In re Alexander Bill Jarowyj
Attorney-Respondent

Commission No. 2023PR00070

Synopsis of Hearing Board Report and Recommendation
(December 2024)

The Administrator filed a one-count Complaint against Respondent that charged him with falsely representing in his dissolution proceeding that he owed a client $65,000 and with recording a fictitious mortgage to the client against marital property, after the court ordered that the property be sold. The Hearing Board found that the Administrator did not meet her burden of proving the charged misconduct by clear and convincing evidence. Therefore, the Hearing Panel recommended that the Complaint against Respondent be dismissed.

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

In the Matter of:

ALEXANDER BILL JAROWYJ,

Attorney-Respondent,

No. 6291215.

Commission No. 2023PR00070

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

The Administrator charged Respondent with falsely representing in his dissolution proceeding that he owed a client $65,000 and with recording a fictitious mortgage to the client against marital property, after the court ordered that the property be sold. The Hearing Panel found that the Administrator did not prove by clear and convincing evidence that the loan agreement and mortgage were fictitious and recommended that the charges against Respondent be dismissed.

INTRODUCTION

The hearing in this matter was held on August 26, 2024, before a Panel of the Hearing Board consisting of Kenn Brotman, Chair, Cristin K. M. Duffy, and Daniel G. Samo. Rory P. Quinn represented the Administrator. Respondent was present and was represented by James A. Doppke.

PLEADINGS AND MISCONDUCT ALLEGED

On November 30, 2023, the Administrator filed a one-count Complaint against Respondent, charging him with knowingly making false statements of fact to a tribunal, knowingly offering false evidence, and engaging in conduct involving dishonesty, fraud, deceit, or

misrepresentation, in violation of Rules 3.3(a)(1), 3.3(a)(3), and 8.4(c) of the Illinois Rules of Professional Conduct (2010). Respondent filed an answer on December 21, 2023, in which he admitted some of the factual allegations, denied others, and denied engaging in misconduct.

EVIDENCE

The Administrator presented testimony from one witness and Respondent as an adverse witness. The Administrator's Exhibits 1-5 and 7-16 were admitted into evidence. In Respondent's case in chief, Respondent testified on his own behalf and presented three character witnesses, two of whom testified by evidence deposition. Respondent's Exhibits 1-14 were admitted into evidence.

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, 577 N.E.2d 762 (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, 848 N.E.2d 961 (2006).

At the close of the Administrator's case-in-chief, Respondent made a motion for directed finding, which was denied.

The Administrator charged Respondent with misconduct related to his dissolution matter by falsely representing that he owed $65,000 to a client and recording a fictitious mortgage to the client against marital property that the court ordered to be sold.

A. Summary

The Hearing Panel found the Administrator did not meet her burden of proving that Respondent's loan agreement with a client was fictitious or that Respondent recorded a false

mortgage to the client in an effort to obstruct the court-ordered sale of a building Respondent and his wife owned and deprive his wife of any sales proceeds.

B. Admitted Facts and Evidence Considered

Respondent was licensed to practice law in Michigan in 1993. (Tr. 101-102). In 2006, he moved to Illinois and obtained his Illinois law license. (Tr. 47). He has maintained a general solo practice since that time. (Tr. 106).

The charges in this matter are related to Respondent's dealings with his friend and client, Roman Sacharewycz. Respondent has known Sacharewycz since approximately 1985. (Tr. 46). In April 2007, Respondent began renting office space from Sacharewycz. They had an agreement that Respondent would charge $250 per hour for legal work, and the first two hours of legal work per month would go towards Respondent's rent. Respondent represented Sacharewycz in numerous matters over the years. He also loaned Sacharewycz money and paid his expenses at times. (Tr. 47-48). Sacharewycz said he would repay Respondent after he sold the building where Respondent rented space. (Tr. 119). On June 29, 2015, Sacharewycz sold that building and received $372,526,79 in proceeds.

