

FILED

November 29, 2022

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

In the Matter of:

JUSTIN KOSLAN SCHWARTZ,

Attorney-Respondent,

No. 6257328.

Commission No. 2022PR00030

REPORT AND RECOMMENDATION OF THE HEARING BOARD

DEFAULT PROCEEDING

The hearing in this matter was held by video conference on November 15, 2022, before a Hearing Board Panel consisting of Henry T. Kelly, Chair, Shelbie J. Luna, and Ghian Foreman. Rory P. Quinn appeared on behalf of the Administrator. Respondent did not appear, and no counsel appeared on his behalf. The Administrator recommended that Respondent be suspended for one year and until further order of the Court and be required to make restitution. We agree with the Administrator's recommendation.

We have considered the Administrator's three-count Complaint, a copy of which is attached as Exhibit 1. We have also considered the Order entered on August 12, 2022, deeming the allegations of the Complaint admitted, a copy of which is attached as Exhibit 2. Respondent did not file an answer, respond to the Motion to Deem the Allegations of the Complaint Admitted, or participate in any prehearing conferences in this matter.

The day before the disciplinary hearing, Respondent filed a motion to continue on the grounds that he had "several hearings" in Vermilion County at the same time as the disciplinary hearing. Given Respondent's knowledge of the disciplinary hearing date for several months, his

failure to file a motion until the eve of hearing, and the absence of specific information about his purported conflicts, the Chair denied Respondent's motion as untimely and insufficient to demonstrate the extraordinary circumstances required for a continuance. See Comm. Rule 272.

The allegations deemed admitted establish that Respondent neglected three client matters, two of which were criminal appeals. He also failed to refund \$1,000 in unearned fees to one of his clients, Kevin Converse.

In aggravation, the Panel has considered the harm Respondent caused to his clients, his pattern of misconduct, and his failure to make restitution. Respondent's failure to participate in this proceeding constitutes significant additional aggravation. His absence demonstrates a lack of respect for the disciplinary process and deprives the Panel of the opportunity to assess whether he is able to competently practice law at this time.

Respondent has no prior discipline. We considered that factor in mitigation, but it does not lead us to recommend a different sanction.

Accordingly,

1. Respondent was served with the Complaint via email, by agreement, on April 25, 2022. A copy of the Affidavit of Agreed Service Pursuant to Commission Rule 214(c) is attached as Exhibit 3.
2. The allegations of the Complaint were deemed admitted in an Order filed on August 12, 2022. A copy of that Order is attached as Exhibit 2.
3. In consideration of the Order deeming the allegations of the Complaint admitted, this Panel finds Respondent committed the misconduct charged in the Complaint.
4. Given Respondent's misconduct, the serious aggravating factors present, and the case law cited by the Administrator, we recommend that Respondent, Justin Koslan

Schwartz, be suspended for one year and until further order of the Court and until he makes restitution in the amount of \$1,000 to Kevin Converse.

5. The Panel has concluded that this report format will adequately and appropriately communicate its recommendation to the Court.

Respectfully submitted,

Henry T. Kelly
Shelbie J. Luna
Ghian Foreman

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 November 29, 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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Exhibit 1

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

In the Matter of:

JUSTIN KOSLAN SCHWARTZ,

Attorney-Respondent,

No. 6257328.

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Commission No. 2022PR00030

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Rory P. Quinn, pursuant to Supreme Court Rule 753(b), complains of Respondent Justin Koslan Schwartz, who was licensed to practice law in Illinois on April 27, 1999, and alleges that Respondent has engaged in the following conduct which subjects Respondent to discipline pursuant to Supreme Court Rule 770:

COUNT I

(Lack of Diligence – Mason Matter)

1. On November 1, 2013, Karen Mason (“Mason”) began employment as an internal auditor for VW Credit Inc. (“VW”) in Libertyville, Illinois. VW is a subsidiary of Volkswagen Group of America located in Hendon, Virginia.

2. As a condition of her employment, Mason signed an agreement to submit any dispute with VW to final and binding arbitration.

3. On December 26, 2017, Mason submitted a charge of discrimination to the United States Equal Employment Opportunity Commission (“EEOC”). On March 20, 2018, the EEOC closed its file on Mason’s charge of discrimination because they were unable to conclude the information they obtained established a violation of any of the statutes enforced by the EEOC. On the same date, the EEOC issued Mason a right to sue letter.

