

Filed August 6, 2015

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	Case Nos. 12-O-13719; 13-O-10245
)	(Cons.); 13-O-11446; 13-O-14149;
GEORGE BERNARD ALTENBERG, JR.,)	14-O-00534 (Cons.)
)	
A Member of the State Bar, No. 117984.)	OPINION AND ORDER
_____)	

Over a three-year period, George Bernard Altenberg, Jr., misappropriated approximately \$93,000 from eight clients to support his passionate hobby of breeding and maintenance of purebred Arabian horses. Though he has repaid most of the funds, he continues to owe \$2,724 to one of his former clients. Altenberg also violated numerous conditions of a prior discipline, and violated rule 9.20 of the California Rules of Court by filing a false compliance declaration.

This consolidated review involves appeals from hearing department decisions filed in Altenberg’s second and third discipline proceedings. In those decisions, a hearing judge recommended, respectively, a two-year actual suspension and disbarment. The Office of the Chief Trial Counsel of the State Bar (OCTC) urges disbarment. Altenberg concedes culpability in both proceedings but seeks less aggravation, more mitigation, and a suspension rather than disbarment. After independently reviewing the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge’s culpability findings, but give greater weight to the evidence in aggravation and find less mitigation. We agree with the judge’s recommendation in Altenberg’s third proceeding that disbarment is necessary to protect the public, the profession, and the courts.

I. PROCEDURAL HISTORY

Following a three-day trial, on November 13, 2013, a hearing judge found Altenberg culpable of a trust account violation and misappropriation involving moral turpitude in one client matter. She also found that Altenberg failed to comply with his probation conditions from his first discipline. The judge recommended a two-year actual suspension as part of a larger stayed suspension. (Case Nos. 12-O-13719; 13-O-10245 (Cons.), hereinafter “*Altenberg II*”.) On December 10, 2013, OCTC appealed, seeking disbarment. Briefing was completed on June 9, 2014.

Subsequently, in his third disciplinary proceeding, a hearing judge found Altenberg culpable of trust account violations and moral turpitude misappropriation in two client matters on July 10, 2014. In addition, she found that he failed to comply with the requirements of rule 9.20 of the California Rules of Court and found him culpable of filing a false rule 9.20 declaration. The judge recommended disbarment. (Case Nos. 13-O-11446; 13-O-14149; 14-O-00534 (Cons.), hereinafter “*Altenberg III*”.) Altenberg filed a request for review on August 11, 2014. On October 28, 2014, we ordered the two cases consolidated. Oral argument was heard in both matters on June 17, 2015.

The primary issue on review is the appropriate discipline because Altenberg does not dispute culpability, and the record clearly and convincingly supports the judge’s culpability findings, which we adopt and summarize below.¹ Further, prior to each trial, the parties filed a stipulation of facts, wherein Altenberg agreed to most of the predicate facts that form the basis of our culpability findings.

¹ Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.) Rule 5.155(A) of the Rules of Procedure of the State Bar provides that the “findings of fact of the hearing judge are entitled to great weight.”

II. FACTUAL HISTORY

Altenberg was admitted to practice law in California on June 13, 1985. For more than 20 years, he maintained a viable law practice focusing on personal injury matters. In addition to practicing law, Altenberg became, in his own words, obsessed with owning and breeding Polish Arabian horses, and raised as many as 90 horses on his farm in Sonoma County. In 1999, Altenberg added another venture when he bought a restaurant in Sebastopol. The restaurant was a financial failure, and he had incurred \$1.7 million in debt by the time he sold it in 2006. To service the debt, he was forced to sell his farm and decided to relocate his stable of horses to Kentucky in hopes of lessening expenses. He traveled between Kentucky and California in an effort to maintain his California law practice. The relocation was a failure, resulting in the decline of his horses' health, ongoing financial difficulties, and an undermining of the viability of his law practice. Because of his financial difficulties, in 2008, Altenberg began using client trust funds for the care and maintenance of his horses. In 2010, the State Bar began an investigation, which led to his three disciplinary proceedings.

