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SJC-13262

IN THE MATTER OF MAUDE LAROCHE-ST. FLEUR.

October 27, 2022.

Attorney at Law, Disciplinary proceeding, Suspension. Board of Bar Overseers.

The respondent attorney, Maude Laroche-St. Fleur, appeals from the order of a single justice of this court suspending her from the practice of law for eighteen months. We affirm.¹

1. Procedural background. On June 25, 2020, bar counsel filed a three-count petition for discipline against the respondent, alleging that during the course of divorce proceedings in which she was self-represented, the respondent (1) filed multiple knowingly false financial statements under the pains and penalties of perjury;² (2) disobeyed various orders of the probate court resulting in multiple contempt judgments

¹ We have reviewed the respondent's preliminary memorandum and appendix, as well as the record that was before the single justice. Pursuant to S.J.C. Rule 2:23, 471 Mass. 1303 (2015), we dispense with further briefing and oral argument.

² In violation of Mass. R. Prof. C. 3.3 (a) (1), (3), as appearing in 471 Mass. 1416 (2015) (candor toward tribunal), and Mass. R. Prof. C. 8.4 (c), as appearing in 471 Mass. 1483 (2015) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

against her;³ and (3) pursued a frivolous motion for relief from judgment and frivolous appeals from the denial of that motion.⁴

The respondent, acting pro se, filed an answer in August 2020.⁵ In November 2020, prior to a hearing in the matter, bar counsel moved to preclude the respondent from relitigating certain facts alleged in the second count of the petition that bar counsel claimed were established in the respondent's divorce proceeding and related contempt proceedings. The motion was allowed, and the order also identified certain facts admitted in the respondent's answer that were not to be contested during the proceedings. The hearing committee chair also allowed a subsequent motion by bar counsel to deem certain matters admitted that were not specifically denied in the respondent's answer. See Rules of the Board of Bar Overseers § 3.15.

An evidentiary hearing was held on March 23 and 24, 2021. The hearing committee issued an amended report on October 21, 2021, recommending that the respondent be suspended from the practice of law for eighteen months. The respondent failed to object to or appeal from the hearing committee's report. After considering the record, a majority of the board voted to adopt the hearing committee's report and recommendation.

The board thereafter filed an information in the county court pursuant to S.J.C. Rule 4:01, § 8 (6), as appearing in 453 Mass. 1310 (2009), recommending that the respondent be suspended from the practice of law for a term of eighteen months. After a hearing, a single justice of this court concluded that the findings of misconduct were supported by substantial evidence -- in addition to having been established as a result of the respondent's waiver of any objection to the hearing committee's report -- and imposed the board-recommended sanction of an eighteen-month suspension. This appeal followed. Among other

³ In violation of Mass. R. Prof. C. 3.4 (c), as appearing in 471 Mass. 1425 (2015) (knowingly disobeying obligation under rules of tribunal), and Mass. R. Prof. C. 8.4 (d) (conduct prejudicial to administration of justice).

⁴ In violation of Mass. R. Prof. C. 3.1, as appearing in 471 Mass. 1414 (2015) (meritorious claims and contentions), and Mass. R. Prof. C. 8.4 (professional misconduct).

⁵ A later attempt to amend the answer failed procedurally when the respondent failed to file an amended answer in response to an order allowing in part the respondent's motion to amend.

filings in this court, the respondent filed an emergency motion seeking a stay of the imposition of the sanction in this case pending appeal. This court denied the stay.⁶

2. Factual background. We summarize the relevant facts as found by the hearing committee and adopted by the board.⁷ We agree with the single justice that these facts are supported by substantial evidence. See S.J.C. Rule 4:01, § 8 (6).

a. The respondent's filing of false financial statements. The respondent was admitted to the Massachusetts bar in 2012. In May 2014, acting pro se, the respondent filed a complaint for divorce against her husband. The primary issue in the divorce was the division of assets, including the marital home.

