FILED SEPTEMBER 21, 2012

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **ROBERT M. VICTOR,** **Member No. 156232,** A Member of the State Bar.	)	**Case Nos.: 11-O-13464 (11-O-13523)-DFM** **DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER**

INTRODUCTION

Respondent **Robert M. Victor** (Respondent) is charged with five counts of misconduct involving two separate transactions. The charges include willfully violating: (1) section 6106 of the Business and Professions Code[1] (moral turpitude - misappropriation) [two counts]; (2) section 6103 (failure to obey court order); and (3) section 6068, subdivision (i) (failure to cooperate with State Bar investigation) [two counts]. In view of Respondent's misconduct and the aggravating factors, the court recommends, *inter alia*, that Respondent be disbarred from the practice of law.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on March 9, 2012. On April 2, 2012, Respondent filed his response to the NDC, admitting certain of the factual allegations but denying any culpability in the two matters.

[1] Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

On April 9, 2012, an initial status conference was held in the matter at which time the case was scheduled to commence trial on June 19, 2012, with a seven-day trial estimate.

On April 9, 2012, Respondent, represented by counsel, filed a motion to abate this matter based on the pendency of two civil cases arising out of the business transactions giving rise to the claimed misconduct. On April 18, 2012, the State Bar filed an opposition to the motion. On April 19, 2012, this court issued an order denying the requested abatement.

On April 11, 2012, the State Bar requested leave to file an amended NDC in the case. No opposition to the request being filed by Respondent, this court entered an order on May 15, 2012, granting the State Bar's request to amend the NDC. The First Amended NDC was filed on May 17, 2012. The newly-added allegations of the amended NDC were deemed denied by Respondent.

Trial was commenced on June 19, as scheduled, and completed on June 26, 2012. The State Bar was represented at trial by Deputy Trial Counsel Mia Ellis. Respondent was represented at trial by David Clare.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the stipulation of undisputed facts and conclusions of law filed by the parties, on the admissions contained in Respondent's response to the NDC, and on the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on December 16, 1991, and has been a member of the State Bar at all relevant times.

Facts

Between January 2011 and mid-February 2011, Rosemax Media LLC (Rosemax) and Triton Films Inc. (Triton) discussed working together to produce a film entitled *The Zone.*

Joseph Q. Bretz (Bretz) was CEO of Rosemax and represented that company in the discussions. Gabriel Napora (Napora) was an owner of Triton, a Canadian company, and represented his company in the negotiations. Sometime in early February 2011, Respondent was hired to represent Rosemax in conjunction with this possible transaction.

As a first step in the development of this potential business relationship, the parties agreed to evidence their respective financial commitment to the proposed project by entering into a funding agreement, whereby each party would deposit funds to be held in escrow while the parties worked out other critical terms and arrangements for creating and producing the film. It was proposed and agreed that the funds would be held by Respondent in his trust account.

On February 21, 2011, Respondent sent Bretz an email, attaching wire transfer instructions for his client trust account at the Bank of America (CTA). His message stated, "Here are the Wire Transfer Instructions for my Trust account." The client trust account was identified by name as the "Victor & Victor Attorney-Client Trust Account" at the Bank of America in Woodland Hills, California. The account number and routing information was included in the email. Within an hour that same day, Bretz then forwarded that information via email to Napora. (Exh. 5.) On the same day, Bretz emailed Respondent, telling him that "They will be wiring the funds to your client trust account tomorrow – a total of $500k[.]" (Exh. M.)

On February 22, 2011, Respondent wrote and transmitted a letter to Triton regarding the terms of this arrangement. This letter (escrow Agreement) provided in pertinent part:

> 1. Upon receipt of $500,000 from Triton Films, such funds shall be held in a special trust account along with $1,500,000.00 deposited by Rosemax Media, LLC for the sole purpose of the filming and production of the film *The Zone.*
>
> 2. The minimum amount of $2,000,000.00 shall remain in the such account and will not be released until all agreements for the production of *The Zone* are finalized and executed.

3. The $2,000,000.00 shall not be released to the production account established by Triton Films and Rosemax Media, LLC for the production of *The Zone* until either:

    A. Joint written and executed instructions of both Triton Films and Rosemax Media, LLC are received; or

    B. Both Triton Films and Rosemax Media, LLC receive a defined list of fully executed contracts/agreements necessary to commence the production of *The Zone* and at least two (2) business days written notice is given to Triton Films that all agreements have been made. If an objection is made by Triton Films within two (2) business days of such notice, Victor Law Offices shall continue to hold the funds until it receives joint instructions from both Triton Films and Rosemax Media, LLC, or an arbitration award or Court Order regarding the release of funds is obtained.

4. The $500,000.00 investment of Triton Films shall be returned in full to Triton Films if neither conditions 3(a) or 3(b) above are satisfied by June 1, 2011.

Unbeknownst to Triton, neither Bretz nor Respondent had any intention of maintaining in Respondent's CTA the funds that Triton was going to deposit in that account. Instead, on February 22, the same day that Respondent would send the above escrow agreement to Triton for review and signature, Bretz emailed Respondent with the following message:

> "This is for the $500K from The Zone – I think basically an agreement from you stating that no funds from the $2M will be released until all agreements from the production is set up and signed off – that way you will have $2.5M **and we can move the $500k no issues.**"

(Exh. Q [emphasis added].)

Later on February 22, 2011, Triton signed the Escrow Agreement and then promptly deposited a cashier's check in the amount of $175,000 into Respondent's CTA. On the same day, it also wired $250,000 into Respondent's CTA.[2]

[2] At trial, Triton witnesses indicated that $25,000, by oral agreement with Bretz, had been paid to Rosemax to be used as attorneys' fees charged by Respondent. Although Respondent stated that he had no knowledge of this agreement, there is no evidence that either he or Rosemax ever inquired about when the additional money would be deposited into his trust account. Further,

Although Triton had been led to believe that $1,500,000 from Rosemax would also to be deposited into Respondent's CTA and that all of the consolidated funds would then remain in the account pursuant to the above Escrow Agreement, that is not what happened. In fact no funds from Rosemax were ever deposited into Respondent's client trust account. More significantly, as soon as Respondent received the funds from Triton in his CTA, Respondent immediately began to disburse the money to various individuals designated by Bretz, including to Respondent himself. According to an accounting prepared by Respondent in conjunction with this proceeding, between the time of Respondent's receipt of the Triton funds on February 22 and February 24, less than two full days later, Respondent had removed from his CTA all of the Triton funds through the following transfers:

	PAYEE	AMOUNT
February 22, 2011:	"Victor & Victor"	$ 5,000
	Nolan Dunbar	$ 10,000
February 23, 2011:	Rosemax Media	$ 14,945
	"Victor & Victor"	$ 5,000
	Nolan Dunbar	$ 10,000
February 24, 2011:	Roberto Sacchetti	$380,000[3]

(Exh. V4.)

