

PUBLIC MATTER

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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos.: 14-O-02783-PEM (14-O-04830)
)	
PAUL ARTHUR JOHNSON,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 212950,)	ENROLLMENT
)	
A Member of the State Bar.)	

Introduction¹

In this contested disciplinary proceeding, respondent **Paul Arthur Johnson** is charged with four counts of professional misconduct in two matters. The charged misconduct includes failing to maintain client funds in a trust account and breaching fiduciary duty by misappropriating entrusted funds of \$240,900.

The court finds, by clear and convincing evidence, that respondent is culpable of all four counts of misconduct. Respondent has harmed the public, damaged public confidence in the legal profession, and failed to maintain the high professional standards demanded of attorneys. In light of the serious nature and extent of respondent's misconduct, as well as the aggravating circumstances, the court recommends that respondent be disbarred from the practice of law.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on December 5, 2014. On February 2, 2015, respondent filed a response to the NDC.

Trial was held on March 24 and 25 and April 7, 2015. The State Bar was represented by Senior Trial Counsel, Eli D. Morgenstern. Respondent represented himself. On April 14, 2015, following closing arguments and briefs, the court took this matter under submission.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on May 29, 2001, and has been a member of the State Bar of California at all times since that date.

The following findings of fact are based on the evidence and testimony admitted at trial and the stipulation as to facts filed March 24, 2015. The two matters (DeCuir and Chen) involved similar misconduct of misappropriation under the guise of investment in which respondent was to act as an unbiased fiduciary in his capacity as an escrow agent. The investors fell prey to respondent's and a third party's deception.

After carefully observing and considering respondent's testimony, including, among other things, his demeanor while testifying; the manner in which he testified; the character of his testimony; his interest in the outcome in this proceeding; his capacity to perceive, recollect, and communicate the matters on which he testified; and after carefully reflecting on the record as a whole, the court finds that much of respondent's testimony lacked credibility and sincerity. (Evid. Code, § 780.) Other times, respondent's testimony appeared contrived.

For example, respondent's testimony, contradicted by documentary evidence, lacked credibility when he testified that:

- (1) He was not an escrow agent in both DeCuir and Chen matters;

(2) He was not aware of the financial agreements between Arthur Tucker and the two investors (DeCuir and Chen); and

(3) He inadvertently through an accounting error gave \$130,000 of the investors' funds to other clients.

The State Bar's witnesses were credible and reliable.

Case No. 14-O-02783 – The DeCuir Matter

Facts

Peter DeCuir (DeCuir) is the CEO of PlayersRoad, Inc., a company seeking to build an internet website. In 2013, DeCuir was seeking \$3.5 million in capital to finance his company. Through a friend who brought businesses seeking capital together, DeCuir was introduced to Arthur Tucker (Tucker), CEO of MSW Industries LLC.² Tucker promised DeCuir a \$5 million return on an \$110,000 investment or at the very least, double his investment within 20 days. To this end, on November 15, 2013, DeCuir³ and Tucker entered into a Financial Cooperation Agreement (Agreement) involving a "Private Bank Monetization Transaction," specifically the funding, delivery and joint use of a \$10 million bank guarantee/standby line of credit.

On November 15, 2013, pursuant to the Agreement, DeCuir delivered \$110,000 to respondent's client trust account at J.P. Morgan Chase Bank, account No. xxx4533⁴ (CTA), in order to accomplish the funding for the transaction. The Agreement specifically stated that DeCuir's \$110,000 was never at risk because it was accomplished by bank to bank delivery with the \$110,000 held in an escrow account of an attorney. Pursuant to the Agreement and to

² To this date, DeCuir has never met Tucker in person.

³ DeCuir had never engaged in such a transaction.

⁴ The full account number is omitted for privacy reasons.

respondent's stipulation of facts, respondent was named as an escrow agent⁵ with respect to the \$110,000. Respondent stipulated that in his capacity as an escrow agent, he was to transfer DeCuir's funds to the funding bank in order to fund the transaction only upon confirmation from DeCuir and Tucker. In short, the Agreement specified that respondent was to act as an unbiased fiduciary for the completion of the Agreement.

