

PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

FILED OCTOBER 4, 2011

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of) Case Nos. 05-O-00754; 05-O-01987
)
TORE BJORN DAHLIN,) OPINION AND ORDER
)
A Member of the State Bar, No. 132353.)
_____)

I. SUMMARY OF THE CASE

The hearing judge found Tore Bjorn Dahlin culpable of six counts of misconduct in two client matters based on a written stipulation of facts and conclusions of law. Dahlin’s admitted misconduct includes misappropriating over \$74,000 of client funds and violating a court order. The hearing judge recommended that Dahlin be disbarred based on standard 2.2(a),¹ which calls for such discipline when an attorney misappropriates a significant amount of entrusted funds without establishing compelling mitigation.

Dahlin seeks review, contending that disbarment is too severe. He also raises two procedural challenges: (1) the State Bar Court lacks jurisdiction to hear his case; and (2) his stipulation was not binding. The Office of the Chief Trial Counsel (State Bar) supports the

¹ Unless otherwise noted, all references to “standard(s)” are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

hearing judge's decision. Upon independent review of the record (Cal. Rules of Court, rule 9.12), we find no procedural errors and adopt the hearing judge's decision.²

II. PROCEDURAL CHALLENGES

A. JURISDICTION

Dahlin challenges this court's jurisdiction, contending that the superior court is the proper forum for disciplinary proceedings. His challenge is without merit. The State Bar Court functions as the administrative arm of the California Supreme Court and has statutory authority to hold attorney discipline proceedings and recommend discipline to the Supreme Court. (*In re Attorney Discipline System* (1998) 19 Cal.4th 582, 592-593.) Dahlin also contends that the State Bar Court judges have a financial interest in the proceedings that favors the prosecution because the State Bar employs both the judges and the State Bar prosecutors. These contentions also lack merit according to settled case law. (See *Kelly v. State Bar* (1988) 45 Cal.3d 649, 655, fn. 8 [State Bar disciplinary structure and proceedings do not violate due process]; *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, 59 [no valid claim of judicial bias based on relationship between discipline costs and salary].)

B. THE STIPULATION

Dahlin next alleges that his stipulation was not binding and the hearing judge violated his due process rights by relying on it. As detailed below, we conclude that Dahlin's stipulation was binding.

At a January 2010 settlement conference, the State Bar prosecutor and Dahlin agreed to settle the case for a three-year actual suspension. As part of the settlement, Dahlin executed a

² On May 20, 2011, Dahlin filed a Motion for Judicial Notice of certain pleadings, rulings and the State Bar investigative file. We deny his motion because the documents requested are either included in the record on review or were not introduced into evidence and are not the proper subject for judicial notice. (Rules Prac. of State Bar Court, rule 1310.)

Stipulation as to Facts and Conclusions of Law. On January 27, 2010, the hearing judge rejected this stipulation because he did not agree with the three-year actual suspension, and set the matter for trial on February 10, 2010.

On February 3, 2010, before the trial commenced, Dahlin filed a resignation with charges pending (Case No. 10-Q-00648), and the hearing judge abated the instant disciplinary case pending the resignation proceeding. Dahlin also filed a new stipulation that he entered into with the State Bar to support his resignation. (Cal. Rules of Court, rule 9.21(d)(8) [failure to enter into stipulation is grounds for rejecting resignation].) It contained the same facts and conclusions of law as the first stipulation and stated that it was “binding upon the parties.”

After the State Bar filed its report on resignation, we ordered it to provide further information about whether Dahlin had paid restitution in all pending matters. Shortly after the State Bar clarified that he had paid full restitution, Dahlin filed a motion to withdraw his resignation, set aside the accompanying stipulation, and dismiss the case with prejudice. On June 24, 2010, we denied Dahlin’s request to set aside the stipulation and dismiss the discipline case with prejudice. We asked him to advise if he still wished to withdraw his resignation in light of this ruling. Dahlin did not respond.

On July 15, 2010, we granted Dahlin’s initial request to withdraw the resignation and confirmed that the stipulation was binding. The case was sent back to the hearing department to conduct “further [expedited] proceedings, including a recommendation as to the level of discipline based on the binding stipulation.”³

A two-day trial was held on August 30 and 31, 2010. The hearing judge concluded that our July 15, 2010 order confirming Dahlin’s stipulation as binding was not yet final.

