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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JAEFFREY J. ARTZ, Plaintiff and Appellant, v. STATE BAR OF CALIFORNIA, Defendant and Respondent.	B259779 (Los Angeles County Super. Ct. No. BS143116)

APPEAL from a judgment of the Superior Court of Los Angeles County. James Chalfant, Judge. Affirmed.

Jaeffrey J. Artz, in pro. per., for Plaintiff and Appellant.

Lawrence Yee, Richard Zanassi, and Tracey L. McCormick, Office of General Counsel, State Bar of California, for Defendant and Respondent.

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Plaintiff and appellant Jaeffrey J. Artz (Artz) filed a writ of mandate challenging the State Bar Client Security Fund Commission's (Commission's) finding that one of Artz's former clients was entitled to a reimbursement of $2,500 in legal fees due to Artz's "dishonest conduct." The trial court denied Artz relief, and he appealed. We conclude there was no error, and affirm.

FACTS AND PROCEDURAL HISTORY

Because Artz did not include in the record on appeal either the administrative record of the proceedings before the Commission or the trial court's order denying his writ petition, we draw the below-stated facts from the trial court's order denying reconsideration and from the parties' briefs. (See *Caldo Oil Co. v. State Water Resources Control Bd.* (1996) 44 Cal.App.4th 1821, 1826.)

Artz is a member of the State Bar of California (State Bar). In 2005, Amador Hurtado (Hurtado) retained Artz to represent him in trying to obtain lawful permanent resident status in proceedings before the United States Citizenship and Immigration Service. Hurtado gave Artz a $2,500 retainer. In a subsequent disciplinary proceeding initiated by the State Bar, Artz stipulated that he performed "no services of value for Hurtado."

In 2009, Hurtado applied to the Commission for reimbursement of the $2,500 retainer he paid to Artz. The Commission was created by the State Bar in response to a legislative mandate that the State Bar "establish and administer a Client Security Fund to relieve or mitigate pecuniary losses caused by dishonest conduct of active members of the State Bar . . . arising from or connected with the practice of law." (Bus. & Prof. Code, § 6140.5, subd. (a); *State Bar of California v. Statile* (2008) 168 Cal.App.4th 650, 660-661; Rules of Procedure, Client Security Fund Matters (CSF Rules), rule 11

(1995).)[1] The Commission ultimately issued a final ruling awarding Hurtado a reimbursement of $2,500.

Artz subsequently filed a petition for a writ of mandate challenging the Commission's determination. The trial court denied the writ on two grounds: (1) Artz waived his challenge by not presenting factual or legal arguments; and (2) Artz's challenge lacked merit because the Commission reasonably concluded that Artz's new-found claim that he actually *had* performed legal services for Hurtado was unsupported by the evidence he proffered, and was inconsistent with his prior, contradictory assertions that he did not know Hurtado and that he knew Hurtado but did no work for him.

After the trial court denied Artz's motion for reconsideration, Artz appealed.

DISCUSSION

Artz argues that the Commission erred in determining that Hurtado was entitled to reimbursement. Reimbursement is available when a client suffers "pecuniary losses" as a result of a State Bar member's "dishonest conduct . . . arising from or connected with the practice of law." (§ 6140.5, subd. (a).) In its rules, the Commission further defines "dishonest conduct" as, among other things," (1) "[w]rongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money or property," or (2) "[r]efusal to refund an advance fee when the lawyer performed no work whatever, or such an insignificant portion of the services that he or she agreed to perform, such that the lawyer can be regarded at the time payment was received as having lacked the intention of performing the work." (CSF Rules, rules 6(a) & (b).) In this case, the Commission found that Artz engaged in dishonest conduct because, as he stipulated, he accepted an advance fee and performed "no services of value." The trial court determined this ruling was not erroneous, and we review the trial court's denial of a writ of mandate de novo. (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1032.)

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1 All further statutory references are to the Business and Professions Code unless otherwise indicated. Also, we may take judicial notice of the Commission's rules. (Evid. Code, §§ 459, 452, subd. (c).)

