

Filed August 7, 2015

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	Case No. 12-O-15976
)	
ROBERT C. BOWMAN, JR.,)	OPINION AND ORDER
)	
A Member of the State Bar, No. 232388.)	
_____)	

THE COURT.*

The Office of the Chief Trial Counsel of the State Bar (OCTC) charged Robert C. Bowman, Jr., with a single count of misconduct—appearing for a party to an action without authority, in violation of Business and Professions Code section 6104.¹ After a two-day trial, the hearing judge dismissed the charge upon finding that Bowman had a reasonable good faith belief that he had authority to represent his client’s ex-wife in a lawsuit. OCTC seeks review, asking us to reverse the hearing judge’s dismissal and impose a one-year stayed suspension.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge’s findings and dismiss this case with prejudice.

I. FACTUAL BACKGROUND

Most of the factual findings are undisputed, and the hearing judge’s decision provides a detailed presentation of the facts. We adopt these findings, except where noted, and summarize and expand those relevant to our analysis.²

*Before Purcell, P. J., Epstein, J., and Stovitz, J., Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.

¹ All further references to sections are to the Business and Professions Code.

² This is Bowman’s first disciplinary proceeding since his admission to the Bar in 2004.

A. The Siinos' Divorce

In 2008, Bowman began representing Joseph Siino in a dissolution proceeding. Joseph's wife, Catherine, hired Sandra Myers to represent her.³ Catherine also hired attorney Robert Hunt as a consultant, but not as an attorney of record, to assist in allocating the couple's property. The divorce was acrimonious, and the parties' communications were strained.

During a settlement negotiation in June 2010, Joseph realized that he and Catherine had overlooked a \$145,000 community debt owed to Westamerica Bank. Catherine would not agree to divide the debt equally, so Joseph assumed full responsibility for this outstanding loan. Catherine made it clear that the loan was his sole responsibility and she expected him to resolve it without her involvement. Joseph testified that the parties and attorneys present at the negotiation understood that he intended to renegotiate or modify the loan, which would require him to default on the payments. He also testified that he wanted no further dealings with Hunt in any ensuing litigation so he agreed to indemnify and hold Catherine harmless from his anticipated default on the loan. The parties inserted the following language into the marital settlement—agreement (MSA), which included an indemnification clause:

Husband shall be solely responsible for the Westamerica line of credit in the sum of One Hundred Forty-Five Thousand Dollars (\$145,000.00), and he shall indemnify and hold Wife harmless therefrom. The parties acknowledge and agree to cooperate in all efforts undertaken by Husband to re-negotiate, modify, or compromise this debt. The last joint payment of this debt shall be July 2010.

Joseph and Catherine finalized their divorce in December 2010. At some point, Joseph stopped making payments on the Westamerica loan. On January 19, 2011, Westamerica's attorney, Steven Mains, sent Joseph and Catherine a collection letter indicating that Westamerica intended to file a lawsuit if they did not resolve the default. Mains enclosed a draft complaint in the letter. Catherine forwarded the letter to Joseph with a note stating, "Joe – This is your

³ We refer to the Siinos by their first names to avoid confusion.

responsibility per the MSA. Catherine.” She also discussed the letter with Hunt, but they took no action.

B. The Westamerica Lawsuit

Westamerica filed a collection action against Joseph and Catherine in January 2011. Two months later, the bank served the complaint on Joseph and Catherine at their eldest son’s home. Their son informed Catherine and provided her with the documents, which she arranged to have delivered to Joseph. On April 1, Catherine emailed Joseph about the delivery and reminded him that the Westamerica “situation” was his “responsibility to resolve . . . per the MSA.”

On April 28, 2011, Hunt sent Mains a letter indicating that he represented Catherine, that she was not properly served, and that no responsive pleading would be filed until service was proper. He also informed Mains that the debt was Joseph’s sole responsibility. Hunt never made an appearance on Catherine’s behalf.

C. Bowman Appears for Catherine

Joseph hired Bowman to represent him in the Westamerica action. After they discussed the lawsuit, Joseph informed Catherine about it. In response, she told him, “It’s your responsibility, and whatever you got to do, do it.” Thereafter, Bowman represented Catherine and Joseph in the Westamerica litigation. He filed a joint answer on their behalf, filed a subsequent answer for Catherine only, and failed to respond or responded untimely to certain discovery requests for Catherine.

In December 2011, Bowman resolved the Westamerica lawsuit by stipulation after the bank filed a motion for summary judgment. Joseph agreed to make payments on the loan, but if he failed to comply with the terms of the stipulation, the bank could apply for an entry of judgment. Catherine was not a party to the stipulation. The court granted Westamerica’s summary judgment motion pursuant to the stipulation and ordered that, upon the bank’s

application, Westamerica “may have judgment entered” against Joseph and Catherine for \$141,223.47 in principal owed, \$11,165.19 in interest, and \$6,120.00 in attorney fees.

