**In re Matthew Eric Gurvey**
Respondent-Appellant

Commission No. 2021PR00073

**Synopsis of Review Board Report and Recommendation**
(May 2023)

The Administrator brought a one-count complaint against Respondent, charging him with engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010). The disciplinary complaint alleged that Respondent acted dishonestly by converting $25,000 for his own benefit, which he had agreed to hold as part of a real estate transaction.

The Hearing Board found that Respondent had engaged in dishonest conduct in violation of Rule 8.4(c), as charged. The Hearing Board recommended that Respondent be disbarred.

Respondent appealed, challenging the Hearing Board's sanction recommendation and asking the Review Board to recommend a suspension instead of disbarment. Respondent also argued that the Hearing Board erred concerning certain aggravating and mitigating factors.

The Review Board agreed with the Hearing Board's recommendation that Respondent be disbarred. The Review Board also concluded that the Hearing Board did not err concerning the aggravating factors, and that the limited mitigating factors are not sufficient to offset the need for disbarment.

**BEFORE THE REVIEW BOARD**
**OF THE**
**ILLINOIS ATTORNEY REGISTRATION**
**AND**
**DISCIPLINARY COMMISSION**

In the Matter of:

**MATTHEW ERIC GURVEY,**

Respondent-Appellant,

No. 6225090.

Commission No. 2021PR00073

**REPORT AND RECOMMENDATION OF THE REVIEW BOARD**

SUMMARY

The Administrator brought a one-count complaint against Respondent, charging him with engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010). The complaint alleged that Respondent acted dishonestly by converting $25,000 for his own benefit, which he had agreed to hold as part of a real estate transaction. Respondent admitted that he used that $25,000, which did not belong to him, for his own purposes without authority.

Following a hearing at which Respondent appeared *pro se*, the Hearing Board found that Respondent had engaged in dishonest conduct in violation of Rule 8.4(c), as charged. The Hearing Board recommended that Respondent be disbarred.

The complaint also charged Respondent with failing to hold a client's funds (the $25,000) separate from his own property in violation of Rule 1.15(a), but the Hearing Board found Respondent had not violated that Rule because the money he converted did not belong to a client. That issue is not on appeal.

Respondent appealed *pro se*, challenging the Hearing Board's recommendation and asking this Board to recommend a suspension instead of disbarment. Respondent does not request a specific length of suspension but asserts that he should be given credit for the two-year suspension from his prior discipline. Respondent also argues that the Hearing Board erred concerning certain aggravating and mitigating factors.

For the reasons that follow, we agree with the Hearing Board's recommendation that Respondent be disbarred. Additionally, we find that the Hearing Board did not err concerning the aggravating factors, and that the limited mitigating factors are not sufficient to offset the need for disbarment.

## BACKGROUND

The facts are fully set out in the Hearing Board's report. Because the only issue on appeal is the appropriate sanction, the facts are summarized only briefly here.

### Respondent

Respondent was licensed to practice law in Illinois in 1994. He worked at a law firm for four years and then worked in banking and real estate for a period of time. He returned to the practice of law in approximately 2010 and focused on handling foreclosure matters for property owners. Respondent was previously disciplined in 2020 for converting approximately $70,000 of client funds. He was suspended for two years, from June 8, 2020 through June 8, 2022. *See In re Gurvey*, 2017PR00092 (Review Bd., Dec. 5, 2019), *petitions for leave to file exceptions denied*, M.R. 030215 (June 8, 2020).

Respondent's Misconduct in the Instant Matter

Respondent represented a client, Jonathan Moss, during a foreclosure proceeding concerning a property located at 10135 South Princeton, Chicago, Illinois. A real estate investor, Marshall Thompson, purchased the Princeton property at a public auction in July 2018.

Respondent's client, Jonathan Moss, wanted to re-purchase the Princeton property, but did not have the funds to do so at that time. Moss hoped to acquire an interest in that property at a later date. Respondent agreed to help Moss do so, by finding an investor for the property.

In September 2018, Respondent contacted Marshall Thompson, who had purchased the Princeton property. Thompson indicated that he was willing to sell the Princeton property for $25,000.

Respondent also contacted a friend of his, Ruben Ybarra, to see if Ybarra would be interested in buying the Princeton property. The idea was that Respondent's client, Jonathan Moss, might be able to purchase the property from Ybarra in the future. Ybarra agreed to buy the property for $25,000.

The property owner, Marshall Thompson, agreed to sell the property to Ybarra's company, YRY Holdings, for $25,000. Respondent agreed to hold Ybarra's funds for the purchase of the property, and to transfer those funds to Thompson at the time of the sale.

In October 2018, Ybarra wired a total of $25,000 to Respondent for the purchase of the Princeton property. Ybarra sent $10,000 on October 9, and $15,000 on October 15, 2018.

