IN RE: ABBY R. WILLIAMS
BBO NO. 559245

COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

BAR COUNSEL,	)	
Petitioner,	)	
v.	)	B.B.O. File No. C4-17-251176
ABBY R. WILLIAMS, ESQ.,	)	
Respondent.	)	

CORRECTED BOARD MEMORANDUM

By fraudulently inflating case expenses, the respondent intentionally deprived several clients of their money from personal injury settlements. A hearing committee has recommended the respondent's disbarment. Finding no error of fact or law (with one minor exception, *see* footnote 8), we agree with the recommendation.

Findings of Fact

The hearing committee made detailed findings of fact. After careful review, we adopt them in their entirety and summarize them here to explain our reasoning.

General Findings

Admitted to the bar in 1991, the respondent, Abby R. Williams, focused her practice on plaintiffs' personal injury cases, in particular medical malpractice. Since 1996 or 1997, she has owned her own practice, employing other lawyers and paraprofessionals. In 2007, the respondent hired Ross Annenberg as an associate; he remained employed until 2013 when he was allowed to resign in lieu of being fired. In 2015, the Supreme Judicial Court disbarred

Annenberg for misuse of client funds while employed by the respondent. In 2018, Annenberg pleaded guilty to criminal charges arising out of the same conduct. Bar counsel's investigation into Annenberg found no basis to file a petition for discipline against the respondent, since she had no involvement in Annenberg's theft of funds. In a disturbing confluence of misconduct, the respondent and Annenberg independently stole money from different clients. In this case, the hearing committee rejected the respondent's attempts to blame Annenberg for her defalcations (as well as her related argument that Annenberg altered the firm's computer records to conceal his theft). Among other facts, the committee noted: Annenberg had no access to the firm's accounting software (Quickbooks); the respondent signed all of the relevant checks; and the respondent offered no evidence that the stolen funds ended up in Annenberg's possession. The committee found that the respondent was responsible for allocating costs in medical malpractice cases, while Annenberg was responsible for allocating costs in non-medical personal injury cases. (Hearing Report, para. 48). It also rejected as not credible the respondent's defenses that the clients' losses resulted from her inattention to the details of case finances (rather than intentional conduct) as well as her attempt to pin the blame on the law firm's computer system (claiming that the system inexplicably lost backup records that would have substantiated the higher costs charged to clients).[1] The committee found that the respondent's law firm suffered financial challenges during the time in question, furnishing an unambiguous motive for her thefts. The hearing committee traced some of the stolen funds to the law firm's operating

[1] The committee's findings were based on credibility determinations, supported by documentary evidence. We will not disturb them, as we defer to the hearing committee for such findings unless those findings are contradicted by other evidence, which is not the case here. B.B.O. Rule 3.53.

accounts for the payment of salaries.[2] The committee also traced client funds to the respondent's personal accounts.

Count One

In Count One, Bar Counsel charged the respondent with intentional misuse of funds belonging to her clients, Jennifer and Seth Booth.

The respondent filed a lawsuit on behalf of the Booths in 2008, alleging wrongful death against a hospital and physicians arising out of the death of their five-month old daughter. The case settled in May 2012 for a total of $2 million. Part of the total ($550,000) was paid to Berkshire Hathaway Life Insurance Company as a structured settlement. The respondent deposited the balance of the funds ($1,450,000) in an IOLTA account.

Bar Counsel's financial analyst, Albert Nolan, calculated the total costs on the Booth case as $33,392.78. The hearing committee agreed with Mr. Nolan's calculations, finding no evidence to call them into question. (Hearing Report, para. 26).[3] The committee found the respondent's firm was entitled to a contingent fee of $545,000, which, when combined with the case expenses, should have resulted in a total payment to the firm of $578,392.78. (Hearing Report, para. 27). Instead, the respondent took a fee of $705,000, a difference of $126,607.22 over the total in fees and expenses to which the respondent was entitled.[4] The Booths should

[2] As an example, on Count Two (the Osterlund case), the hearing committee noted the low balance in the firm's operating account before the respondent transferred funds into that account from her IOLTA account. (Hearing Report, para. 79(e)-(f)). She made these transfers at a time when there was insufficient money in her operating account to pay salaries. (Id).

