PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed May 18, 2015

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 11-O-15122
	)	
VERNON LESTER BRADLEY,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 49294.	)	
	)	

This case illustrates the consequences of failing to fulfill ethical responsibilities incumbent upon attorneys who conduct business with clients.

Vernon Bradley appeals a hearing judge's decision recommending he be disbarred for professional misconduct in his business dealings with a single client, Alton Lomas. The judge found that Bradley entered into business transactions with Lomas without ensuring that the terms were fair, reasonable, and fully disclosed (Rules of Prof. Conduct,[1] rule 3-300), failed to provide an accounting of transaction funds (rule 4-100(B)(3)), and willfully misappropriated those funds (Bus. & Prof. Code,[2] § 6106). Bradley challenges each of these culpability findings. The Office of the Chief Trial Counsel of the State Bar (OCTC) also charged Bradley with failing to maintain the business funds in his client trust account (CTA) (rule 4-100(A)). The hearing judge dismissed this charge, and OCTC has not appealed.

We affirm culpability on the rule 3-300 charges because Bradley's business dealings with Lomas were neither fair, reasonable, nor fully disclosed. We affirm dismissal of the rule 4-100(A) charge because the business transaction funds were not subject to the client trust

[1] All further references to rules are to this source, unless otherwise noted.

[2] All further references to sections are to this source.

accounting rule requirements. Because the funds were not subject to these requirements, we disagree with the hearing judge's rule 4-100(B)(3) culpability finding. We also disagree with the judge's misappropriation finding because it is based on a different theory than was charged in the Notice of Disciplinary Charges (NDC). Bradley did not have notice or an opportunity to defend against the uncharged theory.

We conclude disbarment is unwarranted, absent culpability for misappropriation. We recommend instead that Bradley be actually suspended for two years and until he proves his rehabilitation and fitness to practice law at a formal reinstatement hearing.

I. FACTUAL BACKGROUND[3]

Bradley was admitted to the State Bar in 1971, and has no record of discipline. The current charges stem from his representation of, and business dealings with, Alton Lomas, a business-savvy client who owned an international commodities trading business, Scotia Pacific International (SPI). Bradley initially represented Lomas in a legal malpractice case, obtaining a roughly $100,000 settlement. Pleased with Bradley's work, Lomas hired him to represent SPI in an arbitration before the London Metals and Exchange (LME). On December 27, 2007, Bradley and Lomas entered into a retainer/fee agreement for the LME matter.

Besides practicing law, Bradley co-owned and operated a construction business involved in various real estate projects, including upgrading and reselling properties. During 2008, Bradley was developing properties on Mount Tiburon (the Tiburon Property) and on Geldert Drive (the Geldert Property) in Marin County.[4] The real estate projects involved multiple parties and agreements, the details of which are largely irrelevant to this case. We discuss only the terms that relate to Lomas's and Bradley's financial interests.

[3] We review the record independently, pursuant to California Rules of Court, rule 9.12. Our factual findings are based on those of the hearing judge, which we afford great weight (see Rules Proc. of State Bar, rule 5.155(A)), the trial testimony, and the documents in evidence.

[4] We refer to these as the "Tiburon Project" and the "Geldert Project," respectively.

A. The Tiburon Project

Bradley became involved in the Tiburon Project in early 2008 when he assumed responsibility for building out the Tiburon Property through his construction company. In return, he was to receive the balance of the proceeds from the sale of the developed property, after paying project expenses and an agreed-upon profit to investor Barbara Epis. The Tiburon Property was subject to a $1.95 million promissory note, secured by a deed of trust, for the benefit of the property's prior owner, Jane Marra. The full balance on the note was due in January 2009, with monthly interest payments owed until then. If not timely paid, the note provided that the property would revert to Marra. Epis agreed with Bradley and others holding interests in the Tiburon Property that she would pay the monthly interest and timely pay off the balance, in exchange for a $1 million profit upon the property's eventual sale. However, Epis experienced financial difficulties almost immediately thereafter, and could not make the monthly payments.

