

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No.: 09-O-19259-LMA
)	
WADE ANTHONY ROBERTSON,)	DECISION; ORDERS; AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 217899,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this disciplinary proceeding, respondent Wade Anthony Robertson is charged with multiple acts of misconduct in one client matter. The charged misconduct includes (1) moral turpitude –scheme to defraud; (2) moral turpitude –misrepresentations; (3) moral turpitude – misappropriation; (4) failure to maintain funds in a trust account; (5) moral turpitude – abuse of the process; (6) maintaining an unjust action; (7) failure to inform a client of a significant development; and (8) failure to comply with laws.

The court finds, by clear and convincing evidence, that respondent is culpable of four of the charged counts. Based upon the serious nature and extent of culpability, as well as the applicable aggravating circumstances, the court recommends that respondent be disbarred from the practice of law.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on December 5, 2012. On January 28, 2013, respondent filed a response the NDC.

Prior to the commencement of the trial in this matter, respondent made several motions to dismiss the case, which were denied by the court.

On May 28, 2013, prior to the commencement of the trial in this matter, the State Bar filed a motion to amend the Notice of Disciplinary Charges to conform to proof. On June 7, 2013, respondent filed a partial opposition to the State Bar's motion to amend. Having considered the pleadings of the parties and good cause having been shown, the court **GRANTS** the State Bar's May 28, 2013 motion to amend the NDC.²

Prior to the commencement of the trial in this matter, respondent made several motions to dismiss the matter, which were denied by the court. At the conclusion of the State Bar's case, respondent also made an oral motion to dismiss the matter, which the court denied from the bench. Respondent filed another "Objection and Motion to Dismiss" on June 11, 2013, one day prior to the submission of the matter for decision. No good cause having been shown, the court **DENIES** respondent's June 11, 2013 "Objection and Motion to Dismiss."

A nine-day hearing was held on April 9-12, May 14-16, May 24, and May 28, 2013. Senior Trial Counsel Robert A. Henderson and Sherrie B. McLetchie represented the State Bar. Respondent represented himself.

The court took this matter under submission for decision on June 12, 2013.

² The court notes that the issues and concerns raised by respondent in his opposition to the State Bar's motion to amend the NDC to conform to proof are moot, since the court has not included the facts to which respondent objects in its findings of fact or considered those facts in reaching its conclusions regarding culpability in this matter.

On June 13, 2013, after this matter was taken under submission, respondent filed a Motion to Abate Part of Proceedings and a Request for Judicial Notice. The State Bar filed an opposition thereto on June 24, 2013. Having carefully reviewed the pleadings, the court, finding no good cause, **ORDERS** that respondent's motion to abate and request for judicial notice is hereby **DENIED**.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 11, 2001, and has been a member of the State Bar of California at all times since that date.

Case No. 09-O-19259 – The Cartinhour Matter

Facts

1. The Formation of W.A.R. LLP

On or about September 6, 2004, respondent was introduced to William C. Cartinhour, Jr., (Cartinhour), who at the time was a 77 year-old resident of Maryland. Thereafter, respondent informed Cartinhour that he represented some plaintiffs in an ongoing class-action lawsuit, entitled *Liu, et al. v. Credit Suisse Boston, et al.*, case No.1:04-CV-03757-SAS, United States District Court, Southern District of New York (Credit Suisse litigation),³ which had been filed in February 2003. Respondent never formally entered an appearance in the Credit Suisse litigation; but, he was involved in the class action lawsuit.

In early September 2004, respondent informed Cartinhour that he was seeking investors on behalf of the class plaintiffs to finance their out-of-pocket litigation expenses. Respondent informed Cartinhour that the litigation involved a multi-billion dollar claim with a high

³ The case was originally filed on February 28, 2003, in United States District Court Southern District of Florida, 1:03-CV-20459-JEM. On May 18, 2004, the case was transferred to New York because it was deemed a multi-district litigation case.

likelihood of success. Respondent further advised Cartinhour that if he financed the litigation, he would receive a fixed percentage of the recovery. Cartinhour agreed to finance the litigation.

In September 2004, respondent formed W.A.R. LLP⁴ (the partnership), a District of Columbia partnership entity and presented Cartinhour with a partnership agreement (partnership agreement). The partnership agreement stated the partnership's sole purpose was the provision of legal services for various security class actions, which respondent was pursuing or intended to pursue on behalf of his clients. On September 16, 2004, respondent and Cartinhour executed the partnership agreement.

Respondent served as Cartinhour's attorney, as well as his business partner.

Article XI of the partnership agreement set forth the fiduciary duties to the partnership's business and stated that no partner shall pursue or become directly or indirectly interested in any business or occupation that was in conflict with either the business of the partnership or with the rights, duties and responsibilities of the partner to the partnership.

Article XII of the partnership agreement set forth the fees and compensation for services as determined by respondent. It also stated that each partner shall account to the partnership for all compensation received.

Article XIII of the partnership agreement set forth the management structure, the rights, powers and duties, and named respondent as the partner with exclusive right and authority to manage the business. This provision also gave respondent the authority to take any action he deemed necessary, stated that Cartinhour would have no control over the partnership's business, and granted respondent the authority to choose the partnership bank account with respondent as signer.

