SJC-12929

IN THE MATTER OF STEVEN A. ABLITT.

February 3, 2021.

Attorney at Law, Disciplinary proceeding, Disbarment, Conflict of interest, Misuse of client funds, Use of confidence or secret, Deceit. Due Process of Law, Attorney disciplinary proceeding.

The respondent attorney, Steven A. Ablitt, appeals from the judgment of a single justice of this court disbarring him from the practice of law.[1] He claims both that the findings of misconduct are not supported by substantial evidence and that his due process rights were violated in the disciplinary proceedings. We affirm.

1. Background. On September 6, 2016, bar counsel filed a two-count petition for discipline against the respondent and his former law partner, Lawrence F. Scofield, arising out of their default services law practice, Ablitt Scofield, P.C.[2] At one time, the firm had offices in Massachusetts, Florida, and Puerto Rico; until it was restructured in 2013, Ablitt owned ninety-nine shares of the firm, while Scofield owned the remaining

[1] This appeal is subject to the court's standing order governing bar discipline appeals. See S.J.C. Rule 2:23, 471 Mass. 1303 (2015). Pursuant to the standing order, we dispense with oral argument.

[2] Lawrence F. Scofield defaulted on the petition for discipline and subsequently was disbarred. The petition for discipline proceeded to hearing solely against the respondent.

share.[3] Ablitt also owned, or held interests in, several ancillary businesses, some of which provided services to the firm.

Because of the nature of its practice, the firm customarily advanced certain fees for the benefit of its lender clients for expenses such as filing fees, title searches, and auctions. Over time, and particularly after U.S. Bank Nat'l Ass'n v. Ibanez, 458 Mass. 637, 655 (2011) (Ibanez) (foreclosure action may not be commenced where lender not in possession of promissory note), those cash advances, combined with poor billing and collection practices, created a financial burden for the firm, and client funds on deposit in an Interest on Lawyers' Trust Account (IOLTA or IOLTA account) were used to pay the firm's operating expenses.

As amended, count one of the petition for discipline charged that the respondent was responsible for intentional misuse of client funds, failed as a partner in the firm to supervise the firm's financial and accounting personnel, and failed to maintain required IOLTA account records. Count two charged that the respondent engaged in misrepresentation, disclosed confidential client information, and was involved in a conflict of interest in connection with a factoring agreement the firm used to finance its accounts receivable.

A hearing committee of the Board of Bar Overseers (board) held a public hearing, at which the respondent was represented by counsel. Over the course of thirteen days, fifteen witnesses, including the respondent and Scofield, testified, and 283 exhibits were admitted in evidence. After the hearing, on the respondent's motion, the evidence was reopened and there was an additional day of testimony. Thereafter, the hearing committee issued a report, determined that bar counsel had proved the allegations of misconduct, and recommended that the respondent be disbarred.

The board adopted the committee's findings, conclusions, and recommendations, and voted to recommend that the respondent be disbarred. An information was filed in the county court pursuant to S.J.C. Rule 4:01, § 8 (6), as appearing in 453 Mass. 1310 (2009). A single justice of this court reviewed the record

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[3] In 2013, three partners were added to the firm, and it was restructured as "Connolly, Geaney, Ablitt & Willard, A Professional Corporation." The firm, as restructured, closed in June 2014.

and, after a hearing, accepted the hearing committee's role as the "sole judge of the credibility of the testimony presented at the hearing." S.J.C. Rule 4:01, § 8 (5) (a). She concluded that the findings were supported by substantial evidence. See S.J.C. Rule 4:01, § 8 (6). The single justice accepted the board's recommendation as to sanction, and a judgment of disbarment entered.