To ensure timely interest payments, Bradley solicited financing from Lomas. He convinced Lomas that the Tiburon Property would sell for at least $10 million, once developed, yielding an estimated return of $4 to $6 million. Lomas agreed to invest.

On February 18, 2008, Bradley and Lomas executed an "Investment Agreement Between Alton A. Lomas and Vernon L. Bradley" (Agreement or Investment Agreement). The Agreement, which Bradley prepared, provides: "Alton A. Lomas wishes to invest $100,000 initially and may invest an additional $150,000. However, for the initial investment of $100,000, Alton A. Lomas will get a return of 80% on his $100,000 investment or $80,000 and further investments will return 80% after 1 year. The $100,000 will be used to debt service the property including taxes, insurance, preliminary design expenses for preparation of plans and preparation

of building site requirements as well as the monthly interest payments due to the LLC."[5] The Agreement further recites: "Barbara Epis will continue to be obligated to purchase the property on or before 12 months from the date of the close of escrow on the property."

B. The Modified Retainer

Also on February 18, 2008, Bradley and Lomas executed a "Modification of Existing Attorney Agreement for Representation in London Metals Exchange Arbitration" (the Modified Retainer). The Modified Retainer provides that in return for Lomas's investment in "a collateral business venture of Vernon Bradley," Bradley "will pursue preparation and finding [*sic*] of the arbitration action . . . and will pursue all necessary discover y [*sic*] for Mr. Lomas without Mr. Lomas receiving a bill for the payment of services immediately." The Modified Retainer explains that Bradley would "track and prepare bills but those bills will not be required to be paid except for costs actually incurred . . . ." It concludes: "In essence, Mr. Lomas' investment in Vernon Bradley's 96 Mount Tiburon property may result in the project generating sufficient monies from the project to pay for his attorney fees."

C. The Geldert Project

Bradley's interest in the Geldert Project provided that he would receive 50 percent of the profits upon the development and sale of the Geldert Property. In or about June 2008, while representing Lomas in the LME arbitration, Bradley solicited Lomas to lend $35,000 to Bradley's partner, Scott Jolley, for the Geldert Project (the Geldert Loan). Lomas and Jolley executed a promissory note that stated that Jolley would repay the loan in full, with 12 percent interest, by August 31, 2008. The loan was secured by a deed of trust on another Tiburon property in which Jolley and Bradley had partnership interests (the Greenwood Property). When

[5] The Agreement does not name or define "the LLC" or "the property." The record below, however, establishes that "the property" refers to the Tiburon Property, and "the LLC" refers to the Tiburon LLC, an entity formed to purchase, develop, and sell the Tiburon Property.

Lomas made the loan, he believed he was receiving a second priority lien interest on the Greenwood Property, after Bank of America. However, he actually was in third position, behind Bank of America and Barbara Epis.

D. The Tiburon and Geldert Projects Fail

During 2008, Lomas gave $205,000 to Bradley, who deposited the money into his CTA before paying it out in due course for the Tiburon Project and the Geldert Loan. However, due to the real estate downturn, neither the Tiburon Project nor the Geldert Project was successful. Jolley failed to timely pay off the Geldert Loan when he found himself in financial trouble. As a remedial measure, he assigned Lomas the rents from the Greenwood Property, which resulted in Lomas eventually recovering his $35,000 loan for the Geldert Project. Epis defaulted on the Tiburon Property note, and consequently, the property reverted back to its prior owner. The Tiburon Project investors, including Lomas, lost all of their money.

