In re Leonard Samuel Defranco
Respondent-Appellant

Commission No. 2022PR00040

Synopsis of Review Board Report and Recommendation
(December 2023)

The Administrator brought a two-count complaint against Respondent charging him with dishonestly misappropriating $161,608 of client funds, and, separately, entering into a business transaction with a client, by obtaining a loan of $180,000, without complying with all of the required safeguards to protect the client's interests, in violation of Rules 1.15(a), 1.8(a), and 8.4(c) of the Illinois Rules of Professional Conduct (2010).

The Hearing Board found that Respondent had committed the charged misconduct. The Hearing Board recommended that Respondent be disbarred.

Respondent appealed, challenging the Hearing Board's findings that Respondent committed the charged misconduct, as well as challenging the sanction recommendation.

The Review Board rejected Respondent's arguments, and affirmed the Hearing Board's findings that Respondent committed the charged misconduct. The Review Board also recommended that Respondent be disbarred.

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

FILED

December 11, 2023

ARDC CLERK

In the Matter of:

LEONARD SAMUEL DEFRANCO,

Respondent-Appellant,

No. 3122606.

Commission No. 2022PR00040

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

The Administrator brought a two-count complaint against Respondent, charging him with dishonestly misappropriating $161,608 of client funds, and, separately, entering into a business transaction with a client, by obtaining a loan of $180,000, without complying with all of the required safeguards to protect the client's interests, in violation of Rules 1.15(a), 1.8(a), and 8.4(c) of the Illinois Rules of Professional Conduct (2010).

Following a hearing at which Respondent was represented, the Hearing Board found that Respondent had committed the charged misconduct. The Hearing Board recommended that Respondent be disbarred.

On appeal, Respondent, who is *pro se*, challenges the Hearing Board findings that he committed the charged misconduct. He also challenges the sanction recommendation and argues that a sanction that is less severe than disbarment is warranted.

For the reasons that follow, we affirm the Hearing Board's findings that Respondent committed the charged misconduct, and we agree with the Hearing Board's recommendation that Respondent be disbarred.

FACTS

The facts are fully set out in the Hearing Board's report and are summarized only to the extent necessary here. The facts outlined below reflect the Hearing Board's findings of fact.

Respondent

Respondent was admitted to practice law in Illinois in 1978. After working at a law firm as a tax specialist for approximately ten years, he established his own law firm and worked as a solo practitioner with a focus on business law, tax law, and estate planning. He also owned and operated a business known as Futter's Nut Butter, Inc., which closed in 2018. Respondent is retired from the practice of law. Respondent was previously disciplined in 2011 for charging excessive legal fees and was suspended for 30 days.

Respondent's Misconduct

As described below, Respondent dishonestly converted $161,608 of client funds, for his own use, without authority. In order to repay those funds, he borrowed $180,000 from another client, without safeguarding that client's interests as required. Respondent did not repay the $180,000.

Respondent misappropriated $161,608: In 2017, Respondent handled the sale of two companies owned by Francis Ferrone and his brother, Donald Ferrone. The proceeds from the sale were deposited into Respondent's client trust account, pursuant to a court order, and Respondent misappropriated $161,608 of those funds without authority, knowing that the funds belonged to the Ferrones.

In 2016, the court appointed Felicia Ferrone ("Felicia") as the temporary guardian for the estate of her uncle, Francis Ferrone, who was suffering from dementia. Felicia was represented by an attorney in connection with the guardianship. In February 2017, the court

granted permission to sell the Ferrones' companies. Felicia's attorney recommended hiring Respondent as legal counsel to handle the sale of the companies, and Felicia agreed.

Based on a petition filed by Felicia's attorney, the court issued an order appointing Respondent to represent Francis Ferrone's estate, as an attorney, in connection with the sale of the companies. Felicia and her attorney each testified that Respondent was hired as an attorney to represent Francis Ferrone's estate in the sale of the companies. Respondent also testified that he represented the Ferrones in the sale of their companies. In order to sell the companies, Respondent provided legal services that included structuring the deal; preparing the sales contract; communicating with the purchaser's attorney; negotiating the terms of the sale; researching the assignment of contractual rights; handling the closing; and paying the companies' debts.

In 2017, the court issued an order directing that the proceeds from the sale of the companies be deposited into Respondent's client trust account. Between June and August 2017, the sale proceeds were wired into Respondent's client trust account.

After the companies were sold, a petition was filed with the court requesting that Respondent be paid legal fees totaling $25,593. In July 2017, the court issued an order authorizing that payment. Respondent withdrew those legal fees from the Ferrones' funds, as authorized by the court.

