PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed June 27, 2018

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 11-O-11759
	)	
RITA MAHDESSIAN,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 141901.	)	
	)	

In this contested proceeding, Rita Mahdessian was charged, inter alia, with misappropriating in excess of $385,000 in *cy près* settlement funds awarded to a California nonprofit corporation established for the education and remembrance of the Armenian Genocide of 1915–1918, and with misleading the district court judge who approved the award. The hearing judge dismissed the charges of misleading the judge, but found that Mahdessian committed acts of moral turpitude by both (1) misappropriating $30,000 from the nonprofit, and (2) engaging in tax fraud by falsely reporting this and another $26,000 in taxable payouts to her children and their law school as donations or loan repayments, charges that were not contained in the Notice of Disciplinary Charges (NDC). Considering Mahdessian's three prior disciplinary suspensions, the hearing judge recommended disbarment.

Both Mahdessian and the Office of Chief Trial Counsel of the State Bar (OCTC) appeal. OCTC supports the hearing judge's disciplinary recommendation, does not challenge the considerable narrowing of the misappropriation charge, and requests review only as to the limited issue of whether Mahdessian engaged in additional acts of moral turpitude, by withholding material information from the district court judge.

Mahdessian disputes culpability and requests a full dismissal. Her argument is twofold: (1) OCTC did not charge her with either tax-related transgressions or breach of fiduciary duties; and (2) the evidence falls short of establishing the actual charged allegations of misappropriation and misrepresentation because (a) the nonprofit board approved all at-issue fund transactions, and (b) Mahdessian did not file any pleadings, make any court appearances, or have any proven duty to provide information to the district court judge.

Upon our independent review (Cal. Rules of Court, rule 9.12), we too find fatal deficiencies in the notice and evidentiary record in this case. Conduct in the nature of tax fraud was not alleged in the NDC against Mahdessian. Moreover, we find no clear and convincing evidence to support culpability as to the charged misconduct. The evidence fails to establish that Mahdessian made any unauthorized fund withdrawals from the nonprofit or that she was ever involved in the district court litigation such that she had an obligation to disclose information. Accordingly, we dismiss this proceeding with prejudice.

I. SIGNIFICANT PROCEDURAL HISTORY

As detailed below, Mahdessian's husband and law partner—Vartkes Yeghiayan—was lead cocounsel in a pair of Armenian Genocide-related class action lawsuits that settled in 2005 and 2006. Pursuant to the settlement agreements, funds were earmarked for distribution to qualified charities dedicated to advancing the interests of the Armenian community. Yeghiayan was designated to administer these funds. Shortly after the cases settled, Yeghiayan and Mahdessian established two California nonprofit foundations—the Center for Armenian Remembrance (CAR) and Conservatoire de la Memoire Armenienne (CMA). The federal court judge overseeing the settlement awards approved charitable disbursements to CAR and CMA.

Attorney disciplinary proceedings ensued based on alleged misconduct relating to the representations made by the couple to the judge about CAR and CMA and the couple's handling of the *cy près* funds.

On August 18, 2016, OCTC filed a four-count NDC against Mahdessian (State Bar Court Case No. 11-O-11759), and a parallel, but separate, NDC against Yeghiayan (State Bar Court Case No. 11-O-11758).[1] Although the cases proceeded independently, the NDC against Mahdessian set out several paragraphs of factual allegations that detailed some of her activities, but primarily the activities of her husband; and then generally alleged that, by virtue of those facts, Mahdessian: (1) misled a judge, in violation of Business and Professions Code section 6068, subdivision (d), and rule 5-200 of the Rules of Professional Conduct (count one);[2] (2) over the course of approximately 30 transactions, misused entrusted settlement funds and other funds in excess of $385,000, in violation of rule 4-100(A) (count two);[3] (3) misled a judge, and over the course of approximately 30 transactions, misappropriated entrusted settlement funds and other funds in excess of $385,000, in

[1] Kevin Gerry represented both Mahdessian and Vartkes, and Special Deputy Trial Counsel Edward McIntyre represented OCTC in both matters.