⁴ Respondent's initials are W.A.R.

Article XXIII of the partnership agreement gave the partnership authority to make recourse loans from the partnership capital to a partner and granted respondent the authority to make those loans.

2. Cartinhour's Funding of the Partnership and Respondent's Depletion of the Partnership's Assets for Respondent's Personal Use and Benefit

On September 17, 2004, Cartinhour issued a check from his Vanguard account payable to W.A.R. LLP and respondent in the amount of \$300,000. On September 17, 2004, Cartinhour also issued a check from his Legg Mason account payable to W.A.R. LLP and respondent in the amount of \$700,000. Respondent received the checks.

Thereafter, respondent failed to inform Cartinhour that two weeks after the partnership was formed on October 1, 2004, Credit Suisse had filed a motion for an order to dismiss the third amended complaint.

On September 29, 2004, respondent deposited \$1,000,100 into a Citibank account in the name of W.A.R. LLP (partnership bank account).

On October 21, 2004, respondent opened a personal brokerage account at Charles A. Schwab & Sons, Inc., (the Schwab trading account), listing only himself as the account holder. Cartinhour's name did not appear on the application. On October 22, 2004, respondent executed a promissory note for \$975,000 in favor of the partnership. The promissory note was a zero interest loan from the partnership to respondent with repayment due on or before January 1, 2015. Respondent, however, did not inform Cartinhour that he had taken out a zero percent loan from the partnership account. Between October 25 and 26, 2004, respondent withdrew \$975,000 from the partnership bank account.

On October 25, 2004, respondent deposited \$970,000 of the funds he removed from the partnership account into his personal Schwab trading account. Respondent did not inform Cartinhour that he had placed the funds into the Schwab trading account held only in his name.

Thereafter, in a letter dated March 14, 2005, respondent informed Cartinhour that he had “persuaded” plaintiffs’ counsel to allow Cartinhour to contribute additional funds to the W.A.R. LLP partnership in exchange for an increased recovery return. In that same letter, while acknowledging that he had “dragged” in providing the annual report for the partnership, respondent informed Cartinhour that Cartinhour would “be receiving a financial report on the status of the partnership for both the year-end and the quarter’s end.” Cartinhour, however, did not receive a year-end or quarter-end financial report. In his March 14th letter to Cartinhour, respondent also falsely stated “there were no draws on the partnership’s capital through year-end” (Exh. 14, Bates Stamp No. 1844-1845.) In fact, during the same time frame that respondent was making the afore-referenced misrepresentations to Cartinhour, respondent failed to inform Cartinhour of the fact that a motion to dismiss the Credit Suisse litigation had been filed and was pending. (*Ibid.*)

On March 16, 2005, respondent replaced the \$975,000 by executing a Discharge of Promissory Note in the amount of \$975,000. He signed off on the discharge on behalf of the partnership, as “Wade A. Robertson, general partner & legal representative.” (Exh. 15.) The discharge stated that all obligations under the October 22, 2004 promissory note were discharged and the debt was recorded as paid-in-full.

Respondent deposited \$975,000 back into the partnership account on March 16, 2005. Thereafter, respondent failed to inform Cartinhour that he had taken the partnership funds, obtained an interest free loan to trade the funds through Schwab, and then replaced the partnership funds with funds from his personal Schwab trading account.

On March 21, 2005, respondent prepared and obtained Cartinhour's signature on a "Limited Waiver," which waived the partnership's obligation to obtain a year-end certified public

accountant audit for the fiscal year 2004. At the same time, respondent also amended the partnership agreement to reflect a total contribution by Cartinhour of \$2,000,000.

On April 1, 2005, the court issued a memorandum and opinion in the Credit Suisse litigation, dismissing the plaintiffs' third amended complaint with prejudice. Thereafter, respondent, failed to inform Cartinhour that the plaintiffs' claim in the Credit Suisse litigation court had been dismissed.

On April 5, 2005, Cartinhour caused a wire transfer in the amount of \$1,000,000 to be deposited into the partnership bank account, making his total capital contribution to the partnership \$2,000,000.

On April 8, 2005, respondent again issued himself a zero percent promissory note – this time in the amount of \$1,970,000, with a maturity date of January 1, 2030. (On January 1, 2030, Cartinhour would be 102 years old.)

On April 11, 2005, respondent withdrew \$1,970,000 from the partnership bank account. On April 30, 2005, the balance in the partnership account was \$24,561.74.

On April 11, 2005, respondent deposited \$1,970,000 into his personal Schwab trading account. He then used the funds for securities trading. Thereafter, respondent did not inform Cartinhour that he had removed funds from the partnership account for his own use and not for the use and benefit of the partnership. Respondent also failed to inform Cartinhour that he had placed the funds into a Schwab trading account held only in respondent's name.

