

PUBLIC MATTER

FILED
AUG 17 2016
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 15-O-13756-WKM
)	
JOHN HENRY EDWARDS III,)	DECISION AND ORDER OF
)	DISMISSAL WITH PREJUDICE
Member No. 52343,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction

The Office of the Chief Trial Counsel of the State Bar of California (OCTC) charges respondent **JOHN HENRY EDWARDS III** with four counts of misconduct related to his management of a checking account that OCTC alleges is a client trust account (CTA). Specifically, respondent is charged with willfully violating: (1) section 6106 of the Business and Professions Code¹ (moral turpitude – issuing CTA checks that are not sufficiently funded); (2) rule 4-100(A) of the State Bar Rules of Professional Conduct² (depositing personal funds into a CTA); (3) rule 4-100(A) (commingling – paying personal expenses from a CTA); and (4) section 6106 (moral turpitude – concealing personal funds in a CTA).

As set forth *post*, the court dismisses count one on the motion of OCTC. In addition, the court finds that OCTC failed to establish, by clear and convincing evidence (Rules Proc. of State

¹ Unless otherwise noted, all future references to sections are to the Business and Professions Code.

² Unless otherwise noted, all future references to rules are to the State Bar Rules of Professional Conduct.



Bar, rule 5.103), respondent's culpability on counts two, three, and four. Accordingly, the court will dismiss this proceeding with prejudice.

Pertinent Procedural History

OCTC filed the notice of disciplinary charges (NDC) in this matter on January 26, 2016. At the initial status conference on February 29, 2016, respondent was ordered to file his response to the NDC by March 4, 2016, which he filed on that day.

On April 12, 2016, the parties filed a partial stipulation of facts and admission of documents. On May 3, 2016, the parties filed a supplemental partial stipulation of facts. A one-day trial was held on May 5, 2016. Both parties were ordered at the conclusion of trial to file posttrial briefs, which OCTC filed on May 12, 2016,³ and respondent filed on May 18, 2016. The court took the matter under submission for decision on May 19, 2016.

At trial, OCTC was represented at trial by Senior Trial Counsel Eli D. Morgenstern. Respondent represented himself.

Findings of Fact and Conclusions of Law

The following findings of fact are based on the parties' partial stipulation of facts, the parties' supplemental partial stipulation of facts, and the documentary and testimonial evidence admitted at trial.

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³ In its posttrial brief, OCTC purports to dismiss count one "in the interest of justice." The court deems the purported dismissal as a motion to dismiss in the interest of justice under Rules of Procedure of the State Bar, rule 5.124(G) and then grants the motion to dismiss. Accordingly, count one, which charges respondent with violating section 6106 by issuing non-sufficient funds checks, is DISMISSED with prejudice. (Rules Proc. of State Bar, rule 5.124(G); *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [a dismissal after trial is with prejudice]).

Jurisdiction

Respondent was admitted to the practice of law in California on June 2, 1972. He has continuously been a member of the State Bar of California since that time.

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Facts

On about January 4, 2013, at the Ladera Heights Branch of Union Bank, N.A., respondent opened account number xxxxx-92584.⁴ At that time, respondent intended to open and believed that he had opened this account as a client trust account (CTA). In fact, respondent reported to the State Bar that account number xxxxx-92584 was his CTA, and in the parties' partial stipulation as to facts, respondent stipulated: "At all times relevant to the facts herein, Respondent maintained a client trust account at Union Bank, account no. xxxxx92584."

However, as respondent aptly testified, the copies of the depositor agreement for account number xxxxx-92584, the monthly bank statements for account number xxxxx-92584 for March through July 2015, and the individual deposits made into and checks paid from account number xxxxx-92584 between March and July 2015, which OCTC proffered into evidence as OCTC's exhibit number 10, clearly establish that account number xxxxx-92584 is not a trust account. Instead, this account is clearly a business deposit account (i.e., a business checking account), which is owned and held by respondent (a sole proprietorship) doing business under the trade name of "John Henry Edwards III Attorney at Law." Even the bank-printed checks for account number xxxxx-92584 disclose that the account is a business account, and not a trust account, as the account name on the printed checks is "John Henry Edwards III [¶] Attorney at Law." Though not directly relevant to any of the charges, the court notes nonetheless that, as of the time of trial, respondent had never deposited any client funds into account number xxxxx-92584.

⁴ The account's first five numbers have been omitted for privacy reasons.

In February 2015, respondent contacted the California Franchise Tax Board (FTB) to resolve outstanding orders to withhold personal income tax that FTB issued against respondent's personal bank accounts. These orders (i.e., levies) were for uncontested assessments of personal income taxes that FTB issued against respondent for tax years going back as early as 1997 for which respondent did not file a California personal income tax return. In February 2015, the unpaid FTB assessments against respondent totaled more than \$120,000.

