PUBLIC MATTER

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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **MELVIN LEE EMERICH,** **Member No. 118180,** A Member of the State Bar.	Case No.: **10-C-03074 – PEM** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

Introduction[1]

This matter is before the court on an order of reference filed by the Review Department of the State Bar Court (review department) on October 23, 2014, after the judgment of conviction of respondent Melvin Lee Emerich for a violation of Penal Code section 32 (accessory to felony grand theft), a misdemeanor involving moral turpitude, became final. As the statutory criteria for summary disbarment had not been met, the review department referred the matter to the Hearing Department of the State Bar Court (hearing department) under the authority of rule 9.10(a), California Rules of Court for a hearing and decision recommending the discipline to be imposed.

After having thoroughly reviewed the record, including the testimony and exhibits presented at trial in this proceeding and evaluating the crime of which respondent was convicted and the facts and circumstances surrounding respondent's conviction, as well as the aggravating

[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.

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factors, and the absence of any mitigating factors, the court recommends that respondent be disbarred from the practice of law.

Significant Procedural History

On May 29, 2014, after a criminal trial in the Superior Court of the State of California, City and County of San Francisco, case No. 214641, in which respondent had been named as a co-defendant along with four other defendants ended in a mistrial as to respondent (hung jury – 11-1 for conviction of respondent), respondent entered a plea of nolo contendere to one count of a misdemeanor violation of Penal Code section 32 (accessory to a felony grand theft).

On September 30, 2014, the State Bar of California, Office of the Chief Trial Counsel (State Bar) transmitted evidence of finality of respondent's conviction to the review department. On October 23, 2014, based on the judgment of conviction of respondent for a violation of Penal Code section 32 (accessory to felony attempted grand theft), a misdemeanor involving moral turpitude, which the review department noted did not meet the statutory criteria for summary disbarment, the review department referred this case to the hearing department for a hearing and decision recommending discipline to be imposed. On October 24, 2014, the State Bar Court issued and properly served respondent with a Notice of Hearing on Conviction.[2] Respondent filed a response on November 7, 2014.

In accordance with the Review Department's referral order, this case proceeded to trial in the hearing department on February 24, 2015. The State Bar was represented by Senior Trial Counsel Robin Brune. Respondent represented himself. After the first four days of trial, the

[2] The review department had placed respondent on interim suspension on July 26, 2013, effective August 16, 2013, pending final disposition of the State Bar proceeding.

court continued the matter to April 1, 2015.[3] Following closing arguments and the submission of the parties' closing briefs, the case was submitted for decision on April 10, 2015.

Findings of Fact and Conclusions of Law

Respondent is conclusively presumed, by the record of his conviction in this proceeding, to have committed all of the elements of the crime of which he was convicted. (*In re Crooks* (1990) 51 Cal.3d 1090, 1097; *In re Duggan* (1976) 17 Cal.3d 416, 423.)

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 13, 1985, and has been a member of the State Bar of California at all times since that date.

B. Findings of Fact

Case No. 10-C-03074 – The Conviction Matters

The following facts are derived from the exhibits and testimony admitted into evidence at trial.

1. Respondent's Conviction

In the Second Amended Information, a 27- count felony complaint, which was filed on April 3, 2012, in the Superior Court of the State of California, City and County of San Francisco, respondent was one of five named defendants. Respondent was charged with numerous felony violations in Counts 1, 7, 8, 9, 10, 11, 12, and 13.

In the first count, respondent was charged, as were all of his co-defendants, with the crime of conspiracy to commit money laundering in violation of Penal Code section 182 (a) (1).[4]

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[3] At the commencement of the trial, respondent told the court that he was going to assert his Fifth Amendment right not to incriminate himself. Consequently, the court continued the trial to April 1, 2015, because the statute of limitations ran on March 16, 2015, as to the crimes of which respondent's co-defendants were convicted. On April 1, 2015, respondent did assert his Fifth Amendment rights and did not testify to many of the questions put to him. Respondent believed that he still risked exposure to new state and federal charges for ongoing money laundering, conspiracy, and acting as an accessory after the fact.

In Count 7, respondent was charged with grand theft of currency belonging to DeWitte Mortgage and Kitco Holdings (Pen. Code, § 487, subd. (a).). In Count 8, respondent was charged with filing a false or forged deed of trust to 425 First St., unit 5501, San Francisco. (Pen. Code, § 115, subd. (a).) In Count 9, respondent was charged with filing a false or forged deed of trust to 425 First St., unit 4802, San Francisco. (Pen. Code, § 115, subd. (a).) In Count 10, respondent was charged with filing a false or forged deed of trust to 425 First St., unit 4902, San Francisco. (Pen. Code, § 115, subd. (a).) In Count 11, respondent was charged with having laundered funds on March 6, 2009. (Pen. Code, § 186.10.) In Count 12, respondent was charged with money laundering on March 9, 2009. (Pen. Code, § 186.10.) And, in Count 13, respondent was charged with money laundering on April 20, 2009. (Pen. Code, § 186.10.)

