FILED JULY 17, 2014

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **ROBERT L. ANDERSON,** **Member No. 40025,** A Member of the State Bar.	)	Case Nos.: **12-O-15072; 12-O-15676 (Cons.)** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

Introduction[1]

In this disciplinary proceeding, respondent Robert L. Anderson is charged with five counts of acts of misconduct in two client matters. The charged misconduct includes: (1) failing to maintain client funds in a trust account; (2) committing acts of moral turpitude by misappropriation (two counts); (3) failing to pay client funds promptly; and (4) failing to deposit client funds in a client trust account.

This court finds, by clear and convincing evidence, that respondent is culpable on four of the five charged counts of the misconduct. Based on the nature and extent of culpability, as well as the applicable aggravating and mitigating circumstances, in conjunction with meeting the goals of attorney discipline, the court recommends, among other things, that respondent be disbarred.

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[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

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Significant Procedural History

The Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on December 3, 2013. A second NDC was filed on December 4, 2013.[2] Respondent filed his response to the NDCs on January 13, 2014. On that same date, the matters were consolidated for trial at a status conference.

A two-day trial was held on April 1 and 2, 2014. The State Bar was represented by Senior Trial Counsel Erica L. M. Dennings. Respondent represented himself. On April 28, 2014, after the parties had submitted their closing briefs, the court took this matter under submission for decision.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on January 26, 1967, and has been a member of the State Bar of California at all times since that date.

Facts

Background Facts

The law firm of Lanahan and Reilley (the firm) was formed in or about 1995. In 2002, respondent became a partner in the firm. In or about 2010, the firm changed names from Lanahan & Reilley to Lanahan Steever & Anderson. Respondent was a named partner of the firm, as was Scott Steever (Steever). Steever was the managing partner; but, both Steever and respondent had full authority over the firm's bank accounts.

As early as 2009, and continuing until the present, the firm experienced major cash flow problems. Steever experienced health problems; and, in or about March 2012, he asked

[2] In addition to naming Robert Anderson as a respondent, each of the NDCs filed on December 3 and December 4, 2013, also named respondent's law partner, Scott L. Steever (Steever) as a respondent. Steever, however, did not appear at the January 13, 2014 status conference. Thereafter, at a status conference held on February 10, 2014, the *Steever* matter was severed from the *Anderson* matter.

respondent to take over as managing partner, while he was out for the next several weeks recovering from surgery.

Case No. 12-O-15676 – The Ramirez Matter

Facts

On October 26, 2011, Joanna Ramirez (Ramirez) and her husband hired the firm to represent them in debt resolution matters due, in part, to money that they owed to Parkway Properties in addition to other debts. Ramirez sent a check in the amount of $55,500 to the firm for the purpose of paying the debt and for legal fees. Pursuant to the fee agreement, Ramirez and her husband were to pay the firm $5,500 as a flat fee for legal services and costs.

On or about October 28, 2011, the check was deposited into an operating, non-client trust account at West America bank. (Exh. 3.) From those funds, a cashier's check in the amount of $44,000 was purchased. On November 7, 2011, respondent deposited $42,000 of the $44,000 into his own client trust account (CTA) at Bank of America. Respondent was the sole signatory on the Bank of America CTA. Respondent then wrote checks and otherwise disbursed monies from the Bank of America CTA for partner draws and firm expenses. By December 31, 2011, the balance in the Bank of America CTA was $53. No money had been paid out on Ramirez's behalf by this point.

Ramirez asked respondent about the status of her case and her funds. Although he knew that the firm had already used her funds for its own purposes and that the firm had "cash flow problems," at no time did he provide Ramirez with that information. Respondent testified that he knew that the funds that Ramirez had provided to the firm for the purpose of paying her creditors were "gone" shortly after they were deposited. Yet, he did not inform her that her creditors were not being paid when Ramirez asked him about the status of her funds. When Ramirez went to

the firm in 2012, and asked for a status update, respondent told her that Steever would talk to her, despite respondent knowing full well that her funds were "gone."

