

6/28/17

Richard Hernandez, Disciplinary Counsel  
The Disciplinary Board of the Supreme Court of Pennsylvania  
District 1 Office  
1601 Market Street  
Suite 3320  
Philadelphia, PA 19103-2337

**RE: Complaint Against Craig R. Tractenberg, Esquire File No. C1-17-514**

Dear Mr. Hernandez:

Thank you and The Board for your diligent investigation of my complaint against attorney Craig Tractenberg. Submitting a complaint that could affect someone's career, reputation and professional standing is not something I take lightly. However, I think that it is in the public interest for us to stand up to illegal and unethical bullying of this sort, not only for the sake of future victims but also to preserve the reputation of attorneys as officers of the court and stewards of the law, not as hired "muscle" who are free to use any tactic to fulfill their clients' wishes.

I would like to submit two additional pieces of information that have come to light since I submitted my initial complaint against Mr. Tractenberg on 6/13/17.

Prior to submitting my complaint to the Board, I had reached out to a number of parties for clarification regarding Mr. Tractenberg's threats (and asked upon whose authority and direction he was making them). I contacted Mr. Tractenberg, his client Dzana Homan, CEO of School of Rock, and Rick Elfman, Managing Director of private equity parent Sterling Partners. I received no reply or acknowledgement.

On Friday, June 15, 2017, I sent an email to Sterling Partners General Counsel Avi Epstein. Mr. Epstein replied that evening with this message:

**Mr. Kelly,**

**Sterling Partners is an investor in School of Rock and, as a matter of practice and consistent with the activities normally associated with investors, does not generally engage directly in operational matters with those outside the company. Nevertheless, I can confirm that neither**

**School of Rock nor Sterling Partners was aware of, or authorized, Mr. Tractenberg to contact you.**

So, according to Mr. Epstein, Craig Tractenberg (who has represented School of Rock at least since 2009) acted on his own and made the threatening call to me without his clients' knowledge or consent. Either Mr. Tractenberg took it upon himself to threaten to ruin my reputation with false reports and hit me with a SLAPP lawsuit (as there is no anti-SLAPP legislation in PA – yet – as Tractenberg gleefully pointed out) OR his threatening call was so egregious that his client seeks to distance themselves from it.

I have included the full text of my correspondence with Mr. Epstein in Attachment #1 and both Mr. Epstein's and Ms. Homan's contact information in Attachment #3.

As to the second piece of information, a respected franchisee attorney, Mr. Harry Rifkin, posted a comment to my site.

Mr. Rifkin states that he has faced Craig Tractenberg as opposing counsel in multiple arbitration proceedings. Attorney Rifkin states that he was appalled by Craig Tractenberg's unprofessional attitude and behavior. Mr. Rifkin provides an example in which he alleges that Tractenberg aggressively used intimidation tactics to keep a 3<sup>rd</sup> party witness from providing true testimony. Tractenberg allegedly went so far as to file a baseless and vaguely worded lawsuit against the potential witness. After the witness declined to testify and Tractenberg prevailed, the suit against the witness was dropped.

Mr. Rifkin is known as a respectable and principled franchise attorney. For him to speak out against another attorney indicates that he believes Craig Tractenberg routinely flouts the Rules of Professional Conduct as a way of achieving his desired results.

I have attached the full text of Mr. Rifkin's comment and his contact information in Attachments #2 and #3.

For the record, I do not have any current or prior relationship with Mr. Rifkin. I swear that my statements are true and will swear to them in a court of law.

Thank you,

Sean Kelly

Publisher, UnhappyFranchisee.Com

President, Relentless, Inc.

717-371-1911

***Attachments: #1 Email Exchange between Sean Kelly & Avi Epstein***

*Attachment #2 Comment posted by Attorney Rifkin*

*Attachment #3: Contact Information for Referenced Individuals*

**Attachment #1 Email Exchange between Sean Kelly & Avi Epstein**

From: Ima Franchisee [unhappyfranchisee@gmail.com](mailto:unhappyfranchisee@gmail.com) [Sean Kelly]

to: aepstein@sterlingpartners.com

date: Fri, Jun 16, 2017 at 2:56 PM

subject: Ethics complaint against Sterling Partners/SoR attorney Tractenberg

Mr. Epstein:

My name is Sean Kelly and I'm a franchise industry expert and publisher of a franchise discussion site, UnhappyFranchisee.Com.

