PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed December 26, 2024

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-22-O-30919
	)	
MIR-HOUTAN TONY KAMRAN,	)	OPINION AND ORDER
	)	
State Bar No. 145214.	)	
	)	

Mir-Houtan Tony Kamran was charged with six counts of professional misconduct involving the misappropriation of almost $57,000 in entrusted funds meant to pay for the housing and care of a client's brother. The hearing judge found culpability for five of the six charges and recommended Kamran's disbarment due to the significant amount of money taken, Kamran's lack of insight into his actions, and his failure to make restitution. Kamran appeals, asserting that no culpability should be found and all counts should be dismissed. The Office of Chief Trial Counsel of the State Bar (OCTC) supports the disbarment recommendation. After an independent review of the record (Cal. Rules of Court, rule 9.12), we find that disbarment is appropriate considering the standards, relevant case law, and the aggravating and mitigating circumstances.

I. PROCEDURAL BACKGROUND

On September 27, 2022, OCTC filed a Notice of Disciplinary Charges (NDC) alleging six counts of misconduct: failure to obtain informed written consent to represent a client in a

matter that is directly adverse to another client (count one), failure to maintain funds in a trust account (count two), misappropriation (count three), failure to render an accounting of funds (count four), and misrepresentation (counts five and six). Trial was held on September 12, 13, and 14, 2023. The hearing judge filed the decision on December 21. After briefing, oral argument was held on October 16, 2024, and the case was submitted the same day.

II. FACTUAL BACKGROUND

Kamran's primary arguments on review challenge the hearing judge's factual findings. After independently examining the record and the weight of the evidence, we affirm the hearing judge's factual and credibility findings as supported by the record.[1] (See *Coppock v. State Bar* (1988) 44 Cal.3d 665, 676-677 [sufficiency of evidence].) The factual background is summarized in this section and addresses Kamran's factual arguments.

A. Unlawful Detainer Action

In November 2018, Shahram,[2] the owner of a condominium (the property) in Los Angeles, hired Kamran to assist in his representation in an unlawful detainer action that he had filed against his brother, Bahram. Shahram, through attorney Alex Swain, had filed the unlawful detainer action in October 2018. Shahram wanted to sell the property after his parents' deaths, but Bahram was still living there. Bahram had lived in the condominium with his parents since 1991. Both brothers were in their sixties at the time of the unlawful detainer action. Bahram had been diagnosed with schizophrenia as a young man and continued to experience impairments related to his condition as an older adult. Due to these circumstances, Bahram's and Shahram's

[1] Any reasonable doubts as to the facts must be resolved in Kamran's favor. (*Himmel v. State Bar* (1971) 4 Cal.3d 786, 793-794.) The facts are based on the trial testimony, documentary evidence, and the hearing judge's factual and credibility findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

[2] To ensure clarity for the reader, we refer to the family members involved in the underlying matter by their first names.

three sisters urged Shahram to give a portion of the property sale proceeds to Bahram for living expenses as Shahram was insisting Bahram move out of the home he had shared with his parents for almost 30 years.

B. Settlement of the Unlawful Detainer Action

On November 15, 2018, the superior court in the unlawful detainer action determined Bahram was competent, granted his request for a jury trial, and reset the trial date for the next day. On November 16, the parties engaged in settlement discussions at the courthouse. Several family members participated in the discussions; however, the proceedings agitated Bahram, so he waited outside of the courthouse while the family negotiated. Bahram's nephew, Daniel, in addition to other family members, represented Bahram's interests. Shahram, who was not present in person, was represented by Swain. Kamran and Shahram's son, Patrick, were also in attendance, and while they represented Shahram's interests, Swain remained the attorney of record during the unlawful detainer proceedings. At the end of the day, the parties came to an agreement and signed an "Unlawful Detainer Stipulation and Judgment" (UD Stipulation), which was subsequently lodged with the court.

In the UD Stipulation, Bahram agreed to vacate the property by December 16, 2018. Shahram agreed to "establish a trust for the exclusive benefit" of Bahram and "to fund said trust with a one-time payment of $80,000 to be paid from escrow from the proceeds of the sale of the [property]." The parties agreed that $13,000 of the $80,000 would be reserved for Bahram's funeral and burial expenses and the remaining funds would be "distributed monthly at the rate of $1,200 per month to be paid to [Bahram's] assisted living facility/landlord, and shall be used exclusively for [Bahram's] housing/care, until said funds are exhausted, or upon [Bahram's] death, whichever is earlier." Any unexhausted funds after Bahram's death were to be distributed

to Shahram or his heirs. The parties agreed that no payments beyond the $80,000 were contemplated and that the funds were to be used "for the benefit, welfare, and health" of Bahram.

