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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the Matter of)	Case No.
)	
DREXEL ANDREW BRADSHAW,)	State Bar Case No.: 16-O-15558
)	
State Bar No. 209584.)	
_____)	

PETITION FOR REVIEW

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PETITION FOR REVIEW

I. INTRODUCTION

The Chief Trial Counsel of the State Bar of California (“State Bar”) asks this Court to grant review, or remand this matter with instructions, in order to settle important questions of law impacting attorney discipline, fiduciaries, and trusts; and to address serious conflicts and inconsistencies between the interpretations of law in the opinions below. Review is essential to resolve these conflicts and to address the danger of unethical attorney-trustees committing elder financial abuse through self-dealing and misrepresentations.

The State Bar Court Hearing Department (“Hearing Department”) determined that attorney Drexel Andrew Bradshaw (“Bradshaw”) breached his fiduciary duties as trustee of the trust of his elderly client, Ms. Ora Gosey (“Gosey”), by concealing his true relationship with the company he repeatedly hired with trust funds, Bay Construction. The Hearing Department determined that Bradshaw was running Bay Construction “from the shadows”—incorporating, funding, and controlling the company while denying that nearly any relationship existed. The Hearing Department found that Bradshaw engaged in a prolonged scheme to defraud the trust through misrepresentations in court documents and by requesting reverse

mortgages on Gosey's home while concealing his true intent to direct substantial amounts of trust funds to his own company for home repair work. The Hearing Department recommended disbarment and Bradshaw appealed.

The State Bar Court Review Department ("Review Department") brushed aside these well-reasoned findings in order to conclude that Bradshaw did not commit *any* disciplinary violation whatsoever. This included erroneous findings that Bradshaw (1) obtained no advantage from awarding projects on the Gosey home to Bay Construction; (2) was permitted to engage in self-dealing by the terms of the trust regardless of the Rules of Professional Conduct; (3) had "no relationship" to Bay Construction; and (4) made no actionable misrepresentations.

The issues of trust and fiduciary law raised in this Petition are of crucial importance not just for attorney discipline, but for the law of trusts and the growing issue of elder financial abuse. Taken individually, the findings by the Review Department require correction because they are in error, conflict with opinions of this Court in other cases, conflict with the Superior Court's interpretation of the relevant statutes and facts in removing Bradshaw as trustee, and fail to give any deference to the Hearing Department's factual findings. Taken as a whole, the Review Department's opinion lays out a blueprint for future unethical attorneys to take advantage of the elderly with impunity and urgently requires this Court's intervention to prevent future misconduct.

II. ISSUES PRESENTED FOR REVIEW

1. Does a trustee who uses trust funds to hire a company in which he has a substantial interest as, at minimum, a creditor, obtain an “advantage” through that transaction under Probate Code section 16004, whether or not the work is performed at fair market value and whether or not all of the loans made by the trustee are ultimately repaid?
2. If the terms of a trust document allow for self-dealing by a trustee, is an attorney acting as trustee still required to comply with the Rules of Professional Conduct addressing self-dealing and conflicts of interest?
3. Does Probate Code section 1064, subdivision (a)(4), require a fiduciary to disclose to the probate court that he has an “affiliate relationship” with a company hired with trust funds when that fiduciary: 1) drafts and files the company’s incorporation documents; 2) represents the company as an attorney; 3) holds himself out as president of the company; 4) provides an office and resources for the company to operate its business; 5) opens the company’s bank account using his own funds and is authorized to sign its checks; 6) lends tens of thousands of dollars to the company; and 7) engages in other indicia indicating a relationship with the company?
4. Is a knowingly-false statement to a court an act of dishonesty and moral turpitude under Business and Professions Code section 6106 even if the false statement is not the dispositive factor in a decision made by that court?
5. Does the Review Department have to accord some level of deference to the Hearing Department’s factual findings under rule 5.155 of the State Bar Rules of Procedure and rule 9.12 of the Rules of Court, and does it fail to accord proper deference where it disregards the findings of the Hearing Department wholesale?

III. WHY REVIEW SHOULD BE GRANTED

This Court should either grant this Petition and reverse the ruling of the Review Department, or remand the matter with instructions. Review is appropriate in this case because review within the State Bar Court has been exhausted, and because the Supreme Court may review recommendations and decisions of the Review Department pursuant to rule 9.14 of the California Rules of Court and under the Court's inherent power to control the attorney discipline process. (*In re Rose* (2000) 22 Cal.4th 430, 439; *Emslie v. State Bar* (1974) 11 Cal. 3d 210, 224.)

Review of the Review Department's July 30, 2019 Opinion ("Review Dep't Op.")¹ reversing the Hearing Department's August 30, 2018 Decision ("Hearing Dep't Dec.")² is necessary to settle important questions of law, (Cal. Rules of Court, rule 9.16, subd. (a)(1)), and because the Review Department's opinion is not supported by the weight of the evidence and is inappropriate in light of the record as a whole. (Cal. Rules of Court, rule 9.16, subds. (a)(4) and (5).)

Review should be granted in this case for five reasons.

First, review is necessary to uphold the principle that a fiduciary gains an "advantage" through his or her transactions as trustee under Probate Code section 16004 when he or she has substantial interest, including as an undisputed creditor, in a company hired by the trust. The Review Department found that because evidence was presented that Bay Construction still owed Bradshaw money for payments he made, and because Bay Construction performed "competent" work at fair market

¹ A copy of the State Bar Court of California Review Department's July 30, 2019, Order and Opinion is attached as Appendix A.

² A copy of the State Bar Court of California Hearing Department's August 30, 2018, Decision and Order of Involuntary Inactive Enrollment is attached as Appendix B.

value, (Review Dep't Op. at p. 25), Bradshaw obtained no "advantage" from his arrangements with the Gosey Trust and Bay Construction that could trigger the rebuttable presumption of inappropriate self-dealing under the Probate Code. This ruling conflicts with this Court's prior broad interpretation of the term "advantage" in this context, (*Bradner v. Vasquez* (1954) 43 Cal.2d 147, 152), as well as the Superior Court's findings in removing Bradshaw as trustee.³

Second, review is necessary to uphold the principle that the terms of a trust alone cannot override an attorney's ethical and fiduciary duties. The Review Department looked to the terms of the trust to find that Bradshaw "had the ability to do business with the trust as long as he did not act in bad faith or in disregard of the purposes of the trust." (Review Dep't Op. at p. 24.) The Review Department then declined to look any further at whether such conduct could still be a violation of the Rules of Professional Conduct. This decision conflicts with this Court's holding in *Schneider v. State Bar* (1987) 43 Cal.3d 784, 796, that the mere fact that a transaction arises in the context of a trust agreement does not exempt an attorney from compliance with the Rules of Professional Conduct around self-dealing.

Third, review by this Court is necessary to hold that a fiduciary must disclose a relationship of the kind between Bradshaw and Bay Construction under Probate Code section 1064, subdivision (a)(4). The Review Department found that Bradshaw was not required to state that he had an "affiliate relationship" with Bay Construction despite the fact that he had represented the company as its attorney, incorporated the company, listed himself as president of the company, listed his own law office as its

³ The June 14, 2019 Amended Statement of Decision on Petition After Trial and Order in *In re: The Gosey Revocable Trust Dated January 3, 2007*, Case No. PTR-17-301118 ("Superior Ct. Dec.") is attached to Petitioner's Request for Judicial Notice as Exhibit A.

headquarters, opened its bank account with his own funds, and lent the company tens of thousands of dollars. This finding both conflicts with the Probate Code and ignores Bradshaw's more general ethical obligation not to mislead a court.

Fourth, review is also necessary to uphold the principle that an attorney's misrepresentation to a court is an ethical violation even if it is not the dispositive factor in a decision made by that court. Here, the Review Department agreed that when Bradshaw asked to be named conservator, he falsely claimed to the probate court that Gosey had to be removed from her home by Adult Protective Services. However, the Review Department found that this statement was insufficiently "material" to the final decision on conservatorship to be a disciplinary violation. This conflicts with this Court's foundational holding that "[t]he presentation to a court of a statement of fact known to be false presumes an intent to secure a determination based upon it and is a clear violation." (*Pickering v. State Bar* (1944) 24 Cal.2d 141, 144.)

Fifth, review by this Court is necessary because the Review Department's reversal of the Hearing Department's carefully considered findings of fact and recommendation for discipline was not supported by the weight of the evidence and was not appropriate in light of the record as a whole. In particular, the Review Department failed to give the Hearing Department's factual findings proper deference under rule 5.155 of the State Bar Rules of Procedure, even on independent review of the record. This factual issue is amplified by the additional conflict between the Review Department's opinion and the findings of the Superior Court in removing Bradshaw as trustee.

IV. STATEMENT OF THE CASE

In 2006, Bradshaw’s law firm prepared an estate plan for Gosey, which included the Gosey Revocable Living Trust (“Gosey Trust”). (Stip. of Facts, no. 2; Ex. 34, pp. 220–246.) Bradshaw’s firm was listed as the third successor trustee. (*Ibid.*)

The Gosey Trust stated three primary purposes: (1) “To provide for the care and maintenance of [Gosey] as long as [she] is living;” (2) “To facilitate management of the trust property in the event of [Gosey’s] incapacity;” and (3) “To facilitate transfer of the trust property” after Gosey’s death. (Ex. 34 at p. 221.) It was Gosey’s strong preference to spend the rest of her life in her home, even if she became incapacitated, and Gosey’s will (written contemporaneously at the time the Gosey Trust was executed) made clear that her assets should be used for that purpose first and foremost. (*Id.* at p. 244.)

The Gosey Trust also included the following in Paragraph VII(B):

As long as the Trustee does not act in bad faith or in disregard of the purposes of the Trust, it is not a breach of the Trust for the Trustee to take any of the following actions:...

5. Employ the Trustee, a relative of the Trustee, or a business in which the Trustee has an interest, to perform needed services for the Trust or any business in which the Trust has an interest and pay compensation not exceeding fair market value.

(*Id.* at p. 229.)

Gosey executed the estate planning documents drafted by Bradshaw’s firm in January 2007, and did not have further contact with Bradshaw or his firm for the following six years. (RT VII at p. 23.)

On August 5, 2013, at age 86, Gosey fell in her home, and Gosey’s tenants contacted Adult Protective Services (“APS”). (RT I at pp. 24–26.) When APS visited Gosey, she refused their offer of assistance. (*Ibid.*) By

August 30, 2013, the tenants urged Gosey to seek hospital care and called an ambulance for her. (Stip. of Facts, no. 6; RT I at p. 26.) Gosey’s doctors determined that, due to her level of dementia impairment, she was unable to care for herself or for her estate. (RT I at pp. 29–30; RT VII at p. 28; Ex. 1005.) As the first and second successor trustees named in the Gosey Trust were unable to serve, Bradshaw served as successor trustee. (RT VII at pp. 33–36; Ex. 6 at pp. 34–36.)

A. The Gosey Conservatee and Trustee Proceedings.

On or about August 30, 2013, Bradshaw filed concurrent petitions for temporary and permanent appointment as the conservator of Gosey’s person and estate with the San Francisco County Superior Court. (Ex. 34 at pp. 139, 147–158.) In these filings, Bradshaw falsely claimed that Gosey “was recently removed from her home by Adult Protective Services.” (*Id.* at p. 150.)

Bradshaw was appointed temporary conservator of Gosey’s person and estate on September 11, 2013, (*Id.* at pp. 139, 186–188), and as permanent conservator on or about November 14, 2013. (*Id.* at pp. 138, 207–211.) At that time, Bradshaw requested that the probate court waive annual accountings and/or terminate its oversight of the Gosey Trust entirely, purportedly to reduce costs to the trust. (*Id.* at pp. 138, 207–211, 217.) In response, the probate court ordered Bradshaw to file a trust accounting for the period of December 2, 2013 through November 30, 2014, and retained jurisdiction over the Gosey Trust until the filing and approval of that accounting. (*Id.* at pp. 137, 264–267.)

B. Bradshaw Takes First Reverse Mortgage on Gosey’s Home.

On February 14, 2014, Bradshaw filed a petition for an order authorizing him to obtain a reverse mortgage in the amount of \$346,000 on Gosey’s home, stating that Gosey’s expenses significantly exceeded her income. (*Id.* at pp. 6–13.) The probate court granted this petition.

(Ex. 1022.) Based on Bradshaw's own estimates of Gosey's living expenses, the \$346,000 should have lasted approximately four years. (Ex. 34 at p. 478.)

C. Juan Gonzalez and the Formation of Bay Construction.

Juan Gonzalez ("Gonzalez") was a handyman who did business under the name NJ Construction. (RT II at pp. 7–9.) Gonzalez had a longstanding relationship with Bradshaw, having provided handyman services for Bradshaw dating back to approximately 2004. (*Ibid.*) Gonzalez was not a licensed contractor. (RT II at pp. 49–51.)

In November 2013, Bradshaw hired Gonzalez as an independent contractor to repair water damage at Gosey's home. (*Id.* at pp. 32–33; RT VII at pp. 93–95.) Gosey's homeowner's insurance policy paid \$21,484.53, which covered most of the repair costs. (RT VII at pp. 101–102; Ex. 34 at p. 397.) Bradshaw also hired NJ Construction to work on additional smaller projects at Gosey's home in late 2013 and early 2014. NJ Construction was paid for those projects by the Gosey Trust. (RT IV at pp. 56–58; Ex. 1079; Ex. 1081.)

Gonzalez testified that in February 2014 Bradshaw suggested that he and Gonzalez form a construction company. Specifically, Bradshaw suggested that he (Bradshaw) would have a majority 51 percent ownership in the company and run its administrative aspects, while Gonzalez would have a minority 49 percent stake and perform the construction work. (RT II at pp. 35, 39–42; RT IV at pp.73–74; Ex. 69.)

Bradshaw also entered into a retainer agreement with Gonzalez to represent Gonzalez in his efforts to obtain a contractor's license. (Ex. 1138.) Bradshaw assisted Gonzalez in various ways, including paying for Gonzalez to attend a licensing course and instructing one of his associates to prepare Gonzalez's second license application. (RT III at pp. 141–147; RT IV at pp. 73–74; Ex. 19 at pp. 1–2.)

Bradshaw's firm then prepared incorporation documents forming a construction company by the name of Bay Construction, Inc. On April 1, 2014, Bradshaw signed, and his office filed, the Bay Construction Articles of Incorporation, listing Bradshaw as "incorporator" and designating Bradshaw's law office as Bay Construction headquarters. (Ex. 21 at p. 6; RT II at p. 43; RT III at pp. 138–140.)

Bradshaw also set up Bay Construction's bank account. On October 24, 2014, he signed the Bay Construction business checking account signature card, which listed Bradshaw as "President" of Bay Construction and again stated that Bay Construction was located at his law firm's address. (RT VIII at pp. 109–111; Ex. 31 at p. 7.) In fact, in the process of opening the account, Bradshaw designated himself as Bay Construction's president five separate times, and declared himself as the only person with the power to act on behalf of the corporation. (Ex. 31 at pp. 7–10.) In opening the account, Bradshaw used his own social security number and deposited \$10,000 from his law firm's account. (RT XII at pp. 82, 93–94; Ex. 31 at p. 15.)

After Gonzalez was initially unsuccessful in obtaining his contractor's license, Bradshaw reached out to Ray Invernon ("Invernon"), a California-licensed contractor, and asked if Invernon would supervise Gonzalez's construction work in the hopes of increasing Gonzalez's chances of ultimately obtaining his license. Bradshaw paid \$1,000 of his own money to Invernon, (Ex. 1186 at p. 12); paid Invernon's bonding expenses of \$490, (*Ibid.*; Ex. 1164 at p. 2); and wired Invernon an additional \$5,000 through the Bay Construction account. (Ex. 31 at p. 19.) However, Invernon never actually supervised any of Bay Construction's work. (RT II at pp. 55–56; RT VI at p. 85; RT VIII at p. 62–63.) In fact, Invernon was in his 70s, retired, and lived in Idaho. (Ex. 1163; Ex. 1165.) No credible evidence was

presented that Invernon travelled to California to work with Bay Construction.

On December 22, 2014, Bay Construction obtained a contractor's license, which listed Gonzalez as CEO and President. (Ex. 1166.) Bay Construction employed two payroll employees: (1) Gonzalez; and (2) Bradshaw's 19-year-old son. (RT III at p. 23.) Bradshaw's son was hired as a handyman in January 2015 although he had no construction, design, or architectural experience or training. (RT II at pp. 57–59; RT VI at pp. 54–56, 62–74.)

D. The Gosey Trust's First and Final Accounting.

On February 3, 2015, Bradshaw filed the trust accounting ordered by the probate court for the period of December 2, 2013 through November 30, 2014 ("First and Final Accounting"). (Ex. 11.) Bradshaw again requested that the court terminate its supervision over the trust, and stated that "during the period of the account, there was no relationship or affiliation between Petitioner and any agent hired by Petitioner during the accounting." (*Id.* at pp. 5–6.)

E. Additional Labor.

Throughout 2015, Bradshaw authorized the Gosey Trust to pay Bay Construction for significant additional labor. Bradshaw did not obtain competitive bids from third-party contractors for any of these projects. (RT VIII at pp. 43, 49–50, 55–57, 60; Ex. 34 at pp. 39–40.)

First, Bay Construction was paid \$9,933.41 for flood repair work in January 2015 (Ex. 34 at pp. 39–40.) Bradshaw waited until after he was sure that Bay Construction had obtained its contractor's license before preparing the invoice for the flood work. (Ex. 17 at pp. 26–30.)

Second, Bay Construction was paid \$48,909.20 to replace the back staircase of Gosey's home beginning in or around February 2015. (*Id.* at pp. 24, 43, 47–50, 61, 63, 72; Ex. 34 at pp. 41, 445.) Bradshaw pulled a

permit for this project in June 2014 (before Bay Construction was licensed), and deemed the staircase repair necessary to prevent a “catastrophic injury,” (Ex. 34 at pp. 41; Ex. 17 at pp. 51, 57), but the repairs did not begin for eight months, until after Bay Construction became licensed.

Third, Bay Construction received \$70,793.36 for foundation repair work. (Ex. 34 at pp. 42–43.) For this project, Bradshaw not only submitted a proposal on behalf of Bay Construction to himself, but he immediately accepted that proposal as trustee and paid Bay Construction in full despite the fact that no work had yet been performed. (Ex. 17 at pp. 24, 68–71.)

All told, Bradshaw authorized and made payments from the Gosey Trust to Bay Construction in the total amount of \$157,246.76 between January 2015 and February 2016. (Stip. of Facts, no. 23.)

F. Second Reverse Mortgage on Gosey’s Home.

On or about July 19, 2016, Bradshaw filed a petition for a second reverse mortgage on Gosey’s home. (Ex. 34 at pp. 34–49.) Bradshaw stated that Gosey’s monthly expenses continued to exceed her income and that, despite the first reverse mortgage just two years earlier, the trust had only two to three months of funds remaining. (*Id.* at p. 36.)

