In re Matthew Eric Gurvey
Attorney-Respondent

Commission No. 2021PR00073

Synopsis of Hearing Board Report and Recommendation
(October 2022)

The Administrator charged Respondent with failing to hold funds of his clients or third persons separate from his own property, converting $25,000, and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rules 1.15(a) and 8.4(c) of the Illinois Rules of Professional Conduct.

The Hearing Board found that the Administrator proved that Respondent violated Rule 8.4(c) by engaging in dishonest conduct when using $25,000 that did not belong to him. It also found that the Administrator failed to prove that Respondent violated Rule 1.15(a). Based on these findings, the Hearing Board recommends that Respondent be disbarred.

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

In the Matter of:

MATTHEW ERIC GURVEY,

Attorney-Respondent,

No. 6225090.

Commission No. 2021PR00073

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

Respondent engaged in misconduct by using $25,000 he held for a third party for his own personal or business purposes. The Hearing Board recommended that he be disbarred.

INTRODUCTION

The hearing in this matter was held remotely by video conference on June 16, 2022, before a Panel of the Hearing Board consisting of Carol Hogan, Chair, MiAngel Cody, and Brian Duff. Matthew Lango represented the Administrator. Respondent was present and represented himself.

PLEADINGS AND ALLEGED MISCONDUCT

The Administrator filed a one-count Complaint against Respondent, alleging he converted $25,000 belonging to a third party. Specifically, Respondent was charged with failing to hold funds of his clients or third persons separate from his own property, converting $25,000, and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rules 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, and denied engaging in misconduct.

EVIDENCE

The Administrator called Respondent as an adverse witness and two additional witnesses. The Administrator's Exhibits 1-18 were admitted into evidence. (Tr. 8). Administrator's Exhibit 18 is a joint stipulation of facts. Respondent presented no witnesses or exhibits.

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 hold funds of clients or third parties separate from his own property, converting those funds for his own personal or business purposes, and dishonestly using those funds.

A. Summary

Respondent admits that he used $25,000 that did not belong to him for his own purposes. The Hearing Board found the Administrator failed to prove that Respondent violated Rule 1.15(a), but proved that Respondent violated Rule 8.4(c) by acting dishonestly when he used the money.

B. Admitted Facts and Evidence Considered

The charges in this matter pertain to Respondent's involvement in the purchase of real estate located at 10135 South Princeton Avenue, Chicago, Illinois (Princeton property). Between 2012 and 2018, Respondent represented Jonathan Moss, a real estate developer, in a number of real estate transactions. In 2018, Respondent agreed to represent Moss in a pending foreclosure action against the Princeton property. On April 24, 2018, Respondent filed his appearance on

behalf of Moss. On that same day, the circuit court entered a judgement of foreclosure and sale in that case. The order provided that the property would be sold at a public auction. On July 25, 2018, the Princeton property was sold to Marshall Thompson, a real estate investor and developer. (Adm. Exs. 1, 2, 18 at 1-2).

Between July and September 2018, Moss discussed with Respondent his desire to buy back the Princeton property, however, he lacked sufficient funds to do so. Respondent agreed to assist Moss in repurchasing the property, and to seek other potential investors. In early September 2018, Respondent contacted Thompson to discuss purchasing the Princeton property. Thompson offered to sell the property for $25,000. On September 4, 2018, Respondent and Thompson verbally agreed that in exchange for $25,000, Thompson would assign his interest in the property to an entity known as Junkyard Properties, LLC (Junkyard Properties). On September 10, 2018, Respondent created Junkyard Properties, and registered it with the Illinois Secretary of State. Respondent was the sole member of that entity. (Adm. Exs. 3, 6, 7, 18 at 2-3).

