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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **VERNON LESTER BRADLEY,** **Member No. 49294,** A Member of the State Bar.	Case No.: **11-O-15122-PEM** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

Introduction[1]

In this disciplinary proceeding, respondent **Vernon Lester Bradley** is charged with five counts of professional misconduct involving a single-client. The charged misconduct includes: (1) entering into two business transactions with a client without insuring that the terms of the transactions were fair and reasonable to the client, fully disclosed, and transmitted in writing; (2) failing to maintain client funds in a trust account; (3) misappropriating entrusted funds; and (4) failing to render accounts of client funds. The court finds, by clear and convincing evidence, that respondent is culpable on four of the five counts of misconduct. In light of the serious nature and extent of respondent's misconduct, as well as the aggravating circumstances, the court recommends that respondent be disbarred.

Significant Procedural History

[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.

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on October 17, 2012. On November 13, 2012, respondent filed a response to the NDC.

Trial was held on July 9, 10, 11, 12, 30, and 31, and August 7, 2013. The State Bar was represented by Deputy Trial Counsel Heather Abelson. Respondent was represented by Jonathan Arons and Alexis Gough. On August 22, 2013, following the filing of closing briefs, the court took this matter under submission.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 24, 1971, and has been a member of the State Bar of California at all times since that date.

Case No. 11-O-15122 – The Lomas Matter

Facts

The Tiburon Property

Prior to December 2007, Alton Lomas (Lomas) retained respondent as his attorney in a malpractice lawsuit where respondent obtained $100,000 in Lomas's favor. Lomas was pleased with respondent's work in the malpractice lawsuit. As a result, on December 27, 2007, Lomas, as the owner of Scotia Pacific International (SPI), hired respondent to handle an arbitration matter against his former business partner before the London Metals and Exchange (LME) and the International Commerce Commission. On that same date, Lomas and respondent entered into an "Attorney Retainer and Fee Agreement" (retainer agreement). The written retainer agreement expressly called for respondent to draft a brief regarding a claim to be submitted to arbitration before the LME.

On January 17, 2008, respondent and his son, John Bradley,[2] gave Lomas a memorandum on the partnership dispute before the LME. At the top of the memorandum it stated, "The following is a cleaned up version of my first attempt to lay the relevant facts with the exhibits attached." This language implied that there was going to be other memorandums or attempts forthcoming.[3]

In addition to his legal practice, respondent invested in real property and operated a construction business entitled Bradley Signature Kitchens and Baths, Inc (BSKB). BSKB was licensed by the Contractors State License Board. Its primary focus was to upgrade and resell properties, specifically high-end homes in Marin County.

As of 2006, Scott Jolley (Jolley) was the CEO/President of BSKB and respondent was an officer. Respondent and Scott Webster (Webster) each held a 50% interest in BSKB.

At times, respondent invested in properties with Barbara Epis (Epis). Respondent and Epis had successfully developed and sold various real estate projects in Marin County. BSKB managed and developed the projects. According to respondent, Epis held over $45 million in appraised commercial and residential real estate and had substantial equity in those properties.

In January 2008, Webster and Bruce Portner (Portner) founded the 96 Mount Tiburon, LLC (the Tiburon LLC). Webster was the President/Managing Member of the Tiburon LLC and Portner was the Secretary/Member. The purpose of the LLC was to acquire through purchase or transfer of deed a vacant residential lot in Tiburon, California, and to conduct the following:

a. Build a new single family residence on the property according to an approved plan and building permit issued by the Town of Tiburon, California.

[2] At that time John Bradley was a paralegal. He later became an attorney.

[3] Respondent argued that the memorandum was the final version of the brief called for in retainer agreement and therefore his attorney-client relationship with Lomas had ended. Respondent's testimony on this subject was not credible, as the evidence clearly demonstrates he was still representing Lomas.

b. Sell the property on the open market or to a qualified buyer at a price mutually agreed upon by all members of the Tiburon LLC.

