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STATE BAR COURT
HEARING DEPARTMENT – SAN FRANCISCO

In the matter of:

CHARLES DODGSON,
No. 999999,

A Member of the State Bar.

Case No. 13-O-1778506

RESPONDENT’S POST-TRIAL BRIEF

Trial Date: January 20, 2015

Trial Judge: Hon. John Smith

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I. INTRODUCTION

The Notice of Disciplinary Charges (“NDC”) in this matter contains two counts. Count One charges a violation of Rule of Professional Conduct 4-100(A)(2), Withdrawal of Disputed Funds. Count Two charges a violation of Bus. & Prof. Code § 6016, Moral Turpitude – Misappropriation.

Neither charge can stand, as the State Bar has failed to meet its burden to demonstrate by clear and convincing evidence that Mr. Dodgson withdrew funds at a time they were disputed, and it has failed to meet its burden to demonstrate by clear and convincing evidence that Mr. Dodgson committed an act of moral turpitude. Thus, no sanction should issue.

II. STANDARD OF PROOF

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The State Bar must prove Mr. Dodgson’s misconduct by clear and convincing evidence, which “requires evidence so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind.” In the Matter of Allen (Rev. Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198, 201.

Mr. Dodgson is entitled to the benefit of any inference in his favor which is equally supported by the evidence as is an inference against him. Id. at 201 (“we resolve all reasonable doubts in [respondent’s] favor, and when equally reasonable inferences may be drawn from the stipulated facts, we accept those inferences that lead to a conclusion of innocence”); In the Matter of Oheb (Rev. Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 934 (where record equally supports inference for and against respondent, court “must accept the inference favoring the attorney”).

As to funds held in trust, the State Bar bears the burden of proving by clear and convincing evidence that they were in fact disputed at the time they were withdrawn. See In the Matter of Malek-Yonan (Rev. Dept. 2003) 4 Cal.

1 State Bar Ct. Rptr. 627, 635 (State Bar bears burden to demonstrate by clear and
2 convincing evidence that funds held in trust were client's and were stolen).

3 **III. STATE BAR HAS FAILED TO MEET ITS BURDEN TO ESTABLISH**
4 **CULPABILITY ON COUNT ONE**

5 In order to find culpability on Count One of the NDC, the court must find
6 by clear and convincing evidence that the following allegation is true: "On or
7 about June 10, 2014, respondent withdrew \$80,247.35 from respondent's trust
8 account at a time when the client disputed respondent's right to receive the
9 funds, in willful violation of the Rules of Professional Conduct, rule 4-100(A)(2)"
10 NDC at 2 (Count One).

11 The State Bar has failed to meet its burden in multiple ways.

12 **A. Failure to Establish Date of Withdrawal Alleged in NDC.**

13 First, the State Bar has unequivocally failed to establish that Mr. Dodgson
14 withdrew the funds from his trust account "on or about June 10, 2014." Mr.
15 Dodgson denied this allegation and specifically the date in his Answer to the
16 State Bar's Notice of Disciplinary Charges ("Mr. Dodgson's Answer") filed in
17 this case. The undisputed evidence presented at trial was that the withdrawal
18 took place on July 10, 2014. Ex. 12 at p. 33. The State Bar has completely failed to
19 show that the funds were disputed on the date alleged in the NDC, as it has
20 presented absolutely no evidence whatsoever of any communications to Mr.
21 Dodgson from Mr. Singh or Mr. Hill demanding return of the appeal bond
22 refund before June 10, 2014. Having failed to establish this basic component of
23 the allegations in Count One, the State Bar has failed to meet its burden of
24 proving culpability by clear and convincing evidence.
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1 **B. Failure to Establish Funds Were Disputed When Withdrawn.**

2 Second, the State Bar has failed to demonstrate by clear and convincing
3 evidence that the funds were disputed on the actual date of withdrawal of
4 July 10, 2014.

