

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

FILED

OCT 24 2016

BOARD OF PROFESSIONAL CONDUCT

In re:

Complaint against

Brian H. Richman, Esq.
B.H. Richman & Co., Ltd.
12800 Shaker Boulevard
Cleveland, Ohio 44120

No. 16-0492

Attorney Registration No. (0013467)

COMPLAINT AND CERTIFICATE

Respondent,

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

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

Relator.

Now comes the relator and alleges that Brian H. Richman, an Attorney at Law, duly admitted to the practice of law in the State of Ohio, is guilty of the following misconduct:

1. Respondent, Brian H. Richman, was admitted to the practice of law in the State of Ohio on November 8, 1969.
2. Respondent is subject to the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio.
3. On November 3, 2015, the Supreme Court suspended respondent from the practice of law as a result of his failure to comply with the attorney registration requirements of Gov. Bar R. VI(1)(A) for the 2015/2017 attorney registration biennium. *See 11/05/2015*

Administrative Actions, 2015-Ohio-4567. Respondent has remained suspended from the practice of law at all times since November 3, 2015.

4. In 1997, respondent was retained by Three HB International, Inc. (“Three HB”), a company that primarily invests in real estate ventures, to represent the company in an action to recover funds that were misappropriated by a former Three HB manager, Saadideen Khayat.
5. On July 11, 1997, respondent filed a civil action against Khayat in the U.S. District Court for the Northern District of Ohio entitled *Three HB Int’l Inc. v. Khayat, et al.*, Case No. 1:97-cv-01841 JDT (“*Three HB v. Khayat* action”). By judgment filed August 24, 1998, respondent obtained a \$2 million judgment in favor of Three HB and against Khayat.
6. Following the successful conclusion of the *Three HB v. Khayat* action, Three HB retained respondent to act as a fiduciary for the company. In that fiduciary capacity, respondent was responsible for receiving the dividends or earnings paid on the real estate investments made by Three HB and for depositing those funds into Three HB’s bank account. Respondent also maintained Three HB’s check ledger and was responsible for paying Three HB’s bills.
7. Respondent was not authorized to use Three HB’s corporate funds for his own benefit.
8. Between May 2011 and November 2015, respondent misappropriated at least \$339,125.50 from Three HB by writing at least 113 checks drawn upon Three HB’s bank account and made payable either to respondent or to his company, B.H. Richman & Co.
9. On March 29, 2016, Three HB filed a civil action against respondent in the Cuyahoga County Court of Common Pleas entitled *Three HB International, Inc. v. Brian H. Richman*, Case No. 16 CV 1681053 (“*Three HB v. Richman* action”), alleging causes of

action for (a) conversion and civil theft; (b) breach of the duty of good faith and loyalty; (c) breach of fiduciary duty; (d) breach of contract; and (e) fraud. The complaint alleged that respondent had misappropriated \$339,125.50 of Three HB's funds for his own personal use and benefit.

10. On August 3, 2016, in accordance with a stipulation to judgment entered into by respondent and counsel for Three HB, the Cuyahoga County Court of Common Pleas filed a Judgment Entry in favor of Three HB and against respondent in the amount of \$339,125.50, with post-judgment interest from the date of entry of the judgment. The court ordered Three HB to conduct a private debtor's examination of respondent by deposition at a time and place agreed upon by the parties and retained jurisdiction to enforce the terms of the judgment and to hear and determine all matters arising from or related to the judgment.
11. On April 19, 2016, Douglas M. Mansfield, counsel for Three HB in the *Three HB v. Richman* action, submitted a grievance to relator alleging that respondent had misappropriated \$339,125.50 of Three HB's funds for his own personal use and benefit.
12. Thereafter, on May 16, 2016, relator mailed a Letter of Inquiry ("LOI") to respondent by certified mail, return receipt requested, addressed to him at the address he had registered with the Supreme Court's Office of Attorney Services, i.e., 12800 Shaker Blvd., Cleveland, Ohio 44120. In its LOI, relator asked respondent to reply to the allegations of Mr. Mansfield's grievance and to provide any documents referenced in his response. Relator instructed respondent that his response to the LOI must be postmarked on or before May 31, 2016.

13. Although U.S. Postal Service records show that written notice of relator's certified mail copy of the LOI was left at respondent's business address on May 18, 2016, at 12:40 p.m., neither respondent nor anyone acting on his behalf claimed the certified LOI by June 3, 2016. As a result, on June 5, 2016, the U.S. Postal Service returned the LOI to relator with a label affixed to the envelope that stated "Return to Sender – Unclaimed – Unable to Forward."
14. On June 9, 2016, relator mailed a second LOI ("Second LOI") to respondent by certified mail, return receipt requested, addressed to him at the address he had registered with the Supreme Court's Office of Attorney Services, i.e., 12800 Shaker Blvd., Cleveland, Ohio 44120. On the same date, relator also sent a copy of the Second LOI to respondent by email at the email address he had registered with the Office of Attorney Services, i.e., brian.richman@richmanco.com. In its Second LOI, relator instructed respondent that his reply to the allegations of Mr. Mansfield's grievance must be postmarked on or before June 23, 2016.
15. Relator did not receive any notification that its June 9, 2016 email to respondent was undeliverable for any reason. Nevertheless, respondent did not respond to Mr. Mansfield's grievance or to the Second LOI, either by June 23, 2016 or at any time thereafter.
16. Although U.S. Postal Service records show that notice of relator's certified mail copy of the Second LOI was left at respondent's business address on June 13, 2016, at 2:39 p.m., neither respondent nor anyone acting on his behalf claimed the Second LOI by June 28, 2016. As a result, on June 30, 2016, the U.S. Postal Service returned the Second LOI to

relator with a label affixed to the envelope that stated “Return to Sender – Unclaimed – Unable to Forward.”

