

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the Matter of)	
)	Case No. S282314
)	
DREXEL ANDREW BRADSHAW,)	State Bar Case No.: 16-O-15558
)	
)	
State Bar No. 209584.)	
_____)	

PETITION FOR REVIEW

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PETITION FOR REVIEW

I. INTRODUCTION

This is the second time this matter is before this Court.

After a 22-day trial, the State Bar Court Hearing Department recommended that attorney Drexel Andrew Bradshaw (“Bradshaw”) be disbarred. This recommendation was based on clear and convincing evidence that Bradshaw, as trustee for an elderly client, Ms. Ora Gosey (“Gosey”), engaged in a scheme to defraud and breached his fiduciary duties when he directed the expenditure of hundreds of thousands of dollars of Gosey’s trust funds on services from a construction company that Bradshaw created, controlled, loaned thousands of dollars to, and secured a sham license for—all without obtaining competitive bids for the work. As the Hearing Department correctly held, Bradshaw also made material misrepresentations to the probate court, denying his relationship with the construction company and the Gosey trust’s expenditures on the same, with the intent to hide his scheme and breach of fiduciary duties from scrutiny.

Notwithstanding the Hearing Department’s findings, in 2019, the Review Department found that Bradshaw had committed *no misconduct*, largely by rejecting the credibility determinations of the hearing judge—who was present for the 22-day trial—and based on the unfathomable

conclusion that, since it appeared, after the fact, that the work performed by the construction company ended up being of sufficient quality and performed at market rate, no harm had been done by Bradshaw's self-dealing. As discussed below, among other things, this reasoning ignored the fact that, by using a construction company with a "sham" license and not seeking other bids, Bradshaw was putting the trust at risk in order to direct revenue to the company he controlled, even if, in the end, the work performed happened to be satisfactory.

The Review Department's 2019 decision was also in stark contrast to the decision of the probate court overseeing the trust, which removed Bradshaw as the trustee, finding that he breached the trust, that he did so in bad faith, and that he knowingly lied to the probate court about material matters in an attempt to hide his actions.¹

Although the State Bar attorney disciplinary trial was independent from, and happened before, the probate court decision, the probate court was the entity vested with oversight of Bradshaw's actions as conservator and trustee. As such, it was in the best position to determine whether Bradshaw lied, schemed, and breach his fiduciary duties to the trust. The probate court answered those questions resoundingly in the affirmative, and the Court of Appeal affirmed.²

The civil court findings provided corroboration to the Hearing Department's findings and disbarment recommendation. And, like the

¹ The June 14, 2019 Amended Statement of Decision on Petition After Trial and Order in *In re: The Gosey Revocable Trust Dated January 3, 2007*, Case No. PTR-17-301118 ("Superior Ct. Dec.") is attached to Petitioner's Request for Judicial Notice as Exhibit A.

² The September 30, 2022 Court of Appeal decision in *Coleman v. Bradshaw*, Case No. A157968 ("Ct. App. Dec.") is attached to Petitioner's Request for Judicial Notice as Exhibit B.

Hearing Department, and unlike the Review Department, the probate court received live testimony from the key witnesses and was intimately familiar with the underlying facts. The probate court held:

Bradshaw breached the Trust when he repeatedly engaged Bay Construction, Inc., a company in which he was a principal and a substantial creditor, to perform no-bid work on settlor Ora Gosey's home, which was the Trust's main asset, knowing that Bay Construction was without credible contracting credentials, all while actively concealing from the court and misrepresenting his interests, Bay Construction's lack of credentials and the no-bid status of the work. In light of the breach of the Trust and Bradshaw's intentional misrepresentations to the court made in the course of his fiduciary work for Gosey, the court orders Bradshaw removed as Trustee.

(Superior Ct. Dec., at p. 2.)

The Court of Appeal further underscored that Bradshaw's breach of fiduciary duties was not excused merely because he used trust funds on repairs that ended up being of sufficient quality and market price—affirming the probate court's holding (which corroborated that of the Hearing Department) that Bradshaw put the trust at risk by hiring his company, Bay Construction, when it had no valid license.

On remand, however, the Review Department did not give the Superior Court decision—which was affirmed on its appeal—due consideration. Rather, the Review Department's majority opinion quickly disposed of the civil court findings by noting they were decided under a lesser standard, and again espoused an erroneous legal conclusion that breach of fiduciary duties cannot lie if trust funds are spent on work that ends up being satisfactory, even though Bradshaw took great risks by directing those funds to a no-bid, effectively unlicensed, contractor for Bradshaw's own benefit. Indeed, rather than properly recognizing the probate court's decision as further evidence corroborating the Hearing Department's

decision, the Review Department ignored it. Thus, rather than recommending disbarment, as the Hearing Department properly did, the Review Department continued to hold that Bradshaw did not breach the Trust, did not engage in a scheme to defraud, and did not make intentional misrepresentations to the court. Rather, the Review Department found only that Bradshaw made grossly negligent misrepresentations, and based on this finding, recommended only a six-month actual suspension. Notably, one of the three members of the Review Department panel dissented, properly holding that Bradshaw should be disbarred.

The dissenting Review Department judge was correct. It was error for the Review Department to find no culpability for scheme to defraud and breach of fiduciary duty and to not recognize that Bradshaw acted intentionally when he funneled trust money to his own company and lied to the probate court about it. The Hearing Department, dissenting Review Department Judge, probate court, and unanimous Court of Appeal panel have all determined that Bradshaw breached his fiduciary duties. This Court should grant review; find Bradshaw culpable for scheme to defraud, breach of fiduciary duties, intentional misrepresentation, and misappropriation; and order him disbarred, or, alternatively, remand with instructions.

II. ISSUES PRESENTED FOR REVIEW

1. Did the Review Department give proper weight to the factual findings and legal conclusions of the courts of record?
2. Did the Review Department improperly reject credibility findings made by the triers of fact?
3. Should Bradshaw be disbarred?

III. WHY REVIEW SHOULD BE GRANTED

This Court should grant this Petition, reverse the ruling of the Review Department, and order disbarment, or, in the alternative, remand the matter with instructions. Review is appropriate in this case because review within the State Bar Court has been exhausted, and because the Supreme Court may review recommendations and decisions of the Review Department pursuant to rule 9.14 of the California Rules of Court and under the Court's inherent power to control the attorney discipline process. (*In re Rose* (2000) 22 Cal.4th 430, 439; *Emslie v. State Bar* (1974) 11 Cal. 3d 210, 224.)

Review of the Review Department's September 20, 2023 Opinion³ ("2023 Review Dep't Op.") reversing much of the Hearing Department's August 30, 2018 Decision ("Hearing Dep't Dec.") is necessary to settle important questions of law (Cal. Rules of Court, rule 9.16(a)(1)), and because the Review Department's Opinion is not supported by the weight of the evidence and is inappropriate in light of the record as a whole. (Cal. Rules of Court, rule 9.16 (a)(4) and (5)).

IV. STATEMENT OF THE CASE

In 2006, Bradshaw's law firm prepared an estate plan for Gosey, which included the Gosey Revocable Living Trust ("Gosey Trust"). (Stip. of Facts, no. 2; Ex. 34, pp. 220–246.) Bradshaw's firm was listed as the third successor trustee. (*Ibid.*)

The Gosey Trust stated three primary purposes: (1) "To provide for the care and maintenance of [Gosey] as long as [she] is living;" (2) "To facilitate management of the [T]rust property in the event of [Gosey's] incapacity;" and (3) "To facilitate transfer of the [T]rust property" after

³ A copy of the State Bar Court of California Review Department's September 20, 2023, Order and Opinion, is attached as Appendix A.