Between September 2017 and April 2018, Respondent misappropriated $161,608 of the Ferrones' sale proceeds, without authority, for his own benefit. He used the Ferrones' funds to pay for personal expenses, which included payments for furniture, groceries, restaurants, and other personal items. Respondent also used the Ferrones' funds to pay business expenses for Respondent's law firm and for his company, Futter's Nut Butter. Over a period of seven months, Respondent wrote 44 checks, withdrew cash on two occasions, and made two wire transfers.

In April 2018, the court issued an order directing that the proceeds from the sale be paid to the Ferrones. After the companies' debts were paid, the Ferrones were owed $482,177. Respondent did not have funds to replace the money that he had misappropriated. Therefore, he obtained $180,000 from another client, Margaret Burke, which he used to replace the funds he had taken.

Respondent borrowed $180,000: Respondent borrowed $180,000 from his client, Margaret Burke, in May 2018. Respondent did not prepare a written agreement or obtain written consent from Burke concerning the $180,000. Burke testified that the $180,000 was an interest free loan that was to be repaid in a few months, and that Respondent was her attorney at the time.

Respondent testified that he did not represent Burke as an attorney, and the money was a gift. The Hearing Board found Burke to be credible and rejected Respondent's testimony.

Burke testified that Respondent acted as her attorney between 2014 and 2019, in connection with her investment in a restaurant called the Sovereign Tap, in Plainfield, Illinois. Respondent represented her concerning several issues, including the restaurant's operating agreement, the partners' use of funds; and the restaurant's bankruptcy, where Burke was a creditor. Respondent submitted invoices to Burke for legal fees, and Burke paid those bills. In August 2017, Burke and her co-investors filed a lawsuit in Will County against members of the Sovereign Tap entity, requesting an accounting and alleging breach of contract. Respondent and co-counsel represented Burke in that case, and Respondent was still representing Burke in that case when he obtained the money from Burke in May 2018.

Burke also testified that the $180,000 was a loan, not a gift. In April 2018, Respondent asked her if he could borrow $180,000, so that he could buy a closed restaurant in Oak Brook Terrace, Illinois, and she agreed to loan him the money for a few months, with no interest.

Respondent said he would give her a promissory note but did not do so. She loaned him the money because they were friends and she trusted him since he was her attorney.

Burke obtained the $180,000 through a line of credit, with interest, backed by securities that she owned, and she wired the money to Respondent on May 3, 2018. Respondent used the money from Burke to repay the $161,608 that he had misappropriated from the Ferrones.

Respondent testified that the money was a gift. He testified he told Burke that he was having financial difficulties and she offered to give him $180,000. Respondent testified that when she offered him the money, she told him not to worry about it, and they did not discuss repayment at the time. The Hearing Board rejected Respondent's testimony.

Respondent did not repay the $180,000. Burke repeatedly asked him to repay the money, and he responded by giving her various excuses concerning why he could not immediately repay the funds. In August 2019, Burke sued Respondent to recover the funds. In 2021, after a bench trial in that case, the court found that Respondent had breached an oral agreement and had breached his fiduciary duty. The court ordered him to repay the $180,000, and to pay legal fees of $43,602. He did not pay any money to Burke, and he testified that he does not intend to pay any money to Burke. Instead, Respondent obtained a discharge of the debt in a bankruptcy proceeding.

Respondent's Prior Misconduct

In 2011, Respondent was suspended for 30 days for charging an excessive fee to two estates in a probate matter. He obtained legal fees totaling $212,140, over a two-year period. The heirs objected to Respondent's fees as being exorbitant. The Illinois Supreme Court found that his fees were excessive. Respondent eventually repaid $100,000 of those fees. *See In re DeFranco*, 2008PR00029, *petition for discipline on consent allowed*, M.R. 24483 (June 8, 2011).

HEARING BOARD'S FINDINGS AND SANCTION RECOMMENDATION

Misconduct Findings

The Hearing Board found that Respondent violated Rule 1.15(a), which requires attorneys to "hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property." The Hearing Board found that Respondent failed to safeguard $161,608 of client funds that he was holding in his client trust account in connection with the sale of the Ferrones' companies. (Hearing Bd. Report at 6-9.)

The Hearing Board also found that Respondent violated Rule 8.4(c), which prohibits attorneys from engaging in "conduct involving dishonesty, fraud, deceit, or misrepresentation." The Hearing Board found that Respondent's misappropriation of funds was dishonest, in that he intentionally used client funds, without authority, for his own personal benefit, knowing that those funds belonged to the Ferrones. (*Id*. at 9-10.)

Finally, the Hearing Board found that Respondent violated Rule 1.8(a), which prohibits a lawyer from entering into a business transaction with a client without complying with the required safeguards. The Hearing Board found that Respondent engaged in a business transaction with Burke, who was his client, without safeguarding Burke's interests, in that he borrowed $180,000 from her without preparing a written agreement or obtaining her written consent, and he did not advise her that she could consult with independent counsel. (*Id*. at 16-17.)

