

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

FILED

November 14, 2023

ARDC CLERK

In the Matter of:

PHILIP MICHAEL KISS,

Attorney-Respondent,

No. 6187296.

Commission No. 2022PR00086

REPORT AND RECOMMENDATION OF THE HEARING BOARD

DEFAULT PROCEEDING

The hearing in this matter was held by video conference on October 27, 2023, before a Hearing Board Panel consisting of Rhonda Sallée, Chair, Michael T. Trucco, and James W. Kiley. Rachel C. Miller 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 six months and until further order of the Court. We agree with the Administrator's recommendation.

We have considered the Administrator's two-count Complaint, filed on December 20, 2022, a copy of which is attached as Exhibit 1. Respondent initially participated in these proceedings but stopped participating after June 28, 2023. He did not file an answer to the Complaint or a response to the Administrator's Motion to Deem the Allegations of the Complaint Admitted. Consequently, on September 18, 2023, an Order was entered deeming the allegations of the Complaint admitted. A copy of that Order is attached as Exhibit 2.

The allegations deemed admitted establish that Respondent: 1) provided financial assistance totaling \$2,666,67 to a client for personal expenses that were not court costs or litigation

expenses; 2) failed to safeguard \$929.03 of the same client's settlement funds by allowing the balance of his client trust account to fall below the amounts owed to the client and/or lienholders; and 3) failed to maintain required accounting records for his client trust account. Based on these admitted allegations, the Administrator established by clear and convincing evidence that Respondent violated Rules 1.8(e) and 1.15(a) of the Illinois Rules of Professional Conduct (2010).

We have considered in mitigation that Respondent has no prior discipline and his failure to safeguard funds appears to have resulted from poor bookkeeping practices rather than a dishonest motive. Respondent's failure to appear for his disciplinary hearing and to fully participate in this proceeding is a significant factor in aggravation.

Accordingly,

1. Respondent agreed to accept electronic service of the Complaint and was served by email on January 3, 2023. 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 entered on September 18, 2023. 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 aggravating and mitigating factors present, and the case law cited by the Administrator, we recommend that Respondent, Philip Michael Kiss, be suspended for six months and until further order of the Court.

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

Respectfully submitted,

Rhonda Sallée
Michael T. Trucco
James W. Kiley

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 14, 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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Exhibit 1

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

In the Matter of:

PHILIP MICHAEL KISS,

Attorney-Respondent,

No. 6187296.

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COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Albert S. Krawczyk, pursuant to Supreme Court Rule 753(b), complains of Respondent, Philip Michael Kiss, who was licensed to practice law in the State of Illinois on November 16, 1984, and alleges that Respondent has engaged in the following conduct which subjects Respondent to discipline pursuant to Supreme Court Rule 770:

ALLEGATIONS COMMON TO ALL COUNTS

1. At all times related to this complaint, Respondent was the sole attorney of the law firm known as Kiss & Associates, primarily handling personal injury matters.
2. Beginning in June 1998, Respondent maintained and was the sole signatory on a checking account at JP Morgan Chase Bank, N.A. ("Chase Bank") ending with the digits 4698. That account was titled "KISS & ASSOCIATES LTD, ATTORNEYS AT LAW" ("Respondent's operating account"), was used by Respondent for the deposit and disbursement of funds for business or personal purposes, and was not a separate, identifiable trust account.
3. Beginning in May 2017, Respondent maintained and was the sole signatory on an IOLTA client trust account at Chase Bank ending with the digits 5311. That account was titled "PHILIP M. KISS, DBA PHILIP M. KISS, KISS & ASSOCIATES, IOLTA TRUST ACCOUNT"

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(“Respondent’s client funds account”) and was used by Respondent for the deposit and disbursement of funds of clients or third persons in Respondent’s possession.

COUNT I
(Providing Financial Assistance to Mohamed Ali)

4. On June 5, 2016, Mohamed E. Ali (“Ali”), one of about 43 passengers in a bus operated by Darrell Langston (“Langston”) on behalf of South Ocean, Inc., a corporation d/b/a D & J Coach Tours (“Coach Tours”), sustained injuries as a result of a collision between the bus and a vehicle operated by Jose Martinez Muro (“Muro”) and involving other vehicles. At the time of the incident, the bus was traveling southbound along I-94 at or near 63rd Street in Chicago.

