

BEFORE THE BOARD OF
PROFESSIONAL CONDUCT OF
THE SUPREME COURT OF OHIO

RECEIVED

APR 07 2016

In re: Complaint Against
DAVID GREGORY SIMONETTE
(Attorney Registration No. 0079707)
100 E. Broad Street
16th Floor
Columbus, Ohio 43215

RESPONDENT,

by

COLUMBUS BAR ASSOCIATION
175 South Third Street, Suite 1100
Columbus, Ohio 43215

RELATOR

Case No. 16-0092 BOARD OF PROFESSIONAL CONDUCT

FILED

APR 29 2016

COMPLAINT AND BOARD OF PROFESSIONAL CONDUCT
CERTIFICATE

(Rule V of the Supreme Court
Rules for the Government of the
Bar of Ohio)

Now comes Relator, Columbus Bar Association, and alleges that David Gregory Simonette (Attorney Reg. No. 0079707), an Attorney at Law duly admitted to practice law in this state of Ohio, is guilty of the following misconduct:

INTRODUCTION

1. Respondent has been licensed to practice law in the state of Ohio since November 7, 2005.
2. Respondent has not previously been the subject of attorney discipline or sanctions.

COUNT ONE – GORDON A. AND CLEO ZIEBEL

3. Respondent is the principal and sole member of TREXL, LLC.
4. Gordon A. and Cleo Ziebel, as co-trustees of the Ziebel Family Revocable Living Trust, loaned TREXL, LLC, \$100,000 on August 27, 2013.
5. The Ziebels' \$100,000 loan was memorialized by a Promissory Note drafted by respondent.

6. The Promissory Note was executed by respondent on August 27, 2013.
7. Under the terms of the Promissory Note, respondent, by and through TREXL, LLC, agreed to pay the Ziebels monthly interest payments of \$1,000 and to repay the principal amount “on or before September 1, 2014.”
8. On August 28, 2013 and at respondent’s direction, \$100,000 was wired by the Ziebels into respondent’s Interest on Lawyers’ Bank Account (“IOLTA”), *i.e.*, J.P. Morgan Chase Bank account ending in 1306.
9. At all relevant times, Chase Bank account ending in 1306 was respondent’s only IOLTA (hereinafter “his IOLTA,” “respondent’s IOLTA,” and “the IOLTA”).
10. Immediately prior to the \$100,000 Ziebel loan deposit, the balance of funds in respondent’s IOLTA was \$0.00.
11. On August 30, 2013, respondent transferred \$12,993.22 from the IOLTA to Golden Title Agency.
12. On September 6, 2013, respondent withdrew \$18,306.73 from his IOLTA to purchase a cashier’s check payable to Eric Pifer.
13. On September 12, 2013, respondent withdrew \$11,269.39 from his IOLTA to purchase a cashier’s check payable to Barrister Real Estate.
14. By check written September 16, 2013 from the IOLTA payable to “Columbus Turnkey Houses, LLC,” respondent withdrew \$5,000.
15. By check written September 17, 2013 from the IOLTA, respondent withdrew \$16,041.41 as a cash draw from his IOLTA.

16. On September 26, 2013, the Ziebels signed an escrow agreement, also drafted by respondent. The agreement states:

As we have discussed, Borrower [respondent] is borrowing from Lender [Ziebels] pursuant to a note (the Note) funds to be lent (sic) to other entities for real estate investment purposes. Borrower shall retain all loan proceeds in Escrow Agent's account until such time that other borrowers (Sub-Borrowers) have projects suitable for the aforementioned at which time Sub-Borrower will supply a note and mortgage to secure said loan from Borrower.

17. The Ziebel loan was never deposited into an "Escrow Agent's account."

18. By check dated October 2, 2013 from the IOLTA, respondent paid \$2,500 to TREXL, LLC.

19. By check dated October 2, 2013 from the IOLTA, respondent paid Barrister Real Estate Closings \$2,500.

20. By check dated October 2, 2013 from the IOLTA, respondent paid SBNOVA Fund Management \$9,000.

21. By check dated October 8, 2013 from the IOLTA, respondent paid Jennifer Simonette (respondent's spouse) \$1,000.

22. By check dated October 8, 2013 from the IOLTA, respondent paid himself \$1,000.

23. By check dated October 15, 2013 from the IOLTA, respondent paid himself \$2,500.

24. By check dated October 15, 2013, respondent deposited into the IOLTA a check from TREXL, LLC in the amount of \$27,311.20. The memo line notes "Repayment for loan for Contract + Revb." The TREXL check is signed by respondent.