³ Dahlin sought review of this order, which the Supreme Court denied on November 10, 2010.

Consequently, the judge permitted Dahlin to present evidence outside the stipulation and to move to strike it. Ultimately, the hearing judge upheld the stipulation, reasoning that it expressly stated it was binding, no court had approved its withdrawal and Dahlin presented no basis for invalidating it. We agree.

The hearing judge gave Dahlin ample opportunity to present evidence to invalidate the stipulation, which he failed to do. Moreover, Dahlin has not shown prejudice by the hearing judge relying on the stipulation since the State Bar established his culpability with independent evidence. (*In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 503 [procedural error claim rejected when respondent offered no proof of prejudice].)

III. DISCIPLINARY CHARGES

Dahlin's written stipulation forms the basis of our factual findings below.⁴

A. CIPPONERI MATTER (05-O-00754)

1. Facts

In June 2001, Sebastian Cipponeri hired Dahlin to represent him in pending divorce proceedings. On September 5, 2001, the superior court ordered that the Cipponeri marital home be sold and the net proceeds placed in an interest-bearing account. The court further ordered that "no withdrawals shall be made without a written stipulation or order of the court."

After the home was sold in October 2001, the title company issued a check for \$69,620.75 in sale proceeds to "Dahlin & Associates Client Trust Account." Dahlin deposited the money into a separate, interest-bearing money market account which was not a client trust account (CTA). He named it the "Dahlin Cipponeri Account" (Cipponeri account). Dahlin's

⁴ In the stipulation, Dahlin admitted to facts and culpability for three counts that the hearing judge did not address in his decision: Count 10, Count 11, and Count 12. The State Bar did not seek review of these counts, and stated at oral argument that it was not relying on them in seeking disbarment. We therefore dismiss the charges in Counts 10, 11, and 12, but we consider the facts in the binding stipulation that form the basis for these counts.

stipulation recited that he “did have authority to withdraw \$4,000.00 and \$887.90 pursuant to a January 11, 2002 order of the court, and he did so.” But Dahlin also made eight improper withdrawals totaling \$63,826.08 between November 2001 and May 2002 without permission from the parties or the court, and used the funds for matters other than those related to the Cipponeris. In January 2004, Dahlin closed the Cipponeri account.

Dahlin made several misrepresentations about the money in the Cipponeri account to third-party creditors, the court and opposing counsel for two years after the improper withdrawals. First, Dahlin falsely told attorneys for one of Cipponeri’s creditors that the funds were in trust as part of his offer to settle \$9,500 of Cipponeri’s unresolved debts. Ultimately, Dahlin paid these debts from other accounts.

Next, Dahlin told the court during a May 2003 settlement conference that he was holding \$70,000 in trust although less than \$1,000 remained in the account. After he closed the account in 2004, Dahlin falsely represented in court documents that the parties had settled all but one debt. In fact, Dahlin did not resolve the debts to four creditors totaling \$12,077.45 until five months later, in January 2005. Again, Dahlin eventually paid these creditors with funds from other accounts.

Finally, Dahlin misled opposing counsel that he was properly holding the remaining Cipponeri funds when he was not. Dahlin misrepresented the amount of money in the account and promised documentation, which he did not provide.

2. Culpability

Count One: Moral Turpitude (Bus. & Prof. Code § 6106) - Misappropriation⁵

Count Two: Failure to Maintain Client Funds in CTA (Rules Prof. Conduct, rule 4- 100(A))⁶

Count Three: Moral Turpitude (§ 6106) – Misrepresentations

Count Four: Failure to Obey Court Order (§ 6103)

Dahlin has stipulated, and the record independently reveals, that he violated multiple ethics rules when he deposited and withdrew funds from the Cipponeri account, and then made misrepresentations about these funds. Dahlin ignored the superior court's order to refrain from making withdrawals from the Cipponeri home proceeds account except by a stipulation of the parties or a court order. Since Dahlin had obtained neither when he withdrew \$63,826.08, he willfully failed to obey the court order in violation of section 6103.⁷ Dahlin also violated rule 4-100(A) when he deposited the Cipponeri funds in an account other than a CTA, improperly withdrew the funds and closed the account before the divorce proceedings concluded. (*In the Matter of Bleecker* (Review Dept. 1990) 1 Cal State Bar Ct. Rptr. 113, 123 [attorney must maintain client funds in CTA until outstanding balances are settled].)