Nearly two weeks ago I received a call from attorney Craig Tractenberg who said he represented Sterling Partners' owned School of Rock. He threatened that if I did not remove complaints from my website posted by School of Rock franchise owners I'd have by reputation ruined by the posting of personal financial, bankruptcy and divorce records. As I've never been divorced and have no skeletons in my closet that haven't been made public, I assume Tractenberg and School of Rock are threatening to smear me with false records or those of another Sean Kelly.

He also threatened that School of Rock would crush me with a massive lawsuit.

I have reached out to Rick Elfman and others at Sterling Partners and received no response. I am certainly not likely to bow to such unethical and illegal tactics, but would like to know if you and Sterling Partners have sanctioned and directed this threat. Are you and Sterling Partners threatening this action through School of Rock and Craig Tractenberg?

I have made a formal complaint to the Disciplinary Committee of the Supreme Court of the State of Pennsylvania (letter attached). If you have not already read about this, you can get up to speed here:

Craig Tractenberg Complaint Submitted to Disciplinary Board of the Supreme Court of PA

<http://www.unhappyfranchisee.com/craig-tractenberg-complaint/>

School of Rock Attorney Craig Tractenberg Threatens Unhappy Franchisee Publisher

<http://www.unhappyfranchisee.com/attorney-craig-tractenberg/>

Mr. Epstein, I am in disbelief that a private equity firm would risk its name and reputation by condoning such a thuggish and illegal attack on a private citizen. I cannot find a possible upside for Sterling Partners to make such a mistake. But I also find it hard to believe that a managing partner would not have notified the company's General Counsel about what looks like it could be a very public and messy battle with someone who has 30 years in marketing, PR and media relations.

Please afford me the courtesy of a response (it will be the first response of many I've requested from SoR and Sterling execs) and let me know if the spectre of these threats are still hanging over me.

Thank you,

Sean Kelly

Publisher, UnhappyFranchisee.Com

President, Relentless, Inc.

717-371-1911

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from: Avi Epstein <AEpstein@sterlingpartners.com>

to: Ima Franchisee [unhappyfranchisee@gmail.com](mailto:unhappyfranchisee@gmail.com) [Sean Kelly]

date: Fri, Jun 16, 2017 at 10:53 PM

subject: RE: Ethics complaint against Sterling Partners/SoR attorney Tractenberg

mailed-by: sterlingpartners.com

signed-by: sterling365.onmicrosoft.com

Mr. Kelly,

Sterling Partners is an investor in School of Rock and, as a matter of practice and consistent with the activities normally associated with investors, does not generally engage directly in operational matters with those outside the company. Nevertheless, I can confirm that neither School of Rock nor Sterling Partners was aware of, or authorized, Mr. Tractenberg to contact you.

**Attachment #2 Comment posted by Attorney Rifkin**

Posted to UnhappyFranchisee 06/15/17 at 6:04 pm

URL: <http://www.unhappyfranchisee.com/craig-tractenberg-fox-rothschild/#comment-1555661>

**[Comment text start]**

None of this surprises me. I faced Craig Tractenberg in two arbitrations involving a franchisor who was ethically challenged. In the first case, a former contractor for the franchisor was identified by me in discovery as a potential witness for my client, the former franchisee. Mr. Tractenberg launched into an attack on the witness and threatened to sue him on behalf of his client for alleged violation of his confidentiality agreement, conversion of trade secrets and defamation arising out of events a few years earlier if the witness. He sent the following e-mail to the witness (names redacted):

“I am counsel to \*\*\*\*\*. The purpose of this email is to demand that you cease and desist communications with the business colleagues of \*\*\*\*\* as you have no legitimate purpose for such communications. This is also to advise you that you have defamed \*\*\*\*\* , which I will more formally advise you about in a later communication.

