

FILED ^{P.B.}
Public Matter 1/24/2022

**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

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9
10 THE STATE BAR COURT
11 HEARING DEPARTMENT - LOS ANGELES
12

13 In the Matter of:) Case No. **SBC-22-O-30016**
14)
14 DAVID KAGEL,) NOTICE OF DISCIPLINARY CHARGES
15 State Bar No. 58961,)
16)
16)
17 An Attorney of the State Bar.) (OCTC Case No. 20-O-16600)

NOTICE - FAILURE TO RESPOND!

18 **IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE**
19 **WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT**
20 **THE STATE BAR COURT TRIAL:**

- 21 (1) **YOUR DEFAULT WILL BE ENTERED;**
22 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**
WILL NOT BE PERMITTED TO PRACTICE LAW;
23 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN**
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION
AND THE DEFAULT IS SET ASIDE, AND;
24 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
25 **ORDER RECOMMENDING YOUR DISBARMENT AND MAY**
RECOMMEND THE IMPOSITION OF MONETARY SANCTIONS
26 **WITHOUT FURTHER HEARING OR PROCEEDING. (SEE RULES**
PROC. OF STATE BAR, RULES 5.80 ET SEQ. & 5.137.)

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The State Bar of California alleges:

JURISDICTION

1. DAVID KAGEL ("respondent") was admitted to the practice of law in the State of California on April 30, 1974. Respondent was a licensed attorney at all times pertinent to these charges, and is currently a licensed attorney of the State Bar of California.

COUNT 1

Case No. 20-O-16600
Rules of Professional Conduct, Rule 1.15
[Failure to Deposit Client Funds in Trust Account]

2. On or about October 5, 2020, Benjamin Oren hired respondent to serve as an escrow agent for him in order to facilitate a purchase of shares of stock by Oren's company (Opiex LLC) from Custodian Ventures LLC, a company represented by David Lazar.

3. On or about October 10, 2020, Oren and Lazar executed a Stock Purchase Agreement, wherein Opiex LLC agreed to purchase the shares of a company from Custodian Ventures LLC for \$120,000.

4. On or about October 25, 2020, Oren gave respondent \$120,000 in cash. Respondent signed a receipt acknowledging receipt of \$120,000 from Oren and committing to wire the full sum to Lazar on behalf of Custodian Ventures LLC the following day.

5. Respondent did not deposit the \$120,000 he received from Oren into a Client Trust Account.

6. By failing to deposit the cash respondent received from Oren into a Client Trust Account, respondent failed to deposit funds received for the benefit of Oren in a bank account labeled "Trust Account", "Client's Funds Account" or words of similar import, in willful violation of the Rules of Professional Conduct, rule 1.15.

COUNT 2

Case No. 20-O-16600
Rules of Professional Conduct, Rule 1.15
[Failure to Maintain Client Funds in Trust Account]

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7. The allegations of Count 1 are incorporated by reference.

8. On or about October 25, 2020, respondent received \$120,000 in cash on behalf of Benjamin Oren. Of this sum, Oren was entitled to \$120,000. Respondent failed to maintain a balance of \$120,000 on behalf of Oren in a Client Trust Account, in willful violation of the Rules of Professional Conduct, rule 1.15.

COUNT 3

Case No. 20-O-16600
Business and Professions Code, section 6106
[Moral Turpitude - Misappropriation]

9. The allegations of Counts 1 and 2 are incorporated by reference.

10. On or about October 26, 2020, respondent deposited \$95,000 of the \$120,000 respondent had received from Oren into Chase Bank account # _____ 9285¹ on behalf of Custodian Ventures LLC.

11. On or about October 26, 2020, Oren sent respondent a text message requesting that respondent send Oren a photograph of the written confirmation of the deposit made on behalf of Custodian Ventures LLC, and informing respondent that Lazar had informed Oren that only \$95,000 had been received. Respondent asserted to Oren that respondent had spoken with Lazar and obtained Lazar’s consent to receive \$95,000 that day and the remaining \$25,000 later that week. Oren asked respondent why respondent had not sent the full amount as agreed; respondent replied that “[respondent] needed \$25,000 to close [respondent’s] deal” and would send the balance of the purchase price later that week.

12. On or about October 30, 2020, Lazar sent respondent a text message confirming that respondent had expressed his intention to forward to Lazar the balance of the purchase price. Respondent replied to Lara’s text message with a text message in which respondent asserted that respondent was “closing a 100-million-dollar deal” and would pay Lazar an additional \$5,000 for Lazar’s patience.

¹ The complete account number of Custodian Ventures LLC’s Chase bank account is omitted for privacy considerations.