On or around July 1, 2015, Sacharewycz gave Respondent a check for $105,000. (Adm. Ex. 2). From those funds, Respondent applied $51,988.12 as repayment of funds he had loaned Sacharewycz or paid on his behalf. Sacharewycz also owed Respondent at least $71,313.06 in legal fees and costs. Respondent did not apply the remaining $53,011.88 toward the outstanding legal fees. Instead, he gave Sacharewycz a $65,000 "credit" toward his outstanding bills. (Adm. Ex. 5). Respondent testified he did so because he wanted to remain on friendly terms with Sacharewycz, who was influential in the Ukrainian community and would refer potential clients to Respondent. (Tr. 128). Respondent hoped "at some point in time that we would sit down and he

would ask me for like a bigger reduction and that I would have to pay something on his behalf and then eventually that, you know, we would still be friends." (Tr. 69).

Respondent documented the credit by executing a promissory note on July 2, 2015, which stated he would pay Sacharewycz $65,000, without interest, in monthly installments of $450. (Adm. Ex. 3). At the same time, Respondent executed a promissory note to Igor Pluta, another friend who loaned Respondent $80,000. (Tr. 50-51). Respondent used the funds he received from Sacharewycz and Pluta to buy property at 540 North Western Avenue (Western Avenue property). On or around July 10, 2015, Respondent and his wife, Natalia, purchased the Western Avenue property in a tax sale for $116,927.53 in cash. (Tr. 123-24; Adm. Ex. 7 at 1221).

On July 10, 2015, Respondent executed a mortgage to Sacharewycz in the amount of $65,000 and a mortgage to Pluta in the amount of $80,000 against the Western Avenue property. (Tr. 123; Adm. Ex. 4 at 0013). Natalia did not sign the mortgage papers. (Tr. 183). Respondent did not record the mortgages, because he was hoping to refinance the property and pay off the debts after he made property improvements. (Tr. 69).

On July 19, 2015, Respondent sent Sacharewycz a letter stating that the $105,000 payment was "to repay the money that I have lent you, or paid on your behalf since 2008, and that the remainder was to be applied to your long outstanding fees, and costs that have been incurred on your behalf, with the hope that I will be able to extend you a further discount on those bills, based on our close and long term friendship." The letter went on to say that the amount Respondent had loaned to Sacharewycz was $51,998.12, leaving a balance of $53,011.88 to be applied to fees and costs. Sacharewycz owed Respondent $71,313.06 in legal fees and costs, with an additional $20,000 of expected fees for work Respondent had performed but not yet billed. Although the balance to be applied to the outstanding legal fees was approximately $53,000, Respondent

indicated that he was giving Sacharewycz a credit of $65,000. The letter further stated that Respondent and Sacharewycz entered into "an agreement which reflects the $65,000 credit that I am agreeing to, in case that something happens to me, prior to the finalizing the terms of any further payments or obligations, which I am also agreeable to, and was executed by both of us, under the understanding that upon final agreement to the further obligations that are owed by you, that the promissory note and attorney statements will be torn up." (Adm. Ex. 5). Respondent testified that the reference to tearing up the promissory note and legal bills meant that he and Sacharewycz would come to an agreement as to the amounts they owed each other and release each other from their obligations. (Tr. 129).

Respondent's letter further stated that he executed a mortgage in Sacharewycz's favor "to keep this transaction at arm's length, and that in the highly unlikely event that we cannot come to terms on the final obligations between us, I will have the mortgage recorded against our newly acquired office, to preserve any potential interests that you may claim." (Adm. Ex. 5). When Respondent was asked whether he saw it as a problem that he agreed to an additional $13,000 mortgage being placed on the marital property, he answered, "It was the obligation I agreed to." (Tr. 52-54).