Respondent testified that he believed Steever when Steever had told him on several occasions that Ramirez had agreed to give the firm unrestricted access to her funds to use at the firm's sole discretion, which would include using her funds for the firm's operations (the agreement). The purported agreement was dated December 19, 2011. (Exh. 8.) When asked at trial if he had attempted to verify what Steever had told him, respondent testified that he had not.[3]

On January 20, 2012 and on April 6, 2012, the firm made two payments, each payment in the amount of $5,000 on Ramirez's behalf. Thus, the firm paid a total of $10,000 on behalf of Ramirez.

Respondent testified that in March 2012, he did not notify Ramirez that the firm did not have her funds.

After March 2012, Ramirez asked respondent about the status of her case and her funds. At no time did respondent tell Ramirez that the firm no longer had any of her funds.

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[3] The court finds respondent's testimony lacks credibility. Respondent testified that Steever told him about the agreement when the funds were first deposited. Respondent admitted in his testimony that the Ramirez funds had been withdrawn and used very shortly after being deposited. However, the purported agreement, which was in fact a fabricated document, was dated December 19, 2011, well after almost all of the Ramirez funds had already been disbursed. That respondent relied on a purported agreement, which he made no attempt to verify, would at minimum provide evidence of gross negligence. That respondent, being a practicing lawyer for more than 40 years at the time of the misconduct and a partner at the firm for nine years, would believe in good faith that such an "agreement," would allow the firm or any partner thereof to use the client's money for their own purposes without violating the Rules of Professional Conduct defies credulity.

Conclusions

Count One - (Rule 4-100(A) [Failure to Deposit 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 in the December 3, 2013 NDC, that on October 26, 2011, respondent and Steever received a check from Ramirez to be held in trust to pay debts owed by Ramirez. It was further alleged that respondent and Steever failed to deposit the funds received for the benefit of Ramirez into a client trust account.

However, the evidence introduced at trial merely proved that on or around October 28, 2011, the check from Ramirez was received by Lanahan and Reilley and deposited into a Lanahan and Reilley non-client trust-account. No clear and convincing evidence was introduced, which showed who had received Ramirez's check or funds in October, or who deposited the funds into the firm's non-client account at that time. As a result, Count One is dismissed with prejudice.

Count Two - (§ 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. 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.)

"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.)

On November 7, 2011, respondent, acting in his capacity as a partner of the firm, deposited $42,000 of the $44,000, which was to be held in trust for Ramirez, into his CTA at Bank of America. Respondent was the sole signatory on the Bank of America CTA. Respondent then wrote checks and otherwise disbursed monies from the Bank of America CTA for partner draws and firm expenses. By December 31, 2011, the balance in the Bank of America CTA was $53. No money had been paid out on Ramirez's behalf by this point.

As addressed above, the court does not find credible respondent's testimony that he believed Steever, who allegedly had told respondent that Ramirez had given the firm unrestricted access to use Ramirez's funds at the firm's discretion. The record is devoid of any credible evidence as to why respondent would do nothing to verify what Steever had told him. Respondent provided no reasonable explanation as to why he failed to contact Ramirez or why he, an attorney with more than 40 years of experience, ignored the obvious lack of fairness to the client, which was inherent in the agreement purportedly described by Steever. (See Rule 3-300 of the Rules of Professional Conduct.) Respondent's excuse that he was complying with Steever's directives, even if such excuse were credible, provides no justification for respondent's violating the Rules of Professional Conduct.

The evidence is clear and convincing that once respondent, who was the sole signatory on his Bank of America CTA, deposited $42,000 of Ramirez's funds into that client trust account, he began misappropriating her funds. Respondent wrote checks and disbursed monies from his CTA for partner draws and firm expenses. By December 31, 2011, the balance in the CTA had dipped to $53. No money had been paid out on Ramirez's behalf by that time.