Respondent has not practiced law full time for many years. In fact, between 1997 and 2014, respondent's yearly income was sufficient to require him to file a California personal income tax return only twice; once for the year 1998, and the second for the tax year 2000. Respondent filed California returns for those two years.

Beginning in 1988, respondent made a commitment to serve the homeless and disadvantaged. In 1991, he was ordained as a Minister of the Gospel. Since about 1992, respondent has lived with his sister, who pays for his food and most of his necessities. Respondent practices law only occasionally. Since about 1999, respondent's primary profession has been as the Pastor of the Church of Greater Works (a ministry for the homeless) for which he receives no compensation. Respondent's only regular income is his monthly Social Security payment of \$411.

On March 2, 2015, respondent authorized an electronic debit from account number xxxxx-92584 to the Los Angeles Department of Water and Power for \$2,674.16. This transaction was to pay for his sister's utility bill for her house, where he lived, and thus was a payment for personal expenses.

On March 12, 2015, account number xxxxx-92584 paid two checks issued by respondent. The first check (check no. 1032) was in the amount of \$270 and issued to the Church of Greater Works, and the second check (check no. 1034) was in the amount of \$80 and also issued to the

Church of Greater Works. Both checks were written by respondent for personal donations to the church and thus were payments for personal expenses.

On April 8, 2015, respondent deposited a \$500 cashier check into account number xxxxx-92584. This \$500 deposit was from his own personal funds.

On April 13, 2015, respondent sent FTB a letter and various documents supporting his February 2015 objections to FTB's erroneously issued orders to withhold personal income tax. Respondent credibility testified, and OCTC does not dispute, that FTB retracted all of its orders on tax assessments it issued against respondent.

On April 22, 2015, account number xxxxx-92584 paid a check (check no. 1036) issued by respondent. The check was issued to Resurrection Life Center in the amount of \$25. The check was written by respondent as a donation to the church and thus was a payment for personal expenses.

On April 23, 2015, respondent deposited \$20 into account number xxxxx-92584. This \$20 deposit was from his own personal funds.

On April 24, 2015, account number xxxxx-92584 paid a check (check no. 1026) issued by respondent. The check was issued to the FTB in the amount of \$50. The check was for a payment that respondent made to FTB for The Cultivated Seed, which is a charity respondent supports, as a donation, and thus was a payment for personal expenses.

On May 11, 2015, respondent deposited a \$1,000 money order into account number xxxxx-92584. This \$1,000 deposit was from his own personal funds. Also on the same date, account number xxxxx-92584 paid a check (check no. 1035) issued by respondent. The check was issued to the Church of Greater Works in the amount of \$250. The check was written by respondent as a donation to the church and thus was a payment for personal expenses.

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Conclusions of Law

Counts Two and Three -- Rule 4-100(A) (Depositing Personal Funds in a CTA)

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited into a trust account and that no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions not relevant here. Rule 4-100(A) “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 *Murray v. State Bar* (1985) 40 Cal.3d 575, 584 [“An attorney violates [rule 4-100(A)] when he or she fails to deposit and manage funds in the manner delineated by the rule, even if this failure does not harm the client. [Citation.]”].)

In count two, OCTC charges that account number xxxxx-92584 is respondent’s CTA and that he deposited or commingled his personal funds into his CTA in willful violation of rule 4-100(A) when he made the following three deposits totaling \$1,520: \$500 on April 8, 2015; \$20 on April 23, 2015; and \$1,000 on May 11, 2015. In count three, OCTC again charges that account number xxxxx-92584 is respondent’s CTA and that respondent willfully violated rule 4-100(A) when he made the following six payments for personal expenses totaling \$3,349.16 from account number xxxxx-92584: \$2,674.16 on March 2, 2015; \$270 on March 12, 2015; \$80 March 12, 2015; \$25 on April 22, 2015; \$50 on April 24, 2015; and \$250 on May 11, 2015. The record fails to establish any of the misconduct charged in counts two or three by clear and convincing evidence because as noted *ante*, account number xxxxx-92584 is not a trust account.

Account number xxxxx-92584 is not an identifiable bank account “*labelled* ‘Trust Account,’ ‘Client’s Funds Account’ or words of similar import” under rule 4-100(A) in which respondent must deposit any client funds he receives. (Emphasis added.) The parties’ partial stipulation of facts does not compel a conclusion to the contrary. The issue of whether a specific

bank account, such as account number xxxxx-92584, is a trust account is a question of law for the court to determine, and not an issue of fact to which the parties may stipulate under Rules of Procedure of the State Bar, rule 5.54 without the court's approval.