Artz raises two sets of challenges to the Commission's ruling—one factual and several legal. In his factual challenge, Artz argues that the Commission's finding that he engaged in dishonest conduct is unfounded because he *did* in fact win the appeal of Hurtado's case, as illustrated by a notice of ruling that was addressed to him. We review factual findings for substantial evidence, and must affirm as long as the findings are reasonable, credible and of solid value—while viewing the evidence in the light most favorable to the findings and drawing all reasonable inferences to support them. (*In re J.C.* (2014) 233 Cal.App.4th 1, 5.) Artz argues that the Commission misread the notice of ruling he proffered, but we cannot review it ourselves because Artz has not included it in the record on appeal; Artz's entreaty that we reinterpret a document not before us "must be ignored." (*Advanced Choices, Inc. v. State Dept. of Health Services* (2010) 182 Cal.App.4th 1661, 1670.) The notice of ruling is of minimal relevance in any event because Artz's stipulated admission that he accepted Hurtado's money and then did nothing is sufficient by itself to sustain the Commission's finding of "dishonest conduct." Artz asserts in his reply brief that the stipulation is inaccurate, but it is too late to dispute the contents of a document he signed. (See *Frittelli, Inc. v. 350 North Canon Drive, LP* (2011) 202 Cal.App.4th 35, 52.) Moreover, the fact that Artz has presented conflicting evidence does not affect its substantiality (see *People v. Hicks* (2014) 231 Cal.App.4th 275, 286 ["Conflicting evidence . . . does not cast doubt on the trial court's factual findings because we review factual findings for substantial evidence."]), particularly when the Commission has found Artz's ever-changing story to demonstrate a fundamental lack of credibility to which we must also defer. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 819; see also Gov. Code, § 11425.50, subd. (b).)

Artz raises three different legal challenges to the Commission's order, each of which we review de novo. (*In re Marriage of Doughtery* (2014) 232 Cal.App.4th 463, 465, fn. 3.) First, he argues that the Commission lacks jurisdiction because he was representing Hurtado in proceedings before a *federal* administrative agency. To be sure, as Artz points out, the State Bar may not regulate the conduct of nonmembers who appear in federal courts within the geographical boundaries of California. (See, e.g, *Birbrower,*

Montalbano, Condon & Frank, P.C. v. Superior Court (1998) 17 Cal.4th 119, 130; *Cowen v. Calabrese* (1964) 230 Cal.App.2d 870, 872; *Blustein v. State Bar of California* (1974) 13 Cal.3d 162, 174, fn. 10.) But this case involves a member of the State Bar regarding his conduct outside of court and, as required by section 6140.5, subdivision (a), "arising from or connected with the practice of law." That the litigation Artz promised to (but never did) undertake was before a federal administrative tribunal does not somehow place Artz's out-of-court conduct as a member of the State Bar beyond the reach of that Bar. (See *Geibel v. State Bar of Cal.* (1938) 11 Cal.2d 412, 415 ["If an attorney admitted to practice in the courts of this state commits acts in reference to federal court litigation which reflect on his integrity and fitness to enjoy the rights and privileges of an attorney in the state courts, proceedings may be taken against him in the state court."].)

Second, Artz contends that CSF Rules, rule 6's interpretation of the "dishonest conduct" set forth in section 6140.5, subdivision (a) is contrary to its plain meaning. We defer to some extent to an agency's interpretation of a statute it is charged with implementing. (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1012-1013.) However, even without any deference, we conclude that rule 6 reasonably and logically equates "dishonest conduct" with the "wrongful taking" of money and a "refusal to refund an advance fee when the lawyer performed no work whatever, or such an insignificant portion of the services that he or she agreed to perform."

Lastly, Artz asserts that applying rule 6 to him violates due process because he did not have fair notice of rule 6's definition of "dishonest conduct" and because that definition is unconstitutionally vague. "All citizens are presumptively charged with knowledge of the law." (*Atkins v. Parker* (1985) 472 U.S. 115, 130 (*Atkins*).) Even in cases when some additional "grace period" is required by due process before a law may take effect, 90 days has sufficed. (*Id.* at pp. 127-131.) Rule 6 had been on the books for 13 years (since 1992) before Artz took money from Hurtado; Artz had ample notice. Rule 6's standards are also clear enough for "people of ordinary intelligence" to have "fair notice of what is prohibited." (*Brown v. Entertainment Merchants Assn.* (2011) 131 S.Ct. 2729, 2743.) Artz's due process rights were not violated.

DISPOSITION

The judgment is affirmed. The State Bar is entitled to its costs on appeal.

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_____, J.

HOFFSTADT

We concur:

_____, P. J.

BOREN

_____, J.

ASHMANN-GERST