In this petition process, the probate court learned for the first time of a possible relationship between Bradshaw and Bay Construction, and appointed attorney Nancy Rasch to represent Gosey. (RT V at pp. 21–23; Ex. 34 at p. 481.) On September 16, 2016, Rasch advised the probate court that Bradshaw had failed to obtain any other bids for the work performed by Bay Construction on Gosey’s home; that he had hired an unlicensed contractor (Gonzalez) to perform most of the construction work on Gosey’s home; that Bradshaw was Gonzalez’s attorney; and that Bradshaw’s son was employed by Bay Construction. (Ex. 34 at pp. 476–477.) Rasch believed “this information was relevant to a determination about the reasonableness of the funds spent on repairs.” (*Ibid.*)

In response to these concerns, Bradshaw submitted a declaration that did not disclose any affiliation or relationship with Bay Construction. (*Id.* at pp. 443–458.) On September 26, 2016, Bradshaw filed a second supplemental declaration at his attorney’s suggestion. (*Id.* at pp. 463–466.) In that declaration, Bradshaw stated that he allowed Gonzalez use of his office as a “home base” and prepared the incorporation papers, but that he received no compensation and “never [had] a financial interest in Bay Construction.” (*Id.* at p. 464.)

Bradshaw also stated that—despite all of the timely payments made to Bay Construction—\$45,000 of Gosey’s home care bills were still outstanding. (*Id.* at p. 461.) The court issued an order authorizing Bradshaw to obtain an additional reverse mortgage for \$250,000 on Gosey’s home, but directed that those funds could only be used for payment of Gosey’s care costs and living expenses. (*Id.* at pp. 468–469.)

G. Bradshaw’s Additional Ties to Bay Construction.

The record in this matter is replete with additional connections between Bradshaw and Bay Construction, including the following:

- Bradshaw “loaned” Bay Construction \$22,000 in addition to the \$10,000 opening deposit he made in the Bay Construction checking account. (Ex. 1186.)
- Gonzalez testified that Bradshaw prepared all invoices for Bay Construction, including deciding what line items to include, the amount to charge for each item, and the amount of profit to be added to each item. (RT II at pp. 59–60, 82, 87–90, 98–104; RT IV at pp. 11–12, 21, 105–106.)
- Bradshaw twice asked his wife to apply for American Express cards on behalf of Bay Construction. (RT VI at pp. 8–11, 26–30; RT VIII at pp. 136–137.) The card statements were sent to Bradshaw’s law office, Bradshaw’s secretary performed the bookkeeping tasks, and Bradshaw reviewed the bills. (RT VI at pp. 9–10; Ex. 48 at p. 11; RT III at pp. 14, 32, 34–35; RT II at pp. 60–63.)

- On July 30, 2015, Bradshaw submitted a membership application to The Golden Gate Better Business Bureau for Bay Construction, identifying himself as the company’s principal, “main contact,” and billing contact. (Ex. 51; RT II at p. 128.)
- Bay Construction’s January 7, 2016 Statement of Information filed with the California Secretary of State listed Brea Violette, the secretary and office manager at Bradshaw’s law office, as the CEO, CFO, Secretary, and Agent for Service of Process for Bay Construction. (Ex. 21 at p. 1.) After Violette expressed concern about this statement, an updated Statement of Information was filed listing Gonzalez instead. (Ex. 21 at p. 2; RT III at pp. 53–55.) The updated Statement of Information was certified with a stamp of Gonzalez’s signature. (RT II at pp. 114–118.)

H. Gosey’s Passing and Bradshaw’s Removal as Trustee.

Gosey died on June 16, 2017 at the age of 90. (Stip. of Facts, no. 1.) On August 10, 2017, counsel for Dolores Coleman, one of Gosey’s beneficiaries, filed petitions to suspend and remove Bradshaw as trustee. (Ex. 58.) On January 25, 2018, the probate court suspended Bradshaw in his role as trustee and appointed an interim trustee. (Ex. 124.) On June 14, 2019, after Bradshaw’s Review Department appeal in this matter had already been submitted for opinion, the Superior Court determined that Bradshaw breached the trust, and ordered him formally removed as trustee. (Superior Ct. Dec.)⁴

I. The Hearing Department’s Findings.

Bradshaw was charged with five counts of professional misconduct, and the Hearing Department found him culpable of three: (1) creating a scheme to defraud; (2) breaching fiduciary duties as a trustee; and (3) making misrepresentations in various documents.

The Hearing Department found clear and convincing evidence that Bradshaw engaged in a scheme to defraud the Gosey Trust, and thus was culpable of committing acts involving moral turpitude, dishonesty, and

⁴ Bradshaw has filed a notice of appeal of this Superior Court order.

corruption, in willful violation of Business and Professions Code section 6106. The Hearing Department found that Bradshaw's scheme included: (1) making multiple misrepresentations under penalty of perjury in court documents regarding his true financial affiliation with Bay Construction; (2) hiring and paying an unlicensed contractor for services that were required to be performed by a licensed contractor; (3) requesting reverse mortgages on Gosey's home for the limited purpose of providing for Gosey's care while concealing from the probate court that he intended to use substantial amounts of those funds for construction projects; and (4) concealing from the probate court his true affiliation with Bay Construction so he could continue to function as trustee. (Hearing Dep't Dec. at p. 23.)

Second, the Hearing Department found Bradshaw culpable of a violation of Business and Professions Code section 6068, subdivision (a), by knowingly and repeatedly breaching his fiduciary duties regarding loyalty and avoiding conflicts of interest by surreptitiously and repeatedly retaining Bay Construction to perform work on Gosey's home. (*Id.* at pp. 23–25.).

Third, the Hearing Department found that Bradshaw intentionally or with gross negligence made three misrepresentations to the probate court, and was therefore culpable of moral turpitude in violation of Business and Professions Code section 6106:

- 1) On August 30, 2013, in his petition for appointment as conservator, Bradshaw falsely stated that Gosey was removed from her home by APS;
- 2) On February 3, 2015, Bradshaw falsely stated in the First and Final Accounting that there was "no relationship or affiliation" between Bradshaw and any agent hired by Bradshaw; and

- 3) On September 26, 2016, Bradshaw falsely stated in his second supplemental declaration that he had no financial interest in Bay Construction.

(*Id.* at pp. 26–27.) The Hearing Department recommended that Bradshaw be disbarred, and Bradshaw appealed.

J. The Review Department’s Opinion.

The Review Department found that there was no clear and convincing evidence to support any culpability as to the charged misconduct and dismissed the proceedings with prejudice. The opinion stated that Bradshaw “managed the trust according to its stated purposes and terms in a reasonable and proper manner,” and that the work done by Bay Construction was “all done competently and at fair market value.” (Review Dep’t Op. at p. 2.)

As to the scheme to defraud, the Review Department determined that the evidence did not establish that Bradshaw owned or had control over Bay Construction, and that even if he did, the trust would have allowed a business relationship “as long as he did not act in bad faith or in disregard of the purposes of the trust, the services provided were necessary, and the services were at fair market value.” (*Id.* at pp. 18–19.)

As to fiduciary duty, the Review Department found that, under the terms of the trust, Bradshaw could not have breached his duty of loyalty or his duty to avoid conflicts of interest because even if he owned Bay Construction, Paragraph VII(B) of the trust document gave him the ability to conduct business with the trust. The opinion also found that Bradshaw did not obtain an “advantage” from the dealings between the Gosey Trust and Bay Construction under Probate Code section 16004(c) because there was testimony that Bradshaw was still owed money from loans to Bay Construction. (*Id.* at pp. 24–25.)

As to misrepresentations, the Review Department found that while Bradshaw’s statement that APS had removed Gosey from her home was false, “it was a simple mistake and also not material to the petition.” (*Id.* at p. 12.) Second, the Review Department found that Bradshaw’s statement that he had “no relationship or affiliation” with Bay Construction was also a mistake, as he had intended to state instead “no family or affiliate relationship,” which the Review Department deemed would technically have been true. (*Id.* at p. 14). Finally, the Review Department found that Bradshaw’s statement that he had no “financial interest” in Bay Construction was not a misrepresentation, as the only “proven” financial relationship was one of debtor-creditor. (*Id.* at p. 15.)

V. ARGUMENT

Review by the Supreme Court and reversal of the Review Department’s opinion is necessary in this case to resolve conflicts about the relevant law and findings of fact among the Review Department, the Superior Court, and the Hearing Department; and to prevent future attorney-trustees from using the opinion as a blueprint for how to commit elder financial abuse while avoiding disciplinary consequences.

A. Review is Necessary to Uphold the Proper Legal Standards for Evaluating Attorneys’ Duties to Avoid Conflicts of Interest Under the Probate Code and the Rules Of Professional Conduct.

In evaluating whether Bradshaw violated his fiduciary duties, the Review Department essentially applied a “no harm, no foul” approach, finding that because evidence was presented that Bay Construction had not repaid Bradshaw for alleged loans he made and that it had performed competent work at fair market value, Bradshaw could not have obtained an “advantage” from his arrangements with the Gosey Trust and Bay Construction. (Review Dep’t Op. at p. 25.) The Review Department also looked to Paragraph VII(B)(5) of the trust to find that Bradshaw was

permitted to self-deal with the trust as long as he did not act in bad faith, and found this dispositive over questions of possible attorney misconduct. (*Id.* at p. 24).

These two findings of the Review Department conflict with this Court's prior interpretation of the term "advantage" as well as the Rules of Professional Conduct. Review by this Court is necessary to affirm that (1) an "advantage" under Probate Code section 16004 can be obtained by a trustee through self-dealing even if the services provided are at fair market value, and (2) the text of a trust instrument written by an attorney cannot override that attorney's ethical obligations to avoid self-dealing and conflicts of interest.

1. Probate Code Section 16004

Under Probate Code section 16004, subdivision (c), "[a] transaction between the trustee and a beneficiary which occurs during the existence of the trust or while the trustee's influence with the beneficiary remains and by which the trustee obtains an advantage from the beneficiary is presumed to be a violation of the trustee's fiduciary duties." Thus, when a trustee benefits from transactions in his duties as trustee, the burden shifts to the trustee to show that the transactions at issue were not prohibited self-dealing. This presumption exists to ensure that clients (or their beneficiaries) are fully advised and have a complete understanding of the transactions at issue. (*Ferguson v. Yaspan* (2014) 233 Cal.App.4th 676, 687). Likewise, rule 1.8.1 of the Rules of Professional Conduct (formerly rule 3-300) reflects a similar obligation for attorneys engaging in transactions with clients or acquiring interests adverse to clients. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813; *Passante v. McWilliam* (1997) 53 Cal.App.4th 1240, 1248.)

Here, Bradshaw repeatedly engaged Bay Construction for work on the Gosey home, paying them with upwards of \$150,000 of trust funds.

Nevertheless, the Review Department found that Bradshaw could not have obtained an “advantage” through these transactions because the construction work was “competent” and Bradshaw presented evidence that he had not been repaid money that he had loaned to Bay Construction. Thus, the Review Department declined to find a presumption that Bradshaw had violated his fiduciary duties. (Review Dep’t Op. at pp. 24–25.)

The Review Department’s interpretation of the term “advantage” here is indefensible. The State Bar did not allege that Bradshaw clumsily stole money from the Gosey Trust and directly lined his pockets with it. Rather, the State Bar alleged (and the Hearing Department found) an elaborate scheme to route money from the Gosey Trust to Bradshaw’s own interests by using Gosey’s preference to stay in her home as the basis to repeatedly award repair projects to Bay Construction.

Crucially, the fact that Bay Construction may have never repaid money Bradshaw “loaned” to the company is irrelevant. Even if, as Bradshaw claims, his only financial relationship to Bay Construction was as a creditor, it was still clearly in Bradshaw’s self-interest for Bay Construction to obtain paid work. Regardless of the ultimate financial outcome for Bay Construction, awarding repair projects to them was to Bradshaw’s advantage as, at a bare minimum, it increased the chances that Bay Construction would have the funds to pay him back.

Thus, the Review Department’s interpretation conflicts with this Court’s holding that “advantage” should be interpreted broadly. In *Bradner v. Vasquez* (1954) 43 Cal.2d 147, interpreting a nearly identical usage of “advantage” in an older Civil Code section, this Court rejected the suggestion that the advantage gained by the fiduciary must be an *unfair* advantage before a statutory presumption is raised, and stated that “[w]hen a fiduciary enters into a transaction with a beneficiary whereby the

fiduciary's position is improved, or he obtains a favorable opportunity, or where he otherwise gains, benefits, or profits, it may fairly be said that an advantage has been obtained.” (See also *Fair v. Bakhtiari* (2011) 195 Cal.App.4th 1135, 1154–1155 [business agreements creating “favorable opportunities” sufficient to find “advantage” under section 16004].)

The Review Department's analysis also conflicts with the analysis of the Superior Court in ordering Bradshaw removed as trustee. The Superior Court found that unsecured loans to Bay Construction were clearly an “interest” in Bay Construction because, at a minimum, Bradshaw wanted the loans to be repaid, and thus he had motivation to secure well-paid projects for the company (Superior Ct. Dec. at p. 20.) The Superior Court stated:

Bradshaw's interest in Bay Construction securing the Trust work could hardly have been greater. Then, Bradshaw made almost no effort to obtain any bids for any of the projects at the Trust Property, thus making Bay Construction's engagement a certainty. All this without a word to Gosey or the court, at least not until he was directly asked at which point he intentionally misrepresented events and circumstances.

(*Id.* at p. 21.) The Superior Court thus found that not only had Bradshaw engaged in self-dealing, but that he had done so in bad faith. (*Ibid.*)

Defining “advantage” as the Review Department did is also inconsistent with the purposes of the Probate Code as it fails to protect elderly members of the public who use trusts. It sends a dangerous message to unethical attorney-trustees: as long as you route funds back to yourself through arguably “competent” work, the Court will not apply the presumption that you violated your fiduciary duties as trustee, and will not question your actions any further.

This Court should grant review to clarify that a trustee can obtain an “advantage” under section 16004 even if a transaction results in competent work being performed, and whether or not it creates a financial windfall for the trustee.

2. Rules of Professional Conduct, Rules 1.8.1 And 1.7

Review is also necessary as to whether the terms of a trust agreement can override an attorney’s duties regarding conflicts of interest under rules 1.8.1 and 1.7 (formerly rules 3-300 and 3-310) of the Rules of Professional Conduct. These rules require, at a minimum, that an attorney disclose that he or she has a legal, business, financial, professional, or personal relationship with another person or entity the attorney knows would be affected substantially by the subject matter of the representation.

The Review Department declined to even reach this issue, instead looking to Paragraph VII(B)(5) of the trust—which Bradshaw drafted—to find that Bradshaw “had the ability to do business with the trust as long as he did not act in bad faith or in disregard of the purposes of the trust.” (Review Dep’t Op. at p. 24.) By failing to consider whether such conduct could still be a violation of the Rules of Professional Conduct, the Review Department’s approach conflicts with this Court’s holding in *Schneider v. State Bar* (1987) 43 Cal.3d 784, 796, that compliance with the disciplinary rules around self-dealing cannot be waived by the terms of a trust.

In *Schneider*, an attorney acting as trustee made loans to entities in which he had an interest, pursuant to clauses in the trust documents that purported to allow for such transactions. The Court stated:

The mere fact that [] a transaction arises in the context of a trust agreement does not exempt an attorney from the rule [against self-dealing]. The terms of the trusts authorizing self-dealing on the part of petitioner clearly come within the rule and do not supersede it.

(*Ibid.*) An attorney who is performing services both in a legal capacity and as a trustee must conform *all* of the services performed to the Rules of Professional Conduct. (See *Layton v. State Bar* (1990) 50 Cal.3d 889, 904 [“[Attorney’s] misconduct, however, is not insulated from scrutiny under the Rules of Professional Conduct merely because much of it was undertaken at least partly in his capacity as executor.”])

Bradshaw drafted the language in the trust allowing certain self-dealing and then proceeded to self-deal as trustee, and the Review Department failed to look past the language of the trust to fully consider Bradshaw’s ethical duties as an attorney. This Court should clarify that the terms of a trust agreement alone are insufficient to preclude analysis of whether an attorney violated his or her ethical duties.

B. Review is Necessary to Uphold Attorneys’ Duties of Disclosure to Courts Under Both the Probate Code and the Business and Professions Code.

This Court should also grant review to clarify that the Review Department’s sweeping rejection of the Hearing Department’s findings of misrepresentations made by Bradshaw to the probate court is erroneous as a matter of law and conflicts with an attorney-trustee’s duties of disclosure under both the Probate Code and the Rules of Professional Conduct.

1. Probate Code Section 1064

While asking the probate court to terminate its supervision over the trust, Bradshaw submitted the First and Final Accounting on February 3, 2015. In that document, Bradshaw stated that “there was no relationship or affiliation between Petitioner and any agent hired by Petitioner” between December 2013 and November 2014. (Ex. 11 at pp. 5–6.) This statement was made despite the following undisputed facts detailed above:

- Bradshaw had a relationship with Gonzalez that dated back to 2004.

- Bradshaw signed, and his office filed, Bay Construction’s Articles of Incorporation, listing Bradshaw as “incorporator” and designating Bradshaw’s law office as Bay Construction headquarters.
- Bradshaw had an attorney-client relationship with Gonzalez to represent Gonzalez in his efforts to obtain a contractor’s license.
- Bradshaw contacted Invernon about supporting Bay Construction in getting licensed and had paid Invernon with \$1,000 of his own money.
- Bradshaw set up Bay Construction’s bank account with \$10,000 of his own money, and in that process identified himself as “President” and retained authority to execute, negotiate, and endorse all checks for the company.

Additionally, though disputed by Bradshaw, Gonzalez testified that during this accounting period, Bradshaw had been the one to suggest the formation of Bay Construction, and specifically that Bradshaw himself would have a majority ownership in the company and run its administrative aspects. The Hearing Department, which heard the testimony, found Gonzalez’s testimony credible. (Hearing Dep’t Dec. at p. 15, fn. 16.)

The Hearing Department found that Bradshaw knew his statement to be false, and thus that it amounted to a willful violation of Business and Professions Code section 6106. (*Id.* at p. 27.) However, the Review Department disagreed, going so far as to find that “Bradshaw had *no relationship*” with Gonzalez or Bay Construction. (Review Dep’t Op. at p. 13 [emphasis added].) This finding was driven by the Review Department’s blanket acceptance of the testimony of Bradshaw’s trust law expert, who stated that every trustee who hires an agent always has *some* level of relationship with that agent based on the mere fact that the hiring occurred. (*Ibid.*)

Even after making this sweeping conclusion, the Review Department also stated that it accepted Bradshaw’s claim that his statement was

mistakenly written as “no relationship or affiliation” when instead his intention was to write “no family relationship or affiliation” in conformance with the language of Probate Code section 1064, subdivision (a)(4).⁵ The Review Department then stated that there was no “clear and convincing evidence that Bradshaw had an affiliate relationship with Gonzalez, NJ Construction, or Bay Construction” during the accounting period. (Review Dep’t Op. at p. 14.)

Under Probate Code section 1064, subdivision (a)(4), a petition for approval of an account must disclose any “family or affiliate relationship between the fiduciary and any agent hired by the fiduciary during the accounting period.” The Probate Code defines “affiliate” as “an entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, the fiduciary.” (Prob. Code § 1064, subd. (c).)

