

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case Nos.: **10-O-07369-RAH**
) (12-O-12879; 12-O-13731)
GRETA SEDEAL CURTIS,)
) **DECISION AND ORDER OF**
Member No. 175248,) **INVOLUNTARY INACTIVE**
) **ENROLLMENT**
A Member of the State Bar.)
)
)
_____)

Introduction¹

In this case, respondent Greta Sedal Curtis is found culpable of 11 of the 14 counts alleged in 3 client matters. Significantly, the court finds that respondent misappropriated nearly a quarter of a million dollars in two of the matters. In the third matter, she violated a bankruptcy court order which resulted in the court sanctioning her in the amount of \$18,656.50, and ordering her to disgorge \$2,000 in fees. Because of the seriousness of the found misconduct, respondent's disbarment is necessary to adequately protect the public.

Significant Procedural History

The Notice of Disciplinary Charges was filed on December 28, 2012. Trial commenced on May 13, 2013. Ross Viselman of the Office of the Chief Trial Counsel represented the State

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.

Bar of California, and Ollie Manago and Beatrice Lawson represented respondent. This matter was submitted for decision on March 26, 2014.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 30, 1994, and has been a member of the State Bar of California at all times since that date.

Case No. 10-O-07369 – The Mt. Zion Church Bankruptcy Matter

Facts

The Bankruptcy Petition for Mt. Zion

On May 22, 2007, Mt. Zion Missionary Baptist Church, a California Nonprofit Corporation (Mt. Zion) hired respondent to prepare and file a bankruptcy petition. On May 24, 2007, respondent prepared and filed a chapter 11 bankruptcy petition on behalf of Mt. Zion (the Bankruptcy Petition) in the United States Bankruptcy Court for the Central District of California (the Bankruptcy Matter). From at least May 24, 2007 to January 23, 2009, respondent acted as attorney of record for Mt. Zion in the bankruptcy court. Respondent filed the bankruptcy because Dan Bochner had commenced foreclosure proceedings on a \$1.3 million deed of trust secured by a promissory note which was recorded against the property on which the church stood at 1895 Del Rosa Avenue, San Bernardino, California (the Del Rosa Property).

Respondent filed the Bankruptcy Petition in the name of Mt. Zion. The Bankruptcy Petition required Mt. Zion to disclose all other names it had used in the previous eight-year period, and the Bankruptcy Petition indicated “None.” Terry Elliott (Elliott) signed the Bankruptcy Petition as president of Mt. Zion. Respondent signed the Bankruptcy Petition as the attorney for Mt. Zion. As a result of the Bankruptcy Petition, an automatic stay went into effect, pursuant to the applicable bankruptcy law, including 11 U.S.C. § 362.

At a status conference on February 19, 2008, the bankruptcy court determined that there were grounds to dismiss the Bankruptcy Matter because Mt. Zion had not filed various operating reports, and operating reports that were filed reflected a continuing loss to or diminution in value to the estate. Also, the court found that Mt. Zion was unable, after nine months in chapter 11, to articulate a confirmable plan for reorganization. However, rather than dismiss, on February 25, 2008, the court ordered the appointment of Christopher Barclay (Barclay) as the chapter 11 trustee. Respondent filed a motion challenging the appointment of Barclay as the trustee, but the court denied this motion.

On June 17 and July 2, 2008, respondent filed amendments to the Bankruptcy Petition claiming exemptions for the Del Rosa Property. Neither the chapter 11 trustee nor any other party in interest filed an objection to the June 17 and July 2, 2008 amendments to the Mt. Zion bankruptcy petition within 30 days of the filing.

Superior Court Petition to Change the Name of Mt. Zion

On August 1, 2008, respondent filed a petition in San Bernardino County Superior Court (the Superior Court Petition). The Superior Court Petition was filed to change the name of Mt. Zion to “Mount Zion Missionary Baptist Church, an unincorporated association.” Filing the Superior Court Petition violated the automatic stay in the bankruptcy court.

The Bankruptcy Court Order

As is described in more detail in the paragraphs which follow, on January 23, 2009, the bankruptcy court issued an order finding, by clear and convincing evidence, that respondent had committed various violations of law. The court found that respondent had willfully violated the automatic stay for the sole purpose of circumventing the bankruptcy court’s jurisdiction to bolster her claim that the Del Rosa Property was owned by “Mt. Zion Missionary Baptist Church, an unincorporated association” and not Mt. Zion, and therefore, was not an asset of the

bankruptcy estate. The bankruptcy court further found that respondent had violated her duty to fully disclose her connections with the “debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee,” as required by rule 2014(a) of the Federal Rules of Bankruptcy Procedure (FRBP). The bankruptcy court sanctioned respondent and Mt. Zion \$18,656.50 in attorney’s fees and costs payable to Barclay, and ordered respondent to disgorge her \$2,000 fee. Respondent and Mt. Zion were ordered to pay the sanction no later than March 6, 2009. Respondent was also ordered to disgorge the fee no later than March 6, 2009. In this same order, the bankruptcy court disqualified respondent as counsel for Mt. Zion.

