FILED SEPTEMBER 24, 2014

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **DAVID HALL FREDERICKSON,** **Member No. 42810,** A Member of the State Bar.	)	Case Nos.: **13-O-10909, 13-O-14190-DFM** **DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER**

INTRODUCTION

Respondent David Hall Frederickson (Respondent) is charged here with five counts of misconduct, involving two different client matters. The five counts include allegations of willfully violating (1) Business and Professions Code section 6068, subdivision (a) (failure to comply with laws – breach of fiduciary duties)[1] [two counts]; (2) section 6106 (moral turpitude - misappropriation) [two counts]; and (3) rule 4-100(A) of the Rules of Professional Conduct[2] (failure to maintain client funds in trust account). The court finds culpability and recommends discipline as set forth below.

[1] Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

[2] Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

PERTINENT PROCEDURAL HISTORY

On December 11, 2013, the Notice of Disciplinary Charges (NDC) was filed by the State Bar against Respondent in case No. 13-O-10909. On February 4, 2014, Respondent filed his response to the NDC.

On February 3, 2014, the initial status conference was held in case No. 13-O-10909. At that time, the case was given a trial date of March 27, 2014.

On March 7, 2014, a status conference was held at the request of the parties. At that conference, the parties indicated that the State Bar was about to file new charges against Respondent and that the parties wanted the new charges to be consolidated with the already pending matter. Such a consolidation would require a new trial date to be set in the newly-consolidated matters. As a consequence and at the request of the parties, the case No. 13-O-10909 was abated until March 17, 2014.

On March 18, 2014, the NDC was filed by the State Bar in case No. 13-O-14190.

On April 17, 2014, a status conference was held in the cases. At that time the cases were consolidated and given a trial date of June 24, 2014.

On May 6, 2014, Respondent filed his response to the NDC in case No. 13-O-14190.

Trial was commenced on June 24, 2014 and the case submitted for decision on June 26, 2014. The State Bar was represented at trial by Senior Trial Counsel Ashod Mooradian. Respondent was represented at trial by himself and by Edward Lear of Century Law Group LLP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's response to the NDCs, the stipulation of undisputed facts previously filed by the parties, and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on January 9, 1969, and has been a member of the State Bar at all relevant times.

Case No. 13-O-10909 (Labis Matter)

On or before May 14, 2012, Midwest Consulting Services, LLC (MCS) and Supergroup, Inc., represented by Kevin Wayne (Wayne), the President of Supergroup, Inc., agreed to enter into a financial transaction whereby MCS would arrange for a $20,000,000 Stand-By Letter of Credit (SBLC) from an issuing bank benefitting a bank identified by Wayne on behalf of Supergroup, Inc., This transaction was part of Wayne's efforts, on behalf of Supergroup, Inc., to secure and "monetize" funding to produce films, television programs and other entertainment-related ventures (SBLC/Monetization transaction).

As part of this transaction, MCS, Supergroup, and Respondent entered into a "Financial Services and Escrow Agreement," whereby Respondent agreed to act as the escrow agent for funds advanced for the purpose of securing the SBLC. This agreement stated that Respondent's fee for acting as the escrow agent would be one percent (1%) of the escrow funds.

On April 14, 2012, this Financial Services and Escrow Agreement was amended in writing to provide that John Labis would provide $150,000 of the escrow funds contemplated in the original agreement, which money was to be held by Respondent as the escrow agent and disbursed only as provided in the escrow instructions contained in the written agreement. These instructions included a requirement that Respondent was to return the $150,000 (minus certain specified charges) to Labis in the event that the SBLC was not issued and available for delivery within seven business days after the funds had been deposited by Labis into the escrow account.

On May 15, 2012, Labis sent $150,000 to Respondent's CTA by wire transfer. The $150,000 was therefore deposited into Respondent's client trust account (CTA).

On the same day, May 15, 2012, Respondent properly withdrew $1,500 from the funds, representing Respondent's entitlement to his fee for acting as the escrow agent for these funds.

