IN RE: GLENN H. HAESE

NO. BD-2013-037

S.J.C. Judgment of Disbarment entered by Justice Botsford on August 9, 2013, with an effective date of September 9, 2013.[1]

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[1] The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
DOCKET NO. BD-2013-037

IN RE: GLENN H. HAESE

MEMORANDUM OF DECISION

The Board of Bar Overseers (board), adopting the recommendation of a hearing committee, has filed an information pursuant to S.J.C. Rule 4:01, § 8 (6), recommending the disbarment of the respondent, Glenn H. Haese. The respondent challenges various factual findings and legal conclusions of the board, as well as the appropriateness of the recommended sanction. The respondent also has filed in this court a motion for a new hearing before the hearing committee, asserting that the committee's denial of his request for a continuance of the original hearing violated his right to procedural due process. For the reasons set out below, I conclude that the respondent's motion for a new hearing should be denied, and that disbarment is the appropriate discipline to impose.

Background. The background facts set out here are taken from the hearing committee's report and the memorandum of the board that followed; with an exception noted below, the board adopted all of the hearing committee's factual findings.

The respondent was licensed to practice law in Colorado in 1983, and was admitted to the Massachusetts bar in December of 2005. He opened a law firm in Colorado in 1986, focusing on construction, engineering, and design defects. In December of 1996, and thus before he was licensed to practice law here, he opened a solely-owned law firm in Massachusetts, Haese LLC,

with a continuing focus on construction and engineering matters. At all relevant times, the respondent maintained control over the financial aspects of the law firm's practice, setting all fees and approving all client bills. Either he personally signed all checks of the firm, whether checks drawn on its IOLTA account or otherwise, or authorized someone else to use his signature stamp. Massachusetts attorney Andrew Tine worked as an associate at Haese, LLC from late 1996 to January, 2006. Tine left Haese, LLC, in January, 2006, and opened his own practice.

On March 4, 2011, bar counsel filed a petition for discipline against the respondent with five counts. The following summarizes the board's findings, which are derived entirely from the committee's findings that the board adopted.

Count 1 concerned homeowner clients of the respondent's law firm who had been brought in by Tine. As was true before the board, the respondent does not contest the factual findings relating to this count. At issue was the respondent's misuse of settlement funds received in July of 2005 that should have been sent to the clients. The respondent mistakenly and negligently believed the funds at issue represented his firm's contingent fee, and therefore funds that he, on behalf of the firm, was entitled to use. About one and one-half months after the funds were received, the respondent paid the clients what was due to them, using personal funds. Before doing so, however, the respondent misrepresented to the clients the reason why they had not immediately received the settlement funds. The board concluded that the respondent had violated Mass. R. Prof. C. 1.15(b) (hold trust funds separate from the lawyer's personal funds); 1.15(c) (prompt notice and delivery of trust funds to persons entitled to receive); 1.15(d)(2) (billing and notices to client on withdrawal from trust account), and 1.15(f)(1)(C) (no withdrawals creating negative balances in an individual client's account); Mass. R. Prof. C.

1.4(a) and 1.4(b) (duty to keep client reasonably informed and respond to requests for information); and, in connection with the respondent's misrepresentation about the reasons for delay in sending the settlement funds, Mass R. Prof. C. 8.4 (c) (proscribing dishonesty, deceit, fraud or misrepresentation).