25. On October 18, 2013, respondent withdrew \$27,150.95 from the IOLTA to purchase a cashier's check made payable to Classic Turnkey Properties LLC.

26. By check dated October 21, 2013 from the IOLTA, respondent paid CH Grogs, LLC \$6,000. The memo line notes "Barthman Draw."
27. On October 29, 2013 and at respondent's direction, an additional \$10,000 was wired by the Ziebels into respondent's IOLTA.
28. On October 30, 2013, respondent deposited into his IOLTA a check from G&R LLCO in the amount of \$10,089.21.
29. By check dated October 30, 2013 from the IOLTA, respondent paid Mohr Partners, Inc. \$8,589.21.
30. On November 4, 2013 and at respondent's direction, the Ziebels wired \$13,250.00 into respondent's IOLTA.
31. By check dated November 4, 2013 from the IOLTA, respondent paid Chase Bank \$23,250.00. This check is endorsed by respondent.
32. Between August 28, 2013 and November 4, 2013, the Ziebels wired a total of \$123,250 into respondent's IOLTA.
33. As of November 4, 2013, respondent's IOLTA balance was \$4,227.54.
34. By no later than November 4, 2013, the Ziebels' funds and potentially the funds of other clients, had been exhausted by respondent for unauthorized expenditures.

35. The chart below summarizes paragraphs 10-34 above and represents respondent's IOLTA activities from August 28, 2013 through November 4, 2013:

Date	Deposit	Withdrawal	Balance	Comment
8/28/2013	100,000.00		100,000.00	Ziebel Family Trust wire transfer
8/30/2013		12,993.22	87,006.78	Book Transfer Debit to Golden Title Agency
9/6/2013		18,306.73	50,378.49	Cashier's Check to Eric Pifer
9/6/2013		18,321.56	"	Cashier's Check to David Simonette
9/12/2013		11,269.79	39,108.70	Cashier's Check to Barrister Real Estate
9/16/2013		5,000.00	34,108.70	Check #4068 made payable to Columbus Turnkey Houses, LLC
9/17/2013		16,041.41	18,067.29	Check #4069 made payable to Cash
9/22/2013	9,000.00		27,067.29	Cash deposit
10/2/2013		2,500.00	24,456.29	Check #4257 made payable to TRELX
10/2/2013		2,500.00	22,067.29	Check #4258 made payable to Barrister Real Estate Closings
10/2/2013		9,000.00	13,067.29	Check #4070 made payable to SBNOVA Fund Management
10/8/2013		1,000.00	12,067.29	Check #4259 made payable to Jennifer Simonette
10/8/2013		1,000.00	11,067.29	Check #4320 made payable to respondent
10/14/2013	2,500.00		13,456.29	Check from Barrister Real Estate Closings – drafted and endorsed by respondent
10/15/2013		2,500.00	11,067.29	Check #4321 made payable to respondent
10/15/2013	27,311.20		38,378.49	Check from TRELX, LLC – "Repayment for Loan for Contract + Revb" – drafted by respondent
10/18/2013		27,150.95	11,227.54	Cashier's Check to Classic Turnkey Properties LLC
10/21/2013		6,000.00	5,227.54	Check #4322 made payable to CH Grogs (?) LLC
10/24/2013		1,000.00	4,227.54	On-line transfer to Checking Account #2183
10/29/2013	10,000.00		14,227.54	Ziebel Family Trust Wire Transfer
10/30/2013	10,089.21		24,316.75	Check from G&R LLCO
10/30/2013		8,589.21	15,727.54	Check #4506 made payable to Mohr Partners Inc.
10/31/2013		1,500.00	14,227.54	On-line transfer to Checking Account #2183
11/4/2013	13,250.00		27,477.54	Ziebel Family Trust Wire Transfer
11/4/2013		23,250.00	4,227.54	Check #4507 made payable to Chase Bank. Endorsed by respondent.