Swain testified at trial that he drafted the UD Stipulation. He recalled that it was an unusual agreement because the law was favorable to Shahram and, typically, unlawful detainer actions settle in the $25,000 to $35,000 range, much less than the $80,000 that Shahram agreed to pay. His testimony about his understanding of the agreement confirms the plain language of the UD Stipulation: Shahram was responsible for paying any costs and fees associated with creation of the trust; the $80,000 was not to be used for the trust's creation; the trust would be funded with $80,000; the $80,000 would be used for the exclusive benefit of Bahram; and consent from Shahram or Patrick was not needed to release any funds to Bahram pursuant to the agreement. Swain's understanding was that Shahram agreed to pay this money so that Bahram would have a place to go when the property was sold and "get back on his feet and not end up homeless on the streets." He testified that the families agreed it was "probably best" for Bahram to be in an assisted living facility, which is why they included the term that the money was to be used for "housing/care." Swain stated the $1,200 was to be used to pay for "an assisted living facility or a place to live." Considering this cost and reserving funds for a funeral, Swain stated that Shahram agreed to support Bahram's housing for about four years. Daniel testified that the $1,200 was based on a $2,000 per month cost quoted by a specific assisted living facility. They anticipated that the trust would pay $1,200 (sixty percent) of that cost and other family members would pay the remaining $800.

C. Reimbursement of Bahram's Rent

Bahram moved out before December 16, 2018, and signed a lease agreement for an apartment in Chabad House, a community center with a residential component. On December 10, the day Bahram moved into Chabad House, Daniel notified Kamran about the

apartment lease and the family's agreement to use Kamran as "the trustee for the disbursement of funds" instead of creating a trust. In accordance with this agreement, Shahram designated $80,000 from the proceeds of the sale to be deposited into Kamran's client trust account (CTA). After the sale, the escrow company sent Kamran a check for $80,000. Kamran deposited the $80,000 in his CTA on December 17, 2018.[3]

On January 4, 2019, Daniel sent a copy of the Chabad House lease agreement to Kamran and requested $3,075 in reimbursement for payment of the $1,025 security deposit and two months of rent at $1,025 per month for December 2018 and January 2019. Kamran expressed concerns over Bahram not being in an assisted living facility,[4] but Daniel explained that the assisted living facility that they had contemplated had raised the quote from $2,000 to $2,500 per month and required Bahram to have a roommate. Due to Bahram's schizophrenia, the family believed a roommate would not be a viable option. Bahram also toured the facility and refused to live there. Other assisted living facilities either determined Bahram was not eligible or were more expensive. Instead, Bahram moved to Chabad House as he liked the amenities, and it was close in proximity to places that were familiar to him and that he enjoyed visiting on his daily walks. Although Chabad House was not an assisted living facility, Kamran reimbursed Daniel the requested $3,075 for the security deposit and two months' rent with a January 9, 2019 check issued from Kamran's CTA.

The settlement of the unlawful detainer action culminating in the signing of the UD Stipulation had been contentious between the family members. Even though the family

[3] The beginning balance for Kamran's CTA before the deposit was $315.46.

[4] Kamran also wrote on February 18, 2019, that if a facility was not available for $2,000, then it was up to "other family members to cure the difference." He further stated that Daniel "may not unilaterally change the [UD Stipulation]."

subsequently agreed Kamran would hold and disburse the funds for Bahram's benefit, Daniel was wary of Kamran.[5] After Kamran expressed concerns over Chabad House, on February 20, 2019, Daniel proposed reducing the payments to $615, sixty percent of $1,025, and reiterated why Chabad House was a good fit for Bahram and how he refused to live in the assisted living facility. Daniel also voiced his unease over Kamran's continued representation of Shahram's interests[6] while he was "trustor" of Bahram's funds.[7]

Kamran replied by email on March 2, 2019, that he had previously indicated that once the funds were in his CTA, he would "have a duty to Bahram" as well as his client (Shahram or his heir) "to maintain the funds and dispense them pursuant to a verbal understanding among the two parties, as well as myself, which is to be reduced to writing as well as the [UD Stipulation] reached in Court." No such writing, or "contract" as Kamran called it, was ever signed by the parties. Kamran also stated that if a conflict occurred, he would be required to direct his client to hire new counsel and Kamran would "maintain the funds in trust until the matter is resolved." Kamran wrote that Bahram was more of a "party" to the contract instead of a beneficiary of a trust, but either way, the "result [was] really insignificant" because Kamran had "fiduciary duties regardless" and had to maintain the funds pursuant to the parties' agreements.

In May 2019, Kamran emailed Daniel that he intended to issue him a second check for $1,462. Kamran stated that this figure represented the outstanding balance for reimbursement of

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[5] Before the scheduled trial date in the unlawful detainer action, Kamran exhibited aggressive behavior towards Daniel, accusing Daniel, his mother, and his aunt of extortion, fraud, defamation, and criminal threats.

[6] Shahram died on January 19, 2019.

[7] Daniel mistakenly used "trustor" when he actually meant "trustee," even though a trust was not formed as originally contemplated. Daniel stated in the email that he understood Kamran to be a "neutral third party" who was to serve Bahram's interests, a person Kamran knew was "physically and mentally disabled." Daniel believed that representing Shahram's interests was a breach of Kamran's role as trustee.

