

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 11-O-17582-LMA
)	
TERENCE WYNN ISOBE,)	DECISION
)	
Member No. 154933,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this disciplinary proceeding, respondent Terence Wynn Isobe is charged with four counts of misconduct, including not complying with the terms of an agreement in lieu of discipline (ALD) and, in one client matter, not performing competently or communicating and entering into a business transaction with a client without following certain requirements.

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged misconduct. Based on the present misconduct, the factors in mitigation and aggravation, the court recommends, among other things, that respondent be actually suspended for 30 days.

Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on March 5, 2014², to which a response was filed on March 24, 2014.

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 State Bar was represented by Susan Chan and Tammy Albertsen. Respondent was represented by Steven H. Berniker.

A three-day trial was held on June 20, 26 and 27, 2014. The court took this matter under submission following closing briefs on July 2, 2014.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 16, 1991, and has been a member of the State Bar of California at all times since that date.

Facts³

On January 30, 2009, Rozina and Johaness Van Breukelen retained respondent to handle the probate of the estate of their son, Geert Van Breukelen. The Van Breukelens were elderly and it was agreed that their niece Elisabeth Koebergen Ramadhan would communicate with respondent and be appointed the administrator of Geert Van Breukelen's estate.

On February 2, 2009, respondent filed a petition for probate, *Estate of Geert Van Breukelen*, San Mateo County Superior Court case number 118538. On March 17, 2009, Ramadhan was appointed the estate's administrator.

On May 4, 2009, respondent, as a real estate broker, entered into a contract with Ramadhan to sell the deceased's condominium. The residential listing agreement provided that respondent would receive a broker's commission. Accordingly, respondent entered into a business transaction regarding the estate. He did not advise Ramadhan or the Van Breukelens that they could seek the advice of independent counsel before retaining respondent for real estate services. Respondent's testimony to the contrary was not credible. Neither his probate retainer

² The NDC filed on October 8, 2013, was dismissed without prejudice pursuant to the court's February 10, 2014 order so the parties could participate in the Early Neutral Evaluation Conference process. (Rule 5.30, Rules Proc. of State Bar.)

³ The facts are based upon those agreed to by the parties in the ALD and as supported by evidence admitted at trial.

agreement nor the notices of proposed action regarding the sale of the condominium gave proper notice as required by the Rules of Professional Conduct. The notices of proposed action indicate consent to the sale of the property, not an agreement to enter a business transaction with the estate's lawyer.

The condominium sold and respondent received a broker's commission of \$13,090. He also received statutory fees of \$15,319.43 for handling the probate.

On October 7, 2009, the San Mateo County Superior Court issued an Order Approving, Settling, and Confirming First and Final Account and Report of Administrator; Allowing Reserve, Waiver of Statutory Administrator's Compensation, and Statutory Attorneys' Compensation, and Final Distribution. This order provided that Ramadhan was authorized to distribute the remainder of the estate to the Van Breukelens, including a retirement savings plan from Kaiser Permanente administered by Fidelity Investments in the amount of \$121,855.36. As of October 7, 2009, the probate matter was complete and the estate was ready for distribution.

Respondent asked Ramadhan to inform him when the Fidelity retirement funds had been distributed so he could close the estate.

Between October 7, 2009 and April 2010, respondent and Ramadhan had several communications regarding the estate assets and closing the probate.

On March 11 and 15, 2010, respondent emailed Ramadhan and asked her for the status of the Fidelity retirement funds. Respondent informed Ramadhan that he would like to close the probate by filing receipts and requests to discharge the personal representative.

On April 7, 2010, Ramadhan emailed respondent that she had received the Fidelity retirement funds and requested that he close the probate case.

Ramadhan emailed respondent on July 8 and 28, 2010 asking about the status of the probate case, whether it was closed or if he was still working on it. Respondent received the emails, but did not reply.

On August 12, 2010, Ramadhan contacted respondent by instant message to ask if the probate had been closed. Respondent replied that he would need to send Ramadhan some papers first and then hoped “to get it done this month.”

Respondent took no further steps to have the probate closed.

On December 10, 2010, Ramadhan emailed respondent to inquire once again whether the probate case had been closed but he did not respond.

On March 1, 2011, Ramadhan wrote to respondent, noting that both his office and cell phone voicemail boxes were full. She again asked whether the probate case had been closed and requested documents in order to file 2010 taxes for the estate. Respondent did not reply to this letter.

On April 4, 2011, Ramadhan emailed respondent a copy of the March 1, 2011, letter and reiterated that she would be unable to file a tax return for the estate without paperwork from respondent. Respondent did not reply to this email.

Respondent never responded to Ramadhan again after the August 12, 2010 instant message and he took no further steps to have the probate closed from August 12, 2010 until the signing of the ALD in May 2012.

In May 2012, respondent and the State Bar entered into an ALD in response to Ramadhan’s complaint to the State Bar. In the ALD, respondent stipulated to facts of the Ramadhan complaint and agreed to, among other things, timely file quarterly reports and a final

report⁴ for one year and to provide the Office of Probation proof of completion of the State Bar Ethics School by May 8, 2013.

Respondent admitted that he did not timely file his quarterly reports due in July and October 2012 and January and April 2013 and the final report due on May 8, 2013. The July 10, 2012, report was submitted on July 12, 2012; was rejected by the Office of Probation; and was not resubmitted until December 31, 2012. The October 10, 2012 report was not submitted until December 27, 2012. The April 10, 2013 report was not submitted until June 18, 2013. The May 8, 2013 final report was not submitted until June 26, 2013.