2. Disciplinary violations. We summarize the hearing committee's subsidiary findings, as adopted by the board and, like the single justice, conclude that the findings are supported by substantial evidence.[4] See S.J.C. Rule 4:01, § 8 (6). Its ultimate "findings . . . , as adopted by the board, are entitled to deference, although they are not binding on this court." Matter of Ellis, 457 Mass. 413, 415 (2010). See Matter of Strauss, 479 Mass. 294, 296 (2018).

a. Count one: intentional misuse of client funds, failure to supervise, and failure to maintain records. By 2010, the firm's operating account had been depleted. Faced with mounting financial pressures, the respondent authorized the firm's accounting department to withhold payments to certain vendors. His partner, Scofield, learned that the firm's chief financial officer, Alfred Moss, was misusing IOLTA funds to pay operating expenses, and reprimanded him. In December 2010, on the respondent's recommendation, Robert Feige was hired as a financial consultant. By the beginning of 2011, however, the firm owed millions of dollars to its vendors.

Between October 2010 and March 2011, the firm opened several new IOLTA accounts and an operating account. The respondent and Scofield were the only signatories to those accounts. Nonetheless, Moss continued to misuse IOLTA funds to pay firm expenses, and his employment was terminated in February 2011. Soon thereafter, Feige became the firm's chief financial officer. Feige reported to both the respondent and Scofield that "a pretty big number" had been misappropriated from the

[4] The respondent's argument that the single justice's memorandum of decision is not sufficiently detailed is without merit. Like the single justice, we have considered the record in light of the respondent's arguments that the board's findings are not supported by substantial evidence, that it did not consider adequately his own testimony and documentary evidence, and that it relied on witnesses who he thought were not credible. Like the single justice, we conclude that the board's findings are supported by substantial evidence.

firm's IOLTA accounts. The respondent and Scofield adopted Feige's recommendation to replenish the IOLTA funds from new client trust funds received on behalf of other clients and, over time, from the firm's profits.

Beginning in February 2011, Feige provided the respondent with weekly summaries of the firm's finances, showing that the firm's accounts payable exceeded its accounts receivable. In addition, the respondent required that Feige and other accounting personnel report directly to him, and instructed that he be involved in meetings with creditors, lenders, and vendors.

The firm's financial condition continued to deteriorate, particularly after the court's decision in Ibanez, 458 Mass. at 655. Various of the firm's lender clients froze foreclosure litigation, and for the next five or six months, the firm had no new foreclosure work. Because it continued to incur operating expenses, however, it began operating at a loss. The firm's debts to vendors, including the respondent's ancillary businesses, escalated, and the accounting department began using the firm's credit cards to "buy extra time" to cover payroll and other expenses.

In August 2011, five checks drawn on the IOLTA accounts were returned for insufficient funds. As a result, bar counsel opened an investigation. By that time, the respondent, Scofield, Feige, and Mary Donovan, a member of the firm's accounting staff, had met to review the firm's financial records. The respondent retained legal ethics counsel to assist in responding to bar counsel's inquiry. Ethics counsel taught Donovan how to perform the three-way reconciliation required by Mass. R. Prof. C. 1.15, as appearing in 471 Mass. 1380 (2015).[5] Given that there were insufficient funds in the IOLTA accounts to reconcile them, however, a false set of records was created and submitted to bar counsel. Although, based on the false records, bar counsel closed its investigation in May 2012, she emphasized to the respondent that the lawyers must comply with their professional obligations under Mass. R. Prof. C. 1.15. Despite the warning, the respondent took no steps to comply with that obligation.

[5] For convenience, in this opinion, we cite the current versions of the rules of professional conduct, which include substantially the same language as those in effect at the relevant times in this matter.

No later than the fall of 2011, the respondent was aware of both Moss's and Feige's misuse of IOLTA funds. By November 2011, funds transferred from the firm's IOLTA accounts were being used to pay credit card bills, as well as other operational expenses. In August 2012, a check for $370,000 drawn on one of the firm's IOLTA accounts was returned for insufficient funds. Bar counsel opened a second investigation. That investigation subsequently was closed based on what the hearing committee determined were false statements by Feige to bar counsel.

