

Filed May 13, 2014

**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

In the Matter of	)	Case No. 12-O-11477
	)	
ROBBIN VAN HERR WAARDEN HEWITT,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 158751.	)	
_____	)	

Respondent Robbin Van Herr Waarden Hewitt was admitted to practice law in 1992. This is his second disciplinary proceeding. He seeks review of the hearing judge's disbarment recommendation, which was largely based on his failure to avoid adverse interests to his clients. He borrowed over \$153,000 from them by abusing their trust, making material misrepresentations, and intentionally omitting information that would have alerted the clients to the dangers inherent in the transaction. Hewitt has not made a payment on the loan since November 2011, and still owes over \$109,000.

We reject Hewitt's claim that he was no longer representing the clients at the time he borrowed the money, and therefore, he did not violate any ethical rules of professional responsibility. The record clearly establishes an ongoing attorney-client relationship. Such a relationship is of the highest fiduciary character and always requires the attorney's utmost fidelity and fair dealing. Hewitt breached his duty to his clients, and taking their money was tantamount to a misappropriation. Based on his serious misconduct and the aggravating factors, including his prior record of discipline, we agree with the hearing judge that disbarment is the only appropriate discipline to protect the public.

## **I. HEWITT'S PROCEDURAL CHALLENGES ARE WITHOUT MERIT**

Hewitt contends that the hearing judge denied him due process by refusing to grant a continuance, and by admitting his prior record of discipline before a culpability finding was made. We find no error in the judge's rulings.

On the first day of trial, Hewitt sought a continuance because he had recently been diagnosed with depression, and suffered from insomnia, lack of focus, and other difficulties due to side effects of his prescribed medication. The hearing judge was willing to grant Hewitt's motion if he agreed to be inactively enrolled due to his mental impairment, reasoning that if he was unable to proceed at his own trial, then he was unfit to practice law. When Hewitt refused, the judge acted within her discretion in denying the motion. (*In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, 695 [abuse of discretion standard applied to review of procedural rulings]; *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 355 [discretion of trial judge is not whimsical or uncontrolled but subject to reversal where there is no reasonable basis for action].) Additionally, while Hewitt argues he could have provided additional facts in his defense if granted a continuance, he failed to identify the specific facts he would have offered or otherwise identify any actual prejudice he suffered. (*In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 241 [absent actual prejudice, party not entitled to relief from hearing judge's procedural ruling].)

Next, Hewitt argues that the hearing judge erred by admitting his prior discipline record before making a culpability finding. (State Bar Ct. Rules of Prac., rule 1260 [prior record shall not be introduced for level of discipline purposes until after culpability found].) However, Hewitt failed to object at trial to the questions about his previous discipline or to the introduction of that evidence. "Because respondent did not object to the [prior record of discipline] when it was offered into evidence, it is well settled that any objection on that point has been waived."

(*In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509, 522.) Moreover, he fails to state how he was prejudiced. We find that the hearing judge did not err.

## **II. FINDINGS OF FACT<sup>1</sup> AND CONCLUSIONS OF LAW**

### **A. The Maggis Hire Hewitt to Revise a Trust**

In 2006, James Maggi hired Hewitt to represent him in a divorce. At the time, James<sup>2</sup> lived with his 87-year-old father, Sebastian Maggi, serving as his father's caretaker and managing his finances. The divorce was final in January 2008, but James and Hewitt maintained a personal friendship.

In 2008, James and Sebastian had dinner with Hewitt to discuss possible revisions to Sebastian's trust, which named James and his two half-brothers as beneficiaries. Sebastian wanted to revise the trust so that James would inherit his home and stock investments. Four to six weeks after the meeting, James provided Hewitt with the trust documents. In May and June 2008, he gave Hewitt the names and addresses of his half-brothers because Hewitt said he needed their consent before revising the trust.

From September 2008 through March 2011, James emailed Hewitt at least nine times about the trust revisions. He asked to "get together [sic] finish Dad's trust, and get it over with ASAP . . . . So we can put to rest . . ." James sent documents from Sebastian's tax accountant that had "some relation to the trust," and asked when Hewitt would be "ready to do dinner and make adjustments to the trust." James also explained that he and Sebastian agreed that they needed "to get house and investment with you secured in a will your [sic] working on signed,

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<sup>1</sup> We adopt the hearing judge's findings with a few corrections based on the record, which are not material and do not alter our legal conclusions.