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4. On June 1, 2018, Mason and Respondent discussed her EEOC charge. During that conversation, Respondent advised Mason that she needed to send a request for arbitration to VW. On that same day, Respondent and Mason agreed that Respondent would represent Mason, draft a request for arbitration, and submit the request for arbitration to VW on Mason's behalf. Respondent and Mason agreed Respondent would accept a flat fee of \$500 as his fee in the matter.

5. On June 20, 2018, Mason paid Respondent the agreed-upon fee of \$500.

6. On June 21, 2018, Respondent sent a draft letter to Mason for her approval.

7. On June 26, 2018, Mason returned a revised letter to Respondent for him to submit to VW.

8. Between June 26, 2018 to January 10, 2019, Mason called Respondent four times and sent Respondent nine text messages requesting the status of her request for arbitration and confirmation that Respondent had mailed her letter.

9. At no time between June 26, 2018 and January 10, 2019 did Respondent provide Mason the status of her arbitration or proof he had mailed the letter to VW.

10. On January 10, 2019, Mason emailed Respondent requesting the status of her matter. On that same day, Respondent replied to Mason's email indicating he would call her that same day. Respondent did not call Mason between January 10, 2019 and January 15, 2019.

11. On January 14, 2019, Mason again emailed Respondent requesting the status of her letter. On that same day, Respondent replied to Mason's email indicating he would call her on January 15, 2019.

12. Between January 17, 2019 and July 19, 2019, Mason emailed Respondent fourteen times requesting the status of her arbitration letter and confirmation that Respondent had mailed the letter. During this time, Respondent told Mason he had sent the letter, would resend the letter, and would call VW to determine the status of their reply.

13. At no time did Respondent provide Mason with requested confirmation that he had mailed her request for arbitration.

14. On November 25, 2019, Respondent called VW in Herdon, Virginia. VW advised Respondent that he needed to contact VW's legal department in Auburn Hills, Michigan.

15. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failing to act with reasonable and promptness in representing a client, by conduct including failing to take any action from June 26, 2018 until April 26, 2019, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010); and
- b. failing to keep the client reasonably informed about the status of the matter and failing to promptly comply with reasonable requests for information, by conduct including failing to respond to Mason's requests for proof that he had mailed her request for arbitration in violation of Rule 1.4 of the Illinois Rules of Professional Conduct (2010).

COUNT II

(Lack of Diligence and Improper Withdrawal – Cunningham Matter)

16. On March 22, 2018, Lakeisha Cunningham ("Cunningham") was convicted of first-degree murder in case number 17 CF 312 in Vermilion County, Illinois.

17. On July 15, 2018, Respondent and Cunningham agreed that Respondent would represent Cunningham in her sentencing hearing, post-trial proceedings, and an appeal of her criminal conviction. Respondent and Cunningham agreed that Respondent would accept a flat fee of \$7,500 for the sentencing hearing and post-trial proceedings and a flat fee of \$10,000 for the appeal.

18. Between July 15, 2018 and November 26, 2018, Cunningham, or someone at her direction, paid Respondent \$7,500 for his work on the sentencing hearing and post-trial proceedings.

