FILED

OCT - 6 2015

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **MARY DERPARSEGHIAN aka MARY DER-PARSEGHIAN,** **Member No. 224541,** A Member of the State Bar.	))))))))	**Case Nos.: 13-O-17168, 14-O-01719-DFM (Cons.)** **DECISION**

INTRODUCTION

Respondent **Mary Derparseghian** (Respondent), also known as Mary Der-Parseghian, is charged here with nine counts of misconduct involving two different client matters. The nine counts include allegations of willfully violating (1) Rule 3-110(A) of the Rules of Professional Conduct[1] (failure to perform with competence); and (2) Business and Professions Code[2] section 6068, subdivision (m) (failure to inform client of significant development), in case No. 13-O-17168; and willfully violating (3) rule 4-100(A) (failure to deposit client funds in trust account); (4) rule 4-100(B)(1) (failure to notify client of receipt of client funds); (5) rule 4-100(A) (commingling); (6) rule 4-100(A) (failure to maintain client funds in trust account); (7) section 6106 (moral turpitude - misappropriation); (8) rule 4-100(C) (failure to maintain required client trust account records); and (9) section 6068, subdivision (m) (failure to respond to

[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.

kwiktag® 197 147 392

client inquiries), in case No. 14-O-01719. The court finds culpability and recommends discipline as set forth below.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) in case No. 13-O-17168 was filed by the State Bar of California on July 14, 2014.

On August 25, 2014, Respondent filed her response to the NDC in that case. On the same day, the initial status conference was held. At that time, the parties notified the court that the client matter giving rise to the case was the subject of an ongoing civil lawsuit, and they agreed that the case should be abated during the pendency of that civil action. As a result, the case was then ordered abated.

During the time that case No. 13-O-17168 remained abated, the NDC in case No. 14-O-01719 was filed by the State Bar on September 30, 2014. On October 22, 2014, Respondent filed her response to the NDC in that case.

On November 18, 2014, the initial status conference was held in case No. 14-O-01719, at which time that matter was given a trial date of April 14, 2015, with a five-day trial estimate. Case No. 13-O-17168 remained abated at that time.

On February 23, 2015, the order abating case No. 13-O-17168 was vacated; the two cases were ordered consolidated; and a new trial date of April 27, 2015, was scheduled for the consolidated cases.

At the time that the cases were scheduled to commence trial in April 2015, Respondent's counsel in one of the two matters was engaged in trial in another court. Accordingly, the trial in these matters was continued to June 18, 2015.

Trial in the consolidated cases was commenced on June 18, 2015, and completed as scheduled, followed by a period of post-trial briefing. The State Bar was represented at trial by

Deputy Trial Counsel Charles Calix. Respondent was represented at trial by Brian Ward in case No. 13-O-17168 and by Jerry Kaplan in case No. 14-O-01719.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's responses to the NDCs in the two cases, the stipulations of undisputed facts previously filed by the parties in each of the cases, and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on March 29, 2003, and has been a member of the State Bar at all relevant times.

Case No. 13-O-17168 (Merrigan Matter)

On June 20, 2011, Image Lab, Inc. (Image Lab) filed a complaint for breach of contract against Paul Merrigan (Merrigan) and his corporation, Desert Classic Concours D'Elegance (Desert Concours). The complaint alleged, inter alia, that Desert Concours and Merrigan failed to pay Image Lab for promotional services it had rendered to Desert Concours for a car show held in La Quinta, California, in February 2011.

On July 21, 2011, Merrigan hired Respondent to defend Desert Classic and himself in the Image Lab action. On July 23, 2011, Merrigan mailed a $2,500 check to Respondent as a retainer. On October 5, 2011, Respondent filed an answer on behalf of Desert Concours and Merrigan and a cross-complaint on behalf of Desert Concours and Merrigan against Image Lab and its owner, Stuart Wilson.

On August 3, 2012, a trial-setting conference was held in the Image Lab action. Respondent did not appear personally for the conference, but instead had a contract attorney appear for her on behalf of Merrigan and Desert Concours. At the conference, the case was set for a three-day jury trial to begin January 14, 2013.

On November 30, 2012, Respondent sent a letter to Merrigan, stating, in part, that Desert Concours' corporate status was suspended and that it must be reinstated promptly; otherwise, Respondent would be unable to defend Merrigan or prosecute Merrigan's action.

On December 20, 2012, Respondent sent a another letter to Merrigan, again stating, in part, that Merrigan needed to reinstate Desert Concours's corporate status and that "[t]rial is set on this matter and around the corner." (Ex. 39, p. 4.)

On December 21, 2012, Respondent sent another letter to Merrigan, again stating, in part, that Merrigan needed to provide proof that Desert Concours' corporate status had been "reinstated:"

> I previously discussed with you the necessity of reinstating Desert Classic Concours d'Elegance Corporation's corporate status. As I advised you, a suspended corporation may neither prosecute nor defend a lawsuit. You stated several weeks ago that you were seeing to it that the corporation was reinstated, and even sent me some papers related to your attempt to reinstate. However, we checked with the California Secretary of State today and determined that the corporation remains suspended.
>
> It is imperative that you take all necessary steps to promptly reinstate the corporation. Should you fail to provide us with proof of reinstatement by January 31 [sic], 2013, we will have no alternative but to notify the Court of the suspension and to withdraw as counsel.

(Ex. 13.)

On January 8, 2013, Image Lab filed a declaration regarding compliance with the court's trial rules in the action scheduled to commence trial on January 14, 2013. In this declaration, counsel for Image Lab notified the court that the defendants represented by Respondent had failed to comply with the local pretrial rules and, more significantly, had failed to post the jury fees for the jury they had requested. Plaintiff's counsel then indicated that he and his client were prepared to try the matter as a bench trial on January 14, 2013, as previously scheduled.

On January 9, 2013, Merrigan sent an email to Respondent, stating, in part, that he had sent the required documents to reinstate Desert Concours' corporate status. However, he also reported that he had been informed by a representative of the Franchise Tax Board that it "sometimes takes up to 90 days" for this to happen. (Ex. 15.)

With the trial scheduled to go forward on Monday, January 14, 2013, Respondent sent an e-mail to Merrigan on Thursday, January 10, 2013, stating: "We do not need you to be there, we will keep you informed on Monday of the outcome." (Ex. 18.)

