IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR, Complainant, v. JOHN HADSALL, Respondent. _____/	Supreme Court Case No. SC21-1444 The Florida Bar File No. 2018-10,404 (6A)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred. Due to the ongoing COVID-19 pandemic, all of the proceedings herein were conducted via telephone.

On October 19, 2021, The Florida Bar filed its Complaint against Respondent. On October 21, 2021, the undersigned was appointed referee. On October 25, 2021 Respondent filed his Objection to Venue Designation and Answer to Complaint.

On December 9, 2021 a telephonic Case Management Conference was held. During the Case Management Conference the court heard

Respondent's argument on the Objection to Venue Designation and appointment of the undersigned Referee. By Order signed January 3, 2022, the Court overruled the objections to the venue designation and appointment of the undersigned as Referee. The Referee set a Final Hearing for February 22, 2022.

On February 22, 2022, a final hearing was held in this matter. Evan Rosen, bar counsel, appeared on behalf of The Florida Bar, and Respondent appeared *pro se*. At the conclusion of the Final Hearing, the parties stipulated to submission of written memorandum in lieu of a Hearing on Sanctions. The court set deadlines of March 18, 2022, for the Complainant to file their memorandum and provided Respondent with seven days from that date to provide a response. Complainant filed The Florida Bar's Memorandum of Law for Sanctions on March 16, 2022. Respondent filed Respondent's Corrections to the Bar's Memorandum of Law for Sanctions on March 25, 2022.

All items properly filed including pleadings, exhibits in evidence and the report of Referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

Narrative Summary Of Case. Respondent's brother submitted the underlying inquiry/complaint to The Florida Bar. Respondent's brother, along with other siblings of respondent, were to be beneficiaries of Respondent's mother, Jean Peak Hadsall's, estate in addition to Respondent. After the passing of Respondent's mother, a dispute arose as to the distribution of property and funds. Respondent's brother alleged impropriety in Respondent's handling of his mother's affairs and estate and sued Respondent in Iowa, the place of Respondent's mother's residence. Respondent, who had cared for his mother prior to her death, denied any impropriety and fought the allegations, including refusing to release financial documents. Respondent's position and attempt to quash subpoena were documented and entered into evidence as The Florida Bar's Exhibit 2, Transcript of Hearing On Motion To Quash Subpoena, Case No. ESPR020796.

On October 31, 2017, the Iowa District Court for Warren County, Case No. ESPR020796, the matter relating to the estate of Jean Peak Hadsall, entered its Findings of Fact, Conclusions of Law, and Order. The court's

order was entered into evidence as The Florida Bar's Exhibit 1. The 22-page order details Respondent's handling of his mother's financial affairs including the creation of bank accounts and movement of funds (TFB 1, pgs. 2-8). A bench trial was held on June 16, 2017, and August 15, 2017, and transcripts of the proceedings were entered into evidence as The Florida Bar's Exhibit 3 and The Florida Bar's Exhibit 4, respectively.

In its Order of October 31, 2017, the Iowa court found Respondent improperly transferred assets from the estate of his mother for personal use. The court found that Respondent formed a confidential relationship with his mother, as he was her son and an attorney whom Ms. Hadsall had relied upon to manage her legal and financial affairs (TFB 1, pgs. 16-17). Respondent drafted the power of attorney Ms. Hadsall signed on January 23, 2008, drafted the deeds that were used to transfer property sold, created bank accounts, and moved money through various accounts. Respondent, who held power of attorney, later drafted amendments to Ms. Hadsall's life estate plan, was co-owner of many of Ms. Hadsall's bank accounts, and the successor trustee on her amended estate planning documents (TFB 1, pgs. 16-19).

The court found that because a confidential relationship existed between Respondent and Ms. Hadsall, that transfers from Ms. Hadsall to

Respondent were presumed to arise from undue influence. The court found Respondent failed to show by clear, satisfactory, and convincing evidence that he acted in good faith throughout the transactions and failed to show that Ms. Hadsall acted freely, intelligently, and voluntarily in gifting Respondent funds from her accounts (TFB 1, pg. 18).

