

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

In the Matter of:

JOHN PAUL KOLB,
Attorney-Respondent,
No. 6225351.

Commission No. 2022PR00039

RESPONDENT'S ANSWER TO THE COMPLAINT

John P. Kolb, Respondent, by his attorney, Stephanie Stewart, of Robinson, Stewart, Montgomery & Doppke LLC, answers the complaint filed by the Administrator in this matter, as follows:

RESPONDENT'S STATEMENT PURSUANT TO COMMISSION RULE 231

- a. Respondent was a licensed realtor in Illinois from 1989-91. His license was never subject to discipline.
- b. Respondent is admitted in the District Court for the Northern District of Illinois.

(Misrepresentation and Dishonesty by Failing to Disclose the Death of a Client During Settlement Negotiations)

1. On April 20, 2016, Kyle Moon ("Moon"), was involved in an incident in which the taxi in which Moon was a passenger collided with a vehicle operated by Gregory McLain at or near the intersection of 83rd Street and Martin Luther King Drive in Chicago. Moon, age 56 at the time, sustained injuries requiring medical attention.

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ANSWER: Admitted.

2. On or about April 20, 2016, Disparti Law Group (“DLG”) and Moon agreed that DLG would represent Moon in matters related to the injuries that he sustained in the incident described above.

ANSWER: Admitted.

3. Pursuant to a written fee agreement, DLG and Moon agreed that DLG would be compensated on a contingent basis. If DLG settled Moon’s claim without filing a lawsuit, then DLG would be entitled to 33.33% of the gross amount recovered on Moon’s behalf. If DLG filed a lawsuit on behalf of Moon relating to his claim, then DLG would be entitled to 40% of the gross amount recovered on Moon’s behalf. If DLG filed an appeal, then DLG would be entitled to 50% of the gross amount recovered on Moon’s behalf. After entering into the fee agreement, DLG assigned the case to Respondent, an attorney employed by DLG.

ANSWER: Admitted.

4. On January 1, 2017, Moon died from causes unrelated to the automobile collision.

ANSWER: Admitted.

5. On January 3, 2017, Moon’s mother, Armather Thompson (“Thompson”) notified DLG of Moon’s death.

ANSWER: Admitted, however Respondent does not recall being aware of Moon’s death until sometime after January 3, 2017.

6. Upon Moon's death, the attorney-client relationship between Moon and DLG ended, and Respondent no longer had authority to act on Moon's behalf. Rather, Moon's family could pursue Moon's claim through a representative of his estate appointed by the probate court. Without the opening of an estate, the appointment of a personal representative, and that person's retention of Respondent to pursue the claim on behalf of the estate, Respondent had no authority to act on Moon's behalf following his death.

ANSWER: As the allegations of Paragraph six call for a legal conclusion, no answer is required. To the extent an answer may be deemed required, the allegations are denied. In further answering, Moon's mother, Armather Thompson, agreed to serve as the de facto representative of her son's estate and authorized Respondent to provide representation in the matter on behalf of the estate. Ms. Thompson was later appointed by the probate court as the duly authorized representative of the estate.

7. On November 6, 2017, Respondent reviewed information regarding Moon's medical treatment so that he could prepare a demand. That same day, an employee of DLG sent Respondent an email in which he told Respondent, "[t]he Client is dead so we cannot contact him directly."

ANSWER: Admitted that the allegations state part of the November 6, 2017 email.

8. On November 8, 2017, Respondent sent a demand letter to Mike Chlumecky of Transit General Insurance Company ("TGIC") that purported to be sent on behalf of Moon. In that letter Respondent made a purported settlement demand of \$245,000. Respondent demanded that

amount from TGIC for Moon's injuries and for "future pain and physical limitations" and for injuries "which will likely result in significant arthritis."

ANSWER: Admitted that Respondent sent the November 8, 2017 letter and that it contained, in part, the language described. In further answering, Respondent mistakenly incorporated language into the demand letter as he routinely does in virtually all cases with an open reduction and internal fixation joint surgery, as any such injury typically increases the risk of future arthritis in that joint. Respondent regrets that he included that language in the letter.

9. When Respondent sent the demand letter to TGIC, Moon had not authorized Respondent to send the demand letter, nor had Moon authorized Respondent to demand \$245,000 or any other amount. When Respondent sent the demand letter, he knew that Moon had died and that Respondent did not have authority to send the demand.

ANSWER: Admitted, except that Respondent denies that he did not have authority to send the demand. Moon's mother, Armather Thompson, authorized Respondent to act on the estate's behalf.

10. When Respondent sent the demand letter to TGIC, the claims that Moon would sustain future pain and physical limitations and that his injuries would likely result in significant arthritis were false.

ANSWER: Admitted that the language of the letter was incorrect regarding future pain and injury. In further answering, Respondent mistakenly incorporated language into the demand letter as he routinely does in virtually all cases with an open reduction and

internal fixation joint surgery, as any such injury typically increases the risk of future arthritis in that joint. Respondent regrets that he included that language in the letter.

11. Respondent knew when he sent the demand to TGIC that his statements that Moon would sustain future pain and physical limitations and that his injuries would likely result in significant arthritis were false because Respondent knew that Moon had died.

ANSWER: Admitted that Respondent knew Moon had died at the time he sent the letter. In further answering, Respondent mistakenly incorporated language into the demand letter as he routinely does in virtually all cases with an open reduction and internal fixation joint surgery, as any such injury typically increases the risk of future arthritis in that joint. Respondent regrets that he included that language in the letter.