[2] Section 6068, subdivision (d), provides that an attorney has a duty "[t]o employ . . . those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact." Rule 5-200(B) includes a substantially identical prohibition. All further references to sections are to the Business and Professions Code and all further references to rules are to the Rules of Professional Conduct unless otherwise noted.

[3] Rule 4-100(A), in relevant part, requires an attorney to deposit and maintain in a trust account "[a]ll funds received or held for the benefit of clients."

violation of section 6106 (count three);[4] and (4) assisted, solicited, or induced her husband to commit misconduct, in violation of rule 1-120 (count four).[5]

At the September 26, 2016 initial status conference, upon the request of the parties, the two pending cases were consolidated and set for trial on January 3, 2017. The trial was subsequently continued and abated due to Yeghiayan's health issues.

On March 29, 2017, at the request of the parties, the hearing judge issued an order severing Mahdessian's case and setting it for trial on June 6, 2017. The March 29 order also reflects OCTC's pretrial dismissal of count four against Mahdessian—the rule 1-120 aiding and abetting charge. On May 30, 2017, by stipulation of the parties, OCTC filed an Amended NDC.

The trial was held June 6-8, 2017. Due to concerns raised by Mahdessian in a June 5, 2017 pretrial brief about possible disclosure of confidential information related to CAR, the parties stipulated, and the hearing judge agreed, that Mahdessian's testimony would be subject to a protective order. A conforming order was later filed on June 15, 2017.[6] Posttrial briefing was completed on June 30, and in its posttrial brief, OCTC requested dismissal of count two—the rule 4-100(A) charge.

On August 29, 2017, the hearing judge issued his decision and disbarment recommendation. The judge dismissed the vast majority of the case against Mahdessian for lack of clear and

---

[4] Section 6106 states, "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

[5] Rule 1-120 states, "A member shall not knowingly assist in, solicit, or induce any violation of these rules of the State Bar Act."

[6] On review, the parties stipulated that the protective order "shall be modified to exclude from its scope the complete record in the Review Department, including: the transcript of the trial in the Hearing Department, and specifically the testimony of [Mahdessian] and any reference to it; the exhibits admitted during the trial in the Hearing Department; the Decision of the Hearing Department; the briefs filed in the Review Department on behalf of [Mahdessian] and the State Bar; the transcript of oral argument in the Review Department and any Opinion of the Review Department." This stipulation was accepted and filed on April 18, 2018.

convincing evidence, including all of counts one (misled judge) and two (misused settlement funds) and most of count three (moral turpitude misrepresentation to judge and misappropriation), save for a few CAR fund transfers made by Mahdessian to or for the benefit of her children that the hearing judge found involved misappropriation and tax violations.

OCTC does not challenge the dismissal of counts one, two, and four, which we adopt and affirm. The disputed issues on review are, therefore, limited to count three and the disciplinary disposition.

Eventually, on November 20, 2017, Yeghiayan's case was terminated due to his death.

II. FACTUAL AND CULPABILITY FINDINGS

The facts are based on the parties' extensive pretrial stipulation, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) Typically, the hearing judge also makes witness credibility findings, which are similarly afforded great weight. (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 241 [great weight given to hearing judge's credibility findings]; *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions, having observed and assessed witnesses' demeanor and veracity firsthand].) Notably absent here, the hearing judge made no credibility determinations that we would customarily utilize to assist us in our review of the record on appeal.

Although mentioned above, but also of note here, the bulk of the facts, as presented by OCTC, relate to Yeghiayan, while Mahdessian's role appears limited.

A. Class Action Litigation

Mahdessian was admitted to the practice of law on November 20, 1989. At all times pertinent to this proceeding, Mahdessian and her husband, Yeghiayan, practiced law together at

the variously named Yeghiayan and Associates, Yeghiayan Law Corp., and Law Offices of Vartkes Yeghiayan. Since 2009, Mahdessian has maintained her own law practice under the name Law Offices of Rita Mahdessian.