Failure to Correctly Disclose Fee Arrangements

Pursuant to 11 U.S.C. § 329(a) and related rules, respondent, as counsel for Mt. Zion, was required to accurately and timely disclose respondent’s fee arrangements with Mt. Zion and compensation paid by Mt. Zion. On June 7, 2007, respondent disclosed in a form filed with the bankruptcy court that she had received from Mt. Zion the sum of \$2,000 for legal services to be rendered in the Bankruptcy Matter. On October 15, 2007, respondent filed a declaration in support of her employment and fee application, stating that she received \$2,000 from Mt. Zion pre-petition. Respondent also disclosed she “received payments [from Mt. Zion] pre-petition in the amount of \$5,000.” On November 7, 2008, respondent stated in another declaration that she received \$2,000 from Mt. Zion.

These disclosures were incomplete. In fact, respondent had received other fees from Elliott, Mt. Zion’s president, and James Marshall, the then Chairman of the Board of Deacons. Both of these individuals were creditors of the bankruptcy. These fee payments arose from a quiet title action entitled *Thomas v. Elliott*, filed in San Bernardino County Superior Court. The retainer agreement for this litigation was attached to Mt. Zion’s application to employ

respondent. It obligated Mt. Zion to pay respondent a non-refundable retainer of \$25,000. The bankruptcy court did not enter an order approving Mt. Zion's employment of respondent as attorney for the debtor in possession, but it did approve the application to which the retainer agreement was attached.²

Failure to Cooperate with the Trustee

At the time the bankruptcy court appointed the trustee, respondent had a duty to assist Mt. Zion in cooperating with the trustee, in accordance with applicable bankruptcy law and regulations. Barclay requested that Mt. Zion turn over its financial records. During the period after the appointment of the trustee, respondent and the leaders of the church failed to cooperate with Barclay and his counsel, Jesse Finlayson (Finlayson). In particular, they failed to provide basic documents to assist the trustee in carrying out his duties. Often, the trustee and his counsel were required to file motions to compel the production of documents that would have normally been routinely provided. This dramatically increased the cost of the administration of the bankruptcy estate. In one instance, respondent provided the trustee with an occupancy permit that had been altered, deleting references to the expiration date. As a result, the trustee warned respondent that willfully providing false information was a federal crime.

The bankruptcy court found by clear and convincing evidence that several of respondent's acts and omissions constituted a failure to cooperate with the trustee and the court in administering the bankruptcy estate, as follows:³

1. Failure to properly counsel Mt. Zion to promptly turn over financial records and other documents to Barclay upon his appointment as trustee;

² In bankruptcy court, an attorney may represent a debtor in possession, but to do so, the attorney must disclose any connections he or she has to parties in the case. (See FRBP 2014(a).)

³ The bankruptcy court's order is found at Exhibit 12.

2. Failure to turn over to Barclay the financial records and other unprivileged documents of Mt. Zion in her possession and subject to her control upon his appointment as trustee;
3. Failure to properly counsel Mt. Zion to cooperate with Barclay in vacating the Del Rosa Property or in negotiating a fair and reasonable lease or occupancy agreement after his appointment as trustee;
4. Failure to participate in good faith, as counsel for Mt. Zion, in mediation of the consolidated adversary proceedings;
5. Filing amended schedules and statements ostensibly on behalf of Mt. Zion indicating that Mt. Zion's assets were not owned by the debtor on the petition date, but were held in trust by Mt. Zion for a non-debtor entity, Mt. Zion Baptist Church, an unincorporated association;
6. Opposing Barclay's efforts to abandon the estate's ministry function and to employ a real estate broker to sell the Del Rosa Property on the grounds that Mt. Zion's assets were not owned by Mt. Zion, but were held in trust by Mt. Zion for the benefit of Mt. Zion Baptist Church, an unincorporated association;
7. Filing the Superior Court Action on behalf of Mt. Zion Baptist Church, an unincorporated association and obtaining, on shortened time and without notice to Barclay, a decree changing the identity of the grantee on the Grant Deed to the Del Rosa Property from Mt. Zion to Mt. Zion Baptist Church, an unincorporated association;
8. Filing a motion ostensibly on behalf of Mt. Zion seeking dismissal of the case on the grounds that Mt. Zion did not exist on the petition date; and
9. Failing to properly counsel Mt. Zion to amend its voluntary petition as ordered by the court on November 3, 2008.