Once respondent deposited the $42,000 in his CTA, he was required to maintain the entirety of the balance in his CTA, as no work had been done on Ramirez's behalf and no funds had been disbursed on her behalf as of December 31, 2011.

The mere fact that the balance in respondent's CTA had fallen below the total of amounts deposited supports a conclusion of misappropriation. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474-475.) The rule regarding safekeeping of entrusted funds leaves no room for inquiry into respondent's intent. (See *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.)

"[O]nce the trust account balance is shown to have dipped below the appropriate amount, an inference of misappropriation may be drawn." (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618.) When the balance in the CTA fell below $42,000 by December 31, 2011, to a balance of $53, respondent had misappropriated $41,947 ($42,000 - $53) of Ramirez's client funds.

"There is no doubt that the wilful misappropriation of a client's funds involves moral turpitude." (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034.) Therefore, respondent committed an act of moral turpitude on December 31, 2011, in willful violation of section 6106 by misappropriating funds that should have been used for Ramirez's benefit and on her behalf.

Case No. 12-O-15072 – The Margolin Matter

Facts

Ed and Bonnie Margolin had been clients of the firm since at least 2004. Ed Margolin died in 2009. In 2009, Bonnie Margolin (Margolin) hired the firm to represent her in matters concerning claims arising from her deceased husband's business ventures, as well as to advise her on how to manage and invest the proceeds from his $500,000 life insurance policy. Margolin, who had been a preschool teacher, left the handling of the couple's finances to her

husband while he was alive. She was not very knowledgeable regarding her husband's business ventures. Margolin purchased an annuity with $200,000 of the proceeds from her husband's life insurance policy. The remaining $300,000 was to be used to pay debts and expenses related to her husband's business ventures. Margolin anticipated that after the debts were paid, the remainder would be used for her living expenses.

On November 13, 2009, a check dated August 18, 2009, for $318,903.94 from Protective Life Insurance Company, made payable to Bonnie Margolin, was deposited into the firm's American River Bank CTA. Respondent was a signatory on the CTA.

On November 30, 2009, the balance on the American River Bank CTA was $272,777.57. No funds had been disbursed on behalf of Margolin as of November 30, 2009. On December 31, 2009, the balance on the American River Bank CTA was $132,018.37. No funds had been disbursed by the firm on Margolin's behalf as of December 31, 2009. By April 30, 2010, the American River Bank CTA was closed and the balance was zero.

Between November 13, 2009 and April 30, 2010, respondent wrote at least eight checks from the American River Bank CTA, which totaled more than $175,692; he also authorized at least one wire transfer for $7,200 from the American River Bank CTA. (Exh. 13, pp. 24-28, 60.) Thus, respondent personally withdrew more than $182,892 of Margolin's funds from his client trust account for his own or his firm's purposes. None of the funds withdrawn by respondent were withdrawn for Margolin or her benefit.

None of these funds withdrawn between November 13, 2009 and April 30, 2010 were disbursed to Margolin or on her behalf. On April 30, 2010, respondent knew that all of Margolin's funds had been expended and not for her benefit or on her behalf.

Michael Shiffman (Shiffman) is an attorney, who had represented Ed Margolin from 1990 to the time of his death. After Ed Margolin's death, Shiffman, acted as a family lawyer for

Margolin and as her "general counsel." Shiffman, who had been a partner at the firm in 1995, and later went into private practice, represented Margolin, after her husband's death, in dealing with the firm.

Respondent knew that he and Steever were misappropriating funds belonging to Margolin. He intentionally used funds received in trust for Margolin for purposes that were not intended for her benefit. Respondent testified that he knew that Margolin's funds had been used and expended for purposes other than for her benefit as early as 2010. Yet, respondent repeatedly deceived Shiffman regarding the Margolin's funds and his misconduct in relation to those funds. He provided Shiffman with fabricated information, indicating that the entrusted funds were being maintained for Margolin, while knowing that the funds had already been expended. When in 2012, Shiffman asked respondent for specific billing information in order to determine the amount of the funds that should be returned to Margolin, respondent misled Shiffman for months, offering fabricated excuses as to why he was too busy to provide the information. (Exh. 14.)

