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DECISION FROM DISCIPLINARY REPORTS AND DECISIONS SEARCH

BEFORE THE HEARING BOARD

OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

NIKOLA DURIC,

Attorney-Respondent,

No. 6190677.

Commission No. 2015PR00052

FIRST AMENDED COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorneys, Roona N. Shah and Scott Renfroe, pursuant to Supreme Court Rule 753(b), complains of Respondent, Nikola Duric, who was licensed to practice law in the State of Illinois on November 7, 1985, and alleges that Respondent has engaged in the following conduct which subjects him to discipline pursuant to Supreme Court Rule 770:

COUNT I

(Conversion of Real Estate Sale Proceeds - Kozak)

1. In February 2012, Andrew Kozak ("Kozak") agreed to sell a home located at 5846 N. Melvina in Chicago ("the Melvina property") to Pinet, Inc.
2. In February 2012, Respondent and Kozak agreed that Respondent would represent Kozak in matters relating to the real estate transaction described in paragraph one, above. At that time, Respondent and Kozak agreed that Respondent would be paid a fee of \$1,500 for his legal services relating to that transaction.
3. On March 9, 2012, the parties closed on the Melvina property, and agreed that Kozak was entitled to \$133,557.93 as his proceeds of the sale.
4. On March 9, 2012, Respondent told Kozak that the title company was required to "hold" \$20,000 of the proceeds from the sale to "verify that everything went through." At that time, Respondent directed the closing agent to issue a separate check for \$20,000 of Kozak's proceeds.
5. Respondent's assertion to Kozak, described in paragraph four, above, was false. In fact, no such requirement existed.
6. At the time Respondent made the statement described in paragraph four, above, he knew that the title company had not imposed a requirement that \$20,000 of Kozak's sale proceeds be held separately from the remainder of the proceeds.
7. At the closing on March 9, 2012, at Respondent's direction, Chicago Title and Trust issued the following checks to Kozak: check number 5012006104, payable to Kozak's order in the amount of \$113,557.93; and check number

5012006106, payable to Kozak's order in the amount of \$20,000. Kozak received check number 5012006104, and Respondent received check number 5012006106.

8. On March 12, 2012, Respondent deposited check number 5012006106, in the amount of \$20,000, into his Bridgeview Bank account bearing an account number ending in the four digits "8501," which was entitled "Marko Realty and Investment Corp." Bridgeview Bank account number 8501 was not an IOLTA account but was an account used by Respondent for his own business or personal purposes.

9. At no time did Kozak authorize Respondent to use any portion of the \$20,000 proceeds of check number 5012006106 for Respondent's own purposes.

10. On April 3, 2012, prior to any disbursement to Kozak, Respondent drew the balance in his Bridgeview Bank account number ending in 8501 to \$10,601.92, by drawing funds from the account to pay his own personal or business obligations.

11. As of April 3, 2012, Respondent had used at least \$9,398.08 of the proceeds to the sale of Kozak's property for his own business or personal purposes.

12. Respondent's conduct, described in paragraphs one through 11, above, constitutes conversion of funds received in connection with his representation of Kozak.

13. Between March 12, 2012, and June 29, 2012, Kozak telephoned Respondent on several occasions, and appeared at least once at Respondent's office, to request information about the proceeds. On each occasion, Kozak did not reach Respondent, and left a message for Respondent. Respondent received each message shortly after it was left.

14. At no time did Respondent respond to Kozak's requests for information about the \$20,000.

15. At no time did Respondent deliver to Kozak any portion of the \$20,000.

16. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failure to hold property that is in the lawyer's possession in connection with a representation separate from the lawyer's own property, by conduct including depositing Kozak's funds in a business account, and converting \$9,398.08 of Kozak's funds, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010);
- b. failure to promptly deliver to Kozak proceeds from the sale of his real estate, which funds Kozak was entitled to receive, in violation of Rule 1.15(d) of the Illinois Rules of Professional Conduct (2010);
- c. failure to promptly comply with reasonable requests for information from Kozak, in violation of Rule 1.4(a)(4) of the Illinois Rules of Professional Conduct (2010); and
- d. conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including falsely telling Kozak that the title company required a separate distribution of \$20,000 of Kozak's funds, by holding the funds in Respondent's personal account without Kozak's knowledge, and by converting \$9,398.08 of Kozak's funds for Respondent's own personal or business purposes without authority, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT II

(Conversion of Real Estate Sale Proceeds - Rees)