Gosey's death. (Ex. 34 at p. 221.) It was Gosey's preference to spend the rest of her life in her home, even if she became incapacitated, and Gosey's will made clear that her assets should be used for that purpose first and foremost. (*Id.* at p. 244.)

The Gosey Trust also included the following in Paragraph VII(B):

As long as the Trustee does not act in bad faith or in disregard of the purposes of the Trust, it is not a breach of the Trust for the Trustee to take any of the following actions:...

5. Employ the Trustee, a relative of the Trustee, or a business in which the Trustee has an interest, to perform needed services for the Trust or any business in which the Trust has an interest and pay compensation not exceeding fair market value.

(*Id.* at p. 229.)

Gosey executed the estate planning documents drafted by Bradshaw's firm in January 2007, and did not have further contact with Bradshaw or his firm for the following six years. (RT VII at p. 23.)

On August 5, 2013, at age 86, Gosey fell in her home, and Gosey's tenants contacted Adult Protective Services ("APS"). (RT I at pp. 24–26.) When APS visited Gosey, she refused their offer of assistance. (*Ibid.*) By August 30, 2013, the tenants urged Gosey to seek hospital care and called an ambulance for her. (Stip. of Facts, no. 6; RT I at p. 26.) Gosey's doctors determined that, due to her level of dementia impairment, she was unable to care for herself or for her estate. (RT I at pp. 29–30; RT VII at p. 28; Ex. 1005.) As the first and second successor trustees named in the Gosey Trust were unable to serve, Bradshaw served as successor trustee. (RT VII at pp. 33–36; Ex. 6 at pp. 34–36.)

A. The Gosey Conservatee and Trustee Proceedings.

On or about August 30, 2013, Bradshaw filed concurrent petitions for temporary and permanent appointment as the conservator of Gosey's

person and estate with the San Francisco County Superior Court (“superior court” or “probate court”). (Ex. 34 at pp. 139, 147–158.) In these filings, Bradshaw falsely claimed that Gosey “was recently removed from her home by Adult Protective Services.” (*Id.* at p. 150.)

Bradshaw was appointed temporary conservator of Gosey’s person and estate on September 11, 2013, (*Id.* at pp. 139, 186–188), and as permanent conservator on or about November 14, 2013. (*Id.* at pp. 138, 207–211.) At that time, Bradshaw requested that the probate court waive annual accountings and/or terminate the court’s oversight of the Gosey Trust entirely, purportedly to reduce costs to the trust. (*Id.* at pp. 138, 207–211, 217.) In response, the probate court ordered Bradshaw to file a trust accounting for the period of December 2, 2013 through November 30, 2014, and retained jurisdiction over the Gosey Trust until the filing and approval of that accounting. (*Id.* at pp. 137, 264–267.)

B. Bradshaw Takes First Reverse Mortgage on Gosey’s Home.

On February 14, 2014, Bradshaw filed a petition for an order authorizing him to obtain a reverse mortgage in the amount of \$346,000 on Gosey’s home, stating that Gosey’s expenses significantly exceeded her income. (*Id.* at pp. 6–13.) The probate court granted this petition. (Ex. 1022.) Based on Bradshaw’s own estimates of Gosey’s living expenses, the \$346,000 should have lasted approximately four years. (Ex. 34 at p. 478.)

C. Juan Gonzalez and the Formation of Bay Construction.

Juan Gonzalez (“Gonzalez”) was a handyman who did business under the name NJ Construction. (RT II at pp. 7–9.) Gonzalez had a longstanding relationship with Bradshaw, having provided handyman services for Bradshaw dating back to approximately 2004. (*Ibid.*) Gonzalez was not a licensed contractor. (RT II at pp. 49–51.)

In November 2013, Bradshaw hired Gonzalez as an independent contractor to repair water damage at Gosey's home. (*Id.* at pp. 32–33; RT VII at pp. 93–95.) Gosey's homeowner's insurance policy paid \$21,484.53, which covered most of the repair costs. (RT VII at pp. 101–102; Ex. 34 at p. 397.) Bradshaw also hired NJ Construction to work on additional smaller projects at Gosey's home in late 2013 and early 2014. NJ Construction was paid for those projects by the Gosey Trust. (RT IV at pp. 56–58; Ex. 1079; Ex. 1081.)

Gonzalez testified that in February 2014 Bradshaw suggested that he and Gonzalez form a construction company. Specifically, Bradshaw suggested that he (Bradshaw) would have a majority 51 percent ownership in the company and run its administrative aspects, while Gonzalez would have a minority 49 percent stake and perform the construction work. (RT II at pp. 35, 39–42; RT IV at pp.73–74; Ex. 69.)

Bradshaw also entered into a retainer agreement with Gonzalez to represent Gonzalez in his efforts to obtain a contractor's license. (Ex. 1138.) Bradshaw assisted Gonzalez in various ways, including paying for Gonzalez to attend a licensing course and instructing one of his associates to prepare Gonzalez's second license application. (RT III at pp. 141–147; RT IV at pp. 73–74; Ex. 19 at pp. 1–2.)

Bradshaw's firm then prepared incorporation documents forming a construction company by the name of Bay Construction, Inc. On April 1, 2014, Bradshaw signed, and his office filed, the Bay Construction Articles of Incorporation, listing Bradshaw as "incorporator" and designating Bradshaw's law office as Bay Construction headquarters. (Ex. 21 at p. 6; RT II at p. 43; RT III at pp. 138–140.) Tellingly, this was *the very same day* the probate court approved Bradshaw's petition allowing him to secure a reverse mortgage, providing Bradshaw with a ready revenue source for the new company. (Ex. 1022.)

Bradshaw also set up Bay Construction's bank account. On October 24, 2014, he signed the Bay Construction business checking account signature card, which listed Bradshaw as "President" of Bay Construction and again stated that Bay Construction was located at his law firm's address. (RT VIII at pp. 109–111; Ex. 31 at p. 7.) In fact, in the process of opening the account, Bradshaw designated himself as Bay Construction's president five separate times, and declared himself as the only person with the power to act on behalf of the corporation. (Ex. 31 at pp. 7–10.) In opening the account, Bradshaw used his own social security number and deposited \$10,000 from his law firm's account. (RT XII at pp. 82, 93–94; Ex. 31 at p. 15.)

After Gonzalez was initially unsuccessful in obtaining his contractor's license, Bradshaw reached out to Ray Invernon ("Invernon"), a California-licensed contractor, and asked if Invernon would supervise Gonzalez's construction work in the hopes of increasing Gonzalez's chances of ultimately obtaining his license. Bradshaw paid \$1,000 of his own money to Invernon, (Ex. 1186 at p. 12.); paid Invernon's bonding expenses of \$490, (*Ibid.*; Ex. 1164 at p. 2); and wired Invernon an additional \$5,000 through the Bay Construction account. (Ex. 31 at p. 19.) However, Invernon never actually supervised any of Bay Construction's work. (RT II at pp. 55–56; RT VI at p. 85; RT VIII at p. 62–63.) In fact, Invernon was in his 70s, retired, and lived in Idaho. (Ex. 1163; Ex. 1165.) No credible evidence was presented that Invernon travelled to California to work with Bay Construction.

On December 22, 2014, Bay Construction obtained a contractor's license, which listed Gonzalez as CEO and President. (Ex. 1166.) Bay Construction employed two payroll employees: (1) Gonzalez; and (2) Bradshaw's 19-year-old son. (RT III at p. 23.) Bradshaw's son was hired as a handyman in January 2015 although he had no construction,

design, or architectural experience or training. (RT II at pp. 57–59; RT VI at pp. 54–56, 62–74.)

