

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT  
OF THE SUPREME COURT OF OHIO**

**In re:**

**Case No. 2014-092**

**Complaint against**

**Brandon Louis Azman  
Attorney Reg. No. 0087246**

**Respondent**

**Cleveland Metropolitan Bar Association**

**Relator**

**Findings of Fact,  
Conclusions of Law, and  
Recommendation of the  
Board of Professional Conduct  
of the Supreme Court of Ohio**

**OVERVIEW**

{¶1} This matter was heard on September 9, 2015 in Columbus before a panel consisting of David L. Dingwell, Jeff Davis, and Hon. William A. Klatt, chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to former Gov. Bar R. V, Section 6.

{¶2} Respondent was present at the hearing, represented by Ian N. Friedman. Seth H. Wamelink and Paul L. Janowicz appeared on behalf of Relator.

{¶3} Based on the parties' stipulations and the evidence presented at the hearing, the panel finds by, clear and convincing evidence, that Respondent engaged in professional misconduct by accessing the email accounts of his former employer on multiple occasions without authority and by deleting certain email communications from his employer's email account in violation of Prof. Cond. R. 3.4(a) [fairness to opposing party and counsel]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; Prof. Cond. R. 8.4(d) [conduct prejudicial to the administration of justice]; and Prof. Cond. R. 8.1(a) [knowingly making a false statement of material

fact in connection with a disciplinary matter]. The parties stipulated to these violations.<sup>1</sup> The parties also stipulated to a 12-month suspension from the practice of law, with six months of the suspension stayed.

{¶4} Upon consideration of the applicable mitigating and aggravating factors as well as case authority, the panel recommends that Respondent be suspended from the practice of law for one year, with six months stayed on conditions.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶5} Respondent was admitted to the practice of law in the state of Ohio on May 9, 2011 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶6} The following facts are taken from the parties' stipulations. Joint Ex. A.

{¶7} Respondent received a Bachelor of Science degree from Loyola University in May 2007. He majored in computer science. Respondent received his Juris Doctorate degree from the University of Detroit Mercy School of Law in May 2010.

{¶8} From March 2012 through August 29, 2013, Respondent was employed as an associate attorney by the Piscitelli Law Firm located in Cleveland. Respondent practiced primarily in the area of personal injury and consumer class actions.

{¶9} Every employee of the firm had an individual firm email account and personal log-in credentials, including a unique password. During his employment with the Piscitelli Law Firm, Respondent learned the firm's email log-in credentials, including passwords for Frank Piscitelli ["Piscitelli"], and co-workers Amanda Condon, Pam Loftus, and Brittni Sanders.

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<sup>1</sup> Respondent orally stipulated to the Prof. Cond. R. 8.1(a) violation during the September 9, 2015 hearing. The parties stipulated to the other violations in writing prior to the hearing.

{¶10} The firm stored certain files in a digital, cloud-based system known as Drop Box. Among the files stored in the firm's Drop Box account was an electronic file that contained the log-in information for certain electronic files, databases, websites, etc., including the firm's email accounts (the "password file"). Every Piscitelli Law Firm employee had their own set of log-in credentials for the Piscitelli Law Firm's Drop Box account.

**Respondent's Termination from the Piscitelli Firm and Email Communications with Piscitelli**

{¶11} On August 29, 2013, Piscitelli terminated Respondent's employment with the law firm. That termination was effective immediately. Later that day, Respondent sent an email to Piscitelli and directed him to inform clients that Respondent was no longer employed by the Piscitelli Law Firm or working on their cases. Respondent also directed Piscitelli to file appropriate notices with the courts where Respondent was listed as an attorney of record for Piscitelli Law Firm clients.

{¶12} Piscitelli answered Respondent's August 29, 2013 email later that same day and informed Respondent that he would handle everything in a professional manner. Piscitelli forwarded his August 29, 2013 email exchange with Respondent to Loftus' firm email account.

{¶13} On September 4, 2013, Respondent sent Piscitelli an email and asked him to write a letter of recommendation or at least confirm his dates of employment with the firm. Between September 4, 2013 and September 9, 2013, Piscitelli did not respond to Respondent's September 4, 2013 email.

{¶14} On September 9, 2013, Respondent sent another email to Piscitelli essentially asking him to respond to Respondent's September 4, 2013 email. Piscitelli forwarded Respondent's September 4, 2013 and September 9, 2013 emails to Loftus' firm email account. As of September 12, 2013, Piscitelli still had not answered Respondent's September 4, 2013 or September 9, 2013 emails.

