In re Leonard Samuel DeFranco
Attorney-Respondent

Commission No. 2022PR00040

Synopsis of Hearing Board Report and Recommendation
(May 2023)

The Administrator alleged that Respondent improperly withdrew from his client trust account and used for his own purposes $161,608.75 belonging to an elderly client who was under a limited guardianship and his brother. Respondent then obtained a $180,000 loan from another client to replace the funds he misused. Respondent asserted that he earned the $161,608.75, the $180,000 was a gift, and he did not have an attorney-client relationship with the individuals at issue. The Hearing Panel rejected Respondent's assertions and found that the Administrator proved the charges of failing to safeguard funds belonging to a client or third person that Respondent was holding in connection with a representation, engaging in dishonest conduct by knowingly using $161,608.75 that belonged to a client or third person for Respondent's own purposes without authorization, and entering into an improper business transaction with a client by obtaining the $180,000 loan without complying with required safeguards.

Based on the egregious misconduct and significant aggravation that included prior discipline, a lack of candor in his testimony, and financial harm to his client, the Hearing Panel recommended that Respondent be disbarred.

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

LEONARD SAMUEL DEFRANCO,

Attorney-Respondent,

No. 3122606.

Commission No. 2022PR00040

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

The Administrator charged Respondent with failing to safeguard funds belonging to a client or third person that Respondent was holding in connection with a representation, dishonestly using $161,608.75 that belonged to a client or third person without authorization, and entering into an improper business transaction with a client by obtaining a $180,000 loan without complying with required safeguards. The Hearing Panel found that the Administrator proved all of the charged miscondcut and recommended that Respondent be disbarred.

INTRODUCTION

The hearing in this matter was held remotely by video conference on December 12, 2022, before a Panel of the Hearing Board consisting of Carl E. Poli, Chair, Maureen Sullivan Taylor, and Charles A. Hempfling. Rachel C. Miller represented the Administrator. Respondent was present and was represented by James A. Doppke.

PLEADINGS AND ALLEGED MISCONDUCT

The Administrator charged Respondent in a two-count Complaint with failing to safeguard funds he received in connection with a representation belonging to a client or third person (Count

I); engaging in conduct involving dishonesty, fraud, deceit or misrepresentation by knowingly using $161,608.75 of those funds for his own purposes without authorization (Count I); and entering into an improper business transaction with a client by obtaining a $180,000 loan without providing required safeguards (Count II), in violation of Rules 1.8(a), 1.15(a) and 8.4(c) of the Illinois Rules of Professional Conduct (2010).

In his Answer, Respondent admitted some of the factual allegations but denied that there was an attorney-client relationship in either of the matters at issue, denied that the funds at issue in Count II were a loan, and denied all allegations of misconduct.

EVIDENCE

The Administrator presented testimony from three witnesses and Respondent as an adverse witness. The Administrator's Exhibits 1-14 were admitted. Respondent testified on his own behalf. Respondent's Exhibits 1-23 were admitted. (Tr. 10).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Administrator bears the burden of proving the charges of misconduct by clear and convincing evidence. In re Thomas, 2012 IL 113035, ¶ 56. Clear and convincing evidence constitutes a high level of certainty, which is greater than a preponderance of the evidence but less stringent than proof beyond a reasonable doubt. People v. Williams, 143 Ill. 2d 477 (1991). The Hearing Board assesses witness credibility, resolves conflicting testimony, makes factual findings and determines whether the Administrator met the burden of proof. In re Winthrop, 219 Ill. 2d 526, 542-43 (2006).

I. In Count I, Respondent is charged with failing to safeguard $161,608.75 in funds belonging to a client or third person that he was required to hold in his client trust account and dishonestly using those funds for his own purposes without authorization, in violation of Rules 1.15(a) and 8.4(c).

A. Summary

The Administrator established that Respondent engaged in misconduct by withdrawing $161,608.75 in client funds from his client trust account and knowingly and intentionally using those funds for personal or business purposes without authorization.

B. Evidence Considered

Respondent has been licensed in Illinois since 1978 and practices in the areas of tax-related transactions and estate planning. (Tr. 100). He also owned a business called Futter's Nut Butters. (Tr. 101).

During the time period at issue, Respondent had the following bank accounts at ABC Bank for both his law firm and Futter's Nut Butters: a client trust account for DeFranco Law Firm with an account number ending in 0452; an operating account for DeFranco Law Firm with an account number ending in 8334; and an account for Futter's Nut Butters with an account number ending in 8313. Respondent was the only signatory on the client trust account and the law firm operating account. (Tr. 101-103).