Yeghiayan, on behalf of Yeghiayan and Associates, was counsel of record and co-lead counsel[7] in two class actions lawsuits filed in 1999 and 2002—*Marootian, et al. v. New York Life Insurance Company*, Case No. C99-12073 CAS (MCx) (NYLIC class action) and *Kyurkjian, et al. v. AXA, S.A., et al*., Case No. 2:02-cv-01750 (AXA class action). The litigation was brought on behalf of heirs and descendants of victims of the Armenian Genocide of 1915–1918, seeking to enforce survivor benefits under life insurance policies sold by New York Life and AXA. The cases were eventually related and singly assigned to the Honorable Christina A. Snyder of the United States District Court for the Central District of California.

B. NYLIC Class Action Settlement

In January 2005, the NYLIC class action settled for $20 million. Among other things, the settlement agreement created a fund for distribution to charitable organizations, as recommended by class counsel, "whose activities advance the charitable interests of the Armenian community and [which] will use the distribution solely for such purposes." Two months after the case settled, Mahdessian and other CAR directors filed articles of incorporation and established CAR as a California nonprofit public benefit corporation.[8] On July 23, 2007, Yeghiayan filed paperwork

[7] The other co-lead counsel were Mark Geragos and Brian Kabateck (together with Yeghiayan referred to collectively as "class counsel").

[8] CAR's bylaws state that the organization's objectives are "A. To study the extensive claims that the Armenian Nation has as a result of Armenian Genocide. B. To promote the publication of articles as books on the subject of restitution and recovery of Armenian properties and claims as a result of the 1915 Genocide. C. To encourage its members to participate individually or collectively in local organizations engaged in community activities and social services, compatible with the principles of [CAR]. D. To investigate and research the records of the historic injustices caused to the Armenians [and] E. To uncover and recover monies looted or otherwise appropriate by governments and financial institutions as a consequence of the 1915 genocide of the Armenians."

with the district court representing that CAR was a qualified charitable organization eligible to receive a $200,000 donation. Judge Snyder approved the distribution, and on August 27, 2007, $200,000 was transferred to CAR and thereafter deposited into its checking account.

C. AXA Class Action Settlement

In May 2006, the AXA class action settled for $17.5 million. As part of the settlement agreement, a fund was created for distribution to "a charitable foundation, based in France and approved by AXA, S.A., whose activities advance the interests of the Armenian community . . . for the benefit of the needy, or for educational purposes, and not for political purposes." The court designated Yeghiayan, as one of the lead counsel in the case, to administer the fund. In turn, he created the Vartkes Yeghiayan Trust Account (AXA Trust Account).

Several French charities were nominated by class counsel and approved by the court to receive distributions. On June 10, 2008, Conservatoire de la Memoire Armenienne, a French nonprofit headquartered at 34 Champs Elysees (CMA France),[9] was notified that it had been selected to receive $300,000. The next day, Mahdessian and/or Yeghiayan filed articles of incorporation and established a California nonprofit with the same name, Conservatoire de la Memoire Armenienne (CMA California). On June 14, 2008, Yeghiayan, as trustee of the AXA Trust Account, issued a $300,000 check to CMA (with no designation of whether it was to CMA France or CMA California). At the behest of CMA France, the funds were directed to CMA California and deposited into CMA California's bank account.[10]

---

[9] CMA France's articles of incorporation state that its goal is to "Educate younger generations on the Armenian genocide and crimes of genocide in general; Recall the genocide suffered by Armenians so that it is not forgotten; Study the lost [sic] suffered by Armenians because of the genocide; Promote the publishing of articles and works on despoiled property and demands of Armenians. Generally speaking, provide support to Armenians the world over."

[10] According to Mahdessian's unchallenged testimony, CMA France's board wanted the money to be deposited into CMA California's bank account for tax purposes while CMA France's board maintained control over the funds and instructed her from France how to distribute the money worldwide for charitable purposes.

On March 12, 2010, Yeghiayan filed paperwork with the district court providing an update on charitable distributions, including the $300,000 to CMA, and an accounting of the remaining AXA Trust Account funds. Yeghiayan continued to make charitable distributions from the AXA Trust Account through September 30, 2010, and he reported them to Judge Snyder in a status report filed on October 26, 2010.[11]

D. Mahdessian's Role

1. Mahdessian's Involvement in the Class Action Litigation

Mahdessian was an attorney with Yeghiayan and Associates. Her name appeared on the docket in the AXA class action as one of many "lead attorney[s] to be notified." She testified that her name was entered into PACER's electronic case filing system at some point by the law firm so that she could receive notices about the case. No evidence was produced at the disciplinary trial that she directed any of the civil litigation, filed any pleadings, or appeared in court in any representative capacity in either class action matter. Rather, it was Yeghiayan and two other lead class counsel who had these roles.