On January 14, 2008, the Tiburon LLC purchased a vacant lot located at 96 Mount Tiburon Road (the Tiburon property) with a promissory note for $1.95 million, secured by a deed of trust.[4] The promissory note required that $12,187.50 be paid every month (beginning on March 1, 2008) and that the entire balance of principal and interest was due in full on or about January 14, 2009.

Respondent first met Portner in 2003 and had since used Portner over the years as his real estate agent. Respondent had also represented Portner in some real estate deals. At some point, Portner approached respondent and asked him to become involved with the development of the Tiburon property (the Tiburon project).

Respondent and Jolley agreed and became involved with the Tiburon project. Respondent and Jolley then prevailed upon Epis to invest in the Tiburon project. On January 19, 2008, Epis formally agreed to give $259,932.06 to the Tiburon LLC. In tendering the $259,932.06, Epis bought out Portner's 50% interest in the LLC.[5] Epis also agreed to be responsible for the monthly $12,187.50 payments required by the promissory note. Upon Epis's payment of the loan, Webster was to relinquish his 50% interest in the Tiburon project to respondent.[6]

Shortly after Epis agreed to be responsible for the loan on the Tiburon property, she ran into a liquidity problem and was unable to pay the mortgage on the note. Consequently,

[4] Portner received a $50,000 commission on the sale of the Tiburon property.

[5] Portner received $250,000 from Epis. Portner was then no longer involved in the Tiburon project.

[6] It was contemplated that the payment of the promissory note was to be secured through a construction loan acquired by Epis. However, Epis agreed that the promissory note would be paid in full within a year, regardless of whether she could secure a construction loan.

respondent quickly needed an investor to fill Epis's shoes and make the monthly promissory note payments until a construction loan could be secured.

In late January 2008, respondent began to speak to Lomas about the Tiburon project. Respondent spoke highly of the project, representing that it was one of the last great view lots in Tiburon. Respondent told Lomas that he planned to develop a luxury private residence with expansive uninterrupted views stretching from Treasure Island and the Bay Bridge to the Golden Gate Bridge and Sausalito. Respondent convinced Lomas that once the residence was completed the house could be sold for at least $10 million, yielding an estimated return of $4 to $6 million.[7]

After convincing Lomas that once completed the Tiburon project would make a profit of at least $4 million, respondent prepared a document entitled, "Investment Agreement between Alton A. Lomas and Vernon L. Bradley" (the investment agreement). On February 18, 2008, the investment agreement was signed by respondent and Lomas.[8] The investment agreement provided that Lomas's funds would be used "to debt service the property including taxes, insurance, preliminary design expenses for preparation of plans and preparation of building site requirements as well as the monthly interest payments due to the [Tiburon LLC]." The investment agreement also stated that Epis remained solely responsible for paying the remaining balance on the promissory note in January 2009.

On February 18, 2008, Lomas/SPI gave respondent a check for $100,000 pursuant to the investment agreement. On or about that same date, respondent prepared a modification to his retainer agreement with Lomas in the LME arbitration matter (modified retainer agreement). In

[7] Respondent's claim that he tried to discourage Lomas from investing in the Tiburon project was directly contradicted by his actions and not credible.

[8] Respondent contended that the investment agreement was between Lomas and Epis. This contention contradicts the credible testimony of Lomas and Epis, as well as the plain language of the investment agreement – highlighted by the fact that the investment agreement was not signed by Epis.

the modified retainer agreement, respondent agreed to perform additional legal services, including pursuing all necessary discovery in the arbitration action before the LME and hiring a London solicitor, in exchange for Lomas's $100,000 investment.[9] The modified retainer agreement clearly laid out that Lomas's $100,000 was invested in a "collateral business." It went on to state that while respondent would track and prepare legal bills for his services in the LME matter, Lomas would not be required to pay those bills (with the exception of costs) and that the Tiburon project may result in sufficient monies to pay respondent's attorney's fees.