Count I involves Respondent's conduct in connection with the estate of Francis Ferrone (Fran), who was placed under a limited guardianship after becoming a victim of elder fraud. Fran's niece, Felicia Ferrone (Felicia), was appointed as his limited guardian. Fran and his brother, Donald, owned Chicago Sightseeing and O'Hare Wisconsin Limousine, Inc., which were motor coach businesses. Because Fran was no longer able to participate in running the businesses, Felicia and Donald decided to sell them. Felicia obtained court approval to do so on February 24, 2017.

(Tr. 34; Adm. Ex. 1). At that time, attorney Amy Delaney represented Felicia in her capacity as limited guardian. (Tr. 23).

Because Delaney did not have experience in commercial transactions, she wanted to find an attorney with that experience to assist with the sales. (Tr. 24; Adm. Ex. 1). She met Respondent at an elder law event, and he expressed interest in handling the sales of the Ferrones' businesses. Delaney then referred Respondent to Felicia. (Tr. 25-26).

Felicia testified that Delaney recommended hiring a separate attorney to handle the sale of the businesses. After meeting with Respondent, Felicia agreed to use his services. They did not enter into a written fee agreement, but Felicia recalled that Respondent charged an hourly rate of $325. (Tr. 34-35).

Delaney petitioned the court to appoint Respondent to represent Fran's estate for the purpose of selling the businesses, and the court approved Respondent's appointment. (Tr. 27). Respondent testified he was not given notice of the petition, but Delaney told him he was "onboard." (Tr. 140).

Felicia testified that Respondent drafted the sales contract, worked with the buyer's attorney on structuring the deal and completing the transaction, and moved the process "through the sale as well as through the guardianship." (Tr. 35). In his Answer, Respondent denied the allegation that he, Donald, and Felicia agreed that Respondent would represent Donald and Fran in the sale of the businesses. Respondent stated he was engaged to perform tax consulting services. (Ans. at par. 4). When Respondent was asked at hearing whether he represented the Ferrones in the sale of their businesses, he answered, "Yes." (Tr. 103). Felicia testified that the court ordered that the sales proceeds were to be held in Respondent's "escrow account." (Tr. 35). Sales proceeds of $250,000 and $634,227.88 were wired into Respondent's client trust account on June 20, 2017, and August 11, 2017, respectively. (Ans. at pars. 7, 9).

Delaney testified that Respondent was not allowed to take attorney fees without filing a fee petition with the court, because the court had jurisdiction over the sales transaction. (Tr. 27). On July 26, 2017, the court entered an order allowing Respondent to utilize the escrowed funds to pay "outstanding legal expenses due and owing to Leonard DeFranco in the amount of $25,593.75." (Ans. at par. 8; Tr. 104). Respondent testified he did not file the fee petition, and it was probably Delaney who filed it. On November 30, 2017, the Court entered an order stating that "all fees paid to Leonard DeFranco shall be first approved by the court and thereafter paid by Donald Ferrone and Francis Ferrone equally." (Ans. at par. 14). Respondent could not recall when he learned of this order, but he became aware of it "at some point in time." (Tr. 144).

Respondent did not withdraw the court-approved $25,593.75 in fees from his client trust account at one time. Instead, between July 26, 2017, and April 30, 2018, he made dozens of withdrawals from that account by checks payable to the DeFranco Law Firm, by wire transfer, and by making cash withdrawals. (Adm. Ex. 2). By September 19, 2017, when he withdrew $3,470 from his client trust account, he had taken funds exceeding $25,593.75. His total withdrawals exceeded the court-approved fees by $161,608.75. Respondent used the funds for a variety of personal and business purposes, including replenishing his overdrawn operating account, making payments on a business line of credit for his law firm, and transferring funds to his Futter's Nut Butters account. (Tr. 111-113).

At no time did Respondent petition the court for additional fees. Felicia never authorized Respondent to take fees that were not approved by the court, and it would not have been possible for her to do so given the court's control over the estate assets. She testified that "anything and everything" related to fees had to go through the court. (Tr. 36).

Respondent testified that he performed services for the Ferrones for eighteen months to two years, which included researching certain business relationships in order to facilitate the sale

of the businesses and giving tax advice. Respondent testified that he would "file an invoice" or take what he thought was fair compensation. He further testified that "[s]ometimes, not all the time, I discussed it with Don." According to Respondent, Donald told him, "Do what you got to do." (Tr. 143, 147). It was Respondent's understanding that he could take fees without leave of court. He testified that "the Court was not particularly interested as near as I could tell in what my fees were or what the invoices were. There were three other attorneys that, you know, looked over this. And, you know, if they had an objection, I would have reacted instantly." (Tr. 107).