Subsequently, Respondent contacted Rubin Ybarra (Ybarra) regarding purchasing the Princeton property. Ybarra was a real estate investor and developer, and along with his wife Yolanda Ybarra (Yolanda), were the managing members of YRY Holdings, LLC (YRY). After discussing the property with Respondent, Ybarra understood that he would purchase the property. He believed that YRY would be part of Junkyard Properties, but he later learned that he was not included in the LLC. (Tr. 27-28, 49-50; Adm. Ex. 18 at 3). Ybarra testified that Respondent was not his partner in the deal, and Respondent did not represent Ybarra or YRY. In October 2018, after discussions with Respondent and Ybarra, Thompson understood that YRY would purchase the Princeton property. (Tr. 28-29, 32-33, 37-38, 52-56; Adm. Ex. 18 at 3). There was no written agreement regarding the purchase of the property. Respondent testified that he created Junkyard

Properties, and at Ybarra's request, YRY was not a partner in Junkyard Properties. (Tr. 95-96, 99-100).

On October 9, 2018, Ybarra wire-transferred $10,000 to Respondent's bank account ending in the digits 8037 at Bank of America. The account was entitled "Law Offices of Matthew E. Gurvey PC" and was used by Respondent for his business and personal purposes. The account was not a separate and identifiable trust account. Ybarra testified that Respondent told him the money would be put into an IOLTA account, and Respondent would act as an escrowee in the transaction. (Tr. 38-40; Adm. Exs. 8, 9).

On October 15, 2018, Ybarra transferred $15,000 to the same account. On October 19, 2018, the balance in Respondent's account was $14,255.54. On October 29, 2018, the balance in that account was negative $11,573.26. On October 23, 2018, Respondent gave Ybarra a check for $10,000. On October 29, 2019, Respondent gave Ybarra a check for $15,000, but that check was returned for insufficient funds. (Tr. 44-47, 91; Adm. Exs. 10, 11, 13). When he wrote that check, Respondent thought there would be adequate funds in his account, but there were not. (Tr. 91-92).

The sale of the Princeton property was never completed. On October 19, 2018, Respondent filed a motion in the foreclosure matter on behalf of Moss to vacate the judicial sale of the Princeton property. On November 5, 2018, Respondent's motion to vacate was denied. (Tr. 42, 90-91; Adm. Exs. 7, 9, 10, 11, 14, 15, 16, 18 at 3-4).

In October or November 2018, Ybarra retained an attorney, Michael Gotkin, to represent him in obtaining the remaining funds from Respondent. Gotkin had represented the Ybarras in real estate and corporate matters for approximately six years. (Tr. 73-74, 80; Adm. Exs. 12, 13). Ybarra told Gotkin that Respondent was the attorney representing YRY Holdings or an entity that would be formed, and that Ybarra sent money to Respondent that would be held in escrow for the purchase of the property. (Tr. 73-74). Gotkin based his understanding that Respondent

represented Ybarra on Ybarra's statements to him, and what he saw in emails between Respondent and Ybarra. (Tr. 78-79). After talking to Respondent, Gotkin sent him a letter dated November 7, 2018, detailing the conversation. (Tr. 74, 77-78; Adm. Ex. 12).

Later, on November 7, 2018, Respondent sent Gotkin an email stating the funds from Ybarra were mistakenly deposited in the wrong account, and he would return them to Ybarra "post haste." (Tr. 74-75; Adm. Ex. 13). There were numerous other communications between Respondent and Gotkin, in which Respondent said he would return the money. In none of those communications did Respondent state that he was entitled to any portion of the $25,000. (Tr. 75-76). Gotkin and Ybarra testified that Respondent never sent Ybarra the remaining $15,000. (Tr. 47-48, 76). Gotkin has billed Ybarra between $2,000 and $2,500 in legal fees in relation to this matter. (Tr. 83-84).

Ybarra testified that in 2019, Respondent sent him $6,000; however, that money was not part of the $15,000 owed to him for the Princeton Property. Instead it was partially for Gotkin's legal fees and partially for other matters unrelated to the money for the Princeton property. (Tr. 62-63; Adm. Ex. 13).

Respondent testified that he understood that the $25,000 was not his money, and he was supposed to ensure that the money was used for the purchase of the Princeton property. He did not believe he had to hold the money in a separate escrow account because he was not acting as Ybarra's attorney. (Tr. 84-86). He thought he was acting as a partner of Junkyard Properties, and not as an escrowee or as the Ybarras' attorney. (Tr. 85-87). However, in a sworn statement, Respondent said he was acting as an escrowee. Respondent testified that he gave that statement before he reviewed his files relating to this matter. (Tr. 87-88). At the time Respondent used the money, he was having financial difficulties, and knew that he was spending money that did not belong to him. (Tr. 95-96).