We have collected your emails sent to our clients’ business partners regarding the public records of \*\*\*\*\*.

Your commentary to some of these emails contain false information regarding \*\*\*\*\*. Other of the emails which purport to simply forward public information maliciously cast \*\*\*\*\* in a false light. Both are actionable as you are motivated to achieve an unlawful result from this targeted communication.

Our investigation shows that you maintain both a \*\*\*\*\* and \*\*\*\*\* address; accordingly, I will send the demand letter to both addresses. Please have your counsel contact me regarding a protocol for collecting the emails sent and prohibiting future communications, and the availability of your counsel for a hearing in federal court if we cannot agree to a proper protocol.”

I responded:

“Craig: I just got the e-mail chain below from Mr. \*\*\*\*\*. First, I am very concerned by the threats made by you to Mr. \*\*\*\*\* in the e-mails. You never identified the false statements that Mr. \*\*\*\*\* supposedly made. Therefore I will assume there were no defamatory statements. Otherwise, I do not see how you can prevent Mr. \*\*\*\*\* from discussing what he apparently discussed with other persons who contacted him and what he will testify to at trial.. Your e-mails were clearly meant to intimidate Mr. \*\*\*\*\* I trust that you will not seek to intimidate him from testifying truthfully at the arbitration. Second, it is apparent that you have a \*\*\*\*\* address for Mr. \*\*\* which is more than I have so please don’t play games with me. Send me his address, as should have been included in your interrogatory answers and I will verify that it is still current.

Frankly, I continue to be appalled at your repeated conduct. It is clear that you are doing what you can through threats and intimidation to keep people from talking about \*\*\*\*\*and \*\*\*\*\*how far they can go. Remember, litigation is not a game and it is certainly not a situation where all is fair and anything goes. ”

He [Craig Tractenberg] went ahead and sued this witness who was intimidated and ended up not testifying. The allegations included violation of the computer abuse and fraud act, breach of fiduciary duty, tortious interference with contract, conversion of confidential information, breach of contract and conversion, After my arbitration was over, the suit was dismissed. Mission accomplished.

As alluded to in this e-mail, there were other instances where I found Mr. Tractenberg’s conduct to be inappropriate but this suffices for now.

I do not wish ill against any lawyer. I understand the pressures he is under to produce for his clients and his firm and to prove his worth to them. However, we lawyers are supposed to be professionals and held to a higher standard than others by the Rules of Professional Conduct.

Harry Rifkin

Harry Rifkin

rifkinlaw.net

[hrifkin@rifkinlaw.net](mailto:hrifkin@rifkinlaw.net)

**[Comment text end]**

### **Attachment #3: Contact Information for Referenced Individuals**

**Dzana Homan, CEO of School of Rock**, was identified by Craig Tractenberg as his client. Removal of website complaints about Dzana Homan's bullying and vindictiveness (among other things) by School of Rock franchise owners was the Tractenberg's demand. The General Counsel of School of Rock's private equity owner (Sterling Partners) claims Tractenberg acted without Dzana Homan's approval, authorization or knowledge.

Dzana Homan, CEO

School of Rock

2101 E. El Segundo Blvd, #102 | El Segundo, CA 90245

p. 323.457.5723 | w. schoolofrock.com

Email: dhoman@schoolofrock.com>

Ms. Homan's Assistant is Nicole Somers. She can be reached at nsomers@schoolofrock.com or via phone 310-893-0877.

**Avi Epstein** is the General Counsel for Sterling Partners, private equity owner of School of Rock.

Avi Epstein, General Counsel

Sterling Partners

401 N Michigan Ave

Chicago, IL 60611

(312) 465-7000

Email: Email: AEpstein@sterlingpartners.com

**Harry Rifkin, Esq.** is an attorney who has witnessed several alleged acts of professional misconduct by Craig Tractenberg during the mediation process.

Harry Rifkin, Esq.

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(410) 779-9199

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