

ORIGINAL

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

12-2056

In re:	:	Case No. 12-047
Complaint against	:	
Jeffrey Lee Terbeek Attorney Reg. No. 0033227	:	Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Disciplinary Counsel	:	
Relator	:	

FILED
DEC 10 2012
CLERK OF COURT
SUPREME COURT OF OHIO

MOTION FOR DEFAULT JUDGMENT

{¶1} This matter was referred to Master Commissioner, Joseph L. Wittenberg, on September 7, 2012, by the secretary of the Board pursuant to the former Gov. Bar R. V, Section (6)(F)(2) for ruling on Relator's motion for default judgment which governs consideration of the motion. As indicated in Gov. Bar R. XX, Section (2)(LLLL), former Gov. Bar R. V, Section (6)(F), applies to complaints certified by the Board prior to August 1, 2012.

PROCEDURAL HISTORY

{¶2} This action was commenced with the filing of a complaint against Respondent by Relator on May 24, 2012. On June 8, 2012, a probable cause panel certified the complaint to the Board.

{¶3} The secretary of the Board notified Respondent that the complaint had been certified and the complaint was sent to Respondent by certified mail to his address at 5248 Bethel-Reed Park, Columbus, Ohio. The complaint was received by Respondent. To date,

Respondent has not filed an answer or any other pleading to the complaint.

{¶4} Relator has filed its motion for default judgment.

{¶5} Materials offered in support of the motion are sufficient. *Dayton Bar Assn. v. Sebree*, 104 Ohio St.3d 448, 2004-Ohio-6560; and *Northwestern Ohio Bar Assn. v. Lauber*, 104 Ohio St.3d 121, 2004-Ohio-6237.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶6} Based upon the materials offered in support of the motion for default, the following findings are made by clear and convincing evidence.

{¶7} Respondent was admitted to the practice of law in the State of Ohio on November 3, 1973. Respondent is subject to the Code of Professional Responsibility, the Rules of Professional Conduct, and the Rules for the Government of the Bar of Ohio.¹

{¶8} On December 30, 1994, Diep Nguyen Vo (Vo) agreed to buy a business entitled “Cottage of Tailoring” from Eugene Pearson (Pearson). The purchase price was \$15,000 and included the name, equipment, fixtures, and inventory. Motion for Default, Ex. E.

{¶9} Respondent represented Vo in this transaction.

{¶10} Because there were liens against the business, the purchase agreement required Respondent to hold the purchase price in escrow until Pearson paid off the liens. *Id.*

{¶11} From in or about December 1994, Respondent held the purchase price in escrow in his lawyer’s trust account (IOLTA) until December 2001, when he began to withdraw the funds for personal use. Motion for Default, Ex. Q.

{¶12} Respondent withdrew the majority of the funds in two transactions made payable

¹ The complaint alleges that some of Respondent’s conduct occurred on or before February 1, 2007 and therefore is subject to the Code of Professional Responsibility.

to himself: check number 1066 for 2,500 written December 29, 2001 and check number 1072 for \$12,000 written May 17, 2002. Motion for Default, Ex. F.

{¶13} Respondent does not have a record of the remaining \$500, but admits that he withdrew it for personal use. Motion for Default, Ex. Q.

{¶14} In a letter to Pearson's counsel on or about July 6, 2010, Respondent stated that he could not recall the specific issues surrounding the transaction but remembered that the funds were to be held until the tax lien was paid and that the reason for holding the funds "seems to be still in effect." Motion for Default, Ex. H. Pearson still owed approximately \$5,455.05 on the liens in July 2010. Motion for Default, Ex. R.

{¶15} Despite Pearson not paying off the liens, on or about November 8, 2010, Pearson through counsel, filed a lawsuit against Vuong Hai Vo, the husband of Diep Nguyen Vo, and Respondent alleging breach of contract for failure to forward the funds to Pearson. Motion for Default, Ex. I.

{¶16} It is uncertain why Pearson sued Vuong Hai Vo rather than her husband. The complaint was filed in Franklin County Municipal Court. *Id.*

{¶17} Respondent answered the complaint on December 8, 2010. In part, the answer states that Respondent withheld the funds until the liens were paid and that the liens had not been paid. Motion for Default, Ex. J.

{¶18} Pearson filed a motion to compel and for sanctions on March 31, 2011. Pearson served a request for documents on Respondent on or about January 19, 2011. Respondent failed to answer the request. Motion for Default, Ex. K.

{¶19} Pearson filed a second motion to compel and for sanctions on April 18, 2011. Pearson served a second request for documents and first request for interrogatories on

Respondent on or about February 25, 2011. Respondent failed to provide the documents and did not answer the interrogatories. Motion for Default, Ex. L.

{¶20} On or about May 19, 2011, the court held a pretrial in the case. Neither Respondent nor Vo appeared. The court granted both motions to compel and set a hearing on sanctions for the same date as the trial, August 18, 2011. Motion for Default, Ex. M.

{¶21} Neither Respondent nor Mr. or Mrs. Vo appeared at the trial on August 18, 2011. Pearson voluntarily dismissed Mrs. Vo as a party and judgment was entered against Respondent in the amount of \$15,000 plus attorney fees of \$2,500 and sanctions of \$750. Motion for Default, Ex. N.

{¶22} Respondent failed to appear for a judgment debtor exam on November 9, 2011 and the court issued a show cause order for a hearing on January 19, 2012. Motion for Default, Ex. O.

{¶23} Respondent appeared at the January 19, 2012 hearing and admitted that he used the funds held in escrow for personal use. Respondent's admission is included in the Court's judgment entry of January 20, 2012. Motion for Default, Ex. P.