By early May 2012, Catherine and Hunt discovered that Bowman had represented her during the Westamerica lawsuit. Ultimately, they believed that a judgment had been entered against Catherine. Hunt contacted Bowman to express Catherine’s displeasure with Bowman’s purported representation of her. Hunt also assisted Catherine with submitting a complaint to the State Bar. But he neither substituted into the Westamerica case nor asked Bowman to withdraw. Catherine’s outrage prompted Joseph to enter into an agreement with the bank where he paid \$65,000 toward the principal in exchange for the bank’s dismissal of Catherine from the action. No judgment was ever entered against Joseph or Catherine.

II. BOWMAN IS NOT CULPABLE OF VIOLATING SECTION 6104

The Notice of Disciplinary Charges (NDC) charged Bowman *solely* with violating section 6104 by filing two answers on Catherine’s behalf without her authority. Section 6104 provides: “Corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding constitutes a cause for disbarment or suspension.” The hearing judge dismissed the charge because she found that Bowman held an honest and reasonable belief that he had the authority to represent Catherine.⁴ On appeal, OCTC’s principal argument is that there is no indication of an attorney-client relationship between Bowman and Catherine and no evidence that she authorized him to appear on her behalf. For the following reasons, we find Bowman not culpable of misconduct.

To begin, we give great weight to the hearing judge’s factual findings. (Rules Proc. of State Bar, rule 5.155(A).) In particular, we defer to the judge’s credibility findings because “[she] alone is able to observe the witnesses’ demeanor and evaluate their veracity firsthand.”

⁴ We do not reach OCTC’s other claimed violations of failure to communicate, perform, and obtain a conflict waiver because they were not charged in the NDC.

(*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032.) We are limited on review to the examination of a cold record and must rely on the hearing judge's assessment of Joseph's demeanor and the nature and quality of his testimony. Indeed, the hearing judge was in an appreciably better position than we are to attribute intent or motive to Joseph. Finally, we are mindful that all reasonable inferences must be resolved in Bowman's favor. (*Galardi v. State Bar* (1987) 43 Cal.3d 683, 689.)

Applying these legal principles, we agree with the hearing judge that Bowman's belief that he had the authority to represent Catherine was honestly held and reasonable under the circumstances. First, Catherine's insistence that Joseph assume all responsibility for the Westamerica debt reasonably included whatever legal action was necessary to resolve it. Additionally, once Joseph agreed at the settlement negotiation to be solely responsible for the loan, he made sure Catherine and her attorneys knew he intended to renegotiate, modify, or compromise the loan, which could require him to default on the payments and would likely result in a lawsuit. Moreover, Joseph credibly testified that he wanted no involvement with Hunt if a lawsuit resulted from his default on the loan. To that end, the indemnity clause was placed in the MSA.⁵

True to the settlement discussions, once Westamerica filed the collection action, Catherine refused to participate in resolving the debt and reminded Joseph that it was his responsibility. Given the language in the MSA, Bowman honestly and reasonably inferred that Catherine gave Joseph consent and authority to take the necessary actions to achieve a favorable result. This authority, Joseph believed, included choosing an attorney to represent their interests. In addition, Hunt knew about the lawsuit but never substituted into the case or asked Bowman to

⁵ OCTC conceded at oral argument that the MSA created an implied duty to defend Catherine.

withdraw. Finally, Bowman credibly testified that Joseph told him he kept Catherine informed of the lawsuit proceedings.

While OCTC advocates that we reverse the hearing judge and find Bowman culpable, it cites no persuasive case law establishing that an attorney appears without authority when acting under the provisions of an MSA, as drafted in this case—particularly given the indemnity clause. OCTC cites *Knox v. Knox* (1948) 88 Cal.App.2d 666, 672-673, disapproved on other grounds in *Hudson v. Hudson* (1959) 52 Cal.2d 735, 739. There, a party's Nevada counsel had the authority to appear for her in a Nevada divorce action, largely because the property settlement agreement (prepared by her Florida attorneys) had so provided. Although OCTC distinguishes the facts in *Knox* from those before us, we deem the facts and circumstances presented to the hearing judge to be sufficiently comparable to what was authorized in *Knox*.

In sum, the factual findings clearly and convincingly⁶ support the hearing judge's conclusion that Bowman held an honest and good faith belief that he had the authority to represent Catherine. The record provides no basis for us to depart from the judge's well-reasoned conclusion. Accordingly, the matter is dismissed with prejudice.

III. ORDER

As Bowman is not culpable of the charge alleged in the NDC, we order this case dismissed with prejudice. Bowman may move for reimbursement of costs in accordance with section 6086.10, subdivision (d), and rule 5.131 of the Rules of Procedure of the State Bar.

⁶ 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.)