

Filed September 20, 2023

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

In the Matter of) 16-O-15558
DREXEL ANDREW BRADSHAW,) OPINION AND ORDER
State Bar No. 209584.)
_____)

In a 2019 opinion, we dismissed the charges against respondent Drexel Andrew Bradshaw as we did not find clear and convincing evidence of culpability for the charged professional misconduct. The Supreme Court remanded the matter to us for reconsideration in light of a superior court decision involving Bradshaw. Bradshaw appealed the superior court decision and we abated the matter until the appeal was final.

After reconsideration in light of the superior court decision as ordered by the Supreme Court, and in consideration of the December 5, 2022 remittitur and the September 30, 2022 opinion from the appellate court, along with the parties' arguments, we now find, for the reasons stated below, that Bradshaw is culpable of professional misconduct for three grossly negligent misrepresentations in violation of Business and Professions Code section 6106. The superior court removed Bradshaw as trustee but did not award damages against Bradshaw, which we find significant as no harm resulted to his client or the trust and the repair work was done competently and at fair market value. Given the misconduct, the aggravating and mitigating

circumstances, and comparable case law, we recommend an actual suspension of six months. We also recommend that Bradshaw be given credit for the time he spent on inactive enrollment.

I. PROCEDURAL BACKGROUND

We issued an opinion and order on July 30, 2019, dismissing all of the misconduct alleged by the Office of Chief Trial Counsel of the State Bar (OCTC) in the first amended Notice of Disciplinary Charges (NDC) filed on January 11, 2018.¹ OCTC appealed and, on January 2, 2020, the Supreme Court filed an order remanding the matter to us for reconsideration in light of the June 14, 2019 “Amended Statement of Decision on Petition After Trial and Order” in *In re Gosey Revocable Trust* (Super. Ct. San Francisco County, No. PTR-17-301118).² On February 24, 2020, we abated the matter pending Bradshaw’s appeal of the superior court decision.

The appellate court filed its opinion on September 30, 2022, and a remittitur was filed on December 5. (*Coleman v. Bradshaw* (Court of Appeal, First Appellate District, Division Two, No. A157968).) After notice to the parties, we terminated the abatement on January 12, 2023. On March 1, we took judicial notice of the appellate court opinion and remittitur. We considered briefing from the parties and held a second oral argument on June 22.

¹ We adopt our 2019 opinion as the opinion of this court, including our factual findings established by the record, except as otherwise stated throughout this opinion.

² The first oral argument in this disciplinary matter was held on May 16, 2019, which occurred before the superior court’s decision. We accepted the file back from the Supreme Court on January 17, 2020.

II. CULPABILITY³

OCTC has the burden to establish culpability by clear and convincing evidence. (Rules Proc. of State Bar, rule 5.103; *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].) Even if a factual finding was made in a civil proceeding, that finding does not alter the “fundamental requirement that OCTC prove each element of a charged violation by clear and convincing evidence. [Citation.]” (*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195, 206.) The superior court’s findings in the decision were made under the preponderance of the evidence standard.

Civil findings must be independently assessed under the more stringent standard of proof applicable to disciplinary proceedings. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947; *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318, 324 [independently assess weight of civil findings under disciplinary standard of proof]; *In the Matter of Kittrell*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 206 [civil findings not given preclusive effect and must be assessed under clear and convincing standard].) Due to differences in applicable standards of proof, civil court findings are not binding on the State Bar Court for purposes of discipline.⁴ (*In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735, 745.) Further, in disciplinary matters, all reasonable doubts are resolved in favor of the attorney accused of

³ The dismissal of count five (unlawfully acting as a contractor without a license) by the hearing judge was not challenged by OCTC in its 2018 appeal. In our 2019 opinion, we affirmed that dismissal for this count, which is not affected by the superior court’s June 2019 amended decision, and thus we do not discuss this count any further in this opinion.

⁴ The appellate court reviewed the superior court’s decision under the substantial evidence standard. Under substantial evidence review, the evidence is viewed in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor. (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.) The appellate court found that the superior court’s decision to remove Bradshaw as the trustee of the Gosey Trust was supported by substantial evidence.

misconduct. (*Himmel v. State Bar* (1971) 4 Cal.3d 786, 793-794.) When equally reasonable inferences may be drawn from a proven fact, the inference which leads to no culpability will be accepted. (*Ibid.*)

On remand, we must consider the findings of the superior court and determine if they relate to the issues charged in the NDC and that were previously raised by the parties on review. (See *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360, 365 [State Bar Court may rely on court of appeal opinion for legal determinations if strong similarity to charged disciplinary conduct].) We must also compare the evidence, under which the superior court based its findings, to the evidence in our record. The record in the civil case may be different than the one in the instant disciplinary proceeding, and the purpose of the two matters are different. (*Most v. State Bar* (1967) 67 Cal.2d 589, 595, fn. 5; *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112, 117 [purposes of disciplinary proceeding “quite different” from those of a civil proceeding].) Further, we cannot impose discipline for any violation not charged. (*Gendron v. State Bar* (1985) 35 Cal.3d 409, 420; *Hartford v. State Bar* (1990) 50 Cal.3d 1139, 1151-1152.) As explained below, in due consideration of the superior court’s decision and our case law, we find that Bradshaw made three misrepresentations through gross negligence in violation of Business and Professions Code section 6106.⁵

A. Count One: Moral Turpitude—Scheme to Defraud (Bus. & Prof. Code, § 6106)

In our 2019 opinion, we dismissed count one with prejudice, finding that Bradshaw’s actions did not amount to a scheme to defraud in violation of section 6106. Fraud was not alleged in the civil matter and the findings in the superior court decision do not impact our prior

⁵ All further references to sections are to the Business and Professions Code unless otherwise noted.

decision that OCTC did not prove by clear and convincing evidence that Bradshaw engaged in a scheme to defraud the trust.⁶ Accordingly, we affirm our dismissal of count one with prejudice. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)

B. Count Two: Breach of Fiduciary Duty (§ 6068, subd. (a))

Count two alleged Bradshaw breached fiduciary duties owed to Gosey and the beneficiaries of the trust, in violation of section 6068, subdivision (a). Section 6068, subdivision (a), provides that it is the duty of an attorney to “support the Constitution and laws of the United States and of this state.”

Our 2019 opinion dismissed count two with prejudice based on OCTC’s failure to prove culpability. We have considered the superior court’s findings and “assess[ed] them independently under the more stringent standard of proof applicable to disciplinary proceedings. [Citations.]” (*Maltaman v. State Bar, supra*, 43 Cal.3d at p. 947.) As discussed in this section, we affirm our finding that there is no convincing proof to a reasonable certainty that Bradshaw is culpable under count two.

1. Hearing Judge’s Decision

The hearing judge found that Bradshaw violated his duty of loyalty and duty to avoid conflicts of interest by hiring Bay Construction to perform work on Gosey’s home. The judge noted that Bradshaw did not disclose his affiliation with Bay Construction or earnestly seek out and obtain bids from licensed contractors,⁷ all while knowing that Raymond Invernon, the

⁶ Thus, we reject OCTC’s argument that “the totality of the superior court’s findings, affirmed by the Court of Appeal, support the hearing judge’s original findings and conclusions of culpability” regarding this count.

⁷ The hearing judge stated that it was “not credible or believable that no licensed contractors in San Francisco would provide Ms. Gosey with a written estimate, especially when

responsible managing officer (RMO) for Bay Construction, was not its work. Therefore, the judge found culpability under count two. OCTC supported this finding on review.

Count two of the NDC made several other allegations as to how Bradshaw violated section 6068, subdivision (a). These allegations included making misrepresentations to the court in the August 2013 petitions to become conservator, and were not addressed by the hearing judge in making the culpability determination for count two. In the original briefing on review, OCTC did not assert that these misrepresentations or the other allegations not addressed by the judge under count two were further evidence of culpability for this count.⁸ Therefore, OCTC has waived these issues on review. (Rules Proc. of State Bar, rule 5.152(C) [factual issues not raised in appellant's brief are waived]; *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873, 885.)

2. 2019 Review Department Opinion

In our 2019 opinion, we found that Bradshaw did not breach his duty of loyalty or his duty to avoid conflicts of interest because the trust gave him the ability to self-deal as long as he did not act (1) in bad faith or (2) in disregard of the purposes of the trust. We found that Bradshaw met his fiduciary duties because he administered the trust for Gosey's benefit. The repairs were necessary to allow Gosey to stay in her home, as was her stated desire as indicated in the trust. The uncontroverted evidence at trial established that the work was of competent quality and done for fair market value. Our record also established that Bradshaw was not required to seek additional bids; thus, he did not breach any fiduciary duty by not "earnestly"

[Bradshaw's] alleged attempts to obtain competitive estimates are considered in light of his self interest in Bay Construction."

⁸ As discussed *post* under count four, we do not find that the statements in the August 2013 petitions were misrepresentations in violation of section 6106.

seeking and obtaining multiple bids.⁹ Our record also showed that Bay Construction had a valid license from the Contractors State License Board (CSLB) and that the San Francisco Department of Building Inspection (DBI) approved the permits, inspected the work that was done, and approved the work.¹⁰ In addition, we found that OCTC did not establish that Bradshaw was required to disclose his hiring of Bay Construction.

3. Superior Court Decision

At issue in the civil trial was whether Bradshaw breached the trust. The petitioner in the civil matter, trust beneficiary Delores Coleman, alleged that Bradshaw breached his statutory duties under the Probate Code, specifically the duty of loyalty and the duty to avoid self-dealing. The superior court found that Bradshaw acted in bad faith and in disregard of the purposes of the trust because Bay Construction “had no credible contracting credentials,” hired Bay Construction with “almost no effort” to obtain other bids, and did not disclose to Gosey or to the court his interest in Bay Construction.¹¹ These findings are very similar to the findings of the hearing judge, and do not change our decision from our 2019 opinion that OCTC did not prove by clear and convincing evidence that Bradshaw violated his fiduciary duties under the trust.

a. Purpose of the Trust

The superior court found that Bay Construction was unqualified to do the work on Gosey’s home, and Bradshaw knew of this fact, but hired Bay Construction anyway, which

⁹ Three people besides Bradshaw (Albert Handelman, Nancy Rasch, and Jeremiah Raxter) testified in the Hearing Department trial that a trustee is not required to obtain competitive bids.

¹⁰ It appears this evidence regarding permits and inspections was not before the superior court.

¹¹ Because the superior court found that Bradshaw acted in bad faith and in disregard of the purposes of the trust, they found that he breached the trust and removed him as trustee. However, the superior court found that Coleman did not prove a basis for damages and no money damages were awarded as a result of the superior court decision.

“jeopardized the safety of the home and the health and welfare of its occupants.” Therefore, the court found that Bradshaw did not satisfy the principal purpose of the trust—the care and maintenance of Gosey. We have evidence in our record that DBI approved the permitted work, including the work on the staircase and the foundation. The record in our disciplinary proceedings shows that Gosey and the occupants were never actually in jeopardy. Therefore, our finding that Bradshaw did not act in disregard of the purposes of the trust remains the same. (See *Maltaman v. State Bar*, *supra*, 43 Cal.3d at pp. 947-948 [civil determination not followed to find culpability when additional evidence in disciplinary hearing conflicted with civil finding].)

b. Bad Faith

The superior court’s finding that Bradshaw acted in bad faith hinges on his failure to disclose to Gosey or the court that he had an interest in Bay Construction and the work was being done by an “unqualified contractor.” The superior court stated that a reasonably prudent person acting in good faith would not have put the trust in jeopardy by hiring an unqualified contractor without discussing the issues with the interested parties. As stated *ante*, we do not find that the trust was in actual jeopardy. The record in these proceedings established that Bradshaw had no duty to disclose under the trust or the Probate Code. Sheila Robello, a certified specialist in probate and trust law, who was hired by Bradshaw to represent him as the conservator and trustee, advised Bradshaw that he did not have to disclose his interest in Bay Construction, and, in reviewing the superior court decision and the appellate court opinion, there is nothing to suggest these courts considered this evidence. Further, the superior court stated, “By its plain terms, Paragraph VII(B)(5) authorizes self-dealing if certain conditions are met. *Those conditions do not include disclosure.*” (Italics added.) The requirement to inform Gosey or the probate court about Bradshaw’s interest in Bay Construction was not established by clear and convincing evidence in these disciplinary proceedings. Given our different record and our

finding that disclosure was not required under the trust, the superior court's decision does not cause us to find that Bradshaw acted in bad faith in violation of the trust. (See *Maltaman v. State Bar*, *supra*, 43 Cal.3d at pp. 947-948.)

