In re George Louis Acosta
Attorney-Respondent

Commission No. 2021PR00037

Synopsis of Hearing Board Report and Recommendation
(June 2022)

The Administrator filed a six-count Complaint against Respondent, alleging he failed to safeguard settlement funds by causing the balance of his client trust account to fall below the amount owed to clients and third parties in violation of Rule 1.15(a), and dishonestly using those funds for his own purposes without authorization in violation of Rule 8.4(c).

The Hearing Board found the Administrator proved all of the allegations of misconduct. After considering the serious misconduct as well as the aggravating and mitigating factors, the Hearing Board recommended that Respondent be suspended for one year.

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

In the Matter of: **GEORGE LOUIS ACOSTA,** Attorney-Respondent, No. 6200430.	Commission No. 2021PR00037

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

The Administrator charged Respondent with failing to safeguard settlement funds he was holding in six client matters and acting dishonestly by using the funds for his own purposes without authorization. The Hearing Board found the charges were proved and recommended that Respondent be suspended for one year.

INTRODUCTION

The hearing in this matter was held remotely by video conference on January 25 and 26, 2022, before a Panel of the Hearing Board consisting of Brigid A. Duffield, Chair, Nancy Hablutzel, and Michael J. Friduss. Richard C. Gleason, II represented the Administrator. Respondent was present and was represented by Shelley M. Bethune and Thomas P. McGarry.

PLEADINGS AND MISCONDUCT ALLEGED

On June 2, 2021, The Administrator filed a six-count Complaint, alleging Respondent misused funds belonging to clients and lienholders in six personal injury matters. In each count, Respondent was charged with failing to hold property of clients or third persons that was in his possession in connection with a representation separate from Respondent's own property and

engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Illinois Rules of Professional Conduct 1.15(a) and 8.4(c). Respondent filed an Amended Answer on January 20, 2022, in which he admitted most of the factual allegations, admitted he failed to hold property of clients separate from his own property, and denied engaging in dishonest conduct.

EVIDENCE

The Administrator called Respondent as an adverse witness. Administrator's Exhibits 1, 2 and 8 were admitted into evidence. Respondent testified on his own behalf and called four character witnesses. Respondent's Exhibits 1, 2, 4 and 5 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).

Respondent is charged with failing to keep funds belonging to clients and third parties separate from his own funds and acting dishonestly by withdrawing those funds from his client trust account and using them for personal and business purposes.

A. Summary

Respondent failed to safeguard client funds and acted dishonestly when he knowingly used funds from his client trust account that did not belong to him.

B. Admitted Facts and Evidence Considered

Respondent was licensed to practice law in Illinois in 1989. Since 1996, he has had a solo practice focused on plaintiff's personal injury law. (Tr. 58, 62).

The clients in the matters at issue retained Respondent to represent them in personal injury matters. Respondent and the clients had written contingency fee agreements that entitled Respondent to a percentage of the clients' recoveries. (Resp. Ex. 1). At all relevant times, Respondent had a client trust account at Chase Bank with an account number ending in 2313 (Account 2313). (Adm. Ex. 1).

Garcia Flores Matter

Maria Garcia Flores retained Respondent on October 17, 2017, to represent her in connection with injuries she sustained in a motor vehicle collision. On January 26, 2018, Garcia Flores's insurer, Allstate, issued nine checks, totaling $14,475.84, in partial payment of her MedPay claims. On May 15, 2018, Allstate issued two more MedPay checks that totalled $5,976.75. Respondent deposited all of the checks into Account 2313. (Amd. Ans. pars. 5, 9). Respondent disbursed $2,000 to Garcia Flores on February 3, 2018. As of June 5, 2018, without having made any more disbursements to Garcia Flores or lienholders, Respondent drew down the balance of Account 2313 to $0.17. (Amd. Ans. par. 11). The matter settled for $45,000, and Garcia Flores received another distribution of $15,000 on July 9, 2018. (Tr. 141; Resp. Ex. 1).

