

## Count II: Filing a False Tax Return

Schwartz believed that his personal 2007, 1040 Income Tax Return was correct, on advice of his CPA. Upon the government's claim that Schwartz filed a "False Tax Return," it was important for Schwartz to present other critical documents that Schwartz had provided to Fleisher. Fleisher said he would represent Schwartz in all IRS matters. Fleisher had signed the IRS Form 2848, Power of Attorney and Declaration of Representative (**EXHIBIT E**). Fleisher was duty bound to use the IRS Power of Attorney and present the critical information and litigate any IRS claimed loss. If he was not to represent Schwartz in any IRS matter, he was responsible to inform him.

Fleisher had misrepresented to Schwartz that he was capable of representing him in all IRS matters. Schwartz had provided Fleisher with his accounting worksheets supporting his computation of federal tax on his personal 1040 return for 2007. Schwartz paid what he calculated to be the proper tax to IRS. Fleisher was professionally required to request a hearing in order to present that important information to the government and the Court. Even if the tax determination was wrong, the information would prove that there was never any intent to file a "false return."

Fleisher did not present any of the documents or make any defenses in regard to Count Two. The Federal Rule is that the IRS must show "income." The taxpayer must show "deductions." The only information presented to the Court was the government's claim of "income."

Fleisher failed to present Schwartz's documents to show that there were expenses and deductions for running a law office, including the cost of 5 full time employees, overhead, and other office and case expenses.

Fleisher, without communicating his actions or intent to Schwartz, merely accepted the government's position showing "income only" without any objection or claim of deductions. Fleisher did not communicate with Schwartz to let him know that Fleisher had made no contact with IRS. Without that critical information to IRS or any communication with his client, Fleisher permitted the Court to consider income only but without deductions for expenses. Fleisher permitted the IRS Count 2, "Filing a False Tax Return", to go unopposed. Fleisher also did not follow through with his promised representation to arrange a Post-Plea Hearing to correct the IRS false claims.

Without the list of the deductions, the government claimed an uncontested loss of \$935,217.12 to the IRS. The government never claimed tax evasion. It only claimed False Tax Return. The government would have expected Fleisher to contest the claimed amount. Fleisher did not contest the amount, did not request a hearing, and did not inform his client of his failure to do so.

Contrary to the Rules of Professional Conduct, Fleisher, without his client's consent, intentionally failed to present Schwartz's documents, failed record any objection, failed to request a hearing on the claimed IRS loss and failed to inform his client of his intent not to do those responsibilities.

After the sentencing, Schwartz, *pro se*, took the IRS to Tax Court for the same year and on the same return. It was a Civil claim for the same year. It is shown on the Notice of Deficiency from the Civil Tax Court, **EXHIBIT F**, that claim is only \$297,391.00, plus a penalty. The unopposed criminal claim was for \$935,217.12. The civil claim was \$637,826.12 less than the criminal claim for the same tax return. Due to Fleisher's lack of diligence, Schwartz was ordered to pay the higher amount plus a penalty, to the IRS. This order remains in effect. Schwartz is still ordered to pay the higher amount ordered by the criminal Court.

Sentence was based on the higher false amount that Fleisher did not contest. Schwartz was sentenced to prison and was ordered to pay the higher uncorrected amount of loss that was claimed by the government for IRS. The duplicate orders still stand.

Again, this Grievance report is not intended to consider the merits of the case or review any claim of malpractice. This is a report of Grievance for Fleisher's violation of these and other Rules:

**Rule 1.3: DILIGENCE, failing to act with reasonable diligence and promptness in representing a client.**

**Rule 3.3 - FALSE STATEMENT a lawyer shall not knowingly make or fail to correct a false statement of fact to a tribunal.**

**Rule 1.4: COMMUNICATION: A lawyer shall ... promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these rules...**