After DeCuir deposited \$110,000 into the CTA, DeCuir sent respondent an email informing him of the deposit. On November 16, 2013, respondent sent a reply email to DeCuir informing him that he would confirm the deposit. However, respondent never informed DeCuir that he had received the deposit. Respondent admits that he did not maintain a client ledger for DeCuir's fund nor an account journal. Furthermore, he admits he never reconciled his CTA.

After the November deposit, respondent did not transfer any portion of the funds to a funding bank. DeCuir's funds were never used for the funding and delivery of any form of financial instrument. The funding for the Private Bank Monetization Transaction was never completed. Between November 18 and December 3, 2013, respondent, without the authorization or consent of DeCuir, made six direct disbursements totaling \$95,000 to Tucker as follows:

⁵ In his statement of stipulated facts, respondent stipulated that he was an escrow agent. But at trial and in his closing brief, he claimed that he had no knowledge that he was an escrow agent. The stipulation of facts is binding on all parties and evidence to prove or disprove a stipulated fact is inadmissible at trial. (Rules Proc. of State Bar, rule 5.54.) Thus, the court finds respondent's testimony incredible and rejects his testimony.

Respondent testified that he received from Tucker on November 15, 2013, a document titled "Irrevocable Sub-Fee Protection Agreement" and DeCuir was not a signatory to the Irrevocable Sub-Fee Protection Agreement. He claims not to have known the Financial Cooperation Agreement between DeCuir and Tucker until a few days before the trial in this matter. He claims he had no idea that he was to act as an escrow agent. His belief was that he was only to act as a paymaster and as a paymaster, his job was only to distribute money as directed by Tucker. However, he advertised as a paymaster and escrow agent on the internet and that was how he met Tucker in 2013. On his website, he stated: "The Law Office of Paul A. Johnson ... offers Attorney Escrow Services for various financial transactions ... Our Attorney Client Trust Account is well established with a Top 25 World Bank, and is equipped to facilitate your transaction and stay in full compliance of applicable law." Again, the court finds respondent's testimony incredulous.

<u>Date</u>	<u>Payment to Tucker</u>
11/18/13	\$10,000
11/22/13	\$15,000
11/25/13	\$20,000
11/27/13	\$20,000
12/02/13	\$10,000
12/03/13	<u>\$20,000</u>
Total	\$95,000

Also, in November 2013, respondent disbursed a total of \$130,000 to third parties without the authorization or knowledge of DeCuir, as follows:

<u>Date</u>	<u>Payment to Third Parties</u>
11/18/13	\$65,000
11/25/13	\$ 6,500
11/27/13	<u>\$58,500</u>
Total	\$130,000

The transfers referenced made November 18, 25, and 27, 2013, had nothing to do with the Agreement.

On November 29, 2013, Terrance Watts, an agent of Tucker, forwarded DeCuir an email that Watts received from Tucker. Attached to the email were the alleged "screen shots" of the financial instrument related to the Agreement. Watts wrote: "We are well on our way towards closure." But in fact, the screen shots were not related to the Agreement. It had nothing to do with the private monetization transaction. It was basically a sham.

By December 30, 2013, the balance in respondent's trust account fell to \$250. On January 17, 2014, respondent sent an email to DeCuir, stating: "As per the **Agreement**

[emphasis added], those funds [DeCuir's \$110,000] were used to secure the instrument - - which was provided to you." Respondent's statement was false. DeCuir's funds were not used to secure any type of financial instrument. Respondent made the false statement to conceal the fact that he had disbursed DeCuir's funds without DeCuir's consent or authorization.

On January 17, 2014, in response to respondent's email, DeCuir replied: "Again, I suggest that you read the Cooperation Agreement. I can supply a copy if needed." And respondent replied: "I have a copy, thanks. What exactly would the Agreement state that is contrary to what I indicated in my email below."

