

STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case No. 11-105-GA

JEROME P. REIF, P 19324,

Respondent.

FILED
ATTORNEY DISCIPLINE BOARD
13 JAN -4 PM 12:53

ORDER AFFIRMING DISMISSAL

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

Tri-Valley Hearing Panel #1 entered an order of dismissal in this matter on June 8, 2012. The order was accompanied by the hearing panel's report containing its findings that the charges of misconduct in the formal complaint were not established by a preponderance of the evidence. The Grievance Administrator has petitioned the Attorney Discipline Board for review on the grounds that the hearing panel's dismissal was contrary to the facts and constituted error as a matter of law. The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the record before the panel and consideration of the briefs and arguments submitted at a hearing conducted on September 19, 2012, and the Board is otherwise fully advised,

NOW THEREFORE,

IT IS ORDERED that the hearing panel's order of dismissal issued June 8, 2012, is **AFFIRMED**.

On review, the Attorney Discipline Board must determine whether the hearing panel's findings on the issues of misconduct have evidentiary support in the whole record. *In re Daggs*, 411 Mich 304, 318-319 (1981); *Grievance Administrator v August*, 438 Mich 296, 304; 475 NW2d 256 (1991). "This standard is akin to the clearly erroneous standard [appellate courts] use in reviewing a trial court's findings of fact and civil proceedings." *Grievance Administrator v Lopatin*, 462 Mich 248 n12 (2000). Under the clearly erroneous standard, a reviewing court cannot reverse if the trial court's view of the evidence is plausible. *Thames v Thames*, 191 Mich App 299, 301-302 (1991), lv den 439 Mich 897 (1991).

In applying the appropriate standard of review of a panel's factual findings, it is not the Board's function to substitute its own judgment for that of the panels' [sic] or to offer a *de novo* analysis of the evidence. When . . . the panel's decision to dismiss certain counts has evidentiary support, that decision should be affirmed. [*Grievance Administrator v Carrie L.P. Gray*, 93-250-GA (1996), p 3.]

Applying that standard of review in this case, the Board defers to the hearing panel's unanimous findings that in his capacity as an escrow agent under the terms of a Memorandum of Understanding (MOU) between the parties to a contemplated sale of rights to mineral concessions in Mexico, respondent's distribution of the earnest money deposit to the seller was not shown to have been in violation of the express terms of the MOU or a violation of the Michigan Rules of Professional Conduct cited in the complaint. The Board also affirms the hearing panel's unanimous conclusion that respondent's statements regarding those funds, including his statements to the Grievance Administrator in response to a request for investigation, were not knowing misrepresentations or knowingly false statements of material fact in violation of the cited rules.

In its report, the hearing panel explicitly found that there was no evidence on the record that the sellers were unwilling or unable to consummate the sale, thus requiring respondent, as escrow agent, to return the earnest money to the buyers under the terms of the MOU. The panel noted that the disposition of the earnest money deposit was the subject of a civil lawsuit then pending in Connecticut and, the panel continued:

Because the MOU is silent on the disposition of the earnest money should Buyers be unwilling or unable to consummate the sale of the goldmine, this issue and any others, will, presumably, be decided by way of the pending civil action. The matters at issue in the [petitioner's formal complaint] otherwise relate to an investment or dispute related to business dealings and do not arise out of conduct that would be the subject of Michigan Rules of Professional Conduct. [Hearing Panel Report, 06/08/12, p 3.]

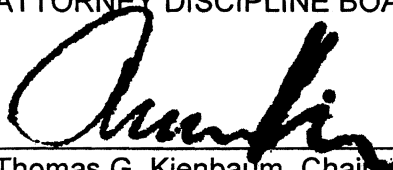
Hearing panel decisions on the law are reviewed by the Board *de novo*. *Grievance Administrator v Jay A. Bielfied*, 87-88-GA (ADB 1996); *Grievance Administrator v Geoffrey N. Fieger*, 94-186-GA (ADB 2002). To the extent that the panel's statement above could be construed as a conclusion that respondent's alleged conduct could not be found to be in violation of the Rules of Professional Conduct, as a matter of law, the Board would have no difficulty in reversing such a holding. As the opinions cited by the Grievance Administrator make abundantly clear, attorneys who are acting in a variety of personal or business transactions outside an attorney/client relationship, or otherwise not directly related to the practice of law, may nevertheless be disciplined for conduct including fraud, deceit, misrepresentation, misappropriation of funds or other breaches of an individual's fiduciary duty outside of the practice of law.¹

However, we do not read the panel's report as a holding that the conduct alleged in the formal complaint could not be the subject of the Rules of Professional Conduct. Rather the panel concluded that the conduct in this case did not implicate the rules charged in the complaint and

¹ See, for example, *Grievance Administrator v Weideman*, 05-79-GA (ADB 2007) (breach of fiduciary duties by the executor of a relative's estate); *Grievance Administrator v Spivak*, 94-176-GA (Hearing Panel, 1996) (misappropriation of funds by an attorney serving as an escrow agent); *Grievance Administrator v Amanda Howe*, 05-52-GA (Hearing Panel, 2005) (attorney made unauthorized and undisclosed withdrawals of association funds in her capacity as treasurer for a local chapter of the American Association of University Women); and *Grievance Administrator v William V. Kokko*, File DP 53/82; DP 116/82 (Hearing Panel, 1982) (attorney violated his fiduciary obligations in his capacity as the volunteer treasurer of a non-profit neighborhood swim club).

therefore did not constitute professional misconduct based on the evidence presented. In particular, although it is argued by the Administrator that the panel erred in dismissing Count One, which charged respondent with misconduct for "his improper handling of a \$100,000 earnest money deposit as an escrow agent," we defer to the hearing panel's conclusion that it was not established that respondent's distribution of the earnest money deposit was in violation of the express terms of the Memorandum of Understanding itself nor has there been a citation of authority for the proposition that return of the earnest money deposit to the buyer in this case was required as a matter of law.

ATTORNEY DISCIPLINE BOARD

By: 
Thomas G. Kienbaum, Chairperson

DATED: January 4, 2013

Board members James M. Cameron, Jr., Rosalind E. Griffin, M.D., Andrea L. Solak, Carl E. Ver Beek, Sylvia P. Whitmer, Ph.D., Lawrence G. Campbell, and Dulce M. Fuller concur in this decision.

Board Chairperson Thomas G. Kienbaum and Board Member Craig H. Lubben were absent and did not participate.