Count 2 concerned a construction company client of Haese, LLC, on whose behalf the law firm was seeking to collect moneys owed to the client. This also was a client brought into the firm by Tine. The fee agreement, authorized by the respondent, called for reduced hourly billing ($60 per hour) and a contingent fee of 20 per cent of the recovery. The client paid a $2,000 retainer fee that the respondent used for his own purposes before it had been earned, and without providing notice of that use to the client. The collection case that the respondent's firm brought on behalf of the client settled in December, 2005. Tine received the settlement check for $15,000, of which the client was entitled to $11,883.49 after deductions for attorney's fees and costs, plus the return of his $2,000 retainer, for a total of $13,889.49; the respondent's bookkeeper informed the respondent of these facts. When the check was received, it was deposited in the firm's IOLTA account, and sometime between January 12 and January 17, 2006, the respondent transferred $3,116.51 from the IOLTA account to a firm business account as appropriate payment in full of the firm's fees and costs. However, during the same time period, the respondent caused an additional $12,300[1] of the client's settlement funds to be transferred from his IOLTA account, and he used these funds for purposes unrelated to this client. The respondent did not send the client written notice of the dates on which he withdrew funds or the amount of each withdrawal, or a statement of the balance of funds remaining in the account after each withdrawal. Around February 10, 2010, the respondent transferred other funds into the

[1] The respondent caused $300 of this total to be transferred from his IOLTA account by writing a check to cash.

IOLTA account, and paid the client the full amount of the settlement that was due. Based on these facts, the board, like the hearing committee, concluded that the respondent had knowingly and intentionally misappropriated or converted the client's funds causing temporary deprivation, thereby violating Mass. R Prof. C. 8.4(c), and also had violated a number of the provisions of Mass. R. Prof. C. 1.15, concerning the handling of trust funds, as well as Mass. R. Prof. C. 1.16(d) (refunding advance payment of fees not yet earned).

Counts 3, 4 and 5 all relate to the respondent's dealings with other attorneys. As to count 3, the board found that the respondent breached an agreement concerning the division and distribution of $75,000 in attorney's fees among three law firms, the respondent's and two others – Pepe & Hazard (Pepe) and Demeo & Associates. In particular, the respondent had agreed to file a collection action on behalf of the three firms to recover $75,000 in unpaid legal fees connected to work that all three firms had done on behalf of a particular client, and to distribute to each firm its share of the fees recovered. In 2006, the respondent successfully recovered the full fee amount, paid the appropriate share ($13,500) to Demeo & Associates, but failed to pay Pepe the $31,000 in fees that had been agreed upon. Instead, the board and hearing committee found, the respondent intentionally misappropriated these funds to his own use. (The hearing committee, and derivatively the board, found not credible the explanations and justifications for his conduct to which the respondent testified at the hearing.) While the respondent made some payments to Pepe between 2006 and 2008. Pepe brought suit against the respondent to recover the amounts still due, and in January of 2011, was awarded summary judgment in its favor. It appears that Pepe is still owed almost $20,000, exclusive of interest. The hearing committee determined that the respondent had violated Mass. R. Prof. C. 1.15(b), 1.15(c), 1.15(d)(1) – all provisions relating to the handling of trust property and funds held by an attorney – as well as

Mass. R. Prof. C. 8.4(c) (dishonesty, deceit, fraud or misrepresentation). The board, however, declined to decide whether rule 1.15 applied here – that is, whether, in the particular circumstances presented, the $75,000 that the respondent received as an award or payment of attorney's fees should be deemed "trust funds" governed by rule 1.15. The board did conclude that the respondent's conduct violated rule 8.4(c).

Count 4 focused on certain financial transactions between (1) the respondent and a commercial lender and (2) the respondent and a North Carolina attorney, J. Anthony Penry, that were connected to the respondent's representation of a minor child in a personal injury action against a major manufacturer. The board and hearing committee found that the respondent induced Penry to assist in litigating the personal injury matter for 35 per cent of the contingent fee, without informing Penry that the respondent already had pledged the entire legal fee he might receive from this matter to the commercial lender as collateral for a series of loans totaling $250,000.[2] The lawsuit against the manufacturer settled, and on October 30, 2006, the respondent received a settlement check that included almost $76,000 in legal fees, but the respondent failed to notify Penry or the commercial lender of his receipt of the settlement funds and included fees, and signed the settlement check with Penry's name but without his authority. The settlement funds were deposited in the respondent's IOLTA account, but the respondent failed – at least voluntarily – to distribute to Penry or the lender any portion of the fees recovered. Instead, within two weeks of receiving the settlement funds, the respondent removed and used all but $43,717.44 of the settlement fee amount, although he did properly transmit the client's portion of the settlement. On learning of the settlement and the respondent's receipt of the same, the commercial lender brought suit against the respondent to recover the pledged legal