As noted, *ante*, after the trial ended in a mistrial as to respondent, he entered a plea of nolo contendere to one count of a misdemeanor violation of Penal Code section 32 (accessory to a felony grand theft).

On September 17, 2012, the jury, however, found respondent's friend of 20 years and co-defendant, Jay Shah, guilty on all counts with which he was charged and found each enhancement allegation to be true. Specifically, Jay Shah was found guilty of each of the counts with which respondent had been charged, i.e., counts 1, 7, 8, 9, 10, 11, 12, and 13 as set forth, *ante*. Additionally, Jay Shah also was found guilty of the crimes alleged in each of the following counts:

Count 2: Grand theft of real property belonging to Shirley Hwang in violation of penal code section 487, subd. (a);

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[4] The charges in Count One, as in many of the counts, included "enhancement allegations." For purposes of this proceeding the enhancement allegations, which were myriad and complicated will not be discussed.

Count 3: Identity theft by obtaining Shirley Hwang's personal identifying information without authorization and for an unlawful purpose in violation of penal code section 530.5;

Count 4: Knowingly filing a false or forged instrument, i.e., the grant deed to 425 First St., unit 5501 San Francisco in violation of penal code section 115, subd. (a));

Count 5: Knowingly filing a false or forged instrument, i.e., the grant deed to 425 First St., unit 4802, San Francisco in violation of penal code section 115, subd. (a));

Count 6: Knowingly filing a false or forged instrument, i.e., the grant deed to 425 First St., unit 4902, San Francisco in violation of penal code section 115, subd. (a));

Count 18: First degree burglary by entering the residence of Shirley Hwang and another with the intent to commit a felony in violation of penal code section, 459.)

Thus, Jay Shah was found guilty of counts 1 through 13 and count 18 of the Second Amended Information/Complaint. He was sentenced to 20 years in prison and ordered to make restitution to his victim(s) in the amount of $14.1 million.

On May 29, 2013, after the trial had ended in a mistrial as to respondent (hung jury – 11- to-1 for conviction), respondent entered a plea of nolo contendere to accessory grand theft, one of the felonies of which co-defendant Jay Shah was convicted. Upon entry of judgment by the superior court, respondent was sentenced to one year of unsupervised probation, a term of 360 days in County Jail, with 360 days credit for time served, and a $140 restitution fine and other assessments.

On May 16, 2014, the superior court found that respondent was convicted of a crime that entitles the victim, Shirley Hwang, to restitution in the amount of $85,000 plus 10% interest per year from the date of sentencing. The court issued its Order of Restitution on May 16, 2014, requiring respondent to pay the $85,000 in restitution to Shirley Hwang. To date respondent has not paid any part of the restitution as ordered by the court.

2. Facts and Circumstances Surrounding Respondent's Conviction

a. Jay Shah and Kaushal Niroula – The San Francisco Real Estate Scam Based on the Fraudulent Transfer of Deeds

Respondent had been a friend of Jay Shah (Shah) for twenty years. Shah and another individual, Kaushal Niroula (Niroula) were interested in obtaining loans for properties that they did not own. At some point they became aware of the fact that a woman, Shirley Hwang (Hwang) owned three condominiums in San Francisco, which were unencumbered, i.e., there were no liens or mortgages on the properties. After Shah and Niroula verified that the condominiums were not mortgaged, they arranged for the fraudulent transfer of Hwang's condominiums to one Winston Lum (Lum).

In January 2009, Lum, a person totally unknown to Hwang, facilitated the scheme devised by Shah and Niroula. Lum forged Hwang's signature and executed three grant deeds that conveyed title of the condominium units to himself. The fraudulent deeds, conveying title of the condominiums to Lum, were used to further the scam devised by Shah and Niroula.

After the grant deeds to Hwang's property were recorded in Lum's name, Shah and Niroula, through an elaborate scheme involving mass deception, convinced DeWitte Mortgage Investors LLC[5] and Kitco Holdings, LLC to fund loans to them amounting to approximately $1.7 million, using Hwang's condominiums as security. Thus, Shah and Niroula, with Lum's assistance, were able to obtain $1.7 million in loans based on fraudulent deeds. When DeWitte and Kitco made the loans on the condominiums, they obtained title insurance with respect to their deeds of trust.