On April 30, 2018, the court entered an order granting Felicia leave to liquidate Respondent's client trust account number 0452 and procure two checks from Respondent in the amounts of $181,333,43 payable to Felicia as Fran's limited guardian, and $298,779.21 payable to Donald. (Ans. at par. 22). Respondent admits that the total amount due to the Ferrones was $482,177.87. (Ans. at par. 18). The balance of Respondent's client trust account on April 30, 2018, was $320,569.12. (Ans. at par. 17; Tr. 117).

On May 1, 2018, Respondent issued a check from his client trust account to Felicia in the amount of $183,333.43. Felicia received the check in a timely manner and was satisfied with the work Respondent performed. (Tr. 36-37).

On May 3, 2018, Margaret Burke wired $180,000 into Respondent's client trust account. (Ans. at par. 25). The circumstances surrounding that wire transfer are set forth in more detail in the discussion of Count II, below. On May 4, 2018, Respondent issued a check from his client trust account to Donald in the amount of $298,779.21. (Tr. 118).

C. Analysis and Conclusions

Rule 1.15(a)

Rule 1.15(a) requires a lawyer to hold property of clients or third persons in connection with a representation separate from the lawyer's own property, in a client trust account. Ill. Rs.

Prof'l Conduct R. 1.15(a). Respondent is charged with violating Rule 1.15(a) by causing the balance of his client trust account to fall below the amounts owed to Fran and Donald, thereby converting $161,608.75 of their funds. We find the Administrator proved this charge by clear and convincing evidence.

As a threshold matter, we address whether Respondent was holding the Ferrone sales proceeds "in connection with a representation." Respondent's position on this issue is less than clear. In his Answer, he denied that he agreed to represent Donald and Fran in connection with the sale of their businesses. In his testimony, however, he answered "Yes" when asked whether he represented the Ferrones in the sale of their business. Regardless, the evidence clearly established that Respondent represented Fran's estate in the sales transaction and held sales proceeds belonging to both Fran's estate and Donald in connection with that representation.

An attorney-client relationship is appropriately found where the client reasonably believes there is an attorney-client relationship, the attorney performs functions supporting that belief, and the attorney does not act to disavow representation. In re Gallo, 07 CH 110, M.R. 25259 (May 18, 2012) (Hearing Bd. at 19). All of these elements were established in this case.

Felicia and attorney Delaney credibly testified that Respondent was hired to represent Fran's estate in the sales transaction. The evidence amply demonstrated that their belief was reasonable. They had a specific need for an attorney with transactional experience to handle the sale, and Respondent represented that he had such experience. Delaney recommended Respondent to Felicia as an attorney who could handle the sale. Felicia came away from her meeting with Respondent with the understanding that she and Respondent orally agreed to his representation. Delaney petitioned the court to appoint Respondent to represent the estate in the sale, and the court approved that petition. It is also clear that the court viewed Respondent as an attorney for the estate,

based on the language in its July 26, 2017, order allowing Respondent to take fees for "outstanding legal expenses due and owing."

The evidence further established that Respondent performed functions consistent with his representation of the estate. It is undisputed that he drafted the sales contract, negotiated the final terms, performed research to facilitate the assignment of certain contractual rights, and handled the closing. All of these activities were legal services that he provided in his role as attorney for Fran's estate. We reject Respondent's assertion that he was acting solely as a tax consultant. Even if he provided tax advice, he also provided legal services. In addition, there is no evidence that Respondent ever disavowed representation or clarified that he was acting in a role other than attorney. For these reasons, we find that an attorney-client relationship existed between Respondent and Fran's estate.

Given Respondent's role as the attorney handling the sales for the Ferrones, there is no question that he received the sales proceeds in connection with a representation. Accordingly, he was obligated to hold them in his client trust account, separate from his own property. It is undisputed that he withdrew $161,608.75 beyond the court-approved fees. We do not find credible Respondent's testimony that he was entitled to the additional funds for services he provided to the Ferrones. An attorney may not help himself to whatever funds may be within his reach. If an attorney claims fees from funds held on the client's behalf, he or she must provide the client with an accounting as to the attorney's services and a statement of fees owed. In re Kitsos, 127 Ill. 2d 1, 11 (1989); In re Lohman, 2016PR00061, M.R. 029273 (May 24, 2018) (Hearing Bd. at 14-15). In this case, Respondent was required to take the additional step of obtaining court approval for his fees. After July 26, 2017, he did not ask the court to approve additional fees, nor has he presented any invoices or statements detailing the funds he purportedly earned. Accordingly, we

find that Respondent's withdrawal of $161,608.75 from his client trust account was unauthorized and a violation of Rule 1.15(a).