[2] The respondent deposited all of these loan funds in his IOLTA account when he received them.

fees, and the respondent agreed to entry of judgment in the lender's favor; as a consequence, the court ordered that the respondent pay the lender all but $600 in the respondent's IOLTA account, which the respondent did. The respondent still has not fully repaid the lender the full $250,000 he borrowed, and has not paid Penry any portion of Penry's 35 per cent share of the contingent fee amount. Based on these findings, the hearing committee found that the respondent had violated Mass. R. Prof. C. 1.15(b) (2) (no personal funds in IOLTA account [here, the loan proceeds, see note 2, supra]), and 1.15(e)(3) (prohibiting withdrawal from IOLTA account by check made payable to cash); rule 1.15(c), by failing to notify Penry of receipt of the settlement in which Penry had an interest and failing promptly to pay those funds to Penry; Mass. R. Prof. C. 8.4(c) and (h), by inducing Penry to provide legal services in exchange for a share of fees that already had been pledged as security to the commercial lender, and by failing to notify the lender that the respondent had impaired or reduced the collateral securing the loan; and rule 1.15(b), by converting the contingent fee in which Penry had an interest. As with count 3, the board declined to rule on whether the respondent's handling of the contingent fee vis-à-vis Penry violated rule 1.15, but agreed that the respondent had violated the remaining rules listed.

Finally, as to count 5, the board and hearing committee found that the respondent dishonestly induced Penry to loan him a total of $81,000 by promising as security for the loans those fees already pledged as collateral to the lender, and also that the respondent deposited $17,000 of the loan proceeds in his IOLTA account. The respondent did not repay Penry in the agreed-upon manner, and indeed threatened to urge his client to bring a malpractice claim against Penry in retaliation for Penry's lawsuit against the respondent seeking to collect the amounts owed on the unpaid loans. Based on these findings, the hearing committee found the respondent violated Mass. R. Prof. C. 1.15(b)(2) (lawyer must segregate personal property [here,

loans] from trust property), and Mass. R. Prof. C. 8.4(c) & (h) (conduct otherwise reflecting adversely on fitness to practice).

At the hearing, the respondent introduced an array of medical records – which ultimately were submitted under seal – and the testimony of his primary care physician to present information relating to a series of very serious medical conditions and illnesses that had afflicted the respondent, including cardiomyopathy diagnosed in the fall of 2005 and an episode of meningitis in the spring of 2006 with apparent sequelae lasting into the spring of 2007, and acute appendicitis in April, 2008.[3] He argued that these medical crises and conditions, in combination with the wholesale disruption to his law office caused by Tine's departure in January of 2006, should be considered in mitigation in relation to his conduct pertaining to all five counts of the petition for discipline. The hearing committee and board found that between July, 2005, and June, 2008, the respondent suffered from several severe and ongoing medical conditions that resulted in the respondent's being hospitalized at various times during this three-year period, and the respondent experienced a variety of physical and psychological side effects as a result of his treatments for these conditions, but that as serious as the medical conditions were, they were not causally related to the intentional misconduct of the respondent that was the subject of counts 2 through 5.

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[3] Before the respondent's physician, Dr. Mitchell Kase, testified, the respondent's counsel raised the issue of admitting the respondent's medical records under seal, and the parties agreed that the respondent's counsel would file a protective order after the completion of the hearing to this end. Thereafter, the respondent successfully moved to maintain the respondent's medical records under seal. The respondent did not seek a protective order concerning the testimony of Dr. Kase, the physician who testified to the respondent's various ailments at the hearing. The respondent offered similar medical testimony throughout his own testimony. As noted by both the hearing committee and the board, the underlying medical records contained additional details as to each medical condition addressed by Dr. Kase and the respondent in their testimony, but the essential substance of the respondent's medical conditions was presented at the hearing through Dr. Kase.

