

**Probate Court - Failure to Oppose Magistrate's Decision
of Disgorgement and Secret Withdrawal of Objections**

The newly appointed fiduciaries to the Estate and Trusts filed a Probate Court Motion to Disgorge all fees earned by Schwartz who had been doing Probate approved work for the Estate and Trusts for five years. The Motion sought a Probate order for Schwartz to refund to the Estate all of his formerly approved earned fees that Schwartz was fairly permitted to charge over five years.

Initially, Fleisher did file an Objection to the Motion to Disgorge Fees, but as the Probate Hearing date approached, without consulting with Schwartz and without Schwartz's knowledge, for his own personal convenience, Fleisher chose not to attend the hearing. Instead, he surreptitiously withdrew his Objections. As a result, Schwartz's position to the Court was never presented and Fleisher, without objection, left Schwartz responsible to refund all of the formerly approved \$331,386.07 he had fairly earned over five years. The Motion was defensible, but, last minute, probably because Fleisher chose not to do the work and not to travel to Cincinnati from his office in Dayton, Fleisher secretly withdrew the Objections, without Schwartz's notice or consent. **EXHIBIT K)**

The legitimate defenses to the Disgorgement included the following:

- 1) Schwartz had concentrated his law practice in those three years on the trust and Estate,
- 2) he had done a great deal of charity for the trust,
- 3) some of the work was for the Estate and not subject to disgorgement for activities regarding the trust, and Schwartz' personal contribution,
- 4) Schwartz's actions were transparent and at the direction of another hired law office, and
- 6) some of the work was reimbursement for money paid to others for services hired by Schwartz.
- 7) The law office that Schwartz paid from the trust as an expense for legal guidance should also have been joined and ordered to return its fees.

This was another violation of a lack of diligence **RULE 1.3: DILIGENCE, A lawyer shall act with reasonable diligence and promptness in representing a client.**

It was also an extremely outrageous act of betrayal, and serious lack of communication in violation of the rules with devastating results. **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.**

Fleisher withdrew this motion guided by his own convenience, obviously hoping that Schwartz would never know. The drastic consequences of these rule violations, including the seizure of Schwartz's personal property and assets, are discussed below, which includes additional violations.

Fleisher's Violations Resulting Personal Property Seizure

The above Rule violations have to do with Fleisher's secret withdrawal of any objection to the above Motion for Fee Disgorgement. It resulted in a Certificate of Judgment against Schwartz (**EXHIBIT L**) and the seizure of Schwartz's personal assets and garnishment of Schwartz's accounts. This act was a similar betrayal to Fleisher encouraging the Federal Judge to issue Schwartz's prompt sentence without objections.

After sentence was passed and while Schwartz was preparing to self-surrender, he was under the "custody" of the Bureau of Prisons. Schwartz then had a surprise early morning knock at his door. The new Trustee, Richard Nelson, and his attorney, brought two Cincinnati Policemen, a locksmith, two moving vans, a sheriff from the Hamilton County Court, and an auction house representative. They came to seize all of Schwartz's furniture, household goods, collectibles, automobiles, art work, electronics, a collection of antique slot machines, a coin collection, his family heirlooms, his magic library, autographed gifts from famous friends, like Penn & Teller, and Andy Warhol, and even took Schwartz's personally created art work.

This seizure by the new Trustee Nelson was to satisfy the Certificate of Judgment from Fleisher's permitted Disgorgement. This seizure had been approved *ex parte* by the Trustee and the Judge in the Hamilton County Court of Common Pleas.

Fleisher failed to monitor the available Hamilton County On-Line case information, thereby permitting a surprise attack on Schwartz. If Fleisher had monitored the case and communicated with Schwartz, preparations and measures would have prevented the seizure of assets.

Fleisher had represented to Schwartz that he was an expert on Probate and civil matters. Schwartz called Fleisher during the seizure and Fleisher was at a loss. He dismissed the call with a "don't bother me" attitude, and without advice or any effort to intervene.

Fleisher chose not to intervene. He would not contact the Court. He would not file a Motion for a hearing to object to the seizure without notice. He would not contact any expert counsel. He would not communicate any further with Schwartz on the matter. Fleisher failed to provide his needed representation that was his duty to address.

Fleisher probably knew that because he withdrew all Objections to the Disgorgement, he had conceded to a right of seizure.

However, many items that had been seized were sold contrary to the law of exemptions. Upon Schwartz's release, three years later, by Schwartz's *pro se* action, the same Court ordered that all unsold items be returned. Still, the art work, furnishings, family memorabilia and other valuable items that had been sold were gone.

Fleisher was incompetent and failed in his duty to communicate and diligently fulfill his professional duties that he was employed to provide.