Supreme Court had ruled, the First Department would impose reciprocal discipline based on the record in New Jersey, since the original NY complaint was based on same facts as the First Department complaint.

You will note from your review of the master's report (at p. 2) that when New Jersey commenced its investigation of Fagan for trust account irregularities, he was already ineligible to practice law in New Jersey for failure to pay his N.J. Client Security Funds fee. In fact it appears that it evidence that he was still practicing in New Jersey, despite his ineligibility, is apparently what led to the initial investigation, which proceeded from there to the trust account irregularities.

The fact Mr. Fagan's right to practice in New Jersey was already effectively suspended throughout the entire period of the investigation and hearings in New Jersey is important to keep in mind in connection with the matter of a temporary suspension on his right to practice in New York pending the completion of the pending disbarment proceedings in New Jersey. I am advised that in cases involving the prosecution of charges intentional misappropriation, particularly involving hundreds of thousands of dollars, it is virtually automatic upon the filing of the complaint for an order to show cause to be entered by the New Jersey Supreme Court as to why the respondent should not be temporarily suspended pending the disposition of the charges. Such orders to show cause typically include temporary restraints upon the respondent's ability to practice or at least access a trust account. As I believe Mr. McGill can confirm, but for the fact Fagan was at all times ineligible to practice in New Jersey, and therefore, effectively was already suspended, such an order to show cause would have been sought in the New Jersey Supreme

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Court. Given the facts and amounts involved in the complaint, plus his many other ethical problems (see below), Fagan very likely would have been suspended in New Jersey thereafter and remain suspended as of now, pending the outcome of the charges, but for already being ineligible to practice. It may be that Fagan's failure to pay his Client Security Fund fee was a tactical choice to avoid facing a temporary suspension which would have been automatically be reported to New York, and led then to his suspension in New York as well.

In re Pisacane, 220 A.D.2d 981, 632 N.Y.S.2d 986 (3 Dept. 1995) is essentially the identical case. New Jersey had brought intentional misappropriation charges leading to Pisacane's temporary suspension in New Jersey, but no hearings had taken place yet, and Pisacane was still actively practicing in New Jersey when the DDC successfully sought temporary suspension in New York under the reciprocal discipline rules, based just on the pending charges in New Jersey. See also In re Schecterman, 202 A.D.2d 788, 612 N.Y.S.2d 956 (3 Dept. 1994), where New York temporarily suspended, also based only the allegations of serious trust account violations brought in Florida.

Despite the slight and essentially meaningless technical difference between Pisacane and Schecterman - that Fagan was already ineligible to practice in New Jersey so there was no need for New Jersey to move to temporarily suspend him in New Jersey -- the Fagan case, given that there already are findings by the master, presents far more compelling case imposing for temporary suspension than either Pisacane and Schecterman.

The gravity of the misconduct already found by Judge Minuskin is at least as serious as the misconduct which was then only alleged against the respondent in Pisacane at the point he when was suspended - on the basis of charges which were as yet unheard. Likewise in Schecterman, the respondent had been suspended in Florida, and was reciprocally suspended in New York pending the outcome of the Florida proceeding on the basis of what that point were also only "serious allegations of substantial trust fund shortages and misappropriation..." In both Pisacane and Schecterman, the Court found that even though the proceeding on the charges had not progressed beyond the complaint stage, both lawyers represented immediate threats to the public interest, and suspended both lawyers under 22 NYCRR § 806.4(f).

The pending New Jersey disbarment matter is hardly Fagan's first brush with ethics proceedings and sanctions. He has a previous ethics history in New Jersey. He is also serial violator of Federal Rule 11 in the Southern and Eastern Districts, with a history of sanctions going back well over a decade. E.g., he currently owes over \$415,000 in unpaid sanctions and fee and costs awards imposed by various judges in the Southern and Eastern Districts. E.g., includes sanctions, cost and attorneys fees of + \$350,000 were awarded against him by Judge Kram in Ass'n of Holocaust Victims for Restoration of Artwork (Etc.) v Bk. Austria [Etc.], No. 04 Civ. 3600, 2005 WL 3099592 (S.D.N.Y. 11/17/ 2005), a case in which the court found Fagan had created a fictitious plaintiff; \$15,000 in sanctions and fee and costs awarded against him in

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Molefi v. The Oppenheimer Trust, 03 Civ 5361, 2007 WL 538547 (E.D.N.Y. 2/15/07), relating to retaliatory actions directed at former co-counsel following Fagan's dismissal by the clients; \$5,000 in sanctions and +\$45,000 in fees and costs awarded by Judge Scheindlin in In Re: Ski Train Fire in Kaprun Austria, 01-MDL-1428, 2007 WL (August 16, 2007), disqualifying Fagan for conflict of interest and ethics violations, imposing; see also Windows Headquarters, Inc. v. MAI Basic Four, Inc., 1994 WL 673519 (S.D.N.Y.1994) and 1996 WL 63046 (S.D.N.Y.1996).

In addition, in a recent bankruptcy filing Fagan disclosed that he owes over \$13. million to creditors, including over \$4 million in malpractices and other judgments in favor of former clients. Thus, the threat of monetary sanctions are not an effective deterrent to his continuing misconduct.

Finally, Fagan has lately filed frivolous pro se lawsuits naming as defendants virtually every other lawyer who was formerly involved with him in recent high-profile cases, as well as various lawyers who are, or recently were his adversaries.

Fagan is a menace to the public and the legal system. It is a grave embarrassment to the First Department District Disciplinary Committee that it had the opportunity to take action on my complaint 10 years ago and did nothing. Most respectfully it must act now to correct this error by suspending Fagan pending the conclusion of the proceeding in New Jersey.

Sincerely yours,

Gizella Weisshaus
Gizella Weisshaus

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GIZELLA WEISSHAUS
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By Certified Mail:

April 23, 2008

Departmental Disciplinary Committee
Supreme Court, Appellate Division
First Judicial Department
61 Broadway
New York N. Y. 10006

Attention Chief Counsel: **ALLAN FRIEDBERG**

IN RE: Edward D. Fagan

Enclosed is a copy of the January 30, 2008 Decision of the New Jersey Office of Attorneys Ethics v Edward D. Fagan Esq. Docketed No. XIV-2000-0135E Recommending Disbarment. More than 30 days have passed since the issuance of the decision and Mr. Fagan has failed to file a notice of appeal.

For your information, the complaint which I joined in 2004 in New Jersey was identical To the one which your agency dismissed in New York several years ago.

Index no: 1998. 1811 & Index no:2000. 3324

Based on reciprocity between the states, I request that you immediately initiate disbarment in New York. Mr. Fagan is harassing people like Betsey Combier and others with fraudulent claims in the Courts.

Very truly yours,



Gizella Weisshaus

Enc: Jan. 30, 2008 decision
Apr. 11, 2008 decision
Dec. 10,1998 Cahill's dismissal
Mar. 14, 2002 Cahill's dismissal

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