Further, Dahlin's withdrawal and use of \$63,826.08 of the Cipponeri funds entrusted to him for safekeeping constituted a misappropriation. (*Jackson v. State Bar* (1979) 25 Cal.3d 398, 403 ["The fact that the balance in an attorney's trust account has fallen below the amount due his client will support a finding of wilful misappropriation"].) Because his misappropriation violated the superior court's clear order, we find it to be "a serious offense involving moral

⁵ All further references to "section(s)" are to the Business and Professions Code.

⁶ All further references to "rule(s)" are to the State Bar Rules of Professional Conduct.

⁷ Section 6103 calls for suspension or disbarment for "[a] willful disobedience or violation of an order of the court."

turpitude” under section 6106.⁸ (*Morales v. State Bar* (1988) 44 Cal.3d 1037, 1045 [attorney’s intentional deposit of check benefiting former firm’s client into account other than CTA involved moral turpitude].)

We reject Dahlin’s argument that he did not misappropriate the funds because he transferred them into other out-of-state CTAs, using such accounts as “clearinghouses” to avoid his own creditors. First, Dahlin stipulated that he “misappropriated \$63,826 of the Cipponeri funds.” Second, we give great weight to the hearing judge’s finding that Dahlin’s testimony that he safely maintained the funds was not credible. (Rules Proc. of State Bar, former rule 305(a);⁹ *Chefsky v. State Bar* (1984) 36 Cal.3d 116, 121 [findings based on testimony given great weight since trier of fact was in better position to evaluate conflicting statements after observing demeanor and character of witness testimony]; see *Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020 [“The lack of an evil intent will not immunize an attorney from a conclusion of moral turpitude when the attorney’s actions constitute gross carelessness and negligence violating the fiduciary duty to a client”].)¹⁰

Even if Dahlin had safely maintained the funds elsewhere, his reasoning shows a fundamental misunderstanding of an attorney’s duty to properly maintain entrusted funds.

⁸ Dahlin violated both rule 4-100(A) (failure to maintain client funds) and section 6106 (moral turpitude for willful misappropriation). However, for our discipline analysis, 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.)

⁹ The Rules of Procedure of the State Bar were amended effective January 1, 2011. However, the former rules apply to this proceeding as the request for review was filed prior to the effective date. (Rules Proc. of State Bar (eff. Jan. 1, 2011), Preface, item 2.)

¹⁰ We also reject Dahlin’s argument that he was prejudiced because he was not permitted to present the financial records of other clients, under seal, to prove he kept adequate funds in those accounts for *all* his clients. Dahlin never sought to present such records at trial in a redacted form to protect the privacy of those clients. And the location where he held misappropriated client funds is not relevant to his culpability for misappropriating those funds in the first instance.

Rule 4-100(A), like its predecessors, is a prophylactic rule designed to prevent a great harm – the loss of entrusted client funds – when the attorney fails to properly deposit and manage such funds. (See *Hamilton v. State Bar* (1979) 23 Cal.3d 868, 876.) Dahlin testified that despite “handling a lot of trust funds,” he had never read rule 4-100(A), and knew nothing of the rules governing CTAs in his 15 years of practice. We cannot excuse Dahlin’s conduct because he claims he never read and did not understand rule 4-100(A) or because he purports to have preserved the Cipponeri funds in other accounts. (*Silver v. State Bar* (1974) 13 Cal.3d 134, 145 [ignorance of rule governing CTA use not a defense]; *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 976 [rule governing use of CTA “is violated where the attorney commingles funds or fails to deposit or manage the funds in the manner designated by the rule, even if no person is injured”]; *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 586 [rule 4-100(A) “leaves no room for inquiry into attorney intent” and good faith is no defense to rule violation].)