<sup>2</sup> We use first names to avoid confusion, not out of disrespect.

notarized ect. [sic] asap,” and asked if he owed “200 bucks for will draft up?”<sup>3</sup> James began pressing Hewitt to finish the revisions, and told him, “we have to get this done..... please!” Hewitt responded to some of James’s emails, but he discussed matters other than the trust. It was not until March 2011, after James asked if he needed to hire another attorney, that Hewitt finally addressed Sebastian’s trust. He said, “Sorry I been [sic] so busy. Let’s do lunch next week and we’ll sign the will etc.” Hewitt never revised Sebastian’s trust.

In August 2011, James began asking Hewitt for the original trust documents he had given him. Hewitt said he would provide them, but never did. When James did not receive the documents, his nephew, Andrew Schoppe, requested the entire file on James’s behalf. Schoppe is an attorney admitted to practice law in Idaho and California. He made three requests for the documents in January 2012, in addition to another request by James. Hewitt responded by letter in March 2012 — only after James and Sebastian filed a complaint with the State Bar. Hewitt claimed that he never represented James or Sebastian and that James possessed the trust documents. He also said he would review his files to determine if he had a copy of the trust that James asked him to review, but he believed James had already obtained the copy from his office. Hewitt never provided James or Schoppe with the trust documents.

#### **B. Hewitt Enters into a Business Deal with his Clients**

Around the end of 2008, Sebastian had become frustrated with the decline of the stock market and its fluctuations. He wanted investments with a fixed return. James discussed Sebastian’s concerns with Hewitt, who presented James with two “investment opportunities.” These investment opportunities occurred in 2008, before the attorney-client relationship started to deteriorate over the above-discussed trust.

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<sup>3</sup> Although James’s emails referred to a “will” at times, he testified he was referring to Sebastian’s trust.

## **1. James and Sebastian Lend \$19,750 to One of Hewitt's Other Clients**

Pursuant to Hewitt's suggestion, James entered into an "Agency and Loan Agreement" with Capitol Waste and Capitol Disposal (Capitol Waste) in October 2008 to provide a short-term, unsecured loan. Capitol Waste was Hewitt's client. James withdrew \$19,750 from his joint checking account with Sebastian and provided Hewitt with a cashier's check.<sup>4</sup> Pursuant to the undated agreement signed by James and Hewitt, the loan was to be repaid by November 1, 2008.

James understood very little about the "investment." He could not understand the agreement, stating it was "all legal mumbo jumbo," but he believed he would receive "some sort of return" on the loan. Hewitt did not disclose in writing before James signed the agreement that Capitol Waste was his client or that James could seek the advice of an independent attorney. The loan was repaid by Capitol West to Hewitt, but there was no return or interest paid on the loan. And instead of returning the funds to James and Sebastian, Hewitt suggested that he retain the funds for a second investment opportunity.

## **2. James and Sebastian Lend \$153,970 to Hewitt**

The second investment opportunity promised a 10% return. In December 2008, James and Hewitt entered into an agreement memorialized as a Deed of Trust with Assignment of Rents (deed of trust) whereby Sebastian and James loaned Hewitt \$153,970. The loan was comprised of \$134,119.42 from the liquidation of Sebastian's stocks and the \$19,750 Hewitt retained from the Capitol Waste loan. On December 5, 2008, at Hewitt's request, \$134,119.42 was wired directly into his client trust account (CTA).

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<sup>4</sup> The agreement stated that the loan was for \$18,750. Capitol Waste was to repay \$19,250, which would include \$317.50 for loan origination fees and \$182.50 for interest. Despite these provisions of the agreement, James transferred \$19,750 to Hewitt.

On December 17, 2008, Hewitt signed the deed of trust, which was recorded the following day. The loan was secured by property owned by Hewitt, his siblings, and his mother, with Hewitt having a one-fourth interest. Hewitt agreed to repay James and Sebastian in regular periodic payments, with full repayment of the loan by December 3, 2019. If Hewitt defaulted, James and Sebastian could sue to foreclose on Hewitt's one-quarter interest in the secured property or bring an action to assign Hewitt's one-fourth interest in rents owed to Hewitt and apply those funds to the loan. However, Hewitt's mother and sister controlled the rental income generated by the property, and he had not been receiving any of that income. Furthermore, a lis pendens had been filed against the property in 2004 due to a lawsuit among the family members that had been pending for six years. According to Hewitt, pursuant to a settlement, an order existed to sell the property. But as of 2013, the family still disputed the property's worth, so it had not been sold. Additionally, a problem existed over potential contamination on the property and at least one encumbrance remained. James was not aware of any of these issues regarding the property when he loaned Hewitt the money.