On January 30, 2014, DeCuir received an email from Tucker stating: "Peter's funds were used to transfer an instrument from the stock market to our Account, the instrument is being returned today as per his request and agreement to get a refund..." The statement was false. DeCuir's funds were never used to transfer any form of financial instrument.

On January 31, 2014, DeCuir and his wife made an unannounced visit to respondent's office. During the visit, respondent telephoned Tucker at DeCuir's insistence. Tucker said that he would return DeCuir's \$110,000 to him. After the telephone call, respondent told DeCuir that he would return DeCuir's funds to him within the next 15 business days.

Respondent did not return any portion of DeCuir's funds to him through the months of February and March 2014. The CTA balance was \$1 on February 11, 2014, and it further dropped to \$.50 on March 12, 2014. On March 20, 2014, DeCuir sent respondent an email asking when his \$110,000 was transferred. DeCuir assumed that if respondent had disbursed his funds, he would have done so in one lump sum pursuant to the Agreement.

On March 21, 2014, respondent offered the following cryptic reply: "December 3, 2013 was the final transfer." On the same date, DeCuir replied, "Are you implying that it was not transferred in one lump sum?" Respondent never provided an explanation to DeCuir as to what

respondent did with DeCuir's funds. On April 21, 2014, respondent wired \$20,000 to DeCuir's bank account. To date respondent has only returned \$20,000 to DeCuir.

Incredibly, on April 30, 2014, respondent sent an email to DeCuir's representative reiterating the false statement "that the funds [the \$110,000] were distributed as per the agreement your client signed." The statement was false as respondent had not distributed the funds consistent with the Agreement. Again, the court believes that respondent made the false statement to conceal the fact that he had taken DeCuir's funds without DeCuir's consent.

Conclusions

Count 1 - (Rule 4-100(A) [Failure to Maintain 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 a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions.

Pursuant to the Agreement, DeCuir deposited \$110,000 to respondent's CTA. Respondent was to act as an escrow agent with respect to the \$110,000 and was to transfer those funds to the funding bank only upon confirmation from DeCuir and Tucker. The court finds that respondent had actual knowledge of the terms of the Agreement. Despite this knowledge, between November 18 and December 3, 2013, respondent disbursed all of DeCuir's \$110,000 without DeCuir's authorization or consent. Moreover, respondent did not disburse any of DeCuir's funds to a funding bank related to the Private Bank Monetization Transaction pursuant to the Agreement. Instead, respondent disbursed the funds to Tucker directly and/or to third parties.

Rule 4-100(A) is violated where the attorney fails to manage the funds in the CTA. (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 976.) The rule "leaves no room for inquiry into attorney intent. [Citations.]" (*Ibid.*) The court rejects respondent's claim that he had no

obligation to account to DeCuir. "As a fiduciary his obligation to account for the funds extended to both [DeCuir and Tucker] claiming an interest in them. Having assumed the responsibility to hold and disburse the funds as directed ... or stipulated by both parties, [respondent] owed an obligation to [DeCuir] as a 'client' to maintain complete records ... and '[p]romptly pay or deliver to the client' on request the funds he held in trust." (*Id.* at p. 979.) Instead, by December 30, 2013, respondent's CTA balance fell to \$250.

Therefore, by clear and convincing evidence, respondent willfully violated rule 4-100(A) by failing to maintain a balance of \$110,000 on behalf of DeCuir in his CTA.

Count 2 - (§ 6106 [Moral Turpitude – Breach of Fiduciary Duty/Misappropriation])

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

Respondent argues that he owed no fiduciary duty to DeCuir because he was neither DeCuir's escrow agent nor attorney. He may not have been DeCuir's attorney but he was clearly DeCuir's escrow agent, as he had stipulated to and shown by documentary evidence.

On November 15, 2013, DeCuir deposited \$110,000 into respondent's CTA pursuant to his November 15, 2013 Agreement with Tucker. Between November 18 and December 3, 2013, respondent disbursed all of DeCuir's funds without DeCuir's authorization or consent.