On April 15, 2005, plaintiffs in the Credit Suisse litigation filed a motion to alter, vacate or amend the Memorandum and Opinion which had dismissed their third amended complaint with prejudice. On May 16, 2005, the court issued an order dismissing plaintiffs' third amended complaint. The order also stated that Credit Suisse was permitted to file letters in support of a request for sanctions. Respondent was aware of plaintiffs' April 15, 2005 motion and the court's

May 16, 2005 order. Nonetheless, respondent wrote to Cartinhour on June 27, 2005, informing him that “all continues ‘on track’” and “there is nothing substantively new to report with the case.” (Exh. 23.)

Respondent, however, knew that he had taken the money, which Cartinhour provided as a capital investment in the partnership for the purpose of funding the Credit Suisse litigation, for his own use and benefit and not for the use and benefit of the partnership. Respondent was well aware that the funds, which Cartinhour had provided to the partnership for the purpose of funding the Credit Suisse litigation, were not being used for that purpose, but instead were being used to finance respondent's personal investments. Respondent's representations to Cartinhour claiming that Cartinhour's funds were invested in the Credit Suisse litigation were untrue. Thus, respondent knew that he had applied the funds for his own use and benefit and not for the use and benefit of the partnership.

On June 27, 2005, the court dismissed the second motion for reconsideration that had been filed in the Credit Suisse litigation. Although respondent knew that the second motion for reconsideration had been dismissed by the court, respondent still did not inform Cartinhour that the court had dismissed the Credit Suisse litigation with prejudice.

On June 30, 2005, respondent's Schwab trading account's balance was \$1,917,730.23. On July 31, 2005, respondent's Schwab's trading account balance was \$60,226.52, as a result of significant securities trading losses incurred by respondent in July 2005.

On August 3, 2005, respondent transferred \$60,226.52 from his Schwab trading account to the partnership bank account.

On September 6, 2005, respondent wrote a letter to Cartinhour stating he believed the litigation was going to be successful and the magnitude of the partnership's success would be "very, very large." (Exh. 28, Bates Stamp No. 1978.) Respondent, however, knew that most of

the partnership funds were not invested in the Credit Suisse litigation. At the time that respondent represented to Cartinhour that the partnership's success would be large, he knew that he had lost almost all of Cartinhour's funds and that the Credit Suisse litigation had been dismissed by the court.

On December 6, 2005, respondent amended the partnership agreement a second time. He amended Article XXI to state that if a partner died or became incompetent, the partnership interest would be held in trust until the dissolution of the partnership. At the same time, respondent also prepared a codicil to Cartinhour's will.

On March 15, 2006, respondent stated to Cartinhour in a letter, "I am confident that our position continues to grow stronger and that we will ultimately be wildly successful in this endeavor." (Exh. 39.) Respondent also informed Cartinhour that he had persuaded plaintiffs' counsel to allow Cartinhour to invest additional funds to finance the litigation. But, in fact, respondent knew that most of the funds which Cartinhour had invested in the partnership had never been invested in the Credit Suisse litigation. Moreover, at the time that respondent represented the partnership would be wildly successful, he was well aware that he had lost almost all of Cartinhour's investment funds and that the court had dismissed the Credit Suisse litigation. Thus, in his dealings with Cartinhour, respondent intentionally made representations that he knew or should have known were false, including the representation that the Credit Suisse litigation would be wildly successful.

Although respondent knew that the Credit Suisse litigation had been dismissed by the court and that he had lost almost all of Cartinhour's funds, respondent intentionally and knowingly misrepresented the facts when he advised Cartinhour that the litigation would be wildly successful. Respondent knowingly omitted informing respondent that the court had dismissed the Credit Suisse litigation matter.

Prior to April 7, 2006, Cartinhour had employed respondent to prepare estate planning documents and to “wind up” Cartinhour’s corporation “TCT Group.”

On April 7, 2006, respondent presented to Cartinhour the "Last Will and Testament of William C. Cartinhour, Jr." The will appointed respondent as executor of Cartinhour's will. Respondent also prepared a document entitled "Attestation and Certification of No -Client Relationship with Attorney Wade A. Robertson," which stated that respondent was not Cartinhour's attorney, was strictly a business partner, and that no attorney-client relationship existed. Respondent also prepared a document entitled the “Indemnification, Hold Harmless, and Agreement to Waive all Claims." That document stated that Cartinhour agreed to indemnify, hold respondent harmless, and waive all claims against respondent.

On April 7, 2006, Cartinhour signed the "Last Will and Testament of William C. Cartinhour, Jr.," "Attestation and Certification of No Attorney-Client Relationship with Attorney Wade A. Robertson," and "Indemnification, Hold Harmless, and Agreement to Waive all Claims," which respondent had provided.

Shortly thereafter, on April 10, 2006, respondent amended the partnership agreement a third time to reflect that Cartinhour contributed an additional \$1,500,000. On April 19, 2006, Cartinhour made another capital contribution to the partnership, by providing respondent with a check in the amount of \$1,500,000 payable to the partnership. On April 20, 2006, respondent deposited the check into partnership bank account.

Cartinhour’s capital contributions to the partnership totaled \$3,500,000, while respondent contributed a total of \$3,500 to the partnership. Additionally, on April 19, 2006, Cartinhour gave respondent a check in the amount of \$40,000 payable to respondent.