Rule 8.4(c)

Rule 8.4(c) provides that it is misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Ill. Rs. Prof'l Conduct R. 8.4(c). Dishonesty includes any conduct, statement or omission that is calculated to deceive, including the suppression of truth and the suggestion of what is false. In re Gerard, 132 Ill. 2d 508, 528 (1989). There must be an act or circumstance that shows purposeful conduct or reckless indifference to the truth, rather than a mistake. In re Gauza, 08 CH 98, M.R. 26225 (Nov. 20, 2013) (Hearing Bd. at 42).

The Administrator presented ample, credible evidence establishing that Respondent deliberately and dishonestly misappropriated client funds. Respondent's contention that he earned the funds and simply was not careful in accounting for his compensation is not credible. Between September 19, 2017, when the amount of withdrawals exceeded the court-approved fees, and April 30, 2018, Respondent wrote forty-four checks from his client trust account to his law firm, withdrew cash on two occasions, and made two wire transfers to his law firm account. Some withdrawals occurred on consecutive days, and many were separated only by two to four days. The checks contained no notations indicating they were payments of fees. On at least one occasion, Respondent's operating account was overdrawn when he deposited funds from his client trust account. The timing and quantity of the withdrawals, coupled with the lack of documentation that they constituted fees, are not consistent with normal billing practices. Rather, they demonstrate that Respondent treated his clients' sales proceeds as his personal slush fund, withdrawing funds as he pleased without client or court approval.

Respondent has an accounting background and has been an attorney for 45 years with a practice in tax and estate law. Given his experience, we do not believe that he was simply lax in

his recordkeeping. Moreover, he provided no documentation whatsoever to support his claim that he earned the fees. It is also noteworthy that when the court ordered the distribution of sales proceeds to Felicia and Donald, Respondent did not advise the court that he had earned additional fees. Instead, he obtained funds from Margaret Burke to replenish the funds he had taken and distributed the full amount ordered by the court. We find this conduct inconsistent with Respondent's position that he legitimately earned the fees and indicative of a dishonest motive.

Respondent's blatantly false testimony that he believed he could take fees without court approval and that the court was not interested in the amount of his fees further convinces us of his dishonest motives. In our role as triers of fact, we need not accept testimony that is inherently incredible or improbable, nor are we required to be naïve or impractical in evaluating the evidence. In re Peek, 93 SH 357, M.R. 9461 (Dec. 29, 1995). It is inconceivable that Respondent or any other attorney would believe that a court had no interest in monitoring and protecting the assets of a ward under a guardianship. Respondent's testimony is even more improbable given his experience in estate law and the court's order specifically requiring him to obtain approval for all fees. We find that Respondent gave this false testimony as part of an ongoing effort to avoid the consequences of his misuse of funds.

For all of the foregoing reasons, we find the Administrator proved by clear and convincing evidence that Respondent engaged in dishonest conduct in violation of Rule 8.4(c).

II. In Count II, Respondent is charged with entering into a business transaction with a client without complying with required safeguards, in violation of Rule 1.8(a).

A. Summary

The Administrator proved by clear and convincing evidence that Respondent committed misconduct by obtaining a $180,000 loan from Margaret Burke while she was his client and without complying with required safeguards.

B. Evidence Considered

Margaret Burke is a sales executive with Fisher Printing and is an investor in the Sovereign Tap restaurant in Plainfield. Prior to and during the events at issue, Respondent and Burke were social friends who saw each other frequently. Because Respondent was also an investor in restaurants, he and Burke would discuss issues related to the Sovereign Tap. (Tr. 151).

Burke testified that in 2014 she retained Respondent to revise an operating agreement for Sovereign Tap. She and Respondent orally agreed that he would charge $325 per hour. (Tr. 41-43). Respondent denied entering into a representation with respect to the operating agreement. He testified that he provided a draft agreement to Burke so she could see what her partnership interests were supposed to look like. (Tr. 154). According to Respondent, he was only helping Burke as a friend. (Tr. 120).

On October 14, 2014, Respondent drafted a letter to one of Sovereign Tap's landlords. The letter stated that Respondent represented Sovereign Tap investors and asked the landlord to repair certain property defects. The letter was signed, "DeFranco Law Firm." (Tr. 74; Adm. Ex. 7). Along with the draft letter, Respondent sent Burke a bill for $250, which Sovereign Tap paid. (Tr. 45). Respondent testified that he sent the letter on his law firm letterhead because Burke asked him for a favor and insisted that he be paid for preparing the letter. (Tr. 155-56).