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[5] DeWitte was a hard money lender. Hard money lenders make loans to people who cannot get loans from a traditional bank. Hard money lenders require substantial real estate in exchange for the loan funds they provide.

b. The Fraudulent Conveyance to Lum of Title to Shirley Hwang's Condominiums

Hwang owned three condominium units, unit numbers 4802, 4902, and 5501 at 425 First Street, San Francisco (Rincon Towers). Units 4801 and 4902 each cost about $1.4 million when she purchased them. Hwang and her partner Michael Shigenzane (Shigenzane) together purchased unit 5501 for $1.95 million.[6]

On March 5, 2009, De Witte and Kitco recorded the deeds of trust, which (unbeknownst to them) were forged by Lum, to secure their interests in the loans they made to Shah. Sometime thereafter while Hwang was on vacation in Hawaii, the building manager of Rincon Towers contacted her and told her that Lum purportedly had a grant deed to unit 5501 and was seeking access to unit 5501. When Hwang returned from Hawaii she went to the county recorder's office and discovered that title to all three of her units had been conveyed to Lum in January 2009. Hwang did not recognize the signatures that appeared on each of the three deeds, although the signatures were purportedly hers. The forged deeds had been notarized by Grachelle Languban (Languban) – one of the five co-defendants in the underlying criminal matter. The signatures on the deeds were not Hwang's signature, nor did she appear before Languban on the dates of the forged deeds. Moreover, Hwang did not authorize any loans to be taken on the units. Hwang alerted the San Francisco Police Department, which began a fraud investigation.

c. Respondent Aided and Abetted Shah's San Francisco Real Estate Scam By Establishing and Overseeing A Sham Corporation, Martini & Chnoogle, Which Served as the Conduit for Funneling and Laundering $601,069 of Illegally Obtained Loan Proceeds

On February 3, 2009, McLaughlin Associates, Inc., a company that offers services regarding the formation of Nevada corporations and services involving limited liability companies (LLCs) set up a corporation, Martini & Chnoogle, in Nevada for $900. The articles of

[6] All these units were purchased by Hwang prior to 2009. Hwang used her life savings to purchase the units. Her intention was to resell the condominiums.

incorporation were filed with the State of Nevada on February 12, 2009. Martini &Chnoogle did not have a physical address; but, it used a borrowed residential address belonging to one Morad Afraimi (Afraimi), a friend of respondent. Aside from respondent, Martini & Chnoogle did not have any employees. And, respondent held all the office titles in Martini & Chnoogle, including that of director, treasurer, secretary, and president. Not only did Martini & Chnoogle have no actual board of directors; it had no shareholders.

McLaughlin Associates billed respondent $900 for setting up Martini & Chnoogle in Nevada. Shah paid the bill.

On February 3, 2009, it was respondent, who opened a corporate checking account for Martini & Chnoogle at Colonial Bank with a $200 check issued by Shah's company, Telsystems. Respondent's name was the only name on the bank signature card.

A month after Shah fraudulently obtained the $1.7 million in loans from DeWitte and Kitco, which, as set forth, *ante*, were secured by using the equity in Hwang's condominiums, Martini &Chnoogle received $601,069 in funds from the Tran's Escrow Corporation.[7] The $601,069 was the sole "asset" of Martini & Chnoogle. Respondent, having access to the Martini & Chnoogle bank account took out at least $30,000 in cash within a month of opening that account. He cashed a $15,000 check made payable to himself on the Martini & Chnoogle account on March 6, 2009, the day the escrow check came in. He also cashed a $10,000 check made payable to himself and a $4,050 check, both dated March 17, 2009. On March 27, 2009, respondent cashed a $5,000 check made payable to himself. Respondent also paid $15,000 to Afraimi for the use of his Nevada address.

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[7] Tran's Escrow Corporation is where the loan money Shah received from DeWitte and Kitco was "parked." Shah gave Tran's instruction on how the money coming into the escrow was to be disbursed.

Prior to receiving payments from the Martini & Chnoogle account respondent had very little money in his personal accounts. He had a -$243 balance in his Wells Fargo account, and he spent the $15,000 deposit from Martini & Chnoogle by the end of the month in which it was received. Respondent also had a -$10.22 in his Bank of the West Account, prior to his depositing $10,000 from the Martini & Chnoogle check account. On April 22, 2009, respondent wrote a $2,000 check to his Wells Fargo account; and, on the following day, he wrote a second check for $2,000 to his Bank of the West account.

Between March 6, 2009 and April 28, 2009, respondent wrote approximately 45 checks to Shah's company, Telsystems. Respondent wrote the word "services" on many of the checks made payable to Telsystems. The checks to Telsystems totaled $281,602.

Telsystems, however, did not provide any services to Martini & Chnoogle as Telsystems was in the business of installing telephone systems.[8] And, since Martini & Chnoogle did not have a physical location, installation of a phone system for Martini & Chnoogle was beyond the realm of possibility.