D. The Gosey Trust’s First and Final Accounting.

On February 3, 2015, Bradshaw filed the trust accounting ordered by the probate court for the period of December 2, 2013 through November 30, 2014 (“First and Final Accounting”). (Ex. 11.) Bradshaw again requested that the court terminate its supervision over the Gosey Trust, and stated that “during the period of the account, there was no relationship or affiliation between Petitioner and any agent hired by Petitioner during the accounting.” (*Id.* at pp. 5–6.) As shown above, this was blatantly false.

E. Additional Labor.

Throughout 2015, Bradshaw authorized and the Gosey Trust paid Bay Construction for significant additional labor. Bradshaw did not obtain competitive bids from third-party contractors for any of these projects. (RT VIII at pp. 43, 49–50, 55–57, 60; Ex. 34 at pp. 39–40.)

First, Bay Construction was paid \$9,933.41 for flood repair work in January 2015 (Ex. 34 at pp. 39–40.) Bradshaw waited until after he was sure that Bay Construction had obtained its sham contractor’s license before preparing the invoice for the flood work. (Ex. 17 at pp. 26–30.)

Second, Bay Construction was paid \$48,909.20 to replace the back staircase of Gosey’s home beginning in or around February 2015. (*Id.* at pp. 24, 43, 47–50, 61, 63, 72; Ex. 34 at pp. 41, 445.) Bradshaw pulled a permit for this project in June 2014 (before Bay Construction was licensed), and deemed the staircase repair necessary to prevent a “catastrophic injury,” (Ex. 34 at pp. 41; Ex. 17 at pp. 51, 57), but the repairs did not begin for eight months, until after Bay Construction became licensed (raising the question why other bids weren’t sought for this work purportedly so essential to Gosey’s safety).

Third, Bay Construction received \$70,793.36 for foundation repair work. (Ex. 34 at pp. 42–43.) For this project, Bradshaw not only submitted a proposal on behalf of Bay Construction to himself, but he immediately accepted that proposal as trustee and paid Bay Construction in full despite the fact that no work had yet been performed. (Ex. 17 at pp. 24, 68–71.)

All told, Bradshaw authorized and made payments from the Gosey Trust to Bay Construction in the total amount of \$157,246.76 between January 2015 and February 2016. (Stip. of Facts, no. 23.)

F. Second Reverse Mortgage on Gosey’s Home.

On or about July 19, 2016, Bradshaw filed a petition for a second reverse mortgage on Gosey’s home. (Ex. 34 at pp. 34–49.) Bradshaw stated that Gosey’s monthly expenses continued to exceed her income and that, despite the first reverse mortgage just two years earlier, the Gosey Trust had only two to three months of funds remaining. (*Id.* at p. 36.)

In this petition process, the probate court learned for the first time of a possible relationship between Bradshaw and Bay Construction, and appointed attorney Nancy Rasch to represent Gosey. (RT V at pp. 21–23; Ex. 34 at p. 481.) On September 16, 2016, Rasch advised the probate court that Bradshaw had failed to obtain any other bids for the work performed by Bay Construction on Gosey’s home; that he had hired an unlicensed contractor (Gonzalez) to perform most of the construction work on Gosey’s home; that Bradshaw was Gonzalez’s attorney; and that Bradshaw’s son was employed by Bay Construction. (Ex. 34 at pp. 476–477.) Rasch believed “this information was relevant to a determination about the reasonableness of the funds spent on repairs.” (*Ibid.*)

In response to these concerns, Bradshaw submitted a declaration that did not disclose any affiliation or relationship with Bay Construction. (*Id.* at pp. 443–458.) On September 26, 2016, Bradshaw filed a second supplemental declaration at his attorney’s suggestion. (*Id.* at pp. 463–466.)

In that declaration, Bradshaw stated that he allowed Gonzalez use of his office as a “home base” and prepared the incorporation papers, but that he received no compensation and “never [had] a financial interest in Bay Construction.” (*Id.* at p. 464.)

Bradshaw also stated that—despite all of the payments successfully made to Bay Construction—\$45,000 of Gosey’s home care bills were still outstanding. (*Id.* at p. 461.) (Tellingly, while Bradshaw allowed the bills for Gosey’s home care to go into arrears, Bay Construction was paid on time.) The court issued an order authorizing Bradshaw to obtain an additional reverse mortgage for \$250,000 on Gosey’s home, but directed that those funds could only be used for payment of Gosey’s care costs and living expenses. (*Id.* at pp. 468–469.)

G. Bradshaw’s Additional Ties to Bay Construction.

The record in this matter is replete with additional connections between Bradshaw and Bay Construction, including the following:

- Bradshaw “loaned” Bay Construction \$22,000 in addition to the \$10,000 opening deposit he made in the Bay Construction checking account. (Ex. 1186.)
- Gonzalez testified that Bradshaw prepared all invoices for Bay Construction, including deciding what line items to include, the amount to charge for each item, and the amount of profit to be added to each item. (RT II at pp. 59–60, 82, 87–90, 98–104; RT IV at pp. 11–12, 21, 105–106.)
- Bradshaw twice asked his wife to apply for American Express cards on behalf of Bay Construction. (RT VI at pp. 8–11, 26–30; RT VIII at pp. 136–137.) The card statements were sent to Bradshaw’s law office, Bradshaw’s secretary performed the bookkeeping tasks, and Bradshaw reviewed the bills. (RT VI at pp. 9–10; Ex. 48 at p. 11; RT III at pp. 14, 32, 34–35; RT II at pp. 60–63.)
- On July 30, 2015, Bradshaw submitted a membership application to the Golden Gate Better Business Bureau for Bay Construction,

identifying himself as the company's principal, "main contact," and billing contact. (Ex. 51; RT II at p. 128.)

- Bay Construction's January 7, 2016 Statement of Information filed with the California Secretary of State listed Brea Violette, the secretary and office manager at Bradshaw's law office, as the CEO, CFO, Secretary, and Agent for Service of Process for Bay Construction. (Ex. 21 at p. 1.) After Violette expressed concern about this statement, an updated Statement of Information was filed listing Gonzalez instead. (Ex. 21 at p. 2; RT III at pp. 53–55.) The updated Statement of Information was certified with a stamp of Gonzalez's signature. (RT II at pp. 114–118.)

H. Gosey's Passing and Bradshaw's Removal as Trustee.

Gosey died on June 16, 2017 at the age of 90. (Stip. of Facts, no. 1.) On August 10, 2017, counsel for Dolores Coleman, one of Gosey's beneficiaries, filed petitions to suspend and remove Bradshaw as trustee. (Ex. 58.) On January 25, 2018, the probate court suspended Bradshaw in his role as trustee and appointed an interim trustee. (Ex. 124.) On June 14, 2019, the Superior Court determined that Bradshaw breached the Trust, and ordered him formally removed as trustee. (Superior Ct. Dec.)

I. The Hearing Department's Findings.

Bradshaw was charged with five counts of professional misconduct, and the Hearing Department found him culpable of three: (1) creating a scheme to defraud; (2) breaching fiduciary duties as a trustee; and (3) making misrepresentations in various documents.⁴

The Hearing Department found clear and convincing evidence that Bradshaw engaged in a scheme to defraud the Gosey Trust, and thus was culpable of committing acts involving moral turpitude, dishonesty, and corruption, in willful violation of Business and Professions Code section

⁴ The Hearing Department did not find Bradshaw culpable of misappropriation or a violation of law under Business and Professions Code section 7028; although, notably, on remand, the dissenting Review Department judge did find Bradshaw misappropriated trust funds.

