In re McStephen Olusegun Adewale Solomon
Attorney-Respondent

Commission No. 2021PR00012

Synopsis of Hearing Board Report and Recommendation
(February 2023)

The Administrator charged Respondent with failing to communicate with and diligently represent a client in a mortgage foreclosure matter, dishonestly holding rental income that he collected on behalf of the client and should have paid over to her, and dishonestly converting a portion of that rental income from the client. The Hearing Board found that the Administrator proved by clear and convincing evidence that Respondent neglected his client's matter, failed to communicate with his client, and dishonestly converted $12,400 that he should have been safeguarding for his client, and therefore that he violated Rules 1.3, 1.4(a)(3), 1.15(a), and 8.4(c) of the Illinois Rules of Professional Conduct (2010). Finding Respondent's misconduct serious, but also recognizing that Respondent had been a lawyer for less than a year when he began representing his client in the foreclosure matter and, as a solo practitioner, had no colleagues or mentors to guide him, the Hearing Board recommended that Respondent be suspended for one year and until further order of the Court, stayed after six months by a one-year period of probation with conditions designed to improve his law office management skills.

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

In the Matter of:

MCSTEPHEN OLUSEGUN ADEWALE SOLOMON,

Attorney-Respondent,

No. 6310211.

Commission No. 2021PR00012

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

The Administrator charged Respondent with failing to communicate with and diligently represent a client in a mortgage foreclosure matter, dishonestly holding rental income that he collected on behalf of the client and should have paid over to her, and dishonestly converting a portion of that rental income from the client. The Hearing Board found that the Administrator proved by clear and convincing evidence that Respondent neglected his client's matter, failed to communicate with his client, and dishonestly converted $12,400 that he should have been safeguarding for his client. For this misconduct, it recommended that Respondent be suspended for one year and until further order of the Court, stayed after six months by a one-year period of conditional probation.

INTRODUCTION

The hearing in this matter was held remotely by videoconference on July 20, 2022, before a panel of the Hearing Board consisting of Stephen S. Mitchell, Chair, Patricia Piper Golden, and Willard O. Williamson. Matthew D. Lango represented the Administrator. Respondent was present and represented himself.

PLEADINGS AND MISCONDUCT ALLEGED

On February 23, 2021, the Administrator filed a two-count Complaint against Respondent, alleging that Respondent failed to act with reasonable diligence and promptness in representing a client in a mortgage foreclosure matter; failed to keep his client reasonably informed about the status of the foreclosure matter; failed to hold his client's funds that were in his possession separate from his own funds; and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of Rules 1.3, 1.4(a)(3), 1.15(a), and 8.4(c) of the Illinois Rules of Professional Conduct (2010).

In his Answer, Respondent admitted some factual allegations, denied others, and denied the charges of misconduct.

EVIDENCE

The parties entered into a Joint Stipulation of Facts. The Administrator's Exhibits 1 through 16 were admitted into evidence. (Tr. 11.) At hearing, the Administrator presented testimony from Edith Raices and Respondent as an adverse witness. Respondent's Exhibits 1 through 7 were admitted into evidence. (Tr. 11, 265.) Respondent testified on his own behalf.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In attorney disciplinary proceedings, the Administrator has the burden of proving the charges of misconduct by clear and convincing evidence. In re Winthrop, 219 Ill. 2d 526, 542, 848 N.E.2d 961 (2006). Clear and convincing evidence requires 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); In re Santilli, 2012PR00029, M.R. 26572 (May 16, 2014). In determining whether the Administrator has met that burden, the

Hearing Board assesses witness credibility, resolves conflicting testimony, and makes factual findings. In re Edmonds, 2014 IL 117696, ¶ 35; Winthrop, 219 Ill. 2d at 542-43.

I. In Count I, the Administrator charged Respondent with failing to diligently represent a client and failing to communicate with a client

A. Summary

Respondent failed to diligently represent his client, Edith Raices, in that he failed to pursue her affirmative defense, attend court dates, and respond to the plaintiff's motions in a mortgage foreclosure action against Raices. He also failed to keep her reasonably informed about the status of the foreclosure matter, in that he failed to inform her that the property had been foreclosed upon and a deficiency judgment entered against her.

B. Admitted and Stipulated Facts and Evidence Considered

Respondent was licensed to practice law on November 1, 2012. For the entirety of his law career, Respondent has been a solo practitioner, focusing on immigration, family law, real estate, and general litigation. (Ans. at par. 1; Tr. 162.)

Respondent met Edith Raices in 2013, when Raices hired him as an adjunct professor at South Suburban College in South Holland, Illinois. Raices was his supervisor for the duration of his employment at South Suburban College, from 2013 to 2018. (Ans. at par. 2; Tr. 49-50.)

Around October 2013, Respondent and Raices agreed that Respondent would represent Raices in a mortgage foreclosure action that had been brought against her with respect to a property in South Holland. Raices did not believe she should have been named as a defendant in the foreclosure action because she believed she had sold the property in 2011 to a company called Walk Away Today. (Ans. at pars. 3-4; Tr. 51-52.) Unfortunately for Raices, Walk Away Today was criminally prosecuted and convicted in federal court on fraud charges in connection with its purported purchases of distressed properties, including hers. Consequently, Raices' sale of her

property to Walk Away Today was fraudulent and she still owned the property, which caused the bank holding the mortgage on the property to remove Walk Away Today from the deed, put Raices' name back on the deed, and bring a mortgage foreclosure action against her. (Ans. at pars 6-7; Tr. 52-53; Adm. Ex. 1.)

Respondent and Raices agreed that she would be responsible for any costs associated with the representation, but he would not charge her attorney's fees. Respondent did not prepare and Raices did not execute a written retainer or fee agreement. (Ans. at par. 5; Tr. 54, 159-60, 163-64.)

