



BOARD OF PROFESSIONAL RESPONSIBILITY
of the
SUPREME COURT OF TENNESSEE

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December 30, 2014

CONFIDENTIAL

Thomas Joseph
P.O. Box 2111
Brattleboro, VT 05303

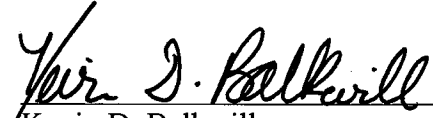
Re: File No. 37705-5-KB
Respondent: Matthew M. Curley, #18613

Dear Mr. Joseph:

Upon receipt of your complaint, we notified the attorney and asked for a response to the allegations. A copy of the attorney's response dated December 22, 2014, is enclosed.

Your written reply to the statements contained in the attorney's response within ten (10) days of your receipt of this letter would be helpful and appreciated.

Sincerely,


Kevin D. Balkwill
Disciplinary Counsel
(615) 695-0943

KDB/te

Enclosure

WALKER, TIPPS & MALONE PLC

ATTORNEYS AT LAW

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RECEIVED

December 22, 2014

DEC 23 2014

VIA FIRST CLASS MAIL AND EMAIL

BOARD OF PROFESSIONAL
RESPONSIBILITY

Kevin Balkwill, Esq.
Board of Professional Responsibility of the Supreme Court of Tennessee
10 Cadillac Drive, Suite 220
Brentwood, TN 37027

Re: *Complaint Against Matthew Curley / BPR File No. 37705-5-KB*

Dear Mr. Balkwill:

As you are aware, I represent Matthew Curley in connection with the complaint filed by Thomas Joseph with the Board of Professional Responsibility of the Supreme Court of Tennessee ("BPR"). Needless to say, Mr. Curley is troubled to be confronted with a complaint to the BPR calling into question his integrity, ethics, and professionalism, and he takes this matter very seriously. At the same time, Mr. Joseph's complaint is exasperating because it is utterly baseless.

I am confident that the information set forth below will demonstrate that Mr. Curley (along with all counsel of record for The Brattleboro Retreat (the "Retreat")) followed the strict letter and spirit of the Tennessee Rules of Professional Conduct ("RPC") and all other applicable ethical and court rules in the case of *United States of America ex rel. Thomas Joseph v. The Brattleboro Retreat*, United States District Court for the District of Vermont, Case No. 2:13-cv-55 (the "Qui Tam Action"). As such, Mr. Joseph's complaint should be summarily dismissed, as the reputation and record of an outstanding and honorable lawyer in this State should not be sullied by baseless and false allegations by an individual who is simply unhappy with a ruling of law issued by a United States District Court.

FACTUAL BACKGROUND

The procedural history for the Qui Tam Action is documented in the Court files, which are available on Pacer. To the extent you would like us to provide you with any specific

pleading or order, we would be happy to do so. A brief summary of the case, however, is set forth below.

On April 12, 2013, pursuant to the federal False Claims Act, Mr. Joseph filed under seal his Complaint, alleging in general terms that the Retreat violated the False Claims Act as a result of certain accounting entries that Mr. Joseph alleged concealed certain overpayments received by the Retreat from federal and state payers. On August 20, 2013, the United States Attorney General declined to intervene in the Qui Tam Action, and Mr. Joseph's Complaint was unsealed.

Mr. Curley served as attorney for Retreat, along with co-counsel from the law firm of Down, Rachlin & Martin, PLLC in Brattleboro, Vermont, in the Qui Tam Action. At all times relevant to the Action, Mr. Joseph was represented by his own counsel in the Qui Tam Action.¹

On March 11, 2014, the Retreat filed a Motion to Dismiss Mr. Joseph's Complaint and an accompanying Memorandum of Law in support of its Motion to Dismiss. In general terms, the Motion sought dismissal of Mr. Joseph's Complaint on the grounds that certain of the alleged misconduct was barred by the False Claims Act's statute of limitations and that the Complaint otherwise failed to satisfy the heightened pleadings requirements of Rule 9(b) of the Federal Rules of Civil Procedure. On April 10, 2014, on behalf of Mr. Joseph, Mr. Joseph's counsel filed an opposition to the Retreat's Motion to Dismiss. And, on April 24, 2014, the Retreat filed its reply memorandum in support of its Motion to Dismiss.