In fact, none of the loan terms was explained to James in a manner he could understand.<sup>5</sup> He believed that he and Sebastian received a "30-year note" by providing Hewitt with \$153,970. He thought they would receive \$1,351.20 per month for 30 years, totaling over \$450,000 during the life of the loan. He also thought that the property was being rented to the tenants who paid Hewitt, and then Hewitt would pay James and Sebastian from the rent proceeds. James was unaware that Hewitt intended to repay the loan with earnings from his law practice. Hewitt never informed James in writing that they could seek the advice of an independent attorney.

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<sup>5</sup> James's confusion is more than understandable given the language of the six-page, single-spaced deed of trust that, among other things, defines the borrower as "42006785 RE TRUST."

Hewitt testified that he used the \$153,970 loan for “day-to-day things over a long period of time” related to his law practice. He made monthly payments of \$1,351.20 to James and Sebastian from January 2009 through November 2011. Hewitt missed one payment, which James told him to apply toward the cost of revising the trust. Hewitt made 33 payments totaling \$44,589.60, but has made no payments since November 2011.

**Count One: Failure to Perform with Competence (Rules Prof. Conduct,<sup>6</sup>  
Rule 3-110(A))**

The Office of the Chief Trial Counsel of the State Bar (OCTC) charged Hewitt in count one with violating rule 3-110(A), which provides that an attorney “shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.” The hearing judge determined that Hewitt violated the rule by failing to respond to James’s requests or otherwise complete the revisions to the trust. We agree.

Hewitt argues that he is not culpable because no attorney-client relationship existed. He asserts that he never agreed to draft the trust revisions, and that he explained to James that the trust could not be revised without his other family members’ consent. Hewitt said he believed James had improper motives for changing the trust and told him he would not revise it. However, based on other more credible evidence, the hearing judge found that Hewitt’s testimony was not credible and that he was hired to revise the trust. We agree and find that an attorney-client relationship with James and Sebastian existed from 2008 to at least March 2011.

Hewitt also claims that no attorney-client relationship existed because the trust could not be revised without the consent of the siblings, and therefore, when an “impossibility of performance exists at the time the agreement is made, the promisee has no duty to perform and no binding contract is created.” We reject Hewitt’s argument. James testified that Hewitt advised him that his half-brothers had to consent to the trust revisions. Pursuant to this advice,

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<sup>6</sup> All further references to rules are to this source, unless otherwise noted.

James sent Hewitt emails in 2008 that contained his half-brothers' names, addresses, and phone numbers. Although Hewitt failed to take any action to obtain the siblings' consent, the clear understanding was that he would pursue it. Thus, it was a failure to perform, not an impossibility of performance. Moreover, the seeking and giving of legal advice is itself enough to create a "prima facie" attorney-client relationship. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 811-812 ["When a party seeking legal advice consults an attorney at law and secures that advice, the relation of attorney and client is established *prima facie* [internal quotes omitted]"].) James and Sebastian sought Hewitt's legal advice, and he clearly consulted with them regarding revision of the trust.

Hewitt violated rule 3-110(A) by failing to revise Sebastian's trust or make any effort to do so. He failed to contact James's family members to discuss any trust revisions, but led James to believe that the revisions were complete. After almost three years, Hewitt's failure to revise Sebastian's trust constitutes a reckless failure to perform with competence. (See *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979-980 [attorney failed to perform competently by taking no action toward purpose client retained him to accomplish].)

#### **Count Two: Failure to Return Client File (Rule 3-700(D)(1))**

In count two, Hewitt was charged with violating rule 3-700(D)(1), which requires an attorney to release, upon termination of employment, all client papers and property at the client's request. Hewitt does not challenge the hearing judge's culpability finding, and we adopt it; the evidence establishes that Hewitt failed to return the client file and the documents related to the trust as requested.