Respondent never transferred any money to Thompson to purchase the Princeton property as agreed. Instead, Respondent spent that $25,000, which he did not own, for his own personal purposes, without authority. Consequently, the sale of the Princeton property to Ybarra never took place, and Thompson sold the property to another buyer. Ybarra lost the opportunity to

purchase the property, and Respondent's client, Jonathan Moss, lost the potential opportunity to purchase the property from Ybarra in the future.

At the disciplinary hearing, Respondent's testimony included the following:

- He misappropriated the $25,000 for his own benefit. (Tr. 88-98);
- The $25,000 was not his money; it was Ybarra's money. (*Id.*);
- He knew the $25,000 was for the purchase of the Princeton property. (*Id.*);
- At the time he was spending the $25,000, he knew that those funds should have been held to purchase the Princeton property. (Tr. 98); and
- After he spent the money, Respondent did not have sufficient funds to pay $25,000 to purchase the property because he was experiencing serious financial problems. (Tr. 97).

As soon as Respondent received funds from Ybarra, Respondent began spending that money. Respondent took out cash, paid bills and expenses, and purchased personal items and services, which included payments relating to numerous restaurants, a salon, a hotel, a fitness club, Uber rides, Apple I-tunes, PlayStation, Amazon, a parking ticket, the Art Institute, tollway fees, self-storage, groceries, gas, pharmacy items, and pet supplies.

After the purchase of the Princeton property fell through, Ybarra asked Respondent to return the $25,000. Respondent repaid $10,000 to Ybarra but did not repay the full $25,000.

Shortly thereafter, Respondent gave Ybarra a check in the amount of $15,000, which was rejected by the bank due to insufficient funds. Respondent knew that the check would not clear the bank because he did not have sufficient funds in his account to cover that check. Respondent testified, "I knew I didn't have the money at the time and … couldn't cover it." (Tr. 95.) Respondent's account was overdrawn by $11,000 at the time he wrote that check.

After the check failed to clear, Ybarra sent an email to Respondent asking him to return the outstanding $15,000. Respondent replied that he was going to the bank, and that he was sorry for the aggravation. Respondent did not repay the outstanding $15,000.

Ybarra subsequently hired an attorney, who sent a letter to Respondent demanding immediate repayment of Ybarra's $15,000. Respondent replied by sending an email, in which he promised to repay the money. According to Ybarra's attorney, Michael Gotkin, who testified at the disciplinary hearing, Respondent repeatedly promised to repay the funds, but failed to do so. At the time of the disciplinary hearing in 2021, Respondent had not repaid the money that he owed to Ybarra.

In 2019, Respondent did pay $6,000 to Ybarra. However, Ybarra testified that Respondent paid that money to cover other debts Respondent owed to Ybarra, as documented in an email between Ybarra and Respondent; Ybarra also testified that the $6,000 was not part of the $15,000 restitution Respondent owed. (Tr. 64-67; Admin. Ex. 13 at 9-13.) The Hearing Board found Ybarra's testimony to be credible and rejected Respondent's argument that he paid the $6,000 as restitution.

At the disciplinary hearing, Respondent did not call any witnesses or offer any exhibits.

Respondent's Prior Misconduct in 2015-2016

In the prior disciplinary case, Respondent was suspended for two years for converting funds in two separate instances. The funds, which totaled approximately $70,000, belonged to two clients and a third party. Respondent also intentionally issued bad checks to repay the money that he had misused, knowing that the checks would be returned for insufficient funds,

and he provided a false explanation about the reason one of the checks did not clear. *See In re Gurvey*, 2017PR00092 (Review Bd., Dec. 5, 2019).

The Review Board in the prior disciplinary case concluded that "Respondent engaged in serious misconduct involving the dishonest conversion of approximately $70,000 over the course of two different matters. He also engaged in additional dishonesty by issuing a $25,000 check when he knew it would be dishonored and giving a false explanation regarding the reasons it did not clear." *Id*. at 19. The Review Board in the prior case described the harm Respondent caused in that matter as follows:

> Of particular concern is the harm caused by Respondent's misconduct, especially to [his clients], who were struggling financially and were eventually evicted from their home. They entrusted Respondent with their life savings along with borrowed funds in an effort to try to save their home from foreclosure. Instead of safeguarding those funds in accordance with his professional obligations, Respondent used the majority of those funds for his own purposes, including the payment of rent on his own sizable home.

*Id.* at 21.

Respondent engaged in the prior misconduct between November 2015 and May 2016. The disciplinary complaint against Respondent in the prior case was filed in August 2017, and the disciplinary hearing in that case was held in September 2018. Those dates are significant because, in the instant matter, Respondent misappropriated Ybarra's $25,000 in October 2018, one month after the disciplinary hearing in that matter, while the prior matter was pending.