On Friday, January 11, 2013, Merrigan received an e-mail from the office of the California Secretary of State, confirming that Desert Concours' corporate status had been revived. (Ex. 17.) On the same day, the Franchise Tax Board issued a Certificate of Revivor to Desert Concours. (Ex. 16.) Merrigan did not inform Respondent of his receipt of these documents prior to the time that trial was scheduled to commence on January 14, 2013.

Also on Friday, January 11, 2013, Respondent filed an ex parte application for a continuance of the trial scheduled to start on Monday, due to (1) Respondent's stated unavailability due to her being "engaged in trial" in another county during the week of January 14th; and (2) Desert Concours' suspended corporate status, which Respondent stated would take 60 days to reinstate. (Ex. 19, p. 5.)

On January 14, 2013, Respondent did not appear for the scheduled trial. Instead, she caused a contract attorney to appear for the singular purpose of requesting the continuance of the trial. After then hearing Respondent's ex parte application for continuance of the trial, the superior court denied the requested continuance basing the denial on Merrigan's delay in seeking to revive the corporate status of Desert Concours and Respondent's delay in filing the continuance request.

After denying the requested continuance, the superior court commenced hearing the Image Lab trial. Because Respondent had not arranged for contract attorney to represent Desert Concours and Merrigan at trial, no one appeared on their behalf. Further, by agreement of the Image Lab parties, there was no court reporter present to record the proceeding. At the conclusion of the abbreviated trial, the court found in favor of Image Lab on its complaint against Desert Concours and Merrigan, eventually resulting in a judgment against them for $83,700 (plus interest at 10 percent from May 2011) and for $18,000 in attorney fees. In addition, the court dismissed the cross-complaint against Image Lab and Wilson filed by Respondent on behalf of Desert Concours and Merrigan.

On January 15, 2013, a contract attorney in Respondent's law firm sent an email to Respondent, stating, in part, that he had spoken to the court clerk and had been told that the court entered judgment for Image Lab for $83,700, plus interest, and for $18,000 in attorney fees as the result of the trial on January 14, 2013. On the same day, Image Lab served a proposed judgment on Respondent, which Respondent received on January 17, 2013.

On January 22, 2013, Respondent sent a letter to Merrigan, stating, in part, that "[a]s was contemplated, the corporate status was not reinstated and the Court dismissed our actions and claims and inability for Desert Classis to defend itself [sic]. I was in another trial and attempted to get a continuance to no avail." (Ex. 39, page 5.) The letter did not state that the trial had been conducted or that a judgment for $83,700 plus interest and $18,000 in attorney fees had been entered.

On January 29, 2013, the court gave notice to the parties that the hearing on the proposed judgment would take place on February 20, 2013, at 8:30 a.m., which Respondent received on January 31, 2013. (See Ex. 24.)

On February 20, 2013, the hearing was held on the proposed judgment. Respondent did not file any opposition to the proposed judgment or appear at the hearing.

On February 22, 2013, Image Lab served notice of entry of judgment on Respondent. This notice stated, in part, that Desert Concours and Merrigan are liable for the judgment amount of $116,889.78, consisting of $83,700 damages, $15,189.78 in interest, and $18,000 in attorney fees. (Ex. 26.)

On March 8, 2013, Respondent filed and served a motion for a new trial.

On March 13, 2013, Image Lab filed its opposition to Respondent's motion.

On April 12, 2013, the superior court held a hearing on Respondent's motion for a new trial. (See Ex.s 30 and 31.) Respondent appeared at the hearing and argued that she had been unavailable for the prior Image Lab trial due to a trial in another matter in Los Angeles. The court, however, denied the motion for a new trial, concluding that, because the Los Angeles trial had been in recess on the day of the scheduled trial and until January 18, 2013, Respondent was not actually unavailable at the time that the Image Lab trial was scheduled to commence trial and was conducted.

On June 6, 2013, Merrigan sent an email to Respondent, requesting a status report and stating that he had just learned of the judgment against him from the Desert Sun newspaper.

On July 24, 2013, Respondent filed a motion to set aside the default judgments.

On July 26, 2013, Respondent sent a letter to Merrigan, stating, in part, that the superior court dismissed Merrigan's cross complaint "as your corporation was not of valid active status," requesting proof of the corporate status, and stating that, "[a]s to the Judgment entered against you we have a hearing in the coming weeks to set that aside." (Ex. 33.)

On August 9, 2013, the superior court heard Respondent's motion to set aside the default judgments. Respondent and counsel for Image Lab appeared at the hearing. After considering the motion, opposition, and oral argument, the court denied the motion.

On August 9, 2013, Merrigan sent a letter to Respondent, stating, in part, that he had received no correspondence from Respondent between January 11, 2013 and June 2013, and that his first notice of the judgment was from the local newspaper in June 2013. Merrigan asked Respondent if she attended the "[c]onference" on January 14, 2013, that she stated he did not need to attend. (Ex. 36.)

On August 20, 2013, Respondent sent a letter to Merrigan, stating that the motion to set aside the judgment had been denied; that she had incurred legal fees totaling $25,157; and that she had now negotiated a possible settlement with Image Lab for $15,000. Merrigan declined to go forward with the proposed settlement, stating that he lacked the funds to fund it.

Respondent encouraged Merrigan to appeal the superior court's actions in refusing to continue the trial. Merrigan, however, failed to provide her with any authority to file such an appeal. Instead, on October 15, 2013, Merrigan filed a lawsuit against Respondent alleging legal malpractice. He subsequently voluntarily dismissed that action against Respondent.

Respondent has continued to assist Merrigan in dealing with the consequences of the adverse judgment, including paying for the cost of his filing for bankruptcy.

Count 1 – Rule 3-110(A) [Failure to Perform with Competence]

Rule 3-110(A) provides that an attorney "shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." In this count, the State Bar alleges that Respondent "intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A), by the following:

- Failing timely to request a continuance of the trial held in the matter on January 14, 2013;
- Failing to prepare for the trial held on January 14, 2013;
- Advising Merrigan on January 10, 2013, that his appearance in court in the matter on January 14, 2013, was not needed;
- Failing to appear for the trial held on January 14, 2013; and
- Failing to appear for the hearing regarding the Proposed Judgment held on February 20, 2013.