In finding that Bradshaw’s statement was not a misrepresentation, the Review Department made an interpretive leap that ignored a relationship between Bradshaw and Bay Construction that was deep, financial, personal, long-standing, and (according to Gonzalez’s testimony) plainly involved control over the agent by the fiduciary. At a minimum, the Review Department erred in failing to recognize that Bradshaw’s statement misled the court by knowingly concealing his relationship with Bay Construction. A misleading statement can be by commission, omission, or half-truth. (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315; *In the Matter of Chesnut* (2000) 4 Cal. State Bar Ct. Rptr. 166, 174–175.)

⁵ While the accounting period for the First and Final Accounting ended with November 2014, between that date and when the filing was made in February 2015, Bradshaw had a “family relationship” with Bay Construction as well, as the company had begun to employ Bradshaw’s son. (RT VI at pp. 54–56.)

The Review Department’s interpretation of the Probate Code definition of “affiliate”—one that excludes a situation where the fiduciary at a minimum incorporated the agent, listed himself as its president, served as attorney for the (then-)sole employee of the agent, and used his own money to open the agent’s bank account—essentially invites future attorney-trustees to route trust funds to companies with which they are deeply financially involved and to fail to report that fact to the courts supervising the trusts.

This Court should grant review to clarify that an attorney-trustee is obligated to disclose such a deep financial relationship to the court supervising a trust.

2. Business and Professions Code Section 6106

Review by the Supreme Court is also necessary to hold that an attorney’s misrepresentation to a court is not subject to an overly-restrictive and technical test for “materiality” before a violation involving moral turpitude or dishonesty under Business and Professions Code section 6106 may be found.

The Review Department agreed that in his petition to be appointed temporary and permanent conservator, Bradshaw falsely stated that Gosey “was recently removed from her home by Adult Protective Services,” when in fact Gosey’s tenants were the ones who arranged an ambulance to take her to the hospital. However, the Review Department declined to find culpability, holding that the false statement was not sufficiently “material.” The Review Department relied on its own speculation that Bradshaw’s statement would not have “improved the chances of his petition being granted,” as there were other facts in the case sufficient for the judge to find that a conservator was necessary. (Review Dep’t Op. at p. 12–13.)

This Court’s review is necessary to hold that the Review Department erred in this analysis. The Review Department’s holding appears to be that

a misrepresentation to a court has to be “material” not only in the sense of being relevant to a decision of the court, but be the dispositive factor in a decision made by the court. This is overly restrictive and plainly in conflict with this Court’s holding that the Business and Professions Code requires an attorney “to refrain from misleading and deceptive acts *without qualification*.” (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 315 [citing *Di Sabatino v. State Bar* (1980) 27 Cal.3d 159, 162] [emphasis added].)

Even to the extent that some level of materiality is required, the Review Department’s narrow interpretation of its own “materiality” standard conflicts with this Court’s holding that “[t]he presentation to a court of a statement of fact known to be false presumes an intent to secure a determination based upon it and is a clear violation.” (*Pickering v. State Bar* (1944) 24 Cal.2d 141, 144; see also *Davis v. State Bar* (1983) 33 Cal.3d 231, 239–240; *Bernstein v. Committee of Bar Examiners* (1968) 69 Cal.2d 90, 100; *In the Matter of Chesnut*, *supra*, 4 Cal. State Bar Ct. Rptr. at pp. 174–175.) “Actual deception is not necessary to prove wilful deception of a court; it is sufficient that the attorney knowingly presents a false statement which tends to mislead the court.” (*Davis v. State Bar*, *supra*, 33 Cal.3d at p. 240.)

Here, the statement that Gosey was removed from her home by Adult Protective Services served to inaccurately portray elements of Gosey’s deterioration, and was made in a petition in which Bradshaw was asking the court to name him conservator. As the Hearing Department found, such a statement goes to Bradshaw’s moral fitness to be an attorney. The facts surrounding Gosey’s condition were clearly relevant to the petition, whether or not this one misrepresentation changed the court’s ruling. Yet the Review Department nevertheless found that the statement could not be “material” only because the end result of the court’s ruling may not have been altered.

This Court should grant review to hold that the standard for misrepresentations applied by the Review Department conflicts with the prior rulings of this Court.

C. The Review Department Failed to Give Proper Deference to The Factual Findings of the Hearing Department.

Finally, review by this Court is necessary to affirm that rule 5.155 of the State Bar Rules of Procedure and rule 9.12 of the Rules of Court require the Review Department to give deference to the Hearing Department's findings of fact. Here, the Review Department's reversal of the Hearing Department's carefully considered decision was not supported by the weight of the evidence and was not appropriate in light of the record as a whole. Even on independent review of the record, the Review Department failed to give the Hearing Department's factual findings proper deference.

While rule 9.12 of the Rules of Court requires the Review Department to independently review the Hearing Department record on appeal, rule 5.155, subdivision (A) of the State Bar Rules of Procedure specifically states that "[t]he findings of fact of the hearing judge are entitled to great weight." (See *Garlow v. State Bar* (1982) 30 Cal.3d 912, 916 ["the hearing panel's *factual findings* may be entitled to greater deference than the board's own findings"] [emphasis in original]; *Toll v. State Bar* (1974) 12 Cal.3d 824, 831 ["In view of the greater opportunity of the committee to observe and judge the credibility of the attorney charged with misconduct, great weight must be given to their findings."]; *Warner v. State Bar* (1983) 34 Cal.3d 36, 42 ["While we give the panel's factual findings greater weight, we afford greater deference to the review department's recommendations of discipline."].)

The Review Department opinion paid lip service to this standard at the beginning of its factual summary. (Review Dep't Op. at p. 3, fn. 2.) However, the Review Department appears to have afforded no weight

whatsoever to the factual findings of the Hearing Department. Instead, the Review Department took Bradshaw's invitation to make factual conclusions based on the drawing of non-existent or, at best, unreasonable inferences. It repeatedly substituted its blanket acceptance of the conclusions of Bradshaw's expert witnesses and Bradshaw's own claims to find that Bradshaw had hardly any relationship at all with Bay Construction, that all of his misrepresentations were either non-material "mistakes" or true at the most technical of levels, and that he properly fulfilled the aims of the trust.

This conflict is also amplified by the findings of the Superior Court in removing Bradshaw as trustee for repeatedly breaching the trust and making intentional misrepresentations in the course of his fiduciary work. The Superior Court found that:

Bradshaw breached the Trust when he repeatedly engaged Bay Construction, Inc., a company in which he was a principal and a substantial creditor, to perform no-bid work on settlor Ora Gosey's home, which was the Trust's main asset, knowing that Bay Construction was without credible contracting credentials, all while actively concealing from the court and misrepresenting his interests, Bay Construction's lack of credentials and the no-bid status of the work.

(Superior Ct. Dec. at p. 2.)⁶

Review by this Court is necessary because the Review Department's decision goes against the weight of the evidence, is at odds with the interpretations of law and fact of the Superior Court, and fails to give the

⁶ This Court ordinarily gives great weight to the findings of the Superior Court. (*Bernstein v. Committee of Bar Examiners* (1968) 69 Cal.2d 90, 97.) This is appropriate here given the Superior Court's knowledge of trust law and its position to assess the credibility of witnesses.

necessary deference to the Hearing Department's carefully-considered factual findings.

VI. CONCLUSION

For the reasons set forth above, the State Bar respectfully requests that the Court grant the Petition for Review, or remand the matter to the State Bar Court with instructions.

Dated: September 30, 2019

Respectfully submitted,

VANESSA L. HOLTON
ROBERT G. RETANA
KENNETH J. HOLLOWAY

By: /s/KENNETH J. HOLLOWAY
KENNETH J. HOLLOWAY

Attorneys for Petitioner
Chief Trial Counsel of
The State Bar of California

WORD COUNT CERTIFICATE PURSUANT TO
CALIFORNIA RULE OF COURT 8.520(C)(1)

Pursuant to rule 8.520(c)(1) of the California Rules of Court, I hereby certify that this brief contains 8,398 words. I have relied on the word count of the computer program used to prepare the brief.

Dated: September 30, 2019

/s/KENNETH J. HOLLOWAY
KENNETH J. HOLLOWAY

APPENDIX A

FILED

JUL 30 2019

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	No. 16-O-15558
)	
DREXEL ANDREW BRADSHAW,)	OPINION AND ORDER
)	
State Bar No. 209584.)	
_____)	

Drexel Andrew Bradshaw is charged with five counts of misconduct related to his position as the successor trustee of a client’s trust and his involvement with a construction company that repaired the client’s home. The Office of Chief Trial Counsel of the State Bar (OCTC) charged Bradshaw with four counts related to his handling of the trust: engaging in a scheme to defraud the trust, breaching his fiduciary duties to his client and the trust beneficiaries, misappropriation of trust funds, and making several misrepresentations to the probate court and other government agencies. The hearing judge found Bradshaw culpable of those charges, except for misappropriation. On the remaining count, OCTC charged Bradshaw with engaging in the construction business without a contractor’s license; however, the hearing judge did not find Bradshaw culpable of that charge and OCTC does not challenge its dismissal on review. Ultimately, the judge recommended that Bradshaw be disbarred.

Both Bradshaw and OCTC appeal. Bradshaw asserts that he is not culpable of any charge. OCTC argues that Bradshaw is culpable of the three charges found by the hearing judge, and also the misappropriation charge she dismissed, along with additional misrepresentations that the hearing judge did not find. OCTC supports the judge’s disbarment recommendation.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we do not find clear and convincing evidence to support culpability as to the charged misconduct. We reject OCTC's premise that Bradshaw wanted to start a construction company and used his position as trustee to start his "corrupt" enterprise. Bradshaw served as the successor trustee for a client years after his firm drafted the client's trust and estate plan, and only after the first two successor trustees were unable to serve. He managed the trust according to its stated purposes and terms in a reasonable and proper manner, including engaging a certified specialist in probate and trust law to assist him in his duties. Further, he adhered to his client's clearly expressed desires to be cared for in her San Francisco home, and that the equity in the home be used to accomplish that goal. To that end, Bradshaw used the trust assets, which consisted mostly of the home's \$1.6 million equity, to provide his client with quality nursing care and for necessary repairs to ensure her safety in the home, which was built over 100 years ago. For most of the construction projects, Bradshaw hired Bay Construction, a licensed contracting company that he incorporated on behalf of Juan Gonzalez, the owner, who had previously done work for Bradshaw and to whom Bradshaw had provided other assistance in establishing the company. In total, the trust paid Bay Construction \$157,246.76 for various construction projects, including replacement of the back stairs and repair of the home's foundation, all done competently and at fair market value.

The evidence in the record fails to establish that Bradshaw engaged in any of the acts as alleged by OCTC. Accordingly, we dismiss this proceeding with prejudice. (See *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 839 [dismissal of charges for want of proof after trial on merits is with prejudice].)

I. PROCEDURAL BACKGROUND

On October 20, 2017, OCTC filed the original Notice of Disciplinary Charges (NDC) in this matter. The NDC was amended on January 11, 2018 (FANDC), and charged Bradshaw with

(1) engaging in a scheme to defraud his client's trust, in violation of Business and Professions Code section 6106;¹ (2) breaching his fiduciary duties to his client and the beneficiaries of the trust, in violation of section 6068, subdivision (a); (3) misappropriating \$157,246.76 from the trust, in violation of section 6106; (4) making several misrepresentations, in violation of section 6106; and (5) engaging in the construction business without a license, in violation of section 6068, subdivision (a).

The parties entered into a Stipulation as to Facts and Admission of Documents (Stipulation) on January 10, 2018, and on January 16 and February 14, the parties stipulated to the authenticity of trial exhibits. Trial was held on January 16, 17, 18, 19; February 6, 7, 8, 12, 13, 14, 15; March 6, 7, 8, 9; April 10, 11, 12; and May 1, 2, 3, and 4, 2018. The matter was submitted on June 1 after the parties filed their closing briefs. On August 30, the hearing judge issued her decision, finding Bradshaw culpable of three of the five counts of misconduct and recommending disbarment.

II. FACTS²

A. The Gosey Trust

In 2006, Bradshaw's law firm, Bradshaw & Associates, P.C., prepared Ora Gosey's estate plan, including the Gosey Revocable Living Trust (Gosey Trust). The trust listed three primary purposes: (1) to provide for Gosey's care and maintenance while she was alive; (2) to facilitate management of the trust property in the event of Gosey's incapacity; and (3) to

¹ All further references to sections are to the Business and Professions Code unless otherwise noted.

² The facts in the opinion are based on the Stipulation, trial testimony, documentary evidence, and factual and credibility findings by the hearing judge, which are entitled to great weight, unless we have found differently based upon the record. (Rules Proc. of State Bar, rule 5.155(A); *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 748 [while factual and credibility findings by finder of fact are to be accorded great weight, on independent review of record, Review Department may decline to adopt hearing judge's findings if insufficient evidence exists in record to support them].)

facilitate transfer of the trust property after Gosey's death. It also stated that the trustee's "priority" was to "keep in mind that the health, maintenance, comfort and support of [Gosey] are more important to [Gosey] than any other purposes of [the] trust."³ The trust also included a provision entitled "Limitations on Trustee's Duty of Loyalty[,]" which stated:

As long as the Trustee does not act in bad faith or in disregard of the purposes of the Trust, it is not a breach of the Trust for the Trustee to take any of the following actions: ¶ Employ the Trustee, a relative of the Trustee, or a business in which the Trustee has an interest, to perform needed services for the Trust or any business in which the Trust has an interest and pay compensation not exceeding fair market value

Thomas Bush and Willie Cole were listed, respectively, as the first and second successor trustees; and Bradshaw's firm was listed as the third. After Gosey executed her estate planning documents in January 2007, Bradshaw did not have any contact with her until she was hospitalized in 2013.

B. Gosey Becomes Incapacitated

In August 2013, Gosey fell in her San Francisco home. Her tenants, Claire Lewis and John Blaber, who resided in the downstairs rental unit, found her a few days later. At the tenants' request, Adult Protective Services (APS) visited Gosey, but she rejected its assistance. Two weeks after the fall, she continued to be in pain, and the tenants arranged for an ambulance to transport Gosey to a hospital.

After accompanying her to the hospital, Lewis returned to Gosey's home to locate documents identifying emergency contact information. Lewis found Gosey's trust and will, and contacted Bradshaw since his firm drafted the documents. Thereafter, Bradshaw met Lewis and Gosey at the hospital. After a period of hospitalization, a doctor determined that Gosey had

³ Gosey's will, handwritten by her contemporaneously at the time the trust was executed, indicated that she wanted to remain in her residence if she became incapacitated and that as much of the estate as necessary should be used to avoid placing her in "a rest home."

severe dementia and lacked the capacity to give informed consent to any form of medical treatment.

C. Bradshaw Appointed Conservator and Becomes Trustee

Bradshaw retained Sheila Robello, a certified probate and trust law specialist, to represent him in the Gosey conservatorship and trust matters.⁴ On August 30, 2013, Bradshaw filed concurrent petitions in superior court for temporary and permanent appointment as the conservator of Gosey's person and estate (conservatorship case).⁵ In an attachment to the petition, Bradshaw inaccurately stated that Gosey had recently been removed from her home by APS. On September 11, 2013, Bradshaw was appointed temporary conservator, at which time he arranged for a service, the Institute on Aging, to provide full-time in-home care for Gosey.⁶

On November 14, 2013, Bradshaw was appointed permanent conservator, and he filed a petition in the conservatorship case requesting transfer of the assets in the conservatorship estate to him as the successor trustee of the Gosey Trust. Bradshaw also asked that the trust "not be under continuing court supervision as the additional expenses will only decrease the available assets for the conservatee." On December 5, the court ordered the trust funded and that Bradshaw file a trust accounting by February 2, 2015, for the period of December 2013 through November 2014. The court also ordered that it would retain jurisdiction over the trust until filing and approval of the trust accounting.

⁴ Bradshaw contacted Cole and asked if she was willing to serve as trustee. He testified that Cole told him she was unable to serve because she was ill. Bradshaw subsequently visited Bush in the facility where he was living, and he also declined to serve as trustee because he was ill too. Robello also contacted Bush and Cole upon reviewing the trust. She prepared declinations to serve as successor trustee, which Bush and Cole both signed in August 2013.

⁵ *In the Matter of Conservatorship of Ora Gosey*, San Francisco County Superior Court No. PCN-13-297063.

⁶ The Institute on Aging cared for Gosey from the time she was released from the hospital in September 2013 until she passed away on June 16, 2017, at age 90.

D. Bradshaw Hires Juan Gonzalez for Repair Work

In November 2013, Bradshaw hired Juan Gonzalez, whom he knew and had previously engaged to work on his own residence, to repair the damage from a burst pipe in Gosey's home. Gonzalez was doing business as NJ Construction and was not a licensed contractor; therefore, Bradshaw hired a licensed contractor, Celso's Plumbing, to supervise and work with Gonzalez. Gosey's insurance covered most of those repair costs.

E. Bradshaw Obtains First Reverse Mortgage

On February 14, 2014, Bradshaw filed a petition in superior court for an order authorizing him to obtain a reverse mortgage in the amount of \$346,000 on Gosey's home (trust case).⁷ At that time, Gosey's home was valued at approximately \$1.6 million and the property had no liens. Bradshaw stated in the petition that a reverse mortgage was necessary because Gosey's care and living expenses exceeded her income by approximately \$7,147 each month. Bradshaw also stated that he had hired a contractor to repair a water leak and the resulting damage in Gosey's home. On April 1, the court authorized and directed Bradshaw to obtain the reverse mortgage.

F. Bay Construction Established

Also on April 1, 2014, Bradshaw, on behalf of Gonzalez, filed articles of incorporation to form Bay Construction.⁸ On April 5, Gonzalez signed, as the sole director of Bay Construction, an "Action by Unanimous Written Consent," wherein he ratified Bradshaw's action as the

⁷ *In the Matter of the Gosey Revocable Living Trust*, San Francisco County Superior Court No. PTR-14-297499.

⁸ Previously, in February 2014, Bradshaw and Gonzalez signed a legal services agreement where Bradshaw agreed to represent Gonzalez in seeking to obtain his contractor's license, and he also paid for Gonzalez to attend contractor's school. The hearing judge found the veracity of the agreement to be suspect because it contradicted Bradshaw's assertion that he was just trying to help Gonzalez and there was no evidence that Bradshaw issued billing statements to Gonzalez. We disagree because Gonzalez testified that he signed the agreement, and Bradshaw explained he never issued any billing statements because he never billed Gonzalez for services.

incorporator and named himself as the president, secretary, and treasurer of Bay Construction. On that same day, Gonzalez also signed the Bay Construction shareholder agreement listing himself as the sole shareholder, chairman, and president. This and other evidence presented at trial revealed that Gonzalez, not Bradshaw, was the owner of Bay Construction.⁹

In October 2014, Bradshaw opened a checking account at Chase Bank for Bay Construction. Gonzalez was unable to open the account on his own due to his negative credit report. Bradshaw deposited \$10,000 from his law firm's checking account into the Bay Construction account. At the bank, he signed a blank signature card for the account. Subsequently, the title "president" was added to the signature card, but not by Bradshaw or at his direction. Bradshaw was the sole signer on the account, but Gonzalez used a debit card to access the account. Additionally, due to Gonzalez's bad credit, he was unable to obtain a credit card himself. Bradshaw's wife opened two American Express credit accounts for Bay Construction.¹⁰

Gonzalez was also unable to secure a contractor's license from the CSLB. Upon investigation, Bradshaw learned that Bay Construction could have someone with an existing CSLB license serve as a responsible managing officer (RMO) to supervise Gonzalez until Gonzalez could later obtain the license on his own once he had the necessary documented work experience. Bradshaw arranged for Raymond Invernon, who had an existing license, to be Bay

⁹ The other evidence includes the following items, all signed by Gonzalez: (1) an October 15, 2014 Contractors State License Board (CSLB) workers' compensation exemption form for Bay Construction, in which he stated he did not employ anyone subject to California workers' compensation laws; (2) a January 8, 2015 San Francisco business registration application, in which he stated he was the Chief Executive Officer (CEO) and owned 100 percent of Bay Construction; (3) a January 9, 2015 IRS form, in which he stated he was the CEO; and (4) a March 31, 2016 declaration, in which he stated he was the "CEO and sole shareholder of Bay Construction, Inc., a company I founded in 2014." The declaration also stated that Bradshaw never had any interest in the company or profited from it in any way.

