

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

M247817  
E/afa

ALAN D. SCHEINKMAN, P.J.  
WILLIAM F. MASTRO  
REINALDO E. RIVERA  
MARK C. DILLON  
RUTH C. BALKIN, JJ.

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2017-10726

DECISION & ORDER ON MOTION

In the Matter of Sean Grogan, admitted as  
John Gerard Grogan, an attorney and counselor-at-law.

Grievance Committee for the Second, Eleventh,  
and Thirteenth Judicial Districts, petitioner;  
Sean Grogan, respondent.

(Attorney Registration No. 2269165)

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Motion by the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts (1) to immediately suspend the respondent from the practice of law, pursuant to 22 NYCRR 1240.9(a)(3) and (5), upon a finding that he is guilty of professional misconduct immediately threatening the public interest based upon his failure to comply with the lawful demands of the Grievance Committee and other uncontroverted evidence of professional misconduct, (2) to provide notice to the respondent, pursuant to 22 NYCRR 1240.9(b), that he may be disbarred by the Court without further notice in the event that he fails to respond to or appear for further investigatory or disciplinary proceedings within six months, and (3) to refer the issues raised to a Special Referee, to hear and report. Pursuant to Judiciary Law § 90(6), the Grievance Committee was authorized by order to show cause of this Court dated October 23, 2017, to serve the respondent with the motion and any future papers in this matter, using substituted service. On October 23, 2017, the Grievance Committee served the motion upon the respondent, by first class mail, at the home and office addresses the respondent provided with his attorney registration, and duly filed an affidavit of service with this Court. The respondent was admitted to the Bar at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on May 31, 1989, under the name John Gerard Grogan.

Upon the papers filed in support of the motion and no papers having been filed in opposition or in relation thereto, it is

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

ORDERED that pursuant to 22 NYCRR 1240.9(a)(3) and (5), the respondent, Sean Grogan, admitted as John Gerard Grogan, is immediately suspended from the practice of law in the State of New York, pending further order of the Court; and it is further,

ORDERED that the respondent, Sean Grogan, admitted as John Gerard Grogan, shall promptly comply with this Court's rules governing the conduct of disbarred or suspended attorneys (*see* 22 NYCRR 1240.15); and it is further,

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

ORDERED that if the respondent, Sean Grogan, admitted as John Gerard Grogan, has been issued a secure pass by the Office of Court Administration, it shall be returned forthwith to the issuing agency and the respondent shall certify to the same in his affidavit of compliance pursuant to 22 NYCRR 1240.15(f); and it is further,

ORDERED that on the Court's own motion, the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts is directed to institute and prosecute a disciplinary proceeding in this Court pursuant to 22 NYCRR 1240.8 based upon the allegations of professional misconduct set forth in the affirmation of David W. Chandler, dated October 18, 2017; and it is further,

ORDERED that within 30 days of the date of this decision and order on motion, the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts shall serve a notice of petition and verified petition pursuant to 22 NYCRR 1240.8(a)(1), upon the respondent, Sean Grogan, admitted as John Gerard Grogan, as authorized by the order to show cause of this Court dated October 23, 2017, using substituted service, file the notice of petition and verified petition, as well as proof of service, with this Court, and serve copies of the notice of petition and the verified petition upon the Special Referee, appointed herein; and it is further,

ORDERED that the issues raised are referred to the Honorable Charles J. Thomas, 50 East 89<sup>th</sup> Street, #10-F, New York, NY 10128, as Special Referee, to hear and report, with the hearing to be completed within 90 days of the date of this decision and order on motion, or as soon thereafter as practicable, and to submit a report, which contains his findings on the issues and charges, within 60 days after the conclusion of the hearing or the submission of post-hearing memoranda; and it is further,

ORDERED that pursuant to 22 NYCRR 1240.9(b), in the event the respondent,

Sean Grogan, admitted as John Gerard Grogan, fails to respond to or appear for further investigatory or disciplinary proceedings within six months of the date of this decision and order on motion, he may be disbarred by the Court without further notice.

We find, prima facie, that the respondent is guilty of professional misconduct immediately threatening the public interest based on his failure to comply with the lawful demands of the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts and the uncontroverted evidence that he misappropriated client funds.