The court found Respondent's mother had relinquished control of her finances to Respondent and found Respondent's actions concerning for multiple reasons. Respondent's mother's estate planning documents required her assets be put into trust. Respondent failed to do so. Respondent moved his mother from her former bank where she had been for years to a new bank where Respondent's mother had no relationship (TFB 1, pgs. 16-18). Respondent created the accounts with himself as co-owner, as opposed to setting up the accounts in the name of his mother with access as power of attorney. The court found these actions permitted Respondent to more easily move money to his personal accounts without scrutiny (TFB 1, pgs. 16-18). The court found the manner in which Respondent moved money showed his intent to disguise transfers made to his accounts (TFB 1, pg. 19).

The court found that in 1990 Respondent's parents executed Wills and a Declaration of Trust. Respondent's mother's Will bequeathed all

property to Respondent's father, Robert C. Hadsall, and/or the Jean A Hadsall Trust. The trust provided that all assets of the trust would be divided equally among the four children following the Hadsalls' death (TFB 1, pg.1). Respondent moved back to Iowa in 2007 to assist his aging parents. Respondent's father, Robert C. Hadsall, passed away in December of 2007. After Robert's death, Respondent assisted his mother with the sale of her farmland and farm equipment. On January 23, 2008, Respondent's mother signed a document making Respondent her durable power of attorney for any and all reasons. Respondent personally drafted the document from his law practice forms (TFB 1, pg. 2).

Respondent's mother and father had banked at Peoples Savings Bank for years; however, Respondent opened multiple accounts at various banks between 2008 and the death of Respondent's mother in 2016. On January 10, 2008, Respondent and his mother opened a joint checking account at Farmers and Merchants State Bank. This became Respondent's mother's primary transaction account (TFB 1, pgs. 2-3). A joint saving account at Farmers and Merchants State Bank was also opened on the same date.

Respondent's mother sold her farmland in two parcels, a 60-acre tract for approximately $197,500.00 and a second parcel of 100 acres for

approximately $300,000.00. The farm equipment was sold for $22,210.57. None of the funds from the sales were transferred or deposited into Respondent's mother's trust. The sales occurred on January 23, 2008, February 14, 2008, and June 3, 2008, respectively (TFB 1, pg. 2).

On January 23, 2008, Respondent and/or his mother presented a check in the amount of $177,509.70 to Farmers and Merchants State Bank for deposit. The Iowa court found this amount and date to match the date of the first farm sale minus the $20,000.00 earnest money previously paid. (TFB 1 pg. 3). Of the deposit, $77.509.70 was deposited into the joint saving account, while the remaining $100,000.00 was issued as cash. The $100,000.00 was not deposited into any of Respondent's mother's account. Respondent testified that he presumed the money went into an account owned by him and that it was a gift from his mother. The court found no corroborating evidence to support Respondent's testimony that his mother intended to give him $100,000.00 as a gift (TFB 1, pg. 3).

The funds from the second sale of farmland were deposited into four separate accounts. The total closing check was $268,832.32, which did not include the $30,000.00 earnest money previously paid. The $30,000.00 was deposited into an account owned by Respondent and his wife. Respondent purchased two certificates of deposit (CDs) at Peoples

Savings Bank for $100,000.00 each as joint owner with his mother. The remaining $68,832.32 was deposited into the joint saving account Respondent held with his mother. (TFB1, pg. 3). No proof was provided that Respondent was entitled to the $30,000.00 he deposited in the account he shared with his wife. (TFB 1, pg. 4).

On February 28, 2008, Respondent withdrew $100,000.00 from the joint saving account he shared with his mother and deposited the funds into one of his personal accounts. Respondent and/or his mother then transferred an additional $70,000.00 from the saving account they shared to their joint checking account. On March 11, 2008, Respondent and/or his mother used the funds from the joint checking account to purchase a $50,000.00 CD from City State Bank to which Respondent and his mother were joint owners. On March 18, 2008, they purchased another $50,000.00 CD from the same (TFB 1, pg.4).

The court found that following the sale of Respondent's mother's land, Respondent and/or his mother transferred a total of $250,000.00 into the account that Respondent personally owned with his wife. This included $50,000.00 in earnest funds from the two separate sales of the farmland, $100,000.00 in cash from the initial deposit, the additional $100,000.00 Respondent transferred on February 28, 2008 (TFB 1, Pg.4).

Respondent claimed that his mother intended for him to take all the funds as a gift. The court found no evidence or documents to support this claim. Respondent's mother failed to file any gift tax documents even though she was aware of the obligation to do so should she make such a gift (TFB 1, Pg. 4).

