

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

In the Matter of:

KURT D. HYZY,  
Attorney No. 6196871,  
Respondent

Commission No. 2023PR00056

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Scott Renfroe, pursuant to Supreme Court Rule 753(b), complains of Respondent, Kurt D. Hyzy, who was licensed to practice law in the State of Illinois on November 5, 1987, and alleges that Respondent has engaged in the following conduct which subject him to discipline pursuant to Supreme Court Rule 770:

COUNT I

*(Conversion of Settlement Funds- Multiple Clients of Vioxx Class Action)*

1. At all times alleged in this complaint, Respondent was a sole practitioner who operated under the name “The Law Group” in Chicago, with a concentration in personal injury matters, including class action claims. Respondent was the sole signatory on a Citibank IOLTA with an account number ending in 5155 (hereinafter “IOLTA account”), which was entitled “The Law Group Ltd Attorney Trust,” and which Respondent used as a depository of funds belonging, presently or potentially, to the firm’s clients, third parties, or to the firm.

2. Prior to July 8, 2016, Respondent agreed to represent a group of clients, including those listed in the chart below, in a class action claim against Merck Pharmaceuticals (“Merck”), for injuries each allegedly sustained from using a drug called “Vioxx,” a prescription painkiller

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that was later linked to heart attacks and strokes. Respondent and the clients agreed that Respondent would receive 40% of any recovery as his fee for handling the claim. As part of the eventual settlement process between attorneys for various groups of claimants, counsel for Merck, and various tribunals, a formula was negotiated by which each claimant was assigned a number of points, depending on the extent of their injuries, which would be used to calculate the amount of each client's share of the final recovery amount, as set forth below:

	Client name: last, first	Points awarded to client
1.	Aebersold, Beatrice	1.05
2.	Aebersold, Estate of Walter	52.50
3.	Bell, Herbert	10.00
4.	Bechara, Wegdi	10.00
5.	Burritt, Estate of Mark	125.00
6.	Campaigner, Jennifer	1.35
7.	Chrzaszcz, Stanislaw	60.00
8.	Clements, Estate of David	52.50
9.	Evans, Haley	10.00
10.	Futa, Timothy	67.50
11.	Futa, Wendy	4.05
12.	Goldie, Herbert	40.50
13.	Gough, Delores	61.875
14.	Haroldson, Leslie	26.325
15.	Landreville, Suzanne	23.985
16.	Laruccia, Carmelina	2.2832
17.	Laruccia, Diana	.7611
18.	Laruccia, Destiny	7.50
19.	Laruccia, Donato	.7611
20.	Laruccia, Lorenzo	38.0531
21.	Leveridge, Destiny	7.50
22.	Leveridge, Raelene	7.50
23.	Locke, Daniel	.4095
24.	Locke, Joyce	20.475
25.	MacKenzie, Colin	29.5312
26.	MacKenzie, Heather	1.7719
27.	Mackey, Alan	20.25
28.	Mackey, Sonya	1.215
29.	Malaidack, Rebecca	2.0387
30.	Mason, Robert	38.025
31.	McAnaul, Estate of Lance	37.4766
32.	McCrae, Bevan	2.0387

33.	McCrae, Donna	33.9788
34.	Newman, Tracie	1.35
35.	Nielsen, Lana	7.50
36.	Oakes, Pamela	.90
37.	Orth, Donna	1.2375
38.	Pafford, Carol	39.00
39.	Pafford, Cyril	.78
40.	Patton, Judith	40.95
41.	Patton, Robert	2.457
42.	Perry, John	23.40
43.	Perry, Michael	.468
44.	Portelli, Gerard Jr.	.624
45.	Portelli, Estate of Gerard	31.20
46.	Poudrier, Johanne	.4797
47.	Roussel, Patricia	10.00
48.	Savigny, Estate of John	10.00
49.	Shecter, Susan	3.15
50.	Schroyer, Richard	10.00
51.	Smith, Anthony	29.25
52.	Saratsitis, Felicetta	.7611
53.	Stoddard, Rosanna	.78
54.	Tourloukis, Karen	1.65
55.	Watkins, Alan	1.65
56.	Watkins, Estate of Elizabeth	82.50
57.	Watkins, Raymond	4.95
58.	Welsh, Estate of Ralph	45.00
59.	Welsh, Rebecca-Havill	.90
60.	Wood, Leslie	1.404

3. Prior to June 27, 2016, Respondent's clients' claims against Merck were settled for the total amount of \$446,367.91 in Canadian currency.

4. On or about June 27, 2016, an advice of payment was delivered from Citibank to Respondent, referencing a credit to his IOLTA account in the amount of \$446,367.91 in Canadian currency (\$337,688.05 after converted into US currency) from RicePoint Administration Inc., a Canadian class action accounting administration service acting on behalf of Merck in connection with the distribution of settlement funds relating to Canadian Vioxx claims.

