Circuit Court for Baltimore County
Case No. C-03-CV-22-000216

UNREPORTED *

IN THE APPELLATE COURT

OF MARYLAND

No. 1623

September Term, 2022

Namkeb, LLC, et al

v.

Client Protection Fund of the Bar of Maryland

Leahy,
Albright,
Irma S. Raker
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: February 26, 2024

As we stated in *Grebow v. Client Protection Fund of Bar of Maryland*, 255 Md. App. 7 (2022):

> The Client Protection Fund of the Bar of Maryland (the "Fund") was established in 1966 to "maintain the integrity and protect the good name of the legal profession." Md. Rule 19-602(a). The Fund reimburses members of the public for "losses caused by defalcations" by attorneys acting in professional capacities or certain fiduciary capacities that are "traditional and customary in the practice of law in Maryland." Md. Rule 19-602(a) and (b).

Grebow, 255 Md. App. at 9.

In this appeal, under facts that closely resemble *Grebow*, Appellants Namkeb, LLC ("Namkeb"), and Repid, LLC ("Repid") (together, "Appellants"), challenge the final decision of the Fund's Trustees denying their respective claims for reimbursement.

Appellants' claims arise from four escrow agreements—one that involved Namkeb, and three that involved Repid—that they entered into with Brian McCloskey ("McCloskey"), various entities controlled by McCloskey, and Kevin Sniffen ("Sniffen"). The purpose of each agreement was to demonstrate to Workmen's Life Insurance Company and Insurance Annuity Group, LLC ("IAG") (together, the "Lenders") that McCloskey had the necessary "liquidity" to obtain a large development loan. In exchange for temporarily depositing a total of $6,035,000 into escrow accounts managed by Sniffen, Appellants were to receive "sizable" fees. Moreover, each escrow agreement specified that the escrow accounts were "for the benefit" of Appellants and that the funds "belong[ed] solely" to the Appellants. Each escrow agreement also expressly stated that neither McCloskey nor the entities he controlled "had" or were "acquiring any right, title or interest" in the escrowed

funds, and that Sniffen was prohibited from "allow[ing] any third party to obtain possession of or an interest" in the funds.

As in *Grebow*, Sniffen never returned the escrowed funds to Appellants because he and McCloskey embezzled the money as part of a broader wire fraud scheme. *See Grebow*, 255 Md. App. at 10. "For his role, Mr. Sniffen was convicted in the United States District Court for the District of Maryland of conspiracy to commit wire fraud, and he was subsequently disbarred by the [Supreme Court of Maryland] from the practice of law in Maryland." *Id.*

Appellants filed claims totaling $6,035,000 with the Fund in July 2013; Appellants later amended their claims to reflect sums recovered through other avenues, thus reducing the total to $3,011,916. The Trustees issued a final decision denying Appellants' claims in December 2021. As in *Grebow*, the Trustees determined that Appellants' claims were not eligible for payment because Sniffen, as the escrow agent, was not acting as an attorney or in a fiduciary capacity that is traditional and customary in the practice of law in Maryland. *See id.* at 11, 17.

The Trustees also exercised their discretion, as afforded them by statute and the Maryland Rules, to deny Appellants' claims for two additional, independent reasons. *See* Maryland Code (1989, 2018 Repl. Vol.), Business Occupations and Professions Article ("BOP"), § 10-312(b); Md. Rules 19-602(a) & 19-609(b)-(c). Specifically, the Trustees denied Appellants' claims because Appellants foreclosed the Fund's subrogation rights by executing settlements and releases with various parties in related civil litigation, and

because the purposes of the Fund do not include acting as a guaranty for any profit-making business.

Appellants petitioned for judicial review in the Circuit Court for Baltimore County. That court affirmed the decision of the Trustees. On appeal, Appellants present three questions for our review:

I. "Did the Trustees err as a matter of law and fail to base their determination on substantial evidence in the record when they found that Attorney Sniffen's conduct, while serving as escrow agent for Appellants' funds, did not involve a fiduciary relationship that is traditional and customary to the practice of law in Maryland?"

II. "Did the Trustees err as a matter of law and fail to base their determination on substantial evidence in the record when they found that Appellants' decision to execute settlement agreements with, and release, certain entities sued by Appellants related to the losses caused by Attorney Sniffen prevented Appellants from recovering from the Client Protection Fund?"

III. "Did the Trustees err as a matter of law and fail to base their determination on substantial evidence in the record when they found that the agreements entered into by Appellants related to the escrow accounts managed by Attorney Sniffen were "profit-making schemes" that were not entitled to recovery from the Client Protection Fund, or forced the Trustees to guarantee a "profit-making business" from the proceeds of the Client Protection Fund?"

The result of this case, as concerns Appellants' first question presented, is controlled by *Grebow*. Accordingly, we hold that Appellants are not eligible to recover from the Fund because, as the Trustees correctly decided, Sniffen was not acting in a fiduciary capacity that is "traditional and customary in the practice of law in Maryland."

As already stated, the Client Protection Fund is designed to "protect the good name of the legal profession." Md. Rule 19-602(a). The Fund is not intended to be a "broad

brush" that will "compensate for any type of loss caused by an attorney." *Monumental Life Ins. Co. v. Trs. of Clients' Sec. Tr. Fund of Bar of Md.*, 322 Md. 442, 447 (1991). Instead, the Fund is designed to protect attorney-client relationships and, recognizing that attorneys are often called upon to act as fiduciaries, the Fund also protects those relationships *but only if the specific fiduciary relationship is traditional and customary in the practice of law in Maryland*. Md. Rule 19-602(a)-(b). In this case, as we detail below, substantial evidence supports the Trustees' decision because the evidence before the Trustees clearly demonstrated that Sniffen was not acting in a fiduciary capacity that is traditional and customary in the practice of law.

Because this is a threshold issue, we do not reach the second and third questions posed by the Appellants. Accordingly, we will affirm the judgment of the circuit court.

BACKGROUND

A. The Escrow Agreements

The four escrow agreements were executed in late 2010 and early 2011. Each agreement was executed by McCloskey in both his personal capacity and as the sole member of an LLC for which he was the sole member;[1] by Sniffen, who acted as the escrow

[1] The McCloskey Group, LLC, was a party to two of the escrow agreements, including an agreement dated September 14, 2010, which involved Namkeb; and one of two escrow agreements dated January 5, 2011, which involved Repid. Lane Nine Properties, LLC, was a party to the December 22, 2010, escrow agreement, which involved Repid. 75th Street, LLC, was a party to the remaining escrow agreement dated January 5, 2011, which also involved Repid. All four escrow agreements indicated that McCloskey was the "sole member" of the applicable LLC, and McCloskey signed on behalf of each entity.

agent; and Ben Lyons ("Lyons"), as the managing member of either Namkeb[2] or Repid,[3] such as the case may be. Pursuant to the first escrow agreement, which was executed on September 14, 2010, Namkeb delivered $3,300,000 to Sniffen for placement in his escrow account. Pursuant to the three other agreements, including one dated December 22, 2010; and two dated January 5, 2011; Repid delivered a total of $2,735,000[4] to Sniffen for the same purpose. Cumulatively, these sums totaled $6,035,000.

Each escrow agreement provided the following:

- The escrow funds were to be placed in a "depository account at Wachovia Bank" in a "separate interest bearing account entitled 'Kevin Sniffen, Escrow Agent, for the benefit of [Namkeb or Repid].'"

- The escrow funds "belong solely to [Namkeb or Repid], and that neither the Company[5] nor McCloskey have, nor shall have any interest whatsoever" in the funds, including "legally, equitably, or otherwise."

- Sniffen "is holding the Escrow Funds in the Escrow Account for the benefit of [Namkeb or Repid] and neither McCloskey nor the Company have, had, or are acquiring any right, title or interest in the Escrow Funds or the Escrow Account."

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[2] As stated by Paul Bekman, Esq. at a hearing before the Trustees of the Client Protection Fund on December 9, 2020, the members of Namkeb, LLC, included Paul Bekman, Stewart Salisbury (phonetic), Frank Twoerke, and Ben Lyons.

[3] As stated by Lyons at a hearing before the Trustees of the Client Protection Fund on December 9, 2020, the members of Repid, LLC, included Ben Lyons and his wife, Sherry (phonetic) Lyons.

[4] A different amount—$3,735,000 (not $2,735,000)—results when one adds the deposits called for by the face of the three escrow agreements that involve Repid. However, where one of the escrow agreements called for $1,300,000 to be transferred, only $300,000 was transferred.

[5] Depending on the escrow agreement, the term "Company" referred to the McCloskey Group, LLC; Lane Nine Properties, LLC; or 75th Street, LLC.

- Sniffen "shall not allow any third party to obtain possession of or an interest in the Escrow Funds and shall not represent to any third party that such third party has an interest in the Escrow Funds."

- Notwithstanding the foregoing, Sniffen was authorized to "give written notice to Workmen's Life Insurance Company and/or its broker (the 'Bank') involved in a Loan to the Company and/or McCloskey . . . that the Escrow Account contains the Escrow Funds, provided, however, neither the Escrow Agent, the Company nor McCloskey shall represent to the Bank, nor any other party or entity, that the Escrow Funds and/or the Escrow Account belong to, or are usable by, the Company, McCloskey, Bank or any party other than" Namkeb or Repid, as the case may be.

