

ORIGINAL

State Bar Court of California Hearing Department Los Angeles DISBARMENT		
Counsel For The State Bar Kimberly G. Anderson Senior Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017 (213) 765-1083 Bar # 150359	Case Number(s): 13-O-17595	For Court use only <div style="text-align: center;"> FILED MAY 09 2014 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Counsel For Respondent Thomas R. Saltarelli 100 Bayview Circle, Suite 500 Newport Beach, CA 92660 (949) 833-9200 Bar # 97889	PUBLIC MATTER	
In the Matter of: PATRICK LEE LUND Bar # 86371 A Member of the State Bar of California (Respondent)	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

kwiktag® 048 639 886



A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **May 31, 1979**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (10) pages, not including the order.
- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ Costs to be awarded to the State Bar.
- ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
- ☐ Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) ☒ **Prior record of discipline**
- (a) ☐ State Bar Court case # of prior case
- (b) ☐ Date prior discipline effective
- (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
- (d) ☐ Degree of prior discipline
- (e) ☒ If respondent has two or more incidents of prior discipline, use space provided below:
- See Stipulation Attachment at page 7**
- (2) ☐ **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
See Stipulation Attachment at page 7.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

(Do not write above this line.)

- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☒ **Restitution:** Respondent failed to make restitution. **See Stipulation Attachment at page 7.**
- (9) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and reasonable.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

(Do not write above this line.)

Additional mitigating circumstances:

Prefiling Stipulation - See Stipulation Attachment at page 7.

D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, 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's Order in this matter.
- (2) ☒ **Restitution:** Respondent must make restitution to **Jeffrey B. Armour** in the amount of \$ **69,500** plus 10 percent interest per year from **November 10, 2011**. If the Client Security Fund has reimbursed **Jeffrey B. Armour** for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than days from the effective date of the Supreme Court order in this case.
- (3) ☐ **Other:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: PATRICK LEE LUND

CASE NUMBER: 13-O-17595

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 13-O-17595 (Complainant: Jeffrey B. Armour)

FACTS:

1. On January 12, 2011, Jeffrey B. Armour hired Respondent to represent Armour Capital LLC (collectively referred to as "Armour") in a business dispute. Armour paid Respondent \$27,729 for the representation.

2. On January 21, 2011, Respondent received two wire transfers totaling \$200,000 in the amounts of \$40,000 and \$160,000, respectively, from a settlement of the business dispute. On January 21, 2011, the \$200,000 was deposited into Respondent's Wells Fargo client trust account. Respondent was to hold the funds in trust and then disburse them to Armour after the opposing party authorized the release of the funds to Armour.

3. Between January 21, 2011 and March 14, 2011, Respondent intentionally misappropriated for Respondent's own purposes \$199,992.19 of the funds that he was required to hold in trust on behalf of Armour. The balance in Respondent's client trust account dipped to \$7.81 as of March 14, 2011.

4. On November 10, 2011, the opposing party authorized Respondent to release the \$200,000 to Armour that Respondent was supposed to be holding in his client trust account.

5. Between November 10, 2011 and January 13, 2012, Armour repeatedly asked Respondent to release the \$200,000 to him. Respondent did not release any portion of the funds to Armour and Respondent did not tell Armour that he had misappropriated the funds until January 13, 2012.

6. On January 13, 2012, Respondent admitted to having used the \$200,000 belonging to Armour for his own purposes and benefit and that he no longer had the funds; however, between October 12, 2012 and February 2014, Respondent paid Armour \$130,500 as partial restitution. To date, Respondent has not paid Armour the \$69,500 balance of the funds he misappropriated.

CONCLUSIONS OF LAW:

7. By intentionally misappropriating \$199,992.19 in entrusted funds, Respondent committed an act of moral turpitude, in willful violation of Business and Professions Code section 6106.

8. By failing to maintain at least \$199,992.19 in his client trust account on behalf of Armour, Respondent failed to maintain entrusted funds in a client trust account in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has the following two prior records of discipline:

Effective October 6, 2012, Respondent received a one-year stayed suspension and two years' probation in State Bar Court Case No. 11-O-11135 for a violation of rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services competently). The misconduct occurred between approximately July 2007 and September 2008, when Respondent failed to supervise his staff, resulting in the dismissal of a client's appeal. Respondent received mitigation for his candor and cooperation with the State Bar. There were no aggravating factors.

Effective, September 21, 2011, Respondent received a one-year public reproof with conditions in State Bar Court Case Nos. 08-O-11293 and 10-O-08625 for violations of rules 3-310(B)(3) (failure to provide written disclosure to the client of personal relationship with a third party in a matter where the member knows the third party would be affected substantially by the resolution of the matter) and 3-700(D)(2) of the Rules of Professional Conduct (failure to promptly refund unearned fees) and Business and Professions Code section 6090.5 (seeking an agreement that client withdraw a disciplinary complaint). The misconduct involved occurred between approximately March 2007 and March 2011, and involved misconduct in two separate client matters. Respondent received mitigation for cooperating with the State Bar and for not having a prior record of discipline.

