

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos.: 12-O-15405 (12-O-15555;
) 12-O-16212); 12-O-10161-DFM
) (Cons.)
RONALD WHITE,) DECISION INCLUDING DISBARMENT
) RECOMMENDATION AND
Member No. 85723,) INVOLUNTARY INACTIVE
A Member of the State Bar.) ENROLLMENT ORDER

INTRODUCTION

Respondent **Ronald White** (Respondent) was charged at trial with eight counts of misconduct, involving four different client matters.¹ The counts included allegations that Respondent willfully violated (1) Business and Professions Code section 6106 (moral turpitude - breach of fiduciary duty);² (2) section 6068, subdivision (a) (failure to comply with laws – breach of common law fiduciary duty); (3) section 6106 (moral turpitude - misappropriation); (4) section 6106 (moral turpitude - misrepresentation); and (5) section 6068, subdivision (i) (failure to cooperate in State Bar investigation)[four counts]. The State Bar had the burden of proving the above charges by clear and convincing evidence. The court finds culpability, as set

¹ As will be discussed below, ten of the thirteen counts in the initial notice of disciplinary charges were dismissed by the State Bar prior to the trial date in this matter.

² Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

forth below. 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) in case Nos. 12-O-15405 (Payne), 12-O-15555 (Nelson), and 12-O-16212 (Newell) was filed by the State Bar of California on June 3, 2013. The NDC contained 13 counts, including charges of misrepresentation, failing to act with competence [two counts], failing to respond to client inquiries, failing to refund unearned fees [two counts], failing to inform client of significant developments [three counts], failing to release client's file, and failing to cooperate in a State Bar investigation [three counts]. On July 18, 2013, Respondent filed his response to the NDC, denying culpability of any of the thirteen counts.

An initial status conference was held in the matter on July 15, 2013. At that time the case was given a trial date of October 1, 2013, with a five-day trial estimate.

On October 1, 2013, this court was in overseeing a lengthy trial in another matter. As a result, the trial in this case was continued to January 22, 2014.

On January 17, 2014, on the eve of the new scheduled trial date, the State Bar successfully moved to dismiss 10 of the 13 pending counts in the Payne, Nelson and Newell matters retaining only the three counts that Respondent had failed to cooperate in the State Bar's investigations of those matters. Those remaining three counts were disputed by Respondent. At that same time, because Respondent was required to be present in a superior court matter at the same time as the scheduled trial in this matter, the trial of this matter was continued to March 21, 2014.

On March 17, 2014, the State Bar was in the process of filing charges against Respondent in a new matter (case No. 12-O-10161[Giorgi]). As a result, Respondent filed a motion on that

date to continue the pending trial in order that the cases might be consolidated and tried at one time. On March 18, 2014, the State Bar filed an opposition to the motion, based on Respondent's alleged delay in making the request.

Prior to calling the matter for trial on March 21, 2014, this court convened a status conference for the purpose of addressing the motion to continue the trial. The State Bar had still not filed charges in case No. 12-O-10161, but informed the court that it would soon be doing so. While the State Bar did not waive its opposition to the continuance, the parties agreed and the court ordered as follows:

- The pending cases were abated for two weeks.
- The scheduled trial date was vacated.
- The State Bar was expected to file an NDC in case No. 12-O-10161 during the following two weeks. On the date that the NDC was filed, the State Bar was required both to serve the NDC in the manner required by the rules and transmit by fax, email, or personal delivery a copy of the NDC to Respondent.
- Immediately on filing, the new case would be deemed consolidated with the previously-filed cases. In addition, each side was deemed to have made and received a discovery request pursuant to rule 5.65 of the Rules of Procedure of the State Bar on the date the NDC is filed. The provision in rule 5.65 delaying the making of any such discovery request was waived by the parties.
- The consolidated cases were made subject to the provisions of this court's trial-setting order of July 15, 2013, with the following modifications:
 - (1) Trial would commence on May 20, 2014, with a four-day trial estimate;
 - (2) a pretrial conference would be held in-person on May 12, 2014, at 10:30 a.m.;
 - (3) pretrial statements would be filed on or before May 9, 2014; and
 - (4) the deadline for lodging exhibits was May 12, 2014.