Respondent did not advise Lomas to seek the advice of independent counsel prior to entering into the investment agreement and modified retainer agreement.[10]

On February 19, 2008, respondent deposited Lomas's $100,000 check into his client trust account (CTA). Prior to the deposit, the balance in respondent's CTA was $479.08. From February 19 to May 6, 2008, respondent withdrew $97,657.50 from his CTA. During this same time period, respondent paid out $56,867.50 to debt service the Tiburon property.

In early May 2008, respondent came to Lomas for more Tiburon project money because he had already spent the initial $100,000 investment. On May 7, 2008, Lomas gave Bradley a check for $20,000 pursuant to the investment agreement. Respondent deposited this $20,000

[9] Respondent maintained his argument that he was no longer representing Lomas at the time of this modification. The terms of the modification belie this contention as it is clear that in February 2008, respondent referred to Lomas as his client in correspondence with London counsel. In fact in a February 9, 2008 email, respondent said he would try the arbitration case with the local counsel. Furthermore, the modified retainer agreement was entitled "Modification of Existing Attorney Agreement for Representation in London Metal Exchange Arbitration." So clearly, as of February 18, 2008, respondent was still representing Lomas in the arbitration matter.

[10] Instead, respondent argued that since Lomas was married to an attorney, respondent assumed that Lomas must have spoken with her about the agreements. Lomas's wife was a lawyer, however, she and Lomas had been separated since 2004 and she did not speak to Lomas about his investments.

check into his CTA that same day. Prior to depositing this check, the balance in respondent's CTA was $2,831.81.

In later May 2008, respondent again approached Lomas for more Tiburon project money, stating that he had spent the prior $20,000. On May 21, 2008, Lomas gave Bradley a check for $20,000 pursuant to the investment agreement. Respondent deposited this check into his operating account on May 22, 2008. From May 7 to June 8, 2008, respondent withdrew $21,787.50 from his CTA. During this same time period, respondent paid out $16,187.50 to debt service the Tiburon property.

In early June 2008, respondent again approached Lomas for additional funds for the Tiburon project, telling Lomas that he had spent Lomas's prior investment money. On June 9, 2008, Lomas wired an additional $20,000 into respondent's CTA pursuant to the investment agreement. Prior to this deposit, the balance in respondent's CTA was $34.08. From June 9 to June 24, 2008, respondent withdrew $19,987.50 from his CTA. During this same time period, respondent paid out $12,187.50 to debt service the Tiburon property.

Two weeks later, respondent again approached Lomas for additional Tiburon project money, stating that he had spent Lomas's prior $20,000. On June 24, 2008, Lomas gave respondent another check for $20,000 pursuant to the investment agreement. Respondent deposited this $20,000 into his CTA the next day. Prior to this deposit, respondent's CTA balance was $36.58. From June 24 to June 25, 2008, respondent withdrew $18,200 from his CTA. During this same time period, respondent did not pay out any money to debt service the Tiburon property.

The next day, respondent approached Lomas for more Tiburon project money. On June 26, 2008, Lomas gave respondent a check for $25,000 pursuant to the investment agreement. Respondent deposited this $25,000 into his CTA that same day. Prior to this deposit, the balance

in respondent's CTA was $1,836.58. From June 26 to July 2, 2008, respondent withdrew $23,000 from his CTA. During this same time period, respondent paid out $5,000 to debt service the Tiburon property.

In early July 2008, respondent again approached Lomas for more Tiburon project money because he had spent Lomas's prior investment money. On July 10, 2008, Lomas gave respondent a check for $20,000 pursuant to the investment agreement. Respondent deposited this $20,000 into his CTA that same day. Prior to depositing this check, the balance in respondent's CTA was $3,838.06. From July 10 to 31, 2008, respondent withdrew $23,787.50 from his CTA. During this same time period, respondent paid out $12,692.62 to debt service the Tiburon property. As of July 31, 2008, the balance in respondent's CTA was $51.27.