In his Amended Answer, Respondent admitted he misused a portion of the Garcia Flores funds but asserted that the amount was less than what was alleged in the Complaint because he was entitled to fees for obtaining MedPay payments. (Amd. Ans. pars. 10, 12). Respondent acknowledges he did not have an agreement with Garcia Flores that allowed him to take fees for the MedPay negotations. (Tr. 137-38). The original settlement statement provided to Garcia Flores does not show any recovery or fees related to the MedPay claims. (Tr. 142; Adm. Ex. 8). Shortly before the hearing, Respondent prepared an amended distribution summary and provided it to Garcia Flores. (Adm. Ex. 8). The amended summary listed an additional recovery of $20,452.59 in MedPay benefits and attorney fees of $19,462.70, as opposed to the $15,000 in fees shown on

the initial distribution summary. (Adm. Ex. 8, Resp. Ex. 1). According to Respondent, Garcia Flores did not have any disagreement with what was shown on the amended distribution statement. (Tr. 156-57).

Evangelista Matter

Ben Evangelista was injured in a bicycle accident in 2017 and retained Respondent to represent him in connection with that accident. On August 9, 2018, Respondent reached a settlement with the opposing party for $234,534.44. On August 13, 2018, Respondent deposited a settlement check in that amount into Account 2313. From the settlement funds, Respondent was entitled to a fee of $78,178.15, plus $222.86 for costs and expenses. Respondent distributed $80,000 to Evangelista on August 22, 2018, and $120.72 to Blue Cross Blue Shield on September 14, 2018. After these disbursements, Respondent should have been holding $76,012.71 in his client trust account. On September 28, 2018, the balance of Account 2313 was $69,279.88. Respondent admits he used $6,732.83 of Evangelista's settlement proceeds for his own personal or business purposes without authorization. (Amd. Ans. pars. 15-23).

Awad Matter

Respondent represented Samy Awad, a minor, in connection with a motor vehicle accident that occurred in March 2016. On October 11, 2018, Respondent reached a settlement in the amount of $102,000 from the at-fault driver's insurance carriers and $15,000 from the at-fault driver personally. From these settlements, Respondent was entitled to costs and fees in the amount of $30,653.68. Between October 29, 2018 and November 19, 2018, Respondent deposited settlement checks totalling $112,000 into Account 2313. On December 31, 2018, he deposited the final settlement check in the amount of $5,000 into his operating account. (Amd. Ans. pars. 26-36).

As of February 14, 2019, Respondent had paid $7,276.32 to lienholders but had not made any distributions to Awad's parents. He should have been holding $79,070 to distribute to them,

but had drawn down the balance of his client trust account to $40,070 in order to pay business or personal obligations. Respondent admits he used $39,000 of Awad's settlement funds without authorization. (Amd. Ans. pars. 37,38).

Bomicino Matter

Respondent represented Jennifer Bomicino in connection with an incident at a Jewel-Osco store that caused her injuries. On June 11, 2019, Respondent and Jewel-Osco agreed to settle the matter for $100,000. Respondent deposited the $100,000 settlement check into Account 2313 on June 18, 2019. He was entitled to fees and costs totaling $34,655.69, but agreed to reduce his fee to $32,899.48. He distributed $39,000 to Bomicino on June 22, 2019. Bomicino's employer, Costco, had a subrogation lien of $26,778.16 for disability benefits paid to Bomicino. Before distributing any funds to Costco, Respondent drew the balance of Account 2313 down to $22,924.06. Respondent admits that by doing so he used $3,854.10 of the Bomicino settlement funds for his own purposes without authorization. (Amd. Ans. pars. 41-49).

Colosi Matter

On April 30, 3019, Loretta Colosi retained Respondent to represent her in connection with injuries she sustained in a motor vehicle collision. On July 18, 2019, Respondent and the opposing party agreed to settle the matter for $25,000. Respondent was entitled to a fee of $8,333.33, but agreed to reduce his fee to $7,500 and to waive reimbursement for costs and expenses.