In March 2012, Shiffman believed that the claims against Ed Margolin and his estate were mostly concluded and that the remaining funds should be distributed to Margolin. Shiffman starting seeking the money that he was misled into believing was being held in trust on Margolin's behalf and for her benefit. He requested billing statements from respondent to determine how much of the $318,903.94 remained for disbursement to Margolin.

Even though respondent knew that all of Margolin's funds had been withdrawn from the CTA and spent by the firm for purposes unrelated to Margolin, he did not so inform Shiffman. Nor did respondent provide any appropriate billing statements to Shiffman. As respondent has acknowledged, the trust account balance given to Shiffman in 2012, only represented the amount owed to Margolin and was not an amount being held in trust, as Shiffman had been led to

believe. As noted by Shiffman in his June 27, 2012 letter to respondent, respondent had verified to him that the amount being held in trust by the firm for Margolin was $252,511.55. (Exh. 14, p. 31.) Respondent, in fact, eventually admitted that the $252,511.55, which he falsely had represented as being held in trust, was actually the amount owed to Margolin, which he and the firm had failed to maintain for her. (Closing Trial Brief of Robert L. Anderson, filed April 22, 2014, page 3.)

From March 2012 to June 2012, Shiffman, who had been misled into believing that Margolin's funds were being held in trust, contacted respondent and tried to get the firm to disburse Margolin's funds to her. Despite Shiffman's many inquiries regarding Margolin's funds, and his attempts to obtain information regarding the funds from respondent, respondent concealed from Shiffman the fact that Margolin's funds had not been maintained in the CTA and that they had been used for purposes unrelated to Margolin.

On June 25, 2012, respondent informed Shiffman that the firm had been evicted from the offices and needed time to work things out with the landlord before Shiffman could pick up the check for Margolin. Thus, respondent continued to conceal from Shiffman that Margolin's funds had not been maintained in the firm's CTA, but, had been expended – not for Margolin and not on her behalf or for her benefit.

On June 27, 2012, Shiffman, sent a letter to respondent and Steever, demanding that they immediately send Margolin's funds by check, made payable to Margolin, to Shiffman's office in the amount of $209,483.07 or, alternatively, have the funds wired to Shiffman's client trust account. (Exh. 14, p. 31.) Shiffman noted in his demand letter that he had been asking for payment on behalf of Margolin to no avail and that she could wait no longer.

Shiffman then contacted Daniel Lanahan (Lanahan), a retired partner of the firm, informing Lanahan of his concerns regarding the firm's conduct regarding his attempts to get

information about Margolin's funds. Lanahan emailed Shiffman, informing him of "the firm's inability to produce the money." It was at that point that Shiffman understood that "[t]hey [i.e., respondent and Steever] took the money." (Exh. 20.) Shiffman then filed a complaint with the State Bar on behalf of Margolin.

Shiffman attempted to negotiate with respondent and Steever in an attempt to obtain repayment of Margolin's funds. It was not until late 2012, however, that respondent sent a check for $6,500. In December 2013, respondent made a second payment to Margolin in the form of a cashier's check in the amount of $70,000. The payors on the cashier's check were the firm, i.e., Lanahan, Steever & Anderson. Finally, respondent entered a stipulation with Margolin, wherein he agreed to pay $252,511.53 plus 6% interest per annum. The Stipulation for Entry of Judgment and Order Thereon, in case No. SCV253, was filed in the Superior Court of California, County of Sonoma on February 24, 2014. Of the $252,511.53, to date Margolin has only received the $76,500.