Findings Regarding Mitigation and Aggravation

In mitigation, the Hearing Board found that Respondent was active in bar associations, including the DuPage County Bar Association, the Justinian Lawyers Association, and the Illinois State Bar Association. He also received awards from the Illinois State Bar

Association and John Marshall Law School, and he helped out with the Jesse White Tumblers and the Casa Italia Italian Cultural Center. He also cooperated in the disciplinary proceedings.

In aggravation, the Hearing Board found that Respondent failed to take responsibility or express remorse for his misconduct; he placed his own interests ahead of Burke's interests; he failed to repay the $180,000 that he borrowed from Burke, and he testified that he does not intend to repay any of that money; Burke was harmed financially by losing that $180,000 and by incurring interest payments, and legal fees; Respondent placed the Ferrones' funds at risk by misappropriating those funds at a time when Respondent did not have sufficient funds to repay the money; Respondent provided false testimony at the disciplinary hearing concerning the charged misconduct; and Respondent was previously disciplined.

Recommendation

The Hearing Board recommended that Respondent be disbarred.

ANALYSIS

The Hearing Board's factual findings are entitled to deference and will not be disturbed on review unless they are against the manifest weight of the evidence. *See In re Timpone*, 208 Ill. 2d 371, 380, 804 N.E.2d 560 (2004). The Hearing Board's credibility findings are given particular deference because the Hearing Board is able to observe the testimony of the witnesses and judge their credibility. *See In re Franklin*, 2019PR00068 (Review Bd., Jan. 20, 2022) at 13, *petition for leave to file exceptions denied,* M.R. 031177 (May 19, 2022). Questions of law, including the interpretation of disciplinary rules, are reviewed *de novo*. *See In re Thomas*, 2012 IL 113035, ¶ 56, 962 N.E.2d 454 (2012).

Respondent argues the Hearing Board erred in finding that he committed the charged misconduct. He also argues that disbarment is excessive and requests a lower sanction.

For the reasons set forth below, we affirm the Hearing Board's findings that Respondent committed the charged misconduct. We also agree with the Hearing Board that Respondent should be disbarred.

1. The Hearing Board did not err in finding that Respondent dishonestly converted $161,608 of client funds in violation of Rules 1.15(a) and 8.4(c).

Rule 1.15(a)

Respondent argues that he did not violate Rule 1.15(a) because his use of the Ferrones' funds does not fall within the scope of Rule 1.15(a), which applies to funds that are "in a lawyer's possession in connection with a representation." Respondent argues he was not representing Francis Ferrone as an attorney, he was acting as a tax consultant, and therefore Rule 1.15(a) does not apply. That argument has no merit.

Attorney-client relationship: The evidence shows that Respondent was acting as an attorney, representing Francis Ferrone in connection with the sale of the Ferrones' companies. The judge, who was overseeing Francis Ferrone's guardianship, appointed Respondent to represent Francis Ferrone's estate, as an attorney, to handle the sale of the Ferrones' companies. The judge also authorized payment of legal fees to Respondent for the legal services Respondent provided, and Respondent accepted those legal fees.

Felicia Ferrone, the temporary guardian for Francis Ferrone, and her attorney each testified that Respondent was hired to represent Francis Ferrone's estate to handle the sale of the companies. Respondent also testified that he represented the Ferrones in the sale of their companies. Additionally, Respondent provided legal services in connection with the sale of the companies, which included structuring the deal, preparing the sales contract, negotiating the terms of the sale, researching the assignment of contractual rights, and handling the closing.

The Hearing Board stated, "An attorney-client relationship is appropriately found where the client reasonably believes there is an attorney-client relationship, the attorney performs functions supporting that belief, and the attorney does not act to disavow representation …. All of these elements were established in this case." (Hearing Bd. at 7) (citing *In re (Oscar) Gallo*, 2007PR00110 (Hearing Bd., April 14, 2011) at 19, *affirmed*, (Review Bd., Feb. 23, 2012), *approved and confirmed*, M.R. 25259 (June 8, 2012)). We agree.

Based on the evidence, we conclude that the Hearing Board was correct in finding that Respondent acted as an attorney for Francis Ferrone, and the misappropriated funds were funds that were in Respondent's possession "in connection with a representation," as required by Rule 1.15(a).

Misappropriation: The evidence also shows that Respondent misappropriated the funds for his own benefit, without authority. We note that on appeal, Respondent admits that he misappropriated the Ferrones' funds, without authority, and he admits that he violated Rule 1.15(a), which contradicts his argument that he did not violate Rule 1.15(a).