On March 24, 2014, the State Bar filed a Notice of Disciplinary Charges (NDC) in case No. 12-O-10161. On April 21, 2014, Respondent filed a motion to dismiss that NDC, alleging

that it did not state disciplinable offenses and that Respondent was precluded from responding to the allegations by his attorney-client relationship with Curtis Peterson.

On May 5, 2014, the State Bar filed an opposition to the motion to dismiss.

On May 6, 2014, this court denied the motion to dismiss, finding that each of the counts alleged sufficient facts to state a disciplinable offense; that each count cited the specific statute or rule supporting its allegation of misconduct; and that Respondent's arguments were based on his contention that the factual allegations were untrue. Such arguments do not support a motion to dismiss directed at the sufficiency of the NDC. This court also found that Respondent's claim, that he was unable to respond to the allegations of the NDC due to his relationship with Curtis Peterson, also depends on his denial of the accuracy of the allegations of the NDC and ignored the fact that the fiduciary duties alleged in the NDC allegedly arose from Respondent's relationship with John Giorgi, not Peterson. Since Respondent disavowed having any attorney-client relationship with Giorgi, no privilege would apply to Respondent's dealings with him.³ Respondent was then ordered to file a written response to the NDC prior to the commencement of the consolidated trial on May 20, 2014.

Trial was commenced on May 20, 2014. A new motion by Respondent to continue the trial was denied at that time, as was a motion by the State Bar to exclude Respondent's evidence. Because Respondent had not yet complied with the May 6, 2014 order to file his written response to the NDC prior to the commencement of trial, all of the allegations of the NDC were deemed disputed by Respondent for purposes of going forward with the trial, and Respondent

³ At trial, the court concluded that the crime-fraud exception of Evidence Code section 956 applied to Respondent's communications with Peterson, thereby allowing Respondent to testify regarding those communications to seek to explain his actions.

was directed to file his response forthwith or have his default entered. On May 23, 2014, Respondent filed his response to the NDC.⁴

Trial was completed on May 21, 2014. During the course of the trial, the parties executed and filed a written stipulation regarding the bulk of the underlying facts in the three initial three cases. The State Bar was represented at trial by Deputy Trial Counsel Agustin Hernandez. Respondent acted as counsel for himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's responses to the NDCs, the stipulation of undisputed facts filed by the parties, and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on May 31, 1979, and has been a member of the State Bar at all relevant times.

Case No. 12-O-15405 (Payne Matter)

On August 29, 2012, a State Bar investigator mailed a letter to Respondent at his official State Bar membership records address regarding a complaint made by Kevin Payne. The State Bar investigator's August 29, 2012 letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in Payne's complaint by September 12, 2012. Respondent received the letter but did not respond to it.

⁴ On May 28, 2014, Respondent filed a motion for reconsideration of this court's denial of his motion to dismiss and his motion to continue the trial. The motion fails to set forth any good cause or other basis under rule 5.115 of the Rules of Procedure of the State Bar for any relief from this court's prior rulings. Therefore, the motion is denied in its entirety.

Count 5 – Section 6068, subd. (i) [Failure to Cooperate in State Bar Investigation]

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.

By failing to respond to the letter of the State Bar’s investigator, Respondent willfully violated section 6068, subdivision (i). (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 644 [attorney may be found culpable of violating § 6068, subd. (i), for failing to respond to State Bar investigator’s letter, even if attorney later appears and fully participates in formal disciplinary proceeding].) While Respondent alleges in his response to the NDC that his failure to respond to the State Bar’s investigation was a result of his busy schedule, that fact does not excuse an attorney’s failure to comply with the statutory duty to cooperate with the State Bar’s investigation.

Case No. 12-O-15555 (Nelson Matter)

On August 29, 2012, and September 17, 2012, a State Bar investigator mailed letters to Respondent at his official State Bar membership records address regarding a complaint made by James Nelson. The State Bar investigator’s August 29, 2012, and September 17, 2012 letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in Nelson’s complaint by September 12, 2012, and October 1, 2012, respectively. Respondent received both of the letters but did not respond to either of them.