5 It was established by stipulation that Mr. Dodgson received the funds that
6 are the subject of this case on June 2, 2014. Stipulation As To Facts at p. 2 ¶ 4.
7 Between that date and July 10, 2014, the communications Mr. Dodgson had with
8 any other person regarding the appeal bond refund which could potentially be
9 construed as placing the funds in dispute are Exhibits 5, 7 and 8. In
10 contemporaneous communications, Mr. Dodgson made clear that he and Mr.
11 Singh had an agreement under which he was entitled to the appeal bond refund
12 as partial payment of his fees. Ex. 10, 1038, 1042, 1045.

13 Complaining Witness Jack Hill, who had been retained as additional
14 counsel to Mr. Singh in early 2014, corresponded with Mr. Dodgson during the
15 June-July 2014 time period, but at no point did he clearly communicate to Mr.
16 Dodgson that he had been authorized to act on Mr. Singh's behalf on issues
17 related to the billing on the Smith matter (on which the bond refund was issued
18 and on which Mr. Singh owed Mr. Dodgson well in excess of \$80,000) or any
19 other matter (of which there were several for which Mr. Singh owed significant
20 additional money to Mr. Dodgson). Hill Trial Testimony at 10:47:02 – 10:47:20¹
21 (Hill would not have communicated to Mr. Dodgson that he was taking over
22 billing issues related to her representation). Mr. Hill also claimed not to recall
23 Mr. Dodgson ever taking the position that he had an agreement with Mr. Singh,
24 Hill Trial Testimony at 10:53:26 – 10:53:38, a position which was clearly
25 articulated in Mr. Dodgson's July 19, 2014 letter to Mr. Hill contained at Ex. 1045.

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27 ¹ As no trial transcript is yet available, all references to the audio recording of trial
28 testimony are to testimony taken January 21, 2016. Time stamps referenced herein are to the
time of day stamped on the audio recording.

1 (1) Documentary Evidence Fails to Establish the Funds Were Disputed

2 The documentary evidence of correspondence from Mr. Hill prior to
3 July 10, 2014 regarding the appeal deposit is contained at Exhibits 5, 7 and 8.

4 Mr. Hill stated to Mr. Dodgson on June 26, 2014, “He asked me to talk to
5 you about return of the deposit, including an accounting. Can you let me know
6 how much money you are holding and how it is calculated? He needs the
7 money to repay a mortgage loan he took out on his house.” Ex. 5. Given the
8 prior agreement between Mr. Dodgson and Mr. Singh, and given that Mr. Hill
9 provides no basis for Mr. Dodgson to believe that he has the authority to
10 repudiate that agreement or the full knowledge of that agreement, this email is
11 insufficient to render the funds disputed. Mr. Hill’s testimony about this
12 document clearly establishes that it was not a demand to refund the bond funds.
13 Mr. Hill testified as to the purpose of this email, “I was trying to determine how
14 much money he had received back from whoever was holding the money and I
15 wanted to know how it was calculated, meaning what was the amount of the
16 judgment, what was the amount of the original undertaking, and do the math
17 and how do you reach the number that you're holding.” Hill Trial Testimony at
18 10:27:31 – 10:27:57.

19 Mr. Hill wrote to Mr. Dodgson on June 30, 2014 and stated, “I want to try
20 to resolve this immediately since he needs the deposit to redeem a mortgage”
21 and went on to request details on how much was refunded by the court, how
22 much Mr. Dodgson was owed, and other details of information. Ex. 7. Again, he
23 provided no basis for authority to repudiate the prior agreement or any actual
24 repudiation.

25 On that same date, Mr. Hill asked for the same information again and
26 forwarded a letter that Mr. Dodgson had provided to Mr. Singh detailing the
27 application of the appeal bond refund to his fees. Ex. 8. He also demanded more
28 information. Clearly Mr. Dodgson had been in contact with Mr. Singh and

1 provided information on the application of the bond refund to his fees in
2 accordance with their prior agreement. Had Mr. Hill intended to make a
3 demand upon Mr. Dodgson with respect to her application of the bond refund to
4 her fees, he could have done so – but he did not.