In his appellate briefs, he states: "Respondent did indeed withdraw funds from his IOLTA account, funds that were not his, in violation of SC Rule 1.15." (Resp. Brief at 8); "Respondent did in fact admit to misuse of client funds." (*Id*.); "Respondent is not justifying his misuse of funds." (*Id*. at 13); "Respondent did not and does not believe that he could take fees without permission." (*Id*. at 5); "Respondent did not think or testify that he had unfettered right to withdraw funds for himself, using the pretext of paying himself fees." (*Id*. at 13-14); and "Respondent does not and has not contested inappropriate conduct with respect to the Funds held in his IOLTA account." (Resp. Reply Brief at 1).

Thus, we affirm the Hearing Board's finding that Respondent violated Rule 1.15(a) by misappropriating $161,608 of client funds, thereby failing to safeguard those funds.

Rule 8.4(c)

Respondent next argues that he did not violate Rule 8.4(c) because his use of the Ferrones' funds did not constitute conversion under state law cases; he did not deceive anyone; and he repaid the funds. Those arguments are unpersuasive.

Conversion: Respondent argues he did not violate Rule 8.4(c) because his conduct did not constitute conversion as defined in state law cases, citing *Fonda v. General Cas. Co.*, 279 Ill. App. 3d 894, 899, 665 N.E.2d 439 (1996), which sets forth the elements of conversion under state law. That argument has no merit.

In disciplinary cases the state law definition of conversion is not applicable. *See* Rule 1.15, Comment 1 (2023) ("An attorney's unauthorized use of another's funds is called conversion. The Illinois Supreme Court has drawn a distinction between the common-law tort of conversion and the conduct by an attorney that warrants the imposition of discipline …. Conversion of trust funds occurs when a lawyer uses those funds for a purpose other than that for which they were delivered."); *see also In re Alpert*, 2009PR00104 (Review Bd., Feb. 11, 2013) at 12, *petition for leave to file exceptions denied,* M.R. 26028 (June 12, 2013) ("[In] the context of disciplinary matters, the Illinois Supreme Court has found that when an attorney accepts funds for a specific purpose and then uses the funds for the lawyer's own personal and business expenses, the attorney has improperly converted the funds."); *In re Sullivan*, 1992PR00314 (Review Bd., Feb. 17, 1994) at 9, *petition for leave to file exceptions allowed,* M.R. 10124 (May 19, 1994) ("[C]onversion occurs whenever an attorney utilizes funds belonging to another for his or her own

purposes, or the purposes of a third party, without the owner's consent."). In this case, Respondent converted the Ferrones' funds.

Dishonesty: Respondent also argues that his use of the Ferrones' funds was not dishonest because he did not deceive anyone. The Hearing Board, however, found that there was "ample, credible evidence establishing that Respondent deliberately and dishonestly misappropriated client funds." (Hearing Bd. Report at 9.) We agree.

Respondent's conduct was dishonest because he intentionally used the Ferrones' funds for his own purposes without authority, knowing that he did not own the funds; that constitutes dishonest conduct. *See In re Kosztya*, 2018PR00113 (Hearing Bd., Feb. 26, 2021) at 4, *sanction increased*, (Review Bd., Nov. 9, 2021), *petition for leave to file exceptions denied*, M.R. 031091 (April 15, 2022) ("A lawyer who uses client funds knowingly and without authority engages in dishonest conduct"); *In re Ogoke*, 2014PR00180 (Review Bd., March 11, 2019) at 11, *petitions for leave to file exceptions allowed*, M.R. 029836 (Oct. 21, 2019) ("This Board has repeatedly found, as a matter of law, that attorneys who have taken funds that they knew did not belong to them have engaged in dishonesty.").

Respondent also deceived the Ferrones and the court in three ways: (1) he failed to disclose that $161,608 of the Ferrones' money was no longer in Respondent's trust account and allowed them to believe Respondent was still holding those funds; (2) he concealed his conversion of the Ferrones' funds by using Burke's money to replace the converted funds; and (3) he caused Burke to wire the funds into his client trust account and then issued a check drawn on the trust account, thereby making it falsely appear that he was distributing money from the original sale proceeds, and concealing the fact that Burke was the true source of the funds. Respondent's omissions and actions were deceptive and dishonest. *See In re (Elena) Gallo*, 2017PR00101

(Review Bd., Oct. 31, 2019) at 17, *petition for leave to file exceptions allowed*, M.R. 030139 (March 13, 2020) ("[D]ishonesty is defined broadly under the Rules to include any conduct, statement, or omission which is calculated to deceive …. Here, by remaining silent, Respondent clearly deceived [the victim]."); *In re Edmonds*, 2014 IL 117696, ¶ 55, 21 N.E.3d 447 (2014) (the attorney attempted to deceive his client by depositing money from various sources into his trust account, thereby "attempting to conceal from [his client] the true source of the funds"); *In re Loveless*, 2000PR00065 (Review Bd., May 19, 2003) at 9, *leave to file petitions allowed*, M.R. 18838 (Sept. 19, 2003) (the attorney's transfer of funds back into the escrow account "on the eve of the audit was an attempt to conceal his personal use of the funds"). Respondent acted dishonestly.