4. Conclusion

For these reasons, we find that the superior court decision does not change our culpability determination. OCTC did not establish that Bradshaw violated his duty of loyalty and duty to avoid conflicts. The other allegations in count two of the NDC were waived on review. Accordingly, we affirm our dismissal of count two with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

C. Count Three: Moral Turpitude—Misappropriation (§ 6106)

Count three of the NDC alleged that Bradshaw misappropriated from the trust over \$150,000 in payments to Bay Construction in violation of section 6106. The hearing judge found that a misappropriation charge was not appropriate and dismissed count three with prejudice. In our 2019 opinion, we agreed that clear and convincing evidence to support a misappropriation charge did not exist in the record and dismissed count three with prejudice. Misappropriation was not at issue in the civil matter and no findings from it affect our previous dismissal. Therefore, we affirm our dismissal of count three with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

OCTC maintained in its briefing on remand that Bradshaw should be found culpable of misappropriation because he committed a “serious act of embezzlement.” OCTC then stated at oral argument, without any support, that Bradshaw’s “mark-up” amounted to misappropriation. These arguments are unmeritorious and we expressly reject them. As the superior court found, and even Coleman conceded in the probate litigation, the work performed by Bay Construction was at fair market value and of competent quality. We question why OCTC continues to make

these claims considering the reasons the hearing judge articulated for the dismissal of this count and the superior court's findings.

D. Count Four: Moral Turpitude—Misrepresentation (§ 6106)

Count four alleged that Bradshaw made several misrepresentations in violation of section 6106.¹² The hearing judge found culpability for three misrepresentations: (1) in petitions to be appointed as conservator in August 2013, Bradshaw stated that Gosey was removed from her home by Adult Protective Services (APS);¹³ (2) on February 3, 2015, Bradshaw falsely stated in the First and Final Report and Account before the probate court that between December 2, 2013, and November 30, 2014, that no “relationship or affiliation” existed between Bradshaw and any agent hired by him; and (3) on September 26, 2016, Bradshaw falsely stated in a second supplemental declaration that he had no financial interest in Bay Construction.

In our first review, OCTC agreed with the hearing judge that Bradshaw made these three misrepresentations, but asserted that additional misrepresentations were proven: (1) on September 22, 2016, in the first supplemental declaration, Bradshaw stated he attempted to solicit bids from several contractors for the work; and (2) on September 20, 2017, in a declaration in support of his opposition in the superior court case, Bradshaw stated he had no financial or ownership interest in Bay Construction and that he took no funds from Gosey's trust.

¹² Section 6106 provides that acts involving moral turpitude, dishonesty, or corruption constitute cause for attorney discipline.

¹³ In our 2019 opinion, we found that the statements regarding APS did not amount to a violation of section 6106 given that the statements did not improve Bradshaw's chances of the petitions being granted and were not material to the issues before the probate court. APS and Bradshaw's statements regarding APS were not discussed in the superior court's decision. There is nothing in the superior court's decision that would cause us to change our finding. Therefore, we affirm our finding that the statements regarding APS did not rise to a violation of section 6106.

In our 2019 opinion and order, we found OCTC did not prove that any of these statements amounted to misrepresentations in violation of section 6106.

The superior court, on page 25 of its amended decision, found that Bradshaw lied to the court when he (1) testified he had no financial interest in Bay Construction; (2) testified that Juan Gonzalez was *the* company principal when Bradshaw knew Gonzalez was *a* principal along with Bradshaw; (3) testified that Gonzalez hired Bradshaw's son and that he had no role in that decision; (4) suggested that Gonzalez prepared Bay Construction's bids when Bradshaw controlled the bidding process; (5) claimed that he sought competitive bids knowing that no one made any "substantial efforts" on this front; and (6) testified that Bay Construction was licensed by the CSLB knowing "the purported license was a sham." These findings were the basis of the superior court's decision to remove Bradshaw as the trustee—the court found that a reasonably prudent person would have disclosed the "true facts" so that the probate court could accurately assess the expenditures.

1. Bradshaw's "Financial Interest" in Bay Construction

The superior court found that Bradshaw lied in his September 2016 declaration when he stated he "[does] not have, and never [has] had, a financial interest in Bay Construction." In these proceedings, the hearing judge found that it was a misrepresentation that Bradshaw stated he had no financial interest in Bay Construction in the September 26, 2016 second supplemental declaration. In our 2019 opinion, we did not find culpability for this statement based on the un rebutted testimony of Bradshaw's expert, Handelman, who stated that "financial interest" is not the same as "financial relationship," and Bradshaw was not required to disclose his connections to Bay Construction including the loans, bank account, and credit cards.

The superior court stated in the decision that Bradshaw did have "an interest in Bay Construction and it was substantial." The court found that Bradshaw was an unsecured creditor

of Bay Construction, and the company owed Bradshaw tens of thousands of dollars; Bradshaw was a company principal; Bradshaw maintained significant control over the company, its resources, its employees, and the work it did; Bradshaw set Bay Construction's prices and controlled cash flow; and Bay Construction's operations were substantially intertwined with the operations of Bradshaw's law firm.

After consideration of the superior court decision, we find that Bradshaw should have been more careful in his statements before the court. Bradshaw was petitioning for authorization to obtain another reverse mortgage to pay for Gosey's care and the repairs made on her home. The superior court found that a reasonably prudent person would have disclosed enough facts so that the court could accurately assess the expenditures. The court found that Bradshaw did not do so and, therefore, his statements were misrepresentations to the court. We do not know the exact testimony the superior court heard on this matter from Bradshaw or Handelman, or how it was weighed. The crux is that the superior court found that Bradshaw should have disclosed more facts regarding his relationship to Bay Construction. It was imprudent for Bradshaw to present information to the court in the way that he did. Based on the superior court's finding, we now find that Bradshaw violated section 6106 when he stated in the second supplemental declaration that he did not have a financial interest in Bay Construction.

However, based on our higher standard of proof, we cannot find that Bradshaw intended to mislead the court. Instead, we find that Bradshaw's actions amount to gross negligence under section 6106. (See *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9, 15 [gross negligence is well-established basis for finding of moral turpitude].) The un rebutted evidence in these disciplinary proceedings was that Bradshaw meant, by his statement, that (1) he did not have an ownership interest in the company and (2) he did not believe he had to report this interest in Bay Construction. Therefore, we find clear and convincing evidence that

Bradshaw's statement in the second supplemental declaration, that he had no financial interest in Bay Construction, was a grossly negligent misrepresentation establishing culpability under count four. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786 [gross negligence sufficient for § 6106 moral turpitude violation for misrepresentation], citing *In the Matter of Moriarty, supra*, 4 Cal. State Bar Ct. Rptr. at p. 15; *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 90-91.)

The NDC also alleged Bradshaw made misrepresentations in violation of section 6106 when he stated in accountings to the probate court that he had no relationship or affiliation with any agent hired by him. The hearing judge found culpability for this statement in the February 3, 2015 First and Final Report and Account. In our 2019 opinion, we found no clear and convincing evidence of culpability. After consideration of the superior court's decision, we find that the February 3, 2015 statement was also a grossly negligent misrepresentation in violation of section 6106. The superior court did not address this statement; however, it found that Bradshaw should have disclosed more facts regarding his connections to Bay Construction. Like his statement in the second supplemental declaration, we find that Bradshaw did not intend to deceive the court when he stated there was no relationship between him and any agent hired by him. However, he should have been more careful. Therefore, we also find culpability under count four for the February 3, 2015 statement.

In addition, the superior court did not discuss the September 20, 2017 Opposition and Response to Allegations of Dolores Coleman's Petition (2017 Opposition and Response), where Bradshaw stated he had no financial or ownership interest in Bay Construction.¹⁴ OCTC argued

¹⁴ This pleading was prepared by Bradshaw's attorney and stated Bradshaw had no financial or ownership interest in Bay Construction. In an attached declaration, Bradshaw claimed only that he had never owned any interest in Bay Construction.

on review that the hearing judge should have found culpability for stating that he had no financial or ownership interest in Bay Construction.¹⁵ In our 2019 opinion, we found insufficient evidence in the record to support culpability. Based on the superior court decision, we now find that the 2017 Opposition and Response amounted to a grossly negligent misrepresentation in violation of section 6106, as he failed to provide the court with all of the relevant facts. Accordingly, we find additional culpability under count four.

2. Gonzalez was the Principal of Bay Construction

The superior court found that Bradshaw was a principal of Bay Construction. In the September 2016 second supplemental declaration before the probate court, Bradshaw identified Gonzalez as “the principal” of Bay Construction. The superior court found that this statement inferred that “Gonzales was the *only* principal,” and included it as a misstatement in its findings on page 25 of the decision. The court stated that Bradshaw made the statement “knowing that, at best, Gonzalez was a principal *along with Bradshaw*.” This statement was not alleged in the NDC nor raised by OCTC as a misrepresentation when it appealed the hearing judge’s decision. Therefore, we cannot find culpability for this statement. (*Gendron v. State Bar, supra*, 35 Cal.3d at p. 420; *Hartford v. State Bar, supra*, 50 Cal.3d at pp. 1151-1152.)

3. The Hiring of Bradshaw’s Son and Bradshaw’s Role in the Decision

The superior court also found as a misstatement that Bradshaw stated Gonzalez hired Bradshaw’s son without Bradshaw having a role in the decision. Like the statement regarding Gonzales being “the principal” of Bay Construction, this statement about the hiring of Bradshaw’s son was not alleged as a misrepresentation in the NDC and was not raised by OCTC

¹⁵ OCTC’s opening brief made the argument based solely on the declaration attached to the 2017 Opposition and Response. However, the charge in the NDC related to the full pleading, not just the declaration to the pleading.

on review as a misrepresentation under count four. Again, we cannot find culpability for a statement that was not alleged as misconduct.

4. Gonzalez Prepared Bids

Another misstatement found by the superior court was that Bradshaw suggested Gonzalez prepared the company bids for the Gosey work, knowing that he controlled the bidding process. In the second supplemental declaration, Bradshaw stated that he allowed Gonzalez to use Bradshaw's office as a "home base" for Bay Construction, and that he allowed Gonzalez to "receive mail and phone calls, meet with clients, and prepare bids/invoices for his clients." This statement was also not alleged in the NDC as a misrepresentation or raised by OCTC on review as a request for additional culpability. No culpability can be found for this statement.

5. Bradshaw's Claim that He Sought Bids

In the September 22, 2016 first supplemental declaration, Bradshaw stated that he "called several contactors in an attempt to obtain bids to address the emergency repairs, but most of the contractors did not return my calls much less offer a bid." In the September 26, 2016 second supplemental declaration, Bradshaw stated, "As noted in my previous declaration, for many of those jobs I did call different contractors for quotes, but I rarely had calls back, and when I did the contractors were not interested in the job or my conservative price point." The superior court found Bradshaw's claim that he sought competitive bids, knowing that no one made any substantial efforts on this front, was a misstatement to the court.

On review, OCTC argued that the hearing judge should have found culpability for Bradshaw's statements in the first supplemental declaration that he attempted to solicit bids from several contractors. OCTC argued that Bradshaw provided no documentation or testimony to support the statement, and that, because the hearing judge found Bradshaw not credible when he

testified he called other contractors, we should find the statements to the probate court regarding obtaining bids to be misrepresentations.

We did not overrule the hearing judge's credibility finding in our 2019 opinion. Instead, we stated that lack of credibility does not necessarily lead to the conclusion that Bradshaw's statements were false. (See *Edmonson v. State Bar* (1981) 29 Cal.3d 339, 343 [law is well-settled that rejection of testimony does not create affirmative evidence to contrary].) We found OCTC did not establish by clear and convincing evidence that the statements in the first supplemental declaration were false or otherwise amounted to misrepresentation under section 6106.