A. *Altenberg I (Prior Discipline)*

On July 22, 2011, Altenberg stipulated to six counts of misconduct in five client matters. (State Bar Court No. 09-O-11169; S196276, hereinafter *Altenberg I*.) From November 2008 through January 2009, he deposited settlement funds into his trust account and was required to maintain funds of a certain amount for each client. From November 2008 through February 2009, Altenberg's trust account dipped below the amount he was required to maintain, and he

thereby willfully violated rule 4-100(A) of the Rules of Professional Conduct,² and misappropriated client funds (\$15,791.66) in violation of Business and Professions Code section 6106.³ In addition, on four occasions, he deposited funds belonging to him into his trust account, thereby commingling funds in violation of rule 4-100(A). He also failed to promptly notify one of his clients that he received settlement funds on her behalf, in violation of rule 4-100(B)(1).⁴ Further, though one client requested her portion of settlement funds, Altenberg failed to promptly pay them to her, in violation of rule 4-100(B)(4).⁵ Finally, he lied to the same client that he had not received her settlement funds, thereby committing a second act of moral turpitude.

Altenberg's misconduct was aggravated because it involved multiple acts. He received mitigation for no prior discipline, candor and cooperation, and because he repaid each client his or her entrusted funds prior to contact from the State Bar. The parties stipulated to an additional mitigating circumstance: i.e., Altenberg "dipped into his client trust account in order to fund the support of his pure-bred [*sic*] Arabian horses, an obsession which will be the subject of his ongoing psychotherapy."

Altenberg stipulated to a one-year actual suspension to continue until he proves his rehabilitation and fitness to practice law, and two years' stayed suspension subject to a three-year probation with conditions, including, inter alia, that he must:

² Rule 4-100(A) of the Rules of Professional Conduct requires an attorney to deposit all funds held for the benefit of a client, including advances for costs and expenses, into a trust account. Subsequent references to rules are to this source unless noted.

³ Business and Professions Code section 6106 prohibits attorneys from engaging in any act involving moral turpitude, dishonesty, or corruption. All further references to sections are to this source unless noted.

⁴ Rule 4-100(B)(1) provides that a member shall "[p]romptly notify a client of the receipt of the client's funds, securities, or other properties."

⁵ Rule 4-100(B)(4) requires an attorney to promptly "pay or deliver, as requested by the client, any funds, securities, or other properties" in the attorney's possession that the client is entitled to receive.

1. Submit written quarterly reports to the Office of Probation (Probation) stating compliance with the State Bar Act, the Rules of Professional Conduct, and all probation conditions;
2. Obtain psychiatric treatment from a psychiatrist at least four times per month and provide proof to Probation with his quarterly reports;
3. Within one year of the effective date of the discipline, attend the State Bar Ethics School and pass the test administered there and attend Client Trust Accounting School; and
4. Comply with the requirements of rule 9.20 of the California Rules of Court, subdivisions (a) and (c), within 30 and 40 calendar days, respectively, after the effective date of the discipline.

The discipline became effective on December 17, 2011.

B. *Altenberg II*

1. Altenberg Misappropriated \$22,504.94 in the Gartin Matter

During 2011, Altenberg represented Jeanie Gartin in a personal injury matter. Gartin accepted a settlement offer of \$55,000 conditioned on Altenberg's agreement that: (1) Gartin would net \$20,000 from the settlement proceeds; and (2) Altenberg would assume responsibility for paying all of Gartin's outstanding medical liens and costs from his portion of the settlement. On August 11, 2011, less than a month after stipulating to discipline in *Altenberg I*, Altenberg deposited \$55,000 in settlement funds into his trust account. He distributed \$20,000 to his client. However, as of August 18, 2011, he was on notice that he was required to keep \$22,821 in his trust account for the purpose of paying Gartin's medical bills as promised. Altenberg did not maintain that amount in his account. In fact, it dipped to a low of \$316.41 by September 28, 2011. Altenberg paid some medical liens from his trust account between October 24, 2011 and December 28, 2011. During the first half of 2012, he settled the remainder of the debt with personal checks.⁶

Altenberg admitted at trial that he manipulated his trust account and that this manipulation amounted to misappropriation. Thus, we affirm the hearing judge's finding that by

⁶ Altenberg ultimately paid off all the lienholders at a discounted total of \$17,726.06.

allowing his trust account to dip below the amount he was required to maintain, he willfully violated rule 4-100(A) and intentionally misappropriated client funds in violation of section 6106.⁷ (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474 [“The mere fact that the balance in an attorney’s trust account has fallen below the total of amounts deposited in and purportedly held in trust, supports a conclusion of misappropriation”]; *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824, 827-830 [using trust account funds without permission to fund horse breeding business constitutes misappropriation].)