C. Analysis and Conclusions

Rule 1.15(a)

Rule 1.15(a) provides that a lawyer shall hold property of clients of third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Ill. R. Profession Conduct 1.15(a). We find that the Administrator failed to prove that Respondent violated this Rule. The Administrator alleged that Respondent violated the Rule when he had money deposited into his own bank account and used that money for his own personal or business purposes. It is undisputed that Respondent did what the Administrator alleged, and used money that was not his. However, that does not mean there was a violation of Rule 1.15(a). The Rule also requires that the money must be "in the lawyer's possession in connection with representation." The Administrator presented insufficient evidence to prove this part of the Rule.

The Administrator failed to prove that there was any connection between Respondent's transactions with Ybarra his representation in connection with the Princeton property. It is clear that Moss was Respondent's client. Moss lost the property in a foreclosure action, and Respondent represented Moss in that action. The property was then purchased by Thompson. Respondent stated that Moss wanted to repurchase the property, and Respondent contacted Thompson to arrive a purchase price. That price was $25,000. Subsequently, Respondent contacted Ybarra to purchase the property. However, there is absolutely no evidence establishing how Respondent's efforts to have Ybarra purchase the property would assist Moss in obtaining it. In fact, Ybarra agreed to purchase the property, and gave Respondent the entire $25,000.

The evidence only shows that Respondent contacted Ybarra to buy the property, and Ybarra agreed to do so. Respondent created Junkyard Properties as the entity that would purchase the property, but neither Moss or Ybarra were part of that entity. Importantly, Junkyard Properties was created before Respondent contacted Ybarra. Both Ybarra and Respondent testified that

Ybarra was not Respondent's attorney. Similarly, there is insufficient evidence to prove that Respondent was acting as the escrowee. The Administrator failed to sufficiently connect Respondent's transactions with Ybarra to his representation of Moss or with any type of relationship with Ybarra. Without that connection, we find that the Administrator failed to present clear and convincing evidence that Respondent violated Rule 1.15(a).

Rule 8.4(c)

Rule 8.4(c) prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Rule 8.4(c) is broadly construed to include any intentional conduct calculated to deceive, including the suppression of truth and the suggestion of falsity. In re Quitschau, 2017PR00084, M.R. 029433 (Sept. 20, 2018) (Hearing Bd. at 21); In re Edmonds, 2014 IL 117696, ¶ 53. Whether dishonesty is present is an issue of fact, to be determined based on all the circumstances. See In re Rodriguez, 2012PR00169, M.R. 26591 (May 16, 2014) (Hearing Bd. at 13). We find that Respondent's use of the $25,000 was dishonest.

The evidence established, and Respondent admitted, that he used the $25,000 for his own personal and business expenses. Respondent also admitted that he was having financial difficulties at the time he used the money. The evidence further shows that Respondent used all of the money within a few weeks of when it was deposited into his account. On October 9, 2018, $10,000 was deposited into his account, and on October 15, 2018, $15,000 was deposited, for a total of $25,000. By October 19, 2018, four days later, Respondent had used more than $10,000 of those funds, and the balance in the account was $14,255.54. Ten days after that, on October 29, 2018, the balance in the account was negative $11,573.26. Additionally, Respondent acted dishonestly when he gave Ybarra a check for $15,000. When he issued that check he knew he did not have the funds to cover it, and in fact, the check was dishonored by the bank. These facts establish that Respondent knowingly and intentionally acted dishonestly, in violation of Rule 8.4(c).

EVIDENCE IN AGGRAVATION AND MITIGATION

Aggravation

There are several aggravating factors presented in this case. Specifically, Respondent failed to demonstrate any remorse, failed to fully acknowledge his misconduct, failed to make full restitution, and caused harm to the Ybarras. Although Respondent admitted he used Ybarra's money, he showed no real remorse for his actions or understanding of the impropriety of them. Although he admitted he used money that did not belong to him, he failed to apologize for doing so or recognize that his actions were dishonest. This is a serious aggravating factor.