On or about February 28, 2011, Triton, unaware of the above transfers, wired an additional $50,000 into Respondent's CTA. On the very same day, all of that $50,000 was also transferred by Respondent out of the CTA to Nolan Dunbar.

In March 2011, Triton sought confirmation from Respondent that Rosemax's funds had also been deposited into Respondent's CTA. Respondent was initially hard to reach, according

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when Respondent eventually sought to interplead the funds, he alleged in his interpleader complaint that Triton had deposited the $500,000 contemplated by the Escrow Agreement. (Exh. 11, p. 49, ¶6.)

[3] The small remaining funds then in the account were used to pay bank costs charged for the various transfers.

to Napora. Then, when he was reached, he indicated that he would forward a copy of the Bank of America monthly account statement when it was received. When Respondent eventually forwarded an account statement, however, it was not from the Bank of America. Instead, it was a "snapshot" of a computer image of an account ostensibly held at Penson Financial Services. The account number was stated to be 41240**474**[4] and the account name was "Victor Law Offices FBO Zone Film, LLC Sub-Account Altrion Capital Group, LLC." The stated balance of the account was $1,911,655.13. The stated date of the account balance was February 22, 2011. (Exh. 11, p. 19; see also Exh. R.)

Triton representatives were concerned both that the balance of the account was less than required and that the funds were not in the original attorney client trust account. When they tried to contact Respondent to discuss the situation, he did not return the calls, even though messages were left on his cell phone and at his office. Triton representatives then spoke to Bretz about the situation. Bretz assured them that the funds were in a secure account and then obtained a new "snapshot" of the account, showing an ostensible balance of the account of $2,600,022.40 on April 1, 2011. The name on the account, however, no longer made any reference to Respondent or his law firm. Instead, the account name was now shown to be "The Zone Film, LLC, Sub-Account Altrion Capital Group, LLC." The account number for the account, however, was again shown to be 41240**474**. When the Triton representatives sought to reach Respondent to find out why the account names were different, he did not return their calls.

In fact both of the above "snapshots" were completely bogus, as were the purported accounts. There was no money being held at Penson Financial for the benefit of Triton, The Zone Film, or Respondent (either in trust or otherwise), and there never had been. The only

[4] As will be noted below, the last three digits of the account number shown on this snapshot are significant, because they differ from the account number subsequently given by Respondent for the account when he purportedly seeks to comply with a court order requiring the funds in the account to be transferred to a court-designated escrow holder.

money that had ever been deposited to fund the proposed deal was the money deposited into Respondent's CTA at the Bank of America, and it was now gone. In order for Bretz, Rosemax and Respondent to be able to return any funds to Triton, it would be necessary for them to obtain new money from another source.

At the same time that Triton was becoming concerned about the status of its deposited funds, Bretz and Respondent began negotiations with SBDL Productions, LLC in April 2011, about the possibility of entering into a similar funding arrangement regarding a proposed movie entitled *Light Years*. On April 12, 2011, Respondent sent to representatives of SBDL an escrow agreement quite similar to that which had previously been sent to Triton. This agreement (Exh. 19) provided in pertinent part:

> This letter shall confirm the following terms and conditions agreed upon by SBDL Production, LLC and Rosemax Media, LLC:
>
> 1. Upon receipt of $475,000.00 from SBDL Productions, LLC, such funds shall be held in a special trust account along with $925,000.00 deposited by Rosemax Media, LLC for the sole purpose of the filming and production of the film *Light Years.*
>
> 2. The minimum amount of $1,400,000 shall remain in the such [sic] account and will not be released until all agreements for the production of *Light Years* are finalized and executed. …
>
> 6. If Rosemax Media, LLC fails to deposit $925,000.00 into the trust account within 48 hours of receipt of SBDL Productions, LLC's $475,000.00 deposit, the entirety of SBDL Productions, LLC's deposit shall be returned to SBDL Productions, LLC forthwith. …

Respondent forwarded to representatives of SBDL on April 12, 2011, both the above draft agreement and the same wiring instructions for Respondent's CTA at Bank of America as had previously been provided to Triton. Later on April 12, 2011, after executing the above agreement, SBDL transferred $475,000 from its Bank of America account to Respondent's CTA at Bank of America. As Respondent had previously done in the Triton matter, Respondent immediately began to disburse the funds to various payees designated by his client, including

transferring $120,000 out of the account on the very same day. Within three days after the $475,000 had been deposited into the CTA for safekeeping, only $33,336.10 of SBDL's funds remained in the account. No money had been deposited into the account by Rosemax. The accounting put together by Respondent in this proceeding reveals the following disbursements during that three day period:

	PAYEE	AMOUNT
April 12, 2011:	Alfred Hollender	$ 5,000
	Desmon Devenish	$ 10,000
	Nolan Dunbar	$ 20,000
	Jason Chai	$ 40,000
	Ali Hashemian	$ 45,000
April 13, 2011:	Stacy Rosen	$ 24,000
	Stacy Rosen	$ 233
	Hannah Cooper	$ 2,700
	Rosemax Media	$ 148,020
	MPIPHP[5]	$ 6,665
April 14, 2011:	Roberto Sacchetti	$125,000

(Exh. V4.)

Although the above agreement required Rosemax to deposit $925,000 into the trust account within 48 hours of SBDL's deposit and obligated Respondent to return the funds to SBDL if that deposit were not timely made, no such deposit was ever made by Rosemax in Respondent's client trust account, Respondent never notified SBDL of that fact, and he failed to return to SBDL any of the funds that it had previously deposited. Instead, between April 12, 2011 and April 14, 2011, SBDL requested confirmation from Respondent that Rosemax's funds had also been deposited into Respondent's CTA. When Respondent did not provide any response to the request for a confirmation that all of the required funds had been deposited into his CTA, SBDL demanded that its funds be returned.