Respondent did not disburse any of the funds to a funding bank related to the Private Bank Monetization transaction pursuant to the Agreement. He had a fiduciary duty to protect the funds in the CTA on behalf of DeCuir. Almost immediately after DeCuir deposited the funds in his CTA, within three weeks, he depleted the account without the knowledge or approval of DeCuir, disbursing DeCuir's funds to Tucker and/or to third parties.

To be deemed a willful misappropriation, "all that is required is 'a general purpose or willingness to commit the act or permit the omission.' [Citation.]" (*Edwards v. State Bar* (1990))

52 Cal.3d 28, 37.) The mere fact that the balance in an attorney's trust account has fallen below the total of amounts deposited in and purportedly held in trust, supports a conclusion of misappropriation. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474-475.)

Here, there is clear and convincing evidence that respondent willfully misappropriated DeCuir's \$110,000 when his CTA's balance fell to \$250 on December 30, 2013, and when the balance further dropped to \$.50 on March 12, 2014. Respondent was responsible for the funds in the CTA and had disbursed them without DeCuir's authorization or consent. In January 2014, respondent told DeCuir that he would refund the \$110,000 within 15 business days. In April 2014, he returned only \$20,000. Respondent utterly failed to exercise his fiduciary duty when he distributed the funds to Tucker without the knowledge or consent of DeCuir. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 586.)

"There is no doubt that the wilful misappropriation of a client's funds involves moral turpitude. [Citations.]" (*Bates v. State Bar* (1983) 34 Cal.3d 920, 923.) Thus, respondent's misappropriation involved moral turpitude, dishonesty, or corruption in willful violation of section 6106.

Case No. 14-O-04830 –The Chen Matter

Facts

The above facts found in the DeCuir matter (case No. 14-O-02783) are incorporated herein.

In August 2013, Lili Chen (Chen) sold her home in Australia for approximately \$130,900. The proceeds of the home represented all of her savings. Her fiancé, Tim Overton (Overton), convinced her to use the proceeds to help him build a church near the airport in Sydney, Australia. To this end, Chen was introduced to Arthur Tucker.⁶

⁶ Arthur Tucker was the same person as in the DeCuir matter.

On November 25, 2013, Chen and Tucker entered into a Non-Recourse Loan Agreement (Loan Agreement) involving a "Private Bank Monetization Transaction," specifically the funding, delivery and joint use of a \$10 million bank guarantee/standby line of credit.⁷ Chen had never engaged in such a transaction before.⁸

Chen and Tucker signed the Loan Agreement; respondent did not.⁹

Tucker promised Chen a \$5 million return on Chen's \$130,900 investment. Under the Loan Agreement, some of the conditions were: (1) the bank guarantee would be funded in approximately 20 days; (2) Chen was to deliver \$130,900 to respondent's CTA at JP Morgan Chase Bank in order to accomplish the funding for the transaction; (3) respondent was to act as an escrow with respect to the \$130,900; (4) respondent, in his capacity as an escrow, upon confirmation from Chen and Tucker, was to deliver the \$130,900 to a funding bank in order to fund the financial instrument; and (5) respondent was to act as "an unbiased fiduciary for the completion" of the transaction.

On November 19, 2013, Chen gave birth to her daughter in China. On November 25, 2013, Chen wired \$130,900 into respondent's CTA. Respondent maintained neither a client

⁷ Chen entered into the Loan Agreement at the urging of Overton and Overton's friend, Anthony O'Neill (O'Neill), who is a risk management consultant. He advised Chen that there was no risk to her taking on the investment because the loan agreement was risk adverse. In short, at best she would receive a \$5 million return and at worst \$261,800. Moreover, as a private monetization transaction, it was an instrument that was only available between financial institutions. For the transaction to take place, the banks must exchange documents and only with her consent.

⁸ The Loan Agreement is nearly identical in all material respects with the Agreement that DeCuir entered into with Tucker in the DeCuir matter.

