STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellee,

v Case No. 21-4-GA

LUKASZ WIETRZYNSKI, P 77039,

Respondent/Appellant.
_____/

ORDER AFFIRMING HEARING PANEL ORDER OF DISBARMENT AND RESTITUTION AND VACATING ORDER GRANTING INTERIM STAY

Issued by the Attorney Discipline Board
333 W. Fort St., Ste. 1700, Detroit, MI

Tri-County Hearing Panel #61 of the Attorney Discipline Board issued an order on May 13, 2021,[1] disbarring respondent and ordering him to pay restitution of $32,282.24, effective June 4, 2021. Respondent filed a timely petition for review and for a stay of the hearing panel's order. On June 8, 2021, an order granting an interim stay of the panel's order was issued to allow the Grievance Administrator to respond to respondent's request for a stay and to provide time for further consideration of respondent's request by the Board. On June 16, 2021, the Administrator filed a response objecting to respondent's request for a stay.

Respondent argues on review that the hearing panel's denial of his oral request at the hearing, to file a motion to set aside the default precluded him from asserting a defense and he attacks the sufficiency of the formal complaint arguing that it does not contain well-pleaded allegations of misconduct, does not provide a basis for disbarment, and should be dismissed.

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the evidentiary record before the panel and consideration of the briefs and arguments presented by the parties at a review hearing conducted via Zoom videoconferencing on August 18, 2021. For the reasons discussed below, we affirm the decision of the hearing panel in its entirety.

The nine-count formal complaint filed by the Grievance Administrator alleged that respondent committed professional misconduct while employed as an associate attorney at Buckfire and Buckfire P.C. (Buckfire) from June 17, 2013 to November 27, 2017. The complaint

[1] An amended report was issued on May 14, 2021, to correct the descriptions of Petitioner's Exhibits A1-A12. No substantive changes were made to the May 13, 2021 original report.

contained general allegations regarding respondent's employment, that advised that while employed at Buckfire, respondent's practice primarily consisted of representing medical providers in cases against insurance companies for unpaid medical bills. Respondent's sister, Karolina Wietrzynski, was his assistant at Buckfire. Respondent had no signatory authority over any of the Buckfire accounts and he had no authority to endorse any checks on Buckfire's behalf for deposits or for any other reason. Pursuant to firm procedure, respondent was to have checks made payable to the client and Buckfire; to then provide a settlement disbursement statement/breakdown to the office manager listing case expenses, attorney fees, liens, and disbursements to the client; and, the Buckfire office manager would then issue checks for Lawrence Buckfire, the managing partner of Buckfire, to sign.

Counts I-VII of the complaint alleged that between June 2013 and November 2017, respondent, his sister and his then girlfriend/fiancee, Revan Francis, engaged in a number of fraudulent actions/transactions with the intent to deprive Buckfire and its clients of fees and funds to which they were entitled; that in 2015, respondent engaged in a conflict of interest with a litigation funding company (Count VIII); and, knowingly provided false testimony during his February 11, 2019, sworn statement taken by the Administrator's counsel (Count IX).

The matter was assigned to Tri-County Hearing Panel #61 and scheduled for hearing on March 8 and 9, 2021. Respondent failed to file an answer to the complaint within the time prescribed in MCR 9.115(D)(1) and his default was entered by the Grievance Administrator on February 11, 2021. (Petitioner's Exhibit A5.) Respondent appeared for the March 8, 2021 hearing and asked for leave to file a motion to set aside the default. (Misconduct Tr 3/8/21, pp 7, 10.) Counsel for the Administrator opposed respondent's request. After considering respondent's argument and counsel's response, the panel denied respondent's request on the record. (Misconduct Tr 3/8/21, pp 13-14.) The panel found that "the facts established by the default constitute misconduct as charged in the complaint," and the matter immediately proceeded to a sanction hearing in accordance with MCR 9.115(J)(2). (Misconduct Tr 3/8/21, p 14-15.) As indicated earlier, an order of disbarment and restitution was issued on May 13, 2021.