We do not change our finding from the 2019 opinion regarding culpability for statements in the declarations that Bradshaw sought bids. OCTC has not proven culpability by clear and convincing evidence. In addition, the superior court's finding supports a finding of no culpability because it suggests that Bradshaw made some attempt to obtain bids. Under the preponderance of the evidence standard used in the civil matter, the superior court stated Bradshaw's efforts were not "meaningful" and that he "made almost no effort to obtain any bids." We cannot find clear and convincing evidence, even by gross negligence, that Bradshaw violated section 6106 when he stated in the first supplemental declaration that he attempted to solicit bids from several contractors. Therefore, we affirm our prior finding that sufficient evidence of misrepresentation for this statement does not appear in the record.

6. Bay Construction's License

The superior court found that it was a misstatement when Bradshaw said that Bay Construction was licensed by the CSLB because he knew "the purported license was a sham." The superior court stated, "At no point did Bay Construction acquire credible contractor credentials and Bradshaw knew this." Bradshaw stated in the second supplemental declaration:

Juan Gonzalez's corporation Bay Construction was licensed by the CSLB through a qualifying individual acting as the responsible managing officer. The qualifying individual or "qualifier" was Raymond Invernon who is a licensed contractor. Mr. Invernon then obtained the bond to activate the license. . . . [¶] . . . Under information and belief, the Bay Construction Inc.'s contractor license number is 999481. It is my understanding, based on a review of the California Contractor's License Board website's listing for Bay Construction's license, that Bay Construction received its license on December 22, 2014. It is my understanding that Bay Construction's license was rendered inactive in January 2016.

This statement was not alleged as a misrepresentation in the NDC and OCTC did not argue on review for additional culpability for this statement. Therefore, the superior court's finding regarding Bradshaw's statement that Bay Construction was licensed does not affect culpability under count four.

III. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct¹⁶ requires OCTC to establish aggravating circumstances by clear and convincing evidence. Bradshaw bears the same burden to prove mitigation.

(Std. 1.6.)

A. Aggravation

1. Prior Discipline (Std. 1.5(a))

The hearing judge assigned moderate weight in aggravation for Bradshaw's prior record of discipline—a private reproof. (State Bar Court No. 07-O-11540.) In 2009, Bradshaw stipulated to misconduct for failing to inform a client that he received a \$47,500 check, in violation of section 6068, subdivision (m). There were no aggravating circumstances, and he received mitigation for absence of prior discipline.

¹⁶ All further references to standards are to this source.

Bradshaw's misconduct occurred in 2006, and he received a private reproof in 2009. The misconduct was minimal, involving one client and one violation, and Bradshaw received the minimum discipline available for professional misconduct—a private reproof. His prior misconduct is different than his misconduct in the instant matter. For these reasons, we find that Bradshaw's prior discipline merits only minimal weight in aggravation. (*In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, 713 [no significant weight in aggravation for private reproof involving minimal misconduct].)

2. Multiple Acts of Wrongdoing (Std. 1.5(b))

The hearing judge assigned moderate weight in aggravation for Bradshaw's multiple acts of wrongdoing. We have found that Bradshaw is culpable of three acts of grossly negligent misrepresentations to the court. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered multiple acts].) These three statements were all similar in that they concerned his interest in Bay Construction. For this reason, we assign limited weight in aggravation.

3. Significant Harm (Std. 1.5(j))

The hearing judge found significant harm to the administration of justice, reasoning that Bradshaw's conduct necessitated the probate court appoint counsel for Gosey and investigate why the trust proceeds were so depleted. The judge assigned moderate weight in aggravation.

We have found harm to the administration of justice when an attorney wasted judicial time and resources by appearing at hearings only to make misrepresentations to a court. Combined with the attorney's harm to his clients, we determined the totality constituted significant aggravation. (*In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 217.) We have also found aggravation for harm to the administration of justice when an attorney made last-minute continuances, without merit, where some were intended to cause

unnecessary delay. (*In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 526.) We found that these acts were a moderate aggravating circumstance. (*Ibid.*)

On review, we find that OCTC has not proven by clear and convincing evidence that Bradshaw's actions caused significant harm to the administration of justice. Bradshaw's misconduct did not result in the depletion of trust proceeds. As we found before, the work was necessary to keep Gosey in her home – the declared purpose of the trust. His grossly negligent misrepresentations did not harm his client and did not cause delay or waste judicial time and resources. Therefore, we do not assign aggravation under standard 1.5(j).

4. Indifference (Std. 1.5(k))

“Indifference toward rectification or atonement for the consequences of the misconduct” is an aggravating circumstance. (Std. 1.5(k).) While the law does not require false penitence, it does require an attorney to accept responsibility for wrongful acts and show some understanding of his culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) The hearing judge found that Bradshaw's lack of insight, little or no remorse, and general indifference toward rectification of or atonement for the consequences of his misconduct warranted significant consideration in aggravation. After his appeal of the civil matter and the remand from the Supreme Court, Bradshaw now expresses that he would have done things differently. Considering Bradshaw's misconduct for grossly negligent misrepresentations and his defense in these proceedings, we find that his actions do not rise to indifference under standard 1.5(k), especially due to his admission regarding doing things differently.

5. High Level of Vulnerability of the Victim (Std. 1.5(n))

The hearing judge assigned substantial weight in aggravation because Gosey was a vulnerable victim, suffering from dementia and unable to care for herself or for her estate. The judge found that in her impaired state, Gosey was highly vulnerable to trustee misconduct. No

evidence exists that Gosey was actually harmed from Bradshaw's grossly negligent misrepresentations to the court. Further, no evidence exists that he secured an unfair advantage by hiring Bay Construction or that he took advantage of Gosey. Bradshaw acted with Gosey's interests in mind, trying to keep costs down and to help her remain in her home. The work was done competently and at a fair price. Therefore, we do not assign aggravation under standard 1.5(n). (*In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660, 674-675 [no aggravation where vulnerable trust beneficiary suffered no damage]; see also *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 244 [attorney exploited vulnerable client to client's detriment].)

B. Mitigation

1. Good Character (Std. 1.6(f))

"Extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct" is a mitigating factor. (Std. 1.6(f).) The hearing judge assigned moderate weight in mitigation for Bradshaw's moral character evidence. Bradshaw argued that additional weight should be given to this mitigating circumstance.

Seven witnesses testified regarding Bradshaw's good character; all were aware of the charges against Bradshaw and many knew him for a substantial period of time. They testified that Bradshaw is honest, trustworthy, and is a person with integrity. We give serious consideration to the testimony of attorney Clinton Woods and Ernest Goldsmith, a retired

superior court judge.¹⁷ (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [attorneys have strong interest in maintaining honest administration of justice].) Judge Goldsmith stated he could trust Bradshaw’s pleadings—they were accurate and honest. However, Judge Goldsmith stated his opinion would change depending on the culpability found, which reduces the effect of his testimony.¹⁸ Bradshaw’s witnesses were comprised of people who knew Bradshaw as a friend and his reputation in the general community and people who knew Bradshaw’s work and reputation in the legal community. We find that Bradshaw has presented evidence of good character and affirm moderate weight in mitigation. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591-592 [no extraordinary showing of good character, nevertheless, received mitigation for three good character witnesses who had long-standing familiarity with respondent and broad knowledge of good character, work habits, and professional skills].)

2. Cooperation (Std. 1.6(e))

Mitigation includes “spontaneous candor and cooperation displayed to the victims of the misconduct or to the State Bar.” (Std. 1.6(e).) The hearing judge assigned modest mitigation for Bradshaw’s stipulation to facts and the authenticity of some trial exhibits. Bradshaw argued that he should be given more weight for cooperation because of the volume of the documents agreed to and the agreement to certain facts. Even with the stipulation, trial lasted several days,

¹⁷ The hearing judge gave limited weight to Judge Goldsmith’s testimony and the testimony of Janice Chuakay because “they only have personal knowledge about [Bradshaw’s] performance of his duties as a lawyer but no personal knowledge about any other aspect of his character.” The standard does not require each reference to testify about a respondent’s character in both the legal and general communities. The standard requires references from both communities. Therefore, we do not discount the testimony of these witnesses as the judge did.

¹⁸ The judge stated he would have a negative reaction if he found out Bradshaw was self-dealing or had violated a law or statute. He was not specifically asked about his opinion regarding culpability for grossly negligent misrepresentations to the court regarding Bradshaw’s interest in Bay Construction.

seemingly not conserving judicial time and resources for a case involving only one client matter and five counts of misconduct. (See *In the Matter of Chavez* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 783, 792 [substantial mitigation for stipulating to facts that formed basis of culpability and conserving judicial time and resources].) Bradshaw has not proven that more weight in mitigation is warranted for this circumstance. We affirm the judge’s finding of modest mitigation under standard 1.6(e).

IV. DISCUSSION

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.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.) The Supreme Court has instructed us to follow the standards “whenever possible.” (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

The standards provide for a range of discipline from actual suspension to disbarment for a grossly negligent misrepresentation. (Std. 2.11.) “The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the practice of law.” (*Ibid.*) Bradshaw’s grossly negligent misrepresentations involved one client matter and no harm to the victim. The misrepresentations had some harm to the administration of justice, as the superior court determined that Bradshaw should have been more forthcoming in his statements to the court. However, the magnitude of Bradshaw’s misconduct supports discipline of an actual suspension,

rather than disbarment, under standard 2.11. (Cf. *In the Matter of Moriarty*, *supra*, 4 Cal. State Bar Ct. Rptr. 9 [disbarment warranted where misconduct was in six client matters, wide-ranging and “most serious” with significant harm to the administration of justice].) Standard 1.8(a) also applies and calls for progressive discipline based on Bradshaw’s prior private reproof.¹⁹

Looking to case law, *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151 provides some guidance. Downey filed a complaint and signed a verification on behalf of his clients attesting they were absent from Los Angeles County, when this was not true. We found that this was a grossly negligent misrepresentation—a section 6106 moral turpitude violation.²⁰ His mitigation for good character evidence and cooperation was limited. The aggravating circumstances were serious: he had a prior record of discipline including a four-month actual suspension, and he twice concealed that the verification was in error. Following progressive discipline, we found that a 150-day actual suspension was appropriate discipline. (*Id.* at pp. 157-158.) The magnitude and type of misconduct in *Downey* is similar to the instant matter. The main difference between the two is that Downey’s prior discipline involved a four-month actual suspension, while Bradshaw has received only a private reproof. *Downey* instructs that actual suspension is appropriate and that progressive discipline should be considered.

In the Matter of Farrell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490 is also instructive as it involves misrepresentation in violation of section 6106 where an attorney falsely told a municipal court judge that he had subpoenaed a witness and misled a judge.²¹ Farrell

¹⁹ We do not agree with Bradshaw that his prior discipline was so remote in time or not serious enough that imposing greater discipline would be manifestly unjust.

²⁰ Downey was also culpable of a violation of section 6068, subdivision (j), for failing to notify the State Bar when he moved his office.

²¹ Farrell was also culpable of failing to cooperate with the disciplinary investigation.

received aggravation for his prior record of discipline including a 90-day actual suspension. He received some mitigation for his belief that a subpoena had been prepared and sent out for service. Based on progressive discipline, we found that a six-month actual suspension was appropriate.²²

Even though Bradshaw believed he did not have to make certain disclosures to the superior court, moral character includes candor and respect for the judicial process. (*In re Lesansky* (2001) 25 Cal.4th 11, 15.) “Honesty in dealing with the courts is of paramount importance” and is a serious offense regardless of motive. (*Paine v. State Bar* (1939) 14 Cal.2d 150, 154 [six-month suspension for making false allegations in petition to probate court].) The superior court found that Bradshaw did not display candor by failing to fully disclose his relationship with the construction company doing work for the trust that Bradshaw administered. We take seriously an attorney’s duty of candor in the administration of justice. However, no harm resulted to the client or the trust, and the superior court did not award damages against Bradshaw and concluded that the work was done competently and at fair market value. The petitioner was only granted her request that Bradshaw be removed as the trustee. Finally, we emphasize that Bradshaw achieved the declared purpose of the trust—to keep Gosey in her home. Given Bradshaw’s three separate misrepresentations to the superior court in one client matter, and also considering the standards, the facts, and comparable case law, we find that a six-month actual suspension is appropriate to protect the public, the courts, and the standards of the profession.