⁹ Respondent testified that Tucker never provided him with any documents related to the Loan Agreement. He further asserted that he did not see any of those papers until February 24, 2014, when O'Neill sent him an email with various attachments. The attached documents included the Loan Agreement and certain papers regarding bank wire transfers dated December 6, 2013, which were addressed to respondent. The court rejects his testimony as unbelievable.

ledger for Chen's funds nor an account journal. And he did not reconcile his CTA in relation to Chen's funds.

On November 25, 2013, respondent notified Tucker that he had received Chen's funds in his CTA. On the same date, Tucker sent an email to Chen informing her that "we have received All (sic) of your deposits." After Chen deposited the \$130,900 into respondent's CTA, respondent did not transfer any portion of the funds to a funding bank. Thus, funding for the Private Bank Monetization Transaction was never completed. Chen's funds were never used for the funding and delivery of any form of financial instrument. Instead, respondent took Chen's funds without her knowledge or consent because by December 30, 2013, the balance in respondent's CTA was \$250. Respondent never provided Chen with an accounting of her funds.

Between November 25, 2013, and April 24, 2014, both Tucker and respondent repeatedly misrepresented to Chen, Overton, and O'Neill regarding the funds, providing false and conflicting information concerning the funding of the bank guarantee and concealing the fact that the funds were gone. The following are but a few examples of their misleading emails:

1. On January 9, 2014, respondent sent an email to Chen and Overton confirming his receipt of Chen's funds in his CTA. Respondent stated, "Once I receive instructions from him [Mr. Tucker], then the payments will be made accordingly." The statement was false because by January 9, 2014, respondent's CTA was depleted.¹⁰
2. On January 10, 2014, respondent made another intentional misstatement in an email sent to Overton: "My understanding is that the funds will be available next week." The funds were gone.

¹⁰ Respondent testified that he believed Chen's funds would be available based on Tucker's information to him. Again, the court finds his testimony unbelievable.

3. On February 24, 2014, O'Neill sent respondent an email with attachments, including a letter, the Loan Agreement, and the documents that Chen signed on December 6, 2013. In the letter, O'Neill memorialized the communications that had taken place among Chen, Overton, Tucker, and respondent. O'Neill also demanded that respondent return Chen's funds to her by no later than February 27, 2014. Respondent sent a reply email to O'Neill confirming receipt of the email and its attachments. On April 11, 2014, O'Neill sent another letter to respondent. In the letter, O'Neill memorialized the communications that had taken place between Overton and Tucker between February 25 and April 11, 2014, and again demanded the return of Chen's funds. On the same date, respondent sent O'Neill an email stating, in part: "ALL escrow deposits that were made to my Escrow Account will be fully refunded on or before April 25, 2014." The refunds never materialized.
4. On April 22, 2014, respondent sent another email to O'Neill stating, in part, "Additionally, escrow funds were NOT misappropriated. There was an accounting error made which will be fully rectified after which I will have no obligation to MSW nor any of its clients." At that point there were no funds in his CTA.
5. On April 22, 2014, respondent sent another email to O'Neill stating, in part, "I did not con anyone. I received funds and disbursed the funds accordingly. As I indicated, I made an accounting error in the handling of certain escrow funds... I cannot be held responsible or liable for following the terms of the Agreement in the disbursement of funds." Respondent's statements were false: he did "con" Chen.
6. On April 24, 2014, respondent sent an email to O'Neill stating: "The funds were released from escrow when as far as I know, the conditions were met when proof of the instrument to be traded was submitted to me." Respondent's statement was false.

Again, the court believes that respondent made the false statement to conceal the fact that he had stolen Chen's monies.

To date, respondent has neither accounted for nor returned any portion of Chen's \$130,900.

Conclusions

Count 3 - (Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account])

Between November 25 and December 3, 2013, respondent disbursed all of Chen's \$130,900 without her authorization or consent. Respondent did not disburse any of Chen's funds to a funding bank related to the Private Bank Monetization Transaction pursuant to Chen's Loan Agreement with Tucker. Instead, respondent directly disbursed the funds to Tucker and/or third parties. By December 30, 2013, respondent's CTA balance fell to \$250. Therefore, respondent failed to maintain a balance of \$130,900 on behalf of Chen in respondent's CTA, in willful violation of rule 4-100(A).