¹⁰ The credit accounts were used for Bay Construction's operations and projects, including paying for items used to repair Gosey's home. Bradshaw's son, an employee of Bay Construction, used one of the company's credit accounts for personal purchases of approximately \$2,600. Bradshaw also used the same account to make a \$13 personal purchase. He repaid Bay Construction for both his and his son's charges.

Construction's RMO. On November 19, 2014, Bradshaw wrote a letter to Gonzalez telling him that Invernon "must be engaged in 'direct supervision and control' of the work." On December 22, 2014, the CSLB issued Bay Construction a contractor's license. Gonzalez was listed on the license as CEO and President of Bay Construction.

In January 2015, another plumbing problem occurred. A sewage pipe burst at Gosey's house, requiring that the trust pay for emergency repairs and for Gosey's tenants to be temporarily relocated. Bay Construction did the repair work. Bradshaw's son began working for Bay Construction around this time.

G. Bradshaw Files First and Final Report and Account in Trust Case

On February 3, 2015, Bradshaw filed the First and Final Report and Account in the trust case covering December 5, 2013, through November 20, 2014, providing an itemization of the trust disbursements and assets for that period. On a form drafted by Robello, Bradshaw also stated, "During the period of the account, there was no relationship or affiliation between [Bradshaw] and any agent hired by [Bradshaw] during the accounting." On July 31, 2015, the court approved the accounting. Bradshaw requested a second time that the court terminate its supervision over the trust. The court did not grant Bradshaw's request, and, this time, Bradshaw appealed.¹¹

H. Bay Construction Hired for Repair Work

Bradshaw learned that the two-story spiral back staircase of Gosey's home was in disrepair. In June 2014, he obtained a permit to fix the stairs himself, and in January 2015, he hired Bay Construction to do the repairs. The Department of Building Inspection for the City and County of San Francisco (DBI) rejected Bay Construction's initial plans for repair of the stairs and required the staircase to be completely replaced. The total cost of the replacement was

¹¹ On July 29, 2016, the appellate court reversed the trial court's ruling, finding that no basis existed for court supervision of the trust.

\$48,909.20, which was paid by the Gosey Trust to Bay Construction. Patrick Kelley, a construction expert, testified that the work on the stairs was competently done, the stairs were code-compliant, and the cost of the stairs was reasonable. DBI approved the work on the stairs on March 30, 2015.

Bradshaw testified that, after an inspection, a pest control company determined in 2015 that the foundation of Gosey's home was crumbling, causing the house to shift. Lewis testified that her back door would no longer close. In July 2015, DBI issued a building permit for the foundation repair, which Bay Construction performed. Bradshaw authorized and paid Bay Construction \$70,793.36 from the Gosey Trust for the foundation repair work. DBI approved the work on September 2, 2015. Kelley testified that such a job would be difficult and time-consuming given that the old foundation had to be removed by hand before installing the new one and all the work was done in a very restricted space. He also stated that the cost was fair and reasonable and that the foundation work was competently done. Altogether, the parties stipulated that, between approximately January 26, 2015, and February 17, 2016, the Gosey Trust paid Bay Construction \$157,246.76 for its services.¹²

I. Bradshaw Obtains Second Reverse Mortgage

On July 19, 2016, Bradshaw filed a petition for a second reverse mortgage on Gosey's home, asserting that it was necessary because Gosey's monthly expenses exceeded her income by approximately \$7,644 each month, and her remaining funds would be exhausted in two to three months. Bradshaw requested a disbursement that would allow him to pay off the existing reverse mortgage and provide for an additional \$479,205.31 for Gosey's care and living

¹² Other work done by Bay Construction on Gosey's property during this period included repair of termite damage, replacement of a water heater, toilet, shower plumbing and tile in Gosey's home, and repair of the tenants' bathroom plumbing, walls, and subfloor, along with other miscellaneous work. OCTC did not present any evidence to rebut the evidence presented by Bradshaw that the work Bay Construction performed was necessary, competently done, and reasonably priced.

expenses. In this petition, Bradshaw informed the court that funds received from the first reverse mortgage had been used to pay Gosey's monthly expenses and also for repairs to the property, which he specifically detailed.

After Bradshaw filed the petition for the second reverse mortgage, the court became aware of a relationship between Bradshaw and Bay Construction. On August 3, 2016, the court appointed Nancy Rasch to represent Gosey with respect to the conservatorship and the trust. On September 26, Rasch filed a declaration stating that she learned that Juan Gonzalez was the principal of Bay Construction, Bradshaw was his attorney, and Bradshaw's son was working for Gonzalez. She believed that the lack of clarity and disclosure needed to be rectified to determine if the funds spent on Bay Construction work were reasonable. Rasch also stated that Bradshaw did not obtain additional bids for the non-emergency repairs, and she was unclear how Gonzalez became a licensed contractor.

On September 19, 2016, the court's probate examiner asked Bradshaw to submit a supplemental declaration explaining how the funds from the first reverse mortgage were depleted so quickly, including specific information about all repairs paid for with those funds. In response, Bradshaw submitted a first supplemental declaration on September 22. He stated that most of the funds from the reverse mortgage were used to pay for Gosey's care and necessary repairs to her home about which he provided more detail. Bradshaw also stated that he "called several contractors in an attempt to obtain bids to address the emergency repairs, but most of the contractors did not return my calls much less offer a bid."

Bradshaw filed a second supplemental declaration on September 26, 2016, providing detail about his relationship with Gonzalez. Bradshaw stated that he allowed Gonzalez to use his office as a "home base" for Bay Construction because Gonzalez was hard-working and "needed help getting a leg up." He stated that he prepared certain documents in order to help Gonzalez

incorporate Bay Construction. He also reiterated that he had contacted other contractors about bidding on repair work, but “rarely” got calls of interest back. Additionally, Bradshaw declared, “I have no relationship with Bay Construction or Mr. Gonzalez. I do not have, and never have had, a financial interest in Bay Construction or its construction projects.” Bradshaw also disclosed that Gonzalez independently decided to hire Bradshaw’s son.

In October 2016, the court authorized Bradshaw to obtain the second reverse mortgage on Gosey’s home, in which the net proceeds were not to exceed \$250,000 and were to be used only for Gosey’s care and living expenses. The court also required Bradshaw to provide monthly reports to Rasch explaining all expenditures from the second reverse mortgage proceeds.

Approximately nine months later, Gosey passed away. Subsequently, on August 10, 2017, one of the beneficiaries to the Gosey Trust filed a petition that, inter alia, sought to have Bradshaw removed as the trustee. On January 25, 2018, the superior court removed Bradshaw as the trustee.

III. CULPABILITY¹³

A. **Count Four: Moral Turpitude—Misrepresentation (§ 6106)¹⁴**

In count four, OCTC alleged that Bradshaw made numerous misrepresentations.¹⁵ The hearing judge found Bradshaw culpable of three misrepresentations: (1) on August 30, 2013,

¹³ OCTC has the burden of proving culpability by clear and convincing evidence. (Rules Proc. of State Bar, rule 5.103.) Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

¹⁴ We begin our culpability analysis with this count, as the charged acts of misrepresentation are part of OCTC’s allegations of a scheme to defraud, discussed below. Section 6106 states, “The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.”

¹⁵ The hearing judge found Bradshaw culpable on three of the misrepresentation allegations pleaded in count four. While agreeing with the hearing judge’s culpability findings, OCTC also requests in its appeal that Bradshaw be found culpable on two additional acts of misrepresentation as pleaded in the FANDC. Because OCTC did not seek to have any additional findings of fact considered in its appeal, we limit our review to only those culpability findings by

Bradshaw falsely stated in his petitions for appointment as conservator that Gosey was removed from her home by APS; (2) on February 3, 2015, Bradshaw falsely stated in the First and Final Report and Account that between December 2, 2013 and November 30, 2014, “there was no relationship or affiliation between [Bradshaw] and any agent hired by [Bradshaw] during [the] accounting”; and (3) on September 26, 2016, Bradshaw falsely stated in his second supplemental declaration that he had no financial interest in Bay Construction.

1. Bradshaw’s Statement Regarding APS

In his August 30, 2013 petitions to be appointed temporary and permanent conservator, Bradshaw stated that Gosey “was recently removed from her home by Adult Protective Services” The hearing judge found that Gosey was not removed from her home by APS, and, because Bradshaw knew or should have known that the statement in his petition was false, he was culpable of making a misrepresentation in that petition.

Bradshaw asserts that OCTC did not establish that his statements in these petitions were false. However, we note that Bradshaw did stipulate that Gosey’s tenants were the ones who arranged the ambulance to take her to the hospital. Bradshaw argues that even if the statements regarding APS were false, it was a simple mistake and also not material to the petition. He states that he was told “third hand” that APS removed Gosey from her home. OCTC asserts that the statement was material because it improved Bradshaw’s chances of the court granting his petition as it portrayed “Gosey’s deterioration as so profound as to require APS intervention.”

While we conclude that Bradshaw’s statements were inaccurate given the Stipulation, we fail to see how the manner of Gosey’s removal from her home or Bradshaw’s erroneous statement improved the chances of his petition being granted or as material to the issues before the probate court. Many other facts were pleaded in the two petitions, which, along with the

the judge and the two additional acts of misrepresentation as requested by OCTC. (Rules Proc. of State Bar, rule 5.152(C) [factual error not raised on review is waived].)

report of the probate court investigator, were sufficient for the superior court judge to find that a conservator was necessary. (See *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 497 [misrepresentation to tribunal must be material to issues before it].) Because we do not see the statement as material, we decline to find culpability for Bradshaw's statement.

2. Bradshaw's Statement in First and Final Report and Account

On February 3, 2015, Bradshaw filed the First and Final Report and Account in his role as the trustee of the Gosey Trust, which covered the period of December 5, 2013, through November 30, 2014. As part of his required reporting duties, Bradshaw stated, "During the period of the account, there was no relationship or affiliation between [Bradshaw] and any agent hired by [Bradshaw] during the accounting."

The hearing judge found that, during the relevant time period, Bradshaw had an attorney-client relationship with Gonzalez and was in the process of forming Bay Construction with him. Therefore, the judge determined that Bradshaw's February 3, 2015 statement was false, and thus she found him culpable of a misrepresentation. We disagree.

Bradshaw's trust law expert, Albert Handelman, an attorney certified as a specialist in estate planning, trust, and probate law, testified that the literal reading of Bradshaw's statement is a logical impossibility because any trustee who hires an agent must have some relationship with that agent by virtue of the fact that the trustee hired the agent. Based on our review of the record, we agree with the trust law expert as to the part of the statement that Bradshaw had no relationship with Gonzalez, NJ Construction, or Bay Construction, and thus we assign no culpability for the statement as a misrepresentation.

Bradshaw's statement otherwise complies with Probate Code section 1064, subdivision (a)(4), which requires that a petition for approval of an account must disclose any "family or affiliate relationship between the fiduciary and any agent hired by the fiduciary during

the accounting period.”¹⁶ Bradshaw argues that while his statement was mistakenly written as “no relationship or affiliation,” his and his attorney’s intention was to state instead “no family or affiliate relationship” in conformance with the language in the Probate Code section 1064, subdivision (a)(4). Bradshaw argues that his relationship with Gonzalez does not qualify as a family or affiliate relationship under that section because he did not have control over Gonzalez, NJ Construction, or Bay Construction during the reporting period. We do not find clear and convincing evidence that Bradshaw had an affiliate relationship with Gonzalez, NJ Construction, or Bay Construction during the period that the First and Final Report and Account covered, within the meaning of that term as defined in Probate Code section 1064, subdivision (a)(4). Accordingly, we assign no culpability for his February 3, 2015 statement.

3. Bradshaw’s Statement in Second Supplemental Declaration

On September 26, 2016, Bradshaw filed a Second Supplemental Declaration Regarding the Petition for Order Authorizing Conservator to Obtain Additional Reverse Mortgage. In that filing, Bradshaw stated, “I do not have, and never have had, a financial interest in Bay Construction; nor have I received any financial benefit from Bay Construction or its construction projects.” The hearing judge found that Bradshaw had extensive financial interests with Bay Construction, including paying \$10,000 toward its initial startup, serving as its attorney, and purportedly loaning additional sums to the company. Therefore, the judge determined Bradshaw’s statement that he had no financial interest in Bay Construction was false. We disagree.

Bradshaw argues that he meant “financial interest” to mean an ownership interest in the company, and because he had no ownership interest, he did not make a misrepresentation. In support of his position, Bradshaw relies on the testimony of Handelman, who testified that

¹⁶ “Family” is defined in the statute as “a relationship created by blood or marriage,” and “affiliate” is defined as “an entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, the fiduciary.” (Prob. Code, § 1064, subd. (c).)

“financial interest” is not the same as a “financial relationship,” and opined that the former term means an ownership interest in an entity, or that it meant receiving a percentage of the profits from the entity; it does not mean a debtor-creditor relationship that the latter term implies. Handelman testified under cross-examination that, therefore, Bradshaw’s use of the term “financial interest” did not obligate him to disclose any loans he made to Bay Construction, the bank account on which he was the signatory, or the credit cards in Bay Construction’s name that Bradshaw used. Based on the trust expert’s un rebutted testimony, we find clear and convincing evidence does not exist to establish that Bradshaw’s September 26, 2016 statement was a misrepresentation to the probate court. Therefore, we do not assign culpability for the statement.

4. OCTC’s Appeal for Additional Misrepresentations

In its appeal, OCTC asserts that Bradshaw committed two additional misrepresentations that the hearing judge did not find, but were factually pleaded within count four of the FANDC. First, OCTC argues that, on September 22, 2016, in a declaration regarding his petition for an additional reverse mortgage, Bradshaw falsely claimed twice that he attempted to solicit bids from several contractors for work performed on Gosey’s property. Specifically, OCTC argues that Bradshaw provided no documentation or testimony from other witnesses to support that statement, and, because the hearing judge found that Bradshaw was not credible when he testified that he called other contractors at various times to obtain bids, we should find that his September 22, 2016 statements were also false misrepresentations to the probate court. Bradshaw argues that OCTC has the burden to establish he made a false statement to the probate court when he said he attempted to get bids from several contractors. We agree with Bradshaw. While the hearing judge found Bradshaw to be not credible, this does not necessarily lead to the conclusion that his statements were false. (See *Edmonson v. State Bar* (1981) 29 Cal.3d 339,

343 [law is well-settled that rejection of testimony does not create affirmative evidence to contrary].)

Next, OCTC argues that on September 20, 2017, in a declaration in superior court for another case involving the Gosey Trust,¹⁷ Bradshaw falsely claimed that he had no financial or ownership interest in Bay Construction and that he took no funds from the Gosey Trust. Further, OCTC claims that Bradshaw's statements, signed under penalty of perjury, were permeated with half-truths, omissions, and outright misstatements of fact. Bradshaw argues that the evidence does not establish OCTC's claim. We agree. As discussed previously, we do not find sufficient evidence in the record that Bradshaw had a financial interest in Bay Construction.

As for OCTC's argument that Bradshaw had an ownership interest in Bay Construction, our review of the record indicates that he had no ownership interest.¹⁸ The hearing judge found that Bradshaw lacked credibility regarding his testimony that he had "limited control" of Bay Construction. However, she premised that finding on his testimony being "contradicted by numerous credible exhibits, as well as the testimony of Mr. Gonzalez and other witnesses," though she does not specify on which particular exhibits and witnesses she relies, except for Gonzalez. Upon our review of the record, we can find no other witnesses who testified that Bradshaw had control of Bay Construction. Further, all the documents in the record indicate Gonzalez's ownership of Bay Construction, including those regarding corporate action as the sole shareholder, and are executed with Gonzalez's signature. Finally, we find no evidence that Bradshaw "took" money from the Gosey Trust. While the record shows that money was paid

¹⁷ *In Re The Gosey Revocable Living Trust Dated January 3, 2007*, San Francisco County Superior Court No. PTR-17-301118.

¹⁸ We note that Gonzalez testified that Bradshaw orally told him that Bay Construction's ownership would be split in favor of Bradshaw at 51 percent to Gonzalez's 49 percent. However, while testifying to this ownership split, Gonzalez also testified that an employee of CSLB and someone from the district attorney's office had interviewed him as part of a potential criminal investigation. We also note that, at least twice, Gonzalez's answers to Bradshaw's attorney's questions were inconsistent.

from Bay Construction to Bradshaw's law firm, nowhere does the record show that Bradshaw directly took money from the trust. In fact, the record shows that Bradshaw, at least to the point of trial in this matter, has deferred any fees that he may have been entitled to take as the trustee.¹⁹

We conclude that none of the findings by the hearing judge on this count can be upheld based upon the record,²⁰ and the request by OCTC for additional findings in its appeal must also be rejected as not supported by the record. We therefore dismiss count four with prejudice.

B. Count One: Moral Turpitude—Scheme to Defraud (§ 6106)

1. Introduction

In count one, Bradshaw is charged with violating section 6106 by engaging in a scheme to defraud and committing an act or acts involving moral turpitude, dishonesty, or corruption. Even if individual acts do not involve moral turpitude, a pattern of misconduct may amount to moral turpitude. (See *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1, 14 [attorney committed similar acts in numerous matters which amounted to overall pattern of misconduct constituting moral turpitude].)

Based on her review of the record, the hearing judge stated that she found the evidence demonstrated that Bradshaw engaged in a prolonged scheme to defraud the Gosey Trust. That scheme included making misrepresentations in court documents regarding his financial affiliation with Bay Construction and failing to disclose his true affiliation to the court so he could continue to function as trustee; hiring and paying an unlicensed contractor for services that were required to be performed by a licensed contractor; and requesting first and second reverse mortgages on Gosey's home for the purported purpose of providing for Gosey's care while

¹⁹ To the extent that OCTC meant that his taking money is an act of misappropriation, we address this under count three, discussed below.

²⁰ See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 638 [deference given to hearing judge's credibility-based findings unless specific showing that such were made in error].

concealing from the court that he intended to use substantial amounts of the trust money on construction for Gosey's home.²¹ The hearing judge also found that Bradshaw perpetuated this scheme "by running Bay Construction from the shadows," and he incorporated, funded, and controlled the finances of Bay Construction so that he could self-deal with the trust clandestinely and circumvent his duties as trustee. Finally, the judge found that Bradshaw attempted to defraud the trust by trying to eliminate court supervision during the time he paid Bay Construction \$157,246.76.

