In re Tradd Ashton Fromme
Attorney-Respondent

Commission No. 2021PR00072

Synopsis of Hearing Board Report and Recommendation
(September 2022)

The Administrator charged Respondent with engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c), based on his unauthorized use of his employer's credit card, which resulted in his fraudulently obtaining at least $136,745.79 from his employer; and with making misrepresentations to the Administrator in violation of Rules 8.1(a) and 8.4(c), based on his statement to the Administrator that he had made more than $40,000 in restitution toward the unauthorized charges when he knew that statement was false.

The Hearing Board found that the Administrator proved the charged misconduct. It recommended that Respondent be suspended for three years and until further order of the Court.

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

TRADD ASHTON FROMME,

Attorney-Respondent,

No. 6291557.

Commission No. 2021PR00072

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY

The Administrator charged Respondent with engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, based on his unauthorized use of his employer's credit card, which resulted in his fraudulently obtaining at least $136,745.79 from his employer; and with making misrepresentations to the Administrator, based on his statement to the Administrator that he had made more than $40,000 in restitution toward the unauthorized charges when he knew that statement was false. The Hearing Board found that the Administrator proved the charged misconduct and recommended that Respondent be suspended for three years and until further order of the Court.

INTRODUCTION

The hearing in this matter was held remotely by videoconference on May 10, 2022, before a panel of the Hearing Board consisting of Kenn Brotman, Chair, Michael J. Friduss, and Ricardo Meza. Matthew D. Lango represented the Administrator. Respondent was present and appeared *pro se*.

PLEADINGS AND MISCONDUCT ALLEGED

On August 30, 2021, the Administrator filed a two-count Complaint against Respondent. Count I alleged that Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct, based on his unauthorized use of his employer's credit card, which resulted in his fraudulently obtaining at least $136,745.79 from his employer. Count II alleged that Respondent made misrepresentations to the Administrator, in violation of Rules 8.1(a) and 8.4(c) of the Illinois Rules of Professional Conduct, based on his statement to the Administrator that he had made more than $40,000 in restitution toward the unauthorized charges when he knew he had not paid more than $875 in restitution to anyone.

In his Answer, Respondent admitted most of the factual allegations.

EVIDENCE

The parties entered into Joint Stipulations of Fact. Administrator's Exhibits 1 and 2 were admitted into evidence. (Tr. 20). No witnesses testified, and Respondent presented no evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In attorney disciplinary proceedings, the Administrator has the burden of proving the charges of misconduct by clear and convincing evidence. In re Winthrop, 219 Ill. 2d 526, 542, 848 N.E.2d 961 (2006). Clear and convincing evidence requires a high level of certainty, which is greater than a preponderance of the evidence but less than proof beyond a reasonable doubt. People v. Williams, 143 Ill. 2d 477, 577 N.E.2d 762 (1991); In re Santilli, 2012PR00029, M.R. 26572 (May 16, 2014). The Hearing Board determines whether the Administrator has met that burden. In re Edmonds, 2014 IL 117696, ¶ 35. In doing so, the Hearing Board assesses witness credibility, resolves conflicting testimony, makes factual findings, and determines whether the Administrator met the burden of proof. Winthrop, 219 Ill. 2d at 542-43.

I. Count I charged respondent with engaging in dishonest conduct, in violation of Rule 8.4(c)

A. Summary

Respondent engaged in dishonest conduct in violation of Rule 8.4(c), based on his unauthorized use of his employer's credit card, which resulted in his fraudulently obtaining at least $136,745.79 from his employer.

B. Admitted Facts and Evidence Considered

From January 2016 until February 2020, Respondent was employed as in-house counsel with Professional National Title Network ("PNTN"), which provides a variety of services to businesses and attorneys, primarily acting as a title agent in real estate transactions. In the course of his employment, Respondent was given access to PNTN's corporate American Express credit card ("the American Express card"). On certain occasions, in the course of his employment, Respondent was authorized by PNTN to use the American Express card for payment of expenses such as corporate filing fees with the Illinois Secretary of State, membership fees in professional associations, and registration fees for certain conferences and meetings. (Ans. at pars. 1-2; Joint Stips. at par. 1).

Prior to February 2019, Respondent established merchant accounts with Square, Inc. ("Square") and Intuit, Inc. ("Intuit"). These accounts, which linked to Respondent's personal checking account at JPMorgan Chase Bank, allowed Respondent to accept payments via credit card. Funds from these payments, less a processing fee, would be deposited directly into Respondent's personal checking account. (Ans. at par. 4; Joint Stips. at par. 2).

