PUBLIC MATTER — NOT DESIGNATED FOR PUBLICATION

Filed December 12, 2014

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	**Case Nos. 12-O-11079; 12-O-13430 (Cons.)**
	)	
WARREN PAUL FELGER,	)	**OPINION AND ORDER**
	)	
A Member of the State Bar, **No. 104410**.	)	
	)	

Respondent Warren Paul Felger twice used dishonest tactics to collect his legal fees. A hearing judge recommended that he be disbarred for (1) willfully misappropriating $4,065.94 from one client and (2) obtaining a fraudulent default judgment against a former client. Felger appeals. He denies the misappropriation, but concedes culpability for the fraudulent judgment. He urges less aggravation, more mitigation, and a suspension rather than disbarment. After independently reviewing the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's findings and disbarment recommendation. Our analysis begins with Felger's admitted misconduct.

1. CENTRAL GREEN MATTER (12-O-13430) [FRAUDULENT DEFAULT]

1.1 Facts

The gravamen of the misconduct in this matter involves Felger's dishonest acts in obtaining a fraudulent default judgment against his former client, Central Green Mutual Water Company (Central Green). He accomplished this by serving a lawsuit for his legal fees on *himself* on behalf of his former client, but without the client's knowledge or consent.

In 2002, Larry Freels hired Felger to incorporate Central Green. Freels served as Chief Executive Officer and Felger was listed as the agent for service of process. After Central Green

lost a lawsuit where Felger had been counsel, Freels fired him and, in 2006, stopped paying his legal fees. In March 2010, Central Green's new attorney informed Felger by letter that he was no longer the company's legal counsel. However, Freels failed to remove Felger as the company's agent for service of process.

In June 2011, Felger filed a complaint against Central Green to recover his unpaid legal fees in excess of $25,000,[1] but he did not serve Freels or anyone at Central Green. Instead, he served the lawsuit on himself as agent for service of process for Central Green, and signed the Acknowledgement of Receipt of the summons and complaint on behalf of Central Green. Thereafter, Felger served two notices on himself: (1) a request for entry of default and clerk's default judgment for $35,880.30; and (2) the court's notice of entry of default judgment in favor of Felger. On September 27, 2011, Felger recorded the Abstract of Judgment for $35,880.30, listing Central Green's address as the judgment debtor. The County Recorder then provided notice of the recording to Central Green, as required.

Freels was shocked when he received the Abstract of Judgment and a Notice of Involuntary Lien. He immediately instructed the company's attorney to file a motion to set aside the default judgment. The superior court granted the motion, which Felger did not oppose. Freels testified that Central Green paid $10,000 or more in legal fees "just to get the judgment removed," and its reputation was harmed.

1.2 Felger Admits Culpability in Central Green

The Office of the Chief Trial Counsel of the State Bar (OCTC) filed a Notice of Disciplinary Charges (NDC) alleging that Felger's conduct in Central Green violated Business and Professions Code section 6106,[2] which prohibits attorneys from engaging in any act

[1] Central Green had paid $350,000 to Felger in legal fees since 2000.

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

involving moral turpitude, dishonesty, or corruption. The hearing judge found Felger culpable because he served the lawsuit against Central Green on himself, improperly used his position as the company's service agent, and failed to notify Freels or anyone at Central Green of his actions — a conflict the judge described as "obvious and undeniable." We agree.

Although Felger concedes he is culpable, he argues in his opening brief that his misconduct was just a "petty stunt meant to get Larry Freels' attention, not an attempt to collect a surreptitious judgment." His argument is not persuasive. If Felger wished merely to get Freels's attention, he could have served the lawsuit for his legal fees on Freels in the first instance. Instead, we find that Felger's trial testimony exposed his true motive. When asked why he concealed the lawsuit from Freels, Felger testified: "I wanted to fix and -- liquidate the amount [of attorney fees] as promptly and with as little effort as possible. And I knew that [Freels] would not receive notice of it, and I knew that if he did want to fight me, that he would not then have that opportunity." Further, when asked why he did not remove himself as agent for service of process, he replied: "It was certainly the most expeditious way to obtain that judgment." Felger's attempt to minimize his misconduct reveals he does not comprehend his ethical duty to be honest.

2. SABBAH MATTER (12-O-11079) [MISAPPROPRIATION]

2.1 Facts

This case involves Felger's misappropriation of his client's bankruptcy distributions totaling $4,065.94. Felger misappropriated the funds by depositing them into his general account after he promised his client he would maintain them in trust until their fee dispute was resolved.