Repayment: Respondent further argues that his misconduct was not dishonest because he replaced the $161,608 before the ARDC filed a complaint. That argument has no merit.

Attorneys cannot convert client funds, whenever they want, for as long as they want, and then simply eliminate their wrongdoing by repaying the funds. Respondent's repayment of the Ferrones' funds "does not erase his intentional misuse of client funds or absolve him of his wrongdoing, and it does not change the fact that Respondent deliberately took client funds without authority." *In re Acosta*, *supra*, 2021PR00037 (Review Bd.) at 8; *In re Sullivan*, *supra,* 1992PR00314 (Review Bd.) at 9, ("The original conversion is not avoided by the fact that the attorney later makes restitution."); *In re Rotman*, 136 Ill. 2d 401, 422-23, 556 N.E.2d 243 (1990) ("[R]estitution does not purge the original wrongdoing."); *In re Rolley*, 121 Ill. 2d 222, 234, 520 N.E.2d 302 (1988) ("[It] is well settled that restitution will not serve as a defense to a disciplinary action."). Thus, Respondent's argument concerning his repayment of funds fails.

Accordingly, we affirm the Hearing Board's finding that Respondent dishonestly converted $161,608, in violation of Rule 8.4(c).

2. The Hearing Board did not err in finding that Respondent failed to protect Margaret Burke's interests, in violation of Rule 1.8(a).

Respondent argues that the Hearing Board erred in finding that he violated Rule 1.8(a), in connection with the $180,000 that he obtained from Burke. He asserts that his conduct does not fall within the scope of Rule 1.8(a). We reject that argument and affirm the Hearing Board's findings.

Attorney-client relationship: Respondent argues that he did not violate Rule 1.8(a) because Burke was not his client, as required by the Rule, when he obtained $180,000 from her in May 2018. He contends that he was acting as her friend and as a tax consultant, not as her attorney, and he was giving her business advice, not legal advice. The Hearing Board rejected that argument, finding that Respondent was unquestionably acting as Burke's attorney in May 2018, and his testimony to the contrary was false. (Hearing Bd. Report at 17.) We agree.

Burke testified that, in May 2018, Respondent was one of the attorneys representing her in the case in Will County. She also testified that he was one of the attorneys representing her in connection with a bankruptcy proceeding, where she was a creditor. The Hearing Board found Burke to be credible, and we defer to the Hearing Board's finding concerning her credibility.

The evidence also shows that Respondent was listed as an attorney of record for Burke in the Will County case from 2017 through 2019. The complaint in that case identified him as an attorney for Burke, and his appearance was entered in the case. Respondent attended six court hearings in the Will County case and Respondent admitted that he was appearing in court on Burke's behalf. Moreover, between August 2017 and February 2019, Respondent submitted invoices to Burke on his law firm letterhead, which Burke paid, for legal services he provided to

Burke, including drafting a complaint, drafting responses to interrogatories, and drafting proposed findings of fact.

All of the elements of an attorney-client relationship were established. Burke reasonably believed there was an attorney-client relationship; Respondent performed functions supporting that belief; and he did not act to disavow representation. See *In re Gallo*, *supra,* 2007PR00110 (Hearing Bd.) at 19.

Based on the evidence in the record, we conclude that the Hearing Board was correct in finding that Respondent represented Burke in May 2018 when he obtained the $180,000 from her.

The loan: Respondent argues that the $180,000 was a gift from Burke, and therefore it was not a business transaction, as required by Rule 1.8(a). That argument fails.

Burke testified that the money was a loan, not a gift. As noted above, the Hearing Board found that her testimony was credible. The Hearing Board rejected Respondent's testimony that the money was a gift and found that his testimony was not credible. (*See* Hearing Bd. Report at 17, stating, "We find credible Burke's testimony that the funds were a loan that she expected to be repaid in three months. We do not find credible Respondent's testimony that the funds were a gift.") We defer to those findings. *See In re Franklin*, 2019PR00068 (Review Bd., Jan 20, 2022) at 15, *petition for leave to file exceptions denied,* M.R. 031177 (May 19, 2022) ("[The] Hearing Board did not believe Respondent, and it is not this Board's place to second-guess the Hearing Board's credibility determinations.").