Between February 21, 2019 and January 16, 2020, using the merchant accounts he established through Square and Intuit, Respondent used the American Express card to charge funds to himself on at least 90 separate occasions. During that time period, Respondent charged at least

$136,745.79 to himself using the American Express card. (Ans. at pars. 5-6; Joint Stips. at par. 3). At no time did Respondent have permission or authority to use the American Express card for these transactions. (Joint Stips. at pars. 4-5). At the time Respondent made these charges, he knew that he was not authorized to do so. (Ans. at par. 10).

PNTN discovered the improper charges in late January 2020. When confronted about the charges, Respondent initially told his supervisors at PNTN that he only used the American Express card for legitimate business reasons, such as registering for continuing legal education courses. This statement was false, as none of the charges that Respondent made to himself were authorized or used for legitimate business reasons. Shortly thereafter, in early February 2020, PNTN terminated Respondent's employment. (Ans. at par. 11; Joint Stips. at par. 6).

In April 2020, PNTN reported Respondent's transactions to American Express as fraudulent and unauthorized. (Joint Stips. at par. 8; Adm. Ex. 1). American Express conducted an investigation and determined that Respondent's use of the American Express card was not authorized and therefore that PNTN was not responsible for the charges Respondent made. (Joint Stips. at pars. 9-10).

C. Analysis and Conclusions

It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Ill. R. Prof'l Cond. 8.4(c). Dishonesty is defined broadly under the Rules to include any conduct, statement, or omission that is calculated to deceive, including the suppression of truth and the suggestion of what is false. In re Gerard, 132 Ill. 2d 507, 528, 548 N.E.2d 1051 (1989).

In his Answer, Respondent admitted most of the facts that form the basis of Count I. The Joint Stipulations of Fact and Administrator's Exhibits 1 and 2 substantiated the aspects of Respondent's misconduct that Respondent did not expressly admit. Finally, in his opening

statement and closing argument, Respondent acknowledged that he committed the misconduct charged in Count I. (Tr. 16-17, 20, 33-40).

Consequently, in light of Respondent's admissions in his Answer, the Joint Stipulations of Fact, and documentary evidence presented by the Administrator, we find that the Administrator proved by clear and convincing evidence that Respondent charged at least $136,745.79 to himself using his employer's credit card when he knew he was not authorized to do so. He therefore engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

II. Count II charged respondent with making misrepresentations to the administrator in violation of Rules 8.1(a) and 8.4(c)

A. Summary

In his written response to the Administrator's request for information, Respondent made misrepresentations about the amount of restitution he had paid toward the unauthorized charges, in violation of Rules 8.1(a) and 8.4(c).

B. Admitted Facts and Evidence Considered

Following its investigation, American Express charged back and recovered $41,085.65 from Intuit, one of the companies through which Respondent set up a merchant account. This left American Express with a loss of $92,924.14. (Joint Stips. at pars. 11-12).

In 2020, both American Express and Intuit sought repayment from Respondent for the amounts above. In or about May 2020, a representative of Intuit contacted Respondent regarding his use of his Intuit merchant account to make unauthorized charges to himself using the American Express card. At that time, Intuit sought repayment from Respondent of $42,135.65, representing the amount of its loss as a result of the charge-back to American Express, plus additional fees. (Ans. at par. 16).

On or about June 2, 2020, Respondent entered into a payment plan agreement with Intuit, agreeing to pay $42,135.65 in restitution. Under the payment plan agreement, Respondent agreed to make recurring monthly payments to Intuit of $125 until January 4, 2021. Following the final recurring payment, Respondent was to renegotiate an increase in monthly payments and enter into a new payment plan agreement for the remainder of the outstanding balance. (Ans. at par. 17; Joint Stips. at par. 13). Between June 2, 2020, and January 4, 2021, Respondent made recurring monthly payments of $125 to Intuit. (Ans. at par. 18).

On or about July 30, 2020, the Administrator received a request for investigation of Respondent from Christine Kulagowski, a senior special agent at American Express, reporting that American Express investigated the unauthorized and fraudulent charges to the American Express card and believed such charges were made by Respondent. (Ans. at par. 19).

On or about October 1, 2020, counsel for the Administrator sent Respondent a copy of Kulagowski's request for investigation, along with a letter requesting that Respondent send a letter within fourteen days setting forth the material facts relating to the matters raised by Kulagowski. (Ans. at par. 20).