On May 19, 2006, the United States Court of Appeals for the Second Circuit issued a summary order affirming the district's court decision to dismiss the Credit Suisse litigation.

After a half-a-year elapsed, on November 7, 2006, Cartinhour wrote to respondent to obtain an update on the status of the Credit Suisse litigation. In particular, Cartinhour stated to respondent that "We have asked you over and over as to whether you still entertain the same settlement expectations with Credit Suisse that you were entertaining at the time you left town 7 months ago." Two months later, Cartinhour again wrote to respondent, noting that "[t]o sell an investment to someone and then subsequently make yourself the sole and exclusive person who can purvey any and all information about this investment is not a Kosher Act in any investment circles." Cartinhour also pointed out that he had dropped off respondent's radar after respondent received his last contribution.

In April 2007, Cartinhour wrote to John Watts (Watts), a plaintiffs' attorney in the Credit Suisse Litigation, informing Watts that he had invested \$3,500,000 with respondent for the purpose of funding the Credit Suisse litigation. Cartinhour also communicated his suspicion that respondent had duped him.

On April 18, 2007, respondent executed a promissory note in the amount of \$1,435,000 in favor of the partnership. The promissory note reflected that respondent received a zero percent interest loan payable on or before January 1, 2040. (At the time of maturity, Cartinhour would be 112 years old.) The following day, respondent withdrew \$1,435,000 from the partnership bank account, leaving a balance of \$5,044.06 in the partnership bank account. On April 19, 2007, the same date on which he withdrew the \$1,435,000 from the partnership bank account, respondent transferred the \$1,435,000 into his personal Schwab trading account.

Thereafter, respondent failed to inform Cartinhour that he had removed funds from the partnership account and deposited them into his personal Schwab account to be used for his personal use and not for the benefit of the partnership. Respondent did not inform Cartinhour

that in fact he had placed the funds into a Schwab trading account held in his name only or that only \$5,044.06 remained in the partnership bank account.

On April 28, 2007, respondent wrote a letter to Cartinhour, stating that he had received a call from Watts. Respondent informed Cartinhour that Cartinhour had breached their partnership agreement when he contacted Watts. Respondent also represented to Cartinhour that he was busy with the Credit Suisse litigation, was working on re-filing the case, and was working with new lead attorneys.

On September 22, 2007, respondent again wrote to Cartinhour stating that his efforts were still ongoing and that Cartinhour's letter to Watts "wreaked havoc on the working relationship [he] had with some of the other attorneys that . . . worked on the case." At no time did respondent inform Cartinhour that he had used the funds, which Cartinhour had contributed to the partnership for his own use and benefit and not for the use and benefit of the partnership. At no time did respondent inform Cartinhour that he had been using the partnership funds for stock market trading and for his personal use.

By January 30, 2008, respondent had sustained options trading losses of more than \$850,000 on his Schwab trading account.⁵

At no time did respondent inform Cartinhour that he had used Cartinhour's funds for his own use and benefit and not for the use of and benefit of the partnership. At no time did respondent inform Cartinhour that he was using the partnership funds for stock market trading or for his personal use.

Respondent has not repaid the partnership the monies borrowed from the loans of \$1,970,000 or \$1,435,000 to date. Nor has he paid back any funds to Cartinhour.

⁵ The \$850,000 sustained as a result of trading losses on options does not include the \$2,000,000 in securities trading losses incurred by respondent in July 2005.

3. Litigation between Cartinhour and Respondent

On January 9, 2009, attorney Albert Schibani (Schibani) wrote to respondent, informing him that he represented Cartinhour. Schibani advised respondent that Cartinhour was aware the Credit Suisse case had been dismissed and thus wanted to address the costs and expenses of the partnership. Schibani requested that respondent provide an accounting and also stated that Cartinhour never received any tax documents or K-Is from the partnership.

On January 27, 2009, respondent replied to Schibani's January 9, 2009 letter. In his reply, respondent informed Schibani that any relationship, which he had with Cartinhour was confidential. Respondent further stated that he would not provide any documentation or disclosures regarding the partnership.

On January 29, 2009, Schibani wrote to attorney J. Gusty Yearout, a member of the Watts law firm. Schibani informed Yearout that he was representing Cartinhour and in the course of his representation was seeking information about respondent's relationship with the Watts firm and respondent's role in the Credit Suisse litigation. On February 3, 2009, Yearout wrote to Schibani and advised him that he had no knowledge of respondent's relationship to Cartinhour. Yearout also stated that respondent had no financial interest in the Watts' law firm.

On February 6, 2009, Schibani wrote to respondent and again requested an accounting and the return to Cartinhour of the \$3,500,000.

On August 28, 2009, respondent filed a civil complaint for declaratory relief against Cartinhour, *Wade Robertson v. William C. Cartinhour*, case No. 1:09-cv-01642, United States District Court, District of Columbia. In his complaint, respondent alleged that Cartinhour made written demands for a sum of money in excess of \$1,000,000 without justification, and thereby breached the terms of the April 7, 2006 "Hold Harmless" agreement. Respondent also alleged that he had incurred costs, expenses and fees as a direct result of Cartinhour's demands and that

Cartinhour failed to fulfill his obligations under the hold harmless agreement. Respondent's complaint requested relief in the form of a judgment ordering Cartinhour to release, indemnify and hold respondent harmless.