Bahram's rent through May 2019. Kamran explained that the amount reflected the security deposit of $1,025 and rent reimbursement beginning December 2018 in the amount of $615 per month, with the December 2018 rent being prorated to $437 for the month. Additionally, Kamran subtracted from this figure $3,075 (the amount of the first check he had sent Daniel). This was effectively a unilateral decision to refund himself the $3,075 he had already paid to Daniel. Daniel disagreed with Kamran's calculation and the proportionate reduction and insisted that there was never a mutual agreement to reduce the payments to $615 per month. Daniel stated he believed the payments should remain at $1,200 per month, as no amendment to the UD Stipulation had been finalized. Nevertheless, Daniel asked for the $1,462 check to be sent and stated they would "balance it out" later.

Kamran sent a third check to Daniel in June 2019 for $1,845. The check's memo stated that it was for rent reimbursement for June, July, and August 2019. He sent Daniel seven other checks: (1) $1,845 for September through November 2019 rent, dated September 10, 2019; (2) $1,845 for December 2019 and January and February 2020 rent, dated December 19, 2019; (3) $3,150 for March through July 2020 rent, dated April 21, 2020; (4) $1,890 for August through October 2020 rent, dated September 21, 2020; (5) $2,610 for November 2020 through February 2021 rent, dated November 17, 2020; (6) $2,640 for March through June 2021 rent, dated March 30, 2021; and (7) $2,640 for July through October 2021 rent, dated September 2, 2021. These amounts mostly equate to rent reimbursement of $615 per month. The total of all 10 checks equals $23,002.

Daniel attempted to negotiate the September 2021 check, but it was returned due to insufficient funds as Kamran's CTA balance was $2,500.46. Daniel confronted Kamran about the check and then Kamran deposited $200 in the account on September 23. The check then cleared on September 29, and Kamran later blamed recurring "complications" from his bank and

said he would wire funds in the future. The ending balance of the CTA on September 30 was $60.46.

When Daniel inquired about the September 2021 bounced check, he requested proof that the remaining funds were in Kamran's account. He also sought accountings of the disbursed funds in September and October. Kamran never provided any proof or the requested accountings. On November 4, 2021, Kamran assured Daniel that he was not offended by the request for an accounting and claimed that the accounting in question had other proprietary information about his law practice and he would have to research how to provide Daniel the requested information. He suggested that the UD Stipulation was intact by stating he needed to determine "how much of the funds are left for rent reimbursement after deducting the funds I'm obligated to keep for the cemetery plot (about $20K) and other fees and costs." Referring to the need to input information manually due to his billing and accounting program crashing, he stated: "We may be getting close to the final payments on this and I have to make sure I don't go over." Kamran did not disclose that he had issued checks to himself, as discussed *post*, reduced the CTA to approximately $60, and had no money left to cover funeral expenses.

On January 17, 2022, Kamran emailed Daniel, explaining that he had not rendered an accounting because his billing program crashed. He also attached an "Amendment to Settlement Agreement and Mutual Release" (amendment) drafted by Kamran. The amendment provided that Kamran had deposited $80,000 into his CTA for Bahram's benefit and "[s]ome payments" had been made from the CTA to Daniel "to reimburse him for the rents paid, or to be paid." The amendment also stated that Kamran agreed to maintain funds in his CTA and disburse the funds "only in accordance with what was agreed between the parties in the [UD Stipulation]" and in the proposed amendment. Finally, the amendment provided for Kamran to receive fees for all

services at an hourly rate of $500. The amendment was never agreed to by Daniel or the parties, and it was never signed.

D. Kamran Diminishes the CTA by Issuing Checks to Himself

Beginning in January 2019, Kamran began to issue checks to himself from the $80,000 in his CTA. Between January 22 and April 24, 2019, Kamran issued five checks to himself, mostly for purported legal fees or attorney fees,[8] totaling $36,635. On April 25, he withdrew $19,818.06 via cashier's check to pay for his personal rent. With the rent payment, the total amount taken at this time was $56,453.06. On August 2, Kamran issued a check from his CTA to an individual unrelated to the Bahram matter in the amount of $5,000. As of this date, with the first three checks sent to Daniel, Kamran should have had at least $73,618 remaining of the $80,000, but by August 30, his CTA balance was $12,480.46. Therefore, in less than a year, Kamran's actions reduced the funds to well under $13,000, the amount that was agreed to cover Bahram's funeral expenses.

E. Kamran's Factual Challenges

Kamran's factual challenges center around his argument that the agreement memorialized in the UD Stipulation was rescinded because Bahram "breached" the agreement by not moving into an assisted living facility. Therefore, he insists that Shahram was released from his duty under the stipulation to create a trust for Bahram's benefit. Yet, Kamran also asserts that the trust was not created due to concerns over the costs and the potential effect on Bahram's Social Security benefits. Regardless of the reasoning, Kamran maintains in his opening brief on review that the UD Stipulation was invalid because it was impossible to implement, and the parties "*called off the deal*." Accordingly, he argues that the agreements contained in the UD

[8] Kamran did not present any evidence of a fee agreement with Shahram or Patrick.