5. As a result of his injuries from the June 2016 collision, Ali incurred approximately \$21,000 in medical bills.

6. In or about June 2016, Respondent and Ali agreed that Respondent would represent Ali in matters relating to the June 2016 collision referred to in paragraph four, above. Respondent and Ali agreed that Respondent would be paid a total fee equal to one-third of the gross amount recovered from Ali’s claim.

7. On January 12, 2017, Allstate Fire and Casualty Insurance Company (“Allstate Insurance”), by its attorneys, caused a complaint for interpleader and to stay any pending litigation, and, on July 18, 2017, a first amended complaint, to be filed naming Ali and others as defendants in the Circuit Court of Cook County in the matter entitled *Allstate Fire and Casualty Insurance Company v. Mohamad Ali et al.*, case number 17 CH 00432, asserting that at the time of the June 2016 collision, Allstate Insurance insured the vehicle owned and operated by Muro, Muro was the named insured, and Allstate Insurance stood willing and able to offer and pay the bodily injury policy limits of \$25,000 per person and \$50,000 per occurrence, to the court to be disbursed and allocated between claimants.

8. On June 28, 2017, Respondent filed his appearance as counsel of record for Ali in case number 17 CH 00432.

9. On May 31, 2018, the court in case number 17 CH 00432 entered an order allowing Ali to file his own complaint against Muro and others, and, on June 4, 2018, Respondent caused a complaint, and, on August 29, 2018, an amended complaint, to be filed against Muro and others, including Langston and Coach Tours, in the Circuit Court of Cook County in the matter entitled *Mohamed E. Ali vs. South Ocean Inc. et al.*, case number 18 L 005793, seeking to recover damages for Ali's personal injuries from the June 2016 collision.

10. In or about 2019 and 2020, at various times, Ali told Respondent that he needed money to pay his rent and other personal expenses.

11. On August 30, 2019, Respondent drew and Chase Bank paid, check number 6041 made payable to Ali in the amount of \$500 on Respondent's operating account from Respondent's funds, for financial assistance to Ali as an advance on the proceeds that Respondent anticipated would be recovered on Ali's claims.

12. On September 17, 2019, the court in case number 17 CH 00432 entered an order by agreement of the parties, allocating, among other things, \$4,457.43 to Ali from the insurance funds before the court from Allstate Insurance, and, on October 28, 2019, the court in the case entered an agreed distribution and interpleader order dismissing the case.

13. In or about December 2019, Respondent, on behalf of Ali, and Langston and Coach Tours, by its attorneys, agreed to settle Ali's claims against them in case number 18 L 005793, in exchange for the payment of \$2,500 to Ali, and, on December 5, 2019, Ali signed a release and settlement agreement.

14. On December 5, 2019, Respondent drew and Chase Bank paid, check number 6067 made payable to Ali in the amount of \$500 on Respondent's operating account from Respondent's funds, for financial assistance to Ali as an additional advance on the proceeds of the recovery on Ali's claims.

15. In or about January 2020, Respondent received a check dated January 3, 2020, from New York Marine & General Insurance Co. made payable to "Mohammed E. Ali and his attorneys, Kiss & Associates Ltd." in the amount of \$2,500, as the settlement of Ali's claims against Langston and Coach Tours, and, on January 8, 2020, Respondent deposited the proceeds of the check into Respondent's client funds account.

16. On January 8, 2020, Respondent drew and Chase Bank paid, check number 6072 made payable to Ali in the amount of \$666.67 on Respondent's operating account from Respondent's funds, for financial assistance to Ali as another advance on the proceeds of the recovery on Ali's claims.

17. In or about March 2020, Respondent advised Ali that he was still working on Ali's case and would have a check for Ali within 30 days.

18. On March 3, 2020, Respondent drew and Chase Bank paid, check number 6087 made payable to Ali in the amount of \$1,000 on Respondent's operating account from Respondent's funds, for financial assistance to Ali as a further advance on the proceeds of the recovery on Ali's claims.

19. None of Respondent's payments to Ali referred to in paragraphs 11, 14, 16, and 18, above, were for court costs or expenses related to contemplated or pending litigation.

20. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

providing financial assistance to a client in connection with pending or contemplated litigation that were not court costs or litigation expenses, by conduct including giving Mohamed E. Ali a total of \$2,666.67 to pay his rent and other personal expenses, in violation Rule 1.8(e) of the Illinois Rules of Professional Conduct (2010).