Finlayson credibly testified that the Mt. Zion matter should have been a simple single asset case, but because of respondent's failure to cooperate, it became one of the most difficult cases he had done in his career.⁴

Respondent did not pay the amount of the sanctions by the deadline and did not timely file a notice of appeal of the sanctions order. But she did timely seek an extension of time to file

⁴ Finlayson was particularly knowledgeable in bankruptcy matters. He was confident in his demeanor and familiar with the details of the Bankruptcy Matter. His testimony was measured and did not seem to advocate a position in the State Bar Court proceeding. Accordingly, the court found his testimony to be very credible.

the notice of appeal, which was denied. In 2012, respondent paid the \$2,000 plus interest that the court ordered paid to the trustee, but the trustee had already been paid his court approved fee, so he returned the payment. The sanction amount payable to the trustee technically still remains in force, but Finlayson indicated that the trustee was not likely going to pursue collection.

(Exhibit L, p. 1.)

Respondent failed to timely report either of the sanction orders to the State Bar pursuant to the requirements of Business and Professions Code section 6068, subdivision (o)(3).

Conclusions

Count One – § 6068, subd. (a) [Duty to Support All Laws]

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. By filing the Superior Court Petition in violation of the automatic stay rules (11 U.S.C. § 362), respondent failed to support the laws of the United States, in willful violation of section 6068, subdivision (a).

Count Two – § 6068, subd. (a) [Duty to Support All Laws]

By failing to disclose completely and accurately her fee arrangements with Mt. Zion, and by receiving fees and expenses as counsel for Mt. Zion in its bankruptcy matter without first obtaining the necessary court approvals for employment as Mt. Zion's counsel in violation of 11 U.S.C. §§ 329(a) and 327 [requirement to accurately report fees and seek allowance], respondent failed to support the laws of the United States, in willful violation of section 6068, subdivision (a) , in willful violation of section 6068, subdivision (a).

Count Three – § 6068, subd. (a) [Duty to Support All Laws]

By failing to advise Mt. Zion to turn over financial records to the trustee and by failing to turn over Mt. Zion's financial records in her possession to the trustee in violation of 11 U.S.C.

§ 521 [duty to assist bankruptcy trustee], respondent failed to support the laws of the United States, in willful violation of section 6068, subdivision (a).

Count Four – § 6068, subd. (d) [Duty to Employ Means Consistent with Truth]

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact. The State Bar alleged that by failing to inform the superior court judge of the pendency of the bankruptcy, by failing to inform the bankruptcy court of the pendency of the Superior Court Petition, and by failing to accurately disclose the nature of her fee agreement to the bankruptcy court, respondent sought to mislead a judge. These failures constituted other violations of her duties as an attorney; however, there was no clear and convincing evidence that respondent intended to mislead any judicial officer by filing the Superior Court Petition. Similarly, it has not been established by clear and convincing evidence that respondent's failure to fully and accurately advise the bankruptcy court of her prior fee arrangements with Mt. Zion, Elliott, and Marshall constituted a willful attempt to mislead the court. As such, Count Four is dismissed with prejudice.

Count Five – § 6103 [Failure to Obey a Court Order]

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

On January 23, 2009, the bankruptcy court issued a valid order for respondent to disgorge and pay Barclay \$2,000 "not later than March 6, 2009." Respondent did not attempt to comply with this order for approximately three years.⁵ By failing to disgorge the \$2,000 by March 6, 2009, as ordered by the bankruptcy court, respondent disobeyed an order requiring her to do or

⁵ In 2012, respondent attempted to pay the \$2,000 she was ordered to disgorge, but the trustee returned the payment, indicating that he had already been paid in the bankruptcy and he had been discharged as trustee.

forbear an act connected with or in the course of her profession, in willful violation of section 6103.⁶

Count Six – § 6068, subd. (o)(3) [Failure to Report Sanctions]

Section 6068, subdivision (o)(3), provides that within 30 days of knowledge, an attorney has a duty to report, in writing, to the State Bar the imposition of judicial sanctions against the attorney of \$1,000 or more which are not imposed for failure to make discovery. By failing to report to the State Bar of California either of the sanctions imposed against her by the bankruptcy court, respondent willfully failed to comply with section 6068, subdivision (o)(3).

Case No. 12-O-12879 – The Troup Matter

Facts

Anna and Larry Troup (the Troups) contacted respondent to seek her help in assisting them in obtaining a loan modification. At the time, they were two months behind on their mortgage loan payments. Respondent did not do loan modifications, but she did do bankruptcies. As such, she advised the Troups that they needed to file a bankruptcy. The Troups understood their retention of respondent to involve a “two-step process;” that is, an initial bankruptcy which would strip away a lien on the property, followed by an attempt to negotiate with the bank to modify the loan.

