

STATE OF FLORIDA
COUNTY OF ORANGE

AFFIDAVIT

I, Matthew D. Herdeker, after being duly sworn, say:

1. I have been an auditor with The Florida Bar, located at 1000 Legion Place, Suite 1625, Orlando, Florida 32801, since January 2012. My duties include conducting compliance audits of attorneys' trust accounts, investigating allegations of misappropriations from trust accounts, preparing written reports of audit findings, and testifying. I have been qualified as an expert witness in trust accounting matters in bar disciplinary proceedings.

2. I am a Certified Public Accountant (CPA), Certified Internal Auditor (CIA), and Certified Fraud Examiner (CFE). I am also Certified in Financial Forensics (CFF) with the AICPA.

3. I conducted an audit of respondent's trust accounts after the bar received a complaint against her by members of the Stoneybrook West Master Association, Inc. ("Stoneybrook") on December 28, 2017. Stoneybrook hired respondent in December 2013 to perform various legal services, including the collection of delinquent association fees from homeowners.

4. The complainants generally alleged that respondent did not provide timely accountings of the fees she collected and did little or no work on files. They also alleged her trust account records were incomplete and inaccurate, and believed

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there was approximately \$14,000 missing from the trust account.

5. Pursuant to a subpoena served April 23, 2018, the bar directed respondent to provide trust account records. The Rules Regulating The Florida Bar required her to maintain for the audit period December 2013 to April 2018.

6. The bar also issued subpoenas to five financial institutions at which respondent held seven trust accounts: Fairwinds Credit Union, Florida Community Bank, Northern Trust Co., Seaside National Bank & Trust, and SunTrust Bank. The subpoenas directed the institutions to provide bank records for respondent's trust and operating accounts for the audit period December 2013 to April 2018.

7. I reviewed the records respondent, the credit union, and the banks provided as part of my audit.

8. As part of the audit, I also attended respondent's sworn statement at the bar on August 1, 2018.

Seaside National Bank Trust Account

9. Respondent used a trust account at Seaside National Bank & Trust to collect payments related to the Stoneybrook matter.

10. During the audit period, respondent used client funds in the account, to which she was not entitled, for her own benefit or the benefit of her firm.

11. For example, on or around January 12, 2015, respondent issued a check for \$10,000.00 from the account, payable to Anderson Legal Group. The

memo line was blank. The check cleared on January 13, 2015.

12. The check was recorded in the ledger card for the “Belle Isle Bayou” matter, which had a balance of -\$5,579.84 before the payment. The \$10,000.00 payment increased the negative balance to -\$15,579.84. There were no funds available, therefore, from the Belle Isle Bayou matter for respondent to use.

13. The \$10,000.00 was deposited into respondent’s Fairwinds Credit Union operating account. In the operating account, respondent used a portion of the funds to make a payment to American Express for what she described as business expenses, to Navient for her student loan payment, and to an employee for payroll.

14. As another example, on or around January 29, 2016, respondent issued a check for \$4,458.26 from the Seaside trust account, payable to Anderson Legal Group. The memo line referenced the matter “13413 Fox Glove.” The check cleared February 17, 2016.

15. The disbursement was recorded in the ledger card for the 13413 Fox Glove Street matter, which had a balance of only \$751.18 before the payment. The disbursement resulted in a balance of -\$3,707.08 in the ledger. There were insufficient funds in the ledger, therefore, for respondent to use.

16. Respondent deposited the \$4,458.26 into her Fairwinds Credit Union operating account. In the operating account, she used a portion of the funds to pay

Attorney Closing Services and American Express for what she described as business expenses.

17. As another example, on or around February 20, 2016, respondent issued a check for \$2,112.00 payable to Anderson Legal Group. The memo line referenced the matter "2531 Balforn." The check cleared March 1, 2016.

18. The disbursement was recorded in a ledger card titled "Firm Funds," which had a balance of -\$1,617.03 before the payment. The disbursement of \$2,112.00 increased the negative balance to -\$3,729.03. There were no funds available, therefore, in the Firm Funds ledger for respondent to use.

19. There were also insufficient funds in the ledger card for the 2531 Balforn Tower matter for respondent to use. As of February 20, 2016, the balance in that ledger was only \$645.54.

20. Respondent deposited the \$2,112.00 into her Fairwinds Credit Union operating account. In the operating account, she used a portion of the funds to pay office rent.

21. As of February 23, 2018, there was a shortage of roughly \$37,000.00 in the Seaside trust account.

22. On February 23, 2018, the beginning balance in the Seaside trust account was \$1,543.54. That day, respondent deposited \$37,000.00 into the trust account from her parents. The ending daily balance in the account was \$38,543.54.

23. On February 27, 2018, respondent used the funds from her parents to wire \$37,870.03 to Neil A. Saydah, P.A., the new attorney who represented Stoneybrook. Respondent's ledger cards showed the payment was for balances totaling \$50,309.04 she owed to Stoneybrook in 30 matters, offset by overpayments to Stoneybrook totaling \$12,439.01 in 16 matters.

