

Fleisher's Ethical Violations in Regard to The Plea Counts

Count I: Mail Fraud

Count I was based on a single letter from Schwartz to Hadassah's counsel, September 1, 2005, stating it would be paid a bequest, but that the actual amount was not yet known (**Exhibit A**). The later two incriminating, deceitful letters were actually written by Fleisher. The Government claimed the letters failed to state an amount certain and that there was a loss of \$2,492,469.00 to Hadassah. It was an unsubstantiated, premature and improper claim. The Hadassah claim has been fully paid and settled from money from that very Trust Schwartz was formerly managing. Schwartz was never charged with stealing Trust funds, but was charged and sentenced for losses by Mail Fraud. **Exhibit B** is the government's letter finally stating that Hadassah had no loss and was paid in full from the Trust.

Schwartz's single "mail fraud" letter to Hadassah (**Exhibit A**) made no misrepresentations. The letter said Hadassah was a beneficiary, but that Schwartz did not yet know how much. Schwartz and others listed in the letter were always available to answer any questions but received no call. All Estate information was also in the public record of the Hamilton County Court of Common Pleas, Probate Division database.

Hadassah had been promptly notified of their involvement and could have viewed the proceedings on the Probate website or contacted any of those listed on the letter. Fleisher never expressed these points.

Fleisher's last two letters were claimed by the agents to be the deceptive ones and the major scheme of non-disclosure. Fleisher authored these second two letters for Schwartz's signature. Fleisher's two letters deceptively avoided Hadassah's question as to what the Trust said as to their entitlement. The first single letter did not constitute a scheme. It takes more than one letter to show a scheme. At first, the agents displayed all three letters written to Hadassah. Agents claimed that the three letters, together, constituted a "scheme" of Mail Fraud. Schwartz wrote only that first single letter, **EXHIBIT A**, promptly informing Hadassah of their bequest, although the amount was not yet known.

When the agents learned that it was Fleisher, and not Schwartz, who wrote those other two letters, the agents promised Fleisher to focus only on the first benign letter that Schwartz originally wrote.

The government agents broke their promise at the Plea Hearing and stated that all three letters constituted the fraudulent "scheme." Fleisher never objected to the agents' claims that broke their promise and permitted them to state that all three letters constituted Schwartz's scheme of deception. Fleisher never stated the need to await a computation from Probate Court.

Fleisher promised Schwartz that he would later step forward and admit to the Court that he wrote the two bad letters, but he never did. If he was not to admit his involvement, he was ethically required to withdraw as counsel, due to this professional conflict of interest that it was his own acts that were being called a scheme. He chose not to incriminate himself by stating the truth or withdrawing to be a needed witness in order to counter the government's claim of a Mail Fraud scheme. Instead, Fleisher permitted Schwartz to be totally blamed and fully sentenced.

This was only one of Fleisher's major Conflicts of Interest and betrayals in violation of **Rule 1.7: CONFLICT OF INTEREST. Fleisher's was unable to carry out an appropriate course of action for a client. Fleisher was materially limited by the his own personal interests.**

At the Federal Plea Hearing, June 12, 2009, the record shows that Schwartz personally asked the Judge for a time-out twice during the Hearing. Each time the Court stopped the proceedings. Each time-out, Schwartz specifically asked Fleisher if he was sure that he was going to correct those wrong details, particularly related to a government's unsubstantiated claims of loss by a scheme of mail fraud. Each time-out, when Schwartz asked Fleisher if it was proper to make a false admission, Fleisher said, "Absolutely!" So, Schwartz continued to agree to the false statements by the government.

Fleisher confirmed to Schwartz of his ability and intent to correct those facts each time Schwartz asked. The time-outs are in the record. It will later be shown that his use of the word "Absolutely!" was also used as Fleisher's constant and false expression to the Court.

The Judge asked Fleisher if he read the Plea Statement and if he knew the facts were correct. Fleisher misrepresented that he did. Fleisher knew that the facts were not correct and did not reserve his need for a hearing.

The Judge then asked Schwartz if he wanted to add anything. Since Schwartz had been assured by Fleisher that he could do what he promised in a Pre-Sentence hearing, Schwartz responded on the record, "Not at this time." Schwartz with misplaced trust and on Fleisher's direction, continued to uncomfortably accept the Plea Bargain statement up to the time of sentence.

The admissions of Schwartz, and his guilt or innocence, are not the issue. The unethical misconduct of Fleisher is the focus of this set of facts.

Fleisher procrastinated for a full year after the Plea Hearing, even to the day of sentence. He fatally failed to request the needed litigation that would determine, as the Plea Agreement said, "provable loss." Fleisher was supposed to require the government to "prove" any loss by a hearing before Sentence.

Sentence was a full year after the Plea Hearing, June 8, 2010. Sentencing took place without the benefit of the prior referenced evidentiary hearing, leaving only the wrong and unsubstantiated unchallenged allegations of the government to determine Schwartz's sentence.

It was 11 years after the Estate began that an Agreed Settlement was finally approved by Probate Court. A primary reason for the delay was that Hadassah was attempting to claim and receive more money than the Trust language stated. Hadassah was finally fully paid the unsubstantiated amount of money from the Estate.

There had been a surplus of assets in the Estate. Substantiating the more than adequate funds in the Estate is **EXHIBITS C**, which includes (1) Assets Remaining the Estate (\$4,597,170.77) and (2) Newly Discovered Assets (\$3,537,679.13). These are the Probate Court Filings by the subsequent Trustee, Richard Nelson, whose filings could have been seen by Fleisher and reported to the Federal Court. The total amount held by the new trustees was \$8,134,849.90.

EXHIBITS D are the Dismissals, Proof of Final Payments and Satisfaction Documents of three civil claims. Schwartz was sentenced on false information falsely ratified by Fleisher as correct. This information was not available to Schwartz, who was incarcerated. Had Fleisher diligently done the math, discovered and disclosed that there were such lucrative funds available in the Trust yet to be paid to Hadassah and others, there would have been no reason for the government to allege that there had been any loss. Fleisher had Schwartz sentenced for Mail Fraud when there was to be no loss to Hadassah.

Fleisher committed unethical violations of *The Rules of Professional Conduct*, **Rule 3.3 - FALSE STATEMENT: a lawyer shall not knowingly make or fail to correct a false statement of fact to a tribunal. Rule 1.3: DILIGENCE, failing to act with reasonable diligence and promptness in representing a client. 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...**