Procedural Background of the Troups’ Bankruptcy Filings

On June 26, 2009, the Troups hired respondent to prepare and file a chapter 13 bankruptcy petition. At this time, respondent and the Troups executed a written retainer agreement, which provided that, among other things, respondent’s billing rate was \$350 per hour, and the initial retainer was \$4,500. Respondent agreed to hold “any future deposit” in a

⁶ Neither respondent nor Mt. Zion have paid the \$18,656.50 sanction; however, this was not alleged in Count Five, so the court will not address this issue.

client trust account. The initial retainer was paid in two installments: \$2,288 on June 30, 2009, and \$2,500 on December 31, 2009.⁷

Between June and October 2009, respondent prepared and filed a chapter 13 bankruptcy petition and a motion to strip the lien (a “Lam” motion) on behalf of the Troups in the United States Bankruptcy Court for the Central District of California (the First Troup Bankruptcy). Pursuant to the local rules, both respondent and the Troups executed a Rights and Responsibilities Declaration (RARA) in connection with the First Troup Bankruptcy. The First Troup Bankruptcy was dismissed on December 18, 2009, after the Troups missed their second plan payment payable to the trustee.

Respondent and the Troups agreed that respondent would prepare and file a second chapter 13 bankruptcy petition on behalf of the Troups. From December 2009 through April 2010, respondent prepared and filed a second chapter 13 bankruptcy petition and Lam motion on behalf of the Troups in the United States Bankruptcy Court for the Central District of California (the Second Troup Bankruptcy). Pursuant to the local rules, both respondent and the Troups executed a RARA declaration in connection with the Second Troup Bankruptcy. The Second Troup Bankruptcy was dismissed in May 2010.

Respondent and the Troups agreed that respondent would prepare and file a third bankruptcy petition with a Lam motion, under chapter 11. On November 29, 2010, respondent filed an employment application with the bankruptcy court in the Troups’ chapter 11 bankruptcy, which was denied in January 2011.

In 2011, respondent filed, on behalf of the Troups, a motion to convert the chapter 11 proceeding to a chapter 7, which was granted on March 4, 2011, with orders to amend

⁷ The parties have stipulated to these amounts being used for payment of the initial retainer. The total of these two payments exceeds \$4,500. The record is unclear as to why this disparity exists.

the bankruptcy petition. The Troups received a full chapter 7 discharge of their unsecured debt in June 2011.

Respondent was successful in changing the status of a \$30,000 second trust deed from a secured to an unsecured asset.⁸ However, no loan modification was obtained by respondent. The Troups' first trust deed was foreclosed upon.

Payments Made by the Troups to Respondent

The Troups paid respondent \$23,249.38 between June 30, 2009 and September 1, 2010, as follows:

<u>Date Paid</u>	<u>Amount</u>	<u>Exhibit Reference</u>
June 30, 2009	\$2,288.00	Exhibit 15, page 1
December 31, 2009	\$2,500.00	Exhibit 15, page 3
January 30, 2010	\$2,366.20	Exhibit 19, page 1
April 1, 2010	\$2,288.08	Exhibit 19, page 4
April 3, 2010	\$2,366.70	Exhibit 19, page 7
April 30, 2010	\$2,288.08	Exhibit 19, page 5
June 1, 2010	\$2,288.08	Exhibit 19, page 10
June 30, 2010	\$2,288.08	Exhibit 19, page 12
July 30, 2010	\$2,288.08	Exhibit 19, page 15
September 1, 2010	\$2,288.08	Exhibit 19, page 17

The above payments represented the Troups' monthly mortgage payments and were deposited into respondent's general business account.⁹ With the exception of the first two

⁸ The record is unclear as to whether this junior lien was completely eliminated using the Lam motion (i.e., upon proof that there was insufficient equity in the property to secure any lien other than the first trust deed) or if the debt remained but was converted to an unsecured status. In any event, it appears that through respondent's efforts, she was able to prevent a foreclosure of the second trust deed.

⁹ The payments from January 30 through September 1, 2010, were actually directly deposited by the Troups into respondent's business account, upon the instruction of respondent. Each check has the account number provided by respondent to the Troups written in the memo

payments, which the parties have stipulated were for the initial retainer, all or most of the above payments were the exact amounts of the mortgage payments that were otherwise due, and were to be held by respondent to assist in negotiating the loan modification.

