

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re

Valmiro L. Donado,

AMENDED GENERAL ORDER NO. 671

A Suspended Attorney.
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AMENDED ORDER DIRECTING NOTICE TO CLIENTS

WHEREAS, Valmiro L. Donado ("Donado "), by order dated October 31, 2018 (the "EDNY Order"), was suspended from the practice of law before the United States District Court for the Eastern District of New York; and

WHEREAS, the EDNY Order is effective 24 days after the date of service upon Donado, unless otherwise modified or stayed; and

WHEREAS, the EDNY Order was served upon Donado on October 31, 2018; and

WHEREAS, pursuant to Rule 2090-1(a) of the Local Rules of the United States Bankruptcy Court for the Eastern District of New York, an attorney who may practice in the District Court pursuant to Civil Rule 1.3 of the Local District Rules may practice in this Court, and conversely, an attorney who has been suspended by the District Court is also suspended from practicing in this Court; and

WHEREAS, it appears that Donado is currently the attorney of record to the debtors in the cases listed on Exhibit A to this order, and the failure by Donado to notify his clients of his suspension and the need to retain substitute counsel may interfere with this Court's administration of these cases and prejudice the debtors and the creditors of their estates; and

WHEREAS, the State Court Rules governing the conduct of disbarred, suspended and resigned attorneys requires such attorneys, inter alia, to provide notice to their clients and advise of the prompt substitution of another attorney and attorneys in their place (e.g. 22 NYCRR § 691.10(d));

NOW, THEREFORE, by resolution of the Board of Judges of the United States Bankruptcy Court for the Eastern District of New York, and pursuant to 11 U.S.C. § 105(a), it is hereby

ORDERED, that in addition to any other obligations imposed upon Donado by any court order, statute, rule or regulation relating to his suspension, Donado shall, within fourteen days after the entry of this order give the notice required by 22 NYCRR § 691.10(d)(1) and (3), and in the manner set forth therein, to any client for whom he has appeared in a case or adversary proceeding currently pending in this Court, to any attorney for each adverse party in such adversary proceeding or in any contested matter in any such case, to any chapter 7 or chapter 13 trustee in that case, and to the United States Trustee, and shall promptly file a copy of each such notice on the electronic docket of the case or adversary proceeding to which it pertains; and it is further

ORDERED, that Donado's attorney password for access to the Court's Electronic Case Filing System shall be revoked on the effective date of the EDNY Order; and it is further

ORDERED, that the Clerk of Court is directed to serve this order upon Donado

Dated: Brooklyn, New York
January 4, 2019

/s/ CARLA E. CRAIG

Carla E. Craig
Chief United States Bankruptcy Judge

EXHIBIT A

1. 1-14-44080-ess Chapter: 13
Debtor: Eduardo Alejandro Lucano
2. 8-15-72201-las Chapter: 13
Debtors: Maria Angelica Silva
3. 8-15-72735-las Chapter: 13
Debtor: Iris Nin

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In re:

18-MC-2832 (AMD)

VALMIRO L. DONADO,
an attorney admitted to practice before this Court,

Respondent.

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**BEFORE THE GRIEVANCE COMMITTEE OF THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF NEW YORK**

An order having been entered in the Supreme Court of the State of New York,
Appellate Division, suspending the respondent from the practice of law before that Court,

IT IS ORDERED, pursuant to Local Rule 1.5, that the respondent is suspended
from the practice of law in the Eastern District of New York upon such terms and conditions as
set forth in the Supreme Court of the State of New York's order, and until further order of this
Court. This order shall become effective 24 days after the date of service upon the respondent
unless otherwise modified or stayed.

If service is unavailable via ECF, the docketing clerk is directed to mail a copy of
this order to the respondent, and to close this action without prejudice.

SO ORDERED.

Dated: Brooklyn, New York
October 31, 2018

s/Ann M. Donnelly

ANN M. DONNELLY, U.S.D.J.
Chair of the Committee on
Grievances, E.D.N.Y.