During the remainder of 2008, Lomas continued to give respondent investment checks to debt service the Tiburon property. These checks were deposited into either the Tiburon project checking account or respondent's operating account. In total, Lomas paid respondent $334,187.50 in 2008. As addressed below, $35,000 of this money was presumably a loan extended to Jolley relating to another property. This leaves a balance of $299,187.50 in funds paid to respondent by Lomas. Pursuant to the modified retainer agreement, Lomas would not be required to pay bills associated with the LME matter (with the exception of costs), and there is no credible evidence that any of the checks Lomas paid in 2008 were for the LME matter. Accordingly, the court concludes that the balance of $299,187.50 in funds paid to respondent by Lomas were to be applied to the Tiburon project.

On August 15, 2008, respondent sent Epis a letter stating that he needed money to complete the Tiburon Project. In the letter, respondent stated that he had "paid into the project for mortgage payments, engineering studies, architectural fees a total of $200,000 from Andy

Lomas," and asked Epis to fill out a loan application because he needed more money to debt service the Tiburon property.

On October 9, 2008, respondent sent an email to Lomas in which he admitted that he did not "have the money to pay the mortgage of $12,190 for [the Tiburon property] today[.]" In response to respondent's plea for additional money, on October 13, 2008, Lomas gave respondent a check for $12,000 to pay the October mortgage payment. Respondent deposited this check into his operating account, and the mortgage payment was paid on or about October 14, 2008.

On December 1, 2008, Lomas sent a memo to respondent stating that he had advanced $265,000[11] in connection with the Tiburon project and that he was concerned that as "crunch time" approached they were not going to be able to come up with funding for the full purchase of the Tiburon property. If full funding for the purchase price of the Tiburon project was not completed in a year, then the property reverted back to the prior owner and the investors would lose the money paid into the project.

In late April 2009, John Bradley gave Lomas an accounting of the money he had advanced on the Tiburon project. The accounting only accounted for $177,934.15 of Lomas's investment. After the April 2009 accounting, Lomas never received a full accounting of where the remaining funds were spent.[12]

[11] The records in Exhibits 6 & 7 indicate that this sum was actually $257,000 as of December 1, 2008. By the end of 2008, however, this sum increased to $299,187.50.

[12] Exhibit B is a purported accounting relating to the LME matter. Many of the charges contained in the Exhibit B accounting occurred after April 2009, and there was no credible indication that Lomas's Tiburon project investment funds were applied to the LME matter.

Also, Exhibit M is purported Tiburon project accounting. Exhibit M is not dated, but respondent testified that he prepared it about a year ago. Exhibit M inaccurately states that respondent only received $205,000 from Lomas for the Tiburon project. Exhibit M contains much of the same accounting as Exhibit V, however, there are additional entries such as an

Lomas had become so concerned about the financing of the Tiburon project that he sent respondent a memorandum on April 29, 2009. In the memorandum, Lomas stated that $108,524.07[13] was unaccounted for and he wanted to know what happened to it.

On April 30, 2009, respondent replied to Lomas. Respondent admitted that he had continued to ask Lomas for additional Tiburon project money after he spent each of Lomas's checks, and that he used a portion of the Tiburon project money for personal and business expenses. Specifically, respondent stated that he used some of the funds to cover his "overhead," and that he had always regarded those funds as "loans to [respondent], which [Lomas was] entitled to get back with profit." However, as previously noted, the investment agreement contained no mention of Lomas's Tiburon project funds covering respondent's overhead or serving as a personal loan to respondent.

On June 8, 2009, Lomas replied to respondent's April 30, 2009 communication. In his reply, Lomas acknowledged that on several occasions respondent had told him that respondent's cash flow was very tight and that respondent had used some of the funds to cover respondent's monthly overhead nut. However, Lomas elaborated that he thought respondent's financial problems were minor and short in duration. Lomas "had no idea" that respondent's use of "some of the funds" amounted to over $100,000.