In or around early 2017, Burke became concerned that Sovereign Tap's managing partners were not paying the investors what they were owed. She and Respondent discussed the possibility of initiating litigation if necessary. (Tr. 50). On April 26, 2017, Respondent sent a letter on his law firm letterhead to two managing partners of Sovereign Tap. The letter stated, "Please be advised that this firm represents Margaret Burke." It went on to demand an audit of Sovereign Tap's operations and stated that Respondent was authorized to file a complaint for an accounting if the managing partners did not comply with the audit. (Adm. Ex. 7 at 24).

According to Respondent, he told Burke he would talk to the managing partners after she became frustrated with them. When asked why he stated in his letter that he represented Burke, Respondent said, "If I'm going to do it, I'm going to do it right." He believed he "had to have standing of some sort" even though he did not feel he was representing Burke. Respondent further testified that he advised Burke that "the only thing you could really do is file suit. And I think the suit would sound in accounting because you are worried about where the money is going." Respondent characterized this as accounting advice. (Tr. 157-59).

On June 18, 2017, Respondent emailed a draft complaint to Burke. Burke testified that Respondent went through the draft complaint with her and explained it. (Tr. 51; Adm. Ex. 7). Respondent testified he drafted the complaint for discussion purposes, so that Burke would understand what an accounting action is. (Tr. 161). When Burke decided she wanted to proceed with litigation, Respondent helped her find attorney James Murphy because Respondent is not a litigator. (Tr. 162-63).

On August 15, 2017, the matter of Margaret Burke, Travis Bonifas, and Mike Bakos, individually and on behalf of Sovereign Tap, LLC, vs. Rafael Gomez et al., Case No. 17CH01517, was filed in the Circuit Court of Will County. (Adm. Ex. 8). The complaint stated that it was filed on behalf of the plaintiffs by attorneys Mahoney, Silverman and Cross, LLC, and DeFranco Law Firm, and it identified Leonard S. DeFranco as an attorney for the plaintiffs. (Adm. Ex. 8)

Burke testified that Respondent continued to represent her after the complaint was filed. He appeared in court and communicated with her about the status of the case. (Tr. 54-55). The docket sheet for the Will County matter shows that Respondent was present for the plaintiffs in court on six occasions, with his last appearance occurring on October 18, 2018. (Adm. Ex. 10). Respondent testified that he never addressed the court or filed anything, and it was "not [his] reality" that he was acting as Burke's attorney. (Tr. 122, 168). He further testified that attorney

Murphy included Respondent's name on the complaint and wanted Respondent to file an appearance "for service purposes." (Tr. 122).

Between August 22, 2017, and February 5, 2019, Respondent submitted invoices to Burke on a monthly or bimonthly basis, which she paid. (Tr. 57; Adm. Ex. 12). According to Respondent, he sent the invoices not because he was Burke's lawyer but because Burke did not want to take advantage of him. (Tr. 180). Respondent said he submitted the invoices on his law firm letterhead due to sloppiness on his part. The invoices included entries for drafting and redrafting the complaint, discussions with attorney Murphy, preparing for and attending hearings, drafting and reviewing motions, drafting responses to interrogatories, discussing settlement negotiations, drafting proposed findings of fact and forwarding them to the judge, and reading and discussing the judge's ruling. (Adm. Ex. 12). When asked to explain why these billing entries did not reflect legal work, Respondent testified that the lawsuit was "all about the numbers" and he was focused on the accounting. (Tr.194-95).

Burke testified that in March or April of 2018 Respondent asked if she would loan him $180,000 to buy a piece of property on Summit Avenue in Oakbrook Terrace. Respondent told Burke he wanted to open a restaurant and drove her to see the property. (Tr. 60-63). Respondent denied telling Burke that he was trying to buy the Summit Avenue property. He testified he told Burke about the property because a friend of his was interested in buying it. According to Respondent, Burke somehow became confused and did not understand that Respondent was not seeking to buy the property. (Tr. 190-91).

According to Respondent, the $180,000 transfer came about when he and Burke were discussing difficulties Respondent was having with Futter's Nut Butters. Burke asked if she could do anything to help, and Respondent told her she could give him $150,000. Respondent testified

that Burke "rounded it up to $180,000 and said don't worry about it." (Tr. 177). Burke testified that she would never give such a large amount of money as a gift. (Tr. 69).