Natalia filed a petition for dissolution of her marriage to Respondent on July 11, 2016. (Adm. Ex. 7). Respondent testified that he had no intention of getting divorced when he executed the Sacharewycz promissory note and mortgage, nor did he know that Natalia would be filing for divorce the following year. (Tr. 67). When asked whether he believed he would ever get a divorce, he testified, "I could see it coming." (Tr. 67).

Attorney Mary Katherine Avery represented Natalia during the time period relevant to this matter, and Respondent represented himself in the divorce proceedings. (Tr. 13). Respondent has handled about 300 divorce cases. (Tr. 184).

In a financial affidavit dated December 31, 2016, Respondent listed his debts, which included a $65,000 "real estate loan" from Sacharewycz, an $80,000 "real estate loan" from Pluta, and a $25,000 "construction loan" owed to Yuriy Vilchynskyj. (Tr. 19; Adm. Ex. 9 at 6, 10). Respondent identified the same loans in his financial affidavits dated March 31, 2017, and September 18, 2017. (Adm. Ex. 11 at 6, 10; Adm. Ex. 12 at 6, 10). Respondent did not indicate in the financial affidavits that Sacharewycz owed him legal fees. (Tr. 20). In Avery's view, that information should have been included. (Tr. 20-21). Respondent testified that everything in his financial affidavits was accurate. (Tr. 132, 138, 153).

In answers to interrogatories prepared in January 2017, Respondent identified the following debts owed on the Western Avenue property: $80,000 to Igor Pluta, $65,000 to Sacharewycz, and $25,000 to Vilchynskyj. (Adm. Ex. 10 at 0003). In Respondent's answers to an interrogatory asking him to identify money owed to him, the only amount he disclosed was $13,500 owed by Natalia's mother. (Tr. 22-23; Adm .Ex. 11).

Avery testified that there was a dispute between Natalia and Respondent over the sale of the Western Avenue property. (Tr. 27). On August 24, 2017, the court ordered that the property be sold. (Ans. at para. 18). On September 28, 2017, in open court, Respondent was ordered to execute the listing agreement. (Adm. Ex. 7 at 1087).

As part of a petition by Respondent to modify maintenance and child support, the court entered an order on October 2, 2017, stating that Respondent received significant income in excess of what he reported on his financial affidavit dated September 18, 2017. (Adm. Ex. 7 at 731-32).

On October 20, 2017, Respondent recorded the following against the Western Avenue property: a $65,000 mortgage to Sacharewycz; an $80,000 mortgage to Pluta; and a $36,083.80 claim of lien by Yuriy Vilchynskyj. (Ans. at para. 19; Adm. Ex 7 at 1087). Avery testified that if the property were sold with the recorded lien and mortgages, Natalia would not have received any proceeds from the sale because all of the proceeds would have gone to the lienholders. (Tr. 28-30). Avery filed a motion asking the court to remove the mortgages and lien. Although Avery was not aware of the mortgages and lien before Respondent recorded them, she acknowledged that she was aware of Respondent's indebtedness to Sacharewycz, Pluta, and Vilchynskyj, based on his disclosures in his financial affidavits. (Tr. 39-40).

> In a petition for relief from the court's order directing that the Western Avenue property be sold, Respondent made the following statements:
>
> It is presented to the Court that contrary to the arguments made in the Petitioner/Counter Respondent, Natalia Jarowyj's Motion to Sell Marital Property and Other Relief, the parties obtained 540 N. Western Avenue, Chicago, IL 60612-1422, which is currently serving as Respondent/Counter-Petitioner, Alexander B. Jarowyj's place of business and residence, on all borrowed funds.
>
> On July 10, 2015, the property was purchased for cash, solely on borrowed funds from two individuals, Igor Pluta and Roman Sacharewycz. The property was purchased for $116,927.33.
>
> On July 1, 2015, Mr. Sacharewycz issued a check to the Respondent in the amount of $105,000.00. That check reflected $40,000.00, that Mr. Sacharewycz owed to the Respondent, as well as a loan for $65,000 to purchase and rehabilitate the premises.
>
> As was the case with Mr. Pluta, a Mortgage was contemporaneously executed also, but was not recorded until recently, with the same hope that the property would be refinanced in a short period of time and the funds to be repaid.