[5] Motion Picture Industry Pension & Health Plan

On April 14, 2011, in response to SBDL's demands for confirmation that all of the required funds had been deposited into Respondent's CTA or for a return of its funds, Bretz provided to SBDL a "snapshot" of a computer screen, purportedly showing that $925,000 was then being held in an account at Altrion Capital Group through Penson Financial Services. Because this showed that the funds were no longer in Respondent's CTA and that the account did not have the required $1,400,000, SBDL became concerned that the funds were not in Respondent's CTA and demanded that its funds be returned. (Exh. 11, p. 219.) When Respondent continued to not respond to SBDL's demands, despite email and telephone messages from SBDL's attorney, on April 15, 2011, SBDL demanded the return of its $475,000 via an email message to Respondent. (Exh. I3.) After receiving that email, Respondent called SBDL's attorney in New York and said he would send her confirmation that day that the funds were on deposit. When he did not do so, the attorney again demanded that the funds be returned immediately.

On the morning of April 15, 2011, $48,336.10 of the funds deposited by SBDL into Respondent's CTA still remained there. On the same day that SBDL representatives were demanding the return of SBDL's funds, Respondent withdrew from his CTA $15,000 of those funds, purportedly to pay legal fees to himself. (Exh. V4.)

On April 18, 2011, SBDL's attorney again demanded return of SBDL's funds. In response, Respondent also forwarded via email a purported "statement which verifies that Rosemax Media has deposited $925,000.00 into the firm's trust account." (Exh. L3.) The attached statement was an email message from Bretz to Respondent, dated April 12, 2011, attaching the same April 12, 2011 "snapshot" of the purported Altrion account.

In response to this email message and statement, SBDL's counsel quickly noted that the statement did not show that there had been compliance by Rosemax with the terms of the

agreement, and the demand was again made that SBDL's funds be returned. In making this demand, the attorney emphasized that the agreement was that the Rosemax and SBDL funds were to be held in the same account, that SBDL's funds had been deposited into Respondent's CTA at Bank of America, that the balance in the Altrion account was less than the required $1,400,000, and that there was no indication that the funds at Altrion had even been deposited by Rosemax.

On or about April 20, 2011, Kyle Fogden, a Vancouver attorney (Fogden), on Triton's behalf, sent Respondent an email requesting that Respondent return the $500,000 that Respondent was supposed to be holding for Triton. Fogden provided Respondent with Triton's account number. On the same date, Gabriel Napora of Triton sent an email to Respondent, asking that he confirm that the $2,000,000 of Triton's and Rosemax's funds were still in his CTA. Respondent received both of these email messages but did not respond.

Between on or about April 21, 2011 and April 25, 2011, Bretz exchanged a series of email messages with Triton representatives, proposing ways in which the existing relationship could be expanded by an additional deposit of funds into an escrow account. Respondent was copied with this correspondence.

In response to SBDL's email of April 18, 2011, Respondent sent a letter to SBDL on April 21, 2011, enclosing another "statement" for the Altrion account "verifying that $1,400,000.00 is on deposit in a special trust account under the name Victor Law Offices FBO SBDL Productions, LLC." This statement was dated April 14, 2011, and stated that the balance in the account was then $1,400,000. (Exh. 11, pp. 219-220, 230-233.) In Respondent's letter, he did not respond to SBDL's continuing demands that its money be returned. Instead, he conveyed alternatives offers whereby SBDL could agree to cancel the agreement by either paying money

(a $50,000 cancellation fee) or agreeing to surrender significant rights in the movie they were attempting to produce. (Exh. 11, pp. 219-220, 230-233.)

Sensing that it was at risk of losing all of its $475,000 investment, SBDL reached an agreement with Respondent, acting on behalf of Rosemax, that SBDL would pay a $25,000 cancellation fee in exchange for receiving a refund of the money it had previously deposited in Respondent's CTA. A mutual release document was prepared and signed by SBDL on May 2, 2011, and sent to Respondent for execution by Rosemax. On that same day, Respondent sent an email to SBDL stating that he had initiated the transfer of funds from Altrion and that he was going to receive the funds into his CTA by May 4, 2011. (Exh. 11, p. 220.) The funds were never transferred "back" to Respondent's CTA, and there is no evidence that any such request of such a transfer was ever made. Respondent later sought to explain the reason for the funds not being transferred by Altrion into his CTA by telling SBDL representatives that Altrion was waiting on a release from Rosemax before it would transfer the funds. (Exh. 11, pp. 220-221.) There is no evidence of any such actual indication by Altrion to Respondent. Moreover, any such refusal by Altrion to transfer the funds would have been inconsistent with Respondent's stated belief that he believed the funds were under his sole control and should have generated some protest by him. There is no evidence of any such protest having been made.

Throughout this time period, Respondent was continuing to ignore the demands of Triton that its funds also be returned immediately. On April 25, 2011, Bretz sent email instructions to Respondent on how Respondent was to buy time with the principals at Triton:

> "Can u call their attorney and tell them or her that the US bank escrow was never agreed to. Nor did we do anything wrong and they never came up with a script etc…And that we will be terminating the deal and refunding their escrow less legal fees and we shld draft a release or termination. That shld get us another few days. As ill [sic] find out tmmrw at 2pm when fund r hitting act this week."

(Exh. B4.)

On or about April 26, 2011, Napora sent Bretz an email requesting a return of Triton's $500,000. Neither Bretz nor Respondent returned the funds.

On or about May 3, 2011, Fogden, representing Triton, sent Respondent an email regarding the status of and the immediate return of the $500,000. Respondent received the email but did not return the funds. On that same day, Respondent withdrew from his CTA another $5,000 of the funds deposited there by SBDL to pay fees to himself. (Exh. V4.)

On May 5, 2011, Triton attempted to have its representatives go personally to Respondent's office to verify that Triton's funds were still in Respondent's trust account. Respondent was notified that these representatives were on their way. When they arrived, they were told that Respondent was not there and they were asked to leave. When Triton then complained that day about the situation, Respondent responded with a letter stating that he would not talk with the principals of Triton "because they were represented by an attorney and to do so would be an ethical violation." He further indicated that he would only discuss the matter with Triton's attorney in Vancouver. He then wrote a letter to that attorney stating that all further communications were to be in writing. (Exh. C4.) Later that same day, when the Vancouver attorney called to complain and informed Respondent that Triton intended to file a complaint with the State Bar, Respondent seized on the information to place additional restrictions on Triton's access to him and to create further reasons to delay returning any money to Triton:

> However, your statement (combined with the prior statements of Mr. Landis [Triton's representative] who also made such a threat) require me to do the following:
>
> 1. I may not have any further verbal communications with you or any member of your firm. I do not want to be in a situation where we have a disagreement as to what was said during any conversation.
>
> 2. I will need to have the proposed Settlement Agreement reviewed by an outside attorney to ensure that it adequately resolves all of the disputes between our two clients. I do not want to be put in a position where I will have to defend myself against a claim that I

somehow exerted undue influence or undue pressure upon either your clients or my client in order to have a Settlement Agreement signed.