Burke testified that she agreed to loan Respondent the funds and obtained them by taking a line of credit loan secured by securities she owned. (Tr. 70, 80-81). She wired $180,000 into Respondent's client trust account on May 3, 2018. According to Burke, Respondent agreed to pay her back in a few months. She did not charge interest because she considered Respondent to be a friend and trusted him as her attorney. Burke further testified that Respondent said he would give her a promissory note but never did so. (Tr. 63). Respondent denied offering to provide a promissory note or promising to repay the funds within three months. (Tr. 175-76).

At the time Burke transferred the funds, Respondent was still an attorney of record in the Will County litigation. He continued to appear in court on Burke's behalf through October 18, 2018 and was not granted leave to withdraw from that matter until October 24, 2019. (Ex. 14).

Burke discussed the loan transaction with her financial advisor. (Tr. 82). Respondent did not put the terms of the transaction in writing, advise Burke to consult with an independent attorney, or obtain her informed consent in writing. (Tr. 64). When asked why he did not do so, Respondent answered, "There were no terms. There is no contract. There were no terms." (Tr. 126).

When Respondent failed to repay the $180,000 after a few months, Burke made oral requests for the money then began sending email requests. She testified that Respondent provided a variety of reasons why he had not repaid her, including that he needed more time, he was moving his home and then his business, and the funds were tied up in an LLC. (Tr. 64, 66).

Burke was asked whether she became angry with Respondent in February 2019 because he arrived late to an event she invited him to attend. Burke acknowledged she was angry and felt

Respondent had been rude but denied that was the reason she asked him to pay back the money. (Tr. 84-85).

Between April 14, 2019, and June 18, 2019, Burke sent Respondent emails demanding that he repay the money and referring to Respondent's many excuses and failures to respond to her. On May 20, 2019, Respondent sent Burke an email stating as follows:

> Hi Margaret
>
> Neither one of us like excuses, but the last two weeks have been hell. I feel as though I am in one of Dante's circle [sic] of hell. The two day trip to DC was all business, for the record.
>
> To be frank, I didn't call you back because I just didn't feel like getting harangued while I needed to focus. There was nothing new to say anyway.
>
> To boot, I have been moving, which is a major undertaking, especially when you are trying to conduct business. I won't even get into the physical discomfort these damn stones are giving me.
>
> I know you don't care, and you shouldn't. But I am not neglecting anything—I just have to get my house in order.
>
> Whether you care or not, or believe me, you are my priority.
>
> I am optimistic based on my discussions that we will wrap this up shortly.

(Adm. Ex. 13).

Respondent denied telling Burke he was working on repaying the $180,000. He testified that his statements in the above email did not refer to repayment but to having a conversation with Burke about how she came to believe Respondent wanted the funds to buy the Summit Avenue property. (Tr. 127 -29).

Burke then hired an attorney, who filed a lawsuit on her behalf against Respondent on August 15, 2019, in the Circuit Court of DuPage County. (Tr. 68). Burke's complaint alleged that Respondent breached an oral agreement, breached a fiduciary duty, and engaged in fraudulent inducement with respect to the loan. (Ans. at par. 41). On June 4, 2021, after a bench trial, the

court found that Respondent breached an oral agreement and breached his fiduciary duty because he was Burke's lawyer at the time of the transaction. Judgment was entered in Burke's favor for $180,000 plus punitive damages in the form of Burke's attorney's fees. (Ans. at par. 42). On September 3, 2021, the court ordered Respondent to pay Burke $43,602 in attorney fees. (Ans. at par. 43). Respondent has not paid any portion of the judgment, nor does he intend to do so because he has filed for bankruptcy. (Tr. 127).

C. Analysis and Conclusions

Rule 1.8(a)

Rule 1.8(a) prohibits a lawyer from entering into a business transaction with a client unless certain requirements are met: the terms of the transaction must be fair and reasonable to the client and disclosed in writing, the lawyer must inform the client in writing that he or she may seek the advice of independent counsel, and the client must give informed consent in writing to the essential terms of the transaction and the lawyer's role in the transaction. Ill. Rs. Prof'l Conduct R. 1.8(a). The Administrator alleges that Respondent violated Rule 1.8(a) by borrowing $180,000 from Burke without taking the required protective measures.