(Ans. at para. 22).

On December 22, 2017, Respondent filed a response in which he repeated his assertion that he owed Sacharewycz $65,000 and attached as exhibits his three financial affidavits, his answers to interrogatories, and a signed and sworn affidavit stating that he owed Sacharewycz $65,000.

(Ans. at para 26). Following a quiet title action and the settlement of the dissolution matter, Natalia was given title to the Western Avenue property. Respondent rents office space from her. (Tr. 78).

Respondent never made a loan payment to Sacharewycz. He testified that his divorce prevented him from doing so. However, when Sacharewycz asked for money, Respondent gave it to him. (Tr. 49). Respondent denied that he intended to mislead his wife or the court about his indebtedness to Sacharewycz. (Tr. 70-71).

In 2019, Sacharewycz started demanding that Respondent repay him $105,000. Respondent testified that he owed, at most, $5,000. (Tr. 141). Sacharewycz submitted a request for investigation to the ARDC on April 30, 2021, in which he stated that Respondent asked him for a $105,000 loan and did not repay it. In email correspondence with the Administrator, Sacharewycz stated, "The question of the $105,000.00 loan for Mr. Jarowyj's 520 N. Western Ave., Chicago, IL 60612 property is true. That loan does exist." (Resp. Ex. 1).

In a letter to the Administrator dated May 11, 2021, Respondent stated "there were no loans, advances, or business transactions made by Mr. Sacharewycz on my behalf." (Adm. Ex. 15 at 0002). Respondent testified that he meant there were no outstanding transactions at that point. (Tr. 156-57). Respondent further stated he never asked Sacharewycz to loan him money, but later in the same letter stated, "Outside of the sole promissory note dated July 2, 2015 and attached to Mr. Sacharewycz's request for investigation, there were no other written contracts or loan agreements between Mr. Sacharewycz and I [sic]." (Tr. 158; Adm. Ex. 15 at 0003).

C. Analysis and Conclusions

The Administrator charged Respondent with violating the Rules of Professional Conduct by knowingly making false statements to the court that he owed Sacharewycz $65,000 (Rule 3.3(a)(1)); knowingly offering false evidence in his financial affidavits and answers to interrogatories by stating he owed Sacharewycz $65,000 (Rule 3.3(a)(3)); and engaging in

dishonest conduct by making the foregoing statements and recording a false mortgage to Sacharewycz based on the false promissory note (Rule 8.4(c)). The premise of each of these charges is that the $65,000 promissory note and mortgage to Sacharewycz were fictitious. The Administrator alleged that "Respondent and Sacharewycz agreed upon a scheme to mischaracterize the purpose of the $105,000. Under the scheme, Respondent would take $40,000 of the $105,000 as fees to pay down Sacharewycz's outstanding legal fees. Respondent characterized the remaining $65,000 as a purported interest free loan from Sacharewycz to Respondent."

The Administrator did not prove by clear and convincing evidence that Respondent and Sacharewycz schemed to mischaracterize the $105,000 payment or that the $65,000 promissory note and mortgage were fictitious. Clear and convincing evidence means a degree of proof that, considering all the evidence, produces a firm and abiding belief that it is highly probably the proposition at issue is true. In re Grant, 2013PR00074 (Hearing Bd. at 3). Suspicious circumstances are insufficient to meet the Administrator's burden of proof. In re Winthrop, 219 Ill. 2d 526, 550, 848 N.E.2d 961 (2006).