Excluding the first two payments, the remaining payments totaled \$18,461.38 (the Troup funds.) Respondent did not hold these payments, but rather, used these funds for her own purposes. Eventually, respondent prepared a billing statement reflecting the work she claims was performed and the amounts she received from Troup from June 2009 to November 2010.. (Exhibit 24, pages 2-3.) Respondent retained, as attorney's fees, all of the above payments sent to her to hold as mortgage payments.

Respondent's Disclosures in the Troup Bankruptcies

On several occasions, respondent disclosed her fees in the Troup bankruptcies in an incorrect manner. On April 26, 2010, respondent filed an attorney disclosure of compensation stating that she had agreed to accept \$4,000, and that prior to the filing of the disclosure, she had received \$2,870.95. This was incorrect. In truth, by that date, she had received from the Troups fees in the amount of \$4,788 and additional mortgage funds in the amount of \$7,020.98.

On November 29, 2010, respondent filed an application for authority to employ general counsel, indicating she had been employed by the Troups on November 12, 2010. In fact, she had been employed since June 2009. In this employment application, she also stated variously that she had been paid \$15,400 and at another point, \$10,087. In fact, the Troups had paid her a total of \$23,249.38 in fees and mortgage funds.

Respondent also made several other inconsistent statements in the filings with the bankruptcy court, but the court does not consider these inconsistencies to be material.

section. The Troups did not know that this account was not a CTA account as required by paragraph five of the retainer agreement. (See exhibit 14.)

The Troups Terminate Respondent

In or around November 2011, the Troups terminated respondent's employment and requested that she return the Troup funds. Respondent did not comply with this request.

Respondent created a billing statement and delivered it to the Troups in late September 2012, almost two years after the last services were performed on the Troups' matter. In this statement, all of the payments made by the Troups were improperly listed as payments on their account, not mortgage payments to be held by respondent.

Respondent did not make any appropriate payments on behalf of the Troups out of the \$18,461.38 in Troup funds. And on October 12, 2010, respondent's business account was overdrawn, with a balance of negative \$3,392.36. As such, respondent spent all of the Troup funds on matters personal to her.

Conclusions

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

Rule 4-100(A) 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. By not maintaining any portion of the Troup funds in a client trust account, respondent willfully violated rule 4-100(A).

Count Eight – § 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. “There is no doubt that the wilful misappropriation of a client's funds involves moral turpitude. [Citations.]’ [Citations omitted.]” (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034.) While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, the law is

clear that where an attorney's fiduciary obligations are involved, particularly trust account duties, a finding of gross negligence will support such a charge. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.) By misappropriating \$18,461.38 of the Troups' funds, respondent committed an act involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

Count Nine – Rule 4-100(B)(3) [Failure to Account]

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property. By failing to provide an appropriate accounting of Troup's funds respondent held in her possession after she was terminated by Troup, respondent failed to render appropriate accounts to a client, in willful violation of rule 4-100(B)(3).

Count Ten – § 6068, subd. (d) [Duty to Employ Means Consistent with Truth]

Respondent made several incorrect and inconsistent statements in her employment applications to the bankruptcy court. The court has found, below, that these statements violated respondent's duties under section 6068, subdivision (a). These incorrect statements represent, at least, carelessness on respondent's part, and, at most, reflect her lack of competence in bankruptcy matters; however, there was no clear and convincing evidence that these statements were made with an intent to mislead the bankruptcy court. As such, Count Ten is dismissed with prejudice.

Count Eleven – § 6068, subd. (a) [Duty to Support All Laws]

By failing to disclose completely and accurately her fee arrangements with the Troups, as required by 11 U.S.C. §§ 329(a) and 327, respondent failed to support the laws of the United States, in willful violation of section 6068, subdivision (a).

Case No. 12-O-13731 – The Carr Matter

Facts

Respondent was initially contacted by John Kralik (Kralik), an acquaintance of Kathryn Carr (Carr). Between February 15 and 18, 2010, Carr retained respondent to assist her in managing her property, organizing her taxes, and handling probate matters. On February 15, 2010, Carr paid respondent for each of these tasks: \$3,500 for preparation of her several unfiled federal and state tax returns; \$200 for work on her will, real property, and other tax issues; and \$700 for the probate work.

When respondent initially met with Carr, respondent recommended to Carr that she take her savings out of the bank and give it to respondent to hold in her client trust account at Wells Fargo Bank (Wells CTA) to protect it from an IRS lien. In order to encourage her to do so, respondent told Carr the money would be safe, since respondent had “about \$3 million” in the account. In actuality, respondent had only \$1,487.66 in the Wells CTA on January 31, 2010.