At trial, Respondent stipulated, and this court finds, that Respondent is culpable of a willful violation of rule 3-110(A) as alleged in Count 1.

Count 2 – Section 6068, subd. (m) [Failure to Inform Client of Significant Development]

Section 6068, subdivision (m), obligates an attorney to "respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services."

In this count, the State Bar alleges that Respondent failed to keep Merrigan reasonably informed of significant developments in the action brought by Image Lab in willful violation of section 6068, subdivision (m), by failing to inform Merriman of the following:

- That the court granted judgment in the matter in favor of Image Lab Inc. and against Paul Merrigan and Desert Concours on January 14, 2013;
- That Respondent received a Proposed Judgment in the matter on January 17, 2013; and
- That Respondent received a Notice of Entry of Judgment in the matter on February 25, 2013.

Respondent testified credibly, and this court finds, that Respondent timely reported each of these events to Merrigan during the course of the many telephone conferences she had with Merrigan after the trial had taken place. Some of these conversations are corroborated by the written communications by Respondent to Merrigan. (Ex. 41, pp. 29-33.) Although Merrigan initially testified at trial that Respondent had not informed him of various significant developments, this testimony was shown by cross-examination to be not credible and the result of Merrigan's faulty memory.

Because the evidence supporting this count was not clear and convincing, the count is dismissed with prejudice.

Case No. 14-O-01719 (Rodionov Matter)

On February 8, 2010, Galina Donis (Donis) and Igor Rodionov (Rodionov) hired Respondent to represent them in a dispute with their home owners association (HOA) over a leak in the roof of their condominium that caused mold in their home. Donis and Rodionov agreed to pay a contingency fee of 40% of the gross recovery after mediation, arbitration or trial.

On February 10, 2010, Donis and Rodionov paid $5,000 to Respondent for advanced costs. Respondent did not deposit the advanced costs in a client trust account.

On November 4, 2010, Respondent filed a complaint on behalf of Donis and Rodionov in the Los Angeles Superior Court.

Respondent subsequently settled the matter for $111,500 and repair of the roof by the HOA.

On June 28, 2011, Respondent deposited into her client trust account (CTA) a settlement check for $2,500 concerning Donis and Rodionov. On March 1, 2013, Respondent deposited into her CTA a settlement check for $65,000 concerning Donis and Rodionov. Respondent was then entitled to a contingency fee of $27,000 (40% of $2,500 and $65,000) and costs of $1,100.24, or a total of $28,100.24 from the funds held in trust on March 1, 2013. Consequently, Respondent was then required to maintain in trust the sum of $39,399.76 until portions of such funds were either distributed to the clients or on the clients' behalf.

Between March 12, 2013 and April 11, 2013, the balance in Respondent's CTA dipped below $39,399.76 on repeated dates, including but not limited to the following:

DATE	BALANCE
3/12/13	$39,303.12
3/14/13	$29,503.12
3/18/13	$18,503.12

4/11/13	$16,855.65

Between those same dates, March 12, 2013 and April 11, 2013, Respondent wrote and negotiated client trust account checks totaling $38,800 to herself, including the following:

DATE	AMOUNT	BALANCE
3/12/13	$9,500	$39,303.12
3/14/13	$9,800	$29,503.12
3/18/13	$4,000	(see below)
3/18/13	$7,000	$18,503.12
4/11/13	$8,500	$16,855.65

The balance of $16,855.65 in the CTA on April 11, 2013, was an amount $22,544.11 less than what Respondent was required to maintain in her CTA on behalf of Donis and Rodionov at that time.

On April 26, 2013, Respondent deposited a settlement check for $44,000 concerning Donis and Rodionov into her CTA, reflecting the balance of the $111,500 settlement. After subtracting her contingency fee of $44,600 and costs of $1,100.24, Respondent was then required to maintain $65,799.76. in her account, absent some disbursement to her clients or on their behalf.

Between May 17, 2013 and June 25, 2013, there were no disbursements to the clients or on their behalf. Nonetheless, the balance in Respondent's CTA dipped below $65,799.76 on repeated dates, including the following:

DATE	BALANCE
5/17/13	$52,597.73
5/21/13	$47,475.64
5/30/13	$46,384.63
6/3/13	$37,384.63
6/4/13	$32,833.78
6/6/13	$26,833.78
6/7/13	$15,236.44
6/12/13	$13,736.44
6/14/13	$10,736.44
6/19/13	$12,186.44
6/21/13	$4,486.44
6/25/13	$2,486.44

Between those same dates, May 17, 2013 and June 25, 2013, Respondent wrote and negotiated numerous CTA checks, totaling $48,800, to herself, despite the fact that the balance in the CTA was already below the amount required to be maintained in the account on behalf of her clients Donis and Rodionov. These checks by Respondent to herself included the following:

DATE	AMOUNT	BALANCE
5/17/13	$9,500	$52,597.73
5/21/13	$4,000	$47,475.64
5/24/13	$3,000	(see below)
5/24/13	$2,000	$58,895.64
5/30/13	$6,000	$46,384.63
6/3/13	$9,800	$37,384.63
6/6/13	$6,000	$26,833.78
6/12/13	$1,500	$13,736.44
6/14/13	$3,000	$10,736.44

The balance of $2,486.44 in the CTA on June 25, 2013, was an amount $63,313.32 less than what Respondent was required to maintain at that time in her CTA on behalf of Donis and Rodionov.

Between June 25, 2013 and July 19, 2013, the balance in Respondent's client trust account remained at $2,486.44. Between July 19, 2013 and July 25, 2013, the balance was $4,886.44. Between July 26, 2013 and August 4, 2013, the balance was $6,786.44.

Respondent did not prepare and maintain a written ledger for Donis and Rodionov, a written journal for the client trust account, or the monthly reconciliation for the written ledger, written journal, and bank statement.

On September 27, 2013, the attorney representing the HOA sent an email to Respondent, stating that the HOA had completed the repair of the roof.

On September 30, 2013, Respondent replied to the email, stating that her clients would then obtain a mold clearance test.

On October 2, 2013, Respondent deposited two settlement checks each for $500,000 for two unrelated clients into her client trust account, which brought the balance to $1,047,265.38.