6106. The Hearing Department found that Bradshaw’s scheme included: (1) making multiple misrepresentations under penalty of perjury in court documents regarding his true financial affiliation with Bay Construction; (2) hiring and paying an unlicensed contractor for services that were required to be performed by a licensed contractor; (3) requesting reverse mortgages on Gosey’s home for the limited purpose of providing for Gosey’s care while concealing from the probate court that he intended to use substantial amounts of those funds for construction projects; and (4) concealing from the probate court his true affiliation with Bay Construction so he could continue to function as trustee. (Hearing Dep’t Dec., at p. 23.)

Second, the Hearing Department found Bradshaw culpable of a violation of Business and Professions Code section 6068, subdivision (a), by knowingly and repeatedly breaching his fiduciary duties of loyalty and to avoid conflicts of interest by surreptitiously and repeatedly retaining Bay Construction to perform work on Gosey’s home. (*Id.* at pp. 23–25.).

Third, the Hearing Department found that Bradshaw intentionally or with gross negligence made three misrepresentations, and was therefore culpable of moral turpitude in violation of Business and Professions Code section 6106:

- (1) On August 30, 2013, in his petition for appointment as conservator, Bradshaw falsely stated that Gosey was removed from her home by APS;
- (2) On February 3, 2015, Bradshaw falsely stated in the First and Final Accounting that there was “no relationship or affiliation” between Bradshaw and any agent hired by Bradshaw; and

(3) On September 26, 2016, Bradshaw falsely stated in his second supplemental declaration that he had no financial interest in Bay Construction.

(*Id.* at pp. 26–27.)

The Hearing Department recommended that Bradshaw be disbarred. Both Bradshaw and the State Bar appealed.⁵

J. The Review Department’s First Opinion.

In its first opinion, filed July 30, 2019, the Review Department found that there was no clear and convincing evidence to support any culpability and dismissed the proceedings with prejudice. The opinion stated that Bradshaw “managed the trust according to its stated purposes and terms in a reasonable and proper manner,” and that the work done by Bay Construction was “all done competently and at fair market value.” (2019 Review Dep’t Op., at p. 2.)

As to the scheme to defraud, the Review Department determined that the evidence did not establish that Bradshaw owned or had control over Bay Construction, and that even if he did, the Trust would have allowed a business relationship “as long as he did not act in bad faith or in disregard of the purposes of the trust, the services provided were necessary, and the services were at fair market value.” (*Id.* at pp. 18–19.)

As to fiduciary duty, the Review Department found that, under the terms of the Gosey Trust, Bradshaw could not have breached his duty of loyalty or his duty to avoid conflicts of interest because even if he owned Bay Construction, Paragraph VII(B) of the trust document gave him the ability to conduct business with the trust. The Review Department also found that

⁵ Although the State Bar agreed with the disbarment recommendation and that Bradshaw was culpable for the counts the Hearing Department held him culpable for, the State Bar maintained that Bradshaw also made additional intentional misrepresentations and misappropriated funds.

Bradshaw did not obtain an “advantage” from the dealings between the Gosey Trust and Bay Construction under Probate Code section 16004, subdivision (c), because there was testimony that Bradshaw was still owed money from loans to Bay Construction. (*Id.* at pp. 24–25.)

As to misrepresentations, the Review Department found that while Bradshaw’s statement that APS had removed Gosey from her home was false, “it was a simple mistake and also not material to the petition.” (*Id.* at p. 12.) Moreover, the Review Department found that Bradshaw’s statement that he had “no relationship or affiliation” with Bay Construction was also a mistake, as he had intended to state instead “no family or affiliate relationship,” which the Review Department deemed would technically have been true. (*Id.* at p. 14). Finally, the Review Department found that Bradshaw’s statement that he had no “financial interest” in Bay Construction was not incorrect, as the only “proven” financial relationship was one of debtor-creditor. (*Id.* at p. 15.)

K. The Supreme Court Grants Review, and Remands to the Review Department.

The State Bar petitioned this Court for review of the Review Department’s 2019 decision. On January 20, 2020, this Court granted the petition for review, stating in relevant part: “The matter is remanded to the State Bar Review Department for reconsideration in light of the June 14, 2019 Amended Statement of Decision on Petition After Trial And Order in San Francisco Superior Court Case No. PTR-17-30118.” (Jan. 2, 2020 Order in S258271.)

Notably, that referenced Superior Court order directed that Bradshaw be removed as trustee, holding:

Bradshaw breached the Trust when he repeatedly engaged Bay Construction, Inc., a company in which he was a principal and a substantial creditor, to perform no-bid work on settlor Ora Gosey’s home, which was the Trust’s main

asset, knowing that Bay Construction was without credible contracting credentials, all while actively concealing from the court and misrepresenting his interests, Bay Construction's lack of credentials and the no-bid status of the work. In light of the breach of the Trust and Bradshaw's intentional misrepresentations to the court made in the course of his fiduciary work for Gosey, the court orders Bradshaw removed as Trustee.

(Superior Ct. Dec., at p. 2.)

The Superior Court further emphasized:

Bradshaw committed *significant* breaches of the Trust when he repeatedly engaged Bay Construction, an unqualified contractor in which Bradshaw had a substantial interest, to perform work at the Trust Property, doing so without competitive bids to ensure that Bay Construction and only Bay Construction secured the work and obtained remuneration from the Trust exceeding \$157,000, which allowed Bay Construction to substantially pay down the debt it owed to Bradshaw. Bradshaw breached the Trust and *did so in bad faith*. *The court has no confidence that Bradshaw would act any differently if he were reinstated.*

The court has no confidence that if he were to continue as trustee in these proceedings, Bradshaw could satisfy the duties of a fiduciary.

(Superior Court Dec., at pp. 24–26 [emphasis added].)

L. The Court of Appeal Affirms the Superior Court's Finding of Breach of Trust and the Removal of Bradshaw as Trustee

While the remand was pending, Bradshaw's appeal of the superior court order was decided. The Court of Appeal affirmed the superior court's findings in total. (Ct. App. Dec., at p. 1.) Importantly, it affirmed the Superior Court's holding (which in turn corroborated the Hearing Department's decision) that Bradshaw's self-dealing to channel Gosey Trust funds to a contractor without a valid license was a breach of trust not allowed by the terms of the trust because: (1) by hiring Bay Construction

knowing its license was a sham, Bradshaw did not give due regard to the trust, and (2) he acted in bad faith.

As to the first ground supporting the finding of a breach of trust, the Court of Appeal rejected the concept that a lack of due regard for a trust is only shown where there is monetary harm to the trust after the fact, and affirmed that a breach of trust lies where a trustee puts the trust assets at risk: “It follows that hiring a contractor without a valid license carries more risk than hiring a properly licensed contractor. The trial court’s point was that repeatedly hiring a contractor without a valid license exposed the trust property to greater *potential* risk than hiring a company with a valid license.” (Ct. App. Dec. at p. 39.)

As to the second ground, the Court of Appeal affirmed the superior court’s determination that Bradshaw acted in bad faith

based upon the totality of a number of circumstances, as discussed above: Bradshaw’s role in and control over Bay Construction, his financial interest in repayment of his loans to the company, his knowledge of Bay Construction’s lack of a valid contractor’s license, his repeated hiring of Bay Construction to work on the trust property without obtaining other bids for the work, and his misrepresentations and omissions to the court, Gosey, and the beneficiaries.

(*Id.* at pp. 44–45.) Notably, these were the same basic facts that the Hearing Department found by clear and convincing evidence based on its own record, and which it found supported culpability for breach of fiduciary duty and scheme to defraud. (Hearing Dep’t Dec. at pp. 22–25.)