When Carr came into respondent’s office on February 18, 2010, Kralik was with Carr. Respondent asked Kralik to leave the room, but he refused. Following respondent’s instructions, Carr gave respondent checks totaling \$289,410.38 (the Carr funds), representing her life savings. These funds were delivered in three checks: (1) a cashier’s check for \$200,000 from Carr’s credit union; (2) a cashier’s check for \$76,410.38 from Carr’s bank; and (3) a personal check for \$13,000 from Carr’s checking account. Without

any request from Carr, respondent provided Carr with a hand-written receipt, on which respondent wrote that the payments were “for safekeeping in Atty-Client Trust.” (Exhibit 30.) Respondent deposited the Carr funds in her Wells CTA, with the \$13,000 check deposited on the same day it was received, February 18, and the remaining two checks deposited on February 22, 2010.

Upon being retained, respondent commenced working on Carr’s matters.

Unfortunately, respondent also commenced removing the Carr funds from her Wells CTA at a rapid rate.

Immediately prior to February 18, 2010, respondent had \$3,313.17 in her Wells CTA. One day after the deposit of the \$13,000 check, respondent transferred \$10,000 to her business account, with a notation “Fees Carr.” Immediately after depositing all Carr’s funds, and after the \$10,000 transfer to her business account, respondent had a balance in her CTA of \$282,361.89.

By February 26, 2010, the Wells CTA balance had dropped to \$170,047.68. Among the withdrawals was a transfer to respondent’s business checking account of \$25,000 and a February 24, 2010 check for \$80,000, payable to respondent’s other client trust account (see discussion, below).

By March 31, 2010, the balance of the Wells CTA dropped to \$99,532.79, after four bank transfers to respondent’s business account totaling \$71,000 and various small deposits and withdrawals. On April 30, 2010, the balance of the Wells CTA was \$81,838.13.

When respondent advised Carr that she would hold the Carr funds “for safe keeping” she was being dishonest. In fact, she intended to immediately begin withdrawing those funds and taking the money for her own purposes.

The February 24, 2010 check for \$80,000, referred to above, was deposited on February 25, 2010, in respondent's client trust account at Bank of America (BofA CTA). (See exhibits 46 and WWWW.) Just prior to that deposit, the account held \$102.02. No additional deposits were made to that account until September 20, 2010, at which time a \$20,000 transfer was made, via check, from the Wells CTA to the BofA CTA.¹⁰ There were, however, several withdrawals, including the following:

<u>Date</u>	<u>Payee</u>	<u>Amount</u>
March 3, 2010	Gina Hardin, Tax Preparer/Carr	\$1,000
March 31, 2010	Greater Bethel Missionary Baptist Church, settlement funds GBMBC/Pat Brown	\$3,155.79
March 31, 2010	T. Elliott & Associates, structured settlement	\$10,000
April 7, 2010	H&R Block, Tax Preparation 05-09	\$2,817 ¹¹
April 7, 2010	KPRO Radio, Publication	\$500
April 12, 2010	Rev. Joel Morales, Salary (FDL)	\$750

¹⁰ On September 20, 2010, check number 7476 from the Wells CTA cleared the Wells CTA in the amount of \$20,000. While there are no bank records definitely demonstrating that this check was the source of the \$20,000 deposit in the BofA CTA, the evidence strongly indicates this to be the case.

¹¹ On March 29, 2010, respondent sent Carr a letter memorializing a conversation in which Carr authorized respondent to engage the assistance of H&R Block because of the complexity of the tax returns. Respondent notes "You indicated hiring of H&R Block was acceptable and payment from your funds on account was fine." Because this was less than six weeks after Carr had paid respondent \$3,500 for tax preparation, and because respondent earlier referred to her inability to perform the work because it was too complicated, the court finds that Carr reasonably understood the statement "funds on account" to refer to the \$3,500 deposit being held for the preparation of taxes.

April 12, 2010	Aracely Palacios, salary (FDL)	\$100
May 19, 2010	T. Elliott, structured settlement	\$10,000
June 2, 2010	T. Elliott, settlement proceeds	\$7,500
June 23, 2010	Law Office of Greta Curtis, Inc., Attorneys fees Carr	\$2,800

Respondent made some payments from the BofA CTA that were perhaps attributable to the Carr matter, including the March 3, 2010 payment of \$1,000 to Gina Hardin for tax preparation services; the April 7, 2010 payment of \$2,817 to H&R Block, also for tax preparation services; and the payment on June 23, 2010, of \$2,800 to the Law Office of Greta Curtis, Inc. for attorney's fees. However, none of these payments was authorized to be removed from the Carr Funds. The balance of the payments from this account appears to be totally unrelated to Carr or her matter.¹²

Between February 18, 2010 (when the Carr funds were deposited) and April 30, 2012 (just before respondent returned \$80,000 to Carr) the Wells CTA dipped to a low point of negative \$2,939.52 on December 14, 2011. Between the February 24, 2010 deposit of \$80,000 and September 30, 2010 (the last BofA CTA bank record in evidence in this matter) the BofA CTA dipped to a low point of \$37,945.23. Following the \$20,000 transfer from the Wells CTA to the BofA CTA, the BofA CTA balance rose to \$57,945.23.

