FILED APRIL 8, 2015

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **ALI LAREYBI,** **Member No. 185732,** A Member of the State Bar.	)	**Case Nos.:** 13-O-15707, 13-O-16146-**DFM** **DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER**

INTRODUCTION

Respondent **Ali Lareybi** (Respondent) is charged here with willfully violating: (1) rule 4-100(A) of the Rules of Professional Conduct[1] (failure to maintain client funds in trust account) [two counts];(2) section 6106 of the Business and Professions Code[2] (moral turpitude - misappropriation) [two counts]; (3) section 6106 (moral turpitude - issuance of NSF checks); and (4) section 6106 (moral turpitude - misrepresentation). In view of Respondent's misconduct and the aggravating factors, the court recommends, inter alia, that Respondent be disbarred from the practice of law.

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

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

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on August 18, 2014. On September 22, 2014, Respondent filed his response to the NDC, admitting all of the factual allegations but denying any culpability.

On September 22, 2014, an initial status conference was held in the matter at which time the case was scheduled to commence trial on December 9, 2014.

On November 25, 2014, the parties filed a joint stipulation of undisputed facts in which Respondent admitted that his various conduct was wrongful, dishonest, and/or grossly negligent, although the stipulation did not specifically admit culpability in the proceeding.

On the same day, Respondent filed a motion for a continuance of the scheduled trial, citing the emotional distress he was suffering as a result of family issues. That motion was not opposed by the State Bar and the trial was continued by the court to April 8, 2015.

Trial was commenced and completed on April 8, 2015. However, Respondent did not appear for it. The State Bar was represented at trial by Deputy Trial Counsel Elizabeth Stine.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the extensive stipulation of undisputed facts filed by the parties, on the admissions contained in Respondent's response to the NDC, and on the documentary evidence admitted at trial based on the prior stipulation of the parties.

Jurisdiction

Respondent was admitted to the practice of law in California on December 16, 1996, and has been a member of the State Bar at all relevant times.

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Case No. 13-O-15707 (Schultz and Alvarez Matters)

Beatriz Schultz Matter

On May 22, 2013, Respondent received a settlement check from Anchor General Insurance Company made payable to Respondent and his client, Beatriz Schultz (Schultz), in the sum of $8,850.60. On May 22, 2013, Respondent deposited the $8,850.60 check into his client trust account (CTA) at Wells Fargo Bank on behalf Schultz. Of this $8,850.60, Schultz was entitled to $2,800. As a result, Respondent was required to maintain at least $2,800 in his trust account until such time as Schultz received her disbursement. Instead, between May 22, 2013 and May 28, 2013, Respondent made multiple online transfers of her funds for his own purposes from his CTA, resulting in the balance in Respondent's CTA dipping to $200.46 on May 28, 2013. Respondent has now stipulated, and this court finds, that Respondent wrongfully took $2,600 of funds belonging to Schultz and that he failed to maintain those funds in a client trust account.

On June 6, 2013, Respondent issued check no. 2329, in the amount of $2,800, to Beatriz Schultz.

Juan and Maria Alvarez Matter

On July 16, 2013, Respondent received a settlement check in the sum of $44,500.29 from Golden Eagle Insurance Company, made payable to Respondent and his clients, Juan and Maria Alvarez. Of $44,200.29, Juan and Maria Alvarez were entitled to $24,500.29. On July 16, 2013, Respondent deposited $40,500.00 of the Alvarez funds into his CTA on behalf Juan and Maria Alvarez and $4,000.29 of those funds into his general account.

Respondent was required to maintain at least $24,500.29 in his trust account until such time as Juan and Maria Alvarez received their disbursement. Between July 16, 2013 and August 1, 2013, Respondent's trust account dropped below $24,500.29 over a dozen times. On

August 1, 2013, the balance in Respondent's CTA was $8,599.45. Respondent has stipulated, and this court finds, that Respondent wrongfully took $15,900.84 of funds belonging to Juan and Maria Alvarez.