M. The Review Department’s Second Opinion.

The Review Department issued its opinion after remand on September 20, 2023. In the majority, two of the three judges modified the Review Department’s 2012 Opinion only to the extent of finding Bradshaw culpable for three grossly negligent misrepresentations and recommending a six-month actual suspension. (2023 Review Dep’t Op., at pp. 1–29.) The

third Review Department judge wrote a well-founded and well-reasoned dissent that meaningfully followed this Court’s direction to consider the superior court’s decision, and would have affirmed the Hearing Department’s disbarment recommendation, based on culpability findings as to scheme to defraud, breach of trust, intentional misrepresentation, and misappropriation. (*Id.* at pp. 30–56.) The majority also filed a rebuttal opinion. (*Id.* at pp. 57–64.)

The Review Department’s majority holding that, contrary to the Hearing Department’s decision, Bradshaw was not culpable of breach of trust, was essentially based on its conclusion that Bradshaw’s self-dealing was permissible under the terms of the Trust. (*Id.* at pp. 7–9.) The majority rejected the Hearing Department’s findings (corroborated by the probate court and Court of Appeal) that there was a breach of fiduciary duties, in particular the duty of loyalty and to avoid conflicts of interest, by “surreptitiously and repeatedly” retaining his own company to perform work for the Trust, without earnestly obtaining bids from licensed contractors, while knowing the work would not be supervised by a licensed contractor. (*Id.*; Hearing Dep’t Dec. at pp. 24–25.) The Review Department majority found that, because the work done on the home was satisfactory in the end, the surreptitious hiring of an unlicensed contractor without bids was not a breach of fiduciary duty because “the trust was not in actual jeopardy.” (2023 Review Dep’t Op., at pp. 1–29.) This focus on “actual jeopardy” was contrary to the legal holdings of the probate court and Court of Appeal—which held that putting the Gosey Trust at risk was not serving the purposes of the Trust and therefore found Bradshaw to have breached his duties to the trust—and, as discussed below, is also inconsistent with the Probate Code.

Finally, as noted, the Hearing Department—which was present for and heard the 22 days of trial—determined, largely based on its credibility

finds, that Bradshaw engaged in moral turpitude misrepresentations to the Court when he informed it, on separate occasions, that Gosey had been removed from her home from APS, that he had “no relationship or affiliation” with any agent he hired on behalf of the Trust, and that he had no “financial interest” in Bay Construction; the Hearing Department specifically found that Bradshaw knew his statements regarding lack of relationship with or financial interest in Bay Construction were false. (Hearing Dep’t at pp. 26–27.) The Review Department majority, however, found Bradshaw culpable only of grossly negligent misrepresentation, based on its rejection of the Hearing Department’s credibility findings, finding that “he should have been more careful in his statements to the court.” (2023 Review Dep’t Op., at p. 12.) As discussed below, it was error to reject the Hearing Department’s findings in this matter.

V. ARGUMENT

A. The Review Department Did Not Give Proper Weight to the Civil Court Findings

1. The Review Department Did Not Properly Consider the Probate Court’s Findings, and Improperly Rejected the Probate Court’s Legal Conclusions

The Review Department erred in finding no culpability for scheme to defraud or breach of fiduciary duty. Moreover, the Review Department erred in not finding culpability for the full panoply of Bradshaw’s intentional lies to the superior court. The facts as set forth above, and as described in both the Hearing Department Decision and the Review Department dissent, establish that Bradshaw breached his fiduciary duties when he created an unlicensed construction company, directed that trust funds be used to pay that company, Bay Construction, for repairs to Gosey’s home without obtaining bids from licensed contractors, and then hiding this scheme from the probate court supervising the Gosey Trust

through repeated lies indicating he had no relationship with Bay Construction. (Hearing Dep't Dec., at pp. 22–25; 2023 Review Dep't Op., at pp. 41–46.)

In remanding this matter to the Review Department the first time, this Court instructed the Review Department to reconsider its decision in light of the probate court's decision finding Bradshaw to have breached the trust and removing him as Trustee. The Review Department majority, however, did not meaningfully consider that the probate court, which like the Hearing Department, had heard testimony from multiple witnesses, found Bradshaw to have breached the trust, but rather focused on the fact of the probate court's differing standard of proof to essentially ignore it. (2023 Review Dep't Op., at pp. 7–9.)

This was error. This Court has instructed that, in attorney disciplinary proceedings, “civil findings bear a strong presumption of validity if supported by substantial evidence.” (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947; see also *In re Lais* (2000) 4 Cal. State Bar. Ct. Rptr. 112, 117 [“[C]ivil matters do arise which bear a strong similarity, if not identity, to the charged disciplinary conduct.... The Supreme Court has also held that even civil findings made under a preponderance of evidence test are entitled to a strong presumption of validity before the State Bar Court if supported by substantial evidence.”]; see also *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 112, 117 [“And we may rely on a court of appeal opinion to which an attorney was a party as a conclusive legal determination of civil matters ‘which bear a strong similarity, if not identity, to the charged disciplinary conduct.’”].)) While attorney discipline must still be independently assessed as to whether they are supported by clear and convincing evidence in the State Bar Court record, (*id.*), here the hearing judge made that determination using the clear and convincing evidence standard based only on the record in the State Bar

Court. The separate decision of the probate court was *additional* corroborating evidence, and it therefore bears a “strong presumption of validity.” The Review Department majority here, however, essentially chose to ignore both the Hearing Department and the superior court, which both found Bradshaw to have breached his fiduciary duties. Moreover, the Review Department majority’s opinion appears to be based on its erroneous and unsupported position that it was fine for Bradshaw to use a no-bid, unlicensed, contractor that he controlled for making repairs to Gosey’s home (and then lying to the probate court about those facts) because, in the end, it turned out that the work done was fine, and done at a reasonable rate. (See, e.g., 2023 Review Dep’t Op., at p. 8 (“The record in our disciplinary proceedings shows that Gosey and the occupants were never actually in jeopardy.”) This position, however, was rejected by the Court of Appeal, which affirmed that it was a breach of the Gosey Trust to place trust assets *at risk* through the surreptitious use of an unlicensed contractor. (Ct. App. Dec., at p. 1.) (Other risk to the Trust occurred when, as noted above, Bradshaw paid Bay Construction on time while allowing the bills for Gosey’s homecare to go into arrears.) The Review Department’s ratification of Bradshaw’s conduct in this regard is particularly troubling in that it is dismissive of the importance of a contractor’s licensing requirements—requirements that serve the same goal of protecting the public that attorney licensing and regulation does.

As duly noted by the Court of Appeals:

“ ‘The purpose of the licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. [Citation.] The licensing requirements provide minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business. [Citations.]’ ” (*Montgomery Sansome LP v. Rezai* (2012) 204

Cal.App.4th 786, 793–794, quoting *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995; Bus. & Prof. Code, § 7000.6 [“Protection of the public shall be the highest priority for the Contractors State License Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount”].) It follows that hiring a contractor without a valid license carries more risk than hiring a properly licensed contractor. The trial court’s point was that repeatedly hiring a company without a valid license exposed the trust property to greater potential risk than hiring a company with a valid license.

(Ct. App. Op., at p. 39.)

The civil courts understood and properly evaluated the seriousness of Bradshaw’s misconduct. The Review Department majority’s baseless insistence that Bradshaw’s breach was excused because there was purportedly no harm done in the end, should be rejected.

2. The Review Department’s Analysis on the Breach of Fiduciary Duty and Scheme to Defraud Claims Is Inconsistent With a Trustee’s Duties under the Probate Code and Rules of Professional Conduct.