Discussion. 1. Motion for new hearing. As indicated previously, the respondent has filed in the county court a motion for a new hearing before a hearing committee of the board in this matter. He argues that he is entitled to another evidentiary hearing because the denial of his motion to continue the evidentiary hearing in this matter constituted a deprivation of his procedural due process right to participate meaningfully in a hearing asserting charges against him. The relevant facts are set forth below.

Bar counsel filed the petition for discipline in this matter on March 4, 2011. In April and May, 2011, the respondent requested three extensions of time to obtain counsel for purposes of responding to the petition. On May 20, at the conclusion of the extensions, the respondent filed his answer *pro se*. On June 24, the respondent again requested an extension of time to obtain counsel. At a prehearing conference on June 28, the hearing was scheduled for October 17 through 28, and the respondent was ordered to file an amended answers by July 28. The hearing committee granted the respondent a further extension until August 3. Less than a week later, on August 8, the hearing committee granted the request of the respondent, now represented by counsel, for leave to file an amended answer. A second prehearing conference was held on August 23, and new hearing dates were set for December 5 through 14, 2011, with the directive that no further continuances would be allowed.

On September 13, 2011, the respondent filed his amended answer. On November 22, two weeks before the scheduled December 5 start date of the hearing, the respondent's counsel filed a motion to withdraw, and the respondent filed a motion to continue with new counsel. Specifically, the respondent requested the hearing be continued until late January or February, 2012, to accommodate his new counsel's need to prepare and counsel's previously-scheduled vacation outside of the country. The hearing committee denied the respondent's motion to

continue, but, upon reconsideration, gave the parties the opportunity to have two additional days to prepare for the hearing, if both were willing to try the matter in a condensed three-day schedule, rather than the nine day schedule agreed to at the pretrial conference. Both parties, through counsel, agreed to this option – although the respondent argues here that his counsel "agreed" in name only, and did so only because realistically, there was no other option available.

The hearing was conducted on December 12 through 14, 2011. Attorney Thomas Butters represented the respondent. Each party filed proposed findings and post-trial briefs in February, 2012, and in May, the hearing committee issued its report recommending that the respondent be disbarred.

The denial of a motion for continuance by a hearing committee will not constitute error absent an abuse of discretion. See Matter of Brauer, 452 Mass. 56, 73-74 (2008). I will assume that the respondent had difficulty in obtaining counsel initially and that he had reason thereafter to change counsel. Nonetheless, a number of continuances had previously had been granted to the respondent, including a continuance of the hearing dates. As bar counsel argued at the time, an additional continuance of the hearing date as the respondent requested would greatly inconvenience witnesses and others who had set their schedules. Moreover, the hearing committee did accommodate to some degree the vacation plans of the respondent's successor counsel.

It is true that the preparation time available to the respondent's new counsel was shorter than counsel would have liked, and the number of hearing days was reduced to accommodate the later start of the hearing. But these points, alone, do not establish an abuse of discretion. Moreover, the respondent has not indicated with any specificity the prejudice that he suffered as a result of the denied continuance. He suggests that additional time for both preparation and

hearing would have given him the opportunity to present a fuller, and more persuasive, picture of his debilitating medical conditions and their collective impact on his conduct; to call out-of-State witnesses "to testify as to the facts in some of the counts"; to cross-examine Tine more effectively; to hire an accounting expert; and to call witnesses familiar with the respondent's financial situation and ability to access funds. With respect to time to develop further the medical testimony, it is difficult to see what would have been accomplished.[4] As for Tine, for reasons discussed below, his testimony concerning facts that supported a finding of conversion by the respondent in relation to count 2 was corroborated by the independent testimony and evidence presented by the forensic accountant Albert Nolan. Finally, the respondent's failure to provide specifics relating to the other asserted areas of prejudice make the assertions impossible to assess. In sum, I cannot conclude that there was any abuse of discretion on the hearing committee's part in refusing the respondent's (second) motion to continue the hearing.