5 This documentary evidence simply does not rise to the required level of
6 evidence “so clear as to leave no substantial doubt” that the funds were disputed
7 before they were withdrawn on July 10, 2014.

8 This lack of clear documentary proof of the dispute is compounded by the
9 inconsistencies contained in these documents and the oral communications Mr.
10 Dodgson received from Mr. Singh. While Mr. Hill told Mr. Dodgson in more
11 than one writing that Mr. Singh wanted the appeal bond refund to pay a
12 mortgage, Mr. Singh had complained to Mr. Dodgson that he owed taxes. Mr.
13 Dodgson testified that Mr. Singh was always complaining about owing someone
14 money, and these inconsistencies in Mr. Hill’s communications undermined any
15 potential statement of a dispute they may have contained.

16 *(2) Witness Testimony Fails to Establish that Funds Were Disputed*

17 The testimony of witnesses Mr. Hill and Mr. Singh provide no more
18 definite statement of repudiation of the prior agreement before July 10, 2014. Mr.
19 Hill testified to phone calls to Mr. Dodgson in May 2014 but provided no details
20 as to the content of those calls, and he testified to only vague and general
21 recollections of the emails he sent Mr. Dodgson. See Hill Trial Testimony at
22 10:30:10 – 10:30:25 (“I generally recognize it” and “this was the kind of email I
23 was sending”); Mr. Singh testified to having no recollection of any billing-related
24 details of his relationship with Mr. Dodgson yet claimed he had no agreement to
25 pay her from the appeal bond refund. See Singh Trial Testimony at 12:15:45 –
26 12:16:02, 12:35:40 – 12:35:45. Rather than repudiate the prior agreement, Mr.
27 Singh testified that when the appeal bond refund was provided by the court to
28 Mr. Dodgson, “all I told him” was that he owed taxes. Singh Trial Testimony at

1 12:43:04 – 12:43:31. Mr. Singh even testified that he never talked to Mr. Dodgson
2 about the appeal bond refund being applied to his fees, even after he had
3 received written notice that the refund was being applied to his fees. Singh Trial
4 Testimony at 12:44:48 – 12:44:58. He denied even talking to Mr. Dodgson for the
5 entire period of time from June 2, 2014 when the appeal bond refund was
6 received through July 10, 2014 when the withdrawal took place. Singh Trial
7 Testimony at 12:44:58 – 12:45:11.

8 This testimony is insufficient to meet the clear and convincing evidence
9 standard, even in conjunction with the documentary evidence presented. Thus,
10 the State Bar has failed to establish by “evidence so clear as to leave no
11 substantial doubt and sufficiently strong to command the unhesitating assent of
12 every reasonable mind” that the funds were disputed on July 10, 2014. See In the
13 Matter of Allen, 5 Cal. State Bar Ct. Rptr. at 201.

14 (3) *Documentary Evidence and Witness Testimony Do Establish The Existence of*
15 *a Prior Agreement for Mr. Dodgson to Retain the Funds*

16 Mr. Dodgson testified that he had a prior agreement with Mr. Singh
17 pursuant to which the funds received from the court on June 2, 2014 were to be
18 applied to past due bills owed to Mr. Dodgson. The existence of this agreement
19 precludes a finding that the funds were disputed on July 10, 2014; the funds
20 cannot be disputed absent a repudiation of that agreement, and as discussed
21 above, none is contained in the evidence presented at trial.