We assign no additional weight to the rule 4-100(A) violation because the misconduct underlying the section 6106 violation supports the same or greater discipline. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

2. Altenberg Violated Conditions of His Probation

Altenberg failed to: (1) properly file the quarterly report that was due April 10, 2012; (2) timely comply with the Ethics School and Client Trust Accounting School requirements by December 17, 2012; and (3) obtain psychiatric treatment four times per month in the months of March, April, June, and July 2012. We therefore affirm the hearing judge’s thorough findings that Altenberg did not comply fully with the probation conditions from *Altenberg I* and is, therefore, culpable of violating section 6068, subdivision (k), which requires attorneys “[t]o comply with all conditions attached to any disciplinary probation.”

C. *Altenberg III*

1. Altenberg Misappropriated \$49,690.06 in the Brians Matter

Altenberg represented Catherine Brians in a personal injury matter. Between September and late November 2008, Altenberg deposited \$75,000 in settlement funds into his trust account

⁷ The hearing judge found that Altenberg misappropriated \$10,850.33 from his trust account. For the reasons stated in OCTC’s opening brief, we find this amount to be in error and find Altenberg misappropriated \$22,504.94.

and was obligated to maintain \$50,000 on Brians's behalf. By December 12, 2008, however, his trust account dipped to \$309.94. At trial, Altenberg admitted that he knew that all of Brians's money was gone and that he did not tell her that he had taken the money because, as he conceded, it would not be "good for him" to do so. In 2010, he disbursed \$20,000 to his client. He disbursed another \$20,000 in April 2011. In February 2013, Altenberg and Brians reached an agreement whereby Altenberg would pay Brians \$7,376 to satisfy the \$10,000 debt he owed her. After Brians filed a State Bar complaint, Altenberg finally satisfied his debt to her.

We affirm the judge's finding that by allowing his account to drop to \$309.94, Altenberg willfully violated rule 4-100(A) and intentionally misappropriated \$49,690.06 in client funds, in violation of section 6106. (*Giovanazzi v. State Bar*, *supra*, 28 Cal.3d at p. 474.) We assign no additional weight to the rule 4-100(A) violation. (*In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)

2. Altenberg Misappropriated \$5,285.68 in the Damian Matter

Altenberg represented Alejandra Damian and her daughter in a personal injury matter. He received \$7,900 in settlement funds between January 18 and June 2, 2011, but he did not inform Damian that he settled the case or that he received settlement funds. Though Altenberg was required to maintain \$5,384 in his trust account on the Damians' behalf, he allowed his trust account to dip to \$98.32 by June 13, 2011. With the exception of \$160 paid to a medical provider on November 30, 2011, Altenberg paid no settlement funds to Damian or her daughter during this time period.

Faced with other medical bills, Damian tried unsuccessfully to reach Altenberg in 2011. She then filed a State Bar complaint in 2013 and was finally contacted by Altenberg. They met in August 2013, and Altenberg admitted to her that he misappropriated her settlement funds. He testified that "anger consumed her" and that she had been deprived of funds in a time of serious

need. He agreed to pay her \$20,000 to cover her settlement share and to compensate her for the harm he caused. Finally, at the time of trial, Altenberg made his first payment to Damian in the amount of \$2,500. She is still due \$2,724 from her settlement share.

We affirm the hearing judge's findings as follows. In violation of rule 4-100(B)(1), Altenberg failed to inform Damian about the settlement or the receipt of \$7,900 in funds. He also failed to promptly pay Damian her portion of the settlement (\$5,384) in violation of rule 4-100(B)(4). Further, by allowing his account to drop to \$98.32, Altenberg willfully violated rule 4-100(A) and intentionally misappropriated \$5,285.68 in client funds, in violation of section 6106. (*Giovanazzi v. State Bar*, *supra*, 28 Cal.3d at p. 474.) We assign no additional weight to the rule 4-100(A) violation. (*In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p.127.)

3. Altenberg Failed to Comply with Rule 9.20 and Filed a False Declaration

We adopt and affirm the hearing judge's finding that Altenberg failed to file a declaration of compliance in conformity with California Rules of Court, rule 9.20, subdivision (c), by January 26, 2012 as required by the Supreme Court order issued in *Altenberg I*. He submitted his declaration on January 27 rather than January 26 in violation of the rule. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187 ["Nothing on the face of [rule 9.20] or in [Supreme Court] practice distinguishes between 'substantial' and 'insubstantial' violations of [rule 9.20]".])