In November 2012, the firm began receiving funds on behalf of a client, Ocwen Loan Servicing LLC (Ocwen), and by May 2013, it had received more than $2 million. By May 24, 2013, however, the balance of the IOLTA account was less than $188,000, although no payments to Ocwen had been made, and notice had not been given to Ocwen that the funds were withdrawn to pay firm fees. Between February 11, 2013, and May 22, 2013, the firm's records indicated that approximately $591,000 was transferred from this IOLTA account to the firm's operating account.

In 2013, the firm added three new partners to its practice: John Connolly, Jr.; Kevin Geaney; and Rachelle Willard. At the time, the firm was interested in regaining approval to handle Federal National Mortgage Association (Fannie Mae) loans, which had been lost years earlier. It considered restructuring to give Fannie Mae the impression that the respondent was no longer managing the firm. In May 2013, Connolly told Fannie Mae that the firm was under new management, although the respondent retained management authority.

In August 2013, Geaney learned that there were insufficient funds in the IOLTA account to cover a check Willard had requested, and that approximately $3 million was missing from the account. At a meeting attended by the respondent, Scofield, Connolly, Geaney, and Willard, the lawyers were informed that, acting on the instruction of Feige, IOLTA funds had been used to cover firm operational expenses. Options, including terminating Feige's employment, were discussed. Although the respondent testified that he favored firing Feige, the hearing committee credited contrary testimony from other firm lawyers and employees.

In October 2013, a firm restructuring agreement and a consulting agreement were signed, listing May 16, 2013, as the effective date. Notwithstanding the respondent's position that, after May 16, 2013, he lacked management responsibility for the

firm -- in light of the restructuring agreement, his purported resignation, and the consulting agreement -- the substantial evidence supports the hearing committee's conclusion that he retained that responsibility. Regardless of their purported effective date, the documents were signed in October 2013, months after Fiege's misconduct was discussed at the August meeting. The substantial evidence also supports the hearing committee's finding that the changes were largely illusory, designed in part to fool Fannie Mae into approving the firm to handle its business.

On September 3, 2014, the respondent filed a Chapter 7 involuntary bankruptcy petition against the firm, listing himself and his ancillary businesses as creditors. Ocwen also filed a proof of claim, alleging that more than $2 million of its funds, which should have been deposited in an IOLTA account, had been misappropriated.

As the hearing committee found, and the board agreed, the respondent had a "hands-on approach" to the firm's financial affairs and was well aware of its declining financial viability. Not only did he have a substantial ownership interest in the firm itself, but he also had ownership interests in ancillary businesses that received payments from it. He recommended hiring Feige to improve its financial condition. The hearing committee concluded that by failing to terminate Feige's employment after the misconduct was discovered, the respondent ratified Feige's misappropriation of client funds. In addition, the hearing committee found, and the board agreed, that by collecting salary payments from the firm and ancillary businesses during the period that the respondent was aware of the misuse of IOLTA funds to pay operating expenses, the respondent benefited from the misuse.

The hearing committee found, and the board accepted, that not only was the respondent willfully blind to the misuse of client funds, but he also had actual knowledge of the misuse, and was personally responsible, pursuant to Mass. R. Prof. C. 5.3 (c), as appearing in 471 Mass. 1447 (2015), because he ratified Feige's actions and failed to mitigate them. See Matter of Zimmerman, 17 Mass. Att'y Discipline Rep. 633 (2001), quoting C.W. Wolfram, Modern Legal Ethics § 13.3.3, at 696 (1986) ("[A] lawyer cannot avoid 'knowing' a fact by purposefully refusing to look. While a lawyer 'is not under an obligation to seek out information,' his or her 'studied ignorance of a readily accessible fact by consciously avoiding it is the functional equivalent of knowledge of the fact'"). By

failing to adopt procedures sufficient to ensure that the conduct of nonlawyer staff was compatible with the respondent's professional obligations, by failing to ensure that the conduct of nonlawyer staff under his supervision adhered to those professional obligations, and by ratifying the misconduct of nonlawyers, the respondent violated Mass. R. Prof. C. 5.3 (responsibilities regarding nonlawyer assistance) and Mass. R. Prof. C. 8.4 (c), as appearing in 471 Mass. 1483 (2015) (dishonesty, fraud, deceit, or misrepresentation).