Ultimately, the balance on the Tiburon property loan was not paid and the property reverted back to its prior owner. Consequently, Lomas lost all of his invested money. Further, none of Lomas's funds that respondent classified as a "loan … which [Lomas was] entitled to get back with profit" have been refunded.

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undated $6,000 entry for "administrative expenses." The court does not find Exhibit M to be a reliable accounting.

[13] The evidence before the court indicates that this sum may have actually been $121,253.35 ($299,187.50 – $177,934.15). However, since Lomas claimed a lower total, and the court will defer to his calculation.

The Geldert and Greenwood Properties

Respondent and Jolley held a partnership interest in two properties located on Geldert Avenue (the Geldert property) and Greenwood Court (the Greenwood property) in Tiburon, California. In February 2008, the Geldert property was under construction. Respondent took Lomas to see the Geldert property. Respondent told Lomas that when the Geldert property was sold respondent was entitled to half of the profit realized on the sale of that property.

In June 2008, respondent, on behalf of Jolley, solicited Lomas for a loan for work at the Geldert property. Respondent told Lomas the loan was needed to complete the bathroom, a stairway, and to pay the day-laborers. At respondent's request, Lomas loaned Jolley $35,000 for the benefit of the Geldert property. Respondent prepared a promissory note and deed of trust in the Greenwood property for Jolley's signature. The promissory note required Jolley to repay the loan in full with 12% interest in by August 31, 2008.[14] Jolley signed both documents.

As of June 2008, respondent still represented Lomas in the LME arbitration matter. Although respondent had a financial interest in the Geldert property, he did not advise Lomas in writing that he should seek the advice of an independent lawyer or obtain informed written consent from Lomas before soliciting the $35,000 loan to Jolley.

At the time Lomas loaned the money to Jolley, Lomas believed that his position with respect to the Greenwood property was second in line after Bank of America. Lomas did not know that Epis was actually second in line after Bank of America. In fact, Lomas did not know that Epis was even involved with the Greenwood property.

Jolley ran into financial difficulty and did not have funds to repay the loan to Lomas. Ultimately, Jolley assigned the rent he received on the Greenwood property to Lomas. While it

[14] The due date was included in the deed of trust and hand-written in at the bottom of the promissory note.

remains somewhat unclear, the evidence indicates that Lomas subsequently recovered his $35,000 through rent payments.

Conclusions

Count One – Rule 3-300 [Avoiding Interests Adverse to a Client]

Rule 3-300 provides that an attorney must not enter into a business transaction with a client or knowingly acquire an ownership, security, possessory, or other pecuniary interest adverse to a client unless: (1) the transaction/acquisition and its terms are reasonable and fair to the client and are fully disclosed and transmitted in writing to the client in a reasonably understandable manner; (2) the client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to do so; and (3) the client thereafter consents in writing to the terms of the transaction/acquisition.

Clearly, respondent entered into a business transaction with his then-client Lomas involving the Tiburon project. Respondent's argument to the contrary was clearly contradicted by the credible evidence before this court.

Upon entering into the Tiburon project with Lomas, respondent failed to advise Lomas in writing that he may seek the advice of an independent lawyer and failed to give Lomas a reasonable opportunity to seek that advice. Respondent's assertion that he assumed Lomas would discuss the matter with his attorney wife also lacked credibility. And even if respondent's claimed assumption was credible, it still would not have satisfied the requirements of rule 3-300(B).

Further, the court finds that the Tiburon project transaction was not fair and reasonable to Lomas. Nor was it fully disclosed and transmitted in writing. While the investment agreement provided many of the details involving the Tiburon project, Lomas did not know the extent to which Epis was unable or unwilling to invest any additional money into the Tiburon project.

This fact is significant because the success of the Tiburon project hinged on Epis's willingness and ability to purchase the $1.95 million Tiburon property within a year. In addition, the investment agreement did not provide Lomas with any security or collateral and failed to detail any terms regarding what would happen in the event Epis did not execute her end of the bargain.