17. On February 11, 2012, Anita Rees ("Rees") agreed to sell a home located at 4946 W. Fargo Ave., Skokie, Illinois ("the Fargo Avenue property") to Marko and Gordana Domazet ("the Domazets").
18. In April 2012, Respondent and Rees agreed that Respondent would represent Rees in matters relating to her sale of the Fargo Avenue property. At that time, Respondent and Rees did not discuss what fee Respondent would be paid for his legal services in the matter.
19. On May 3, 2012, the parties closed on the Fargo Avenue property, and the closing agent determined that Rees was entitled to \$141,059.61 from the sale. At that time, Respondent advised Rees that Rees could reduce her tax liability by entrusting a portion of the sale proceeds to Respondent.
20. Respondent's statement to Rees, described in paragraph 19, above, was false. In fact, Rees' tax liability would not have been affected if Respondent had held a portion of the sale proceeds.
21. At the time Respondent made the statement described in paragraph 19, above, he knew it was false.
22. On May 3, 2012, the closing agent delivered to Rees, Chicago Title and Trust Company check number 9511016373, which was made payable to Rees' order in the amount of \$115,506.05, and two additional checks, which represented the balance of the sale proceeds.
23. On May 3, 2012, pursuant to Respondent's advice, described in paragraph 19, above, Rees affixed her signature to the back of check number 9511016373, in the amount of \$115,506.05, and delivered the check to Respondent.
24. At no time did Rees authorize Respondent to use any portion of the proceeds of check number 9511016373 for Respondent's own personal or business purposes.
25. On May 10, 2012, Respondent deposited check number 9511016373 into a North Community Bank client fund account bearing an account number ending in the four digits "7072." The account ("client fund account") was entitled, "Nicholas M. Duric, Attorney at Law, IOLTA Account" and was used by Respondent as a depository of funds belonging to Respondent's clients, to third parties, or, presently or potentially, to Respondent.
26. On June 27, 2012, Respondent drew check number 66159, which he made payable to "cash," from his client fund account, in the amount of \$75,000. On that date, Respondent negotiated the check, and used it to purchase a cashier's check made payable to Rees' order, in the amount of \$75,000.
27. On June 27, 2012, Respondent delivered the \$75,000 cashier's check, described in paragraph 26, above, to Rees. After that delivery, Respondent continued to hold \$40,506.05 of the proceeds of check number 9511016373 for the benefit of Rees.
28. On June 29, 2012, prior to distributing any of the remaining proceeds of check number 9511016373 to, or for the benefit of, Rees, Respondent drew the balance in his client fund account to \$249.34, by drawing funds from the account for his own personal or business purposes.
29. As of June 29, 2012, Respondent had used at least \$40,256.71 of Rees' funds for Respondent's own personal or business purposes.
30. Respondent's conduct, described in paragraphs 17 through 29, above, constitutes conversion of funds received in connection with his representation of Rees.
31. On several occasions after May 3, 2012, Rees requested that Respondent deliver the remainder of the proceeds of the sale of the Fargo Avenue property to her. On each such occasion, Respondent told Rees that her funds were not available.
32. At no time did Respondent inform Rees that he had used her funds for his own personal or business purposes.
33. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failure to hold property of a client that is in the lawyer's possession in connection with a representation separate from the lawyer's own property, by conduct including conversion of \$40,256.71 of the funds belonging to Rees, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010);
- b. failure to promptly deliver to Rees proceeds from the sale of her real estate, which funds Rees was entitled to receive, by conduct including conversion of \$40,256.71 of the funds belonging to Rees, in violation of Rule 1.15(d) of the Illinois Rules of Professional Conduct (2010); and
- c. conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including falsely inducing Rees to entrust funds to Respondent by telling her she could realize tax benefits by doing so, converting Rees' real estate proceeds to his own use, without authorization, while purporting to hold the funds for her benefit, and failing to inform her of his use of her funds for his own purposes, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT III

(Conversion of Earnest Money Funds - Odsterczyl)

34. On June 11, 2013, Jacek and Elzbieta Odsterczyl ("the Odsterczyls") agreed to purchase residential property located at 18 E. Old Willow Road, Unit 423N, in Prospect Heights, Illinois ("the Willow Road property") from John Livaditis ("Livaditis"). Respondent represented Livaditis with respect to the real estate transaction, and the Odsterczyls were represented in the matter by Agnes Pogorzelski ("Pogorzelski"). The parties agreed to close the sale on August 7, 2013.

35. In the purchase agreement, described in paragraph 34, above, the Odsterczyls agreed to pay earnest money in the amount of \$8,450 toward their purchase of the Willow Road property. Respondent, as counsel for Livaditis, agreed with the Odsterczyls and Livaditis to hold the earnest money in escrow pending the sale closing.

36. Between June 11, 2013 and June 18, 2013, the Odsterczyls tendered to Respondent two checks as earnest funds towards their purchase of the Willow Road property: their PNC Bank check number 558, which was dated June 11, 2013, and was made payable to Respondent's order in the amount of \$4,000; and PNC Bank check number 561, which was dated June 18, 2013, and was payable to Respondent's order in the amount of \$4,450.

37. On June 14, 2013, Respondent opened a personal checking account with PNC Bank. The account was titled "Nikola Duric," and bore an account number ending in the four digits "2216." Account number 2216 was not a separate and identifiable client fund account. On June 14, 2013, and June 19, 2013, Respondent deposited the Odsterczyls' check numbers 558 and 561, in the amount of \$8,450, into account number 2216.

38. At no time did the Odsterczyls or Livaditis authorize Respondent to use any portion of the Odsterczyls' \$8,450 earnest money payment for Respondent's own business or personal purposes.

39. On June 25, 2013, prior to distributing any portion of the proceeds of the Odsterczyls' check numbers 558 and 561, Respondent drew the balance in account number 2216 to \$30, by drawing funds from the account for Respondent's own personal or business purposes.

40. As of June 25, 2013, Respondent had used at least \$8,420 of the Odsterczyls' funds for his own business or personal purposes.

41. Respondent's conduct, described in paragraphs 34 through 40, above, constitutes conversion of funds received in connection with his representation of Livaditis.

42. The intended closing on the purchase of the Willow Road property did not take place, and the real estate contract was voided in August 2013. Pursuant to the terms of the contract, Livaditis became obligated to return the \$8,450 in earnest money to the Odsterczyls.

43. Between August 7, 2013, and February 6, 2014, Pogorzelski left several telephone messages with Respondent requesting the return of her clients' earnest money payment. Respondent received each message shortly after it was sent.

