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October 20, 2020

VIA CERTIFIED MAIL, REGULAR MAIL, AND E-MAIL

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Re: In the Matter of Nicholas C. Ponzini
Docket No. DRB 20-157
District Docket No. XIV-2018-0463E
LETTER OF ADMONITION

Dear Mr. Ponzini:

The Disciplinary Review Board has reviewed your conduct in the above matter and has concluded that it was improper. Following a review of the record, the Board determined to impose an admonition for your violation of RPC 5.3(a), (b), and (c)(3) (failure to supervise a nonlawyer employee); RPC 7.1(a)(1) (false or misleading communications about the lawyer's services); and RPC 7.5(a) (a lawyer shall not use a firm name, letterhead or other professional designation that violates RPC 7.1).

Specifically, in 2008 or 2009, you became the sole managing partner of the Ponzini & Ponzini, PC law firm (the firm), now known as Ponzini Law, PC, in Paramus, New Jersey. Your father, Peter A. Ponzini (Peter), previously had run the firm for decades.

On July 24, 2018, Antoinette Caruso, a New York attorney, filed a grievance against you. Ms. Caruso is the granddaughter of Patricia Paskivich, a former client of yours and, purportedly, Peter. Ms. Caruso alleged that Peter had been engaged in the unauthorized practice of law since the mid-1980s; that you knew or should have known that Peter had been improperly practicing law; and that you assisted Peter in "a scheme to deceive clients."

When you became the firm's sole managing partner, Peter became an employee of the firm and focused primarily on tax return preparation, claiming to be a certified public accountant (CPA). The firm's letterhead listed Peter as a "Member of NY Bar," and the firm's website identified him as an attorney at law. Yet, from the time that Peter became the sole managing partner of the firm to the present, he was a member of neither the New Jersey nor the New York bar.

As sole managing partner, you vetted the professional backgrounds of the firm's other associates, but failed to verify whether Peter was licensed to practice law. You admitted that you should have confirmed that Peter was a licensed attorney, and conceded that you supervised all the employees, including Peter.

Ms. Paskivich clearly believed that Peter was an attorney. Ms. Caruso asserted that, in November 2010, you drafted a "Durable Power of Attorney for Health Care" for Ms. Paskivich, in which you wrote that she designated and appointed "my attorney and friend, Peter Ponzini" as an alternate agent and health care representative; Ms. Paskivich's November 2010 will named her "good friend and attorney, Peter A. Ponzini" as the executor; and her November 2010 General Durable Power of Attorney designated her "attorney, Peter A. Ponzini" as her agent.

Ms. Caruso also submitted a September 12, 2016 transcript from a lawsuit filed in the United States District Court for the Middle District of Pennsylvania, captioned Ponzini and Barbaros v. Monroe County, et al., (the Primecare matter) to support her contention that Peter had held himself out as an attorney with the firm. In that matter, Peter testified that "I practice with the firm of Ponzini and Ponzini. I'm a CPA, and I have attended New York Law School and I have a J.D. I don't actively practice law."

In addition, Ms. Caruso attached to her grievance her July 12, 2018 letter to Carol Johnston, Esq., Secretary of the Committee on the Unlicensed Practice of Law, summarizing her allegations that Peter had engaged in the unauthorized practice of law, "albeit not as conspicuously as in the 1980's through circa 2010," and included documents from the 1980s through 2009. She alleged that Ms. Paskivich and her family believed that Peter, who was a close family friend, was an attorney and a CPA; that he represented Ms. Paskivich in various legal matters including estate planning, real estate, tax, and landlord-tenant; and that he formed corporate entities, prepared Ms. Paskivich's tax returns, provided legal advice, and handled real estate transactions, including mortgages, closings, and evictions.

In your December 6, 2018, reply to the grievance, you disclosed that Peter always has held himself out to the public and to his family as both an attorney and a CPA licensed in New York. You never questioned your father's status and, early in your legal career, looked forward to working with him.

You graduated from law school in 2006 and formed the Law Office of Nicholas Ponzini, LLC, as a solo practitioner. In 2006, Ponzini and Ponzini, LLC was formed to provide tax preparation and accounting services. Although you and Peter were partners in Ponzini and Ponzini, you never contemplated that Peter would perform any legal services at that point, even though you

believed Peter was an attorney. Rather, you believed that he would perform only tax return preparation.