{¶24} To date, Respondent has not repaid any portion of the judgment against him.

{¶25} Relator alleges that Respondent's conduct on or before February 1, 2007 violates the following: DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; DR 1-102(A)(6) [conduct that adversely reflects on a lawyer's fitness to practice law]; DR 9-102(A)(2) [all funds of clients paid to a lawyer or law firm shall be maintained in a trust account, portions in dispute must remain in the trust account until the dispute is resolved].

{¶26} With respect to conduct after February 1, 2007, Relator alleges that Respondent's

conduct violates the following: Prof. Cond. R. 1.15 [a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; and Prof. Cond. R. 8.4(h) [conduct that adversely reflects upon the lawyer's fitness to practice law].

{¶27} Based upon the referenced exhibits, the master commissioner finds by clear and convincing evidence that Respondent has violated, for conduct prior to February 1, 2007, DR 1-102(A)(4); DR 1-102(A)(6); and DR 9-102(A)(2).

{¶28} For conduct after February 1, 2007, the master commissioner finds by clear and convincing evidence, based on the referenced exhibits, that Respondent has violated Prof. Cond. R. 1.15; Prof. Cond. R. 8.4(c); Prof. Cond. R. 8.4(d); and Prof. Cond. R. 8.4(h).

AGGREVATION, MITIGATION AND SANCTION

{¶29} The sole mitigating factor the master commissioner is aware of is Respondent has no prior discipline.

{¶30} The aggravating factors present in this case are a dishonest or selfish motive, lack of cooperation of the disciplinary process, and failure to make restitution.

{¶31} Relator recommends that Respondent be disbarred from the practice of law.

{¶32} Respondent misappropriated funds held in his IOLTA account for personal use. Respondent further defended an inquiry from Pearson's attorney and a lawsuit by stating that Pearson had not yet paid off the liens. While it is true that Pearson had not yet paid off the liens, Respondent knew that he had already misappropriated the funds and they were not in his IOLTA account.

{¶33} The Court has found that misappropriation of client funds carries a “presumptive sanction of disbarment.” *Cleveland Bar Assn. v. Dixon*, 95 Ohio St.3d 490, 2002-Ohio-2490.

{¶34} The Court has permanently disbarred attorneys for misappropriating client funds. In *Cleveland Metro. Bar Assn. v. Freeman*, 128 Ohio St.3d 421, 2011-Ohio-1483, the Court held “[r]espondent’s conduct, however, also includes misappropriation of client settlement funds and misrepresentation and we have consistently recognized that the presumptive sanctions for misappropriation of client funds is permanent disbarment.”

{¶35} Freeman misappropriated settlement funds from personal injury clients by failing to distribute settlement proceeds to the clients. Freeman also made false statements to both his clients and the investigator for the bar association.

{¶36} The Respondent in *Greene Cty. Bar Assn. v. Saunders*, 132 Ohio St.3d 29, 2012-Ohio-1651, converted \$40,000 given to him by a client for taxes on the client’s mother’s estate. Saunders also neglected two client’s cases, failed to communicate with clients regarding the status of their cases, and failed to cooperate in the disciplinary case. The Court found that permanent disbarment was the appropriate sanction based on the misappropriation of client funds.

{¶37} The Court also disbarred an attorney who misappropriated funds from a title agency. *Disciplinary Counsel v. Zumstein*, 93 Ohio St.3d 544, 2001-Ohio-1619. Zumstein wrote checks unrelated to any client matter from the escrow funds of Capital Title. Zumstein was President of Capital Title. Because Zumstein misappropriated funds from the escrow fund, checks written on behalf of clients were dishonored.

{¶38} Sufficient mitigation can create an exception to the presumptive sanction of disbarment. In *Disciplinary Counsel v. Bandman*, 125 Ohio St.3d 503, 2010-Ohio-2115,

Bandman misappropriated the assets of a client's family trust while serving as trustee. Bandman presented mitigation of cooperation with the disciplinary process, no prior disciplinary record, remorse and full restitution. Bandman received an indefinite suspension.

{¶39} Respondent in *Office of Disciplinary Counsel v. Kurtz*, 82 Ohio St.3d 55, 1998-Ohio-278, also received an indefinite suspension after making fifty-two unauthorized transfers totaling \$75,800 from a client's trust account while he was trustee. Kurtz repaid the funds to the trust at an interest rate higher than could have been obtained at a bank. Kurtz also presented evidence of his honesty and good character through letters and witness testimony.

{¶40} In this case, Respondent misappropriated funds from his trust account. Respondent was holding the funds for a third-party pending the fulfillment of certain conditions, specifically the payment of liens. When Respondent was sued, instead of stating that he did not have the funds, Respondent argued that the condition for payment had not been met. At the time, it was irrelevant as Respondent no longer had the funds to give Pearson.

{¶41} In the court case, Respondent also failed to provide discovery, failed to appear at pretrial hearings, and the trial, and failed to appear at a debtor's exam after judgment was imposed.

{¶42} Finally, over one year after Pearson filed his complaint in court, Respondent admitted to having converted the funds to personal use.

{¶43} Respondent did not present any evidence of mitigation at his deposition on March 14, 2012 and did not provide supplemental information to Relator.

{¶44} Based on the evidence in this case and the sanctions imposed in the above-referenced cases, the master commissioner finds Relator's recommended sanction of disbarment acceptable. Therefore, the master commissioner recommends that Respondent be disbarred from

the practice of law.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V, Section 6, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 7, 2012. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the master commissioner and recommends that Respondent, Jeffrey Lee Terbeek, be permanently disbarred from the practice of law in Ohio. The Board further recommends that the costs of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.



RICHARD A. DOVE, Secretary