## HEARING BOARD'S FINDINGS AND RECOMMENDATION IN THIS CASE

### Misconduct Findings

The Hearing Board found that Respondent violated Rule 8.4(c), which prohibits attorneys from engaging in "conduct involving dishonesty, fraud, deceit, or misrepresentation." The Hearing Board found that Respondent acted dishonestly by converting Ybarra's $25,000,

which Respondent had agreed to hold and to use for the purchase of the Princeton property. Respondent admitted that he misappropriated Ybarra's funds.

Mitigation and Aggravation Findings

In terms of mitigation, the Hearing Board noted that "Respondent presented no evidence in mitigation." (Hearing Bd. Report at 8.)

In terms of aggravation, the Hearing Board found Respondent's prior misconduct, and the fact that Respondent engaged in the instant misconduct while the prior disciplinary hearing was pending, to be aggravating factors. The Hearing Board also found that the aggravating factors included Respondent's failure to make full restitution; the harm Respondent caused to Ybarra, who lost the opportunity to purchase the Princeton property; Respondent's failure to show sincere remorse; and his failure to understand the serious nature of his misconduct.

Recommendation

The Hearing Board recommended that Respondent be disbarred.

## SANCTION RECOMMENDATION

The issue on appeal is the appropriate sanction for Respondent's misconduct. Respondent argues that disbarment is unnecessarily harsh, and asks this Board to recommend a suspension, with credit for Respondent's prior two-year suspension. The Administrator responds that disbarment is the appropriate sanction in this case.

We review the Hearing Board's sanction recommendations *de novo*. *See In re Storment*, 2018PR00032 (Review Bd., Jan. 23, 2020) at 15, *petition for leave to file exceptions denied*, M.R. 030336 (June 8, 2020). In making our recommendation, we consider the nature of the proved misconduct, and any aggravating and mitigating circumstances shown by the evidence, *In re Gorecki*, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (2003), while keeping in mind that the

purpose of discipline is not to punish but rather to protect the public, maintain the integrity of the legal profession, and protect the administration of justice from reproach. *In re Timpone*, 157 Ill. 2d 178, 197, 623 N.E.2d 300 (1993). We also consider the deterrent value of attorney discipline and whether the sanction will help preserve public confidence in the legal profession. *Gorecki*, 208 Ill. 2d at 361. We seek to recommend a sanction that is consistent with sanctions imposed in similar cases, *Timpone*, 157 Ill. 2d at 197, while considering the unique facts of each case. *In re Witt*, 145 Ill. 2d 380, 398, 583 N.E.2d 526 (1991). Although our review is *de novo*, the Hearing Board's findings regarding candor, intent, understanding of the misconduct, and other fact-finding judgments are ordinarily entitled to considerable weight because the Hearing Board is able to observe the witnesses' demeanor and judge their credibility. *In re Timpone*, 157 Ill. 2d at 196; *In re Martinez-Fraticelli*, 221 Ill. 2d 255, 280, 850 N.E.2d 155 (2006).

Respondent argues that a suspension rather than disbarment is the appropriate sanction given the facts of this case and based on the mitigating factors that exist. Respondent also argues that the Hearing Board erred in finding that the aggravating factors include Respondent's prior misconduct; his engaging in the instant misconduct while the prior disciplinary proceeding was pending; and his failure to show genuine remorse. Respondent also argues that the Hearing Board erred in finding that there is no mitigation in this case.

For the reasons set forth below, we agree with the Hearing Board that disbarment is the appropriate sanction. We also conclude that the Hearing Board did not err concerning the aggravating factors, and that the limited mitigating factors are not sufficient to offset the need for disbarment. Our goal in this case is to protect the public. We believe that disbarment is appropriate in light of the very serious nature of Respondent's misconduct, together with the significant aggravating factors, and the very minimal mitigation. Disbarment will protect the public and the

integrity of the legal profession by ensuring that Respondent will not be able to practice law until he proves he is able to do so ethically.

The Serious Nature of the Misconduct Supports Disbarment

In making our recommendation, we give substantial weight to the serious nature of Respondent's misconduct. Respondent intentionally and dishonestly converted Ybarra's funds, knowing that Ybarra had entrusted those funds to Respondent for the purchase of the Princeton property. At the disciplinary hearing, Respondent testified that, when he was spending the $25,000, he knew that those funds should have been held to purchase the Princeton property. (Tr. 98.) Respondent intentionally misappropriated those funds even though he promised to hold those funds for Ybarra and to use those funds solely for the purchase of the Princeton property. Because Respondent converted Ybarra's $25,000, the sale of the Princeton property to Ybarra could not be completed, and the property was sold to someone else.

Respondent knew that the success of the real estate deal hinged on using Ybarra's $25,000 to pay for the Princeton property, and that the deal would fall through if Ybarra's funds were not available to make that payment. Despite knowing that the real estate deal would fail, Respondent elected to spend the $25,000, thereby placing his own interests ahead of Ybarra's interests.

