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SJC-12305

IN THE MATTER OF WILLIAM P. CORBETT, JR.

October 25, 2017.

Attorney at Law, Disciplinary proceeding, Disbarment,
Commingling of funds. Conversion.

A single justice of this court ordered that the respondent, William P. Corbett, Jr., be disbarred from the practice of law for conduct including intentional conversion of funds belonging to two clients, causing deprivation for both. The respondent concedes that his conduct violated the rules of professional conduct applicable to attorneys; he appeals only the sanction imposed as being too harsh.¹ We affirm.

Background. Bar counsel filed a five-count petition for discipline with the Board of Bar Overseers (board). Three counts concerned the most serious allegations, charging that the respondent intentionally misused client funds, with deprivation resulting, and that he made various misrepresentations to the clients. One count alleged that the respondent failed to comply with the rules of professional conduct regarding client trust accounts. The final count charged that the respondent failed to cooperate and made misrepresentations during bar counsel's investigation of the respondent's conduct, and that he violated the terms of the resulting suspension from the practice of law. The respondent answered the petition, and the matter was

¹ We have reviewed the respondent's preliminary memorandum and record appendix, as well as the record that was before the single justice. Pursuant to S.J.C. Rule 2:23, 471 Mass. 1303 (2015), governing appeals in bar discipline cases, we dispense with oral argument.

referred to a hearing committee of the board. After a hearing, the hearing committee issued its report and recommended that the respondent be disbarred. The board voted to accept the report and recommendation.

Pursuant to S.J.C. Rule 4:01, § 8 (6), as appearing in 453 Mass. 1310 (2009), bar counsel filed an information in the county court. After a hearing, the single justice concluded that the hearing committee's factual findings, all of which were adopted by the board, were supported by substantial evidence, accepted the recommended sanction, and entered a judgment of disbarment.

Discussion. The respondent has acknowledged the most serious allegations of misconduct, i.e., those involving misappropriation of client funds, and it is unnecessary to our decision to consider other evidence of misconduct. Instead, we focus on the question of sanction. While each case is unique, and every offending attorney must receive the sanction most appropriate in the circumstances, the common, overarching factor for our consideration in all cases "is the effect upon, and perception of, the public and the bar." Matter of Alter, 389 Mass. 153, 156 (1983). That factor is promoted by "even-handed results in such cases." Id. For that reason, we review the single justice's determination of the appropriate sanction de novo, focusing on whether the sanction imposed is "markedly disparate from those ordinarily entered by the various single justices in similar cases," id., "tempered with substantial deference to the board's recommendation." Matter of Foley, 439 Mass. 324, 333 (2003). See Matter of Barrett, 447 Mass. 453, 464 (2006).

In this case, the ethical violations to which the respondent has admitted were serious. Among other things, he admitted to three counts of intentional misappropriation of client funds with temporary deprivation resulting. First, he misused approximately \$36,085.93 belonging to one client, which had been withheld from the settlement of a portion of her claims for the purpose of covering anticipated future litigation expenses. The respondent instead spent the money on matters unrelated to the client.

Second, after settling a second portion of the same client's claims, the respondent deposited a \$50,000 settlement check into his trust account, withdrew his fee without notifying the client or providing her with an accounting, and then misappropriated nearly all of the remaining balance. After

giving false explanations for his delay in sending her the settlement proceeds, the respondent sent the client a check, which was dishonored by the bank because of insufficient funds. It was not until after the client filed a complaint with bar counsel, and six months after bar counsel filed her petition for discipline, that the respondent repaid the client the funds due to her, plus interest.

Third, the respondent intentionally misused, for personal purposes, not less than \$5,800 from the proceeds of a second client's settlement to repay the funds he misappropriated from the first client. About two months before his disciplinary hearing, the respondent repaid the second client. At the time of the hearing, he had not complied with the second client's request that his files be returned to him.

The single justice correctly observed that the ordinary and presumptive sanction for attorneys who have intentionally misused and deprived their clients of funds is disbarment or indefinite suspension. Matter of Schoepfer, 426 Mass. 183, 187 (1997). See Matter of Haese, 468 Mass. 1002, 1008 (2014). A respondent has a heavy burden to justify any departure from that presumption, and for the reasons that follow, we conclude he has not done so. See Matter of Schoepfer, supra at 187-188.