Additionally, respondent wrote numerous checks to Shah and Shah's immediate family from the Martin & Chnoogle account, including a $14,000 check to Shah's wife; a $7,500 check to Sundowner Inn, LP, a hotel owned by Shah's parents; and a $5,000 check to Shah's mother.

d. Respondent's Funneling/Laundering of Loan Funds to Niroula's Attorney and Others

In 2008, C. Lambert (Lambert), the owner of considerable property in Palm Springs, California went missing.[9] While Lambert was still considered missing, one of his attorneys, Martina Ravicz (Ravicz) petitioned for a temporary conservatorship of Lambert's estate. As the temporary conservator, Ravicz discovered that two grant deeds had been recorded in connection

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[8] Shah testified at his trial that Telsystems did not provide any services to Martini & Chnoogle.

[9] In 2008, Lambert's body was found in the Palm Springs desert.

with Lambert's Palm Springs property. One deed involved a former attorney for Lambert who deeded property, which was part of Lambert's estate, to Niroula. The second grant deed discovered by Ravicz was recorded on January 5, 2009, which deeded the property from Niroula to Shah.

In March 2009, Niroula was arrested for the murder of Lambert.[10] As soon as Niroula was arrested for Lambert's murder, Shah did two things. He used Tran's Escrow to move $100,000 into Martini & Chnoogle's bank account for the purpose of funding Niroula's legal defense; and, he changed one of his email accounts to the name of David Replogle (Replogle).[11] While Niroula was in jail, respondent visited him.

In that jailhouse meeting, when Niroula requested that Shah pay $90,000 to Mark Sullivan (Sullivan), his defense attorney, respondent did not immediately agree to Niroula's request. Rather, on May 23, 2009, respondent sent an email to Sullivan, informing him that Shah did not have ready cash to pay Niroula's defense fees in a lump sum. Sullivan responded by informing Shah that Niroula had been charged with murder and the case involved fraudulent deeds. In response, respondent quickly promised to provide $10,000 as part of Sullivan's fee and to come up with the rest of the funds. Specifically, respondent wrote to attorney Sullivan that he would be "happy" to arrange for Sullivan to receive $10,000 that week, but that he could not do more "for at least 2-3 weeks." Respondent further stated that Shah intended to assist Niroula by paying Sullivan; but, Niroula's case had caused Shah "trouble" and Shah could not come up with the cash as quickly as Niroula was demanding. Respondent ended his email by stating that Sullivan should inform Niroula about the police investigation of Shah that was ongoing and the threats to Shah from law enforcement.

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[10] Subsequently, Niroula was convicted of the homicide of Lambert.

[11] Riplogle is a disbarred attorney, who also was convicted of the homicide of Lambert. He had been an attorney for Lum.

Respondent, who had total access to the Martini & Chnoogle bank account, was able to write checks from that account. Respondent was acting as the go-between between Shah and Niroula in negotiating how the funds for Niroula's defense were to be paid to Sullivan, while keeping the source of the funds hidden. Respondent knew that Shah had Tran's Escrow move $100,000 into the Martini & Chnoogle checking account, which funds were to be used for Niroula's defense. Not only was respondent the one person who wrote checks on the Martini & Chnoogle checking account, but, he knew that the funds would be transferred from Martini & Chnoogle in relatively small amounts to Sullivan over time in order to make it difficult to trace the source of the funds used to pay Niroula's legal fees. The fact that, thereafter, respondent made a second cash withdrawal of $11,000 in June 2009, from the Martini & Chnoogle account and put the notation "sully" on the check strongly suggests that the check was to go to attorney Sullivan. By overseeing the transfer of relatively small amounts of the funds from the Martini & Chnoogle bank account to Sullivan, respondent assisted Shah's plan to hide the source of the funds and make it difficult to trace who was actually paying for Niroula's defense.

The transfer of money from Shah to Sullivan/Niroula started in March 2009, the same month that Shah with respondent's assistance funneled funds received from the Rincon Towers loan scam through Martini & Chnoogle. Respondent assisted Shah with many other transactions that involved the funneling of funds through Martini & Chnoogle to various entities and individuals, including Shah's wife, Shah's mother, Sundowner Inn, and Sullivan. By his actions, it is clear that respondent's role and function was to assist Shah with the laundering/funneling of the illegally gotten $1.7 loans funds. As noted, respondent also over time took relatively small amounts from the loan funds that were transferred into Martini & Chnoogle for himself. In the end, respondent received $85,000 of those funds.