5. On July 13, 2016, Citibank credited to Respondent’s IOLTA account the deposited amount of \$337,688.05 (“the Vioxx settlement proceeds”). Immediately prior to the deposit of the Vioxx settlement proceeds, the balance in Respondent’s IOLTA account was \$25.50.

6. Respondent’s firm, The Law Group, had a contractual claim to 40% of the Vioxx settlement proceeds, or no more than \$135,075.22, as the firm’s fee. Respondent was to distribute the remainder of the settlement funds, in the amount of \$202,612.83, between the Vioxx claimants as apportioned by the point system described in paragraph two above.

7. Between July 13, 2016, and December 7, 2016, Respondent made only the following settlement distributions to the following 16 Vioxx clients:

<u>Check number</u>	<u>Date negotiated</u>	<u>Payee</u>	<u>Amount</u>
5855	September 20, 2016	Estate of Burritt	\$15,736.37
5858	September 20, 2016	Herbert Bell	\$1,629.66
5859	September 21, 2016	Carol Pafford	\$6,584.89
5856	September 22, 2016	Destiny Leveridge	\$1,321.58
5857	September 22, 2016	Raelene Leveridge	\$1,321.58
5853	September 23, 2016	Wagdi Bechara	\$1,468.42
5860	October 4, 2016	Cyril Pafford	\$137.45
5862	October 4, 2016	Lana Nielsen	\$1,321.58
5865	October 25, 2016	Tim Futa	\$11,270.83
5866	October 25, 2016	Wendy Futa	\$713.66
5875	October 26, 2016	Rebecca Welsh-Havill	\$158.59
5876	October 26, 2016	Rebecca Welsh-Havill	\$7,890.96
5880	December 5, 2016	Raymond Watkins	\$14,458.40
5868	December 6, 2016	Tracie Newman	\$237.88
5872	December 7, 2016	Susan Shecter	\$555.07
5881	December 7, 2016	Raymond Watkins	\$872.24
<b>TOTAL</b>			<b>\$65,679.16</b>

8. Between July 13, 2016, and December 7, 2016, Respondent also made other payments or transfers from the IOLTA account, including payments for his own business or personal purposes. As of December 7, 2016, Respondent had not paid any of the other 44 clients identified in paragraph two, above (“the unpaid Vioxx clients”). On December 7, 2016, following

the negotiation of checks 5872 and 5881 as set forth in paragraph seven above, the balance of Respondent's IOLTA account fell to \$3,110.62. On December 7, Vioxx client Susan Shecter attempted to negotiate Respondent's check number 5871, which had been made payable to Shecter in the amount of \$9,190.34 as her portion of the Vioxx settlement funds, but that check was returned unpaid due to insufficient funds.

9. As of December 7, 2016, following the negotiation of the checks to Vioxx clients as detailed in paragraph seven above, Respondent should have been holding no less than \$136,933.67 of the Vioxx class action clients' funds.

10. As of December 7, 2016, Respondent had used for his own business or personal purposes approximately \$133,823.05 he should have been holding for the benefit of the unpaid Vioxx clients.

11. At no time did Respondent request or receive authority from the unpaid Vioxx clients to use any portion of their settlement proceeds funds for his own business or personal purposes.

12. Respondent's use of the \$133,823.05 in funds intended for the unpaid Vioxx clients constitutes conversion of the funds to which they were entitled.

13. At the time Respondent used the funds due to the unpaid Vioxx clients, Respondent acted dishonestly, as he knew that he was using their funds for his own purposes.

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

- a. failure to 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, by conduct including: (1) failing to hold all funds belonging to the unpaid Vioxx clients separate from Respondent's own property, and (2) converting at least \$133,823.05 of the

Vioxx settlement funds relating to the unpaid Vioxx clients to Respondent's own use and causing the balance in his IOLTA account to fall below the amount then belonging to the unpaid Vioxx clients, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010);

- b. failure to promptly deliver to the client or third person any funds that the client or third person is entitled to receive, by conduct including failing to promptly deliver the \$133,823.05 of Vioxx settlement funds that the unpaid Vioxx clients were entitled to receive, in violation of Rule 1.15(d) of the Illinois Rules of Professional Conduct (2010); and
- c. conduct involving dishonesty, fraud, deceit or misrepresentation, by knowingly converting at least \$133,823.05 of Vioxx settlement funds relating to the unpaid Vioxx clients to Respondent's own use without authority, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT II

