COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY
NO: BD-2025-034

IN RE: KAI RICHARD YU

MEMORANDUM OF DECISION

This matter came before the court, Dewar, J., on an information and record of proceedings filed by the Board of Bar Overseers (board) pursuant to S.J.C. Rule 4:01, § 8 (6), as appearing in 453 Mass. 1310 (2009). The respondent, Kai Richard Yu, was charged by the Office of Bar Counsel (bar counsel) with thirteen counts arising from the respondent's repeated and intentional misuse of client funds in connection with his real estate conveyancing practice. For reasons set forth below, I find that disbarment is the appropriate sanction and a judgment of disbarment shall issue in accordance with this memorandum.

1. Background. The following facts were found by the Hearing Committee (committee). The respondent was admitted to the Bar of Massachusetts on June 16, 2004, and practiced as a sole practitioner focused on residential real estate transactions. From 2004 until 2021, the respondent was a title

insurance agent for Old Republic National Title Insurance Company (Old Republic).

In October 2020, a client submitted a written complaint about the respondent related to his conduct in the closing of a home purchase in Natick. Bar counsel thereafter contacted the respondent for information related to the client's allegations. The respondent did not respond to bar counsel's requests. Consequently, the respondent was suspended administratively from the practice of law on March 2, 2021. After subsequently demonstrating substantial compliance with bar counsel's request for information, the respondent was reinstated to practice on April 16, 2021.

The respondent was administratively suspended for a second time on September 1, 2021, for his failure to cooperate with bar counsel's requests for additional information regarding two additional client matters and his IOLTA account records. After the respondent gave a statement under oath and complied with bar counsel's requests for information, this court lifted his administrative suspension on September 30, 2021.

Meanwhile, shortly after the respondent's first administrative suspension, Old Republic terminated the respondent's long-time agency contract after discovering the

administrative suspension during the respondent's annual audit.[1] This termination revoked the respondent's authority to issue title insurance policies on Old Republic's behalf.

Following the termination of his agency contract, the respondent conducted nine further real estate closings in which he "knowingly held himself out as an authorized Old Republic agent," claiming to collect title insurance premiums on the company's behalf. After collecting the premiums from his clients and depositing them into his IOLTA account, the respondent made transfers into his own operating account of funds that included the premiums.[2] Moreover, three of these closings occurred during the respondent's second administrative suspension by this court. For some of these transactions, the respondent's clients did receive title insurance policies from Old Republic, despite the fact that the respondent was not an authorized Old Republic agent at the time; for others, however,

[1] These audits consisted of reviewing the timeliness of the agent's title insurance policy remittances, reviewing the agent's underwriting files, and reviewing the agent's IOLTA or conveyance accounts to ensure they were reconciled regularly.

[2] Whether these funds at this point belonged to the client or a third party is not relevant. Our case law treats the misuse of client funds and third-party funds identically. See Matter of Hilson, 448 Mass. 603, 619 (no reason "to treat differently an attorney who misappropriates third-party funds from the attorney who misappropriates client funds when the misconduct occurs within the practice of law").

the clients did not receive coverage, despite remitting their policy premiums to the respondent.

The events described in count ten, which involve a residential property in Norwood (Neponset Street), are representative of the respondent's pattern of misconduct. In September 2021, the respondent acted as a settlement agent and homebuyer's attorney for a residential real estate purchase. As with the eight other transactions during this period, the respondent no longer had an active contract with Old Republic and was not permitted to issue title insurance documents on its behalf. Additionally, the respondent was under his second administrative suspension during the purchase of this property. Nevertheless, the respondent represented clients in connection with the closing of the home.