On December 18, 2020, Respondent emailed a letter to counsel for the Administrator in response to the request for investigation. In the letter, Respondent admitted to making the unauthorized charges. In addition, Respondent stated:

> To this time, there have been more than $40,000.00 of restitution made towards these particular unauthorized charges. I am currently in process of making restitution for the additional balance of funds owed to repay the charges in question. I initiated contact with Christine Kulagowski at American Express regarding completing restitution for these funds and remain in consistent contact with her on this matter.

(Ans. at par.21).

As of December 18, 2020, Respondent had paid Intuit a total of $875 in restitution under the payment plan agreement, and had made no restitution payments to American Express. As of the time of hearing, Respondent still owed American Express at least $92,924.14. (Ans. at par. 23; Joint Stips. at pars. 14-15).

C. Analysis and Conclusions

A lawyer shall not knowingly make a false statement of material fact in connection with a disciplinary matter. Ill. R. Prof'l Cond. 8.1(a). As with Count I, Respondent admitted most of the facts that form the basis of Count II in his Answer and in the Joint Stipulations of Fact. However, in his Answer, he denied making knowingly false statements to the Administrator and denied engaging in misconduct. (Ans. at pars. 22, 24-25). At hearing, Respondent did not expressly disavow that he committed the misconduct alleged in Count II, but argued that he did not intend to say anything untruthful about restitution but could have been clearer in his written response. He stated that Intuit refunded to American Express over $40,000, which resulted in Respondent having a negative balance with Intuit that he was paying back on a monthly basis, and thus that "those funds had been recouped in some respect," presumably meaning by American Express or possibly by Intuit, because of the negative balance. (Tr. 18).

We find Respondent's argument unpersuasive.[1] There is no question that, as of the time he wrote his response letter to the Administrator, he knew that he had paid nothing back to American Express and had paid only $875 back to Intuit. Moreover, the fact that Respondent phrased his statement in passive voice by saying "there has been more than $40,000.00 of restitution made toward these particular unauthorized charges" does not obviate our finding that Respondent made an intentional misrepresentation to the Administrator. As a lawyer, Respondent clearly had to have known that Intuit's refund to American Express did not constitute restitution for his misappropriation of funds. His suggestion that he believed that Intuit's refund to American Express

constituted restitution because "those funds had been recouped in some respect" is implausible, and we reject that explanation for his statement to the Administrator that restitution of over $40,000 had been made as of December 18, 2020.

Accordingly, we find that the Administrator proved by clear and convincing evidence that Respondent's statement that more than $40,000 in restitution had been made as of December 18, 2020 was knowingly false, given that he knew he still owed Intuit over $41,000 and also knew he had paid nothing in restitution to American Express. This conduct violated Rules 8.1(a) and 8.4(c).

EVIDENCE IN MITIGATION AND AGGRAVATION

Mitigation

At his hearing, Respondent apologized to the legal profession, the ARDC, his former employer and coworkers, the American Express agent who investigated his unauthorized charges, and his family for his misconduct, for which he acknowledged he has no defense. He stated that he attempted to be cooperative and stipulate to facts in order to "mitigate the additional time that anybody should have to spend on this matter." (Tr. 33).

He testified that he has had "the opportunity to address some pretty significant mental health issues that [he] was dealing with that took [him] down this road." (Tr. 34). He explained that he has received intensive counseling to deal with his mental health issues, and to build the skills to deal with conflict-avoidance and other issues in the future. However, he acknowledged that "that does not in any way undo or excuse the actions that [he] took, and the behavior that [he] engaged in." He stated that, because of his misconduct, he has gone through a divorce and lost his family. (Tr. 34-35).

He testified that, with the counseling he has received, the lessons he has learned, and what he has put himself through, including the destruction of his professional reputation and his family,

"this is something … that will sit with [him] for the rest of his life; that [he] will always be reminded of; and that [he] will never engage in again." (Tr. 36).

Respondent entered into a restitution payment plan with Intuit prior to the ARDC's investigation into his conduct. (Ans. at pars. 17-18).

Aggravation

Respondent's misconduct occurred over a period of about eleven months, involved at least 90 separate fraudulent transactions, and resulted in him obtaining $136,745.79 in funds that belonged to his employer. (Ans. at pars. 5-6; Joint Stips. at par. 3).