²² *In the Matter of Wyrick, supra*, 2 Cal. State Bar Ct. Rptr. 83 also provides some guidance as it is a case involving a section 6106 violation resulting in a six-month actual suspension. Wyrick concealed being under interim suspension when he applied to the Sacramento County Superior Court arbitration program.

Bradshaw has been enrolled involuntary inactive pursuant to Business and Professions Code section 6007, subdivision (c)(4), since February 27, 2020. Bradshaw was also enrolled involuntary inactive in this case from September 2, 2018, until July 30, 2019, when we initially dismissed the proceeding. Hence, Bradshaw has already spent over four years as not entitled to practice law in relation to this case. We recommend that Bradshaw be given credit for the period of his inactive enrollment toward the six-month period of actual suspension that we have recommended. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 143.)

V. RECOMMENDATIONS

We recommend that Drexel Andrew Bradshaw, State Bar Number 209584, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for two years with the following conditions:

1. **Actual Suspension.** Bradshaw must be suspended from the practice of law for the first six months of the period of his probation. However, we recommend that Bradshaw be given credit for the period of his inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), toward the recommended six-month actual suspension. Because Bradshaw will have already served more than six months on inactive enrollment as of the date of this opinion, there would be no prospective period of actual suspension in this matter.
2. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Bradshaw must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of probation.
3. **Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Bradshaw must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to his compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Bradshaw's first quarterly report.
4. **Complete E-Learning Course Reviewing Rules and Statutes on Professional Conduct.** Within 90 days after the effective date of the Supreme Court order imposing discipline in this matter, Bradshaw must complete the e-learning course entitled "California Rules of Professional Conduct and State Bar Act Overview." Bradshaw must provide a declaration,

under penalty of perjury, attesting to Bradshaw's compliance with this requirement, to the Office of Probation no later than the deadline for Bradshaw's next quarterly report due immediately after course completion.

5. **Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Bradshaw must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has his current office address, email address, and telephone number. If he does not maintain an office, he must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Bradshaw must report, in writing, any change in the above information to ARCR, within 10 days after such change, in the manner required by that office.
6. **Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Bradshaw must schedule a meeting with his assigned Probation Case Coordinator to discuss the terms and conditions of his discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Bradshaw may meet with the Probation Case Coordinator in person or by telephone. During the probation period, Bradshaw must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
7. **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During Bradshaw's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, Bradshaw must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his official State Bar record address, as provided above. Subject to the assertion of applicable privileges, Bradshaw must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
8. **Quarterly and Final Reports.**
 - a. **Deadlines for Reports.** Bradshaw must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Bradshaw must submit a final report no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
 - b. **Contents of Reports.** Bradshaw must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether he has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on

the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

- c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
 - d. **Proof of Compliance.** Bradshaw is directed to maintain proof of compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of actual suspension has ended, whichever is longer. Bradshaw is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
9. **State Bar Ethics School.** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Bradshaw must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he will not receive MCLE credit for attending this session. If he provides satisfactory evidence of completion of the Ethics School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Bradshaw will nonetheless receive credit for such evidence toward his duty to comply with this condition.
10. **Commencement of Probation/Compliance with Probation Conditions.** 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 probation period, if Bradshaw has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VI. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Bradshaw be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Bradshaw provides satisfactory evidence of the taking and

passage of the above examination after the date of this opinion but before the effective date of the Supreme Court's order in this matter, he will nonetheless receive credit for such evidence toward his duty to comply with this requirement.

VII. CALIFORNIA RULES OF COURT, RULE 9.20

We do not recommend that Bradshaw be ordered to comply with California Rules of Court, rule 9.20, as it is recommended that he be given credit for the period of his inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), toward the recommended six-month actual suspension. As Bradshaw will have already served more than six months on inactive enrollment as of the date of this opinion, there would be no prospective period of actual suspension in this matter, and we therefore do not recommend that he be ordered to comply with California Rules of Court, rule 9.20.

VIII. MONETARY SANCTIONS

We do not recommend the imposition of monetary sanctions in this matter, as the NDC was filed prior to April 1, 2020. (Rules Proc. of State Bar, rule 5.137(H).)

IX. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of applying for reinstatement or return to active status.

X. ORDER

We order that Bradshaw's inactive enrollment, ordered February 27, 2020, under Business and Professions Code section 6007, subdivision (c)(4), be vacated upon the filing of this opinion. This order does not affect his ineligibility to practice law that has resulted or that may hereafter result from any other cause.

McGILL, J.

I CONCUR:

HONN, P. J.

DISSENTING OPINION OF RIBAS, J.:

I, respectfully, dissent. This case has returned to us on remand from the California Supreme Court, and upon my independent review of the record (Cal. Rules of Court, rule 9.12), I agree with the hearing judge's culpability findings in counts one, two, and four, as modified, and I would also find culpability in count three. Consequently, I agree with the recommendation of the judge that disbarment is the appropriate discipline.

I. FACTUAL BACKGROUND

The facts of this case involve the intersection of Bradshaw's duties as a trustee and conservator and his role in a construction company called Bay Construction, Inc. (Bay Construction).²³ Bradshaw disputes many facts to which Juan Gonzalez testified differently, but the hearing judge found Bradshaw was not credible and credited Gonzalez's testimony. Having reviewed the entire record, I detect no error in the judge's credibility determinations and would adopt them. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 638 [deference given to hearing judge's credibility-based findings unless specific showing that such were made in error].) We give great weight to the judge's credibility findings because that judge is best suited to resolve credibility having observed and assessed the witnesses' demeanor and veracity firsthand. (See *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032.)

The majority does not defer to the credibility findings of the hearing judge, nor did this court do so the first time this matter was before us. In its 2019 Opinion and Order—which the majority adopts unless stated otherwise—this court found Gonzalez to not be credible, citing without specifying, inconsistencies in his testimony. In my review of the record, I find Gonzalez to be a credible witness for several reasons.

²³ The company is also referred to in the record as Bay Design and Construction.

First, to the extent the majority relies on examples provided by Bradshaw of purported inconsistencies by Gonzalez, I have reviewed them and find that they either do not demonstrate inconsistencies or the perceived inconsistency is explained later in testimony. Second, Gonzalez was forthcoming in his testimony and made attempts to clarify the record when he believed there was confusion, as he did, for example, when explaining how he came to believe over time that his share of Bay Construction was going to proceed from a 49 percent share to eventually full ownership when Bradshaw would turn the company over to him. Third, Bradshaw has argued Gonzalez is untrustworthy, pointing out that Gonzalez admitted he lied in a March 31, 2016 sworn declaration he signed during the investigation of the State Bar of California (State Bar) concerning his ownership interest and involvement in Bay Construction. But Gonzalez's explanation for this made sense. Gonzalez did not draft the declaration that Bradshaw presented to him, and he felt obligated to sign it, because he was extremely grateful for the assistance Bradshaw had provided over the years and continued to give him. Fourth, there has been an allegation that Gonzalez was dishonest about his role in Bay Construction after he came under investigation by a government agency. However, Gonzalez testified that he accepted full responsibility for any action against him that the government agency may take. Finally, Gonzalez testified that he was somewhat fearful of Bradshaw, because Bradshaw was known to become intensely angry at times. Bradshaw's anger directed toward Gonzalez was witnessed on several occasions by an associate at Bradshaw's law firm, Bradshaw & Associates. When Gonzalez later sought Bradshaw's help financially, Bradshaw told Gonzalez that if he said his March 2016 declaration was untrue, Gonzalez would "have trouble" from him, and Gonzalez viewed this as a threat and became worried. Nevertheless, Gonzalez testified at the disciplinary

hearing over the course of two days.²⁴ (See *People v. Sandoval* (2015) 62 Cal.4th 394, 430 [witness afraid to testify or fears retaliation relevant to credibility].)

Giving deference to the hearing judge's credibility determinations, which drive the facts of this case, I would adopt the factual findings of the hearing judge. (Rules Proc. of State Bar, rule 5.155(A) [hearing judge's factual findings entitled to great weight].) I provide an overview of the facts here.

In 2006, Bradshaw's law firm drafted a revocable living trust for an elderly client, Ora Gosey, in which Bradshaw was named third successor trustee (Gosey Trust). Approximately seven years later, in 2013, Gosey injured herself and ultimately needed to be placed in a conservatorship. The probate court named Bradshaw as Gosey's conservator (Conservatorship matter). The probate court later appointed Bradshaw as the trustee of the Gosey Trust after the first two successor trustees declined to serve. Gosey was able to continue living in her house (the Gosey House),²⁵ which was the primary trust asset, but she needed ongoing medical care, which Bradshaw secured from the Institute on Aging.

Since approximately 2003 or 2004, Gonzalez, an unlicensed handyman who conducted business as NJ Construction, had performed work for Bradshaw. Gonzalez, as NJ Construction, also performed some work on the Gosey House toward the end of 2013. Pursuant to the California Contractors License Law & Reference Book that was in effect during the relevant years, an individual or company that repairs or works on a building in which the value of labor and materials for the project totals \$500 or more is required to be licensed by the California State Licensing Board (CSLB).

²⁴ Gonzalez and Bradshaw both testified in the related superior court proceeding, and the superior court judge found Gonzalez to be credible and Bradshaw to not be credible.

²⁵ The Gosey House is a duplex, and Gosey had tenants in one unit.

In early 2014, Bradshaw proposed to Gonzalez that they start a construction company to which Gonzalez agreed. Once Bay Construction was formed in April 2014, Bradshaw provided, free of charge, administrative support, reception services, and space in his law office to conduct Bay Construction business. Bradshaw incorporated the business, and during the lifetime of the business, Bradshaw handled and maintained all of Bay Construction's paperwork, controlled the company finances, registered Bay Construction with the Better Business Bureau (listing his email address and identifying himself as a principal of the company and Gonzalez as president), set Gonzalez's hourly pay, hired his 18-year old son to work with Gonzalez on construction projects, handled payroll, managed vendors, and issued the proposals and invoices for construction projects. Over the course of Bay Construction's existence, Bradshaw estimated he loaned the company close to \$60,000. Bay Construction records reflect that Bradshaw authorized Bay Construction to repay himself at least \$33,000 of the loaned funds, not including any in-kind payment that Bay Construction may have provided.

Gonzalez, on the other hand, provided Bradshaw with estimates of the material and labor costs for each construction project and performed the construction work in the field, although the proposals Bradshaw submitted to the Gosey Trust for payment were significantly higher. On paper, Gonzalez was named the owner and sole shareholder of Bay Construction.

After two or three attempts, Gonzalez was unable to obtain a contractor's license; therefore, Bradshaw secured the license of a retired contractor, Raymond Invernon, who lived in Idaho. CSLB allows a company to perform work under the license of a licensed contractor, so long as that licensed contractor, also known as a responsible managing officer (RMO), is directly supervising or controlling the work pursuant to the Business and Professions Code. (See Bus. &

Prof. Code, § 7068.1.)²⁶ On December 22, 2014, CSLB permitted Bay Construction to operate under Invernon's license, with the understanding that Invernon was the RMO and would be fulfilling the obligations of an RMO. But Bradshaw knew that Invernon would not directly supervise or control any of Bay Construction's projects during its existence.²⁷

On April 1, 2014, Bradshaw was authorized by the probate court to obtain a reverse mortgage in the amount of \$367,794 for the Gosey House (Trust matter). In his petition, Bradshaw had represented to the probate court that the reverse mortgage was needed, because Gosey's expenses for her care exceeded her income. It was expected that funds from this reverse mortgage would last four years. Bradshaw did not inform the probate court that he was planning on using funds from the reverse mortgage to make repairs or perform any substantial construction on the Gosey House.

Almost immediately upon CSLB's issuance of Invernon's license to Bay Construction, work began on the Gosey House, funded by the Gosey Trust. Significant work in 2015 consisted of flood repairs in the tenants' unit (\$9,933), the replacement of the entire back staircase (\$48,909), repair from termite damage (\$10,513), foundation repair (\$70,793),²⁸ shower repairs (\$4,384), and a water heater replacement (\$4,030). In early 2016, Bay Construction performed

²⁶ Further references to sections are to this source unless otherwise indicated.