In April 2009, Ravicz, as temporary conservator of Lambert's property, tried to quiet title by filing suit against Niroula and Shah. Shah was not served until November 2009. After Shah was served, respondent contacted Ravicz. Respondent negotiated on Shah's behalf, at first demanding $80,000 to quiet title to Lambert's property. When Ravicz declined, respondent, thereafter, called back and said Shah would sign off on a deed without receiving money.

e. The Funneling of $868,845 of Fraudulently Obtained Loan Proceeds Through Lum International

After Niroula's arrest in March 2009, the fraud investigators, who were working on the Rincon Towers scam, connected Niroula to Shah. Consequently, the investigators executed a search warrant on Shah's residences. At one of Shah's residences, the investigators talked to Michael Hartshorn (Hartshorn), a trusted assistant to Shah. Hartshorn told the investigators that respondent assisted Shah in preparing documents, which Hartshorn eventually mailed to Switzerland. Hartshorn kept copies of some of the documents that he had mailed, because something struck him as not right. He showed the investigators pieces of the documents, which he had kept. One of the documents bore the name "Lum International."[12] Martini and Chnoogle received $601,069 from Tran's escrow account and Lum International received $868,000 from Tran's escrow.[13]

Respondent not only helped Shah by overseeing a portion of the illegally gotten loan funds in a sham corporation; but, he also assisted in setting up an overseas Swiss bank account in which to secure and hide the remainder of the loan funds. When Lum International was set up, respondent wrote a March 16, 2009 letter of introduction to the Swiss banking authorities

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[12] After Shah fraudulently obtained the $1.7 million loan, he made sure to keep his name off anything that linked him to the money. Shah's name appeared nowhere on the Tran's escrow account.

[13] Although Lum International was named after Winston Lum, the investigators assigned to investigate the Rincon Towers swindle were sure that the primary beneficiary of the money funneled into Lum International was not Winston Lum.

vouching for Shah's good moral character.[14] Thus, respondent played a critical role in assisting Shah cover up his criminal acts. Respondent helped Shah acquire a Swiss bank account, which was used to launder funds and keep them hard to trace and well-hidden.

Nonetheless, after years of investigation and after forty subpoenas were issued and numerous search warrants executed, Lum International was traced to Shah. The investigators then used international treaties to get the record of Shah's overseas Swiss account.

f. Respondent, Acting as the Front Man for the Sham Corporation of Martini & Chnoogle, Assisted and Aided Shah to Carry Out Multiple Acts of Dishonesty

Respondent acting as a real estate broker[15] or a corporate officer took a central role in "legitimizing" the use of the fraudulent funds obtained by Shah. Respondent distributed funds from Martini & Chnoogle to Shah's various real estate transactions at the behest of Shah. Respondent received small payment through at least one of the transactions.

On March 9, 2009, just three days after respondent received the $1.7 million in loan funds into Martini & Chnoogle from Tran's Escrow (which loan was based on the mortgage that Niroula and Shah had obtained by using the forged deed to Hwang's three condominiums at Rincon Towers as collateral), Shah took out "loans" in the amounts of $6,900 and $19,999, by "mortgaging" property he and his wife owned at 659 South 15th Street, San José. The "mortgagor" was the sham corporation, Martini & Chnoogle. Thus, only three days after the $1.7 million in loan funds was transferred by Tran's Escrow into Martini & Chnoogle, Shah with the assistance of respondent received over $25,000 in instant cash by giving himself a mortgage from Martini & Chnoogle. It was only with the assistance of respondent that Shah was able to carry out his plan to launder funds.

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[14] In order to set up a Swiss bank account a reference letter is required.

[15] Respondent held a real estate broker's license.

On May 4, 2009, Martini and Chnoogle transferred $160,000 to Ocwen Financial Corporation to pay off a mortgage on property owned by Shah's wife at 2103 South 11th Street, Los Banos, California. With the property being unencumbered, on July 24, 2009, Shah used the equity to obtain a loan from Lenny Clark/LenGross Mortgage Services for $108,500. Of that amount, $80,000 was transferred back to Martini & Chnoogle; $5,000 went to Shah's relatives; and, $11,325.75 went to Telsystems.

Thereafter, in June and July, the $80,000 which had been transferred to Martini & Chnoogle was used to purchase property for the Shahs at 530 Adams Avenue, Los Banos, California. The sale was actually a short-sale from Shah's in-laws to Martini & Chnoogle. Respondent, in his capacity as the listing agent, represented Shah's in-laws; he also represented the buyer in the transaction. Respondent received $3,200 from the sale. Martini & Chnoogle paid $80,000 to purchase the property.

Thus, respondent, using Martini & Chnoogle, continued to assist Shah move funds and make them difficult to trace.

On August 11, 2009, Shah used $171,975 from Lum International to buy property in the name of his wife, Elvia Palomino and his mother-in-law, Maria Palomino. The property was located at 2071 Genoa Court, Los Banos, California.