On August 1, 2013, Respondent issued to Juan and Maria Alvarez check no. 2338, in the amount of $24,500.29, on his CTA. Although there were insufficient funds in the CTA to pay that check, the overdrawn check (NSF check) was nonetheless honored by the bank. However, Respondent's issuance of the NSF check was then reported to the State Bar by the bank, as the bank was required to do by statute.

Counts 1 and 3 – Rule 4-100(A) [Failure to Maintain Client Funds in Client Trust Account]

Rule 4-100(A) of the Rules of Professional Conduct requires that all funds received or held for the benefit of clients by an attorney or law firm, including advances for costs and expenses, shall be deposited and maintained in a designated client trust account. (See also *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 286.) Respondent has acknowledged that he withdrew on a periodic basis from his CTA the funds of his clients Schultz and Alvarez to use for his own purposes. Each of those repeated withdrawals of the funds of his clients represented a willful violation by him of his duties under rule 4-100(A). (*Palomo v. State Bar* (1984) 36 Ca1.3d 785, 795-796.)[3]

Counts 2 and 4 – Section 6106 [Moral Turpitude – Misappropriation]

Section 6106 of the Business and Professions Code prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. While moral turpitude generally

[3] However, the conduct underlying these violations is essentially the same as that underlying the finding, below, that Respondent is culpable of the more serious misconduct of committing acts of moral turpitude (misappropriation) in willful violation of section 6106. Accordingly, the court finds no need to assess any additional discipline as a consequence of it. (See *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.)

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.) "[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; *Jackson v. State Bar* (1975) 15 Cal.3d 372, 380-381; see also *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034 [depriving client of rightful and timely access to funds by withholding them without authority represents clear and convincing proof of a violation of section 6106].) .) There is no doubt that the willful misappropriation of a client's funds involves moral turpitude. (*Bates v. State* Bar (1990) 51 Cal.3d 1056, 923; *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 278.)

Respondent's acts of removing the funds of the Schultz and Alvarez clients from his CTA for his own purposes constituted knowing and intentional misappropriations by him of those funds and represented acts of moral turpitude in willful of section 6106. (*McKnight v. State Bar, supra*, 53 Cal.3d at pp. 1033-1034; *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824, 830.) The fact that Respondent eventually returned to his clients the funds that he had previously misappropriated does not constitute a defense to his culpability for the prior misappropriations. (*In the Matter of Elliott* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 541, 544.)

Count 6 – Section 6106 [Moral Turpitude – Misrepresentation]

On August 19, 2013, a State Bar bank reportable analyst wrote a letter to Respondent, stating that the State Bar had received notification from Respondent's bank that he had issued a check on his client trust account against insufficient funds. The investigator asked that Respondent provide a written explanation of the reason for the insufficient fund activity. (Ex. 6.)

On September 22, 2013, Respondent replied to the Intake Department of the Office of the Chief Trial Counsel regarding the bank reportable action and stated that he had received settlement funds for his clients, Maria and Juan Alvarez, on July 30, 2013 in the amount of $40,500. He then stated that he had checked with his bank to ensure there was no hold on the money and thereafter wrote a check to his clients on August 1, 2013 for their share of the settlement. Respondent then said that, after writing the check, he was notified by the bank that there was a hold on the funds and this caused his client's check to overdraw his CTA when the check was deposited on August 2, 2013. This explanation by Respondent was knowingly false.

On December 30, 2013, Respondent sent a response to an investigative letters in this matter, through counsel, in which he admitted that his prior statements to the Bar regarding the Alvarez settlement funds were false.

Respondent's conduct of providing knowingly false statements to the State Bar on September 22, 2013, in response to its inquiry regarding possible mishandling of client funds, Respondent constituted an act of moral turpitude in willful violation of the prohibition of section 6106.

Case Nos. 13-O-15707, 13-O-15707 (NSF Checks)

As previously noted, on August 1, 2013, Respondent issued to Maria and Juan Alvarez, check no. 2338, in the amount of $24,500.29, on Respondent's client trust account at Wells Fargo Bank. At the time Respondent issued the check the balance in his CTA was $8,599.45. When Respondent issued the check, he knew or was grossly negligent in not knowing that there were insufficient funds in the CTA to pay the check.