Although Respondent knew that he was not authorized to spend Ybarra's funds, he did not hesitate to spend those funds for his own purposes. Respondent began spending those funds almost immediately after he received the first wire transfer from Ybarra, and he continued spending those funds after he received the second wire transfer. Respondent spent all of Ybarra's money in less than four weeks. Although Respondent could have stopped spending Ybarra's money at any time, Respondent continued spending those funds until he had taken every dollar

that Ybarra sent. All of Ybarra's funds were gone by the end of October, and Respondent's bank account was overdrawn by $11,000.

Respondent also argues that he should not be disbarred because the funds that he converted did not belong to a client, they belonged to third-party (Ybarra), with whom he had a business relationship. Additionally, Respondent argues that cases involving the conversion of client funds are inapplicable here because the funds he converted did not belong to a client. In his *pro se* opening statement, Respondent stated, "At the end of the day I used Reuben [Ybarra's] money …. This was for a business relationship. It wasn't me violating the rules of professional responsibility." (Tr. 27.) That argument has no merit, and it shows that Respondent does not understand the gravity of his misconduct.

The intentional and dishonest misappropriation of funds clearly violates the Rules of Professional Conduct. *See* Rule 8.4(c) ("It is professional misconduct for a lawyer to …. engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."). It does not matter who owns those funds, the dishonest conversion of funds is prohibited. The legal system breaks down and the public's trust of attorneys is damaged when an attorney intentionally and dishonestly misappropriates funds, regardless of who owns those funds. Although Ybarra was not a client, Respondent's intentional conversion of Ybarra's funds constituted dishonest conduct and was a flagrant violation of the ethical rules.

Thus, we find that Respondent's wrongdoing was very serious, and we give substantial weight to the serious nature of his misconduct.

The Aggravating Factors Support Disbarment

In making our recommendation, we have also considered the aggravating factors in this case, including the harm caused by Respondent's misconduct; his failure to make full

restitution; his intentional use of a bad check; the false representations he made to Ybarra and his attorney concerning repayment; and Respondent's financial difficulties at the time of the misconduct. As discussed below, we find that the aggravating factors also include Respondent's engaging in the instant misconduct while the prior disciplinary proceeding was pending; and Respondent's prior misconduct, which involved his conversion of $70,000.

The aggravating factors include the following:

- Respondent's misconduct harmed Ybarra in two ways: (1) Ybarra lost $15,000 of the funds that he entrusted to Respondent; and (2) Ybarra was unable to purchase the Princeton property because Respondent spent Ybarra's money.

- Respondent's misconduct also harmed his client, Jonathan Moss, because Moss lost the potential opportunity to purchase the property from Ybarra in the future. The entire transaction was initially designed to help Moss obtain an interest in the Princeton property in the future. Even though it was completely foreseeable to Respondent that both Ybarra and Moss would be harmed by the conversion of Ybarra's funds, that did not deter Respondent from converting those funds.

- Respondent failed to make full restitution, in blatant disregard for his professional and ethical obligations, which suggests that he is likely to disregard other professional and ethical obligations in the future.

- Respondent gave a $15,000 check to Ybarra that was returned for insufficient funds. Respondent knew he did not have sufficient funds to cover that check when he wrote it. In fact, Respondent's account was overdrawn by $11,000 when he wrote the check. Nevertheless, Respondent intentionally and dishonestly issued that check, even though he knew that it would not clear the bank, which we view as being egregious conduct.

- Respondent attempted to mislead Ybarra and his attorney about why the $15,000 check was returned for insufficient funds. Respondent falsely represented that it was simply a mistake resulting from a banking transaction, in which money was "mistakenly placed in the wrong account." (Admin. Ex. 13 at 1.) However, it was not a mistake. Respondent intentionally issued a bad check, knowing that he did not have sufficient funds in his bank account to cover the check.

- Respondent also made false and misleading representations to Ybarra and his attorney concerning prompt repayment of the $15,000. Respondent falsely represented that he would repay Ybarra immediately or within a short period of time. Ybarra's attorney, Michael Gotkin, testified at the disciplinary hearing that Respondent "gave a lot of dates when he said he will return [the $15,000]. It will be there next week. It will be there Monday. It will be there by the end of the year."

(Tr. 78.) Gotkin also testified that Respondent "gave a lot of excuses" concerning why the money was not repaid as promised. (Tr. 77-78.)

- Respondent was having financial difficulties at the time of the misconduct. During the disciplinary hearing, Respondent testified that he was experiencing serious financial problems at the time he converted Ybarra's funds. (Tr. 97.) Those financial difficulties created a significant risk that Respondent would not be able to complete the real estate transaction or repay Ybarra promptly, which is exactly what happened.

- Respondent misappropriated the money for his own selfish purposes to benefit himself. He used Ybarra's funds to purchase expensive personal items and services, including payments to numerous restaurants, a salon, a hotel, and a fitness club. Although Respondent was experiencing financial difficulties, he did not limit his use of the misappropriated funds to paying bills and expenses.