At various times during the divorce proceedings, the respondent filed personal financial statements with the court, which were signed under the pains and penalties of perjury. These financial statements contained material false statements; chief among them, the respondent claimed that the marital home was encumbered by a "mortgage" when, in fact, the mortgage on the property had been paid off. In another of her financial statements, the respondent claimed that she had an outstanding "loan" from a third party. This purported "loan" was the same money that the respondent had elsewhere claimed as a "mortgage" on the marital home. As the board noted, characterizing the purported debt as a "mortgage" stood to benefit the respondent, as each spouse's share of the property division would be reduced equally by the amount of a mortgage on the marital home, whereas the probate court was not bound to treat the respondent's

⁶ In subsequent filings with this court, the respondent has brought to our attention the fact that bar counsel has since filed a petition for contempt against the petitioner in the underlying disciplinary matter in the county court. As of the writing of this opinion, the single justice has held a hearing on the matter and issued an order holding the respondent in contempt of court for failure to comply with the order of term suspension at issue in this appeal. Our decision in this appeal does not rely in any way on the single justice's recent contempt order, and we express no view on the findings and conclusions contained therein.

⁷ We therefore refer to the hearing committee's factual findings as those of the board. See Matter of Eisenhauer, 426 Mass. 448, 449 n.1, cert. denied sub nom. Eisenhauer v. Massachusetts Bar Counsel, 524 U.S. 919 (1998).

nonmortgage liability as debt to be borne equally by the two parties. The respondent also failed to disclose certain bank accounts on her financial statements, including accounts that she owned separately from her husband.

The respondent eventually revealed to the court and to her husband's counsel that she had falsely listed the third party's purported loan as mortgage debt. However, by the time of this disclosure, the respondent had on five prior occasions submitted financial statements to the court with the false claim of a mortgage on the marital home.⁸

b. Contempt judgments against the respondent. The respondent acknowledged to the hearing committee that there were up to six contempt judgments against her in her divorce and related matters. The second count of the petition for discipline was premised on three of these, dated April 17, 2015; December 23, 2015; and February 22, 2018, respectively.

The April 2015 contempt judgment was based on the respondent's repeated refusal to cooperate with a special discovery master appointed by the probate court in the respondent's divorce proceeding. As part of that judgment, the probate court ordered the respondent to pay the discovery master's fees and to pay her husband's reasonable attorney's fees in litigating the underlying discovery disputes. In December 2015, after the respondent failed to pay any fees to the discovery master, the probate court again found the respondent in contempt.

⁸ The respondent claimed that her motive for doing so was to protect the third party from a risk of kidnapping in Haiti. When considering this as a potential mitigating factor, the hearing committee credited that the respondent had this "generalized concern," but it did not credit that "this was the primary motivating factor" for the respondent's mischaracterization of the purported loan as a mortgage. As discussed *infra*, we do not revisit the hearing committee's credibility determinations, see Matter of Diviacchi, 475 Mass. 1013, 1018-1019 (2016), S.C., 480 Mass. 1016 (2018), and we find adequate support in the record for the hearing committee's ultimate conclusion that the respondent "knowingly and intentionally misrepresented her financial condition on her financial statements in an effort to obtain a more favorable outcome in the divorce case."

On December 30, 2015, after a two-day trial, the probate court issued a judgment of divorce nisi requiring, among other things, that the respondent sell the marital home so that the proceeds could be divided between the parties. The respondent moved for, and was denied, relief from the divorce judgment. The Appeals Court affirmed the denial of the respondent's motion, and this court denied further appellate review. After the respondent failed to sell the marital home, her former husband filed a further complaint for contempt against her. The February 2018 contempt judgment entered as a result of the respondent's failure to sell the marital home. As part of the February 2018 contempt judgment, the court appointed a master to sell the marital home; the respondent has since continually refused to cooperate with the master's efforts to sell the home.

c. The respondent's frivolous Mass. R. Dom. Rel. P. 60(b) motion and appeal. On February 12, 2018, the respondent filed a motion pursuant to Mass. R. Dom. Rel. P. 60(b) in the probate court, in which she once again sought relief from the divorce judgment. This motion did not raise any issue that was not or could not have been raised in the respondent's 2016 motion for relief from the judgment. The motion was also filed over a year late. See Mass. R. Dom. Rel. P. 60(b) (requiring that such motions be brought within one year of entry of judgment). The probate court denied the respondent's motion and awarded attorney's fees to her husband. The respondent appealed, and the Appeals Court affirmed the denial. The respondent sought reconsideration from the Appeals Court, which was denied, and then she sought further appellate review from this court, which was also denied. During this time, the marital home remained unsold. Based on the foregoing, the board concluded that the respondent's February 2018 rule 60(b) motion was frivolous and that the respondent's appeals from its denial were intended merely to "hamper and delay her husband from receiving the benefit of the judgment of divorce."