Harm (Std. 1.5(f)): Respondent has misappropriated a total of \$199,992.19 of funds belonging to Armour, and to date, he has only paid Armour partial restitution in the amount of \$130,500. Armour was significantly harmed by Respondent's misconduct because he was deprived of \$200,000 of his funds between November 10, 2011 and October 12, 2012, and he has been deprived of the \$69,500 balance of his funds from November 10, 2011 to the present.

Failure to Make Restitution (Std. 1.5(i)): To date, Respondent has not made full restitution to Armour and he only made \$130,500 in partial restitution to Armour as of May 29, 2013. To date, Respondent has failed to make restitution to Armour for the \$69,500 balance of funds.

MITIGATING CIRCUMSTANCES.

Prefiling Stipulation: Respondent admitted to the State Bar during the investigation that he had misappropriated the funds and he has entered into this stipulation as to facts and culpability prior to the filing of disciplinary charges, which has saved the State Bar's resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for

Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the Standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the Standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, Respondent admits to committing two acts of professional misconduct. Standard 1.7(a) requires that where an attorney “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

The most severe sanction applicable to Respondent’s misconduct is found in Standard 2.1, which applies to Respondent’s misappropriation of entrusted funds in violation of Business and Professions Code section 6106. Standard 2.1 states, in pertinent part:

- (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.

Respondent’s misappropriation was intentional and the amount of funds taken was not insignificantly small.

Since Respondent has two prior records of discipline, this matter also requires an evaluation of the Respondent’s misconduct in light of Standard 1.8(b). Standard 1.8(b) provides in relevant part:

If a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct: ...

3. The prior disciplinary matters coupled with the current records demonstrate the members unwillingness or inability to conform to ethical standards.

Moreover, there are significant aggravating factors and there is no compelling mitigation which would justify a lesser sanction. In this case, Respondent's misconduct involved three aggravating factors and only one mitigating factor. Moreover, Respondent's two prior records of discipline constitutes significant aggravation.

Case law also supports a sanction of disbarment for similar misconduct. Misappropriation of client funds breaches the high duty of loyalty owed to a client, violates basic notions of honesty, and endangers public confidence in the legal profession. (*Kelly v. State Bar* (1988) 45 Cal.3d 649; *McKnight v. State Bar* (1991) 53 Cal.3d 1025.) Misappropriation generally warrants disbarment. (*Kelly, supra*, 45 Cal.3d 649.) Intentional misappropriation of entrusted funds, even without a prior record of discipline, warrants disbarment in the absence of compelling mitigation. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1071-1073.)

Based upon the standards and case law cited above, disbarment would be the only appropriate sanction in this case even if Respondent did not have a prior record of discipline. However, disbarment is also necessary here as Respondent has demonstrated an unwillingness or inability to conform to ethical standards. Respondent has committed misconduct from 2008 to the present, and has been the subject of three separate State Bar disciplinary proceedings between September 2011 and the present. Moreover, there is no compelling mitigation of the type that would justify a lesser sanction than disbarment.

COSTS OF DISCIPLINARY PROCEEDINGS.

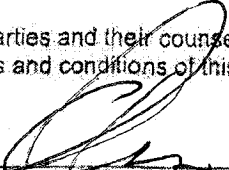
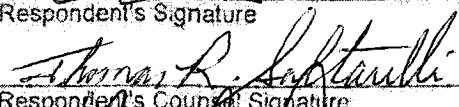
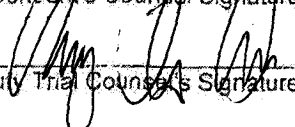
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of date, the prosecution costs in this matter are approximately \$2,992. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: PATRICK LEE LUND	Case number(s): 13-O-17595
---------------------------------------	-------------------------------

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>4/22/14</u>		<u>Patrick Lund</u>
Date	Respondent's Signature	Print Name
<u>4/22/2014</u>		<u>THOMAS R. SALTARELLI</u>
Date	Respondent's Counsel Signature	Print Name
<u>4/24/14</u>		<u>KIMBERLY G. ANDERSON</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: PATRICK LEE LUND	Case Number(s): 13-O-17595
---------------------------------------	-------------------------------

DISBARMENT ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Respondent Patrick Lee Lund is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

05-08-2014
Date


RICHARD A. PLATEL
Judge of the State Bar Court

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 May 9, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

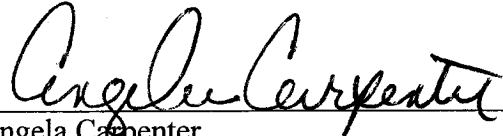
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

THOMAS R. SALTARELLI
SALTARELLI LAW CORPORATION
PO BOX 10367
NEWPORT BEACH, CA 92658

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

KIMBERLY ANDERSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 9, 2014.



Angela Carpenter
Case Administrator
State Bar Court