44. At no time did Respondent respond to Pogorzelski's messages, described in paragraph 43, above.

45. By letters to Respondent dated February 6, 2014, and March 20, 2014, Pogorzelski requested information about the status of the transaction, informed Respondent that her clients no longer wished to purchase the property, and demanded the return of the Odsterczyls' earnest money. Respondent received the letters shortly after they were sent.

46. At no time did Respondent respond to Pogorzelski's letters, described in paragraph 45, above.

47. At no time did Respondent refund any portion of the escrow funds to the Odsterczyls, or tender any portion of the escrow funds to Livaditis.

48. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failure to promptly deliver to a client or a third person funds that the client or third person is entitled to receive, by conduct including depositing the Odsterczyls' funds into a non-trust account, and converting \$8,420 of the funds, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010);
- b. failing to hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from a lawyer's own property, by conduct including depositing the Odsterczyls' funds into a non-trust account, and converting \$8,420 of the funds, in violation of Rule 1.15(d) of the Illinois Rules of Professional Conduct (2010); and
- c. conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including depositing the Odsterczyls' funds into a non-trust account, converting \$8,420 of the funds, and failing to respond to Pogorzelski's requests for information, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT IV

(Conversion of Escrow Funds - Holas)

49. In November 2012, Respondent and Frank Holas ("Holas") agreed that Respondent would represent Frank in connection with outstanding financial obligations relating to two properties owned by Alice Holas Revocable Trust ("Holas Trust"), located at 6523 and 6525 Richmond ("Holas trust properties"). Alice Holas was Frank Holas' mother and Frank Holas served as trustee for the Holas Trust.

50. In November 2012, Holas obtained a loan from a friend, David Wesseldyk, in the amount of \$52,650, to allow Holas to pay taxes and other obligations relating to the Holas Trust properties.

51. On or about November 15, 2012, Wesseldyk tendered \$25,189.72 to Holas, pursuant to the loan agreement described in paragraph 50, above.

52. On November 15, 2012, Respondent and Holas agreed that Respondent would receive the remaining \$27,460.28 proceeds of the loan described in paragraph 50, above, from Wesseldyk, and to hold the funds in escrow until the tax payments on the Holas Trust properties were made.

53. At no time did Holas authorize Respondent to use any portion of the funds described in paragraph 50, above, for Respondent's own personal or business purposes.

54. On November 15, 2012, pursuant to the agreement described in paragraph 52, above, Wesseldyk wired the remaining \$27,460.28 loan balance to Respondent's US Bank account number ending in 4374, which was entitled "Nikola Duric."

55. Respondent's US Bank account number ending in 4374 was not a separate and identifiable trust account, but was used by Respondent for his own business and personal purposes.

56. On January 28, 2013, prior to distributing any funds from US Bank account number 4374 in connection with Holas' legal matter, Respondent overdrew the account by drawing funds from the account to pay his own personal or business expenses.

57. Respondent's conduct, described in paragraphs 49 through 56, above, constitutes conversion of funds received in connection with his representation of Holas.

58. As of January 28, 2013, Respondent had used for his own business or personal purposes the entire \$27,460.28 wired to him by Wesseldyk for the purpose of paying the tax obligation on the Holas Trust properties, without authority.

59. On several occasions between January and March 2013, Respondent spoke by telephone with John Rogers ("Rogers"), an attorney retained by Holas, and promised, at Rogers' request, to provide Rogers with information regarding the disposition of Holas' funds, and the status of the Holas Trust's outstanding financial obligations.

60. At no time did Respondent reveal to Holas or to Rogers his use of Holas' funds.

61. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failing to hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from a lawyer's own property, by conduct including depositing escrow funds into a personal account, and converting \$27,460.28 of the funds, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010);
- b. failure to promptly deliver to a client or a third person funds that the client or third person is entitled to receive, by conduct including depositing escrow funds into a personal account, and converting \$27,460.28 of the funds, failing to distribute the escrow funds, and failure to respond to Holas' requests for information about the funds, in violation of Rule 1.15(d) of the Illinois Rules of Professional Conduct (2010);
- c. failure to promptly comply with reasonable requests from Holas or Rogers for information about the funds Respondent was purportedly holding to pay the for the trust properties, in violation of Rule 1.4(a)(4) of the Illinois Rules of Professional Conduct (2010); and
- d. conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including depositing escrow funds into a personal account, and converting \$27,460.28 of the funds, and by failing to inform Holas or Rogers of Respondent's use of the funds for his own purposes, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT V

(Conversion Escrow Funds - Naqhavi)

62. In November 2012, Respondent and Chris Dimas ("Dimas") agreed that Respondent would represent Dimas in the sale of a Lincolnwood, Illinois, restaurant property.

63. On November 6, 2012, Javad Naqhavi ("Naqhavi") agreed to purchase Dimas' restaurant property, and tendered to Respondent his check number 1915, which was made payable to Respondent's order in the amount of \$10,000, as earnest funds. Respondent agreed to hold the earnest funds in trust pending the close of the sale of the business and real property.

64. At no time did either Dimas or Naqhavi authorize Respondent to use any portion of the \$10,000 earnest money payment for Respondent's own personal or business purposes.

65. On November 6, 2012, Respondent deposited Naqhavi's check number 1915 into his US Bank account ending in 4374, which was entitled "Nikola Duric." Respondent's US Bank account ending in 4374 was not a separate and identifiable client trust fund account, and Respondent used the account to pay his own personal or business expenses.

