ORIGINAL

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

13-0581

In re:	:	
Complaint against	:	**Case No. 12-055**
David Allen Streeter, Jr. **Attorney Reg. No. 0073936**	:	**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	:	

OVERVIEW

{¶1} This matter was heard on January 31, 2013, before a panel consisting of Judge Lee Hildebrandt, Jr., Roger Gates, and Judge Robert Ringland, chair. None of the panel members is from the appellate district from which the complaint arose or served on the probable cause panel in the matter. Joseph L. Caligiuri appeared for Relator. Respondent was present and was represented by Richard Koblentz.

{¶2} On October 30, 2012, the parties submitted a consent to discipline agreement that was rejected by the panel on the basis that the panel members wished to hear testimony from Respondent at hearing as well as view his demeanor after further inquiry by the panel and counsel. The original recommendation by the parties was that Respondent be suspended from the practice of law for two years, with 18 months stayed with conditions.

FILED
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CLERK OF COURT
SUPREME COURT OF OHIO

FINDING OF FACTS AND CONCLUSIONS OF LAW

{¶3} Respondent, David Allen Streeter, was admitted to the practice of law in the state of Ohio on November 13, 2001. Respondent is subject to the Code of Professional Responsibility, Rules of Professional Conduct, and the Rules for the Government of the Bar of Ohio.

{¶4} The parties entered into the following stipulation of facts and rule violations.

{¶5} In 2001, after completing law school, Respondent joined a law firm focusing on business transactions and probate matters. Approximately one year later, his firm opened Statewide Title Agency LTD underwritten by Chicago Title (CTIC). Initially, Respondent was responsible for daily management, but not major business decisions and spending that were under the direction of one of the senior partners. In 2005, the law firm dissolved and the senior partner took full management ownership of Statewide. Respondent remained with Statewide Title, but the agency continued to have poor fiscal management under the partner's direction.

{¶6} The senior partner and Respondent parted ways and Respondent obtained full interest in Statewide in 2007. The business he inherited had exceptionally high overhead and more debt than expected resulting in eventual layoffs of employees and inability to make payroll. It was around this time, that Respondent began feeling totally overwhelmed. Eventually, Respondent decided to close Statewide Title and contacted the underwriting company CTIC that informed him to pull together the bank reconciliations.

{¶7} Between February 2010 and May 2011, Respondent conducted real estate closings involving the purchase of properties in Ohio. In conducting these closings, Respondent received funds from third parties that were required to be held in the Statewide escrow account and to be disbursed in accordance with the closing instructions.

{¶8} As the below table illustrates, on February 11, 2010, Respondent misappropriated $6,911.78 in closing proceeds by depositing the proceeds into his operating account, rather than the Statewide escrow account. Prior to the deposit, the operating account had a negative balance of $5,084.17. Respondent used the misappropriated funds to cover personal and business expense.

{¶9} On July 15, 2010, Respondent misappropriated $40,589.43 in closing proceeds by depositing the proceeds into his operating account, rather than the Statewide escrow account. Respondent used a portion of the $40,589.43 to repay the $6,911.78 he had misappropriated on February 11, 2010. The remaining funds were used to pay Respondent's personal and business expenses.

{¶10} On August 24, 2010, Respondent misappropriated $53,814.52 in closing proceeds by depositing the proceeds into his operating account, rather than the Statewide escrow account. Respondent used a portion of the $53,814.52 to repay the $40,589.43 he had misappropriated on July 15, 2010. The remaining funds were used to pay Respondent's personal and business expenses.

{¶11} On September 10, 2010, Respondent misappropriated $53,805.28 in closing proceeds by depositing the proceeds into his operating account, rather than the Statewide escrow account. Respondent used the $53,805.28 to repay the $53,814.52 he had misappropriated on August 24, 2010.

{¶12} As the table illustrates, Respondent used the $26,000 and $48,992.75 in closing proceeds on December 30, 2010 and January 21, 2011 respectively by depositing the proceeds into his operating account, rather than the Statewide escrow account.

{¶13} As illustrated below, Respondent used the $26,000 and a portion of the $48,992.75 to repay the $53,805.28 he had misappropriated on September 10, 2010. The remaining funds were used to pay Respondent's personal and business expenses.

CHECKS INTENDED FOR ESCROW BUT DEPOSITED INTO OPERATING				
Date	**Payment**	**Amount**	**Date repaid**	**Source of funds**
2-11-10	Check	$6,911.78	7-19-10	$40,589.43
7-15-10	Check	$40,589.43	8-27-10	$53,814.52
8-24-10	Check	$53,814.52	9-10-10	$53,805.28
9-10-10	Check	$53,805.28	1-21-11	$26,000 $48,992.75
12-30-10	Check	$26,000	6-9-11	Personal
1-21-11	Check	$48,992.75	6-9-11 8-3-11 9-2-11	Personal

{¶14} In early May 2011, CTIC learned that Respondent had been delinquent in performing the required monthly account reconciliations. Respondent was given until May 13, 2011 to reconcile the Statewide accounts through April 2011.