On October 28, 2009, Cartinhour filed an answer and cross complained against respondent. Cartinhour alleged that respondent induced him to invest \$3,500,000 in a partnership, the stated purpose of which was to fund class action lawsuits.

Thereafter, the case eventually proceeded to jury trial.

On February 18, 2011, a jury found respondent liable for legal malpractice and breach of fiduciary duty in his capacity both as a business partner and as a lawyer. The jury also found the Release/Indemnification agreement which Cartinhour had signed on April 7, 2006, was invalid and unenforceable. Additionally, the jury awarded Cartinhour \$3,500,000 in compensatory damages and another \$3,500,000 in punitive damages.

On February 25, 2011, the court entered judgment against respondent in the amount of \$3,500,000 in compensatory damages and another \$3,500,000 in punitive damages. (Exh. 128.) Respondent was served with the judgment.

Thereafter, respondent filed a series of appeals. On April 3, 2012, the United States Court of Appeals, District of Columbia Circuit, affirmed the District Court's judgment in favor of Cartinhour. (Exh. 129.) The appellate court determined that respondent had no meritorious argument on appeal and rejected his contention that the partnership agreement permitted all of his actions, including the issuing of personal loans issued to himself from the partnership. The court wrote, "In this case where, in spite of the fiduciary duty Robertson owed Cartinhour as his business partner, Robertson misled the elderly and unhealthy Cartinhour into believing all was 'on track' with the litigation well after the case had been dismissed, we have no trouble upholding the jury's finding." (Exhs. 129 and 130.)

4. The Bankruptcy Proceedings

Prior to May 4, 2012, respondent utilized the bankruptcy courts to delay his obligation to pay the damages owing to Cartinhour. Part of respondent's delay tactics involved his utilization of Ray Connolly (Connolly) as a purported creditor, i.e., a straw creditor.

On May 4, 2012, U.S. Bankruptcy Court Judge S. Martin Teel, Jr. issued a Memorandum Decision re: Imposition of Sanctions, *In Re W.A.R. LLP*, United States Bankruptcy Court for the District of Columbia, case No. 11-00044 (Bankruptcy Decision). In the Bankruptcy Decision, the court stated that it was sanctioning respondent in the amount of \$10,000 for his advancement of frivolous arguments, the purpose of which was to delay Cartinhour from exercising his rights and to cause him to incur unnecessary expenses. In addition, the court granted an award of fees to Cartinhour against respondent for his utilization of Connolly to advance arguments designed, in "extreme bad faith vexatiously and wantonly to delay Cartinhour in his rights and to cause him undue litigation expense." (Exh. 139.) This court finds that the arguments respondent raised in the bankruptcy action are similar and in some cases identical to the arguments raised in the instant matter. And, like the bankruptcy court, this court finds those arguments were without merit and were designed to delay Cartinhour in his attempt to collect on the judgment entered against respondent.

The bankruptcy court further stated in its decision, "Rarely has the court seen such an unrelenting pursuit of a patently frivolous argument undertaken with such complete indifference to the merits." (Exh. 139.) The court found by clear and convincing evidence that respondent's "ghostwriting" of Connolly's papers was done in "bad faith" and "advanced legally frivolous arguments."

On September 26, 2012, the bankruptcy court vacated its earlier imposition of \$10,000 in sanctions and instead imposed sanctions against respondent in the amount of \$5,000. The court

also issued judgment in favor of Cartinhour against respondent in the amount of \$21,901 plus interest. (Exhs. 132, 141, and 143.)

On September 27, 2012, respondent filed a Notice Appeal from the final orders of the bankruptcy court.

Conclusions

Count One - (§ 6106 [Moral Turpitude-Scheme to Defraud])

Count Three - (§ 6106 [Moral Turpitude-Misappropriation])

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

The facts clearly and convincingly show that in September 2004, respondent solicited Cartinhour, a 77-year old man to invest in the Credit Suisse litigation. In a matter of just a few days, as set forth, *ante*, respondent: (1) was introduced to Cartinhour; (2) solicited an investment from Cartinhour by making false claims and misrepresentations to the effect that Cartinhour's investment would be used to fund the expenses of the Credit Suisse litigation and would result in a fixed percentage of the recovery for Cartinhour; and (3) drafted and prepared a partnership agreement, which he and Cartinhour executed, and which respondent used to obtain access to and control over Cartinhour's money. The facts, as set forth in this Decision, *ante*, make manifest that over a period of approximately four years Cartinhour invested a total of \$3,500,000 into the partnership, while respondent invested \$3,500. During the duration of the partnership, respondent permanently removed/misappropriated a total of \$3,500,000 from the partnership bank account through dishonest and corrupt acts, relying on misrepresentations and/or omissions of material facts regarding the true nature of Credit Suisse litigation. Respondent manipulated Cartinhour and hid the true nature of how Cartinhour's investment funds were being used. The misrepresentations and omission of material facts made by respondent reveal a well-implemented, well-thought out, and deviously orchestrated plan to

defraud Cartinhour and misappropriate large sums of money, which he had induced Cartinhour to invest in the partnership.