Respondent also facilitated that sale. The original purchase offer for $170,000 was made by Martini & Chnoogle. Yet, the funds came from Lum International. In the final settlement statement, the buyer was noted as Martini & Chnoogle and Maria Palomino. The property was originally deeded from Yolanda Smith, the seller to Martini & Chnoogle. Martini & Chnoogle then conveyed the property to Elvia Palomino and Maria de Palomino. In the final settlement statement, the buyer is noted as Martini & Chnoogle and Maria Palomino. Respondent used

Martini & Chnoogle as a front in this transaction in order to facilitate the funneling and laundering of the funds.

On September 24, 2009, Shah used $150,000 from Lum International to buy property at 317 Crescent Street, Los Banos, California. The property was to be owned jointly by Shah and his wife. Shah and his wife later transferred ownership of the property to M & K Properties, LLC, a corporation they formed in Nevada on November 19, 2009, in which Shah was the corporation's agent and manager. Martini & Chnoogle, and therefore, respondent, also facilitated this real estate transaction.

Lum International deposited $149,982 into escrow for the property. The original purchase agreement listed Martini & Chnoogle as the buyer. This, however, was changed to Elvia Shah and Jay Shah. The instructions read, "[T]he buyer desires to take title as an individual rather than in the name of the corporation. This addendum is intended to correct those names." [16] The purchase price was $135,000. Respondent was noted as authorized to sign for Martini & Chnoogle in his capacity as president, secretary, treasurer, and director. Thus, again, respondent, using Martini & Chnoogle, legitimized the transaction, with funds coming from an overseas account and the overage going directly to Shah.

At a time when respondent knew that Shah was in desperate need of funds to save Shah's 106 acre property, Quimby Road Ranch, respondent helped set up foreign corporations and bank accounts that could not be easily traced from the United States. Respondent, who was Shah's friend of twenty years, was aware of Shah's Quimby Road Ranch problems. Respondent made payments to both Bassett and Richard Van Trood (Van Trood), attorneys who were helping Shah with litigation involving Quimby Road Ranch. On November 26, 2009, Shah used $325,000

[16] If a corporation is buying the property a copy of the Articles of Incorporation are required. They were provided.

from Lum International to regain ownership of the Quimby Road Ranch through the services of his attorney, Van Trood.

C. Conclusions

In light of the foregoing facts, and given that respondent's misdemeanor conviction for a violation of Penal Code section 32 involves moral turpitude, but does not meet the statutory criteria for summary disbarment, the issue before this court is the degree of discipline which should be recommended following the hearing in this matter.

The final conviction of a felony or a misdemeanor, involving moral turpitude, constitutes cause for suspension or disbarment. (Bus. & Prof. Code § 6101, subd. (a).) Although the term "moral turpitude" defies precise definition, it has been described "as an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. [Citation.]" (*In re Craig* (1938) 12 Cal.2d 93, 97.) Crimes which necessarily involve an intent to defraud or dishonesty for personal gain, such as perjury (*In re Kristovich* (1976) 18 Cal.3d 468, 472), *grand theft* (In re Basinger (1988) 45 Cal.3d 1348, 1358) and embezzlement (*In re Ford* (1988) 44 Cal.3d 810, 813) involve moral turpitude.

As set forth, *ante*, respondent is conclusively presumed to have committed all of the elements of the crime of which he was convicted. (*In re Duggan, supra*, 17 Cal.3d. at p. 423.) However, the fact that respondent pled guilty to a violation of Penal Code section 32 is not determinative of the degree of discipline to be imposed. Nor does the fact that respondent's criminal conduct occurred outside of the practice of law insulate him from discipline. As the Supreme Court stated in *In re Lesansky* (2001) 25 Cal.4th 11, 16:

> [W]e can provide this guidance: Criminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious

> breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession.

In examining the circumstances giving rise to the offense, the court is not restricted to examining the elements of the crime, but may look to the whole course of respondent's conduct which reflects upon his ability to practice law.

Respondent's primary role was to assist Shah to launder the illegally obtained loan funds and keep them hidden. Through Martini & Chnoogle, respondent held and controlled over $600,000 of the $1.7 million of the illegal funds.