On August 16, 2019, Respondent deposited the $25,000 settlement check from Lighthouse Casualty into Account 2313. On August 23, 2019, he distributed $7,500 to Colosi. On September 11, 2019, he distributed $5,000 to lienholder Northwest Community Hospital. After making that payment, Respondent should have continued to hold $5,000 in his client trust account to distribute to remaining lienholders. However, as of October 23, 2019, Respondent drew down Account 2313 to $500.49 by drawing checks or making transfers to pay personal obligations. In doing so, he

admits he used $4,499.51 of the Colosi settlement funds without authorization. (Amd. Ans. pars. 52-62).

Demmon Matter

Respondent began representing William Demmon on August 8, 2019, in connection with a motor vehicle accident. On September 12, 2019, Respondent reached an agreement to settle Demmon's matter for $25,000. Respondent was entitled to $8.333.33 as his fee, plus costs of $214.39. The at-fault driver's insurer, USAA, issued a settlement check for $22,537.22 on September 17, 2019. USAA withheld $2,462.78 to resolve a Medicare lien on the settlement proceeds. USAA subsequently paid $1,576.18 in full satisfaction of the Medicare lien, and issued a check payable to Respondent and Demmon for the balance of $886.60. Before disbursing any settlement funds to Demmon, who was owed at least $14,876.10, Respondent drew down the balance of Account 2313 to $500.49. Respondent admits he used $14,375.61 of Demmon's settlement funds for his own personal or business purposes without authorization. (Amd. Ans. pars. 65-75).

Respondent

Respondent admits he advanced funds to himself "a number of times" so he could meet pressing personal and business needs, including college loan debts for his children and other business expenses. (Tr. 79, 84). He denied having an intent to permanently deprive clients or lienholders of funds that were owed to them. (Tr. 90). He knew it was not right to use the funds, but justified it in his mind because he planned to replace the funds with fees he expected from other cases. (Tr. 102-103). Respondent attributed his conduct to poor financial management skills and poor judgment. (Tr. 126).

C. Analysis and Conclusions

Rule 1.15(a) requires a lawyer to hold property of clients or third persons that is in the lawyer's possession 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). As to each Count before us, Respondent admits he used funds belonging to clients or third persons without authorization and caused the balance of his client trust account to fall below the amounts he should have been holding. Based on these admissions and the bank records admitted into evidence, we find the Administrator proved the violations of Rule 1.15(a) charged in Counts I through VI by clear and convincing evidence.

With respect to the Garcia Flores matter, Respondent contends that the amount of misused funds was less than what was alleged in the Complaint because he was entitled to fees for obtaining MedPay payments. The evidence does not support Respondent's position. The fee agreement with Garcia Flores does not state that Respondent was to receive fees for assisting with MedPay claims, nor did Garcia Flores testify in support of Respondent's assertion. Respondent's reliance on the revised settlement statement is not persuasive, as he prepared it in anticipation of the hearing, and it appears to be an after-the-fact attempt to alter his agreement with Garcia Flores. Accordingly, we find that Respondent misused $18,452,42 of Garcia Flores's funds, as alleged in the Complaint.

Rule 8.4(c)-Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation

It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Ill. Rs. Prof'l Conduct R. 8.4(c). Rule 8.4(c) is broadly construed to encompass any act or omission calculated to deceive. In re Edmonds, 2014 IL 117696 ¶ 53.

Respondent contends his conduct was not dishonest because he always intended to replace the funds he advanced to himself and did replace them. Regardless of Respondent's intentions, he admittedly knew he was not authorized to transfer or use the funds but did so anyway. The case

law is clear that evidence of a lawyer's knowing use of funds that did not belong to him is sufficient to establish dishonest conduct, even if there was no intent to permanently deprive clients or third parties of those funds. See In re Smith, 2013PR00076, M.R. 27563 (Sept. 21, 2015) (Review Bd. at 4-5). Accordingly, based on Respondent's admissions and the evidence presented, we find the Administrator proved violations of Rule 8.4(c) as charged in Counts I through VI.