Bradshaw asserts on appeal that he did not engage in a scheme to defraud Gosey or the trust. Specifically, he argues that, because the hearing judge did not find him culpable of misappropriation under count three, he could not have engaged in a scheme to defraud. We reject Bradshaw's argument that a dismissal of count three necessitates a dismissal of count one. We focus our analysis instead on Bradshaw's argument that the judge's findings of fact establishing culpability on this count are in error. On review, OCTC agrees with the hearing judge's analysis of Bradshaw's culpability under count one and asserts that the decision clearly delineates Bradshaw's acts as a scheme to defraud the trust. OCTC also asserts that Bradshaw has not established any reasonable doubts or errors concerning the judge's findings.

2. The Finding Regarding Misrepresentation of Bradshaw's Affiliation with Bay Construction

As discussed earlier in the opinion, we find that the evidence does not establish that Bradshaw was the owner of Bay Construction. Nor does it establish that he had control of the company. Even if Bradshaw had owned or otherwise had actual control of Bay Construction, the trust's provision regarding limitations on loyalty clearly would have allowed him to have a

²¹ Count one of the FANDC alleged several actions by Bradshaw that compromised the scheme to defraud. The hearing judge did not find all of those actions in determining his culpability under this count. Because OCTC did not seek to have additional findings of fact under this count considered in its appeal, we limit our review to only those facts as found by the judge. (Rules Proc. of State Bar, rule 5.152(C).)

business relationship with the trust, as long as he did not act in bad faith or in disregard of the purposes of the trust, the services provided were necessary, and the services were at fair market value. Handelman testified that trust provisions modifying the statutory duty of loyalty are standard and provide for greater flexibility in trust administration. No clear and convincing evidence establishes that Bradshaw made misrepresentations about his connection to Bay Construction or that he did so as part of a scheme to defraud the trust.

3. The Finding that Bradshaw Hired and Paid an Unlicensed Contractor for Services that Required a Licensed Contractor

Bradshaw asserts that the hearing judge's finding—that he defrauded the trust when he hired an unlicensed contractor for services required to be performed by a licensed contractor—was erroneous. This finding was brief and we are uncertain how the judge meant it to relate to the alleged scheme to defraud. At oral argument, OCTC sought to clarify this point by arguing that, when the trust paid for work to be done by a licensed contractor and it was done instead by an unlicensed contractor, the result is a fraud on the trust. As discussed previously, we find that Bay Construction was licensed when it was paid for Gonzalez's work on Gosey's home in 2015.²² Additionally, the construction expert Kelley testified that the work was of competent quality. Accordingly, we do not find that hiring and paying Gonzalez and Bay Construction show that Bradshaw schemed to defraud the trust.

²² Carlos Marquez, a 31-year CSLB employee, testified that the CSLB would not have issued the license to Bay Construction if it had known that Invernon was not going to fulfill his duties as RMO. However, this conclusion after the fact does not negate that Bay Construction had an active license when the work was done on Gosey's home. Marquez also testified that the RMO has full liability for the work done, even if the license is being used by another person or entity. Further, he testified that a consumer would not be in violation of the law for using an unlicensed contractor, only the unlicensed contractor would be. Finally, DBI signed off on the permits for the work on Gosey's home, and we see no reason why it would have done so if Bay Construction, the entity listed on the permits, did not have an active and valid license.

4. The Finding Regarding Bradshaw's Purpose in Obtaining Reverse Mortgages

Bradshaw argues that his requests to obtain reverse mortgages on Gosey's home do not show a scheme to defraud. He correctly asserts that, as the trustee, he was obligated under the trust's purposes to use trust assets, comprised mostly of the equity in Gosey's home, to pay for her care and to ensure that she could remain in a home that was safe for her. He reiterates that the work done on Gosey's home was necessary, for a reasonable price, and competently done. OCTC does not assess the relationship of the reverse mortgages to the alleged scheme to defraud beyond asserting that we should affirm the hearing judge's finding that Bradshaw concealed from the court that he intended to use the trust money for construction on Gosey's home.

Bradshaw also contends that the timeline does not suggest that he requested the mortgages in order to defraud the trust. He first petitioned for a reverse mortgage in February 2014 when he was clearly aware that, because of Gosey's need for full-time care, access to her home's equity would be required. Later, some of those funds were used to pay for emergency repairs, which were necessary and consistent with Gosey's expressed desire to remain in her home. The bulk of the construction costs did not occur until January 2015 and continued through November of that year. Bradshaw did not apply for a second reverse mortgage until July 2016, when Bay Construction was no longer an operating business. He asserts that it would be illogical to file for a second reverse mortgage in order to defraud the trust through a construction company that no longer had a license.²³ We agree.

We do not find clear and convincing evidence that Bradshaw improperly concealed from the court the intended purpose of the money from the reverse mortgages. We again emphasize that Bradshaw had the duty to use trust funds to care for Gosey and ensure that she remained in her home. Due to the construction costs, the funds from the first reverse mortgage were depleted

²³ Nonetheless, Bradshaw clearly described the construction work performed by Bay Construction and the costs for the work in his petition for a second reverse mortgage.

sooner than he anticipated, and Bradshaw then asked for a second reverse mortgage, which was granted. OCTC did not prove that Bradshaw's requests for reverse mortgages, which were granted by the court, were connected to a scheme to defraud the trust.

5. The Finding that Bradshaw Ran Bay Construction from the Shadows

We disagree with the hearing judge's finding that Bradshaw perpetrated his scheme to defraud "by running Bay Construction from the shadows." While Bradshaw did incorporate Bay Construction and provided money to it in order to help Gonzalez, clear and convincing evidence does not exist to show that Bradshaw controlled or owned Bay Construction. His actions concerning Bay Construction do not demonstrate that he attempted to avoid his duties as trustee—quite the contrary. Accordingly, we do not find that Bradshaw ran Bay Construction from the shadows in an attempt to defraud the trust.

6. The Finding that Bradshaw Avoided Court Supervision in Order to Defraud

Bradshaw insists that his attempts to eliminate court supervision over the trust do not show a scheme to defraud. We agree. Bradshaw maintained that he sought to eliminate court supervision in order to keep costs down. Robello testified that eliminating court supervision over the trust would save costs. Notably, she also testified that court supervision is normally not necessary because the Gosey Trust was an existing trust, not created by the court, with a named person acting as the trustee. She explained that court supervision usually occurs when the court actually creates the trust. We see no reason to not rely on her un rebutted testimony.

OCTC argues that Bradshaw's attempts to eliminate court supervision over the trust show that he was endeavoring to defraud the trust. OCTC requests that we affirm the hearing judge's finding that Bradshaw paid Bay Construction \$157,246.76 after filing the First and Final Report and Account because he believed that court supervision would be terminated. OCTC concludes that Bradshaw wanted to eliminate court supervision, thus foregoing attorney fees, in order to

gain unfettered access to the trust assets. We disagree. Both Bradshaw and Robello testified that they sought to eliminate court supervision to decrease costs. The hearing judge and OCTC relied on an inference that Bradshaw did so for a fraudulent purpose, but clear and convincing evidence was not produced to support such an inference.

7. Culpability for Scheme to Defraud Not Established

We reverse the hearing judge's factual findings regarding culpability under count one.²⁴ None of Bradshaw's actions, described above and taken together, amount to a scheme to defraud. OCTC did not present clear and convincing evidence that his actions constituted moral turpitude or that he acted dishonestly to defraud the trust. Accordingly, we do not find that Bradshaw engaged in a scheme to defraud the trust in violation of section 6106. Because we find a lack of evidence, count one is dismissed with prejudice.

C. Count Two: Breach of Fiduciary Duty (§ 6068, subd. (a))

In count two, OCTC alleges that Bradshaw violated section 6068, subdivision (a), by breaching the fiduciary duties²⁵ he owed to Gosey and the beneficiaries of her trust.²⁶ The hearing judge found Bradshaw culpable.²⁷ The judge specifically found that Bradshaw willfully

²⁴ *In the Matter of Bach*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 638.

²⁵ In the FANDC, OCTC alleged that Bradshaw breached "common law fiduciary duties" he owed to Gosey and the beneficiaries of the trust. However, the nature of the duties arising out of trust relationships is primarily statutory. (*Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 271–272.) Therefore, our analysis here is concentrated on the law of trusts under the Probate Code.

²⁶ In count two, OCTC included the alleged actions committed by Bradshaw that it used in count one to charge engaging in a scheme to defraud. As with count one, OCTC did not seek to have additional findings of fact considered in its appeal for count two. Again, we limit our review to only those facts found by the judge. (Rules Proc. of State Bar, rule 5.152(C).)

²⁷ The hearing judge excluded a portion of Handelman's testimony regarding his conclusions of law that Bradshaw satisfied the standard of care under Probate Code section 16040, met his duty of loyalty to Gosey and the beneficiaries, and met his duty to avoid conflicts. On review, we may not disturb the judge's ruling on the admissibility of opinion evidence absent an abuse of discretion. (*Amtower v. Photon Dynamics* (2008) 158 Cal.App.4th 1582, 1599.) Further, the use of a lawyer as an expert witness to give an opinion on the

violated the duty of loyalty and the duty to avoid conflicts by “surreptitiously and repeatedly” hiring Bay Construction to perform work on Gosey’s home between January 2015 and February 2016. She found that Bay Construction was Bradshaw’s company and that he did not disclose his affiliation with Bay Construction. The judge also found that Bradshaw did not “earnestly seek out and obtain bids from licensed contractors.” The judge concluded that Bradshaw knew the work done by Bay Construction was not supervised by a licensed contractor because he had “orchestrated the arrangement” with Invernon.

Section 6068, subdivision (a), provides that it is the duty of an attorney to “support the Constitution and laws of the United States and of this state.” The law requires that a trustee administer the trust *according to the terms of the trust*, and with reasonable care, skill, and caution as a prudent person acting in similar circumstances. (Prob. Code, §§ 16000, 16040, subd. (a).) Additionally, trustees have a duty of loyalty: they must “administer the trust solely in the interest of the beneficiaries.” (Prob. Code, § 16002.) The duty to avoid conflicts of interest provides that a trustee will not “use or deal with trust property for the trustee’s own profit or for any other purpose unconnected with the trust” (Prob. Code, § 16004, subd. (a).) As a fiduciary, a trustee has a duty “to act with the utmost good faith” (*Hearst v. Ganzi* (2006) 145 Cal.App.4th 1195, 1208.)

The Gosey Trust indicated that its prime purpose was to promote the health, maintenance, comfort, and support of Gosey. Also, Gosey indicated that she wanted to stay in her home and that her estate assets should be used to avoid placing her in a rest home. Bradshaw testified that the repairs and construction done on Gosey’s home, which was over 100 years old, were necessary to allow Gosey to remain in her home. OCTC did not present any evidence showing

application of the law to particular facts is inadmissible. (*Summers v. A.L. Gilbert Co.* (1999) 69 Cal.App.4th 1155, 1179–1180.) We find no abuse of discretion in the hearing judge’s exclusion of Handelman’s testimony as it related to his opinions regarding ultimate conclusions of law, and we do not rely on those conclusions of law here.

that the work was not necessary. Further, the uncontradicted evidence at trial established that the work was of competent quality and done for fair market value.

Bradshaw asserts that he did not breach his fiduciary duty to Gosey or the beneficiaries. He argues that he met the primary fiduciary duty of administering the trust according to its terms and in compliance with Probate Code section 16000. We agree. As conservator and trustee, Bradshaw was tasked with providing for Gosey's care and doing all that was possible to allow her to stay in her home. By obtaining reverse mortgages, arranging for Gosey's care, and maintaining her home at a fair cost so that she could stay there, he fulfilled his fiduciary duties under the trust. As discussed above, he was not required to disclose to the court his connection to Bay Construction because he did not own or control it. The evidence shows that Bradshaw properly performed his fiduciary duties by administering the trust for Gosey's benefit.

In addition, we find that Bradshaw did not breach his duty of loyalty or his duty to avoid conflicts of interest. Under the terms of the trust, even if he owned or controlled Bay Construction, he had the ability to do business with the trust as long as he did not act in bad faith or in disregard of the purposes of the trust. OCTC argues a rebuttable presumption exists that Bradshaw violated his fiduciary duties under Probate Code section 16004, subdivision (c), because he "gained an advantage by hiring his own construction company to do the work on Gosey's home." Probate Code section 16004, subdivision (c), provides that if a trustee "obtains an advantage" in a transaction between the trustee and a beneficiary, then it is "presumed to be a violation of the trustee's fiduciary duties," but OCTC did not present any evidence that Bradshaw received an advantage within the meaning of Probate Code section 16004, subdivision (c). No evidence in the record demonstrates that Bradshaw dealt with the trust for his own profit, made a deal that was unconnected to the trust's purpose, or took part in a transaction that was adverse to the trust beneficiary. Bradshaw presented evidence from Phillip

Allman, an economist who analyzed the cash flow between Bradshaw and Bay Construction, who determined that Bradshaw was still owed over \$30,000 from Bay Construction based on his loans to it and other payments made on Gonzalez's behalf. Bradshaw presented un rebutted evidence that he did not obtain an advantage from his dealings with Bay Construction and the Gosey Trust.

As to the hearing judge's finding that Bradshaw breached his fiduciary duties by failing to seek bids from licensed contractors, the evidence presented at trial showed that Bradshaw was not required to seek additional bids.²⁸ The evidence presented was that the work performed by Bay Construction was competent and done at fair market value. In addition, no clear and convincing evidence exists that Bradshaw knew that Invernon was not supervising the construction on Gosey's home as the judge found. The evidence here shows that Bay Construction had an active license when it repaired Gosey's home.

We do not find clear and convincing evidence that Bradshaw breached his fiduciary duties by acting unreasonably, in bad faith, or in disregard of the trust's purposes. Additionally, we do not find clear and convincing evidence that Bradshaw violated his duty of loyalty or his duty to avoid conflicts. Therefore, count two is dismissed with prejudice.

D. Count Three: Moral Turpitude—Misappropriation (§ 6106)

In count three, the FANDC alleges that Bradshaw misappropriated \$157,246.76 from the Gosey Trust to Bay Construction, which OCTC alleged was his construction company. The hearing judge determined that "a charge of misappropriation is not appropriate under the present facts and circumstances." The judge found that no clear and convincing evidence existed to establish that Bay Construction did not perform the work for which it was retained or that the amount paid to Bay Construction exceeded market rates. Therefore, the judge dismissed

²⁸ Handelman, Rasch, and Jeremiah Raxter, attorney for one of the beneficiaries, all testified that a trustee is not required to obtain competitive bids.

count three with prejudice. Upon our independent review, we also find insufficient evidence to support a charge of misappropriation here.

An attorney clearly violates section 6106 when that attorney engages in misappropriation. (See *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 278 [“Section 6106 prohibits an attorney from engaging in any act involving moral turpitude . . . , and ‘[t]here is no doubt that the [willful] misappropriation of a client’s funds involves moral turpitude [Citations]’”].) Additionally, “an attorney’s failure to use entrusted funds for the purpose for which they were entrusted constitutes misappropriation. [Citation.]” (*Baca v. State Bar* (1990) 52 Cal.3d 294, 304.)

On review, OCTC challenges the hearing judge’s dismissal of count three, arguing that Bradshaw diverted and wrongfully appropriated Gosey’s trust funds for his own benefit as owner of Bay Construction in violation of section 6106. OCTC asserts that the judge focused on “factors . . . immaterial” to culpability. Specifically, OCTC asserts that “culpability for misappropriation is not based on whether the work was performed or at what cost, but . . . whether [Bradshaw] wrongfully appropriated Gosey’s funds for his own use and benefit, regardless of whether Gosey received any indirect or residual benefit.”²⁹ Bradshaw argues that he could not misappropriate funds because he did not own Bay Construction and the work done by it was “actually performed at fair market prices.”

In examining if Bradshaw misappropriated Gosey Trust funds to Bay Construction, OCTC has the burden to prove by clear and convincing evidence that such a misappropriation occurred. Returning again to the trust language, Bradshaw had the duty as Gosey’s trustee to administer the trust funds as specified in the trust, which emphasized, as a priority, using trust

²⁹ We focus our analysis only on whether Gosey Trust funds were misappropriated to Bay Construction, as specifically pled in count three of the FANDC. Our discussion that Bradshaw did not personally benefit from the trust funds, as now argued on appeal, is discussed under count two as a breach of fiduciary duty.

assets to keep her safely in her home. Bradshaw exercised this authority by using trust fund money to pay Bay Construction for work it did on Gosey's home. Bradshaw provided evidence that the projects undertaken by Bay Construction were necessary, through his testimony and those of the construction expert Kelley and Gonzalez; however, OCTC provided almost no testimony or documentation to refute this production of evidence.³⁰ Kelley also provided unrebutted testimony that all the projects performed by Bay Construction were competently done, and that the charges made by Bay Construction to the Gosey Trust for all the work performed were reasonable, given the difficulty of working on a home of that type and age³¹ and given market prices in San Francisco at the time for similar work.

Accordingly, no evidence supports misappropriation of the \$157,246.76 paid by the Gosey Trust to Bay Construction. Because OCTC did not meet its burden of proof, we dismiss count three with prejudice.

E. Count Five: Unlawfully Acting as a Contractor Without a License (§ 6068, Subd. (a); § 7028)

The hearing judge found no clear and convincing evidence demonstrating that Bradshaw engaged in the construction business without a contractor's license, in violation of section 7028. Therefore, the judge dismissed count five with prejudice, which OCTC does not challenge on review. We agree with the hearing judge's decision to dismiss count five with prejudice.

³⁰ For example, regarding the stairs, Bradshaw testified that he began a small repair job that led to the stairs having to be replaced to conform to San Francisco's current building code. Kelley testified that upon his review of the permits and other documentation, the likely scenario was as Bradshaw described in that, once DBI came to inspect the repair work, it concluded that more than 50 percent of the stairs had to be repaired, which then required that the repaired stairs had to be nonetheless replaced. Further, Gonzalez testified that he did not perform any unnecessary work on Gosey's property; in fact, he testified that the staircase was in a "dangerous" condition. The only evidence that could call into question Bradshaw's evidence is that Lewis testified that she noticed nothing wrong with the stairs, other than a loose handrail.

³¹ Kelley estimated that Gosey's home was built in the early 1900s.

IV. ORDER

As Drexel Andrew Bradshaw is not culpable of the charges alleged in the FANDC, we order this case dismissed with prejudice. Bradshaw may move for reimbursement of costs in accordance with section 6086.10, subdivision (d), and rule 5.131 of the Rules of Procedure of the State Bar.

Because we order this case dismissed, pursuant to rule 5.111(D)(2) of the Rules of Procedure of the State Bar, we further order that Bradshaw's inactive enrollment, ordered September 2, 2018, under Business and Professions Code section 6007, subdivision (c)(4), be vacated upon the filing of this opinion. This order does not affect his ineligibility to practice law that has resulted or that may hereafter result from any other cause.

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.