In December 2013, Respondent filed an appearance in the foreclosure action. On the appearance form, he indicated that Raices was asserting an affirmative defense of "third-party fraud." In January 2014, the plaintiff in the foreclosure action withdrew a pending motion for default judgment against Raices and filed an answer to the affirmative defense of third-party fraud. At no time throughout the pendency of the foreclosure action did Respondent file or produce any additional documents or pleadings to substantiate or otherwise explain the affirmative defense. (Ans. at pars. 7-8.)

In June 2017, the plaintiff filed various motions, including a motion for summary judgment, a motion for judgment of foreclosure, and a motion that would allow the plaintiff to sell the property at auction. The plaintiff served Respondent with copies of the motions, and Respondent received notice of the motions, which set forth the date on which they would be heard, but Respondent did not respond to any of the motions or appear in court on the date the motions were scheduled to be heard. Thus, on September 19, 2017, the Court granted the motions and entered a judgment of foreclosure against Raices and in favor of the plaintiff. (Ans. at pars. 10-12; Adm. Exs. 6, 7, 9.)

The plaintiff sold the property at auction on March 6, 2018. In May 2018, the plaintiff filed a motion seeking, among other things, an order for a personal deficiency judgment against Raices. In a court proceeding on June 6, 2018, which Respondent did not attend, the Court granted the plaintiff's motion and entered a deficiency judgment against Raices in the amount of $314,236.69. (Ans. at pars. 13-14; Adm. Ex. 8.)

Raices testified that Respondent did not tell her about any of the plaintiff's motions, discuss with her a strategy for responding to the motions, tell her about the sale, or tell her that the foreclosure case had concluded. She testified that, at the end of 2018, Respondent told her that she had lost the house, and that he was going to make sure that she did not get a monetary judgment against her. She testified that Respondent did not give her updates on any negotiations he might be having with the plaintiff bank. She further testified that she would not have agreed to allow a judgment to be entered against her in the foreclosure action. (Tr. 66-69.)

Raices testified that she did not learn of the deficiency judgment against her until she spoke with Administrator's counsel about a week before Respondent's disciplinary hearing in July 2022. (Tr. 70.) She testified that Respondent never provided her with a copy of the judgment or indicated to her that he was going to attempt to negotiate down or away any judgment against her. (Tr. 70.)

For his part, Respondent acknowledged that the only filing he made in the mortgage foreclosure matter was his appearance. (Tr. 164-65.) He acknowledged that he did not try to negotiate with the bank to avoid a judgment against Raices. (Tr. 165-66.) He also acknowledged that he did not respond to the plaintiff's motions or attend court when the motions were scheduled to be heard. He testified that the first set of motions was voluminous, and that he must have missed the date on which the motions were scheduled to be heard. He claimed he was not aware of the May 2018 motion requesting that a personal deficiency judgment be entered against Raices. (Tr.

196-97.) He testified that he learned that the property had been sold at auction when he received the confirmation of the sale in June 2018. (Tr. 198.)

Respondent testified that he had told Raices that a foreclosure was inevitable, so his focus would be to negotiate a deficiency judgment. He testified that he believed the deficiency judgment would be negotiated after it was entered. However, he acknowledged that Raices did not consent to having a deficiency judgment entered against her. He also acknowledged that he was not in communication with anyone who represented the bank, either before or after the deficiency judgment was entered. (Tr. 199-201, 203-204.)

C. Analysis and Conclusions

A lawyer is required to act with reasonable diligence and promptness in representing a client. Ill. R. Prof'l Cond. 1.3. A lawyer also is required to keep the client reasonably informed about the status of the matter. Ill. R. Prof'l Cond. 1.4(a)(3). The Administrator charged Respondent with failing to meet those obligations to Raices.

In his Answer, Respondent admitted many of the salient facts that form the basis of Count I's misconduct charges against him. At hearing, however, he claimed that his failure to respond to the various motions filed by the plaintiff in the foreclosure action and failure to appear in court were strategic decisions rather than neglect. He also asserted that he kept Raices apprised of the court proceedings and informed her of the judgment that was entered against her.

Raices, on the other hand, flatly denied that Respondent provided any information at all to her about the foreclosure proceedings, and claimed that she did not know about the deficiency judgment until a week prior to Respondent's disciplinary hearing.

This contradictory testimony requires us to make credibility determinations, as well as look to other evidence, in order to make our findings of fact and of misconduct. See Winthrop, 219 Ill. 2d at 542-43 (Hearing Board resolves conflicting testimony, assesses witness credibility, and

makes findings of fact). Raices' testimony about the events surrounding the foreclosure matter was straightforward, unwavering, and consistent, which leads us to find her testimony to be credible. Much of Respondent's testimony, on the other hand, was vague, ambiguous, and internally inconsistent, particularly with respect to whether and/or when he received notice of the various motions filed by the plaintiff, when he learned about the orders entered by the court, and what information he provided to Raices and when. This calls into question the reliability of his version of events. We thus accept Raices' testimony that Respondent did not keep her apprised of what was happening in the foreclosure proceedings or consult with her about any strategy that he was purportedly following.

We also reject Respondent's claim that his failure to respond to or appear in court on the plaintiff's motions, and the resulting foreclosure, property sale, and deficiency judgment against Raices, were part of an overarching legal strategy. In an email dated January 14, 2014, Respondent told Raices that, "[n]o matter what happens, I am determined to make sure that you are not foreclosed upon, so you won't have that in your credit records." (Adm. Ex. 13 at 6.) And in late 2018, when Respondent told Raices that she had lost the property, he also told her that he would make sure she did not get a monetary judgment against her. (Tr. 67-68.) This evidence directly contradicts Respondent's testimony that allowing a foreclosure and deficiency judgment was part of his legal strategy.