#### **Count Three: Avoiding Interests Adverse to Client (Rule 3-300))**

OCTC charged Hewitt with violating rule 3-300 by entering into agreements adverse to his clients in both the Capitol Waste loan and the loan to himself. This rule requires that before



an attorney enters a business transaction with a client, certain conditions must be satisfied, including: (1) the transaction is fair and reasonable to the client; (2) the terms are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (3) the client is advised that he or she may seek the advice of an independent lawyer and is given a reasonable opportunity to obtain that advice; and (4) the client consents in writing to the terms of the transaction. While we do not find that Hewitt violated this rule by serving as an agent for the Capitol Waste loan, we find he clearly violated it when he borrowed over \$153,000 from James and Sebastian.<sup>7</sup>

As for the Capitol Waste loan, the agreement indicates that Capitol Waste was the borrower, James was the lender, and Hewitt was James's agent. Although Capitol Waste was Hewitt's client, Hewitt was not a party to and did not financially gain from the transaction. His role as James's agent did not make him a party to the loan, nor did his retention of the principal amount once it was repaid make him a third party beneficiary to the transaction. (See *Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct.Rptr. 767, 776-777 [no rule 3-300 violation where attorney was neither party to, nor financially gained from, transaction at issue].) Accordingly, we do not find clear and convincing evidence of a violation of rule 3-300.<sup>8</sup>

On the other hand, Hewitt committed serious ethical misconduct when he entered into the \$153,970 loan agreement with Sebastian and James. It is clear from James's testimony that he did not understand the transaction. He did not even realize that he and Sebastian were loaning the money to Hewitt for his own use. More importantly, as discussed under count five, the loan was neither fair nor reasonable based on the multiple problems with the property that secured it

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<sup>7</sup> As set forth above, we reject Hewitt's argument that he is not culpable because James and Sebastian were not his clients at the time he entered into the loan agreement.

<sup>8</sup> Based on the evidence admitted without objection, including Hewitt's own testimony, we find that he violated rule 3-310, which requires an attorney to avoid the representation of adverse interests. We consider this additional violation in aggravation.

— none of which was disclosed. Hewitt violated rule 3-300 by failing to provide the necessary protective disclosures set out in the rule. (See *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 99 [attorney culpable of violating rule 3-300 for failing to comply with prophylactic requirements of rule].)

**Count Four: Commingling (Rule 4-100(A))**

In count four, Hewitt was charged with violating rule 4-100(A), which prohibits attorneys from depositing personal funds into CTAs: “No funds belonging to the member or the law firm shall be deposited therein or otherwise commingled.” Hewitt does not challenge the hearing judge’s culpability finding as to count four, and we adopt it since the evidence establishes that Sebastian wired \$134,119.52 into Hewitt’s CTA pursuant to the \$153,970 personal loan, and Hewitt withdrew the funds for personal expenses.

**Count Five: Moral Turpitude (Bus. & Prof. Code, § 6106<sup>9</sup>)**

OCTC charged Hewitt with violating section 6106 by committing acts involving moral turpitude, dishonesty, or corruption because he failed to disclose material facts to James and Sebastian about the property used as security for the \$153,970 loan. The hearing judge found Hewitt culpable of this charge, and we agree.

Hewitt concealed material facts about the property from James and Sebastian. James was an unsophisticated investor, and Sebastian was an 87-year-old man whose wife took care of his finances until she died. After Sebastian’s stocks took a hit in 2008, he agreed to liquidate everything he had left for Hewitt *to invest* the money. However, Hewitt took the money as a loan for his personal use, and failed to disclose that: (1) he only held a one-fourth interest in the property; (2) his mother and sister controlled the rents received on the property and he had not enforced his right to collect his one-fourth share; (3) James and Sebastian would have to sue

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<sup>9</sup> All further references to sections are to this source.

Hewitt's family if Hewitt defaulted on the loan; and (4) the loan repayments were coming from Hewitt personally.