²⁷ Bradshaw claims to have informed Gonzalez that Gonzalez needed to contact Invernon and that Invernon was required to supervise and control Bay Construction's work. This information was contained in a November 19, 2014 letter on Bradshaw & Associates letterhead from Bradshaw to Gonzalez. Unlike other letters in the record that used Bradshaw & Associates letterhead, this one is unsigned, does not reflect the method of delivery, and contains no reference notation. Coupled with Gonzalez's credible testimony that he had not seen the letter until Bradshaw's disciplinary trial, I have no difficulty concluding this letter was never sent to Gonzalez.

²⁸ Related to the foundation repair were additional charges by Bay Construction and paid by the Gosey Trust for engineering research, consultation with the Department of Building Inspection (DBI), and architectural drawings totaling \$6,350, and charges for additional plans and materials amounting to \$15,187.

work on the Gosey House to repair a leak from a pipe in Gosey's bathroom (\$6,885). At no time did Bradshaw obtain bids for any of the work. Instead, work was immediately directed to Bay Construction. Additionally, Bradshaw did not seek authorization from the probate court for any substantial repair, even though the trust was under court supervision during most of the repairs. And from 2014 through early 2016, Bradshaw continually suggested a remodel of the tenants' bathroom.

Meanwhile, on February 3, 2015, Bradshaw filed a First and Final Report and Account of Trustee (First and Final Account) and petitioned the probate court to remove the Gosey Trust from court supervision. The First and Final Account covered the period from December 5, 2013, through November 30, 2014, and Bradshaw asserted in pertinent part: "**No Affiliate Relation**. During the period of the account, there was no relationship or affiliation between [Bradshaw] and any agent hired by [Bradshaw] during [the] accounting." Bradshaw did not disclose his prior and ongoing relationship with Gonzalez or NJ Construction.

The final repair on the Gosey House occurred in February 2016, and Bay Construction ceased business operations. While in business, most of Bay Construction's revenue was generated from construction projects at the Gosey House.²⁹ The cost for the repairs in 2015 through February 2016 was approximately \$157,000 that Bradshaw authorized to be paid out of the Gosey Trust to Bay Construction.

By July 2016, the funds from the reverse mortgage on the Gosey House that had been expected to last four years were almost gone, and Bradshaw had not kept up with the payments to the Institute on Aging and was in arrears approximately \$45,000. On July 19, Bradshaw

²⁹ Bay Construction also performed work on buildings owned by Bradshaw's landlord, some of Bradshaw's family members, and two other individuals, generating approximately \$50,000 in revenue.

petitioned the probate court in the Trust matter to obtain a second reverse mortgage for the Gosey House. Bradshaw again represented that the second reverse mortgage was needed, because Gosey's living expenses continued to exceed her income. For the first time, Bradshaw informed the probate court of the repairs that he had authorized on the Gosey House in 2015 and early 2016. He also represented, with respect to the January 2015 flood repairs to the Gosey House, that he attempted to obtain bids, but most contractors did not return his calls and offer bids except for Bay Construction.

The probate court was concerned about the depletion of trust funds and appointed Nancy Rasch to serve as the attorney for Gosey regarding the conservatorship and her interests in the Gosey Trust. In response to an inquiry by the probate examiner about needing "specific information about any and all repairs paid for with those [trust] funds," on September 22, 2016, Bradshaw filed with the probate court a declaration and repeated his July 19 assertion that he attempted to secure bids for the repairs related to the January 2015 flood damage.

Rasch responded to Bradshaw's request to obtain a second reverse mortgage and expressed concerns about Bradshaw's failure to disclose to the court his relationship with Gonzalez and Bay Construction, to explain how Gonzalez was transformed from an unlicensed handyman to a licensed contractor, and to obtain bids for the substantial construction projects at the Gosey House. She asked the court to address these matters and the reasonableness of how the Gosey Trust funds were being spent before granting the second reverse mortgage.

On September 26, 2016, Bradshaw filed a second supplemental declaration in which he stated, "I do not have, and never have had, a financial interest in Bay Construction." He also repeated his claim that he called contractors for quotes and added that they were not interested in his "conservative price point." After a hearing on September 27, during which the judge expressed some reservations, the probate court authorized a reverse mortgage to be obtained in

the amount of \$250,000, but it limited its use to paying for Gosey's medical care and living expenses. Rasch subsequently filed a complaint with the State Bar against Bradshaw.

Gosey died on June 16, 2017. Deborah Coleman was a beneficiary of the Gosey Trust. On August 15, 2017, Jeremiah Raxter, Coleman's attorney, filed a lawsuit in superior court on Coleman's behalf, alleging that Bradshaw breached the Gosey Trust, and Coleman sought to remove Bradshaw as trustee, among other remedies (Coleman matter). On September 20, Bradshaw opposed Coleman's petition, stating he had no financial or ownership interest in Bay Construction. On June 14, 2019, after a bench trial, the superior court issued an Amended Statement of Decision on Petition After Trial and Order (Superior Court Decision), in which the court found Bradshaw breached the Gosey Trust and removed him as trustee. The First District Court of Appeal issued a September 30, 2022 decision (A157968) affirming the superior court's findings.

While the Coleman matter was proceeding, the Office of Chief Trial Counsel (OCTC) filed its First Amended Notice of Disciplinary Charges (FANDC) on January 11, 2018, alleging that Bradshaw engaged in five counts of misconduct. Only four counts remain before this court.

II. CULPABILITY

The majority is correct that the superior court's findings were made under the preponderance of the evidence standard and, thus, are not dispositive of the issues in this case. Nevertheless, civil findings made under this standard of proof are entitled to a strong presumption of validity if supported by substantial evidence. (See *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947; *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112, 117.)

A. Count Four: Moral Turpitude—Misrepresentation (§6106)

I discuss this count first since the findings in this count illuminate my findings in other counts. The superior court found Bradshaw “misrepresent[ed] his interests, Bay Construction’s lack of credentials and the no-bid status of the work.” (Super. Ct. Dec., p. 2.) These findings are supported by substantial evidence in our record and are relevant to most of the misrepresentation allegations in this case.

I agree with the majority’s finding of no culpability for a misrepresentation made on August 30, 2013. I also agree with the majority that Bradshaw made a misrepresentation on February 3, 2015 (no affiliation), September 26, 2016 (no financial interest), and September 20, 2017 (no financial interest). For the reasons explained below, I disagree with the majority in that I believe they were intentional.

1. Misrepresentation on September 22, 2016 (Soliciting Bids)

Unlike the majority, I find Bradshaw made a misrepresentation on September 22, 2016, when he informed the probate court in the Trust matter that he sought multiple bids for repairs on the Gosey House. The hearing judge also did not find there was clear and convincing evidence of culpability, although throughout her decision, she notes that Bradshaw did not obtain competitive bids.

On September 22, 2016, in Bradshaw’s first supplemental declaration in support of his petition to obtain a second reverse mortgage on Gosey’s property, he stated regarding the January 2015 flooding that he “called several contractors in an attempt to address the emergency repairs, but most of the contractors did not return my calls much less offer a bid. Bay Design and Construction was the only contractor to offer a bid to address the emergency repairs.”

The assertion that contractors would not return Bradshaw’s calls is one that is unlikely since Patrick Kelley, Bradshaw’s construction expert witness, testified that construction activity

was slow from 2009 until 2016. To the extent that contractors did not return Bradshaw's calls due to his "conservative price point," as Bradshaw surmised a few days later, on September 26, this all but ensured that any contractors he could have contacted would not call him back, thus, making any attempt to solicit bids meaningless.

Despite Bradshaw's contention that he attempted to get bids from other contractors, Bradshaw's testimony supports the opposite conclusion. When asked to identify contractors he contacted for the repairs to the stairs, Bradshaw mentioned one—Mr. Stairs—that he contacted in early 2015 and could not recall any others. For the repair due to termite damage in February 2015, he testified he used Bay Construction and did not obtain any other bids. For the repairs due to the flood that occurred in January 2015 (which is the subject of his statement in his September 22 declaration and which the charge is based upon) and the foundation work later that year, Bradshaw testified that he did not get any bids. When asked why he did not do so, in both instances he replied, "Because I didn't have to." He also added that he was satisfied with Gonzalez's work, which was un-bid from the start. Similarly, he testified he did not contact anyone to obtain bids to draft the plans for the foundation work, which he described as "wildly complex and required an enormous amount of detail," because he believed it would be less expensive for his son to draft the plans. In all instances, he used Bay Construction to perform the work. Bradshaw's testimony establishes that he had reasons to *not* solicit bids, and it constitutes clear and convincing evidence that his statement to the court that he solicited bids was false.

In finding that Bradshaw made a misrepresentation to the probate court, I also consider the second sentence in the September 22 declaration stating Bay Construction was the only company to offer a bid. This sentence provides context, implying that Bay Construction either answered his call or returned his call, and combined with the first sentence, is an attempt to mislead the court to believe that the employment of Bay Construction came about through a

process that was removed from Bradshaw, personally. That this was the expected misunderstanding was demonstrated by the testimony of Coleman’s attorney, who exposed the irony of his misrepresentation: “[O]ut of all the contractors in San Francisco, the only one that called him back was Bay Construction. Well, that’s pretty handy since he answered the phone.”

The misrepresentation was also material, because it was made to justify the expenditure of the Gosey Trust funds on Bay Construction, so that the probate court would authorize a second reverse mortgage.

2. The Misrepresentations Were Intentional

Of the three misrepresentations regarding financial interest that the majority finds Bradshaw culpable of, my colleagues determine that they were made from gross negligence, but no explanation is provided as to how they arrived at this conclusion. The superior court found that “overwhelming” evidence established that Bradshaw was a principal of Bay Construction and was so involved with the company that it “would not have existed without him.” (Super. Ct. Dec., p. 20.)

The superior court identified significant facts, such as Bradshaw controlling the construction process at the Gosey House, setting all prices, and failing to obtain a single bid, and found: “Bradshaw disclosed none of these facts to Gosey or anyone else associated with the Trust. In fact, when the probate court asked for more information on the home repair and maintenance expenditures, Bradshaw lied about many of the facts discussed herein and omitted other material facts. [Citation.]” (Super. Ct. Dec., p. 9.) These findings are amply supported in our record, and they support a finding that the misrepresentations were intentionally made, because individually and collectively, they created the illusion of an arm’s length transaction between Bradshaw, as trustee of the Gosey Trust, and Bay Construction.

Additionally, repeating the misrepresentations in various proceedings demonstrates that they were not negligent misstatements to a court, and instead, were intentional. The February 3, 2015 misrepresentation in the Trust matter was previously made in the Conservatorship matter on August 25, 2014. And the September 22, 2016 misrepresentation in the Trust matter was made two other times—in Bradshaw’s July 19, 2016 petition and his September 26 second supplemental declaration.³⁰ (See *Lee v. State Bar* (1970) 2 Cal.3d 927, 942 [repeated false statements and attempts to deceive court support conclusion they involved corrupt and dishonest purposes].) With respect to the September 26, 2016 statement in Bradshaw’s sworn declaration that he had no financial interest in Bay Construction, it was repeated on September 20, 2017, in a pleading submitted by Bradshaw’s attorney, with Bradshaw signing the verification of the pleading affirming the truth of its contents.

B. Count One: Moral Turpitude—Scheme to Defraud (§ 6106)

The superior court did not determine that Bradshaw planned to defraud the Gosey Trust, but it made other findings that Bradshaw was a principal and substantial creditor of Bay Construction, engaged Bay Construction to work primarily on the Gosey House, made misrepresentations in court about his financial interests in and affiliation with Bay Construction, and that he repeatedly hired an unqualified or unlicensed contractor, Gonzalez, to perform work on the Gosey House. These findings are amply supported by the evidence in this case and are relevant to the scheme to defraud charge. I agree with the hearing judge that clear and convincing evidence establishes Bradshaw schemed to defraud the Gosey Trust with the continuous employment of Bay Construction under the circumstances of this case.

³⁰ OCTC did not charge Bradshaw with these misrepresentations in the FANDC. Any uncharged misrepresentations discussed herein are considered only as evidence that the charged misrepresentations were intentional.