II. CULPABILITY

A. Bradley Is Culpable under Rule 3-300 because the Tiburon Project Terms Were Neither Fair and Reasonable Nor Fully Disclosed in Writing (Count One)

OCTC charged Bradley with entering into the Investment Agreement and Modified Retainer in violation of rule 3-300.[6] Bradley asserts that this rule does not apply because Lomas was not his client when they executed the Investment Agreement and Modified Retainer. The evidence disproves his claim. The Modified Retainer itself establishes that Bradley represented

[6] Rule 3-300 dictates that, before entering into a business transaction with a client or knowingly acquiring a pecuniary interest adverse to a client, an attorney must ensure certain conditions are satisfied, including: (1) the transaction or acquisition is fair and reasonable to the client; (2) the terms are fully disclosed and transmitted in writing in a manner that reasonably can be understood by the client; (3) the client is advised in writing that he or she may seek the advice of an independent lawyer and is given a reasonable opportunity to obtain that advice; (4) the client thereafter consents in writing to the transaction or acquisition terms. "When an attorney-client transaction is involved, the attorney bears the burden of showing that the dealings between the parties were fair and reasonable and were fully known and understood by the client. [Citation.]" (*Hunniecutt v. State Bar* (1988) 44 Cal.3d 362, 372-373.)

Lomas when they signed both agreements. Also, the record shows Bradley represented Lomas continuously in the LME arbitration from December 2007 through March 2010.

Bradley next claims the Investment Agreement was not a business transaction between Lomas and him but, instead, a loan from Lomas to Epis, rendering rule 3-300 inapposite.[7] We reject this argument as contrary to the plain language of the Investment Agreement as well as other evidence, including the testimony of Lomas and Epis.[8]

The hearing judge correctly determined that the Tiburon Project terms were not fair and reasonable, nor were they fully disclosed to Lomas. The Investment Agreement, barely over a page long, is so vague that it fails to include basic provisions of the deal. The Agreement does not contain terms specifying the consequences if Epis failed to pay off the note nor does it set forth any clear provision for the return or distribution of capital.

Bradley failed to disclose material facts about the project's risk versus its potential. He did not reveal the extent to which Epis was unable or unwilling to invest additional money, a condition demonstrably crucial to the project's success. Bradley also did not tell Lomas about his own financial weakness, which was highly relevant, as Bradley's personal agreement was all that guaranteed the investment. (See *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 164 [unsecured investment guaranteed by attorney not reasonable where attorney failed to disclose personal financial situation].) Finally, Bradley did not advise Lomas to seek independent counsel regarding the Investment Agreement. (See *Rose v. State Bar* (1989)

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[7] Bradley employs this same argument to challenge the validity of the NDC. He asserts that Epis, not Lomas, has "standing" to initiate a disciplinary action because Lomas lent the investment money to Epis. Besides being factually unsupported, this argument fundamentally misunderstands the nature of discipline proceedings. The State Bar, not the complaining client, initiates disciplinary proceedings, and may do so with or without a complaint from an injured client. (See § 6044 [State Bar may initiate disciplinary proceedings on its own accord]; Rules Proc. of State Bar, rule 2402.)

[8] The hearing judge found Lomas and Epis credible; we give great weight to that finding. (Rules Proc. of State Bar, rule 5.155(A); *Connor v. State Bar* (1990) 50 Cal.3d 1047, 1055.)

49 Cal.3d 646, 663 [before entering into business deal with client, attorney must affirmatively advise client to seek independent counsel].)

B. Bradley Is Culpable under Rule 3-300 because the Geldert Loan Terms Were Neither Fair and Reasonable Nor Fully Disclosed in Writing (Count Two)

We also affirm the hearing judge's finding that Bradley violated rule 3-300 in arranging the Geldert Loan. Bradley indisputably had a financial interest in the Geldert Project, although he was not a party to the loan agreement. Therefore, rule 3-300 applied. (See *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 123-124 [respondent not culpable under rule 3-300 for negotiating deal between client and third party, where deal benefited respondent's son but respondent had no pecuniary interest].) The loan terms were neither fair and reasonable nor fully disclosed since Lomas believed the loan was secured by a second priority deed of trust when he actually had a third priority lien. (See, e.g., *In the Matter of Hagen*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 164.) Further, as with the Tiburon Project, Bradley did not advise in writing that Lomas obtain advice from independent counsel, as required by rule 3-300.