Count 9 – Section 6068, subd. (i) [Failure to Cooperate in State Bar Investigation]

As discussed above, this failure by Respondent to respond to the letters of the State Bar’s investigator in the Nelson State Bar disciplinary investigation constituted a willful violation by him of section 6068, subdivision (i).

Case No. 12-O-16212 (Newell Matter)

On January 29, 2013, and February 12, 2013, a State Bar investigator mailed letters to Respondent at his official State Bar membership records address regarding a complaint made by Annette Coleman on behalf of Michael Newell. The State Bar investigator's January 29, 2013, and February 12, 2013 letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar regarding the Newell complaint by February 12, 2013, and February 26, 2013, respectively. Respondent received both of the letters but did not respond to either of them.

Count 12 – Section 6068, subd. (i) [Failure to Cooperate in State Bar Investigation]

As discussed above, the above failure by Respondent to respond to the letters of the State Bar's investigator in the Newell State Bar disciplinary investigation constituted a willful violation by him of section 6068, subdivision (i).

Case No. 12-O-10161 (Giorgi Matter)

In 2009, Respondent was approached by Curtis Peterson (Peterson) about the possibility of assisting Peterson in dealing with his prospective investment clients. Peterson, using an entity named Express International, LLC, offered to invest money of potential investment clients in purported discounted bank guarantees of certain foreign banks. He contractually assured these investor-clients that they would receive spectacular returns without any risk of losing their invested money. In approaching Respondent about the possibility of participating in the transactions, Peterson told Respondent that these prospective clients would feel more secure wiring their money into an attorney's client trust account in order to be assured that Peterson "would not run off with it." In exchange for Respondent using his client trust account (CTA) to function in that intermediary position, Respondent testified that he was to receive \$3,500 for

each transaction. Respondent agreed to the arrangement and authorized Peterson to provide his name and bank information to prospective investors.

In October 2009, John Giorgi (Giorgi), an attorney in New Jersey, decided to invest funds with Peterson's company. He had been told that his funds were to be held in escrow in Respondent's client trust account by Respondent, a licensed California attorney.

After assuring himself that Respondent was a licensed attorney in California and that the bank account was as represented, Giorgi executed an Escrow/Joint Venture/Contract with Peterson's company, whereby he agreed to invest \$820,000. The written contract identified Respondent as the escrow holder, provided information for how money was to be transferred into Respondent's client trust account, made an express representation that the funds "are not at risk," and specified the following with regard to Respondent's duties as escrow holder:

Escrow Holder's duties hereunder shall be limited to the proper handling of such monies received into escrow holder's account and the proper purchase and safe keeping of such instruments in this transaction. Authorization is given to escrow holder to prepare, obtain and deliver the instruments to carry out the terms and conditions.

Escrow Holder shall acknowledge receipt of \$USD \$820,000 (Eight Hundred Twenty Thousand dollars) in cash or wire transfer which can be given immediate availability upon deposit. Any principal instructing escrow holder to cancel this escrow shall file notice of cancellation in writing escrow holder will return funds within 10 (ten) business days, if such right is exercised, all funds shall be returned to the party who deposited them and escrow holder shall have no liability hereunder. [Sic.]

This agreement was purportedly executed by both Peterson and Respondent. On November 3, 2009, Giorgi wired \$820,000 into Respondent's CTA.

Shortly thereafter, Giorgi decided to increase his investment with Peterson's company. A new Escrow/Joint Venture/Contract with Peterson's

company was prepared and signed, by which Giorgi agreed to increase his total investment to \$1,070,000. The agreement was essentially identical to the prior agreement, except for the date and amount of the investment. Again, it purported to have been signed by Respondent as the escrow holder. Pursuant to that agreement, Giorgi wired an additional \$250,000 into Respondent's CTA on November 10, 2009, for a total investment of \$1,070,000.