Moreover, even if the issue of whether a specific bank account is a trust account is an issue of fact to which the parties may stipulate, the court rejects the stipulated finding in the parties' partial stipulation of facts to the effect that account number xxxxx-92584 is respondent's CTA. Furthermore, to conclude that the parties' erroneous, if not overreaching, stipulated finding that account number xxxxx-92584 is respondent's CTA is binding on this court would, in effect, force the court to recommend that respondent be disciplined for multiple serious violations of rule 4-100(A) that the court knows respondent did not commit. Such a result would not only impermissibly interfere with this court's adjudicatory independence to hear and decide the matters submitted to it, but would also usurp the court's judicial function.

In *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 7-8 & fn. 7, which is the very first published Review Department opinion, the Review Department aptly held both that the State Bar's Office of Trials commendably moved for reconsideration of the hearing referee's decision to delete the findings that Mapps failed to account for and misappropriated \$522 in client funds, which findings were based on the allegations in the notice that were deemed admitted by Mapps's default, and that the hearing referee properly deleted the two findings from his decision because, as the State Bar noted in its motion for reconsideration, the findings were contrary to the evidence admitted at the default hearing. Thereafter, the Review Department repeatedly held that, to the extent that the evidence produced at a default hearing negates the allegations in the notice admitted by default, the evidence, and not the allegations, control the State Bar Court's findings. (E.g., *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 318; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563,

571, citing *Conroy v. State Bar* (1991) 53 Cal.3d 495, 502, fn. 5.) Implicit in these holdings is the principle that, notwithstanding the Rules of Procedure of the State Bar, the State Bar Court will not find an attorney culpable of misconduct that it knows the attorney did not commit. Even though attorney disciplinary proceedings are adversarial proceedings (*In re Ruffalo* (1968) 390 U.S. 544, 550-551), the goals of attorney discipline, and, likewise, the State Bar's primary goal of public protection, is not furthered by disciplining attorneys for acts of misconduct that they did not actually commit.

Concomitantly, the goals of attorney discipline and public protection are clearly furthered by disciplining attorneys for the acts of misconduct that they do, in fact, commit. Thus, an attorney's lack of intent to violate a State Bar Rule of Professional Conduct is not a defense or a mitigating circumstance. To conclude otherwise would reward attorneys for their ignorance of their own ethical responsibilities. (*In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 427. In sum, since none of the charged violations of rule 4-100(A) has been proved, no violation of rule 4-100(A) is found.

Count Four – Section 6106 (Moral Turpitude – Concealing Personal Funds In CTA).

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

Between in or about March 2015 and in or about May 2015, respondent deposited personal funds into respondent's client trust account at Union Bank, account no. xxxxx92584 ("respondent's client trust account") for the purpose of concealing the personal funds from [the] Franchise Tax Board, [sic] and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

Again, the record fails to establish the charged violation of section 6106 by clear and convincing evidence. Specifically, OCTC failed to carry its burden to prove, by clear and

convincing evidence, that account number xxxxx-92584 is a trust account. In fact, as noted under counts two and three *ante*, the record establishes that account number xxxxx-92584 is business deposit account, and *not* a trust account. Accordingly, no violation of section 6106 is found.

ORDER OF DISMISSAL WITH PREJUDICE

The court orders that the present proceeding is DISMISSED WITH PREJUDICE. (Rules Proc. of State Bar, rule 5.123(A); *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [a dismissal after a trial on the merits is with prejudice].) Because respondent JOHN HENRY EDWARDS III has been EXONERATED of all charges following a trial on the merits, he may, upon the finality of this decision and order, file a motion seeking reimbursement for costs under Business and Professions Code section 6086.10, subdivision (d). (See Rules Proc. of State Bar, rule 5.131.)

Dated: August 16, 2016



W. KEARSE MCGILL
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 August 17, 2016, I deposited a true copy of the following document(s):

DECISION AND ORDER OF DISMISSAL WITH PREJUDICE

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

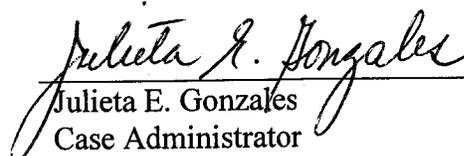
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JOHN HENRY EDWARDS III
ATTORNEY AT LAW
510 W 121ST ST
LOS ANGELES, CA 90044

- 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 Los Angeles, California, on August 17, 2016.



Julieta E. Gonzales
Case Administrator
State Bar Court