

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of ) Case No.: **12-O-16760-RAP**  
)  
**LLOYD DOUGLAS BROWN,** ) **DECISION AND ORDER OF INACTIVE**  
) **ENROLLMENT**  
**Member No. 44908,** )  
)  
A Member of the State Bar. )

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**Introduction**<sup>1</sup>

In this contested disciplinary matter, respondent **Lloyd Douglas Brown** is charged with three counts of misconduct in a single client matter, including breaching a fiduciary duty, breaching of common law fiduciary duty, and misappropriation.

Having considered the facts and the law, the court finds respondent culpable on two of the three counts and recommends that he be disbarred from the practice of law.

**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) against respondent on November 6, 2013. Respondent filed a response to the NDC on December 16, 2013.

The parties entered into a partial factual stipulation on February 25, 2014. Trial in this matter was held on March 5 and 6, 2014. The State Bar was represented by Deputy Trial

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<sup>1</sup> 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.

Counsel Agustin Hernandez. Respondent represented himself in this matter. The matter was submitted for decision on March 6, 2014.

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on January 15, 1970, and has been a member of the State Bar of California at all times since that date.

#### **Case No. 12-O-16760 – The Amboseli Energy Partners Matter**

##### **Facts**

In May 2012, Amboseli Energy Partners LLC (Amboseli) entered into a bank instrument lending and borrowing transaction as the borrower.<sup>2</sup> Maximus I Trust (Maximus) was the lender in this transaction. Amboseli agreed to pay Maximus a service fee of \$22,500 as part of the transaction.

Respondent was designated as the escrow agent in the transaction between Amboseli and Maximus. As the escrow agent, respondent was obligated to maintain the service fee in his bank account until receipt of confirmation from Amboseli that its bank had received the bank instrument. After receipt of confirmation from Amboseli, respondent was to release the service fee to Maximus.

In early May 2012, a telephone conference call was held involving respondent and parties from Maximus and Amboseli. The parties were discussing the draft agreement for the bank instrument lending and borrowing transaction. During the telephone conference, respondent's duties as an escrow agent – as described above – were discussed.<sup>3</sup>

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<sup>2</sup> The bank instrument at the center of this transaction was a Standby Letter of Credit, also known as Demand Guarantee. This instrument was to enhance the credit of Amboseli, specifically in regard to its import/export commodities.

<sup>3</sup> Respondent testified that he had no recollection of this conference call.

Respondent owed a fiduciary duty to Amboseli to maintain the escrow funds in his account until such point as the conditions for release of the funds to Maximus were met. In the event the conditions to release the escrow funds to Maximus were not met, respondent owed a fiduciary duty to Amboseli to return the escrow funds.

On May 7, 2012, Amboseli transferred \$10,000 by wire transfer to respondent's corporate account at Bank of America (respondent's account). On May 8, 2012, Maxim Fields (Fields) contacted respondent on behalf of Maximus and directed respondent to meet him at respondent's bank to disburse the \$10,000. Respondent did as requested based on nothing more than Field's assurance that respondent could disburse the \$10,000. Respondent distributed \$3,100 to Fields and kept \$6,900 as partial payment for past legal fees Fields owed respondent.<sup>4</sup>

On or about May 24, 2012, respondent authorized Fields to sign respondent's name to the Bank Instrument Lending and Borrowing Agreement (the Agreement), solidifying respondent's agreement to act as the escrow agent in the transaction between Amboseli and Maximus. Fields simulated respondent's signature to the Agreement by a cut and paste procedure utilizing a document that respondent had previously affixed his signature.<sup>5</sup>

On May 25, 2012, Amboseli emailed a copy of the executed Agreement to respondent. Respondent opened his email on or about May 25, 2012, and responded to email from Chasia.<sup>6</sup>

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<sup>4</sup> Fields owed respondent over \$40,000 in legal fees.