Notwithstanding the provisions of the Escrow agreements, Giorgi's understanding that Respondent was serving to safeguard the money, and Respondent's awareness that money was being wired into his account to prevent Peterson from running away with it, Respondent made absolutely no effort to safeguard the funds or to see that they were disbursed for proper purposes. Instead, Peterson had notified Respondent in advance that funds were going to be wired into the account and Peterson and Respondent had made arrangements to meet at Respondent's bank as soon as the funds were received. Once the two were at the bank, Respondent removed the funds from his account and disbursed them according to oral instructions provided by Peterson. Of the \$820,000 deposited on November 3, 2009, Respondent removed \$810,000 on the very next day, November 4, 2009. The \$250,000 deposited by Giorgi on November 10, 2007, was removed by Respondent on the very same day.

None of Giorgi's funds were used by Respondent for the purposes specified in the escrow agreement. The vast majority of these funds were merely turned over to Peterson by Respondent, sometimes with by cashier's check made payable to Peterson personally, sometimes by a cashier's check to one of Peterson's companies, and sometimes in cash. Other portions of Giorgi's funds were disbursed by Respondent to Peterson's church and to various individuals completely unknown to Respondent. Significantly, Respondent also disbursed \$30,000 of the funds to himself, despite the fact that he had provided no legal services of any value.

Respondent characterized these fees as a "bonus" paid to him by Peterson based on how well the Peterson's business was doing. Respondent was unconcerned over the fact that the bonus was being paid out of funds belonging to the investors and entrusted to Respondent as a fiduciary for safe-keeping.

Giorgi was expecting to begin receiving installments payments within a month, reflecting the guaranteed return on his investment. When he had not received the anticipated first payment, he telephoned Respondent in December 2009 to find out what was going on. During the telephone call, Respondent affirmed that he was acting as the escrow holder pursuant to the agreement, told Giorgi that no investments had been made because the various banks had changed their protocols, and sought to comfort Giorgi about the investment, telling him to be patient. He did not tell Giorgi that virtually all of the funds had already been disbursed by him from the account.

On January 24, 2010, when Giorgi had still not received any money, he again telephoned Respondent to express his concerns. During that call, Respondent again stated that there had been no purchases made with the money and falsely assured Giorgi that all of the funds remained in his client trust account. In fact, by that date all of the funds had been disbursed from the account.

After the phone calls, Respondent had notified Peterson of Giorgi's calls and was told not to talk any further with Giorgi. Although Giorgi subsequently made numerous calls to Respondent about the status of the \$1,070,000 investment and left numerous messages seeking a reply, Respondent did not respond to any of them.

On February 4, 2010, Giorgi faxed a letter to Respondent, demanding that his money be returned. He also asked that Respondent acknowledge receipt of the letter. Respondent received the letter but did nothing either to discuss the matter with Giorgi or to return any money to him.

Instead, Respondent turned the demand over to Peterson, who wrote a letter to Giorgi, stating that they were then in the process of making investments, with the first payout now being scheduled for March 1, 2010. On February 24, 2010, Peterson again wrote Giorgi to say that the payout was being delayed. In fact, there was never going to be a payout.

In June, September, and October 2010, Giorgi again made written demands on Respondent for a return of his funds, together with an accounting. Respondent did not respond to the demands or the letters. Giorgi then complained to the State Bar and to the Securities and Exchange Commission (the SEC).

On February 11, 2011, the SEC filed a complaint for securities violations against Peterson, Eric Maher, Express International, LLC, and Respondent. The complaint alleged:

This matter concerns a fraudulent offering scheme operated by Curtis Peterson ("Peterson"), Eric Maher ("Maher"), and Express International, LLC ("Express International"), and aided and abetted by attorney Ronald White ("White") (collectively, the "Defendants"). From September through December 2009, the Defendants raised almost \$3.3 million from at least 10 investors through an unregistered offering of securities in the form of investment contracts. Peterson and Maher told investors that they would pool their monies to purchase international bank instruments, then "lease" those instruments to "top 25" international banks willing to pay substantial fees for the right to place the instruments on their balance sheet for a brief period of time. By using the same instrument in multiple transactions per day, they claimed that they would generate profits sufficient to pay investors returns of as much as 1,000% per month for 12 months. Moreover, they promised investors that their monies would remain in a trust account at all times and never be placed at risk.