When the probate court authorized Bradshaw to obtain a reverse mortgage, the Gosey Trust became a deep pocket, and on the same date as the probate court’s authorization, Bradshaw incorporated Bay Construction and registered it with the Better Business Bureau. Bradshaw made Gonzalez the owner on paper while he controlled the company. Bradshaw then loaned the company tens of thousands of dollars, thus establishing a strong incentive to have Bay Construction continually generate revenue. Because Bradshaw controlled Bay Construction’s operation and finances, he could and did increase Gonzalez’s estimates of the cost of repairs to the Gosey House. And because Bradshaw controlled the Gosey Trust assets, he had unfettered access to funds from the Gosey Trust to pay Bay Construction. However, for much of the time, the Gosey Trust was under court supervision. To dispense with any unwanted scrutiny and accountability, not only did Bradshaw operate Bay Construction “from the shadows,” as the hearing judge found, but he repeatedly sought to have court supervision terminated and made multiple misrepresentations to eliminate any serious inquiry into his true association with Bay Construction and how Bay Construction came to make so many repairs to the Gosey House.

Unlike the majority, I would find culpability for this count. The plan to use the Gosey Trust funds in this manner—all while concealing his true interests—is a scheme to defraud and constitutes moral turpitude. (*In re Lesansky* (2001) 25 Cal.4th 11, 16.)

C. Count Two: Breach of Fiduciary Duty (§ 6068, subd. (a))

The superior court in the Coleman matter found Bradshaw breached the duty of loyalty and duty to avoid self-dealing, stating the following:

Bradshaw breached the Trust when he repeatedly engaged Bay Construction, Inc., a company in which he was a principal and a substantial creditor, to perform no-bid work on settlor Ora Gosey’s home, which was the Trust’s main asset, knowing that Bay Construction was without credible contracting credentials, all

while actively concealing from the court and misrepresenting his interests, Bay Construction's lack of credentials and the no-bid status of the work.

(Super. Ct. Dec., p. 2.)

The legal finding that Bradshaw breached his duties as trustee was affirmed on appeal, and I recognize the importance given to appellate court decisions where the disciplined attorney is a party. (*In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360, 365 [appellate court opinion on the merits is conclusive legal determination of strongly similar issue in disciplinary case].) This alone should settle the matter for our purpose, but even without the court of appeal's legal determination, the evidence in our record clearly and convincingly supports a finding that Bradshaw breached his fiduciary duties, as the hearing judge found.

Trustees owe beneficiaries the duty of loyalty and the duty to avoid conflicts of interest, among other duties. (*City of Atascadero v. Merrill Lynch* (1999) 68 Cal.App.4th 445, 462.) Additionally, "[a] trustee has a duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary." (Prob. Code, § 16004, subd. (a).)

Article VII.B.5 of the Gosey Trust permitted self-dealing, but only so long as Bradshaw had due regard for the trust, did not act in bad faith, and any compensation paid did not exceed fair market value. Additionally, pursuant to Article VI.A.2, the Gosey Trust required Bradshaw to employ the prudent person standard to satisfy the trust objectives. As explained below, Bradshaw's repeated employment of an unlicensed worker was not with due regard for the Gosey Trust and violated the prudent person standard and his duty of loyalty.

1. Payment to Bay Construction Was Prioritized Over Gosey's Care

Bradshaw ensured that Bay Construction was consistently paid in full. So eager was Bradshaw to have the Gosey Trust pay Bay Construction that on three occasions, he bounced

checks from the Gosey Trust to Bay Construction.³¹ In fact, Bradshaw had expended so much of the trust funds to Bay Construction that he was in arrears \$45,000 in payments to the Institute on Aging for Gosey's care by July 2016, prompting him to petition the probate court to obtain a second reverse mortgage. The punctual payments to Bay Construction, resulting in the delayed payments to the Institute on Aging, demonstrate that Bradshaw was not giving due regard to the Gosey Trust, because he was placing the interests of Bay Construction over the primary purpose of the Gosey Trust, which was the care and maintenance of Gosey. Bradshaw's actions breached his duty of loyalty and were out of step with the prudent person standard required by the Gosey Trust.

2. Effect of DBI on Breach

The superior court found that Bay Construction was unqualified to do the work on the Gosey House, because it did not have credible contractor credentials, and Bradshaw knew of this fact, but hired Bay Construction anyway, which "jeopardized the safety of the home and the health and welfare of its occupants." (Super. Ct. Dec., p. 20.)

The majority reasons that since DBI signed off on the repairs, it meant that the Gosey Trust was not in jeopardy.³² I disagree. To adopt the majority's view means that it is irrelevant that both CSLB and DBI were duped into believing that Bay Construction was utilizing a license with the requisite RMO supervision or control. But Carlos Marquez, an enforcement supervisor for CSLB and the State Bar's expert witness regarding CSLB licensing authority, testified that

³¹ This occurred on January 26, 2015, in the amount of \$9,817.28, on March 25, 2015, in the amount of \$10,994.62, and on September 25, 2015, in the amount of \$2,667.15. No fees were incurred.

³² In fact, Bradshaw testified that he discovered in 2017 that DBI had not signed off on, or "finaled," one permit.

CSLB would not have granted a license to Bay Construction had it known the true circumstances.

More importantly, that DBI later validated the work as competent³³ did not obviate the risk Bradshaw imposed on the Gosey Trust by employing an unlicensed contractor—who had not demonstrated the requisite training and knowledge of a licensed contractor—to work on the Gosey House at the outset. In other words, whether Bradshaw breached his fiduciary duty does not turn on what DBI decides to do after the fact. The employment of an unlicensed worker is inconsistent with the prudent person standard and does not show due regard for the trust. In short, the majority’s reasoning is the same sort of “no harm, no foul” claim that the superior court rejected.

3. Effect of No Bids on Breach

The majority argues that Bradshaw was not required to secure multiple bids prior to making repairs on the Gosey House, and thus there was no breach.³⁴ But Bradshaw was not charged with a breach of fiduciary duty due to a failure to obtain multiple bids. The significance of Bradshaw not engaging in any meaningful attempt to solicit bids from other companies was that it ensured Bay Construction would perform the work and be paid by the Gosey Trust, and

³³ The competency of the work is not the only purpose of the Contractors License Law found at section 7000 et seq. Its purpose is “to guard the public against the consequences of incompetent workmanship, imposition and deception.” [Citations].” (*Asdourian v. Araj* (1985) 38 Cal.3d 276, 282, superseded by statute on another ground as stated in *Construction Financial v. Perlite Plastering Co.* (1997) 53 Cal.App.4th 170, 175.)

³⁴ The majority relies on the testimony of Rasch, Raxter, and Albert Handelman for the proposition that a trustee is not required by law to secure multiple bids. However, Handelman testified that he would advise his clients to obtain multiple bids, especially for expensive repairs, and that he understood (incorrectly, as discussed *ante*) that “bids for a lot of the work were, in fact, solicited.” And both Rasch and Raxter testified that obtaining multiple bids is something the probate court would nevertheless want to see to help determine whether the cost of repairs was reasonable. The testimony of these witnesses is consistent with the Gosey Trust’s requirement that the trustee act as a prudent person.

that it would be done so unquestionably. This is further underscored by Bradshaw's failure to inform the probate court in advance of substantial repairs while the Gosey Trust was under court supervision.

D. Count Three: Moral Turpitude—Misappropriation (§ 6106)

OCTC alleged in the FANDC that Bradshaw diverted and misappropriated \$157,246 from the Gosey Trust to Bay Construction. The hearing judge did not sustain this charge, finding that OCTC did not show by clear and convincing evidence that Bay Construction did not perform the work it was hired to do or that the prices exceeded fair market value. Bradshaw urges us to uphold the judge's finding of non-culpability, and OCTC argues that the judge focused on the wrong factors to find no culpability. The majority finds no culpability. Generally, misappropriation is defined as "[t]he application of another's property or money dishonestly to one's own use." (Black's Law Dict. (11th ed. 2019).)

1. The Use of the Gosey Trust Funds to Pay Bay Construction Was Unauthorized and Improper

The superior court found: "The Gosey Trust revenue made it possible for Bay Construction to pay down much of its debt to Bradshaw." (Super. Ct. Dec., p. 9.) This finding is supported by substantial evidence in our record. In addition to Bradshaw engaging in a scheme to defraud the Gosey Trust, the evidence in our record shows that the Gosey Trust in fact funded more than three quarters of Bay Construction's total revenue, and Bay Construction, in turn, repaid Bradshaw more than half the amount of money he had lent Bay Construction.

Bradshaw has claimed throughout these proceedings that he was merely trying to help Gonzalez, as he had done on many prior occasions. Even if true, that was not in the interests of the Gosey Trust, and it was unlawful for Gosey Trust funds to be used to pay an unlicensed contractor more than \$500 per job, notwithstanding the purported emergency nature of any

repairs. This last point demonstrates an underlying disagreement I have with the majority regarding the facts of this case. The majority accepts that Bay Construction had a valid license, *notwithstanding* that (1) Bradshaw deceived CSLB into granting use of that license, and (2) CSLB would not have granted the license had it known the truth.

The superior court did not agree with the majority's view, and instead found that "from start to finish and with Bradshaw's full knowledge, Bay Construction was never in compliance with state licensing requirements and, in fact, never possessed credible credentials as a general building contractor." (Super. Ct. Dec., p. 8.) The court of appeal similarly upheld the superior court's conclusion that Bradshaw "knew Bay Construction did not have a valid license." (Ct.App. Dec., p. 37.)

That Bay Construction did not have a valid license is supported by substantial evidence in the instant record. Specifically, Invernon's license, while independently valid, was obtained through deception *and utilized* illegally, because Bradshaw knew Invernon never supervised or controlled the work at the Gosey House within the meaning of section 7068.1. For this reason, I also disagree with the hearing judge's finding that the repairs did not exceed fair market value as a basis for not finding misappropriation,³⁵ because as an unlicensed contractor, Bay Construction was not legally permitted to charge the Gosey Trust more than \$500 per repair or improvement.

The use of the Gosey Trust funds for Bradshaw's own purpose, to a company without a valid license in which he was a substantial creditor and in excess of the amount it was legally authorized to charge, constitutes willful misappropriation. (See *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824, 829-830 [attorney using portion of client's

³⁵ Inherent in the opinion offered at the disciplinary hearing that the cost of repairs did not exceed fair market value was the assumption that the repairs were done by a *licensed* contractor.

investment funds to further his and spouse's personal interests is willful misappropriation].)

That this also resulted from Bradshaw's scheme to defraud the Gosey Trust demonstrates the intentionality of the misappropriation. Therefore, I would find culpability for this count.

However, as explained below, the precise amount of the misappropriation is not clear.

2. Restitution is Not Warranted

OCTC argues that Bradshaw should pay restitution, since as an unlicensed company, Bay Construction was not permitted to charge the Gosey Trust more than \$500 per job. Indeed, Rasch testified that paying an unlicensed contractor thousands of dollars per job meant the Gosey Trust was spending money it did not have to pay. But that statement oversimplifies matters. To the extent that the Gosey House required emergency repairs,³⁶ the Gosey Trust would have had to employ a contractor, just not an unlicensed one. Additionally, not every repair Bay Construction made to the Gosey House exceeded \$500. For these reasons, the evidence does not establish that ordering restitution in the amount of \$157,246 is warranted.³⁷

III. AGGRAVATION AND MITIGATION

Here, I address the aggravating and mitigating circumstances of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct³⁸ where I am not in agreement with the majority.

³⁶ The record does not establish the extent to which the repairs were truly emergency in nature. The one construction project that clearly would not have been an emergency was the remodel of the tenants' bathroom, but that upgrade never occurred.

³⁷ The superior court found that Coleman had not proven damages or surcharge fees consisting of payments from the Gosey Trust to Bay Construction.

³⁸ All further references to standards are to this source.

A. Aggravation

1. Prior Discipline (Std. 1.5(a))

The majority gave minimal weight in aggravation to Bradshaw's 2009 private reproof for failing to adequately inform his client of his receipt of a check made out to his client in the amount of \$47,500. In the instant case, the first misrepresentation occurred in February 2015, only six years after the prior discipline; thus, the prior discipline was not remote in time. (See *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628 [prior reproof considered aggravating as occurred seven years earlier and not remote].)