22 Mr. Hill testified he did not have details of this agreement (which he then
23 alleged did not exist). Hill Trial Testimony at 10:50:55 – 10:51:02 (he was never
24 aware of the agreement). Mr. Singh denied the existence of the agreement, Singh
25 Trial Testimony at 12:15:45 – 12:16:02, while simultaneously testifying to having
26 no recollection of any billing-related details of his relationship with Mr.
27 Dodgson. Singh Trial Testimony at 12:35:40 – 12:35:45. Mr. Singh also claimed
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1 no recollection of making any arrangements to pay Mr. Dodgson his large
2 outstanding bill prior to the Smith trial, and no recollection of ever talking about
3 the bill. Singh Trial Testimony at 12:40:48 – 12:41:04. Mr. Singh’s testimony in
4 general is not at all credible; he repeatedly claimed to have no recollection of
5 information which would be key to a businessman overseeing multiple
6 businesses and millions of dollars in assets, and he attempted to feign ignorance
7 of legal matters all the while testifying about the multiple litigations and other
8 matters in which he has been involved in the American legal system in over 50
9 years of living in Los Angeles. Meanwhile, the one single piece of information
10 about which he testified he was certain is that he did not authorize Mr. Dodgson
11 to receive the appeal bond refund. Such recollection is far too convenient when
12 trying to wrest \$80,000 from an attorney he would rather not pay at all and to
13 whom he has issued threats regarding any attempt to collect the remainder of
14 fees owed.² It just does not ring true.

15 Mr. Dodgson, on the other hand, testified in great detail about the
16 agreement, its formation, and his performance pursuant to it. Mr. Dodgson
17 testified to specific conversations about the agreement to apply the appeal bond
18 refund to his past due fees. As he testified, as trial approached in a matter
19 referred to at trial as the Smith case (captioned Smith v. Singh, Superior Court of
20 California, Los Angeles County, Case No. BC42643480) in March 2013, Mr.
21 Dodgson was owed significant money by Mr. Singh. In one matter alone, Mr.
22 Singh owed Mr. Dodgson over \$80,000 in fees (primarily) and costs. Ex. 1039.
23 Mr. Dodgson testified that he informed Mr. Singh that he could not try the Smith
24 case without being paid on his past due invoices. Mr. Dodgson testified that Mr.
25 Singh offered to give Mr. Dodgson the appeal bond refund when it arrived in
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27 ² See Ex. 1048 in which Mr. Hill, in representing Mr. Singh, threatens Mr. Dodgson with a
28 counterclaim if he attempts to collect his fees (which have never been disputed by Mr. Singh or
the State Bar).

1 partial payment of her past due fees if she would go forward with trial on the
2 Smith case. Dodgson Trial Testimony at 2:40:20 – 2:43:20. Mr. Dodgson testified
3 that absent Mr. Singh’s promise of the appeal bond refund, he would not have
4 gone forward with the Smith trial. Dodgson Trial Testimony at 2:49:30 – 2:49:57;
5 3:00:50 – 3:05:00. Mr. Dodgson did in fact try the Smith case, providing
6 contemporaneous evidence that the agreement existed.

7 Mr. Dodgson testified about the conversations he had with Mr. Singh
8 about this agreement. He recalled details of these conversations, one of which
9 took place in the hallway of the courthouse, another of which took place at
10 Antonio’s restaurant in the presence of a friend of Mr. Dodgson’s (a dining
11 experience Mr. Dodgson clearly recalls and testified to in detail). Dodgson Trial
12 Testimony at 3:03:30 – 3:07:52. Mr. Dodgson’s detailed recollection of these
13 conversations, coupled with the fact that he did actually try the Smith case
14 despite holding open outstanding receivables owed by Mr. Singh in excess of
15 \$80,000, weighs heavily in favor of a finding that this agreement did in fact exist.
16 It is certainly far more credible than Mr. Singh’s convenient memory of only this
17 one singular detail of all of his years of billing history from Mr. Dodgson. It is
18 also far more credible when viewed in light of Mr. Dodgson’s handling of the
19 Smith trial and Mr. Singh’s total lack of any explanation for why Mr. Dodgson
20 would move forward with that multi-day trial without having some assurance of
21 payment in light of his enormous outstanding receivable.