Count 4 - (§ 6106 [Moral Turpitude - Breach of Fiduciary Duty])

As in the DeCuir matter, respondent argues that he owed no fiduciary duty to Chen because he was neither her escrow agent nor her attorney. Respondent was clearly Chen's escrow agent, as he had stipulated to and shown by documentary evidence.

On November 25, 2013, Chen wired \$130,900 into respondent's CTA pursuant to her Loan Agreement with Tucker, which respondent had actual knowledge of its terms. Yet, between November 25 and December 3, 2013, respondent disbursed all of Chen's \$130,900 without her authorization or consent. By December 30, 2013, his CTA balance was \$250. And by March 12, 2014, the balance was \$.50. He did not disburse any of Chen's funds to a funding bank related to the Private Bank Monetization Transaction. Instead, in breach of his fiduciary

duty owed to Chen, respondent knowingly disbursed directly the funds to Tucker and/or to third parties.

As discussed in the DeCuir matter, the mere fact that respondent's CTA balance has fallen below the total of amounts deposited in and purportedly held in trust supports a conclusion of misappropriation. Here, there is clear and convincing evidence that respondent willfully misappropriated Chen's \$130,900 when his CTA's balance fell to \$250 on December 30, 2013, and when the balance further dropped to \$.50 on March 12, 2014. Respondent was responsible for the funds in the CTA and had disbursed them without Chen's authorization or consent. Despite his numerous misrepresentations that there was an accounting error which he was going to rectify, respondent failed to reimburse any portion of the \$130,900 to Chen. Respondent had clearly misappropriated the funds, and thereby committed acts of moral turpitude, dishonesty, or corruption in violation of section 6106.

Aggravation¹¹

Multiple Acts (Std. 1.5(b).)

Respondent's multiple acts of misconduct are an aggravating factor in both matters, including failing to maintain protected funds in his CTA and misappropriating a total of \$240,900 (DeCuir's \$110,000 + Chen's \$130,900) of the investors' funds.

Intentional Misconduct, Bad Faith, Concealment, Dishonesty, Overreaching or Other Uncharged Violations of the Business and Professions Code/Rules of Professional Conduct (Std. 1.5(d).)

Despite the investors' repeated demands of reimbursements, respondent continued to conceal, in his emails, that the funds were gone and misled them to believe that he was rectifying

¹¹ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. Effective July 1, 2015, the standards are amended. As this case was submitted before the effective date, the court applies the standards that were effective January 1, 2014, and not the newly revised version.

his accounting error in the Chen matter and that he would refund DeCuir within 15 business days. His misconduct was surrounded by dishonesty and bad faith.

Refusal or Inability to Account for Entrusted Funds or Property (Std. 1.5(e).)

Respondent had more than \$240,900 of entrusted funds in his CTA in November 2013. Yet, he was unable to account for them. His bank records show that he had distributed \$95,000 to Tucker and \$130,000 to third parties in November and December 2013. And by the end of December, the balance was only \$250. He had no explanation for the missing funds.

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

Respondent harmed the public and administration of justice. His failure to return the funds to DeCuir and Chen significantly harmed them.

DeCuir suffers funding difficulties for his internet start-up business. He finds it hard to attract venture capitalists after this bad investment where he lost \$90,000.

Chen's life savings of \$130,900 are gone and respondent's misappropriation nearly destroyed her relationship with Overton, the father of her newborn. Chen had intended to give the majority of the funds to the Hillsong Church and to use the remainder of the funds to buy a home in Australia for herself and Overton, as well as their infant child. In August 2013, Chen moved to China so that she could be with her family when she gave birth to her child. She had planned to move back to Australia after the funding of the bank guarantee. Now, she is unable to do so because the bank guarantee was never funded. Consequently, Chen remained in China throughout 2014 while Overton, the father of her child, lives in Australia with O'Neill and his family.

