

Public Matter **FILED**

3/15/2019

**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

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STATE BAR OF CALIFORNIA
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STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

SBC-19-O-30113

In the Matter of:) Case No. 17-O-00205
)
BARRY FISCHER,) NOTICE OF DISCIPLINARY CHARGES
No. 122412,)
)
A Member of the State Bar.)

NOTICE - FAILURE TO RESPOND!

**IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT
THE STATE BAR COURT TRIAL:**

- (1) YOUR DEFAULT WILL BE ENTERED;**
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU
WILL NOT BE PERMITTED TO PRACTICE LAW;**
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION
AND THE DEFAULT IS SET ASIDE, AND;**
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

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1 The State Bar of California alleges:

2 JURISDICTION

3 1. Barry Fischer ("respondent") was admitted to the practice of law in the State of
4 California on January 24, 1986, was a member at all times pertinent to these charges, and is
5 currently a member of the State Bar of California.

6 COUNT ONE

7 Case No. 17-O-00205
8 Business and Professions Code, section 6106
9 [Moral Turpitude – Misappropriation/Breach of Fiduciary Duty]

10 2. On or about July 3, 2013, respondent received on behalf of respondent's client, Navid
11 Davidian, and Davidian's spouse, Sharona Davidian, certain community funds to be held in trust
12 pending court order or stipulation in the dissolution matter *Navid Davidian v. Sharona Davidian*,
13 Los Angeles Superior Court case no. BD567366 ("dissolution matter").

14 3. On or about July 3, 2013, Navid Davidian's former counsel deposited the \$38,147.43
15 into respondent's client trust account at California Bank & Trust account no. XXXXXX6121
16 ("client trust account") on behalf of the parties in the dissolution matter.

17 4. Between July 3, 2013 and October 11, 2013, portions of the community funds in
18 respondent's client trust account were disbursed pursuant to court orders and stipulations
19 between the parties in the dissolution matter. The remaining amount of \$18,278.83 was to be
20 maintained in trust on behalf of the parties pending further court order or stipulation.

21 5. Between in or about November 21, 2013 and March 3, 2014, respondent willfully and
22 intentionally misappropriated \$18,278.83 that respondent's client, Navid Davidian, and
23 Davidian's spouse, Sharona Davidian, were entitled to receive. Respondent thereby breached his
24 fiduciary duty to Navid Davidian on one hand, and Sharona Davidian on the other hand, and
25 committed an act involving moral turpitude, dishonesty or corruption in willful violation of
26 Business and Professions Code, section 6106.

6. A violation of section 6106 may result from intentional conduct or grossly negligent conduct. Respondent is charged with committing an intentional misappropriation. However, should the evidence at trial demonstrate that respondent misappropriated funds as a result of grossly negligent conduct, respondent must still be found culpable of violating section 6106 because misappropriation through gross negligence is a lesser included offense of intentional misappropriation.

COUNT TWO

Case No. 17-O-00205
Rules of Professional Conduct, Former Rule 4-100(A)
[Failure to Maintain Client Funds in Trust Account]

7. On or about July 3, 2013, respondent received on behalf of respondent's client, Navid Davidian, and Davidian's spouse, Sharona Davidian, certain community funds to be held in trust pending court order or stipulation in the dissolution matter *Navid Davidian v. Sharona Davidian*, Los Angeles Superior Court case no. BD567366 ("dissolution matter").

8. On or about July 3, 2013, Navid Davidian's former counsel deposited the \$38,147.43 into respondent's client trust account at California Bank & Trust account no. XXXXXX6121 ("client trust account") on behalf of the parties in the dissolution matter.

9. Between July 3, 2013 and October 11, 2013, portions of the community funds in respondent's client trust account were disbursed pursuant to court orders and stipulations between the parties in the dissolution matter. The remaining amount of \$18,278.83 was to be maintained in trust on behalf of the parties pending further court order or stipulation.

10. Navid Davidian and Sharona Davidian were jointly entitled to the \$18,278.83 pending further court order or stipulation. Respondent failed to maintain a balance of \$18,278.83 on behalf of Navid Davidian and Sharona Davidian in respondent's client trust account, in willful violation of the former rule 4-100(A), Rules of Professional Conduct.

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NOTICE - INACTIVE ENROLLMENT!

YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT.

NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: 3/14/2019

By: Stacia L. Johns
Deputy Trial Counsel

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 17-O-00205

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

☐

By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.

☒

By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))

☐

By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ("UPS").

☐

By Fax Transmission: (CCP §§ 1013(e) and 1013(f))

Based on a court order or an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.

☐

By Electronic Service: (CCP § 1010.6)

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*

☒

(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,

Article No.: 9414 7266 9904 2111 0122 98 at Los Angeles, addressed to: *(see below)*

☐

(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,

Tracking No.: addressed to: *(see below)*

Person Served	Business-Residential Address	Fax Number	Courtesy Copy to:
Edward O. Lear	Century Law Group LLP 5200 W Century Blvd #345 Los Angeles, CA 90045	Electronic Address	

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

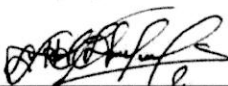
I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ("UPS"). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: March 15, 2019

SIGNED:


Lusine Hambardzumyan
Declarant