Stipulation are not enforceable. Beyond his testimony, Kamran has provided no evidence to support his version of events. The hearing judge thoroughly explained why she found Kamran's testimony to lack credibility. We agree with the judge that Kamran's testimony on disputed issues was unsupported or contradicted by the other evidence in the record. Kamran "failed to corroborate or substantiate his testimony with evidence that one would have expectedly produced," such as emails, text messages, documents, or other witness testimony. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935, fn. 13.) We affirm the judge's credibility finding.

The record shows that even though Bahram moved into Chabad House, Kamran disbursed money to Daniel for Bahram's rent. Chabad House suited Bahram's needs and he was receiving daily care from his sister who lived nearby. The emails support Daniel's testimony that the $80,000 deposited into the CTA was always to be used for Bahram's benefit.[9] Kamran argues that the $80,000 was not designated for Bahram's benefit because Bahram's name was not on the check. This does not offset the overwhelming weight of the evidence that the money was provided for Bahram's benefit and used for that purpose. The check was written to Kamran as the parties had agreed it would go into his CTA for him to disburse the money. Kamran insists that Shahram gave Kamran the $80,000 and was Shahram's to control, even in the face of the intention to benefit Bahram. While Kamran wrote in emails that he believed Chabad House did not "conform" to the UD Stipulation, he never suggested that the money had not been deposited into his CTA pursuant to the agreement.

[9] Although Daniel stated in his February 20, 2019 email that Kamran may be in breach, the email also indicated that Daniel believed the UD Stipulation remained intact and the $80,000 in Kamran's CTA was to be used for Bahram's benefit.

Kamran's own actions, including reimbursing Daniel, often notating Bahram's name in the memo line, and implying money remained in his CTA to cover funeral expenses, belie his argument on review that he took an "honest and credible" legal position by acting as if the UD Stipulation was voided. His argument also ignores his February 18, 2019 email warning Daniel that he could not unilaterally change the UD Stipulation. Finally, his assertion on review that he owed no duty to Bahram is entirely inconsistent with his emails to Daniel discussing the duties he owed to Bahram, such as his March 2, 2019 email that he had a fiduciary duty to Bahram, his November 4, 2021 email that he was obliged to pay for Bahram's cemetery plot, and his January 22, 2022 email acknowledging that he had received $80,000 on behalf of Bahram that he had deposited in his CTA.

The record also does not support Kamran's theory that he could use the $80,000 to pay for his own legal fees, which he claims he was authorized to do by Patrick. First, as the hearing judge found, his assertion lacks credibility, and he presented no evidence to support his contention that he had an attorney-client relationship with Patrick. Additionally, the judge found Kamran's explanation for his lack of documentation—that Patrick's authorization to take legal fees was communicated through WhatsApp and Kamran lost these messages when he changed phones—was not credible or reasonable given the availability of more reliable methods of record keeping. She further found that even if Patrick was Kamran's client, he had no authority to direct the disbursement of funds held for Bahram. We see no basis to disturb these well-reasoned credibility findings, and we adopt them. (Rules Proc. of State Bar, rule 5.155(A) [hearing judge's credibility findings entitled to great weight].)

Second, only Kamran was attempting to negotiate an amendment to the UD Stipulation, which included payment to him for legal fees. Legal fees had never been contemplated as an expense to be paid from the $80,000, and no other documentation supports such a belief. Swain

testified that the UD Stipulation clearly stated that the $80,000 was only to be used for Bahram's benefit and costs for creation and management of any trust were Shahram's responsibility. Kamran maintained in the emails that he owed a duty to Bahram and that should a conflict arise, he would hold the funds in his CTA until the conflict was resolved. Yet at the same time, he was writing checks to himself for "legal fees" and depleting the $80,000. Instead of notifying Bahram or Daniel of his purported belief that he could take legal fees out of the $80,000, Kamran covered up his depletion of the CTA and implied that the September 2, 2021 check was returned for insufficient funds due to a bank error. In November 2021, he then suggested that money remained in the CTA to cover funeral expenses, yet the CTA balance was only around $60.

Despite these representations to Daniel, Kamran now claims the $80,000 was money he was holding until a substitution for the "failed stipulation" was formulated. Kamran also argues that he anticipated Patrick would provide more funds once a new agreement had been reached. He contends Shahram and Patrick asked him to draft a new agreement, and in the meantime, they wanted to pay a portion of Bahram's rent. Kamran's proposed amendment, which included that he would maintain funds in accordance with the UD Stipulation, is contrary to his current argument that he believed the UD Stipulation was void. Simply put, Kamran's interpretation of the facts is unreasonable, and his arguments lack any basis in the record.[10]

III. CULPABILITY

OCTC has the burden of proving culpability by clear and convincing evidence. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves

[10] We also reject Kamran's argument that the hearing judge held that "only a court could declare the [UD S]tipulation invalid." The judge made no such finding. The judge stated only that no court had declared the UD Stipulation void. She then found there was no support to consider the UD Stipulation void "due to any non-compliance by Bahram."

no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].)