On October 18, 2013, Respondent sent an email to an employee in her office, stating, in part, that the work on the Donis and Rodionov property had been completed, but to remind Donis that Respondent could not distribute the settlement proceeds until the property had been repaired.

On October 23, 2013, a Mold Clearance Test Report was prepared. This report concluded that the level of mold at the Donis and Rodionov property was within normal tolerances.

On October 31, 2013, Donis sent an email to Respondent, attaching a copy of the Mold Clearance Test Report.

On November 5, 2013, Respondent sent the report to the attorney representing the HOA and requested proof of completion of the repair to the roof and skylight.

Later in November 2013, Donis and Rodionov sold the property.

On December 18, 2013, Respondent sent a follow-up letter to the attorney representing the HOA, requesting that he "confirm receipt and that all conditions have been met for the settlement to be disbursed." (Ex. 54, p. 51.)

On January 14, 2014, Donis submitted a complaint concerning Respondent to the State Bar.

On January 17, 2014, Respondent sent an email to Donis, stating, in part, that Respondent had attempted to contact Donis for two weeks to no avail and requesting that Donis contact her to make an appointment to close the case.

On January 17, 2014, Donis responded by email to Respondent's email, and requested that Respondent explain why the settlement proceeds could not be disbursed, since she had

signed all of the settlement documents over one year ago and had sold the house more than two months ago. (See Ex. 54, p. 52.)

On February 3, 2014, Respondent purportedly sent a letter to Donis and Rodionov stating, in part, that, "I really need to see you as soon as possible to figure out the breakdown of the settlement proceeds." (See Ex. 51.) The letter attached a "Settlement Breakdown" and "Costs Sheet." However, this letter was misaddressed to "17006 Tennyson Place." At that time, Donis and Rodionov resided at "17066 Tennyson Place." The "Costs Sheet" purported to show total costs of $1,325.24, but this accounting improperly charged costs of $75 and $170 for "appearance attorneys;" therefore, Respondent's actual total reimbursable costs were $1,080.24.

On February 20, 2014, the State Bar sent a letter to Respondent, requesting, in part, that she both respond to allegations that she had failed to communicate with Donis and Rodionov and provide her clients with a report on the status of the settlement. Respondent received the letter. (See Ex. 53.)

On May 29, 2014, the balance in Respondent's client trust account was $10,724.38. (See Ex. 67, p. 121.) On May 30, 2014, Respondent deposited a check from Alvina Bagrian for $40,000 into her client trust account. The memo section states "loan." On the same day, $25,000 was wired into Respondent's client trust account from Feliks and Zhaneta Garunts and, in addition, a "counter credit" of $10,000 was credited to Respondent's CTA. (See Ex. 67, p. 120.) As a result, the balance of Respondent's CTA on May 30, 2014, was increased to $85,724.38.

During this same period of time, Respondent wrote checks, dated May 27, 2014, to Donis and Rodionov for $5,000 and $65,575. Donis and Rodionov then negotiated the two CTA checks, which cleared Respondent's CTA on June 2, 2014. After these checks cleared

Respondent's bank on June 2, 2014, the balance in Respondent's CTA was reduced to $10,149.38.

Count 1 - Rule 4-100(A) [Failure to Deposit Client Funds in Trust Account]

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in an identifiable bank account which is properly labeled as a client trust account and that no funds belonging to an attorney or law firm shall be deposited in such an account or otherwise commingled with such funds.

In this count, the State Bar alleges:

> On or about February 10, 2010, Respondent received from her clients, Galina Donis and Igor Rodionov, a check for $5,000 for advance costs. Respondent failed to deposit the $5,000 in funds received for the benefit of the clients in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation Rules of Professional Conduct, rule 4-100(A).

At trial, Respondent stipulated, and this court finds, that Respondent is culpable as alleged in Count 1.

Count 2 – Rule 4-100(B)(1) [Failure to Notify Client of Receipt of Client Funds]

At trial, the State Bar requested that this count be dismissed by the court. Reaffirming this court's order at that time, this count is dismissed with prejudice.

Count 3 – Rule 4-100(A) [Commingling]

Rule 4-100(A) prohibits attorneys from depositing personal funds into a client trust account: "No funds belonging to the member or law firm shall be deposited therein or otherwise commingled." Where the attorney becomes entitled to receive a portion of the funds held in the trust fund, the attorney must withdraw those funds at the earliest reasonable time after the member's interest in that portion becomes fixed. Further, "[t]he rule absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit." (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23; see also *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State

Bar Ct. Rptr. 47, 54 ["Trust accounts, open or closed, are never to be used for personal purposes . . . ."].)

In this count, the State Bar alleges:

> On or about June 28, 2011, Respondent received on behalf of her clients, Galina Donis and Igor Rodionov, a settlement check from American Safety Indemnity Company made payable to Respondent in the sum of $2,500. On or about June 28, 2011, Respondent deposited the $2,500 into her client trust account at Bank of America, Account No. xxxxx-x27572, on behalf of the clients. On or about March 1, 2013, Respondent received on behalf of her clients a settlement check from Farmers Insurance Exchange made payable to Respondent in the sum of $65,000. On or about March 1, 2013, Respondent deposited the $65,000 into her client trust account on behalf of the clients. On or about April 26, 2013, Respondent received on behalf of her clients, a settlement check from Truck Insurance Exchange made payable to Respondent in the sum of $44,000. On or about April 26, 2013, Respondent deposited the $44,000 into her client trust account on behalf of the clients. Of these funds, Respondent was entitled to attorney's fees of $44,600. Respondent did not promptly remove the funds which she had earned as attorney's fees from her client trust account and instead, left her attorney's fees in her client trust account to be withdrawn as needed, in willful violation of Rules of Professional Conduct, rule 4-100(A).

At trial, Respondent stipulated, and this court finds, that Respondent is culpable as alleged in Count 3.

Count 4 – Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]
Count 5 – Section 6106 [Moral Turpitude - Misappropriation]

Rule 4-100(A) requires that "funds received or held for the benefit of clients" shall be deposited in a client trust account (CTA). It is well-established that "an attorney has a 'personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds.' [Citation.] These duties are non-delegable. [Citation.]" (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 411.) Under this non-delegable duty, an attorney must maintain client funds in a CTA until outstanding balances are settled. (*In the Matter of Bleecker* (Review Dept. 1990) 1 Cal State Bar Ct. Rptr. 113, 123.)