On July 14, 2009, the two $100,000.00 CDs purchased at Peoples Savings Bank matured and the bank issued two cashier's checks for $105,425.99 each to Respondent's mother. Respondent endorsed one check, totaling $94,065.24 as his mother's power of attorney and deposited the funds into a money market account owned by him and his wife. The remaining $11,360.64 was deposited into a separate account owned by Respondent and his wife. The second cashier check was deposited into a money market account owned by Respondent's mother and payable on death to Respondent. Twelve days after making the $100,000.00 deposit in his mother's money market account, $100,000.00 was withdrawn from the same money market account owned by Respondent's mother and a corresponding $100,000.00 deposit was made into an account owned solely by Respondent and his wife (TFB 1, pg. 5).

The court found no evidence that Respondent's mother ever modified her estate planning wishes to bequeath her assets to her four children

equally, in direct conflict with Respondent's claim (TFB 1, pgs. 18). Respondent, on multiple occasions, told his siblings that his mother had created accounts with funds in them for their benefit and that all funds in question were in those accounts. The court found that these letters indicated bad faith on behalf of Respondent (TFB 1, pg. 18). A letter written by Respondent to his siblings in 2013 stated, "that Jean had accounts which contain[ed] all funds in question plus proceeds from [his father's] insurance policies" (TFB 5, pg. 9). The court found the funds in question were not in Respondent's mother's account at the time Respondent wrote the letter, and that substantial funds had been transferred from Respondent's mother's accounts to Respondent and his wife's accounts, where Respondent's mother had no ownership over the assets (TFB 5, pg. 9).

While Respondent claimed his mother began gifting him funds as early as January 2008, the Iowa court found no independent evidence documenting this intent and that the transfers were directly contrary to Respondent's statements in letters to his siblings and in the estate planning documents signed by his mother (TFB 1, pg. 19). The court found that, "[i]t was clear during the trial that [Respondent] justified transferring Jean's funds into his accounts because he felt he deserved them" (TFB 1, pg. 19).

The court found, “[i]n this case, Jean consistently showed an intent to give equally to her four children. [Respondent] occupied a confidential relationship with Jean. During this confidential relationship, [Respondent] transferred essentially all of Jean’s assets into accounts owned by him” (TFB 1, pg. 20).

The court ordered Respondent to return $383,595.63 to the estate of Jean Peak Hadsall, to be paid within 30 days of October 31, 2017 (TFB 1, pg. 22).

Respondent failed to timely return $383,595.63 to the estate of Jean Peak Hadsall as ordered October 31, 2017 (TFB 6, pg.12).

On January 11, 2018, beneficiaries of the estate of Jean Peak Hadsall filed a Notice of Filing Foreign Judgment in Pinellas County, Florida, Court Case No. 18-000155-CI, to collect on the Iowa court order dated October 31, 2017.

On March 6, 2019, the Court of Appeals of Iowa affirmed the lower court’s decision that ordered Respondent to return $383,595.63 to the estate of Jean Peak Hadsall. A copy of the 11-page Order affirming the lower court’s decision was entered into evidence as The Florida Bar’s Exhibit 5. The Appellate Court stated in its Order, “[b]ecause [Respondent] was in a confidential relationship with Jean, and because he failed to show

that his transfers of substantial amounts of Jean's assets from her accounts to his were made in good faith or at the direction of or with the assent of Jean, we agree with the probate court that [Respondent] must return the "gifted" assets to Jean's estate" (TFB 5, pg. 10).

Respondent appealed to the Supreme Court of Iowa. Respondent's appeal was denied. (TFB 6, pg. 2).

Following the affirmation of the lower court ruling, Respondent continued to refuse to return $383,595.63 to the estate of Jean Peak Hadsall as ordered (TFB 6, pg. 12).

On June 3, 2020, in Pinellas County matter No. 18-000155-CI-20, the court held a non-jury trial on the Estate's and beneficiaries' effort to collect the foreign judgment. On December 8, 2020, the Court entered its Final Judgment, a 19-page order that included revelations regarding Respondent's concealment of conversion funds from the estate and the Iowa Court. A copy of the Court's Final Judgment was entered into evidence as The Florida Bar's Exhibit 6.