Moreover, the Review Department’s “no harm, no foul” approach to the breach of fiduciary duty and scheme to defraud counts conflict with this Court’s prior interpretation of the term “advantage” as well as the Rules of Professional Conduct. Review by this Court is necessary to affirm that (1) an “advantage” under Probate Code section 16004 can be obtained by a trustee through self-dealing even if the services provided are at fair market value, and (2) the text of a trust instrument written by an attorney cannot override that attorney’s ethical obligations to avoid self-dealing and conflicts of interest.

Under Probate Code section 16004, subdivision (c), “[a] transaction between the trustee and a beneficiary which occurs during the existence of

the trust or while the trustee’s influence with the beneficiary remains and by which the trustee obtains an advantage from the beneficiary is presumed to be a violation of the trustee’s fiduciary duties.” Thus, when a trustee benefits from transactions in his duties as trustee, the burden shifts to the trustee to show that the transactions at issue were not prohibited self-dealing. This presumption exists to ensure that clients (or their beneficiaries) are fully advised and have a complete understanding of the transactions at issue. (*Ferguson v. Yaspan* (2014) 233 Cal.App.4th 676, 687.) Likewise, rule 1.8.1 of the Rules of Professional Conduct (formerly rule 3-300) reflects a similar obligation for attorneys engaging in transactions with clients or acquiring interests adverse to clients. (See *Beery v. State Bar* (1987) 43 Cal.3d 802, 813; *Passante v. McWilliam* (1997) 53 Cal.App.4th 1240, 1248.)

Here, Bradshaw repeatedly engaged Bay Construction for work on the Gosey home, paying it with hundreds of thousands of dollars in Gosey Trust funds. Nevertheless, the Review Department found that Bradshaw could not have obtained an “advantage” through these transactions because the construction work was “competent,” and Bradshaw presented evidence that he had not been repaid money that he had loaned to Bay Construction. Thus, the Review Department declined to find a presumption that Bradshaw had violated his fiduciary duties. (2019 Review Dep’t Op., at pp. 24–25.)

The Review Department’s interpretation of the term “advantage” here is indefensible. The State Bar did not allege that Bradshaw clumsily stole money from the Gosey Trust and directly lined his pockets with it. Rather, the State Bar alleged (and the Hearing Department found) an elaborate scheme to route money from the Gosey Trust to Bradshaw’s own interests by using Gosey’s preference to stay in her home as the basis to repeatedly award home construction projects to Bay Construction.

Crucially, the fact that Bay Construction may have never repaid all money Bradshaw “loaned” to the company is irrelevant. Even if, as Bradshaw claims, his only financial relationship to Bay Construction was as a creditor, it was still clearly in Bradshaw’s self-interest for Bay Construction to obtain paid work. Regardless of the ultimate financial outcome for Bay Construction, awarding construction work to them was to Bradshaw’s advantage as, at a bare minimum, it increased the chances that Bay Construction would pay him back.

Thus, the Review Department’s interpretation conflicts with this Court’s holding that “advantage” should be interpreted broadly. In *Bradner v. Vasquez* (1954) 43 Cal.2d 147, interpreting a nearly identical usage of “advantage” in an older Civil Code section, this Court rejected the suggestion that the advantage gained by the fiduciary must be an *unfair* advantage before a statutory presumption is raised, and stated that “[w]hen a fiduciary enters into a transaction with a beneficiary whereby the fiduciary’s position is improved, or he obtains a favorable opportunity, or where he otherwise gains, benefits, or profits, it may fairly be said that an advantage has been obtained.” (See also *Fair v. Bakhtiari* (2011) 195 Cal.App.4th 1135, 1154–1155 [business agreements creating “favorable opportunities” sufficient to find “advantage” under section 16004].)

The Review Department’s analysis also conflicts with the analysis of the probate court in ordering Bradshaw removed as trustee. The probate court found that unsecured loans to Bay Construction were clearly an “interest” in Bay Construction because, at a minimum, Bradshaw wanted the loans to be repaid, and thus he had motivation to secure well-paid projects for the company (Superior Ct. Dec., at p. 20.) The probate court stated:

Bradshaw’s interest in Bay Construction securing the Trust work could hardly have been greater. Then, Bradshaw made

almost no effort to obtain any bids for any of the projects at the Trust Property, thus making Bay Construction's engagement a certainty. All this without a word to Gosey or the court, at least not until he was directly asked at which point he intentionally misrepresented events and circumstances.

(*Id.* at p. 21.) The probate court thus found that not only had Bradshaw engaged in self-dealing, but that he had done so in bad faith. (*Ibid.*)

Defining "advantage" as the Review Department did is also inconsistent with the purposes of the Probate Code as it fails to protect elderly members of the public who use trusts. It sends a dangerous message to unethical attorney-trustees: as long as you route funds back to yourself through arguably "competent" actions, the Court will not apply the presumption that you violated your fiduciary duties as trustee, and will not question your actions any further.

This Court should grant review to clarify, as the superior court found, that a trustee can obtain an "advantage" under section 16004 even if a transaction results in competent work being performed, and whether or not it creates a financial windfall for the trustee.

Review is also necessary as to whether the terms of a trust agreement can override an attorney's duties regarding conflicts of interest under rules 1.8.1 and 1.7 (formerly rules 3-300 and 3-310) of the Rules of Professional Conduct. These rules require, at a minimum, that an attorney disclose that he or she has a legal, business, financial, professional, or personal relationship with another person or entity the attorney knows would be affected substantially by the subject matter of the representation.

The Review Department declined to even reach this issue, instead looking to Paragraph VII(B)(5) of the Trust—which Bradshaw drafted—to find that Bradshaw "had the ability to do business with the trust as long as he did not act in bad faith or in disregard of the purposes of the trust." (2019 Review Dep't Op., at p. 24.) By failing to consider whether such

conduct could still be a violation of the Rules of Professional Conduct, the Review Department’s approach conflicts with this Court’s holding in *Schneider v. State Bar* that compliance with the disciplinary rules around self-dealing cannot be waived by the terms of a trust.

In *Schneider*, an attorney acting as trustee made loans to entities in which he had an interest, pursuant to clauses in the trust documents that purported to allow for such transactions. The Court stated:

The mere fact that [] a transaction arises in the context of a trust agreement does not exempt an attorney from the rule [against self-dealing]. The terms of the trusts authorizing self-dealing on the part of petitioner clearly come within the rule and do not supersede it.

(*Schneider v. State Bar* (1987) 43 Cal.3d 784, 796.) An attorney who is performing services both in a legal capacity and as a trustee must conform *all* of the services performed to the Rules of Professional Conduct. (See *Layton v. State Bar* (1990) 50 Cal.3d 889, 904 [“[Attorney’s] misconduct, however, is not insulated from scrutiny under the Rules of Professional Conduct merely because much of it was undertaken at least partly in his capacity as executor.”])

Bradshaw or his firm drafted the language in the Gosey Trust allowing certain self-dealing and then Bradshaw proceeded to self-deal as trustee, and the Review Department failed to look past the language of the trust to fully consider Bradshaw’s ethical duties as an attorney. This Court should clarify that the terms of a trust agreement alone are insufficient to preclude analysis of whether an attorney violated his or her ethical duties.

B. The Review Department Did Not Give Proper Deference to the Hearing Department’s Factual or Credibility Findings—Which Were Corroborated by the Superior Court and Court of Appeal.

Finally, review by this Court is also necessary to affirm that rule 5.155 of the State Bar Rules of Procedure and rule 9.12 of the Rules of Court

require the Review Department to give deference to the Hearing Department's findings of fact. Here, the Review Department's reversal of the Hearing Department's carefully considered decision was not supported by the weight of the evidence and was not appropriate in light of the record as a whole. Even on independent review of the record, the Review Department failed to give the Hearing Department's factual findings proper deference.