3. I also need to advise my client that he may wish to seek the assistance of substitute counsel. I must also now advise my client that your clients have stated that they are reporting me to the State Bar so that my client is fully informed of all facts relating to this matter.

(Exh. D4.)

On about May 6, 2011, Michael Resch (Resch), Triton's newly retained California counsel, spoke to Respondent and demanded the return of Triton's funds. On the same day, Resch sent Respondent a letter demanding that Respondent release the funds to Triton by the close of business on Monday, May 9, 2011. "Triton Films is also concerned that your client is running a Ponzi scheme." (Exh. 10.) The letter stated that, if Respondent did not return the funds, Respondent should interplead the funds with the court so that Triton knew the funds were secure. Respondent received the letter.

On May 9, 2011, Respondent did not return to Triton any of the funds that it was demanding. Instead, he withdrew for himself another $5,000 of the funds deposited there by SBDL. (Exh. V4.)

On or about May 11, 2011, Respondent filed a Complaint in Interpleader Action in Los Angeles Superior Court entitled, *Victor Law Offices v. Triton Films, Inc; Rosemax Media, LLC,* case number BC 461313. Respondent was required to deposit the funds with the court. (Stipulation, p. 3, ¶ 16.) However, Respondent did not deposit the funds with the court along with the filing of the interpleader.

On or about May 13, 2011, Triton filed an ex parte application for an order requiring the interpleader funds to be deposited with the clerk of the court and requested sanctions. Respondent filed an objection to the ex parte application. In his objection, Respondent stated

that proper notice was not given as he did not represent Rosemax. In addition, Respondent represented to the court at that time that the funds were safe, that the money had been in the same account for two months, and that he was the sole signatory on the account. (Exh. 11, p. 296.) As a result, the court denied the ex parte application.

Sometime later on May 13, 2011, Resch's office contacted Penson Financial to determine whether the Triton funds were in fact on deposit there. In making that inquiry, Resch quickly learned that the account information that had previously been provided by Respondent to Triton was bogus, that account that had been identified by Respondent as holding the funds was closed, contained no assets, and had never been in the name of Respondent or any of his law offices. In addition, representatives at Penson had reviewed the "snapshots" that Triton had been provided and had informed Resch that they were false and not true account summaries.

On or about May 16, 2011, Triton filed another ex parte application for an order requiring the interpleader funds to be deposited with the clerk of the court and again requested sanctions. Unlike the earlier application, this filing emphasized the fact that the account information being provided by Respondent was false, and it included sworn declarations from representatives of Penson Financial Services and Transcend Capital (the actual holder of the designated account) attesting to the falsity of the account information that Respondent had provided to Triton. (Exh. 11, pp. 128, 130, 137-154.)

Before the hearing on this ex parte application on May 16, 2011, counsel for Triton handed a copy of the ex parte application to Respondent and told him of the newly-discovered information regarding the falsity of the account information. Respondent and counsel for Triton then reached an agreement that Respondent would have Triton's $500,000 deposited into an Allyson McCloskey Escrow Account, a neutral escrow company agreed-upon by the parties, by

5:00 p.m. that day. At the ex parte hearing, this agreement was converted into an order by the court. (Exh. 11, p. 155.)

Resch testified credibly at the trial of this matter that Respondent, on being informed by Resch that the Penson accounts were fraudulent, expressed no surprise. While Respondent disputed that testimony during his own testimony at the trial, Respondent's apparent lack of concern about the situation at and after the May 16 hearing is quite telling. He made no effort to contact Penson to see if there was some misunderstanding. He made no complaint to Altrion about the situation and demanded no explanation regarding the whereabouts of the Triton money. There is no evidence that he made any inquiry or complaint to Bretz about the situation. And he made no call to the police. Instead, the only apparent action taken by Respondent was to send a letter to Altrion, providing it with written instructions to transfer $500,000 to the court-ordered escrow account. (Exh. E4; see also Exh. 11, p. 503.) There was nothing contained in Respondent's letter to Altrion regarding the evidence that there was no money in the account or that the information regarding the account, purportedly provided by Altrion in the past, now appeared to be fraudulent.[6] Nor was there any indication in the letter that Respondent had been ordered by the court to transfer the funds by 5:00 p.m. of that same day. Had Respondent believed that there was any possibility that he could comply with the court's order, one would reasonably expect that he would have included that information in his directive to Altrion.

Also significant is the fact that Respondent did not use in his May 16, 2011 instruction to Altrion the same account number for the purported account as had been displayed in the two "snapshots" of the account previously given to Triton. As noted above, the account number

[6] On May 16, 2011, Respondent sent a comparable instruction to Altrion to transfer the $475,000 of SBDL funds back to his CTA. (Exh. G3.) Once again, there was no apparent effort by Respondent to determine whether there were actually funds being held by Altrion or in an Altrion account at Penson. Respondent also took no steps to notify SBDL of the possibility that its funds may have been mishandled.

shown in those snapshots was 41240**474**. In Respondent's directive to Altrion to have the Triton money transferred, he identified the account as number 41240**284**. This was, of course, after Triton's counsel had learned and shown the court that account number 41240**474** was a sham.

The court-ordered deadline for Respondent to transfer the Triton funds into the court-ordered escrow account expired at 5:00 p.m. on May 16, without any funds having been transferred. There is no evidence that this came as a surprise to Respondent. Other than sending the written instruction to Altrion on May 16 to transfer the funds, there was no other evidence of any effort by Respondent to get any of the Triton funds transferred by the May 16 deadline or even during the week following that deadline. Instead, the only apparent follow-up by Respondent came on May 24, 2011, more than a week after the deadline had expired, when Respondent sent the following very brief follow-up inquiry to his purported account representative at Altrion: "On May 16, 2011, I wrote you and instructed you to transfer funds from the above account as follows: … Please advise as to the status of the transfer." Exh. 11, p. 505.) The account number was again given as 41240**284**, and the lack of any sense of concern or expression of urgency in this letter is both troubling and telling.[7]

Also troubling and telling is Respondent's continued mishandling of the SBDL funds still remaining in his Bank of America CTA. Throughout the time that SBDL was demanding that its funds be returned to it, Respondent continued to pay "legal fees" to himself from the portions of the funds that still remained in the account. As previously noted, the unilateral payments included withdrawals of $5,000 on May 3, 2011, and $5,000 on May 9, 2011. These withdrawals accelerated, rather than stopped, after Respondent was informed by Resch that he had learned that the Penson/Altrion Triton account was bogus. As of May 16, 2011, there

[7] According to Respondent's own testimony, he did not go to the office of Randall Crane/Altrion to investigate what happened to the Triton and SBDL funds until February 2012, after disciplinary charges were being pursued by the State Bar. When he arrived, the office space was occupied by another company.