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

M256275
E/mm

ALAN D. SCHEINKMAN, P.J.
WILLIAM F. MASTRO
REINALDO E. RIVERA
MARK C. DILLON
LEONARD B. AUSTIN, JJ.

2018-04103

DECISION & ORDER ON MOTION

In the Matter of Valmiro L. Donado,
an attorney and counselor at law.

Grievance Committee for the Second,
Eleventh, and Thirteenth Judicial Districts,
petitioner; Valmiro L. Donado, respondent.

(Attorney Registration No. 3030434)

Motion by the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts 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, and to refer the issues raised to a Special Referee, to hear and report. The respondent was admitted to the Bar at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on April 12, 2000.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

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

ORDERED that pursuant to 22 NYCRR 1240.9(a)(3) and (5), the respondent, Valmiro L. Donado, 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, Valmiro L. Donado, shall promptly comply with this

October 16, 2018

MATTER OF DONADO, VALMIRO L.

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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, Valmiro L. Donado, 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, Valmiro L. Donado, 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 the issues raised are referred to David I. Ferber, c/o Ferber, Chan Essner & Coller, LLP, 60 East 42nd Street, Suite 2050, New York, NY 10165, as Special Referee, to hear and report, with the hearing to be completed within 60 days of the date of this decision and order on motion, or as soon 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.

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 escrow funds.

Failure to Cooperate

On April 27, 2017, the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts received a dishonored check report from the Lawyers' Fund For Client Protection reflecting that on March 16, 2017, check no. 1009 in the amount of \$17,288.43, drawn on the respondent's escrow account at Chase Bank, account number ending x9883 (hereinafter the escrow account), was dishonored due to insufficient funds on deposit. By letter dated May 9, 2017, sent to the respondent at his office in Astoria, New York, the Grievance Committee notified him that a *sua sponte* complaint had been initiated, and asked him to submit, within 20 days, a written answer together with records for his escrow account for the preceding six months. At the respondent's request, by letter dated May 12, 2017, the Grievance Committee forwarded copies of the initial letter to the respondent's home address in Woodbury, New York. The respondent failed to provide the Grievance Committee with his answer and the requested escrow records.

A second request was made of the respondent by letter dated June 5, 2017, sent by certified mail, return receipt requested, and by regular mail, requesting his answer and the specified

escrow records within 10 days of his receipt of the letter. The Grievance Committee received confirmation from the United States Postal Service that the respondent received the certified mail letter on June 17, 2017. The respondent did not respond. The Grievance Committee made a third request of the respondent by letter dated June 28, 2017, seeking his response by July 5, 2017. The respondent was again reminded of the consequences should he fail to comply. No response was received.

By letter to the respondent dated August 4, 2017, sent by certified mail, return receipt requested, and by regular mail, he was asked to call the Grievance Committee to schedule an examination under oath (hereinafter EUO). Neither letter was returned to the Grievance Committee. The respondent failed to contact the Grievance Committee.

On September 15, 2017, the respondent was personally served with a judicial subpoena and a judicial subpoena duces tecum commanding his appearance at the Grievance Committee's office on September 27, 2017, for an EUO, and directing him to produce, inter alia, specified files and escrow records. Additionally, by letter, the Grievance Committee directed the respondent to provide, inter alia, his answer to the sua sponte complaint and specified escrow records in advance of the EUO, by September 20, 2017, but the respondent failed to comply.

On September 27, 2017, the respondent appeared at the Grievance Committee's office for an EUO, but failed to bring an answer in response to the sua sponte complaint, and failed to provide all of the documents sought by the judicial subpoena duces tecum. During the EUO, he was asked to submit the outstanding documents by October 16, 2017. When he failed to do so, by letter dated October 18, 2017, another request was made of the respondent, requiring his response by October 30, 2017. Although the respondent contacted staff counsel and advised that he would deliver his answer and escrow records on November 3, 2017, he did not do so.

During a continued EUO on December 7, 2017, the respondent was again asked to provide, by December 18, 2017, the client file related to the sua sponte investigation, an explanation for certain escrow account transactions, and "a complete narrative explanation of why the subject check was dishonored, with full documentation." On December 20, 2017, the Grievance Committee received the respondent's response to the request for additional information made at the December 7, 2017, EUO together with a copy of the client file, and his explanation for the dishonored check.