Each escrow agreement also stipulated when the deposited funds must be returned. Sniffen was required to return Namkeb's funds on the earlier date of: (i) the settlement of the loan with Lenders, or (ii) within 120 days of the escrow agreement. In the remaining escrow agreements, Sniffen was required to return Repid's funds "on the earlier to occur of the date of the closing of the Loan [with Lenders], or by January 17, 2011[,]" representing a date no later than four weeks from the execution of each applicable agreement. Each of the four escrow agreements also gave Namkeb or Repid, such as the case may be, the option to demand the return of the escrow funds "at any time."

In exchange for these agreements, Namkeb and Repid were promised robust returns. For its part in three of the escrow agreements, Repid was to receive $685,000 in fees. The amount of Namkeb's fee was not stated on the face of the September 14, 2010, escrow agreement; however, Appellants indicate in their brief that the fee was "sizable."

Among other provisions, each escrow agreement also required Sniffen to maintain a "fidelity bond" naming Namkeb or Repid (depending on the agreement) as the obligee, in a "form and substance acceptable" to Namkeb or Repid in order to "insur[e] same against losses sustained from the unauthorized acts or omissions of [Sniffen], his employees agents

and contractors."

B. The Criminal and Civil Fraud Cases

The funds were never returned to Namkeb and Repid, and in August 2011, the Appellants filed a complaint in the Circuit Court for Baltimore County alleging McCloskey and Sniffen embezzled the escrow funds and used the money as part of a large wire fraud scheme. *See Grebow v. Client Prot. Fund of Bar of Md.*, 255 Md. App. 7, 14 & n.3 (2022). As we summarized in *Grebow*:

> A year later, Mr. Sniffen was disbarred from the practice of law in Maryland for his participation in the scheme. *See Att'y Grievance Comm'n v. Sniffen*, 427 Md. 521, 50 A.3d 8 (2012). He pleaded guilty to one count of conspiracy to commit wire fraud in the United States District Court and, in January 2015, was sentenced to 36 months imprisonment, followed by three years of supervised probation upon his release. *See* Second Amended Judgment, *United States v. Sniffen*, No. 1:12-cr-00127-JFM (D. Md. Jan. 21, 2015). At his sentencing, Mr. Sniffen was ordered to pay $15,850,000.00 in restitution[.]

Id. at 14. In response to the lawsuit against Sniffen, and a variety of other similar lawsuits, on December 3, 2012, the circuit court appointed a receiver "to identify Mr. Sniffen's stolen or misappropriated funds and to distribute his estate." *Id.* at 14 n.4. By order entered on December 16, 2020, the circuit court directed the receiver to make a final distribution to the "Sniffen Escrow Victims[,]" including a sum of $11,205 to Repid, and $15,197.27 to Namkeb.[6]

Namkeb and Repid also filed other, related lawsuits that succeeded in recouping a

[6] The order was entered under Case Number 03-C-12012552 in the Circuit Court for Baltimore County.

portion of their lost funds from other parties.[7]

C. Client Protection Fund Claims

In July 2013, Namkeb and Repid each filed their underlying "Statement of Claim" against Sniffen with the Client Protection Fund of the Bar of Maryland (the "Fund"). Namkeb alleged that, in September 2010, Sniffen had taken $3,300,000 while acting as an "Escrow Agent[.]" Repid alleged that, in December 2010 and January 2011, Sniffen had taken $2,735,000 while acting as an "Escrow Agent[.]" Both Namkeb and Repid asserted that Sniffen's "responsibility was to maintain and safeguard the Escrow Funds in the

[7] On February 14, 2013, Namkeb and Repid filed a lawsuit in the Circuit Court for Baltimore County against Philadelphia Insurance Company, Sandy Spring Insurance Corporation d/b/a Chesapeake Insurance Group, and Kimberly Casper, in her capacity as Personal Representative of the Estate of Bradley R. Swanson. The lawsuit was assigned Case Number 03-C-13-001708. As summarized in the eventual settlement agreement that Appellants entered with these defendants, the lawsuit alleged that the defendants "were negligent and breached certain duties owed to [Appellants] related to the insuring/bonding of the risk associated with certain escrow agreements, resulting in damage and loss to [Appellants], that the [defendants] breached alleged contractual obligations to [Appellants], and that certain insurance claims presented by [Appellants] were wrongfully denied[.]" The parties settled the case for a sum of $800,000; after deducting attorney fees and costs a sum of $536,000 was recovered. As stated by the settlement agreement, it was the "intention" of the parties "to extinguish not only all claims that now exist in favor of" Appellants "but also to extinguish any possibility of liability on the part of the Released Parties to any other person, by way of, or as a result of, claimed indemnity or contribution or otherwise[.]"

On September 12, 2013, Repid and Namkeb filed a lawsuit in the Circuit Court for Baltimore County against Wachovia Bank, National Association ("Wachovia Bank"), Wells Fargo Bank, National Association ("Wells Fargo"), and Ryan Behnken. The lawsuit was assigned Case Number 03-C-13-010380. It alleged counts of negligence, negligent misrepresentation by concealment or omission, and negligent misrepresentation against each defendant. According to Appellants, all claims related to this case were settled for a sum of $210,000; after deducting attorney fees and costs, a sum of $103,212.42 was recovered.

Sniffen Escrow Account for the benefit of" Namkeb or Repid, such as the case may be.

In June 2019, Lyons notified the Fund via email that Namkeb and Repid wished to modify their claims "based on collections we have been able to obtain in the past 6 years." According to Lyons, Namkeb's claim should be reduced to $1,974,125, and Repid's claim should be reduced $1,427,080. Together, these claims totaled $3,401,205.

In a letter dated May 18, 2020, Appellants acknowledged that additional funds had been collected and, accordingly, they asserted $3,011,916 remained outstanding.[8]

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[8] The May 18, 2020, letter recounted Appellants "extensive attempts" to "mitigate their losses" by "collect[ing] funds from various" entities other than Sniffen. As stated in the letter:

> a. Efforts were made to collect monies directly from Patrick Belzner, a/k/a/ Brian McCloskey. A total of $1,904,000.50 was collected from him. [Citation omitted].
> b. A lawsuit was filed against Philadelphia Insurance Company which paid a total amount of $800,000.00. After deducting attorney fees and costs the sum of $536,000.00 was recovered. [Citation omitted].
> c. A lawsuit was filed against Wachovia Bank, N.W. which paid a total of $210,000.00 in settlement, resulting in a net recovery of attorney fees and costs of $103,212.42. [Citation omitted].
> d. Through the Receiver appointed by the Circuit Court for Baltimore County the following monies were collected from other parties:
>
> 1. Richard Bonnet: $64,960.00
> 2. Cleary & Clampett: $414,861.84
>
> * * *
>
> [An exhibit to the letter] reflects the receipt of $1,904,050.00 from McCloskey/Belzner by Repid and Namkeb prior to the appointment of the Receiver. The second report of the Receiver reflects the sum collected by Repid and Namkeb of $1,728,050.00. Repid and Namkeb are relying on its records as more accurate. [Citation omitted].

(continued)

The Trustees of the Fund considered Appellants' claims during their September 2020 meeting and, by decision dated September 15, 2020, the Trustees "decided the claims should not be granted[.]" Among other reasons,[9] the Trustees denied Appellants' claims because there was no "attorney-client relationship, nor a fiduciary relationship that was traditional and customary to the practice of law" between Namkeb or Repid and Sniffen. Namkeb and Repid requested reconsideration and, on December 9, 2020, the Trustees held a hearing on the record.

At the hearing,[10] Lyons testified that "[i]n 2009" Brian McCloskey, on behalf of the

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> . . . . Kevin Sniffen, Esquire was a licensed attorney who converted $6,035,000 of money owned by Namkeb and Repid to his own use. . . . There still remains a deficit of $3,011,916.

[9] In full, the Trustees declined Appellants' claims because:

> 1. As between claimant Namkeb and Sniffen, and as between claimant Repid and Sniffen, there was neither an attorney-client relationship, nor a fiduciary relationship that was traditional and customary to the practice of law. Neither claimant is therefore eligible for reimbursement from the Fund;
> 2. The claim of Namkeb and Sniffen is also not eligible for reimbursement from the Fund because the fundamental purposes of the Fund do not include the guaranty of profit-making businesses such as small loan companies, and similar enterprises. . . ;
> 3. The claim of Namkeb and Sniffen are further not eligible because the fundamental purposes of the Fund do not include the reimbursement of investors; and
> 4. The escrow agreement between Namkeb and Sniffen, and the one between Repid and Sniffen evidenced at [sic] attempt to misrepresent to a prospective lender the liquidity and financial wherewithal of McCloskey and Belzner for the purpose of the latter obtaining a large business development loan.

[10] In line with their May 18, 2020, letter, Appellants orally amended the total amount of their claims to $3,011,916 at the hearing.

McCloskey Group, asked him to finance a project to convert a school in York, Pennsylvania, into an apartment complex. McCloskey was a residential homebuilder in Baltimore County who owned the McCloskey Group. Lyons was the managing member of Appellants Namkeb and Repid. Lyons and McCloskey had worked together previously. Lyons had provided several construction loans to McCloskey and, according to Lyons, McCloskey was a "very good client" with "good credit" who "always paid" his debts. However, due to the size of the proposed project, Lyons initially decided not to become involved.