2. Mahdessian's Involvement with CMA and CAR

Mahdessian and/or her husband filed documents to secure CMA's nonprofit status, and she was listed as a primary owner/key individual and authorized signer on CMA's checking and savings accounts. Other than this, her title and role with CMA are not clear from the record.

Mahdessian also filed documents to secure CAR's nonprofit status, and she was listed as one of two primary owners/key individuals and authorized signers on CAR's checking and savings accounts. From 2007 to 2012, she was variously listed as CAR's Executive Director, its agent for service of process, and/or its custodian of records. From 2008 to 2012, she was the

[11] Other distributions of AXA funds that Yeghiayan made at this time included $75,000 to the Institute for Religious Works at the Vatican, $100,000 to Loyola Law School, and $90,000 to CAR.

Executive Director of CAR. On September 22, 2008, she became the sole signatory on CAR's banking accounts. The executed bank signature card of that date lists her as an attorney. After Mahdessian became the sole individual authorized to issue checks on CAR's account, Mahdessian, *with approval from CAR's board*, disbursed significant amounts of money to herself, her husband, to the Law Offices of Vartkes Yeghiayan, and to and for the benefit of her children in order to reimburse them for CAR expenses they had incurred or for CAR work they had done.

Evidence is undisputed that a substantial portion of CAR's funding came directly from Yeghiayan, frequently in the form of loans to the organization, and that he, Mahdessian, and their children did considerable work for CAR and incurred expenses for work-related activities. Further, as attested to by several witnesses, CAR's Executive Committee knowingly approved all at-issue transactions in this case with no evidence of improper or undue influence from Mahdessian.

As the Executive Director, Mahdessian served as a member of the Executive Committee of CAR's Board of Directors. Under CAR's bylaws, this committee had the authority to act on behalf of the full board between regular meetings and was empowered to conduct the business and affairs of the corporation. Mahdessian and other board members testified that the Executive Committee met regularly, voted to approve transactions, and kept written notes and minutes of the meetings and resolutions.[12] Although the testimony reveals informalities in the conduct of the meetings and recordkeeping, it is undisputed that CAR's Executive Committee had the authority and power to make financial decisions on behalf of CAR.

[12] The notes and minutes from the relevant time period of 2008 to 2012 were not produced at trial given the age of the documents and CAR's record retention policies.

E. Hearing Judge's Disputed Findings

Regarding the misrepresentation charges, the hearing judge found no proof that Mahdessian had any written or oral interactions or exchanges or even knowledge of such exchanges with Judge Snyder in the class action litigation.

However, the hearing judge found that while Mahdessian was the sole signatory on CAR's checking account in 2009 and 2010, she handled the following transactions in manners resulting in moral turpitude violations against her under section 6106.

(1) On October 30, 2009, Mahdessian transferred $30,000 from CAR to a ShareBuilder brokerage investment account in her daughter's name, without her daughter's knowledge or permission, under the false pretense of a loan repayment to her daughter. Mahdessian then continued to maintain control over the funds, about which the daughter knew nothing. The hearing judge found this "represented a misappropriation by [Mahdessian] of CAR funds for which she had a fiduciary duty and constituted acts of moral turpitude."

(2) On August 16, 2010, Mahdessian made two $5,500 transfers (totaling $11,000) from CAR to Loyola Law School to partially pay for her children's law school tuition in lieu of payment for work they had performed for CAR. Although CAR's board approved these transactions, the hearing judge found that "the payments were not treated as payable income being received by the children but instead were falsely reported on the tax return, signed by [Mahdessian], as charitable contributions by CAR to the school."