We give substantial weight to those aggravating factors, as well as Respondent's engaging in the instant misconduct while the prior disciplinary proceeding was pending, and Respondent's prior misconduct, as discussed below.

Converting Funds While the Prior Proceeding was Pending is an Aggravating Factor

Respondent argues that his conversion of Ybarra's funds while the prior disciplinary proceeding was pending should not be considered an aggravating factor because no discipline had been imposed prior to the time he converted Ybarra's funds. We reject that argument.

Respondent misappropriated Ybarra's $25,000 in October 2018, one month after the disciplinary hearing in the prior matter, which we find is a significant aggravating factor. Respondent was not deterred by the pending disciplinary proceeding, and the threat of discipline was not sufficient to motivate him to act in an ethical manner. *See In re Kesinger*, 2014PR00083 (Review Bd., June 1, 2016) at 17, *approved and confirmed in part*, M.R. 28530 (March 20, 2017) ("[W]e find particularly aggravating the fact that he committed the current misconduct during the pendency of disciplinary proceedings for other misconduct."); *In re Segovia*, 2008PR00054 (Hearing Bd., Feb. 19, 2009) at 16, *approved and confirmed*, M.R. 23076 (May 18, 2009) ("[T]he

misconduct here not only occurred after the prior misconduct, but also during the very time that the prior disciplinary matter was being adjudicated. It is troubling that Respondent would engage in additional misconduct at a time when he should have been acutely aware of his responsibility to adhere to his professional obligations. Thus, while Respondent may not be a recidivist in the ordinary sense of the word, he has displayed a repeated failure to adhere to his ethical obligations."). *See also In re Teichner*, 104 Ill. 2d 150, 167, 470 N.E.2d 972 (1984) (The Court stated that the attorney, who was charged in two separate disciplinary cases, was "not a recidivist in the ordinary sense. If he were, disbarment would be virtually automatic, given the serious nature of the misconduct in both the earlier case and this. Similarly, we believe disbarment would have resulted had the cases been joined in a single prosecution.").

The fact that Respondent committed new misconduct while going through the disciplinary process strongly suggests that Respondent is unwilling or unable to practice law ethically and honestly.

Respondent's Prior Misconduct is a Significant Aggravating Factor

Respondent argues that his prior misconduct should not be considered an aggravating factor because he has already been sanctioned for that misconduct with a two-year suspension. We disagree and find that his prior misconduct is a significant aggravating factor.

The Hearing Board addressed the issue of Respondent's prior misconduct as follows:

> 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 …. Given this lack of awareness and the similarity to the misconduct before us, Respondent's prior discipline is a significant aggravating factor.

(Hearing Bd. Report at 10-11.) (Citations omitted.) We agree with the Hearing Board's well-reasoned analysis and its finding that Respondent's prior discipline is a significant aggravating factor. *See In re Stamos*, 2012PR00007 (Hearing Bd., May 9, 2013) at 13, *approved and confirmed*, M.R. 26133 (Nov. 20, 2013) ("Generally, prior discipline is a serious aggravating factor and typically requires a more severe sanction than might otherwise be imposed."). We also share the Hearing Board's concern that Respondent will continue his pattern of conversion of funds and dishonesty.

When Respondent's misconduct in this case and the prior case are considered together, it is evident that Respondent engaged in a pattern of wrongdoing that began in 2015 and continued through 2018, in which Respondent dishonestly and intentionally misappropriated a total of $95,000. In both cases, Respondent converted funds that had been entrusted to him; he wrote bad checks that were returned for insufficient funds; he made false representations concerning those bad checks; he had financial difficulties; he failed to make timely restitution; and he showed a callous disregard for the interests of the victims and the harm he caused.

We conclude that Respondent's prior misconduct is a significant aggravating factor that weighs heavily in favor of disbarment in order to protect the public.

The Hearing Board Did Not Err in Finding that Respondent Failed to Show Remorse

Respondent argues that the Hearing Board erred in finding that Respondent failed to demonstrate genuine remorse. That argument is unpersuasive.

We recognize that Respondent admitted that he misappropriated $25,000 that did not belong to him, for his own personal use, without authority. Respondent also admitted that he did not make full restitution, and that he gave Ybarra a $15,000 check, knowing that there were insufficient funds to cover the check. We commend Respondent for making those admissions, and we have taken those admissions into consideration in our analysis. We note, however, that Respondent's admissions are essentially the only credible responses that could be made, given the overwhelming evidence, which includes the bank records showing Respondent's personal use of Ybarra's funds, the emails concerning the transaction, and Ybarra's testimony concerning what took place.

The Hearing Board found that, even though Respondent admitted converting the funds, he failed to show genuine remorse or to understand the serious nature of his misconduct. (Hearing Bd. Report at 11-12.) The Hearing Board also found that Respondent's failure to make full restitution illustrates "that he does not understand the nature and seriousness of his misconduct, and will likely repeat it." (*Id*. at 12.)

