

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

In the Matter of:

JUSTIN KOSLAN SCHWARTZ,

Attorney-Respondent,

No. 6257328.

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Commission No. 2022PR00030

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Rory P. Quinn, pursuant to Supreme Court Rule 753(b), complains of Respondent Justin Koslan Schwartz, who was licensed to practice law in Illinois on April 27, 1999, and alleges that Respondent has engaged in the following conduct which subjects Respondent to discipline pursuant to Supreme Court Rule 770:

COUNT I

(Lack of Diligence – Mason Matter)

1. On November 1, 2013, Karen Mason (“Mason”) began employment as an internal auditor for VW Credit Inc. (“VW”) in Libertyville, Illinois. VW is a subsidiary of Volkswagen Group of America located in Hendon, Virginia.

2. As a condition of her employment, Mason signed an agreement to submit any dispute with VW to final and binding arbitration.

3. On December 26, 2017, Mason submitted a charge of discrimination to the United States Equal Employment Opportunity Commission (“EEOC”). On March 20, 2018, the EEOC closed its file on Mason’s charge of discrimination because they were unable to conclude the information they obtained established a violation of any of the statutes enforced by the EEOC. On the same date, the EEOC issued Mason a right to sue letter.

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ARDC Clerk

4. On June 1, 2018, Mason and Respondent discussed her EEOC charge. During that conversation, Respondent advised Mason that she needed to send a request for arbitration to VW. On that same day, Respondent and Mason agreed that Respondent would represent Mason, draft a request for arbitration, and submit the request for arbitration to VW on Mason's behalf. Respondent and Mason agreed Respondent would accept a flat fee of \$500 as his fee in the matter.

5. On June 20, 2018, Mason paid Respondent the agreed-upon fee of \$500.

6. On June 21, 2018, Respondent sent a draft letter to Mason for her approval.

7. On June 26, 2018, Mason returned a revised letter to Respondent for him to submit to VW.

8. Between June 26, 2018 to January 10, 2019, Mason called Respondent four times and sent Respondent nine text messages requesting the status of her request for arbitration and confirmation that Respondent had mailed her letter.

9. At no time between June 26, 2018 and January 10, 2019 did Respondent provide Mason the status of her arbitration or proof he had mailed the letter to VW.

10. On January 10, 2019, Mason emailed Respondent requesting the status of her matter. On that same day, Respondent replied to Mason's email indicating he would call her that same day. Respondent did not call Mason between January 10, 2019 and January 15, 2019.

11. On January 14, 2019, Mason again emailed Respondent requesting the status of her letter. On that same day, Respondent replied to Mason's email indicating he would call her on January 15, 2019.

12. Between January 17, 2019 and July 19, 2019, Mason emailed Respondent fourteen times requesting the status of her arbitration letter and confirmation that Respondent had mailed the letter. During this time, Respondent told Mason he had sent the letter, would resend the letter, and would call VW to determine the status of their reply.

13. At no time did Respondent provide Mason with requested confirmation that he had mailed her request for arbitration.

14. On November 25, 2019, Respondent called VW in Herdon, Virginia. VW advised Respondent that he needed to contact VW's legal department in Auburn Hills, Michigan.

15. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failing to act with reasonable and promptness in representing a client, by conduct including failing to take any action from June 26, 2018 until April 26, 2019, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010); and
- b. failing to keep the client reasonably informed about the status of the matter and failing to promptly comply with reasonable requests for information, by conduct including failing to respond to Mason's requests for proof that he had mailed her request for arbitration in violation of Rule 1.4 of the Illinois Rules of Professional Conduct (2010).

COUNT II

(Lack of Diligence and Improper Withdrawal – Cunningham Matter)

16. On March 22, 2018, Lakeisha Cunningham ("Cunningham") was convicted of first-degree murder in case number 17 CF 312 in Vermilion County, Illinois.

17. On July 15, 2018, Respondent and Cunningham agreed that Respondent would represent Cunningham in her sentencing hearing, post-trial proceedings, and an appeal of her criminal conviction. Respondent and Cunningham agreed that Respondent would accept a flat fee of \$7,500 for the sentencing hearing and post-trial proceedings and a flat fee of \$10,000 for the appeal.

18. Between July 15, 2018 and November 26, 2018, Cunningham, or someone at her direction, paid Respondent \$7,500 for his work on the sentencing hearing and post-trial proceedings.

