BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

MARK STEVEN LENZ,

Attorney-Respondent,

No. 6192658.

Commission No. 2022PR00029

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Richard Gleason, pursuant to Supreme Court Rule 753(b), complains of Respondent Mark Steven Lenz, who was licensed to practice law in Illinois on July 15, 1986, and alleges that Respondent has engaged in the following conduct which subjects him to discipline pursuant to Supreme Court Rule 770:

(*Filing frivolous pleadings and making false statements of law to a court*)

1. At all times alleged in this complaint, Lenz was an associate attorney at the law firm Fisher Cohen Waldman Shapiro, located in Glenview, and practiced primarily in real estate law.

2. On February 17, 2016, Harlem Irving Plaza ("HIP") filed a complaint in the circuit court of Cook County against its former employee, Edan Gelt ("Gelt). The clerk docketed the case 2016CH02178. In the suit, HIP alleged that Gelt violated her fiduciary duties to HIP by conduct including diverting HIP funds to limited liability companies she controlled, submitting false expense reports to HIP, and by using the proceeds of those activities to obtain various parcels of real estate. On the same day, HIP filed *lis pendens* notices as to the four different parcels of real

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estate HIP alleged were funded by Gelt's activities.

3. Respondent's law firm Fisher Cohen Waldman Shapiro, LLP filed its appearance on behalf of Gelt on November 18, 2016. In or about January of 2017, Respondent and Gelt agreed that Respondent would represent Gelt on behalf of the firm in matters relating to the defense of HIP's suit against her. Daniel Mathless ("Mathless") represented HIP in the suit.

4. On June 13, 2017, Respondent drafted four different complaints against HIP and against Mathless personally regarding each of the four *lis pendens* notices described in paragraph two, above. In each of the four complaints, Respondent alleged that HIP and Mathless slandered the title of one of the four properties by virtue of HIP's filings of the four *lis pendens*. Respondent filed four separate actions, even though the *lis pendens* all arose from HIP's single suit described in paragraph two, above, which remained pending at the time Respondent filed the four separate suits. The clerk of the circuit court of Cook County docketed the four matters 2017CH8229, 2017CH08230, 2017CH08232, and 2017CH08235, respectively.

5. In *Ringier America Inc. v. Enviro-Technics, Ltd.*, 284 Ill. App. 3d 1002 (1996), ("*Ringier*"), the Illinois appellate court held that the filing of a *lis pendens* is absolutely privileged as to a claim of slander of title, regardless of any malice by the filer.

6. On June 20, 2017, Mathless emailed Respondent and, citing the *Ringier* case, informed him that a party to a lawsuit had an absolute privilege to file a *lis pendens* whenever there was a lawsuit pending concerning the property at issue, and that the *lis pendens* filer was immune from a claim of slander of title. In an email message dated June 20, 2017, Mathless asked Respondent, in light of the controlling caselaw, to voluntarily dismiss the four complaints within

ten days. Respondent received the email, but did not respond to it, and did not procure a dismissal of the complaints.

7. On August 1, 2017, Mathless and HIP appeared in each of the Chancery matters described in paragraph four, above. On August 4, 2017, HIP filed motions to dismiss the complaints referenced in paragraph 4, above, again citing the holding in *Ringier* described in paragraph five, above. On August 9, 2017, Mathless filed similar motions to dismiss the complaints, also citing the holding in *Ringier*. Respondent received the various motions to dismiss at or about the time they were filed.

8. Between September 12, 2017 and September 27, 2017, Respondent filed combined responses to HIP's and Mathless's motions to dismiss in the four chancery cases. The responses Respondent filed were nearly identical to each other.

9. In each of the responses, Respondent cited the case of *Kurtz v. Hubbard*, 2012 IL App. (1st) 111360 ("*Kurtz*"). *Kurtz* discussed the issue of whether a lien was accorded an absolute privilege, like a *lis pendens*, or rather a qualified privilege. In *Kurtz*, the court held, citing *Ringier*, that: "In general, the defense of absolute privilege is available against both false light and slander of title claims. However, the narrower issue of whether statements made in an assessment lien are absolutely privileged in the same way as statements made as part of judicial or quasi-judicial proceedings is one of first impression in Illinois." *Kurtz*, P11. In distinguishing a *lis pendens*, which enjoys an absolute privilege, and a lien, which enjoys a qualified privilege, the court in *Kurtz* held that "an absolute privilege provides complete immunity from civil action even though the statements were made with malice. On the other hand, proof of malice will defeat a qualified

privilege." *Kurtz*, at P19. The court wrote:

> "Illinois courts have long held that the act of maliciously recording a document, **such as a lien,** that clouds title to real estate is sufficient to support a claim for slander of title. This precedent provides the basis for our holding that statements in a lien must be conditionally rather than absolutely privileged. As defendants acknowledge, if an absolute privilege were accorded to statements made in a lien, a showing of malice would be insufficient to defeat this privilege. ([A]n absolute privilege provides a complete immunity from civil action even though statements are made with malice.) On the other hand, **proof of malice will defeat a qualified privilege**. Therefore, implicit in the requirement that malice must be shown in an action for disparagement of title based on a lien is the existence of a qualified privilege for statements made in the lien." (Internal citations omitted.) (Emphasis added.