#### Failure to Comply with Lawful Demands of the Grievance Committee

##### The McMahon Complaint

On November 25, 2016, the Grievance Committee received a complaint of professional misconduct against the respondent from Michael McMahon. According to the complaint, the respondent received a \$97,000 down payment in connection with Mr. McMahon's sale of property located in Rockaway Park, New York. Although the real estate transaction closed, Mr. McMahon has not received his funds despite the respondent's multiple assurances that he would pay him. By letter dated February 14, 2017, Mr. McMahon's attorney, Steven S. Kaiser, forwarded additional information to the Grievance Committee including copies of a down payment check, a letter from the respondent dated January 25, 2016, acknowledging receipt of the down payment, a statement signed by the respondent dated August 19, 2016, acknowledging that he owed \$97,000 to Mr. McMahon and promising to pay Mr. McMahon by September 30, 2016, and a police department complaint filed by Mr. McMahon.

By letter dated February 23, 2017, the Grievance Committee notified the respondent that it had opened an investigation based upon Mr. McMahon's complaint and requested his answer within 10 days of his receipt thereof. No response was received from the respondent.

A second request was made by letter dated April 24, 2017, sent to the respondent's office address by regular and certified mail return receipt requested, which demanded that he submit an answer on or before May 8, 2017. Both letters were returned to the Grievance Committee by the U.S. Postal Service, and marked "RETURN TO SENDER ATTEMPTED - NOT KNOWN UNABLE TO FORWARD."

##### The Dishonored Check Complaint

On March 27, 2017, the Grievance Committee received a dishonored check report from the Lawyers' Fund for Client Protection, which advised that a check in the amount of \$562 drawn on the respondent's attorney IOLA account at TD Bank was returned for insufficient funds on February 27, 2017. By letter dated April 4, 2017, sent to the respondent's office address, the Grievance Committee notified him that a sua sponte complaint had been initiated based upon the dishonored check report, and requested that he provide an answer together with certain bank and bookkeeping records. No response was received from the respondent.

On May 8, 2017, the Grievance Committee's investigator sent an address verification request to the U.S. Postal Service for the respondent's home address, and received a response on May 22, 2017, which advised that the address was "good as given."

A second request for the respondent's response to the dishonored check complaint was made by letter dated May 23, 2017, sent to his registered office address. No response was received from the respondent.

A third request for the respondent's response to Mr. McMahon's complaint and a third request for the response to the dishonored check complaint were made by letters dated June 7, 2017, sent to his home address. Also, on June 7, 2017, staff counsel to the Grievance Committee sent the respondent an email advising him of the Grievance Committee's efforts to obtain the respondent's answers to the pending complaints, and asking him to contact the Grievance Committee. No response was received from the respondent.

A further request for the respondent's response to the McMahon and dishonored check complaints was made by letter dated August 29, 2017, sent by regular and certified mail return receipt requested, to his home address. No response was received from the respondent.

#### Uncontroverted Evidence of Professional Misconduct

Pursuant to subpoena, on June 6, 2017, the Grievance Committee received records from TD Bank for the respondent's IOLA account no. ending 3875 for the period October 1, 2015, through April 30, 2017. The bank statement and corresponding deposited items for January 2016 show, inter alia, that the \$97,000 down payment check in the McMahon transaction was deposited into the respondent's IOLA account on January 20, 2016. Further, as reflected on the respondent's IOLA account bank statements, the McMahon down payment funds were depleted, as follows:

<u>Date</u>	<u>IOLA account Balance</u>
2/18/16	\$96,514.68
4/22/16	\$27,449.43
6/24/16	\$ 8,000.68
8/04/16	\$ 1,000.68
4/26/17	\$ 200.68

Additionally, the bank records reflect that the respondent depleted the McMahon down payment by cashing numerous checks made payable to himself, and through a cash withdrawal of \$53,258 on March 2, 2016.

Based on the foregoing, the motion is granted, the respondent is immediately suspended from the practice of law pursuant to 22 NYCRR 1240.9(a)(3) and (5), pending further order of this Court, and the respondent is notified pursuant to 22 NYCRR 1240.9(b) that in the event he hereafter fails to respond to or appear for further investigatory or disciplinary proceedings within six months of the date of this decision and order on motion, the Court may, without further notice, disbar him. Additionally, the Grievance Committee is directed, pursuant to 22 NYCRR 1240.8, to

serve the respondent with a notice of petition and verified petition and file the original notice of petition and petition with the Court, together with proof of service, and serve copies of the notice of petition and petition upon the Special Referee appointed herein, and the matter is referred to the Special Referee, to hear and report.

SCHEINKMAN, P.J., MASTRO, RIVERA, DILLON and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court