For purposes of moral turpitude, “[n]o distinction can . . . be drawn among concealment, half-truth, and false statement of fact. [Citation.]” (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315.) Hewitt's failure to disclose material facts to James and Sebastian was dishonest and in bad faith, constituting moral turpitude. (*In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615 [§ 6106 violated where attorney entered transaction with unsophisticated client, concealed material facts and known risks, and client lost life savings earmarked to purchase home]; see *In the Matter of Johnson, supra*, 3 Cal. State Bar Ct. Rptr. at p. 244 [“As an attorney and a [close family member], respondent exploited [her] superior knowledge and position of trust to the detriment of [her] vulnerable client” constituting overreaching].)<sup>10</sup>

### **III. SIGNIFICANT AGGRAVATION AND NO MITIGATION**

The offering party bears the burden of proof for aggravating and mitigating circumstances. OCTC must establish aggravating circumstances by clear and convincing evidence (Rules Proc. of State Bar, tit. IV, Standards for Attorney Sanctions for Prof. Misconduct, std. 1.5),<sup>11</sup> while Hewitt has the same burden to prove mitigating circumstances (std. 1.6).

The hearing judge found no factors in mitigation and six factors in aggravation: prior discipline; multiple acts of misconduct; bad faith, dishonesty, concealment and overreaching; client harm; indifference toward rectification; and lack of candor. Although we do not consider

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<sup>10</sup> In count six, Hewitt was charged with violating section 6068, subdivision (i), based on his failure to cooperate with the State Bar. On review, OCTC asks us to dismiss this charge based on additional conflicting evidence it subsequently discovered. Finding good cause, we dismiss count six with prejudice.

<sup>11</sup> All further references to standards are to this source, and reflect the modifications to the standards effective January 1, 2014.

Hewitt's bad faith and dishonesty in aggravation since those facts are incorporated in count five (moral turpitude), we do find additional uncharged misconduct, as discussed below. Overall, the serious aggravating factors clearly demonstrate that a severe sanction is needed to adequately protect the public, courts and legal profession. (See std. 1.1.)

**A. Prior Record of Discipline (Std. 1.5(a))**

Hewitt has one prior record of discipline. In 2005, he was publicly reprovved for two ethical violations in a single client matter. From May 1999 through March 2003, he deposited his personal funds into his CTA and used the account for "personal purposes." He also had numerous insufficient funds transactions, but no client funds were involved. When OCTC inquired about the 2002 and 2003 insufficient funds transactions, Hewitt failed to respond to ten investigative letters. He stipulated to depositing personal funds into his CTA and failing to cooperate, in violation of rule 4-100(A) and section 6068, subdivision (i). His misconduct was aggravated by multiple acts of wrongdoing, but tempered by his lack of a prior discipline record and lack of harm. Hewitt's prior disciplinary record demonstrates his failure to properly utilize his CTA and failure to cooperate with the State Bar. These same problems persist in the present case. Thus, we give significant weight to the prior record of discipline.

**B. Multiple Acts of Wrongdoing (Std. 1.5(b))**

Hewitt committed five ethical violations in one client matter over a four-year period. These multiple acts of wrongdoing over an extended period significantly aggravate this case.

**C. Other Violation of Rules of Professional Conduct (Std. 1.5(d))**

Standard 1.5(d) provides that misconduct surrounded by other violations of the Rules of Professional Conduct may be considered in aggravation. We find that Hewitt willfully violated rule 3-310 when acting as an agent for James in the Capitol West loan.

Rule 3-310 precludes an attorney from, among other things, accepting representation of a client without providing written disclosure to the client that the attorney has a legal relationship with a party to the matter. In the Capitol West transaction, Hewitt advised James on the terms of the loan and agreed to act as James's "attorney in fact" to carry out the terms of the agreement. But Capitol West also was Hewitt's client; a fact he never disclosed to James in writing or otherwise. We may properly consider this uncharged rule violation as an aggravating factor because the evidence was elicited for a relevant purpose and was confirmed by Hewitt's own testimony. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.)

**D. Harm to Client (Std. 1.5(f))**

Hewitt's misconduct significantly harmed James and Sebastian. They lost a considerable portion of Sebastian's retirement funds. They intended to use the monthly payment from Hewitt "as income to feed [their] needs," and they "would use [it] to supplement" James's reduced income since he was experiencing difficulty in finding work. Additionally, they had saved the money to pay for Sebastian's health care needs in his later years; he was 87 years old at the time of the loan. Since Hewitt has defaulted on the \$153,970 loan, he has deprived James and Sebastian of funds necessary for Sebastian's care and retirement. This is a significant aggravating factor.