36. The Ziebels never received promissory notes and mortgages from any sub-borrowers as required by the September 26, 2013 escrow agreement.
37. The Ziebels never received any monthly interest payments from respondent as required by the August 27, 2013 promissory note.
38. In or about July 2014, the Ziebels inquired of respondent as to the status of their payments and principal.
39. Respondent replied by letter dated July 30, 2014, falsely claiming that, "As of today, \$100,000 is being held in the IOLTA account of The Law Offices of David G. Simonette, Esq., LLC pursuant to the Escrow Agreement executed August 26, 2013."
40. The balance in respondent's IOLTA on July 30, 2014, was \$9,030.63. By August 4, 2014, respondent's IOLTA balance was \$130.63. With the exception of a few deposits that were immediately withdrawn, the balance of respondent's IOLTA remained at or near \$100 from August 4, 2014 until November 30, 2015.
41. When respondent failed to return the Ziebels' principal investment in August 2014, the Ziebels hired counsel who inquired into the status of respondent's repayment.
42. In response to the Ziebels' attorney's communication, respondent stated by e-mail dated October 7, 2014, "I have every intention to pay any and all amounts due under the promissory note without litigation or other aggressive measures on your clients' part. I have been traveling a lot over the past month, and have had limited communication; for that I apologize. With that being said, I will make arrangements to have your clients paid in the next two weeks."
43. On November 14, 2014, Mr. Ziebel filed a grievance against respondent with the Office of Disciplinary Counsel.

44. Respondent failed to repay the Ziebels and, on February 5, 2015, they filed suit in the Court of Common Pleas of Franklin County, Ohio, to wit, *The Ziebel Family Revocable Living Trust vs. TREXL, LLC and David G. Simonette*, 15CV001071 (“the lawsuit”).
45. Respondent filed an Answer to the lawsuit on March 23, 2015.
46. Respondent responded to the Office of Disciplinary Counsel’s letter of inquiry by letter dated April 16, 2015.
47. In the April 16, 2015, response, respondent stated that he “agree[s] with most of the Ziebels’ comments regarding time and composition of events.”
48. Respondent falsely stated in his response to the Disciplinary Counsel that the Ziebels agreed to extend the loan through their financial advisor and that Mrs. Ziebel verbally agreed to extend the note.
49. The Ziebels never agreed to extend the note.
50. On November 2, 2015, respondent and Ziebels filed an Agreed Final Judgment Entry. In the agreed entry, respondent conceded that he committed a breach of contract, conversion, fraud and that he violated the Ohio Securities Act. He further agreed to a judgment against him in the amount of \$126,344.73.
51. On January 4, 2016, the Ziebels filed for a Certificate of Judgment in an attempt to regain the stolen funds.
52. Respondent has not paid the judgment and pursuant to Gov.Bar R. V(10)(E)(1)(b), relator alleges that respondent owes restitution in the amount of the Ziebels’ judgment plus interest pursuant to the order of the Franklin County Court of Common Pleas.

53. As set forth in Count One herein, respondent's conduct violates the Ohio Rules for Professional

Conduct:

- Rule 1.15(a) (2)-(5) – Failure to properly maintain trust account.
- Rule 1.15(d) – Responsibilities to third persons with a lawful interest in IOLTA funds.
- Rule 8.1(a) – In connection with a disciplinary matter, a lawyer shall not knowingly make a false statement of material fact.
- Rule 8.4 (b) – It is professional misconduct for a lawyer to commit an illegal act that reflects adversely on the lawyer's honesty or trustworthiness
- Rule 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

COUNT TWO – CLEFTON JACKSON

54. On or about 2013, Clefton (aka Clifton) Jackson and a partner began buying and selling real estate.

55. Mr. Jackson and his partner formed a business entity to conduct these real estate transactions. The name of the entity is Page Group Properties, LLC.

56. Respondent drafted the Operating Agreement for Page Group Properties, LLC.

57. Respondent also drafted purchase and assignment contracts for Mr. Jackson's use in conducting the business of Page Group Properties, LLC.

58. Respondent's title company, Barrister Real Estate Closings, LLC, also handled several closings for Jackson and/or Page Group Properties, LLC.