$23,336 of SBDL's funds still remained in Respondent's CTA. Rather than return this money to SBDL, on June 1, 2011, Respondent withdrew $10,000 of these funds for himself. A week later, on June 8, 2011, he withdrew another $10,000 for himself, leaving a balance of only $3,336. According to his own accounting (Exh. V4), he subsequently withdrew for himself even that remaining balance of the SBDL funds at an unspecified later date.

On May 23, 2011, new counsel for SBDL, Bruce Altshuler, faxed a letter to Respondent, notifying him that SBDL intended to file an action against Respondent, Rosemax, and Bretz. In this letter, Altshuler, on behalf of SBDL, pointed out the impropriety of Respondent's claimed conduct and demanded that SBDL's funds be returned within 24 hours. (Exh. 22, pp. 441-442.) Respondent failed to respond to the letter. (Exh. 22, p. 430.)

On or about May 27, 2011, Triton filed a cross-complaint in Los Angeles County Superior Court entitled *Triton Films Inc., v. Robert M. Victor; Victor Law Offices; Joseph Q. Bretz; Rosemax Media, LLC.*, case number BC 461313, for breach of fiduciary duty, fraud, negligent misrepresentation, negligence, breach of contract, conversion, and constructive trust.

On or about May 31, 2011, Triton filed an ex parte application requesting an order requiring Respondent to provide declarations tracing the custody of the Triton money. On that same day, the court granted the request and issued the following order, "Plaintiff Victor Law Offices and Defendant Rosemax Media, LLC within 24 hours shall file and serve declarations under oath tracing the funds deposited by Triton Films into Plaintiff's client trust account from the time of deposit to the present." (Exh. 11, pp. 234-235.) On the same date, counsel for SBDL gave notice to Respondent that they would be appearing in the Los Angeles Superior Court on the following morning to seek the issuance of a writ of possession of the $475,000 SBDL had deposited into Respondent's CTA and a restraining order on the funds. (Exh. 22, p. 458.)

On the following day, June 1, 2011, Respondent did not file the required declaration in the *Triton* lawsuit. Instead, he filed a request for dismissal of the interpleader action he had filed. (Exh. 11, p. 281.)

At 8:30 a.m. on that same day, June 1, 2011, a hearing was held on the ex parte application by SBDL to obtain a writ of possession and restraining order on the funds purportedly being held by Respondent. Respondent appeared at the hearing. In conjunction with that ex parte application, SBDL filed a civil action in the Los Angeles Superior Court against Respondent personally for conversion, fraud, negligence and racketeering. (Exh. 22, p. 485.) At the conclusion of the hearing, the court set a briefing schedule for the application and issued a temporary order restraining Respondent from "transferring any interest, pledge, or grant of security interest, or otherwise disposing of, or encumbering the following property: Trust funds held for Plaintiff SBDL Productions, LLC in the amount of $475,000." (Exh. 22, pp. 426, 480.) Notwithstanding Respondent's awareness that SBDL was seeking to obtain a writ of possession of the funds it had deposited into his CTA, he withdrew for himself on June 1, 2011, another $10,000 of the SBDL funds then still remaining in his CTA. (Exh. V4.)

On June 2, 2011, Triton's counsel issued a Deposition Subpoena for Production of Business Records by the Bank of America regarding deposits and disbursements from Respondent's CTA since February 20, 2011. (Exh. 11, pp. 469, 480-487.) On June 22, 2011, Respondent's attorney, representing "Victor and Victor," filed a motion for a protective order to bar that record production from going forward. (Exh. 11, pp. 469, 480-487.) That motion was ultimately not successful, and Triton succeeded in obtaining production of records by the bank prior to August 1, 2011. (See Exh. 11, pp. 538, 559-563.)

On June 3, 2011, Respondent, individually and in his stated capacity as a cross-defendant, filed a written response to the court's May 31, 2011 order. In this response, signed

only by his attorney (Dmitry Gurovich), Respondent stated that he was unable to comply with the order because (1) compliance would violate his Fifth Amendment Privilege[8]; and (2) he had been instructed by his client Rosemax "to assert the attorney-client privilege to its fullest extent." (Exh. 11, pp. 28-290.)

On or about June 7, 2011, Triton filed an ex parte application for an order to show cause why Victor Law Offices and Rosemax should not be sanctioned for violating the May 16 and May 31, 2011 court orders. In this application, counsel for Triton noted that Victor Law Offices is a corporation and that a corporation has no Fifth Amendment privilege. The application also argued that the attorney-client privilege would not apply to the issue of where the deposited funds were located. (Exh. 11, pp. 300.) The court issued the OSC on the same day and set a contempt hearing for June 24, 2011. On June 8, 2011, Respondent withdrew for himself yet another $10,000 of the SBDL funds still remaining in his CTA, leaving a balance of only $3,336.10.

On or about June 24 2011 and on or about June 27, 2011, the court held the hearing on the Order to Show Cause on contempt. On or about June 27, 2011, the court found Victor Law Offices in contempt and imposed a sanction of $5,000 plus $500 each day it failed to file and serve a response to the court's orders. Execution of the matter was stayed until July 1, 2011. (Exh. 11, pp. 491-492.) On July 1, 2011, the amount of the sanction was reduced to $1,000, and the stay of execution was extended until July 11, 2011, and later extended again until August 8, 2011.

On July 11, 2011, Aimeelynne Lake, the office manager of Victor Law Offices, signed a declaration which purported to comply with the court's order in the *Triton* matter that the funds deposited in the CTA be traced. In her declaration, she disclosed that Respondent, after

[8] The court draws no negative inference from Respondent's exercise of his Fifth Amendment rights. (Evid. Code, §913.)

purportedly being told that Rosemax had deposited in excess of $1.9 million into Altrion account no. 41240284, had released to Rosemax all of the funds previously deposited by Triton into his CTA. (Exh. 11, pp. 500-501.)