¹² In fact, \$31,000 of these funds went to T. Elliott, a person with a similar name as Terry Elliott, the Pastor and President of the Mt. Zion Missionary Baptist Church. There was no testimony on whether T. Elliot is the same person as Terry Elliot and there was no testimony as to whether Greater Bethel Missionary Baptist Church was in any way related to Carr or her matter.

While it is clear that respondent performed more work on this matter than is represented by the \$4,400 in advance fees, respondent never informed Carr that her services were being paid out of the Carr funds. In addition, respondent depleted the Carr funds at a rate much faster than even the billing set forth at Exhibit ZZZZ.

Carr's Request for Accounting and Termination of Respondent

At some point prior to April 12, 2011, Carr requested information as to the status of the funds being held in respondent's trust account.¹³ On April 12, 2011, Carr sent respondent a letter requesting an accounting of the funds being held in trust by respondent, and noting her concern about respondent's bill. (See Exhibit 45, p. 3.) Respondent received this letter, but did not send Carr an accounting until after May 21, 2012.¹⁴

On March 29, 2012, Carr terminated her employment of respondent, and requested the return of the Carr funds. Respondent returned \$80,000 to Carr in May 2012. No portion of the \$209,410.38 remaining balance of the Carr funds has been returned to Carr.

Conclusions

Count Thirteen¹⁵ – § 6106 [Moral Turpitude]

Respondent should have maintained \$189,410.38 in her Wells CTA (\$289,410.38 (the Carr funds) - \$80,000 (transferred to BofA CTA) - \$20,000 (transferred to BofA CTA)). She also should have maintained \$100,000 (\$80,000 + \$20,000) in her BofA CTA.

¹³ The evidence indicates that this request was not in writing.

¹⁴ The court found Carr's testimony that she did not receive an accounting until May 2012 to be credible. The court bases this finding on Carr's demeanor at trial and on her correspondence which was consistent with the fact that she had not received an accounting prior to May 21, 2012. Respondent claimed, to the contrary, that she provided Carr with a previous accounting; however, the court did not find respondent's testimony on this subject to be credible.

¹⁵ At trial, on the motion of the State Bar, Count Twelve was dismissed in the interest of justice.

As noted above, the Wells CTA dipped to a low point of negative \$2,939.52 on December 14, 2011, and the BofA CTA dipped to a low point of \$57,945.23 (following the \$20,000 transfer). As such, the amount misappropriated from the Wells CTA was \$189,410.38. The amount misappropriated from the BofA CTA was \$42,054.77 (\$100,000 - \$57,945.23). Altogether, the total amount misappropriated from Carr was \$231,465.15.

By misappropriating \$231,465.15 of the Carr funds, respondent committed an act involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

Count Fourteen – Rule 4-100(B)(3) [Failure to Account]

On April 12, 2011, Carr requested that respondent provide an accounting of the funds she held in her client trust account for the benefit of Carr. Respondent failed to provide an accounting to Carr until May 2012, after Carr had terminated respondent. By failing to promptly provide an appropriate accounting of Carr's funds respondent held in her possession as requested by Carr, respondent failed to render appropriate accounts to a client, in willful violation of rule 4-100(B)(3).

Aggravation¹⁶

Multiple Acts/Pattern of Misconduct (Std. 1.5(b).)

The misconduct in these three client matters constitutes multiple acts. This is an aggravating factor.

Dishonesty and Overreaching (Std. 1.5(d).)

Respondent told Carr that respondent would hold Carr's funds "for safe keeping in Atty-client Trust." Despite that assurance, within one day, she had withdrawn \$10,000, approximately \$7,000 of this amount was directly from the Carr funds. Within eight days, she had withdrawn

¹⁶ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

over \$100,000. This gross violation of Carr's trust constitutes dishonesty and overreaching. This is a serious aggravating factor.

Significant Harm to Client (Std. 1.5(f).)

Carr provided respondent her life savings for "safe keeping." Before she was terminated by Carr, respondent had taken most of Carr's funds. While respondent has repaid \$80,000 after Carr was forced to hire an attorney, the resulting loss has caused Carr serious financial and emotional harm.

Respondent's misconduct also caused significant financial harm to the Troups. At a time when the Troups were not making their mortgage payments and facing foreclosure, respondent misappropriated funds set aside to negotiate a loan modification on their behalf. Ultimately, the Troups lost their home in foreclosure.

