

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M77293
E/cb

A. GAIL PRUDENTI, P.J.
REINALDO E. RIVERA
ROBERT A. SPOLZINO
PETER B. SKELOS
STEVEN W. FISHER, JJ.

2008-07577

DECISION & ORDER ON MOTION

In the Matter of Yohan Park, an attorney
and counselor-at-law.

Grievance Committee for the Second and
Eleventh Judicial Districts, petitioner;
Yohan Park, respondent.

(Attorney Registration No. 2975662)

Motion by the Grievance Committee for the Second and Eleventh Judicial Districts for an order: 1) suspending the respondent from the practice of law pending consideration of charges of professional misconduct against him, pursuant to 22 NYCRR 691.4(l)(1)(ii) and (iii), upon a finding that he is guilty of professional misconduct immediately threatening the public interest based on substantial admissions under oath and other uncontroverted evidence of professional misconduct; 2) authorizing the institution and prosecution of a disciplinary proceeding based upon a verified petition dated August 13, 2008; and 3) appointing a Special Referee to hear and report. The respondent was admitted to the Bar at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on December 15, 1999.

Upon the papers submitted in support of the motion and the papers submitted in opposition thereto, it is

ORDERED that the motion is granted; and it is further,

ORDERED that pursuant to 22 NYCRR 691.4(l)(1)(ii) and (iii), the respondent, Yohan Park, is immediately suspended from the practice of law in the State of New York, pending further order of the court; and it is further,

October 17, 2008

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ORDERED that the respondent, Yohan Park, shall promptly comply with this court's rules governing the conduct of disbarred, suspended, and resigned attorneys (*see* 22 NYCRR 691.10); and it is further,

ORDERED that pursuant to Judiciary Law §90, during the period of suspension and until further order of this court, the respondent, Yohan Park, is commanded to desist and refrain from (1) practicing law in any form, either as principal or agent, clerk, or employee of another, (2) appearing as an attorney or counselor-at-law before any court, Judge, Justice, board, commission, or other public authority, (3) giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) holding himself out in any way as an attorney and counselor-at-law; and it is further,

ORDERED that the Grievance Committee for the Second and Eleventh Judicial Districts is hereby authorized to institute and prosecute a disciplinary proceeding in this court, against Yohan Park, based on the petition dated August 13, 2008; and it is further,

ORDERED that the Grievance Committee shall serve the petition upon the Special Referee and file the original petition in the office of the Clerk of this court within 20 days after receipt of a copy of this decision and order on motion; and it is further,

ORDERED that Diana Maxfield Kears, Chief Counsel, Grievance Committee for the Second and Eleventh Judicial Districts, Renaissance Plaza, 335 Adams Street, Suite 2400, Brooklyn, N.Y. 11201-3745, is hereby appointed as attorney for the petitioner in such proceeding; and it is further,

ORDERED that within 20 days after service upon him of a copy of this order, the respondent, Yohan Park, shall serve an answer upon the petitioner and the Special Referee, and shall file the original answer with this court; and it is further,

ORDERED that the issues raised by the petition and any answer thereto are referred to the Honorable Herbert Altman, a retired Acting Supreme Court Justice, New York County, 333 E. 23rd Street-Apt 4D, New York, N.Y. 10010, as Special Referee to hear and report, together with his finding on the issues, and to submit a report within 60 days after the conclusion of the hearing or the submission of post-hearing memoranda; and it is further,

ORDERED that if the respondent, Yohan Park, has been issued a secure pass by the Office of Court Administration, it shall be returned forthwith to the issuing agency and the respondent shall certify to the same in his affidavit of compliance pursuant to 22 NYCRR 691.10(f).

We find, *prima facie*, that the respondent is guilty of professional misconduct immediately threatening the public interest based upon substantial admissions under oath and other uncontroverted evidence of professional misconduct.

The Grievance Committee for the Second and Eleventh Judicial District was notified

that on August 10, 2006, a check in the sum of \$220 drawn on the respondent's IOLA account at JP Morgan Chase was returned due to insufficient funds. Subsequently, the respondent gave sworn testimony at the Grievance Committee's offices, on July 23, 2007.