In reality, none of what Peterson and Maher told investors was true. Specifically, the program does not exist and the promised rates of return cannot be obtained. White, the attorney who controlled the trust account to which Express International investors were instructed to wire their monies, aided and abetted the fraudulent scheme by, among other things, converting investor principal into cashier's checks payable to Peterson, thus allowing Peterson to dissipate investor funds. Indeed, Peterson used only about 20% of investor monies for their avowed purpose and used the remainder to pay his personal expenses and to funnel monies to

third parties with no legitimate claim to them, including Curtis International Express, Inc. and Peterson's wife, Ann Scott (collectively, the "Relief Defendants").

The Defendants, by engaging in the conduct described in this Complaint, violated and/or aided and abetted violations of the antifraud, securities registration, and/or broker-dealer registration provisions of the federal securities laws.

(Ex. 19, pp. 2-3.)

At another point in the complaint, the SEC alleged that Respondent "knew that Peterson and Maher were engaged in fraudulent activity[:]"

White received copies of the investment agreements, which bear his signature, and evidenced his familiarity with them by discussing their contents with others on several occasions. Those contents are so inherently ludicrous as to put White on notice that he was furthering a fraudulent scheme.

White knew that he was being compensated almost solely for lending an attorney's imprimatur of legitimacy to the Defendants' fraudulent scheme because there was no rational relationship between the compensation he received and the value of the services he rendered. White was paid more than \$100,000 - and withdrew from the Trust Account more than \$400,000 - for (1) maintaining the Trust Account to which the investors were instructed to wire their money and (2) converting those monies into cashier's checks payable to Peterson.

(Ex. 19, p. 10.)

In answer to those charges, Respondent denied that he was aware of the fraudulent scheme, but admitted "that he maintained an attorney-client trust account into which investor money was wired and that he followed Peterson's direction as the distribution of funds to and from his attorney-client trust account." He also admitted "that he was paid slightly more than \$100,000 for his services." (Ex. 20, pp. 3, 7, and 13.)

On January 25, 2012, the United State District Court for the Southern District of California entered a Final Judgment of Disgorgement, Prejudgment Interest, and Civil Penalty

Against Defendant Ronald White. In that judgment, the court noted that Respondent had consented to entry of a Judgment of Permanent Injunction and Other Relief, which was entered on September 9, 2011, and incorporated into the Final Judgment. The court then "ordered, adjudged, and decreed that defendant White is liable for disgorgement of \$596,400, representing proceeds gained as a result of the conduct alleged in the Complaint[.]" In addition, the court ordered Respondent to pay a civil penalty of \$150,000. (Ex. 21, pp. 2-3.)

Count 1 – Section 6106 [Moral Turpitude – Breach of Fiduciary Duties]

Count 2 – Section 6068, subd. (a) [Failure to Support Laws – Breach of Common Law Fiduciary Duty]

Count 3 – 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, 2 and 3 of the NDC, the State Bar charges that Respondent's mishandling of the funds deposited by Giorgi into Respondent's client trust account constituted breaches of fiduciary duties imposed on Respondent by common law and acts of moral turpitude in violation of section 6106, including misappropriation of Giorgi's funds. This court agrees.

At the time Respondent agreed that investors could deposit money into his client trust account, he assumed a fiduciary relationship with those investors and was responsible for the proper handling of their funds. As stated by the Supreme Court, "When an attorney receives money on behalf of a third party who is not his client, he nevertheless is a fiduciary as to such

third party. ...'When an attorney assumes a fiduciary relationship and violates his duty in a manner that would justify disciplinary action if the relationship had been that of attorney and client, he may properly be discipline for his misconduct.'" (*Crooks v. State Bar* (1970) 3 Cal.3d 346, 355, quoting *Johnstone v. State Bar* (1966) 64 Cal.2d 153, 155-156; see also *Simmons v. State Bar* (1969) 70 Cal.2d 361, 365.)

Respondent was aware that the reason the investors were wiring money into his account, rather than into an account owned by Peterson or his company, was their desire to have the funds safeguarded from mishandling by those parties. Peterson had told Respondent when they were discussing the possibility of Respondent getting involved in the transactions: "I've got people who are going to be investing by me. They want to make sure that I'm not somebody who's just going to run away, whatever. So they want to know if there's a place where they can send their money to me." At trial, after describing the above conversation, Respondent concluded with the comment to the court, "I understood the importance of that." Sadly, his conduct did not reflect that understanding.