While rule 9.12 of the Rules of Court requires the Review Department to independently review the Hearing Department record on appeal, rule 5.155, subdivision (A) of the State Bar Rules of Procedure specifically states that “[t]he findings of fact of the hearing judge are entitled to great weight.” This Court’s decisions uphold this principle. (See *Garlow v. State Bar* (1982) 30 Cal.3d 912, 916 [“the hearing panel’s *factual findings* may be entitled to greater deference than the board’s own findings”] [emphasis in original]; *Toll v. State Bar* (1974) 12 Cal.3d 824, 831 [“In view of the greater opportunity of the committee to observe and judge the credibility of the attorney charged with misconduct, great weight must be given to their findings.”]; *Warner v. State Bar* (1983) 34 Cal.3d 36, 42 [“While we give the panel’s factual findings greater weight, we afford greater deference to the review department’s recommendations of discipline.”].)

Despite this obligation, the Review Department appears to have afforded no weight whatsoever to the factual findings of the Hearing Department—which have now been corroborated by probate court and Court of Appeal. Instead, the Review Department took Bradshaw’s invitation to make factual conclusions based on the drawing of non-existent, or, at best, unreasonable inferences. It repeatedly substituted its blanket acceptance of the conclusions of Bradshaw’s expert witnesses and Bradshaw’s own claims to find that Bradshaw had hardly any relationship at all with Bay Construction, that all of his misrepresentations were either

non-material “mistakes” or true at the most technical of levels (relenting, on remand, only to the extent of finding unintentional misrepresentations), and that he properly fulfilled the aims of the Trust.

The Review Department similarly failed to give due deference to the Hearing Department’s credibility determinations, such as the Hearing Department’s decision to credit Gonzalez’s testimony over Bradshaw’s, and the Hearing Department’s finding that Bradshaw falsely misled the superior court when he told it, first, that he had no affiliation or relationship with Bay Construction, and then, on a separate occasion, that he had no financial interest in Bay Construction—when these statements were glaringly false and served only to preserve the self-dealing scheme he had set up. This Court has observed that “the hearing panel is best suited to resolving credibility questions, because it alone is able to observe the witnesses’ demeanor and evaluate their veracity firsthand.” (*McKnight v. State Bar* (1991) 53 Cal. 3d 1025, 1032.) In fact, the Review Department has previously held: “We must give reference to the referee’s determinations as to credibility, and we are reluctant to deviate from his credibility-based findings in the absence of a specific showing that they were in error.” (*Matter of Bach* (1991) 1 Cal. State Bar. Ct. Rptr. 631, 638; see also e.g., *In the Matter of Aguiluz* (1992) 2 Cal. State Bar Ct. Rptr. 32, 42 [Review Department owes deference to the findings of credibility made by the hearing judge, especially when the findings are based on conflicting testimony, and even when a witness’s testimony may not have been uniformly reliable on all topics].) The Hearing Department clearly credited Gonzalez’s testimony regarding the division of authority and labor, over that of Bradshaw’s. Gonzales was very candid about the fact that Bradshaw created all the documents and controlled the markup, and that, believing Bradshaw to be in charge, Gonzalez just signed whatever Bradshaw put in front of him. This scenario is completely plausible based on the evidence

that Gonzales is an immigrant handyman who was not good at paperwork, whereas Bradshaw is a seasoned attorney. There was no reason to disturb those credibility determinations.

Indeed, the Review Department majority offered no “specific showing” that the Hearing Department’s credibility findings—made after a 22-day trial—were in error. (It would indeed be surprising if they could, given that the superior court, independent of the Review Department, made findings that even the Review Department majority recognized to be “very similar” to those of the Hearing Department. (2023 Review Dep’t Op., at p. 7.)) Indeed, the dissenting judge on the Review Department panel recognized this with respect to the Review Department majority’s refusal to find that Bradshaw made intentional misrepresentations to the court regarding his financial relationship with Bay Construction:

Of the three misrepresentations regarding financial interest that the majority finds Bradshaw culpable of, my colleagues determine that they were made from gross negligence, but no explanation is provided as to how they arrived at this conclusion. The superior court found that “overwhelming” evidence established that Bradshaw was a principal of Bay Construction, and was so involved with the company that it ‘would not exist’ without him.

(2023 Review Dep’t Op., at p. 40.)

In rebuttal, the Review Department majority points only to its general acceptance that Bradshaw “honestly held certain beliefs” about his lack of a relationship with Bay Construction. (*Id.* at p. 62.) However, the only support the Review Department majority offers for this is Bradshaw’s expert’s testimony suggesting that Bradshaw may not have technically been incorrect when he said he had no “financial interest” in Bay Construction. (*Id.*) Even accepting that expert testimony with respect to “financial interest,” however, does not explain how Bradshaw could have told the superior court, on another occasion, that he had no “no relationship or

affiliation” with any agent he hired on behalf of the Trust. While *maybe it could be conceivable* that Bradshaw would not be intentionally lying if he stated he had no financial interest in the company based on some honestly-held narrow interpretation of those terms, it is not believable that Bradshaw did not intend to lie when he stated he had no relationship or affiliation with the company that he created and ran. This is especially true here, where Bradshaw made similar misrepresentations repeatedly. (See *Lee v. State Bar* (1970) 2 Cal. 3d. 927, 942 [“Petitioner’s repeated false statements and attempts to deceive the court further support the conclusion that his violations of these rules were not mere technical violations but that they involved corrupt and dishonest purposes, which these rules were designed to prevent.”].) The Review Department majority opinion simply replaced the Hearing Department’s (and the Superior Court’s) credibility determinations with its own. This was error, and is further ground for review.

C. Bradshaw’s Lies Were Intentional, as They Were Motivated by Financial Gain.

The Review Department ignores the fact that Bradshaw’s financial interest motivated his misrepresentations. This was a fact that was readily apparent to the Hearing Department, the probate court, and the Court of Appeal. As the probate court correctly pointed out: Bradshaw’s interest in Bay Construction securing the Gosey Trust work “could hardly have been greater” because he was a substantial unsecured creditor and the Gosey Trust was Bay Construction’s only, or near only, client and the source of most of the company’s revenue. “Then Bradshaw made almost no effort to obtain any bids for any of the trust property, thus making Bay Construction’s engagement a certainty. All this without a word to Gosey or the court, at least not until he was directly asked, at which point he

intentionally misrepresented events and circumstances. By any reasonable measure, Bradshaw acted in bad faith.” (Superior Ct. Dec., at pp. 20–21.)

And as the dissenting Review Department judge correctly pointed out, the fact that Bradshaw repeated the misrepresentations demonstrates that they were not negligent, but were in fact, intentional. (2023 Review Dep’t Op. at p. 41, citing *Lee v. State Bar* (1970) 2 Cal.3d 927.)

It is this financial motive that takes Bradshaw’s misrepresentations outside the realm of gross negligence or inadvertence. Bradshaw lied to conceal his true affiliation with Bay Construction from the probate court, with the intent to induce the probate court to release more of the Gosey Trust assets to him so he could pay Bay Construction. (Hearing Dep’t Decision, at p. 23.) What the Review Department seemingly failed to appreciate is that Bradshaw was charged with lying to the probate court, and the probate court—the entity that was lied to—found that he had, in fact, intentionally lied to it. (Superior Ct. Dec., at pp. 20–21.) “A reasonably prudent person seeking to promote and protect the Trust’s interest would have disclosed the true facts so that the court could accurately assess the expenditures. Bradshaw, though, chose a different course. His intentional misrepresentations were material.” (Superior Ct. Dec., at p. 25.)