[3] The committee noted that Mr. Nolan's findings were consistent with the firm's own computer records. (Hearing Report, para. 26). It rejected as not credible and speculative the respondent's defense that some expense records were missing or that Annenberg colluded with the firm's bookkeeper, Linda Williams (no relation to the respondent), to change the records to (inexplicably) *understate* case expenses on the firm's computer records.

[4] To support this amount, the respondent provided the clients with a "settlement breakdown," reflecting that the total cases expenses were $160,000. (Hearing Report, para. 36(d)-(f) and para. 43). The hearing committee found that this amount was fraudulent and was part of the respondent's scheme to inflate her claimed litigation expenses. Specifically, it found that the respondent, "knew that the firm would ultimately seek to charge the Booths $160,000 in expenses that would be netted out against their settlement, and she knew that this amount was excessive and unsupported." (Hearing Report, para. 43).

have received a total of $871,607.22 from the cash portion of the settlement (after deducting the amount that was structured). Rather than that amount, they received only $745,000, a difference of $126,607.22. The hearing committee found the Booths were deprived of that amount. The clients have not received that amount, resulting in ongoing deprivation. (Hearing Report, para. 42 and 44).

Next, the hearing committee found that the respondent knew she was falsely over-charging the Booths for expenses, and her misuse of their settlement funds was intentional. (Hearing Report, para. 43). Specifically, the committee found that the respondent knew the claimed expenses of $160,000 were false. (Id). Among other factors, a case that settled before trial would not likely generate expenses in that amount. (Hearing Report, para. 43(f)). The committee rejected as not credible the respondent's testimony that she simply relied on her bookkeeper for the calculation of expenses. (Hearing Report, para. 43(g)-(h)). In sum, the committee found the respondent knowingly misstated the costs. (Hearing Report, para. 45).

As discussed above, the committee found numerous reasons to reject the respondent's attempt to blame Annenberg for the theft. It found no credible evidence that Annenberg altered the firm's records or that he colluded with the bookkeeper to do so. (Hearing Report, para. 26(d)-(e)).

Count Two

In Count Two, Bar Counsel charged the respondent with intentional misuse of funds belonging to her client, Irene Osterlund.

In 2008, Irene Osterlund retained the respondent to sue a nursing home and physician for the wrongful death of Ms. Osterlund's husband, Ero. Due to Ms. Osterlund's incapacity, a Probate Court judge appointed Melinda Montiverdi as Administrator of the estate of Ero

Osterlund. In February 2012, the nursing home settled the case for $725,000. After trial, a jury issued a verdict in favor of the physician defendant.

The hearing committee found that the respondent's firm was entitled to a contingent fee of $226,250 and expenses of $59,736.90 out of the gross settlement proceeds for a total payment of $285,986.90. (Hearing Report, para. 71). As with the Booth case, the finding was based on the uncontradicted testimony of Albert Nolan from the Office of Bar Counsel and validated by the law firm's own computer records. (Hearing Report, para. 72). The committee found as fraudulent the respondent's claimed expenses of $116,802.54. Part of the fraud included payment of $48,905 to a referring lawyer. As the hearing committee noted, this amount should not have been claimed as an expense; it should have been deducted from the respondent's fee. (Hearing Report, para. 72(e)). Another fraudulent charge was a payment of $11,816.36 to a registered nurse who reviewed documents on the case. The nurse was an employee of the respondent's firm and never received a payment other than her regular salary. (Hearing Report, pra.72(f)).[5]

After deleting the improper expenses, the hearing committee found that Osterlund was entitled to a total settlement payment of $435,434.27. However, the respondent paid the client only $300,000, a difference of $135,434.27. That difference has never been paid to the client, resulting in ongoing deprivation. (Hearing Report, para. 93).

The committee found that the respondent knew she was overcharging the client for expenses. (Hearing Report, para. 94). She provided the estate administrator, Montiverdi, with a

[5] The respondent did pay the nurse-employee the amount claimed as an expense. However, the payment was actually repayment on a personal loan the nurse had made to the respondent. On the memo line of the repayment check, the respondent initially wrote, "consulting fee," which the committee found was part of a scheme to characterize the payment as a case expense. (Hearing Report, para. 94(d)). She issued a replacement check after the nurse objected to the characterization. (Hearing Report, para. 72(f)).

fraudulent settlement breakdown indicating expenses of $195,171.17, which was $135,434.27 more than the firm was entitled to retain as expense reimbursement. Among other supporting facts, the hearing committee noted the suspiciously round number of $300,000 in settlement proceeds due to the client. It also found that the settlement breakdown – delayed by two months for no reason -- was "reverse-engineered to justify the under-payment." (Hearing Report, para. 89). As in Booth, the claimed expenses (almost $200,000) were very high for a case that resulted in a total settlement of only $300,000. As discussed above, the respondent mis-characterized her repayment of a personal loan as a case expense for "consulting fees." (Hearing Report, para. 94(d)).