The evidence presented at the hearing in this matter shows clearly and convincingly that respondent was deeply mired in the swindle. A brief synopsis of respondent's involvement reads as follows:

•Respondent sent Tran's Escrow instructions on how to transfer the money to Martini & Chnoogle;

•Martini & Chnoogle was a sham corporation, with no physical presence, no employees (except respondent), no shareholders, and no board of directors or officers other than respondent. The purpose of the corporation, for which respondent was the front man, was to serve as a means to funnel and launder the illegally obtained loan funds;

•All decision-making in Martini & Chnoogle was made by Shah, but carried out by respondent;

•Respondent facilitated the setting up of an overseas Swiss bank account for Shah by writing a reference letter for Shah, a requirement for opening the account; and

•At Shah's request, respondent visited Niroula, who had been arrested and was being held on charges of the murder of a wealthy Palm Springs landowner, Lambert, after Niroula had fraudulently obtained title to some land belonging to Lambert, using a forged grant deed, and, thereafter, transferred that fraudulently obtained deed to Shah. Respondent, as directed by Shah, funneled funds through Martini & Chnoogle to Niroula's attorney, Sullivan, to pay for Niroula' legal defense.[17]

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[17] Respondent had previously represented Niroula in Marin County, where Niroula had been charged with jewelry theft.

After considering the facts and circumstances surrounding respondent's criminal conviction, the court finds that they involve moral turpitude. Respondent wrote checks to himself from the Martini & Chnoogle bank account, cashed them and ultimately withdrew $85,000 for his own purposes. Respondent's acts, which were carried out in furtherance of the money laundering operations, as well as those acts carried out by respondent for his own benefit involved corruption, dishonesty, and deception – with the ultimate goal being personal gain.

Therefore, the court concludes that not only did respondent's criminal conviction involve serious and egregious acts of moral turpitude; but, the circumstances surrounding that criminal conduct were also characterized by and included elements of corruption, deception, greed, and dishonesty.

Aggravation[18]

Multiple Acts (Std. 1.5(b).)

Over a period of about one year, respondent engaged in multiple acts of misconduct through the countless acts in which he engaged to further Shah's scheme to keep the illegally obtained loan funds hidden and hard to trace. Respondent, among other things, wrote 45 checks to Shah's business, Telsystems in one month alone, in furtherance of the money laundering scheme. He also wrote numerous checks to Shah's family for the same purpose. Respondent negotiated with Sullivan, Niroula's attorney, regarding the payment of Niroula's legal defense and implemented a payment plan for that defense in March 2009. In furtherance of the money laundering aspect of Shah's scheme, respondent wrote a letter of reference on Shah's behalf to a Swiss bank, which required a reference letter as a prerequisite to establishing an overseas

[18] All references to standards (stds.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. The standards have been amended, effective July 1, 2015. As this case was submitted before the effective date, the court applies the standards that were effective January 1, 2014, and not the newly revised version.

account. And, acting in his capacity as a real estate broker, respondent distributed part of the illegally obtained loan funds through Shah's various real estate transactions in an effort to "legitimize" the funds.

Harm to Client/Public/Administration of Justice (Std. 1.5(f).)

Respondent acts harmed Shirley Hwang. Due to respondent's acts, which involved the laundering of funds for Shah, title to Hwang's condominium units remained under a cloud. Until the title could be cleared, Hwang was unable to sell her condominium or access her investment. Yet, she still had to pay condominium fees, taxes, and litigation expenses amounting to over $100,000. Hwang's professional reputation as a mortgage broker was negatively impacted by the ongoing scheme, because initially she was considered a suspect. That impacted her job as mortgage broker and she was unable to work. Additionally, Hwang learned about the Palm Springs land fraud and Lambert's murder. She was informed of the elements shared by the Palm Springs fraud and the Rincon Towers fraud. Consequently, when Hwang learned of Lambert's murder, she began to fear for her own life. She was unable to go to work. She went into hiding and was forced to live in seclusion. Her relationship with her family and her health were adversely affected. Respondent's acts harmed Hwang emotionally, professionally, and economically.

Indifference Toward Rectification/Atonement (Std. 1.5(g).)

Respondent has shown indifference towards rectification or atonement. He has not acknowledged his wrongdoing or taken any steps to atone for the consequences of his misconduct. He stated he did nothing to Hwang. Respondent demonstrates a lack of insight into the extent and nature of his wrongdoing, as well as the impact it has had on others. Respondent's lack of insight into his wrongdoing and his failure to accept responsibility for his wrongful actions is an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091.)

Failure to Make Restitution (Std. 1.5(i).)

Respondent has been ordered to pay restitution in the amount of $85,000 to Hwang. To date, he has made no restitution payments.

Mitigation

No Prior Record (Std. 1. 6(a).)

Respondent had practiced law without discipline for almost 24 years at the time his misconduct commenced. And, while respondent's conduct does not involve a pattern of wrongdoing over many years, it cannot be said that it involved only isolated instances of wrongdoing. Respondent engaged in ongoing dishonest conduct for at least one year. That conduct ended only when he was arrested and charged with criminal violations.

Respondent has offered no mitigating evidence or indicated that he has taken any action related to his rehabilitation. He has stated that he has not apologized to Hwang, because he has done nothing wrong. He has expressed no remorse for his conduct. He has not accepted responsibility for his wrongdoing.