To advance his scheme to defraud Cartinhour, respondent made use of legal documents that he prepared, including the partnership agreement, the "Attestation and Certification of No Attorney-Client Relationship with Attorney Wade A. Robertson," the "Indemnification, Hold Harmless, and Agreement to Waive all Claims," and the "Last Will and Testament of William C Cartinhour, Jr." (Respondent was named as executor of the will.) Respondent prepared the afore-listed documents and used them as instruments in his scheme to ensure his absolute and complete control over and unilateral access to Cartinhour's funds. The plan, which respondent created and put into motion, was devised for the purpose of luring Cartinhour into turning over large sums of money to the "partnership," over which respondent had total and absolute control. Part of the dishonest nature of the plan was that it was based on a non-existent investment. The evidence reveals that the Credit Suisse litigation was dismissed by the courts and did not exist or serve as an investment opportunity for Cartinhour for the vast part of the investment period, during which respondent solicited and misappropriated Cartinhour's investment funds from the partnership. Respondent's scheme provided a means for him to gain access to Cartinhour's "investment" funds by issuing loans to himself and then depositing those "loan" funds in his personal trading account. To date respondent has not repaid Cartinhour any part of the \$3,500,000, which he misappropriated, despite a final judgment (Exh. 130) requiring him to do so.

Consequently, the court finds that respondent engaged in a scheme to defraud through misrepresentations and omissions of material fact, which resulted in the systematic misappropriation of millions of dollars. By engaging in the scheme to defraud Cartinhour and by

misappropriating Cartinhour's funds, respondent committed acts involving moral turpitude, dishonesty, and corruption in willful violation of section 6106.

Count Two - (§ 6106 [Moral Turpitude - Misrepresentation])

Respondent communicated to Cartinhour that: (1) respondent had persuaded plaintiffs' counsel in the Credit Suisse litigation to allow Cartinhour to contribute more funds to the W.A.R. LLP in exchange for an increased recovery return, when in fact he had not so persuaded plaintiffs' counsel; (2) the Credit Suisse litigation continued "on track" well-after respondent knew that the litigation had actually been dismissed by the court; (3) the partnership's success would be large, when respondent knew that the Credit Suisse litigation had been dismissed; and (4) the partnership would be "wildly successful." At the time respondent made the afore-listed representations, he also knew that: (1) most of the funds that Cartinhour had invested in the partnership had never been invested in the Credit Suisse litigation, (2) he had already lost almost all of Cartinhour's funds, and (3) the court had dismissed the Credit Suisse litigation.

By making the misrepresentations and withholding material facts from Cartinhour, as set forth, *ante*, respondent committed acts involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

Count Four - (Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account])

Rule 4-100(A) of the California Rules of Professional Conduct provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions.

The facts show that the partnership entered into by respondent and Cartinhour was a partnership entity formed in the District of Columbia. The evidence also shows that upon receipt of those funds from Cartinhour, respondent deposited them into the partnership's bank account.

The State Bar alleges that respondent was required to maintain the partnership's funds in a client trust account, as required under the California Rules of Professional Conduct. The State Bar, however, has not provided clear and convincing evidence that funds, which were received for investment in a District of Columbia partnership, were required to be maintained in a client trust account pursuant to the California Rules of Professional Conduct, as opposed to a partnership bank account in the District of Columbia.

The court concludes that the State Bar has failed to meet its burden of showing by clear and convincing evidence that the partnership funds were required to be maintained in a trust account as set forth in rule 4-100(A) of the California Rules of Professional Conduct as alleged in Count Four of the NDC. Accordingly, Count Four is dismissed with prejudice.

Count Five - (§ 6106 [Moral Turpitude-Abuse of Process])

In the bankruptcy court, respondent asserted legally frivolous positions and advanced frivolous arguments, as well as engaged in acts that he knew or should have known were improper, such as utilizing Ray Connolly as a purported creditor, i.e., a straw creditor and "ghostwriting" Connolly's papers. In addition to asserting meritless and frivolous positions and engaging in the aforesaid acts, respondent maintained a legal action, i.e., the bankruptcy matter, for the corrupt motive of delaying his obligation to pay the damages owing to Cartinhour, despite the existence of a valid court judgment issued against him. By so doing, respondent abused the litigation process and engaged in acts which were corrupt and dishonest, in willful violation of section 6106.

Count Six - (§ 6068, subd. (c) [Attorney's Duty to Counsel/Maintain Only Legal or Just Actions or Defenses])

Count Eight - (§ 6068, subd. (c) [Attorney's Duty to Counsel/Maintain Only Legal or Just Actions or Defenses])

Section 6068, subdivision (c), provides that an attorney has a duty to counsel or maintain those proceedings, actions, or defenses only as appear to the attorney legal or just, except the defense of a person charged with a public offense.⁶

In Counts Six and Eight, the State Bar asserts that respondent maintained unjust actions against Cartinhour by pursuing frivolous and meritless litigation, i.e., specifically the claims, which respondent raised in the bankruptcy proceedings.