The hearing committee made detailed findings that the respondent made or caused to be made transfers from the law firm's IOLTA account into her firm's operating account as well as her personal bank accounts. (Hearing Report, para. 79(g)-80). She then used the money for firm and personal expenses. (Hearing Report, para. 79(e) and 81). The same day the respondent received the first settlement check, she opened a new business account. She made a withdrawal from a firm business account and deposited the funds into the new account. (Hearing Report, para. 81). She used the money to pay a jeweler and for a vacation.

As with Count One, the hearing committee found that Annenberg had no involvement in the manipulation of the Osterlund expenses. In addition to tracing the money to her law firm operating account and for personal expenses, the committee noted that the respondent was the only signatory on the relevant IOLTA and operating accounts. (Hearing Report, para. 78 and 79(c)). The respondent presented no evidence that Annenberg had any involvement in calculating the expenses on the case. (Hearing Report, para. 94(h)).

Count Four

In Count Four, Bar Counsel charged the respondent with intentional misuse of funds belonging to her client, Cheryl Zeoli, the personal representative of the estate of Sylvia Maitland, arising out of a wrongful death suit against a nursing home and other individuals.

Suit was filed in September 2012. One defendant settled for $50,000 in July 2015; another defendant settled in 2016 for $75,000. Of the first settlement, the respondent paid her law firm a fee of $20,000 and expenses of $9,000 for a total of $29,000. Of the second settlement, the respondent provided the client with a settlement breakdown showing that her firm was due a fee of $30,000 and expense reimbursement of $15,000 for a total of $45,000.[6] The client agreed that the respondent could hold her settlement proceeds to cover appellate costs. (Hearing Report, para. 131).

Trial against the remaining defendant ended in a defense verdict in June 2016. The respondent filed a Notice of Appeal, but it was untimely. (Hearing Report, para. 138). In February 2018, the appeal was dismissed. In October 2018, the respondent sent Zeoli a check for $7,960.21, which she characterized as the net due the client after appellate costs.

A settlement breakdown document that accompanied the check reflected the total amount of money received ($125,000) less the (correct) capped expenses of $15,000, contingent legal fees of $50,000, and other deductions for medical liens, the prior payment of $21,000 for the first ($50,000) settlement and appellate costs of $18,819.09. (Hearing Report, para. 148).

[6] The respondent had agreed to cap total expenses on the case at $15,000. Thus, as of the time of the second settlement, the respondent had violated that agreement, since total claimed expenses were $24,000. The hearing committee found this was an unintentional error. In addition, the client had agreed that her portion of the settlement could be held for appellate costs. Thus, the committee concluded there was no interim deprivation. (Hearing Report, para. 128).

Bar counsel alleged, and the hearing committee found, that the claimed appellate costs ($18,819.09) were intentionally false.[7] Mr. Nolan from the Office of Bar Counsel calculated total appeal costs at $8,000.76, a difference of $10,818.33 from the amount claimed by the respondent. Of the $10,818.33, the respondent claimed that $8,000 was paid to an appellate lawyer. The committee rejected this testimony as not credible and further noted that it found absolutely no support in the record. (Hearing Report, para. 150(e)-(f)). The respondent has never paid the $10,818.33 to the client, resulting in ongoing deprivation. (Hearing Report, para. 155).

The hearing committee found that the respondent knew the claimed appellate costs were fraudulent and that she was personally responsible for the false claim. (Hearing Report, para. 150(h)). Among other facts, the respondent was responsible for preparing the settlement breakdown with the false claim. (Hearing Report, para. 156). In addition, she lied to the client, Zeoli, about the status of the appeal and dragged out the time for a final payment from approximately February 2018 until October 2018. (Hearing Report, para. 156(e)-(g)).