Moreover, we find it implausible that an attorney – even an inexperienced one – would knowingly allow a judgment of over $300,000 to be entered against a client, with the purported intention of negotiating with the bank after the judgment had been entered. We are not required to accept testimony that is inherently improbable and contrary to human experience. In re Wilkins, 2014PR00078, M.R. 028647 (May 18, 2017) (Hearing Bd. at 18). Respondent's explanation for

his inaction strains credulity, and appears to be an afterthought to hide his neglect. We therefore reject it and find, instead, that he neglected Raices' matter.

Accordingly, in light of Respondent's admissions in his Answer and the evidence presented at hearing, we find that the Administrator proved by clear and convincing evidence that Respondent failed to act with reasonable diligence in representing Raices in the foreclosure matter and failed to keep her reasonably informed about the status of the matter, and therefore violated Rules 1.3 and 1.4(a)(3).

II. In Count II, the Administrator charged Respondent with misappropriating client funds and engaging in dishonest conduct

A. Summary

Respondent misappropriated $12,400 of rental income that belonged to Raices, by making cash withdrawals from his IOLTA account and using those funds for his own personal or business purposes, without Raices' authorization. His taking of the funds was dishonest because he knew the funds in the account did not belong to him.

B. Admitted and Stipulated Facts and Evidence Considered

In 2013, around the time Raices learned that she still owned the property, she also learned that a tenant, Tiffany Daniels, was living at the property. In or about September 2013, Respondent agreed to represent Raices with respect to Daniels' tenancy. He told Raices that he would hold all rent money collected from Daniels in an IOLTA account until the conclusion of the foreclosure action against Raices, because he believed that the plaintiff in the foreclosure action may have a claim to the rent money being paid by Daniels. (Ans. at pars. 18-19.)

In October 2013, Respondent opened an IOLTA account at JP Morgan Chase Bank, N.A. for the sole purpose of holding rent collected from Daniels on behalf of Raices. Also in October 2013, he drafted a lease agreement to be executed between Daniels and Raices. The lease

agreement provided that Daniels would pay Raices $900 a month for rent, by depositing her rent payments directly into Respondent's IOLTA account. Respondent included the full IOLTA account number in the lease agreement. (Ans. at pars 20-21; Joint Stip. at par. 1.)

On October 30, 2013, Respondent sent an email to Raices in which he stated:

> Since you have hired me as your lawyer in this case, I have opened a Client Trust Account with Chase Bank … specifically and only for Ms. Daniels' rent payment. All deposited monies will be kept there and accounted for (monthly) until order of court or party agreement.

(Adm. Ex. 13 at 3.)

A day later, on October 31, 2013, Respondent sent Daniels a letter, which he drafted, and he and Raices signed, in which he informed Daniels that Raices was her landlord and that she needed to resume paying rent on the property. The letter stated:

> Please be aware also that rent payments made into the escrow account shall be kept and accounted for until final resolution or further order of court. Withdrawals may only be made for the purpose of executing any and all obligations of landlord that may involve any and all expenditures.

(Resp. Ex. 2.)

On December 30, 2013, Respondent sent an email to Daniels, with a copy to Raices, in which he stated:

> Since you're under a lease, and currently in physical possession of the property now, you must pay any and all rent to whoever the owner is…. Whoever that becomes will get ALL the rent money. This is why you have been asked to deposit the money in escrow where it will NOT be released to either party until the court decides or the issue is resolved.

(Adm. Ex. 13 at 13.)

On January 2, 2014, Respondent sent an email to Daniels in which he told her that, "if Ms. Raices [loses] the property to foreclosure, all rent monies will become the property of the bank." (Adm. Ex. 13 at 15.)

Between February 18, 2014, and June 30, 2018, Daniels deposited 67 rent payments for a total of $47,100 into Respondent's IOLTA account. (Ans. at par. 22; Joint Stip. at par. 2.) Between June 11, 2014, and March 24, 2018, Respondent made ten cash withdrawals from the IOLTA account, in amounts ranging from $200 to $3,000, for a total of $14,400. (Ans. at par. 23; Joint Stip. at par 4.)

One of the withdrawals – in the amount of $2,000 on April 28, 2017 – was for cash that Respondent gave to Raices to pay college tuition. (Tr. 63.) Raices testified that Respondent told her that the money belonged to the bank and she might have to pay that amount back, and had her sign paperwork indicating that he gave her money out of the client trust account and that she would probably have to pay it back. (Tr. 63-64, 93.)

Raices testified that she did not authorize the remaining nine withdrawals, totaling $12,400, and never authorized Respondent to use any portion of those funds for his own business or personal purposes. She testified that Respondent never told her that he was owed attorney's fees out of the rent money, sent her an invoice for attorney's fees, or discussed with her his belief that he could collect attorney's fees from Daniels. She testified that she never authorized him to withdraw attorney's fees from the IOLTA account. (Tr. 57, 61-62, 64-66.)

Raices testified that she asked Respondent on several occasions if she needed to pay him anything. He told her that she did not have to pay him anything and that he was going to represent her as a favor. She testified that she asked him on many occasions if she owed him money and he said no. (Tr. 101-103.) Raices denied that Respondent told her that Daniels would be responsible for any fees because Daniels was not paying rent. (Tr. 102.) She denied that, when he told her she did not owe him anything, he said that any money that is owed would be from Daniels. (Tr. 103.) Raices did not know that Respondent was charging Daniels attorney's fees. (Tr. 113.) She testified

that there was no expectation that Respondent would get paid for his representation of her, either in the foreclosure matter or with respect to his work with Daniels. (Tr. 159-60.)

Respondent, in turn, testified that he drafted the lease between Raices and Daniels, and did not include a provision in the lease regarding attorney's fees. (Tr. 167-68.) He testified that Daniels was not his client, and that Raices was his client. He acknowledged that Raices did not put in writing that he could take fees out of the rent that Daniels was depositing into the IOLTA account. (Tr. 172-73.)