We give due consideration to the Hearing Board's conclusions regarding Respondent's remorse and understanding of his wrongdoing because the Hearing Board had the opportunity to observe and evaluate Respondent's testimony. *See In re Capozzoli*, 2000PR00037 (Review Bd., Aug. 9, 2002) at 11, *petitions for leave to file exceptions allowed*, M.R. 18371 (Jan. 2, 2003) ("[T]he Hearing Board's conclusions as to the level of a respondent's credibility, remorse,

understanding of his or her misconduct, and other similar matters do deserve deference, as these are factual matters.").

On appeal, Respondent argues: "Throughout the hearing, I felt guilt, remorse, and shame. I apologized for my actions." (Resp. Brief at 9.) Respondent does not provide any citations to the record to support that argument. A review of the record shows that, in fact, Respondent did not apologize for his actions. Furthermore, although we recognize that Respondent may have felt guilt, remorse, and shame, as he claims, there is no evidence in the record supporting that claim.

Additionally, Respondent attempted to minimize his own wrongdoing by blaming Ybarra, in connection with the $15,000 check that Respondent issued, which was returned for insufficient funds. Respondent testified he issued that check because Ybarra was demanding that Respondent return the $15,000 immediately, and Respondent was feeling "extensive pressure from Reuben to make the deposit." (Tr. 94, 96.) Ybarra, however, did not pressure Respondent to write a bad check. Respondent made the decision to write that check in order to stall and mislead Ybarra, even though Respondent knew he did not have sufficient funds to cover the check. Respondent also did exactly the same thing in connection with his prior misconduct, when he gave bad checks to his victims instead of actually repaying them in a timely manner.

Moreover, in his answer to the disciplinary complaint, Respondent also blamed Ybarra for the check being returned for insufficient funds, claiming that "Ybarra deposited the check for $15,000 prematurely and without authorization." (Tr. 94-95; Answer ¶14.) That was not true. Ybarra did not deposit that check prematurely. In fact, Respondent deposited that check into Ybarra's account. At the disciplinary hearing, Respondent admitted that he was the one who deposited the check. (Tr. 95.) We believe that Respondent's attempts to blame Ybarra show a lack of remorse by Respondent concerning his own wrongdoing.

We conclude that the Hearing Board did not err in finding that Respondent failed to show remorse and failed to understand the seriousness of his misconduct. However, we do not give significant weight to the issue of remorse in this case, given Respondent's admissions that he converted Ybarra's funds; he failed to make full restitution; and he knew that there were insufficient funds to cover his check.

The Mitigating Evidence is Insufficient to Support a Suspension Instead of Disbarment

Respondent argues that a suspension rather than disbarment is appropriate in light of the mitigating factors in this case. We disagree, given the very limited nature of the mitigating factors.

Respondent argues that his unblemished 20-year legal career prior to his misconduct in 2015, and his cooperation with the disciplinary proceeding should be considered as mitigating factors. We agree that Respondent's legal career and his cooperation are mitigating factors.

Respondent also argues that his two-year suspension, and his use of his business account to receive Ybarra's funds, instead of his client trust account, constitute mitigating factors. The record, however, does not support that argument.

In a disciplinary proceeding, the respondent has the burden of proving mitigating facts by clear and convincing evidence. *See In re Scroggins*, 89PR00689 (Review Bd., May 8, 1992) at 6-7, *approved and confirmed*, 8477 (Sept. 29, 1992) ("[I]t is the Respondent's burden to prove mitigating facts by clear and convincing evidence."). Respondent had the opportunity to provide mitigating evidence at the disciplinary proceeding to demonstrate that he will act honestly in the future, but he failed to provide such evidence.

Although we recognize that disbarment is an extremely harsh sanction, the record contains almost no evidence demonstrating that Respondent is likely to practice law in a professional and ethical manner. The record is devoid of evidence showing that Respondent has taken any real steps to turn his life around; or that he has the support of colleagues and members of the community; or that he has helped others in a meaningful way by volunteering, teaching, or providing *pro bono* services. We note, however, that Respondent may be able to provide enough mitigating evidence in the future to warrant reinstatement, so that he can continue his legal career at a later date. At this time, however, the record simply does not provide sufficient mitigating evidence for us to find that Respondent is honest and trustworthy and will practice law ethically.

Respondent argues that his two-year suspension is a mitigating factor because he has atoned for his prior misconduct, and his suspension helped him to become a better person. He also argues that his suspension was unusually difficult because it occurred during the Covid-19 pandemic. Although Respondent asserts that his suspension helped him to become a better person, there is essentially no evidence in the record supporting that claim or showing the impact of the suspension on Respondent. We recognize that being suspended during the pandemic may have created unusual hardships, including making it difficult to find employment. However, Respondent's suspension and the resulting hardships, standing on their own without additional evidence showing that Respondent has changed, do not give us confidence that Respondent will act responsibly in the future.