66. On January 4, 2013, prior to any disbursement to or on behalf of Naqhavi or Dimas, Respondent drew the balance in US Bank account ending in 4374 to \$6.45 by drawing funds from the account to pay his own personal or business expenses.

67. As of January 4, 2013, Respondent had used at least \$9,993.55 of the earnest funds for Respondent's own business or personal purposes.

68. Respondent's conduct, described in paragraphs 62 through 67, above, constitutes conversion of funds received in connection with his representation of Dimas.

69. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failure to hold property that is in the lawyer's possession in connection with a representation separate from the lawyer's own property, by conduct including depositing the earnest funds in a personal account, and converting \$9,993.55 of the funds, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010); and
- b. conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including depositing the earnest funds in a personal account, and converting \$9,993.55 of the funds, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT VI

(Neglect in Loan Modification Matter-Divkovic)

70. On January 24, 2012, Respondent and Branko Divkovic ("Divkovic") agreed that Respondent would represent Divkovic in seeking a mortgage loan modification, and attempting to prevent a foreclosure action by Divkovic's lender, Liberty Bank, in connection with properties located at 2443 S. 50th Ave. in Cicero, Illinois, and 4010 Odell Street in Harwood Heights, Illinois. Respondent and Divkovic agreed that Respondent would be paid a flat fee of \$2,500 to assist Divkovic in obtaining a modification of the Divkovic's loans.

71. On January 24, 2012, Divkovic gave Respondent his check number 597, payable to Respondent in the amount of \$2,500, as well as documents relating to his mortgages and leases for the Cicero property, which was an apartment building.

72. In January and February 2012, Divkovic delivered to Respondent additional documents related to his property and loans.

73. At no time did Respondent communicate with Divkovic's lender regarding Divkovic's properties.

74. On several occasions between January 24, 2012 and March 22, 2013, Divkovic telephoned and visited Respondent's law office to request information regarding the status of his matter. On none of these occasions did Respondent speak with Divkovic, but Divkovic left messages requesting that Respondent contact him and provide information regarding the status of his legal matter. Respondent received each message shortly after it was sent.

75. On March 22, 2013, Divkovic went to Respondent's office and did speak with Respondent. On that date, Divkovic expressed dissatisfaction with Respondent's communication, discharged Respondent, and requested that Respondent refund the \$2,500 fee Divkovic had paid. Respondent agreed to refund the fee by March 27, 2013.

76. At no time has Respondent refunded to Divkovic any portion of the \$2,500 fee Respondent received on January 24, 2012.

77. Between January 24, 2012 and March 27, 2013, Respondent did not provide sufficient services to Divkovic to earn the fee of \$2,500 Respondent received for the matter.

78. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failure to act with reasonable diligence and promptness in representing his client, Divkovic, by conduct including failing to take action to seek a loan modification, violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- b. failure to keep a client, Divkovic, reasonably informed about the status of a matter, by conduct including failing to inform the client he had taken no action to seek a loan modification, in violation of Rule 1.4(a) of the Illinois Rules of Professional Conduct (2010);
- c. failure to explain a matter sufficiently to permit a client, Divkovic, to make informed decisions regarding his legal matter, by conduct including failing to inform the client Respondent had taken no action to seek a loan modification, in violation of Rule 1.4(b) of the Illinois Rules of Professional Conduct (2010); and
- d. failure to refund any advance fee payment that has not been earned, upon termination of representation, by conduct including failing to refund any portion of Divkovic's \$2,500 fee advance, in violation of Rule 1.16(d) of the Illinois Rules of Professional Conduct (2010).

COUNT VII

(Misrepresentation and creation of false affidavit to ARDC)

79. On March 28, 2013, the Administrator received a request for investigation from Branko Divkovic relating to Respondent's handling of Divkovic's loan modification matter. Based upon Divkovic's allegations, the Administrator docketed investigation number 2013IN01512.

80. On April 2, 2013, counsel for the Administrator mailed a letter to Respondent asking that Respondent, within fourteen days, provide information regarding Respondent's representation of Divkovic. Respondent received the letter shortly after it was sent.

81. On July 23, 2013, Respondent prepared an affidavit purporting to be that of a receptionist in Respondent's office, and purporting to affirm that Respondent had met with Divkovic "on multiple occasions for extended periods of time" and that Respondent had "conducted himself in a courteous and professional manner when meeting with Mr. Divkovic."

82. On July 23, 2014, Respondent directed Terri Wurster ("Wurster"), an employee of a real estate office in which Respondent maintained office space, to sign the affidavit described in paragraph 81, above. Respondent did so by placing the affidavit under other documents, so that Wurster would be unlikely to see the statements contained therein.

83. The statements Respondent included in the affidavit described in paragraphs 81 and 82, above, were false. In fact, Respondent had not met with Divkovic on multiple occasions for extended periods of time, and Wurster had not witnessed any such meetings.

84. At the time Respondent created the affidavit described in paragraphs 81 and 82, above, he knew the statements it contained were false.

85. At the time Respondent directed Wurster to sign the affidavit described in paragraphs 81 and 82, above, he knew Wurster had not witnessed the events described in the affidavit.

86. Immediately after signing the affidavit described in paragraphs 81 through 85, above, Wurster saw the full document, told Respondent that the statements were false, and demanded that Respondent destroy the affidavit. Respondent did not do so.

87. Sometime between July 23, 2014 and October 30, 2013, Respondent, or someone acting at his direction, attached the affidavit described in paragraphs 81 through 85, above to a letter to counsel for the Administrator, responding to counsel's April 2, 2013 letter requesting information regarding Respondent's representation of Divkovic, and sent the letter to counsel for the Administrator. Counsel received the letter shortly after it was sent.