In Count 4 of the NDC, the State Bar alleges that Donis and Rodionov were entitled to at least $66,900 of the funds received by Respondent and deposited by her in the CTA; that

Respondent failed to maintain a balance of least $66,900 in the CTA on behalf of those clients; and that this failure represented a willful violation by Respondent of rule 4-100(A) of the Rules of Professional Conduct.

At trial, Respondent stipulated, and this court finds, that Respondent is culpable as alleged in Count 4, namely that she failed to maintain at least $66,900 of funds belonging to Donis and Rodionov in her CTA and that this failure represented a willful violation by her of rule 4-100(A) of the Rules of Professional Conduct.[3]

In Count 5, the State Bar alleges that, between about June 25, 2013, and July 19, 2013, Respondent dishonestly or grossly negligently misappropriated for her own purposes at least $64,413.56 that her clients were entitled to receive and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

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 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*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 410.) An attorney's non-deliberate breach of a fiduciary duty to a client involves moral turpitude if the breach occurred as a result of the attorney's gross carelessness and negligence. (see, e.g., *Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 475 ["Gross carelessness and negligence constitute violations of the oath of an attorney to faithfully discharge his duties to the best of his knowledge and ability, and involve moral turpitude as they breach the fiduciary relationship

[3] However, the conduct underlying this violation 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.)

owed to clients."]; *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195, 208, citing *Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020, and *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468, 478.)

While Respondent stipulated to having failed to maintain these funds in her client trust account, at trial she disputed that her failure to maintain the funds in her CTA represented an act of moral turpitude. Instead, she contends that her failure to maintain the clients' funds in the trust account resulted merely from mistakes and negligence on her part, not conduct amounting to gross negligence or actual dishonesty.

This court does not agree with the argument advanced by Respondent. The evidence is clear and convincing that Respondent's mishandling of her client trust account reflected at least gross negligence on her part. There is ample evidence for this court to conclude that her misappropriation of more than $60,000 of her clients' funds and her use of that money for more than a year was knowing and intentional on her part. While Respondent contends that her use of the clients' funds was unintentional and unnoticed by her for more than a year, she sought to justify such ignorance of the true status of her CTA by evidence showing that she exercised virtually no oversight over the status of client funds in her CTA for that entire period. She did not maintain the records required by the standards adopted pursuant to by rule 4-100 for client funds deposited into her client trust account. While she testified that she maintains a "ledger" for every chart, she stated that the ledger maintained for this matter was not accurate. More significantly, she clearly did not regularly reconcile the stated balance in this ledger with the monthly balance in her CTA, as reflected in the fact that the balance of Respondent's CTA frequently dipped below the amount required to be maintained in it and remained at a deficient level for a long period of time. Indeed, she did not regularly monitor the balance in her CTA at all.

It is well-established that such a lack of concern by Respondent in the performance of her fiduciary responsibilities amounts to at least gross negligence and makes her repeated and ongoing misuse of her clients' funds acts of moral turpitude in willful violation of section 6106. (See, e.g., *Palomo v. State Bar* (1984) 36 Cal.3d 785, 795-796 [trust account violation may be willful for disciplinary purposes when caused by "serious and inexcusable lapses in office procedure"]; *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708, 712 ["[T]he repeated dipping of respondent's trust account below the required balance constitute[s] a basis for a finding of moral turpitude under section 6106 . . . ."]; see also *Simmons v. State Bar* (1970) 2 Cal.3d 719, 729, quoting *Grove v. State Bar* (1967) 66 Cal.2d 680, 683-684; *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 385; *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416; and *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824, 829-830 [attorney's willful misappropriation of trust funds usually compels conclusion of moral turpitude].)

For all of the above reasons, this court finds that Respondent's repeated and sustained use of $64,413.56 belonging to her clients, Donis and Rodionov, represented acts of moral turpitude by her and willful violations of the prohibition of section 6106.

Count 6 - Rule 4-100(C) [Failure to Maintain Required Client Trust Account Records]

Rule 4-100(B)(3) provides, in pertinent part, that a member shall "[m]aintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them; preserve such records for a period of no less than five years after final appropriate distribution of such funds or properties . . . ." Rule 4-100(C) provides: "The Board of Governors of the State Bar shall have the authority to formulate and adopt standards as to what 'records' shall be maintained by members and law firms in accordance with subparagraph (B)(3). The standards formulated and

adopted by the Board, as from time to time amended, shall be effective and binding on all members."

Pursuant to rule 4-100(C), the Board of Governors of the State Bar adopted the following standards, effective January 1, 1993, as to what "records" shall be maintained by members and law firms in accordance with subparagraph (B)(3):

> (1) A member shall, from the date of receipt of client funds through the period ending five years from the date of appropriate disbursement of such funds, maintain:
>
> (a) a written ledger for each client on whose behalf funds are held that sets forth:
>
> (i) the name of such client,
>
> (ii) the date, amount and source of all funds received on behalf of such client,
>
> (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client, and
>
> (iv) the current balance for such client;
>
> (b) a written journal for each bank account that sets forth:
>
> (i) the name of such account,
>
> (ii) the date, amount and client affected by each debit and credit, and
>
> (iii) the current balance in such account;
>
> (c) all bank statements and cancelled checks for each bank account; and
>
> (d) each monthly reconciliation (balancing) of (a), (b), and (c).

In this count, the State Bar alleges that Respondent failed to maintain the records required by the standards adopted by the State Bar pursuant to rule 4-100(C), in willful violation of that rule. At trial, Respondent stipulated, and this court finds, that Respondent is culpable as alleged in Count 6.[4]

Count 7 – Section 6068, subd. (m) [Failure to Respond to Client Inquiries]

Section 6068, subdivision (m), of the Business and Professions Code obligates an attorney to "respond promptly to reasonable status inquiries of clients and to keep clients

[4] However, because the conduct underlying this culpability is also the basis for the finding, above, that Respondent is culpable of willful acts of moral turpitude, the court finds no need to assess any additional discipline as a consequence of it.

reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services."