Counts Six and Eight, however, are based in large part on the same misconduct as that at issue in Count Five⁷ and are subsumed within the more expansive issues that fall under the rubric, “abuse of process,” raised by Count Five. The court, therefore, declines to find culpability based on the misconduct alleged in Counts Six and Eight. Accordingly, Counts Six and Eight are dismissed with prejudice.

Count Seven - (§ 6068, subd. (m) [Failure to Communicate])

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

In Count Seven, the State Bar asserts that respondent failed to inform Cartinhour of specific significant developments related to Cartinhour's investment and the partnership. The “significant developments” at issue in Count Seven are subsumed under the larger and more

⁶ The court notes that Counts Six and Eight are essentially identical counts, and thus will be treated as one count.

⁷ In *Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060, the Supreme Court advised that little, if any, purpose is served by duplicate allegations of misconduct in State Bar proceedings. Thus, it is redundant to bring separate counts in this proceeding based on the same alleged misconduct.

expansive categories, “scheme to defraud” and “omissions of material facts,” which were raised in Counts One and Three. As previously noted in this Decision, little, if any, purpose is served by duplicate allegations of misconduct in State Bar proceedings. Accordingly, the court declines to find culpability based on the misconduct alleged in Count Seven, which is based on the same omissions, which are relied on in finding culpability in Counts One and Three. Accordingly, Count Seven is dismissed with prejudice.

Count Nine - (§ 6068, subd. (a) [Attorney’s Duty to Support Constitution and Laws of United States and California])

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California.

In Count Nine, the State Bar alleges that by engaging in a scheme to defraud Cartinhour in the District of Columbia, respondent breached fiduciary duties he owed to Cartinhour. As previously noted, the partnership was established as a “District of Columbia partnership entity” under the laws of the District of Columbia. It is State Bar’s contention, as set forth in paragraph 139 of the NDC, that “[p]ursuant to California law Respondent owed Cartinhour fiduciary duties as his business partner and as his attorney.”

The State Bar has not demonstrated by clear and convincing evidence that the fiduciary duties owed to Cartinhour by respondent are governed *under California law*, as opposed to the laws of the District of Columbia, under which the partnership was established.

Accordingly, Count Nine is dismissed with prejudice.

Aggravation⁸

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Respondent committed multiple acts of misconduct by entering into a scheme to defraud Cartinhour, misappropriating \$3,500,000, making myriad misrepresentations to Cartinhour, and abusing the litigation process.

Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)

Respondent has misappropriated \$3,500,000 of Cartinhour's funds. As a result, Cartinhour had to hire attorneys to obtain a judgment against respondent and thereafter to enforce the judgment. Respondent still has not complied with the court judgment, which became final in April 2012. Rather, respondent misused the bankruptcy court proceedings to delay payment on the judgment.

Attorney Patrick Kearney, whose firm represented Cartinhour regarding the judgment, credibly testified that respondent paid him over \$700,000 in attorney fees. Respondent's failure to comply with the final judgment against him and his thwarting of respondent's attempts to collect on that valid judgment has forced Cartinhour to spend additional hundreds of thousands of dollars in legal fees.

Not only did respondent deprive Cartinhour of his funds for years, but he continues to harm Cartinhour by prolonging the bankruptcy proceedings and forcing Cartinhour to remain involved in extensive litigation in order to enforce the judgment which he obtained against respondent. These unnecessary and protracted legal proceedings have been time-consuming, costly, and burdensome for Cartinhour and the legal system.

⁸ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Indifference Toward Rectification/Atonement (Std. 1.2(b)(v).)

Respondent has shown no remorse or recognition of the serious consequences of his misbehavior. Throughout this proceeding he has denied culpability for any wrongdoing and has argued the reasonableness of his conduct. Respondent has failed to demonstrate any realistic recognition of the seriousness and/or consequences of his misbehavior. Rather, respondent has demonstrated only indifference toward rectification of or atonement for his misconduct.

“The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

Respondent’s failure to acknowledge or accept responsibility for actions or to understand that wrongfulness of his actions is a serious aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.)

Mitigation

No Prior Record (Std. 1.2(e)(i).)

Respondent was admitted to the practice of law in December 2001. His misconduct began less than three years after he was admitted to the practice of law. Respondent’s mere three-year tenure of discipline-free practice does not provide any mitigative weight. (*In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, 837 [six years of blemish-free practice entitled to no mitigative weight].)

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.2(a) and 2.3 apply in this matter. The more severe sanction is found at standard 2.2(a), which recommends disbarment for willful misappropriation unless the amount misappropriated is insignificantly small or unless the most compelling mitigating circumstances clearly predominate, in which case the discipline recommended must not be less than one-year actual suspension, regardless of mitigating circumstances.