Respondent has also failed to make full restitution to the Ybarras. Respondent admitted using $25,000 of the Ybarras's money in 2018. He repaid them $10,000. However, it is now nearly four years later, and Respondent has failed to repay the remaining $15,000. He suggests that he gave them an additional $6,000 in restitution. Ybarra testified that the $6,000 was for other debts owed to him by Respondent. We find that Ybarra's testimony on this issue was credible, and Respondent still owes $15,000 in restitution. However, even if we believed Respondent, he would still owe the Ybarra's $9,000. Respondent has given no explanation for his failure to repay the Ybarra's, and we find this failure a significant aggravating factor.

Respondent further aggravated his misconduct by causing harm to the Ybarras. In addition to the loss of $15,000, the Ybarras lost the opportunity to profit from the purchase of the property and had to hire an attorney to attempt to recover those funds from Respondent. The Ybarras paid that attorney between $2,000 and $2,500. Although there was some testimony that Respondent reimbursed the Ybarras for those fees, it does not diminish the fact that they had to hire an attorney, and still do not have the money owed to them.

Mitigation

Respondent presented no evidence in mitigation.

Prior Discipline

In 2020, Respondent was suspended from the practice of law for two years for converting funds, misusing client funds, issuing a check to another attorney knowing that it would be dishonored, and dishonesty. In re Gurvey, 2017PR00092, M.R. 030215 (May 18, 2020). In that case, Respondent failed to promptly deliver funds to a client in connection with a real estate matter and engaged in dishonest conduct by knowingly using $44,865.77 of client money to pay the debt of another client. Additionally, Respondent issued a check for $25,000 that he knew would be dishonored by his bank and provided a false explanation for why the check was dishonored. In a separate matter, Respondent failed to hold client funds separate from his own property and converted $25,661.03 in earnest money for his own use. The misconduct occurred between November 2015 and May 2016. The disciplinary complaint against Respondent was filed on August 29, 2017. The disciplinary hearing was held on September 6, 2018, and the Hearing Board issued its recommendation on March 8, 2019.

RECOMMENDATION

A. Summary

Having considered the nature of the misconduct and the evidence in aggravation and mitigation, the Hearing Board recommends that Respondent 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, 2014IL117696, ¶ 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, 2014IL117696, ¶ 90.

The Administrator asks us to recommend that Respondent be disbarred. Respondent argues that disbarment is too severe and requests that he receive no suspension. Instead, he states that the two year suspension he received in his prior disciplinary case is sufficient, and he should be given six months to repay the Ybarras. If our recommendation were based solely on the facts of the case before us, we would likely agree that disbarment might not be necessary. However, based on the aggravating factors, and particularly Respondent's prior misconduct, we believe disbarment is warranted.

The misconduct in this case and Respondent's prior disciplinary case, are strikingly similar. In both cases, Respondent used money that did not belong to him for an unauthorized purpose. Both cases involved large sums of money. In this case he used $25,000 for his own purposes, and in the previous case he used $25,661.03 for his own purposes in one matter and used $44,865.77 of one client's money to pay the debt of another client in another matter. In both cases, Respondent attempted to repay a portion of the money he used by writing checks that he knew he did not have funds to cover. In the present case he wrote a check to Ybarra for $15,000 that he knew would he did not have sufficient funds to cover. In the previous case, he wrote a check for $25,000 that he knew would be dishonored by his bank. These facts show a pattern of conversion and misuse of funds that is compounded by dishonesty.

Additionally, Respondent has presented no evidence or testimony to assure us that he would not continue this pattern. In fact, the evidence is to the contrary. It is very concerning that his prior disciplinary matter did not have the desired effect of creating an awareness of his obligation to comply with the ethical rules. See In re Storment, 203 Ill. 2d 378, 401, 786 N.E.2d 963 (2002). Given this lack of awareness and the similarity to the misconduct before us, Respondent's prior discipline is a significant aggravating factor. See In re Banks, 2020PR00068, M.R. 031115 (March 25, 2022) (Hearing Bd. at 12).

In addition, even after receiving a two year suspension for nearly identical misconduct, Respondent showed no remorse or acknowledge his wrongdoing. Without genuine signs of remorse and an acknowledgement of his misconduct, we have little faith that Respondent will not repeat this misconduct in the future. See In re Lewis, 138 Ill. 2d 310, 347-48, 562 N.E.2d 198 (1990).