Respondent did not provide the Office of Probation timely proof of completion of the State Bar Ethics School. He attended Ethics School on March 14, 2013, but did not provide proof of attendance until June 18, 2013.

Conclusions

Count One -§ 6068, subd. (l) [Failure to Comply with ALD]

Section 6068, subdivision (l), provides that an attorney has a duty to keep all agreements made in lieu of disciplinary prosecution.

Respondent willfully violated section 6068, subdivision (l) by not timely submitting any of his quarterly reports for one year or the final report. He also did not timely submit proof of attendance at Ethics School.

⁴ Respondent agreed to report in writing to the Office of Probation no later than the 10th of January, April, July and October under penalty of perjury, that he has complied with the State Bar Act and the Rules of Professional Conduct during the preceding calendar quarter or applicable reporting period. A final report covering the remaining portion of the effective period of the ALD following the last quarterly report was also required.

Count Two-Rule 3-110(A) [Failure to Perform Legal Services with Competence]

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. Respondent willfully violated rule 3-110(A) by not taking any further steps after August 2010 to close the probate.

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

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

Respondent willfully violated section 6068, subdivision (m) by not responding to Ramadhan's reasonable status inquiries of July 8 and 28 and December 10, 2010 and March 1 and April 4, 2011.

Count Four-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 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; 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 the client thereafter consents in writing to the terms of the transaction/acquisition.

Respondent willfully violated rule 3-300 by entering into a business transaction with a clients without informing them that they could seek the advice of independent counsel of their choice or otherwise obtaining their informed written consent to the real estate transaction with him in the manner required by rule 3-300.

Aggravation⁵

Multiple Acts (Std. 1.5(b).)

Respondent engaged in multiple acts of misconduct.

Mitigation

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

Respondent had no prior discipline in over 17 years of practice at the time the misconduct commenced.

Extreme Emotional/Physical/Mental Difficulties (Std. 1.6(d).)

Respondent suffered from severe and debilitating back pain from December 2010, now under control, according to his chiropractic neurologist.

Moreover, respondent suffered extreme stress, including caring for his elderly and sick mother who suffers from dementia and Alzheimer's disease. He has done so from the time of the misconduct until the present. In July 2012, his landlord sued him and respondent was evicted in 2013. In September 2012, respondent started a new job which, ultimately, led to his filing a sexual harassment complaint. In July 2013, he filed for bankruptcy.

Community Service/Pro Bono Work

Community service and pro bono work are mitigating circumstances. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [community service and pro bono activities are mitigating factors that may be entitled to considerable weight]. Minimal weight is afforded to respondent's past volunteer work as a river rafting guide with two nonprofit organizations, Outdoors Unlimited and Healing Waters.

⁵ All references to standards (std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

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. 1.1.)

Standard 1.7 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 must be the most severe of the applicable sanctions. (Std. 1.7(a).) Discipline is progressive. However, the standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.8.)

Standards 2.4, 2.5(c) and 2.8(b) apply in this matter, calling for a range of discipline from reproof to disbarment. Standard 2.4, the most severe applicable standard, provides that a suspension is appropriate for improperly entering into a business transaction with a client or knowingly acquiring a pecuniary interest adverse to a client, unless the extent of the member's misconduct and the harm to the client are minimal, in which case, reproof is appropriate. If the transaction or acquisition and its terms are unfair or unreasonable then disbarment or actual suspension is appropriate.

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; std. 1.1.) 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; std. 1.1.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

This case involved consistent, untimely compliance with conditions of an ALD as well as, in one client matter, not performing competently or communicating and entering into a business transaction with a client without following certain requirements. In aggravation, the court considered multiple acts of misconduct. Mitigating circumstances included no prior disciplinary record, extreme emotional/mental difficulties and community involvement.

Under these circumstances, the court recommends respondent's actual suspension for 30 days, among other things, because of the nature and extent of the misconduct, including the repeated and consistent noncompliance with the terms of the ALD. By analogy, an attorney's failure to strictly comply with the conditions of his or her State Bar disciplinary probation " 'demonstrates a lapse of character and a disrespect for the legal system that directly relate to [the attorney's] fitness to practice law and serve as an officer of the court. [Citation.]' [Citation.]" (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.)

During the process that led to the parties entering into an ALD, respondent had contact with the disciplinary system and, by entering into the ALD, had the opportunity of addressing his misconduct without incurring a disciplinary record. This should have heightened his attention to compliance with the ethics rules and requirements. Yet, it appears from the evidence, that respondent did not take the requirements of the ALD seriously because he repeatedly and continually did not timely comply with them. Accordingly, the court recommends some actual suspension to indicate the gravity of the offenses and also recommends that respondent be placed on probation during which time he will be able to demonstrate that he understands the

seriousness of compliance with disciplinary conditions. The court believes that this will be sufficient to protect the public in this instance.

Recommendations

It is recommended that respondent Terence Wynn Isobe, State Bar Number 154933, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that respondent be placed on probation⁶ for a period of two years subject to the following conditions:

1. Respondent Terence Wynn Isobe is suspended from the practice of law for the first 30 days of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.

⁶ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

6. It is not recommended that respondent attend Ethics School, as he did so on March 14, 2013.

At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

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.

Dated: September ____, 2014

LUCY ARMENDARIZ
Judge of the State Bar Court