EVIDENCE IN MITIGATION AND AGGRAVATION

Mitigation

In December 2019, as a result of the Administrator's investigation, Respondent hired an accounting firm to handle the bookkeeping for his client trust account. (Tr. 64; Resp. Ex. 2). In addition, he instructed his bank to remove his ability to transfer funds between his operating and client trust accounts. (Tr. 127). Respondent has completed two CLE courses pertaining to handling client funds. (Tr. 67-8; Resp. Ex. 4). He now understands that he put client funds at risk. (Tr. 103).

Respondent has done *pro bono* work for church groups and individual clients, including a young man who was abused by a foster parent. He has participated in mission trips to Cuba, and has served as president of his church congregation and a member of his church's executive committee. He has been active in charitable and service organizations, including Du Page Court Appointed Special Advocates, and Urban Youth Ministries. (Tr. 70-76).

Respondent is active in the Du Page County Bar Association, the Du Page County Bar Foundation, and the Kane County Bar Association. (Tr. 77-78).

Aggravation

Respondent testified that the Awad settlement was subject to the approval of the Circuit Court, because Awad was a minor. (Tr. 30-31). The Court ordered that the net settlement proceeds of $79, 070 were to be held for Samy Awad. (Tr. 135.)

Character Witnesses

Attorney Emmanuel Sanchez has known Respondent since 1989, when Respondent became employed at his law firm, Sanchez & Daniels. After Respondent left the firm in 1995 or 1996, they remained friends and Sanchez has referred clients to Respondent. Sanchez has always considered Respondent to be straightforward, honest, and reputable. He was taken aback by the allegations in this case but still holds Respondent in the highest regard. According to Sanchez, Respondent has an excellent reputation in the legal community. (Tr. 169-175).

Attorney Brian Murphy and Retired Associate Judge and Brigadier General of the United States Marine Corps, William Weir, similarly testified that Respondent has outstanding character, is a credit to the profession, and has a good reputation in the legal community. (Tr. 193-94; 212-15).

Phil Wood, a pastor and clinical professional counselor, is involved with Respondent in Urban Youth Ministries and Wayside Center homeless ministry. (Tr. 202-203). Wood described Respondent as generous and caring. He has never heard anything negative about Respondent. (Tr. 206-209).

Prior Discipline

Respondent has no prior discipline.

RECOMMENDATION

A. Summary

Having weighed the serious nature and pattern of the misconduct and the substantial evidence in mitigation, the Hearing Board recommends that Respondent be suspended for one year.

B. Analysis and Conclusions

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. In arriving at our recommendation, we consider these purposes as well as the nature of the misconduct and any factors in mitigation and aggravation. In re Gorecki, 208 Ill. 2d 350, 360-61 (2003). We seek to recommend similar sanctions for similar types of misconduct, but must decide each case on its own unique facts. Edmonds, 2014 IL 117696, ¶ 90.

Respondent presented strong evidence in mitigation, including his pro bono work, contributions to his church and community, and impressive character testimony. We also consider that he cooperated in this proceeding, has no prior discipline in close to 25 years of practice, and has taken steps to correct his accounting procedures. Respondent has taken responsibility for his conduct, and we found him to be sincerely remorseful. While we consider that Respondent placed client funds at risk, it is noteworthy that none of his clients suffered actual harm. See In re Miller, 2014PR00134, M.R. 028618 (May 18, 2017).

There is also evidence in aggravation. Respondent engaged in a pattern of misconduct over a period of eighteen months. As a practitioner with substantial experience handling personal injury matters, Respondent should have been aware of his obligation to safeguard settlement funds entrusted to him.

The Administrator argues there was additional aggravation consisting of Respondent's financial difficulties at the time of the misconduct. There was no evidence, however, establishing the purported financial difficulties. It does not necessarily follow from the fact that Respondent

used the funds at issue to pay student loan bills or business expenses that he was in financial distress. Consequently, we decline to consider this as a factor in aggravation.