1. As stated, the respondent made restitution to both clients after the petition for discipline was filed, but before the disciplinary hearing commenced. See Matter of Watt, 430 Mass. 232, 233 (1999). Although payment of restitution may tip the balance toward imposition of an indefinite suspension rather than disbarment, see id. at 236, that is so because restitution often evinces an "outward sign of the recognition of one's wrongdoing and the awareness of a moral duty to make amends to the best of one's ability." Matter of McCarthy, 23 Mass. Att'y Discipline Rep. 469, 470 (2007). Here, not only was there was no finding of "sincere remorse for and embarrassment about his misconduct," Matter of Watt, supra, but, to the contrary, the hearing committee rejected the respondent's testimony that he accepted full responsibility for his misconduct, finding instead that he "adopted an intentionally false affectation of remorse that was belied by his efforts to blame others, to elicit favorable testimony from his former clients that was not based in fact, and to portray himself as remorseful at the very times he attempted to misled his clients and to mislead and obstruct bar counsel." The hearing committee is "the sole judge of the credibility of the testimony presented at the hearing," Matter of Balliro, 453 Mass. 75, 83-84 (2009), quoting S.J.C. Rule

4:01, § 8 (5), and there is nothing to suggest clear error in its findings. See, e.g., Matter of Curry, 450 Mass. 503 (2008); Matter of Hoicka, 442 Mass. 1004, 1006 (2004). Giving due deference to the board's recommendation, we conclude that disbarment rather than indefinite suspension is the appropriate presumptive sanction in the circumstances.

2. There are no "special mitigating facts that justify less severe discipline" in this case. Matter of Schoepfer, 426 Mass. at 187. See Matter of Alter, 389 Mass. at 156-157. Indeed, the hearing committee's findings concerning insincerity of the respondent's assertions of remorse and acceptance of responsibility support weighing those facts in aggravation, rather than mitigation. See Matter of Eisenhower, 426 Mass. 448, 456-457, cert. denied, 524 U.S. 919 (1998) (lack of candor, remorse, or awareness of wrongdoing weighed in aggravation). See also Matter of Cobb, 445 Mass. 452, 480 (2005). Likewise, the board properly declined to weigh in mitigation the respondent's claims concerning the desirable results he obtained for his clients. Even assuming that the results were to the clients' advantage, good work is to be expected of attorneys; it is not a factor ordinarily considered in mitigation. The same is true of the absence of a prior record of discipline. Matter of Alter, supra at 157.

The respondent additionally argues that certain psychological conditions contributed to his misconduct and therefore should be weighed in mitigation. See Matter of Schoepfer, 426 Mass. at 188 ("If a disability caused a lawyer's conduct, the discipline should be moderated, and, if that disability can be treated, special terms and considerations may be appropriate"). See also Matter of Sharif, 459 Mass. 558, 562 (2011); Matter of Ring, 427 Mass. 186, 191 (1998) (attorney's depression causally related to misconduct). The hearing committee, however, declined to credit evidence supporting the requisite causal nexus between respondent's intentional misconduct and any psychological condition. Not only did the credible evidence fail to establish that his psychological condition was a "substantial contributing cause" of the misconduct, Matter of Balliro, 453 Mass. at 88, but it supports the hearing committee's observation that

"various forms of the respondent's intentional misconduct -
- including his serial misuse of client funds, his misrepresentations to his clients, and his misrepresentations in response to bar counsel's inquiries -- were too calculated and deliberate for the

[psychological] disabilities . . . to have had a substantially contributing role. That misconduct instead demonstrates a relatively clear and calculating respondent, aware of his misdeeds, attempting to disguise his wrongdoing."

The hearing committee was entitled to reject the respondent's proffered justification of his intentional misconduct. See Matter of Johnson, 452 Mass. 1010, 1011 (2008) ("The special hearing officer's observation is well taken that 'methodical and systematic' misuse of funds for personal purposes is inconsistent with any conclusion that the respondent was operating under a cognitive disability"). It was the respondent's obligation to demonstrate a causal connection between the psychological issues and the charged misconduct, see Matter of Luongo, 416 Mass. 308, 311 (1993), and there is no basis for disturbing the board's conclusion that he failed to do so.

3. In short, there are no factors in this record to be weighed in mitigation of sanction. However, aggravating factors are present. The respondent was admitted to the bar of the Commonwealth in 1992, and has substantial experience in the practice of law. Further, he engaged in multiple ethical violations over an extended period. Particularly when considered in the context of the hearing committee's findings concerning the respondent's lack of remorse and insincerity with regard to acceptance of responsibility, these factors are properly evaluated in aggravation of sanction. See Matter of Haese, 468 Mass. at 1007; Matter of Saab, 406 Mass. 315, 327-328 (1989).

Conclusion. Considering the respondent's multiple acts of misconduct and the facts found by the board in aggravation, the record of this case amply supports the single justice's conclusion that disbarment is the appropriate sanction.

Judgment of disbarment
affirmed.

The case was submitted on the papers filed, accompanied by a memorandum of law.

William P. Corbett, Jr., pro se.