{¶15} On September 12, 2013, Respondent sent another email to Piscitelli in which he stated that he had had lunch with a Piscitelli Law Firm client, Don Dunn, on September 11, 2013. Respondent also made another attempt to obtain a letter of recommendation from Piscitelli stating in relevant part:

[I]n exchange for you writing a letter of recommendation for me, I would be willing to negotiate a non-compete of sorts with you. I would agree to make no efforts whatsoever to contact former clients of mine for the purpose of bad mouthing you, to try and steal them away or to convince them to terminate the services of the Piscitelli Law Firm.

{¶16} Piscitelli responded to Respondent's September 12, 2013 email later that same day. Piscitelli told Respondent that he was fired because of his poor performance. Piscitelli further added that he would not provide "a letter of recommendation and your attempt to extort one from me is not going to change my mind. \* \* \* You can be sure of one thing: if you contact another one of my clients, meet with them behind my back, harass any of my employees or make any additional threats against me or my business, I will \* \* \* take legal action against you." This was the last email exchange between Respondent and Piscitelli. Piscitelli forwarded his September 12, 2013 email exchange with Respondent to Loftus' firm email account.

#### **Unauthorized Access of Piscitelli Law Firm Email Accounts**

{¶17} Beginning on August 30, 2013 through September 16, 2013, Respondent accessed the Piscitelli Law Firm email accounts of Piscitelli, Condon, Loftus, and Sanders (collectively, the "email accounts") without authority at least 20 times.

- Respondent accessed email accounts once on August 30, 2013;
- Respondent accessed the email accounts twice on September 10, 2013;
- Respondent accessed the email accounts three times on September 11, 2013;
- Respondent accessed the email accounts five times on September 12, 2013;
- Respondent accessed the email accounts once on September 13, 2013;
- Respondent accessed the email accounts three times on September 14, 2013;
- Respondent accessed the email accounts twice on September 15, 2013;
- Respondent accessed the email accounts three times on September 16, 2013.

{¶18} Respondent accessed the email accounts using the user names and passwords he learned during his employment with the Piscitelli Law Firm. Respondent accessed the email accounts between August 30, 2013 and September 16, 2013 without authorization or consent of any kind, whether express or implied from Piscitelli, Condon, Loftus, or Sanders.

{¶19} On September 13, 2013, Piscitelli, Condon, Loftus, and Sanders all changed their Piscitelli Law Firm email account passwords. The password file was updated with the new log in credentials for the email accounts.

{¶20} Respondent learned that Piscitelli, Condon, Loftus, and Sanders had changed their law firm email account passwords when he attempted to access the email accounts and was unable to do so. Respondent then obtained the new log-in credentials for the email accounts by accessing the password files stored in the law firm Drop Box account.

{¶21} Respondent used the new log-in credentials he obtained for the email accounts to continue to access the email accounts without authorization or consent of any kind, whether express or implied, from Piscitelli, Condon, Loftus, or Sanders.

{¶22} On September 17, 2013, Piscitelli, Condon, Loftus, and Sanders all changed their Piscitelli Law Firm email account passwords a second time. That same day, the log-in credentials needed to access the password file and Drop Box were also changed. Thereafter, Respondent did not access the email accounts.

{¶23} On or about September 13, 2013, Piscitelli discovered that the following emails had been permanently deleted from his law firm email account:

- His August 29, 2013 email exchanged with Respondent;
- Respondent's September 4, 2013 email;
- Respondent's September 9, 2013 email;
- Piscitelli's September 12, 2013 email exchange with Respondent.

{¶24} On or about September 13, 2013, Loftus discovered that the following emails had been permanently deleted from her email account:

- Piscitelli's August 29, 2013 email exchange with Respondent;
- Respondent's September 4, 2013 email to Piscitelli;
- Respondent's September 9, 2013 email to Piscitelli;
- Piscitelli's September 12, 2013 email exchange with Respondent.

{¶25} Respondent intentionally deleted from the firm's email accounts of Piscitelli and Loftus: (1) his August 29, 2013 email exchange with Piscitelli; (2) his September 4, 2013 email to Piscitelli; (3) his September 9, 2013 email to Piscitelli; and (4) his September 12, 2013 email exchange with Piscitelli.

### **Highland Heights Police Investigation**

{¶26} After discovering Respondent's unauthorized access of the email accounts, members of the Piscitelli Law Firm contacted the Highland Heights Police Department and provided the IP address of the individual who had accessed the email accounts without authorization.