COUNT II
(Conversion of \$929.03 of Ali's Settlement Funds)

21. The Administrator realleges the facts set forth in paragraphs four through 19 of Count I, above.

22. On March 5, 2020, Ali signed a release, settlement and indemnity agreement in connection with the \$4,457.43 allocated to Ali from the insurance funds from Allstate Insurance in case number 17 CH 00432.

23. In or before May 2020, Respondent attempted to contact agents of Medicare to inquire as to whether there had been a lien filed on behalf of Medicare against Ali in connection with any medical treatment, prescription medications or physical therapy Ali may have received, as a result of his injuries from the June 2016 collision.

24. On December 3, 2020, the court in case number 18 L 005793 allowed Respondent's oral request to dismiss the case without prejudice.

25. In or about January 2021, Respondent received a check dated January 12, 2021, from Allstate Insurance, to replace an earlier issued check, made payable to "MOHAMMED ALI AND ATTORNEY(S) KISS & ASSOCIATES, LTD" in the amount of \$4,457.43, as the funds allocated to Ali in case number 17 CH 00432, and, on January 21, 2021, Respondent deposited the proceeds of the check into Respondent's client funds account.

26. As of January 21, 2021, Respondent deposited funds totaling \$6,957.43 into Respondent's client funds account in connection with Ali's claims from the June 2016 collision. As of that date, after payment of attorney's fees and costs totaling \$3,342.73 and the repayment of the funds that Respondent had advanced to Ali totaling \$2,666.67, Ali had an interest in at least \$948.03 of the total funds deposited in Respondent's client funds account.

27. As of April 7, 2021, Respondent had not made any payments toward any liens in connection with Ali's claims from the June 2016 collision.

28. Between January 21, 2021 and April 7, 2021, Respondent made various disbursements from Respondent's client funds account for the purpose of paying Respondent's own business and personal expenses unrelated to Ali, causing the balance in the account to fall to \$19.

29. As of April 7, 2021, Respondent had used at least \$929.03 of the funds deposited into Respondent's client funds account in which Ali had an interest, for Respondent's own business and personal purposes.

30. At no time did Ali authorize Respondent to use any portion of the \$929.03 in funds, described in paragraph 29 above, for Respondent's own business or personal purposes unrelated to Ali's claims.

31. Respondent's unauthorized use of the funds to which Ali had an interest constitutes conversion.

32. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

failure to maintain and appropriately safeguard funds belonging to a client or a third person, and to hold the funds separate from the lawyer's own property, by conduct including conversion of at least \$929.03 to his own personal or business use from funds received by Respondent in connection with Ali's matter, by causing the balance in his client funds account to fall below the amounts that he was holding for Ali and/or related lienholders, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010).

COUNT III

(Failure to Maintain Required Client Funds Account Records)

33. Effective September 1, 2011, Rule 1.15(a)(1) through (7) of the Illinois Rules of Professional Conduct (2010) ("Rule 1.15(a)") required Respondent to prepare and maintain records relating to his client funds account, including the following:

- (1) prepare and maintain receipt and disbursement journals for all client trust accounts required by this Rule containing a record of deposits and withdrawals from client trust accounts specifically identifying the date, source, and description of each item deposited, and the date, payee and purpose of each disbursement;
- (2) prepare and maintain contemporaneous ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the date of each deposit, the names of all persons for whom the funds are or were held, the amount of such funds, the dates, descriptions and amounts of charges or withdrawals, and the names of all persons to whom such funds were disbursed;
- (3) maintain copies of all accountings to clients or third persons showing the disbursement of funds to them or on their behalf, along with copies of those portions of clients' files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them;
- (4) maintain all client trust account checkbook registers, check stubs, bank statements, records of deposit, and checks or other records of debits;
- (5) maintain copies of all retainer and compensation agreements with clients;
- (6) maintain copies of all bills rendered to clients for legal fees and expenses;

(7) prepare and maintain reconciliation reports of all client trust accounts, on at least a quarterly basis, including reconciliations of ledger balances with client trust account balances.

34. While Respondent made notations on a legal pad from time to time regarding the client funds that he was handling, at no time from May 2017 to at least February 2022, did Respondent prepare and maintain an account receipts journal, account disbursement journal, client ledger records and reconciliation reports of Respondent's client funds account.

35. On or about February 10, 2022, Respondent received a communication from the Administrator enclosing copies of Rule 1.15(a) and sample copies of receipts and disbursement journal pages, client ledger page, and reconciliation report, requesting that Respondent review a free webinar regarding the ethical requirements of handling trust funds, and directing him to provide a letter to the Administrator by March 3, 2022, describing the changes that he was making to his client trust account practices and record-keeping to comply with the rule going forward.

