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ATTORNEY DISCIPLINE BOARD
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STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case No. 13-136-GA

JOHN S. DAVIDSON, P 35979,

Respondent.

_____ /

ORDER AFFIRMING HEARING PANEL ORDER OF DISBARMENT

Issued by the Attorney Discipline Board
211 W. Fort St., Ste. 1410, Detroit, MI

Tri-County Hearing Panel #63 of the Attorney Discipline Board found that respondent engaged in commingling, misappropriated investment funds while acting as "paymaster" for two joint venture agreements, and failed to preserve complete records of third party funds for a period of five years after termination, in violation of MRPC 1.15(b)(2), and (d), 8.4(b), and MCR 9.104(2) and (3).¹ The panel ordered that respondent be disbarred, effective January 21, 2015. Respondent filed a petition for review and stay of discipline. Respondent's petition for stay of discipline was denied by the Board in an order issued February 13, 2015.

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including a review of the testimony and exhibits submitted to the panel and consideration of the briefs and arguments presented to the Board at a review hearing conducted July 15, 2015.

On review, respondent argued that the withdrawals from his trust account were permissible, and that the discipline imposed by the panel was excessive because, according to respondent, no misappropriation occurred. Respondent requested that the Board vacate the order of disbarment, dismiss all findings of misappropriation, and enter an order imposing reduced discipline solely for failure to maintain adequate documentation of his trust account.

In reviewing a hearing panel decision, the Board must determine whether the panel's findings of fact have "proper evidentiary support on the whole record." *Grievance Administrator v August*, 438 Mich 296,304; 475 NW2d 256 (1991). See also, *Grievance Administrator v T.*

¹ The hearing panel dismissed allegations that respondent violated MRPC 1.15(b)(3) and 8.1(a)(2).

Patrick Freydl, 96-193-GA (ADB 1998). "This standard is akin to the clearly erroneous standard [appellate courts] use in reviewing a trial court's findings of fact in civil proceedings." *Grievance Administrator v Lopatin*, 462 Mich 248 n 12 (2000) (citing MCR 2.613 (C)). The hearing panel's misconduct report contains a very detailed review of the evidence presented and analysis of how that evidence either supported or failed to support the allegations of misconduct set forth in the formal complaint.

Our review of the records indicates that the bank records admitted by the Grievance Administrator provided the necessary support for the finding that respondent misappropriated funds received from both investors in this matter. Those records clearly indicated that respondent improperly used a portion of the funds for personal transactions. Respondent's self-serving claim that he did so because he was authorized by his clients, Mr. Symons and Alephia, to pay himself \$2,500 from each \$50,000 payment was not supported by any evidence. Thus, the hearing panel's findings of misconduct, in particular that respondent engaged in misappropriation, have proper evidentiary support.

With respect to the hearing panel's decision to order disbarment, respondent did not question on review the hearing panel's conclusions as to the applicable ABA Standards or aggravating factors. Rather, respondent took issue with the cases cited by the Grievance Administrator and when they were presented to the panel.

First, we find nothing improper regarding the timing of the Grievance Administrator's presentation of cases to the panel. The October 23, 2014 hearing was noticed as a "hearing on discipline;" scheduled for the sole purpose of determining the appropriate sanction to impose. It should therefore have come as no surprise to respondent that the Grievance Administrator's counsel would be presenting what he believed to be the applicable ABA Standards, aggravating factors, and relevant case law to support the Grievance Administrator's requested discipline.

Second, we find that the cases presented to the panel at the October 23, 2014 sanction hearing by the Grievance Administrator were relevant and applicable to the findings of misconduct made by the hearing panel.² By consciously choosing not to present any evidence, including mitigating evidence, respondent prevented any argument as to whether compelling mitigation existed which would warrant deviating from the presumptive disbarment level of discipline. As a result, respondent has not demonstrated that the sanction imposed by the panel is inappropriate under the ABA Standards or prior precedent. *Grievance Administrator v Lopatin*, 462 Mich 239-240, 248, n 13.


NOW THEREFORE,

IT IS HEREBY ORDERED that the order of disbarment issued on December 30, 2014, is **AFFIRMED**.

² The three cases cited by the Grievance Administrator's counsel were: *Grievance Administrator v Frederick Petz*, 99-102-GA (ADB 2001) (presumptive level of discipline for intentional/knowing misappropriation, absent compelling mitigation, is disbarment); *Grievance Administrator v Mark J. Tyslenko*, 12-17-GA (ADB 2013) (whether the funds are client funds or third party funds, the presumptive sanction is disbarment); *Grievance Administrator v Terry A. Trott*, 10-43-GA (ADB 2011) (regardless of the amount of funds misappropriated, the presumptive sanction is disbarment).

IT IS FURTHER ORDERED that respondent shall, on or before **September 25, 2015**, pay costs in the amount of **\$2,073.49**, consisting of costs assessed by the hearing panel in the amount of \$1,966.66 and court reporting costs incurred by the Attorney Discipline Board in the amount of \$106.83 for the review proceedings conducted on July 15, 2015. Check or money order shall be made payable to the Attorney Discipline System, but submitted to the Attorney Discipline Board [211 West Fort St., Ste. 1410, Detroit, MI 48226] for proper crediting. (See attached instruction sheet).

ATTORNEY DISCIPLINE BOARD

By: 
James M. Cameron, Jr., Chairperson

DATED: August 27, 2015

Board members James M. Cameron, Jr., Lawrence G. Campbell, Dulce M. Fuller, Rosalind E. Griffin, M.D. Sylvia P. Whitmer, Ph. D., Louann Van Der Wiele, and, James A. Fink concur in this decision.

Board members Michael Murray and John W. Inhulsen were absent and did not participate.

The undersigned certifies that a copy of the foregoing document was served upon the Respondent via certified mail (return receipt requested), and all attorneys and parties of record in the above cause via regular mail, by mailing the same to them at their respective business addresses as disclosed by official listings of the State Bar of Michigan and the pleadings of record herein, with postage fully prepaid thereon on the 27th of August, 20 15. I declare that the statements above are true to the best of my information, knowledge and belief.