Several months later, however, McCloskey approached Lyons with a modified proposal. According to McCloskey, Workmen's Life Insurance Company and Insurance Annuity Group, LLC ("IAG") (together, the "Lenders")[11] had already approved a $32 million loan to the Company, but "the only problem" was that, before the Lenders would close on the loan, they needed McCloskey to "prove a certain amount of liquidity."

McCloskey told Lyons that the requisite liquidity could be demonstrated to the Lenders if Lyons agreed to place several million dollars in an "attorney escrow account[,]" with Sniffen acting as the escrow agent. Under this proposed arrangement, the escrowed funds would not be removable, usable, or able to be subjected to any claims by anyone, including the Company or Lenders; the funds would simply sit, temporarily, in the account until the loan was secured and, subsequently, all funds would be returned to the entities that delivered the funds to Sniffen, namely Namkeb and Repid. Thus, paradoxically, the

[11] Lyons testified that Workmen's Life Insurance Company and Insurance Annuity Group, LLC, acted as "the lender" and that these two entities were "one and the same."

Lenders did not require the escrowed funds to "belong[] to the borrower" or even for the borrower to "ha[ve] access" to the funds, even though the purpose of establishing the escrow accounts was to demonstrate, to the Lenders, that "the borrower was liquid, meaning he had access to cash to use for [the] project and [that this] money was in a lawyer's escrow account[.]" In return, McCloskey was willing to pay an exorbitantly high rate of interest, purportedly because he would lose the opportunity to obtain a profit of approximately $17 million if the loan was not secured.

Lyons believed this was an "unorthodox" arrangement, but his concern was eventually assuaged. He received, for example, written assurances from IAG's general counsel that confirmed the contours and adequacy of the arrangement. Lyons also "called" Workmen's Life Insurance Company and spoke with a "gentlemen who purported to be the head underwriter[.]" This individual told Lyons that the Lenders *would* allow McCloskey to prove his liquidity in the manner that McCloskey proposed. Lyons also asked whether he could select his own escrow agent—rather than utilizing Sniffen—but he was told that it would take a prohibitively long time for the Lenders to approve a different escrow agent.

Additionally, before the escrow agreements were executed, Namkeb and Repid made efforts to ensure that the money would be safe. A member of Namkeb who testified in support of Appellants' claims at the hearing, stated that he "checked out Mr. Sniffen myself" and there "was nothing ever mentioned about him in the wildest of anybody's expectations that he would" steal the money, "[n]ot a hint." As discussed *supra*, each escrow agreement also required a fidelity bond to be secured in favor of Namkeb or Repid.

Thus mollified, Lyons agreed to McCloskey's proposal and "the rest," he said, "is history."

Appellants claimed they were entitled to compensation from the Fund because Sniffen, as "a lawyer acting as an escrow agent[,]" is "deemed to be acting as a fiduciary." They directed the Trustees' attention to *Advance Finance Co., Inc. v. Trustees of the Clients' Security Trust Fund of the Bar of Maryland*, 337 Md. 195 (1995) (hereinafter, "*Advance Finance*"), for the proposition that a claim to the Fund is compensable when a loss is caused by an attorney who, acting as an escrow agent, absconds with the escrowed funds.

Throughout the hearing, however, the Trustees expressed doubt that Sniffen was acting in a fiduciary capacity that is "traditional and customary in the practice of law" in Maryland and they highlighted the unusual facts of the case. For example, Trustee James Almand stated that the transaction "doesn't pass the smell test, to be a little frank with you." In a similar vein, Leo Ottey, Jr., who served as counsel to the Fund at the hearing, commented that:

> The way I read the agreements, 100 percent of the money deposited by either Namkeb or Repid was to be returned fairly much in about 30 days, together with about the 33 percent interest rate for just that month.
>
> . . . It's short-term -- I got to call them investments.
>
> No matter what -- a rose is a rose, and it's a short term investment with a documented great return.
>
> I don't understand how that's a fiduciary relationship that's traditional and customary to the practice of law. The lawyer is holding the money for an inconceivable purpose, one that's not been presented clearly today. Mr. Lyons has been honest by saying it's unconventional.
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> And then the lawyer, a month later, turns around and gives the money back to the investor with one-third interest for that month. Now, I don't know how that's a traditional and customary fiduciary relationship, and maybe [the claimants] can explain that, and without reliance on Advance Finance, because . . . Advance Finance certainly didn't involve those facts.

The Trustees issued a final decision denying Namkeb and Repid's claims on December 30, 2021. The decision set forth three separate, independently sufficient, reasons for denying Appellants' claims.

To begin, the Trustees explained that Appellants' claims were not "eligible for reimbursement" because Sniffen was not acting as an attorney in a fiduciary capacity "that is traditional and customary in the practice of law in Maryland[.]" (Citing Md. Rule 19-602(a)-(b)). Under Maryland Rule 19-602(a), the purpose of the Fund is to reimburse certain losses caused by members of the Bar of Maryland "acting either as attorneys or, except to the extent they are bonded, as fiduciaries." Md. Rule 19-602(a). Subsection (b) of the Rule defines "fiduciary" for the purpose of the Rule as "an attorney acting in a fiduciary capacity that is traditional and customary in the practice of law in Maryland[,]" and gives a non-exhaustive list of roles that would qualify under this definition. Md. Rule 19-602(b). The Regulations of the Client Protection Fund ("Fund Regulations")[12] contain similar requirements. *See* Fund Regulations, at § (a)(1).

The Trustees described a traditional and customary fiduciary relationship arising from an escrow agreement as being "characterized by transfers from a depositor to an escrow agent/attorney, and subsequent distributions to others upon the occurrence of a

[12] To view the Fund Regulations, *see* CLIENT PROT. FUND OF THE BAR OF MD., REGULATIONS OF THE CLIENT PROTECTION FUND OF THE BAR OF MARYLAND CURRENTLY EFFECTIVE (filed May 29, 2019), https://www.mdcourts.gov/sites/default/files/import/cpf/pdfs/regulations.pdf, archived at https://perma.cc/PF2F-8GDA.

condition subsequent described in the escrow agreement." A traditional and customary escrow agreement would "not involve the depositor intending to get back one-hundred percent of the deposited funds together with an extraordinary fee."

In marked contrast to these traditional expectations, Appellants "never intend[ed] the money to be distributed to third parties" through the escrow agreements; instead, they "intend[ed] [the money to] be returned only to themselves." (Emphasis removed). Indeed, the escrow agreements "prohibited" McCloskey from obtaining an interest in the escrowed funds, which were "for the benefit of Namkeb or Repid alone," and Sniffen was "unconditionally obligated" to return the funds "upon demand." This "unorthodox" arrangement was "specifically designed to falsely show" the Lenders "that McCloskey had 'liquidity[.]'" No distributions could be made to "any person" except Appellants, including to the Lenders "in the event of a loan default[,]" or to McCloskey to ensure he "remain[ed] sufficiently 'liquid' to remain current on the Loan."

To conclude their analysis on this point, the Trustees discussed two cases—*Advance Finance Co. v. Trustees of the Clients' Security Trust Fund of the Bar of Maryland*, 337 Md. 195 (1995), and *American Asset Finance, LLC v. Trustees of the Client Protection Fund of the Bar of Maryland*, 216 Md. App. 306 (2014) (hereinafter, "*AAF*")—to delimit when an attorney acts in a fiduciary capacity "that is traditional and customary in the practice of law in Maryland" for the purposes of Maryland Rule 19-602(a)-(b). We discuss these cases in detail below but, in general, *Advance Finance* and *AAF* stand for the proposition that an attorney is a fiduciary to a non-client third party in a manner that is traditional and customary to the practice of law in Maryland when the attorney, acting in a

qualifying "intermediary role[,]" holds property in which the third party has an interest. *See Grebow v. Client Prot. Fund of Bar of Md.*, 255 Md. App. 7, 26-33 (2022) (construing and applying *Advance Finance* and *AAF*).

Moving on, the Trustees found two additional, discretionary reasons to deny Appellants' claims. *See* Md. Rule 19-609(b)-(c). First, the Trustees found that Appellants "ran afoul of Fund Regulation (c)(2)" by executing settlement agreements and releases relating to various parties they sued for their losses caused by Sniffen because, by executing those agreements "without prior consultation and approval from the Fund, [Appellants] precluded the Fund's subrogation interest against the released parties." Section (c)(2) of the Fund Regulations provides, in pertinent part, that "since settlements of claims against third parties usually foreclose the Fund's subrogation rights, the Fund will generally not pay any amounts over and above the amount for which the claimant has settled."

Finally, the Trustees determined that Appellants' claims were not eligible for reimbursement because "the purposes of the Fund" did not "include the guaranty of profit making businesses such as small loan companies, and the Fund is not, and will not act as a collection agency for all claims against Maryland lawyers." (Citing Fund Regulations, at § (a)(3) & (a)(5)). According to the Trustees, the escrow agreements constituted a "very risky business investment[,]" as indicated by the lack of "any . . . collateral from McCloskey securing th[e] transfer[s]" and the "the high rate of return" provided for by the agreements.

The Trustees concluded by observing that, to recover from the Fund, a claimant "bear[s] the dual burdens of production and persuasion on the question whether the Claims

meet the requirements for reimbursement." Because Namkeb and Repid failed to meet those burdens, the Trustees denied their claims.