The court found that Respondent, before travelling to Iowa for the second and final day of trial, between the first and last day of trial, paid over $300,000.00 in cash to purchase real property, a home and furnishings, in Pinellas County, Florida (TFB 6, pg. 5). The court found that approximately

four months prior to the purchase of the new real property, Respondent disclosed to the Iowa probate court that he had access to $335,000.00 in cash that he had obtained from his mother and was holding in his personal bank account in Florida. At the time, Respondent claimed these funds were being held in the event he did not prevail at the probate trial and was required to reimburse the estate (TFB 6, pgs. 5-9). Specifically, Respondent was questioned on March 28, 2017, regarding the total dollar amount of funds provided to him by his mother that were preserved somewhere. In response, Respondent stated that there were $335,000.00 in Respondent's personal account at Regions Bank in Punta Gorda, Florida (TFB 2, pg. 28). Respondent, on the first day of trial in Iowa, June 16, 2017, was questioned again if the entirety of the $335,000.00 was still in the Regions Bank in Punta Gorda, Florida. Respondent testified, "[y]es. It is sir. Yes it is. It is in that bank account. I believe your client testified that he checked it as late as yesterday and it was still intact" (TFB 3, pg. 168). Respondent testified at the second day of trial, August 15, 2018, "..[as] I testified in hearing in Madison County on a motion to quash on March 28th of this year, I testified that the monies that Mom gave me were still intact" (TFB 4, pg. 96).

In Pinellas County Matter No. 18-000155-CI-20, Respondent testified that he purchased the new real property with funds unconnected to the cash he disclosed to the Iowa probate court and that he used funds preserved from a property sale in 2007. The court did not find this statement to be credible (TFB 6, pgs. 15-17). Instead, the court found the funds used by Respondent to purchase the new real property were the proceeds of fraud against his mother, and/or reprehensible or egregious conduct as found in the Iowa order dated October 31, 2017 (TFB 6, pg. 10). The court found that Respondent converted at least $315,000.00 of the funds of his mother into Florida real property and concealed the conversion from the Iowa court knowing that he would need to return the funds to the estate if discovered (TFB 6, pg. 13).

The court found Respondent's transfer of assets was fraudulent as to the Estate of Jean Peak Hadsall, a creditor of Respondent, and was done by Respondent with the actual intent to hinder, delay or defraud the Estate of Jean Peak Hadsall regarding its rightful claim against him for $383,595.63 (TFB 6, pgs. 14-15). The court found that Respondent knew, or should have known, that liability for at least $335,000.00 to the Estate of Jean Peak Hadsall existed at the time of purchase of the property and would soon be formalized in a final judgment against Respondent (TFB 6,

pg. 12). The court found that the facts as established showed a pattern of concealment, absconding, and brazen deception on behalf of Respondent (TFB 6, pg. 13).

The court found that although Respondent was ordered by the Iowa court's order of October 31, 2017, to pay $383,595.63, he did not do so, and stated he was insolvent in an attempt to render himself judgement proof. Following the purchase of the real property, Respondent testified that he had no other assets and had no source of income (TFB 6, pgs. 5-15).

Respondent, in an attempt to render himself judgment proof, argued that the property was exempt from any claim by the estate because the property was protected by Florida homestead law. The court found Respondent was precluded from claiming a homestead exemption on the recently purchased real property as Respondent already had an existing homestead exemption on other real property (TFB 6, pg. 6). The court further ordered Respondent to produce documentary evidence to support trial testimony that the homestead on the recently purchased real property began on August 10, 2017. Respondent produced no documentary evidence to support the testimony, and the court found Respondent failed

to present credible evidence to support the claim of homestead (TFB 6, pg. 7).

On December 8, 2020, in Pinellas County matter No. 18-000155-CI-20, the court ordered a forced sale of Respondent's real property to satisfy the Iowa Judgment and further ordered any amount due not satisfied by the proceeds of the judicial sale to be the sole responsibility of Respondent (TFB 6, pgs. 18-19). The Order Setting Judicial Sale was entered into evidence as The Florida Bar's Exhibit 7.

At the final hearing on February 22, 2022, Respondent admitted he "used joint account funds of his mother"; and he intended to "continue his practice in Florida and work to re-pay the money taken". To date, this has not occurred.