Although Respondent had been served with the complaint in the *SBDL* lawsuit, he did not file a response in it. Nor did he file a cross-complaint against Bretz or Rosemax. Instead, he allowed his default to be entered by the court on August 3, 2011 (Exh. 22, p. 212) and then allowed a default judgment in the amount of $521,579 to be entered against him on March 6, 2012. (Exh. 22, pp. 99-100.)

On August 22, 2011, the court ordered that a supplemental statement of compliance by Victor Law Office be filed by September 1, 2011.

To date, no funds have been returned to Triton or to SBDL.

Case Numbers 11-O-13464, 11-O-13523

Counts 1 and 4 – Section 6106 [Moral Turpitude - Misappropriation]

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty, or corruption. While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, a finding of gross negligence will support such a charge where an attorney's fiduciary obligations, particularly trust account duties, are involved. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.) An attorney's failure to use entrusted funds for the purpose for which they were entrusted constitutes misappropriation. (*Baca v. State Bar* (1990) 52 Cal.3d 294, 304.)

In Counts 1 and 4 of the NDC, the State Bar charges that Respondent's mishandling of the funds deposited into his client trust account by Triton (Count 1) and SBDL (Count 4) constituted misappropriation by him of those funds and acts of moral turpitude, in willful violation of section 6106. This court agrees with that assessment.

Respondent's principal defense to culpability here is that he was a victim of the dishonesty of Bretz and, like Triton and SBDL, allowed himself to be swindled. He contends that he believed that Bretz/Rosemax had funded the Altrion account with comparable funds deposited by Triton and SBDL in his CTA and, as a result, the funds in the CTA now belonged to Bretz/Rosemax and could be distributed in any way that Bretz directed. At trial, Respondent spent considerable time and energy seeking to explain how impressive and charismatic Bretz was in the entertainment world.

This court declines to find any solace for Respondent in that defense. This defense is both legally and factually flawed. To begin with, it must be noted that Triton and SBDL were not completely swindled by Bretz. To the contrary, they had taken affirmative steps to be protected from him by designating Respondent, as an attorney and a fiduciary, to safeguard their funds. It was only when Respondent elected to disregard that fiduciary duty that Triton and SBDL were put at risk. For Respondent to immediately turn those funds over to Bretz, based on Bretz's claim that he had somehow become the owner of the funds in the CTA because he had purportedly deposited his own money into a different account, was unthinkably unreasonable. When your sole job is to protect the henhouse, you are not allowed to trust the fox with the chickens, no matter how reassuring that carnivore may purport to be.

Further, Respondent's contention completely disregards the obligations imposed on him as an attorney with regard to how he is required to handle money entrusted to him for safe-keeping. Rule 4-100(A) provides that "All funds received or held for the benefit of clients by a member or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts labeled 'Trust Account,' 'Client's Funds Account' or words of similar import, maintained in the State of California, or, with written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's

business and the other jurisdiction." The failure of a member to maintain in a client trust account funds received and held for the client constitutes a basis for discipline. Respondent did not maintain the funds entrusted to him by Triton and SBDL in his client trust account at Bank of America. Instead, he immediately disbursed the funds to numerous individuals, resulting in the loss of access of those funds.

Respondent's contention that he thought that equivalent funds were in an Altrion account at Penson does not represent a valid excuse for his release of the entrusted funds to others. Respondent did not transfer the funds to the Altrion/Penson account in order that they would be maintained there. Instead, he disbursed the funds to others, including to himself and to individuals in another country, without any knowledge or consent of the owner of the funds. Further, even if there had been equivalent funds in such an Altrion/Penson account, Respondent's maintenance of the funds in such an account still would have violated rule 4-100(A), since Penson was a securities clearing firm located in Texas (Exh. 11, pp. 137, 145), not a bank located in California, and Respondent did not have the clients' consent to maintain their funds in an out-of-state account. Finally, this court finds that Respondent's statements, that he actually believed there were funds deposited in the Penson/Altrion accounts, lack candor.

Respondent's actions constituted willful misappropriation by him of the Triton and SBDL funds and were willful violations by him of the prohibition of section 6106 against acts of moral turpitude.

Count 2 – Section 6103 [Failure to Obey Court Order]

Section 6103 provides, in pertinent part: "A willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, … constitute causes for disbarment or suspension." In this count, the State Bar charges that Respondent willfully violated section 6103

by not timely complying with the court's order in the *Triton* matter that he provide a declaration tracing the handling of the funds entrusted to him by Triton.

The evidence does not provide clear and convincing evidence that Respondent willfully violated 6103. The order relied on by the State Bar in this charge was directed at Respondent's corporate law firm, Victor Law Offices, rather than at Respondent personally. The same is true with respect to the court's subsequent finding of contempt. More importantly, both the order and subsequent finding of contempt were directed at the law firm as a party in the action, rather than at Respondent as counsel in it. Under such circumstances, the courts have concluded that the prohibition of section 6103 does not apply. (See *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 951.)

Accordingly, this count is dismissed with prejudice.

Count 3 – Section 6068, subdivision (i) [Failure to Cooperate in State Bar Investigation – Triton Matter]

On or about May 24, 2011, the State Bar opened an investigation based on a complaint submitted by attorney Resch on behalf of Triton. On or about July 28, 2011, the State Bar mailed Respondent a letter by regular mail to his membership records address 21031 Ventura Blvd., Suite 701, Woodland Hills, CA 91364 ("membership records address"), requesting a written response to specified allegations. The letter gave Respondent until August 15, 2011, to provide a written response. Respondent received the letter but did not respond.

On or about September 8, 2011, the State Bar mailed Respondent a letter by certified mail and regular mail to his membership records address requesting a written response to specified allegations regarding the complaint filed involving Triton films. The letter gave Respondent until September 21, 2011, to provide a written response. Respondent received the letter but did not respond by September 21, 2011.

On or about September 26, 2011, Respondent sent the State Bar a letter requesting a 45-day extension to respond to the State Bar letter.

On or about September 26, 2011, the State Bar sent Respondent a letter to his membership records address granting an extension to October 27, 2011, to respond. Respondent received the letter but did not respond by the new deadline.

On or about October 28, 2011, the State Bar mailed Respondent another letter to his membership records address regarding the complaint involving Triton. The letter gave Respondent until November 11, 2011, to provide a written response. Respondent received the letter but did not respond.

Section 6068, subdivision (i) of the Business and Professions Code, subject to constitutional and statutory privileges, requires attorneys to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against that attorney. Respondent has stipulated that he failed to respond to the State Bar investigator's letters. By failing to respond to those letters, Respondent failed to cooperate and participate in a State Bar disciplinary investigation, in willful violation of section 6068, subdivision (i). (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 644.)