In the prior case, Bradshaw stipulated, in part, that (1) he received a check made out to his client in the amount of \$47,500 on December 30, 2006; (2) he did not adequately inform his client of the amount of the check; and (3) instead, that same day, he mailed his client a check in the amount of \$11,181.22. Although the majority views Bradshaw's prior misconduct to be different from the current misconduct, I am troubled by a common element between the instant case and the prior misconduct in that Bradshaw is once again not being completely candid and forthcoming in his dealings with those to whom he owes a fiduciary duty. (See *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841 [great weight placed on common thread among attorney's past and present misconduct].) The hearing judge assigned moderate weight for this factor, and I agree.

2. Multiple Acts of Misconduct (Std. 1.5(b))

The majority assigned limited weight, because it found Bradshaw made only three misrepresentations with respect to his interest in Bay Construction. Because I believe Bradshaw is culpable of four separate counts of misconduct occurring from February 2015 through September 2017, I agree with the hearing judge's assignment of moderate weight. (See *In the*

Matter of Martin (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 753, 761 [moderate weight in aggravation for two counts of misconduct involving multiple acts occurring over 10 months].)

3. Indifference Toward Rectification or Atonement (Std. 1.5(k))

The hearing judge found that Bradshaw demonstrated indifference toward rectification of or atonement for the consequences of his misconduct and weighed it as “significant consideration.” “The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

The hearing judge’s calibration of weight is supported by the evidence in the instant case in which Bradshaw has a demonstrated history of not recognizing his misconduct each step of the way and asserting nefarious motives on the part of those who questioned his dubious actions. For example, during the September 2016 hearing, when the probate court judge was seeking information about Bradshaw’s use of the trust funds for work performed by Bay Construction and any relationship he had with Bay Construction, Bradshaw accused the judge of trying to “demonize” him. After Rasch complained to the State Bar, Bradshaw wrote her a letter accusing her of defamation. Legitimately, Rasch testified that she viewed this letter with its implied threat to sue her as an intimidation tactic, compelling her to hire an attorney to represent her during Bradshaw’s disciplinary proceedings.

During his testimony, Bradshaw repeatedly tried to distance himself from owning up to his misrepresentations to the probate courts, by diverting responsibility to his lawyer for the content of his pleadings and declarations, even though he signed and verified them.³⁹ He did the same thing during oral argument in the most recent proceedings by further suggesting the probate

³⁹ There is no evidence that Bradshaw’s attorneys were aware of material facts that were part of Bradshaw’s misrepresentations.

court judge was to blame for Bradshaw’s misrepresentations concerning his financial interest in Bay Construction because the judge did not ask him more pointed questions about what was meant by “financial interest.” Rather than engage in serious reflection to attain *some* understanding of wrongdoing—considering the gravity of the allegations that at this point had been levied by multiple individuals and with striking similarity—he instead continues to show no insight into or recognition of his misconduct.

The majority credits Bradshaw’s assertion that he would have handled things differently in not assigning any weight in aggravation. Bradshaw’s purported pronouncement comes only after the superior court removed him as trustee, the ruling was affirmed on appeal, and the Supreme Court directed us to re-examine our 2019 Opinion and Order. In my view, such an assertion—without any articulation by him as to what precisely was wrong with how he handled matters—does not reduce the weight that should be assigned to this aggravating factor. Indeed, the first time Bradshaw was before the Review Department, he argued in his brief that he “has nothing about which to be[] remorseful.” And in the Coleman matter, the superior court found, “[T]he trial made plain that Bradshaw sees nothing wrong in his actions.” (Super. Ct. Dec., p. 25.) It appears to me that any regret Bradshaw may be expressing now stems from having to suffer the consequences of his misdeeds, rather than resulting from a genuine awareness of his wrongdoing. I agree with the hearing judge’s finding that significant—or substantial—weight for this aggravating factor is appropriate.

4. Highly Vulnerable Victim (Std. 1.5(n))

The hearing judge assigned substantial weight in aggravation, given Gosey’s dementia and inability to care for herself or her affairs. I agree. Moreover, there is a direct connection between Gosey’s high level of vulnerability and the misconduct, all of which benefitted Bradshaw’s interests in Bay Construction.

The majority finds no weight should be given to this factor and asserts that Bradshaw acted with Gosey's interests in mind while trying to keep costs down. This is simply not true. In just one example, Gonzalez informed Bradshaw that the cost to repair the February 2016 leak in Gosey's bathroom would be \$1,300, but Bradshaw charged the Gosey Trust \$6,885.

B. Mitigation

Extraordinary Good Character (Std. 1.6(f))

The hearing judge allowed for moderate weight in mitigation, to which the majority agreed. Considering the facts I describe below, I believe nominal weight is appropriate.

Seven witnesses testified on behalf of Bradshaw. The witnesses were generally aware of the charges, but not all the charges, and the predominate qualities his witnesses attested to were Bradshaw's generosity and loyalty as a friend. A few of them also believed he was honest. Five witnesses knew Bradshaw socially, and all but one witness had been represented by Bradshaw at some point, with Bradshaw providing his services pro bono or at a discounted rate. All witnesses, when asked, testified that their good opinion of Bradshaw would change if he was found culpable of any or all the charges, and three witnesses specifically noted that culpability for making misrepresentations would adversely affect their opinion of him.⁴⁰

Bradshaw's witnesses also consisted of a retired superior court judge, Ernest Goldsmith, and a lawyer, and their testimony is afforded serious consideration. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [attorneys have strong interest in maintaining honest administration of justice].) Goldsmith testified that his opinion was limited to Bradshaw's professional proficiency. Importantly, he testified he would have a very negative view of Bradshaw if he was culpable of some of or all the charges. Woods is a lawyer who

⁴⁰ Clinton Woods and A.H. were not asked if their opinions of Bradshaw would change if he was found culpable of any of the charges.

previously worked at Bradshaw's law firm for six years and is a friend of Bradshaw. He provided a few examples illustrating that Bradshaw was a loyal friend and generous. He believed Bradshaw was honest, because one time Bradshaw terminated a receptionist, and when Woods asked Bradshaw for the reason, Bradshaw said the receptionist had forged his signature on a court document.

I also consider OCTC's rebuttal character witness, Richard Zitrin, who is a lawyer and law professor with expertise in legal ethics and is a certified specialist in legal malpractice.⁴¹ In 2006, Zitrin was asked by the Bar Association of San Francisco (BASF) to examine some complaints by individuals whose cases had been referred to Bradshaw through BASF's lawyer referral service. This revealed two instances relevant to Bradshaw's character, specifically regarding honesty.

First, Zitrin reviewed Bradshaw's applications to BASF's lawyer referral service from 2000 through 2006. The applications asked to "advise us if you have been convicted of any crime," and for each year, Bradshaw did not inform BASF that he had been convicted of a misdemeanor in 1987, and a felony in 1991, when he signed the applications. Bradshaw was approved for the lawyer referral service every year, except for 2006, when his criminal convictions were discovered. Interestingly, Zitrin was asked on cross-examination whether he had been told that an attorney had advised Bradshaw about how to answer the pertinent question, and Zitrin testified that it had been posed to him as a hypothetical only and that it would not excuse an applicant from responding truthfully. In any event, there is no evidence in the record that any such advice had in fact been given to Bradshaw.

⁴¹ Zitrin was not designated as an expert witness in this case, and his testimony was limited to matters he personally observed.

Second, Zitrin testified that one case he examined for BASF was the K.M. case in which Bradshaw had represented K.M. Zitrin testified that when he spoke with Bradshaw about the case, Bradshaw lied to him and told him that his fee agreement with K.M. allowed him to put a settlement check that was addressed to K.M. into his trustee account. However, when Zitrin reviewed the agreement, it did not provide the authorization Bradshaw had represented.

Overall, while there is some testimony of good character, most of the examples Bradshaw's witnesses provided pertained to his generosity. The example relevant to Bradshaw's honesty was not based on Woods's observation, but on what Bradshaw *told* Woods, whereas Zitrin's examples of Bradshaw's dishonesty were based on Zitrin's observations, with one of the dishonest matters being repeated annually over a seven-year period. Given that all witnesses who were asked walked back their opinion of Bradshaw if he was found culpable of any of the charges, and since Zitrin provided undisputed evidence of Bradshaw's repeated dishonesty, I believe the appropriate weight for this factor is nominal.

The majority's conclusion that moderate weight is appropriate is based on an imprecise interpretation of the facts. The majority finds that witnesses testified as to Bradshaw's *reputation* in the legal community, but no witness did that. Instead, they offered their own observations and opinions of Bradshaw, but not of the legal community. Also, the majority states that Goldsmith was not asked if his opinion would change if Bradshaw was found culpable of making misrepresentations. But it became apparent during his testimony that Goldsmith did not remember that Bradshaw had been charged with making misrepresentations to a court. That Goldsmith was not aware of the misrepresentation count or was not asked about culpability for this count does not elevate Goldsmith's opinion of Bradshaw's good character; rather, it diminishes it, particularly since Goldsmith testified that he had no opinion as to Bradshaw's "personal moral character or honesty."

The majority's finding is also based on an inaccurate interpretation of the standard and case law. The standard requires Bradshaw to prove "[e]xtraordinary good character attested to by a wide range of references in the legal and general communities who are aware of the full extent of the misconduct." (Std. 1.6(f).) The majority rewrites the standard to a lesser one, finding Bradshaw provided evidence of good character. In doing so, the majority relies on *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, where all of the respondent's character witnesses, who occupied significant positions of authority, displayed a very close association with the respondent over a sustained period of time, and all were aware of the hearing judge's tentative culpability findings when they testified that they trusted the respondent implicitly. In contrast, Bradshaw's witnesses were not in touch with him on such a frequent basis, they were not aware of the "full extent of the misconduct," and most importantly, all witnesses who were asked stated their opinion of Bradshaw would adversely change if he was found culpable of some of or all the charges.

IV. DISCIPLINE

I agree with the hearing judge's recommendation of disbarment. Multiple acts of misconduct involving dishonesty often results in severe discipline, including disbarment. (See *Lebbos v. State Bar* (1991) 53 Cal.3d 37, 43-44 [disbarment where attorney with no discipline record lacked remorse for multiple acts of misconduct involving moral turpitude and dishonesty]; *Weber v. State Bar* (1988) 47 Cal.3d 492 [disbarment for violating court order to distribute estate assets, commingling and misappropriating estate funds, and engaging in moral turpitude and dishonesty]; *In the Matter of Schooler* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494 [disbarment for multiple acts of moral turpitude, including violating fiduciary duties, making repeated misrepresentations, filing frivolous appeals, and demonstrating indifference, with significant harm to beneficiaries and no prior misconduct]; *In the Matter of Wyshak* (Review Dept.

1999) 4 Cal. State Bar Ct. Rptr. 70 [disbarment for serious acts of dishonesty coupled with lack of meaningful regret, understanding, insight, or acceptance of responsibility].)

After examining the entire record, including what I consider to be important aggravating factors and minimal mitigating circumstances, I would recommend disbarment as the only discipline that would adequately protect the public, the courts, and the legal profession.

Accordingly, I dissent.

RIBAS, J.

REBUTTAL OPINION OF MCGILL, J.

Introduction

Respectfully, we disagree with our dissenting colleague's view of many facts, the related civil findings, and the portions of the 2019 opinion we incorporated here. Where we disagree with her on the culpability findings, we stress, as we did in our 2019 opinion, that culpability in attorney discipline matters must be based on clear and convincing evidence. Likewise, the civil findings that we reviewed must be independently assessed under our higher standard of proof rather than the preponderance of evidence standard used by superior court, along with the differences between that proceeding's record and ours. We take seriously our requirement to independently review the record, and we have done so since 2019 when we wrote the first opinion in this matter and carefully scrutinized the hearing judge's findings based on the evidence before us at the time. We also recognize that, unlike the superior court, we must base culpability off the charges in the NDC and arguments made in this disciplinary proceeding. Our instant opinion strives to ensure culpability findings are based on these principles.