During his testimony, the respondent admitted that he deposited \$2,300 into his IOLA account on May 10, 2006, in his capacity as escrow agent in a real estate matter. Although the respondent was required to safeguard that sum until May 31, 2006, the balance in his IOLA account fell to \$914.70 on May 30, 2006.

On July 7, 2006, the respondent received a retainer of \$1,000 from a client, Korean Canaan Church, which he deposited into his IOLA account, bringing his balance to \$1,284.70. On or about August 1, 2006, the balance was approximately \$1,109.70, which included the \$1,000 Korean Canaan Church retainer. On August 2, 2006, the respondent transferred approximately \$910 from his IOLA account into his business account. On July 27, 2006, he had depleted his IOLA account balance to \$289.70. On August 24, 2006, he transferred the subject \$1000 retainer fee to his business account although he had already depleted that fee.

On August 14, 2006, the respondent made two deposits into his IOLA account on behalf of Sang Pun Kwak totaling \$14,550, which he was holding as fiduciary. On or about August 29, 2006, the respondent paid Sang Pung Kwak the sum of \$14,550 which represented a bail refund. However, the account balance on August 16, 2006, was only \$6,179.70.

On or about August 1, 2006, the respondent received a down payment from purchaser Barbara Webb in the sum of \$25,000, as the escrow agent in the sale of his home. On August 7, 2006, he transferred \$7,000 from his IOLA account into his business account prior to the closing. The respondent attempted to explain that he mistakenly believed that sum to be an earned fee. When Grievance Counsel reminded the respondent that there were no other funds in the account at the time, the respondent had no explanation for this belief.

On or about September 8, 2006, the respondent paid client Café Thompson the sum of \$7,746 from his IOLA account. There is no evidence of a corresponding deposit. On September 6, 2006, the balance in the respondent's IOLA account was \$16,446.70, which belonged to Barbara Webb. The respondent made no additional deposits into his IOLA account prior to paying Café Thompson. He paid Café Thompson with Ms. Webb's money, leaving a balance in his escrow account of \$8,700.

In or about May 2006, the respondent deposited into his IOLA account a check in the amount of \$7,300 from his wife, who was not a client. The respondent admitted that he did not keep a contemporaneous ledger for his IOLA account and that his ledger did not include disbursements to himself. He admittedly made the deposit from his wife to correct any shortages in his IOLA account.

The respondent has submitted an affirmation in opposition to the Grievance Committee's motion in which he requests that the allegations be dismissed since his acts never constituted a threat to the public interest. The respondent requests that a Special Referee be

appointed to hear and report.

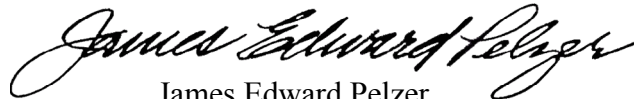
The respondent alleges that he innocently misunderstood the functions of an IOLA account and believed that he could disburse expenses for his clients out of the IOLA account. Although it appears that the balance of the IOLA account fell below the amount he should have been holding on a number of occasions, the respondent maintains that he always had sufficient funds in other bank accounts to cover any shortfall in escrow funds.

The respondent notes that he is a solo practitioner whose native language is Korean. He at no time intended to harm anyone and denies ever doing anything to merit the label “professional misconduct” which threatened the public interest. He observes that he has not been the subject of any clients’ complaints.

While proffering an excuse or an explanation for his conduct, the respondent does not deny his admissions or controvert the allegations set forth by the Grievance Committee. Accordingly, the Grievance Committee’s motion is granted, the respondent is immediately suspended upon a finding that he constitutes an immediate threat to the public interest based on substantial admissions under oath and other uncontroverted evidence, the Grievance Committee is authorized to institute and prosecute a disciplinary proceeding against the respondent based on the petition dated August 13, 2008, the respondent is directed to submit an answer to the petition within 20 days, and this matter is referred to a Special Referee to hear and report.

PRUDENTI, P.J., RIVERA, SPOLZINO, SKELOS and FISHER, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court