(3) On April 12, August 23, and December 22, 2010, Mahdessian made three $5,000 transfers (totaling $15,000) from CAR to her daughter as compensation for work performed. The hearing judge found that, although CAR's board approved these transactions, the payments were not treated as taxable income but rather "falsely recorded by [Mahdessian] as being repayments of loans."

We note that these findings differ from the judge's statements on the record at trial, where he expressed concerns about: (1) the evidence supporting misappropriation, asking, "To the extent that I have evidence from multiple witnesses that all of the transactions were approved by the board, how can I conclude there was a misappropriation if I conclude that everything was approved by the board?"; and (2) the relevancy of any tax-related issues under the NDC, inquiring, "What's the relevancy of the these documents [CAR's general ledgers] being wrong, listed as a charitable donation? [¶] Have you charged her with filing a false tax return . . . .?" As discussed below, we find the judge's reactions during trial to the respective lack of notice and evidence in this case to be most apt.

III. THE NOTICE OF DISCIPLINARY CHARGES AND WEIGHT OF THE EVIDENCE ARE INSUFFICIENT TO SUPPORT THE HEARING JUDGE'S CULPABILITY FINDINGS

A. Notice Pleading Issues

Attorneys charged with misconduct in disciplinary proceedings must be afforded due process of law. (See *Townsend v. State Bar* (1930) 210 Cal. 362, 365.) This requires that an attorney be provided with "fair, adequate, and reasonable notice" of the nature of the charges before commencement of the proceedings. (Bus. & Prof. Code, § 6085.) That is the purpose served by the notice of disciplinary charges—"putting the [attorney] on notice of the specific misconduct the State Bar intends to prove." (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)[13] Uncharged misconduct cannot serve as an independent basis for discipline. (*In re Ruffalo* (1968) 390 U.S. 544, 550–551.)[14]

[13] "The degree of specificity required [in the NDC] does not necessitate lengthy detailed pleading." (*In the Matter of Glasser, supra*, 1 Cal. State Bar Ct. Rptr. at p. 173.) Rather, the NDC must "(1) cite the statutes, rules, or Court orders that the member allegedly violated or that warrant the proposed action; (2) contain facts, in concise and ordinary language, comprising the violation in sufficient detail to permit the preparation of a defense; no technical averments or any allegation of matters not essential to be proved are required; [and] (3) relate the stated facts to the [authorities] that the member allegedly violated . . . ." (Rules Proc. of State Bar, rule 5.41(B).)

Our Supreme Court has emphatically stated that adequacy of notice is essential to allow fair and meaningful review of any disciplinary recommendation: "The right to practice law is a valuable one which should be suspended or revoked only on charges alleged and proved and as to which full notice and opportunity to defend have been accorded." (*Woodard v. State Bar* (1940) 16 Cal.2d 755, 757.) Thus, even when no objection has been raised, the Supreme Court has been critical where the link between the alleged misconduct and specific charges is not evident from the record. (See *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 968 ["[n]either the charges, nor the ultimate findings and conclusions in the instant record relates the conduct charged as violations of petitioner's duties as an attorney to the statutes or Rules of Professional Conduct that the State Bar concludes have been violated"]; *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 931 [same]; *Baker v. State Bar* (1989) 49 Cal.3d 804, 816 ["Once again we are constrained to call to the attention of the State Bar Court the importance of identifying with specificity both the rule or statutory provision that underlies each charge and the manner in which the conduct allegedly violated that rule or statutory provision"].)

With this backdrop, we turn to the case at hand. Mahdessian affirmatively raises issues regarding the inadequacies of the NDC and she challenges any culpability findings based on uncharged misconduct. She highlights that OCTC did not charge her with tax violations or other breaches of fiduciary duties. She also underscores that no effort was even made to move to conform the notice to proof at the conclusion of trial. (See Rule of Proc. of State Bar, rule 5.44(C) [permitting amendment of initial pleading to conform to proof during or after contested trial].)

The NDC also does not have to match the subsequent proof at the hearing as long as the difference is immaterial or the NDC is subsequently amended to conform to proof (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 928–929), and the attorney has the opportunity to respond. (*Marquette v. State Bar* (1988) 44 Cal.3d 253, 264–265.)