{¶27} On September 23, 2013, and after serving Time Warner with a court order to obtain internet subscriber information, the Highland Heights Police Department confirmed that the IP address was registered to Jonathan Provenzano, Respondent's roommate at the time.

{¶28} The Highland Heights Police Department interviewed Provenzano. During the interview, Provenzano confirmed that Respondent was his roommate and that Respondent worked for the Piscitelli Law Firm until August 29, 2013.

{¶29} On September 24, 2013, the Highland Heights Police Department obtained a search warrant for, among other things, Respondent's personnel laptop computer.

{¶30} Later that day, Lieutenant Dennis Matejcic of the Highland Heights Police Department spoke with Respondent over the phone. Respondent agreed to meet with the lieutenant the following day. Respondent and his legal counsel, Ian Friedman, met with the lieutenant on

September 25, 2013. During that meeting, the lieutenant executed the search warrant and seized Respondent's personnel laptop computer.

{¶31} Following the Highland Heights Police Department's investigation, Piscitelli agreed not to sign a criminal complaint against Respondent on the condition that Respondent report his conduct to Relator.

{¶32} Without a criminal complaint, the Highland Heights Police Department did not file criminal charges against Respondent for his unauthorized access of the email accounts from August 30, 2013 through September 16, 2013.

### **Respondent's Report to Relator and Relator's Investigation**

{¶33} On October 11, 2013, Respondent, through his counsel, reported certain violations of the Ohio Rules of Professional Conduct to Relator. Joint Ex. 5.

{¶34} On November 1, 2013, Respondent's counsel, on Respondent's behalf, sent another letter to Relator in which he provided material facts regarding Respondent's unauthorized access of the email accounts and the Piscitelli Law Firm Drop Box account following Respondent's termination from the Piscitelli Law Firm on August 29, 2013. Joint Ex. 6.

{¶35} Relator conducted an investigation of Respondent's conduct that had been reported. That investigation included taking the deposition of Respondent. During his deposition, Respondent testified: "I do not recall ever deleting any e-mails. And that certainly was never my intention; however, if by accident or by operation of the e-mail system or things that were out of my control, if something happened to be deleted, I obviously cannot refute that. But I can say unequivocally that my intent was never to delete any e-mails, and I don't believe that I purposely deleted any e-mails." Joint Ex. 1 at 93-94. Respondent knew that this testimony was untrue. Respondent has stipulated that he intentionally deleted (1) his August 29, 2013 email exchange with Piscitelli, (2) his September

4, 2013 email to Piscitelli, (3) his September 9, 2013 email to Piscitelli, and (4) his September 12, 2013 email exchange with Piscitelli.

{¶36} Based upon the foregoing findings of fact, the panel finds the following violations by clear and convincing evidence:

- Respondent's deletion of the September 12, 2013 email exchange between Respondent and Piscitelli from the firm's email accounts violated Prof. Cond. R. 3.4(a).
- Respondent's multiple unauthorized access of the firm's email accounts and deletion of several emails from the email accounts violated Prof. Cond. R. 8.4(c).
- Respondent's deletion of the September 12, 2013 email exchange between Respondent and Piscitelli from the firm's email accounts violated Prof. Cond. R. 8.4(d).
- Respondent's untruthful response during his deposition regarding a material fact violated Prof. Cond. R. 8.1(a).

#### AGGRAVATION, MITIGATION, AND SANCTION

{¶37} When imposing sanctions for attorney misconduct, a panel must consider relevant factors, including the ethical duties that the lawyer violated and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743, ¶16. A panel must also weigh evidence of the aggravating and mitigating factors listed in the rules and regulations governing procedure of complaints and hearings before the Board of Professional Conduct. *Disciplinary Counsel v. Broeren*, 115 Ohio St.3d 473, 2007-Ohio-5251, ¶21. However, because each disciplinary case is unique, the panel is not limited to the factors specified in the rule, but may consider any factor relevant to the determination of the sanction to be imposed. *Disciplinary Counsel v. Zapor*, 127 Ohio St.3d 372, 2010-Ohio-5769, ¶6.

{¶38} The parties stipulated to, and the panel finds, the following aggravating factors:

- Respondent unlawfully accessed and deleted emails from the email accounts and accessed the Piscitelli's Law Firm Drop Box account with a selfish motive.
- Respondent engaged in a pattern of wrongful conduct over a two-week period of time.
- Respondent knowingly made a false statement during the disciplinary process.