36. As of at least May 5, 2022, on the date Respondent participated in a sworn statement at the direction of the Administrator pursuant to a subpoena *duces tecum*, Respondent had not yet made any changes to the way he kept records in connection with Respondent's client funds account.

37. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

failure to prepare and maintain complete records of a client trust account, by conduct including failure to maintain an account receipts journal, an account disbursement journal, client ledger records and reconciliation reports, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator requests that this matter be referred to a panel of the Hearing Board of the Commission, that a hearing be conducted, and that the Hearing Panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/Albert S. Krawczyk
Albert S. Krawczyk

Albert S. Krawczyk
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Exhibit 2

FILED

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

September 18, 2023

ARDC CLERK

In the Matter of:

PHILIP MICHAEL KISS,

Attorney-Respondent,

No. 6187296.

Commission No. 2022PR00086

ORDER

A telephonic pre-hearing conference was held in this matter on September 15, 2023, at 10:00 a.m. Participating were Rhonda Sallée, Chair, and Rachel C. Miller, Counsel for the Administrator. Respondent was served with notice of the pre-hearing conference at his registered address and was provided call-in information via email and voicemail from the Clerk's staff, but did not participate. Counsel for the Administrator advised the Chair of the status of the matter. Accordingly,

IT IS ORDERED:

1. The Administrator's Motion to Deem the Allegations of the Complaint Admitted Pursuant to Commission Rule 236 ("Motion") is granted, due to Respondent's failure to file an answer or a response to the Motion. All factual allegations and disciplinary charges set forth in the Complaint are deemed admitted, and no further proof is required. At hearing, the parties shall be limited to presenting evidence of aggravating and mitigating factors and arguments regarding the form and amount of discipline to be imposed;

2. All discovery shall be completed on or before October 13, 2023;

3. The parties shall exchange lists of the witnesses they intend to call at hearing on or before October 20, 2023;

4. The parties shall exchange the exhibits they propose to offer at hearing on or before October 20, 2023. Pursuant to Illinois Supreme Court Rule 138, each party is responsible for redacting personal identity information from that party's exhibits;

5. The default hearing in this matter is scheduled for October 27, 2023, commencing at 10:00 a.m., and will be held remotely via Webex videoconference. The Clerk of the Commission shall provide the parties with Webex access information; and

6. 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 September 18, 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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PROOF OF SERVICE

I, Andrea L. Watson, hereby certify that I served a copy of this Order on the Attorney-Respondent listed at the address shown below by regular mail by depositing it with proper postage prepaid, by causing the same to be deposited in the U.S. Mailbox at One Prudential Plaza, 130 East Randolph Drive, Chicago, Illinois 60601 on September 18, 2023, 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.

Philip Michael Kiss
Attorney-Respondent
Kiss and Associates Ltd.
6615 Grand Avenue
Suite B-203
Gurnee, IL 60031-4591

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

BEFORE THE HEARING BOARD
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AND
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1/4/2023 11:30 AM
ARDC Clerk

In the Matter of:

PHILIP MICHAEL KISS,

Attorney-Respondent,

No. 6187296.

Commission No. 2022PR00086

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

I, EDGAR LEON (“Affiant”), 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 an 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 January 3, 2023 at 8:51 A.M., Affiant called Respondent Philip Michael Kiss, at his telephone number, 847-845-4433 and asked him if he would accept service of the Complaint via email. Respondent Philip Michael Kiss agreed to email service and confirmed his email being, Philip_kiss@comcast.net.

4. On January 3, 2023 at 8:58 A.M., Affiant emailed Respondent, Philip Michael Kiss at Philip_kiss@comcast.net. Attached to the email was the Complaint Service Letter, Complaint, Notice of Complaint, Filings and Procedures Memorandum and the Rules of the Attorney Registration and Disciplinary Commission.

5. On January 3, 2023, at 2:57 P.M., Affiant resent the email due to a clerical error in the address, Philip_Kiss@comcast.net.

6. On January 3, 2023, at 3:17 P.M., Affiant received an email from Philip_Kiss@comcast.net confirming service.

7. Further Affiant sayeth not.

/s/ Edgar Leon
Edgar Leon, 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 he verily believes the same to be true.

/s/ Edgar Leon
Edgar Leon, Investigator

Dated: January 4, 2023