88. The affidavit Respondent transmitted to counsel for the Administrator was false. In fact, Respondent had not met with Divkovic on multiple occasions for extended periods of time, and Wurster had not witnessed any such meetings.

89. At the time Respondent sent the affidavit to counsel for the Administrator, he knew that the statements it contained were false.

90. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. knowingly making false statements of material fact in connection with a disciplinary matter, by conduct including producing to the Administrator the affidavit of Terri Wurster, when Respondent knew it contained false statements, in violation of Rule 8.1(a) of the Illinois Rules of Professional Conduct (2010);
- b. conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including preparing a false affidavit and by inducing Wurster to place her signature on the affidavit without her knowledge of its contents, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010); and
- c. conduct that is prejudicial to the administration of justice, by conduct including providing false information regarding a disciplinary investigation to counsel for the Administrator, in violation of Rule 8.4(d) of the Illinois Rule of Professional Conduct (2010).

COUNT VIII

(Neglect in Foreclosure Matter - Soukup)

91. On December 19, 2012, Respondent and Gary Soukup ("Soukup") agreed that Respondent would represent Soukup in matters relating to a foreclosure action which had been filed against Soukup in the Circuit Court of Lake County, in the matter entitled, *FDIC v. Gary V. Soukup*, case number 12 CH 3672. Respondent and Soukup agreed that Respondent would be paid a flat fee of \$2,000 for his legal services in the matter.

92. On December 19, 2012, Respondent requested payment of his legal fee within 24 hours, and told Soukup that Respondent would prepare and file an appearance, answer and counterclaim on Soukup's behalf in case number 12 CH 3672.

93. On December 19, 2012, Soukup sent Respondent an e-mail message requesting that Respondent provide Soukup with a copy of any pleading Respondent filed on Soukup's behalf in case number 12 CH 3672. Respondent received the message shortly after it was sent.

94. On December 20, 2012, Soukup met with Respondent in a grocery store parking lot, and gave Respondent his check number 1235 payable to Respondent in the amount of \$2,000 as their agreed-upon fee payment.

95. At no time did Respondent file an appearance, answer, counterclaim or take any other action on behalf of Soukup in case number 12 CH 3672.

96. On February 1, 2013, Soukup again sent Respondent an e-mail message requesting that Respondent provide Soukup with a copy of any pleading Respondent filed on Soukup's behalf in case number 12 CH 3672. Respondent received the message shortly after it was sent.

97. On February 6, 2013, Respondent telephoned Soukup and told him he had filed an answer in the Circuit Court of Lake County in case number 12 CH 3672.

98. Respondent's statement to Soukup, described in paragraph 97, above, was false. In fact, Respondent had filed no pleading on Soukup's behalf in case number 12 CH 3672.

99. At the time Respondent made the statement described in paragraph 97, above, to Soukup, he knew it was false.

100. In February 2013, Soukup discharged Respondent, requested a refund of his \$2,000 fee payment, and retained a new attorney to represent him in matters relating to case number 12 CH 3672.

101. Between December 2012 and February 2013, Respondent did not provide sufficient legal services to Soukup to earn the \$2,000 legal fee he received.

102. At no time has Respondent refunded any portion of the \$2,000 legal fee he received from Soukup in December 2012.

103. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failure to abide by a client's decisions concerning the objectives of representation and the means by which they are to be pursued, by conduct including failing to take action in furtherance of Soukup's defense in case number 12 CH 3672, in violation of Rule 1.2(a) of the Illinois Rules of Professional Conduct (2010);
- b. failure to act with reasonable diligence and promptness in representing a client, by conduct including failing to take action in furtherance of Soukup's defense in case number 12 CH 3672, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- c. failure to keep the client reasonably informed about the status of the matter, by conduct including failing to inform Soukup of Respondent's failure to take action in furtherance of Soukup's defense in case number 12 CH 3672, in violation of Rule 1.4(a)(3) of the Illinois Rules of Professional Conduct (2010);
- d. failure to promptly comply with reasonable requests for information, by conduct including failing to truthfully inform Soukup of Respondent's failure to take action in furtherance of Soukup's defense in case number 12 CH 3672, and falsely telling Soukup that Respondent had filed an answer on Soukup's behalf in case number 12 CH 3672, when Respondent had not in fact done so, in violation of Rule 1.4(a)(4) of the Illinois Rules of Professional Conduct (2010);
- e. conduct involving dishonesty, deceit, fraud, or misrepresentation, by conduct including falsely telling Soukup that Respondent had filed an answer on Soukup's behalf in case number 12 CH 3672, when Respondent had not in fact done so, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010); and
- f. failure to refund any advance fee payment that has not been earned, upon termination of representation, by conduct including failing to refund any portion of Soukup's \$2,000 fee advance, in violation of Rule 1.16(d) of the Illinois Rules of Professional Conduct (2010).

COUNT IX

(Conversion and dishonesty in the Christos & Sophie Dimas matter)

104. In 2007, Christos and Sophie Dimas ("the Dimases"), were experiencing financial difficulties and fell behind in their real estate mortgage payments to both MB Financial Bank (for the restaurant property they owned on West Devon in Lincolnwood) and to Bank of America (for their home on Madison Drive in Niles).

105. On October 14, 2008, MB Financial Bank filed a foreclosure complaint against the Dimases' restaurant property in Lincolnwood. The matter was entitled *MB Financial Bank, N.A. v. Christos and Sophie Dimas et al.*, case number 2008 CH 38066 (Circuit Court of Cook County, Chancery Division).