In this count, the State Bar alleges:

> Respondent failed to respond promptly to approximately 50 telephonic reasonable status inquiries made by her clients, Galina Donis and Igor Rodionov, between in or about May 2013 and on or about January 19, 2014, and six telephonic reasonable status inquiries made by her clients between on or about January 19, 2014 and in or about May 2014, that Respondent received in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

The evidence at trial failed to provide clear and convincing evidence to support the above allegations, based on the complaints of Respondent's client, or to establish any failure by Respondent to keep the client abreast of the status of the matter being handled by her. While the client complained at trial of the number of times she had asked to speak directly with Respondent, those complaints were clearly exaggerated. Moreover, she acknowledged on cross-examination that, when she called to seek a status report, she was told the status of the action and the settlement by Respondent's office. There was no development in the matter about which the client was not aware or not reminded of when she called wanting to know why her settlement funds were not being disbursed.

This count is dismissed with prejudice.

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

Multiple Acts of Misconduct

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.5(b).)

---

[5] All further references to standard(s) or std. are to this source. While the State Bar has adopted new standards effective July 1, 2015, the court applies to this decision the earlier standards as they were in effect from the filing of the NDC through the completion of the trial of the matter.

Significant Harm

Respondent's misconduct significantly harmed her clients Donis and Rodionov. These clients had settled in March 2013 their case against their homeowner's association; that settlement was fully funded in the same month, with the funds being entrusted to Respondent for safekeeping. While the settlement required Respondent's clients to provide mold remediation work and proof, that obligation was satisfied by November 2013. In the same month, the clients sold the property that had been the subject of the dispute. By that time, they were entitled to have the settlement funds disbursed to them. Because Respondent had misappropriated those funds, they were not immediately available for disbursement. It was not until Respondent secured loans from third parties in May 2014 that Respondent finally disbursed the settlement funds to her clients. During that intervening period, client Donis suffered significant harm as she was required to resort to credit card debt to cover various expenses, including the cost of the mold remediation. This harm is an aggravating factor. (Std. 1.5(f).)

The evidence is not clear and convincing that Respondent's conduct caused significant harm to her clients Merrigan or Desert Concours. While the action against those clients was resolved by an unfavorable judgment against them, during Merrigan's testimony in this proceeding, he made no effort to claim that the action against him lacked merit. Instead, he had sought prior to the scheduled trial in that matter to settle the case against him for $25,000, but the plaintiff elected not to go forward with the action. Then, even after the adverse judgment was handed down, Respondent was successful in making arrangements for the case to be resolved for $15,000. The only reason given by Merrigan for his failure to go forward with that settlement was his lack of sufficient money to fund the settlement. That lack of funds was not shown to have resulted from any misconduct by Respondent. To the contrary, Merrigan acknowledged

during cross-examination that, at the time of the scheduled trial in the underlying matter, he was already having "problems with cash flow".

While Merrigan has now filed for bankruptcy, the evidence is also not clear and convincing that such a proceeding would not have resulted from any unfavorable judgment resulting from the Image Lab action against him. Instead, as a consequence of Respondent's remorse for the bad outcome in his case, she is handling his bankruptcy on a pro bono basis.

Mitigating Circumstances

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

No Prior Discipline

Standard 1.6(a) provides for mitigation in the absence of discipline over many years and where the present conduct is not deemed serious. However, where the misconduct is serious, a discipline-free practice is most relevant where the misconduct is aberrational and unlikely to recur. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029.)

Respondent was admitted to practice law in California on March 29, 2003. Her earliest misconduct in this matter occurred on February 10, 2010, slightly less than seven years later, when she failed to deposit into her client trust account the advance of costs in the Rodionov matter. In its trial brief, the State Bar concedes that Respondent is entitled to some mitigation for this period of discipline-free practice but argues that the weight of that mitigating factor is limited. This court agrees. (See, e.g., *Cannon v. State Bar* (1990) 51 Cal.3d 1103, 1115 [six years "entitled to little weight in mitigation"]; *Kelly v. State Bar* (1988) 45 Cal.3d 649, 658 [seven and one-half years without discipline is mitigating but does not merit significant weight]; *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126, 135 [entitled to "very

limited weight" in mitigation]; *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 44 [seven years entitled to "slight weight in mitigation"].)

Cooperation

Respondent entered into an extensive stipulation of facts and admitted culpability at the commencement of trial to many of the allegations of misconduct in this case. Even where Respondent did not admit culpability, she admitted most of the facts underlying this court's finding of culpability. For such cooperation, Respondent is entitled to mitigation credit. (Std. 1.6(e); see also *In the Matter of Gadda*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 443; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded those who admit to culpability as well as facts].)

Restitution

Respondent repaid to her clients all of the previously-mishandled funds sums. However, she did so only after the clients had complained to the State Bar. 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. 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*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 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.) For that reason, this court declines to treat Respondent's repayment of the misappropriated funds as a mitigating factor.

Remorse/Recognition of Wrongdoing

Respondent has recognized of her wrongdoing in the above matters and credibly expressed her remorse for her misconduct. This is a mitigating factor. (Std. 1.6(g).)

Character Evidence

Respondent presented good character testimony from three individuals, including an attorney and two prominent members of the Armenian community. While the court accords Respondent some nominal mitigation credit for this evidence, it is not significant. The three witnesses do not constitute "a wide range of references in the legal and general communities." (Std. 1.6(f); *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [testimony of four character witnesses afforded diminished weight in mitigation].) Nor did the declarations of the three individuals, all bearing dates in mid-2014, demonstrate having any knowledge of the charges filed against Respondent in the Donis matter. (*In re Aquino* (1989) 49 Cal.3d 1122, 1131 [seven witnesses and 20 letters of support not "significant" evidence of mitigation because witnesses unfamiliar with details of misconduct]; *In the Matter of Myrdall*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 387 [testimony of three clients and three attorneys familiar with charges against attorney was entitled to limited mitigation because they did not constitute a broad range of references]; see also *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476-477; *In the Matter of Johnson*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 190; *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359.)