APPENDIX B

FILED

AUG 30 2018

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No. 16-O-15558-YDR
)	
DREXEL ANDREW BRADSHAW,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 209584.)	ENROLLMENT
_____)	

Introduction¹

In this disciplinary proceeding, Drexel Andrew Bradshaw (Respondent) is charged with five counts of professional misconduct. The charged misconduct includes: (1) creating a scheme to defraud; (2) breaching fiduciary duties as a trustee; (3) misappropriation of entrusted funds; (4) making misrepresentations in various documents; and (5) violating section 6068, subdivision (a), by engaging in a contractor business without a license.

The court finds, by clear and convincing evidence, that Respondent is culpable of three of the five counts of misconduct. In light of the serious nature and extent of Respondent's misconduct, and after consideration of the factors in aggravation and mitigation, the court recommends that Respondent be disbarred.

///

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.



Significant Procedural History

On October 20, 2017, the Office of Chief Trial Counsel of the State Bar of California (OCTC) filed its original Notice of Disciplinary Charges (NDC) in this matter. On November 15, 2017, Respondent filed his response to the NDC.

Each party filed their pretrial statements by December 26, 2017. The pretrial conference was held on January 3, 2018. Each party identified witnesses they intended to call as experts. To facilitate an exchange of expert discovery and to address anticipated expert testimony, the court filed an order on January 10, 2018, requiring the parties to make each proposed expert witness available to opposing counsel for deposition or interview and to file and serve a summary of expert testimony, setting forth each opinion to be offered by each party's expert witness and specifics as to the basis for each opinion.

On January 10, 2018, the parties entered into a partial stipulation of facts. That same day, OCTC filed a motion to amend the NDC in this matter. The motion to amend was granted, and the First Amended Notice of Disciplinary Charges (First Amended NDC) was filed on January 11, 2018.

On January 16, 2018, Respondent filed his response to the First Amended NDC. That same day, the parties filed a stipulation regarding the authenticity of various trial exhibits. The parties later stipulated to the authenticity of additional trial exhibits, by way of a supplemental stipulation.

Trial commenced on January 16, 2018, and, due to scheduling conflicts, trial continued intermittently² until it concluded on May 4, 2018. OCTC was represented at trial by Senior Trial

² Trial was held January 16-19, 2018; February 6-8, 12-15, 2018; March 6-9, 2018; April 10-12, 2018; and May 1- 4, 2018. Before and during the trial, the court ruled on numerous motions in limine (MIL), including, but not limited to, the following: (1) Respondent's MIL to preclude testimony of Carlos Marquez, Contractors State Licensing Board (CSLB) Enforcement Supervisor – Denied; (2) OCTC's MIL to preclude Gosey Trust attorney from invoking the

Counsel Esther Rogers and Carla Cheung. Respondent was represented by Jonathan Arons and Thomas O'Brien.

The parties filed closing argument briefs on June 1, 2018. This matter was taken under submission that same day.

On June 6, 2018, Respondent filed an objection to OCTC attaching non-trial exhibits in its closing brief and moved to strike those exhibits (motion to strike). In the motion to strike, Respondent argued that OCTC was relying on exhibits that were not admitted at trial and was attempting to circumvent the 35-page closing brief page limit. On June 14, 2018, OCTC filed an opposition to the motion to strike. In its opposition, OCTC argued that the attachments were not evidence and, instead, were provided to summarize the voluminous evidence presented at trial. On June 14, 2018, Respondent filed a reply to OCTC's opposition to the motion to strike.

After thorough consideration, the court concludes that the attachments included with OCTC's closing brief do not constitute new evidence and do not violate the page limit.³ Accordingly, the motion to strike is denied, no good cause having been shown.

Findings of Fact and Conclusions of Law

The following findings of fact are based on Respondent's response to the First Amended NDC, the stipulations of undisputed facts filed by the parties, and the documentary and testimonial evidence admitted at trial.

Respondent was admitted to the practice of law in the State of California on December 4, 2000, and has been a member of the State Bar of California since that time.

attorney-client privilege – Granted; (3) Respondent's MIL to exclude testimony of Jeremiah Raxter – Denied; (4) OCTC's MIL to exclude expert testimony of Albert Handelman – Denied; and (5) OCTC's MIL to exclude expert testimony of Phillip Allman – Denied.

³ See Rules of Practice of the State Bar Court, rule 1110(g) [closing brief page limit shall not include attachments].)

Case No. 16-O-15558 – The Gosey Trust Matter

Facts

The Ora Gosey Trust

In 2006, Ora Gosey retained Respondent's law firm, Bradshaw & Associates, P.C., to represent her in a landlord/tenant matter. At Ms. Gosey's request, Respondent's firm also prepared an estate plan for her. The estate plan included the drafting of Ms. Gosey's will and the Gosey Revocable Living Trust (Gosey Trust). (Exh. 34, pp. 220-246.) Ms. Gosey executed her will and the Gosey Trust on or about January 3, 2007. Ms. Gosey had no children or spouse at the time the estate plan was prepared. The Gosey Trust document provided that Ms. Gosey was the initial trustee. Upon Ms. Gosey's death or disability, her former partner, Thomas Bush, was identified as the first successor trustee. Ms. Gosey's friend of many years, Willie Cole, was listed as the second successor trustee. Respondent's firm was named as the third successor trustee.

The Gosey Trust was established for three primary purposes: (1) "To provide for the care and maintenance of [Ms. Gosey] as long as [she] is living;" (2) "To facilitate management of the trust property in the event of [Ms. Gosey's] incapacity;" and (3) "To facilitate transfer of the trust property on death of [Ms. Gosey]." (Exh. 34, p. 221.) The Gosey Trust provided that the trust property was to include Ms. Gosey's home (located in the Cole Valley neighborhood of San Francisco, California), the rental unit at Ms. Gosey's home, and the contents of both.⁴

It was Ms. Gosey's strong preference to remain in her residence, even if she became incapacitated. Her will provided the following:

⁴ In addition to Ms. Gosey's home, the initial trust estate also included Ms. Gosey's bank, stock brokerage, and other financial and securities accounts; intangible property; vehicles; interest in any business; her personal property; and other real property. Although the trust characterized these assets as part of the trust corpus, these assets were not transferred into the trust until 2014, after Respondent was appointed conservator.

In the event I become incapacitated as defined by the Gosey Revocable Living Trust, the Trustee or my Personal Representative may apply or expend all or a part of the income and principal of said Trust, or both, for my comfort, health and maintenance in my accustomed manner of living. The Trustee or my Personal Representative shall expend as much of the Trust estate as necessary to avoid placing me in an assisted living community, home for the elderly, or the like. It is my express preference, and direction, that the Trust property be used to enable me to remain in my residence, located at 1121 Cole Street, San Francisco, California 94177 for the remainder of my life.⁵

(Exh. 34, p. 244.)

The Gosey Trust also included the following provision:

Limitations on Trustee's Duty of Loyalty. As long as the Trustee does not act in bad faith or in disregard of the purposes of the Trust, it is not a breach of the Trust for the Trustee to take any of the following actions:

5. Employ the Trustee, a relative of the Trustee, or a business in which the Trustee has an interest, to perform needed services for the Trust or any business in which the Trust has an interest and pay compensation not exceeding fair market value."

(Exh. 34, p. 229.)

For several years after the finalization of her estate plan, Ms. Gosey had no contact with Respondent or his firm.

On or about August 5, 2013, Ms. Gosey fell in her home. Ms. Gosey's tenants, who lived in her home in the unit below her, learned of her injury and began assisting her by providing her meals. Within a few days, however, Ms. Gosey began to refuse to eat or drink anything. The tenants, concerned about her health, requested that Adult Protective Services (APS) visit Ms. Gosey. When APS arrived, Ms. Gosey, who was lucid at the time, refused APS's offer to assist.

About two weeks later, Ms. Gosey was hospitalized. Upon request of the hospital social worker, one of Ms. Gosey's tenants searched her home for information regarding someone to contact about Ms. Gosey's condition. Ms. Gosey's tenant located her estate documents and contacted Respondent.

⁵ Ms. Gosey's desire to remain in her home was also reflected in her December 7, 2006 holographic will. The holographic will stated, "If I become ill I want to remain at home, not in a rest home. The equity in the home can be used to care for me." (Exh. 1053.)

Respondent met Ms. Gosey and her tenant at the hospital. Ms. Gosey informed Respondent that there was a substantial amount of cash in her home. Respondent located Ms. Gosey's stash of \$43,243 in cash, which he deposited into his client trust account.

After a period of hospitalization, Ms. Gosey's doctors determined that, due to her level of dementia impairment, she was unable to care for herself or for her estate. (Exh. 1005.) At that time, Respondent agreed to serve as Ms. Gosey's temporary conservator since the first and second successor trustees named in the Gosey Trust were unable or unwilling to serve.⁶

The Gosey Conservatee and Trustee Proceedings

Respondent retained Sheila Robello, Esq., to represent him with regard to the Gosey Trust. On or about August 30, 2013, Ms. Robello's office filed concurrent petitions with the probate court for temporary and permanent appointment of Respondent as the conservator of Ms. Gosey's person and estate. That matter was entitled *In the Matter of Conservatorship of the Person and Estate of Ora Gosey*, San Francisco Superior Court, case No. PCN 13-297063. (Exh. 1003, p. 1; Exh. 1004.) The petition for temporary appointment of Respondent as the conservator, which was signed under penalty of perjury by Respondent, included an attachment that inaccurately stated that Ms. Gosey had been removed from her home by Adult Protective Services. (Exh. 34, p. 150.)

Respondent was appointed temporary conservator of the person and the estate of Ms. Gosey on September 11, 2013. By order filed November 7, 2013, the probate court also appointed attorney Christine Del Sherpa to represent Ms. Gosey.⁷

As Ms. Gosey's temporary conservator, Respondent arranged for her to be cared for in her home by the Institute on Aging, a service which offered fulltime in-home care. The Institute on Aging ultimately cared for Ms. Gosey for nearly four years, i.e., from the time she was released from the hospital in or about September 2013 until she passed away in June 2017.

⁶ Ms. Gosey's first successor trustee was residing in an assisted living residence and her second successor trustee did not live in San Francisco and was unable to travel to fulfill the duties of the trustee.

⁷ Ms. Del Sherpa represented Ms. Gosey as her court-appointed attorney until she was discharged by court order filed January 7, 2015. (Exh. 34, p. 384.)

On or about November 14, 2013, Respondent was appointed permanent conservator of Ms. Gosey. At that time, Respondent requested that the probate court waive court accountings requiring court approval (under Probate Code section 2628) and/or terminate court oversight of the Gosey Trust, in order to reduce trust costs. Specifically, Respondent wrote, "Petitioner requests that the Trust not be under continuing court supervision as the additional expenses will only decrease the available assets for [Ms. Gosey]." (Exh. 34, p. 217.)

On November 25, 2013, Respondent filed a supplemental declaration in support of his court supervision termination request. In this declaration, Respondent wrote, "court and attorney fees involved in managing a court supervised trust are unnecessary in situations where the successor trustee is someone named by the settlor and where there is no indication of inappropriate use of trust (or conservatorship) funds." (Exh. 34, p. 193.)

On December 5, 2013, the probate court ordered Respondent to file a trust accounting for the period of December 2, 2013 through November 30, 2014. The order further provided that the court would retain jurisdiction over the Gosey Trust until filing and approval of the aforementioned accounting. (Exh. 34, p. 259.)

NJ Construction Repairs on Ms. Gosey's Home

In November 2013, repairs were needed to fix damage from a pipe that burst and flooded the upstairs unit and the kitchen of the downstairs rental unit at Ms. Gosey's home (the November 2013 Plumbing Repair). Respondent hired Juan Gonzalez, who had previously worked on small construction jobs for Respondent for many years, to perform the repairs. Mr. Gonzalez was doing business as "NJ Construction," but he was not a licensed contractor.

NJ Construction ultimately hired a licensed contractor (Celso's Plumbing) to supervise the November 2013 Plumbing Repair work. Ms. Gosey's homeowner's insurance policy paid \$21,484.53, which covered most of the November 2013 Plumbing Repair costs.

Between November 2013 and June 3, 2014, Respondent hired NJ Construction to work on additional smaller repair jobs at Ms. Gosey's home. NJ Construction was paid for those jobs by the Gosey Trust.

First Reverse Mortgage on Ms. Gosey's Home

On February 14, 2014, Respondent filed a petition for an order authorizing him to obtain a reverse mortgage on Ms. Gosey's home. This petition was filed in a matter entitled *In re: Gosey Revocable Living Trust*, San Francisco County Superior Court, case No. PTR-14-297499 (the Gosey Trust Case). (Exh. 34, pp. 6-13.) At the time Respondent filed the petition, Ms. Gosey's home was valued at approximately \$1.6 million and the property had no liens.

In the petition, Respondent stated that: (1) a reverse mortgage was necessary because Ms. Gosey's expenses exceeded her income by approximately \$7,147 per month and \$346,000 was needed for her support;⁸ (2) he had hired a contractor to repair a water leak and damage caused by the leak in Ms. Gosey's residence and that the cost of the damage and repair was \$23,926.21; (3) he received a reimbursement check from the insurance company in the amount of \$20,249.53, so the net cost of the repair to the Gosey Trust was \$3,676.68; and (4) there was a current cash balance of \$76,825.81, which would be exhausted by the end of November 2014. (Exh. 34, pp. 6-13.)

On April 1, 2014, the probate court granted Respondent's petition for a reverse mortgage. (Exh. 1022.) Thereafter, Respondent obtained a reverse mortgage and \$346,000 was paid to Respondent, as trustee, in two payments.

The Formation and Structure of Bay Construction, Inc.

From February until at least December 22, 2014, Respondent represented Mr. Gonzalez in his efforts to become a licensed contractor. Specifically, on February 4, 2014, Respondent entered into a retainer agreement with Mr. Gonzalez to "represent [Mr. Gonzalez] in seeking the issuance [of his] Contractor's License." (Exh. 1138, p. 1.) The retainer agreement provided that Mr. Gonzalez agreed "to appoint [Respondent] as [his] attorney-in-fact, to have full power and

⁸ Respondent estimated Ms. Gosey's care to be about \$10,351 per month, with about \$9,317 being paid to the Institute on Aging for Ms. Gosey's in-home care and \$1,034 for utilities, food, clothing, and other personal needs. (Exh. 34, p. 7.) Respondent estimated Ms. Gosey's monthly income to be \$3,204 a month. (Exh. 34, p. 7.)

authority to act on [his] behalf. The power of attorney expressly authorizes [Respondent] to execute, negotiate, and endorse any and all checks on [Mr. Gonzalez's] behalf." (Exh. 1138, pp. 2-3.) The retainer agreement also stated that Respondent charges \$495 an hour for his services. (Exh. 1138, p. 1.)⁹

In various ways, Respondent assisted Mr. Gonzalez in his efforts to become a licensed contractor. Respondent paid \$1,000 for Mr. Gonzalez to attend a pre-contracting licensing course, and, after the Contractor State Licensing Board (CSLB) denied Mr. Gonzalez's first application, Respondent instructed one of his associates to prepare Mr. Gonzalez's next CSLB application.

During this same general time period, Respondent's firm prepared the incorporation documents which formed a construction company by the name of "Bay Construction, Inc." (Bay Construction). Respondent signed, and his office filed, the Bay Construction Articles of Incorporation with the California Secretary of State on April 1, 2014. Respondent was Bay Construction's lawyer from its inception until it ceased to exist.¹⁰

In or about October 2014, Respondent contacted his then personal banker at Chase Bank and asked him to help Respondent open a checking account on behalf of Bay Construction. On October 24, 2014, Respondent signed the Bay Construction business checking account signature card which listed him as president of Bay Construction and stated that Bay Construction was

⁹ The veracity of the retainer agreement is suspect. It contradicts statements made by Respondent indicating that he was just trying to help Mr. Gonzalez get a leg up, including, as noted *post*, statements made in Respondent's September 26, 2016 declaration to the probate court. Also, while Respondent performed services for Mr. Gonzalez, there is no credible evidence that he promptly issued billing statements to Mr. Gonzalez.

¹⁰ Although Respondent was Bay Construction's lawyer, he did not maintain a ledger or contemporaneous billing statements or records of services provided to Bay Construction, which he maintained for his other clients.

located at his law firm's office address. (Exh. 31, p. 7.) Respondent was the sole authorized signer on the Bay Construction business checking account.

At the time Respondent opened the Bay Construction checking account, he deposited \$10,000 from his law firm's checking account into the Bay Construction checking account. As of the time of trial in this matter, neither Respondent nor his firm had purportedly been repaid by Bay Construction or Mr. Gonzalez for the \$10,000 initial deposit or the additional \$22,000 that Respondent contends he loaned to Bay Construction.

After several unsuccessful attempts to obtain Mr. Gonzalez's contractor's license, Respondent contacted a construction consulting firm, JaSet, to obtain advice as to how to improve Mr. Gonzalez's chances of getting his license. JaSet recommended that Respondent "rent a license" by retaining the services of a Responsible Managing Officer (RMO) to supervise Mr. Gonzalez. As Respondent conveyed to Mr. Gonzalez, Respondent understood that an RMO was required to be "engaged in the 'direct supervision and control' of the work. 'Direct supervision and control' includes any one or any combination of the following activities: supervising construction, managing construction activities by making technical and administrative decisions, checking jobs for proper workmanship, or direct supervision on construction job sites." (Exh. 1139.)

Respondent reached out to a licensed contractor named Raymond Invernon. Mr. Invernon was in his 70's and lived, at least part-time, in Idaho. Respondent retained Mr. Invernon to act as Bay Construction's RMO to supervise the Bay Construction work on Ms. Gosey's home. There is no credible evidence that Mr. Invernon actually supervised any of Bay Construction's work. Although almost all of Bay Construction's work on Ms. Gosey's home was performed by Mr. Gonzalez and Respondent's son, neither of them ever met or spoke with Mr. Invernon.

In November 2014, Mr. Invernon was paid with a \$1,000 Bradshaw & Associates, P.C. check. (Exh. 1186, p. 12.) On or about December 22, 2014, Mr. Invernon was paid an additional \$5,000 via an online transfer from the Bay Construction checking account. (Exh. 31, p. 19.)

With substantial assistance from Respondent and at no charge to Mr. Gonzalez or Bay Construction, the CSLB issued Bay Construction a Class-B license on December 22, 2014. (Exh. 1166.) Mr. Gonzalez was listed as the CEO/President of Bay Construction on the CSLB paperwork. Mr. Invernon was listed as the RMO that qualified Bay Construction for the license.

With Respondent's authorization, Bay Construction employed two payroll employees: Mr. Gonzalez and Respondent's then 19-year-old son, Colin Grey Bradshaw (Grey). Mr. Gonzalez was paid \$45 an hour.¹¹ Grey was hired in January 2015 as a handyman/employee who worked for the company from January through December of 2015. Grey had no real construction experience prior to working at Bay Construction, but Respondent asked Mr. Gonzalez to teach Grey the trade. Respondent paid Grey \$25 an hour for his services. For the most part, Grey negotiated permits with the San Francisco Department of Building Inspection and performed handyman tasks. Grey, who took two history of architecture courses during the fall of 2014, considered himself to be a self-taught architectural software engineer.