106. On July 1, 2010, Bank of America filed a complaint for foreclosure against the Dimases' relating to their home property in Niles. That matter was entitled *Bank of America, N.A. v. Christos and Sophie Dimas et al.*, case number 2010 CH 28471 (Circuit Court of Cook County, Chancery Division).

107. In 2010, Respondent and the Dimases verbally agreed that Respondent would represent the Dimases in matters relating to both their restaurant and home, including defending their interests in the two foreclosure cases. Respondent and the Dimases never signed a written contract regarding the terms of Respondent's representation of the Dimases. Instead, they agreed that Respondent would ask the Dimases for money whenever Respondent wanted money.

108. Beginning in 2012, Respondent began to dine at or visit the Dimases' restaurant almost daily. At some of these visits, Respondent requested money from the Dimases, either in the form of cash or a cashier's check made payable

to him. Respondent indicated that he was going to deposit the funds he received from the Dimases into accounts with Bank of America and MB Financial Bank, to show the banks that the Dimases were making, what Respondent called, a "good faith effort" to pay their mortgages, and that he would also negotiate a settlement with those banks on the Dimases' behalf. The Dimases agreed to Respondent's plan, with the hope that they would be able to refinance the mortgages on both of their properties.

109. Respondent's statements to the Dimases, that he would deposit money in accounts with Bank of America and MB Financial Bank, and that he was entering into settlement negotiations with the banks on the Dimase's behalf, were false, because at no time did Respondent deposit the funds he received from the Dimases into accounts with these banks, nor did he engage in any settlement negotiations with the banks on the Dimases' behalf.

110. At the time Respondent made statements to the Dimases that he would deposit money in accounts with Bank of America and MB Financial Bank, and that he was entering into settlement negotiations with the banks on the Dimases' behalf, Respondent knew that his statements to the Dimases were false, because Respondent knew that he was not going to deposit money in accounts with these banks. Respondent also knew that had no intention of entering into settlement negotiations with these banks on the Dimases' behalf.

111. Between 2012 and 2013, Respondent requested and received \$111,500 in cash from the Dimases, which the Dimases paid to the Respondent over the course of 16 installments.

112. Additionally, between October 29, 2012 and February 1, 2013, Respondent received from the Dimases' Republic Bank cashier's checks numbered 140005258, 140005512 and 140005606, each of which had been made payable to Respondent in the amounts of \$5,000, \$5,000 and \$6,000, respectively. Check numbers 140005258, 140005512 and 140005606 represented some of the funds Respondent agreed to deposit with Bank of America to help the Dimases in refinancing their property.

113. Between October 30, 2012 and February 1, 2013, Respondent deposited cashier's checks numbered 140005258, 140005512 and 140005606, into an account ending in the four digits "3095" at BMO Harris Bank. That account was entitled "Milena Duric" checking account and was used by Respondent for business and personal purposes, and was not a separate, identifiable client trust account. (At that time, Milena was Respondent's wife.)

114. On February 1, 2013, prior to any distribution of funds to or on behalf of the Dimases, the balance in the BMO Harris Bank account number ending in "3905" fell to \$695.60, as Respondent had drawn funds from the account in payment of his business and personal obligations.

115. As of February 1, 2013, Respondent used for his own business and personal obligations at least \$15,304.40 of the funds he had received from the Dimases.

116. At no time did the Dimases, or anyone on their behalf, authorize Respondent to use any portion of those funds for Respondent's own business or personal purposes.

117. Between April 1 and April 16, 2013, Respondent received from the Dimases' Republic Bank cashier's check numbered 140005814 and 140005859, each made payable to Respondent in the amount of \$6,000. Checks numbered 140005814 and 140005859 represented some of the funds Respondent agreed to deposit with Bank of America to help the Dimases in refinancing their property.

118. Between April 1 and April 18, 2013, Respondent deposited check numbers 140005814 and 140005859, into an account ending in the four digits "7007" at Standard Bank and Trust Company. That account was entitled "Nikola Duric, DBA Nikola Duric Attorney At Law Business Checking account" and was used by Respondent for business and personal purposes. It was not a separate, identifiable client trust account.

119. On May 3, 2013, prior to any distribution of funds to or on behalf of the Dimases, the balance in Respondent's account number ending in "7007" was overdrawn by -\$2,924.73, as Respondent drew funds from the account in payment of his business and personal obligations.

120. As of May 3, 2013, Respondent used for his own business and personal obligations at least \$12,000 of the funds he received from the Dimases.

121. At no time did the Dimases, or anyone on their behalf, authorize Respondent to use any portion of the funds for Respondent's own business or personal use.

122. On or about May 24, 2014, Respondent received from the Dimases Republic Bank cashier's checks numbered 140006966 and 140006967, both of which had been made payable to Respondent in the amounts of \$5,000 and

\$2,816.91, respectively. Checks numbered 140006966 and 140006967 represented some of the escrow funds Respondent agreed to deposit with Bank of America to help the Dimases in refinancing their property.

123. On or about May 24, 2014, Respondent received from the Dimases JPMorgan Chase Bank cashier's checks numbered 9249627157 and 9249627158, both of which had been made payable to Respondent in the amount of \$5,000. Checks 9249627157 and 9249627158 represented some of the funds Respondent agreed to deposit with Bank of America to help the Dimases in refinancing their property.