By failing to maintain individual client ledgers, failing to perform and retain a three-way reconciliation of IOLTA accounts, and failing to ensure that only client trust funds were deposited into IOLTA accounts, the respondent violated Mass. R. Prof. C. 1.15 (b) (segregation of trust funds) and Mass. R. Prof. C. 1.15 (f) (1) (trust account documentation). By failing to keep clients reasonably informed about their cases, the respondent violated Mass. R. Prof. C. 1.4, as appearing in 471 Mass. 1319 (2015) (communication with clients).

b. Count two: fee factoring agreement. The petition's second count alleged that the respondent made knowing misrepresentations to a "factoring" company, Durham Commercial Capital Corp. (Durham), to the effect that the firm was financially solvent, for the purpose of inducing Durham to loan money to the firm. The agreement granted Durham a security interest in the firm's accounts receivable, notwithstanding that the firm previously had granted another creditor a security interest in the same assets. Although the respondent testified that he believed, at the time he signed the agreement, that the firm was solvent, there is substantial evidence to support the hearing committee's finding, adopted by the board, that the respondent was aware, as of October 2012, that the firm was unable to meet its payroll or other debts.

The firm did not comply fully with the factoring agreement. In February 2013, the respondent assigned several clients (including Ocwen) to Durham, notwithstanding a provision in the firm's contract with Ocwen that prohibited nonconsensual assignments. Certain client invoices, provided by the respondent to Durham, disclosed the subject of the firm's representation. In addition, beginning in November 2013, the respondent asked another client to send payments directly to a bank account in Puerto Rico controlled by the respondent, rather than directly to Durham, as the factoring agreement required. The hearing committee did not credit the respondent's claim that the payments made to the Puerto Rico account were for the

benefit of the firm's "stand alone" Puerto Rico office, and therefore were not covered by the factoring agreement.

By disclosing confidential client information to Durham, without the clients' consent, the respondent violated Mass. R. Prof. C. 1.6 (a), as amended, 474 Mass. 1301 (2016) (confidentiality of information). In addition, by failing to obtain his clients' informed consent prior to entering into the factoring agreement, the respondent materially limited his ability to represent his clients, both because he was motivated by his own interests and because the factoring agreement created obligations to Durham, in violation of Mass. R. Prof. C. 1.7 (b), as appearing in 471 Mass. 1335 (2015) (conflict of interest). By using clients' confidential information to their disadvantage and his own advantage, the respondent violated Mass. R. Prof. C. 1.8 (b), as appearing in 471 Mass. 1349 (2015) (conflict of interest). Finally, by misrepresenting to Durham that the firm was solvent and that it was paying its debts in a timely manner, the respondent violated Mass. R. Prof. C. 8.4 (c) (misconduct involving dishonesty, fraud, deceit, or misrepresentation).

3. Due process claim. In addition to challenging the sufficiency of the evidence of misconduct, the respondent contends that the proceedings before the board did not comport with due process considerations, a claim we also reject. Stripped of hyperbole, the gravamen of the respondent's complaint is that bar counsel's investigation was "designed to prove [her] initial conclusion" that the respondent was solely responsible for the demise of the firm of which he owned ninety-nine of its one hundred shares, and that the investigation was deficient because, among other things, bar counsel "had not reviewed or even sought a substantial portion of [the law firm's] files." In the respondent's view, "the only way to mount a defense to the [petition for discipline]" was to obtain "access to all" such files. On appeal, he also contends that the single justice's memorandum of decision failed adequately to address his claim.[6]