19. On October 1, 2018, Respondent filed a post-trial motion for a new trial.
20. On October 9, 2018, Respondent appeared for Cunningham's sentencing hearing. Cunningham's post-trial motion was denied, and Cunningham was sentenced to 60 years of imprisonment in the Illinois Department of Corrections.
21. On October 18, 2018, Respondent filed a Notice of Appeal with the Appellate Court of Illinois Fourth District. The case was docketed as *People v. Cunningham*, case number 4-18-0692. Respondent's docketing statement was due to be filed on October 29, 2018.
22. On November 2, 2018, the Appellate Court sent Respondent a letter to his registered address which stated his Docketing Statement was overdue and failure to file the statement or seek an extension of time within 14 days would result in dismissal of Cunningham's appeal.
23. On November 26, 2018, Respondent filed a Docketing Statement with the Appellate Court.
24. On January 3, 2019 the Appellate Court, on its own motion, filed the Record on Appeal. Respondent's brief was due to be filed February 4, 2019.
25. At no time between November 26, 2018 and March 19, 2019, did Respondent file any further pleadings for Cunningham's appeal.
26. Respondent claims he sent a "Notice of Withdrawal" on January 15, 2019 to the Appellate Court requesting leave to withdraw as counsel for Cunningham. Respondent's notice was never received by the appellate court, and Respondent was never granted leave to withdraw.
27. On March 19, 2019, Cunningham's appeal was dismissed for want of prosecution.
28. At no time following the dismissal did respondent take any action to appeal the dismissal or pursue any relief for Cunningham.
29. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failing to act with reasonableness and promptness in representing a client, by conduct including failing to file an appellate brief or any additional filings on behalf of Cunningham between November 26, 2018 and March 19, 2019, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- b. failing to comply with applicable law requiring notice to or permission of a tribunal when terminating a representation, by conduct including not filing a motion to withdraw between January 15, 2019 and March 19, 2019 and not receiving permission of the Appellate Court to withdraw, in violation of Rule 1.16(c) of the Illinois Rules of Professional Conduct (2010); and
- c. failing to take steps to the extent reasonably practicable to protect a client's interest upon termination of representation, by conduct including terminating his representation of Cunningham without leave of court, failure to give Cunningham proper notice of his withdrawal, and failure to allow time for Cunningham to secure other counsel, in violation of Rule 1.16(d) of the Illinois Rules of Professional Conduct (2010).

COUNT III

(Lack of Diligence and Failure to Refund Unearned Fees – Converse Matter)

30. On December 18, 2019, the Appellate Court of Illinois Second District affirmed the conviction of Kevin Converse (“Converse”) in case *People v. Converse*, case number 2-19-0228.

31. On December 26, 2019, the court granted Converse’s former counsel’s motion to withdraw.

32. On December 27, 2019, Respondent and Converse agreed that Respondent would represent Converse in filing a petition for rehearing in the Appellate Court. Respondent and Converse agreed that Respondent would accept a flat fee of \$2,500 to draft and file the petition for rehearing and a brief in support of the petition for rehearing.

33. On January 3, 2020, Converse paid Respondent \$1,000 as partial payment of his fee.

34. On January 8, 2020, Respondent filed his appearance, a motion to substitute as counsel, and a one sentence petition for rehearing. On the same day, Respondent filed a motion for an extension of time to file a brief in support of the petition for rehearing. In his motion for an extension of time, Respondent stated he was diagnosed with tennis elbow on January 8, 2020 and was unable to complete the brief due to the resulting pain.

35. The court granted Respondent an extension until February 8, 2020 to file the brief in support of the petition for rehearing.

36. On February 10, 2020, Respondent filed a second motion for an extension of time to file the brief. In the motion, Respondent claimed he was still suffering pain related to his tennis elbow.

37. The court granted Respondent an additional extension until February 24, 2020 to file the brief in support of the petition for rehearing.

38. At no time between January 8, 2020 and March 2, 2020, did Respondent file the brief in support of the petition for rehearing.

39. At no time prior to March 2, 2020, did Respondent do work sufficient to earn the \$1,000 fee.

40. On March 2, 2020, the Appellate Court issued a mandate finalizing their December 18, 2019 judgment.

41. On April 1, 2020, Converse sent Respondent a text in which he requested a refund of the \$1,000 payment.

42. On May 29, 2020, June 20, 2020, and August 30, 2020, Converse again sent Respondent a text message requesting a refund of the \$1,000.

43. As of XX, the date a complaint was voted in this matter, Respondent had not returned any portion of the funds owed to Converse.

44. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failing to act with reasonable diligence and promptness in representing a client, by conduct including failing to file a brief in support of the petition for rehearing on Converse's behalf between January 8, 2020 and March 2, 2020, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- b. failing to promptly refund to Converse upon discharge any portion of the \$1,000 fee paid in advance that had not been earned, in violation of Rule 1.16(e) of the Illinois Rules of Professional Conduct (2010); and
- c. failing to make reasonable efforts to expedite litigation consistent with the interests of his client, by conduct including failing to file a brief in support of the petition for rehearing on Converse's behalf, in violation of Rule 3.2 of the Illinois Rules of Professional Conduct (2010).

Respectfully Submitted

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Rory P. Quinn

Rory P. Quinn

Rory P. Quinn
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Exhibit 2

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

In the Matter of:

JUSTIN KOSLAN SCHWARTZ,

Attorney-Respondent,

No. 6257328.