We begin by addressing whether the Administrator proved that Respondent and Burke had an attorney-client relationship at the time of the transaction. Respondent denies that such relationship existed and contends that he provided accounting advice. We find Respondent's denial meritless and disingenuous. The following evidence is undisputed:

- On April 26, 2017, Respondent sent a letter on his law firm letterhead stating he represented Margaret Burke and was authorized to file a complaint for an accounting on Burke's behalf if the recipients did not comply with his requests;
- Respondent advised Burke to file a complaint for an accounting to resolve her dispute with the Sovereign Tap managing partners;
- Respondent assisted in drafting the complaint for an accounting that was filed in Will County;

- Respondent was an attorney of record for Burke in the Will County matter from August 15, 2017, until October 24, 2019, and appeared in court on Burke's behalf six times; and

- Respondent submitted invoices to Burke on DeFranco Law Firm letterhead charging her for services such drafting the complaint, preparing for and attending hearings, drafting motions, answers to interrogatories, and findings of fact, and discussing settlement negotiations.

Based on this evidence, there is no room for reasonable people to differ as to whether Respondent had an attorney-client relationship with Burke. It should not be necessary for us to explain that activities such as drafting a complaint, drafting motions, and appearing in court are legal services, not accounting services. Respondent unquestionably acted as Burke's attorney, and we find his testimony to the contrary to be patently false.

Next, we address whether Respondent entered into a business transaction with Burke. We find the Administrator proved by clear and convincing evidence that he did. We find credible Burke's testimony that the funds were a loan that she expected to be repaid in three months. We do not find credible Respondent's testimony that the funds were a gift. Although Respondent and Burke were friends, it is implausible that Burke would give such a large gift. Burke's efforts to obtain repayment, Respondent's responses to those efforts, and the findings of the circuit court in Burke's favor corroborate Burke's version of events.

It is undisputed that Respondent did not provide an explanation of the terms of the transaction to Burke, advise her she could seek the advice of independent counsel, or obtain her informed consent in writing as required by Rule 1.8(a). Accordingly, the Administrator proved by clear and convincing evidence that Respondent violated Rule 1.8(a).

EVIDENCE IN AGGRAVATION AND MITIGATION

Mitigation

Respondent has been active in bar associations, including the Illinois State Bar Association (ISBA), Du Page County Bar Association, and Justinian Lawyers Association. He has served on the ISBA Investment Committee and has received awards from the ISBA and John Marshall Law School. He has assisted with the Jesse White Tumblers and the Casa Italia Italian Cultural Center. (Tr. 135-138).

Aggravation

Margaret Burke testified that losing the funds she loaned to Respondent has been very hard for her. She had to pay back the account from which she took the funds. She does not expect that Respondent will repay her because he filed for bankruptcy. (Tr. 70-71).

Prior Discipline

In 2011, Respondent was suspended for thirty days on consent for charging an unreasonable fee in violation of Rule 1.5(a) while representing Northern Trust Bank in its capacity as executor for the estates of a mother and daughter. Over a two-year period, Respondent billed and was paid $212,140.80. The estates' heirs objected to Respondent's fees as exorbitant in light of the simple nature of the work involved, some of which could have been handled by non-attorneys and had no value to the estates. Respondent refunded $100,000 to resolve the heirs' objections. The Administrator and Respondent agreed to a thirty-day suspension, which the Court approved. In re DeFranco, 08 CH 29, M.R. 24483 (May 18, 2011).

RECOMMENDATION

A. Summary

Having considered the egregious misconduct, the mitigating factors, and the aggravating factors that include prior discipline, the Hearing Panel does not have confidence that Respondent

is willing or able to comply with the Rules of Professional Conduct and recommends that he be disbarred.

B. Analysis

The purpose of the disciplinary process is not to punish attorneys, but to protect the public, maintain the integrity of the legal profession, and safeguard the administration of justice from reproach. In re Edmonds, 2014 IL 117696, ¶ 90. When recommending discipline, we consider the nature of the misconduct and any factors in mitigation and aggravation. In re Gorecki, 208 Ill. 2d 350, 360-61 (2003). We seek consistency in recommending similar sanctions for similar types of misconduct, but must decide each case on its own unique facts. Edmonds, 2014 IL 117696, ¶ 90.

Respondent committed egregious misconduct by intentionally and dishonestly misappropriating $161,608.75 and improperly borrowing money from a client to replenish the funds he wrongfully took. Intentional conversion of client funds is a gross violation of an attorney's oath. In re Rotman, 136 Ill. 2d 401, 420, 423 (1990).

We consider in mitigation that Respondent cooperated in this proceeding and has been involved in community organizations and bar associations. However, this mitigation is far outweighed by the factors in aggravation and has little impact on our recommendation.