Conclusions

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

In November 13, 2009, a check dated August 18, 2009, for $318,903.94 from Protective Life Insurance Company, payable to Bonnie Margolin, was deposited into the firm's American River Bank CTA. Respondent was a signatory on the CTA.

On November 30, 2009, the balance on the American River Bank CTA was $272,777.57. No funds had been disbursed on behalf of Margolin as of November 30, 2009. On December 31, 2009, the balance on the American River Bank CTA was $132,018.37. No funds had been disbursed by the firm on Margolin's behalf as of December 31, 2009. By April 30, 2010, the American River Bank CTA was closed and the balance was zero.

Between November 13, 2009 and April 30, 2010, respondent wrote at least eight checks from the firm's American River Bank CTA, which totaled more than $175,692; he also authorized one wire transfer for $7,200. Thus, respondent personally withdrew more than $182,892 of Margolin's funds for his own or his firm's purposes. None of the funds withdrawn by respondent were withdrawn for Margolin or her benefit.

None of these funds withdrawn between November 13, 2009 and April 30, 2010, were disbursed to Margolin or on her behalf. On April 30, 2010, respondent knew that all of Margolin's funds had been expended for purposes unrelated to Margolin.

By withdrawing Margolin's funds from the firm's CTA and failing to disburse them to Margolin or on her behalf, respondent failed to maintain the funds received for the benefit of a client in a client trust account in willful violation of rule 4-100(A).

Count Two - (§ 6106 [Moral Turpitude])

"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, supra,* 52 Cal.3d 294, 304.) And, "'[t]here 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.)

Moreover, the fact that the balance in a CTA had fallen below the total of amounts deposited therein and purportedly held in trust supports a conclusion of misappropriation. (*Giovanazzi v. State Bar, supra,* 28 Cal.3d 465, 474-475.) Here, the balance in the firm's CTA fell below the amounts deposited therein and purportedly held in trust for Margolin.

Based on respondent's own admission, at least $252,511.55[4] of the $318,903.94 insurance funds deposited into the CTA to be used for Margolin, were not maintained in that CTA. The evidence is clear and convincing that funds were withdrawn from the CTA by respondent for his own use or benefit and/or for the use and benefit of his firm – but, not for Margolin. (Exh. 14, p. 31; Exh. 29, and Closing Trial Brief of Robert L. Anderson, filed April 22, 2014, p. 3.)

By misappropriating at least $252,511.55, of funds that Margolin was entitled to receive, respondent willfully committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

Count Three - (Rule 4-100(B)(4) [Promptly Pay/Deliver Client Funds])

Rule 4-100(B)(4) requires an attorney to promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the attorney's possession which the client is entitled to receive.

It was not until late 2012, that respondent paid Margolin $6,500, a portion of the $252,511.53 owed to her. Thereafter, in December 2013, respondent provided Margolin with a check in the amount of $70,000. Respondent, thus, still owes Margolin at least $176,011.53 ($252,511.53 - $76,500). Respondent willfully violated rule 4-100(B)(4), by failing to promptly pay or deliver, as requested by the client, the balance of the funds (i.e., $176,011.53), which she is entitled to receive.

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[4] The stipulated judgment entered into by respondent and Margolin states that the amount due and owing to Margolin is $252,511,53. The two cent difference between the amount agreed upon as due and owing to Margolin in the stipulated judgment and the amount previously represented by respondent as owing to respondent is clearly de minimis.

Aggravation[5]

Multiple Acts (Std. 1.5(b).)

Respondent's multiple acts of misconduct are an aggravating factor. He committed acts of moral turpitude by misappropriating client funds, failing to maintain client funds in a client trust account, and failing to pay client funds promptly.

Bad Faith, Concealment, and Dishonesty (Std. 1.5(d).)

Respondent's misconduct was intentional. He knew that he was misappropriating funds belonging to Ramirez and Margolin. He intentionally used funds received in trust for those clients for purposes that he knew were not for their benefit; and, he concealed that fact from them.