124. On May 27, 2014, Respondent deposited cashier's checks 140006966, 140006967, 9249627157 and 9249627158 into an account ending in the four digits "3343" at Centrust Bank. That account was entitled "Nicholas M. Duric, Attorney at Law, Business Checking" and was used by Respondent for business and personal purposes, and was not a separate, identifiable client trust account.

125. On August 25, 2014, prior to any distribution of funds to or on behalf of the Dimases, the balance in Respondent's account number ending in "3343" fell to \$60.70 as Respondent drew funds from the account in payment of his business and personal obligations.

126. As of August 25, 2014, Respondent used for his own business and personal obligations at least \$17,756.21 of the funds he received from the Dimases.

127. At no time did the Dimases, or anyone on their behalf, authorize Respondent to use any portion of the funds for Respondent's own business or personal use.

128. Respondent's use of the funds identified in paragraphs 20, 21, 22, 23, above, constitutes conversion of funds tendered by his clients.

129. Between 2012 and 2015, the Dimases frequently asked for proof of receipts or account balances regarding the funds Respondent claimed to have been delivering to the Dimases' banks. Respondent said he would give the Dimases the proof they requested at a later time, but never did so.

130. Respondent's statement to the Dimases that he would provide the Dimases proof of receipts or account balances was false, because Respondent never planned to provide proof of payment to the Dimases. Nor did Respondent ever provide proof to the Dimases, because no such proof existed since Respondent did not deposit the Dimases' funds to the banks.

131. Respondent knew his statement to the Dimases, that he would provide the Dimases proof at a later time of receipts or account balances, was false because Respondent knew that he never planned to provide proof of payment to the Dimases. Nor did he provide proof, because Respondent knew that no such proof existed, since Respondent knew that he did not deposit the Dimases' funds with the banks.

132. On August 21, 2014, the Honorable Alfred Swanson entered an order in case number 2008 CH 38066 approving the sheriff's sale of the Dimases' restaurant property in Lincolnwood.

133. In the summer of 2015, a third-party purchaser bought the Dimases' former restaurant property.

134. Prior to Respondent's termination, Respondent never sent the Dimases a billing statement.

135. After Respondent's termination, in September and October 2015, Respondent sent the Dimases three billing statements asking for them to pay him a total of \$335,000 in purported attorney's fees. The billing statements were not detailed and did not explain what work, if any, Respondent claimed to have done for the Dimases.

136. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failure to hold property (the Dimases funds) of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property, by depositing the Dimases funds in to his own accounts, withdrawing these funds and then drawing the balance in his business checking account below the amount he received in connection with the representation of the Dimases, thereby converting that property to his own use, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010); and

b. engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including knowingly misrepresenting to the Dimases that he was going to provide receipts or account balances at a later time, and knowingly using client or third party funds without authorization for his own business or personal purposes, and thereby converting that property to his own use, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT X

(Conversion of \$125,000 in escrow funds in the Lucita Zamoras matter)

137. In or about September 2014, Lucita Zamoras ("Zamoras") entered into a real estate contract to purchase the Dimases' restaurant property. Respondent, Zamoras and the Dimases agreed that Respondent would represent both Zamoras and the Dimases in matters related to the sale, and that Respondent would hold \$125,000 in earnest money as escrowee for the mutual benefit of the parties.

138. Between October 8 and December 10, 2014, Respondent received two checks from Zamoras, check numbers 2036 and 104, both of which had been drawn on an account at U.S. Bank and were made payable to Respondent, each in the amount of \$25,000. The proceeds of check numbers 2036 and 104 represented partial payment towards the \$125,000 in escrow funds that Zamoras had agreed to remit to Respondent in connection with the agreement to purchase the restaurant.

139. Between October 8, 2014 and December 10, 2014, Respondent deposited check numbers 2036 and 104 into an account ending in "3343" at Centrust Bank. That account was entitled "Nicholas M. Duric, Attorney at Law, Business Checking" and was used by Respondent for business and personal purposes, and was not a separate, identifiable client trust account.

140. On or about May 4, 2015, Respondent received from Zamoras U.S. Bank account check number 1053, which had been made payable to Respondent in the amount of \$75,000. The proceeds of check number 1053 represented the final payment towards the \$125,000 in escrow funds Zamoras had agreed to remit in connection with the agreement to purchase the restaurant.

141. On or about May 5, 2015, Respondent deposited check number 1053 into an account ending in the four digits "2787" at JPMorgan Chase Bank. That account was entitled "Nikola Duric" and was used by Respondent for business and personal purposes, and was not a separate identifiable client trust account.

142. On June 5, 2015, Respondent had drawn from his account number ending in "3343" and reduced the balance to below the \$50,000 that Respondent had agreed to hold as escrowee for the mutual benefit of the parties.

143. As of June 5, 2015, prior to any distribution of funds to or on behalf of the Dimases, the balance in Respondent's Centrust account number ending in "3343" was overdrawn by -\$25.50 as Respondent had drawn funds from the account in payment of his business and personal obligations.

144. On September 24, 2015, prior to any distribution of escrow funds on behalf of Zamoras or the Dimases, the balance in Respondent's account number ending in "2787" was overdrawn by -\$1423.39, as Respondent had drawn funds from the account in payment of his business and personal obligations.

145. As of September 24, 2015, Respondent had used all of the escrow funds he received from Zamoras, in the amount of \$125,000.

146. At no time did Zamoras, the Dimases, or anyone on their behalf, authorize Respondent to use any portion of the escrow funds for Respondent's own business or personal use.