More significantly, he committed an act involving moral turpitude by stating, under penalty of perjury, in his rule 9.20 declaration that upon the date he filed it, he had no clients. In fact, Damian was still a client. He had not disbursed any settlement money to her or closed her file, facts Altenberg acknowledged at trial. We agree with the hearing judge that Altenberg's purported belief that he did not have any clients at the time he filed his rule 9.20 declaration is attributable to a lack of sufficient care and does not constitute an excuse. (*In the Matter of*

Downey (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 155 [gross negligence amounting to moral turpitude where attorney filed verification his clients were out of county without first confirming that fact].)

III. AGGRAVATION GREATLY OUTWEIGHS MITIGATION⁸

A. Aggravation

In *Altenberg II* and *III*, the hearing judge correctly found several factors in aggravation. Just prior to misappropriating more than \$20,000 in funds in the Gartin matter (*Altenberg II*), Altenberg stipulated to misappropriating more than \$15,000 in funds in five matters in his first discipline. We ascribe substantial aggravation to his first disciplinary record. (Std. 1.5(a); see *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 444 [prior misconduct similar to that found in present case “must be considered to be a serious” aggravation].)

Further, Altenberg committed multiple acts of misconduct in three client matters, violated the conditions of his probation, and filed a false rule 9.20 declaration. (Std. 1.5(b).) In both the Brians and Damian matters, he substantially harmed his clients by failing to pay their settlement funds for years. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060-1061 [misappropriation of \$1,229.75 of personal injury settlement “was especially harmful” to client because amount significant and meant to reimburse for personal injuries]; *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 409, 413 [significant client harm for six-month delay in distributing \$5,618.25 in medical malpractice settlement proceeds].) In addition, his misconduct in the Brians and Damian matters was surrounded by a lack of candor and cooperation as he hid

⁸ Effective July 1, 2015, the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, were revised and renumbered. Because this appeal was submitted for ruling before the July 1, 2015 effective date, we apply the prior version of the standards, which was effective January 1, 2014 through June 30, 2015. All further references to standards are to the prior version of this source. Standard 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Altenberg to meet the same burden to prove mitigation.

his misappropriations from his clients and waited until the State Bar was involved before paying any funds to Damian. (Std. 1.5(h).) Finally, Altenberg has not made full restitution to Damian. (Std. 1.5(i).)

We assign significant weight to these factors in aggravation.

B. Mitigation

We agree with the judge that Altenberg is entitled to some limited mitigation for cooperation with the State Bar. In both cases, he stipulated to numerous, relevant (though easily provable) facts, which assisted the State Bar’s prosecution of the case. He also admitted some culpability at trial and has conceded culpability on review. (Std. 1.6(e); *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [“more extensive weight in mitigation is accorded those who . . . willingly admit their culpability as well as the facts”]; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [stipulation to easily provable facts mitigating if relevant and assisted prosecution of case].) We disagree with the judge that Altenberg went “above and beyond the call of duty” in repaying the medical liens in the Gartin matter. He agreed to pay the liens, in whatever amount, in exchange for Gartin’s agreement to settle and was thus obligated to pay as promised.

Altenberg presented the testimony and declarations of 21 character references in his two disciplinary trials. We adopt and affirm the judge’s finding in *Altenberg II* that he established extraordinary good character as attested to by a wide range of references in the legal and general communities. (Std. 1.6(f).) We also agree that Altenberg is entitled to some mitigation for recognizing the consequences of his very serious misconduct and for his expression of remorse at trial and on review. (Std. 1.6(g).)

We disagree with the hearing judge's finding in *Altenberg II* that Altenberg's extreme emotional difficulties are a significant factor in mitigation. (Std. 1.6(d).)⁹ The judge, relying on Altenberg's testimony and expert testimony from his psychiatrist and therapist, found "a causal nexus between [Altenberg's] mental issues and the lapses in his handling the trust account." Specifically, Altenberg's unconscious guilt from his childhood, related to his infant sister's death, drove his reckless and harmful behavior as an adult. Now aware of this guilt through therapy, he is no longer likely to engage in those behaviors. Notably, viewing this same evidence in *Altenberg III*, the judge accorded it minimal weight given the severity of the misconduct and because no clear and convincing evidence shows Altenberg's emotional difficulties have ceased to pose a problem.