Respondent acknowledged that, as soon as Daniels paid money into the IOLTA account, it was no longer Daniels' money, and that he was holding money in the IOLTA account on Raices' behalf, not Daniels' behalf. Nonetheless, he testified that he strongly believed that Daniels had the authority to decide in any given month if the money that she was paying into the IOLTA account was for rent or attorney's fees. (Tr. 174-75.)

Respondent acknowledged that in none of the emails between him and Daniels did he give an hourly rate for his work, indicate how many hours he spent on the tenancy matter, or itemize the fees he believed he was owed. (Tr. 186-88; see also Resp. Ex. 1.) He also acknowledged that his withdrawals from the IOLTA account did not line up with the $1,850 in attorney's fees he claimed Daniels owed him in the June 2016 "accounting" he provided to her. (Tr. 188-89; see also Resp. Ex. 7.) Respondent testified that he did not expect to be paid for the foreclosure matter, but he told both Daniels and Raices that he expected to be paid for his work on the Daniels tenancy matter. (Tr. 218.) He testified that it was "unreasonable" and "not fair" for Raices to expect him to do all of the work on the Daniels tenancy and not get paid for it. (Tr. 228.)

He further testified that he strongly believed that his fees for his representation of Raices in the Daniels tenancy matter should come from either Daniels or the rent proceeds. He did not

think that Raices should be paying out of pocket for something that did not belong to her, and that they had "already established that the money didn't belong to her. It was going … to the bank, especially in the case of foreclosure." (Tr. 219.) Therefore, he focused on Daniels and charged her. He testified that he charged Daniels each time she called him to make a deal or miss a payment, and that he would tell her that she was going to incur attorney's fees and she would agree to pay them. (Id.)

Respondent further testified that, between the time he learned about the property foreclosure and sale and the time he learned about Raices' request for investigation, he made no attempt to determine who should get the rent money he had collected from Daniels. (Tr. 203-204.)

At some point after Respondent opened the IOLTA account to hold Daniels' rent payments, he opened another IOLTA account at Chase Bank, ending in the digits 1199, for a different matter, because he mistakenly believed that he needed a separate IOLTA account for each client. (Tr. 222; Adm. Ex. 12.) On June 4, 2014, Respondent deposited into the Raices IOLTA account a $5,000 check that should have been deposited in the 1199 account. (Joint Stip. at par. 5.) Rather than withdrawing the $5,000 from the Raices IOLTA account when he discovered his mistake, Respondent left the money in that account. He testified that now he knows he made a mistake by doing so, but, at the time he was making withdrawals, he believed the $5,000 belonged to him. (Tr. 169-70, 193-94, 221-22.)

Between July 5 and September 1, 2018, the Raices IOLTA account was compromised, resulting in unauthorized transactions totaling about $33,000. On September 26, 2018, Chase Bank transferred $40,311.97 from the compromised IOLTA account into the IOLTA account ending in 1199 and merged the two accounts. By December 31, 2018, Chase Bank reversed all of the unauthorized transactions and returned all compromised funds back into the merged IOLTA

account, except for one unauthorized payment of $2,200, which was still outstanding at the time of Respondent's hearing. (Joint Stip. at pars. 7-9.)

On January 7, 2019, Raices filed with the ARDC a request for investigation into Respondent's conduct, expressing her belief that Respondent stole about $50,000 from her. (Resp. Ex. 4.) Respondent learned of the ARDC's investigation in early February 2019. (Resp. Ex. 1 at 59.) Respondent returned $40,311.97 to Raices on or about September 13, 2021. (Adm. Ex. 16.) He testified that, once the investigation of his conduct commenced in January 2019, he did not think he could do anything with the funds in the IOLTA account, but when the Administrator's counsel told him that he could turn over the funds to Raices, he did so. (Tr. 259.)

C. Analysis and Conclusions

Rule 1.15(a)

A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Ill. R. Prof'l Cond. 1.15(a). Rule 1.15(a) obligates attorneys holding client or third-party funds to safeguard those funds. In re Woods, 2014PR00181, M.R. 28568 (Mar. 20, 2017) (Hearing Bd. at 19). An attorney violates Rule 1.15(a) where the attorney uses client or third-party funds without authority, thereby causing the balance in the account into which those funds were deposited to fall below the amount the attorney should be holding. Id.

Respondent's bank records show that, between June 2014 and March 2018, he made ten separate withdrawals, totaling $14,400, from the Raices IOLTA account. Of that $14,400, he gave $2,000 to Raices and used the remaining $12,400 for his own business or personal purposes. Respondent does not dispute that he withdrew the funds and kept $12,400 for himself. He also does not dispute that Raices did not authorize him to withdraw and use those funds. He asserts,

however, that he was entitled to the funds as attorney's fees from Daniels for his work on the tenancy matter. His contention fails for several reasons.

First, Respondent's own words belie his claim. In written communications to Raices and Daniels, he repeatedly demonstrated a recognition that all of the funds in the IOLTA account belonged to either Raices or the plaintiff bank, depending on the outcome of the foreclosure case. He told Raices that he opened the IOLTA account "specifically and only for" Daniels' rent payments, and that "[a]ll deposited monies will be kept there and accounted for (monthly) until order of court or party agreement." (Adm. Ex. 13 at 3.) He told Daniels that rent payments made into the IOLTA account "shall be kept and accounted for until final resolution or further order of court" and that "[w]ithdrawals may only be made for the purpose of executing any and all obligations of landlord that may involve any and all expenditures." (Resp. Ex. 2.) He told Daniels that the money she deposits into the IOLTA "will NOT be released to either party until the court decides or the issue is resolved." (Adm. Ex. 13 at 13.)