By entering into the investment agreement and modified retainer agreement with Lomas when the transaction and its terms were not fair and reasonable to Lomas and without fully disclosing and transmitting in writing the terms of the transaction to Lomas; and not obtaining Lomas's written consent, or giving Lomas time to seek independent counsel, respondent failed to avoid interests adverse to his client, in willful violation of rule 3-300.

Count Two – Rule 3-300 [Avoiding Interests Adverse to a Client]

Similar to Count One, respondent again entered into a business transaction with Lomas involving the Geldert and Greenwood properties. Once again, respondent's argument that Lomas was not his client at the time of this transaction was clearly contradicted by extensive credible evidence before this court.

Just like Count One, respondent failed to advise Lomas in writing that he may seek the advice of an independent lawyer and failed to give Lomas a reasonable opportunity to seek that advice. In addition, the court finds that the terms of the transaction were not fair, reasonable to the client, and fully disclosed in writing. Lomas was led to believe that his position with respect to the Greenwood property was second in line after Bank of America. Neither respondent nor Jolley disclosed that Lomas was actually in third position behind Epis.

By soliciting Lomas to loan Jolley $35,000 for the benefit of the Geldert property which respondent had 50% interest in when the transaction and its terms were not fair and reasonable to Lomas, and without fully disclosing and transmitting in writing the terms of the transaction to

Lomas, respondent failed to avoid interests adverse to his client, in willful violation of rule 3-300.

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

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. The State Bar alleged that respondent violated rule 4-100(A) by failing to maintain Lomas's Tiburon project funds in his CTA. The court disagrees. The funds Lomas paid to respondent for the Tiburon project constituted a business investment transaction. While respondent was acting as a fiduciary, he was not specifically required to deposit and maintain Lomas's Tiburon project funds in a client trust account.[15] And while the State Bar's evidence indicated that respondent was commingling funds in his CTA, he was not charged with commingling. As a result, Count Three is dismissed with prejudice.

Count Four – § 6106 [Moral Turpitude]

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.)

[15] The investment agreement stated that Lomas agreed to deposit the sum of $100,000 to "an account" of respondent for the purpose of paying all costs for the development of the Tiburon property. It did not require that these funds be put in a client trust account.

"Misappropriation" is defined as "[t]he application of another's property or money dishonestly to one's own use." (Black's Law Dict. (8th ed. 2004) p. 1019, col. 1.) "[A]n attorney's failure to use entrusted funds for the purpose for which they were entrusted constitutes misappropriation. [Citation.]" (*Baca v. State Bar* (1990) 52 Cal.3d 294, 304.)

Here, respondent was entrusted with Lomas's Tiburon project investment funds. The investment agreement specifically stated that these funds were to be used "to debt service the property including taxes, insurance, preliminary design expenses for preparation of plans and preparation of building site requirements as well as the monthly interest payments due to the [Tiburon LLC]." Despite the clear language of the investment agreement, respondent began utilizing Lomas's funds for his own personal use. Ultimately, respondent misappropriated $108,524.07 of Lomas's Tiburon project investment funds, thereby willfully violating section 6106.

Count Five – 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 Lomas with an accounting of the $108,524.07, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent's possession, in willful violation of rule 4-100(B)(3).

Aggravation[16]

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

[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.

Respondent committed multiple acts of misconduct including violations of section 6106 and rules 3-300 and 4-100(B)(3). Respondent's multiple acts of misconduct warrant some consideration in aggravation.

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

Respondent's misconduct resulted in significant financial and emotional harm to Lomas. Lomas lost more than a quarter of a million dollars in the Tiburon project and was left clinically depressed, bankrupt, and devastated. Lomas has since incurred further financial harm attempting to recover some of these funds through litigation; however, despite these efforts, respondent has not refunded any money to Lomas.

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

The evidence before the court illustrates respondent's indifference toward rectification of or atonement for the consequences of his misconduct. Respondent believes his misconduct was only a technical failure to advise his client that he may seek the advice of an independent attorney. Respondent fails to understand the magnitude of his actions and the significant harm he has caused. Respondent has made no effort to make Lomas whole.