As with Counts One and Two, the hearing committee rejected the respondent's argument that Annenberg was the responsible party. At the time of the Maitland case, Annenberg no longer worked at the firm. (Hearing Report, para. 156(a)). Based on the committee's findings concerning the financial state of the respondent's firm, it observed that she had a financial interest in retaining as much of the settlement as possible to provide operating cash. (Hearing Report, para. 156(c)).

[7] Bar counsel did not challenge the legal fees, capped pre-appeal expenses, and prior payment to the client. The only issue on Count Four concerns the costs of appeal.

Counts Three, Five, Six, and Seven

The remaining counts (Counts Three, Five, Six, and Seven) were admitted by the respondent in her Answer to the Petition for Discipline. We will address them briefly:

In Count Three, bar counsel charged the respondent with violations of the trust accounting rules in Mass. R. Prof. C. 1.15. The respondent admitted the allegations in her Answer to the Petition for Discipline.

In Count Five, bar counsel charged that the respondent commingled trust funds and other funds and that certain disbursements from her IOLTA account created a negative balance in that account. It also charged her with intentional misuse of settlement funds from two cases. The respondent admitted the allegations in her Answer to the Petition for Discipline.

In Counts Six and Seven, the respondent admitted the charges that she failed to cooperate with bar counsel's investigation.

Conclusions of Law

Contrary to the respondent's principal argument on appeal, the hearing committee did not improperly shift the burden of proof to her. (Respondent's Appeal Brief, p. 9-12). As the committee noted (and as we discussed above regarding Counts One, Two, and Four), there was no dispute that clients were deprived of settlement funds through a scheme by which expenses on their cases were fraudulently inflated. There was ample evidence that the respondent played a role in allocating litigation expenses and had access to the firm's financial software. There was ample evidence of the respondent's motive to steal money from her clients. The hearing committee (based on the testimony of bar counsel's financial investigator), traced the funds into the firm's operating account and the respondent's personal accounts. The respondent's defense

consisted primarily of blaming others (mostly Annenberg) for the deprivation. However, it is well-established that, "[t]he respondent shall have the burden of proof by a preponderance of the evidence on affirmative defenses." B.B.O. Rule Sec. 3.28; Matter of London, 427 Mass. 477, 482-483, 14 Mass. Att'y Disc. R. 431, 438 (1998); Matter of Silvia, 19 Mass. Att'y Disc. R. 435, 455 (2003). The respondent failed to meet this burden. Her defense was speculative, with no actual facts (or documents) to prove it. Indeed, because the defense was based almost entirely on her credibility, the hearing committee's refusal to credit her testimony must be respected. S.J.C. Rule 4:01, Sec. 8(5); Matter of Hachey, 11 Mass. Att'y Disc. R. 102, 103 (1995). Where the facts permit a reasonable inference that a respondent has violated the rules of professional conduct, it does not constitute an improper shifting of the burden of proof to note that the alternative explanation is not credible nor supported by the evidence. Matter of London, *supra*.

Likewise, we reject the respondent's argument that there was insufficient evidence to support the finding that she intended to deprive her clients of their full settlements. As bar counsel points out in his brief, "'substantial evidence' means such evidence as a reasonable mind might accept as adequate to support a conclusion." Matter of Slavitt, 449 Mass. 25, 30, 23 Mass. Att'y Disc. R. 662, 668 (2007). Put another way, we are asked if a reasonable view of the facts would support the conclusion that the respondent knew what she was doing when she inflated the costs on the three cases. We discussed these facts above, and will summarize them here:

With regard to Count One, there was ample evidence that the respondent gave the Booths the cost figure of $160,000, knowing that amount was excessive. There was no evidence that the figure of $160,000 came from anyone else. (Hearing Report, para. 43(c) and (d)). The respondent had a direct financial incentive to inflate the costs, and there was evidence that she benefitted from the scheme. (Hearing Report, para. 28-34). With regard to Count Two, the

hearing committee was presented with evidence that the respondent benefitted from the inflated costs. (Hearing Report, para. 81). There was also evidence that she "reverse engineered" the settlement breakdown to disguise her theft. (Hearing Report, para. 89). On Count Four, the hearing committee correctly noted that Annenberg had left the firm at the time of the settlement. The only person who could have inflated the expenses, and who stood to benefit from the scheme, was the respondent. And on all counts, there was no evidence to support the defense that Annenberg was the responsible party. There was no evidence that he benefitted from the thefts. There was no evidence of his actual involvement in the allocation of costs.