3. Discussion. The case is before us on the respondent's preliminary memorandum, pursuant to S.J.C. Rule 2:23 (b), 471 Mass. 1303 (2015) (appeals in bar discipline cases). Under that rule, the appellant bears of the burden of demonstrating

"that there has been an error of law or abuse of discretion by the single justice; that the decision is not supported by substantial evidence; that the sanction is markedly disparate from the sanctions imposed in other cases involving similar circumstances; or that for other reasons the decision will result in a substantial injustice."

Moreover, "[t]he hearing committee . . . is the sole judge of credibility, and arguments hinging on such determinations generally fall outside our proper scope of review." Matter of Diviacchi, 475 Mass. 1013, 1018-1019 (2016), S.C., 480 Mass. 1016 (2018), quoting Matter of McBride, 449 Mass. 154, 161-162 (2007). "The subsidiary findings of the hearing committee, as adopted by the board, 'shall be upheld if supported by substantial evidence,' see S.J.C. Rule 4:01, § 18 (5), as appearing in 453 Mass. 1315 (2009), and the hearing committee's ultimate findings and recommendations, as adopted by the board, are entitled to deference, although they are not binding by this court" (quotation and citation omitted). Matter of Diviacchi, supra at 1019.

For the reasons discussed infra, the respondent has failed to meet her burden under rule 2:23.

a. Sufficiency of the evidence. On appeal before this court -- as well as before the single justice, as observed in his decision -- "the respondent makes some objections to the board's factual findings, but ultimately does not contest the relevant facts underlying the violations." Rather, "[i]n her defense, she chiefly offers various reasons explaining why she committed her misconduct, or impermissibly seeks to relitigate issues already decided in her divorce proceedings." We agree with the single justice that there is substantial evidence in the record to support the board's findings that the respondent committed the charged misconduct.⁹

b. Sanction. Whether the sanction imposed in this case is "markedly disparate from the sanctions imposed in other cases involving similar circumstances," see S.J.C. Rule 2:23 (b), presents a closer question. "Our primary concern in bar discipline cases is the effect upon, and perception of, the public and the bar, . . . and we must therefore consider, in reviewing the board's recommended sanction, what measure of discipline is necessary to protect the public and deter other attorneys from the same behavior" (quotations and citation omitted). Matter of Lupo, 447 Mass. 345, 356 (2006).

As the hearing committee noted in its report, "[t]he sanctions imposed for misconduct during a lawyer's own divorce

⁹ The respondent's failure to object to the hearing committee's report provides an additional, independent basis for concluding that the alleged misconduct has been established.

have fallen short of those imposed when an attorney engages in misconduct while representing others." Thus, while a two-year suspension is considered a "usual and presumptive" sanction for making false statements under oath, see Matter of Diviacchi, 475 Mass. at 1020, quoting Matter of Finneran, 455 Mass. 722, 731 n.13 (2010), similar forms of misconduct committed during the course of an attorney's own divorce typically have garnered suspensions ranging from several months to one year, see, e.g., Matter of Ring, 427 Mass. 186, 192-193 (1998) (three months); Matter of Finnerty, 418 Mass. 821, 828-830 (1994) (six months); Matter of Leahy, 28 Mass. Att'y Discipline Rep. 529, 539 (2012) (two months); Matter of Kilkenny, 26 Mass. Att'y Discipline Rep. 288, 290 (2010) (three months); Matter of Okai, 11 Mass. Att'y Discipline Rep. 187, 188-190 (1995) (one year).