24. Respondent acknowledged the shortage in her sworn statement. She also stated she would not have been able to pay the balances she owed to Stoneybrook without the funds from her parents or funds from her 401(k) if they had not given her the money. She explained the reason the account was short was because some deposits which should have been placed in the trust account were mistakenly placed in her Fairwinds operating account and were no longer available.

25. From May 1, 2017 to February 27, 2018, the ending daily balance in respondent's Fairwinds operating account ranged from -\$105.00 to \$366.41.

26. Respondent did not notify the bar of the shortage despite being required to do so by Chapter 5 of the Rules Regulating The Florida Bar.

Fairwinds Credit Union Trust Account

27. Respondent opened a trust account at Fairwinds Credit Union before December 2013 and generally used it for non-Stoneybrook matters.

28. The Rules Regulating The Florida Bar did not permit attorneys to

maintain a trust account at a credit union before February 2018.

29. Respondent used client funds in the account, to which she was not entitled, for her own benefit, the benefit of her firm, or the benefit of others.

30. For example, on or around December 22, 2015, respondent wrote a check for \$100,000.00 to her client Karamchand Doobay. The check cleared December 23, 2015.

31. Respondent did not hold any funds in the account for Mr. Doobay. The payment, therefore, caused a shortage in the trust account. Respondent acknowledged in her sworn statement that the \$100,000.00 payment caused the shortage.

32. Respondent explained that Mr. Doobay or another individual told her she would be receiving a wire into the trust account for Mr. Doobay's benefit related to a loan or a real estate matter. Respondent maintained she pre-signed the \$100,000.00 check in anticipation of receiving that wire.

33. Respondent further explained that Mr. Doobay came to her office while she was away, found the check, and took it and cashed it without her permission.

34. On December 28, 2015, respondent deposited a cashier's check from Karamchand Doobay in the amount of \$100,000.00 into the Fairwinds trust account to correct the shortage.

35. Respondent stated in her sworn statement that she should have called the police, but did not because Mr. Doobay was a client and “it would have just made it worse.”

36. Respondent did not notify the bar of the shortage despite being required to do so by Chapter 5 of the Rules Regulating The Florida Bar.

37. As another example, on July 15, 2016, a TD Bank official check in the amount of \$32,000.00 was deposited into the Fairwinds Credit Union operating account. The funds were from a settlement for respondent’s client, Andrea Vogels.

38. In correspondence and in her sworn statement, respondent explained that the settlement check was mistakenly deposited into the operating account instead of the trust account.

39. Over the next two months, respondent disbursed almost the entire amount of the settlement funds from the operating account. By September 19, 2016, the balance in the Fairwinds operating account was \$194.31.

40. Respondent spent the funds on payments to herself, American Express, Florida Lawyers Mutual, and Highwoods Realty for office rent.

41. On August 23, 2016, respondent disbursed settlement proceeds of \$27,289.50 to Ms. Vogels from the Fairwinds Credit Union trust account.

42. Since she never placed the settlement funds in the Fairwinds Credit Union trust account, respondent used other clients’ funds to make the \$27,289.50

payment to Ms. Vogels.

43. In her sworn statement, respondent acknowledged the payment created a shortage in the trust account. She stated she was unsure if she replaced the money in the trust account.

44. As another example, on January 18, 2017, \$5,223.00 was withdrawn from the Fairwinds Credit Union trust account and deposited into the Fairwinds Credit Union operating account.

45. The withdrawal was recorded to the ledger for the “Gastro Intestinal Consultants of Central FLA” matter. Before the payment, the balance in the ledger was \$0.00. After the payment, the balance in the ledger was -\$5,223.00. There were no funds available in the ledger, therefore, for respondent to use.

46. In the Fairwinds Credit Union operating account, respondent issued a check for \$5,075.00, dated January 9, 2017, to Perry Wilson for reimbursement of a loan. The check cleared January 20, 2017. Without the \$5,223.00 from the trust account, there would have been insufficient funds in the operating account to cover that check.

47. As another example, on February 23, 2017, respondent wired \$8,500.00 from the Fairwinds Credit Union trust account to an operating account at Florida Community Bank.

48. The wire was recorded to the ledger for the Gastro Intestinal

Consultants of Central FLA matter. Before the payment, the balance in the ledger was -\$5,223.00. After the payment, the balance in the ledger was -\$13,723.00.

There were no funds available in the ledger, therefore, for respondent to use.

49. In the Florida Community Bank operating account, respondent issued a check for \$8,128.97, dated February 22, 2017, to Highwoods for office rent. The check cleared February 24, 2017. Without the \$8,500.00 wire from her Fairwinds Credit Union trust account, there would have been insufficient funds in the operating account to cover that check.