A. Failure to Maintain Funds in Trust Account (Count Two)[11]

In count two, OCTC alleged that as of September 29, 2021, Kamran failed to maintain a balance of $56,998 in his CTA on behalf of Bahram. The hearing judge determined Kamran violated rule 1.15(a) of the Rules of Professional Conduct.[12] Rule 1.15(a) provides that funds received or held by a lawyer for the benefit of a client or other person to whom the lawyer owes a contractual, statutory, or other legal duty, must be deposited and maintained in a CTA. An attorney violates the standards of conduct when the balance of the CTA drops below the amount that should be maintained for the person to whom the attorney owes a duty. (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1365; *Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474.)

Kamran received the $80,000 in his CTA for the benefit of Bahram. "An attorney can create a fiduciary relationship with a non-client when [the attorney] receives money on behalf of the non-client." (*In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873, 890.)[13] As a fiduciary for Bahram, Kamran was obligated to use the money only for Bahram's benefit. (See *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728, 734-735 [fiduciary duties created for non-client under escrow agreement].) By September 29, 2021,

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[11] The hearing judge dismissed count one with prejudice. OCTC does not challenge the dismissal. We affirm the dismissal of count one. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charge for want of proof after trial on merits is with prejudice].)

[12] All further references to rules are to the Rules of Professional Conduct unless otherwise noted.

[13] On review, Kamran dismisses the application of *In the Matter of Jones* by asserting that the $80,000 was not designed for Bahram's benefit. We have already dispensed with this assertion and found the $80,000 deposited into Kamran's CTA were entrusted funds to be held for Bahram's benefit.

Kamran had issued 10 checks to Daniel for Bahram's rent, totaling $23,002. Therefore, $56,998 should have been maintained in Kamran's CTA. By September 30, Kamran's CTA balance was $60.46, a difference of $56,937.54.[14] Kamran asserts that his withdrawals from the account were proper as they were authorized by his agreement with Patrick. His argument lacks credibility, as discussed *ante*, and we affirm culpability. Kamran's improper withdrawals caused the CTA to dip below the proper amount and resulted in misappropriation under count three, as discussed *post*. Therefore, we do not assign additional weight in discipline for count two. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [no additional disciplinary weight for failing to maintain funds in CTA when duplicative of moral turpitude violation].)

B. Misappropriation (Count Three)

OCTC alleged in count three that by September 29, 2021, Kamran intentionally misappropriated $56,937. The hearing judge found culpability under count three for intentional misappropriation of Bahram's funds, in violation of Business and Professions Code section 6106.[15] Misappropriation is defined as "an attorney's failure to use entrusted funds for the purpose for which they were entrusted." (*Baca v. State Bar* (1990) 52 Cal.3d 294, 304.) Section 6106 provides that "[t]he commission of any act involving moral turpitude, dishonesty, or corruption . . . constitutes a cause for disbarment or suspension." Willful misappropriation of client funds involves moral turpitude and violates section 6106. (*In the Matter of Song* (Review

[14] The hearing judge determined Kamran should have had at least $50,682.54 in the CTA on September 29, 2021, to maintain Bahram's funds. We disagree with this amount as the judge unnecessarily subtracted from the $80,000 the beginning CTA balance in December 2018 and other CTA deposits Kamran made.

[15] All further references to sections are to the Business and Professions Code unless otherwise noted.

Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 278.) Kamran asserts there was no misappropriation because Bahram had no right to the remainder of the $80,000 that had not been disbursed to Daniel. Kamran maintains that any money he paid to himself from the CTA was for fees authorized by Patrick. As discussed *ante*, we are not persuaded by Kamran's unreasonable interpretation of the facts.

Kamran disbursed some of the $80,000 for its intended purpose—he paid Daniel $23,002 for reimbursement of Bahram's rent.[16] Without authority to do so, Kamran withheld the remainder of the $80,000, and withdrew almost all the funds from his CTA. Kamran issued checks to himself from the CTA for purported legal fees from January to April 2019, totaling $36,635. He then issued a cashier's check for almost $20,000 to pay for his own rent and paid $5,000 to another individual from the CTA. On August 30, 2019, $73,618 of the $80,000 should have remained for Bahram's benefit, but Kamran's CTA balance was only $12,480.46. By September 30, 2021, Kamran had paid out $23,002 in rent reimbursements, yet the balance of his CTA was $60.46. Kamran's actions establish intentional misappropriation in violation of section 6106, and we affirm culpability under count three. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034 [§ 6106 misappropriation violation for improperly withholding and withdrawing funds from client trust account].)[17] The repeated nature of Kamran's actions and his subsequent misrepresentations to Daniel to conceal his malfeasance is evidence that the misappropriation was intentional. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar

[16] The difference between the $80,000 and the $23,002 in total reimbursements is $56,998, which is the amount Kamran owes in restitution to Bahram.

[17] Even if Kamran was mistaken as to his duties owed to Bahram, he would still be culpable for a moral turpitude violation based on his willingness to commit the act. (*McKnight v. State Bar*, *supra*, 53 Cal.3d at p. 1034.) Good faith is considered only in determining the level of discipline. (*Ibid*.; see also *Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020-1021.)

Ct. Rptr. 576, 588-589 [numerous acts of deceit are evidence of intentional misappropriation and concealment of relevant facts is persuasive evidence of lack of honest belief and supports moral turpitude finding].)