59. In September 2014, respondent convinced Mr. Jackson and his wife to invest in Worldwide Capital Markets LLC.

60. Respondent represented to the Jacksons that their investment would be returned in "about three months."

61. The Jacksons created Neon Homes & Equity Group, LLC, to funnel their investment to Worldwide Capital Markets as well as future real estate holdings.
62. On or about August 28, 2014, the Jacksons, through Neon Homes & Equity Group, signed an escrow and disbursement agreement. The agreement was drafted by respondent and respondent signed on behalf of his law firm as escrow agent.
63. Pursuant to the escrow agreement, on or about August 28, 2014, the Jacksons wired \$30,000 to a JPMorgan Chase Bank Account named "The Law Offices of David G. Simonette, Esq., LLC," ending in 6687, which the Jacksons believed was respondent's IOLTA.
64. The account described in the paragraph above has never been reported as an IOLTA.
65. The Jacksons' funds were never deposited in respondent's IOLTA.
66. Immediately before the Jacksons' \$30,000 was wired into respondent's account ending in 6687, the balance in the account was \$20.
67. Under the terms of the Jacksons' escrow agreement with respondent and Worldwide Capital Markets, the Jacksons' funds were not to be released by respondent until funding for a larger project was procured by Worldwide Capital Markets.
68. One day after the Jacksons' \$30,000 was deposited into his account, respondent transferred \$15,000 of the Jacksons' funds to Worldwide Capital Markets via wire transfer.
69. One day after the Jacksons' \$30,000 was deposited into his account, respondent withdrew \$15,000 of the amount in cash.
70. As of close of business on August 29, 2014, none of the Jacksons' money remained within respondent's possession or control.

71. After the wire transfer to respondent's business account, respondent failed to adequately communicate with the Jacksons.

72. Despite many requests to respondent and Worldwide Capital Markets, the Jacksons' \$30,000 has never been returned.

73. As of August 30, 2014, the balance of funds in respondent's account ending in 6687 was \$0.00.

74. Pursuant to Gov.Bar R. V(10)(E)(1)(b) relator alleges that respondent owes restitution to the Jacksons; however, given the litigation pending in the Franklin County Court of Common Pleas, relator is unable to set forth a precise amount at this time.

75. As set forth in Count Two herein, respondent's conduct violates the Ohio Rules of Professional Conduct:

- Rule 1.4(a)(2) – Communication: Failure to reasonably consult with the client about the means by which the client's objectives are being accomplished.
- Rule 1.4(a)(3) – Communication: Failure to keep client reasonably informed about the status of the matter.
- Rule 1.7(a)(2) – Conflict of Interest: A conflict of interest is created if there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by the lawyer's own personal interests.
- Rule 1.15(a) – A lawyer shall hold property of clients or third persons . . . separate from the lawyer's own property.
- Rule 1.15(a) (2)-(5) – Failure to properly maintain trust account.
- Rule 8.4(b) – Committing an illegal act that reflects adversely on the lawyer's honesty or trustworthiness
- Rule 8.4(c) – Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

COUNT THREE – FAILURE TO COOPERATE

76. On or about November 14, 2014, the Office of Disciplinary Counsel (“ODC”) received a grievance form from Gordon A. Ziebel, Sr., presenting the issues described above in Count One.
77. ODC sent a letter of inquiry to respondent on December 11, 2014.
78. When no response was received, ODC sent a second letter of inquiry on March 4, 2015.
79. Again, no response was received and ODC sent a third letter of inquiry on April 2, 2015.
80. Respondent provided a written response to ODC dated April 15, 2015.
81. The response contains numerous misrepresentations which the Ziebels outlined in their April 28, 2015 reply.
82. By letter dated April 30, 2015, ODC dismissed the Ziebels’ grievance due to pending litigation.
83. On November 5, 2015, the Ziebels’ attorney notified ODC that litigation was completed. Shortly thereafter, the Ziebels’ grievance was transferred to relator to consolidate with the Jackson matter.
84. Relator opened the Ziebel matter and sent a letter of inquiry on December 7, 2015. No response was received.
85. Relator sent a second letter of inquiry on January 4, 2016.
86. On January 25, 2016, respondent sent an e-mail to relator stating, “I do have a supplemental response for your office; a large portion of it is related to a medical condition that I have experienced for quite some time which had a direct impact on my decisions related to my law practice for a long period of time including the period in question.”
87. Despite respondent’s statement, no response has been received for the Ziebel matter.
88. Relator received Clefton Jackson’s grievance against respondent on June 23, 2015.