These communications leave no room for doubt that Respondent knew that all of the funds in the IOLTA account belonged to either Raices or the bank, and, consequently, that no portion of the funds belonged to him. Thus, even if Respondent sincerely believed that Daniels owed him attorney's fees, he nevertheless knew that he could not withdraw funds from the IOLTA account as payment of those fees.

In addition, other than the "accounting" found in Respondent's Exhibit 7, in which he stated that Daniels owed him $1,850 in attorney's fees, he provided no basis whatsoever for the fees he claimed Daniels owed. He acknowledged that Daniels was not his client; that he had no fee agreement with her; and that he did not tell her his hourly rate, how many hours he had worked on her tenancy matter, or what he did to earn the fees he was charging her. Moreover, the amount

and timing of the withdrawals appear to have no correlation to Respondent's statements to Daniels that she owed him attorney's fees. Thus, aside from Respondent's own testimony, there is no evidence that the withdrawals Respondent made from the IOLTA account corresponded to fees he believed he was owed and entitled to take from the rent payments. See In re Cooper, 2021PR00082, M.R. 31486 (Jan. 17, 2023) (Hearing Bd. at 9) (rejecting respondent's claim that he was entitled to withdraw settlement funds as fees, noting the absence of a fee agreement and lack of a proper accounting as to his services and fees owed).

In sum, if Respondent believed Daniels owed him fees for the work he did in connection with her tenancy, he was required to seek and obtain those fees in an appropriate manner under the Illinois Rules of Professional Conduct. See id. at 10. He did not do so, and instead, took funds that belonged to Raices or, possibly, the bank seeking foreclosure on her property. His actions violated Rule 1.15(a).

Rule 8.4(c)

It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Ill. R. Prof'l Cond. 8.4(c). Dishonesty is broadly construed to include anything calculated to deceive. Edmonds, 2014 IL 117696, ¶ 53. Determining whether conduct was dishonest depends on the unique circumstances of each case. The conduct and the intent behind the conduct are both relevant. Id. at ¶¶ 72-74. An attorney's subjective state of mind is relevant, but a violation of Rule 8.4(c) can be found even if an attorney believed his conduct was legitimate but that belief was unreasonable. In re Mulroe, 2011 IL 111378, ¶ 22; In re Thomas, 2012 IL 113035, ¶ 123.

The Administrator alleges that Respondent engaged in dishonest conduct in two respects: first, by withdrawing funds from the Raices IOLTA account that he knew did not belong to him, and second, by continuing to hold all of the rental income he collected on Raices' behalf until

September 2021. We find that the Administrator proved the first instance of dishonesty by clear and convincing evidence, but not the second.

Dishonesty is not established simply because the balance in an attorney's trust account falls below the amount the attorney should be holding for a client or third person. In re Bleiman, 2016PR00132, M.R. 29458 (Sept. 20, 2018) (Hearing Bd. at 12). In general, the Hearing Board seeks to ascertain whether the attorney knowingly used funds that did not belong to him or her or whether the failure to maintain the proper balance resulted from unintentional errors such as sloppy bookkeeping. In re Knowles, 2015PR00073, M.R. 28744 (Sept. 22, 2017) (Hearing Bd. at 16). Attorneys who take funds that they know do not belong to them engage in dishonest conduct. In re Miller, 2014PR00134, M.R. 28618 (May 18, 2017) (Hearing Bd. at 10). This is true even where unfamiliarity with the Rules may have contributed to the misconduct. See In re Tyler, 98 CH 74, M.R. 16873 (Sept. 22, 2000) (Review Bd. at 9) (holding that, although sloppy bookkeeping practices and unfamiliarity with the Rules may have contributed to attorney's misconduct, his knowing use of money withheld to pay medical providers constituted dishonest conduct).

Respondent withdrew funds from the IOLTA account into which Daniels had deposited rent payments. As discussed at length in the preceding section, he stated unequivocally and on multiple occasions that he was holding the money in the IOLTA account for safekeeping pending the resolution of the foreclosure matter, and that it would belong to either Raices or the plaintiff depending on the outcome of the matter. Thus, he knew that the money in that account belonged not to him but either to Raices or to the plaintiff, and that neither gave him authority to use those funds for himself. By knowingly taking funds that did not belong to him, without authority to do so, Respondent engaged in dishonest conduct.

Moreover, even if Respondent had convinced himself that he could withdraw funds from the IOLTA account as attorney's fees, his subjective belief was patently unreasonable and irrational, as it was wholly contrary to his repeated exhortations to Raices and Daniels that all of the funds in the IOLTA account would belong to either Raices or the plaintiff. See Thomas, 2012 IL 113035, ¶ 123 (finding respondent's unauthorized practice of law to be dishonest, and reasoning that "[t]he fact that he may have convinced himself that his suspension was stayed does not alter his underlying dishonesty because his belief, even if sincere, was entirely unreasonable"); In re Huebner, 2011PR00129, M.R. 26649 (May 16, 2014) (Hearing Bd. at 17) (citing Thomas and holding that, even if respondent had convinced himself that he was entitled to withdraw and use funds from an escrow account, it did not alter his underlying dishonesty because his belief was entirely unreasonable).

For these reasons, we find that the Administrator proved by clear and convincing evidence that Respondent engaged in dishonest conduct by withdrawing funds from the Raices IOLTA account knowing that those funds were not his to withdraw, and therefore violated Rule 8.4(c).*

With respect to Respondent's delay in returning Raices' funds to her, however, we find insufficient evidence that this was done for a dishonest reason. The mere fact of the delay, without more, is not sufficient to establish dishonesty on Respondent's part. The Administrator presented no evidence that established that Respondent held onto the funds for dishonest or otherwise nefarious reasons. To the contrary, the evidence regarding the timing and confluence of events surrounding the IOLTA account, in addition to Respondent's tenuous grasp of his ethical obligations to Raices, suggest reasons for the delay that do not involve an intent to deceive.