Respondent argues that his prior disciplinary action should not be used as aggravation because the misconduct in the current case occurred prior to the imposition of discipline in the first case. We reject this argument. Although Respondent is technically correct, we do not view this as a significant distinction. The misconduct in the first case occurred between November 2015 and May 2016. The complaint in that matter was filed on August 29, 2017, and the disciplinary hearing was held on September 6, 2018. In the present case, the misconduct occurred primarily in October and November 2018. Based on these facts, Respondent engaged in the current misconduct one year after the complaint was filed and one month after his disciplinary hearing in his first case. At the very least, Respondent would have been on notice that the conduct he engaged in, that gave rise to the first disciplinary action, was improper. Nevertheless, while he was waiting for the Hearing Board to decide his first case, he engaged in nearly identical conduct.

Even if, for the sake of argument, we agree with Respondent and find that this prior misconduct should be given less weight, we would still recommend the same sanction. As will be detailed below, there are numerous cases where an attorney was disbarred for similar instances of conversion for comparable or less amounts of money. In other words, based on the totality of the facts in the prior and current disciplinary actions, disbarment is warranted.

Respondent also argues, in his response to the Administrator's Report of Prior Discipline, that he has learned from his prior misconduct and suspension, has changed as a person, and would not repeat the misconduct in the future. The statements made by Respondent in his response were

made after the hearing, and are not evidence in this case. Respondent had the opportunity during the hearing to present mitigating evidence, and he failed to do so. Therefore, we do not consider these statements when making our recommendation.

Additionally, Respondent's argument that he should not receive any sanction for this case is meritless. Respondent was suspended for two years for the misconduct committed in his prior case. He committed additional serious misconduct in this case, which warrants an additional sanction. Respondent's request to be given six months to repay the Ybarras further illustrates our conclusion that he does not understand the nature and seriousness of his misconduct, and will likely repeat it. He has owed the Ybarras $15,000 since October 2018, nearly four years ago, and has not repaid any of it. He has had ample time to prove that he is a changed person, and has not taken even the most obvious first step by repaying the money he wrongfully took from the Ybarras.

The Administrator presents several cases to support imposing disbarment. See In re Peiss, 2013PR00077, M.R. 27441 (Sept. 21, 2015); In re Vogel, 2010PR00118, M.R. 24501 (May 18, 2011); In re Dziedziak, 2017PR00026, M.R. 029128 (Mar. 15, 2018); In re Otero, 2016PR 00107, M.R. 028734 (Nov. 20, 2017); In re Pruitt, 2016PR00072, M.R. 028733 (Sept. 22, 2017).

In addition to the cases cited by the Administrator, the following cases also support disbarment. In In re Birt, 2013PR00053, M.R. 27896 (May 18, 2016) the attorney agreed to hold $80,000 in his trust account for an elderly woman who was not his client. Immediately after receiving the money, he converted it. Birt did not have prior discipline and presented some evidence in mitigation. The Hearing Board noted that the sanction was based on Birt's conduct as a whole, and not the number of rules violated. Birt was disbarred.

In In re Khan, 2017PR00065, M.R. 029150 (March 15, 2018), the attorney neglected client matters and converted security retainers. He engaged in this misconduct while he had another disciplinary matter pending for similar misconduct. Khan was also disbarred. In In re Ucherek, 07

SH 33, M.R. 22538 (Sept. 17, 2008), the attorney converted approximately $50,000, made false statements to his clients and the court, and commingled funds. He made restitution, had no prior discipline and presented other evidence in mitigation. Ucherek was disbarred.

These cases are sufficiently analogous to the present case. As in Birt and Ucherek, the attorneys dishonestly used similar amounts of money that did not belong to them. However, unlike those cases, in this case, Respondent's misconduct is more egregious because he engaged in prior misconduct, exhibited no remorse, failed to pay complete restitution and presented no evidence in mitigation. Accordingly, we recommend that Respondent be disbarred.

Respectfully submitted,

Carol A. Hogan
MiAngel C. Cody
Brian B. Duff

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 October 3, 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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