<sup>5</sup> Respondent does not dispute the validity of his signature on the Agreement. According to respondent, during a telephone conversation, Fields briefly summarized the Agreement and respondent authorized Fields to sign respondent's name to the agreement.

<sup>6</sup> At first, respondent testified that he was too ill to open his email for some time and did not see the Agreement until a demand was made for the return of the service fee in early June 2012. This testimony was not credible. Respondent could not provide an answer as to how he could be too ill to answer emails or competently perform his duties as an escrow agent, but was able to fly to the United Kingdom for a business presentation during this same approximate time period. Respondent later changed his testimony and testified that he must have opened the May 25, 2012 email, but does not recall doing so.

In particular, the Agreement clearly provides that respondent could not release the service fee to Maximus (or Fields) until respondent received confirmation from Amboseli. This is the same duty that was discussed in the early May 2012 telephone conference call involving the parties and respondent. Respondent never received confirmation from Amboseli to release the \$22,500 service fee.

On May 25, 2012, Bushfire Capital Management transferred \$12,500 by wire transfer to respondent's account on behalf of Amboseli. Once again, Fields contacted respondent and, without the consent of Amboseli, respondent disbursed \$3,400 to Fields and kept \$9,100 as partial payment for past legal fees Fields owed respondent.<sup>7</sup>

In June 2012, the bank instrument lending and borrowing transaction between Amboseli and Maximus failed to be completed.

On June 1, 2012, Samuel Chasia (Chasia), managing director of Amboseli, sent an email to respondent – on behalf of Amboseli – requesting return of the service fee from respondent. Respondent received the email.

On June 8, 2012, Thomas Abilla (Abilla), a partner in Amboseli, sent another email to respondent – on behalf of Amboseli – requesting a return of the service fee from respondent. Respondent received the email.

On June 9, 2012, respondent sent an email to Abilla. In this email, respondent acknowledged Amboseli's request for a refund of the service fee and informed Abilla that respondent was in the United Kingdom "on business" and would return to Los Angeles in three

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<sup>7</sup> As of June 4, 2012, without making any payments or disbursement to or on behalf of Amboseli, the balance in respondent's account fell to -\$173.40.

or four days.<sup>8</sup> Upon his return, respondent assured Abilla that he would “follow-up on the wire the next day.”

On June 18 and June 19, 2012, Abilla, on behalf of Amboseli, sent emails to respondent inquiring about the status of the refund of the service fee. Respondent received the emails.

On July 17, 2012, respondent sent an email to Abilla stating that within five days he would return the service fee to Amboseli with an additional \$5,000 for interest and time and effort. In his email, respondent stated, “. . . I was instructed by Maxim to wire the funds to a third party.” That statement was not true.<sup>9</sup>

Despite repeated assurances the he would return the funds, respondent has never returned the \$22,500 service fee to Amboseli.<sup>10</sup>

On August 31, 2012, Hugo Gonzalez (Gonzalez), a complaint analyst for the State Bar, sent a letter to respondent concerning the allegations in the Amboseli matter. On September 24, 2012, respondent provided a written response to Gonzalez. In his response, respondent stated,

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<sup>8</sup> The court takes judicial notice of the 2012 calendar.

<sup>9</sup> Respondent testified that he confused the distribution of the Amboseli service fee with another monetary transfer in the amount of \$25,000 that was processed for Amboseli about the same time as the service fee transfers and that he was not intentionally trying to mislead Abilla. Respondent’s testimony on this subject was not plausible or credible.