C. Bradley Is Not Culpable under Rule 4-100(A) or 4-100(B)(3) because the Business Funds Were Not Subject to CTA Requirements (Counts Three and Five)[9]

In Count Three of the NDC, OCTC charges that, "[b]y misappropriating $97,622.89 of the $205,000 given to him by Lomas pursuant to the investment agreement, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in [a client trust account]." The hearing judge concluded Lomas's funds were for a business transaction and therefore not subject to rule 4-100(A). OCTC does not appeal this determination, and we affirm

[9] Under rule 4-100(A), "[a]ll funds received or held for the benefit of clients by a member or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts labeled 'Trust Account,' 'Client's Funds Account' or words of similar import . . . ." Under rule 4-100(B), a member shall "maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them . . . ."

it. Lomas undeniably gave the funds to Bradley for the real estate projects, not for any attorney-client matter. Bradley is not culpable of failing to maintain the funds in his CTA since business funds do not belong there in the first place. (See *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 424-425 [attorney who accepted fiduciary duty to hold non-client business funds in CTA was culpable of commingling; neither duty nor placement of funds in CTA converted them to client funds].)[10]

The hearing judge concluded Bradley violated rule 4-100(B)(3) by failing to provide Lomas with a full accounting of the business monies, even though these funds were not client funds. We find no legal support for the application of rule 4-100 to non-client funds under the present facts. While an attorney may acquire duties related to non-client funds (*Galardi v. State Bar* (1987) 43 Cal.3d 683, 691 [respondent owed fiduciary duties, including accounting duties, to non-client joint venturers]), those obligations derive from the fiduciary relationship, not from rule 4-100. Business funds acquired separately from an attorney-client matter are not subject to the same specific and non-negotiable rule requirements as client funds.[11] Therefore, Bradley is not culpable under rule 4-100(B)(3). Counts Three and Five are dismissed with prejudice.

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[10] When referencing "client funds" in this opinion, we refer only to funds entrusted to an attorney for an attorney-client matter. At the time of the Investment Agreement and Jolley Loan, Lomas was Bradley's client for the LME arbitration, but not for the real estate projects. Therefore, the funds for the projects were not "client funds," as defined herein.

[11] Our conclusion is consistent with prior case law recognizing that the duty to comply with rule 4-100 when handling *client funds* may sometimes extend to interested non-clients. An attorney may owe rule 4-100 duties to non-clients, but only for funds held in trust *for a client-matter*. (See *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979; *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 10.)

D. Bradley Is Not Culpable under Section 6106 because OCTC Did Not Prove He Misappropriated the Particular Funds Alleged in NDC (Count Four)[12]

On the same facts as in Count Three, Count Four of the NDC charges that Bradley "misappropriated at least $97,622.89 *from the funds held in his trust account* on behalf of Lomas or the investment" (italics added), and thereby committed an act involving moral turpitude. (See § 6106.) The NDC specifically and unambiguously alleges that Bradley misappropriated monies *from the $205,000 placed in his CTA*. It details particular CTA deposits during defined time periods and charges that Bradley took portions of those deposits "for his own use and benefit." During trial and in its post-trial brief, OCTC pursued this misappropriation theory exclusively.

The hearing judge determined Bradley accounted fully for the funds OCTC alleged he had misappropriated from his CTA. The judge concluded that Lomas authorized Bradley to spend the $205,000 on the Tiburon Project and Geldert Loan, and that Bradley spent at least that amount for those purposes ($177,934.15 for Tiburon Project + $35,000 for Geldert Loan = $212,934.15).