The Administrator does not dispute that Respondent received $105,000 from Sacharewycz, nor does she dispute the authenticity of the dates and signatures on the promissory note and mortgage. What is in dispute is the validity of Respondent's $65,000 debt to Sacharewycz and Respondent's intent. Respondent denied that the promissory note and mortgage were fictitious and denied entering into any scheme with Sacharewycz. "[M]otive and intent are rarely proved by direct evidence, but rather must be inferred from conduct and the surrounding circumstances." In re Edmonds, 2014 IL 117696, ¶ 54.

The timing of the Sacharewycz promissory note and mortgage, as well as the fact that Respondent entered into a similar promissory note and mortgage with Igor Pluta at the same time, significantly undermine the Administrator's theory of a scheme to mischaracterize the nature of the $105,000 payment from Sacharewycz and deprive Natalia of marital assets. We find it significant that the promissory note and mortgage were executed one year before Natalia filed for divorce. In order for Respondent and Sacharewycz to have schemed to prevent Natalia from obtaining marital assets, Respondent would had to have known or anticipated that a divorce was coming at the time he executed the documents at issue. The Administrator did not establish by clear and convincing evidence that this was the case. The Administrator did not call Natalia or Sacharewycz as witnesses, so the only evidence we have on this issue is Respondent's testimony. Respondent testified he did not know that Natalia would file for divorce the following year. When asked whether he thought he would ever get divorced, Respondent testified that he "could see it coming." We take this testimony to mean that Respondent had some concerns about his marriage but did not think divorce was imminent. This testimony alone was not sufficient to rise to the level of discrediting Respondent or establishing that he expected to get divorced and concocted a scheme to deprive Natalia of marital assets.

We also find it significant that Respondent executed a promissory note and mortgage to Igor Pluta at the same time he did so with Sacharewycz. The Administrator did not allege that the Pluta promissory note and mortgage were fictitious, nor has the Administrator provided an explanation for why the Sacharewycz debt was fictitious but the Pluta debt was not. We find it unlikely that Respondent would go to the trouble of creating a false loan agreement with Sacharewycz at the same time he executed a legitimate loan agreement with Pluta. We find it equally unlikely that Respondent recorded a false mortgage that would have defeated not just

Natalia's interest in the sales proceeds but Respondent's as well. The contentious nature of the dissolution proceedings does not explain why Respondent would act against his own financial interests. The evidence presented did not resolve these issues, and therefore did not clearly and convincingly establish improper conduct.

Next, we address the Administrator's contention that the Sacharewycz promissory note was not legitimate because Sacharewycz owed Respondent more than the amount of the note. As an initial matter, we find the proof lacking with respect to the nature of the agreement between Sacharewycz and Respondent because the Administrator did not call Sacharewycz as a witness. Additionally, we reject this argument because the issue before us is not whether the "credit" or loan was objectively reasonable or made economic sense, but whether it was a sham. The financial dealings between Respondent and Sacharewycz were complicated due to their friendship, their loans to each other, their landlord-tenant relationship, and their attorney-client relationship.* Respondent was not required to apply the entirety of the $105,000 payment toward Sacharewycz's debts. He was free to address the legal fees owed to him as he saw fit. Respondent explained his reasons for executing the promissory note, which included preserving a friendship that generated business for him. Having been presented with no evidence contradicting Respondent's version of events, we have no reason to discredit this testimony.

Respondent testified consistently with his letter of July 19, 2015, which outlined the $65,000 "credit" to Sacharewycz and the execution of a mortgage against the Western Avenue property to secure Respondent's indebtedness. Respondent's use of the terms "credit" and "loan" at different points in time was inconsistent and inartful, but that does not render the debt invalid. Similarly, we do not find Respondent's statement that he would "tear up" the promissory note and mortgage to be an admission that the promissory note and mortgage were fictitious. As there was

no contradictory evidence, we accept Respondent's testimony that he meant that he and Sacharewycz would release each other from their respective obligations once they resolved the amounts they owed.