12. On December 20, 2017, TGIC submitted a \$50,000 settlement counteroffer to Respondent. Respondent could not present the \$50,000 counteroffer to Moon because he was deceased.

ANSWER: Admitted only that said counteroffer was submitted. Denied as to the remainder. In further answering, Moon's mother, Armather Thompson, authorized Respondent to act on the estate's behalf and the counteroffer was presented to her.

13. On December 27, 2017, Respondent purported to enter into an agreement with TGIC to settle Moon's claim for \$60,000. When Respondent agreed to the settlement with TGIC, Moon had not authorized Respondent to accept the settlement, nor had Moon authorized Respondent settle the claim for \$60,000 or any other amount. When Respondent agreed to the settlement with TGIC, he knew that TGIC did not know of Moon's death.

ANSWER: Admitted that Respondent entered into an agreement with TGIC to settle Moon's claim for \$60,000. Denied as to the remainder. In further answering, Moon's mother, Armather Thompson, authorized Respondent to act on the estate's behalf and accept the settlement. Additionally, while Respondent had no knowledge of whether TGIC knew of Moon's death, he believed that the adjuster was not aware of it.

14. On December 27, 2017, TGIC sent Respondent a full release and settlement for Moon's signature. The release provided that Moon would release and forever discharge TGIC and the taxi cab company in exchange for \$60,000.

ANSWER: Admitted.

15. On December 27, 2017, Respondent sent an email to Larry Disparti and other employees of DLG in which he reported that he had settled Moon's claim. In his email, Respondent stated the following: "Settled \$60,000. Client is dead from unrelated cause. Settled without adj knowledge of death." In that email, Respondent was referring to TGIC when he referred to the adjuster, or "adj."

ANSWER: Admitted as to the first and second sentences and that the allegations state part of the contents of the December 27, 2017 email. Denied as to the third sentence. Respondent was referring to the adjuster at TGIC when he stated "adj."

16. On April 5, 2018, Thompson was appointed the independent administrator of the Moon's estate in Estate of Kyle Moon, Case No. 18P001439, Circuit Court of Cook County, Probate Division. Thompson, as the administrator of Moon's estate, and Respondent did not enter

into any written agreement providing that Respondent would represent Moon's estate relating to the claim that resulted from the incident referred to in paragraph one, above.

ANSWER: The first sentence is admitted. Admitted that no written agreement was entered into with Moon's estate separate and apart from the written fee agreement between Respondent's firm and Moon.

17. On December 31, 2018, Thompson was granted leave by the court in Estate of Kyle Moon, Case No. 18P001439 to enter into the settlement agreement referred to in paragraph fourteen, above.

ANSWER: Admitted.

18. On or about January 4, 2019, Respondent or an employee of DLG at Respondent's direction, made changes to the Full Release and Settlement submitted by TGIC. Respondent caused the party entering into the agreement to be changed from Kyle Moon to Armather Thompson for the estate of Kyle Moon. Respondent also caused the signature line to be changed to indicate that it was being signed by Thompson and not Moon, as originally drafted. Respondent then sent the release and settlement to TGIC.

ANSWER: Admitted. In further answering, Respondent states that said changes properly identified the Court-appointed Administrator, who was granted authority by the Court to execute the release.

19. On February 4, 2019, Mark L. Evans ("Evans"), counsel for TGIC, sent a letter to Respondent regarding the settlement of the claim against TGIC. In that letter, Evans informed

Respondent that TGIC was not aware of Moon's death when TGIC negotiated and agreed to settle the claim for \$60,000. In that letter, Evans claimed that the settlement was void because it was based on Respondent's false statements regarding Moon's future pain and physical limitations.

ANSWER: Admitted.

20. On February 4, 2019, Evans responded to Respondent by email. In that email, Respondent told Evans that TGIC was "in breach by refusal to pay the settlement amount." Respondent told Evans that he would settle the matter in court and asked whether Evans would accept service on behalf of TGIC.

ANSWER: Admitted that on February 4, 2019 Respondent sent an email to Evans and that the allegations partially state the contents of that email.

21. As a result of Respondent's false statements to TGIC, TGIC refused to settle the claim against it for \$60,000, or for any amount.

ANSWER: Admitted that TGIC claimed that its refusal to settle was due to the statements made by Respondent regarding Moon's future pain and physical limitations.

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

- a. failing to abide by a client's decision whether to accept an offer of settlement, by conduct including accepting TGIC's settlement offer without Moon's authority because he was deceased, in violation of Rule 1.2(a) of the Illinois Rules of Professional Conduct (2010);

- b. knowingly making a false statement of material fact or law to a third person, by conduct including representing to TGIC that he continued to represent Moon when Respondent knew that Moon was dead, representing to TGIC that Moon wished to settle the case after he had died, and misrepresenting by omission the material fact of Moon's death to TGIC during settlement negotiations, in violation of Rule 4.1(a) of the Illinois Rules of Professional Conduct (2010); and
- c. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including (1) failing to disclose the material fact of Moon's death to TGIC, (2) making an unauthorized settlement demand on behalf of Moon by falsely claiming that Moon wanted to settle his lawsuit, and (3) misrepresenting Moon's continuing involvement in the case after Moon died, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

ANSWER: Neither admitted nor denied as these allegations state legal conclusions to which no answer is required. To the extent that any answer may be deemed required, the allegations are denied.

Respectfully submitted,
John Paul Kolb

/s/ Stephanie Stewart
BY: Stephanie Stewart

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