10. In paragraph three of the combined responses to HIP's and Mathless's Motions to Dismiss, Respondent wrote:

> Defendants allege that Plaintiff's Complaint fails to state a cause of action as the recording of a *lis pendens* notice is subject to an "absolute privilege" under Illinois law, citing the case of [*Ringier*]. Defendants, however, ignore more recent Illinois law. 16 years after the [*Ringier*] case, in *Kurtz v. Hubbard*, 2012 IL App (1st) 111360 ("*Kurtz*"), the court found that "Illinois courts have long held that the act of maliciously recording a document… that clouds title to real estate is sufficient to support a claim of slander of title…" and that "**Proof of malice *will* defeat an absolute privilege.**" [Ellipsis placed by Respondent in the motion.] [Emphasis added.]

11. By asserting that the filer of a *lis pendens* does not have absolute immunity, Respondent misrepresented the holding in *Kurtz*. The court in *Kurtz* specifically referenced *Ringier*, stating, "In [*Ringier*], cited by the defendants, we held, as a matter of first impression, that the absolute privilege afforded statements contained in judicial pleadings extended to the filing of an associated *lis pendens* notice, where the underling complaint made allegations affecting an

ownership interest in the subject property." *Kurtz*, P14.

12. In paragraph 24 of his responses, Respondent reiterated his misrepresentation of the holding of the court in *Kurtz* by stating that a *lis pendens* was to be accorded a qualified and not an absolute privilege, and again misquoted the court's opinion in *Kurtz*, by writing, "as discussed above, 'proof of malice' will defeat an absolute privilege."

13. In his responses, Respondent did not make an argument for the extension, modification, or reversal of existing law. Instead, Respondent misrepresented the holding in *Kurtz* and cited *Kurtz* to falsely argue that his position was supported by that decision.

14. Between September 29, 2017 and October 20, 2017, HIP and Mathless filed replies to Respondent's responses, described in paragraphs nine through 12, above. Each of those replies pointed out Respondent's mischaracterization of the holding in *Kurtz* and the false quotes Respondent attributed to the court in *Kurtz*.

15. Respondent did not, in any of the four courts hearing the various motions, withdraw the false quotes he attributed to the court in *Kurtz* or correct his mischaracterization of the court's holding in *Kurtz*.

16. On November 15, 2017, Neil Judge Cohen granted HIP's and Mathless's motions to dismiss with prejudice in case number 2017 CH 08229. On November 30, 2017, Judge Thomas Allen and Judge Sanjay Tailor granted HIP's and Mathless's motions to dismiss with prejudice in case number 2017CH08230 and 2017CH08232. On December 18, 2017, Judge Raymond Mitchell granted HIP's and Mathless's motions to dismiss with prejudice in case number 2017CH08235.

17. On each of the four matters, HIP and Mathless sought that the court impose

sanctions upon Respondent pursuant to Illinois Supreme Court Rule 137. On January 3, 2018, Judge Allen denied the motion for sanctions without providing a written opinion. On March 1, 2018, Judge Mitchell denied the motion for sanctions and, in a written opinion, found that Respondent merely misinterpreted the holding in *Kurtz*.

18. On March 1, 2018, Judge Cohen granted HIP's and Mathless's motions for sanctions. In Judge Cohen's written opinion, he stated:

> "When Defendants filed their motions to dismiss, Gedan did not concede the lack of any legal basis for a slander of title claim. Nor did Gedan attempt to cite any authority which would support a good faith argument for the modification of existing law. Instead, Gedan provided false quotations from *Kurtz* in an effort to support its meritless position. Specifically, Gedan manufactured the quotation "[p]roof of malice *will* defeat an absolute privilege." In actuality, *Kurtz* states that: (1) a *lis pendens* notice, unlike the lien claim at issue in *Kurtz*, is absolutely privileged regardless of the existence of malice; and (2) "proof of malice will defeat a qualified privilege." Gedan did not only fail to make a reasonable inquiry as to the law when it was put on notice shortly after the filing of this suit, but it also attempted to manufacture caselaw to support its meritless position. Gedan's combined response offers no excuse for manufacturing a false quotation from *Kurtz*. Nor does Gedan offer any support for its contention that it was making a good faith argument for modification of well-established caselaw."

19. On May 3, 2018, Judge Tailor granted HIP's and Mathless's motion for sanctions. In his written opinion, Judge Tailor stated:

> "Most strikingly, plaintiff's counsel fails to own up to his flagrant misquotation of *Kurtz*, despite having filed a brief and sur-reply in opposition to defendants' motion for sanctions. Even at argument on the sanctions motion, plaintiff's counsel stuck to his position that he merely misinterpreted *Kurtz*. Moreover, plaintiff's argument that sanctions are not warranted because it had a good faith basis to argue for a change to existing law does not stave off Rule 137 sanctions because no such argument was advanced in response to defendants' motion to dismiss. Instead, plaintiff argued that *Kurtz* supported its claim, even though it clearly didn't."

20. By reason of the conduct described above, Respondent has engaged in the following misconduct:

a. Bringing or defending a proceeding without a basis in law and fact, by conduct including filing the four slander of title claims against HIP and Mathless, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct (2010); and

b. Knowingly making a false statement of law to a tribunal, by conduct including mischaracterizing the holding in *Kurtz v. Hubbard*, and for providing false quotes purportedly attributable to the holding in that case, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully Submitted

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: ____/s/_*Richard Gleason*_____
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