<sup>10</sup> Between July 2012 and October 2013, respondent vowed to wire the money to Amboseli on at least ten occasions. On July 17, 2012, respondent promised to wire the money within five days. On July 24, 2012, respondent claimed that an \$80,000 loan should fund into his account the next day and he would wire the money to Amboseli. On July 26, 2012, respondent asserted that his wife was picking up a cashier’s check that afternoon and could wire the money that next day. On August 3, 2012, respondent reported that he expected to receive funds that afternoon and would wire the money shortly thereafter. On August 7, 2012, respondent assured Amboseli that he expected to receive the money that next morning. On August 9, 2012, respondent stated that he would have the money the next day and he would wire it that afternoon. One year later, on August 9, 2013, respondent explained that he was seven to ten days away from receiving the funds necessary to pay Amboseli. On August 19, 2013, respondent assured Amboseli that he was “100% green lighted for closing” on a deal that would produce the necessary funds. On August 30, 2013, respondent stated that he was awaiting confirmation that his deal had closed and that he would have the money in a couple days. And on October 17, 2013, respondent communicated that he was trying to close his deal that week.

“All of the money went to the lender and no portion of the \$22,500 went to me or to any person or entity to whom I am related.” Respondent’s statement was not true.<sup>11</sup>

### **Conclusions**

#### ***Count Three – § 6106 [Moral Turpitude–Misappropriation]*<sup>12</sup>**

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. “[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.) 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.)

Here, respondent owed a fiduciary duty to Amboseli to hold the service fee pursuant to the terms of the Agreement. By prematurely disbursing the \$22,500 service fee without receipt of confirmation of the bank instrument from Amboseli, respondent breached his fiduciary duty and misappropriated entrusted funds. The court finds that respondent’s misappropriation of Amboseli’s entrusted funds constitutes an act involving dishonesty, moral turpitude, or corruption, in willful violation of section 6106.

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<sup>11</sup> Respondent again testified that he confused the distribution of the Amboseli service fee with another monetary transfer in the amount of \$25,000 that was processed for Amboseli about the same time as the service fees transfers and was not intentionally trying to mislead the State Bar. Respondent’s testimony on this subject was also not credible or plausible. The \$25,000 wire transfer was without incident, while the \$22,500 service fee distribution had been a major point of contention for about six weeks when respondent sent the July 17<sup>th</sup> email to Amboseli (via Abilla) and for or about four months when he sent the September 24<sup>th</sup> letter to the State Bar.

<sup>12</sup> To facilitate our analysis, the court takes Count Three out of order.

***Count One – § 6106 [Moral Turpitude–Breach of a Fiduciary Duty]***

As discussed above, respondent willfully breached his fiduciary duty by failing to return the service fee to Amboseli. The court finds that respondent's willful breach of his fiduciary duty in this matter constitutes an act involving dishonesty, moral turpitude, or corruption, in willful violation of section 6106. However, the same facts establishing respondent's culpability in Count One, were relied upon in the court's culpability findings in Count Three. Therefore, the court assigns no additional weight to Count One in determining the appropriate discipline. (See *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [no additional weight given to rule 4-100(A) violation when same misconduct addressed by § 6106].)

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

Count Two alleges a common law violation of respondent's fiduciary duty by failing to return the service fee to Amboseli. Other than alleging a common law violation, this count is identical to Count One. The appropriate resolution of this matter does not depend on how many rules of professional misconduct or statutes proscribe the same misconduct. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) Count Two is therefore dismissed with prejudice, as duplicative.

**Aggravation<sup>13</sup>**

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

Respondent's misappropriation of \$22,500 in entrusted funds caused significant financial harm to Amboseli.

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<sup>13</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

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

Despite the passage of time and his assurances to the contrary, respondent has failed to make any restitution payments to Amboseli.

**Mitigation**

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

Respondent had no prior discipline for over 42 years prior to this misconduct. While the present misconduct is serious, respondent's lack of a prior record over such a long period of time is entitled to significant mitigation. (*Boehme v. State Bar* (1988) 47 Cal.3d 448, 452-453, 454-455 [twenty-two years of practice without prior discipline was important mitigating circumstance despite attorney's intentional misappropriation and lack of candor to court]; *Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [more than 20 years of practice with an unblemished record is highly significant mitigation].)