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

Respondent's failure to repay the full amount due to Carr and the Troups is a serious aggravating factor. While respondent did return \$80,000, this represents less than one-third of the monies taken by respondent.

Mitigation

No Prior Record (Std. 1.6(a).)

Respondent had no prior record of discipline for approximately 13 years prior to the misconduct in this case. While this is a mitigating factor, the mitigating effect is diminished because the present misconduct is extremely serious.

Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)

Respondent cooperated with the State Bar by entering into a stipulation prior to trial. However, the mitigating effect is diminished somewhat because the stipulated facts would have been relatively easy to prove. (See *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State

Bar Ct. Rptr. 547, 567 [attorney afforded limited mitigation for entering belated stipulations which mostly concerned easily provable facts].)

Good Character (Std. 1.6(f).)

Respondent presented letters and witnesses attesting to her honesty and good character. Many commented that respondent has often provided free or reduced fee services to those who could not pay. The letters and witnesses gave concrete examples of these positive character traits. While not a broad cross-section of character witnesses, these positive character evaluations warrant some consideration in mitigation.

Discussion

The primary purposes of attorney discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; std. 1.1.)

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 1.7 provides that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors. And 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. 1.7(a).)

Standards 2.1(a) and 2.7, among others, apply in this matter. The most severe sanction is found at standard 2.1(a) which recommends disbarment for intentional or dishonest misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or

the most compelling mitigating circumstances clearly predominate, in which case the minimum discipline recommended is a one-year actual suspension.

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.) Although 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.)

The State Bar urges the court to disbar respondent from the legal profession. Respondent, on the other hand, argued that the State Bar failed to carry its burden and that respondent should not be disbarred. While the court gives consideration to respondent’s mitigation evidence, the magnitude of the present misconduct and the significant harm respondent caused are particularly troubling.

The Supreme Court has repeatedly held that disbarment is the usual discipline for the willful misappropriation of client funds. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 37; and *Howard v. State Bar* (1990) 51 Cal.3d 215, 221.) “In a society where the use of a lawyer is often essential to vindicate rights and redress injury, clients are compelled to entrust their claims, money, and property to the custody and control of lawyers. In exchange for their privileged positions, lawyers are rightly expected to exercise extraordinary care and fidelity in dealing with money and property belonging to their clients. [Citation.] Thus, taking a client’s money is not only a violation of the moral and legal standards applicable to all individuals in society, it is one of the most serious breaches of professional trust that a lawyer can commit.” (*Howard v. State Bar, supra*, 51 Cal.3d 215, 221.)

Here, the court found *In the Matter of Spaith* (1996) 3 Cal. State Bar Ct. Rptr. 511, to be instructive. In *Spaith*, the attorney was found culpable of misappropriating approximately \$40,000 from a client and misleading the client regarding the status of the money for over a year. In mitigation, the attorney demonstrated good character; provided community service and other pro bono activities; and cooperated with the State Bar by admitting his wrongdoing and stipulating to the facts and culpability. In addition, the attorney had no prior record of discipline in over 15 years of practicing law.¹⁷ In aggravation, the attorney's misconduct involved multiple acts of wrongdoing. The Review Department ultimately found that the mitigating circumstances were not sufficiently compelling to justify a lesser sanction than disbarment when weighed against the attorney's misconduct and aggravating circumstances. (*Id.* at p. 522.)

The present case is more egregious than *Spaith*. Here, respondent misappropriated a total of \$249,926.53 (\$18,461.38 + 231,465.15). Respondent's misappropriation in the Carr matter is particularly disturbing because she took her client's money on the pretense that she was going to safeguard it from the IRS. Respondent used fear to manipulate Carr into putting her life savings into respondent's care, and then immediately began using those funds for respondent's own benefit.

Respondent demonstrated no recognition of her duty to protect and account for her clients' funds and has made little effort to make her clients whole. Accordingly, the court finds that the interests of public protection mandate a recommendation of disbarment.

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¹⁷ Although the attorney paid restitution, this did not warrant mitigative credit due to the fact that none of the restitution was paid until after the attorney's client threatened to report him to the State Bar.

Recommendations

It is recommended that respondent Greta Sedeal Curtis, State Bar Number 175248, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to the following payees:

- (1) Anna and Larry Troup in the amount of \$18,461.38, plus 10% interest per annum from September 1, 2010; and
- (2) Kathryn Carr in the amount of \$209,410.38, plus 10% interest per annum from February 18, 2010.

Any restitution 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. Failure to do so may result in disbarment or suspension.

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 _____, 2014

RICHARD A. HONN
Judge of the State Bar Court