Two days later, on May 17, 2012, Todd Smith (Smith), a client of Respondent and an associate of Wayne, requested that Respondent wire to the account of Haven Motion Pictures, one of Smith's companies, $20,000 of the funds deposited by Labis into the escrow account. Respondent told Smith that he could not release the requested disbursement of $20,000 to Smith because only Wayne, on behalf of Supergroup, Inc., had the authority to request disbursements from the escrow funds held in his CTA. Later that same day, in response to Respondent's concern, Smith sent Respondent an email that attached a document which purportedly was signed by Wayne and stated that $150,000 wired and deposited into Respondent's CTA "are for the benefit of Mr. Todd Smith in c/o Haven Motion Pictures. [¶] The first disbursement of $20,000 USD should commence to the banking coordinates of Mr. Todd Smith per his request." On that same day, May 17, 2012, Respondent disbursed $20,000 from the escrow funds held in his CTA to the account of Haven Motion Pictures.

On May 25, 2012, Smith sent an email to Respondent instructing Respondent to disburse an additional $10,500 from the escrow funds held in Respondent's CTA to the account of Haven Motion Pictures. This email also instructed Respondent to pay $2,500 from the escrow account to himself for "administrative escrow services rendered." On that same day, May 25, 2012, Respondent disbursed $10,500 to the account of Haven Motion Pictures and $2,500 to himself from the escrow funds held in his CTA.

On June 14, 2012, Smith sent an email to Respondent instructing Respondent to disburse another $8,000 from the escrow funds held in his CTA to the account of Haven Motion Pictures. On that same day, June 14, 2012, Respondent disbursed $8,000 from the escrow funds held in his CTA to the account of Haven Motion Pictures.

On July 2, 2012, Smith called Respondent and instructed Respondent to disburse $140,000 from the escrow funds held in his CTA to the trust account of Arizona attorney Larry J. Busch, Jr., who represented MCS, "to conclude the transaction for the acquisition of the SBLC." Later that same day, Smith sent the banking coordinates for attorney Busch's trust account to Respondent by email. At that time, only $107,478 of the escrow funds remained in Respondent's CTA. Smith authorized Respondent to send the $107,478 and make up the balance from funds that had been deposited into Respondent's CTA on behalf of Smith by another of Smith's clients unrelated to the SBLC/Monetization transaction.

On July 3, 2012, Respondent disbursed $140,000 to the trust account of attorney Larry Busch, of which at least $107,478 was attributable to the $150,000 initially deposited by Labis.

On October 25, 2012, Smith informed Respondent that the SBLC/Monetization transaction would no longer be going forward.

On November 20, 2012, Labis sent an email to Respondent, demanding return of the $150,000 escrow funds. Respondent did not return any funds in response to that demand.

On December 20, 2012, attorney Brandon Block, on behalf of Labis, sent Respondent a letter demanding the return of the $150,000 to his client Labis. Respondent received the letter, but did not return any funds.

On March 4, 2013, Labis filed a complaint against Respondent in Los Angeles Superior Court, entitled *John Labis v. David H. Frederickson, et al.,* bearing case number BC502052 and requesting damages for breach of contract and breach of fiduciary duty, among other causes of action (civil action).

On April 9, 2013, Respondent entered into a settlement agreement with Labis (Respondent/Labis settlement), which agreement was tied to a separate agreement (Smith/Labis settlement) between Todd Smith and Envy Digital Entertainment, Inc. (Envy) Pursuant to the

Respondent/Labis settlement, Respondent stipulated to the possible entry of a $150,000 judgment, with entry of the judgment being conditioned on Smith's failure to make payments to Envy under the Smith/Labis settlement. Labis at trial characterized this overall arrangement as allowing him to recoup his funds in the form of an investment in Envy. Pursuant to the Respondent/Labis settlement agreement, Labis agreed to dismiss the civil action. At the time of the trial of this proceeding, the obligations of Smith and Respondent to make payments under the two agreements were still ongoing. Respondent had at that time paid Labis approximately $80,000. Smith had paid $10,000.

Count 1 – Business and Professions Code Sections 6068(a) [Failure to Comply with Law/Breach of Fiduciary Duty]
Count 2 – Section 6106 [Moral Turpitude – Misappropriation]

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty, or corruption. While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, a finding of gross negligence will support such a charge where an attorney's fiduciary obligations, particularly trust account duties, are involved. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.) An attorney's failure to use entrusted funds for the purpose for which they were entrusted constitutes misappropriation. (*Baca v. State Bar* (1990) 52 Cal.3d 294, 304.) An attorney's deliberate breach of a fiduciary duty owed to another involves moral turpitude as a matter of law. (*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195, 208.) Further, an attorney's non-deliberate breach of a fiduciary duty involves moral turpitude if the breach occurred as a result of the attorney's gross carelessness and negligence. (*Id.,* citing *Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020; *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468, 478.)