Respondent's Uncharged Misconduct

Evidence of uncharged misconduct may be considered in aggravation where the evidence is elicited for a relevant purpose and where the determination of uncharged misconduct is based on the attorney's own evidence. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.) At trial, the evidence indicated that respondent commingled funds in his CTA in violation of rule 4-100(A). This evidence, however, did not come from respondent. Instead, it was introduced by the State Bar. Consequently, the court does not afford this evidence any weight in aggravation as uncharged misconduct.

Mitigation

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

At the time of the misconduct, respondent had been a member of the State Bar of California for over 36 years, and had no prior record of discipline. The court considers this an extremely significant mitigating factor. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [more than 20 years of practice with an unblemished record is highly significant mitigation].)[17]

Good Character (Std. 1.2(e)(vi).)

Respondent presented testimony from a broad cross section of individuals, including Robert Ramers (retired financial officer); Ernest Ware (consulting engineer); Alesia Collins (court reporter); John Holman (attorney); Gregory Shaghnessy (attorney); and John Roselious (retired actor). Respondent also presented character testimony from four family members, including his ex-wife. These witnesses were aware of the nature of the charged misconduct, and praised respondent's integrity, dedication, and good character. Respondent's presentation of good character evidence warrants some consideration in mitigation. The weight of respondent's character witness testimony is somewhat diminished by the limited contact some of these witnesses have recently had with respondent as well as the fact that several of these witnesses are related to or work for respondent.

Discussion

Standard 1.3 provides that the primary purposes of discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for

[17] The Supreme Court and Review Department routinely have considered the absence of prior discipline in mitigation even when the misconduct was serious. (*Edwards v. State Bar* (1990) 52 Cal.3d 28 [mitigative credit given for almost twelve years of discipline-free practice despite intentional misappropriation and commingling]; *Boehme v. State Bar* (1988) 47 Cal.3d 448, 452-453, 454-455 [twenty-two years of practice without prior discipline was important mitigating circumstance despite attorney's intentional misappropriation and lack of candor to court].)

attorneys; and to preserve public confidence in the legal profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this 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.) Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.2, 2.3, and 2.8 apply in this matter. The most severe sanction is found at standard 2.2(a) which recommends disbarment for willful misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or unless 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.) 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.) There is no reason, however, to deviate from the standards in this case.

In addition to the standards, the court found *In the Matter of Spaith* (1996) 3 Cal. State Bar Ct. Rptr. 511, to be somewhat 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.[18] 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 court finds the facts involved in the instant case to be more egregious than those of *Spaith*. While respondent characterizes the instant case as simply a business deal gone bad, it stretches far beyond a failed business opportunity. Here, respondent used his influence as a trusted attorney to procure investment capital for his own business venture without complying with the mandates of rule 3-300. Once received, respondent misappropriated more than a third of that capital, using the funds outside the parameters of the investment agreement and for his own personal benefit. Respondent's unrelenting focus on the business venture and his own personal gain blinded him to the peril to which he subjected his client.

The court acknowledges respondent's substantial mitigation including his good character and lengthy career with no prior record of discipline. Respondent's overall mitigation, however, is not "the most compelling," nor does it "clearly predominate" when considered against his

[18] 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.

extensive misconduct and the aggravating factors. (Std. 2.2(a).) This is especially true when the court considers that respondent's misappropriation was more than double the amount taken in *Spaith*. And unlike *Spaith*, respondent has made no effort to make his victim whole.

Therefore, after weighing the evidence, including the factors in aggravation and mitigation, the court finds no compelling reason to recommend a level of discipline short of disbarment.

Recommendations

It is recommended that respondent **Vernon Lester Bradley**, State Bar Number 49294, 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 Alton Lomas in the amount of $108,524.07 plus 10 percent interest per year from April 1, 2009. 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: November _____, 2013

Pat McElroy
Judge of the State Bar Court