The respondent's actions in connection with the Neponset Street transaction involved misconduct of several kinds. First, the respondent issued a title commitment on behalf of Old Republic when he knew he was not authorized by Old Republic to do so, which the committee found to violate Mass. R. Prof. C. 4.1 (a) (intentional misrepresentations); 8.4 (c) (engaging in conduct that involved dishonesty, deceit, fraud, or other misrepresentations); and 8.4 (h) (engaging in conduct that adversely reflects on attorney's fitness to practice law). Second, the respondent acknowledged and agreed to comply with

the lender's closing instructions, which required the issuance of a lender's title insurance policy when he knew he was not authorized to do so, which the committee found to violate Mass. R. Prof. C. 1.1 (failure to act with competence); 4.1 (a); 8.4 (c); and 8.4 (h). Third, the respondent intentionally misrepresented to the lender and the homebuyer-client that the homebuyer was purchasing Old Republic lender and owner's title policies, which the committee found to violate Mass. R. Prof. C. 4.1 (a), 8.4 (c), and 8.4 (h). Fourth, he intentionally misrepresented that he was licensed to practice law in Massachusetts, which the committee again found to violate Mass. R. Prof. C. 4.1 (a), 8.4 (c), and 8.4 (h).

Additionally, the respondent knowingly transferred funds to which he was not entitled into his operating account, thereby commingling client funds with his own funds and intentionally misusing client funds, which the committee found to violate Mass. R. Prof. C. 1.15 (b) (failure to hold trust property separate from lawyer's own property), 8.4 (c), and 8.4 (h).[3] The

[3] Specifically, for the Neponset Street transaction, the respondent collected premiums totaling $2,857.75 from the homebuyer into an IOLTA account. These funds included (i) $1,467.50 for a lender's title insurance policy and (ii) $2,390.25 for an owner's title insurance policy. After collecting these premiums, the respondent transferred $7,538.35 from the IOLTA account into his operating account, which the committee found included the $2,857.75 paid by the homebuyer in title insurance premiums.

respondent also failed to accurately maintain a client ledger, which the committee found to violate Mass R. Prof. C. 1.15 (f) (1) (C) (failure to maintain individual client trust account records). Finally, the respondent practiced law while administratively suspended -- including collecting a $750 attorney's fee for conducting the closing -- which the committee found to violate Mass. R. Prof. C. 5.5 (a) (unauthorized practice of law), 8.4 (c), and 8.4 (d) (engaging in conduct prejudicial to administration of justice).

Again, this misconduct concerning the Neponset Street property is just one of a total of ten transactions with respect to which the committee found violations of the Rules of Professional Conduct, including for commingling client funds with his own funds and intentionally misusing those funds with continuing deprivation. For eight of these instances (counts III-XIII, X-XI),[4] the committee found that the respondent had not made restitution as of the end of August 2023, the last date listed in the respondent's operating account statements admitted into evidence.

[4] For the transactions described in counts I and XII, the committee did not make a finding regarding whether deprivation without restitution occurred and, for purposes of this decision, this court assumes there was no deprivation without restitution as to those counts.

2. Procedural history. On June 21, 2023, bar counsel filed a thirteen-count petition for discipline against the respondent. Counts I, III through VIII, and X through XII related to the ten real estate transactions in which the respondent was alleged to have engaged in misconduct. Counts II and IX stemmed from the respondent's failure to cooperate with bar counsel during its investigations of his conduct regarding two client matters and his IOLTA records. Last, count XIII arose from irregularities in the respondent's IOLTA account, namely, that the respondent did not promptly remit all trust funds to which his clients and other parties were entitled; did not promptly withdraw all earned fees and expense reimbursements; and did not adequately reconcile his IOLTA account.

The respondent's initial answer to the petition was struck by the board chair on bar counsel's motion, because it did not comply with BBO rule 3.15 (d), requiring that the respondent admit or deny each allegation in the complaint. The respondent thereafter filed a new answer, in which he admitted to most of the allegations in bar counsel's petition. As to some of the allegations concerning transfers of funds from his IOLTA account into his operating account, the respondent did not challenge that the transfers were made; instead, he contested the amount misused and claimed no intent to deprive his clients or Old

Republic of the funds permanently. Cf. Matter of Bailey, 439 Mass. 134, 150 (2003) ("Deprivation arises when an attorney's intentional use of a client's funds results in the unavailability of the client's funds after they have become due . . . even if no harm actually occurs").