His misconduct ended when his employer learned of the unauthorized charges he had made and confronted him about it. When confronted about the unauthorized charges, he falsely told his supervisors that he only used the American Express card for legitimate business reasons. (Ans. at par. 11; Joint Stips. at par. 6).

At the time of his disciplinary hearing, Respondent had paid no restitution to American Express. He had paid some restitution to Intuit. (Ans. at par. 23; Joint Stips. at pars. 14-15).

Prior Discipline

Respondent has no prior discipline.

RECOMMENDATION

A. Summary

Based upon the serious nature of Respondent's misconduct, and taking into account the factors that mitigate and aggravate his conduct, the Hearing Board recommends that Respondent be suspended for three years and until further order of the Court.

B. Analysis and Conclusions

In determining the appropriate discipline, we are mindful that the purpose of these proceedings is not to punish, but to safeguard the public, maintain the integrity of the profession,

and protect the administration of justice from reproach. In re Edmonds, 2014 IL 117696, ¶ 90. While we strive for consistency and predictability, we recognize that each case is unique and must be decided on its own facts. In re Mulroe, 2011 IL 111378, ¶ 25.

In arriving at our recommendation, we consider those circumstances that may mitigate or aggravate the misconduct. In re Gorecki, 208 Ill. 2d 350, 802 N.E.2d 1194 (2003). In mitigation, we find that Respondent acknowledged his misconduct and expressed sincere remorse for it. Upon observing and hearing his testimony, we found his regret to be deep and genuine. We find that Respondent understands the wrongfulness of his conduct, and, because of that, he fully cooperated in this disciplinary matter and admitted the relevant facts underlying his misconduct. He paid a small amount of restitution to Intuit prior to this proceeding being brought against him. He has no prior discipline.

In his closing argument, Respondent alluded to mental health issues that he was suffering from at the time of his misconduct. He did not, however, blame his actions on his mental health issues. We have not considered his statements about his mental health issues in mitigation because they do not constitute evidence, having been made in closing argument. In addition, he provided no other evidence, such as a report or testimony from a physician or counselor, to support his statements.

In aggravation, Respondent engaged in a pattern of dishonest conduct that involved at least 90 transactions over the course of eleven months, and ended only because he was caught. In addition, when his employer learned about the unauthorized charges, Respondent initially lied about the charges and claimed that they were for legitimate business expenses.

The amount of funds that Respondent fraudulently took from his employer – almost $137,000 – was substantial. While American Express returned those funds to PNTN, that left American Express and Intuit, collectively, with a loss of almost $137,000. Thus, Respondent's

actions caused a significant amount of financial harm to third parties. He has made no restitution at all to American Express, and has made only some restitution to Intuit.[2]

The Administrator asked that Respondent be disbarred or suspended for a lengthy period of time and until further order of the Court. Respondent acknowledged that precedent would support disbarment or a lengthy suspension, but asked for a long period of probation, with conditions including financial disclosures, confirmation that he is paying restitution, and a date certain for restitution to be completed.

Taking Respondent's argument first, we find probation would be inappropriate under the circumstances of this matter. It is a respondent's burden to demonstrate that he qualifies for probation. Ill. S. Ct. R. 772(a). Respondent, however, has presented no evidence whatsoever suggesting probation would be warranted in this case. In addition, probation is not appropriate where, as in this matter, an attorney engages in intentional misconduct and dishonesty, because those behaviors cannot be monitored for compliance and improvement. See, e.g., In re Odom, 01 CH 69, M.R. 19772 (May 19, 2005) (Review Bd. at 18) (noting that "[i]ntentional deceit for an attorney's own purposes is not a condition which can be easily monitored," and declining to impose probation where attorney's misconduct was intentional and where his mishandling of client funds was not a result of failure to understand how to manage a law practice).

Turning to the Administrator's arguments, we decline to recommend disbarment because Respondent fully participated and cooperated in his proceedings, acknowledged his misconduct, and deeply regrets his actions. In contrast, in the two disbarment cases cited by the Administrator, the attorneys failed to participate at all in their disciplinary proceedings. In re Burnham, 97 CH 22, M.R. 14176 (Jan. 30, 1998) (disbarment for theft of about $17,000 from Black Women Lawyers Association); In re Johnson, 2019PR00090, M.R. 30091 (Oct. 29, 2019) (disbarment in a reciprocal-discipline matter for embezzlement of over $26,000 from employer). Failure to

participate in disciplinary proceedings is a significant aggravating factor that is not present in this matter.