By letter dated January 23, 2018, the respondent was asked by the Grievance Committee to provide, by February 5, 2018, his written response to 14 questions concerning specified escrow transactions during the review period. The respondent failed to respond. Another request was made by letter dated February 15, 2018, which was personally delivered to the respondent at his home on February 21, 2018. By this letter, the respondent was directed to appear on March 1, 2018, to be examined under oath, and to submit, by February 26, 2018, a fully documented explanation for the dishonored check, and his response to the inquiries concerning certain escrow account transactions. The respondent failed to respond, and failed to appear on March 1, 2018.

Uncontroverted Evidence of Misappropriation

During the Grievance Committee's investigation, the respondent provided partial escrow account records for the period October 24, 2016, through September 29, 2017. A review of those records confirms that the respondent misappropriated funds entrusted to him in connection with three real estate transactions.

In two of the transactions, the respondent represented the seller of two parcels of property located on Cooper Street, Brooklyn, New York. The respondent deposited a \$140,000 down payment for one parcel into his escrow account on December 9, 2016, and deposited a \$115,000 down payment for the other parcel into his escrow account on December 12, 2016. The closing of title for both transactions took place on February 8, 2017.

Prior to the closing, the respondent made several disbursements from his escrow account that were unrelated to the Cooper Street transactions, causing the balance in his escrow account to fall below \$255,000, the amount he was required to maintain. These disbursements include a check representing the return of down payment funds in an unrelated transaction (check no. 1002 to Kaiko Chan and Associates, P.C.), and online transfers to the respondent's business checking account number ending x2956, as follows:

<u>Date</u>	<u>Transaction</u>	<u>Amount</u>	<u>Balance</u>
12/16/16	Check no. 1002	\$87,000	\$243,100
1/05/17	Transfer x2956	\$ 2,500	\$240,600
1/10/17	Transfer x2956	\$ 1,000	\$239,600

Concerning the third transaction, the respondent represented the purchaser of property in Hollis, New York. On February 2, 2017, the respondent deposited an \$18,288.43 check into his escrow account which he had received from the purchaser. Prior to the closing of title, the purchaser retained another attorney, however the escrow funds remained with the respondent until the closing, which occurred on March 15, 2017.

While entrusted with funds in connection with the Hollis property, the respondent made disbursements from his escrow account that were not related to this transaction, causing the balance in his escrow account to fall below the amount he was required to maintain. Specifically, on February 2, 2017, the same day that the respondent deposited the purchaser's \$18,288.43 check into his escrow account, he transferred \$1,500 to his business checking account, thereby reducing the balance in his escrow account to \$256,388.43. As the respondent was required to maintain a total of \$273,288.43 for the three transactions, the escrow account deficiency totaled \$16,900. Additionally, after completing the Cooper Street transactions, the respondent made a \$1,000 transfer on March 2, 2017, unrelated to the Hollis property transaction from his escrow account to his business account, which reduced the balance in his escrow account to \$388.43, representing a \$17,900 escrow account deficiency.

At the Hollis property closing on March 15, 2017, the respondent produced his

escrow check no. 1009 in the sum of \$17,288.43 made payable to a title company. This check was dishonored the following day, as the balance in the account was \$388.43. On March 20, 2017, the respondent deposited \$17,000 in cash into his escrow account, and then obtained a cashier's check from his bank payable to the title company to replace the dishonored check.

Conclusion

In a late reply, the respondent claims, inter alia, that the Grievance Committee's statements are inaccurate, that there was "confusion in the [recordkeeping] of the escrow account," and all clients were paid.

We find that the Grievance Committee has sufficiently demonstrated that the respondent poses an immediate threat to the public interest by his continued pattern and practice of obstructing the Grievance Committee's investigation, and his misappropriation of escrow funds.

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 matter is referred to the Special Referee, to hear and report.

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

ENTER:



Aprilanne Agostino
Clerk of the Court