This disparity may reflect a confluence of mitigating circumstances in such cases, or a commonsense understanding that infractions motivated by "deep disagreements" with an estranged spouse can be "a poor predictor of future professional misconduct, especially as regards client matters." Matter of Leahy, 28 Mass. Att'y Discipline Rep. at 535. Nonetheless, it is well established that an attorney is not "entitled to a free pass simply because 'the matter about which [he or] she testified falsely was a private one that arose in the context of a purely personal relationship.'" Id. at 537, quoting Matter of Balliro, 453 Mass. 75, 88 (2009). See Matter of Otis, 438 Mass. 1016, 1017 n.3 (2003) (declining to apply any so-called "private citizen" exception to conduct involving fraud in connection with judicial proceedings). Rather, we "must ultimately decide every case 'on its own merits [such that] every offending attorney . . . receive[s] the disposition most appropriate in the circumstances.'" Matter of Lupo, 447 Mass. at 356, quoting Matter of the Discipline of an Attorney, 392 Mass. 827, 837 (1984).

We therefore examine the particular facts of this case, along with any attendant aggravating and mitigating factors, to assess the appropriateness of the sanction imposed. Here, the board found a lack of mitigating factors and the existence of multiple aggravating factors, including the respondent's failure to accept the nature and seriousness of her misconduct; the respondent's attempts to blame others for her misconduct, including opposing counsel, the probate court, the Appeals Court, and this court; the financial and other harm caused by the respondent's misconduct, which was motivated by her pecuniary interests; the respondent's commission of multiple violations of the rules of professional conduct; and the

respondent's demonstrated lack of candor in her testimony before the hearing committee.

The facts of Matter of Okai, although not identical, are closely analogous. See Matter of Okai, 11 Mass. Att'y Discipline Rep. at 188-190 (imposing one-year suspension for "contumacious behavior" in attorney's own divorce, including four contempt judgments, disposal of assets in violation of court order, and prosecution of frivolous appeal, combined with other various misconduct in representing clients, with aggravating factors). Here, as in Matter of Okai, the respondent committed multiple forms of misconduct in her own divorce, including (1) filing false financial statements with the court, (2) noncompliance with court orders resulting in contempt judgments, and (3) the pursuit of a frivolous motion and appeal. In addition, as discussed supra, the board found a lack of mitigating factors and the existence of multiple aggravating factors.

In contrast, cases in which a lesser sanction has been imposed for similar misconduct have generally involved the presence of significant mitigating factors. See, e.g., Matter of Ring, 427 Mass. at 186, 188, 192-193 (imposing board-recommended three-month suspension for multiple forms of misconduct in attorney's own divorce, despite some misgivings that sanction was too lenient, where evidence was presented that respondent was clinically depressed after breakup of thirty-five year marriage); Matter of Leahy, 28 Mass. Att'y Discipline Rep. at 530-532, 538-539 (imposing two-month suspension for misconduct during attorney's own divorce, including contempt judgment for noncompliance with court orders and misrepresentations to court regarding wife's mental health, where misconduct was not motivated by pecuniary gain; aside from custody violations infractions were minor, and respondent timely paid most financial commitments); Matter of Patch, 20 Mass. Att'y Discipline Rep. 445, 445-446 (2004) (imposing three-month suspension, as stipulated by parties, for misconduct during attorney's own divorce, including seven contempt judgments, filing incomplete and inaccurate financial statement, and failing to timely comply with order to pay fees, where all arrearages were paid, all contempt was cleared, and respondent presented evidence of clinical depression).

Here, the hearing committee did not credit the respondent's proffered mitigating factors, and this case arguably merits a sanction even more severe than that imposed in Matter of Okai, where multiple aggravating factors are present, and, as the

hearing committee observed, "[e]ach type [of misconduct] played a different role in service of the respondent's aggressive and persistent refusal to acknowledge the authority of the probate court to resolve her divorce and the authority of the Appeals Court and [this court] to review the probate court and to put the divorce litigation to an end."

After careful review of the record, and giving due deference to the board's recommendation in light of the substantial aggravating factors and lack of mitigating factors, we conclude that the sanction imposed by the single justice in this case is not markedly disparate from sanctions imposed in similar cases.

4. Conclusion. For the foregoing reasons, we affirm the order of the single justice suspending the respondent from the practice of law for a term of eighteen months.

So ordered.

The case was submitted on the record, accompanied by a memorandum of law.

Maude Laroche-St. Fleur, pro se.