Thereafter, on September 13, 2013, Respondent issued check no. 2342, in the amount of $1,300, on his client trust account when he knew or was grossly negligent in not knowing that there were insufficient funds in the CTA to pay the check.

Count 5 – Section 6106 [Moral Turpitude – Issuance of NSF Checks]

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. "Writing checks when one knows or should know that there are not sufficient funds to cover them manifests a disregard of ethics and fundamental honesty, at least if such conduct occurs repeatedly. Writing bad checks may, by itself under some circumstances, constitute moral turpitude." (*In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 11, citing *Segal v. State Bar* (1988) 44 Cal.3d 1077, 1088; *Bambic v. State Bar* (1985) 40 Cal.3d 314, 324; see also *Rhodes v. State Bar* (1989) 49 Cal.3d 50, 58; *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 315.)

By issuing two checks from his CTA at two different times against insufficient funds, when Respondent knew, or in the absence of gross negligence should have known, that there were insufficient funds in the CTA to cover the checks, Respondent committed acts of moral turpitude, in willful violation of section 6106.

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,[4] std. 1.5.)[5] The court finds the following with respect to aggravating circumstances.

Multiple Acts of Misconduct

Respondent's multiple acts of misconduct are an aggravating factor. Each time Respondent elected to dip into his clients' funds for his own purposes represents a separate act of misconduct by him in violation of his duties as an attorney. That this conduct continued over a period of time is an aggravating factor. (Std. 1.5(b).)[6]

[4] All further references to standard(s) or std. are to this source.
[5] Previously standard 1.2(b).
[6] Previously standard 1.2(b)(ii).

Mitigating Factors

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.)[7] Although Respondent did not appear to participate at trial, the court notes the following with regard to possible mitigating circumstances.

No Prior Discipline

Respondent practiced law in California for over 16 years prior to the commencement of the instant misconduct. During that span, Respondent had no prior record of discipline. Respondent's lengthy tenure of discipline-free practice is a mitigating circumstance. However, the weight to be given that fact is significantly reduced by the fact that the misconduct here was serious. (*In the Matter of* Song, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 279; *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 44; *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 116.)

Cooperation

Respondent did not specifically admit culpability in the matter but entered into an extensive stipulation of facts, thereby greatly 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; but see *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [credit for stipulating to facts "very limited" where culpability is denied].) The weight to be given this mitigating circumstance is reduced by Respondent's initial denial of any culpability in the matter, his ongoing failure to specifically acknowledge culpability, and his eventual failure to participate in the trial of this matter.

[7] Previously standard 1.2(e).

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. 1.3; *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; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) 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.)

Standard 1.7(a)[8] provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for Respondent's misconduct is found in standard 2.1(a), which provides:

[8] Previously standard 1.6(a).

"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, more than $18,000, was clearly not insignificant, and no compelling mitigating circumstances have been demonstrated.

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*; *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].)

Buttressing the conclusion that application of the disbarment sanction set forth in standard 2.1(a) is necessary to protect the public and the profession is the fact that Respondent knowingly lied to the State Bar when it initially contacted him about the possibility that he was mishandling client funds. (See *Warner v. State Bar* (1983) 34 Cal.3d 36, 48 [attorney disbarred after misappropriating funds and then lying about that fact during disciplinary process]; see also *Chang v. State Bar, supra,* 49 Cal.3d at p. 128 ["fraudulent and contrived misrepresentations to the State Bar may perhaps constitute a greater offense than misappropriation."].)

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **Ali Lareybi,** State Bar No. 185732, 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.

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.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Ali Lareybi,** State Bar No. 185732, 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).)[9]

Dated: April _____, 2015.

DONALD F. MILES
Judge of the State Bar Court

[9] An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice of law, or to even hold himself or herself out as entitled to practice law. (*Ibid*.) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid*.; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)