Moreover, respondent's misconduct harmed the integrity and reputation of the legal profession. He has negatively impacted the public's trust. As DeCuir testified, more trust was invested in respondent than in an ordinary escrow agent because he was an attorney.

Indifference Toward Rectification/Atonement (Std. 1.5(g).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. He lacks insight into his wrongdoing and insists, despite contrary evidence, that he was not an escrow agent and owed no fiduciary duties to DeCuir and Chen in protecting their entrusted funds that were in his possession. Respondent's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.)

Lack of Candor/Cooperation to Victims/State Bar (Std. 1.5(h).)

Respondent's lack of candor to DeCuir and Chen and failure to cooperate with them are aggravating factors.

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

Respondent owes \$90,000 to DeCuir and \$130,900 to Chen.

Mitigation

Respondent did not establish any mitigating circumstances by clear and convincing evidence. (Std. 1.6.)

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, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court

entertains “grave doubts” as to its propriety. (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.7(a) provides that, when a member commits two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction must be imposed.

However, standard 1.7(b) provides that if aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities in the future.

In this case, the standards provide a broad range of sanctions ranging from actual suspension to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.1(a), 2.2(a), and 2.7 apply in this matter.

Standard 2.1(a) provides that disbarment is appropriate for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case actual suspension of one year is appropriate.

Standard 2.2(a) provides that actual suspension of three months is appropriate for commingling or failure to promptly pay out entrusted funds.

Standard 2.7 provides that disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact, depending on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law.

The State Bar urges that respondent be disbarred from the practice of law for misappropriating the entrusted funds, which is a serious breach of duty as a fiduciary and of his oath and duties as an attorney.

Respondent maintains that he owed no fiduciary duty to the investors and argues that he may have negligently and carelessly handled the funds and that a stayed suspension of 30 days would be adequate.

The court rejects respondent's contentions. A misappropriation case of such a significant amount (\$240,900) generally calls for disbarment under standard 2.2(a) unless "the most compelling mitigating circumstances clearly predominate." (See *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 276.) This standard "correctly recognizes that willful misappropriation is grave misconduct for which disbarment is the usual form of discipline." (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.) Here, there are no mitigating circumstances.

In *Lipson v. State Bar* (1991) 53 Cal.3d 1010, the attorney was actually suspended for two years for serious misconduct in two matters, including misappropriation of funds and deceit. He had over 42 years of practice with no prior record of discipline.

In *Grim v. State Bar* (1991) 53 Cal.3d 21, the attorney misappropriated over \$5,500 of client funds and did not return the funds to the client until after almost three years later and after the State Bar had initiated disciplinary proceedings and held an evidentiary hearing. The Supreme Court did not find compelling mitigating circumstances to predominate and rejected his defense of financial stress as mitigation because his financial difficulties which arose out of a

business venture were neither unforeseeable nor beyond his control. Finally, the attorney intended to permanently deprive his client of her funds. The Supreme Court therefore did not find his cooperation with the State Bar and evidence of good character to constitute compelling mitigation in view of the aggravating factors. He was disbarred.

In this matter, respondent misappropriated the trust funds and misrepresented to DeCuir and Chen that their funds were still in his CTA. He had disbursed the funds to Tucker and third parties which he had no right to do without the investors' approval. He had a fiduciary duty to safeguard the money. "When an attorney receives money on behalf of a third party who is not his client, he nevertheless is a fiduciary as to such third party. Thus the funds in his possession are impressed with a trust, and his conversion of such funds is a breach of the trust. [Citations.] 'When an attorney assumes a fiduciary relationship and violates his duty in a manner that would justify disciplinary action if the relationship had been that of attorney and client, he may properly be disciplined for his misconduct.'" (*Johnstone v. State Bar* (1966) 64 Cal.2d 153, 155-156.)