At trial, Respondent testified that his failure to provide a response to the above letters resulted from his perceived need to assert constitutional and statutory privileges to the inquiries being made. That explanation, however, does not justify Respondent's failure to provide at least a written response notifying the State Bar that privileges were being asserted. Instead, as concluded by the Review Department of this court in its decision in *In the Matter of Bach, supra*, 1 Cal. State Bar Ct. Rptr. at p. 644:

> Section 6068 (i) requires attorneys to respond in some fashion to State Bar investigators' letters. If an attorney wishes to invoke statutory or constitutional privileges which the attorney contends make a substantive response unnecessary, the attorney must nevertheless respond to the

investigator's letters, if only to state that the attorney is claiming a privilege. …[R]espondent's failure to respond to the investigator's letters, even by making a claim of privilege, violated section 6068 (i), notwithstanding respondent's full participation in the proceedings after the filing of the notice to show cause.

Count 5 – Section 6068(i) [Failure to Cooperate in State Bar Investigation – SBDL Matter]

On or about May 24, 2011, the State Bar opened an investigation based on a complaint submitted by SBDL. On or about July 28, 2011, the State Bar mailed Respondent a letter by regular mail to his membership records address 21031 Ventura Blvd., Suite 701, Woodland Hills, CA 91364 ("membership records address"), requesting a written response to specified allegations regarding the complaint from SBDL. The letter gave Respondent until August 15, 2011, to provide a written response. Respondent received the letter but did not respond.

On or about October 28, 2011, the State Bar mailed Respondent a second letter to his membership records address requesting a written response to specified allegations regarding the SBDL complaint. The letter gave Respondent until November 11, 2011, to provide a written response. Respondent received the letter but did not provide a response.

Respondent has stipulated that he failed to respond to the State Bar investigator's letters. As previously noted, such a failure constituted a willful violation of section 6068, subdivision (i). (See, *e.g.*, *In the Matter of Bach*, *supra*, 1 Cal. State Bar Ct. Rptr. 631, 644.)

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)[9] The court makes the following findings with regard to possible aggravating factors.

[9] All further references to standard(s) or std. are to this source.

Multiple Acts of Misconduct

Respondent has been found culpable of four counts of misconduct in the present proceeding. The existence of such multiple acts of misconduct is an aggravating circumstance. (Std. 1.2(b)(ii).)

Significant Harm

Respondent's misconduct significantly harmed Triton and SBDL, two companies to which Respondent owed fiduciary duties. (Std. 1.2(b)(iv).) In addition to each of them losing all of the $475,000 that each had entrusted to Respondent, both companies had to hire attorneys and have incurred significant legal fees seeking to recover their money.

Lack of Insight and Remorse

Respondent has failed to demonstrate any realistic recognition of or remorse for his wrongdoings. Instead he continues to assert that his client and others are responsible for his misconduct and that his actions would not have been improper if there had been funds in the Altrion account to re-pay Triton and SBDL. Stated another way, "No harm; No foul."

This continued view by Respondent is absolutely contrary to well-settled law. (See, e.g., *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 220 ["Dishonest acts by an attorney are grounds for suspension or disbarment [under section 6106] even if no harm results."]; *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480, 490-491 [attorney found culpable of misappropriation due to misuse of client funds advanced for future costs even though funds had been refunded by attorney to client when representation ended].)

Such indifference, lack of insight, and lack of remorse is a significant aggravating factor. (Std. 1.2(b)(v).) The law does not require false penitence. But it does require that a respondent

accept responsibility for his acts and come to grips with his culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

Lack of Candor

Respondent displayed a lack of candor with this court during his testimony in this matter. Throughout his testimony Respondent's claims of ignorance and innocence were sufficiently incredible, and so consistently belied by his documented actions and inaction, that this court concludes that his testimony lacked candor. In addition to the many instances cited above, a further example of Respondent's lack of candor with this court came in conjunction with his presentation and testimony regarding a purported computer-maintained log of phone messages, presented to ostensibly show that Respondent had received some response from Randall Crane of Altrion to his request to transfer the Triton funds (Exh. D5). This document was not produced by Respondent to either the State Bar or Respondent's own counsel until shortly before Respondent offered it into evidence for the purpose of showing his claimed efforts in early May 2011 to have Altrion transmit the Triton funds to the court-ordered escrow holder. An examination of the document, however, makes clear that it has been intentionally altered after the fact, albeit poorly, to include the entries being referenced by Respondent during his testimony.

The proof of this fabrication is made obvious by the fact that all of the dates of the purported phone calls by Randall Crane to Respondent's office are recorded in the phone log as having been received in 2010, rather than in 2011. Since Respondent did not even meet Bretz or have anything to do with Crane until 2011, clearly no such calls were being made to Respondent's office by Randall on the stated dates in 2010.

Respondent's counsel, who stated openly to the court that he had not previously seen the document until being given it by Respondent just before its anticipated use at trial, noted while he was examining Respondent at trial that the dates in the log for the claimed calls were for the

wrong year. When counsel then asked Respondent about the obvious discrepancy, Respondent responded in a fumbling way that the error might have been due to his computer changing all of the dates in the date column of the log from 2011 to 2010. That explanation was unpersuasive. No explanation was provided as to why Respondent's computer would have changed dates from 2011 to 2010. While computers will sometimes change the date on a document to the date that the document is being printed, Exhibit D5 states on its face that it was printed out by the computer on "6/25/2012". Hence, if the dates on the document were automatically changed, the change presumably would have been 2012, not 2010. Moreover, in the "Message" block for many of the other entries in the log, there is text of messages recorded for various then-upcoming events. All of the dates in these messages refer to dates in 2010. (May 5: *"going in ex parte on 6/24/10"*; May 25: *"She wants to take her son (15 years old) to India for 2 weeks in August. 8/1/10-8/15/10.";* June 4: *"The Court allowed her to schedule Mediation after the due date of 8/12/10. Her available dates are 8/16/10 2:00. 8/17/10 2:00, 8/18/10 – 8/20/10 10:00. She needs to let the Court know today*[10]*. Mediator will allow Defendants to appear telephonically if necessary."*) There was no explanation given for why a computer would have changed any numbers or dates in the text of these recorded messages. Finally, the phone log does not correlate with the other evidence in the case. There was evidence during trial of numerous phone calls being made by the attorneys for Triton and SBDL to Respondent's office and messages being left during the period from May 1, 2011 and June 7, 2011. The only entries in the log related to Triton or SBDL are to the few calls purportedly received from Randall.