C. Failure to Render Accounts (Count Four)

OCTC alleged that Kamran did not promptly account in writing to Bahram or Daniel, despite Daniel's emails to Kamran seeking an accounting of the $80,000. Kamran challenges the hearing judge's culpability determination under count four, asserting he had no duty to provide an accounting to Bahram or Daniel. Rule 1.15(d)(4) provides that a lawyer shall promptly account in writing to the client or other person for whom the lawyer holds funds or property. Attorneys have a fiduciary duty to properly account for entrusted funds. (*In the Matter of Davis*, *supra*, 4 Cal. State Bar Ct. Rptr. 576, 587; *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979 [duty to account to non-client created by agreement depositing proceeds from a sale in attorney's trust account].)

Kamran maintains that the funds belonged to Patrick, who instructed Kamran not to provide this information to other family members. As found above, the funds did not belong to Shahram or Patrick. Kamran held the entrusted funds in his CTA, and they were to be used for Bahram's benefit. As such, Kamran was obligated to give an accounting to Bahram under rule 1.15(d)(4). (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952 [required to account for entrusted funds whether or not accounting requested].) Daniel had also specifically requested that Kamran provide an accounting. In this case, we find Daniel was within his rights to seek and obtain an accounting since the request was clearly in furtherance of Bahram's interests and Kamran understood Daniel's role in assisting Bahram. Daniel had consistently acted on Bahram's behalf while interfacing with Kamran, and Kamran had routinely reimbursed Daniel for Bahram's rent payments. Kamran never provided an accounting, and he

admits as much, telling Daniel instead that his billing and account program crashed. We affirm culpability under count four.

D. Misrepresentation (Count Five and Count Six)

Kamran was charged with making misrepresentations in violation of section 6106. The hearing judge found Kamran intentionally made false and misleading statements to Daniel in November 2021 (count five) and January 2022 (count six).[18] "Representations which may be legally characterized as amounting to 'moral turpitude, dishonesty or corruption' must be made with an intent to mislead." (*Wallis v. State Bar* (1942) 21 Cal.2d 322, 328, quoting § 6106].)

Kamran's November 4, 2021 email falsely implied that he was holding at least $20,000 of the $80,000 for a cemetery plot, when Kamran knew he had already reduced the amount of his CTA to $60.46 by September 29, 2021. And his January 22, 2022 email falsely suggested that Kamran held in his CTA, for Bahram's benefit, the remainder of the $80,000 not already disbursed to Daniel. Clearly, Kamran's statements were intended to mislead Daniel into believing that he held the balance of Bahram's funds in his CTA and had been spending them properly, when in fact, he had only $60.46 in his CTA. We find the reason Kamran did this was to conceal his misappropriation, and consequently, we conclude Kamran's misrepresentations were made intentionally.

Kamran's argument against culpability is only that he "had no duty to explain or account" to Daniel and, therefore, his statements "have no element of moral turpitude, dishonesty[,] or corruption." As explained, we find in this instance that Kamran had an obligation to furnish an accounting to Daniel. And fundamentally, Kamran had an ethical duty of honesty. "[A] member

[18] On review, OCTC effectively reframed counts five and six as charging Kamran with concealing information in violation of section 6106. The counts do not specifically allege concealment, so we do not find culpability on this basis. However, we consider Kamran's concealment as evidence of his intention to mislead Daniel.

of the State Bar should not under any circumstances attempt to deceive another person. [Citations.]" (*McKinney v. State Bar* (1964) 62 Cal.2d 194, 196.) Kamran's statements implied that money remained in his CTA that could be used for Bahram's benefit. These statements were intended to mislead and warrant discipline as Kamran's conduct "falls short of the honesty and integrity required of an attorney at law in the performance of his professional duties." (*Coviello v. State Bar* (1955) 45 Cal.2d 57, 66.) Accordingly, we affirm culpability under counts five and six.

IV. AGGRAVATION AND MITIGATION

Standard 1.5 of the Standards for Attorney Sanctions for Professional Misconduct[19] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Kamran to meet the same burden to prove mitigation.

A. Aggravation

The hearing judge found substantial weight for five aggravating circumstances: multiple acts of wrongdoing, indifference, significant harm, high level of vulnerability of the victim, and failure to make restitution. Kamran challenges these findings, arguing (1) there were no acts of wrongdoing; (2) he was not indifferent as his attitude was based on an honest belief in his innocence; (3) no harm resulted from his actions; (4) he did not victimize Bahram; and (5) he owed no duty to make restitution. After consideration of Kamran's arguments, we affirm the hearing judge's aggravation findings.

Kamran misappropriated funds, did not provide any accounting of Bahram's funds, and engaged in two instances of misrepresentation. In total, he is culpable of three moral turpitude counts under the NDC. Additionally, "multiple acts of misconduct as aggravation are not limited

[19] All further references to standards are to the Rules of Procedure of the State Bar, Title IV, Standards for Attorney Sanctions for Professional Misconduct.

to the counts pleaded. [Citation.]" (*In the Matter of Song*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 279.) We, therefore, also consider that his misappropriation of funds occurred on seven different occasions. Based on the above, we conclude that substantial weight in aggravation is appropriate for Kamran's multiple acts of wrongdoing. (Std. 1.5(b).)