D. Bradshaw Misappropriated Funds.

The Review Department held steadfast to its finding that Bay Construction had a valid contractor’s license during the relevant time period, despite the fact that there is no evidence that Invernon supervised Bay Construction’s employees or inspected the work performed at the Gosey home. (Hearing Dep’t Dec., at p. 13, fn. 14.) However, the probate court and Court of Appeal unquestionably found that the license was a sham—a sham that Bradshaw knowingly participated in *from its inception*. (Superior Ct. Dec., at pp. 8, 26; Ct. App. Op., at pp. 29–31, 37.) When

these findings are juxtaposed with the Hearing Department’s findings—the conclusion that Bay Construction was unlicensed is inescapable.

As the dissenting Review Department judge correctly pointed out, because Bay Construction had no license, it was unlawful for the Gosey Trust funds to be used to pay Bay Construction more than \$500 per job. Hence, the use of the Gosey Trust funds for Bradshaw’s own purpose, to a company without a valid license in which he was a substantial creditor in excess of the amount it was legally authorized to charge, constitutes misappropriation. (2023 Review Dep’t Op. at p. 47 (Dissent), citing *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824, 829, 830 [attorney using portion of client’s investment funds to further his and his spouse’s personal interest is willful misappropriation.]

E. Bradshaw Should Be Disbarred.

The record amply supports the Hearing Department’s original determination that Bradshaw was the architect of Bay Construction, and that he orchestrated an elaborate scheme to drain the Gosey Trust of its financial assets—the equity in the Gosey home—for his own financial gain.

The triers of fact (the hearing judge and probate court judge), who had an opportunity to observe Bradshaw testify first-hand, readily recognized that he is not a credible person—but rather, someone whose self-serving lies should not be believed. There is simply no basis to reverse those credibility findings.

This Court can and should determine, as did the dissenting Review Department judge, that the probate court and Court of Appeal findings buttress the findings of Hearing Department and further support the conclusions that Bradshaw made multiple misrepresentations, orchestrated a scheme to defraud, and breached his fiduciary duty. (See e.g., 2023 Review Dep’t Op. at p. 42.) Further, on the basis that Bay Construction’s

contractor license was a sham and that he lied to the superior court to obtain Trust funds, this Court should also find that Bradshaw misappropriated funds.

Moreover, Bradshaw's serious misconduct is highly aggravated.

First, Bradshaw is a recidivist, and his first discipline, bears a certain similarity to Bradshaw's present misconduct because both matters involved ethical transgressions in dealing with individuals to whom he owes a fiduciary duty.

Second, Bradshaw's misconduct was prolonged and included multiple acts of moral turpitude where he intentionally and in bad faith violated his duties to the trust and then lied to the superior court about it.

Third, Bradshaw's misconduct involved a highly vulnerable victim—Gosey, elderly women with dementia, who was unable to care for herself or her affairs. Bradshaw preyed on this woman and the trust assets and took advantage of the situation. As the dissenting Review Department judge correctly pointed out, the majority's argument that Bradshaw was trying to keep Gosey's costs down is contradicted by Gonzalez's testimony that he thought that the February 2016 leak repairs should have cost \$1,300, but Bradshaw charged the Gosey Trust \$6,885. (2023 Review Dep't Op. at pp. 50–51.)

Finally, most concerning, Bradshaw exhibits no insight and a pervasive indifference toward rectification or atonement for the consequences of his actions. The Review Department majority ignores the evidence in the record of Bradshaw's significant indifference: i.e., his accusation that the probate court judge was trying to demonize him; his written threats to sue Rasch for defamation in an attempt to intimidate her in response to her filing a State Bar complaint against him; and his endless refrain that anyone else but him was responsible for the content of his pleadings and declarations before the probate court. (See 2023 Review Dep't Op. at p. 50

(Dissent).) Indeed, the probate court found that Bradshaw’s breaches were so significant and his indifference so great that his removal as trustee was necessary in order to preserve the Gosey Trust, protect the beneficiaries’ interests, and maintain the integrity of the trust proceedings: “Bradshaw committed significant breaches of the Trust...” “Bradshaw breached the Trust and did so in bad faith. The court has no confidence that Bradshaw would act any differently if he were reinstated.” “Indeed, the trial made plain that Bradshaw sees nothing wrong in his actions. A reasonable inference is that actions inconsistent with the most basic trustee duties would continue.” (Superior Ct. Dec., at pp. 24–26; Ct. App. Dec., at p. 47 [no abuse of discretion in removing Bradshaw as trustee].)

Bradshaw masterminded an elaborate plot to use the assets of a trust that, as trustee, he was duty-bound to preserve (see e.g., Probate Code §§ 16002, 16004(a), 16006), and instead drained the trust for his own financial gain, yet he continues to maintain he did nothing wrong. That is why the probate court removed him as trustee. The same rationale—and more (his prior record of discipline and his indifference)—necessitate removing Bradshaw from the legal profession. (See e.g., *Lebbos v. State Bar* (1991) 53 Cal.3d 37, 43–44 [disbarment where attorney with no discipline record lacked remorse for multiple acts of misconduct involving moral turpitude and dishonesty]; *Weber v. State Bar* (1988) 47 Cal.3d 492 [disbarment for violating court order to distribute estate assets, commingling and misappropriating estate funds, and engaging in moral turpitude and dishonesty]; *In the Matter of Schooler* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494 [disbarment for multiple acts of moral turpitude, including violating fiduciary duties, making repeated misrepresentations, filing frivolous appeals, and demonstrating indifference, with significant harm to beneficiaries and no prior misconduct]; *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70 [disbarment for serious

acts of dishonesty coupled with lack of meaningful regret, understanding, insight, or acceptance of responsibility].)

VI. CONCLUSION

Review by this Court is necessary because the Review Department's decision goes against the weight of the evidence, is at odds with the interpretations of law and fact of the probate court and Court of Appeal, and fails to give the necessary deference to the Hearing Department's carefully-considered factual findings. For these reasons and as set forth above, the State Bar respectfully requests that the Court grant the Petition for Review, and adopt the Hearing Department's recommendation of disbarment, or, in the alternative, remand the matter to the State Bar Court with instructions.

Dated: January 2, 2024

Respectfully submitted,

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ROBERT G. RETANA
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By: /s/BRADY R. DEWAR
BRADY R. DEWAR

Attorneys for Petitioner
Chief Trial Counsel of
The State Bar of California

WORD COUNT CERTIFICATE PURSUANT TO
CALIFORNIA RULE OF COURT 8.520(C)(1)

Pursuant to rule 8.520(c)(1) of the California Rules of Court, I hereby certify that this brief contains 10,809 words. I have relied on the word count of the computer program used to prepare the brief.

Dated: January 2, 2024

/s/BRADY R. DEWAR
BRADY R. DEWAR

APPENDIX

PROOF OF SERVICE

I, Joan Randolph, hereby declare: that I am over the age of eighteen years and am not a party to the within above-entitled action, that I am employed in San Francisco, that my business address is The State Bar of California, 180 Howard Street, San Francisco, California, 94105.

On January 2, 2024, following ordinary business practice, I served a copy of the

PETITION FOR REVIEW

via email via the Court's Truefiling, and by U.S. Mail on the party listed as follows:

Drexel A. Bradshaw
3053 Fillmore Street #205
San Francisco, CA 94123

I also served a copy of this document electronically (with permission) upon the Clerk of the State Bar Court (michelle.cramton@calbar.ca.gov).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in San Francisco, California this 2nd day of January, 2024.

/s/ Joan Randolph
JOAN RANDOLPH