2. Claimed errors in the board memorandum and recommended sanction. Apart from his due process arguments in support of his motion for a new hearing, the respondent challenges several key findings of the board as factually unsupportable, and the board's recommended sanction of disbarment as too harsh and out of step with precedent.

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[4] The difficulty with the respondent's position is that at the hearing, the respondent did not testify that his actions with respect to the client fees that were the subject of count 2, the other attorneys' fees that were the subject of counts 3 and 4, and the loans from Penry that were the subject of count 5, were the product of medical illness-induced mistake, or lack of cognitive capacity related to his medical conditions. Rather, he testified specifically about the reasons why he consciously did what he did. Given his testimony, once the hearing committee and derivatively the board disbelieved the respondent's proffered explanations and reasons for his conduct – as they were entitled to do – they were left with the fact that the respondent had acted consciously and intentionally in appropriating for his own purposes funds that belonged to others, and thereby converted those funds, and were entitled to conclude that the necessary causal link between medical condition and misconduct did not exist. Cf. Matter of Johnson, 452 Mass. 1010, 1012 (2008) ("the special hearing officer's observation is well taken that 'methodical and systematic' misuse of funds for personal purposes is inconsistent with any conclusion that the respondent was operating under a cognitive disability").

In reviewing a bar discipline matter, I recognize that the hearing panel is the sole judge of the credibility of the testimony presented at the hearing. Matter of Finneran, 455 Mass. 722, 730 (2012); S.J.C. Rule 4:01, § 8 (4). In addition, while the findings and recommendations of the board are not binding, they are entitled to "great weight." Id. (citations omitted). See Matter of Barrett, 447 Mass. 463, 459 (2006).

a. Count 2 and intentional conversion. The respondent directly challenges the credibility determinations made by the hearing committee with regard to the testimony of Andrew Tine, and argues that the reliable evidence presented to the hearing committee did not support the committee's finding that the respondent knowingly and intentionally misused the funds of the client described in count 2 of the petition for discipline. He contends that bar counsel presented no evidence apart from Tine's testimony that the respondent knew, in relation to count 2, that the funds he withdrew from the IOLTA account belonged to the Haese firm's client and not the firm; in the respondent's view, even when the evidence is viewed in the light most favorable to bar counsel, at most it supports a finding that the respondent's misuse of client funds was negligent rather than intentional. Bar counsel responds that the board's finding of intentional conversion of the client's funds by the respondent is supported by ample evidence.

Although the hearing committee found substantial portions of Tine's testimony lacking in credibility, the committee credited various portions of his testimony, including Tine's testimony that the respondent authorized him to enter into the fee arrangement with the client. As indicated, the credibility determinations of the hearing committee are generally binding, and are not subject to rejection unless "wholly inconsistent with another implicit finding." Matter of Hachey, 11 Mass. Att'y Discipline Rep. 102, 103 (1995). Here, the record indicates that the hearing committee's conclusion in connection with count 2 that the respondent had intentionally

converted the client's funds was supported by not only by Tine's testimony but also the testimony of the respondent's bookkeeper, Robert Cluxton, and of Albert Nolan, the forensic accountant called by bar counsel.[5] I discern no basis to overturn the hearing committee's credibility judgment here. See Matter of Barrett, 447 Mass. at 460. There was substantial evidence in the record to support the board's ultimate conclusion that conversion by the respondent occurred.

b. Counts 3, 4, and 5, and intentional dishonesty. In connection with counts 3, 4, and 5, the hearing committee found, and the board affirmed, that the respondent (1) intentionally and dishonestly appropriated to himself the portion of the $75,000 legal fee that was supposed to be distributed to the firm of Pepe & Hazard under the terms of the three-party fee distribution agreement to which the respondent was a party (count 3); (2) dishonestly induced Penry to provide legal services in return for a share of a contingent fee that already had been pledged as collateral for a loan from a commercial lender, and then intentionally appropriated to himself Penry's share of the fees (count 4); and (3) dishonestly induced Penry to advance him substantial sums of money by promising already-pledged legal fees as security, while knowing that he was not likely to be able pay the loans back (count 5). The respondent argues that the hearing committee's failure to credit the respondent's testimony that he always intended to pay back Pepe and Penry went against the evidence. I agree with bar counsel, however, that the conclusions of the hearing committee and the board, previously summarized, were supported by substantial evidence in the record.