The State Bar charges that Respondent's mishandling of the funds deposited into his client trust account by Labis constituted misappropriation by him of those funds and acts of moral turpitude, in willful violation of section 6106. This court agrees with that assessment.

Respondent's conduct in disbursing funds at the direction of Smith completely disregarded the obligations imposed on him by the escrow agreement and the Rules of Professional Conduct with regard to how he was required to handle money entrusted to him for safe-keeping. Rule 4-100(A) requires that all funds received or held for the benefit of others by a member or law firm as a fiduciary shall be deposited and maintained in a client trust account. The failure of a member to maintain in a client trust account funds received and held for the benefit of others by the attorney as a fiduciary constitutes a basis for discipline. Respondent did not maintain the funds entrusted to him by Labis in his client trust account. Instead, he disbursed the funds to numerous individuals, including himself, resulting in the loss of access of those funds.

At no time did Respondent seek to contact Labis to determine whether Respondent was entitled to ignore the language of the escrow agreement, which required the escrow funds to be returned to Labis within seven business days after the funds had been deposited by Labis into the escrow account if the SBLC was not issued and available for delivery. Most of the disbursements by Respondent occurred after that deadline had passed. Such disregard by Respondent for the terms of the written escrow agreement, which was designed to protect Labis, constituted gross negligence at a minimum and constituted willful acts of moral turpitude in violation of section 6106.

With regard to Count 1, section 6068, subdivision (a), makes it the duty of an attorney "[t]o support the Constitution and laws of the United States and of this state." The breach by an attorney of his duties as a fiduciary may constitute a violation of section 6068, subdivision (a).

Respondent's acts of misappropriating the funds of Labis constituted violations of his fiduciary duties and, in turn, violations of section 6068, subdivision (a). However, because this court finds that those breaches constituted the more serious violations of section 6106, the court finds no need to assess any additional discipline as a consequence of them. (See, e.g., *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.)

Case No. 13-O-14190 (Dhahir Matter)

On March 20, 2013, Nazar A. Dhahir, M.D., (Dhahir) entered into a Financial Services and Escrow Agreement (FSEA) with South Atlantic Investments Corp (SAIC) represented by Roberto Sassone (Sassone). Respondent was the escrow officer named in the FSEA.

Pursuant to the FSEA, SAIC/Sassone was to procure the issuance of a Standby Letter of Credit (SBLC) from Deutsche Bank or any other major bank within 5 to 7 days following deposit by Dhahir of $200,000 in Respondent's CTA. Respondent was to act as the escrow holder of those funds. Pursuant to the FSEA, Respondent was entitled to a fee of $2,000 (1% of the escrow funds deposited in his CTA) ,which he could immediately deduct after receipt. Except for the disbursement of that $2,000 fee to himself, Respondent warranted that the remaining funds would be held in the escrow account and be distributed strictly in conformity with the instructions in the FSEA unless both Dhahir and SAIC, as represented by Sassone, stated otherwise in writing.

Specifically, the FSEA stated that the "Escrow Agent" (i.e., Respondent) will release the Escrow Fund upon the occurrence of either one of the following two events:

> Release to South Atlantic Investments Corp: After receipt and posting of the Escrow Funds in the Escrow Agent's attorney trust account Escrow Agent may release an amount equal to one percent (1.0%) to South Atlantic Investments Corp <u>for initial bank charges and initiation of SWIFT Procedures</u>. [Underlining added.]
>
> Release to Client [Dhahir]: In the event that the Bank Guarantee is not issued and available for delivery to Client within ten (10)

> banking days after the crediting of the Escrow Funds in the Escrow Agent's account, upon written demand of Client, South Atlantic Investments Corp will forthwith return to the Escrow Agent any funds released pursuant to 3.D.(i), and the Escrow Agent shall immediately wire-transfer back to Client the funds received back from South Atlantic Investments Corp and any balance the Funds in the Escrow Account, less the Escrow Fee, applicable bank transfer fees and costs.

On March 21, 2013, Dhahir wire-transferred $200,000 to Respondent, and it was deposited into his CTA. On March 21, 2013, Respondent properly took his $2,000 fee from the $200,000 held in his CTA.

