

Attorney Discipline Board

2020-Apr-30

Grievance Administrator,

Petitioner/Appellant,

v

John P. Lozano, P 52862,

Respondent/Appellee,

Case No. 19-31-GA

Decided: April 30, 2020

Appearances

Dina P. Dajani, for Grievance Administrator, Petitioner/Appellant
John P. Lozano, In Pro Per, Respondent/Appellee

BOARD OPINION

Genesee County Hearing Panel #1 of the Attorney Discipline Board issued an order on September 11, 2019, suspending respondent's license to practice law in Michigan for a period of three years, and ordering him to pay \$3,500 in restitution. The Grievance Administrator filed a timely petition for review, requesting that the Board increase the discipline imposed by the hearing panel to an order of disbarment. Although not required to do so, respondent did not file a responsive brief. The suspension of respondent's license to practice law became effective October 3, 2019.

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the evidentiary record before the panel and consideration of the brief and argument presented by the Grievance Administrator at a review hearing conducted on February 19, 2020. Respondent did not appear for the review hearing despite being required to do so under MCR 9.118(C)(1), and his presence was not excused by the Board. For the reasons discussed below, we increase the discipline in this case from a three-year suspension to disbarment, and affirm the order requiring respondent to pay restitution.

I. Panel Proceedings

On April 18, 2019, the Grievance Administrator filed Formal Complaint 19-31-GA, alleging in a single count that respondent committed professional misconduct by failing to keep a client reasonably informed and by misappropriating client funds. Specifically, it was alleged that Rochelle Klim paid respondent a total of \$700 to appear at a settlement hearing and subsequently represent her company, Klim Properties, LLC, as a creditor in a Chapter 13 bankruptcy proceeding. In accordance with the Chapter 13 plan approved by the judge, Ms. Klim was supposed to receive payments directly from the bankruptcy trustee. It was alleged that eight separate checks totaling \$3,500 payable to Klim Properties were mailed to respondent, and instead of informing Ms. Klim about the checks, respondent endorsed the checks and deposited them into his own account under the name Lozano Law PLLC.

Based upon a default entered against respondent after failing to answer the formal complaint, Genesee County Hearing Panel #1 found that respondent committed the misconduct set forth in the formal complaint in its entirety. Specifically, the hearing panel found respondent failed to keep a client reasonably informed about the status of a matter, in violation of MRPC 1.4(a); failed to promptly notify a client when funds in which the client had an interest were received, in violation of MRPC 1.15(b)(1); failed to promptly pay or deliver any funds that a client was entitled to receive, and failed to promptly render a full accounting regarding the funds, in violation of MRPC 1.15(b)(3); failed to hold his client's property separate from his own property, in violation of MRPC 1.15(d); violated or attempted to violate the Rules of Professional Conduct, in violation of MRPC 8.4(a); engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b); engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure or reproach, in violation of MCR 9.104(2); engaged in conduct that is contrary to ethics, in violation of MCR 9.104(3); knowingly misrepresented facts or circumstances surrounding a request for investigation, in violation of MCR 9.104(6); failed to answer a request for investigation in conformity with MCR 9.113(A), in violation of MCR 9.104(7). Finding that respondent's conduct warranted a suspension under Standard 4.12 of the American Bar Association Standards for Imposing Lawyer Sanctions (ABA Standards), the panel ordered that a three-year suspension of respondent's license to practice law was appropriate, plus restitution to the client.

II. Discussion

The Grievance Administrator argued at the hearing below that ABA Standard 4.11 was the standard that applied given that respondent's conduct could be described in no other way than intentional. The Grievance Administrator's argument on review has not changed; disbarment is what should occur here. We agree that there can be little question that the disbarment standard found in ABA Standard 4.11 is applicable to the facts and circumstances of this matter. In addition, the Administrator rightly relies on well established principles set forth in a long line of Board opinions dating back to at least 2001 that have held that disbarment is the appropriate sanction to impose for knowing conversion of client or third party funds, absent compelling mitigation. See *Grievance Administrator v Frederick Petz*, 99-102-GA; 99-130-FA (ADB 2001); *Grievance Administrator v Rodney Watts*, 05-151-GA (ADB 2007); *Grievance Administrator v Carl Oosterhouse*, 07-93-GA (ADB 2008); *Grievance Administrator v Brent Hunt*, 12-10-GA (ADB 2012); *Grievance Administrator v Mark Tyslenko*, 12-17-GA (ADB 2013); *Grievance Administrator v Peter C. Mason, Jr.*, 13-4-GA (ADB 2013). Counsel for the Grievance Administrator also asserted that the following aggravating factors set forth in Standard 9.2 apply: prior disciplinary offenses [9.22(a)], submission of false evidence, false statements, or other deceptive practices during the disciplinary process [9.22(f)], substantial experience in the practice of law [9.22(I)], and indifference to making restitution [9.22(j)].

Respondent was present at the hearing below and argued to the panel that he did not "knowingly" convert client funds because he thought the funds were owed to him, but respondent also acknowledged that his client is entitled to restitution. (Tr 6/13/19, p 52.) The evidence presented, however, did not support respondent's claim that he was owed funds. The evidence clearly established that respondent received eight checks over the course of seven months from the Bankruptcy Trustee, totaling \$3,500. All of the checks were payable to "Klim Properties, LLC, Care of John P. Lozano, Attorney" and were mailed to respondent's office address. There is no question respondent received the checks and did not tell Ms. Klim about the checks. There is also no dispute that respondent endorsed the checks, even though they were not payable to him, deposited the funds into his account held with Lozano Law, and eventually used the funds for personal expenses. Finally, there is no evidence to support respondent's claim that he was owed money by Ms. Klim. Ms. Klim testified that after she paid respondent \$700, she continued to ask him if she needed to pay anything more, to which he responded that the amount she had already paid was enough to cover his

services. (Tr 6/13/19, pp 19-20.)

With regard to “compelling mitigation,” there simply is none. This case is indistinguishable from the many others in which a lawyer has been disbarred for intentionally misappropriating client funds. While the hearing panel’s report states that they reviewed the duties violated, the lawyer’s mental state, the actual or potential injury to the clients, and the existence of aggravating or mitigating factors, the report makes no mention of which ones they found applicable, beyond declaring that ABA Standard 4.12 is the standard to apply. With our decision in *Petz*, practitioners have been on notice that disbarment is the presumptive sanction for intentional conversion, absent compelling mitigation. Without reference to any particular mitigating factors, the panel’s report provides no reason to believe that any mitigating factors actually apply, or that any that could apply are “compelling” as discussed in *Petz*. For that reason, we find that the three-year suspension imposed by the hearing panel is insufficient.

III. Conclusion

For the reasons discussed above, we find that the hearing panel imposed insufficient discipline. Accordingly, we increase the discipline imposed from a three-year suspension with restitution to disbarment, and affirm the requirement that respondent pay restitution as ordered by the hearing panel.

Board members Jonathan E. Lauderbach, Barbara Williams Forney, James A. Fink, Karen D. O'Donoghue, and Michael S. Hohausser concur in this decision.

Board members Michael B. Rizik, Jr., John W. Inhulsen, Linda Hotchkiss, MD., and Peter Smit were absent and did not participate.