*(Conversion of Settlement Funds – Multiple Client Matters)*

16. The Administrator realleges the facts set forth in paragraph one of Count I above.

17. As of July 8, 2016, the balance of Respondent's IOLTA account was \$25.50.

18. As set forth below, prior to July 8, 2016, Respondent had obtained settlements or recoveries on behalf of various clients and deposited an unknown amount of settlement funds to which a portion the following clients, or their lienholders or other third parties, were entitled to receive. As of July 8, 2016, Respondent should have been holding in his IOLTA account at least the following outstanding amounts for the named clients and/or their lienholders and other third parties:

	<u>Client</u>	<u>Amount owed</u>
1.	Sandra R. Morris	\$7,167.56
2.	Joseph Meitus	\$2,638.05
3.	Marne Bonomo	\$2,682.00
4.	Sheryl Beth Marsella	\$3,985.30

5.	Ashley Lombardo/Lombardo lienholders	\$8,659.15
6.	Sue Van Cleve	\$3,590.01
7.	Dorothy L. Howland	\$7,163.19
8.	Beth Brody	\$3,590.01
9.	Catherine L. Hinkle	\$3,582.92
10.	Anthony McGee/Clara Byas	\$23,914.59
11.	Donovan McGee/Mary Byas	\$21,029.59
12.	Lesser, Lutrey, Pasquesi & Howe LLP (Obra Trust)	\$2,885.00
13.	Nancy Zmudzinski	\$1,550.00
<b>TOTAL</b>		<b>\$92,437.37</b>

19. Between the dates that the funds referred to in paragraph 18, above, were deposited into Respondent's IOLTA account and July 8, 2016, Respondent made payments or transfers from that account for his own business or personal purposes. As of July 8, 2016, Respondent had used for his own business or personal purposes at least \$92,411.87 of the above clients' funds, as set forth in paragraph 18, which he should have been holding for the benefit of those clients.

20. At no time did Respondent request or receive authority to use for his own business or personal purposes any portion of the settlement proceeds funds due to the clients referred to in paragraph 18, above.

21. Respondent's use of the \$92,411.87 as set forth in paragraph 18 and 19, above, constitutes conversion of the funds due to his clients, their lienholders, or to third parties.

22. At the time Respondent used the funds due to the clients set forth in paragraph 18 and 19, above, to their lienholders, or to third parties, Respondent acted dishonestly, as he knew that he was using their funds for his own purposes.

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

- a. failure to 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, by conduct including: (1) failing to hold funds belonging to the clients

listed in paragraph 18, above, to their lienholders, or to third parties, separate from Respondent's own property, and (2) converting at least \$92,411.87 of client settlement funds relating to the clients listed in paragraph 18, above, to Respondent's own use and causing the balance in his IOLTA account to fall below the amount then belonging to the clients, to their lienholders, or to third parties, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010);

- b. failure to promptly deliver to the client or third person any funds that the client or third person is entitled to receive, by conduct including failing to promptly deliver the \$92,411.87 of settlement funds that the clients listed in paragraph 18, above, or their lienholders were entitled to receive, in violation of Rule 1.15(d) of the Illinois Rules of Professional Conduct (2010); and
- c. conduct involving dishonesty, fraud, deceit or misrepresentation, by knowingly converting at least \$92,411.87 of settlement funds relating to the clients listed in paragraph 18, above, to Respondent's own use without authority, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

### COUNT III

#### *(Conversion of Funds Belonging to Multiple Clients and False Statements)*

24. The Administrator realleges the facts set forth in paragraphs one through 23 of Counts I and II, above.

25. In addition to the amounts alleged in Counts I and II, above, between November 30, 2016, and December 31, 2018, Respondent received and used for his own business and personal purposes, without authority, funds belonging to clients Cynthia Calhoun, Zachary Westerman, the Estate of Earnest Garrett, Lisa Stauss and Christine D'Hondt, as described in more detail below:

- a. On or about November 30, 2016, Respondent received and deposited into his IOLTA account City of Chicago check number 01733915, which had been dated November 23, 2016, and made payable to Cynthia Calhoun and Respondent in the amount of \$10,000, from which Calhoun was entitled to at