Respondent first argues that the hearing panel precluded him from asserting a defense because they denied his oral request for leave to file a motion to set aside his default. A hearing panel's decision to grant or deny a motion to set aside a default is reviewed by the Board under an abuse of discretion standard. *Grievance Administrator v Gerald C. Simon, et al*, 02-83-GA; 03-40-GA; 03-38-GA (ADB 2003); *Grievance Administrator v R. Reid Krinock*, 12-26-GA (ADB 2013). While a hearing panel's decision to grant or deny a motion to set aside a default is in the panel's discretion, the Board has also consistently held that there must be a sufficient showing as to both good cause and meritorious defense, otherwise the panel's decision to set aside a default will be reversed. *Grievance Administrator v Clyde Ritchie*, ADB 52-87 (ADB 1988); *Grievance Administrator v Jeffrey B. Hollander*, 14-10-GA (ADB 2015). Here, respondent never presented anything to support either prong of the test.

Respondent was unable to establish that he had good cause for his failure to answer the formal complaint. He was served at his last known address, as required by MCR 9.115(C),which specifically provides that "service is effective at the time of mailing and nondelivery does not affect the validity of the service." Respondent's Rule 2 address was confirmed by the Grievance Administrator at the time the formal complaint was filed and reflected that the address used by the Administrator has been respondent's address on file with the State Bar since December 4, 2017. (Petitioner's Exhibit A1). Once the Grievance Administrator mailed the formal complaint to respondent's Rule 2 address, service was effectuated.

The Administrator's counsel also emailed a courtesy copy of the formal complaint to respondent and did the same when respondent's default for failure to answer the complaint was entered on February 11, 2021. The record reveals that shortly thereafter, respondent responded to counsel's email and asked if he could still file a response. (Petitioner's Exhibit A10). Minutes later, the Administrator's counsel replied to respondent's message and advised that he would "have to file a motion to set aside the default." (Petitioner's Exhibit A11). Literally a minute later, respondent replied "Ok thank you. I will file the motion." (Petitioner's Exhibit A12).

On February 18, 2021, a notice of virtual misconduct hearing and scheduling order was issued by the panel that required the parties to prepare and file a joint pre-hearing statement containing a stipulation of facts, issues of fact and law to be litigated, evidentiary problems, including objections to exhibits, a list of witnesses to be called to testify, and a list of exhibits stipulated to and not stipulated to. The notice was served on both parties via email on the same date. On March 3, 2021, a joint pre-hearing statement was jointly submitted by the parties with a note from the Administrator's counsel that "Respondent gave permission to file this joint pre-hearing statement. He did not identify any witnesses or object to any exhibits when he granted permission to file the joint pre-hearing statement." Despite indicating that he would do so, respondent did not file a motion to set aside the default.

When respondent asked the panel for leave to file a motion to set aside the default at the March 8, 2021 hearing, he provided no explanation as to why he did not answer the complaint. Furthermore, when asked about the meritorious defense he would assert, he simply stated "the meritorious defense is the fact that, you know, these allegations aren't true." (Misconduct Tr 3/8/21, p 8.) Having failed to provide both good cause and a meritorious defense, we find that it was not an abuse of discretion for the panel to deny respondent's oral motion to set aside the default.

Respondent next argues, for the first time, that the formal complaint is not well-pleaded. He argues that the alleged defective complaint failed to provide him sufficient notice of the alleged misconduct, does not support disbarment, and that the complaint must therefore, be dismissed. As correctly noted by the Administrator, these issues regarding the sufficiency of the formal complaint are not properly preserved for review by the Board because they were not raised before the panel below. Issues and arguments raised for the first time on appeal are not subject to review. *Bloemsma v. Auto Club Ins Ass'n (After Remand)*, 190 Mich App 686, 692 (1991); See also *Polkton Charter Twp v Pellegram*, 265 Mich App 88 (2005) (Generally, an issue is not properly preserved if it is not raised before, addressed, or decided by the [lower tribunal.]) Review may be granted if failure to consider the issue would result in manifest injustice. *Herald Co., Inc. v. Kalamazoo*, 229 Mich App 376, 390 (1998). First, we conclude that manifest injustice would not result here if we decline to address these issues now.