We view the psychiatrist's testimony to be more equivocal than found by the judge in *Altenberg II* – namely, the psychiatrist refused to claim Altenberg's emotional problems were directly responsible for any specific act of misappropriation. On balance, the link between the childhood trauma / emotional problems and the theft of client funds appears too attenuated and unresolved for our purposes. We also agree with the judge's re-evaluation in *Altenberg III* that he has not demonstrated rehabilitation. Altenberg's sincere efforts to resolve his emotional problems are commendable, but he twice misappropriated funds in the summer of 2011, more than a year after he began therapy in February 2010. Also after entering therapy, he violated his probation and submitted a false rule 9.20 declaration. We find that only slight mitigation is warranted based on Altenberg's long-standing emotional pressures.

⁹ Standard 1.6(d) provides mitigation credit for "extreme emotional difficulties or physical or mental disabilities suffered by the member at the time of the misconduct and established by expert testimony as directly responsible for the misconduct, provided that such difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the member established by clear and convincing evidence that the difficulties or disabilities no longer pose a risk that the member will commit misconduct."

Finally, the stipulation in the first proceeding and admissions in the second and third proceedings prove Altenberg stole client funds to offset his financial difficulties so he could care for his horses. While financial difficulties may be considered in mitigation, Altenberg did not establish that they were not reasonably foreseeable or beyond his control. (See *In re Naney* (1990) 51 Cal.3d 186, 196.)

IV. DISBARMENT IS NECESSARY DISCIPLINE¹⁰

Our disciplinary analysis begins with the standards. (*In re Silvertown* (2005) 36 Cal.4th 81, 91.) Standard 2.1(a) provides that disbarment is appropriate for intentional misappropriation “unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case actual suspension of one year is appropriate.”¹¹ Disbarment is unquestionably appropriate. In the two proceedings before us, Altenberg misappropriated more than \$75,000, a significant amount (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1361, 1368 [\$1,355.75 held to be significant amount]), and his mitigation is not compelling and does not clearly predominate. Moreover, he has yet to make full restitution and has a prior record of discipline for misappropriation, commingling, and acts of moral turpitude.

In a time of financial crisis, Altenberg chose to care for his horses at the expense of the duties he owed to his clients. Many attorneys experience comparable financial and emotional difficulties. “While these stresses are never easy, we must expect attorneys to cope with them without engaging in dishonest activities, as did respondent.” (*In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 522.) “Misappropriation of a client’s funds simply

¹⁰ The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.)

¹¹ Standard 2.7 also applies and provides that “[d]isbarment or actual suspension is appropriate for an act of moral turpitude.” Similarly, rule 9.20 provides that willful failure to comply with its provisions is cause for disbarment or suspension. Contrary to Altenberg’s contention, the hearing judge did not recommend disbarment on grounds that this discipline is his third.

cannot be excused or substantially mitigated because of an attorney's needs, no matter how compelling." (*Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 709.) The severe sanction of disbarment is necessary here and is consistent with relevant case law.¹²

V. DISBARMENT RECOMMENDATION

We recommend that George Bernard Altenberg, Jr. be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

We further recommend that he must make restitution to Alejandra Damian in the amount of \$2,724 plus 10 percent interest per year from June 2, 2011 (or reimburse the Client Security Fund to the extent of any payment from the Fund to Alejandra Damian, in accordance with Business and Professions Code section 6140.5).

We further recommend that he must comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this matter.

Finally, we recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VI. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order that George Bernard Altenberg, Jr. be involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007,

¹² See generally *Grim v. State Bar* (1991) 53 Cal.3d 21 (disbarment in light of \$5,546 misappropriation from one client, prior record for commingling and despite good character and cooperation); *Gordon v. State Bar* (1982) 31 Cal.3d 748 (disbarred for misappropriating over \$27,000, despite 13 years of discipline-free practice, financial difficulties, emotional difficulties due to divorce, remorse, and lack of harm); *In the Matter of Spaith, supra*, 3 Cal. State Bar Ct. Rptr. 511 (disbarred for misappropriating \$40,000, aggravated by client harm and uncharged misconduct, despite 15 years of discipline-free practice, emotional problems, restitution, remorse, good character, community service, cooperation by stipulating to culpability and community service).

subdivision (c)(4), effective August 9, 2014, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

STOVITZ, J.*

WE CONCUR:

PURCELL, P. J.

EPSTEIN, J.

* Retired Presiding Judge and Judge Pro Tem of the State Bar Court appointed by the Supreme Court of California.