Commission No. 2022PR00030

ORDER

A telephonic pre-hearing conference was held in this matter on August 12, 2022, at 9:30 a.m. Participating were Henry T. Kelly, Chair; and Rory P. Quinn, Counsel for the Administrator. Respondent did not participate, despite having requested that the pre-hearing conference be scheduled for this date. Counsel for the Administrator advised the Chair as to the status of the matter. Accordingly,

IT IS ORDERED:

1. Respondent having failed to file an answer and a report pursuant to Commission Rule 253, the Administrator's Motion to Deem the Allegations of the Rule 753 Complaint Admitted Pursuant to Commission Rule 236 and Motion to Bar Witnesses from Testifying is granted. No further proof of the factual allegations and disciplinary charges is required. The hearing in this matter shall be limited to presenting evidence of aggravating and mitigating factors and argument regarding the form and amount of discipline to be imposed. Respondent is barred from presenting any witnesses at hearing;

2. The Administrator shall disclose any opinion witness and opinion witness reports on or before September 2, 2022;

3. All discovery shall be completed on or before October 7, 2022;
4. The parties shall exchange the exhibits they intend to offer at hearing on or before November 1, 2022;
5. On or before November 8, 2022, the parties shall meet and confer to determine whether they can agree to the admissibility of exhibits and evidence proposed to be offered at hearing;
6. The default hearing in this matter is scheduled for November 15, 2022, commencing at 9:30 a.m., and will be held remotely via Webex video conference. The Clerk of the Commission shall provide the parties with Webex access information; and
7. The parties shall prepare exhibits in conformance with Commission Rule 276 and the Clerk of the Commission's procedures regarding electronic exhibits.

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, certify that the foregoing is a true copy of the order, approved by the Hearing Board Chair, entered in the above entitled cause of record filed in my office on August 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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PROOF OF SERVICE

I, Andrea L. Watson, hereby certify that I served a copy of this Order on the Attorney-Respondent listed at the e-mail address shown below on August 12, 2022, at or before 5:00 p.m. At the same time, a copy of this Order was sent to Counsel for the Administrator by e-mail service.

Justin Koslan Schwartz
Attorney-Respondent
justinschwartzlaw@gmail.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.

/s/ Andrea L. Watson
Andrea L. Watson

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Exhibit 3

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In the Matter of:

JUSTIN KOSLAN SCHWARTZ,

Attorney-Respondent,

No. 6257328.

Commission No. 2022PR00030

AFFIDAVIT OF AGREED SERVICE
PURSUANT TO COMMISSION RULE 214(c)

I, CHERYL BAUER (“Affiant”), an agent of the Attorney Registration and Disciplinary Commission who is over the age of 18, being duly sworn, hereby state:

1. Affiant possesses firsthand knowledge of the facts presented in this Affidavit and, if called as a witness, Affiant will testify to the truth of the facts as presented in this Affidavit.

2. Affiant is a Senior Investigator for the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (“the Commission”) and, as such, is authorized to serve process.

3. On Friday, April 22, 2022 at approximately 9:50 a.m., Affiant emailed the Respondent at justinschwartzlaw@gmail.com, the Respondent’s last registered email address in Law Manager and asked Respondent to confirm if he would accept service of the Complaint via email.

4. On Friday, April 22, 2022, at approximately 12:57 p.m., Affiant received a reply email from the Respondent asking what the matter is about.

5. On Monday, April 25, 2022, at approximately 8:53 a.m., Affiant emailed the Respondent and notified him of the contents of the Complaint. Additionally, Affiant again asked Respondent to confirm if he will accept service of the Complaint via email.

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6. On Monday, April 25, 2022, at approximately 12:32 p.m., Affiant received a reply email from Respondent stating he will accept service of the Complaint via email.

7. On Monday, April 25, 2022, at approximately 12:37 p.m., Affiant emailed the Complaint Service Letter, Complaint, Notice of Complaint, Order Assigning Chairperson of the Hearing Panel, ARDC Defense Attorney List, Filings and Procedures Memorandum and Rules of the Attorney Registration and Disciplinary Commission to the Respondent at justinschwartzlaw@gmail.com.

8. Further Affiant Sayeth not.

/s/ Cheryl Bauer
Cheryl Bauer
Senior Investigator

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.

/s/ Cheryl Bauer
Cheryl Bauer

Dated: April 25, 2022