1 13. On or about November 27, 2020, Oren sent respondent a text message accusing
2 respondent of having committed fraud and of having stalled Oren’s purchase. Respondent replied
3 with a message in which respondent asserted that the deal had not stalled.

4 14. On or about December 1, 2020, Oren demanded that respondent wire the remaining
5 \$25,000 (which respondent had never forwarded to Lazar as agreed) to Oren’s Bank of America
6 account no. _____ - 0994². Oren informed respondent that, if respondent did not wire the
7 money by the following day, Oren would file a complaint with the State Bar. In reply,
8 respondent wrote, “About the work and money I laid out for you. I will return it all but I am out
9 over \$13,000.” Oren reiterated the account to which he demanded that respondent wire the
10 money and respondent replied: “You had the shell and changed your mind. You will have all
11 your money back.”

12 15. On or about December 3, 2020, Custodian Ventures LLC withdrew from the Stock
13 Purchase Agreement and returned to Oren the \$95,000 received from respondent.

14 16. To date, respondent has not repaid to Oren the \$25,000 that Oren was entitled to
15 receive.

16 17. Between or about October 25, 2020 and the present, respondent willfully and
17 intentionally misappropriated 25,000 that Oren was entitled to receive. Respondent thereby
18 committed an act involving moral turpitude, dishonesty or corruption in willful violation of
19 Business and Professions Code, section 6106.

20 18. A violation of section 6106 may result from intentional conduct or grossly negligent
21 conduct. Respondent is charged with committing an intentional misappropriation. However,
22 should the evidence at trial demonstrate that respondent misappropriated funds as a result of
23 grossly negligent conduct, respondent must still be found culpable of violating section 6106
24 because misappropriation through gross negligence is a lesser included offense of intentional
25 misappropriation.

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28 ² The complete account number is omitted for privacy considerations.

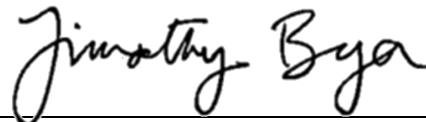
1 INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING
2 AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND
3 PROFESSIONS CODE SECTION 6086.10.

4 **NOTICE – MONETARY SANCTION!**

5 IN THE EVENT THIS MATTER RESULTS IN ACTUAL
6 SUSPENSION, DISBARMENT, OR RESIGNATION WITH CHARGES
7 PENDING, YOU MAY BE SUBJECT TO THE PAYMENT OF A
8 MONETARY SANCTION NOT TO EXCEED \$5,000 FOR EACH
9 VIOLATION, TO A MAXIMUM OF \$50,000 PER DISCIPLINARY
10 ORDER, PURSUANT TO BUSINESS AND PROFESSIONS CODE
11 SECTION 6086.13. SEE RULE 5.137, RULES OF PROCEDURE OF
12 THE STATE BAR OF CALIFORNIA.

13 Respectfully submitted,

14 THE STATE BAR OF CALIFORNIA
15 OFFICE OF CHIEF TRIAL COUNSEL

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17 DATED: January 21, 2022

18 By: _____

19 Timothy G. Byer
20 Senior Trial Counsel
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DECLARATION OF SERVICE

CASE NUMBER(s): SBC-21-O-30492; (OCTC Case No. 20-O-16600)

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, Kelli.Beighle@calbar.ca.gov, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a)) **By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**
 - in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.

By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))
 - I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').

By Fax Transmission: (CCP §§ 1013(e) and 1013(f))
 Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.

By Electronic Service: (CCP § 1010.6 and Rules of Proc. of State Bar, rule 5.26.2)
 Based on rule 5.26.2, a court order, or an agreement of the parties to accept service by electronic transmission, I caused the above-named document(s) to be transmitted by electronic means to the person(s) at the electronic address(es) listed below. If there is a signature on the document(s), I am the signer of the document(s), I am the agent of, or I am serving the document(s) at the direction of, the signer of the document(s). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*

(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,
 Article No.: 9414 7266 9904 2171 3989 36 at Los Angeles, addressed to: *(see below)*

(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,
 Tracking No.: _____ addressed to: *(see below)*

Person Served	Business Address	Fax Number	Courtesy Copy to:
David L. Kagel	1525 Wigwam Pkwy Apt 101 Henderson, NV 89074-8159		1801 Century Park E Ste 1201 Los Angeles, CA 90067-2314
		Electronic Address	
		davidlkagel@gmail.com	

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: **Januray 24, 2022**

SIGNED: *Kelli P. Lopez Beighle*
 Kelli P. Lõpez Beighle
 Declarant