Burke attempted to obtain repayment of the $180,000 from Respondent and he made excuses concerning why he could not immediately repay the funds. In response to Burke's requests for repayment, Respondent said he just needed more time; he was working on it; he was

in the middle of moving; he told her to keep the faith; and he said that the money was tied up in a company, so he had to redo the paperwork to get the money to repay her. In 2019, Burke sent Respondent emails demanding repayment and referring to excuses that he had made for not repaying the funds. (*See* Admin. Ex. 13.) Significantly, in response to Burke's requests for repayment, Respondent never countered her demands by saying that the money was a gift, which is strong evidence that Respondent and Burke had agreed the money was a loan, not a gift.

Eventually, in August 2019, Burke sued Respondent for the $180,000. After a bench trial, the judge in that case found that the money was a loan, not a gift, and ordered Respondent to repay the $180,000, as well as attorney's fees of $43,602.

Respondent argues that Burke's testimony was false and asks this Board to reject her testimony. The Hearing Board, however, found that Burke's testimony was credible and there is no basis in the record to disturb the Hearing Board's credibility findings. The Hearing Board also found that it was implausible that Burke would give Respondent $180,000 as a gift, and we agree.

Respondent further argues that the absence of any documentation proves the money was a gift, and that any oral agreement concerning repayment of the money is unenforceable because there was no written agreement. That argument is completely self-serving and demonstrates the importance of Rule1.8(a), which requires that clients' interests be protected. There is no written agreement in this case because Respondent did not prepare one, as required by Rule 1.8(a), and Respondent is now seeking to benefit from his own violation of that Rule.

Given that Respondent had extensive experience handling tax matters and financial transactions, which ordinarily involve extensive paperwork, we believe he deliberately avoided preparing any written documentation, in order to benefit himself. Absent a written agreement,

Respondent could decide to repay the money on any timetable he wanted, or he could decide to avoid repaying the money altogether, and Burke was left with little recourse.

We agree with the Hearing Board that the $180,000 was a loan, which constituted a business transaction, and Respondent's conduct falls within the scope of Rule 1.8(a).

Failure to protect Burke's interests: Respondent admitted that he did not prepare a written agreement, or obtain written consent from Burke, or advise Burke that she could consult with another attorney. Respondent, however, argues that he did not violate Rule 1.8(a) because Burke had a financial adviser, and therefore Respondent had no obligation to safeguard her interests. That argument has no merit.

Respondent cannot shift his ethical responsibilities onto his client's financial advisor. The fact that Burke had a financial adviser does not eliminate Respondent's responsibilities to his client. Additionally, Respondent had no contact with the advisor and received no documents from the advisor, so Respondent had no basis to believe that Burke's interests were being protected. Rule 1.8(a) does not contain an exception to safeguarding a client's interests, when the client has a financial adviser.

Accordingly, we affirm the Hearing Board's finding that Respondent failed to protect his client's interests in connection with a business transaction, in violation of Rule 1.8(a).

SANCTION RECOMMENDATION

The Hearing Board recommended that Respondent be disbarred for his misconduct. We review the Hearing Board's sanction recommendations based on a *de novo* standard. *See In re Storment*, 2018PR00032 (Review Bd., Jan. 23, 2020) at 15, *petition for leave to file exceptions denied*, M.R. 030336 (June 8, 2020). In making our recommendation, we consider the nature of the proved misconduct, and any aggravating and mitigating circumstances shown by the evidence,

while keeping in mind that the purpose of discipline is not to punish but rather to protect the public, maintain the integrity of the legal profession, deter misconduct, and protect the administration of justice from reproach. *In re Gorecki*, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (2003).

Respondent argues that disbarment is excessive given the mitigating factors here. He also argues that his prior misconduct should not be considered as an aggravating factor because it was not similar to the misconduct charged in this case. We disagree.

We conclude that disbarment is the appropriate sanction in this matter. Although we recognize that disbarment is an extremely harsh sanction, the record contains almost no evidence demonstrating that Respondent is likely to practice law in an ethical manner in the future.

The serious nature of the misconduct: Respondent's misconduct concerning the Ferrone's was very serious. He misappropriated $161,608, over a period of seven months, rapidly burning through their money. He stopped taking their funds only because the court ordered that the funds be distributed to the Ferrones, and by then Respondent had already taken one-third of their funds. The Hearing Board noted that "Respondent treated his clients' sales proceeds as his personal slush fund, withdrawing funds as he pleased without client or court approval." (Hearing Bd. Report at 9.) We agree. Respondent put the Ferrone's at risk of losing their funds.

Respondent's misconduct concerning Burke was also very serious. Respondent borrowed $180,000 and took no steps to protect Burke's interests. Respondent gained $180,000 and Burke lost $180,000. There was nothing fair about that transaction.