As early as 2010, respondent knew that Margolin's funds had been used and expended for purposes other than for her benefit. Respondent knew that he, himself, had withdrawn Margolin's funds from the American River Bank CTA. Yet, he did not reveal that fact to Margolin or her attorney, Shiffman. He provided Shiffman with fabricated information, indicating that Margolin's funds were being maintained in trust for her, while knowing that the funds had already been expended. When in 2012, Shiffman demanded detailed billing information in order to determine the amount of the funds that should be returned to Margolin, respondent, for months, concealed from Shiffman the fact that the client funds had been used for purposes unrelated to the client.

When in March 2012, Ramirez asked respondent about the status of her case and her funds, he was not candid. He knew that he had already used her funds for his or the firm's purposes and that the firm had "cash flow problems." Respondent testified that he knew that the

[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.

funds that Ramirez had provided to the firm for the purpose of paying her creditors were "gone" shortly after they were deposited. Yet, he concealed that information from the client.

When Ramirez went to the firm in 2012, and asked for a status update, respondent told her that Steever would talk to her, despite knowing full well that her funds were "gone." Despite the fact that Ramirez kept inquiring about her funds, respondent was intentionally dishonest, concealing from her the fact that her funds had been "used" for purposes unrelated to her. Respondent had a choice; and, he chose to conceal that her money was gone and that her creditors were not being paid.

In sum, respondent was dishonest, concealed material facts from clients, and acted in bad faith. His dishonesty and efforts to conceal his misconduct warrant significant consideration in aggravation.

Refusal or Inability to Account for Entrusted Funds or Property (Std. 1.5(e).)

Margolin, through her attorney, Shiffman, and Ramirez demanded accountings from respondent.

Ramirez sent a demand letter to respondent giving him a deadline by which to provide her with "proof" of how her funds had been used. (Exh. 28, p.123) Although respondent knew what happened to her funds, he wrote to her, stating, "[t]hese are not things I am able to address." Similarly, Shiffman made numerous requests asking for details regarding the funds purportedly held in trust for Margolin. However, despite having requested detailed accountings, Shiffman only received "summary billings" from respondent which were limited to showing balances due. Respondent did not provide appropriate/detailed accountings even upon demand or request.

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

By misappropriating Ramirez's $55,500 and failing to pay her creditors with the money she deposited with the firm for that purpose, respondent caused significant harm to Ramirez. As a result of failing to pay $25,000 to one of Ramirez's creditors, a $260,000 judgment was entered against Ramirez and her husband. Consequently, they lost their house and were forced into filing for bankruptcy. Additionally, the misappropriation of their funds and the consequences thereof took an emotional and physical toll on the Ramirezes, negatively impacting their emotional and physical well-being.

Since 2009, Margolin has been deprived of over $2500,000, which money she was hoping to use to live out the rest of her life, as well as to help support her adult, disabled daughter. Instead, Margolin now lives off the income from an annuity, her social security, and money she earns when she can get employment as a substitute teacher. Margolin testified that she owes money on her rent and two tax bills. She was making ends meet and at times has had $50 left at the end of the month. Her annuity is good for only five more years. Margolin has had to incur further financial harm by seeking to recover some of the misappropriated funds from respondent through litigation. She filed a lawsuit against respondent and Steever in an attempt to obtain a stipulated judgment against them. By so doing, she has incurred attorney fees for representation in that matter. Despite the stipulated judgment obtained against him, respondent has paid only $76,500 of the $252,511.53 owed to Margolin. By misappropriating Margolin's funds, respondent's has caused her significant financial harm.