Accordingly, we find that the Administrator did not prove by clear and convincing evidence that Respondent's debt to Sacharewycz was fictitious. Respondent chose to enter into an agreement that he owed Sacharewycz $65,000 out of the $105,000 that Sacharewycz gave him. Whether this debt was termed a "credit" or a "real estate loan," we find plausible Respondent's testimony that he considered it to be a valid debt and executed a mortgage in order to secure that debt. Respondent's testimony is corroborated by his contemporaneous execution of the promissory note and mortgage and his explanation of the agreement in his July 19, 2015, letter to Sacharewycz.

We further find that Respondent's conduct in the dissolution proceeding was not indicative of a scheme or an effort to obstruct the sale of the Western Avenue property. Respondent disclosed the $65,000 "real estate loan" to Sacharewycz in his financial affidavits. The fact that he did not accurately identify the indebtedness as a mortgage is insufficient to establish an intent to deceive Natalia or the court. Attorney Avery acknowledged that she was aware of Respondent's debts to Sacharewycz, Pluta, and Vilchynskyj based on his disclosures.

We give no weight to the evidence that the court found that Respondent had significant income in excess of what he reported in one of his financial affidavits. Respondent was not charged with any misconduct related to his reporting of his income, and the court's finding pertained to a petition to modify support, not the sale of the Western Avenue property.

The Administrator further contends that Respondent admitted that the loan agreement was fictitious in his written response to Sacharewycz's request for investigation to the ARDC, in which Respondent stated, "There were no loans, advances, or business transactions made by Mr.

Sacharewycz on my behalf." However, Respondent also stated in that same letter, "Outside of the sole promissory note dated July 2, 2015 and attached to Mr. Sacharewycz's request for investigation, there were no other written contracts or loan agreements between Mr. Sacharewycz and I [sic]." An inartfully drafted and self-contradictory response letter to the ARDC, which suggests both the lack of loans and the existence of a promissory note, is not sufficient to overcome the Administrator's burden of proof. Nor is it a clear admission by Respondent that there was no loan between him and Sacharewycz.

Lastly, the Administrator makes much of the fact that Respondent recorded the mortgages and lien within minutes of each other, after the court had ordered the Western Avenue property to be sold. We agree that Respondent filing these encumbrances after the property was ordered to be sold is a suspicious circumstance. However, suspicious circumstances are not sufficient to meet the burden of proof. Winthrop, 219 Ill. 2d at 550. Respondent explained that he did not file the mortgages and lien earlier because he was hoping to refinance the property so he could repay Pluta, Sacharewycz, and Vilchynskyj, but had not been able to do so. When the court ordered that the Western Avenue property be sold, Respondent sought to protect the creditors' interests. The better course of action would have been to timely record the mortgages and lien, but we find Respondent's explanation plausible.

Based on our finding that the Administrator failed to prove by clear and convincing evidence that Respondent's debt to Sacharewycz was fictitious, we determine that the Administrator did not meet her burden of proof that Respondent's statements in his financial affidavits, answers to interrogatories, and pleadings in his dissolution matter were false. For the same reasons, we find insufficient proof that the mortgage to Sacharewycz was false. Accordingly, we find that the Administrator failed to prove violations of Rules 3.3(a)(1), 3.3(a)(3), and 8.4(c).

EVIDENCE IN MITIGATION

Respondent presented evidence of community involvment, pro bono representation, and character testimony from Andrij Skyba, Fr. Valeriy Kandyuk, and Olya Smyzniuk. Due to our findings that the charges of misconduct were not proven, we need not discuss this evidence in detail.

RECOMMENDATION

Having found that the Administrator did not prove the charges of misconduct by clear and convincing evidence, we recommend that the Complaint against Respondent, Alexander Bill Jarowyj, be dismissed.

Respectfully submitted,

Kenn Brotman
Cristin K. M. Duffy
Daniel G. Samo

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 December 31, 2024.

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

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[*] The Administrator chose not to charge Respondent with entering into business transactions with a client, so we do not address that issue.