


<p>Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL ENFORCEMENT MARGARET P. WARREN, No. 108774 1149 South Hill Street, 9th Floor Los Angeles, CA 90015-2299 Telephone: (213) 765-1000</p>	<p>Case number(s) 00-0-12562 00-0-12681 00-0-15128</p> <p>kwiktag® 035 115 198</p> 	<p>(for Court's use) FILED FEB - 4 2004 STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel for Respondent Selwyn J. Monarch Respondent in Propria Persona 4321 Matilija Ave., #8 Sherman Oaks, CA 91423 Phone: (818) 906-1322</p>	<p>PUBLIC MATTER</p>	
<p>In the Matter of SELWYN J. MONARCH Bar # 31025 A Member of the State Bar of California (Respondent)</p>	<p>Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> ENEC Judge settlement judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted January 11, 1961
(date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation, and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 14 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - ☒ costs added to membership fee for calendar year following effective date of discipline
 - ☐ costs to be paid in equal amounts prior to February 1 for the following membership years:

(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)

 - ☐ costs waived in part as set forth under "Partial Waiver of Costs"
 - ☐ costs entirely waived

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

B. Aggravating Circumstances (for definition, see Standards for Attorneys' Sanctions for Professional Misconduct Standard 1.2(b).) Facts supporting aggravating circumstances are required.

(1) ☒ Prior record of discipline [see standard 1.2(f)]

(a) ☒ State Bar Court case # of prior case 93-0-12815

(b) ☒ date prior discipline effective April 16, 1995

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: former rules

5-101 (1975) and 3-300(1989)

(d) ☒ degree of prior discipline Public Reprimand with conditions

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline".

(2) ☐ Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) ☐ Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4) ☐ Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.

(5) ☐ Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(6) ☐ Lack of Cooperation: Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

(7) ☐ Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

(8) ☐ No aggravating circumstances are involved.

Additional aggravating circumstances:

Judgments were entered against Respondent's clients jointly and severally in each of the three lawsuits Respondent initiated on the clients' behalf. Clients only learned of the judgments against them well after the fact, when they discovered that there were judgment liens against their property. Several clients were unable to sell or refinance their property until the judgments were satisfied and the liens expunged. Lawsuits against Respondent and other defendants were brought by several clients and were ultimately settled with Respondent and other defendants in full satisfaction of the outstanding judgments.

C. Mitigating Circumstances (Standard 1.2(e).) Facts supporting mitigating circumstances are required.

- (1) ☐ No Prior Discipline: Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ No Harm: Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ Candor/Cooperation: Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ Restitution: Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ Good Faith: Respondent acted in good faith.
- (8) ☐ Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ Family Problems: At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (10) ☐ Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (11) ☐ Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☒ No mitigating circumstances are involved.

Additional mitigating circumstances:

D. Discipline

1. Stayed Suspension.

A. Respondent shall be suspended from the practice of law for a period of Thirty (30) days

- ☐ i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ☐ ii. and until Respondent pays restitution to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____, and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
- ☐ iii. and until Respondent does the following: _____

B. The above-referenced suspension shall be stayed.

2. Probation.

Respondent shall be placed on probation for a period of One (1) year, which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

E. Additional Conditions of Probation:

- (1) ☒ During the probation period, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) ☒ Within ten (10) days of any change, Respondent shall report to the Membership Records Office of the State Bar and to the Probation Unit, all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (3) ☒ Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report would cover less than 30 days, that report shall be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.
- (4) ☐ Respondent shall be assigned a probation monitor. Respondent shall promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, respondent shall furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the probation monitor.
- (5) ☒ Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit ~~or the Office of the Chief Trial Counsel~~ and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

(6) ☒ Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

☐ No Ethics School recommended.

(7) ☐ Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Probation Unit.

(8) ☐ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions ☐ Law Office Management Conditions

☐ Medical Conditions ☐ Financial Conditions

(9) ☐ Other conditions negotiated by the parties:

☒ Multistate Professional Responsibility Examination: Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel within one year. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.

☐ No MPRE recommended.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Selwyn J. Monarch

CASE NUMBER(S): 00-O-12562; 00-O-12681; 00-O-15128

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct:

Facts:

1. In 1993 and 1994, Respondent and one other (non-lawyer) individual owned and operated a business called MP Realty Services “(MP)”. MP engaged primarily in the business of auditing adjustable interest rate loans on behalf of homeowner-borrowers, using a computer program specifically designed for this purpose by Respondent. MP did not have a “shop front” or place of business; Respondent and his non-attorney partner worked from their respective homes. Respondent was the one solely responsible for performing the audits themselves. In 1993 and 1994, MP sent a form letter to various individuals (“Borrowers”) who had taken out adjustable mortgage home loans with lending institutions that included Fidelity Federal Bank (“Fidelity”) and Downey Savings and Loan Association (“Downey”).

2. In its form letter, MP advised each Borrower that Fidelity and Downey may have overcharged the interest on Borrower’s loan; offered to audit Borrower’s loan documents to determine if a refund for overcharges was due to Borrower; represented that there would be no charge to Borrower for MP’s audit services unless MP secured a cash refund or credit against the

principal balance of Borrower's loan for any interest overcharges discovered by MP; represented that MP would collect as its fee one-half of any such cash refund or credit to Borrower; and represented that MP would pay for the lenders' charges for the documents it required for its audit. Enclosed with each solicitation letter was a form "Agreement" to be duly filled in, executed, and returned to MP by Borrower, if Borrower was interested in retaining MP's services. This "Agreement" provided, in pertinent part, that "Clients [Borrowers] authorize Auditors [MP] to act as their agents"; and that "Client agrees that Auditors may, at their option, engage the services of an attorney of their choice to prosecute Client's claim against Lender in the name of and on behalf of Clients." A number of Borrowers (hereinafter, "Clients") solicited by MP in fact signed and returned the "Agreement" to MP.