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

The evidence before the court clearly reveals respondent's indifference toward rectification or atonement for the consequences of his misconduct. Even at trial, respondent refused to accept responsibility for his conduct. Although he personally withdrew funds

belonging to Ramirez from his CTA and Margolin's funds from the firm's CTA, respondent maintains that he is not responsible for the misappropriation of their funds. Respondent contends that he has not misappropriated any funds; he attempts to place all responsibility on Steever, saying that he withdrew money with Steever's authorization and thus Steever bears the responsibility. But, respondent did know that Ramirez's funds and Margolin's funds, which were withdrawn and not kept in trust, were not paid to Margolin and Ramirez and were not used on their behalf. And respondent knew or should have known that he was withdrawing and using funds belonging to clients for improper purposes.

Moreover, although respondent has repaid some of her funds he misappropriated from Margolin, he did so only after she had filed a police report and after the State Bar complaint was filed.

And, while respondent admits that he eventually became aware that Ramirez never entered an agreement allowing the firm to use her funds at the firm's discretion or for any purpose other than to pay her creditors or to use on her behalf, he has made absolutely no effort to contact her or repay any part of those misappropriated funds.

Respondent fails to acknowledge the magnitude of his misconduct or the significant harm he caused to both Ramirez and Margolin.

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

In 2012, after the filing of Margolin's complaint with the State Bar, respondent paid her $76,500 of the $252,511.53 he owes to her. Since that time he has not paid any part of the remaining $176,011.53 he owes her.

Ramirez provided the firm with a check in the amount of $55,500, which was deposited into a non-client trust account. From those funds a cashier's check in the amount of $44,000 was purchased. Respondent deposited $42,000 of the $44,000 into his own CTA. Respondent

disbursed the funds from his CTA. By December 31, 2011, only $53 remained in respondent's CTA. By 2012, all of respondent's funds had been used for purposes unrelated to Ramirez.

Thereafter, in January 2012 and April 2012, two payments, which together totaled $10,000 were paid on Ramirez's behalf. Thus, after the $10,000 was paid on Ramirez's behalf, $45,500 was still owed to her. ($55,500 - $10,000 = $45,500.) The evidence shows that respondent was responsible for misappropriating at least $42,000 of the unpaid $45,500 Thus, the evidence is clear and convincing that respondent owes Ramirez at least $42,000.

Mitigation

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

Respondent has no prior record of discipline for over 40 years of practice prior to the first act of misconduct in this matter. Respondent's lack of a prior record of discipline warrants significant consideration in mitigation; however, this mitigation is somewhat reduced due to the serious nature of the present misconduct. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Good Character (Std. 1. 6(f).)

Respondent presented testimony from one character witness and statements from 10 declarants, including the one witness who testified in-person. One of the declarants is an active member of the State Bar of California; another went to law school with respondent. All of the declarants demonstrated some understanding of the charges against respondent, in that they were generally aware of the charges as explained to them by respondent.

Five of the 10 declarants submitted declarations, which were word-for-word identical. The five declarants, who submitted identical declarations, stated that: (1) they had known respondent for several years; (2) they were "familiar" with the charges; (3) they did not believe the charges to be correct; and (4) they believed that respondent was an honest man whom they

would trust to handle their affairs and their property. (Exhs. 1012, 1013, 1014, 1015, and 1016.) The declarants who submitted exhibits 1012 through 1016 provided no specifics regarding the depth of their familiarity with the charges, why they believed the charges were incorrect, and on what they based their belief that respondent was an "honest man."

The one person who testified in court, Charles W. Dunn (Dunn), has known respondent for almost 40 years. Respondent had done legal work for Dunn, who described himself as a "financial guy." Dunn believes that respondent is an honest person, whom he would trust with his business and personal affairs. Based on what he knew, Dunn testified that he does not believe that the charges against respondent are "correct." He testified that he discussed the charges with respondent, who explained that there were two clients whose funds were "not there," because the managing partner misused the funds. Respondent also informed Dunn that he did not know anything about the missing funds until after the fact.