We also find that Dahlin committed acts of moral turpitude by misrepresenting the status of the Cipponeri funds to creditors, the court, and opposing counsel. He asserts that his representations were merely imprecise language, and had no effect on the security of the funds. We reject this assertion since Dahlin stipulated to culpability for committing an act of moral turpitude by “making false statements to the Court, to opposing counsel, and to the creditors in the Cipponeri matter,” and the record supports a moral turpitude finding. Dahlin’s misrepresentations helped him continue to improperly use the entrusted funds without scrutiny. The law disfavors using false statements to secure an advantage, and “[n]o distinction can therefore be drawn among concealment, half-truth, and false statement of fact.” (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315 [false statement to judge was moral turpitude in violation of § 6106].)

B. BOGGS MATTER (05-O-01987)

1. Facts

Dahlin represented Donald Boggs in divorce proceedings. The court issued a judgment on April 12, 2004, ordering that the Boggs residence be sold and the proceeds deposited in an interest-bearing trust account in the name of the parties until one of the following things occurred: the provisions of the judgment were met, the parties agreed or the court ordered otherwise.

After the home was sold, Chicago Title Company issued a May 28, 2004 check for \$57,531.86, representing the sale proceeds. Four days later, Dahlin deposited this check into his general attorney CTA. By June 16, 2004, Dahlin had made three separate disbursements totaling \$41,803.05 on Boggs' behalf. But Dahlin also paid \$38,744.05 in personal expenses from the CTA on June 7th and 8th. Two of these payments were for his personal movie equipment rental and production (\$13,000 and \$11,053), and the third was for Dahlin's yellow pages advertisements (\$14,691.05). He referenced Boggs in the memo lines on these three checks. The stipulation stated that Dahlin was required to hold \$11,638.56 in his CTA for Boggs' benefit until the parties concluded the divorce. Instead, he disbursed the remaining funds on matters unrelated to Boggs and the account had a negative balance by July 2004.

On May 27, 2005, Dahlin responded to a State Bar investigator's request for information about the Boggs matter. In his letter, Dahlin misrepresented the status of Boggs' funds, stating that the sale proceeds were placed in his trust account and "remain in that account waiting to be paid out." This was false since Dahlin had disbursed all but \$182.67 of Boggs' funds by August 2004, nine months earlier. A few weeks after Dahlin wrote this letter, he paid opposing counsel \$11,000 from another account as final settlement in the Boggs' divorce.

2. Culpability

Count Seven: Moral Turpitude (§ 6106)

Count Eight: Failure to Maintain Client Funds in CTA (rule 4-100(A))

Dahlin violated rule 4-100(A) when he misappropriated \$11,638.56 of the Boggs entrusted funds and used them to pay his personal expenses. By referencing disbursements from his CTA for Boggs' benefit when they were in fact for his personal debts, Dahlin engaged in a willful and deceitful misappropriation that constitutes moral turpitude.

IV. AGGRAVATION AND MITIGATION

The State Bar must establish aggravating circumstances by clear and convincing evidence while Dahlin has the same burden to prove mitigating circumstances. (Std. 1.2(b) and (e).)

A. AGGRAVATION

We agree with the hearing judge that the State Bar proved one factor in aggravation. Dahlin committed multiple acts of misconduct over the course of almost four years, including failure to deposit entrusted funds in the proper account, misappropriation, commingling, and misrepresentations to creditors, opposing counsel and the superior court. (Std. 1.2(b)(ii).)

B. MITIGATION

We agree with the following mitigation findings made by the hearing judge. Dahlin established three factors in mitigation: (1) no prior discipline record since admission to practice law in 1987 (std. 1.2(e)(i)); (2) repayment of misappropriated funds (std. 1.2(e)(vii)); and (3) lack of client harm (std. 1.2(e)(iii).) We also agree with the hearing judge that Dahlin did not establish his remorse (std. 1.2(e)(vii)) or good faith (std. 1.2(e)(ii)) at trial.