Credibility

Regarding the charge in count four that Bradshaw stated he attempted to solicit bids, as stated in our majority opinion, we did not overrule the hearing judge's credibility finding. The hearing judge did not include the statement regarding bids in her culpability finding under count four. However, she found that Bradshaw was not credible on this point. We found that a lack of credibility does not provide clear and convincing evidence of culpability. (See *Edmonson v. State Bar* (1981) 29 Cal.3d 339, 343 [charge must be dismissed even if testimony is rejected when there is no convincing proof of culpability].) Therefore, we found that OCTC did not prove that Bradshaw's statements regarding bids amounted to misrepresentation under section 6106.

Regarding credibility issues concerning the control of Bay Construction, on page 16 of the 2019 opinion, we credited Bradshaw's testimony over Gonzalez's because it was supported by documentary evidence. This is consistent with the principle that reasonable doubts must be resolved in favor of the respondent. (See *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911, 923, fn. 6, citing *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 749.) Contrary to our dissenting colleague's assertions, we never concluded that Gonzalez was not credible. On page 16 of the 2019 opinion, in footnote 18, we noted that Gonzalez testified that Bradshaw had the majority interest in Bay Construction but, also in his testimony, that he had been interviewed by the CSLB and the district attorney's office as part of a potential criminal investigation. Our dissenting colleague resolves this by giving much credence to Gonzalez stating that he is willing to accept "full responsibility for any action against him that the government agency may take," knowing that in fact the government has not pursued any criminal action against him. This testimony was in clear contravention to the multiple documents that Gonzalez signed indicating he was the sole owner of the company and we discern nowhere in the record that he had any difficulty understanding those documents.

In addition, our colleague notes Gonzalez testified he had not seen a letter regarding Invernon's supervision requirement. She states she had no difficulty concluding the letter was never sent to Gonzalez. The hearing judge made no such finding. In fact, the judge found that the letter evidenced Bradshaw's conveyance to Gonzalez regarding supervision. OCTC repeated this as fact in its brief on review. Our colleague's conclusion regarding the letter appears to be included to attack Bradshaw's character. The inclusion of this statement is concerning, especially as OCTC did not assert on review that the letter was not sent.

Misappropriation

We disagree with the determination that misappropriation is supported here, a charge even the hearing judge found was not supported by clear and convincing evidence, emphasizing the record contained evidence that Bay Construction performed the work for which it was retained, reflected good workmanship, and the repair costs were generally reasonable. To support her culpability finding for misappropriation, the only disciplinary case law our dissenting colleague cites is *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824. The misconduct in *Priamos* was egregious. The attorney was hired to manage investments for a client to provide resources for her support. Instead, he cavalierly invested in horses and real estate, for the purpose of supporting his own interests and providing a pool of money for him and his wife. Unlike the attorney in *Priamos*, Bradshaw used the trust money for its clearly intended purpose—to care for Gosey in her home. The standalone *Priamos* case with a very fact-specific misappropriation does not lend support to finding culpability here.

As charged, OCTC alleged that Bradshaw diverted \$157,246.76 from the trust to Bay Construction through misappropriation. This allegation has not been proven. The fact that our dissenting colleague concluded that restitution is unwarranted demonstrates that clear and convincing evidence does not exist to establish culpability for this charge. She could not determine how much the trust was overcharged by hiring an “unlicensed” contractor, and, for that matter, neither could OCTC when they claimed at oral argument that the trust was overcharged, but pointed to no evidence that could determine the amount the trust was overcharged. Our colleague’s conclusion implies it was proper for Bradshaw to use trust money to pay for repairs. If he was authorized to use the trust to pay for repairs, and, even if he overpaid or engaged in self-dealing, then we do not see how misappropriation can be found or

how he “diverted” trust funds. The determination that misappropriation was not proven is also supported as the superior court did not order damages or restitution.

Scheme to Defraud

In order to establish a scheme to defraud, there must be intent to defraud. (See *Coppock v. State Bar* (1988) 44 Cal.3d 665, 678-680 [purposefully opening trust account with intent to conceal funds is “in itself” sufficient to establish misconduct].) Our dissenting colleague finds culpability for a scheme to defraud based on the evidence of Bradshaw’s control of Bay Construction, his misrepresentations to the court,⁴² and seeking to terminate court supervision. This is not clear and convincing evidence that Bradshaw intended to defraud the trust. Hiring a company that does competent work at fair market value, even if that company owed Bradshaw money, does not establish fraud.⁴³ The terms of the trust permitted him to self-deal, a fact found by the superior court judge, and, for the reasons discussed in the majority opinion, should be applied here. Even if Bradshaw had the motive to get his loans repaid by contracting with Bay Construction, we cannot find culpability because this is not fraudulent, and the charge was a scheme to *defraud*. In addition, the record contains evidence that eliminating court supervision would cut costs to the trust, an obvious benefit, and that it was not unusual for a trustee to seek to terminate court supervision;⁴⁴ therefore, a cryptic reference to Bradshaw’s desire to operate

⁴² Our dissenting colleague finds four misrepresentations where we found three.

⁴³ Our dissenting colleague states Bradshaw’s loans to Bay Construction established a strong incentive to have Bay Construction continually generate revenue; further, she implies that Bradshaw may have received “in-kind payment[s],” which is simply speculation. The fact that Bradshaw loaned Gonzalez money to start a business does not transmute into fraudulent intent. Our colleague also included in her recitation of the facts that approximately \$50,000 in revenue for Bay Construction came from jobs not related to Gosey. This fact supports our view that Bay Construction was a valid business, not something created by Bradshaw to scheme the trust out of money.

⁴⁴ Robello’s testimony addresses these points.

“from the shadows” is simply hyperbole and not a basis to establish culpability.⁴⁵ The misrepresentations were made without an intent to deceive the court; therefore, they cannot support fraudulent intent. Finally, and not to be overlooked, the superior court did not find fraud.

Breach of Fiduciary Duty

The focus of the analysis for determining whether Bradshaw committed professional misconduct should be on whether the trust was in jeopardy. The superior court focused on this aspect to establish that Bradshaw breached his fiduciary duties by acting in bad faith. Our dissenting colleague chooses to focus on Bay Construction’s CSLB license, along with Bradshaw’s lack of obtaining multiple bids and the delayed payments to the Institute on Aging. While we strongly disagree that Bay Construction was “unlicensed,” the licensing nonetheless did not affect the quality of work that was done and it also does not relate to Bradshaw’s fiduciary duties to the trust, to which he gave due regard. Under the trust’s terms, which the superior court found “accurately reflect[ed] Gosey’s intent,” Bradshaw was permitted to self-deal, especially if it saved the trust money by eliminating time Bradshaw would have spent finding other contractors. Bradshaw trusted Gonzalez’s work and the work was approved by DBI. He was upholding his duties to the trust; therefore, we disagree that he placed his interests over the interests of the trust. As for our colleague’s reliance that “Rasch and Raxter testified that obtaining multiple bids is something the probate court would nevertheless want,” such testimony is not as persuasive to us as the fact that no statute or trust terms required him to obtain multiple bids. Finally, our colleague infers that delayed payments to the Institute on

⁴⁵ In addition, the record does not support, as our dissenting colleague states, that Bradshaw increased Gonzalez’s estimates of the cost of repairs to Gosey’s home.

Aging put Gosey at risk of not being cared for⁴⁶ and show Bradshaw prioritized himself over Gosey.⁴⁷ Such inferences cannot be used to find culpability under the clear and convincing standard we are required to apply.

Gross Negligence in Three Misrepresentations

We disagree with our dissenting colleague that we provide “no explanation” for our conclusion that Bradshaw’s three misrepresentations were a result of gross negligence. Our conclusions are clearly premised on the finding that Bradshaw honestly held certain beliefs. Handelman, the trust expert, testified that Bradshaw’s use of the term “financial interest” did not obligate him to disclose his connections to Bay Construction.⁴⁸ Bradshaw shared this belief and testified that he believed “financial interest” was not the same as “financial relationship.” When he stated in his February 2015 and September 2016 filings, and verified his attorney’s September 2017 filing, that he had no financial interest in Bay Construction, he did not believe that this was a false statement. Therefore, he did not have an intent to deceive the court.⁴⁹ Bradshaw willfully wrote the statement. Willful does not rise to intentional in this instance. A respondent’s actions may constitute moral turpitude even with no intent to deceive. (See

⁴⁶ Our dissenting colleague’s inferences aside, Bradshaw provided an explanation for delayed payments in his May 21, 2015 supplemental filing to the superior court. In that document, he explains that he made estimated payments to ensure that outstanding balances for Gosey’s care did not get too high while he worked with the Institute on Aging on a billing dispute involving misapplied payments he made. He also explained that balances accumulated when he was out of town, and he was the only person who could write checks from the trust accounts to pay the institute, but no late fees were assessed.

⁴⁷ We note that the record established that Bradshaw deferred seeking both his conservator fees in August 2014 when closing out Gosey’s conservatorship and his trustee fees in February 2015 related to his work on the Gosey Trust, fees to which he was otherwise entitled. Both deferrals amounted to well over \$30,000 and appears to us incongruous with someone who was prioritizing his interests over Gosey’s, as our colleague argues.

⁴⁸ This testimony was unrebutted.

⁴⁹ Likewise, we can find no evidence of Bradshaw’s intent to create an “illusion” of an arm’s length transaction, as our dissenting colleague states.

Giovanazzi v. State Bar (1980) 28 Cal.3d 465, 473 [filing dishonest and inaccurate pleadings has been denounced even when no direct evidence of intent to deceive]; *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91 [culpability for grossly negligent § 6106 violation even though respondent did not act with intent to deceive]; *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 155 [grossly negligent violation of § 6106 for misrepresentation to court].) We found respondent was grossly negligent in not disclosing more facts to the court about his connection to Bay Construction, which the superior court concluded he failed to do. Because he did not intend to deceive the court, we do not find intentional misrepresentation as our colleague does.

We also disagree that we can find intentional misrepresentation here simply based on the fact that Bradshaw made the misrepresentations regarding his interest in Bay Construction on different occasions. In this instance, we cannot equate the number of times he made the statements to a finding of improper intent. His beliefs regarding these statements did not change during the time he made them, and he had no intent to deceive the court. Even though he had no intent to deceive, he should have been more careful, especially after Rasch was appointed and began expressing her concerns regarding Bay Construction. Bradshaw's underlying misunderstanding that he should have been more careful is the basis of the culpability and establishes grossly negligent, not intentional, misrepresentations.

Conclusion

The Supreme Court returned this matter with a request to review superior court findings that we did not have at the time this matter was originally submitted to us in 2019. We have reviewed those findings, along with the appellate court opinion that was issued after the matter was returned to us. We cannot conclude, as our dissenting colleague does, that culpability exists for the additional misconduct she found and that disbarment is thereby warranted. The evidence

OCTC has offered, and upon which our colleague relies, fails to prove, in our view, those counts under the clear and convincing evidence standard, a higher burden of proof. As the Supreme Court has recently stated:

The precise meaning of “clear and convincing proof” does not lend itself readily to definition. It is, in reality, a question of how strongly the minds of the trier or triers of fact must be convinced that the facts are as contended by the proponent. Where clear and convincing proof is required, the proponent must convince the jury or judge, as the case may be, that it is *highly probable* that the facts which he asserts are true. He must do more than show that the facts are probably true.
[Citation.]

(*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 998-999.)

The record, when reviewed in its entirety, is large: 22 days of testimony and well over 100 exhibits. Though we have made some findings that are different from our colleague, some points are indisputable: Gosey remained in her home after she could not take care of herself and until she died more than three years later, which was her stated goal in establishing the trust; Gosey received competent care and the trust assets were used to make repairs on the trust property, which was over 100 years old, with no evidence that Bradshaw used trust funds for non-trust or personal purposes; and all the evidence in the record further indicates that the repairs were done competently, at fair market value, and thus the trust and Gosey were never harmed by his actions. We are now recommending an actual suspension for the ethical mistakes Bradshaw made to the superior court while he was the trustee, which he admits now that he could have handled better, and, thus, we believe our recommendation adequately protects the courts and the public, and maintains the high standards of our profession.

I CONCUR:

HONN, P. J.