22 The existence of such an agreement is further supported by Mr. Dodgson’s
23 testimony, and supporting documentary proof, that he and Mr. Singh had a
24 course of dealing whereby Mr. Singh would incur substantial legal bills and then
25 issue relatively large payments (sometimes from specifically identified sources)
26 to bring the account somewhat current and keep Mr. Dodgson working on his
27 cases. Dodgson Trial Testimony at 2:40:42 – 2:43:20, 2:48:25-2:48:50; see Ex. 1001
28 (retainer agreements), 1011 (lump sum payment of \$18,109.42 stemming from

1 judgment owed to Mr. Singh given entirely to Mr. Dodgson for legal fees), 1015
2 (retainer agreement), 1029 (letter re billing), 1039 (invoice for \$86,898.31), 1042
3 (statement for \$201,536.51).

4 The agreement's existence is further supported by Mr. Dodgson's
5 demonstrated care taken with money pertaining to Mr. Singh and his cases. He
6 handled even the smallest of funds according to proper procedure, collecting
7 them from trust as attorney's fees if there was an agreement to do so and sending
8 them on to Mr. Singh when there was not, regardless of how much money he
9 owed Respondent. See Ex. 1018 (refund from court of interest earned by Mr.
10 Singh, forwarded by Mr. Dodgson to Mr. Singh despite Mr. Singh owing Mr.
11 Dodgson fees at the time); 1038 (reconciling handling of an \$85.00 check on Mr.
12 Singh's behalf).

13 At the very least, under the standard set forth in In the Matter of Allen, 5
14 Cal. State Bar Ct. Rptr. at 201 and In the Matter of Oheb, 4 Cal. State Bar Ct.
15 Rptr. at 934, Mr. Dodgson is entitled to the benefit of an inference that this
16 agreement did in fact exist and had not been repudiated as of July 10, 2014. That
17 being the case, the funds were not disputed on July 10, 2014 when they were
18 withdrawn.

19 Mr. Dodgson can therefore not be found culpable under Count One.

20 **C. Failure to Charge Mr. Dodgson With Failing to Replace Funds in**
21 **Trust.**

22 At trial, the State Bar alluded to Mr. Dodgson not having returned the
23 appeal bond refund money to his trust account after July 10, 2014, when a
24 dispute as to these funds allegedly became apparent. The State Bar does not
25 allege in the NDC any violation of the Rules of Professional Conduct for failing
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1 to return the appeal bond refund to his trust account. Thus this cannot be the
2 basis of any sanction issued against Mr. Dodgson.³

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4 **IV. STATE BAR HAS FAILED TO MEET ITS BURDEN TO ESTABLISH**
5 **CULPABILITY ON COUNT TWO**

6 Count Two of the NDC alleges that Mr. Dodgson’s withdrawal of the
7 appeal bond refund was an act of moral turpitude. The State Bar failed to meet
8 its burden to establish Mr. Dodgson’s culpability by clear and convincing
9 evidence.

10 **A. Failure to Establish Date of Withdrawal Alleged in NDC.**

11 Again the State Bar has unequivocally failed to establish that Mr. Dodgson
12 withdrew the funds from his trust account “on or about June 10, 2014” as alleged
13 in Count Two. This is not a minor clerical error, as Mr. Dodgson denied the date
14 of withdrawal in his Answer to the State Bar’s Notice of Disciplinary Charges,
15 and the State Bar could have sought to rectify this error at any time prior to trial.
16 It did not do so, and trial proceeded with this date in the NDC. The State Bar
17 could not prove it and the count should be dismissed on that basis alone.