- least \$5,000. On December 7, 2016, Respondent had overdrawn his IOLTA account by -\$6,079.74 by drawing checks on the account or making other transfers or payments for his own business or personal purposes, and as of that date, Respondent had used at least \$5,000 of Calhoun's funds for his own purposes without her authority;
- b. Prior to December 22, 2016, Respondent agreed to represent Zachary Westerman in matters relating to a personal injury claim following a May 16, 2016, accident. Prior to December 22, 2016, Respondent agreed to settle Westerman's claim without Westerman's authority, and on or about December 27, 2016, Respondent received and deposited into his IOLTA account Country Financial Insurance check number 5742091, which had been dated December 22, 2016, and made payable to Westerman and The Law Group Ltd. in the amount of \$13,500 in settlement of the claim. On February 24, 2017, prior to any distribution to or on behalf of Westerman, Respondent had overdrawn his IOLTA account by -\$308.81, by drawing checks on the account or making transfers or payments for his own business or personal purposes, and as of that date, Respondent had used all of Westerman's funds for his own purposes, without Westerman's authority. Between 2016 and the present, Westerman spoke with Respondent several times a year to request the status of his matter, and Respondent falsely told Westerman that his claim remained pending, despite knowing that he had previously settled the case and used the settlement proceeds for his own purposes. As of August 29, 2023, the date that a panel of the Inquiry Board voted to file a complaint in this matter, Respondent had not informed Westerman that he had settled Westerman's claim, that he had received and deposited settlement funds, had not made any disbursement to or on behalf of Westerman, and had not received Westerman's authority to pay himself a fee from these recoveries. As a result, Respondent should have been holding all of the \$13,500 he had received on Westerman's behalf;
- c. On or about January 9, 2017, Respondent received and deposited into his IOLTA account Hawkins Gibson PLLC check number 4281, which had been dated January 4, 2017, and made payable to the Estate of Earnest Garrett, Sr. in the amount of \$30,414.33, and from which beneficiaries of the estate were entitled to at least \$29,996. On February 24, 2017, prior to any disbursement to any beneficiary or on behalf of the Estate, Respondent had overdrawn his IOLTA account by -\$308.81, by drawing checks on the account or making other transfers or payments for his own business or personal purposes, and as of that date, Respondent had used for his own purposes at least \$29,996 of funds belonging to beneficiaries of the Estate of Earnest Garrett, Sr., without authority;
- d. Prior to February 27, 2017, Respondent agreed to represent Lisa Stauss in matters relating to a personal injury claim following a July 12, 2015, accident. Prior to February 27, 2017, Respondent agreed to settle Stauss' claim without Stauss' authority, and on or about March 6, 2017, Respondent received and

deposited into his IOLTA account Allstate Insurance check number 155609890, which had been dated February 27, 2017, and made payable to Stauss, The Law Group Ltd, Alternative Pain Care, Northshore Univ Healthsystem Faculty Practice Association and Geico Lienholder in the amount of \$28,000 in settlement of the claim. On July 7, 2017, Respondent had overdrawn his IOLTA account by -\$4.18, by drawing checks on the account or making transfers or other payments for his own business or personal purposes, and as of that date, Respondent had used all of Stauss' settlement funds for his own purposes, without authority. Between February 2017, and July 2023, Stauss spoke with Respondent several times a year to request the status of her matter, and Respondent falsely told Stauss that her claim remained pending, despite knowing that he had previously settled the case and used the settlement proceeds for his own purposes. As of August 29, 2023, the date that a panel of the Inquiry Board voted to file a complaint in this matter, Respondent had not paid Stauss or her lienholders any portion of the settlement to which each was entitled and had not received Stauss' authority to pay himself a fee from the recovery. As a result, Respondent should have been holding \$28,000 he had received on Stauss' behalf;

- e. On or about November 17, 2017, Respondent received and deposited into his IOLTA account Badger Mutual Insurance check number 0000810698, which had been dated November 5, 2017, and made payable to Christine D'Hondt and The Law Group in the amount of \$100,000, from which D'Hondt was entitled at least \$32,737.22, and lienholder Blue Cross Blue Shield was entitled to \$34,925.92. As of December 12, 2018, prior to any disbursement to or on behalf of D'Hondt, Respondent had drawn the balance of his IOLTA account to \$2,059.23, by drawing checks on the account or making transfers or payments for his own business or personal purposes, and as of that date, Respondent had used at least \$65,603.89 of D'Hondt's funds for his own purposes without her authority.

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

- a. failure to 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, by conduct including: (1) failing to hold funds belonging to the clients listed in paragraph 25, above, to their lienholders, or to third parties, separate from Respondent's own property, and (2) converting at least \$142,099.89 of client settlement funds relating to the clients listed in paragraph three, above, to Respondent's own use and causing the balance in his IOLTA account to fall below the amounts then belonging to the clients, to their lienholders, or to

third parties, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010);

- b. failure to promptly deliver to the client or third person any funds that the client or third person is entitled to receive, by conduct including failing to promptly deliver the \$142,099.89 of settlement funds that the clients listed in paragraph 25, above, or their lienholders were entitled to receive, in violation of Rule 1.15(d) of the Illinois Rules of Professional Conduct (2010); and
- c. conduct involving dishonesty, fraud, deceit or misrepresentation, by knowingly converting at least \$142,099.89 of settlement funds relating to the clients listed in paragraph 25, above, to Respondent's own purposes without authority, and by falsely telling Westerman and Stauss that their claims were pending when he knew they had been settled, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Jerome Larkin, Administrator  
Attorney Registration and  
Disciplinary Commission

By:                                 /s/ Scott Renfroe                                  
  Scott Renfroe

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