Community Service

Respondent presented significant evidence of community service. She has donated hundreds of hours of time educating parents, children and teachers regarding the laws relative to children, including routinely going into the schools to put on educational programs; has spent much time educating members of the public regarding the need for estate planning; and has

participated for a number of years and been honored by the Harriett Buhai Center for Family Law for her providing "assistance to low-income persons in Los Angeles County in family law matters." These contributions by Respondent to her community are a mitigating factor that is entitled to "considerable weight." (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785; *Rose v. State Bar* (1989) 49 Cal.3d 646, 665 [considerable community service and pro bono work treated as "strong mitigation"]); *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297, 305 [10-15 hours per month of volunteer community and church work counseling people in crisis]; *In the Matter of Crane and DePew* (Review Dept 1990) 1 Cal. State Bar Ct. Rptr. 139, 158.)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but 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. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this 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.) The court then looks to the 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.) As the Review Department noted more than two decades ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) 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; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.7(a) 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. The most severe sanction is found in standard 2.1(b), which recommends disbarment or suspension for willful misappropriation of entrusted funds resulting from gross negligence. This standard, which became effective on January 1, 2014, and was continued with the revised standards adopted in July 2015, reflects a more flexible and potentially more lenient standard than that of the previous standard 2.2(a), which provided that the willful misappropriation of entrusted funds "shall result in disbarment" unless the amount in question was insignificant or compelling mitigating circumstances clearly predominated.

Turning to the case law, 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.) However, where there are mitigating circumstances, the Supreme Court has repeatedly declined to apply the disbarment sanction spelled out in the standards, especially where the attorney had no prior record of discipline, other mitigation is present, and disbarment does not appear to be necessary to protect the public.

By way of example, in its decision in *Edwards v. State Bar* (1990) 52 Cal.3d 28, the court stated, "Disbarment would rarely, if ever, be an appropriate discipline for an attorney whose only misconduct was a single act of negligent misappropriation, unaccompanied by acts of deceit or other aggravating factors. Thus we have ordered discipline as light as 30 days of actual suspension when the misappropriation resulted from negligence and other mitigating factors were present." (*Id.* at p. 38, citing *Schultz v. State Bar* (1975) 15 Cal.3d 799, 803-805.)

In *Lipson v. State Bar* (1991) 53 Cal.3d 1010, the Supreme Court suspended an attorney for two years and until he satisfied the requirements of standard 1.4(c)(ii) [now standard 1.2(c)(1)] for misconduct involving two clients. In one matter, the attorney intentionally misappropriated $12,400, which was intended for the client's lease expenses. The attorney later attempted to pay the client's lessor with an NSF check, which was dishonored. The attorney borrowed an additional $7,000 from the same client, and failed to repay the borrowed funds. The attorney also borrowed $10,750 from a second client and attempted to repay the loan with numerous NSF checks. The client was unable to collect on this debt. In deviating from standard 2.2(a), the Supreme Court focused on the attorney's 42 years of practice without discipline and his contrition. (*Id.* at p. 1021.)

In *Rhodes v. State Bar* (1989) 49 Cal.3d 50, the attorney was culpable of misappropriation and issuing numerous NSF checks drawn against his business, trust, and personal accounts. He also was convicted of a misdemeanor for issuing an NSF check for payment of wages, in violation of Labor Code section 212. The attorney misused his CTA and operating account during a four-year period, including repeated commingling of client and personal funds. He also borrowed $6,000 from a client, failed to repay the client after issuing two NSF checks that were dishonored, and refused to return entrusted funds to another client for six years. Most significantly, in aggravation, the attorney had a prior record of discipline for

commingling and misappropriating client funds, for which he received a two-year stayed suspension. The Supreme Court did not expressly find the attorney engaged in acts of moral turpitude, but it did find his "taking money from clients and writing numerous bad checks over a four-year period represent[ed] a 'continuing course of serious professional misconduct.' [Citation.]" (*Rhodes*, *supra*, 49 Cal.3d at p. 59.) The Court further found the attorney's misconduct was mitigated by domestic difficulties and family tragedy, remorse, modest evidence of good character and rehabilitation, and his eventual reimbursement of the misappropriated funds. The attorney had practiced for less than four years and therefore was not afforded mitigation for his discipline-free record. Although acknowledging that the attorney's misappropriation could lead to disbarment under standard 2.2(a), the Supreme Court nevertheless imposed a two-year suspension and required a showing under standard 1.4(c)(ii).

Other instances since January 1, 1986, when the standards first became effective, where the Supreme Court has imposed discipline of less than disbarment for misconduct that included misappropriation have included *Bates v. State Bar* (1990) 51 Cal.3d 1056 [six months' actual suspension]; *Boehme v. State Bar* (1988) 47 Cal.3d 448 [18 months' actual suspension]; *Brockway v. State Bar* (1991) 53 Cal.3d 51 [three months' actual suspension]; *Dudugjian v. State Bar* (1991) 52 Cal.3d 1092 [public reproval, rejecting recommendation of 90 days' actual suspension]; *Friedman v. State Bar* (1990) 50 Cal.3d 235 [three years' actual suspension]; *Hipolito v. State Bar* (1989) 48 Cal.3d 621 [one year's actual suspension]; *Howard v. State Bar* (1990) 51 Cal.3d 215 [six months' actual suspension]; *Kelly v. State Bar* (1991) 53 Cal.3d 509 [four months' actual suspension, rejecting recommendation of one year's actual suspension]; *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071 [one year's actual suspension, rejecting recommendation of two years' actual suspension]; and *Weller v. State Bar* (1989) 49 Cal.3d 670 [three years' actual suspension].

As evidenced by its decision in *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113, 126-127, the same approach, with comparable results, has been adopted and followed by the Review Department of this court since its earliest days:[6]