However, the hearing judge concluded Bradley was culpable of misappropriating other funds — funds not included in the NDC. The judge found Lomas provided an additional $129,187.50, pursuant to the Investment Agreement, which Bradley deposited either in a Tiburon Project bank account or in his operating account.[13] The hearing judge then determined that because the Tiburon Project expense records did not wholly account for those additional funds, Bradley had misappropriated the difference.

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[12] "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise . . . constitutes a cause for disbarment or suspension." (Bus. & Prof. Code, § 6106.)

[13] We do not adopt this finding, and make no findings as to the amount or designated purpose of any funds other than the $205,000 Bradley deposited in his CTA; any additional funds are irrelevant to the charged misappropriation.

Bradley claims the hearing judge erroneously found him culpable of misappropriating funds not identified in the NDC charges. He argues he did not have fair notice that they were at issue and, thus, did not have the chance to prove he used them for authorized purposes.[14] We agree.

The NDC contains no mention of the additional $129,187.50 or of bank accounts other than Bradley's CTA. His first notice that he might be culpable for misspending the additional funds was the hearing judge's decision.[15] He claims he could have accounted for the additional funds if given the opportunity to do so. It is clear that Bradley did not have reasonable notice and an opportunity to defend against the misappropriation theory upon which the hearing judge based culpability. (See § 6085 [respondent must receive notice of all charges and reasonable opportunity to prepare defense thereto]; see also *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171-172 [scope of respondent's defense is determined by scope of NDC; NDC must articulate specific conduct at issue, with particularity, correlating alleged misconduct with rule allegedly violated].) Therefore, we dismiss Count Four with prejudice.

III. AGGRAVATION OUTWEIGHS MITIGATION

Like the hearing judge, we conclude that multiple acts of wrongdoing (std. 1.5(b)),[16] significant harm to Lomas (std. 1.5(f)), and indifference toward rectification and atonement

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[14] In fact, OCTC objected when Bradley sought to introduce evidence OCTC believed went beyond the $205,000 in his CTA, arguing, "It's irrelevant."

[15] At oral argument, OCTC admitted that the misappropriation theories in its trial closing brief and those in its appeal response brief are "completely different." At trial and in its closing brief, OCTC pursued its charged theory — that Bradley misappropriated approximately $100,000 from the $205,000 deposited in his CTA. Following the hearing judge's decision finding Bradley accounted for the $205,000, OCTC adopted the misappropriation theory the hearing judge relied upon, which was based on the additional $129,187.50. OCTC rationalized this, on appeal, stating that they were "trying to support the hearing judge's decision by saying this is how the court could and did get to the result it did."

[16] All further references to standards refer to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

(std. 1.5(g)) aggravate Bradley's misconduct. We assign minimal aggravation for multiple acts of misconduct because Bradley solicited Lomas's agreement in two distinct deals and did not satisfy rule 3-300 for either one. We also find Lomas suffered significant financial and emotional harm from his business deals with Bradley. Furthermore, Bradley's testimony and briefs indicate that he does not appreciate the high level of care he owed Lomas by virtue of their attorney-client relationship. He believes he committed a mere technical violation of rule 3-300 and that Lomas acted at his own risk in their business dealings. Based on this lack of insight, we assign aggravation under standard 1.5(g).

We adopt the hearing judge's finding of some mitigation for good character under standard 1.6(f). Bradley presented 11 character witnesses, including friends, family, clients, and professional acquaintances. The record reflects that the witnesses were aware of the nature of the charged misconduct, and nevertheless believe Bradley is an honest and trustworthy person of integrity. Bradley's daughters and ex-wife testified that he is a dedicated and supportive father and a kind person. Bradley's son, who is an attorney and works at Bradley's firm, testified that Bradley is an honorable and honest man who tries to "make good on any promise that he makes." Bradley had represented a number of the witnesses in legal matters in the past, and each was happy with his services. The hearing judge found the witnesses constituted a broad cross-section of individuals as to their occupations and personal backgrounds, including a retired financial officer, a consulting engineer, a court reporter, a retired actor, and several attorneys. However, the judge found the weight of their testimony "somewhat diminished by the limited contact some of these witnesses have recently had with [Bradley] as well as the fact that several of these witnesses are related to or work for [him]." This finding is supported: four character witnesses were relatives (ex-wife, daughters, son); three (including Bradley's son) were his employees; and

two had limited recent contact with him. Bradley does not challenge the hearing judge's finding, and we adopt it.