Kamran's lack of insight into his misconduct also calls for substantial weight in aggravation. (Std. 1.5(k).) While the law does not require false penitence, it does require that an attorney accept responsibility for wrongful acts and show some understanding of his culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Kamran does not understand his responsibilities as a fiduciary holding funds for the benefit of another. He maintains that his actions were proper and fails to appreciate the seriousness of his wrongdoing. Kamran's failure to accept responsibility is troubling and suggests future misconduct could recur.

Kamran's argument that no harm resulted from his misconduct is patently incorrect. The record shows that the $80,000 was always meant to support Bahram's living expenses after he was forced to move from the condominium he had lived in for almost 30 years. A portion was also intended to be reserved for Bahram's funeral expenses. Only $23,002 went to support Bahram. Kamran took the rest, $56,998, which is more than 70 percent of the funds. He has not returned any of it. Bahram, an older man dealing with schizophrenia and with limited income, is now faced with more uncertainty as to how he will pay for his living expenses. Kamran's actions caused significant harm to Bahram, a highly vulnerable victim, and his family. (Std. 1.5 (j), (n).) He owes $56,998 in restitution. (Std. 1.5(m).) Each of these factors in aggravation warrants an assignment of substantial weight.

B. Mitigation

The hearing judge found limited weight for two mitigating circumstances: absence of prior discipline and extraordinary good character. Kamran asserts that greater weight should be assigned for his lengthy discipline-free career as there was "little to no misconduct" in this matter. He also argues that he should have received more weight for his character evidence given the "numerous testimonials." Both arguments are flawed.

First, mitigation for absence of prior discipline is assigned only when an attorney has established that the present misconduct is not likely to recur. (Std. 1.6(a); see *Cooper v. State Bar* (1987) 43 Cal. 3d 1016, 1029 [when misconduct is serious, long record without discipline is most relevant when misconduct is aberrational].) Kamran was admitted to the State Bar in December 1989 and has never been previously disciplined. His misconduct in this matter began in January 2019, resulting in 29 years without discipline. Kamran maintains that he committed no wrongdoing and completely fails to demonstrate any insight into his misconduct. As such, he has not proven that his misconduct is not likely to recur. Therefore, we assign only nominal weight in mitigation under standard 1.6(a). (*In the Matter of Jones*, *supra*, 5 Cal State Bar Ct. Rptr. 873, 895 [nominal weight for discipline-free practice when misconduct likely to recur and attorney has "complete lack of insight" into misconduct].)

Second, to receive mitigation for extraordinary good character under standard 1.6(f), Kamran must present evidence from "a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." Two witnesses testified at trial—a client that had known Kamran for about six months and a life-long personal friend of over 50 years. Declarations from 11 other witnesses were also admitted. Most of the witnesses have known Kamran for a considerable length of time and provided favorable character testimony. We agree with the hearing judge's finding that Kamran did not show that his

references were familiar with full extent of the misconduct. Rather, the evidence indicates that they had heard Kamran's versions of events—that he had done nothing wrong in taking the money because he owed Bahram no fiduciary duty. The letters stated that Kamran was remorseful, something he has not demonstrated in this court. Accordingly, we assign limited weight in mitigation under standard 1.6(f). (*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476-477 [strong character evidence without awareness of specific facts and circumstances surrounding misconduct entitled to only limited weight as mitigation evidence].)

Kamran also argues that mitigation should be assigned under standard 1.6(b) for a "good faith belief that is honestly held and objectively reasonable." Both criteria must be true. "To conclude otherwise would reward an attorney for his unreasonable beliefs and 'for his ignorance of his ethical responsibilities.' [Citation.]" (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50.) First, despite Kamran's insistence that he believed he had no fiduciary duty to Bahram and could take the money intended to support Bahram, his actions were contrary to his testimony. His emails and actions comported with the plain language of the UD Stipulation and Swain's and Daniel's perspectives of how the money was to be used. He provided rent reimbursement and implied there was money remaining to cover funeral expenses—terms agreed upon in the UD Stipulation. Second, Kamran has not shown his beliefs regarding his interpretation of the validity of the UD Stipulation were objectively reasonable. The record supports the finding that the $80,000 was to be used to benefit Bahram. If there had been a conflict, it would have been reasonable for Kamran to maintain the money in his CTA until the matter was resolved, a point he specifically stated to Daniel by email. Any belief that he could unilaterally decide the UD Stipulation was invalid and deplete the $80,000 as he saw fit was clearly not reasonable. Therefore, we assign no mitigation under standard 1.6(b).