> We next turn to the issue of the degree of discipline we are to recommend to the Supreme Court based on our conclusions as to respondent's misconduct in this case. In determining the appropriate degree of discipline to recommend, we start with the standards which serve as our guidelines. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We must also consider whether the recommended discipline is consistent with or disproportional to prior decisions of the Supreme Court on similar facts. (See, e.g., *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) In the present case we have concluded that respondent is culpable of misappropriation and commingling of funds in violation of rule 8-101 [now rule 4-100] and of concealment of his assets in violation of section 6106. Standard 2.2(a) provides for disbarment for misappropriation of entrusted funds unless the amount of funds misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case a minimum of one year actual suspension should be imposed. Standard 2.2(b) provides for a minimum actual suspension of 90 days for commingling of entrusted funds or any other violation of rule 8-101, not amounting to wilful misappropriation. Standard 2.3 provides for actual suspension or disbarment for offenses involving moral turpitude, depending on the degree to which the victim was harmed, the magnitude of the misconduct, and the degree to which it relates to the practice of law.
>
> Pursuant to standard 1.6(a), if two or more acts of professional misconduct are found in a single disciplinary proceeding and different sanctions are prescribed by the Standards, the sanction imposed should be the most severe of the different applicable sanctions. Thus in the present case, standard 2.2(a) is the most severe applicable sanction. However, our inquiry does not end with standard 2.2(a).
>
> The Standards must be viewed as a whole with the objective of achieving the primary purposes of the disciplinary proceedings as set forth in standard 1.3: namely, the protection of the public, courts and legal profession; the maintenance of high professional standards; and the preservation of public confidence in the legal profession. We are further guided by standard 1.6(b) which provides that the sanction specified by the Standards shall be imposed unless: (1) aggravating circumstances are found to surround the particular act of misconduct and the net effect of the aggravating circumstances, by themselves and in balance with any mitigating circumstances, demonstrates that a greater degree of sanction is required to fulfill the purpose of imposing sanctions as set forth in standard 1.3 or (2) mitigating circumstances are found to surround the particular act of misconduct and the net effect of the mitigating circumstances, by themselves and

[6] The standards referred to in the following quotation are those in effect in 1990.

> in balance with any aggravating circumstances, demonstrates that a lesser sanction should be imposed to fulfill the purposes set forth in standard 1.3.
>
> In the present case the nature of respondent's misconduct combined with the mitigating factors indicates that imposing the sanction set forth in standard 2.2 would not further the purposes of standard 1.3. The record before us supports the conclusion that respondent is not a venal person and his misconduct was aberrational. Respondent does not have a prior or subsequent record of discipline. He made a very poor business decision brought on by financial pressures. The misconduct occurred over a relatively short period of time (late 1985 and early 1986), and respondent has taken steps to reform his conduct as evidenced by the business consultant he hired and by the lack of subsequent discipline since the misconduct herein. Respondent's ". . . engagement of a management firm is not only a recognition of the seriousness of the misconduct and an acceptance of responsibility therefor, it is, . . . an objective step taken to avoid misconduct in the future." (*Hipolito v. State Bar* (1989) 48 Cal.3d 621, 627, fn. 3.) These factors together with the other mitigating circumstances present in this case establish that a lesser sanction than that called for in standard 2.2(a) should be imposed to fulfill the purposes of attorney discipline.

Adopting the same rationale, the Review Department also went on to reject the 90-day actual suspension minimum discipline of then applicable standard 2.2(b) for violations of what is now rule 4-100(A), and it recommended an actual suspension of 60 days in the *Bleecker* case.

Other published instances since that decision where the Review Department has declined to recommend the disbarment sanction set forth in the standards have included *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404 [six months' actual suspension]; *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280 [one year's actual suspension]; *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153 [one year's actual suspension]; *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902 [90 days' actual suspension, rejecting the hearing judge's recommendation of six months' actual suspension]; *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59 [one year's actual suspension]; and *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47 [90 days' actual suspension].

Factors that the above courts have relied on to impose or recommend discipline below the level set forth in previously-applicable standard 2.2(a) are present in this case. The

misappropriation here resulted from gross negligence rather than any dishonest intent, and Respondent has now taken steps to see that her CTA is handled and monitored appropriately. (See, e.g., *Hipolito v. State Bar* (1989) 48 Cal.3d 621, 627, fn. 2 [favorable consideration given for "steps to repair the damage done and to prevent its recurrence"].) Rather than being a "venal" person, Respondent's rectitude has been demonstrated by significant efforts by her on behalf of the public good and the welfare of others. She has credibly expressed her remorse for her past misconduct, and this court has no doubt that the imposition of discipline consisting of significant actual suspension and probation, but less than disbarment, will accomplish the desired goal of protecting the public, the profession, and the courts from any future misconduct by her.

RECOMMENDED DISCIPLINE

Actual Suspension

For all of the above reasons, it is recommended that **Mary Derparseghian**, also known as Mary Der-Parseghian, State Bar number 224541, be suspended from the practice of law for three years; that execution of that suspension be stayed; and that Respondent be placed on probation for three years, with the following conditions:

a. Respondent must be suspended from the practice of law for a minimum of the first two years of the period of her probation, and remain suspended until she provides proof to the State Bar Court of her rehabilitation, fitness to practice and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.

3. Respondent must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, her current office address and telephone number or, *if no*

office is maintained, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, her current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

4. Within thirty (30) days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation and must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

5. Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which Respondent is on probation (reporting dates). However, if Respondent's probation begins less than 30 days before a reporting date, Respondent may submit the first report no later than the second reporting date after the beginning of her probation. In each report, Respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

   (a) in the first report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and

(b) in each subsequent report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

During the last 20 days of this probation, Respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, Respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

6. Subject to the proper or good faith assertion of any applicable privilege, Respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to Respondent, whether orally or in writing, relating to whether Respondent is complying or has complied with the conditions of this probation.

7. Within one year after the effective date of the Supreme Court order in this matter, Respondent must attend and satisfactorily complete the State Bar's Ethics School and the State Bar's Client Trust Accounting School and provide satisfactory proof of such completion to the State Bar's Office of Probation. This condition of probation is separate and apart from Respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, Respondent is ordered not to claim any MCLE credit for attending and completing this course. (Rules Proc. of State Bar, rule 3201.)

8. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.

At the termination of the probation period, if Respondent has complied with all of the terms of her probation, the three-year period of stayed suspension will be satisfied and the suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that Respondent take and pass the Multistate Professional Responsibility Examination during the period of her actual suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within that same period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

California Rules of Court, Rule 9.20

The court recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.[7]

Costs

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

Dated: October 6, 2015

DONALD F. MILES
Judge of the State Bar Court

[7] Respondent is required to file a rule 9.20(c) affidavit even if she has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 6, 2015, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

BRIAN J. WARD
LAW OFFICES OF BRIAN J. WARD, PC
301 E COLORADO BLVD STE 407
PASADENA, CA 91101

JEROME ALAN KAPLAN
KAPLAN KENEGOS & KADIN
9150 WILSHIRE BLVD #175
BEVERLY HILLS, CA 90212

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

CHARLES CALIX, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 6, 2015.

TCleaver

Tammy Cleaver
Case Administrator
State Bar Court