We further find that the Administrator did not establish that Respondent engaged in uncharged misconduct in connection with the Awad case. We may consider uncharged misconduct in aggravation if it is similar to current charges and established by evidence in the record. In re Storment, 203 Ill. 2d 378, 400-401, 786 N.E.2d 963 (2002). The Administrator points to a portion of an order stating that the Awad settlement funds were to be deposited in a restricted bank account at J.P. Morgan Chase Bank and asserts that Respondent's failure to comply with this requirement constituted additional dishonesty. The Administrator did not inquire as to why the funds were not deposited as directed in the order, nor is there is evidence before us regarding the circumstances surrounding the deposit. We decline to presume from the scant evidence presented that the failure to comply with the order was the result of dishonest intent.

Discipline for misconduct involving the improper use of client funds ranges from censure to disbarment, depending on the number of violations, the amount of funds at issue, and whether there are significant mitigating or aggravating circumstances. See In re Merriwether, 138 Ill. 2d 191, 200, 561 N.E.2d 662, 665 (1990). We conclude that Respondent's misuse of $86,914.47 in six client matters is serious misconduct that warrants a period of suspension.

The Administrator requests a two-year suspension, citing In re Lewis, 118 Ill. 2d 357 (1987) (three-year suspension for converting more than $100,000 in client funds over a four-year period); In re Cohen, 98 Ill. 2d 133 (1983) (eighteen-month suspension for converting $4,000 in settlement funds and withholding payments owed to two physicians for medical services provided to clients); In re O'Dekirk, 2014PR00165, M.R 027911 (March 24, 2016) (one-year suspension for converting $18,000 from escrow funds in three real estate transactions); In re Keeley,

2017PR00093, M.R. 030054 (Jan. 17, 2020) (eight-month suspension for failing to safeguard $16,900 of settlement funds in two matters); and In re Saciuk, 2014PR00075, M.R. 27979 (May 18, 2016) (one-year suspension for failing to safeguard $23,000 in client or third party funds in two client matters).

Respondent asks us to follow In re Parikh 2019PR00005, M.R. 030572 (Jan. 21, 2021) (one-year suspension stayed after five months by two years of probation for misusing and failing to safeguard $70,000 of escrow and earnest money) and In re Olavarria 2012PR00043, M.R. 25821 (March 18, 2013) (five-month suspension stayed in its entirety by one year of probation for converting approximately $35,000 in two personal injury matters). We decline to recommend a period of probation in this matter because Respondent's misconduct was dishonest and intentional, and he has already taken steps to improve his bookkeeping practices. See In re Odom, 01 CH 69, M.R. 19772 (May 19, 2005) (Review Bd. at 17-18).

After carefully reviewing the cases cited by the parties and considering all of the relevant circumstances, we determine that the purposes of the disciplinary process will be achieved with a one-year suspension. The Administrator's cited cases could arguably support a longer suspension, but our observations of Respondent lead us to conclude that he understands his conduct was wrong, has taken steps to prevent future misconduct, and does not pose a threat to the public or the profession. For these reasons, we believe a two-year suspension would be punitive. A one-year suspension will serve to impress upon Respondent the importance of complying with ethical rules and is in line with the discipline imposed in Miller, 2014PR00134, which we find particularly comparable to the circumstances before us. Miller misused approximately $85,000 of client or third-party funds for his own purposes. Like this case, the Administrator requested that Miller be suspended for two years. Both the Hearing Board and Review Board recommended that Miller be

suspended for one year, based on his long career with no prior discipline, his recognition of his errors, and the lack of monetary harm to his clients. The Court accepted the Hearing and Review Boards' recommendations. Both the amount of funds at issue and the mitigating circumstances in Miller are similar to this case.

Accordingly, we recommend that Respondent, George Louis Acosta, be suspended from the practice of law for one year.

Respectfully submitted,

Brigid A. Duffield
Nancy Hablutzel
Michael J. Friduss

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 June 14, 2022.

/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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