The respondent also claimed mitigation based on mental health issues and stress caused by the unraveling of his marriage, which ended in divorce in 2019, and the COVID-19 pandemic. A prehearing order required the respondent to submit medical and psychological information and accompanying releases to bar counsel by April 3, 2024, if he wished to argue that one or more mental health conditions bore on his professional conduct. The respondent did not comply with this deadline, and bar counsel subsequently filed a motion in limine to preclude evidence of medical and psychological conditions. The chair denied bar counsel's motion in part, ruling that the respondent could testify himself about any condition and its relation to the disciplinary charges, but that he could not present third-party testimony or any medical records not yet produced.

An evidentiary hearing was held over two nonconsecutive days in May 2024. The respondent, three Old Republic employees, and the BBO trust account investigator testified. After the hearing, bar counsel filed proposed findings of fact and conclusions of law on September 26, 2024. The respondent did

not file his own proposed findings of fact and conclusions of law, nor dispute most of those submitted by bar counsel. Instead, the respondent filed a brief chiefly focused on his mitigation argument that his misconduct was the result of mental health issues following his divorce and the COVID-19 pandemic.

On December 5, 2024, the hearing committee issued its report, recommending that the respondent be disbarred. The committee concluded that bar counsel had proven all charges. The committee found no mitigating factors. The committee concluded that the respondent had not shown that "the disabilities the respondent has claimed, with their purported genesis in the 2018/2019 time frame, caused the misconduct we have found, most of which occurred in 2021," and that this lack of causation was "especially true as to his numerous, admitted misrepresentations." The committee did find several factors in aggravation: the respondent's nearly twenty years of experience as an attorney; violations of numerous disciplinary rules; continuing to engage in misconduct during bar counsel's investigation; and causing harm to Old Republic and to borrowers who paid for owner's title insurance policies and were misled into believing that they had purchased such coverage.

On March 10, 2025, the board voted unanimously to adopt the committee's recommendation of disbarment and filed an Information and Record of Proceedings in this court. On June

11, 2025, an order of notice was issued and served on the respondent in the manner specified in S.J.C. Rule 4:01, § 21, directing him to appear before this court on July 16, 2025, and he appeared for the hearing before this court on that date.

3. Discussion. a. Standard of review. This court will uphold "[t]he subsidiary findings of the hearing committee, as adopted by the board, '. . . if [they are] supported by substantial evidence.'" Matter of Weiss, 474 Mass. 1001, 1001 n.1 (2016), quoting S.J.C. Rule 4:01, § 18 (5), as appearing in 453 Mass. 1315 (2009). See Matter of Abbott, 437 Mass. 384, 393-394 (2002), and cases cited. "[T]he [] committee's ultimate 'findings and recommendations, as adopted by the board, are entitled to deference, although they are not binding on this court.'" Weiss, supra, quoting Matter of Ellis, 457 Mass. 413, 415 (2010). See Matter of Lupo, 447 Mass. 345, 356 (2006); Matter of Hiss, 368 Mass. 447, 461 (1975). The committee is the sole judge of credibility. Matter of Zankowski, 487 Mass. 140, 144 (2021). Accordingly, its "credibility determinations will not be rejected unless it can be said with certainty that the finding was wholly inconsistent with another implicit finding" (internal quotations omitted). Matter of Haese, 468 Mass. 1002, 1007 (2014).

b. Rule violations. Following review of the record, I conclude that the hearing committee's findings were supported by

substantial evidence. See Zankowski, 487 Mass. at 144, citing S.J.C. Rule 4:01, § 8 (6). Indeed, the respondent's answer admitted most of the allegations in bar counsel's complaint, including those related to making intentional misrepresentations to clients; issuing documents on behalf of Old Republic despite not being authorized to do so; and practicing law during his second administrative suspension. At the hearing, he similarly stated in his closing argument that he "ha[d]n't really denied" the alleged rule violations. And the respondent did not submit competing proposed findings of fact and conclusions of law after the hearing, instead submitting a post-hearing brief stating that "[m]ost of the facts are not being challenged" and principally addressing the issue of mitigation, discussed infra.