For example, Respondent acknowledged that he did not learn of the foreclosure and sale of Raices' property until June 2018 or later. Even after learning the property had been sold,

Respondent did not communicate with the plaintiff or otherwise ascertain whether the plaintiff was making a claim to the rent payments that Respondent was holding in the IOLTA account. The Raices IOLTA account was compromised between July and September 2018, and the bank returned all of the compromised funds to the merged account by the end of December 2018. Raices filed a request for investigation of Respondent's conduct in January 2019, and Respondent learned of Raices' complaint against him in early February 2019. He testified that, once he learned of the investigation, he "froze" because he did not know what he could or could not do with the funds. He paid them over to Raices in September 2021 after the Administrator's counsel told him he could do so.

Thus, while we do not condone Respondent's delay in turning over the rent payments to Raices, we cannot say that it was caused by dishonesty. Rather, it seems more likely, based on the evidence, that it was caused by a combination of neglect, confusion, and ignorance. That said, our finding does not significantly impact our sanction recommendation, as we have already found that Respondent violated Rule 8.4(c) by withdrawing funds that he knew were not his to withdraw, and our sanction recommendation is based upon the unethical nature of respondent's conduct as a whole. See In re Gerard, 132 Ill. 2d 507, 532, 548 N.E.2d 1051 (1989)

EVIDENCE IN MITIGATION AND AGGRAVATION

Mitigation

Respondent testified that, at the time he undertook his representation of Raices, it was his first year out of law school and he was just trying to help his boss. (Tr. 255.)

He also testified that he has learned a lot since then and he is willing to learn more. (Tr. 226, 263.) He has learned that he should not have put his entire IOLTA account number on correspondence with Daniels, which he believes resulted in the account being compromised. He

also did not know then that he only needed one IOLTA account, rather than a separate account for each client. He now knows that he must immediately take any fees out of the IOLTA account and cannot commingle personal funds with client funds, and that he should have removed the $5,000 that he mistakenly deposited in the Raices IOLTA account once he realized it was in there. He should have informed both Daniels and Raices about the withdrawals, but he informed only Daniels because he thought she was the one paying his fees, and he did not think he needed authorization from Raices to get fees from Daniels. He also did not think he needed authority to withdraw the $5,000 that he mistakenly deposited in the account. (Tr. 226-27.)

Prior to his hearing, Respondent paid Raices $42,311.97 out of the $47,100 in rent payments that he collected: $2,000 in April 2017 and $40,311.97 in September 2021. (Tr. 63-64, 258-59.) He testified that, in his practice, he does not have to hold client funds and no longer handles transactions like the one that led to his misconduct. (Tr. 262-63.)

He testified that he was remorseful. (Tr. 263, 265.)

Aggravation

In October 2016, Respondent attempted to loan a former client $2,500 by withdrawing funds from the Raices IOLTA account, but did not complete the loan because the former client changed her mind. Respondent testified that the $2,500 that he withdrew from the IOLTA account for the loan was not Raices' money but rather his own, because of the $5,000 that he had mistakenly deposited and then left in the Raices IOLTA account. He returned the $2,500 to the Raices IOLTA account because it was drawn from there. (Adm. Ex. 15; Tr. 191-93, 195.)

Prior Discipline

Respondent has no prior discipline.

RECOMMENDATION

A. Summary

Based upon the serious nature of Respondent's misconduct, and taking into account the mitigating and aggravating factors, the Hearing Board recommends that Respondent be suspended for one year and until further order, stayed after six months by a one-year period of probation, with conditions designed to improve Respondent's law office management and client communication skills as well as a requirement that Respondent make full restitution to Raices before he resumes the practice of law.

B. Analysis and Conclusions

In determining the appropriate discipline, we are mindful that the purpose of these proceedings is not to punish, but to safeguard the public, maintain the integrity of the profession, and protect the administration of justice from reproach. In re Edmonds, 2014 IL 117696, ¶ 90. While we strive for consistency and predictability, we recognize that each case is unique and must be decided on its own facts. In re Mulroe, 2011 IL 111378, ¶ 25.

In arriving at our recommendation, we consider those circumstances that may mitigate or aggravate the misconduct. In re Gorecki, 208 Ill. 2d 350, 802 N.E.2d 1194 (2003). In mitigation, Respondent has no prior discipline. He cooperated fully in his disciplinary proceedings. Prior to hearing, he paid Raices $42,311.97 of the $47,100 in rent payments that Daniels deposited into the IOLTA account. We believe he is sincere in his expressed desire to gain knowledge and skills that were absent or deficient in his representation of Raices.

Respondent also acknowledged making some mistakes during his representation of Raices, and said that he would have done some things differently. However, we do not find that acknowledgement significantly mitigating, because Respondent failed to acknowledge the actions,

such as neglecting Raices' foreclosure matter and withdrawing funds from the IOLTA account without authority to do so, that are the crux of his misconduct.

Similarly, although Respondent expressed remorse, it is unclear from his testimony what he is remorseful for, given that he does not seem to comprehend what aspects of his conduct constituted misconduct. Instead of showing genuine remorse, which comes from an understanding and acknowledgement of wrongdoing, Respondent attempted to justify or minimize most of his actions. Thus, we do not give much weight in mitigation to his statement that he is remorseful. Cf. In re Knowles, 2015PR00073 (Hearing Bd. at 23) (finding significant mitigation where attorney recognized the seriousness of her misconduct and did not attempt to justify, excuse, or minimize her actions).