There is, however, no evidence before this court to suggest that respondent would not again engage in unlawful acts; nor does the evidence show that he is committed to avoiding further misconduct. The fact that respondent engaged in misconduct, which involved dishonesty, deceit, and corruption is of serious concern to this court. Here, respondent's lack of a prior record fails to indicate that his misconduct was aberrant or likely not to recur. As noted, respondent has indicated that he does not believe he has done anything wrong – especially to the victim of his misconduct. If respondent cannot recognize the wrongfulness of his conduct, it is unlikely that he will make an effort to avoid engaging in the same or similar acts in the future.

Thus, respondent's lack of a prior record does not appear relevant to show that his misconduct will not recur. And, while significant weight is usually assigned when an attorney

has practiced law for many years without a prior record of discipline, due to the serious nature of respondent's misconduct and the lack of any evidence to suggest that respondent will not again engage in similar misconduct, he is given only nominal credit for his lack of a prior record. (Cf. *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 218.)

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.)

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.) However, 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.)

Standard 1.7(b) provides that if aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record

demonstrates that the member is unwilling or unable to conform to ethical responsibilities in the future.

Standard 2.11(c) provides that disbarment or actual suspension is appropriate for final conviction of a misdemeanor involving moral turpitude. Here, there are no compelling mitigating circumstances.

Additionally, it is well-established that "[D]isbarments, and not suspensions, have been the rule rather than the exception in cases of serious crimes involving moral turpitude." (*In re Crooks* (1990) 51 Cal.3d 1090, 1101.)

In the instant matter, respondent argues in his closing argument, which he filed with the court that the "loan of money against the stolen condos involved a loan broker, private lender and title insurance company. There was no reason [for respondent] to suspect that a theft had occurred." The State Bar urges respondent's disbarment, arguing that respondent "should not be allowed to practice law while he owes $85,000 in criminal restitution as an accessory to a 1.7 million dollar real estate swindle."

Based on the unique circumstances of the instant matter, neither the parties nor this court have identified any controlling case law directly on point. Thus, the court looked to analogous matters and other jurisdictions for assistance. The court found *In the Matter of Calhoun* (1997) 268 Ga. 675; 492 S.E.2d 514, which was cited by the State Bar, to be somewhat helpful.

In *Calhoun*, an attorney participated in a scheme to launder proceeds of his client's illicit drug business through the purchase of property, which resulted in convictions for money laundering and aiding and abetting. The Georgia Supreme Court while acknowledging that there were considerable mitigating circumstances, found that disbarment was warranted in order to protect the public from improprieties that injure the public's trust.

In the instant matter, the court agrees with the State Bar. Respondent played a key role in hiding and distributing the fraudulent loan proceeds. On the other hand, the court finds respondent's argument to be self-serving and disingenuous.

First, respondent entered a plea in which he acknowledged that he was an accessory to theft. Even if that were not the case, the very nature of Martini & Chnoogle [the sham corporation, which had no physical location, no employees, no officers other than respondent, no assets other than $601,069, which were kept in Martini & Chnoogle's bank account from which respondent disbursed funds upon direction from Shah (whose name did not appear on any document connecting him to Martini & Chnoogle)] would have provided reason for respondent, an attorney, to suspect that theft had occurred.

Here, respondent engaged in serious misconduct, involving dishonesty, deceit, and corruption for personal gain. The misconduct lasted for approximately one year. It ended only because respondent was arrested and charged with criminal violations. He has yet to make any restitution payment to the victim as he was ordered to do.

Respondent's lack of remorse and his lack of insight regarding his wrongdoing leave this court with no reason to believe that he would not again engage in serious and/or unlawful misconduct. Respondent, who as an attorney took an oath to uphold the law, aided and abetted grand theft. He willingly and intentionally demonstrated flagrant disrespect for the law when he violated that oath.

Thus, after considering all relevant factors, including the serious nature of respondent's misconduct, the aggravating circumstances, the lack of mitigating circumstances, and the case law, the court concludes that to adequately protect the public, the courts. and the legal profession, disbarment is the only appropriate disposition to recommend.

Recommendations

It is recommended that respondent **Melvin Lee Emerich**, State Bar Number 118180, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of the California Rules of Court, rule 9.20, 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: July 9, 2015

Pat McElroy

PAT McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, On July 9, 2015, I deposited a true copy of the following document(s):

DECISION AND ORDER OR INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

MELVIN LEE EMERICH
ATTORNEY AT LAW
209 PORTOLA CT
LOS ALTOS, CA 94022

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Robin B. Brune, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 9, 2015.

Lauretta Cramer
Case Administrator
State Bar Court