Respondent's principal defense here to culpability is his claim that he was also a victim of the dishonesty of his client Peterson and, like Giorgi, had allowed himself to be swindled. This defense is both legally and factually flawed. To begin with, Respondent's testimony that he was unaware at the time that Peterson was mishandling Giorgi's funds was not credible, and the clear and convincing evidence is to the contrary. Further, it must be noted that Giorgi had not been completely swindled by Peterson. Instead, Giorgi had taken affirmative steps to be protected from Giorgi by designating Respondent, as an attorney and fiduciary, to safeguard his funds. It was only when Respondent elected to ignore that fiduciary duty that Giorgi was put at risk.⁵

⁵ Respondent's testimony, that he was unaware of the escrow agreement, was not credible. Instead, Giorgi testified credibly that Respondent had acknowledged being aware of the escrow

Respondent's actions in turning control of Giorgi's funds immediately over to Peterson (including paying \$30,000 of the funds to himself) was intentional, dishonest and knowingly inappropriate. Such actions constituted both a breach by Respondent of his fiduciary duties (Count 1) and multiple intentional misappropriations by him of entrusted funds (Count 3), all actions in willful violation of the prohibition of section 6106 against acts of moral turpitude.⁶

Count 4 –Section 6106 [Moral Turpitude – Misrepresentation]

In this count the State Bar alleges that Respondent also violated section 6106 by misrepresenting to Giorgi on February 24, 2010, that all of Giorgi's funds still remained deposited in Respondent's client trust account.⁷

The evidence is clear and convincing that Respondent assured Giorgi on January 24, 2010, that Giorgi's funds remained on deposit in Respondent's client trust account at that time. This representation by Respondent was knowingly false and constituted a willful violation by him of section 6106.

Count 5 –Section 6068, subd. (i) [Failure to Cooperate in State Bar Investigation]

On April 8, 2013, the State Bar opened an investigation pursuant to a complaint made by Giorgi. On May 22, 2013, and June 19, 2013, a State Bar investigator mailed letters to Respondent at his official State Bar membership records address regarding Giorgi's complaint. The State Bar investigator's May 22, 2013, and June 19, 2013 letters requested that Respondent

agreement during the Giorgi's telephone conversations with Respondent in December 2009 and January 2010. In addition, when Giorgi sent a letter to Respondent in February 2010, referring both to the escrow agreement and to Respondent's role as escrow holder, Respondent did nothing to communicate to Giorgi any surprise at those statements or any belief by Respondent that he was not acting as an escrow holder.

⁶ The same acts support a finding of a willful violation of section 6068, subdivision (a). However, because such a finding would be duplicative here, no additional weight is given to such a finding.

⁷ The NDC mistakenly dates this conversation as having taken place on "February 10, 2011." At trial, it was agreed and ordered that the NDC would be deemed amended to replace that date with the correct date of January 24, 2010. (Rules of Proc. of State Bar, rule 5.44(C).)

respond in writing to specified allegations of misconduct being investigated by the State Bar regarding the Giorgi complaint by June 5, 2013, and July 3, 2013, respectively. Respondent received both letters but did not respond to either of them.

Respondent's failure to respond to the letters of the State Bar's investigator in the Giorgi State Bar disciplinary investigation constituted a willful violation by him of section 6068, subdivision (i).

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.

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct, ⁸ std. 1.5.)⁹ The court finds the following with respect to aggravating circumstances.

⁸ All further references to standard(s) or std. are to this source.

⁹ Previously standard 1.2(b).

Prior Discipline

Respondent has been disciplined on two prior occasions.

In March 2002, the Supreme Court issued an order in State Bar case No. 00-C-10007, disciplining Respondent for the circumstances surrounding his misdemeanor conviction for violating Penal Code section 70(a) [unauthorized emoluments, gratuities or rewards]. In a stipulation executed at that time by the State Bar and Respondent, it was agreed that these circumstances involved a violation of section 6068, subdivision (a), and acts of moral turpitude, including Respondent's misleading his client and fabricating a false community service letter. Respondent was suspended for one year, stayed, and placed on probation for two years on condition that he be actually suspended for three months.