The respondent principally complains that the board's chair improperly denied his request for prehearing discovery subpoenas

[6] Although the single justice did not separately address the denial of what the respondent characterizes as "voluminous" discovery, there is no merit to it, as the single justice correctly summarized.

for a broad swath of e-mail messages and documents held by (1) the trustee in the firm's bankruptcy proceeding, (2) seven individuals who worked at or with the law firm, and (3) three corporate entities. The respondent contends that, as a result of the ruling, he had access to only a "small" portion of documents and communications (including e-mail messages) relating to the now-defunct law firm, i.e., the documents obtained by bar counsel. There is no dispute, however, that bar counsel opened her files to the respondent (with the exception of her work product), or that the respondent had access to the same documents as bar counsel. Nor did the respondent demonstrate that the procedure established by the rules -- which permits hearing subpoenas for witnesses and documents -- prejudiced his defense. See Rules of the Board of Bar Overseers § 4.9(a)(2) (2017).[7] As the board's chair concluded, the respondent failed to demonstrate "substantial need" as required by the rule. Taking into account that "the information sought or its substantial equivalent has been provided or was available by other means, [and] taking into consideration the formal or informal discovery that has already occurred," id., the board's chair denied the applications.

The respondent was permitted to -- and did -- subpoena witnesses to the hearing, and he examined them there. No witnesses were excluded. One of the witnesses produced 3,400 pages of e-mail printouts and delivered them to respondent's counsel on May 25, 2017, more than two months prior to the conclusion of the hearing.[8] There was no claim that bar counsel withheld documents from the respondent. See Matter of the

[7] Section 4.9(a)(2) of the Rules of the Board of Bar Overseers provides that "[a] motion to take a discovery deposition shall be allowed only upon a showing of a substantial need for the deposition in the preparation of the applicant's case, taking in to consideration: (A) The nature and complexity of the case and the need to assure an expeditious, economical and fair proceeding. (B) Whether the information sought or its substantial equivalent has been provided or was available by other means, taking into consideration the formal or informal discovery that has already occurred. (C) The prevention of embarrassment, oppression, or undue burden, including economic burden, that the deposition may cause the deponent."

[8] Among the documents produced were messages from the e-mail boxes of Feige, Geaney, and Connolly. The respondent also obtained the e-mail box of an employee of Durham. Bar counsel provided the respondent's e-mail box.

Discipline of an Attorney, 449 Mass. 1001, 1003 (2007) (bar counsel did not withhold documents she did not possess; no denial of due process). Rather, both bar counsel and the respondent had access to the "full email file [of] Robert Feige, the partial email files of [the respondent] and [a]ttorneys John Connolly and Kevin Geaney" and "a sampling of the operational, financial, and, significantly, IOLTA account establishment records and documents of the [f]irm during the relevant time period." Although the respondent contends that he did not have all firm e-mail, he failed to demonstrate how the purportedly missing e-mail could have aided his defense. The respondent did not, in short, establish that his ability to present an effective defense was impeded by the denial of the requested prehearing discovery.

Bar counsel is not obliged to participate in what amounts to a prehearing fishing expedition for evidence that might prove exculpatory. See Matter of Abbott, 437 Mass. 384, 392 (2002); Matter of London, 427 Mass. 477, 481-482 (1998) (failure to interview respondent's witness does not violate of due process). While we recognize that there might be circumstances in which the denial of prehearing discovery may be so prejudicial as to amount to a due process violation, see Matter of Tobin, 417 Mass. 81, 87 (1994), those circumstances are not present here, see Matter of McDonald, 18 Mass. Att'y Discipline Rep. 382 (2002). Among other things, the hearing committee granted the respondent's request to reopen the hearing, after he had had ample opportunity to review all documents, and the only witness he called was himself.