The Golden Gate Better Business Bureau (BBB) Membership Application submitted on behalf of Bay Construction on July 30, 2015,¹² lists Respondent as principal, "main contact," and billing contact for Bay Construction, while Mr. Gonzalez is listed as president and "additional

¹¹ Mr. Gonzalez also performed work on Respondent's home. He was paid \$65 per hour for that work. Respondent, however, reduced that rate to \$45 per hour for work performed on Ms. Gosey's home.

¹² It is not clear who submitted Bay Construction's BBB membership application. Respondent's secretary, Brea Violette, spoke with BBB representatives but did not recall submitting the application.

contact.” Respondent’s law firm’s phone and fax numbers were provided as contact numbers. In addition, a Bay Construction email address, Drexel@bayconstruction.com, was provided for both Respondent and Mr. Gonzalez. (Exh. 51, pp. 2-3.)

The January 2015 Flood Repair

On or about January 3, 2015, another significant plumbing problem occurred at Ms. Gosey’s home. This plumbing problem resulted in an uninhabitable condition in the rental unit which required the tenants to move from the rental unit for a period of time. Respondent again contacted Mr. Gonzalez to repair the damage to Ms. Gosey’s home and the rental unit. The January 2015 flood repair work was performed by Bay Construction. Respondent did not get a competitive bid from another company.

According to Respondent, he authorized and the Gosey Trust paid Bay Construction \$9,933.41 for the January 2015 flood repair work. (Exh. 34, pp. 444-445.)

The Gosey Trust’s First and Final Accounting

Respondent filed what he titled the Gosey Trust’s “First and Final Report” on February 3, 2015. (First and Final Accounting). The First and Final Accounting covered the period of December 2, 2013 through November 30, 2014. Among other things, Respondent requested that the court terminate its supervision over the trust and order payment to him for \$12,082.54 in compensation for services he provided to the trust, as well as payment for his lawyer’s attorney fees. (Exh. 11, pp. 3, 5.) Respondent also provided an itemization of the trust disbursements and assets on hand during the First and Final Accounting period.

In the First and Final Accounting, Respondent unequivocally stated “[D]uring the period of the account, there was no relationship or affiliation between Petitioner and any agent hired by Petitioner during accounting.” (Exh. 11, pp. 5-6.) Respondent failed to disclose that he was Mr.

Gonzalez's attorney and that he was in the process of financing and creating a construction business with Mr. Gonzalez.

By order filed July 31, 2015, the probate court granted Respondent's requests for compensation and attorney fees. The probate court, however, declined to terminate its supervision over the trust. (Exh. 34, pp. 64-65.)¹³

Replacement of Gosey Home Back Stairs

Prior to her August 2013 hospitalization, Ms. Gosey would spend time in her backyard and garden. After her hospitalization, however, Ms. Gosey would infrequently view the backyard and garden. On or about June 26, 2014, Respondent obtained a permit for the repair of the back staircase which he characterized in the permit paperwork as "not safe," "dangerous," and with visually apparent "significant rotting." (Exh. 34, p. 445.) About seven months after obtaining the permit for the "dangerous" stairs, Respondent authorized Mr. Gonzalez and the newly-licensed Bay Construction to replace the back staircase of Ms. Gosey's home (Back Staircase Replacement). Respondent did not obtain an assessment of the back staircase damage by a licensed contractor¹⁴ and did not obtain any competitive bids for the Back Staircase Replacement.

In total, the Gosey Trust paid Bay Construction \$48,909.20 for the Back Staircase Replacement. (Exh. 34, p. 445.)

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¹³ Respondent appealed the probate court's July 31, 2015 order, and, on July 29, 2016, the appellate court reversed the lower court's order continuing court supervision over the Gosey Trust. (Exh. 34, pp. 16-24.)

¹⁴ Mr. Invernon was the only licensed contractor affiliated with Bay Construction. There is no credible evidence that Mr. Invernon supervised the Bay Construction employees or inspected the work performed at Ms. Gosey's home.

Foundation Work Performed on Ms. Gosey's Home

Respondent believed that the rear foundation of Ms. Gosey's home required repairs after Ms. Gosey's tenant informed Respondent that her back door would no longer close¹⁵ and a pest control company informed Respondent that due to a termite infestation, the rear foundation had shifted. Without seeking competitive bids or a third party contractor's assessment of the foundation problem, Respondent determined that the foundation required repair (the Foundation Repair).

On May 11, 2015, Respondent submitted a \$40,735.05 Foundation Repair proposal to himself and Ms. Gosey on behalf of Bay Construction. (Exh. 17, pp. 68-70.) The proposal included a payment schedule providing for \$10,183.76 to be paid upon acceptance of the proposal; \$20,367.53 to be paid upon delivery of materials; and \$10,183.76 to be paid upon completion. Respondent signed the proposal as the individual submitting the proposal on behalf of Bay Construction.

Respondent then switched hats and, as trustee for Ms. Gosey, accepted the proposal and immediately provided Bay Construction with payment in full, even though no work had been performed. (Exh. 17, p. 24.)

Between May 12 and August 11, 2015, Bay Construction caused additional Foundation Repair proposals to be generated for which Respondent promptly authorized additional payments from the Gosey Trust. In total, Respondent authorized and paid Bay Construction \$70,793.36 from the Gosey Trust for the Foundation Repair work. (Exh. 34, p. 447.)

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¹⁵ The tenant informed Respondent that the back door became misaligned and would no longer lock after the back stairs were replaced. (Exh. 72, p. 63.)

Respondent's Additional Ties to Bay Construction

As laid out above, Respondent had numerous ties to Bay Construction.¹⁶ While Respondent's chosen title at Bay Construction oscillated from president, to attorney, to a non-participant, the evidence demonstrated that he was a principal at Bay Construction and that the business would not have operated without him. Also, Respondent, as the sole authorized signer on the Bay Construction checking account, had full control over the company's finances. Moreover, Mr. Gonzalez, who at various times was identified as president of Bay Construction, was, in actuality, an hourly employee, paid at an hourly rate set by Respondent.

These findings are based on the voluminous amount of evidence in the record, which includes, but is not limited to, the following additional examples of Respondent's affiliation, management, and control of Bay Construction.

The Noretha Jones Bay Construction Proposal

Noretha Jones was an elderly client who sought Respondent's legal advice regarding the eviction of tenants who set fire to her rental unit. Respondent prepared a Three Day Notice to Quit and referred Ms. Jones to Bay Construction to perform repairs to Ms. Jones's damaged rental unit. In a May 22, 2015 letter to Ms. Jones, Respondent advised her that he was "affiliated" with Bay Construction. Specifically, Respondent explained:

When I referred you to Bay Construction, Inc., I informed you that I was affiliated with Bay Construction, Inc., in that I am their attorney, I filed their articles of incorporation and am the initial agent for service of process, my staff provides back office support for them including phone support, and that we share a receptionist. My son also works for them. Should a dispute arise between you and them, I would not be able to represent either side as it would constitute a conflict of interest.

(Exh. 1109.)

¹⁶ Respondent's testimony regarding his limited connection and control of Bay Construction lacked credibility, as it was contradicted by numerous credible exhibits, as well as the testimony of Mr. Gonzalez and other witnesses.

Thereafter, a dispute arose between Ms. Jones and Respondent when Ms. Jones's daughter-in-law, Linda Lee, insisted on obtaining three bids for the construction repair work on Ms. Jones's unit. In or about October 2015, Respondent, Grey, and Mr. Gonzalez met with Ms. Lee to discuss the repair work. They presented her with a proposal of \$74,000. (Exh. 38, pp. 8-11.) Respondent left after Ms. Lee refused to sign Bay Construction's proposal without getting additional bids. Ms. Lee felt that Respondent was trying to pressure her into signing the proposal without getting competitive bids.

It was Ms. Lee's understanding that Mr. Gonzalez was the owner and contractor of Bay Construction, but she did not communicate with him. Instead, only Grey and Respondent communicated with Ms. Lee on behalf of Bay Construction. Also, she never met Mr. Invernon, nor did she get the sense that he was supervising Bay Construction.

Respondent asserted that Grey did over \$15,000 worth of drawings relating to Ms. Jones's repair project. This dispute ultimately resulted in Bay Construction placing a \$20,000 lien on Ms. Jones's property, even though no actual work was performed on Ms. Jones's property by Bay Construction.

The Bay Construction Corporate Executive Positions

Brea Violette was the secretary/office manager/paralegal at Respondent's office from May 2015 through July 2017. She never made any management-related decisions regarding Bay Construction or its finances. Nonetheless, Bay Construction's January 7, 2016 Statement of Information filed with the California Secretary of State listed Ms. Violette as the Chief Executive Officer, Chief Financial Officer, Agent for Service of Process, and Secretary for Bay Construction. (Exh. 21, p. 1.)

After Ms. Violette expressed concern about liability arising in connection with these Bay Construction roles, Respondent's firm caused an updated Statement of Information to be filed with the Secretary of State of California on March 17, 2016. The updated statement listed Mr. Gonzalez as Bay Construction's Chief Executive Officer, Chief Financial Officer, Agent for

Service of Process, and Secretary. The updated Statement of Information was certified with a stamp of Mr. Gonzalez's signature.

Amex Cards for Bay Construction

On two occasions, Respondent asked his wife to secure American Express (Amex) cards on behalf of Bay Construction under her name because she had good credit and a pre-existing relationship with Amex. The first Bay Construction card, a Lowes Amex credit card, was opened by Respondent's wife in or about July 2014. The Lowes Bay Construction Amex cards were issued to Respondent, Respondent's wife, and Grey.

Respondent's wife neither used nor paid the Lowes Bay Construction Amex card. The Lowes Bay Construction Amex card statements were sent to Respondent's law office. Respondent's assistant, Ms. Violette, performed account reconciliation and bookkeeping tasks for Bay Construction by entering the statement information for the Amex cards on Quickbooks. Respondent reviewed the Lowes Bay Construction Amex card bill and would either authorize or dispute payment of the charges.

From July through December 2014, the Lowes Bay Construction Amex card was only charged for Bay Construction work performed on Respondent's home and Respondent paid those charges from his own funds. However, between January 2015 and April 2016, according to Respondent's calculations, Respondent and Grey charged \$2,675.29 to the Lowes Bay Construction Amex card for personal items, such as the Presidio Social Club and snowboarding related expenditures at Northstar. (Exh. 1186.)

The second Amex card that Respondent's wife opened for Bay Construction was a platinum Amex Business card, opened in January 2015 (Amex Business card). Credit cards on the Amex Business account were issued to Respondent, Respondent's wife, and Ms. Violette. As with the Lowes Bay Construction Amex card statements, the Amex Business card account statements were sent to Respondent's office for his review and payment authorization.

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Second Reverse Mortgage on Ms. Gosey's Home

On or about July 19, 2016, Respondent filed a petition for a second reverse mortgage in the Gosey Trust Case. Respondent stated in that petition that the second reverse mortgage was necessary because Ms. Gosey's monthly expenses continued to exceed her income by approximately \$7,644 per month, and the remaining funds would be exhausted in two to three months. Initially, Respondent requested authorization to receive a lump sum disbursement of \$889,741.05, which would allow Respondent to pay off the existing reverse mortgage of \$410,052.74 and leave a principal balance of approximately \$479,000 for Ms. Gosey's monthly living expenses.

After Respondent had filed the petition for a second reverse mortgage, the probate court learned of a possible relationship between Respondent and Bay Construction. On August 3, 2016, the probate court appointed attorney Nancy Rasch to represent Ms. Gosey. (Exh. 34, p. 481.) Ms. Rasch was appointed to represent Ms. Gosey's interests with respect to both the conservatorship and the Gosey Trust.

On September 16, 2016, Ms. Rasch advised the probate court that Respondent had failed to disclose information to the court. Specifically, Ms. Rasch noted that Respondent failed to obtain bids for the work performed by Bay Construction, that Respondent had hired an unlicensed contractor (Mr. Gonzalez) to perform most of the repairs on Ms. Gosey's home, that Respondent was Mr. Gonzalez's attorney, and that Respondent's son was employed by Bay Construction. Ms. Rasch stated that she believed "this information was relevant to a determination about the reasonableness of the funds spent on repairs." (Exh. 34, pp. 476-477.)

Subsequently, on September 19, 2016, the court probate examiner issued a further written inquiry of Respondent, seeking the following:

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1) Need for Additional Mortgage.

- a) Based on the numbers provided in the petition to obtain the first reverse mortgage, granted on 4/1/14, the funds from the mortgage should have lasted about 4 years.
- b) It's just a little more than 2 years after that order, however, and the allegation is made that all the funds are exhausted.
- c) The petition states only that funds were spent on care services and repairs.
- d) Please explain how the funds were spent that resulted in such a quick depletion of available funds, including specific information about any and all repairs paid for with those funds.

(Exh. 34, p. 478.)

In response to the probate court's September 19, 2016 communication re: Respondent's affiliation with Bay Construction, Respondent submitted a first supplemental declaration on September 22, 2016. In that declaration, Respondent stated that "from the period December 1, 2014 through the present, most of the reverse mortgage proceeds were used to pay for necessary repairs to [Ms. Gosey's] real property and attendant care for [Ms. Gosey]." (Exh. 34, p. 444.) Throughout the first supplemental declaration, Respondent did not disclose any affiliation or relationship with Bay Construction. Instead, he repeatedly implied that Bay Construction was an independent and separate entity. Below are some of excerpts from Respondent's first supplemental declaration in which he referenced Bay Construction:

- Meanwhile, I called several contractors in an attempt to obtain bids to address the emergency repairs, but most of the contractors did not return my calls much less offer a bid. [Bay Construction]¹⁷ was the only contractor to offer a bid to address the emergency repairs. I believed that the lack of response or interest from the contractors was due to the availability of many larger construction projects in San Francisco at the time. (Exh. 34, p. 444.)
- Over the same period of time that the emergency flood repairs were being made, I also retained [Bay Construction] to perform the repairs on the stairs at the back of the property.... [¶] Initially, I retained [Bay Construction] to perform patchwork repairs on the stairs and to replace parts of the stairs in kind. Shortly after beginning the repairs, the

¹⁷ Throughout his first supplemental declaration, Respondent referred to Bay Construction as "Bay Design and Construction."

contractor discovered that the damage was much more extensive than initially anticipated. (Exh. 34, p. 445.)

- In February 2015, the downstairs tenant informed me that the rear door of the rental unit could no longer be locked. [Bay Construction], already on site for another job, inspected the building and discovered that (1) the foundation of the property had shifted significantly in a short period of time and (2) significant and related damage from woodboring beetles. [¶] Further investigation of the foundation showed dirt between the concrete and wood posts in the foundation had caused some permanent erosion. The investigation discovered the shift was caused in part by woodboring beetles which had infested and also destroyed the fence of the adjacent property. The damage by the woodboring beetles also caused significant damage to the foundation footings, causing the property to be in danger of collapse. I was concerned for the safety of the rental unit tenants, the potential liability of any harm to the tenants, as well as Ms. Gosey's safety and the value of the trust real property. Accordingly, I acted quickly to remedy the situation by retaining [Bay Construction] to address the significant damage. (Exh. 34, p. 446.)
- I coordinated several other repairs to the trust real property on behalf of the tenants in order to maintain the habitability of the rental unit. I made calls to other contractors but did not receive any returned calls or bids from them and ultimately retained [Bay Construction]. For instance, the water heater that supplied hot water for the entire building but located in the tenants' unit stopped consistently providing hot water to the tenant and to Ms. Gosey. Rather than reducing the rent or paying for the tenants to move into temporary housing, in November 2015 I arranged to have [Bay Construction] replace the old water heater and install a new one for \$4,030.00 as I believed it to be the most cost effective to make the repairs immediately. Then, in January 2016, the tenant informed me that he noticed water collecting in the basement. [Bay Construction] identified the source of the water being a leak coming from the waste drainage pipe from [Ms. Gosey's] bathroom. To access that pipe, the contractor had to go through the tenant's bathroom wall in order to replace the broken pipes and repair the damaged area. The total cost for these repairs was \$6,885.00. I acted quickly to avoid further damage or injury to the tenants and to avoid further costs to the trust. (Exh. 34, p. 447-448.).

On September 26, 2016, Respondent filed a second supplemental declaration upon his attorney's suggestion. In that declaration, he declared under penalty of perjury, in part, as follows:

I have known [Mr. Gonzalez], the principal of [Bay Construction], for a number of years. I became acquainted with Mr. Gonzalez when I hired him for some small construction jobs and as a handyman. I was impressed with Mr.

Gonzalez' [sic] work ethic, skills, and reliability. Mr. Gonzalez and I became friendly, though not socially so. When I became the conservator/trustee for Ms. Gosey, I employed Mr. Gonzalez for a number of construction jobs. As noted in my previous declaration, for many of those jobs I did call different contractors for quotes, but I rarely had calls back, and when I did the contractors were not interested in the job or my conservative price point. On other occasions, Mr. Gonzalez was already on-site for other jobs on Ms. Gosey's property, and it made sense from a financial and temporal stand point to hire Bay Construction for the job.

As we had become friendly, and Mr. Gonzalez struck me as a hard-working and skilled contractor who needed help getting a leg up; I allowed Mr. Gonzalez to use my office as a home base for Bay Construction for which I received no rental compensation or otherwise. I allowed him to receive mail and phone calls, meet with clients, and prepare bids/invoices for his clients. I also allowed him to use my receptionist for incoming calls but did not receive payment for this arrangement either.

When Mr. Gonzalez expressed interest in incorporating his business, I prepared the corporation documents and required filings with the Secretary of State although I received no compensation for this legal work. [Mr. Gonzalez's] corporation Bay Construction was licensed by the CSLB through a qualifying individual acting as the responsible managing officer. The qualifying individual or "qualifier" was Raymond Invernon who is a licensed contractor. Mr. Invernon then obtained the bond to activate the license. Otherwise, I have no relationship with Bay Construction or Mr. Gonzalez. I do not have, and never have had a financial interest in Bay Construction; nor have I received any financial benefit from Bay Construction or its construction projects.

During the course of Mr. Gonzalez's operation of his business, he hired [Grey] as a draftsman who performed drafting work for the repairs to Ora's home. [Grey] is my son. His decision to hire [Grey] was independently made by Mr. Gonzalez. [Grey] had been trained by a company in Florida to draft residential plan sets and still does that work on occasion for other contractors.

(Exh. 34, pp. 463-465.)

The clerk's September 27, 2016 minutes on the Second Reverse Mortgage petition court hearing reflect that the probate judge was concerned about Respondent's affiliated relationships with Bay Construction. The minutes reflect that the probate judge felt that the limited relationship, as described by Respondent, between Respondent and Bay Construction should have been disclosed in the petition. (Exh. 34, p. 460.) The court further indicated that it would want to know if a fiduciary was using his position to further a career or advance a business by

giving unbid work to an individual or corporation. (Exh. 34, p. 460.) During the hearing, Respondent also stated that Ms. Gosey's care provider agency, the Institute on Aging, was owed \$45,000 in unpaid invoices.¹⁸ (Exh. 34, p. 461.)

The September 27, 2016 minutes also reflect that after substantial argument regarding the propriety of a second reverse mortgage, Respondent lowered the requested amount necessary to provide for Ms. Gosey's care from \$479,000 to \$250,000. And Respondent's counsel, Ms. Robello, confirmed her understanding that the proceeds of the second reverse mortgage would be spent only on Ms. Gosey's care costs and living expenses. (Exh. 34, p. 462.)