{¶15} In May 2011, Respondent provided the past-due escrow reconciliations to Ethan Powsner, a CTIC representative, who analyzed Respondent's records and discovered that the final two checks listed in the table above totaling $74,992.75 ($26,000 + $48,992.75) had not been deposited into the escrow account.

{¶16} When questioned by Powsner, Respondent admitted that he had deposited the two checks totaling $74,992.75 into his operating account and spent the funds. In fact, by February 25, 2011 Respondent had a negative balance in his operating account.

{¶17} Based upon Powsner's inquiry, CTIC conducted an investigation of Respondent's escrow and operating accounts and discovered that Respondent had misappropriated the five other checks listed in the previously-mentioned table dating back to February 2010.

{¶18} As the table illustrates, up until January 2011, each new misappropriation was used to repay the previous misappropriation dating back to February 2010. On May 16, 2011, CTIC terminated Statewide's agency relationship. By this time, Respondent owed $74,992.75.

{¶19} Thereafter, Respondent used personal and borrowed funds to replenish the Statewide escrow account in full by making the following payments:

- June 9, 2011 $13,000.00
- June 9, 2011 $26,000.00
- August 3, 2011 $32,000.00
- September 2, 2011 $ 3,992.75

{¶20} CTIC reported the misappropriation to local law enforcement who, after investigation, decided not to file any criminal charges. CTIC also reported the misappropriation to Relator.

{¶21} The panel finds, by clear and convincing evidence, that Respondent's conduct violated Prof. Cond. R. 8.4(c) [conduct involving fraud, dishonesty, deceit, or misrepresentation] and Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

MITIGATION, AGGRAVATION, AND SANCTION

{¶22} The parties have stipulated the following as to aggravation, mitigation and sanction for Respondent's misconduct.

{¶23} With regard to mitigation:

- Respondent has no previous discipline;
- Respondent has cooperated throughout the disciplinary process although he did not self-report;
- Respondent has made complete restitution;
- Respondent has a positive reputation in both the legal community and the general community and has submitted 82 character letters; and
- Respondent suffers from a mental disability.

{¶24} Dr. Galit Askenazi, a board-certified forensic psychologist, has diagnosed Respondent with Major Depressive Disorder and General Anxiety Disorder dating back to 2005. Dr. Askenazi's report indicates that, although Respondent has ongoing symptoms of depression and anxiety, Respondent is in individual and group counseling for his emotional issues and that Respondent has a desire and motivation to continue with comprehensive treatment and is committed to improving his mental health and overall quality of life. Stip. Ex. 5.

{¶25} Respondent's depression contributed to the misconduct as alleged in the complaint.

{¶26} On September 22, 2011, Respondent signed a three-year contract with Ohio Lawyers' Assistance Program. Paul Caimi is his OLAP monitor. According to Mr. Caimi's report, Respondent has actively participated in private counseling and group sessions with Emotions Anonymous pursuant to that contract. Mr. Caimi indicates that Respondent has an excellent attitude, is sincere about recovery and has made marked improvement. Stip. Ex. 6.

{¶27} According to Dr. Askenazi and Respondent's OLAP counselor, Respondent will be able to return to the competent, ethical practice of law.

{¶28} Based upon the stipulated reports and Respondent's testimony concerning his mental health condition at the time of his misconduct and at the current time, the panel concludes that Respondent is successfully engaged in an ongoing course of treatment for the mental disability that has been identified as having contributed to his misconduct in this matter and that he is currently able to return to competent, ethical professional practice under the conditions specified in this report.

{¶29} With regard to aggravation, Respondent acted with a selfish motive in that his actions allowed him to continue to operate his business and maintain employment for his staff.

{¶30} Subsequent to the panel's rejection of the proposed consent to discipline agreement and a recommended sanction, the Supreme Court of Ohio, on December 5, 2012, decided *Disciplinary Counsel v. Edwards*, 134 Ohio St.3d 271, 2012-Ohio-5643. The facts of that case are closely similar to the facts and findings before this panel. While Relator argues that there are distinguishing points, *i.e.*, the amount of money involved, it is the panel's determination that, based on the rationale of the Court's decision, that such distinction is not material. The panel, therefore, constrained to follow any recommendation that conflicts with *Edwards* rational, recommends that, as in *Edwards*, Respondent receive a two-year suspension, all stayed on condition he continue with his OLAP contract, extend the present term of his OLAP contract if recommended by OLAP, continue his individual therapy with a treating health care professional, and commit no further misconduct.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on April 5, 2013. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, David Allen Streeter, Jr., be suspended from the practice of law for two years, with the suspension stayed in its entirety on the conditions contained in ¶30 of this report. The Board further recommends that the costs of these proceedings be taxed to 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 Recommendation as those of the Board.

RICHARD A. DOVE, Secretary