In about 2008 or 2009, you informally merged the Law Office of Nicholas Ponzini, LLC into Ponzini and Ponzini, LLC. You combined the letterhead and listed Peter as a licensed New York attorney, in conformance with your belief that Peter was a member of the New York bar. You also advertised Peter's services on your website. Upon receipt of this grievance, you investigated the matter and claimed to be "shocked and dismayed" when you were unable to find any record of Peter's license as an attorney or a CPA. When you confronted Peter, you "never received a straight answer" from him. You claimed that the situation has devastated you and your family.

You understood that you were responsible for supervising Peter, but denied any knowledge that Peter had performed legal services in behalf of Ms. Paskivich or her family. You maintained that you had very little contact with Ms. Paskivich and her family, and believed that the services Peter provided were related to tax preparation, which did not require a CPA license. Peter kept his own files separate from your files, and performed his own billing, including billing for services performed for Ms. Paskivich. Peter had signatory authority on your attorney business and trust accounts, but he never issued checks, because you exclusively managed the trust account.

You admitted that you prepared the "Durable Power of Attorney for Health" for Ms. Paskivich, but denied having knowledge that Peter previously had prepared a will or general power of attorney (POA) for her. Rather, you asserted that Peter successfully concealed having performed legal work for Ms. Paskivich and her family, and claimed that you learned that Peter had prepared the will and POA only when Ms. Caruso filed the grievance underlying this matter. You admitted that you met with Ms. Paskivich directly and prepared her estate planning documents.

Finally, in respect of the Primecare matter, although you were aware that Peter was a co-administrator of the Estate of Mumun Barbaros, your law firm was not involved in that Pennsylvania litigation. You claimed that, until the present grievance was filed, you did not know that Peter had testified at that trial.

After the grievance was filed, you terminated Peter's employment, and demanded a list, contact information, and files for clients to whom he may have provided legal services. Although you claimed that you found "a few files that we believe may be legal in nature," the only documents located were letters that did not show that Peter "did anything of substance." By letter to the OAE dated March 14, 2019, you asserted that Peter might have provided legal services for two additional New Jersey clients, and provided documents demonstrating that, from 2005 to 2011, he held himself out as an attorney in tax, landlord-tenant, real estate, and business sale matters for those clients.

The Board, thus, determined that your conduct violated RPC 5.3(a), (b), and (c)(3); RPC 7.1(a)(1); and RPC 7.5(a).

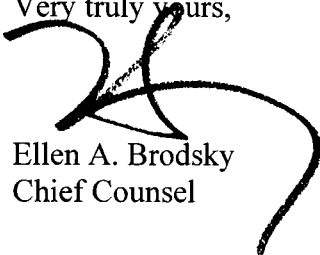
In imposing only an admonition, the Board considered that you have no ethics history in fourteen years at the bar; admitted your misconduct and entered into the stipulation; took prompt corrective action, including terminating Peter's employment; submitted three character letters; have performed service to the community; and expressed contrition and remorse. The Board also considered that Peter purposefully concealed the fact that he was not a licensed attorney from you and your family for the duration of your lifetime.

Your conduct has adversely reflected not only on you as an attorney but also on all members of the bar. Accordingly, the Board has directed the issuance of this admonition to you. R. 1:20-15(f)(4).

A permanent record of this occurrence has been filed with the Clerk of the Supreme Court and the Board's office. Should you become the subject of any further discipline, this admonition will be taken into consideration.

The Board also has directed that the costs of the disciplinary proceedings be assessed against you. An invoice of costs will be forwarded to you under separate cover.

Very truly yours,


For: Ellen A. Brodsky
Chief Counsel

EAB/trj

c: Chief Justice Stuart Rabner
Associate Justices
Heather Joy Baker, Clerk
Supreme Court of New Jersey
Bruce W. Clark, Chair
Disciplinary Review Board (e-mail)
Gail G. Haney, Deputy Clerk
Supreme Court of New Jersey (w/ethics history)
Charles Centinaro, Director
Office of Attorney Ethics (interoffice mail and e-mail)
Eugene A. Racz, Deputy Ethics Counsel
Office of Attorney Ethics (e-mail)
Antoinette Caruso, Esq., Grievant (regular mail)