**Cooperation with State Bar (Std. 1.6(e).)**

Respondent entered into a partial stipulation of facts, saving the court time and resources. While respondent's stipulation with the State Bar would normally warrant consideration in mitigation, this mitigation is greatly limited due to respondent's false statements in his September 24, 2012 response to the present allegations.

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

Respondent testified that he had a heart attack in March 2012 and shortly thereafter he suffered other heart related complications. In addition, respondent testified to suffering from type II diabetes, depression, and alcoholism during the time of the misconduct. However, respondent failed to produce any expert or medical evidence in support of his testimony on this subject. Therefore, the mitigation assigned this factor is nominal.

### **Financial Difficulties**

Respondent testified that since his heart attack in March 2012 he has not practiced law, except in this matter, and his only sources of income are his social security check of \$2,100 per month and his wife's salary of \$4,000 per month. Respondent, however, failed to produce any financial evidence to support his testimony. Further, many of respondent's emails to Amboseli in 2012 and 2013 indicated that he was still traveling, working, and closing business deals. Consequently, respondent's assertion of extreme financial difficulties at the time of the misconduct was not established by clear and convincing evidence.

### **Community Service**

Respondent testified to his military service, government employment, two terms as a councilman for the City of Torrance, and participation as a coach and mentor in various youth organizations. Without additional corroborating evidence, the court assigns minimal mitigation to this factor.

### **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.)

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

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

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 2.7 provides that disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption, or concealment of a material fact. The degree of sanction depends 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.

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4<sup>th</sup> 81, 92.)

The State Bar recommended that respondent be disbarred from the practice of law. Respondent, on the other hand, argued for discipline short of disbarment. In addition to the standards, the court found *In the Matter of Spaith* (1996) 3 Cal. State Bar Ct. Rptr. 511, to be instructive.

In *Spaith*, the attorney was found culpable of misappropriating approximately \$40,000 from a client and misleading the client regarding the status of the money for over a year. In mitigation, the attorney demonstrated good character, provided community service and other pro

bono activities, and cooperated with the State Bar by admitting his wrongdoing and stipulating to the facts and culpability. In addition, the attorney had no prior record of discipline in over 15 years of practicing law.<sup>14</sup> In aggravation, the attorney's misconduct involved multiple acts of wrongdoing. The Review Department ultimately found that the mitigating circumstances were not sufficiently compelling to justify a lesser sanction than disbarment when weighed against the attorney's misconduct and aggravating circumstances. (*Id.* at p. 522.)

The court finds the facts involved in the instant case to be somewhat similar to *Spaith*. While the present case involves less money, it is still a considerable sum. Similar to the attorney in *Spaith*, respondent misrepresented that Maxim had instructed respondent to wire the funds to a third party. Unlike *Spaith*, however, respondent has not paid any restitution. And while respondent's extensive prior record of practice without discipline is impressive, the present mitigation, when considered as a whole, is less significant than that found in *Spaith*. Further, the present case involves more aggravation than *Spaith*.

Despite respondent's lengthy record of discipline-free practice, the court is greatly concerned by the misconduct in this matter and his potential to cause additional harm in the future. Respondent misappropriated \$22,500 by ignoring his fiduciary duties and acting in his own interest. Through deception or misguided optimism, respondent made repeated assurances that the money would be returned. And ultimately, when people began asking questions, respondent lied to cover-up his misdeeds. 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.

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<sup>14</sup> Although the attorney paid restitution, this did not warrant mitigative credit due to the fact that none of the restitution was paid until after the attorney's client threatened to report him to the State Bar.

### **Recommendations**

It is recommended that respondent **Lloyd Douglas Brown**, State Bar Number 44908, 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 Amboseli Energy Partners LLC in the amount of \$22,500 plus 10 percent interest per year from May 8, 2012. 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.

#### **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: April 17, 2014

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RICHARD A. PLATEL  
Judge of the State Bar Court