18 **B. Failure to Establish Funds Were Disputed When Withdrawn.**

19 As on Count One, the State Bar has failed to demonstrate by clear and
20 convincing evidence that the funds were disputed on the actual date of
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22 ³ To the extent the State Bar raised this point as a matter in aggravation, it is not an
23 appropriate consideration. First, without culpability there is no aggravation, so Mr. Dodgson of
24 course disputes any relevance of his not returning the funds to trust. Second, failing to return
25 funds to trust pending the outcome of a State Bar Court matter is not an aggravating factor listed
26 in Standard 1.5. It is not failure to make restitution because there has been no allegation or proof
27 presented that Mr. Singh is owed restitution. In fact, evidence was presented at trial that (1) Mr.
28 Dodgson sought fee arbitration to ensure that the amount of fees he was collecting from Mr.
Singh was not subject to any dispute, but Mr. Singh refused to arbitrate (Ex. 1048, 1049, 1050),
and (2) the State Bar does not allege or contend that Mr. Dodgson was not entitled to the fees he
charged (Trial at 12:42:06 – 12:47:12 (the State Bar is not alleging an unearned fee that she
failed to refund). Mr. Dodgson not returning the funds to trust is simply not pertinent to this
discussion.

1 withdrawal of July 10, 2014. Without the funds being disputed, Mr. Dodgson
2 cannot be found culpable of an act of moral turpitude.

3 **C. Mr. Dodgson's Honest Belief of Entitlement to the Funds**

4 Case law of this court and the California Supreme Court establishes that
5 when a respondent attorney has an honest, even if unreasonable, belief of
6 entitlement to withdrawn funds, the attorney cannot be culpable of an act of
7 moral turpitude for withdrawing those funds. In the Matter of Hagen (Rev.
8 Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 168-69 (established billing practices
9 permitted attorney's collection of fees from related entity, and attorney had
10 honest but unreasonable belief he was entitled to collect fees at the time he
11 received the money); Sternlieb v. State Bar (1990) 52 Cal.3d 317, 332 (no moral
12 turpitude where attorney held honest but unreasonable belief of entitlement to
13 funds).

14 This is explicitly true when the issue presented in the disciplinary matter is
15 that the respondent attorney was owed undisputed fees but collected the fees
16 from specific funds which the client did not intend to be the source of the
17 payment to the attorney. In the Matter of Respondent K (Rev. Dept. 1993) 2 Cal.
18 State Bar Ct. Rptr. 335, 349 (with no dispute as to the amount of the fee, but only
19 as to the source of the funds used to pay the fee, attorney's collection of the fee
20 from trust funds was not moral turpitude).

21 With these cases controlling here, Mr. Dodgson's credible testimony that
22 he believed there to be an agreement with Mr. Singh whereby he was permitted
23 to withdraw the appeal bond refund from his trust account prohibits a finding of
24 moral turpitude.

25 The court may look beyond Mr. Dodgson's testimony that he believed
26 there to be an agreement; it may also look at the testimony of both Mr. Dodgson
27 and Mr. Singh that Mr. Dodgson did in fact try the Smith case in October and
28 November 2013. Documentary evidence presented at trial established that Mr.

1 Dodgson was owed nearly \$80,000 on one matter for Mr. Singh as that trial
2 approached, and yet she did take on the significant additional workload of a
3 multi-day trial. See Ex. 1039. Absent any explanation from Mr. Singh as to why
4 Mr. Dodgson would agree to such significant work while being owed a massive
5 outstanding invoice, the only plausible explanation supported by the evidence is
6 that Mr. Dodgson honestly believed that he had an agreement with Mr. Singh
7 under which he would be paid from the appeal bond refund. The
8 reasonableness of this belief is supported by the course of dealing discussed
9 above and supported by evidence presented at trial (as cited above).

10 At the very least, Mr. Dodgson is entitled to the benefit of an inference in
11 his favor that he believed such an agreement to exist as of July 10, 2014 when he
12 withdrew the funds. In light of Mr. Dodgson's honest belief, he cannot be found
13 culpable of an act of moral turpitude.

14 15 **V. FACTORS IN MITIGATION AND AGGRAVATION**

16 Should the court disagree with Mr. Dodgson and find him culpable of any
17 count of the NDC, Mr. Dodgson submits that he is entitled to credit for
18 mitigation and the State Bar is entitled to no credit for aggravation.