[14] Compare *Grim v. State Bar* (1991) 53 Cal.3d 21, 34 (uncharged misconduct may be used as aggravating circumstance).

OCTC, on the other hand, contends that "However one views [Mahdessian]'s relationship to CAR—founder; checkbook keeper; Executive Director, Board member; lawyer—she owed CAR a fiduciary duty," thus section 6106 applies to all of her conduct. While this could be the case, OCTC had an obligation to adequately connect Mahdessian's role, capacity, and duties to the conduct alleged to be violated. It is insufficient to simply charge a section 6106 violation and presuppose that this provides adequate notice of any and all acts of moral turpitude, particularly given the term's many judicial meanings.[15]

In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297 is instructive on this point. In *Hultman*, an attorney was the trustee of a testamentary trust from which he made two interest-only loans to himself with no repayment due date. (*Id*. at pp. 301–302.) The attorney was charged with violating sections 6068, subdivision (a) (violation of the laws), section 6106 (misrepresentation), and rule 3–300 (conflict of interest/self-dealing). (*Id*. at p. 303.) OCTC did not allege a section 6106 violation for breach of fiduciary duties at trial, but raised it for the first time on review. (*Id*. at p. 305.) We rejected OCTC's request for lack of adequate notice:

> We agree with respondent that a section 6106 violation on account of a breach of fiduciary duty was not charged in the notice. The notice sets out several paragraphs of factual allegations and then generally alleges that by virtue of those facts, respondent violated sections 6068(a) and 6106 and rule 3–300. The notice does not allege that respondent had a fiduciary duty but does allege that respondent made a misrepresentation to the court. The hearing judge and the parties seem to have understood that the charged section 6106 violation was based on the misrepresentation to the court, not a breach of fiduciary duty. The case was tried accordingly. Finally, in a post-trial brief, the only basis for a section 6106 violation argued by the deputy trial counsel was the misrepresentation to the court in the filing of the accounting. We therefore do not accede to the State Bar's request, made for the first time on review, that we find moral turpitude based on respondent's breach of fiduciary duty.

(*Ibid*.)

[15] For an extended, comprehensive discussion of the application of the term "moral turpitude" to attorney disciplinary matters, see *In re Lesansky* (2001) 25 Cal.4th 11, 14–18.

Similarly here, Mahdessian was charged with and tried on allegations of misrepresentations to a judge and misappropriation of funds. We find no justification to support culpability for tax fraud or other violations of fiduciary duties based on the NDC filed in this case.

B. Proof Issues

Even assuming, arguendo, that we could get past the inadequate notice issues here, the sufficiency of the evidence does not support culpability for the charged misconduct, i.e., misrepresentation or misappropriation.

In original disciplinary proceedings, OCTC must prove the charged misconduct by clear and convincing evidence. (Rules Proc. of State Bar, rule 5.103.) This heightened standard of proof "requires a finding of high probability," founded on evidence "so clear as to leave no substantial doubt [and] sufficiently strong to command the unhesitating assent of every reasonable mind." (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [internal quotations and citation omitted].) We find that OCTC fell well short of meeting its burden of proof in this case.

1. Misrepresentation

The hearing judge dismissed count one (misleading a judge in violation of section 6068, subd. (d), and rule 5-200), finding no evidence that Mahdessian ever prepared, directed, or filed any pleadings, made any appearances, or was present in court for any discussion about either CMA or CAR in either of the class action matters.

While OCTC does not challenge this finding, it points out that the hearing judge did not address count three's section 6106 misrepresentation charge, which can be proven by concealment or omission and does not require affirmative misstatements. (See *Grove v. State Bar* (1965) 63 Cal.2d 312, 315 [for purposes of § 6106, there is no distinction between "concealment, half-truth, and false statement of fact"].)

Mahdessian maintains she was not actively involved in the litigation and had no obligation to report or disclose anything to Judge Snyder. We agree. The hearing judge's findings with respect to count one (misleading a judge) obviated the need to address count three's moral turpitude charge. The only evidence in the record connecting Mahdessian to the class action litigation in any way is a docket entry on PACER listing her as an attorney to be noticed in the AXA class action. We are unaware of any case precedent that creates a duty and extends culpability for moral turpitude misrepresentation to a judge based on such remote contact to or activity in a case. Accordingly, we find no section 6106 violation based on a misrepresentation or omission by Mahdessian to Judge Snyder.