Respondent also argues that his use of his business account to receive funds from Ybarra, who was not a client, instead of his client trust account, is a mitigating factor because it shows that Respondent had learned from his prior mistakes (when he converted $70,000) and he was trying to implement corrections to his practice. That argument misses the mark. The issue is

not where Respondent deposited Ybarra's funds. The issue is what Respondent did with those funds after they were deposited, and the evidence shows that he misappropriated those funds. Even though the funds were in his business account, Respondent's conversion of those funds indicates that he did not learn from his prior misconduct. We also note that his prior conversion of funds did not involve bookkeeping errors that needed to be corrected. Respondent simply needed to correct (and stop) his own intentional dishonest conduct of converting funds, which he failed to do.

Thus, we find that Respondent's legal career and his cooperation are mitigating factors, and we have taken those mitigating factors into consideration in making our recommendation. Additionally, we have considered Respondent's admissions concerning his wrongdoing, discussed above, as well as his suspension and the resulting hardships, even though they are not mitigating factors *per se*. We conclude, however, that those factors are insufficient to demonstrate that Respondent will comply with the Rules of Professional Conduct in the future, and those factors do not outweigh the serious nature of the misconduct and the aggravating factors.

Disbarment in This Case is Supported by Precedent

We believe that disbarment in the instant matter is firmly supported by similar cases in which attorneys were disbarred for dishonestly converting funds. We find that the cases cited by Respondent are inapplicable.

Respondent asserts that a suspension rather than disbarment is warranted here based on three cases, *Merriwether*, *Cheronis*, and *Driscoll*, in which suspensions of six months or less were imposed for converting client funds. *See In re Merriwether*, 138 Ill. 2d 191, 561 N.E.2d 662 (1990) (the attorney converted $2,250 owed to the Illinois Department of Public Aid as part of a personal injury settlement and made false statements to the Department's attorney about the status of that money); *In re Cheronis*, 114 Ill. 2d 527, 502 N.E.2d 722 (1986) (the attorney, who did not

realize he was required to have a trust account, deposited $2,200 of client funds into his combined personal and business account, and that account was eventually overdrawn); *In re Driscoll*, 85 Ill. 2d 312, 423 N.E.2d 873 (1981) (the attorney converted settlement funds that belonged to two clients; his misconduct was primarily due to his alcoholism and it was determined that there was no need to disbar him to protect the public because he was sober and had addressed his alcoholism).

We find that those cases are inapposite because Respondent's misconduct was more egregious than the misconduct in those cases, and the aggravating factors here are absent in those cases. *Merriwether*, and *Cheronis*, involved minimal amounts of money, and the misconduct in *Driscoll* resulted from the attorney's alcoholism. Additionally, the attorneys in those cases made full restitution, and presented extensive mitigation; none of those attorneys had any prior discipline; and none of them converted funds while a disciplinary proceeding was pending. Therefore, we conclude that those cases do not support a lesser sanction here.

Instead, we find that disbarment here is consistent with the discipline imposed in comparable cases where attorneys were disbarred for dishonestly converting funds. *See In re Rotman*, 136 Ill. 2d 401, 556 N.E.2d 243 (1990); *In re Lasica*, 2007PR00125 (Review Bd., Jan. 22, 2010), *petition for leave to file exceptions denied*, M.R. 23734 (May 18, 2010); *In re Kitsos*, 1992PR00407 (Review Bd., Dec. 9, 1994), *petition for leave to file exceptions denied*, M.R. 10917 (March 27, 1995). We believe that those cases provide support for disbarment here.

In *Rotman*, the attorney was disbarred for converting $15,000 from the estate of a client who had been adjudicated incompetent. He converted those funds by endorsing three checks with the name of the client's guardian. After his misconduct was discovered, Respondent did not disclose his misconduct to his subsequent employers, which was an aggravating factor. The Court

found that disbarment was warranted even though the attorney cooperated in the disciplinary proceedings, was young and inexperienced, made restitution, and did volunteer work.

In *Lasica*, the attorney was disbarred for converting $78,000 from a decedent's estate. Lasica converted those funds while a disciplinary proceeding was pending relating to his prior conversion of $66,000 from another estate. Lasica was suspended for two years in the first disciplinary proceeding, and he was disbarred in the second proceeding. Lasica failed to make full restitution (he still owed $10,000 at the time of the disciplinary hearing), and he failed to offer mitigating evidence in the second proceeding. The Review Board in *Lasica* noted that Lasica converted "funds while his prior disciplinary proceeding was pending, thereby demonstrating that his imminent suspension had no deterrent effect." *Lasica*, Review Bd. at 12.