D. Petition for Judicial Review

Appellants filed a petition for judicial review in the Circuit Court for Baltimore County on January 18, 2022. They challenged the Trustees' finding that Sniffen was not acting "in a fiduciary relationship with [Namkeb and Repid] that was traditional and customary to the practice of law in law in Maryland" when he embezzled the escrow funds. In their view, there was "no question" that Sniffen was "acting as a fiduciary" when he caused the loss and, because "[a]n attorney serving as an escrow agent under an escrow agreement is a daily occurrence," Sniffen was necessarily acting in a fiduciary capacity that was "traditional and customary in the practice of law in Maryland." Appellants relied heavily on *Advance Finance*, discussed *infra*, to support this view.

In addition, Appellants asserted that the Trustees erred by denying their claims because they executed certain settlement agreements and releases without first consulting with the Fund. In their view, the Fund Regulations provided contradictory mandates because the Regulations required claimants to take "reasonable steps to discover, limit, and recover" their losses, *see* Fund Regulations, at § (a)(2), and generally "exhaust[] all other remedies reasonably available to the claimant for payment[.]" *See id.* at (c)(2). Appellants indicated that the settlements and releases were made in the spirit of fulfilling these requirements and that "[i]f [Appellants] were not allowed to release those parties, they would not have been able to recover any money for the benefit of the Client Protection Fund." Among other arguments, Appellants also asserted that the Fund's interest in

recouping the amount of any award had not been impaired because the Fund's subrogation interest against Sniffen himself remained intact.

Finally, Appellants asserted that the Trustees erred by finding the escrow agreements constituted a for-profit scheme that was not eligible for coverage under subsections (a)(3) and (a)(5) of the Fund Regulations. According to Appellants, the Trustees' decision was motivated by the belief that the escrow deposits were "merely some sort of get-rich-quick scheme" that Appellants "orchestrated" and that the Fund "should not have to pay" when they "got burned in this scheme." This view "could not be further from the truth" because Appellants did "not run a profit-making business" akin to the examples provided in Fund Regulation (a)(3).[13]

Before the Trustees filed their answering memorandum, this Court decided *Grebow v. Client Protection Fund of the Bar of Maryland*, 255 Md. App. 7 (2022). That case, which we discuss *infra*, presented a set of material facts that are, for practical purposes, indistinguishable from the instant case. In *Grebow*, the petitioner, Grebow, was defrauded by the same attorney at issue here—Sniffen—in a substantially similar scheme. *See Grebow*, 255 Md. App. at 10-11. Grebow submitted a claim for compensation with the Fund, but the Trustees denied Grebow's claim because Sniffen was not acting as an attorney or in a fiduciary capacity that is traditional and customary in the practice of law in Maryland. *Id.* The Circuit Court for Baltimore County affirmed the decision of the

[13] Fund Regulation (a)(3) provides: "The Trustees . . . consider that the fundamental purposes of the Fund do not include the guaranty of profit-making business such as small loan companies, title insurance companies, banks and similar enterprises, and that the Fund is not, and will not act as, a collection agency for all claims against Maryland lawyers."

Trustees and, on appeal, we affirmed the judgment of the circuit court because, "under the terms of the Escrow Agreement, Mr. Sniffen was not acting in a fiduciary capacity that is 'traditional and customary in the practice of law in Maryland.'" *Id.* at 11, 33-34.

Returning to the instant case, the Trustees filed an answering memorandum on July 13, 2022, that relied heavily on *Grebow* to assert that the circuit court should affirm their denial of Namkeb and Repid's claims because, as in *Grebow*, Sniffen was not acting in a fiduciary capacity that was traditional and customary in the practice of law in Maryland.[14]

After conducting a hearing in October 2022, the circuit court issued a memorandum opinion and ruling in which it concluded Namkeb and Repid were not entitled to recovery from the Fund. The court "relie[d] on the *Grebow* decision" to conclude there was "substantial evidence" in the record to support the Trustees' determination that "Sniffen, while serving as an escrow agent, was not acting in a fiduciary capacity that is traditional and customary to the practice of law in Maryland."[15] Accordingly, the court affirmed the

[14] The Trustees also continued to advance the additional two alternative bases for the court to affirm their final decision denying Appellants' claims: 1) that Namkeb and Repid violated subsection (c)(2) of the Fund Regulations by settling claims with third parties for less than the value of their claims, and; 2) the purposes of the Fund do not include acting as a guaranty for profit-making businesses "such as small loan companies, title insurance companies, banks and *similar enterprises*." (Emphasis added) (citing Fund Regulations, at § (a)(3)). According to the Trustees, the losses that Namkeb and Repid suffered were "a result of the profit-making scheme they entered into with McCloskey and Sniffen[.]"

[15] The court also ruled that there was substantial evidence in the record to support the denial of Namkeb and Repid's claims on the two alternative bases advanced by the Trustees.

decision of the Fund. Namkeb and Repid noted an appeal on November 17, 2022.[16, 17]

STANDARD OF REVIEW

As we stated in *Grebow v. Client Protection Fund of Bar of Maryland*, 255 Md. App. 7 (2022):

> It is well established that on appeal from the judgment of the circuit court on judicial review of an agency decision, we "look through" the decision of the circuit court and review the agency's decision directly. *Am. Asset Fin., LLC v. Trs. of Client Prot. Fund of Md.*, 216 Md. App. 306, 315, 86 A.3d 73 (2014) (collecting cases). The standard that we apply in reviewing a final decision of the Trustees is spelled out in Maryland Rule 19-610(b):
>
> > [T]he decision of the trustees shall be deemed prima facia correct and shall be affirmed unless the decision was arbitrary, capricious, unsupported by substantial evidence on the record considered as a whole, beyond the authority vested in the trustees, made upon

[16] The circuit court failed to comply with the separate document requirement of Maryland Rule 2-601(a). However, the Supreme Court of Maryland has repeatedly recognized that the separate document requirement may be waived, including where the "trial court intended the docket entries made by the court clerk to be a final judgment and where no party objected to the absence of a separate document after the appeal was noted." *URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 68 (2017) (citing *Suburban Hosp., Inc. v. Kirson*, 362 Md. 140, 154-56 (2000)). In this case, the circuit court clearly intended that the docket entry, dated November 9, 2022, was to be a final judgment because the docket entry reads that "The decision of the Trustees of the Client Protection Fund of the Bar of Maryland is AFFIRMED." Additionally, no party has objected to the absence of a separate document. Therefore, we find that any issue arising from the absence of a separate document is waived. *See URS Corp.*, 452 Md. at 68-71. Otherwise, we would simply "remand to the Circuit Court, and the Circuit Court would simply file and enter the separate judgment, from which a timely appeal would be taken[,]" resulting in a "classic example of wheels spinning for no practical purpose." *Id.* at 70.

[17] On January 3, 2023, Appellants filed a Petition for Writ of Certiorari with the Supreme Court of Maryland to bypass review by this Court. Appellants urged the Supreme Court to grant the Petition because this Court had decided *Grebow* "a mere six months ago" in a reported decision and it was "unlikely that this appeal below would have [the Appellate Court of Maryland] reach a different result." ***Id.*, at 5.** The Supreme Court of Maryland denied the Petition by order entered March 27, 2023, under Petition Docket No. 342, Sept. Term, 2022.

unlawful procedure, or unconstitutional or otherwise illegal.

> In applying this standard, we defer to the Trustees' fact-finding as well as the inferences that the Trustees drew from those facts, so long as there is evidence in the record that can support those findings and inferences. *Am. Asset Fin., LLC*, 216 Md. App. at 316, 86 A.3d 73. In other words, we view the agency's decision "in the light most favorable to the agency," *Mayor of Balt. v. ProVen Mgmt., Inc.*, 472 Md. 642, 667, 248 A.3d 271 (2021), and our review is "limited to determining whether 'there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law,'" *Cherington Condo. v. Kenney*, 254 Md. App. 261, 278, 272 A.3d 852 (2022) (quoting *Md. Real Estate Comm'n v. Garceau*, 234 Md. App. 324, 349, 172 A.3d 496 (2017)). We are under "no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law." *ProVen Mgmt., Inc.*, 472 Md. at 667, 248 A.3d 271 (2021) (quoting *People's Couns. v. Md. Marine Mfg. Co.*, 316 Md. 491, 497, 560 A.2d 32 (1989)).

Grebow, 255 Md. App. at 20-21 (alteration in the original).

LEGAL ANALYSIS

I.

Whether Sniffen was Acting in a Fiduciary Capacity that was "Traditional and Customary in the Practice of Law in Maryland"

Appellant challenges whether substantial evidence supports the Trustees' determination that Sniffen was not acting as a "fiduciary" for the purposes of Maryland Rule 19-602, thus rendering Appellants' claims ineligible for compensation through the Fund. We find that substantial evidence supports the Trustees' determination and, therefore, we will affirm the judgment of the circuit court.

A. Parties' Contentions

According to Appellants, the Trustees' decision lacks both legal and factual support. Specifically, Appellants assert that *whenever* an attorney acts as an escrow agent pursuant

to an escrow agreement, that attorney *necessarily* acts in a "fiduciary capacity that is traditional and customary in the practice of law in Maryland" because it is a "daily occurrence" for attorneys to serve in these types of roles. Citing *Advance Finance Co. v. Trustees of Clients' Security Trust Fund of Bar of Maryland*, 337 Md. 195 (1995), they argue that an attorney acts as a fiduciary under Maryland Rule 19-602 when the attorney executes an escrow agreement with a non-client "third party" and holds "funds in his escrow account" that a "third party[]" has an interest in.