However, were we inclined to ignore the fact that this issue was not preserved for review, respondent's argument in this regard still lacks merit. Michigan has been characterized as a "notice pleading environment." *Dalley v Dykema Gosett*, 287 Mich App 296, 305 (2010). "A complaint must contain a statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the elements the adverse party is called on to defend." *Id.*, citing MCR 2.111(B)(1). In other words, "the primary function of a pleading in Michigan is to give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position." *Id.*, citing *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 317 (1993). The

Administrator's complaint clearly gave notice to respondent of the nature of the claims against him and the rules that he allegedly violated. Although the formal complaint contains factual paragraphs that state conclusions, such as "Respondent misappropriated those funds," (Formal Complaint ¶¶ 63, 73), the well-pleaded facts set forth in each count clearly provide notice to respondent that he was being accused of misappropriating funds, engaging in a scheme to misappropriate funds, engaging in a conflict of interest, and knowingly making a false statement during his sworn statement taken during the investigation of the underlying request for investigation. Respondent was provided more than sufficient notice of the charges he would need to defend. He simply failed to do so.

Finally, we conclude that the hearing panel's decision to disbar respondent is entirely appropriate under the ABA Standards relied on by the Administrator's counsel, which included ABA Standards 4.11 and 4.31, 5.11, and 7.1, all calling for disbarment. (Sanction Tr 3/8/21, pp 9, 12-14.) In further support of his request for disbarment, the Administrator's counsel directed the panel to the applicable aggravating factors under ABA Standard 9.22[2] and relied on the cases cited in his hearing brief.[3] Respondent made no argument in regard to sanction and provided nothing by way of mitigation that would warrant deviating from the disbarment level standards, as referenced above, that rightly appear to us to apply to the facts and circumstances of this matter.

Upon careful consideration of the whole record, the Board is not persuaded that the hearing panel's decision to disbar respondent and order him to pay restitution, as set forth in the panel's order, was inappropriate. As a result of our decision in this regard, respondent's pending petition for a stay of the hearing panel's order has become moot.

NOW THEREFORE,

IT IS ORDERED that the hearing panel's order of disbarment and restitution issued May 13, 2021, is **AFFIRMED** in its entirety.

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[2] Counsel argued that the applicable aggravating factors included, 9.22(b) dishonest or selfish motive; 9.22(c) pattern of misconduct; 9.22(d) multiple offenses; 9.22(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; 9.22(h) vulnerability of victim; and, 9.22(k) illegal conduct. Counsel also indicated that one mitigating factor under ABA Standard 9.32, applied: 9.32(a) absence of a prior disciplinary record, (Sanction Tr 3/8/21, pp 14-15), however the panel later appropriately noted in its sanction report that "respondent has been admonished by the Commission. We conclude that this admonishment must be characterized as a "prior disciplinary offense," an aggravating factor set forth in ABA Standard 9.22(a), rather than as a mitigating factor under ABA Standard 9.32(a). See MCR 9.115(J)(3)." (Report 5/13/21, p 6.)

[3] *Grievance Administrator v John P. Lozano*, 19-31-GA (ADB 2020); *Grievance Administrator v Shawn P. Davis* 13-21-GA (ADB 2014); *Grievance Administrator v Carl Oosterhouse*, 07-93-GA (ADB 2008); *Grievance Administrator v Rodney Watts*, 05-151-GA (ADB 2007); and, *Grievance Administrator v Brent S. Hunt*, 12-10-GA (ADB 2012). (Sanction Tr 3/8/21, p 16; Petitioner's Hearing Brief 3/3/21, pp 9-10.) To those, the hearing panel added *In re Donald G. Huber*, DP 40/82; DP 89/82 (ADB 1983) (disbarment imposed for misappropriation of client funds and engaging in a conflict of interest); and, *Grievance Administrator v V Mosser Dunn*, 91-121-GA; 91-140-FA (Panel Report 11/7/91) (disbarment by default for, in relevant part, misappropriation of client funds and making knowingly false statements under oath for purposes of inducing the Commission to dismiss a request for investigation).