Standard 2.3 provides that culpability of an act of moral turpitude, fraud or intentional dishonesty, or of concealment of a material fact, must result in actual suspension or disbarment.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) As the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent, who maintains that he is completely free of any wrongdoing, contends that if the court finds culpability, the discipline it imposes should be no greater than an admonition. The State Bar urges that respondent be disbarred, citing numerous cases including *Chang v. State*

Bar (1989) 49 Cal.3d 114, *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, and *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824.

In *Chang*, the attorney was disbarred for misappropriating over \$7,000 by secretly opening a trust account in his own name while employed by a law firm, depositing clients' funds in the trust account, later taking the funds, failing to comply with the client's request for copies of bank records, and refusing to pay the client the funds owed. The attorney was also found to have failed to cooperate in the disciplinary investigation by making misrepresentations to a State Bar investigator. The attorney offered no evidence in mitigation, but it was noted that he had no prior record of discipline. In ordering disbarment, however, the Supreme Court pointed to several reasons to doubt that the attorney would conform his conduct in the future to the professional standards required of attorneys in California. In particular, the Supreme Court noted that the attorney had never acknowledged the impropriety of his actions and had made no effort at reimbursing the client.

Like the attorney in *Chang*, respondent, herein has failed to acknowledge the impropriety of his actions. Respondent has made no attempt to pay the judgment against him. Rather, he has engaged in extensive litigation to avoid taking responsibility for his actions.

In *Priamos*, the court found that the attorney therein engaged in business transactions with a client, and committed acts of moral turpitude by his seven year self-dealing with over \$500,000 of investment funds he was asked by his client to handle. The attorney's self-dealing included unilaterally paying himself \$450,000 in management and legal fees. The review department found, as did the hearing department, that disbarment was called for in order to protect the public.

Respondent, like Priamos, engaged in self-dealing with investment funds, making zero-interest loans to himself from the funds that Cartinhour had invested in the partnership.

Respondent made misrepresentations and omitted informing Cartinhour of material facts regarding the Credit Suisse litigation, as well as how the funds, which Cartinhour had invested were actually being used. Respondent never informed Cartinhour that he was depositing the investment funds in his personal Schwab trading account and then using those funds in speculative securities trades—not dissimilar from the speculative ventures in which the *Priamos* attorney engaged. Like *Priamos*, respondent has failed to appreciate the extent and wrongfulness of his conduct.

The result in the instant matter and in *Priamos* was the loss of the funds. And, like attorney *Priamos*, respondent abused his position of trust by engaging in deception, misrepresentations and fraud. The *Priamos* court determined that the only appropriate discipline to impose under such circumstances was disbarment.

Respondent does not acknowledge that he abused his position as a business partner and an attorney to advance his scheme/plan. Nor does he acknowledge that the means he used to carry out his scheme were grounded in corruption, deceit, and dishonesty.

Honesty is the fundamental rule of ethics, “without which the profession is worse than valueless in the place it holds in the administration of justice’ [Citations.]” (*Rhodes v. State Bar* (1989) 49 Cal.3d 50, 60.) The Supreme Court has regularly and consistently condemned attorney dishonesty. (*Sevin v. State Bar* (1973) 8 Cal.3d 641, 645-646 [misappropriation and fabricated loan agreement]; *Chang v. State Bar* (1989) 49 Cal.3d 114, 128 [misappropriation with fraudulent and contrived misrepresentations to the State Bar].

Cases involving client deceit, misappropriation, and lack of insight warrant disbarment. (*Kelly v. State Bar* (1988) 45 Cal.3d 649 [disbarment for \$20,000 misappropriation, moral turpitude, dishonesty, and improper communication with adverse party with no prior record in mitigation and no aggravation]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct.

Rptr. 511 [disbarment for \$40,000 misappropriation and intentionally misleading client, despite mitigation for emotional problems, repayment of money, 15 years of discipline-free practice, strong character evidence, and candor and cooperation with State Bar].)

Here, respondent misappropriated much larger sums of money than the attorneys in *Kelly*, *Spaith*, or *Priamos*. Additionally, the present case involves respondent's deception as manifested through his scheme to defraud and the myriad misrepresentations and omissions of material fact, which he made in order to carry out his scheme. Moreover, respondent has made no effort to make Cartinhour whole, despite the court judgment, which Cartinhour obtained against respondent. To the contrary, respondent has engaged in extensive litigation making the situation even worse. Finally, respondent has demonstrated no understanding of his misconduct and the harm he has caused. Accordingly, the court finds that the interests of public protection require a recommendation of disbarment.

Recommendations

It is recommended that respondent Wade Anthony Robertson, State Bar Number 217899, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

The court also recommends that respondent be ordered to pay the judgment for compensatory damages as ordered by the United States District Court for the District of Columbia in *Robertson v. Cartinhour*, case No. 1:09-cv-1642, filed on February 25, 2011, as affirmed by the United States Court of Appeals, District of Columbia Circuit, No. 11-7026, filed on April 3, 2012, to William C. Cartinhour, Jr., in the amount of \$3,500,000 (or reimburse the Client Security Fund to the extent of any payment from the fund to William C. Cartinhour, Jr., in accordance with Business and Professions Code section 6140.5). Any payment owed to the

Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: September ____, 2013

LUCY ARMENDARIZ
Judge of the State Bar Court