In October 2011, the Supreme Court issued an order disciplining Respondent for violations of (1) Rules of Professional Conduct, rule 3-700(D) [failure to return client file] in two client matters; (2) section 6068, subdivision (m) [failure to inform client of significant developments]; and (3) section 6068, subdivision (i) [failure to cooperate in State Bar investigation]. Respondent was again suspended for one year, stayed, and placed on probation for two years on condition that he be actually suspended for 90 days. The conditions of probation included the requirement that Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct during the probation period.

This prior record of discipline is a significant aggravating factor. (Std. 1.5(a).)¹⁰

Multiple Acts of Misconduct

Respondent is culpable of multiple acts of misconduct. This is an aggravating factor. (Std. 1.5(b).)¹¹

¹⁰ Previously standard 1.2(b)(i).

¹¹ Previously standard 1.2(b)(ii).

Harm

Standard 1.5(f)¹² provides as an aggravating circumstance that the member's misconduct significantly harmed a client, the public or the administration of justice. Respondent's misconduct here caused significant harm to Giorgi, who has received back only \$10,000 of the \$1,070,000 to Respondent as a fiduciary in 2009. This is a significant aggravating factor.

Mitigating Factors

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.)¹³ The court finds that no mitigating factors were shown by the evidence presented to this court.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the 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.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.)

¹² Previously standard 1.2(b)(iv).

¹³ Previously standard 1.2(e).

In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) 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.)

Standard 1.7(a)¹⁴ 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. In the present proceeding, the most severe sanction for Respondent's misconduct is found in standards 2.1(a) and 1.8(b). Application of either of those two standards suggests that disbarment is the appropriate discipline to be recommended.

Standard 2.1(a) provides: "Disbarment is appropriate for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case actual suspension of one year is appropriate." Here, the amount of money misappropriated by Respondent was clearly not insignificant, and no mitigating circumstances have been demonstrated.

In turn, standard 1.8(b) provides:

If a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:

1. Actual suspension was ordered in any one of the prior disciplinary matters;

¹⁴ Previously standard 1.6(a).

2. The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or
3. The prior disciplinary matters coupled with the current record demonstrate the member's unwillingness or inability to conform to ethical responsibilities.”

Standard 1.8(b) applies to the instant matter. Respondent has been disciplined on two prior occasions with actual suspension being ordered on both occasions; there are no compelling mitigating circumstances here; and none of the misconduct here occurred during the same time period as that resulting in the prior discipline. In addition, many of Respondent's acts of misconduct here occurred during the time that Respondent was on probation as a result of his second discipline, demonstrating his unwillingness or inability to conform to ethical responsibilities. Worse, Respondent had been disciplined in 2011 for failing to cooperate in a State Bar investigation in violation of an important professional obligation imposed by statute. Despite that prior discipline, Respondent repeatedly failed to respond to State Bar inquiries about various complaints against him throughout 2012 and 2013. In such instances, disbarment becomes necessary and appropriate to protect the public from future misconduct. That is clearly the situation here.

A review of the case law also confirms that disbarment is the appropriate discipline to recommend here. 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* (1991) 53 Cal.3d 1025, 1035; *Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.) The Supreme Court has consistently stated that misappropriation generally warrants disbarment in the absence of clearly mitigating circumstances. (*Kelly v. State Bar, supra*; *Waysman v. State Bar* (1986) 41 Cal.3d 452, 457; *Cain v. State Bar* (1979) 25 Cal.3d 956, 961.) The Supreme Court has 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* (Review Dept. 1996) 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].) The misconduct and aggravating factors here are significantly more egregious than the facts of any of the above cases.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **Ronald White**, Member No. 85723, 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.

California Rules of Court, 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.

Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds, and such payment is enforceable as provided under Business and Professions Code section 6140.5.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Ronald White**, Member No. 85723, be involuntarily enrolled as an inactive 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).)¹⁵

Dated: June _____, 2014

DONALD F. MILES
Judge of the State Bar Court

¹⁵ 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 to even 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. (*Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)