In aggravation, Respondent still owes Raices $4,788.03 from the Daniels rent payments. He also expressed no regret at all for the harm he caused Raices. While we cannot know whether the outcome of the foreclosure matter would have been any different had Respondent met his obligations to Raices, it is certain that his conduct effectively left Raices without representation in the matter, which culminated in the loss of her property and a judgment of over $300,000 against her. This result, combined with Respondent's failure to turn over all of the rent payments to her in a timely manner, caused Raices a great deal of distress and harm.

Most concerning to us is Respondent's continued failure to understand his ethical obligations. For example, in justifying his attempt to loan $2,500 to a former client using funds in the Raices IOLTA account, he explained that he thought he could do so because the $5,000 that he mistakenly deposited and then left in the Raices IOLTA account belonged to him. Similarly, he repeatedly professed his belief that he was entitled to collect attorney's fees from Daniels for his work on her tenancy – notwithstanding that she was not his client and he had no fee agreement

with her. Those are just two examples in testimony replete with such examples of Respondent's fundamental misunderstanding of the Rules of Professional Conduct. It is apparent from Respondent's testimony that he still does not fully understand the nature of his misconduct, and therefore also fails to recognize the seriousness of his misconduct.

The Administrator cited three cases in support of his request for a suspension of one year and until further order: In re O'Brien, 2015PR00023, M.R. 28493 (March 20, 2017); In re Maros, 94 CH 430, M.R. 12639 (Sept. 24, 1996); and In re Huff, 2014PR00059, M.R. 27323 (May 14, 2015). In O'Brien, the attorney was suspended for two years and until further order for neglecting six client matters, failing to promptly deliver client or third party funds, failing to safeguard the funds of a client, and failing to protect a client's interests by retaining an unearned fee as well as the client's file. The Hearing Board based its recommendation of a suspension until further order on its grave concern that the attorney had "no ideas for remedying his problems or the matters at issue." O'Brien, 2015PR00023 (Hearing Bd. at 33.). It further found that the attorney showed disrespect for the disciplinary proceedings by failing to appear on the first day of hearing, and failing to respond to letters from the Administrator.

In Maros, the attorney was suspended for one year and until further order for neglecting the cases of three clients and engaging in dishonesty to conceal his neglect. In aggravation, the attorney did not respond to discovery or answer the complaint, resulting in the allegations of the complaint being deemed admitted. He also did not respond to the Administrator's exceptions or file a brief on appeal.

In Huff, the attorney was suspended for six months and until further order for misconduct in two client matters for failing to deposit a retainer in a trust account, using client funds for his own purposes, acting with a lack of diligence and promptness in representing the clients, failing to

adequately communicate with the clients, and engaging in dishonesty. In aggravation, the attorney did not fully cooperate in his disciplinary proceedings. In mitigation, the attorney had practiced law for over 40 years without prior misconduct. Based on the attorney's testimony in which he expressed self-doubt about his ability to represent clients, the Hearing Board found that a suspension until further order was necessary to protect the public.

The misconduct in the foregoing cases is more egregious than that in this matter, in that, in all three cases, the misconduct involved multiple client matters, as opposed to the one client matter in this case. In addition, the aggravation was more significant in those cases, in that the attorneys failed to fully participate in and cooperate with their disciplinary proceedings. Nonetheless, these cases provide guidance as to an appropriate sanction here. We find that a suspension at the lower end of the range of suspensions in the cases cited by the Administrator would be appropriate here.

We further find that, as in the foregoing cases, a suspension until further order is necessary in this matter. Respondent's testimony at hearing demonstrates that he still does not fully grasp his ethical obligations, particularly as they relate to handling client funds and charging attorney's fees. A suspension that continues until further order will protect the public and the integrity of the legal profession by ensuring that, should Respondent fail to fulfill his probationary conditions, addressed below, he will not be able to practice law until he proves he is able to do so ethically.

However, we are struck by the fact that Respondent was barely out of law school and had been licensed for less than a year when he undertook representation of Raices in what turned out to be a fairly complicated foreclosure matter and time-consuming rent collection matter. In addition, as a solo practitioner, he received no training and had no guidance from colleagues about how to manage a law practice, negotiate fees, draft a retainer or fee agreement, properly handle client funds, or represent a party in litigation. He had no experience in a law firm setting, no

associates or mentors, and no oversight. Moreover, it seems clear that, because Raices hired and supervised Respondent in his academic job, he felt he should not charge her any fees for the legal services he provided. In short, he put himself in an entirely untenable position as a new lawyer.

None of this excuses Respondent's misconduct, which is serious and warrants a significant suspension. But it does compel us to recommend that part of that suspension be stayed by a period of probation, with conditions that would enable Respondent to learn the skills that were absent in his representation of Raices – skills that are essential in order for him to practice law ethically and responsibly.

Given these unique circumstances, we believe that a suspension until further order, without probation, would be unduly punitive, and that a suspension until further order, stayed in part by a period of conditional probation, is appropriate under the circumstances of this matter and supported by precedent. For guidance, we have looked to cases in which attorneys engaged in misconduct including conversion of client funds, neglect, and dishonesty.

In In re Bertha, 2012PR00098, M.R. 26678 (May 19, 2014), an attorney was suspended for one year and until further order, stayed after four months by an eight-month period of probation with conditions designed to improve his office management and bookkeeping practices, where the attorney dishonestly misappropriated $1,000 in earnest money and never used a client trust account to hold client or third-party funds. In recommending probation, the Hearing Board found that the attorney "genuinely wants to improve his office management practices so that he is in compliance with the ethical rules and will accept the help he is offered toward that goal." (Hearing Bd. at 17).

In In re Hopkins, 06 CH 77, M.R. 22557 (Sept. 17, 2008), an attorney was suspended for one year, stayed after six months by an 18-month period of conditional probation, for neglecting three client matters, giving false assurances to two clients, failing to respond to clients' requests

for information, failing to return two unearned fees, and converting $2,350 in fund given to him to pay filing fees.