The aggravating factors are numerous and serious. We consider first the harm or risk of harm caused by Respondent's conduct. See In re Saladino 71 Ill. 2d 263 (1978). Respondent put a substantial amount of the Ferrones' sales proceeds at risk. He was able to disburse the full amounts owed them only because of the loan he improperly obtained from Burke. That improper loan caused actual financial harm to Burke in the amount of $180,000 plus the attorney fees she incurred to obtain a judgment against Respondent. In further aggravation, Respondent has no

intention of making restitution to Burke, displayed zero remorse and took no responsibility for his conduct.

Respondent's lack of candor in this proceeding is another serious aggravating factor. Respondent testified falsely about all of the key issues in this matter, including the existence of an attorney-client relationship in the Ferrone and Burke matters, his obligation to obtain court approval for fees in the Ferrone matter, the amount of fees he earned, and the nature of his transaction with Burke. An attorney's false testimony in a disciplinary hearing "demonstrates a further unfitness to practice law." In re Vavrik, 117 Ill. 2d 408, 415 (1987).

We also consider Respondent's prior discipline. An attorney with prior discipline is expected to have a heightened awareness of his or her ethical responsibilities. In re Storment, 203 Ill. 2d 378, 401 (2002). The weight we place on the prior misconduct depends on the similarity between the misconduct in this proceeding and the prior matter and the amount of time that elapsed between the two disciplinary matters. See In re Longwell, 2013PR00055, M.R. 26933 (Nov. 13, 2014). While the charges in Respondent's first disciplinary matter were different than the charges before us, in both matters Respondent improperly enriched himself to the detriment of an estate with which he was involved. Thus, his prior discipline reveals not only that his earlier suspension failed to impress upon him the importance of complying with ethical rules but that he poses a particular risk to clients in estate matters. For this reason, we consider Respondent's prior discipline to be a significant factor in aggravation.

In support of his request for disbarment, the Administrator cites In re Mehta, 08 CH 84, 2008, M.R. 24461 (May 18, 2011) and In re Schaefer 99 CH 37, M.R. 17579 (Sept. 20, 2001). The attorney in Schaefer, who had prior discipline, was suspended for three years and until further order of the court for a variety of misconduct that included obtaining three improper loans totaling $17,000 from a client. The attorney in Mehta, while acting as escrowee for a real estate transaction,

misappropriated $100,000 in escrow funds and used them for personal expenses. Despite court orders directing him to turn over the funds and the entry of a judgment against him, he did not do so and never made restitution. Similar to Respondent, Mehta falsely contended he was owed the funds as fees, expressed no remorse, and had prior discipline. In recommending that Mehta be disbarred, the Hearing Panel noted the well-established principle that when a lawyer converts funds to his own personal use, "he commits an act involving moral turpitude and, in the absence of mitigating circumstance, such conversion is a gross violation of the attorney's oath, calling for the attorney's disbarment." Mehta, 08 CH 84 (Hearing Bd. at 31).

Citing In re Mulroe, 2011 IL 111378 (three-month suspension) and In re Santilli 2012PR00029, M.R. 26572 (May 16, 2014) (six-month suspension stayed after thirty days by two years of probation), Respondent contends that a lesser sanction is warranted because the Administrator did not establish that he acted dishonestly. Having found that the Administrator proved all of the charged misconduct, we do not find Respondent's cited cases applicable.

The same considerations that led to disbarment in Mehta apply here. See also In re Birt 2013PR00053, M.R. 27896 (May 18, 2016) (disbarment for dishonestly using $80,000 entrusted to the attorney to pay for an elderly woman's expenses); In re Franklin, 2019PR00068, M.R. 031177 (May 19, 2022) (disbarment for dishonestly converting $122,000 from ten clients' settlement funds). Respondent intentionally and dishonestly misappropriated $161,608.75 in client funds, placed his own interests above those of his client by obtaining an improper loan, and has given us no reason to believe he is willing or able to comply with the Rules of Professional Conduct. Disbarment is particularly warranted when an attorney's conversion and dishonesty were intentional and consisted of a series of improper acts over an extended period of time, and the attorney "manifested a pattern of behavior which clearly tends to bring the legal profession into disrepute." In re Lewis, 138 Ill. 2d 310, 343 (1990). All of these circumstances are present here.

We do not make the recommendation of disbarment lightly, but find it necessary in this matter to protect the public and the integrity of the profession.

Accordingly, we recommend that Respondent, Leonard Samuel DeFranco, be disbarred.

Respectfully submitted,

Carl E. Poli
Maureen Sullivan Taylor
Charles A. Hempfling

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on May 9, 2023.

/s/ Michelle M. Thome
Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

MAINLIB_#1622644_v1