147. Respondent's use of the escrow funds constitutes conversion of those funds.

148. At the time Respondent converted the escrow funds described above, he knew he was using the funds he was obligated to hold in escrow.

149. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failure to hold property (the Zamoras / Dimas escrow funds) of clients or third persons that is in the lawyer's possession in connection with a

representation separate from the lawyer's own property, by drawing the balance in his business checking account below the amount he received in connection with the representation of Zamoras and the Dimases, thereby converting that property to his own use, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010); and

b. conduct involving dishonesty, fraud, deceit or representation, by knowingly using client or third party funds without authorization for his own business or personal purposes, by drawing the balance in his business checking account below the amount he received in connection with the representation of Zamoras and the Dimases, and thereby converting that property to his own use, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT XI

(Conversion of \$55,040.41 in escrow funds in the David Friedman matter)

150. In or about August 2015, after Zamoras' unsuccessful attempt to purchase the Dimases' restaurant property, David Friedman ("Friedman") also entered into a real estate contract in an attempt to purchase the Dimases' restaurant property in Lincolnwood. Friedman was represented by attorney Linda Nagle in the proposed transaction. At that time, Respondent agreed to represent the Dimases in matters related to the sale, and to hold \$125,000 in earnest money as escrowee for the mutual benefit of the parties.

151. On or about August 17, 2015, Respondent received from Friedman's U.S. Bank account, check number 2040, which had been made payable to Respondent in the amount of \$125,000. The proceeds of check number 2040 represented the \$125,000 escrow funds Friedman agreed to remit in connection with the agreement to purchase the Lincolnwood restaurant.

152. On August 18, 2015, Respondent deposited check number 2040 into an account ending in "3343" at Centrust Bank. That account was entitled "Nicholas M. Duric, Attorney at Law, Business Checking" and was used by Respondent for business and personal purposes, and was not a separate, identifiable client trust account.

153. On May 27, 2016, prior to any distribution of escrow funds to or on behalf of the Dimases, the balance in Respondent's account number ending in "3343" fell to \$69,959.59, as Respondent drew funds on the account in payment of his business and personal obligations.

154. As of May 27, 2016, Respondent used for his own business and personal obligations at least \$55,040.41 of the escrow funds.

155. At no time did Friedman, the Dimases, or anyone on their behalf, authorize Respondent to use any portion of the escrow funds for Respondent's own business or personal use.

156. Respondent's use of the escrow funds constitutes conversion of those funds.

157. At the time Respondent converted the escrow funds described above, he knew he was using the funds he was obligated to hold in escrow.

158. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failure to hold property (the Friedman / Dimas escrow funds) of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property, by drawing the balance in his business checking account below the amount he received in connection with the representation of Friedman and the Dimases, thereby converting that property to his own use, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010); and
- b. conduct involving dishonesty, fraud, deceit or representation, by knowingly using client or third party funds without authorization for his own business or personal purposes, by drawing

the balance in his business checking account below the amount he received in connection with the representation of the Dimases, and thereby converting that property to her own use, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT XII

(Failure to cooperate with an ARDC investigation)

159. On December 28, 2015, the Administrator received a request for investigation from Christos Dimas and Sophie Dimas ("the Dimases") requesting that the ARDC conduct an investigation into allegations that Respondent converted client funds that the Dimases had given Respondent. Based upon the information, the Administrator docketed investigation number 2015IN05483.

160. Between December 28, 2015 and February 3, 2017, the Administrator made at least three requests as part of investigation number 2015IN05483 to Respondent that he produce his client file related to his representation of the Dimases. During this time, Respondent did not give the Administrator the client file or any documents related to investigation number 2015IN05483.

161. On February 3, 2017, the Administrator issued a subpoena that required Respondent's appearance for a sworn statement and the production of documents at the Chicago office of the Commission on March 8, 2017, regarding the Dimases' allegations. Shortly thereafter, Respondent's counsel accepted service of the subpoena by mail.

162. On March 2, 2017, Respondent's counsel contacted counsel for the Administrator and requested to continue the March 8, 2017 return date on the subpoena. At that time, counsel for the Administrator agreed to reset Respondent's subpoena to the date of March 23, 2017.

163. On March 3, 2017, counsel for the Administrator mailed a letter to Respondent's counsel's address that confirmed the continued return date of March 23, 2017. Respondent's counsel received this letter shortly thereafter.

164. On May 21 and May 22, 2017, Respondent's counsel sent documents related to investigation number 2015IN05483 to counsel for the Administrator.

165. Also on May 22, 2017, the day before the continued return date for Respondent's appearance for a sworn statement, Respondent's counsel contacted counsel for the Administrator and requested, for a second time, to continue the return date on the subpoena. Respondent's counsel also provided a doctor's note on Respondent's behalf. In that correspondence, Respondent's doctor stated that Respondent was fatigued and experiencing dizziness.

166. Respondent's appearance has never been rescheduled for a date after March 23, 2017, nor has it been waived or excused.

167. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failing to respond to a lawful demand for information from a disciplinary authority, by not responding to the Administrator's multiple requests for production of the client file, as well as for failing to appear on March 8, 2017 and March 23, 2017, pursuant to the Administrator's subpoena, requesting Respondent's appearance for a sworn statement, in violation of Rule 8.1(b) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator respectfully requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held pursuant to Supreme Court Rule 753(b), and that the Panel make findings of fact, conclusions of fact and law, and a recommendation for such

Roona N. Shah
Scott Renfroe
Counsel for the Administrator

Respectfully submitted,

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Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: Roona N. Shah