Respondent's lack of honesty with this court is an aggravating factor. (Std. 1.2(b)(vi); *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 791-792; *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282-283.)

[10] If this call had been received by Respondent's office on June 4, 2011, rather than in 2010, it would have been received on a Saturday, a day when the court would have been closed.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) The court makes the following findings with regard to possible mitigating factors.

No Prior Discipline

Respondent practiced law in California for slightly over 19 years prior to the commencement of the instant misconduct. During that span, Respondent had no prior record of discipline. Respondent's lengthy tenure of discipline-free practice is a mitigating factor. (Std. 1.2(e)(i); *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343, 350; *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, 589.) However, the weight to be given to that fact is reduced greatly by the fact that the misconduct here is serious. (Std. 1.2(e)(i); *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 44; *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 116; see also *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 520; *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679, 688; *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583, 594 [mitigating weight of such a long period of discipline-free service does not rule out possible disbarment in appropriate case].)

Character Evidence

This court declines to find character evidence as a significant mitigating factor. Respondent presented good character testimony from only one witness, who acknowledged that he was not familiar factually with the charges pending against Respondent. Character evidence from such a single witness does not constitute "a wide range of references in the legal and general communities and who are aware of the full extent of the member's misconduct." (Std. 1.2(e)(vi); *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476-

477; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190; *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359.)

Community/Pro Bono Service

Respondent testified that he has regularly performed considerable volunteer service on behalf of victims' rights and domestic violence organizations and that he also provides frequent pro bono legal work for indigent clients. Such service is entitled to some mitigating weight. (See also *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [pro bono and community service as mitigating factor].) However, because Respondent offered only his own testimony to establish these efforts, this court assigns only modest weight to this mitigation evidence. (See *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [limited mitigation weight for community service established only by the respondent's testimony].)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than 20 years ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36

Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

The State Bar contends that disbarment of Respondent is called for by both the case law and the standards and that such is necessary to protect both the public and the profession. This court agrees.

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. The most severe sanction is found at standard 2.2(a) which recommends disbarment for willful misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case the minimum discipline recommended is a one-year actual suspension. Misappropriation of client funds has long been viewed as a particularly serious ethical violation. It breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the profession. (*McKnight v. State* Bar (1991) 53 Cal.3d 1025, 1035; *Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.)

Respondent's misconduct represents an egregious violation by him of his fiduciary duties to Triton and SBDL. He voluntarily assumed important positions of responsibility and trust in two significant business transactions. Having formally agreed to assume responsibility for safeguarding funds belonging to Triton and SBDL, he then allowed and assisted those companies to entrust nearly $1 million to him for the important purpose of preventing those funds from being mishandled by Rosemax and/or Bretz. Having directed those companies to pay their funds into his client trust account, where it should have remained safe from any miscreant intentions of

Respondent's client, Respondent instead almost immediately withdrew the funds from that account and disbursed the money to various payees, designated by Bretz, without the knowledge or authority of Triton or SBDL. Once the funds were disbursed by Respondent to those payees, they were gone.

The trust of the public, including the members of the business community, that funds entrusted to an attorney for safekeeping will remain safe is frequently a critical component in the ability of the public to conduct its affairs and transact its business. Misconduct damaging or even endangering that trust is intolerable, and standard 2.2(a) makes clear that it will not be condoned.

The amount of money misappropriated by Respondent was far from being insignificant, and the harm caused by Respondent's misconduct was even greater. The guideline of Standard 2.2(a) clearly indicates that Respondent be disbarred.

Turning to the case law, misappropriation of client funds has long been viewed by the courts as a particularly serious ethical violation. Misappropriation breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the profession. (*McKnight v. State Bar, supra*, 53 Cal.3d at p. 1035; *Kelly v. State Bar*, *supra*, 45 Cal.3d at p. 656.)

The Supreme Court has consistently stated that misappropriation generally warrants disbarment in the absence of clearly mitigating circumstances. (*Kelly v. State Bar, supra*, 45 Cal.3d at p. 656; *Waysman v. State Bar, supra*, 41 Cal.3d at p. 457; *Cain v. State Bar* (1979) 25 Cal.3d 956, 961.) The Supreme Court has also imposed disbarment on attorneys with no prior record of discipline in cases involving a single misappropriation. (See, e.g., *In re Abbott* (1977) 19 Cal.3d 249 [taking of $29,500, showing of manic-depressive condition, prognosis uncertain].) In *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, an attorney with over 11 years of practice and no

prior record of discipline was disbarred for misappropriating approximately $29,000 in law firm funds over an 8-month period. In *Chang v. State Bar* (1989) 49 Cal.3d 114, an attorney misappropriated almost $7,900 from his law firm, coincident with his termination by that firm, and was disbarred. (See also *In the Matter of Blum, supra,* 3 Cal. State Bar Ct. Rptr. 170 [no prior record of discipline, misappropriation of approximately $55,000 from a single client]; *In the Matter of Spaith, supra,* 3 Cal. State Bar Ct. Rptr 511 [misappropriation of nearly $40,000, misled client for a year, no prior discipline]; *Kennedy v. State Bar* (1989) 48 Cal.3d 610 [disbarment for misappropriation in excess of $10,000 from multiple clients and failure to return files with no prior misconduct in eight years]; and *Kelly v. State Bar, supra,* 45 Cal.3d 649 [disbarment for misappropriation of $20,000 and failure to account with no prior discipline in seven years].)

Here, Respondent was culpable of numerous acts of misappropriation, ultimately totaling $950,000. He continues to dispute his culpability for his misconduct and instead seeks to find justifications for it. Under such circumstances, disbarment is both appropriate and necessary to protect the profession and the public.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **Robert M. Victor,** Member No. 156232, be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

Restitution

It is further recommended that Respondent make restitution to the following former clients: (1) to Triton Films Inc. in the amount of $475,000.00, plus 10% interest per annum from April 20, 2011 (or to the Client Security Fund to the extent of any payment from the fund to

Triton, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and (2) to SBDL Productions, LLC in the amount of $475,000, plus 10% interest per annum from April 15, 2011 (or to the Client Security Fund to the extent of any payment from the fund to SBDL, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

Rule 9.20

The court further recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

Costs

The court further recommends 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.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Robert M. Victor,** Member No. 156232**,** be involuntarily enrolled as an inactive

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member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)[11]

Dated: September _____, 2012.

DONALD F. MILES
Judge of the State Bar Court

[11] An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice law, or even to hold himself or herself out as entitled to practice law. (*Ibid*.) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid*.; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)