19 Mitigating circumstances are set forth in Standard 1.6. Mr. Dodgson
20 established at trial that he has been in practice since December 3, 2007
21 (Stipulation As To Facts at p. 2 ¶ 1) and that he has been subject to no discipline
22 by the State Bar or any other entity. Mr. Dodgson contends that the current
23 charges, if he is found to be culpable, are not serious in light of the fact that it is a
24 very specific and isolated set of events not likely to be repeated. See Standard
25 1.6(a). Mr. Dodgson further contends he is entitled to mitigation in light of his
26 good faith belief of his entitlement to the funds withdrawn on July 10, 2014. See
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1 Standard 1.6(b). The reasonableness of his belief is established by the course of
2 dealing between him and Mr. Singh.

3 The State Bar should not be given any credit in aggravation for harm to the
4 client caused by Mr. Dodgson's conduct, and in fact Mr. Dodgson should be
5 provided with mitigation credit for lack of harm. See Standards 1.5(f), 1.6(c).
6 The State Bar attempted to establish on the record that Mr. Dodgson's
7 withdrawal of the appeal bond refund harmed Mr. Singh to the point of him
8 losing a piece of real property to a property tax foreclosure auction. However,
9 no evidence of such a foreclosure was presented other than Mr. Singh's
10 undetailed testimony. No document establishing the address of the property,
11 the amount of taxes owed, the years for which the taxes were owed, the due
12 dates of the taxes, the date of the auction, or any other details necessary to
13 determine whether the auction even took place and whether Mr. Dodgson's
14 withdrawal of the funds had any impact on the loss of the property were
15 presented at trial. Furthermore, no explanation was provided for why Mr.
16 Singh, who testified to owning over \$10 million worth of real estate, Singh Trial
17 Testimony 12:19:50 – 12:20:00, would be unable to fund a tax bill outside of
18 receiving the appeal bond refund of \$80,247.35 from Mr. Dodgson.

19 Evidence underlying factors used in aggravation must meet the clear and
20 convincing evidence standard, and the evidence of this purported harm to Mr.
21 Singh falls far short of that burden. See Standard 1.5.

22 VI. LEVEL OF DISCIPLINE

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24 As argued here, Mr. Dodgson's position is that no discipline is appropriate
25 because the State Bar has failed to meet its burden of establishing either count of
26 the NDC by clear and convincing evidence.

27 Should the court find otherwise, Mr. Dodgson believes a sanction of no
28 more than a 30-day actual suspension would be supportable. In the case of

1 Sternlieb, supra, the California Supreme Court imposed a 30-day actual
2 suspension on an attorney who withdrew funds from trust while holding an
3 unreasonable belief that she was entitled to do so. The Court held that the
4 attorney misappropriated client funds, yet it issued only a 30 day suspension.

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VII. CONCLUSION

The State Bar has failed to meet its burden to establish by clear and convincing evidence (“evidence so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind”) that the funds he withdrew from her trust account on July 10, 2014 were disputed. Failing to so demonstrate, the State Bar fails to establish culpability on either count of the NDC.

The State Bar’s charges also fail for their failure to allege an accurate date of withdrawal of the funds. The State Bar has attempted to demonstrate the validity of charges that Mr. Dodgson withdrew disputed funds on June 10, 2014 but presented no evidence whatsoever of a dispute or a withdrawal on or about that date.

Finally, the State Bar’s Count Two for moral turpitude is especially unsupportable given the substantial evidence presented by Mr. Dodgson that he held an honest belief on July 10, 2014 that he had an agreement with Mr. Singh which entitled him to withdraw the appeal bond refund from his trust account. Such a belief precludes a finding of moral turpitude.

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Mr. Dodgson respectfully requests that this court dismiss this action in its entirety and find that the State Bar has failed to meet its burden of proof.

Respectfully submitted,

Dated: February 4, 2016

Charles Dodgson
Respondent