With regard to Counts One, Two, and Four, we conclude – as did the hearing committee – that the respondent intentionally misused client funds and misrepresented to her clients the facts concerning the costs incurred on their cases. In doing so, the respondent violated: **(i)** Mass. R. Prof. C. 1.15(b) (as in effect before and after July 1, 2015) (segregation and safekeeping of trust property); **(ii)** 1.15(c) (failure to pay client funds held in trust when due); **(iii)** 1.15(d)(1) (failure to render full accounting on final distribution of funds); **(iv)** 1.15(d)(2) (failure to render accounting on withdrawal from trust to pay on legal fees); **(v)** 1.15(f)(1)(C) (negative balance in individual client ledger in trust fund); **(vi)** 8.4(c) (dishonesty, deceit, misrepresentation or fraud); and **(vii)** 8.4(h) (other misconduct reflecting adversely on lawyer's fitness to practice law). On Count One, the committee concluded that the respondent violated Rule 8.4(d) (conduct prejudicial to the administration of justice), but did not so conclude with regard to Counts Two and Four.[8] The committee rejected the charges that the respondent violated Rules 5.1(a), 5.1(b),

[8] While it makes no difference in the final analysis, we do not adopt the committee's finding on Count One that the respondent violated Rule 8.4(d) (conduct prejudicial to the administration of justice). As the committee noted on Counts Two and Four, the basis of the charge was the fraudulent settlement breakdowns the respondent gave her clients. The committee concluded that providing a settlement breakdown was insufficiently related to the operation of a tribunal to trigger Rule 8.4(d). (Hearing Report, para. 103 and 161). This reasoning would apply as well to Count One. Accordingly, we revise the Conclusions of Law to delete the violation of Rule 8.4(d) from Count One.

5.3(a), and 5.3(b), all of which pertain to the duties of a managing or supervising lawyer to ensure that subordinate lawyers and para-professionals comply with the Rules of Professional Conduct. Because the committee concluded that the respondent was personally involved in the defalcation (rather than failing to properly supervise her employees), the committee found these charges irrelevant. We agree. On Count Four, the committee concluded that the respondent's failure to prosecute the appeal violated Rules 1.1 (competence) and 1.3 (diligence). We agree.

Matters in Mitigation and Aggravation

The hearing committee found no matters in mitigation.

In aggravation, the committee concluded that the respondent violated multiple rules of professional conduct, Matter of Saab, 406 Mass. 315, 326-328, 6 Mass. Att'y Disc. R. 278, 290 (1989); was an experienced lawyer, Matter of Luongo, 416 Mass.308, 311-312, 9 Mass. Att'y Disc. R. 199 (1993); and lied under oath, Matter of Hoicka, 442 Mass. 1004,1006 (2004). The committee also found as an aggravating factor that the respondent failed to recognize her own ethical obligations and the nature and consequences of her actions by repeatedly attempting to blame others. Matter of Diviacchi, 475 Mass. 1013, 1018, fn. 4, 32 Mass. Att'y Disc. R. 268, 276, fn. 4 (2016). Lastly, the committee found that the respondent was untruthful in her hearing testimony. We see no reason to disturb these findings. With regard to the latter two factors, we generally are reticent to penalize a lawyer for defending herself at trial. However, our indulgence is limited. Where, as here, the record is replete with blatant lies, obfuscations, and evasions, we will not hesitate to consider this in aggravation.

Recommended Sanction

The presumptive sanction for intentional misuse of client funds with deprivation is indefinite suspension or disbarment. Matter of Schoepfer, 426 Mass. 183,187, 13 Mass. Att'y

Disc. R. 6769, 685 (1997); Matter of Discipline of an Attorney, 392 Mass.827, 836, 4 Mass. Att'y Disc. R. 155, 166 (1984). Because the respondent has not made restitution, we recommend her disbarment. Schoepfer, *supra*., Matter of Ablitt, 486 Mass. 1017, 37 Mass. Att'y Disc. R. at ___ (2021).

As did the hearing committee, we need not discuss the recommended sanction on the counts other than Counts One, Two, and Four. They would warrant no more than an admonition, and would not affect the overall sanction.

Conclusion

For all of the foregoing reasons, we recommend that the Supreme Judicial Court disbar the respondent, Abby R. Williams.

Dated: September 13, 2021

Respectfully submitted,

Frank E. Hill, III