But, while we decline to recommend disbarment, we also recognize that the seriousness of Respondent's misconduct warrants a commensurate sanction, in order to uphold the integrity of the profession and signal to Respondent and other lawyers that behavior such as Respondent's is unacceptable and will not be tolerated. Consequently, we agree with the Administrator that a lengthy suspension is necessary in this matter, and is supported by relevant precedent.

In In re Petty, 98 CH 25, M.R. 16607 (March 22, 2000), for example, an attorney was suspended for three years and until further order for commingling and converting over $113,000 in funds belonging to his deceased client's estate. The Hearing Board found in mitigation that the attorney's alcohol use was the primary cause of his misconduct. In addition, all of the beneficiaries of the estate received their rightful shares prior to hearing.

In the recently decided matter of In re Hankes, 2019PR00102, M.R. 31005 (Jan. 20, 2022), the Court imposed a three-year suspension on an attorney who, over the course of about 20 months, submitted false bills to his firm for over $100,000, and from the payments made on those bills, took nearly $80,000 that belonged to his clients by submitting false expense statements and reimbursement requests. In aggravation, his misconduct involved multiple dishonest acts over time, which benefited him and harmed his clients and his firm. In addition, although his compensation exceeded $1 million, he gave no explanation for his conduct, which he knew was wrong. In mitigation, he admitted his misconduct when confronted by the firm's general counsel, self-reported his conduct to the ARDC, cooperated in his disciplinary proceedings, and was sincerely remorseful. He also made full restitution to his firm prior to hearing.

We find that the foregoing authority supports a three-year suspension for Respondent's serious misconduct. But, even with a long suspension, we have some doubts about Respondent's

future willingness or ability to practice responsibly. We find it disturbing that the record contains no evidence about why Respondent engaged in his deliberate and harmful misconduct. Other than referencing mental health issues during his closing argument, Respondent provided no explanation for his misconduct.

Regarding those mental health issues, Respondent stated that the disciplinary process "has allowed [him], and given [him] the opportunity to address some pretty significant mental health issues that [he] was dealing with that took [him] down this road." (Tr. 34). He also stated that, since his misconduct, he has "received a lot of counseling, very intensive counseling through a variety of professionals, psychologists, psychiatrists," and that he has "seen professionals to deal with these issues, and to build the skills to deal with this now and in the future." (Id).

However, the record contains no evidence regarding the nature or extent of Respondent's mental health issues, including whether he continues to suffer from mental health issues that might result in future misconduct. Because this panel has insufficient information about the factors that led to Respondent's misconduct, we have no assurance that he will not repeat it, notwithstanding his genuine remorse for his actions.

In addition, unlike the respondent in Hankes, who made full restitution to his firm prior to his disciplinary hearing, Respondent has paid no restitution to American Express and only limited restitution to Intuit. A suspension that continues until further order of the Court would require him to show that he has completed restitution in order to be reinstated to practice. See Ill. S. Ct. R. 767(f)(4). See also In re Houdek, 113 Ill. 2d 323, 327, 497 N.E.2d 1169 (1986) (failure to make restitution and lack of evidence that attorney was willing or able to meet professional standards of conduct in the future warranted suspension until further order).

We therefore believe that, in order to safeguard the public, maintain the integrity of the profession, and protect the administration of justice from reproach, Respondent should be required

to show that he has made full restitution to American Express and Intuit, and also is able and willing to practice law ethically, before being reinstated to practice. We believe that a suspension that continues until further order of the Court will accomplish these disciplinary goals.

In conclusion, we recommend that Respondent be suspended for three years and until further order of the Court. We find this sanction to be commensurate with Respondent's misconduct, consistent with discipline that has been imposed for comparable misconduct, and necessary to serve the goals of attorney discipline, act as a deterrent, and preserve the public's trust in the legal profession.

Respectfully submitted,

Kenn Brotman
Ricardo Meza
Michael J. Friduss

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on September 12, 2022.

/s/ Michelle M. Thome
Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

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[1] We note that Respondent declined to provide testimony in his case in chief. His explanation regarding his statements to the Administrator about restitution came in his closing argument. Thus, we consider it argument and not evidence.

[2] The only evidence in the record about the amount of restitution Respondent has paid is that, as of December 18, 2020, he had paid $875 to Intuit. It is unclear whether he continued to pay restitution to Intuit after that time and, if so, how much he has paid.