The hearing judge also considered Bradley's 36 years of discipline-free practice an "extremely significant" mitigating factor. (Std. 1.6(a).) However, we assign only limited mitigation under standard 1.6(a) because Bradley's misconduct was serious and not clearly aberrational. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is serious, prior record of discipline-free practice is most relevant where misconduct is aberrational and unlikely to recur].) Rather, the record reflects that Bradley has been lax about administrative aspects of his practice. For example, the evidence shows that he has not been diligent in managing his CTA. The hearing judge noted, "the State Bar's evidence indicated that [Bradley] was commingling funds in his CTA," although OCTC did not so charge him. At trial, Bradley admitted he had deposited personal Social Security checks into his CTA. Further, his ex-wife and daughter authenticated checks he had written to them from his CTA. The evidence also shows that Bradley's billing and timekeeping practices have been slipshod. He testified: "We tried to track [timekeeping] as best we could." When asked who recorded his time entries on the computer, he testified, "I assume my son did." And one attorney character witness testified: "It doesn't surprise me, actually, that there's allegations regarding the trust account. If anything, he probably should be more precise or could be more precise in that kind of thing. . . . [I]t's not a matter of maliciousness, but it may be a matter of not crossing his Ts and dotting his Is as much as he should." This past conduct, considered in conjunction with Bradley's lack of insight, weighs against finding his behavior aberrational. His lack of prior misconduct, accordingly, supports only limited mitigation.

IV. TWO-YEAR ACTUAL SUSPENSION IS THE APPROPRIATE DISCIPLINE[17]

Our disciplinary analysis begins with the standards. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Standard 2.4 provides that "disbarment or actual suspension" is appropriate for rule 3-300 violations involving unfair or unreasonable business transactions.

To determine the appropriate discipline within the applicable standard, we consider comparable case law. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168.) We conclude disbarment is too severe a sanction since OCTC did not prove Bradley culpable under section 6106. (Cf. *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 278 [respondent disbarred for obtaining loans from client in violation of rule 3-300 and willfully misappropriating client funds]; *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824 [respondent disbarred for violating former rule 5-101[18] and § 6106 for self-dealing with client funds over seven years and failing to account, and substantial aggravation for client harm, indifference, lack of insight, and prior discipline for misappropriation and commingling].)

Given our culpability findings, and in light of the dismissed misappropriation charge, we find this case is comparable to those recommending actual suspension of two years and until proof of rehabilitation and fitness to practice. (See, e.g., *In the Matter of Peavey* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483; *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.) In *Peavey*, we recommended a two-year actual suspension for an attorney who solicited two unsecured $25,000 loans from unsophisticated clients (where one client had only a seventh-grade education and borrowed $24,000 at 12 percent interest to make the loan). Peavey also was culpable of moral turpitude for entering into unfair and unreasonable deals and

[17] 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.)

[18] Former rule 5-101 is the substantive precursor to current rule 3-300.

making misrepresentations and broken promises to the clients regarding loan repayment. Also, in *Johnson*, we recommended a two-year suspension for an attorney who violated former rule 5-101 by obtaining a $19,860 unsecured loan from settlement proceeds obtained for her client in a personal injury suit. Johnson committed moral turpitude by overreaching and exploiting her vulnerable client who suffered poor health, frequently used alcohol, lacked business sophistication, and had limited education.