We disagree, however, with the hearing judge's findings on three mitigation issues. First, the hearing judge did not assign any mitigating credit to Dahlin's grief upon the deaths of his long-time partner in 2002 and his father in 2004. (See *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 59-60.) We afford modest weight to this factor since Dahlin

established a minimal nexus between his grief and his misconduct. (Std. 1.2(e)(iv); *In the Matter of Ward, supra*, 2 Cal. State Bar Ct. Rptr. at p. 60.) Second, the hearing judge gave Dahlin mitigating credit for excessive delay in the proceedings. (Std. 1.2(e)(ix).) We decline to award credit for this factor because Dahlin did not show how any delay caused him prejudice. (*Amante v. State Bar* (1990) 50 Cal.3d 247, 257.) Third, the hearing judge assigned mitigation credit for candor and cooperation in these proceedings. We disagree because Dahlin misrepresented the status of the entrusted funds to the State Bar during the investigation and repeatedly attempted to invalidate the stipulation. (Std. 1.2(e)(v).)

V. DISCIPLINE

The purpose of attorney discipline is not to punish the attorney but to protect the public, the courts and the legal profession. (Std. 1.3.) To determine the appropriate discipline, we look to the standards and decisional law. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 913.)

Two standards apply here. Standard 2.3 provides for actual suspension or disbarment for an act of moral turpitude, while standard 2.2(a) suggests disbarment for willful misappropriation unless the amount is insignificant or compelling mitigation predominates, in which case a one-year actual suspension is warranted. Although standard 2.2(a) is “a guideline rather than . . . an inflexible rule” (*Lipson v. State, supra*, 53 Cal.3d at p. 1022), misappropriation generally warrants disbarment in the absence of clearly mitigating circumstances. (*Kelly v. State Bar, supra*, 45 Cal.3d at p. 656 [“Misappropriation of client trust funds has long been viewed as a particularly serious ethical violation. [Citations.] It breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the profession”].)

We find no reason to depart from the guidelines of standard 2.2(a). Dahlin misappropriated a significant sum of money from two clients and his mitigation evidence is not compelling when weighed against the circumstances of his misconduct.

Dahlin practiced for decades without understanding basic ethics rules governing entrusted funds, and placed over \$74,000 of client funds at risk due to his ignorance. He misappropriated funds from two clients and used those funds for personal purposes. He then made repeated misrepresentations about the funds, which demonstrates that his misconduct was not aberrational. (*Kelly v. State Bar, supra*, 45 Cal.3d at p. 657 [“lesser discipline [than disbarment] is warranted only where extenuating circumstances show that the misappropriation of entrusted funds was an isolated event”].) It is troubling that Dahlin also disregarded court orders designed to protect the client funds. “Other than outright deceit, it is difficult to imagine conduct [such as violating a court order] in the course of legal representation more unbecoming an attorney.” (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112.)

In order to protect the public, the courts and the legal profession, we recommend that Dahlin be disbarred since he willfully violated court orders and flagrantly disregarded CTA rules for years. Our recommendation is supported by comparable cases where attorneys jeopardized significant sums of client money and were deceptive or disregarded court orders. (*Kelly v. State Bar, supra*, 45 Cal.3d 649 [disbarment in first discipline for \$20,000 misappropriation, moral turpitude, dishonesty, and improper communication with adverse party]; *In the Matter of Spauth* (1996) 3 Cal. State Bar Ct. Rptr. 511 [disbarment for \$40,000 misappropriation, intentionally misleading client about funds, mitigation including emotional problems, repayment of money, 15 years of discipline-free practice, strong character evidence, and candor and cooperation with State Bar not sufficiently compelling].)

VI. FORMAL RECOMMENDATION

We recommend that Tore Bjorn Dahlin be disbarred from the practice of law in this State and that his name be stricken from the roll of attorneys.

We further recommend that he 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 Supreme Court order herein.

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

VII. ORDER OF INACTIVE ENROLLMENT

Because the hearing judge recommended disbarment, he properly ordered that Dahlin be involuntarily enrolled as an inactive member of the State Bar as required by Business and Professions Code, section 6007, subdivision (c)(iv), and rule 220(c) of the Rules of Procedure of the State Bar. The hearing judge's order of inactive enrollment became effective on October 30, 2010. Dahlin has remained on involuntary inactive enrollment since that time and will remain on involuntary inactive enrollment pending the final disposition of this proceeding.

PURCELL, J.

WE CONCUR:

REMKE, P. J.

EPSTEIN, J.