4. Sanction. The board's findings amply support its conclusion that the respondent violated multiple rules of professional conduct. In considering the single justice's determination as to sanction, we inquire whether the sanction imposed is "markedly disparate from those ordinarily entered by the various single justices in similar cases." Matter of Alter, 389 Mass. 153, 156 (1983). Considering the "cumulative effect of the several violations committed by the respondent," Matter of Palmer, 413 Mass. 33, 38 (1992), and, like the single justice, giving "substantial deference to the board's recommendation," Matter of Foley, 439 Mass. 324, 333 (2003), we agree that disbarment is warranted, see Matter of Gordon, 385 Mass. 48, 58 (1982) (while board's recommendation as to sanction is entitled to substantial deference, "ultimate duty of decision rests with this court").

a. Sanction for established misconduct. Although the board focused on the misconduct for which the most severe sanction is warranted, intentional misuse of client funds, bar counsel established a far broader swath of misconduct. Considering the cumulative effect of that misconduct reinforces the conclusion that disbarment is the correct sanction.

Bar counsel established that IOLTA funds intentionally were used, with the respondent's knowledge, to pay the firm's operating expenses. At least one client, Ocwen, was deprived of more than $2 million dollars and, by the time of the disciplinary hearing, had not been reimbursed for the loss. See Matter of Bryan, 411 Mass. 288, 292 (1991). Disbarment is the presumptive sanction for intentional misuse of client funds, either with the intent to deprive or with actual deprivation resulting. See Matter of Schoepfer, 426 Mass. 183, 186 (1997).

This is not a case where the misconduct consists more narrowly of failing adequately to supervise a nonlawyer's handling of client funds. In such cases, a term suspension has been imposed. See Matter of Jackman, 444 Mass. 1013, 1014-1015 (2005) (two-year suspension, with prohibition on civil practice on reinstatement where attorney failed to supervise nonlawyer, resulting in commingling and conversion of client funds, without restitution); Matter of Goldberg, 23 Mass. Att'y Discipline Rep. 191 (2007) (suspension of one year and one day for failure to supervise nonlawyer); Matter of Gordon, 20 Mass. Att'y Discipline Rep. 166 (2004) (two-year suspension where attorney, victimized by employee theft, failed to reconcile and audit client account after learning of it, and engaged in other misconduct).

Even after becoming aware of Moss's and Feige's misuse of IOLTA funds for the firm's operational benefit, the respondent failed to supervise the accounting staff and failed to make reasonable efforts to put in place measures that would provide reasonable assurances that the respondent's professional obligations with respect to client funds were satisfied. See Matter of Fuster, 24 Mass. Att'y Discipline Rep. 287 (2008) (eighteen-month suspension for failure to adequately supervise nonlawyers and other misconduct, including commingling and negligent misuse of client funds; prior record of discipline). The respondent's failure to terminate Feige, and allowing him to remain in control of the firm's finances, ratified the misconduct within the meaning of Mass. R. Prof. C. 5.3 (c) (1) and (2). Likewise, the respondent violated the rules of professional conduct directly and through the acts of another,

in violation of Mass. R. Prof. C. 8.4 (a). In addition, the respondent's failure to keep IOLTA records that complied with the requirements of Mass. R. Prof. C. 1.15 and the dishonored checks drawn on IOLTA accounts also warrant public discipline. See Matter of Beatrice, 23 Mass. Att'y Discipline Rep. 31 (2007).

In connection with the factoring agreement, the respondent disclosed confidential client information for his own benefit, i.e., obtaining financing for the firm. In so doing, he created a conflict of interest between his contractual obligation to Durham and his professional obligations to his clients. See Matter of Wise, 433 Mass. 80, 90-92 (2000) (six-month suspension for conflict of interest and revealing confidential client information); Matter of Pike, 408 Mass. 740, 745-746 (1990) (six-month suspension for engaging in conflict of interest).