89. Relator sent a letter of inquiry to respondent on June 29, 2015.
90. When a response was not received, a second letter of inquiry was sent on July 13, 2015.
91. The matter was assigned to a subcommittee of the Columbus Bar Association's certified grievance committee. The subcommittee continued to solicit a response from respondent.
92. Respondent provided members of the subcommittee with a response by letter dated September 28, 2015.
93. Respondent's response contains numerous misrepresentations.
94. On October 9, 2015, the Board of Professional Conduct issued a subpoena *duces tecum* to respondent for all of the Jackson files for the period of January 1, 2013 through the present; proof of professional liability coverage from January 1, 2013 through the present; and, all IOLTA records required by Rule 1.15 from January 1, 2013 to the present.
95. On October 20, 2015, the Board of Professional Conduct issued a subpoena to respondent for a November 19, 2015, deposition.
96. Respondent was served with both of the October subpoenas.
97. On or about November 2, 2015, respondent provided documents partially responding to the subpoena *duces tecum*.
98. By letter to respondent dated November 12, 2015, relator detailed the missing documents and requested that the missing documents be provided to relator prior to the November 19, 2015, deposition.
99. No additional documents have been received by relator from respondent.

100. Thirty minutes before the November 19, 2015, deposition was scheduled to begin, respondent left a voice mail at the office of relator's Assistant Bar Counsel requesting that the deposition be continued to until December 3, 2015, to provide respondent with the opportunity to obtain counsel.

101. Respondent did not appear on December 3, 2015.

102. On December 7, 2015, respondent again requested additional time to hire counsel.

103. Respondent has never hired counsel and has never appeared for a deposition.

104. As set forth in Count Three herein, respondent's conduct violates the Rules of Professional

Conduct:

- Rule 8.1(a) – In connection with a disciplinary matter knowingly making a false statement of material fact.
- Rule 8.1(b) – Failure to cooperate with disciplinary authority.
- Rule 8.4 – Misconduct: Engaging in conduct that compromises an illegal act, conduct involving dishonestly, fraud, deceit and/or misrepresentation.

COUNT FOUR – PROFESSIONAL LIABILITY INSURANCE

105. In response to relator's October 9, 2015 subpoena *duces tecum* asking for proof of professional liability insurance coverage from January 1, 2013 through the present, respondent provided documentation evidencing professional liability insurance only for the period of February 13, 2014, through February 13, 2015.

106. By letter dated November 12, 2015, relator requested that respondent produce copies of any and all client notice(s) he maintained regarding a lack of professional liability insurance pursuant to Prof. Cond. R. 1.4(c)(2) for the period not covered by the provided policy.

107. Respondent has not responded to relator's requests.

108. As set forth in Count Four herein, respondent's conduct violates the Rules of Professional

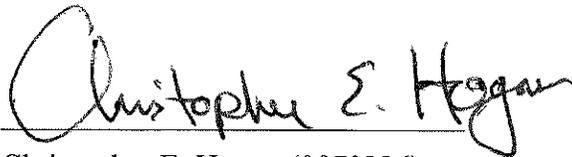
Conduct:

- Rule 1.4(c) – Communication: A lawyer shall inform a client at the time of the client's engagement of the lawyer or at any time subsequent to the engagement if the lawyer does not maintain professional liability insurance in the [requisite] amounts . . . or if the lawyer's professional liability insurance is terminated.

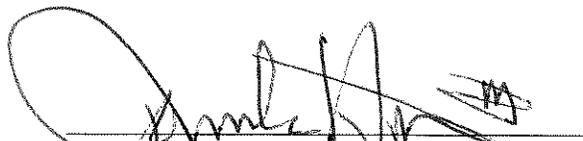
CONCLUSION

WHEREFORE, relator submits that respondent, David Gregory Simonette, should be found in violation of these Rules of Professional Conduct and be sanctioned appropriately.

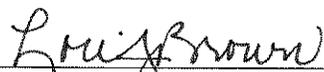
Respectfully submitted,



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COUNSEL FOR RELATOR

CERTIFICATE

The undersigned Chairperson of the Certified Grievance Committee of the Columbus Bar Association hereby certifies that Christopher E. Hogan, Esq., James K. Hunter, III, Esq., Lori J. Brown, Esq., and A. Alysha Clous, Esq., are duly authorized to represent Relator in the premises and have accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: 4/5/16

Signed: 

*Lisa Pierce Reisz, Esq., Chairperson
Certified Grievance Committee, Columbus
Bar Association*