Appellants attempt to distinguish their case from *AAF*, which concerned an attorney who failed to pay AAF after entering four agreements with AAF that assigned it interests in his prospective attorneys' fees in exchange for lump-sum cash payments. *See AAF*, 216 Md. App. at 308. We held that AAF's losses under *those* agreements[18] were ineligible for compensation from the Fund because "an attorney's direct assignment of a personal interest in an expected fee does not create a fiduciary relationship that is traditional and customary in the practice of law." *Grebow*, 255 Md. App. at 29 (quoting *AAF*, 216 Md. App. at 321-22). According to Appellants, *AAF* has no bearing on the instant case because the scope of our holding in *AAF* was limited in effect to what is today Maryland Rule 19-602(c).[19]

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[18] As we discuss in more detail *infra,* the *AAF* case also discussed a separate agreement between AAF and one of the attorney's law clients and held that AAF *was* eligible for compensation from the Fund for losses under *this* agreement because Schwartz's "failure to pay AAF in compliance with his client's instructions was a defalcation resulting in a loss to AAF at a time when Schwartz was acting as its fiduciary." *AAF*, 216 Md. App. at 321.

[19] Maryland Rule 19-602(c) provides: "**Fiduciary Relationship Not Formed.** A fiduciary relationship is not formed between an attorney and a third party who has been (continued)

Additionally, Appellants argue that *Grebow* was "wrongly decided" because, in that case, we "incorrectly focused on the word 'intermediary' mentioned in dicta in *Advance Finance* . . . to deny the petitioner's challenge . . . in a substantially similar case" to what is presented here. In *Grebow* we found that Sniffen's duties—in a scheme that is not materially distinguishable from the instant case—did not "resemble" the "'intermediary roles' occupied by the defalcating attorneys . . . in *Advance Finance* and [*AAF*]." *Grebow*, 255 Md. App. at 30. We stated that the defalcating attorney in those compensable claims "possessed client funds belonging to non-client third parties" whereas, by contrast, "Sniffen was holding [escrow funds] on behalf of a non-client, Mr. Grebow, for the benefit of the same non-client, Mr. Grebow." *Grebow*, 255 Md. App. at 30-31.

According to Appellants, however, an attorney acts as an "intermediary[,]" as that term should be used, when they help "arrang[e]" a transaction that prompts funds to be placed in escrow, and *not* when the attorney instead acts as a go-between in "disbursing" the escrowed funds between interested parties, as dictated by an escrow agreement. (Quotation omitted). Here, Appellants state that Sniffen's role fits this description because he "served as the intermediary between" Appellants, McCloskey, and the Lenders in "arranging the escrow accounts and escrow deposit."

The Trustees maintain, as they did before the circuit court, that their final decision is supported by substantial evidence because Sniffen did not serve Appellants in a fiduciary capacity "that is traditional and customary in the practice of law in Maryland" under

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assigned an interest in the proceeds of a civil award or settlement, including attorneys' fees, in consideration for the advancement of funds by the third party to the attorney or client."

Maryland Rule 19-602(b). They assert that Appellants "do not truly challenge" that the final decision denying their claims was "supported by the substantial evidence"; instead, they "simply disagree with the Trustees' factual findings and application of law to facts[.]" According to the Trustees, it is not "traditional and customary" for "depositors to deposit funds in an attorney's escrow account" in exchange for "an extraordinary fee" while "hold[ing] the sole, exclusive interest in the escrow funds, with no third party having any interest or even any possible interest in the escrow funds," for the purpose of "falsely show[ing]" a potential lender that another party has "liquidity." Any other conclusion, the Trustees say, is "[f]oreclosed" by our recent decision in *Grebow*, a case that is "so alike and indistinguishable" to the instant case that "the claimant in *Grebow* actually joined the civil litigation filed by Namkeb and Repid in the Circuit Court for Baltimore County against Sniffen" and others. The "clear rule" from the *Advance Finance*, *AAF*, and *Grebow* decisions, they say, is that an attorney "generally acts in a fiduciary capacity that is traditional and customary in the practice of law in Maryland" when the "attorney serves in an intermediary capacity by holding client funds in escrow that are owed to non-client third parties[.]"

Finally, the Trustees rebuke Appellants' attempts to portray themselves as "third parties" who held an interest in the escrowed funds because Appellants "directly" entered the escrow agreements with Sniffen and "directly" deposited their funds with him; thus, Appellants were "not third parties who held an interest in client funds escrowed with an attorney."

B. History and Legal Framework of the Client Protection Fund

"No claimant or other person has any right in the Fund, as beneficiary or otherwise." Md. Rule 19-609(b)(2). This axiom has its roots in the creation of the Fund, which "began to take shape" when, in 1965, the Maryland State Bar Association voted unanimously to approve a proposal to establish a client protection fund. *See Grebow*, 255 Md. App. at 21 (citing *Folly Farms I, Inc. v. Trs. of the Clients' Sec. Tr. Fund of the Bar of Md.*, 282 Md. 659, 662 (1978)). The members of the Bar Association were "anxious" to "offer protection" to clients whose funds were "embezzle[d]" by their attorneys as well as others for whom an attorney had "act[ed] as a fiduciary"; however, the Bar Association "understood the Fund would not, and could not, cover all losses an attorney might cause[.]" *Id.* at 21 (quoting *Monumental Life Ins. Co. v. Trs. of Clients' Sec. Tr. Fund of the Bar of Md.*, 322 Md. 442, 447 (1991) (emphasis removed).

Shortly after the Bar Association endorsed the creation of a fund, the General Assembly "enacted Chapter 779 of the Acts of 1965" to "authorize[] the [Supreme Court of Maryland] to promulgate rules and regulations for the creation and operation of a client protection fund." *Id.* at 22 (quotation omitted). The Fund "became fully operative on July 1, 1966, when the [T]rustees began to collect assessments" that finance the Fund. *Id.* at 22 (alteration in original; quotation omitted). Maryland attorneys are "required to pay an annual fee" into the Fund, which "operates as a trust[,]" as a "condition precedent to practicing law in Maryland[.]" *Id.* at 22.

The "purpose" of the Fund is to "maintain the integrity of the legal profession by paying money to reimburse losses caused by defalcations of lawyers." BOP § 10-311(b);

see also Md. Rule 19-602(a). The Fund is managed by nine trustees who are appointed by the Supreme Court of Maryland. BOP § 10-311(a)(2); Md. Rule 19-603(a). Among other things, the Trustees are responsible for "(1) receiv[ing] contributions to the Fund; and (2) manag[ing] the assets of the Fund." *Grebow*, 255 Md. App. at 22 (alteration in original) (quoting BOP § 10-312(a)).

Under BOP § 10-312(b), the Trustees "may" use the Fund to "reimburse a person for a loss that was caused by a defalcation of a lawyer[.]" BOP § 10-312(b). As a threshold issue, however, a loss is eligible for reimbursement *only* if:

> (1) "the lawyer caused the loss while acting for the person *as an attorney* at law *or a fiduciary*; and"
> (2) "the person cannot recover the money under a bond."

BOP § 10-312(b)(1)-(2) (emphasis added); *see also* Md. Rule 19-602(a) (The purpose of the Client Protection Fund is to maintain the integrity and protect the good name of the legal profession by reimbursing . . . losses caused by defalcations by members of the Bar of Maryland or out-of-state attorneys authorized to practice in this State . . . acting as *either attorneys or*, except to the extent they are bonded, *as fiduciaries*.") (emphasis added).

Maryland Rule 19-602(b) clarifies when an attorney acts as a "fiduciary" for the purpose of determining whether a claim is eligible for reimbursement from the Fund. Specifically, the Rule provides:

> **(b) Fiduciary; Definition.** For the purposes of this Rule, "fiduciary" means an attorney acting in a fiduciary capacity that is *traditional and customary in the practice of law in Maryland*, such as a personal representative of a probate estate, a trustee of an express trust, a guardian, a custodian acting pursuant to statute, or an attorney-in-fact by written appointment.

Md. Rule 19-602(b) (italicized emphasis added).[20] As indicated, the Rule expressly provides a non-exhaustive list of functions that, when executed by an attorney, will typically qualify the attorney as a "fiduciary" for the purpose of BOP § 10-312(b)(1) and Maryland Rule 19-602(a). *See id.* Subsection (c) of the Rule also precludes a finding that a qualifying fiduciary relationship has been formed in certain limited circumstances.

If a claim is eligible for reimbursement under BOP § 10-312(b)(1)-(2) and Maryland Rule 19-602, i.e., because the defalcating attorney acted in a qualifying fiduciary capacity, *then* the Trustees "*may* use the Fund" to reimburse the claimant "[t]o the extent the trustees *consider reimbursement proper and reasonable*[.]" BOP § 10-312(b) (emphasis added). The plain text of the statute makes clear that the trustees have discretion to determine whether a given claim should be granted, and in what amount, *even if* the claim is eligible for reimbursement under BOP § 10-312(b)(1)-(2) and Maryland Rule 19-602. *See* BOP §

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[20] As we stated in *Grebow*, Maryland Rule 19-602, as adopted in 2016, "incorporated part of the Fund's regulation governing 'Eligibility.'" *Grebow*, 255 Md. App. at 30. Subsection (a)(1) of the Fund Regulations currently provides:

> **a. ELIGIBILITY**
>
> **1. Attorney-client or fiduciary relationship.**
>
> No claim will be recognized by the Trustees unless an attorney-client or fiduciary relationship existed with a member of the Bar of the [Supreme Court] of Maryland when the loss was incurred as a result of a defalcation by the said Maryland attorney. The Trustees consider that a "fiduciary relationship" means, for example, a lawyer acting in a fiduciary capacity *traditional and customary in the practice of law in Maryland*, such as a court appointed lawyer, a personal representative of a probate estate, a trustee of an express trust, a guardian, a custodian acting per statute, or an attorney-in-fact by written appointment.