Respondent's willful misappropriation of \$240,900 was clear. This is not a case of misappropriation based on carelessness or inadequate office management. He depleted most of the funds earmarked for investment within a month of their deposit. He knew that it was false when he wrote to Chen, Overton, and O'Neill in his emails that an accounting error had taken place and that he was going to rectify that error. In fact, his CTA balance was \$.50 on March 12, 2014. Moreover, his misconduct was not limited to misappropriation but was followed by acts of deceit in covering up the misappropriation.

Because honesty is one of the most fundamental rules of ethics for attorneys, the court finds respondent's act of concealment was dishonest and involved moral turpitude that is subject to professional discipline. (See *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal.

State Bar Ct. Rptr. 139; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.)

Respondent has no recognition of his wrongdoing and had flagrantly breached his fiduciary duties. It is clear that strong steps must be taken to protect the public from future professional misconduct on his part. His "lack of insight makes him an ongoing danger to the public." (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279.)

"In a society where the use of a lawyer is often essential to vindicate rights and redress injury, clients are compelled to entrust their claims, money, and property to the custody and control of lawyers. In exchange for their privileged positions, lawyers are rightly expected to exercise extraordinary care and fidelity in dealing with money and property belonging to their clients. [Citation.] Thus, taking a client's money is not only a violation of the moral and legal standards applicable to all individuals in society, it is one of the most serious breaches of professional trust that a lawyer can commit." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221.)

Even though there is no attorney-client relationship in this matter, respondent is still held to the same fiduciary duties to DeCuir and Chen in dealing with their funds as if there were an attorney-client relationship. (See *Johnstone v. State Bar, supra*, 64 Cal.2d 153, 155-156; *Worth v. State Bar* (1976) 17 Cal.3d 337, 340-341.)

Furthermore, respondent must make restitution to DeCuir and Chen. (See *Brookman v. State Bar* (1988) 46 Cal.3d 1004, 1009 [purpose of restitution is to rehabilitate attorneys and protect public from future misconduct].)

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) The misappropriation of client funds is a grievous breach of an attorney's ethical responsibilities, violates basic notions of honesty and endangers public confidence in the legal profession.

Therefore, in all but the most exceptional cases, it requires the imposition of the harshest discipline – disbarment. (*Grim v. State Bar* (1991) 53 Cal.3d 21.)

Moreover, under standard 2.1(a), lesser discipline than disbarment is not warranted because the amount misappropriated is not insignificantly small and there are no mitigating circumstances. After considering the evidence, the standards, case law, and above all, his misappropriation of \$240,900 and the serious aggravating factors of deceit and concealment surrounding his misconduct, the court concludes that it is both appropriate and necessary to recommend that respondent be disbarred from the practice of law for the protection of the public, the profession, and the courts, maintenance of high professional standards, and preservation of public confidence in the legal profession. Accordingly, the court so recommends.

Recommendations

It is recommended that respondent **Paul Arthur Johnson**, State Bar Number 212950, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to the following payees:

- (1) Peter DeCuir in the amount of \$90,000 plus 10 percent interest per year from November 15, 2013; and
- (2) Lili Chen in the amount of \$130,900 plus 10 percent interest per year from November 25, 2013.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective **15 calendar days** after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: June 29, 2015


PAT McELROY
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 San Francisco, on June 29, 2015, I deposited a true copy of the following document(s):

DECISION AND 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 San Francisco, California, addressed as follows:

PAUL A. JOHNSON
PAUL A. JOHNSON, ATTORNEY AT LAW
445 S FIGUEROA ST STE 3100
LOS ANGELES, CA 90071

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

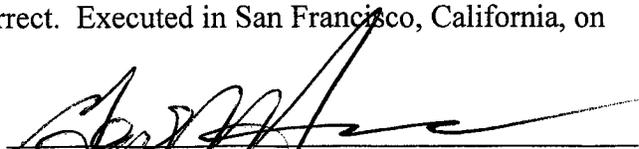
by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Eli D. Morgenstern, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 29, 2015.


George Hye
Case Administrator
State Bar Court