**E. Indifference toward Rectification/Atonement (Std. 1.5(g))**

The hearing judge found that Hewitt demonstrated indifference and has not atoned for his wrongdoing because he has not shown any remorse or taken any remedial action on behalf of his clients. We agree. Hewitt owes James and Sebastian over \$109,000. He claims that he can repay the loan as soon as the property used to secure the loan is sold. However, Hewitt and his family have not listed the property, and they continue to dispute its value. Hewitt has made no attempt to resolve the issue or to take steps to force the sale of the property to repay the loan, as

he suggested. Furthermore, he has failed to show that he is unable to repay the loan from any other source, including employment. (*In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 427 [failure to repay loan showed indifference toward rectification and atonement for misconduct].)

**F. Lack of Candor (Std. 1.5(h))**

The hearing judge found that Hewitt lacked candor when he testified that he had no attorney-client relationship with James and Sebastian, and that James wanted the trust revised so that he could disinherit his brothers. We give great deference to the hearing judge's candor determination, which is fully supported by the record. (*Dixon v. State Bar* (1985) 39 Cal.3d 335, 344, fn. 9 [Supreme Court defers to review and hearing department's candor determinations].) We find Hewitt's lack of candor in these proceedings is a considerable aggravating factor.

**IV. PUBLIC PROTECTION CALLS FOR DISBARMENT**

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession, to preserve public confidence in the profession, and to maintain high professional standards for attorneys. (Std. 1.1.) Ultimately, we balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266; see *Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

We begin our analysis with the standards, which the Supreme Court instructs us to follow "whenever possible." (*In re Young, supra*, 49 Cal.3d at p. 267, fn. 11.) We give them great weight to " " "promote the consistent and uniform application of disciplinary measures." ' ' ' (*In re Silvertown* (2005) 36 Cal.4th 81, 91.) The standards call for discipline ranging from reproof to disbarment.

Standard 2.7 is the most relevant.<sup>12</sup> It provides that culpability for an act of moral turpitude must result in actual suspension or disbarment depending on the degree of harm to the victim, the magnitude of the misconduct, and the extent to which it relates to the member's practice of law. Hewitt obtained a loan from James and Sebastian by concealment and deception. He falsely led James to believe they were investing in a property where they would receive over \$1,351 per month for 30 years, totaling over \$450,000 during the life of the loan. He also knew that James was not a sophisticated investor. Hewitt failed to disclose to James that it was a personal loan, which he intended to repay with funds from his law practice. This was serious misconduct that significantly harmed James and Sebastian.

The hearing judge concluded that there was little difference between Hewitt's misconduct and an attorney who misappropriates funds. We agree. Based on Hewitt's misconduct, his failure to pay full restitution, and the serious aggravating factors, we recommend his disbarment. (See *Grim v. State Bar* (1991) 53 Cal.3d 21 [attorney with prior discipline for mismanagement of trust funds disbarred for misappropriating \$5,546 from client, despite good character, candor and cooperation]; *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495 [attorney disbarred for misappropriating \$9,000, practicing law while suspended, mishandling trust funds, and entering into improper business transaction with client; aggravating circumstances, including prior record, greatly outweighed mitigation credit].)

## **V. RECOMMENDATION**

We recommend that Robbin Van Herr Waarden Hewitt be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

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<sup>12</sup> Applicable standards include: 1.7(a) (where multiple sanctions apply, most severe shall be imposed); 1.8(a) (progressively more severe discipline when attorney has one prior discipline record); 2.2 (rule 4-100 violation shall result in reproof or suspension); 2.5(c) (reproof for failing to perform in single matter); 2.14 and 2.15 (reproof or suspension imposed for other rule and statute violations not otherwise specified); 2.4 (suspension for rule 3-300 violation).

We further recommend that Hewitt must make restitution to James and Sebastian Maggi, in the amount of \$109,380 plus 10% interest per year from December 5, 2008 (or to the Client Security Fund to the extent of any payment from the fund, plus interest and costs, in accordance with section 6140.5). We further recommend that Hewitt be ordered to comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter. Finally, we recommend that costs be awarded to the State Bar in accordance with section 6086.10, and that such costs be enforceable both as provided in section 6140.7 and as a money judgment.

## **VI. ORDER**

The order that Hewitt be enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), effective April 20, 2013, will continue pending the consideration and decision of the Supreme Court on this recommendation.

REMKE, P. J.

WE CONCUR:

EPSTEIN, J.

PURCELL, J.