On August 10, 2014, the District Court granted the Retreat's Motion to Dismiss, concluding that certain of Mr. Joseph's claims were barred under the False Claims Act's statute of limitations and all of his claims failed to satisfy Rule 9(b). *See U.S. ex rel. Joseph v. Brattleboro Retreat*, 2014 U.S. Dist. LEXIS 110154 (D. Vt. Aug. 10, 2014) (copy attached as Exhibit A). The District Court's opinion allowed Mr. Joseph a period of 30 days to file an amended complaint, which time was eventually extended to a full 60 days. Mr. Joseph chose not to file an amended complaint and the district court entered its judgment of dismissal on November 17, 2014. Mr. Joseph did not file a notice of appeal with respect to the entry of judgment.

RESPONSE TO MR. JOSEPH'S COMPLAINT

The basis of Mr. Joseph's complaint to the Board is his allegation that Mr. Curley "filed misleading legal documents" on behalf of the Retreat in connection with the Retreat's Motion to

¹ At one point in the Qui Tam Action, Mr. Joseph switched counsel. On January 9, 2014, Mr. Joseph filed a notice of an intent to proceed *pro se* after his original counsel withdrew from representation. On January 10, 2014, however, Mr. Joseph's retained new counsel, as Mr. Richard Cassidy of the law firm of Hoss Curtis located in Burlington, Vermont, entered an appearance in the Qui Tam Action on behalf of Mr. Joseph. On February 28, 2014, additional counsel, Mr. Timothy Cornell of the law firm of Gardner Cornell, P.C., located in Boston, Massachusetts, filed a motion for leave to appear *pro hac vice* on behalf of Mr. Joseph, which the Court granted on March 14, 2014.

Dismiss. Mr. Joseph alleges that the Retreat's Motion (a) failed to alert the District Court to the Wartime Suspension of Limitations Act ("WSLA") as a grounds to toll the applicable statute of limitations; and (b) "misrepresented the facts as articulated in the Complaint."

As regarding the Retreat's argument that Mr. Joseph's allegations were time barred, Mr. Curley and his co-counsel had no obligation under the RPC – Rule 3.3 or otherwise – to raise legal arguments on behalf of Mr. Joseph to toll the statute of limitations on the basis of the WSLA. There is no adverse controlling case law from either the Second Circuit Court of Appeals or the United States District Court for the District of Vermont that the WSLA tolls the statute of limitations for Mr. Joseph's Qui Tam Action. Thus, Mr. Curley did not violate RPC 3.3(a)(2) by failing to disclose legal analysis relating to the WSLA. While federal courts in other circuits have reached differing conclusions regarding whether the WSLA, a provision in the federal criminal code, can be utilized by a *qui tam* relator to toll the limitations period for a civil complaint filed under the False Claims Act,² the RPC make clear that lawyers have no obligation to provide a "disinterested exposition of the law" in their representation of clients. Tenn. Sup. Ct. R. 8, RPC 3.3, cmt. 4. In response to the Retreat's Motion to Dismiss, Mr. Joseph and his counsel made the decision to focus on purported grounds other than the WSLA in their attempt to toll the applicable statute of limitations. Had Mr. Joseph and his counsel made the strategic decision to raise the WSLA as a grounds to avoid dismissal of Mr. Joseph's claims despite no controlling law for such an argument, Mr. Curley and co-counsel would have vehemently opposed the argument based on a good-faith application of persuasive case law to the contrary.

As regarding the Retreat's argument that Mr. Joseph's allegations otherwise failed to satisfy the heightened pleading requirements of Rule 9(b), the Retreat cited well-developed case law in arguing that Mr. Joseph's allegations failed to state a claim as a matter of law. As the Board is well aware, the legal standards applicable to this analysis involved a review of the facts as set forth in Mr. Joseph's own complaint, with the assumption for purposes of the Motion to Dismiss that such facts are true. As such, Mr. Curley and his co-counsel did not make – and could not have even made – any "false statement of fact" in violation of RPC 3.3(a)(1) on behalf of the Retreat in connection with the Motion to Dismiss.