There is no merit to the respondent's sole argument before the committee in his post-hearing brief regarding the rule violations found by the committee. The respondent's post-hearing brief argued that bar counsel "inflat[ed]" the amounts in controversy, referencing as "one example" the amount allegedly misused in count VII. The respondent asserted that bar counsel omitted from bar counsel's description of a $8,184.40 transfer from the respondent's IOLTA account to his operating account that $5,124.00 of the transfer went to "tax stamps, recording fees and other legitimate fees." The respondent did not dispute, however, that bar counsel proved

intentional misuse. And the respondent has not disputed that, at least as of August 24, 2023, the respondent had not remitted all funds owed to third parties in connection with count VII.[5] Additionally, the respondent's assertion about the composition of the funds he transferred into his own operating account underscores that, as he also admitted in his testimony at the hearing, he did commingle these funds.

c. Mitigating factors. The hearing committee did not find any factors in mitigation, and the board adopted this finding. The record supports this conclusion.

Before the committee, the respondent testified that, after years of suffering from mental illness without seeking help, he had begun seeing a therapist and, a few weeks prior to the hearing, had been diagnosed by the therapist with an "adjustment disorder" with "depressive mood [] complicated by dysthymia." He described the disorder as one that caused him to develop "the wrong coping mechanisms to stress."[6] As a result of his

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[5] The respondent's brief also appears to suggest in passing that he did not intend to permanently deprive Old Republic of funds it was owed, describing his hope at the time of the misconduct that, "when the dust settled, there would be no harm, no foul." The respondent has not, however, disputed the committee's finding that deprivation did occur, nor that the respondent had not made restitution as to many of the funds at issue. See note 4, supra, and accompanying text.

[6] The respondent's post-hearing brief also discussed the definition of "adjustment disorder" in "the Diagnostic and Statistical Manual of Mental disorders (DSM-III)." There was no

condition, he testified, he "didn't have the mental or emotional bandwidth to practice the way that [he] had before." He also described himself as having been mentally "exhausted" from caring for his children during the COVID-19 pandemic. With respect to holding himself out as an Old Republic agent after termination of his agency contract and practicing during his second administrative suspension, the respondent testified that these actions were wrong, but that he "rationalized to [him]self that it would be okay to just finish out the closings," because he had thought he would be reinstated by Old Republic, that his second administrative suspension would be lifted before the closings during that suspension took place, and that if he "exercised enough willpower that [he] could literally just power through these issues." He was "overly optimistic," "desperate for hope," and "not appreciating the severity of the infractions."

I concur with the committee that the respondent has not proven that any such disability or mental illness caused his numerous acts of intentional misconduct. While the respondent testified regarding the mental health problems he was experiencing at the time of the misconduct (and this court has

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testimony in this regard, however, and the court does not consider this extra-record material, which the hearing committee also properly disregarded.

considered that testimony), he did not submit medical records or expert testimony to corroborate his testimony that mental illness caused his misconduct. See Zankowski, 487 Mass. at 152; Matter of Ablitt, 486 Mass. 1011, 1018 (2021). The record supports the committee's conclusion that, even if some of respondent's misconduct -- such as his failure to remit funds owed to others in a timely manner or his failure to maintain his IOLTA accounts properly -- could be attributable to the mental health issues and stressors the respondent described experiencing at the time,[7] he has not shown that they caused and can mitigate the repeated acts of intentional misconduct, spanning multiple transactions over a period of months, described above. See Haese, 468 Mass. at 1007-1008 ("no evidence that [attorney's] multiple acts of intentional misconduct were the product of his medical illness").

[7] The hearing committee noted that it was not finding that the respondent's mental health problems in fact did cause, in the committee's words, such "lassitude and professional paralysis," and, relatedly, the committee did not expressly state whether it credited the respondent's testimony regarding his mental health problems. Instead, the committee found that, "even if" the respondent's testimony were true, the mental health problems faced by the respondent at the relevant time still did not mitigate his intentional misconduct. For purposes of this decision, this court too assumes the truth of the respondent's testimony that, at the time of his misconduct, he was suffering from the mental health problems and subjected to the stresses related to his divorce and the COVID-19 pandemic described in his testimony.