In contrast, Lomas was a sophisticated client, and Bradley is not culpable of moral turpitude. And Johnson's and Peavey's misconduct was more severe than Bradley's because they were culpable of moral turpitude. Even so, we find that Bradley's discipline should be comparable to that in *Johnson* and *Peavey* because his unfair business dealings involved significantly more money and greater concomitant losses, making the gravity of his offenses proportionally similar to Johnson's and Peavey's.

The hearing judge recommended that Bradley make restitution to Lomas in the amount she found to have been willfully misappropriated. Since we do not find Bradley culpable of the charged misappropriation, we consider instead whether restitution is warranted for Bradley's rule 3-300 culpability.[19] Our restitution analysis focuses on the Tiburon Project since Lomas ultimately recovered the Geldert Loan funds.

In general, cases imposing restitution for rule 3-300 violations involve clear attorney overreaching and well-defined equitable interests. (See, e.g., *Beery v. State Bar* (1987) 43 Cal.3d 802; *Hunniecutt v. State Bar*, *supra*, 44 Cal.3d 362; *In the Matter of Johnson*, *supra*, 3 Cal. State Bar Ct. Rptr. 233.) This case involves neither. Lomas was a sophisticated client with extensive experience in commodities deals. His own testimony and memoranda indicate he understood the Tiburon Project and its risks beyond the plainly inadequate Investment

[19] The hearing judge did not assess restitution based on Bradley's rule 3-300 culpability. We requested and have considered supplemental briefing on this issue.

Agreement terms. He participated in the project firsthand — seeking out project funding and paying project expenses directly — and he engaged in ongoing, intelligent negotiations with Bradley regarding the terms of their agreements. These facts do not absolve Bradley of his rule 3-300 violations, but neither do they support overreaching. In fact, the equitable interests here are further complicated by the fact that Lomas, Bradley, and Epis have been parties to civil lawsuits (some of which may be ongoing), litigating issues relating to the Tiburon and Geldert Projects and the Modified Retainer. Under the circumstances, we conclude that restitution is not a necessary rehabilitative measure and that a two-year suspension will both protect the public and impress upon Bradley the seriousness of his misconduct. (See *Brookman v. State Bar* (1988) 46 Cal.3d 1004, 1009 [purpose of restitution is to rehabilitate attorneys and protect public from future misconduct]; *Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1093 ["significance of restitution is its probative value as an indicator of rehabilitation, not the repayment of the underlying indebtedness"].) We therefore recommend that Bradley be actually suspended for two years and until he provides proof of rehabilitation, but decline to impose any restitution requirement.

V. RECOMMENDATION

For the foregoing reasons, we recommend that Vernon Lester Bradley be suspended from the practice of law for three years, that execution of that suspension be stayed, and that he be placed on probation for three years on the following conditions:

1. He must be suspended from the practice of law for a minimum of the first two years of the period of his probation and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code

section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.

4. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request

5. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

6. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.

7. Bradley must comply with the following reporting requirements:

    a. If he possesses client funds at any time during the period covered by a required quarterly report, he shall file with each required report a certificate from him certifying that:

        i. He has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account;" and

        ii. He has complied with the "Trust Account Record Keeping Standards" as adopted by the Board of Trustees pursuant to rule 4-100(C) of the Rules of Professional Conduct.

    b. If he does not possess any client funds, property or securities during the entire period covered by a report, he must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, he need not file the certificate described above.

    The requirements of this condition are in addition to those set forth in rule 4-100 of the Rules of Professional Conduct.

8. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and of the State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education

(MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if he has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VI. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Bradley be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of his actual suspension and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

VII. RULE 9.20

We further recommend that Bradley be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to 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 proceeding. Failure to do so may result in disbarment or suspension.

VIII. COSTS

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

IX. ORDER

Because she recommended disbarment, the hearing judge ordered Bradley involuntarily enrolled inactive under section 6007, subdivision (c)(4). We order Bradley's inactive enrollment under section 6007, subdivision (c)(4), terminated, effective upon filing of this opinion.

HONN, J.

WE CONCUR:

PURCELL, P. J.

EPSTEIN, J.