Fund Regulations, at § (a)(1) (italicized emphasis added).

10-312(b); *see also* Md. Rule 19-609(b)(1) ("The trustees shall determine *whether* a claim *merits reimbursement*[.]" (emphasis added)).

The trustees' discretion to determine whether a claim merits reimbursement is guided by a non-exhaustive list of factors as set forth by Maryland Rule 19-609(c). Specifically, the Rule provides:

> **(c) Factors to be Considered.** In exercising their discretion, the trustees may consider:
>
> (1) The amounts available and likely to become available to the Fund for the payment of claims;
>
> (2) The amount and number of claims likely to be presented in the future;
>
> (3) The total amount of losses caused by defalcations of any one attorney or associated groups of attorneys;
>
> (4) The unreimbursed amounts of claims recognized by the trustees in the past as meriting reimbursement, but for which reimbursement has not been made in the total amount of the loss sustained;
>
> (5) The amount of the claimant's loss as compared with the amount of the losses sustained by other claimants who may merit reimbursement from the Fund;
>
> (6) The degree of hardship the claimant has suffered by the loss; and
>
> (7) *Any other factor the trustees deem appropriate*.

Md. Rule 19-609(c) (italicized emphasis added). Some of the "other factor[s]" that the trustees may "deem appropriate" to weigh, *see* Md. Rule 19-609(c)(7), are described by the Fund Regulations.

If the trustees determine a claim "merits reimbursement" after considering the Rule 19-609(c) factors, then the trustees must also determine:

(A) "the amount of such reimbursement;"

(B) "the time, place, and manner of payment;"

(C) "any conditions upon which payment will be made; and"

(D) "the order in which payments will be made."

Md. Rule 19-609(b)(1). Again, the trustees' discretion is guided by Maryland Rule 19-609(c). *See* Md. Rule 19-609(b)-(c).

C. Analysis

Appellants do not assert that they had an attorney-client relationship with Sniffen. Accordingly, "we concentrate our analysis on the Trustees' determination that Mr. Sniffen was not acting as 'an attorney . . . in a fiduciary capacity that is traditional and customary in the practice of law in Maryland[.]" *Grebow*, 255 Md. App. at 26 (quoting Md. Rule 19-602(b)). We begin with our recent decision in *Grebow*, where we considered whether the same attorney, Sniffen, acted in a fiduciary capacity that was "traditional and customary in the practice of law" under a set of facts that are materially indistinguishable from those presented in this case. *See id.* at 11-20.

i. Grebow v. Client Protection Fund of Bar of Maryland, 255 Md. App. 7 (2022)

The facts of *Grebow* were as follows: The claimant/appellant, Grebow, entered into an agreement with the McCloskey Group to temporarily deposit several million dollars in an escrow account managed by Sniffen in return for a "handsome fee" that, after various amendments to the agreement, totaled "two million dollars." *Grebow*, 255 Md. App. at 10, 14. The purpose of the arrangement was to help the McCloskey Group establish that it had

"cash reserves" to secure a sizable loan from the United States Department of Housing and Urban Development ("HUD") to finance a "large development project." *Id.* at 10. The escrow agreement, which was amended numerous times, specified that Grebow was "the sole beneficiary of the escrow account" and that neither the McCloskey Group; its sole member, Brian McCloskey; Sniffen; or their creditors acquired "any right, title, or interest" in the escrowed funds. *Id.* at 10. Under the agreement, Sniffen was required to return the escrowed funds to Grebow on the date of the settlement of the HUD loan or, failing that, by a date specified in the escrow agreement. *Id.* at 10, 13-14.

The escrowed funds were never returned to Grebow because Sniffen and McCloskey embezzled the funds. *Id.* at 10. Grebow filed an initial claim with the Fund in February 2012, and the Trustees denied the claim in April 2019. *Grebow*, 255 Md. App. at 11. The Trustees concluded, "among other things, that Mr. Sniffen, in his capacity as escrow agent, was not acting as an attorney or in a fiduciary capacity that is traditional and customary in the practice of law in Maryland." *Id.* at 11. Grebow filed a petition for judicial review in the Circuit Court for Baltimore County, and the court affirmed the Trustees' decision. *Id.* at 11. On appeal to this Court, we examined the history of the Fund, the legal framework that governs its consideration of claims, and prior decisional law delimiting the fiduciary capacities that are considered "traditional and customary" in the practice of law in Maryland. *Id.* at 21-23, 26-29. We held that Sniffen "was not acting in a fiduciary capacity that is 'traditional and customary in the practice of law in Maryland'" and, accordingly, we affirmed the judgment of the circuit court. *Id.* at 33-34.

Two prior cases were especially critical to our analysis, including *Advance Finance Co. v. The Trustees of the Clients Security Trust Fund of the Bar of Maryland*, 337 Md. 195 (1995) and *American Asset Finance, LLC v. Trustees of the Client Protection Fund of the Bar of Maryland*, 216 Md. App. 306 (2014). *See Grebow*, 255 Md. App. at 26-33. These cases helped to "delimit the fiduciary capacities that qualify" under Maryland Rule 19-602(a)-(b). *Grebow*, 255 Md. App. at 26. More specifically, the "compensable claims in those cases" involved attorneys acting in "intermediary roles" in which they "possessed client funds belonging to non-client third parties." *Grebow*, 255 Md. App. at 30. The compensable claims were also "adjacent" to "legal services" that the defalcating attorney provided to law clients. *See id.* at 31-32.

In *Advance Finance*, the Supreme Court of Maryland addressed "whether an attorney acts as a fiduciary for a non-client when the attorney, at a client's instruction, 'disburses client funds from the attorney's trust-account to [the] non-client.'" *Grebow*, 255 Md. App. at 26 (alteration in original) (quoting *Advance Finance*, 337 Md. at 208)). Advance Finance was in the business of making loans "to personal injury claim plaintiffs secured by assignments of any proceeds of the injury claims." *Advance Finance*, 337 Md. at 197. Plaintiffs who obtained one of these loans were "required to sign, among other things, an 'Authorization and Assignment,' which authorized the client's attorney to pay Advance Finance with the proceeds of any personal injury recovery." *Grebow*, 255 Md. App. at 26 (construing *Advance Finance*, 337 Md. at 198-99).

Two Maryland attorneys ceased remitting funds to Advance Finance as contemplated by the "Authorization and Assignment" form and, eventually, Advance

Finance filed a claim with the Fund to obtain reimbursement for the "net balance of the loans" that it had not been able to recover through other means. *See Advance Finance*, 337 Md. at 199. The trustees denied the claims because the defalcating attorneys "were not fiduciaries for Advance [Finance,]" nor did they "have an attorney-client relationship" with Advance Finance. *Id.* at 199.

The Supreme Court of Maryland vacated the final determination of the trustees and remanded the case for further proceedings. *Id.* at 212. As we summarized in *Grebow*:

> The Court explained that Rule 1.15 of the Rules of Professional Conduct requires that attorneys in possession of client funds belonging to a non-client third party must promptly notify and disburse the funds to the non-client third party. [*Advance Finance*, 337 Md.] at 204-06, 652 A.2d 660. With this obligation in mind, the Court noted that the Fund frequently paid out claims involving non-clients, including "'[t]hefts of real estate proceeds or related escrows,' '[t]hefts of estate and fiduciary moneys,' and '[t]hefts of accident/injury settlement proceeds, and related escrows[.]'" *Id.* at 210, 652 A.2d 660. In the personal injury context, the Court acknowledged that the Fund had previously "issued joint payee checks to the client and an unpaid health care provider of the client." *Id.* The Court saw "little difference" between these compensable non-client claims and the claims submitted by Advance Finance. *Id.* at 210, 652 A.2d 660. Based on these principles, the Court determined that the former attorneys, who acted as "intermediaries" between Advance Finance and their clients when they coordinated and participated in the loan approval process, were fiduciaries for Advance Finance when they received the settlement proceeds belonging to Advance Finance for their client's personal injury cases. *Id.* Therefore, the Court remanded the case to the Fund to determine whether Advance Finance was entitled to compensation, and if so, in what amounts. *Id.* at 211, 652 A.2d 660.

Grebow, 255 Md. App. at 27 (second through fifth alterations in original); *see also Advance Finance*, 337 Md. at 208 ("The question is whether an attorney acts as a fiduciary for a non-client within the meaning of BOP § 10-312(b)(1) . . . when the attorney disburses client

funds from the attorney's trust account to a non-client, at the instructions of the client and pursuant to the obligations recognized in Conduct Rule 1.15. Our answer is 'yes.'").