In sum, I concur in the findings of the committee adopted by the board. This court does not find any factor in mitigation.

d. Aggravating factors. The committee concluded that the respondent's conduct was aggravated by his two decades of experience in the practice of law, see Matter of Luongo, 416 Mass. 308, 312 (1993) ("An older, experienced attorney should understand ethical obligations to a greater degree than a neophyte"); the harm caused to clients and the multiplicity of violations, see Matter of Saab, 406 Mass. 315, 326-327 (1989) (consideration of cumulative effect of several violations proper when fixing sanction); and his continued misconduct during bar counsel's investigation, see Matter of Bryan, 411 Mass. 288, 291-292 (1991) (continued wrongdoing after disciplinary proceedings have commenced considered aggravating). The board adopted these findings, and, concluding that they are supported by the record, I concur.

e. Appropriate sanction. The "primary concern in bar discipline cases is 'the effect upon, and perception of, the public and the bar.'" Matter of Crossen, 450 Mass. 533, 573 (2008), quoting Matter of Finnerty, 418 Mass. 821, 829 (1994). See, e.g., Matter of Alter, 389 Mass. 153, 156 (1983). "The purpose of the disciplinary rules and accompanying proceedings is to protect the public and maintain its confidence in the

integrity of the bar and the fairness and impartiality of our legal system." Matter of Curry, 450 Mass. 503, 520-521 (2008). "The appropriate level of discipline is that which is necessary to deter other attorneys and to protect the public." Id. at 530, citing Matter of Concemi, 422 Mass. 326, 329 (1996). "In considering the appropriate sanction, 'the board's recommendation is entitled to substantial deference.'" Zankowski, 487 Mass. at 153, quoting Matter of Tobin, 417 Mass. 81, 88 (1994).

Here, this court agrees with the board's recommended sanction of disbarment. The respondent misused funds resulting in deprivation to multiple clients, see Matter of Schoepfer, 426 Mass. 183, 187 (1997), engaged in multiple other disciplinary violations including making repeated misrepresentations to clients and others, and, with respect to at least most of the transactions at issue, see note 4 and accompanying text, supra, failed to make restitution, see Bryan, 411 Mass. at 291-292. Disbarment is the appropriate sanction for such misconduct. See id. (attorney's repetitive wrongdoing, conversion of clients' funds, and absence of any substantial mitigating factor collectively supported disbarment). See also Matter of Dasent, 446 Mass. 1010, 1012-1013 (2006) (imposing sanction of disbarment where attorney intentionally misused client funds, failed to repay full amount owed, committed multiple violations,

and showed no special mitigating factors). The appropriateness of this most severe sanction is underscored by the respondent's further misconduct during these disciplinary proceedings, including engaging in the unauthorized practice of law and committing additional misconduct in so doing. See Bryan, supra.

The respondent instead argued for a sanction of four to six years, "with the possibility of reinstatement sooner, if but only if, [he] can demonstrate fitness to practice, specifically but not limited to, remedying of outstanding title insurance premiums and policies, organization of office files, completed bookkeeping, all to demonstrate capacity and competence to comply with professional standards of conduct, and a written evaluation by a licensed mental health professional." The respondent argues that such a sanction "acknowledges the primacy of the rules for attorney conduct but also acknowledges the realities of mental health problems." This court has assumed the truth of the respondent's testimony regarding the mental health problems he faced at the time of his misconduct, see note 7, supra, and commends the respondent for seeking help. The court nonetheless concludes that, given the record of the respondent's intentional misconduct described above and the absence of any showing of special mitigation of that misconduct, any sanction short of disbarment would be markedly disparate from the sanctions imposed in similar cases.

By the Court,

/Elisabeth N. Dewar/

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Elizabeth N. Dewar
Associate Justice

Dated: August 4, 2025