50. As of April 30, 2018, there was a shortage of at least \$122,330.62 in the Fairwinds Credit Union trust account.

51. On that date, respondent should have been holding balances in the account totaling at least \$242,570.18 for four matters. The bank balance on April 30, 2018, however, was only \$120,239.56.

SunTrust Trust Account

52. Respondent used a trust account at SunTrust to conduct real estate closings.

53. Respondent used funds in the account intended for a mortgage payoff from a real estate closing for another purpose.

54. On or around September 29, 2015, respondent conducted a real estate closing in the account for the sale of property on Maybrook Street in Apopka, Florida.

55. In the closing, respondent issued an official check for \$5,788.22 to Bank of America, dated October 15, 2015, for one of the sellers' mortgage payoffs.

56. The check was returned and deposited back into the SunTrust trust account on January 21, 2016. In her sworn statement, respondent explained that Bank of America returned the check because the bank believed the amount was insufficient to satisfy the mortgage.

57. Respondent should have held the \$5,788.22 in the trust account until she reissued the payoff.

58. On July 18, 2016, respondent withdrew \$3,000.00 cash from the account, resulting in a balance of \$4,938.22. This balance was \$850.00 less than what she was required to be holding for the sellers' payoff ($\$4,938.22 - \$5,788.22 = -\$850.00$).

59. On November 15, 2016, respondent withdrew the remaining balance of \$4,938.22 from the SunTrust trust account and used it to purchase another official check to Bank of America for the mortgage payoff in the amount of \$5,788.22.

60. The withdrawal slip showed that respondent needed \$850.00 cash in addition to the \$4,938.22 to purchase the \$5,788.22 payoff check.

Commingling

61. In some of the above examples, respondent commingled client funds from the Seaside trust account and the Fairwinds Credit Union trust account with operating funds.

Trust Accounting Records and Procedures

62. Respondent did not maintain trust accounting records and perform trust accounting procedures in substantial compliance with the requirements of Rule 5-1.2.

63. She did not clearly label the Seaside trust account as a “trust account.”

64. She did not provide the backs of canceled checks for the Seaside trust account.

65. Numerous entries in respondent’s journals for the Fairwinds Credit Union trust account, Seaside trust account, and the Florida Community Bank general trust account did not identify the client and contain a reason for the transaction.

66. Entries in the ledger cards for the Fairwinds Credit Union, Seaside trust account, and Florida Community Bank general trust account did not consistently contain reasons for transactions.

67. In the Seaside trust account, the July 2014 and December 2014 reconciliations did not identify outstanding checks by date and check number.

68. For the Fairwinds Credit Union trust account, respondent did not provide complete reconciliations. Two months were missing for 2014, five months were missing for 2015, eleven months were missing for 2017, and four months were missing for 2018.

69. In the Florida Community Bank general trust account, the reconciled bank balance did not match the journal balance as of February 28, 2018 and March 31, 2018.

70. Respondent did not provide monthly comparisons for the Seaside trust account.

Compliance Certification

71. Respondent served as a member of the bar's 9C Grievance Committee from July 1, 2013 through June 30, 2016.

72. As a grievance committee member, respondent voluntarily attended a Trust Accounting Workshop I taught at the bar on March 31, 2016.

73. During the two- to three-hour presentation, I covered topics such as misappropriations from trust accounts, trust account shortages, negative ledger balances, commingling, reconciliations, monthly comparisons, maintaining the backs of canceled checks, labeling a trust account, and how to prepare records in

compliance with the trust accounting rules. I provided respondent with a copy of the Rules Regulating The Florida Bar pertaining to trust accounts, sample trust records, and a workbook covering trust accounting topics.

74. Respondent certified on her four annual membership fee statements for 2014-2015 to 2017-2018 (pertaining to the trust account for the period July 1, 2013 to June 30, 2017) that she was in compliance with Chapter 5 of the Rules Regulating The Florida Bar.

75. Respondent submitted the fee statements for 2016-2017 and 2017-2018 after she attended the Trust Accounting Workshop.

Opinion

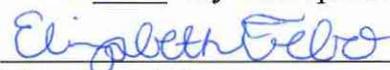
76. It is my professional opinion that respondent was not in substantial compliance with the bar's rules governing trust accounts.

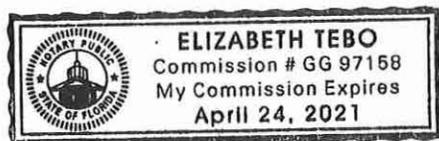
77. It is also my professional opinion that respondent misappropriated client funds and used them for her own benefit, the benefit of her firm, or the benefit of others.

FURTHER AFFIANT SAYETH NOT.


MATTHEW D. HERDEKER

SWORN TO AND SUBSCRIBED before me this 27th day of September, 2018.


Notary Public



Elizabeth Tebo

Print, type, or stamp commission
name of notary public

Personally known to me
 Produced the following identification
Type of Identification produced: _____