On or about October 5, 2018, the court issued an order authorizing Respondent to obtain an additional reverse mortgage for up to \$250,000 on Ms. Gosey's home. (Exh. 34, pp. 468-469.) The order specifically directed that the use of the proceeds from the reverse mortgage were limited to payment of Ms. Gosey's care costs and living expenses.

Ms. Gosey's Passing

Approximately nine months later (on June 16, 2017), Ms. Gosey died at the age of 90. On November 4, 2017, counsel for Dolores Coleman, one of Ms. Gosey's beneficiaries, filed a petition to suspend Respondent as trustee. Ultimately, on January 25, 2018, the probate court suspended Respondent in his role as trustee and appointed an interim trustee. (Exh. 124.)

All told, Respondent authorized and made payments from the Gosey Trust to Bay Construction in the total amount of \$157,246.76. These transactions occurred between approximately January 26, 2015 and February 17, 2016.

Conclusions of Law

Count One – Section 6106 [Moral Turpitude-Scheme To Defraud]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The evidence before this court demonstrates that Respondent engaged in a prolonged scheme to defraud the

¹⁸ While Respondent was in arrears to Ms. Gosey's care provider, Bay Construction was routinely paid promptly and in full.

Gosey Trust, including but not limited to: (1) making multiple misrepresentations under penalty of perjury in court documents regarding his true financial affiliation with Bay Construction; (2) hiring and paying an unlicensed contractor for services that were required to be performed by a licensed contractor; (3) requesting first and second reverse mortgages on Ms. Gosey's home for the purported purpose of providing for Gosey's care while concealing from the court that Respondent intended to use substantial amounts of Gosey Trust money for construction on Ms. Gosey's home; and (4) by Respondent not disclosing to the probate court his true affiliation with Bay Construction so Respondent could continue to function as trustee.

Respondent perpetuated this scheme to defraud by running Bay Construction from the shadows. Respondent incorporated, funded, and controlled the finances of Bay Construction. By naming figurehead presidents and remaining in the shadows, he was able to self-deal with the Gosey Trust – and clandestinely circumvent his duties as trustee.

To perpetuate the scheme to defraud, Respondent repeatedly sought to eliminate court supervision over the Gosey Trust. When the probate court declined to terminate its supervision over the trust, Respondent appealed that ruling and got it overturned. In the first thirteen months after filing the First and Final Accounting and while Respondent thought court supervision of the trust would be terminated, Respondent paid Bay Construction a total of \$157,246.76 for various projects on Ms. Gosey's home.

By engaging in the scheme to defraud the Gosey Trust and its beneficiaries, Respondent committed acts involving moral turpitude, dishonesty, and corruption, in willful violation of section 6106.

Count Two – Section 6068, Subdivision (a) [Breach of Fiduciary Duty]

Section 6068, subdivision (a), makes it the duty of an attorney “[t]o support the Constitution and laws of the United States and of this state.” In Count Two, OCTC alleged that

Respondent violated section 6068, subdivision (a), by breaching the common law fiduciary duties he owed to Ms. Gosey and the beneficiaries of the Gosey Trust. This court agrees.

A trustee has a duty to administer the trust according to the trust instrument and, except to the extent the trust instrument provides otherwise, according to Probate Code section 16000, et seq. (Probate Code section 16000.) A trustee has a duty to administer the trust solely in the interest of the beneficiaries. (Probate Code section 16000.) A trustee also has a duty not to use or deal with trust property for the trustee's own profit nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary. (Probate Code section 16004.)

Under California law, trustees owe beneficiaries "the duty of loyalty, the duty to avoid conflicts of interest, the duty to preserve trust property, the duty to make trust property productive, the duty to dispose of improper investments, and the duty to report and account." (*City of Atascadero v. Merrill Lynch* (1999) 68 Cal.App.4th 445, 462.) A trustee is bound to act in the highest good faith toward the trust beneficiaries and must not occupy a position where his or her interests either conflict with those of the beneficiaries or even where the trustee is exposed to the temptation of acting contrary to the best interest of the beneficiaries. (*Grimmway Enterprises, Inc. v. PIC Fresh Global, Inc.* (E.D.Cal. 2008) 548 F.Supp.2d 840, 847.) Also, an "attorney who accepts the responsibility of a fiduciary nature is held to the high standards of the legal profession whether or not he acts in his capacity of an attorney." (*Worth v. State Bar* (1976) 17 Cal.3d 337, 341.)

Here, Respondent willfully violated his duty of loyalty and duty to avoid conflicts of interest by surreptitiously and repeatedly retaining his own construction company to perform work on the Gosey home between approximately January 2015 and February 2016. During this time span, Respondent did not disclose his affiliation with Bay Construction, nor did he earnestly

seek out and obtain bids from licensed contractors.¹⁹ Further, when Respondent repeatedly retained Bay Construction, he knew the work would not be supervised by a licensed contractor because he was the one who orchestrated the arrangement with Mr. Invernion in an effort to obtain the contractor's license for Bay Construction.

By knowingly and repeatedly violating the duty of loyalty and duty to avoid conflicts of interest that he owed Ms. Gosey as trustee of her estate, Respondent willfully violated section 6068, subdivision (a).

Count Three – Section 6106 [Moral Turpitude – Misappropriation]

In Count Three, OCTC alleged that Respondent misappropriated \$157,246.76 from the Gosey Trust by diverting those funds to Respondent's construction company, Bay Construction.

The court finds that a charge of misappropriation is not appropriate under the present facts and circumstances. While Respondent did engage in self-dealing, it has not been established by clear and convincing evidence that Bay Construction did not perform the work for which it was retained. And while the prices paid for the construction work by the Gosey Trust are suspect considering the absence of any competitive bids from independent contractors, it has not been established that the work performed exceeded market rates.²⁰ Accordingly, Count Three has not been established by clear and convincing evidence and is dismissed with prejudice.

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¹⁹ Respondent has asserted that he called other contractors at various times, but they either would not return his calls or would not give him an estimate. It is not credible or believable that no licensed contractors in San Francisco would provide Ms. Gosey with a written estimate, especially when Respondent's alleged attempts to obtain competitive estimates are considered in light of his self interest in Bay Construction.

²⁰ In addition, Respondent presented evidence from an expert witness that testified, without having seen the property before the construction, that the work on Ms. Gosey's home reflected good workmanship and the repair costs were generally reasonable.

Count Four – Section 6106 [Moral Turpitude - Misrepresentations]

It is clear that section 6106 applies to an attorney's false or misleading statements to a court or tribunal. (*In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 519.) "The actual intent to deceive is not necessary; a finding of gross negligence in creating a false impression is sufficient for violation of section 6106. [Citations.]" (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786; accord, *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 90–91.) Moreover, moral turpitude as a result of gross negligence may be found when a misstatement to a tribunal is made by staff on an attorney's behalf and the attorney takes no steps to correct the record, thereby ratifying the misrepresentation. (*In the Matter of Moriarty, supra*, 5 Cal. State Bar Ct. Rptr. at p. 519.)

OCTC alleged that Respondent violated section 6106 by knowingly or with gross negligence making numerous misrepresentations. The evidence at trial demonstrated the following misrepresentations by clear and convincing evidence:

- On August 30, 2013, Respondent falsely stated in his petition for temporary and permanent appointment of Respondent as the conservator that Ms. Gosey was removed from her home by APS;
- On February 3, 2015, Respondent falsely stated in the First and Final Accounting that between December 2, 2013 and November 30, 2014, "there was no relationship or affiliation between Petitioner and any agent hired by Petitioner during accounting;" and
- On September 26, 2016, Respondent falsely stated in his second supplemental declaration that Respondent had no financial interest in Bay Construction.²¹

As laid out above, all three of these statements were false. First, Ms. Gosey was not removed from her home by APS, and Respondent knew or should have known that his statement in his August 30, 2013 petition was false. Second, during the time period of Respondent's First

²¹ The additional misrepresentations alleged in the First Amended NDC were not established by clear and convincing evidence.

and Final Accounting, he had an attorney-client relationship with Mr. Gonzalez and he was in the process of forming Bay Construction with Mr. Gonzalez. Accordingly, Respondent knew that his February 3, 2015 statement that he had no relationship or affiliation with any agent hired by Respondent was false. And third, Respondent had extensive financial interests with Bay Construction, including but not limited to paying \$10,000 toward the initial startup, serving as the attorney of Bay Construction, and purportedly loaning additional proceeds to Bay Construction. As such, Respondent knew that his September 26, 2016 statement that he had no financial interest in Bay Construction was false.

By intentionally or with gross negligence making the aforementioned false statements, Respondent willfully violated section 6106.

Count Five – Section 6068, Subdivision (a) [Violations of the Law – Section 7028]

In Count Five, OCTC alleges that Respondent violated section 6068, subdivision (a), by engaging in the business of a contractor without a license, in violation of section 7028. Section 7028 provides that engaging in the business or acting in the capacity of a contractor without having a license is a misdemeanor. The evidence at trial demonstrated that Bay Construction had a contractor's license at the time the work was performed on Ms. Gosey's property. While the evidence indicates that Bay Construction's license was improperly acquired, section 7028 only applies to whether or not the contractor was licensed while engaging in the business.

Accordingly, Count Five has not been established by clear and convincing evidence and is dismissed with prejudice.

Aggravation²²

OCTC bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with respect to aggravating circumstances.

²² All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Prior Discipline (Std. 1.5(a).)

Respondent has previously been disciplined on one occasion. Effective June 11, 2009, he was privately reprimanded with conditions in State Bar Court case No. 07-O-11540. In that matter, Respondent stipulated to one count of failing to communicate involving his failure to adequately inform his client of the receipt of a check in the amount of \$47,500. In mitigation, Respondent had no prior record of discipline. No aggravating circumstances were involved.

The court assigns moderate weight in aggravation for Respondent's prior record of discipline.

Multiple Acts of Misconduct (Std. 1.5(b).)

Respondent's multiple acts of misconduct constitute an aggravating factor – warranting moderate weight in aggravation.

Significant Harm (Std. 1.5(j).)

Respondent's misconduct significantly harmed the administration of justice. Respondent's conduct, including his misrepresentations to the probate court, necessitated the need for the probate court to appoint counsel for Ms. Gosey and investigate why Ms. Gosey's trust proceeds were so depleted. (See *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171, 184 [attorney's misconduct harmed administration of justice by causing unnecessary litigation, compromising criminal cases, and negatively impacting public trust in judicial system].) Accordingly, the court assigns moderate weight in aggravation for the significant harm caused by Respondent's misconduct.

Lack of Insight and Remorse (Std. 1.5(g).)

Respondent has demonstrated a lack of insight, little or no remorse, and general indifference toward rectification of or atonement for the consequences of his misconduct. He did not demonstrate any recognition of or remorse for his wrongdoing and, instead, continues to

assert that he had no interest in or control over Bay Construction, despite overwhelming evidence to the contrary. “The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Respondent’s continued insistence that his conduct was appropriate is “particularly troubling” because it suggests that his disregard for his legal and professional obligations may recur. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 595.)

Respondent’s lack of insight, little or no remorse, and general indifference toward rectification of or atonement for the consequences of his misconduct warrants significant consideration in aggravation.

High Level of Vulnerability of Victim

As established above, Ms. Gosey’s doctors determined that, due to her level of dementia impairment, she was unable to care for herself or for her estate. In her impaired state, Ms. Gosey was highly vulnerable to trustee misconduct. Accordingly, the court assigns this factor substantial weight in aggravation.

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating circumstances.

Good Moral Character (Std. 1.6(f).)

Respondent presented testimony from seven witnesses with varied backgrounds who provided evidence about his good moral character. These witnesses included a lawyer and former employee who considers Respondent to be a friend (Clinton Woods); four former clients/friends (Janet Chuhakay, Ashley Hayes, Eric Lovitt and Lisa Hattig), a friend for over ten

years (Eric Dunn); and a retired superior court judge (Judge Ernest Goldsmith). All seven witnesses were knowledgeable about the nature of the charges against Respondent and at least three of his good moral character witnesses (Ms. Hayes, Ms. Hattig, and Mr. Lovitt) knew he had a prior record of discipline.

All seven witnesses testified that they know Respondent to be an honest, trustworthy person with integrity. However, this court affords limited weight to the testimony of two of Respondent's witnesses, Janice Chuhakay and Judge Ernest Goldsmith, because they only have personal knowledge about Respondent's performance of his duties as a lawyer but no personal knowledge about any other aspect of his character.

Ms. Chuhakay testified that over the past six years, Respondent has competently and effectively represented her on a pro bono basis in a family law matter. Ms. Chuhakay did not seem to know any more about Respondent than the manner in which he represented her in her family law case. While competent and effective representation of a client is always commendable, it is not an example of extraordinary good moral conduct and reflects only that Respondent has performed in a manner consistent with his ethical obligations to his client.

Judge Goldsmith's opinion of Respondent's good moral character was based on Respondent's numerous appearances before Judge Goldsmith in real estate matters. Judge Goldsmith characterized his relationship with Respondent as "purely professional" and stated he formed his opinion of Respondent primarily based on his communications with Respondent through court appearances, pleadings, and oral argument. Based on that interaction, Judge Goldsmith formed the opinion that Respondent is a good lawyer whose pleadings and factual representations are accurate. Again, while this is laudable conduct on Respondent's part, it is the type of ethical conduct expected of every lawyer and it is not evidence of extraordinary good moral character.

Based on the testimony of Respondent's character witnesses, this court affords Respondent moderate weight in mitigation for good moral character.

Cooperation with OCTC (Std. 1.6(e).)

Respondent entered into a partial stipulation of facts and stipulated to the authenticity of some of the trial exhibits. The parties' partial stipulation was extremely limited considering the complexity of this matter and the voluminous amounts of evidence presented at trial.

Accordingly, Respondent's cooperation with OCTC warrants only modest consideration in mitigation.

Discussion

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) The discipline analysis begins with the standards, which promote the consistent and uniform application of disciplinary measures and are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91 [Supreme Court will not reject recommendation arising from standards unless grave doubts as to propriety of recommended discipline].)

Standard 1.7(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present matter, the most severe sanction for Respondent's misconduct is found in standard 2.11 (moral turpitude) which provides, in part, that the presumed sanction is disbarment or actual suspension.

Due to Respondent's prior record of discipline, the court also looks to standard 1.8(a) for guidance. Standard 1.8(a) provides that if an attorney has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so

remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton, supra*, 36 Cal.4th at p. 92.)

OCTC argues that the appropriate level of discipline for Respondent’s misconduct is disbarment. Respondent, on the other hand, maintains that he should be exonerated of all charges. In determining the appropriate discipline to recommend in this matter, the court finds some guidance in *In the Matter of Schooler* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494.

In *Schooler*, the attorney was trustee over her parents’ multi-million dollar estate and trusts. The attorney was found culpable of multiple acts of moral turpitude, including misusing her authority and discretion and intentionally and dishonestly violating numerous fiduciary duties. The attorney also made repeated misrepresentations in filed documents and violated court orders by failing to pay sanctions. In addition, the attorney filed several frivolous appeals. In aggravation, the attorney demonstrated indifference, committed multiple acts of misconduct over a period of years, and caused significant harm to the beneficiaries. In mitigation, the attorney had no prior record of discipline over 17 years, though the mitigative weight of this factor was diminished by the fact that she only practiced law for a short time. Noting the attorney’s egregious misconduct, the substantial harm she caused, and her “blatant disregard for

her ethical duties and the court's processes," the Review Department recommended her disbarment. (*In the Matter of Schooler, supra*, 5 Cal. State Bar Ct. Rptr. at p. 504.)

Similar to *Schooler*, Respondent has demonstrated a blatant disregard for his ethical duties in the present matter. Over an extended period of time, Respondent engaged in self-dealing between himself, as trustee for Ms. Gosey, and his construction business. During that time period, Respondent repeatedly petitioned the courts to eliminate court supervision over the Gosey trust with the explanation that he was seeking to preserve trust assets – and without disclosing his relationship or intentions with Bay Construction.

Despite his purported desire to preserve trust assets, shortly after filing his First and Final Accounting, Respondent retained Bay Construction—without obtaining outside bids—to perform over \$157,000 worth of repairs on Ms. Gosey's home. When the money from the first reverse mortgage dried up, Respondent promptly sought to obtain a second reverse mortgage. And in so doing, he once again misrepresented his relationship with Bay Construction.

Of particular concern to this court is the fact that Respondent continues to minimize his relationship with Bay Construction. The evidence at trial clearly demonstrated his involvement with and control over Bay Construction. Despite overwhelming evidence to the contrary, Respondent obstinately continues to argue that the present allegations are “nonsensical” and that he did not commit any of the alleged misconduct. Respondent's lack of insight into his own misconduct gives the court grave concerns regarding the likelihood of future misconduct.²³

²³ The court is not persuaded by Respondent's argument that he had no reason to conceal his affiliation and control of Bay Construction because the terms of the Gosey Trust permitted him to self-deal. To begin with, Respondent was the one who drafted the terms of the Gosey Trust, so the probate court would undoubtedly have had many questions pertaining to the issues of undue influence and conflict of interest. Moreover, the Gosey Trust only permitted self-dealing to the extent that the compensation did not exceed fair market value. Here, Respondent did not obtain competitive bids, so the fair market value was undetermined. Also, Respondent knew that Bay Construction was not actually supervised by a licensed contractor, so even if

Therefore, after weighing the evidence, including the factors in aggravation and mitigation, the court finds that the interests of public protection mandate a recommendation of disbarment.

Recommended Discipline

It is recommended that respondent Drexel Andrew Bradshaw, State Bar Number 209584, be disbarred from the practice of law in California and Respondent's name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.²⁴

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs

Respondent had obtained competitive bids from licensed contractors, he would not have been comparing apples to oranges.

²⁴ For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: August 30, 2018



YVETTE D. ROLAND
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 30, 2018, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

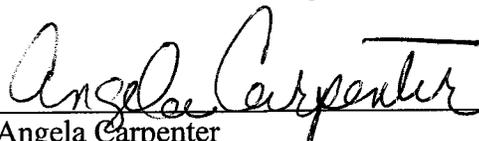
JONATHAN IRWIN ARONS
LAW OFC JONATHAN I ARONS
100 BUSH ST STE 918
SAN FRANCISCO, CA 94104

THOMAS J. O'BRIEN
BRADSHAW & ASSOCIATES, P.C.
1388 SUTTER ST
STE 920
SAN FRANCISCO, CA 94109 - 5453

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Esther J. Rogers, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 30, 2018.



Angela Carpenter
Court Specialist
State Bar Court

PROOF OF SERVICE

I, Joan Randolph, hereby declare: that I am over the age of eighteen years and am not a party to the within above-entitled action, that I am employed in the City and County of San Francisco, that my business address is The State Bar of California, 180 Howard Street, San Francisco, California 94105.

On September 30, 2019, following ordinary business practice, I served a copy of the

PETITION FOR REVIEW

by U.S. Mail on the party listed as follows:

Drexel A. Bradshaw
3053 Fillmore Street #205
San Francisco, CA 94123

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in San Francisco, California this 30th day of September, 2019.

/s/ Joan Randolph
JOAN RANDOLPH