



FILED

Jul. 29, 2021

THE BOARD of DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

No. 64651

**BEFORE THE
BOARD OF DISCIPLINARY APPEALS**

MARIO A. MATA
STATE BAR OF TEXAS CARD NO. 13184400
Respondent/Appellant

V

**COMMISSION FOR LAWYER DISCIPLINE OF THE
STATE BAR OF TEXAS**
Petitioner/Appellee

**Appeal from the Judgment of the District 9 Evidentiary Panel,
Evidentiary Panel 9-1 in File No. 201800134**

APPELLANT'S BRIEF

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ORAL ARGUMENT REQUESTED

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NAME OF PARTIES AND COUNSEL

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STATEMENT OF THE CASE.

I. Nature of the Case: The CFLD brought this case against the Appellant, Mr. Mario A. Mata, stemming from Mr. Mata's representation of the Complainant Joel A. Moser. The Complainant alleged that the Appellant, Mr. Mata, failed to transfer \$270,000 deposited into the Appellant's IOLTA account into the Complainant's offshore asset protection trust in the Cook Islands.

II. Disposition of the Case. The Evidentiary Panel found Appellant Mario A. Mata, had committed professional misconduct and thereafter issued a Judgment of Disbarment in this case.

STATEMENT OF JURISDICTION

The Board of Disciplinary Appeals has jurisdiction over this appeal under Rule 2.24 of the Texas Rules of Disciplinary Procedure. The Evidential Panel judgment was signed on March 10, 2020. The Appellant, Mr. Mata, timely filed a Notice of Appeal on April 14, 2020.

STATEMENT REGARDING ORAL ARGUMENT

Appellant Mario A. Mata believes that the questions in this appeal merit argument because they raise important regarding the facts of the case important legal issues and that oral argument will assist the Board of Disciplinary Appeals in disposing this appeal.

ISSUES PRESENTED

1. Was the Grievance of Complainant Joel A. Moser timely filed?
2. Is Appellant Mario A. Mata still able to claim the Affirmative Defense of expiration of the state of limitations under Rule 94 of the Texas Rules of Civil Procedure to defeat the Grievance filed by the Complainant.
3. If the statute of limitations defeats the claim of the Complainant Moser, can Appellant Mario A. Mata be reinstated as since he would not have been guilty of violation of Section 1.14 (b) of the Texas Disciplinary Rules of Professional Conduct.

STATEMENT OF THE FACTS

The Commission for Lawyer Discipline brought this case against the Appellant, Mr. Mario A. Mata arising out the Appellant's representation of Mr. Joel A. Moser, the Complainant. The Complainant Moser alleges in his Grievance that Appellant had fail to transfer funds deposited into the Appellant's IOLTA account for the purpose of sending, via wire transfer, \$270,000 in funds deposited

into Mr. Mata's IOLTA via a check drawn on the domestic account of The Moser Family Trust Moser. The funds were to be wired transferred to The Joel A. Moser Family Trust, an offshore asset protection trust settled in the Cook Islands.

This case is a disciplinary appeal from the Evidentiary Panel for the State Bar District No. 9, Evidentiary Panel 19-2, of the State Bar of Texas. The Compliment in this case is Joel A. Moser, a resident of Dallas, Texas. He filed his Grievance on January 2, 2018. On or about August 8, 2013, Complainant deposited \$270,000 into the Appellants IOLTA account via a check drawn the account of The Moser Family Trust. The funds were to be wired into the account of the Complainant's offshore Cooks Islands Trust being The Joel A. Moser Family Trust. The Appellant testified that the Compliment agreed to loan the Appellant all or part of the \$270,000 to help finance the Appellant's law practice while the Appellant, as the sole Plaintiff, was consumed with a personal injury lawsuit, with five defendants, over a personal injury that Appellant had suffered in March, 2011. In return, the Appellant would agree to pay interest at a higher rate of interest than what he would earn in his offshore trust plus, upon settlement of the Appendant's personal injury case, the principal balance of \$270,000. However, the Evidential Panel made a fact finding the Complainant had never agreed to such an agreement. Later, the litigation was finally transferred to a personal injury attorney who spoke of the litigation potentially being worth one million dollars. However, that attorney's Engagement Agreement, understandably, stipulated that

no guaranty of success could be promised. The personally injury lawsuit was eventual settled for approximately \$60,000 of which approximately \$30,000 with withheld as attorney fees. However, the Complainant testified that he never agreed to such an arrangement. The Panel found that Appellant had committed Professional Misconduct as defined by Rule 1.14(b) of the Texas Rules of Disciplinary Procedure. Therefore the Panel entered a Judgment of Disbarment against the Appellant on March 10, 2020. However, the important chronology of events leading to the finding of the Appellants alleged professional Misconduct are follows:

Bank Vontobel issues its first Quarterly Investment Statement for The Joel A. Moser Family Trust on October 1, 2012. The Investment Statement would show, and does show all incoming contributions to the Moser Family Trust as the statement shows a binning balance of \$0.00. It is supposed to represent the third quarterly of the investment activity of The Joel Moser Offshore Trust (“Moser Offshore Trust.”). Later in the year, the Complainant would have received the Moser Family Trust Investment Statement for the 4th quarter of 2013. The 3rd and 4th quarter investment Statement for the Moser Family Trust, for reasons unknown, are included in the Commissions Exhibits but were totally out of order and made no sense. Therefore, the Appellant filed a **Motion to Supplement the Reporter’s Record Pursuant to Rule 4.03(d) of the Internal Procedural Rules of the Board of Disciplinary Appeals (“BODA”)** on June 25, 2021 that was approved

by BODA. The Executive Assistant at BODA recently assured the Appellant that the three (3) exhibits attached to Appellant's Motion are now part of the Record and are therefore not attached hereto.

Contrary to the claim of the Complainant the 3rd quarter statement for the Moser Offshore Trust, its very first statement showed a beginning balance of \$0.00 followed by the contributions to the trust which would have shown that the \$270,000 deposit had not been made. Yet, the Complainant did nothing. Nevertheless, on or about October 10, 2017, upon receiving the 3rd Quarter Statement for the Moser Family Trust, the Complainant would have still had time to file his Grievance since the \$270,000 deposit originally into the Complainant's IOLTA account for transfer to the Moser Family Trust occurred on or about August 9, 2013. Even if given the benefit of any :discovery rule, the Complainant would have known, or should have known on or about October 10, 2017, that the \$270,000 deposit had never been made. If it had, it would have appeared on the September 30, 2017 statement mailed on or about October 1, 2017. However, the Complainant waited until December 31, 2017 to mail his Grievance that arrived at on January, 2018, well outside the four (4) year statute of limitations provided by Rule 15.06 of the Texas Rule of Disciplinary Procedure that provides that "no attorney may be disciplined for Professional Misconduct that occurred more than four years before the date on which a Grievance alleging the Professional Misconduct is received by the Chief Disciplinary Counsel." Lastly, the claim that

the Complainant first noticed the \$270,000 deficiency when he received is January 2014 monthly statement is something that is factually alleged in First Amended Evidentiary Petition and the Findings of Fact in Judgment of Disbarment. Yet, a copy of the “monthly statement” is nowhere to be found anywhere in the Record. There is a reason for this. Bank Vontobel does not issue monthly investment statements, only quarterly investment statements.

LACK OF AFFIRMATIVE DEFENSE

Rule 94 of the Texas Rules of Civil Procedure provides that certain defenses must be stated and claimed as an Affirmative. In Roark vs Stallworth Oil and Gas, Inc, et al. 813 S.W. 2nd 492 (1991), the defendant had not plead the affirmative defense of statute of limitations. However, the Texas Supreme Court essentially ruled that if the Plaintiff does not bring the pleading deficiency to the attention of the trial court, the Plaintiff waives the right to raise the issue on appeal. The Texas Supreme Court ruled that “The party who allows an issue to be tried by consent and who fails to raise the lack of pleading before submission of the case cannot later raise the pleading deficiency for the first time on appeal. See Harrington vs. Aetna Causality & Surety Co. 489 S.W.2d 171,178 (Tex. Civ. App-Waco 1972, (writ refused).

PRAYER

The Appellant, Mario A. Mata, hereby request that the Judgement of Disbarment be overturned and that he be allowed to return to the practice of law.

Respectfully submitted,

/s/ Mario A. Mata

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served on the individuals listed on this and the following page, via email, on July 29, 2021.

/s/ Mario A. Mata

Mario A. Mata, Appellant

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