We also reject Kamran's argument that the hearing judge failed to consider his anxiety disorder under standard 1.6(d). Mitigation may be assigned for any extreme emotional difficulties or mental disabilities where (1) the attorney suffered from them at the time of the misconduct; (2) they are established by expert testimony as being directly responsible for the misconduct; and (3) they no longer pose a risk that the attorney will commit future misconduct. At trial, Kamran's counsel offered a declaration from a doctor regarding Kamran's "medical condition" that purported to address Kamran's "difficulty performing legal work" and discuss other "character reference aspects, such as the death of Mr. Kamran's father . . . ." The exhibit was denied. Kamran has not shown this was an abuse of discretion. (*In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, 695 [standard of review for procedural rulings is abuse of discretion].) No other evidence was received regarding Kamran's anxiety.[20] And he fails to explain how the declaration would meet the requirements of standard 1.6(d) for mitigation. Further, Kamran did not request his anxiety be considered in mitigation in his closing brief filed in the Hearing Department. We find Kamran has not established mitigation under standard 1.6(d).

V. DISBARMENT IS THE APPROPRIATE DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) The

[20] Kamran mentioned his anxiety on the third day of trial; however, the judge sustained OCTC's objection that Kamran's answer was beyond the scope of the question. This ruling was not challenged on review.

Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

In considering the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction shall be imposed where multiple sanctions apply].) Here, standard 2.1(a) is the most severe and provides for disbarment for Kamran's intentional misappropriation of entrusted funds. Standard 2.1(a) also provides that an attorney may avoid disbarment if the amount misappropriated is "insignificantly small" or "sufficiently compelling mitigating circumstances clearly predominate." Neither of those conditions applies here. Kamran intentionally misappropriated $56,998, a very significant amount of money. (See *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511 [disbarment for intentional misappropriation of nearly $40,000 in single client matter].) His mitigation for practicing without discipline for 29 years and extraordinary good character evidence are very slight and do not come close to outweighing the substantial aggravation for significant harm, high level of vulnerability of the victim, multiple acts of misconduct, failure to make restitution, and indifference.

We find no reason to deviate from the presumed sanction of disbarment under standard 2.1(a). (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [requiring clear reasons for departure from standards].) Kamran's misconduct involves multiple acts of dishonesty amounting to moral turpitude. He tried to cover up his wrongdoings by blaming his bank and accounting program and implying that he had the money in his CTA when he did not. His failure to take responsibility for his actions is very concerning. Misappropriation "violates basic notions of honesty and endangers public confidence in the legal profession." (*Grim v. State Bar* (1991) 53 Cal.3d 21, 29.) The imposition of disbarment is required "[i]n all but the

most exceptional of cases." (*Ibid*.) We affirm the hearing judge's discipline analysis and recommendation of disbarment.[21] In addition to the cases discussed in the decision, we find this case is also similar to *In the Matter of Jones*, *supra*, 5 Cal. State Bar Ct. Rptr. 873, a case involving misappropriation, misrepresentations, and a failure to appreciate fiduciary duties when holding entrusted funds. We recommended Jones's disbarment in his first disciplinary proceeding for misappropriating $175,000. Jones returned the funds, something Kamran has yet to do. Both Jones and Kamran exhibited a propensity for dishonesty. Their mitigating circumstances were similar, but Kamran has more aggravating circumstances. Under *Jones*, Kamran's disbarment is appropriate.

VI. RECOMMENDATIONS

We recommend that Mir-Houtan Tony Kamran, State Bar Number 145214, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

VII. RESTITUTION

We further recommend that Kamran make restitution to Bahram Banayan, or such other recipient as may be designated by the State Bar's Office of Case Management and Supervision or the State Bar Court, in the amount of $56,998 plus 10 percent interest per year from September 29, 2021 (or reimburse the Client Security Fund, to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5). Reimbursement to the Fund is enforceable as a money judgment and may be collected by the State Bar through any means permitted by law.

[21] The hearing judge considered the serious nature of Kamran's misconduct that was substantially aggravated by his lack of insight into his wrongdoing in determining that a monetary sanction of $5,000 was appropriate. We also consider the significant harm Kamran caused Bahram and agree that a monetary sanction of $5,000 is appropriate. (Rules Proc. of State Bar, rule 5.137.)

VIII. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Kamran be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the date the Supreme Court order imposing discipline in this matter is filed.[22] (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [the operative date for identification of clients being represented in pending matters and others to be notified is the filing date of the Supreme Court order imposing discipline].)

IX. MONETARY SANCTIONS

We further recommend that Kamran be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of $5,000 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a condition of reinstatement, unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

X. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected

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[22] Kamran is required to file a rule 9.20(c) affidavit even if Kamran has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).) The court-approved Rule 9.20 Compliance Declaration form is available on the State Bar Court website at <https://www.statebarcourt.ca.gov/Forms>.

by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is disbarred must be paid as a condition of applying for reinstatement.

XI. MONETARY REQUIREMENTS

Any monetary requirements imposed in this matter shall be considered satisfied or waived when authorized by applicable law or orders of any court.

XII. INVOLUNTARY INACTIVE ENROLLMENT

The hearing judge's order that Kamran be transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4), effective December 24, 2023, will remain in effect pending the consideration and decision of the Supreme Court on this recommendation.

RIBAS, J.

WE CONCUR:

HONN, P. J.

McGILL, J.