In *Kitsos*, the attorney was disbarred for converting $21,000 of client funds. He denied any wrongdoing, and he failed to make restitution. He had previously been disciplined for the misuse of client funds, which occurred around the same time. The Review Board stated, "In our opinion, Respondent's misconduct which included two counts of conversion, when coupled with his prior discipline for similar conduct and his failure to make any restitution to his client, constitutes conduct of such an egregious nature as to warrant disbarment." *Kitsos*, Review Bd. at 11.

We believe that *Rotman, Lasica*, and *Kitsos* are comparable to this case, although they are not identical. In each of those cases, the Court determined that disbarment was warranted. In *Rotman*, as here, the attorney converted a limited amount of money ($15,000); there were aggravating factors; and the mitigating factors were insufficient to offset the misconduct and aggravating factors. In *Lasica*, as here, the attorney converted funds while a disciplinary proceeding was pending against him relating to similar conduct; he failed to make full restitution;

and he presented no mitigating evidence. Finally, in *Kitsos*, as here, the attorney converted a limited amount of money ($21,000); he had been previously disciplined for similar misconduct; and he failed to make restitution.

Disbarment was also imposed in several other cases involving the conversion of funds, which are comparable to this case. *See In re Feldman*, 89 Ill. 2d 7, 13, 431 N.E.2d 388 (1982) (the attorney was disbarred for converting $29,000, and forging his client's signature on checks, as well as lying to his client about the money; the Court stated, "This sanction is particularly warranted since the conversion and fraud involved were intentional and consisted of a series of improper acts over an extended period of time …. 'We cannot permit this respondent to continue the practice of law, and thus invite the public to retain the purported services of one to whom the common obligations of his profession mean so little.'") (citations omitted); *In re Stillo*, 68 Ill. 2d 49, 368 N.E.2d 897 (1977) (the attorney was disbarred for converting $13,500); *In re Smith*, 63 Ill. 2d 250, 347 N.E.2d 133 (1976) (the attorney was disbarred for converting $60,000 from a settlement, and charging his client an excessive fee; he had financial problems; he made full restitution and presented mitigating evidence); *In re Birt*, 2013PR00053 (Review Bd., Dec. 18, 2015), *petition for leave to file exceptions denied*, M.R. 27896 (May 18, 2016) (the attorney was disbarred for converting $79,000 and attempting to conceal his misuse of the funds; his wrongdoing was not an isolated incident; he presented mitigating evidence that included *pro bono* services, helping disabled adults, coaching youth sports, and no prior discipline); *In re Ucherek*, 2007PR00033 (Hearing Bd., June 2, 2008), *approved and confirmed*, M.R. 22538 (Sept. 17, 2008) (the attorney was disbarred for converting $55,000 and making false statements to clients and the court to conceal his wrongdoing; he had financial difficulties; his misconduct harmed his clients;

he presented mitigating evidence that included character witnesses, full restitution, and no prior discipline).

Having considered the cases discussed above, as well as other cases cited by the parties and the Hearing Board, we believe that disbarment is consistent with discipline that has been imposed for comparable misconduct.

## CONCLUSION

In sum, Respondent engaged in serious misconduct for which there are no meaningful mitigating factors. Respondent engaged in a pattern of misconduct beginning in 2015 and continuing through 2018, in which he converted a total of $95,000, issued bad checks to victims, made false representations concerning repayment, failed to make prompt restitution, and caused harm to the victims. Respondent was not deterred by the prior disciplinary proceeding and committed the instant misconduct while that proceeding was pending.

We believe that the recommended sanction serves the goals of attorney discipline by protecting the public and the profession, acting as a deterrent to other attorneys, and helping to preserve public confidence in the legal profession. For the foregoing reasons, we agree with the Hearing Board's recommendation that Respondent be disbarred.

Respectfully submitted,

Leslie D. Davis
George E. Marron III
Charles E. Pinkston, Jr.

## 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 Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on May 11, 2023.

/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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**BEFORE THE REVIEW BOARD**
**OF THE**
**ILLINOIS ATTORNEY REGISTRATION**
**AND**
**DISCIPLINARY COMMISSION**

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|---|---|
| In the Matter of:<br><br>**MATTHEW ERIC GURVEY,**<br><br>Respondent-Appellant,<br><br>No. 6225090. | Commission No. 2021PR00073 |

**PROOF OF SERVICE**
**OF THE REPORT AND RECOMMENDATION**
**OF THE REVIEW BOARD**

I, Andrea L. Watson, hereby certify that I served a copy of the Report and Recommendation of the Review Board on Respondent-Appellant listed at the address shown below by e-mail service on May 11, 2023, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellee by e-mail service.

Matthew Eric Gurvey
Respondent-Appellant
mgurvey@gurveylawpc.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Michelle M. Thome,
Clerk

/s/ Andrea L. Watson
By: Andrea L. Watson
Senior Deputy Clerk

MAINLIB_#1623632_v1

FILED

May 11, 2023

ARDC CLERK