19. On October 1, 2018, Respondent filed a post-trial motion for a new trial.
20. On October 9, 2018, Respondent appeared for Cunningham's sentencing hearing. Cunningham's post-trial motion was denied, and Cunningham was sentenced to 60 years of imprisonment in the Illinois Department of Corrections.
21. On October 18, 2018, Respondent filed a Notice of Appeal with the Appellate Court of Illinois Fourth District. The case was docketed as *People v. Cunningham*, case number 4-18-0692. Respondent's docketing statement was due to be filed on October 29, 2018.
22. On November 2, 2018, the Appellate Court sent Respondent a letter to his registered address which stated his Docketing Statement was overdue and failure to file the statement or seek an extension of time within 14 days would result in dismissal of Cunningham's appeal.
23. On November 26, 2018, Respondent filed a Docketing Statement with the Appellate Court.
24. On January 3, 2019 the Appellate Court, on its own motion, filed the Record on Appeal. Respondent's brief was due to be filed February 4, 2019.
25. At no time between November 26, 2018 and March 19, 2019, did Respondent file any further pleadings for Cunningham's appeal.
26. Respondent claims he sent a "Notice of Withdrawal" on January 15, 2019 to the Appellate Court requesting leave to withdraw as counsel for Cunningham. Respondent's notice was never received by the appellate court, and Respondent was never granted leave to withdraw.
27. On March 19, 2019, Cunningham's appeal was dismissed for want of prosecution.
28. At no time following the dismissal did respondent take any action to appeal the dismissal or pursue any relief for Cunningham.
29. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failing to act with reasonableness and promptness in representing a client, by conduct including failing to file an appellate brief or any additional filings on behalf of Cunningham between November 26, 2018 and March 19, 2019, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- b. failing to comply with applicable law requiring notice to or permission of a tribunal when terminating a representation, by conduct including not filing a motion to withdraw between January 15, 2019 and March 19, 2019 and not receiving permission of the Appellate Court to withdraw, in violation of Rule 1.16(c) of the Illinois Rules of Professional Conduct (2010); and
- c. failing to take steps to the extent reasonably practicable to protect a client's interest upon termination of representation, by conduct including terminating his representation of Cunningham without leave of court, failure to give Cunningham proper notice of his withdrawal, and failure to allow time for Cunningham to secure other counsel, in violation of Rule 1.16(d) of the Illinois Rules of Professional Conduct (2010).

COUNT III

(Lack of Diligence and Failure to Refund Unearned Fees – Converse Matter)

30. On December 18, 2019, the Appellate Court of Illinois Second District affirmed the conviction of Kevin Converse (“Converse”) in case *People v. Converse*, case number 2-19-0228.

31. On December 26, 2019, the court granted Converse’s former counsel’s motion to withdraw.

32. On December 27, 2019, Respondent and Converse agreed that Respondent would represent Converse in filing a petition for rehearing in the Appellate Court. Respondent and Converse agreed that Respondent would accept a flat fee of \$2,500 to draft and file the petition for rehearing and a brief in support of the petition for rehearing.

33. On January 3, 2020, Converse paid Respondent \$1,000 as partial payment of his fee.

34. On January 8, 2020, Respondent filed his appearance, a motion to substitute as counsel, and a one sentence petition for rehearing. On the same day, Respondent filed a motion for an extension of time to file a brief in support of the petition for rehearing. In his motion for an extension of time, Respondent stated he was diagnosed with tennis elbow on January 8, 2020 and was unable to complete the brief due to the resulting pain.

35. The court granted Respondent an extension until February 8, 2020 to file the brief in support of the petition for rehearing.

36. On February 10, 2020, Respondent filed a second motion for an extension of time to file the brief. In the motion, Respondent claimed he was still suffering pain related to his tennis elbow.

37. The court granted Respondent an additional extension until February 24, 2020 to file the brief in support of the petition for rehearing.

38. At no time between January 8, 2020 and March 2, 2020, did Respondent file the brief in support of the petition for rehearing.

39. At no time prior to March 2, 2020, did Respondent do work sufficient to earn the \$1,000 fee.

40. On March 2, 2020, the Appellate Court issued a mandate finalizing their December 18, 2019 judgment.

41. On April 1, 2020, Converse sent Respondent a text in which he requested a refund of the \$1,000 payment.

42. On May 29, 2020, June 20, 2020, and August 30, 2020, Converse again sent Respondent a text message requesting a refund of the \$1,000.

43. As of XX, the date a complaint was voted in this matter, Respondent had not returned any portion of the funds owed to Converse.

44. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failing to act with reasonable diligence and promptness in representing a client, by conduct including failing to file a brief in support of the petition for rehearing on Converse's behalf between January 8, 2020 and March 2, 2020, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- b. failing to promptly refund to Converse upon discharge any portion of the \$1,000 fee paid in advance that had not been earned, in violation of Rule 1.16(e) of the Illinois Rules of Professional Conduct (2010); and
- c. failing to make reasonable efforts to expedite litigation consistent with the interests of his client, by conduct including failing to file a brief in support of the petition for rehearing on Converse's behalf, in violation of Rule 3.2 of the Illinois Rules of Professional Conduct (2010).

Respectfully Submitted

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Rory P. Quinn

Rory P. Quinn

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