

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

In the Matter of:)
)
LEE MARK SMOLEN,)
) Commission No. 2013PR00060
Attorney-Respondent,)
)
No. 6191003.)

ANSWER TO COMPLAINT WITH LANGUAGE STRICKEN

Lee Mark Smolen, Respondent, by his attorney, Robert A. Merrick, Jr., for purposes of maintaining record and in answer to the Administrator's "Complaint With Language Stricken" filed on June 2, 2014, states as follows:

1. Between 2007 and 2012, Respondent was a partner at Sidley Austin LLP, based in the firm's Chicago office. During that time, he was the head partner in charge of the Chicago office's real estate practice group, and was a global coordinator of the firm's real estate practice group. In addition to the responsibilities listed above, after October of 2008, Respondent served as a member of the firm's executive committee. Respondent was responsible for, among other things, billing matters affecting real estate transactions involving a major financial institution, one of the firm's largest clients. One account relating to that client ("the unallocated account") contained funds that had been paid by the client as fees, but against which additional charges could be made for various matters, including post-closing fees. In the absence of such charges, funds in the unallocated account belonged to the law firm.

ANSWER: Respondent admits the allegations of the first sentence of Paragraph

1. Respondent admits that he served in the capacities referenced in the second sentence of Paragraph 1 during the identified period with the clarification that he may not have served in all of those capacities throughout the entirety of that period. Respondent admits

the allegations of the third and fourth sentences of Paragraph 1. Respondent admits that allegations of the fifth and sixth sentences of Paragraph 1 with the clarification that the referenced “unallocated account” was not an actual bank account but rather an internal firm bookkeeping categorization relating to funds received by the firm as fees for services rendered. Respondent further affirmatively states that he charged many of the expenses incurred in connection with his business development and relationship activities relating to the client to this “unallocated account” with the knowledge and approval of the firm.

2. Between 2007 and 2012, Respondent submitted more than 800 requests that the firm reimburse him from the unallocated account for cab rides that he knew he had not taken. In support of the false requests, Respondent fabricated false taxi receipts, in amounts averaging approximately \$80 each, and the firm paid Respondent approximately \$69,000 based on the false submissions.

ANSWER: Respondent admits that, between 2007 and 2012, he submitted more than 800 requests that the firm reimburse him from the “unallocated account” for cab rides that he had not taken. Respondent also admits that he fabricated taxi receipts in amounts averaging approximately \$80 each, and that the firm paid him approximately \$69,000 based on his submissions, further stating that funds so obtained were utilized for purposes that he considered related to the firm. In further clarification, Respondent states that his submission of fabricated taxi receipts was a poorly conceived short cut around the firm’s expense reporting procedures in order to secure more time to address his substantial and demanding commitments to the firm. While wrong, Respondent’s

conduct was not the result of any intent to profit personally. Respondent affirmatively states that he has reimbursed the firm for the approximately \$69,000 at issue.

3. During the same period, Respondent also submitted, or caused to be submitted, fabricated cab receipts totaling at least \$567 that were charged to other firm clients.

ANSWER: Upon information and belief, Respondent admits that fabricated cab receipts totaling at least \$567 were charged to other firm clients, further stating that such charges were the result of a few mistakes and inadvertence over a period of five years. Respondent affirmatively states that he has reimbursed the firm for the \$567 at issue.

4. By causing funds to be paid to himself from the unallocated account, Respondent reduced the amount of money in that account that would otherwise have been paid to the firm and, eventually, distributed to Respondent and Respondent's partners.

ANSWER: Respondent denies the allegations of Paragraph 4 as stated. Respondent admits that the payments he received from the "unallocated account" reduced the amount of money that might eventually have been distributed to firm partners, including himself, but denies the inference that funds received were not related to or used for firm purposes. Respondent further affirmatively states that he has reimbursed the firm for the expenses at issue.

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

- a. conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4 (a)(4) of the Illinois Rules of Professional Conduct (1990), and Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010); and

b. conduct which tends to defeat the administration of justice, or to bring the courts or the legal profession into disrepute by defrauding the firm of expense monies.

ANSWER: Respondent denies the allegations of Paragraph 5 and each subparagraph thereof.

RESPONDENT'S PROFESSIONAL BACKGROUND

Pursuant to Commission Rule 231, Respondent states as follows with respect to his professional background:

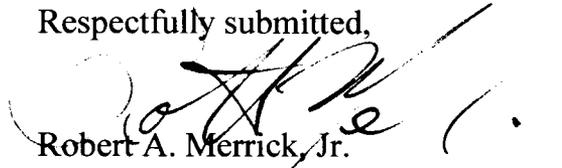
1. To the best of his information and belief, Respondent has not been admitted to practice law in any jurisdiction other than the State of Illinois.

2. To the best of his information and belief, Respondent was licensed as a Registered Certified Public Accountant by the Illinois Division of Professional Regulation. That Division's online records reflect that he was so licensed in at least July 2006, but that such license expired in September 2009.

3. Respondent has no other professional license or certificate.

WHEREFORE, Lee M. Smolen, Respondent, prays that the Administrator's Complaint be dismissed.

Respectfully submitted,



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