We considered a similar issue in *AAF*. As in the case of *Advance Finance*, AAF was "in the business of loaning attorneys and their clients' money in exchange for an interest in prospective settlements or estates." *Grebow*, 255 Md. App. at 27 (citing *AAF*, 216 Md. App. at 308)). AAF entered into four agreements with a Maryland attorney, Bradley Schwartz. *AAF*, 216 Md. App. at 308. Under each agreement, AAF provided Schwartz a lump-sum cash payment in return for an "interest in his prospective attorney's fees[.]" *Grebow*, 255 Md. App. at 27 (construing *AAF*, 216 Md. App. at 308). Separately, AAF entered an "assignment agreement" with "one of Schwartz's clients, Tara Jackson." *AAF*, 216 Md. App. at 308. This agreement "warranted that [Jackson] had 'irrevocably authorized and directed [Schwartz] to arrange for delivery of [AAF's interest] to [Schwartz] and [for Schwartz] to remit it to [AAF] immediately on receipt in accordance with [AAF's] instructions." *Id.* at 310 (first through third, sixth, and seventh alterations in original). Schwartz "never paid AAF its assigned interest" under any of the agreements, and eventually AAF filed claims with the Fund seeking reimbursement for "the agreed assignment in each case plus penalties that had accrued under the terms of each agreement." *Id.* at 311.

The Fund denied the claims related to AAF's interest in Schwartz's attorneys' fees but granted, in part, a sub-claim arising from the separate agreement with Schwartz's law client, Jackson. *Id.* at 312. AAF sought reconsideration of the denials (it did not challenge

the partial grant of the sub-claim) and, in its final determination, the Fund again denied AAF's claims related to the attorneys' fees. *Id.* at 312-13. As we summarized in *Grebow*:

> Although the Fund noted that there were "several grounds upon which the Trustees could deny the Claims," the Fund's decision was "based solely upon its conclusion that AAF did not have standing 'to make a claim with the Fund because of a lack of attorney-client or fiduciary relationship with [the attorney].'" [*AAF*, 216 Md. App. at 313].
>
> The Fund decided there was no attorney-client relationship, noting that the "only legal service Schwartz was to provide to [AAF] was the collection and disbursement of the settlement and estate proceeds from the cases in which Schwartz was the attorney." *Id.* In finding that the requisite fiduciary relationship did not exist, the Fund explained that it "looked to the 'real relationship' between AAF and [the attorney]" and concluded that it was not "traditional and customary in the practice of law." *Id.* at 314, 86 A.3d 73.

Grebow, 255 Md. App. at 28 (first, third, and fourth alterations in original).[21] "Conversely," the Fund had granted the sub-claim involving the law client, Jackson, because Jackson "authorized [Schwartz] to accept her settlement and pay AAF its share" and, under "*Advance Finance*, [Schwartz] and AAF 'had a fiduciary relationship giving rise to a compensable claim.'" *Id.* at 28 (quoting *AAF*, 216 Md. App. at 312).

The Circuit Court for Baltimore County affirmed the Fund's denial of the claims related to Schwartz's attorneys' fees and, on appeal to this Court, we affirmed the judgment of the circuit court. *AAF*, 216 Md. App. at 307, 322. As we summarized in *Grebow*:

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[21] As previously noted, when Maryland Rule 19-602 was adopted in 2016, it "incorporated part of the Fund's regulation governing 'Eligibility.'" *Grebow*, 255 Md. App. at 30. At the time that AAF appealed the Fund's denials of its claims related to its interests in Schwartz's attorneys' fees, "the Maryland Rules did not limit the scope of fiduciary relationships that were eligible for recovery from the Fund." *Id.* at 29. However, the Fund's "Eligibility" regulation did clarify that a "'fiduciary relationship' means, for example, a lawyer acting in a fiduciary capacity traditional and customary in the practice of law in Maryland." *Id.* at 29 (quoting *AAF*, 216 Md. App. at 317).

> We noted that, "in marked contrast to the facts presented in *Advance Finance*," the agreement between the attorney and AAF "did not involve a law client" and, therefore, the attorney's "defalcation resulted in his failure to repay a personal obligation to AAF, rather than his failure to disburse funds to satisfy an obligation of his law client." [*AAF*, 216 Md. App.] at 321, 86 A.3d 73 (emphasis added). Under these agreements, Mr. Schwartz was not acting on behalf of a law client and, consequently, was not acting as an intermediary between a client and third-party. In fact, Mr. Schwartz was not acting as an intermediary at all, as the agreements involved only himself and AAF. *Id.* at 321, 86 A.3d 73. Under these facts, and according the requisite deference to the Fund's interpretation of its own regulation, we determined that the Fund did not err in concluding that "an attorney's direct assignment of a personal interest in an expected fee does not create a fiduciary relationship that is traditional and customary in the practice of law." *Id.* at 321-22, 86 A.3d 73.

Grebow, 255 Md. App. at 29. Although the issue was not before us, in *AAF* we also noted our agreement with the Fund's decision to partially grant the sub-claim involving AAF's agreement with the law client, Jackson:

> The facts in [*Advance Finance*] resemble the facts relative to the Assignment Agreement between Jackson and AAF. Jackson was Schwartz's client. She agreed to assign an interest in an expected estate settlement to AAF in exchange for a [lump sum]. She directed Schwartz both to accept the [lump sum] on her behalf and, upon receiving the proceeds from the estate, pay AAF its assigned interest . . . directly from those proceeds. It was under the authority of [*Advance Finance*] that the Fund determined that Schwartz's failure to pay AAF in compliance with his client's instructions was a defalcation resulting in a loss to AAF at a time when Schwartz was acting as its fiduciary.

AAF, 216 Md. App. at 321.

In *Grebow*, following our discussion of *Advance Finance* and *AAF*, we noted the adoption of Maryland Rule 19-602 in 2016 and, subsequently, we applied the applicable regulatory framework—as informed by *Advance Finance* and *AAF*—to determine whether, under the escrow agreement, Sniffen acted in a qualifying "fiduciary capacity" under

Maryland Rule 19-602. *See Grebow*, 255 Md. App. at 30-33. We held that Sniffen "was not acting in a fiduciary capacity that is 'traditional and customary in the practice of law in Maryland'" and, accordingly, we "affirm[ed] the Trustees' decision that Mr. Grebow was not eligible to recover from the Fund." *Id.* at 33. We reasoned that:

> Mr. Sniffen's duties under the Escrow Agreement did not resemble the "intermediary roles" occupied by the defalcating attorneys with regard to the compensable claims in *Advance Finance* and [*AAF*]. However, unlike the compensable claims in those cases, whereby the attorneys possessed client funds belonging to non-client third parties—here, Mr. Grebow seeks to recover funds that Mr. Sniffen was holding on behalf of a non-client, Mr. Grebow, for the benefit of the same non-client, Mr. Grebow. . . . Mr. Sniffen was clearly not acting as a "mediator or go-between" as the attorney with regard to the compensable claim with the law client in [*AAF*].
>
> In addition to bearing no resemblance to the "intermediary capacities" in *Advance Finance* and [*AAF*] Mr. Sniffen's escrow agent duties also did not resemble the example fiduciary capacities listed in Rule 19-602(b), all of which involve a fiduciary *interacting with third parties for the benefit of a client.* . . .
>
> In further contrast to the compensable claims in *Advance Finance* and [*AAF*], Mr. Sniffen's duties as escrow agent were not adjacent to any legal services that he was providing to either Mr. Grebow or Mr. McCloskey. . . . [T]here was no mention in the Escrow Agreement of any legal services that Mr. Sniffen was required to perform. It is undisputed that Mr. Grebow was not a law client of Mr. Sniffen, as Mr. Grebow was separately represented throughout the pendency of the Escrow Agreement by [a different attorney].
>
> Under the terms of the Escrow Agreement, Mr. Sniffen's role was limited to creating an escrow bank account, which did not qualify as an attorney trust account, and holding the escrowed funds of Mr. Grebow, a non-client, for investment purposes, until he was instructed to return the funds *back* to Mr. Grebow. This relationship does not resemble the "intermediary" capacities recognized in *Advance Finance* and [AAF] or the fiduciary capacities listed in Rule 19-602(b).

Grebow, 255 Md. App. at 30-33 (footnotes omitted).

ii. Sniffen's Capacity Under the Escrow Agreements

As previously noted, the issue before us is whether, under the escrow agreements, Sniffen acted "in a fiduciary capacity that is traditional and customary in the practice of law in Maryland[.]" Md. Rule 19-602(b). For the same reasons we set forth in *Grebow*, *see* 255 Md. App. at 30-33, we conclude that Sniffen was not acting in a qualifying fiduciary capacity under Maryland Rule 19-602(b) in the instant case.

Sniffen's "duties" under the escrow agreements did not "resemble the 'intermediary roles' occupied by the defalcating attorneys with regard to the compensable claims in *Advance Finance* and [*AAF*]." *Grebow*, 255 Md. App. at 30-31. Under each of the four escrow agreements at issue in this case, Sniffen "was holding on behalf of a non-client," Namkeb or Repid, "for the benefit of the same non-client," Namkeb or Repid. *Id.* at 30-31. Each escrow agreement also provided that the escrowed funds "belong solely to [Namkeb or Repid], and that neither the Company nor McCloskey have, nor shall have any interest whatsoever" in the funds, including "legally, equitably, or otherwise." Sniffen was prohibited from "allow[ing] any third party to obtain possession of or an interest in the" escrowed funds and, likewise, he could "not represent to any third party that such third party has an interest" in the funds. While Sniffen could "give written notice" to the Lenders that the "Escrow Account contains the Escrow Funds," neither Sniffen, McCloskey, or the various LLCs owned by McCloskey could "represent" to anyone that "the Escrow Funds and/or the Escrow Account belong to, or are usable by . . . any party other than" Namkeb or Repid. "Sniffen was clearly not acting as a 'mediator or go-between' as the attorney

with regard to the compensable claim with the law client in [*AAF*]." *Grebow*, 255 Md. App. at 31.