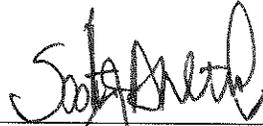
17. Following the Cuyahoga County Court of Common Pleas’ entry of judgment against respondent in the *Three HB v. Richman* action, relator wrote to respondent for a third time. In a letter dated September 28, 2016, relator advised respondent of its intent to file a formal disciplinary proceeding against him in this matter and offered to discuss with him the possibility of his submission of an application for resignation from the practice of law. However, relator’s letter specifically notified respondent that relator would not consent to the acceptance of his resignation until after a Complaint in this matter was certified and filed by the Board. Relator sent its September 28, 2016 letter to respondent by first-class mail addressed to him at both the addresses registered by respondent with the Office of Attorney Services as his business address (i.e., 12800 Shaker Blvd., Cleveland, Ohio 44120) and his residence address (i.e., 3930 Wild Cherry Trail, Beachwood, Ohio 44122-7413). In addition, on the same date, relator emailed a copy of its September 28, 2016 letter to respondent at the email address that he has registered with the Office of Attorney Services (i.e., brian.richman@richmanco.com).
18. On October 10, 2016, respondent telephoned relator and acknowledged his receipt of the copy of relator’s September 28, 2016 letter that was sent to respondent’s residence address. Respondent told relator that he had moved out of his business address and that he no longer had an email address. Respondent expressed his potential desire to resign from the practice of law. Relator reiterated to respondent, however, that relator would not consent to the resignation until a Complaint in this matter had been certified and filed by the Board.

19. By his foregoing conduct, respondent violated the following provisions of the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio:

- (a) By misappropriating, for his own use and purposes, funds belonging to Three HB in the amount of \$339,125.50, respondent violated Prof. Cond. R. 8.4(b) [a lawyer shall not commit an illegal act that reflects adversely on the lawyer's honesty or trustworthiness];
- (b) By misappropriating, for his own use and purposes, funds belonging to Three HB in the amount of \$339,125.50, respondent violated Prof. Cond. R. 8.4(c) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation];
- (c) By failing to respond to relator's Letters of Inquiry regarding the grievance filed against him by Mr. Mansfield, respondent violated Prof. Cond. R. 8.1(b) [a lawyer shall not knowingly fail to respond to a demand for information from a disciplinary authority];
- (d) By failing to respond to relator's Letters of Inquiry regarding the grievance filed against him by Mr. Mansfield, respondent violated Gov. Bar R. V(9)(G) [a lawyer shall not neglect or refuse to assist or testify in an investigation or hearing];
- (e) By failing to notify the Supreme Court's Office of Attorney Services of his current office address, telephone number and email address as required by Gov. Bar R. VI(4)(B), respondent violated Prof. Cond. R. 3.4(c) [a lawyer shall not knowingly disobey an obligation under the rules of a tribunal].

CONCLUSION

Wherefore, pursuant to Gov. Bar R. V, the Code of Professional Responsibility and the Rules of Professional Conduct, relator alleges that respondent is chargeable with misconduct; therefore, relator requests that respondent be disciplined pursuant to Rule V of the Rules of the Government of the Bar of Ohio.

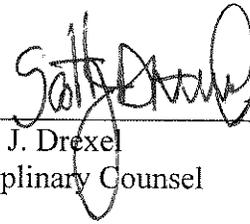


Scott J. Drexel (0091467)
Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
(614) 461-0256
(614) 461-7205 – fax
scott.drexel@sc.ohio.gov

CERTIFICATE

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that I am duly authorized to represent relator in the premises and has 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: October 24, 2016

A handwritten signature in black ink, appearing to read "Scott J. Drexel", is written over a horizontal line. The signature is stylized and cursive.

Scott J. Drexel
Disciplinary Counsel

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Brian H. Richman, Esq.
B.H. Richman & Co., Ltd.
12800 Shaker Boulevard
Cleveland, Ohio 44120

Case No. B6-0856

16 - 049 2

Attorney Reg. No. 0013467

WAIVER OF DETERMINATION
OF PROBABLE CAUSE

Respondent,

[Rule V(11)(B) of the Supreme Court
Rules for the Government of the Bar
of Ohio]

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

Relator.

Pursuant to the provisions of Rule V(11)(B) of the Supreme Court Rules for the Government of the Bar of Ohio, respondent **Brian H. Richman** stipulates that there is probable cause for the filing of a Complaint in the above-referenced proceeding and hereby waives the determination of probable cause by a Probable Cause Panel of the Board of Professional Conduct.

Dated: October 20, 2016

By: 
Brian H. Richman (0013467)
Respondent *Pro Se*