The other declarants, all agreed that they believed respondent to be honest and a good attorney. Of those declarants, two attested to being familiar with the charges filed against respondent and do not believe those charges to be true or correct. Another declarant, the active member of the California Bar, has referred work to respondent and has never received a complaint about respondent in relation to those referrals. That attorney described respondent as a very good "lawyer with high integrity and professional competence," All of the declarants claimed to be aware of the nature of the charged misconduct and praised respondent's integrity, professionalism, and his competence as an attorney.

Although respondent's good character evidence is supported by a fairly wide range of references, and warrants some consideration in mitigation, the weight given to the declarations and testimony is somewhat diminished by the lack of specificity in the declarations and/or testimony.

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).)

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

In this case, the standards provide a broad range of sanctions ranging from reproval to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.1(a), 2.2(a), 2.2(b), and 2.7 apply in this matter.

Standard 2.1(a) provides that disbarment is appropriate for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case actual suspension of one year is appropriate.

Standard 2.2(a) provides that actual suspension of three months is appropriate for commingling or failure to promptly pay out entrusted funds.

Standard 2.2(b) provides that suspension or reproval is appropriate for other violation of rule 4-100.

Standard 2.7 provides that disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact, depending on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law.

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.) As 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 under standard 2.1(a) and case law. The State Bar cited to *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93. Respondent, on the other hand, argues that he did not engage in acts of moral turpitude and/or misappropriation. He further contends that his only failure was a lack of good judgment by failing to timely report the misuse of Margolin's funds by Steever and that "some sanction" is appropriate for that.

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.)

Moreover, cases involving client deceit, misappropriation, and lack of insight have been known to warrant disbarment. (*Kelly v. State Bar* (1988) 45 Cal.3d 649 [disbarment for $20,000 misappropriation, moral turpitude, dishonesty, and improper communication with adverse party with no prior record in mitigation and no aggravation].

Here, the court finds *In the Matter of Spaith* (1996) 3 Cal. State Bar Ct. Rptr. 511, to be particularly 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. 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 more than $294,000 from Margolin and Ramirez. Despite the large sum of money involved, respondent failed to employ the requisite extraordinary care and fidelity required when dealing with client funds. Respondent has not only failed to account for the missing funds, but has failed to accept any responsibility for his own misconduct and persists in his attempts to shift all responsibility to his business partner, Steever.[6] Moreover, respondent has not taken any steps toward making Ramirez whole and has taken only minimal steps to reimburse Margolin.

The court acknowledges respondent's mitigation, including a very lengthy career with no prior record of discipline and some evidence of good character. While the court gives significant consideration to respondent's mitigation evidence, the magnitude of the present misconduct and the significant harm he caused are particularly troubling. Moreover, respondent's overall mitigation, is not "the most compelling," nor does it "clearly predominate" when considered against his extensive misconduct and the aggravating factors. (Std. 2.1(a).) This is especially true when the court considers that respondent's misappropriation was more than seven times the

[6] Respondent's inability to acknowledge the impropriety of his actions and his persistence in placing responsibility for his own wrongdoing on Steever is troubling to the court, in that it strongly suggests an unwillingness or inability by respondent to recognize his own misconduct and, therefore, causes the court to doubt that respondent will conform his conduct in the future to the professional standards required of attorneys in California.

amount misappropriated in *Spaith*. And unlike the attorney in *Spaith*, respondent has made almost no effort to make his victims whole. Additionally, respondent appears to lack any insight into his own wrongdoing.

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. Additionally, the court finds that the interests of public protection mandate a recommendation of disbarment.

Recommendations

It is recommended that respondent Robert L. Anderson, State Bar Number 40025, 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) Joanna Ramirez in the amount of $42,000, plus 10% interest per annum from December 31, 2011; and

(2) Bonnie Margolin in the amount of $176,011.53, plus 10% interest per annum from April 30, 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: August _____, 2014

LUCY ARMENDARIZ
Judge of the State Bar Court