Second, "[i]n addition to bearing no resemblance to the 'intermediary capacities' in *Advance Finance* and [*AAF*], Mr. Sniffen's 'escrow agent' duties also did not [compare with] the example[s of] fiduciary capacities listed in Rule 19-602(b), all of which involve a fiduciary *interacting with third parties for the benefit of a client*." *Id.* at 31. As in *Grebow*, under each escrow agreement Sniffen was tasked with "promptly establish[ing]" an "interest bearing depository account at Wachovia bank" in an "account entitled 'Kevin Sniffen, Escrow Agent, for the benefit of" Namkeb or Repid, such as the case may be. *Compare Grebow*, 255 Md. App. at 31. Appellants could demand the return of the escrowed funds at "any time" and, barring that, each agreement required Sniffen to return the funds on the earlier date of: (i) the settlement of the loan with Lenders, or (ii) a date prescribed by each agreement. Upon the return of the escrowed funds, Appellants would also receive "sizable" fees; in Repid's case, these fees totaled $685,000.

Third, "[i]n further contrast to the compensable claims in *Advance Finance* and [*AAF*], Mr. Sniffen's duties as escrow agent were not adjacent to any legal services that he was providing to" Namkeb, Repid, or McCloskey. *Grebow*, 255 Md. App. at 31-32. As in *Grebow*, the escrow agreements contain "no mention . . . of any legal services that Mr. Sniffen was required to perform[,]" and it is "undisputed" that Appellants were "not . . . law client[s] of" Sniffen. *See id.* at 32.

Finally, Appellants' attempts to liken this case to the compensable claims discussed in *Advance Finance* and *AAF* are unpersuasive. Appellants' bald assertion that an attorney

necessarily acts in a fiduciary capacity that is traditional and customary in the practice of law in Maryland *whenever* the attorney acts as an escrow agent pursuant to an escrow agreement—regardless of the terms of that agreement and the context in which it is made—because it is a "daily occurrence" for attorneys to serve as escrow agents, ignores the substance and context of *Advance Finance*, *AAF*, and *Grebow*, as discussed *supra*. There is simply no authority to support the proposition that *any* fiduciary capacity is sufficient to satisfy Maryland Rule 19-602(a)-(b).

Additionally, Appellants' efforts to construe themselves as "third parties" to the escrow agreements ignores the plain text of the agreements. Each agreement plainly states it was "entered into . . . by and among" Namkeb or Repid, McCloskey, Sniffen, and one of several entities owned by McCloskey. Indeed, each agreement specified that Sniffen was prohibited from allowing "any *third party* to obtain possession of or an interest in" the escrowed funds. (Emphasis added).

Appellants' efforts to construe the meaning of the term "intermediary[,]" as that term is used in *Advance Finance*, to refer only to an attorney's work to "arrang[e]" a transaction, regardless of its context, is also unavailing. In *Advance Finance*, the Supreme Court stated that the defalcating attorneys "were the intermediaries between their clients and Advance in arranging the loans" made by Advance to their clients. *Advance Finance*, 337 Md. at 205. This statement may support Appellants' position when taken out of context; however, in the very same paragraph the Court made clear that the defalcating attorneys "had instructions from their clients to pay" Advance Finance "out of the proceeds of any tort recovery, an amount sufficient to satisfy" their clients' debts to Advance

Finance. *Id.* This context was central to the Court's analysis, including its lengthy discussion of what was then Rule 1.15(b) of The Maryland Lawyers' Rules of Professional Conduct[22] and commentary to that Rule. *See id.* at 204-11. For example, the Court cited commentary that:

> [T]he most difficult situation arising under Rule 1.15(b) is where both the client and a third party claim an interest in funds being held by the lawyer. A common example is where the proceeds from an insurance settlement are intended to pay outstanding medical and hospital bills, as well as recompense to the client. If the lawyer turns all of the funds over to the client and they are dissipated or concealed, the third party medical providers might have an action against the lawyer.

Id. at 206-07 (quoting G. Hazard, Jr. & W. Hodes, *The Law of Lawyering* § 1.15:302, at 459-60 (2d ed. 1990, 1994 Supp.). The Court also noted that, "[p]rior to the adoption" of then Conduct Rule 1.15(b), decisional law applying "Disciplinary Rule 9-102(B)(4)"[23]

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[22] Rule 1.15(b) of The Maryland Lawyers' Rules of Professional Conduct provided:

> "(b) Upon receiving funds or other property in which a client *or third person* has an interest, a lawyer shall promptly notify the client *or third person*. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client *or third person* any funds or other property that the client *or third person* is entitled to receive and, upon request by the client *or third person*, shall promptly render a full accounting regarding such property."

Advance Finance, 337 Md. at 204-05 (quoting former Conduct Rule 1.15(b)). Advance Finance argued that the defalcating attorneys were "fiduciaries" within the meaning of BOP § 10-312(b)(1) because of their "ethical obligations" under Conduct Rule 1.15(b). *Id.* at 204, 208.

[23] Disciplinary Rule 9-102(B)(4) provided, in pertinent part, that:

> "[a] lawyer shall:
> . . .

(continued)

found attorneys were required to disburse tort claim settlement funds to third parties as "authorized" or "instruct[ed]" by their clients, even though the rule "did not expressly recognize an attorney's obligation to a non-client." *See id.* at 207-08 (citing *Att'y Grievance Comm'n v. Morehead*, 306 Md. 808, 818 (1986), *Att'y Grievance Comm'n v. Singleton*, 311 Md. 1, 16 (1987), and *Att'y Grievance Comm'n v. Velasquez*, 301 Md. 450 (1984)).

Perhaps the most obvious indication that the *Advance Finance* Court considered an attorney's role as a go-between in handling and disbursing funds to be important to its analysis arises from the way the Court framed the question presented:

> The question is whether an attorney acts as a fiduciary for a *non-client* within the meaning of BOP § 10-312(b)(1) . . . when the attorney disburses *client funds* from the attorney's trust account *to a non-client*, at the *instructions of the client* and pursuant to the obligations recognized in Conduct Rule 1.15.

Advance Finance, 337 Md. at 208 (emphasis added). Ultimately, the Court concluded that "it is consistent with the purposes of the Fund to recognize that the fiduciary ethical obligation to a non-client that is embodied in Rule 1.15 is a fiduciary obligation under the Fund statutes and rules." *Id.* at 210-11.

Following *Advance Finance*, in both *AAF* and *Grebow* we used the term "intermediary" to refer to attorneys who, although they may have helped "arrange" a

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> (4) [p]romptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive."

Advance Finance, 337 Md. at 207 (alterations in original) (quoting Appendix to former Md. Admin. R. 1230, Code of Pro. Resp., 2 Md. Rules 449 (Md. Code 1985 Repl. Vol.)).

transaction, also possessed *client* funds belonging to *non-client third parties*. *See AAF*, 216 Md. App. at 320 (recognizing that in *Advance Finance* "the Court held that the former attorneys who had acted as 'intermediaries' for their clients to arrange the loans from Advance were acting as fiduciaries for Advance *at such time as they received the settlement proceeds* in each underlying personal injury case *in which their client had directed them to pay Advance* from those proceeds"); *Grebow*, 255 Md. App. at 30-31 ("Sniffen's duties . . . did not resemble the 'intermediary roles' occupied by the defalcating attorneys with regard to the compensable claims in *Advance Finance* and [*AAF*]. . . . [U]nlike the compensable claims in those cases, whereby the attorneys possessed client funds belonging to non-client third parties—here, Mr. Grebow seeks to recover funds that Mr. Sniffen was holding on behalf of a non-client, Mr. Grebow, for the benefit of the same non-client, Mr. Grebow.").

For all the foregoing reasons, we hold that, under the terms of the escrow agreements, Sniffen was not acting in a fiduciary capacity that is "traditional and customary in the practice of law in Maryland[.]" Md. Rule 19-602(b). The transactions at issue in this case represent "unconventional" "short term investment[s] with a documented great return," and Sniffen's role in the transactions did not qualify under any fiduciary capacity that is cognizable under Maryland Rule 19-602(a)-(b). Thus, we will affirm the Trustees' decision that Appellants were not eligible to recover from the Fund.

iii. Substantial Evidence

As in *Grebow*, although the Trustees' final decision provides several reasons why Appellants' claims fail, "we need only examine whether there was substantial evidence in

the record to support their determination that Mr. Sniffen was not acting in a fiduciary capacity that was 'traditional and customary in the practice of law in Maryland.'" *Grebow*, 255 Md. App. at 33.

Under the "substantial evidence test," we consider whether the Trustees' decision is supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Mayor of Balt. v. ProVen Mgmt., Inc.*, 472 Md. 642, 667 (2021) (quoting *Bulluck v. Pelham Woods Apartments*, 283 Md. 505, 512 (1978)). We hold that the Trustees' conclusion that Sniffen was not acting in a fiduciary capacity that was "traditional and customary in the practice of law in Maryland" was supported by substantial evidence. The unusual terms of the escrow agreements clearly supply ample evidence for a reasoning mind to conclude Sniffen was not acting in a qualifying fiduciary capacity under BOP § 10-312(b)(1) and Maryland Rule 19-602.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.