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[5] Nolan testified that a check for $15,000 to settle the collection action brought on behalf of the client was received in the respondent's office and deposited in his IOLTA account; on January 17 and February 6, 2006, the respondent transferred a substantial portion of these funds to a non-IOLTA account with by the same bank, leaving less than $100 in the IOLTA account; and the respondent applied these funds to a variety of personal and business expenditures.

c. The respondent's medical condition. The respondent challenges the board's (and hearing committee's) consideration of the medical evidence he presented, arguing in substance that the only reasonable conclusion to draw from that evidence is that the respondent's very serious medical illnesses and heart condition, particularly combined with Tine's departure from the firm, affected his capacity to practice and his judgment, were causally related to the misconduct with which he has been charged, and served to mitigate that misconduct. He also contends – as he did before the board – that the hearing committee never read the medical records he introduced in evidence.

I have discussed briefly the respondent's medical evidence earlier, in connection with consideration of his motion for a new hearing. To repeat somewhat, the severity of the respondent's various medical conditions does not relieve the respondent of his burden to prove the causal relationship between his medical problems and the misconduct charged. See Matter of Pemstein, 16 Mass. Att'y Discipline Rep. 339, 349-350 (2000). The detail with which the hearing committee and then the board described the respondent's medical issues, including physical and mental impacts, indicates that both recognized there were physical and mental effects of these medical conditions at play. Their findings also reflect, however, their ultimate conclusion that any such physical or mental effect or impact did not cause the respondent to act in the way he did, and that he acted intentionally in converting the funds belonging to the Haese law firm's client (count 2), and in similarly misappropriating the fees intended for Pepe & Hazard and Penry (counts3 and 4), and in securing, using and not repaying the loans from Penry

(count 5).[6] Notwithstanding the respondent's arguments, I am not persuaded by anything in the record that the hearing committee or the board erred in reaching this result.

5. Sanction. In light of its finding that the respondent intentionally converted funds and acted with intentional dishonesty toward Pepe & Hazard and Penry, see Mass. R. Prof. C. 8.4(c) & (a), the board unanimously recommended that the respondent be disbarred. The respondent argues that disbarment is not warranted on the facts of this case. He reasons that a short term suspension is a more appropriate sanction, first because, he claims, the record supports only a finding of negligent conduct on his part, but second, even assuming the respondent intentionally misappropriated client funds (count 2), he made timely restitution and any actual deprivation on the part of the client was extremely temporary.[7] Bar counsel responds that disbarment is

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[6] The respondent's claim that the hearing committee did not read his medical records that were admitted as an exhibit under seal requires a brief response. In a footnote in its report, the hearing committee stated that it found no need to reference in its findings the respondent's medical records, sealed pursuant to a protective order at the time of decision. Instead, the hearing committee cited only the testimony of Dr. Kase – which was not subject to any protective order – in those findings. The respondent apparently interprets this footnote as indicating that the hearing committee failed to review the medical records themselves, and argues that if the hearing committee had done so, it would have observed the strong correlation between the periods in which the respondent suffered from serious infirmities and the dates of the disciplinary actions. I disagree with the respondent's reading of the footnote in question. The footnote addresses only what the hearing committee would be citing in its report, not what evidence its members reviewed, and there simply is no basis to conclude that the hearing committee did not examine the medical records themselves. Moreover, even if I were to accept the respondent's premise about the hearing committee's failure to examine the medical records, to the extent the medical records offered evidence beyond the testimony of Dr. Kase and the respondent himself, the difference in scope is essentially immaterial. See note 4, supra.