Moreover, Respondent obtained the loan based on false representations to Burke concerning his plans to purchase a restaurant, and he falsely represented that he would give her a promissory note. He did not disclose to Burke that he had recently misappropriated $161,608 of client funds, or that her money would be used to repay those funds. Respondent also falsely

represented that he needed the money urgently in order to secure the restaurant, when, in fact, he needed the money urgently to comply with the court's order directing that the Ferrones be paid.

Aggravating factors: The Hearing Board found that the "aggravating factors are numerous and serious." (Hearing Bd. Report at 19.) We agree, and we give substantial weight to the aggravating factors.

Respondent intentionally converted money from the Ferrone brothers, who were both vulnerable individuals. Francis Ferrone had been adjudicated incompetent due to dementia, and Donald Ferrone was 91 years old. Respondent was having financial difficulties, and he did not have the ability to repay those funds.

The Hearing Board found in aggravation that Respondent took no responsibility for his misconduct and displayed no remorse. We agree with that finding.

Margaret Burke tried to help Respondent, and in return, he caused her financial harm. Burke trusted Respondent because he was her attorney and her friend, and Respondent violated that trust and took advantage of her. We note that Rule 1.8(a) is designed to prevent attorneys from taking advantage of clients who trust them. *See* Rule 1.8, Comment 1 ("A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan.").

Moreover, Respondent made no effort to repay any portion of the loan and he does not intend to repay Burke. His failure to protect Burke's interests in the first place, and his decision not to repay the money he owes, indicates that his is unwilling to practice law ethically and professionally.

Additionally, the Hearing Board found that Respondent provided false testimony at the disciplinary hearing, while under oath, concerning the charged misconduct. The Hearing Board made the following findings:

- "Respondent testified falsely about all of the key issues in this matter, including the existence of an attorney-client relationship in the Ferrone and Burke matters, his obligation to obtain court approval for fees in the Ferrone matter, the amount of fees he earned, and the nature of his transaction with Burke." (Hearing Bd. Report at 20.)

- "We reject Respondent's assertion that he was acting solely as a tax consultant [for the Ferrone's]." (Id. at 8.)

- "We do not find credible Respondent's testimony that he was entitled to the additional funds for services he provided to the Ferrones." (Id.)

- "Respondent's contention that he earned the funds and simply was not careful in accounting for his compensation is not credible." (Id. at 9.)

- "Respondent's blatantly false testimony that he believed he could take fees without court approval and that the court was not interested in the amount of his fees further convinces us of his dishonest motives." (Id. at 10.)

- "Respondent gave … false testimony as part of an ongoing effort to avoid the consequences of his misuse of funds." (Id.)

- "Respondent denies that [an attorney client] relationship [with Burke] existed and contends that he provided accounting advice. We find Respondent's denial meritless and disingenuous …. Respondent unquestionably acted as Burke's attorney, and we find his testimony to the contrary to be patently false." (Id. at 16, 17.)

- "We do not find credible Respondent's testimony that the funds [from Margaret Burke] were a gift." (Id. at 17.)

The Hearing Board concluded that Respondent's lack of candor in this proceeding is a serious aggravating factor. We agree. Respondent's false testimony, in our opinion, shows his

willingness to bend the truth; his refusal to accept responsibility for his misconduct; and his attempt to mislead the ARDC and the Illinois Supreme Court concerning the facts.

The Hearing Board also found that Respondent's prior misconduct is a significant factor in aggravation, and we agree. Respondent argues that his prior misconduct was too long ago and is too dissimilar to be considered. That argument is unpersuasive, given the facts of the two cases.

In both cases, Respondent engaged in financial misconduct that helped Respondent and hurt the clients. In the prior case, Respondent improperly obtained $100,000 from two estates by wrongfully overbilling them for legal fees that he had not legitimately earned. In this case, Respondent improperly obtained $161,608 from the Ferrones by wrongfully taking their funds, and he improperly obtained $180,000 from Burke by wrongfully making false statements and failing to prepare a written agreement. In both cases, Respondent enriched himself at the expense of his clients; he placed his own welfare ahead of theirs; and he failed to properly safeguard his clients' interests and their funds. Therefore, we find that Respondent's prior misconduct is similar to the misconduct here and constitutes an aggravating factor.

Mitigating factors: Respondent argues that disbarment is not warranted, in light of the mitigating factors in this case. That argument fails.

Respondent points out that there is substantial mitigation, including that he was involved in bar association activities; he cooperated in the disciplinary proceeding; and he practiced law for 45 years without being accused of stealing money or other serious transgressions. Respondent also points out that he returned the Ferrones' money before his misuse of the funds was discovered, and he argues that his returning the funds should be considered a mitigating factor.