CONCLUSION

In short, Mr. Joseph's complaint to the BPR is nothing more than a baseless attempt to inflict personal harm on a lawyer for the Retreat because Mr. Joseph disagrees with the ruling of the United States District Court for the District of Vermont. Mr. Curley did not commit any violation of the RPC, specifically, or any other laws or rules, generally. Accordingly, I

² To the extent the Board would like a fuller exposition of the status of case law in other jurisdictions on this issue, Mr. Curley would be happy to provide that upon request.

Kevin Balkwill, Esq.
December 22, 2014
Page 4

respectfully request on behalf of Mr. Curley that Mr. Joseph's complaint be summarily dismissed by the BPR.

Although not directly relevant to the Board's inquiry, it is also necessary to highlight that Mr. Joseph sent a copy of his BPR complaint to the United States District Court for the District of Vermont on November 14, 2014. (See Exhibit B). Despite this filing by Mr. Joseph, the Court entered its Order dismissing the case with prejudice on November 17, 2014. Further, Mr. Joseph's complaint to the BPR is only one prong of Mr. Joseph's unwarranted (and likely unlawful) attacks against Mr. Curley. Mr. Joseph maintains a website, www.brattlebororetreat.info, in which Mr. Joseph is attempting to use this BPR process to inflict reputational damage on Mr. Curley. (See Exhibit C). As such, I urge the BPR to act quickly and decisively in dismissing this baseless complaint by Mr. Joseph.

If you need any further information or would like to speak with Mr. Curley directly, please do not hesitate to contact me. Mr. Curley takes his ethical obligations very seriously and would welcome the opportunity to answer any questions you may have. Thank you in advance for your attention to this matter.

Very truly yours,



Charles I. Malone

CIM/klm
Enclosures

cc: Matthew Curley

THOMAS JOSEPH
P.O. BOX 2111
BRATTLEBORO, VERMONT 05303

November 14, 2014

Board of Professional Responsibility
10 Cadillac Drive, Suite 220
Brentwood, TN 37027

RECEIVED
BRATTLEBORO, VT

NOV 14 2014

RE: Attorney Matthew M. Curley
Bass Berry & Sims PLC
150 Third Avenue South
Suite 2800
Nashville, TN 37201

CLERK'S OFFICE
U.S. DISTRICT COURT

Counsel for Defendant, The Brattleboro Retreat in the matter of
United States ex. rel. Thomas Joseph v. The Brattleboro Retreat
United States District Court, District of Vermont, Case No: 2:13-cv-55wks

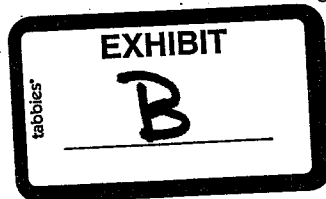
To Whom It May Concern:

I am enclosing a complete and signed Memorandum of Complaint to the Board of Professional Responsibility of The Supreme Court of Tennessee. I respectfully ask that a review be undertaken of the legal documents Mr. Matthew M. Curley has submitted as defense counsel for Defendant, The Brattleboro Retreat, as I believe they evidence purposeful deception and omission before a federal Court on behalf of his client, The Brattleboro Retreat.

NATURE OF COMPLAINT

As a former federal prosecutor, Mr. Curley is very much aware of the laws applicable to wartime. Indeed, in Mr. Curley's own year-end 2013 Healthcare and Fraud Review available on the Bass Berry & Sims website, he concedes having this knowledge by discussing the Wartime Suspension of Limitations Act (WSLA) which provides for the tolling of any statute of limitations during wartime for any fraud-related litigation involving any federal agency. Further, Mr. Curley and his firm admit that the WSLA may very well be heard before the United States Supreme Court in the future.

Despite having a clear understanding of the law during wartime, Mr. Curley filed misleading legal documents on behalf of his client, the Defendant, The Brattleboro Retreat, intended to deceive the Court of information within his personal knowledge and reach that pertain to fraud litigation and specifically, the statute of limitations during wartime. As a result of Mr. Curley's



purposeful efforts to argue for a shorter statute of limitations, despite his personal knowledge of the WSLA, the Court dismissed many patient examples as time barred when these patient examples provided the Court with a level of particularity that details a devious scheme to defraud the federal government that spanned no less than ten years. This was no oversight or human error, but a deliberate effort to circumvent justice, confuse the Court, and carve out an escape from liability for his client, The Brattleboro Retreat for its years of misconduct described in the Complaint.