[7] The respondent suggests in passing that counts 3, 4, and 5 of the petition for discipline "should be dismissed outright as not falling within the aegis of the Massachusetts Rules of Professional Conduct," and therefore should not be considered in connection with the question of sanction. He does not elaborate on the point, but it may be a reference to his argument, advanced before the board, that the hearing committee erred in concluding that the attorney's fees and the loan proceeds that were the subject of counts 3, 4, and 5, qualified as "trust property" or "trust funds" within the meaning of Mass. R. Prof. C. 1.15, and the respondent had violated many dimensions of this rule. As noted earlier, the board passed on the question whether rule 1.15 was

appropriate because the respondent's intentional misconduct was not confined to a single instance, but extended beyond his dealings with clients to other members of the legal profession and law-related business matters.

"Mindful that the board's recommendation is entitled to substantial deference," Matter of Tobin, 417 Mass. 81, 88 (1994), I must consider any sanction in light of "the perception of the public and the bar," Matter of Finneran, 455 Mass. at 737, quoting Matter of Finnerty, 418 Mass. 821, 829 (1994), and also to ensure it is not markedly disparate from what has been ordered in comparable cases. See, *e.g.*, Matter of Goldberg, 434 Mass. 1022, 1023 (2001). Where an "attorney intend[s] to deprive the client of funds, permanently or temporarily, or [causes] the client [to be] deprived of funds (no matter what the attorney intended), the standard discipline is disbarment or indefinite suspension." Matter of Shoepfer, 426 Mass. 183, 187 (1997). The offending attorney bears a heavy burden of demonstrating "clear and convincing reasons" why the presumed sanction should not be applied. See Matter of Sharif, 459 Mass. 558, 567 (2011), quoting Matter of Schoepfer, supra at 187, 188. The board pointed out that where restitution has been made, generally, indefinite suspension rather than disbarment will result – presumably this would be particularly the case where, as here, the restitution was made very quickly. In the present case, however, the board reasoned that despite the respondent's prompt restitution of funds to his firm's client (count 2), the respondent "engaged in more and wider misconduct" – including his intentional, dishonest, misappropriation of fees intended for other attorneys (counts 3 and 4), his dishonest inducement of a fellow attorney to provide legal services (count 4), and

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implicated in relation to the attorney fees and loan proceeds. I do as well, but note there is clearly a viable argument that the attorney's fees held by the respondent, in the circumstances presented in counts 3 and 4, did constitute "trust funds" for the purposes of rule 1.15. See Matter of Brauer, 452 Mass. 56, 75 (2008); Matter of Hilson, 448 Mass. 603, 619 (2007).

his dishonest securing of loans from that attorney (count 5). For the board, this additional misconduct decisively tipped the scales in favor of disbarment.

I agree with the board's analysis and its recommended sanction. The record indeed does reflect a wide range of intentional misconduct that caused deprivation and injury to a client as well as fellow members of the bar. Both clients and other lawyers depend, and are entitled to depend, on the personal integrity of every lawyer with whom they deal. See Matter of Barrett, 447 Mass. at 464, quoting ABA Standards for Imposing Lawyer Sanctions § 5.0 Introduction (1991) ("The most fundamental duty which a lawyer owes the public is the duty to maintain the standards of personal integrity upon which the community relies. The public expects the lawyer to be honest and to abide by the law"). In addition, it is appropriate to consider the respondent's substantial experience in the practice of law: he has been a practicing attorney since 1983, albeit not in Massachusetts for all of those years. See Matter of Crossen, 450 Mass. 533, 580 (2008), citing Matter of Luongo, 416 Mass. 308, 312 (1993). Disbarment is the appropriate sanction in this case.

ORDER

For the foregoing reasons, it is **ORDERED** that a judgment of disbarment of the respondent Glenn H. Haese enter.

Margot Botsford
Associate Justice

Dated: August 7, 2013