The respondent made material misrepresentations to Durham concerning the firm's solvency and falsely represented that pledged assets had not been previously encumbered. A term suspension has been imposed for similar misconduct. See Matter of Hass, 477 Mass. 1015, 1017-1019 (2017) (two-month suspension for falsely representing that client settlement not already encumbered); Matter of Goodman, 22 Mass. Att'y Discipline Rep. 352 (2006) (one-year suspension for multiple misrepresentations to insurance companies); Matter of Behenna, 10 Mass. Att'y Discipline Rep. 15 (1994) (two-year suspension for executing closing documents that falsely represented terms of transaction).

b. Factors considered in mitigation and aggravation. i. Mitigating factors. In his answer to the petition for discipline, the respondent alleged no factors in mitigation of sanction. See Rules of the Board of Bar Overseers § 3.15(d), (f). At the hearing, while he testified to certain medical conditions and stress, he offered no medical records, expert testimony, or other evidence that those circumstances caused or contributed to the misconduct. See Matter of Dragon, 440 Mass. 1023, 1024 (2003) (requiring causal connection between claimed mitigating factor and misconduct). Further, those circumstances and stress appear to have occurred after the respondent became aware that Feige and others had misappropriated the IOLTA funds, in August 2013 at the latest. We agree with the board that those factors do not weigh in mitigation of sanction.

The same is true of the respondent's contention that he and his spouse lent money to the firm to pay the firm's expenses and

to restore the firm's retirement plan. Those "loans" do not serve as restitution to a client, see Matter of Bryan, 411 Mass. at 290-292, or evidence of reform, see Matter of Corbett, 478 Mass. 1004, 1005-1006 (2017). Self-interested loans are not an outward sign of remorse. See id. Further, client funds are not fungible commodities, see Matter of Strauss, 479 Mass. at 301, and IOLTA accounts cannot be treated as a line of credit for a lawyer or law firm experiencing financial difficulties.

ii. Aggravating factors. The board properly weighed multiple factors in aggravation, including the respondent's use of IOLTA funds for personal gain, lack of candor before the hearing committee, harm to clients, and lack of acknowledgment of essential ethical rules.

After learning that the firm's IOLTA accounts were being used to fund the firm's operational needs, and knowing the firm's strained financial condition, the respondent continued to collect his salary and use the firm's funds to pay his own personal expenses. He did not take necessary steps to ensure that IOLTA funds were properly managed, notwithstanding that bar counsel had twice previously investigated the firm when IOLTA checks were returned for insufficient funds. At least one client was not compensated for its loss. He "engaged in more and wider misconduct." Matter of Haese, 468 Mass. 1002, 1008 (2014).

Although the respondent contends that the board erred in weighing in aggravation the hearing committee's finding that he gave false testimony before the hearing committee, he is entitled to defend himself. While a respondent is entitled to defend himself, he is not entitled to testify falsely. Finally, although the respondent contends that the board erred in finding that he demonstrated a lack of appreciation for basic ethics obligations and a lack of remorse, and in weighing those factors in aggravation, on the evidence presented, the board properly could conclude that the respondent's "lack of remorse and insincerity with regard to acceptance of responsibility" are aggravating factors.[9] Matter of Corbett, 478 Mass. at 1007.

[9] Although both the board's and the single justice's memoranda reference events that occurred prior to the misconduct charged in the petition for discipline, those events do not form the basis for discipline. The references do not establish a violation of due process, as the respondent contends. See Matter of Strauss, 479 Mass. at 300 n.9.

5. Conclusion. A bar discipline proceeding is not a forum best used broadly to cast blame or aspersions on others. It is a proceeding with a narrow focus: to determine whether there is a preponderance of evidence that an attorney has violated one or more rules of professional conduct and, if so, what sanction is warranted. The respondent's continued focus in these proceedings on matters other than the charged misconduct does him a disservice because evidence of misconduct is neither excused nor obscured by accusations of misconduct by others. With deference to the sanction recommended by the board, we affirm the judgment of the single justice that disbarment is warranted.

So ordered.

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

Mark L. Josephs for the respondent.