III. RECOMMENDATIONS AS TO GUILT

I recommend Respondent be found guilty of violating the following Rules Regulating The Florida Bar: Rule 3-4.3 (Misconduct and Minor Misconduct); Rule 4-8.4(c) (Conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 4-8.4(d) (Conduct prejudicial to the administration of justice).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

5.1 Failure to Maintain Personal Integrity

5.1 (a) Disbarment is appropriate when a lawyer:

(1) is convicted of a felony under applicable law;

(2) engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft;

(3) engages in the sale, distribution, or importation of controlled substances;

(4) engages in the intentional killing of another;

(5) attempts, conspires, or solicits another to commit any of the offenses listed in this subdivision; or

(6) engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

6.1 False Statements, Fraud, and Misrepresentation

6.1 (a) Disbarment is appropriate when a lawyer:

(1) with the intent to deceive the court, knowingly makes a false statement or submits a false document; or

(2) improperly withholds material information and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

6.2 Abuse of the Legal Process

6.2 (a) Disbarment is appropriate when a lawyer causes serious or potentially serious interference with a legal proceeding or knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another and causes serious injury or potentially serious injury to a party.

7.1 Deceptive Conduct or Statements and Unreasonable or Improper Fees

7.1 (a) Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another and causes serious or potentially serious injury to a client, the public, or the legal system.

3.2 Aggravation

3.2 (b) Aggravating factors:

(2) Dishonest or Selfish Motive

(3) A pattern of Misconduct

3.3 Mitigation

3.3 (b) Mitigating factors:

(1) absence of a prior disciplinary record

V. CASE LAW

I considered the following case law prior to recommending discipline:

Florida Bar v. Karl O. Koepke, No. SC20-286 (Fla. 2021) Koepke was disbarred after planning and executing a scheme to divert his entitlement of attorneys' fees to an irrevocable trust to shield these assets during a post-dissolution of marriage proceeding. The court found it was a financial win for Koepke, at the cost of integrity and fairness in the justice system. The court found that the actual delay in reaching the merits of the case resulted from Koepke's actions and that justice was in fact hindered and delayed. The court found Koepke's actions disrupted the orderly administration of justice, and hindered, obstructed, delayed, and frustrated the prosecution of the matter. The court found that as an officer of the court, Koepke owed a duty of candor that was breached with his intent to shield the funds that were subject, under an order compelling production, to the court's consideration. The court found conduct obstructing to the court's truth-finding mission for pecuniary gain is irreconcilable with a lawyer's duties.

The Florida Bar v. V. Anthony Maggipinto, Case No. SC16-2046 Fla. 2017), Maggipinto was disbarred after becoming trustee of an irrevocable trust for client and neighbor, Ms. Cerullo. Maggipinto prepared estate planning documents for Ms. Cerullo, including a power of attorney appointing Maggipinto as her attorney-in-fact. Maggipinto then took control of Ms. Cerullo's financial accounts and paid himself approximately $77,500.00 from funds belonging to Ms. Cerullo to which he was not entitled.

The Florida Bar v. Swann, 116 So 3d 1225 (Fla. 2013), Swann was disbarred due to dishonest conduct during his divorce proceedings. Swann took actions prior to the divorce to obscure and conceal marital assets from his wife and her attorneys, thwarted efforts by the wife's attorneys to schedule his deposition, failed to file required financial information, and signed his wife's name on a home loan application. Swann personally benefitted from these actions to the detriment of others.

The Florida Bar v. Morse SC18-1028 (Fla. 2019), Morse was disbarred due to his handling of an estate and actions as personal representative. Morse became sole representative and attorney for the Estate of Mary J. Gass. Morse was the sole individual authorized to sign the Estate's bank account. Morse made repeated transfers of funds

belonging to the estate to his personal and business accounts. Morse paid personal and office expenses from the Estate account totaling $40,436.46 in unauthorized disbursements. Morse stated that the heirs eventually received the funds to which they were entitled, that he never had any intent to improperly remove the funds for his own purposes and had funds available in excess of the estate funds at all times. Respondent subsequently pled "no contest" to three counts of theft (embezzlement).

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BEAPPLIED

I recommend Respondent be found guilty of misconduct justifying disciplinary measures, and that Respondent be disciplined by:

A. Disbarment.

Respondent will eliminate all indicia of Respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards office signs or any other indicia of Respondent's status as an attorney, whatsoever.

B. Payment of The Florida Bar's costs in these proceedings.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following:

Personal History of Respondent:

Age: 70

Date admitted to the Bar: 9/23/1980

Prior Discipline: None

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

Court Reporters' Fees	$190.00
Investigative Costs	$ 13.50
Administrative Fees	$1,250.00
TOTAL	$1,453.50

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 5th day of April, 2022.

/s/
Robert Arthur Bauman, Referee
Circuit Judge, 13th Judicial Circuit
401 N Jefferson St, 4th Floor, Room 437
Tampa, FL 33602

Original To:

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