In 2005, Iyad Sabbah obtained a default judgment against Ghaleb Jaber for $40,500 plus $426 in costs.[3] Sabbah, a taxi driver, was not fluent in English so his girlfriend, Farida Zaidi, a

[3] This judgment related to Jaber selling Sabbah a business that Jaber did not own.

legal secretary, acted on his behalf. In June 2006, Sabbah retained Felger to attend Jaber's judgment-debtor examination. The legal representation agreement estimated four hours for the examination, but also provided that legal services would be charged at an hourly rate "based upon the amount of time it takes to render them." After the judgment-debtor examination, Jaber filed for bankruptcy. In response, Felger filed a successful action in bankruptcy court to protect Sabbah's default judgment from discharge.

Thereafter, Felger and Zaidi exchanged several emails about payment of legal fees. On February 26, 2008, Felger emailed Zaidi stating his engagement with Sabbah was over and that the balance of his legal fees was "about $50,000." Zaidi was aware of mounting fees because she had encouraged the litigation to preserve Sabbah's default judgment and had been partially paying invoices from Felger.[4] On February 28, 2008, Zaidi emailed Felger and proposed a payment plan of $150 per month, stating: "Iyad [Sabbah] is willing to turnover to you any money collected from Jaber. We would like you to decide if you wish to keep all or a certain portion of any money." On March 2, 2008, Felger responded with the following counter-proposal: (1) Sabbah and Zaidi would sign a promissory note for the remaining fees; (2) Sabbah would assign his judgment to Felger as partial security for the promissory note; (3) Felger would control collection of the Jaber judgment; and (4) the parties would establish a reasonable monthly payment plan. The parties did not come to an agreement as to these terms.

In late March 2008, the bankruptcy trustee offered $4,065.94 to settle Sabbah's claim. Felger's office informed Zaidi and asked if the offer was acceptable. Neither Sabbah nor Zaidi agreed to the distribution, yet on March 31, 2008, Felger's associate attorney stipulated to accept it. On April 14, 2008, the trustee sent Felger a check made out to Sabbah and Felger's law firm. The following day, Felger sent Sabbah a letter stating: "*Due to the existing dispute over the*

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[4] Zaidi paid approximately $21,000 in legal fees to Felger.

payment of our fees, we propose to deposit the $4,065.94 distribution check into our firm's trust account until a final resolution is reached either through arbitration, if you elect this procedure, or litigation." (Italics added.) On April 18, 2008, Sabbah emailed Felger, requesting that a check for $4,065.94 be issued and mailed to him. Felger did not issue the check and instead emailed back: "That will not happen until my fees are paid." Thereafter, Felger deposited the check into his general account without Sabbah's signature.[5]

After Sabbah and Zaidi stopped paying Felger's legal fees, Felger filed a civil lawsuit against them to recover his fees. The superior court entered judgment for Felger on breach of contract claims against Sabbah and Zaidi for $49,227.69, but against Felger on his request for an equitable lien and on his allegation that Sabbah or Zaidi intentionally misrepresented their intent to pay his fees.

In February 2010, Zaidi filed for bankruptcy. Felger responded that Zaidi's debt from the superior court judgment was not dischargeable because she had made false representations. The bankruptcy court found that Felger's meritless claim of misrepresentation "had no reasonable basis in fact or law" since the superior court already ruled against him on the issue. Felger was sanctioned $25,000, which was utilized primarily to pay Zaidi's legal fees.

2.2 Felger Is Culpable of Misappropriating $4,065.94

The NDC alleged that Felger violated section 6106 by intentionally misappropriating Sabbah's funds. The hearing judge found him culpable, and we agree. At the time Felger deposited the $4,065.94 in his general account, he knew the money was subject to a fee dispute. Yet he failed to place the money in trust until the dispute was resolved, as he had promised. Instead, he withheld the funds for his outstanding fees, which was contrary to his client's written request. Felger did not have a legal right to retain Sabbah's distribution from the bankruptcy court

[5] At the time of trial, Felger had not disbursed the $4,065.94 to Sabbah nor credited the funds against his attorney fee bill.

since he held no lien and did not have an agreement to apply the money to his fees or otherwise keep it. (*Brody v. State Bar* (1974) 11 Cal.3d 347, 350, fn. 5 [attorney may not unilaterally determine fee and withhold trust funds to satisfy it even if entitled to reimbursement for services].)