- Respondent committed multiple violations of the Ohio Rules of Professional Conduct.

{¶39} The parties stipulated to, and the panel finds, the following mitigating factors:

- Respondent has no prior disciplinary record.
- Except for his intentionally false statements during his deposition, Respondent displayed a cooperative attitude during the disciplinary process.
- Respondent acknowledged the wrongful nature of his conduct, expressed remorse, and accepted full responsibility for his conduct.
- Respondent's misconduct did not involve the provision of legal services and no clients were negatively impacted by Respondent's conduct.

{¶40} Misconduct involving dishonesty, fraud, deceit, or misrepresentation generally warrants an actual suspension from the practice of law. *Akron Bar Assn. v. Binger*, 139 Ohio St.3d 186, 2014-Ohio-2114, ¶22, citing *Disciplinary Counsel v. Karris*, 129 Ohio St.3d 499, 2011-Ohio-4243, ¶16. However, where the evidence establishes that an attorney's misconduct involves a single, isolated incident in an otherwise unblemished legal career and an abundance of mitigating factors, the Supreme Court has imposed partially or fully stayed terms of suspension in some disciplinary cases involving dishonest, deceitful, or fraudulent conduct. *Disciplinary Counsel v. Stafford*, 131 Ohio St.3d 385, 2012-Ohio-909, ¶71, citing *Disciplinary Counsel v. Fumich*, 116 Ohio St.3d 257, 2007-Ohio-6040 (12-month stayed suspension); *Disciplinary Counsel v. Niermeyer*, 119 Ohio St.3d 99, 2008-Ohio-3824 (12-month stayed suspension) *Disciplinary Counsel v. Potter*, 126 Ohio St.3d 50, 2010-Ohio-2521 (12-month stayed suspension).

{¶41} The parties have cited *Disciplinary Counsel v. Robinson*, 126 Ohio St.3d 371, 2010-Ohio-3829 and *Disciplinary Counsel v. Engel*, 132 Ohio St.3d 105, 2012-Ohio-2168 in support of the stipulated sanction of a one-year suspension, with six months stayed. We agree that these cases are analogous to the facts presented here and support the agreed-upon sanction.

{¶42} *Robinson* involved a respondent disciplined for giving false and misleading testimony and destroying documents that had potential evidentiary value in violation of Prof. Cond.

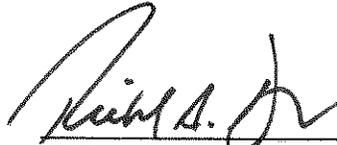
R. 8.4(c), Prof. Cond. R. 8.4(d), Prof. Cond. R. 8.4(h), and Prof. Cond. R. 3.4(a). The Court imposed a one-year suspension as a sanction for the misconduct. *Engel* involved a respondent who unlawfully intercepted and viewed confidential emails in violation of Prof. Cond. R. 8.4(d) and Prof. Cond. R. 8.4(h). The Court imposed a six-month suspension as a sanction for these violations.

{¶43} After considering the aggravating and mitigating factors, the panel agrees with the parties that a suspension is justified in this case. Respondent acted with a selfish motive, engaged in a pattern of wrongful conduct, and committed multiple violations. Respondent also knowingly made a false statement during the disciplinary process. However, Respondent has no prior disciplinary record and generally displayed a cooperative attitude during the disciplinary process. Respondent acknowledged the wrongful nature of his conduct, expressed remorse, and accepted full responsibility for his conduct. No clients were negatively impacted by Respondent's conduct. Respondent is also a young attorney who faced a difficult situation after having been fired by his employer. Weighing these aggravating and mitigating factors, we agree with the parties that a one-year suspension from the practice from law, with six months stayed is an appropriate sanction. However, we condition the six-month stay on the requirement that Respondent engage in no further misconduct and that he pay the costs of these proceedings.

**BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on December 11, 2015. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Brandon Louis Azman, be suspended from the practice of law in Ohio for one year, with six months stayed on the condition of no further misconduct, and ordered to pay the costs of these proceedings.

**Pursuant to the order of the Board of Professional Conduct of the Supreme Court of Ohio, I hereby certify the foregoing findings of fact, conclusions of law, and recommendation as those of the Board.**

A handwritten signature in black ink, appearing to read "Richard A. Dove", written over a horizontal line.

**RICHARD A. DOVE, Director**