IT IS FURTHER ORDERED that the June 8, 2021 order granting an interim stay of the hearing panel's order of disbarment and restitution is **VACATED.**

IT IS FURTHER ORDERED that respondent, Lukasz Wietrzynski, is **DISBARRED** from the practice of law in Michigan **EFFECTIVE OCTOBER 14, 2021**, and until further order of the Supreme Court, the Attorney Discipline Board or a hearing panel, and until respondent complies with the requirements of MCR 9.123(B) and (C) and MCR 9.124.

IT IS FURTHER ORDERED that respondent shall, on or before **October 14, 2021**, pay restitution in the amount of **$32,282.24** to Revan Francis. Respondent shall file written proof of payment with the Attorney Grievance Commission and the Attorney Discipline Board within 10 days of the payment of restitution.

IT IS FURTHER ORDERED that respondent shall not be eligible for reinstatement in accordance with MCR 9.123(A) or (B) unless respondent has fully complied with the restitution provision of this order.

IT IS FURTHER ORDERED that from the effective date of this order and until reinstatement in accordance with the applicable provisions of MCR 9.123, respondent is forbidden from practicing law in any form; appearing as an attorney before any court, judge, justice, board, commission or other public authority; or holding himself out as an attorney by any means.

IT IS FURTHER ORDERED that, in accordance with MCR 9.119(A), respondent shall, within seven days after the effective date of this order, notify all of his active clients, in writing, by registered or certified mail, return receipt requested, of the following:

1. the nature and duration of the discipline imposed;

2. the effective date of such discipline;

3. respondent's inability to act as an attorney after the effective date of such discipline;

4. the location and identity of the custodian of the clients' files and records which will be made available to them or to substitute counsel;

5. that the clients may wish to seek legal advice and counsel elsewhere; provided that, if respondent was a member of a law firm, the firm may continue to represent each client with the client's express written consent;

6. the address to which all correspondence to respondent may be addressed.

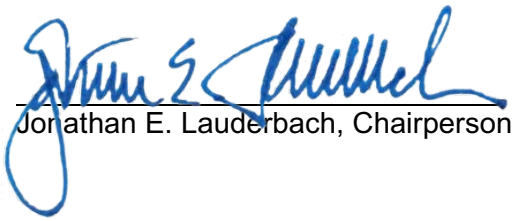
IT IS FURTHER ORDERED that in accordance with MCR 9.119(B), respondent must, on or before the effective date of this order, in every matter in which respondent is representing a client in litigation, file with the tribunal and all parties a notice of respondent's disqualification from the practice of law.

IT IS FURTHER ORDERED that, respondent shall, within 14 days after the effective date of this order, file with the Grievance Administrator and the Attorney Discipline Board an affidavit of compliance as required by MCR 9.119(C).

IT IS FURTHER ORDERED that respondent's conduct after the entry of this order but prior to its effective date, shall be subject to the restrictions set forth in MCR 9.119(D); and respondent's compensation for legal services shall be subject to the restrictions described in MCR 9.119(F).

IT IS FURTHER ORDERED that respondent shall, on or before **October 14, 2021**, pay costs in the amount of **$3,602.84** consisting of costs assessed by the hearing panel in the amount of $3,401.34 and court reporting costs incurred by the Attorney Discipline Board in the amount of $201.50 for the review proceedings conducted on August 18, 2021. Refer to the attached cost payment instruction sheet for method and forms of payment accepted.

ATTORNEY DISCIPLINE BOARD

By: 
Jonathan E. Lauderbach, Chairperson

Dated: September 15, 2021

Board members Jonathan E. Lauderbach, Michael B. Rizik, Jr., Barbara Williams Forney, Karen D. O'Donoghue, Linda S. Hotchkiss, MD, Michael S. Hohauser, Peter A. Smit, and Linda M. Orlans concur in this decision.

Board member Alan Gershel voluntarily recused himself from participation in this matter.