We recognize the extent of the mitigating evidence here, and we have taken that evidence into consideration in making our recommendation. Nevertheless, we conclude that disbarment is warranted. We believe the mitigation here is not sufficient to remove the need for disbarment, because it does not establish that Respondent will comply with the Rules of Professional Conduct in the future.

We also find that Respondent's return of the Ferrones' funds is not a mitigating factor. Respondent had to replace their money because the court issued an order directing that the Ferrones' funds be distributed to them. Failing to distribute those funds would have exposed Respondent's misappropriation of their money. Additionally, Respondent did not use his own funds to replace the money he had taken; instead, he made false representations to Margaret Burke in order to obtain money from her, and he used her money to replace the funds he had taken. That is not mitigating.

We conclude that disbarment is warranted, despite the mitigation in this case, based on Respondent's serious misconduct and the serious aggravating factors.

Relevant legal authority: Although Respondent argues that a sanction of less than disbarment is appropriate, he does not cite any cases on appeal to support his argument.

The Hearing Board in this case relied on three cases, *Mehta*, *Birt*, and *Franklin*, in making its recommendation of disbarment. We agree that those cases, in which attorneys converted funds, firmly support disbarment in this case. *See In re Mehta*, 2008PR00084 (Hearing Bd., Aug. 20, 2010), *approved and confirmed*, M.R. 24461 (May 18, 2011); *In re Birt*, 2013PR00053 (Review Bd., Dec. 18, 2015), *petition for leave to file exceptions denied*, M.R. 27896 (May 18, 2016); *In re Franklin,* 2019PR00068 (Review Bd., Jan 20, 2022), *petition for leave to file exceptions denied,* M.R. 031177 (May 19, 2022).

In *Mehta*, the attorney was disbarred for misappropriating $100,000 that he was holding in escrow. Mehta falsely claimed that the seller had authorized him to take the funds as fees; he ignored court orders directing him to repay the money; and he never made restitution. Mehta showed no remorse, and he had previously been suspended for three years after being convicted of making false statements in immigration cases. He presented no evidence in mitigation.

In *Birt*, the attorney was disbarred for misappropriating $79,000 that he was holding on behalf of an elderly woman to pay for her living expenses. He attempted to conceal his misuse of the funds. He failed to express genuine remorse; his conduct was not an isolated incident; and the Hearing Board found portions of his testimony to be incredible. He presented mitigating evidence, including that he provided *pro bono* services; he worked with an organization that helped disabled adults; he coached his sons' athletic teams; and he had no prior discipline.

In *Franklin*, the attorney was disbarred for misappropriating a total of $122,000 from funds belonging to ten clients. Franklin's misconduct involved numerous instances of the intentional misuse of client funds over an extended period of time. She also failed to accept responsibility and testified falsely at the disciplinary hearing. The mitigating evidence included her work with her church, no prior discipline, and two-character witnesses.

We believe that *Mehta*, *Birt*, and *Franklin*, provide support for disbarment in this case. Respondent's misconduct here was actually more serious than the misconduct in those cases, in that Respondent misappropriated a larger sum of money ($161,608) than the attorneys did in those cases, and Respondent engaged in additional serious misconduct by failing to protect Burke's interests, which resulted in financial harm because Respondent refused to repay her.

CONCLUSION

For the foregoing reasons, we affirm the Hearing Board's findings that Respondent committed the charged misconduct, and we recommend that Respondent be disbarred.

We believe that disbarment is necessary to protect the public, and will serve the other goals of attorney discipline, including maintaining the integrity of the legal profession, acting as a deterrent to Respondent and other attorneys, and preserving the public's trust in the legal profession. We also find that disbarment is commensurate with Respondent's misconduct and consistent with discipline that has been imposed for comparable misconduct.

Respectfully submitted,

Leslie D. Davis
Charles E. Pinkston, Jr.
Michael T. Reagan

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 Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on December 11, 2023.

/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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BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:	
LEONARD SAMUEL DEFRANCO,	
Respondent-Appellant,	Commission No. 2022PR00040
No. 3122606.	

PROOF OF SERVICE
OF THE REPORT AND RECOMMENDATION
OF THE REVIEW BOARD

I, Andrea L. Watson, hereby certify that I served a copy of the Report and Recommendation of the Review Board on Respondent-Appellant listed at the address shown below by e-mail service on December 11, 2023, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellee by e-mail service.

Leonard Samuel DeFranco
Respondent-Appellant
len@defranco-law.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Michelle M. Thome,
Clerk

/s/ Andrea L. Watson
By: Andrea L. Watson
Deputy Clerk

FILED

December 11, 2023

ARDC CLERK