2. Misappropriation

As discussed above, the hearing judge dismissed the vast majority of the misappropriation allegations against Mahdessian. Since we find that the tax issues were not properly charged in this case, we are left with only the hearing judge's limited finding that Mahdessian misappropriated $30,000 from CAR. Upon our independent review, we find factual flaws and insufficient evidence to support this finding.

First, the hearing judge found that Mahdessian created a ShareBuilder brokerage investment account using the name and personal information of her daughter without her daughter's knowledge or permission. Mahdessian, however, testified it was her husband, Yeghiayan, who opened the account for his daughter. Based on the thin evidence presented at trial, we cannot say with certainty that Mahdessian established the account. OCTC produced a copy of an account statement in Mahdessian's daughter's name, containing the daughter's address, social security number, and other identifying information—no other authorized or ancillary users are listed. While OCTC also produced a separate printout showing that email addresses belonging to Mahdessian and Yeghiayan accessed the account, OCTC failed to call a

custodian of records from the account to testify. Without any evidence of user verification or information of how this ShareBuilder account was established and operated, and in the absence of any credibility findings, we are left to speculate who created the account.

Second, the hearing judge found that Mahdessian transferred $30,000 of CAR funds into the ShareBuilder account, and purported to justify that transfer with the explanation that it represented a loan repayment from CAR to the daughter when, in fact, no such loan had ever been made. Again, the evidence does not support this finding. Mahdessian's unrefuted testimony was that her daughter (through the ShareBuilder account) was the secondary recipient of the funds, and that the money was actually Yeghiayan's. Mahdessian testified that Yeghiayan was owed approximately $40,000 as payment for books he published in Armenia. On October 28, 2009, CAR received an overseas wire payment of $39,971, of which CAR approved and earmarked $30,000 to partially recompense Yeghiayan. According to Mahdessian, Yeghiayan directed that the $30,000 be deposited into the ShareBuilder account, and Mahdessian transferred the money accordingly on October 30, 2009.

Moreover, to the extent CAR's general ledger listed the transaction as a loan, Karine Ghapgharan (a manager at CAR and the person responsible for recordkeeping in 2009) testified that Mahdessian did not make ledger entries. That was done by Ghapgharan or an outside accountant. Ghapgharan further testified that Mahdessian did not direct whether to characterize a payment as a "loan." Rather, that decision was made independently, and she indicated it could have been the result of an "English [translation] [¶] problem." She explained that when someone did work for CAR and they were owed money, whoever was doing the ledger treated it "like a loan . . . . But most of them [were] reimbursement[s] . . . . [¶] Instead of 'reimbursement' we wrote 'loan payment' [or] 'loan repayment.'"

Third, the hearing judge found that Mahdessian continued to maintain control over the ShareBuilder funds, which the daughter had no knowledge of until being subpoenaed by the State Bar to testify in this matter. Again, the record does not demonstrate who managed the portfolio or maintained control over the investment funds.

In light of the foregoing, we do not find clear and convincing evidence that Mahdessian misappropriated $30,000 from CAR. CAR, as a nonprofit, is not the subject of these disciplinary proceedings and we have no basis to question the financial decisions of CAR or its board, which approved the transaction. Under the circumstances, and the uncontroverted evidence that CAR knowingly approved the fund transfer, we are unable to find that any unauthorized transaction occurred. Accordingly, we dismiss count three in its entirety.

IV. ORDER

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

Because we order this case dismissed, pursuant to rule 5.111(D)(2) of the Rules of Procedure of the State Bar, we further order that Mahdessian's inactive enrollment, ordered August 29, 2017, under Business and Professions Code section 6007, subdivision (c)(4), be terminated immediately. This order does not affect her ineligibility to practice law that has resulted or that may hereafter result from any other cause.

STOVITZ, J.[*]

WE CONCUR:

PURCELL, P. J.

HONN, J.

[*] Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.