Then, on the next day, March 22, 2013, at the direction of Sassone, Respondent issued CTA check 1001, payable to himself in the amount of $23,000. He testified that Sassone had authorized him to pay himself this money as compensation for work he had previously performed for Sassone. In addition, pursuant to instructions from Sassone, Respondent wire-transferred $174,000 from his CTA to a bank account for Sassone in Hong Kong. Neither of these transactions were done pursuant to the terms of the FSEA or with the knowledge or approval of Dhahir.

No SBLC was ever issued. As a result, on April 21, 2013, Dhahir requested a refund of the $200,000 pursuant to the FSEA. Because Respondent had previously disbursed the funds from his client trust account, he could not, and did not, return the funds.

Count 1 – Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]
Count 2 – Section 6106 [Moral Turpitude – Misappropriation]
Count 3 – Business and Professions Code Sections 6068(a) [Failure to Comply with Law/Breach of Fiduciary Duty]

As previously noted, section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty, or corruption. While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, a finding of gross negligence will support such a charge where an attorney's fiduciary obligations, particularly trust account duties,

are involved. An attorney's failure to use entrusted funds for the purpose for which they were entrusted constitutes misappropriation. An attorney's non-deliberate breach of a fiduciary duty involves moral turpitude if the breach occurred as a result of the attorney's gross carelessness and negligence.

The State Bar charges, and this court finds, that Respondent's mishandling of the funds deposited into his client trust account by Dhahir constituted misappropriation by him of those funds and acts of moral turpitude, in willful violation of section 6106. Respondent's conduct in disbursing funds at the direction of Sassone completely disregarded the obligations imposed on him by the escrow agreement. The FSEA allowed only a limited portion of the escrow funds to be released prior to the issuance of the SBLC and only for limited purposes (underlined in the language quoted above). Respondent's belated contention at trial, the parties intended that all of the $200,000 deposited by Dhahir would immediately be released to Sassone, was inconsistent with the limiting language of the agreement; was credibly contradicted by Dhahir at trial; and, if accepted, would make meaningless and unnecessary Respondent's role as a paid escrow holder.

In Counts 1 and 3, the State Bar alleges that Respondent's failure to maintain the escrow funds in his CTA violated Rule 4-100(A) of the Rules of Professional Conduct and, in turn, section 6068, subdivision (a). This court agrees. However, because this court finds that these breaches constituted the more serious violations of section 6106, the court finds no need to assess any additional discipline as a consequence of them. (See, e.g., *In the Matter of Brimberry*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 403.)

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Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct, [3] std. 1.5.)[4] The court finds the following with respect to aggravating circumstances.

Multiple Acts of Misconduct

Respondent misappropriated funds belonging to two different individuals. Those misappropriations included numerous inappropriate disbursements of funds occurring at various different times. Those multiple acts of misconduct are an aggravating factor. (Std. 1.5(b).)

Significant Harm

Respondent's misconduct significantly harmed Labis and Dharir. (Std. 1.5(f).) Labis was required to hire an attorney to obtain the return of any portion of his funds.[5] Dharir has not received back the funds that Respondent mishandled.

Lack of Insight and Remorse

Respondent fails to demonstrate any realistic recognition of or remorse for his wrongdoings. He continues to deny any culpability in this proceeding and has endeavored throughout to find justifications for his actions. "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Respondent's continued insistence that his conduct was justified is "particularly troubling" because it suggests his conduct may recur. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 595.)

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[3] All further references to standard(s) or std. are to this source.
[4] Previously standard 1.2(b).
[5] The evidence is not clear and convincing that Labis ultimately lost money as a result of Respondent's failure to return the escrow funds. Labis effectively converted the situation into an investment in another business venture, Envy. How and whether Labis has ultimately benefitted or been harmed is unknown to the court.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.)[6] The court finds the following with regard to mitigating factors.

Lack of Prior Discipline Record

Respondent was admitted to practice in 1969 and has never been previously disciplined. Respondent's lengthy tenure of discipline-free practice is considered by this court to be a mitigating factor. (Std. 1.6(a); *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13.) However, the weight to be given that fact is reduced by the fact that the misconduct here is serious.