In In re Newcomb, 04 SH 20, M.R. 20087 (May 20, 2005), an attorney was suspended for 18 months, stayed after 90 days by a 15-month period of probation, for neglecting four cases, failing to keep clients apprised of their cases, making false representations to one client, and providing false information to the ARDC.

In this matter, our rationale for recommending a suspension until further order, stayed in part by a period of probation with conditions, is to give Respondent a chance to correct the deficiencies in his practice and learn how to manage a law practice, but also include a mechanism to protect the public in the event that he falters. Moreover, as in the foregoing cases, we find that probation is appropriate here notwithstanding that Respondent engaged in intentional misconduct, including dishonesty. We find that a lengthy total suspension, a requirement that Respondent serve a significant portion of the suspension before the probationary period begins, and a provision that the suspension continue until further order if Respondent violates probation sufficiently account for the seriousness of Respondent's intentional misconduct.

In conclusion, we believe that a suspension of one year and until further order, stayed after six months by a one-year period of conditional probation, is commensurate with Respondent's misconduct, consistent with discipline that has been imposed for comparable misconduct, and sufficient to serve the goals of attorney discipline and deter others from committing similar misconduct.

Accordingly, Respondent, McStephen Olusegun Adewale Solomon, is suspended from the practice of law for one year and until further order of the Court, stayed after six months by a one-

year period of probation, subject to the following conditions, which shall commence upon the effective date of the Court's order imposing discipline in this matter:

a. Within six (6) months of the effective date of the Court's order imposing discipline in this matter, Respondent shall pay and provide proof to the Administrator of the payment of $4,788.03 in restitution to Edith Raices;

b. Respondent shall comply with the provisions of Article VII of the Illinois Supreme Court Rules on Admission and Discipline of Attorneys and the Illinois Rules of Professional Conduct and shall timely cooperate with the Administrator in providing information regarding any investigation relating to his conduct;

c. Respondent shall reimburse the Commission for the costs of this proceeding as defined in Supreme Court Rule 773 and, at least thirty (30) days prior to the termination of the period of probation, shall reimburse the Commission for any further costs incurred during the period of probation;

d. At least thirty (30) days prior to the termination of the period of probation, Respondent shall reimburse the Disciplinary Fund for any Client Protection payments arising from his conduct;

e. Respondent shall notify the Administrator within seven days of any arrest or charge alleging his violation of any criminal or quasi-criminal statute or ordinance;

f. Respondent shall attend meetings as scheduled by the Commission probation officer;

g. Respondent shall notify the Administrator within fourteen days of any change of address;

h. Respondent shall successfully complete the ARDC Professionalism Seminar within the first six months of probation;

i. Respondent's practice of law shall be supervised by a licensed attorney acceptable to the Administrator. Respondent shall provide the name, address, and telephone number of the supervising attorney to the Administrator. Within the first thirty (30) days of probation, Respondent shall meet with the supervising attorney and meet at least once a month thereafter. Respondent shall authorize the supervising attorney to provide a report in writing to the Administrator, no less than once every quarter, regarding Respondent's cooperation with the supervising attorney, the nature of Respondent's work, and the supervising attorney's general appraisal of Respondent's practice of law;

j. Respondent shall provide notice to the Administrator of any change in the supervising attorney within fourteen (14) days of the change;

k. Respondent shall submit to an independent audit of his client trust account, conducted by an auditor approved by the Administrator, at Respondent's expense, six months after the commencement of probation. Respondent and the Administrator shall each receive

copies of the audit. The audit shall establish Respondent's maintenance of complete records of client trust accounts, required by Rule 1.15 of the Rules of Professional Conduct, including the following:

i. the preparation and maintenance of receipt and disbursement journals, for all client trust accounts, containing a record of deposits and withdrawals from client trust accounts specifically identifying the date, source, and description of each item deposited, and date, payee and purpose of each disbursement;

ii. the preparation and maintenance of contemporaneous ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the date of each deposit, the names of all persons for whom the funds are or were held, the amount of such funds, the dates, descriptions and amounts of charges or withdrawals, and the names of all persons to whom such funds were disbursed;

iii. the maintenance of copies of all accountings to clients or third persons showing the disbursement of funds to them or on their behalf, along with copies of those portions of clients' files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them;

iv. the maintenance of all client trust account checkbook registers, check stubs, bank statements, records of deposit, and checks or other records of debits;

v. the maintenance of copies of all retainer and compensation agreements with clients;

vi. the maintenance of copies of all bills rendered to clients for legal fees and expenses; and

vii. the preparation and maintenance of reconciliation reports of all client trust accounts, on at least a quarterly basis, including reconciliations of ledger balances with client trust account balances; and

l. Probation shall be revoked if Respondent found to have violated any of the terms of probation. The remaining period of suspension shall commence from the date of the determination that any term of probation has been violated and shall continue until further order of the Court.

Respectfully submitted,

Stephen S. Mitchell
Patricia Piper Golden
Willard O. Williamson

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 February 15, 2023.

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

MAINLIB_#1591385_v1[†]

[*] We have considered Respondent's testimony that he believed he could withdraw up to $5,000 from the IOLTA account because he had allowed his errant deposit to remain in the account. His incorrect belief, even if sincere, does not alter our finding that he dishonestly misappropriated funds, nor does it impact our sanction recommendation. The fact remains that, regardless of what he believed about the $5,000, he withdrew at least $7,400 knowing that the funds were not his to withdraw, and therefore dishonestly misappropriated funds that he should have been safeguarding. See In re Gerard, 132 Ill. 2d 507, 532, 548 N.E.2d 1051 (1989) (in sanctioning a respondent, "we analyze and pass judgment upon the unethical nature of respondent's conduct as a whole").