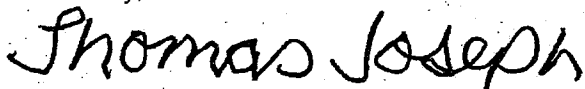
Additionally, in his pleadings before the Court, Mr. Curley deliberately misrepresented the facts as articulated in the Complaint to mislead the Court and ultimately a federal judge, the Honorable William K. Sessions, III. My attorneys highlighted this in our Opposition to the Brattleboro Retreat's Motion to Dismiss stating, "To paint the Complaint as overly vague, the Retreat's Motion flourishes discrete paragraphs in isolation, but does not provide the Court with the full context of these paragraphs."

Finally, it seems fitting that a high profile and historic psychiatric hospital here in Vermont would hire attorneys to continue their own deception before a federal court to avoid being held accountable under the law. I view Mr. Curley's conduct as well as his omissions before the Court to be very serious and would ask that all disciplinary measures including disbarment be considered.

Please feel welcome to contact me should you have any questions.

Thank you for your time and consideration.

Sincerely,



Thomas Joseph

cc: ✓ The Honorable William K. Sessions, III
United States District Court
District of Vermont
Hand Delivered to US District Court, Brattleboro, Vermont

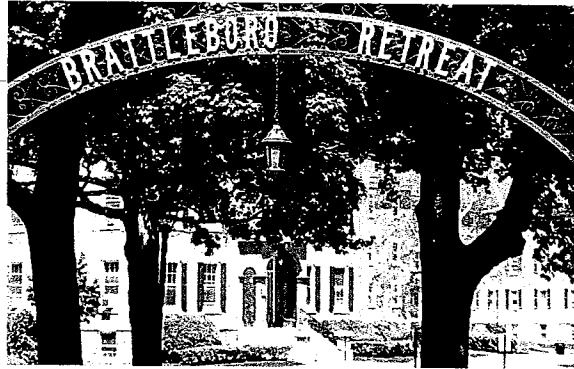
Mr. Nikolas "Kolo" Kerest
Assistant United States Attorney
United States Department of Justice
Burlington, Vermont
Sent via e-mail

The Brattleboro Retreat Escapes Justice - For Now in Brattleboro, Vermont

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BREAKING NEWS: The Board of Professional Responsibility of The Supreme Court of Tennessee has opened a formal investigative file regarding allegations of ethical misconduct by Attorney Matthew M. Curley of Bass, Berry & Sims of Nashville, TN in his defense of The Brattleboro Retreat.

Board of Professional Responsibility Opens Investigative File on Nashville Attorney Matthew M. Curley of Bass, Berry & Sims



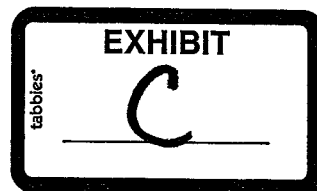
[Click to View the Memorandum of Complaint to the Board of Professional Responsibility of The Supreme Court of Tennessee](#)

"The Brattleboro Retreat seeks to paint itself as a victim. In the Retreat's version, the Retreat is a partner of the U.S. and state governments, a benevolent provider of mental health counseling and treatment for drug and alcohol addiction. **The facts, however - specific, explicit and damning - tell a very different story.** In return, the Retreat exploited that arrangement by double and triple billing and pocketed millions more by pulling an accounting sleight of hand to move payments owed to the government off its books."

~~Excerpts from the Opposition to The Brattleboro Retreat's Motion to Dismiss filed by relator Thomas Joseph by his Attorneys, Mr. Rich Cassidy of Hoff Curtis located in Burlington, Vermont and Mr. Timothy Cornell of GardnerCornell LLC located in Boston, Massachusetts.

8+1 0 [Tweet](#)

United States ex. rel. Joseph v. The Brattleboro Retreat
US District Court, District of Vermont



The Brattleboro Retreat Escapes Justice - For Now

About Relator Thomas Joseph:

Thomas Joseph was hired by The Brattleboro Retreat on January 3, 2011 as the Self Pay Collections Representative. The Retreat placed Mr. Joseph on paid Administrative Leave on October 18, 2013 and terminated his employment on November 20, 2013, just weeks after the unsealing of the federal complaint in U.S. District Court in Burlington, Vermont.