Cooperation

Respondent did not admit culpability in the matter but entered into an extensive stipulation regarding the facts and the admissibility of documents, thereby assisting the State Bar in the prosecution of the case. For such conduct Respondent is entitled to some mitigation. (Std. 1.6(e); see also *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50; cf. *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [credit for stipulating to facts but "very limited" where culpability is denied].)

Restitution

Respondent contends that he should receive mitigation credit for his payments to Labis.

This court declines to give that fact any weight in mitigation. Those payments were made only after a complaint had been made by Labis to the State Bar and only after the civil action had been filed by Labis against Respondent. The authorities are clear and consistent that restitution made only after the initiation of disciplinary proceedings is not a proper source of mitigation credit. (See, e.g., *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct.

[6] Previously standard 1.2(e).

Rptr. 231, 249, citing *Warner v. State Bar* (1983) 34 Cal.3d 36, 47; *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483, 490; *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619; *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480, 496; *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708, 714 [delay in making restitution is aggravating, not mitigating, factor]; and *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652, 663, citing *Rosenthal v. State Bar* (1987) 43 Cal.3d 658, 663.)

Character Evidence

Respondent presented good character testimony from numerous individuals, representing a wide range of references in the legal and general communities and who are aware of the full extent of the member's misconduct. The individuals included attorneys, a former judge, and members of the business community. (Std. 1.6(f); *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [testimony from members of bench and bar entitled to serious consideration because judges and attorneys have "strong interest in maintaining the honest administration of justice"].) This is a mitigating factor.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) 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.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.)

Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

In the present proceeding, the applicable standard regarding discipline for Respondent's misconduct is found in standard 2.1(a). Standard 2.1(a) provides: "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." Here, the amount of money misappropriated by Respondent, nearly $350,000, was clearly not insignificant, and the mitigating circumstances have not been demonstrated to clearly predominate.

A review of the case law also confirms that disbarment is the appropriate discipline to recommend here. Misappropriation of client funds has long been viewed by the courts as a particularly serious ethical violation. Misappropriation breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the profession. *(McKnight v. State Bar (*1991) 53 Cal.3d 1025, 1035; *Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.) The Supreme Court has consistently stated that misappropriation generally warrants disbarment in the absence of clearly mitigating circumstances. *(Kelly v. State Bar, supra*, 45 Cal.3d at p. 656; *Waysman v. State Bar* (1986) 41 Cal.3d 452, 457; *Cain v. State Bar* (1979) 25

Cal.3d 956, 961.) The Supreme Court has imposed disbarment on attorneys with no prior record of discipline in cases involving a single misappropriation. (See, e.g., *In re Abbott* (1977) 19 Cal.3d 249 [taking of $29,500, showing of manic-depressive condition, prognosis uncertain].) In *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, an attorney with over 11 years of practice and no prior record of discipline was disbarred for misappropriating approximately $29,000 in law firm funds over an 8-month period. In *Chang v. State Bar* (1989) 49 Cal.3d 114, an attorney misappropriated almost $7,900 from his law firm, coincident with his termination by that firm, and was disbarred. (See also *In the Matter of Blum, supra,* 3 Cal. State Bar Ct. Rptr. 170 [no prior record of discipline, misappropriation of approximately $55,000 from a single client]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511 [misappropriation of nearly $40,000, misled client for a year, no prior discipline]; *Kennedy v. State Bar* (1989) 48 Cal.3d 610 [disbarment for misappropriation in excess of $10,000 from multiple clients and failure to return files with no prior misconduct in eight years]; and *Kelly v. State* Bar, *supra,* 45 Cal.3d 649 [disbarment for misappropriation of $20,000 and failure to account with no prior discipline in seven years].)

This court is not unmindful of Respondent's many years of discipline-free practice. But his active participation in two significant misappropriations in the last two years casts a heavy pall over his prior years of service and makes clear that the strong prophylactic measure dictated by standard 2.1(a) should be effected to protect the public from any future misconduct.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **David Hall Frederickson,** Member No. 42810**,** be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

Restitution

The court recommends that Respondent must make restitution to Nazar A. Dhahir in the amount of $198,000 plus 10 percent interest per year from April 21, 2013.

California Rules of Court, Rule 9.20

The court further recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20 and to 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.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds, and such payment is enforceable as provided under Business and Professions Code section 6140.5.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **David Hall Frederickson,** Member No. 42810**,** be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)

Dated: October _____, 2014

DONALD F. MILES
Judge of the State Bar Court