Felger contends that even if he misappropriated the funds, his conduct does not rise to the level of moral turpitude. He is incorrect because it is well settled that a willful misappropriation of client funds involves moral turpitude. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034.) Further, Felger's reliance on cases where the attorney merely mishandled funds is misplaced. (*Dudugjian v. State Bar* (1991) 52 Cal.3d 1092 [public reproval where attorney commingled and failed to promptly pay funds to client due to honest mistake]; *Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 332 [no violation of § 6106 where attorney improperly withdrew trust funds without reasonable belief in authorization but no dishonesty].) Here, Felger intentionally placed his client's distribution money into his general account *after* acknowledging that a fee dispute existed and informing Sabbah that he would hold the money in trust. His actions violated section 6106.[6]

3. AGGRAVATION GREATLY OUTWEIGHS MITIGATION[7]

The hearing judge correctly found several factors in aggravation. Felger committed multiple acts of misconduct in two client matters. (Std. 1.5(b).) That misconduct was surrounded by dishonesty and overreaching (std. 1.5(d)) — he filed a meritless claim against

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[6] We adopt the hearing judge's finding that Felger failed to maintain Sabbah's funds in a trust account, in violation of rule 4-100 of the Rules of Professional Conduct. However, we assign no additional weight to this rule violation. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

[7] Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Felger to meet the same burden to prove mitigation. All further references to standards are to this source.

Zaidi in bankruptcy court and defrauded Central Green.[8] Also, Felger caused significant harm to Central Green, according to Freels's testimony. (Std. 1.5(f).) And Felger displayed indifference and a lack of insight by denying he misappropriated funds in the Sabbah matter and by minimizing his wrongdoing in Central Green, characterizing it as a "petty stunt." (Std. 1.5(g).) Finally, Felger has not demonstrated remorse or fully acknowledged his wrongdoing. (See *Weber v. State Bar* (1988) 47 Cal.3d 492, 506 [lack of remorse and failure to acknowledge wrongdoing are aggravating factors].) Overall, we assign significant aggregate weight to these factors in aggravation.

In mitigation, the hearing judge assigned reduced weight to Felger's 25 years of discipline-free practice due to his serious misconduct. (Std. 1.6(a) [mitigation for no prior record of discipline over many years coupled with present misconduct that is not serious].) We agree, and reject Felger's request for greater weight because his misconduct is serious, and is not aberrational given his wrongdoing in two client matters and his repeated fraud in Central Green. (See *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is serious, a long discipline-free practice is most relevant for mitigation when the misconduct is aberrational].) Finally, we reject Felger's request for mitigation credit for lack of harm in view of our findings in aggravation.

4. DISBARMENT IS APPROPRIATE DISCIPLINE[9]

Our disciplinary analysis begins with the standards. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Standard 2.1(a) provides that disbarment is appropriate for intentional misappropriation

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[8] However, we assign no aggravating weight to his dishonesty and overreaching in Central Green since we already considered this misconduct in finding culpability for violating section 6106. (*In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59, 69 [aggravation not assigned for identical conduct used to find culpability].)

[9] 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.)

"unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case actual suspension of one year is appropriate." Felger misappropriated $4,065.94, a significant amount. (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1361, 1368 [$1,355.75 held to be a significant amount].) Further, his single factor in mitigation (discipline-free record) is not compelling nor does it clearly predominate when weighed against the seriousness of Felger's misappropriation and the aggravating factors. Indeed, the Supreme Court has instructed that even a first-time intentional misappropriation may warrant disbarment. (*Kelley v. State Bar* (1988) 45 Cal.3d 649, 656-657.)

Standard 2.7 also applies and provides that "[d]isbarment or actual suspension is appropriate for an act of moral turpitude." Felger's intentional fraud against Central Green deserves the upper end of discipline under this standard because it was repeated, premeditated, and directly involved the practice of law. Honesty is a fundamental rule of ethics "without which the profession is worse than valueless in the place it holds in the administration of justice.' [Citations.]" (*Rhodes v. State Bar* (1989) 49 Cal.3d 50, 60.)

In both the Central Green and Sabbah matters, Felger chose to act dishonestly through fraud and misappropriation to collect his attorney fees. This misconduct is egregious and the aggravating circumstances, particularly Felger's lack of insight, are very significant. For these reasons, disbarment is necessary to protect the public, the courts, and the legal profession.

5. DISBARMENT RECOMMENDATION

We recommend that Warren Paul Felger be disbarred and that his name be stricken from the roll of attorneys.

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

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

6. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order that Warren Paul Felger be involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(4), effective August 2, 2013, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

PURCELL, P. J.

WE CONCUR:

EPSTEIN, J.

HONN, J.