3. Respondent audited Clients' loan agreements and concluded that Clients had been overcharged by Fidelity and Downey on interest charges on Clients' respective loans. The alleged overcharges ranged from approximately a few hundred dollars to approximately fifteen hundred dollars. Some time in the latter part of 1993, after Fidelity declined to settle claims for refunds brought by MP on behalf of Clients with loans through Fidelity, MP decided to proceed to litigation against Fidelity. To this end, MP secured the written consent of its Fidelity Clients to retain counsel on their behalf to prosecute their claims against Fidelity.

4. In or about September 1993, MP retained the services of a litigation attorney ("Attorney 'A'") to represent Clients in their claims against Fidelity. In or about October 1993, MP executed a retainer agreement with Attorney "A".

5. In or about September and October 1993, Attorney "A" wrote to various Clients with

claims against Fidelity, advising them that he had been retained by MP to represent them against Fidelity.

6. On or about November 30, 1993, Attorney "A" filed a lawsuit for, *inter alia*, breach of contract against Fidelity on behalf of forty-one (41) Clients in the Superior Court, County of Los Angeles, entitled *Mark Weber et al. v. Fidelity Federal Bank, et al.*, case no. BC 094 073 ("*Fidelity I*"). The breach of contract cause of action was based on Fidelity's alleged breach of the terms of the promissory notes executed between Fidelity and each of the forty-one (41) Clients, among others. Pursuant to the terms of each of the promissory notes involved in the *Fidelity I* action and the provisions of California Civil Code section 1717, if action were instituted on the promissory note, attorneys' fees and costs would be awarded to the prevailing party.

7. Among other activities, Respondent drafted correspondence in his name to all plaintiffs in *Fidelity I*, informing them of the filing of the lawsuit against Fidelity; explaining what the complaint alleged; advising that discovery would be conducted; and expressing the view that the litigation should be settled within a few months. Respondent also assisted Attorney "A" in the preparation of responses to discovery propounded by Fidelity; advised Attorney "A" to waive jury trial and opt for a bench trial instead; and participated in the preparation of Plaintiffs' Opposition to Fidelity's Summary Judgment motion.

8. On or about July 15, 1994, Attorney "A" filed a second lawsuit for, *inter alia*, breach of contract against Fidelity on behalf of eighteen (18) additional Clients in the Superior Court, County of Los Angeles, entitled *Andrew M. Forman et al. v. Fidelity Federal Bank, et al.*, case

no. BC 108 841 (“*Fidelity II*”). The breach of contract cause of action was based on Fidelity’s alleged breach of the terms of the promissory notes executed between Fidelity and each of the eighteen (18) Clients, among others. Pursuant to the terms of each of the promissory notes involved in the *Fidelity II* action and the provisions of California Civil Code section 1717, if action were instituted on the promissory note, attorneys’ fees and costs would be awarded to the prevailing party.

9. Among other activities, Respondent communicated with at least two of the plaintiffs, Edward Glover and Marolyn Glover (“Glovers”), concerning discovery propounded by Fidelity, and assisted Attorney “A” in preparing the Glovers’ responses to special interrogatories and a production demand. Respondent also advised the Glovers of the reasons for some delay in the lawsuit and advised them when the case was likely to be tried.

10. In or about 1994, after Downey declined to settle claims for refunds brought by MP on behalf of Clients with loans through Downey, MP decided to proceed to litigation against Downey. To this end, MP secured the written consent of its Downey Clients to retain counsel on their behalf to prosecute their claims against Downey.

11. In or about June 1994, MP retained the services of Attorney “B” to represent Clients in their claims against Downey.

12. On or about June 6, 1994, Attorney “B” filed a lawsuit for, *inter alia*, breach of contract against Downey on behalf of two (2) Clients in the Superior Court, County of Los Angeles, entitled *Margaret Pendergast, et al. v. Downey Savings & Loan Association, et al.*, case no. BC 106 285 (“*Downey matter*”). The breach of contract cause of action was based on

Downey's alleged breach of the terms of the promissory notes executed between Downey and each of the two (2) Clients, among others. Pursuant to the terms of each of the promissory notes involved in the *Downey* action and the provisions of California Civil Code section 1717, if action were instituted on the promissory note, attorneys' fees and costs would be awarded to the prevailing party.

13. All pleadings filed on behalf of the Clients during the pendency of the *Downey* matter listed Respondent and Attorney "B" as "Attorneys for Plaintiffs." In correspondence to Downey's counsel, written on letterhead listing Respondent as an "attorney at law," Respondent represented that he had been engaged to represent Plaintiff Margaret Pendergast in her claim against Downey.

14. In or about July 1995, Attorney "A" was substituted out of both *Fidelity* lawsuits, and Attorney "B" was substituted in his place. The Substitutions of Attorney forms filed in both cases listed MP as "Attorney-in-Fact for all Plaintiffs."

15. In or about December 1995, judgment was granted in the *Downey* matter, decreeing that Clients take nothing and that Defendant shall recover its costs of suit from Clients.

16. In or about March 1996, Respondent and Attorney "B" lodged a Notice of Appeal on behalf of Clients in the *Downey* matter.

17. In or about June 1997, the Court of Appeal affirmed in part the lower court's decision in the *Downey* matter, reversed it in part, and remanded the matter with directions. In or about October 1997, pursuant to a Stipulation and Order re Attorney's Fees and Expenses, judgment was entered in favor of defendant Downey in the amount of \$44,500.64.

18. In or about December 1995, defendant Fidelity's Motion for Attorney's Fees and Costs was granted in *Fidelity II*, in the amount of \$27,457.70; judgment in favor of defendant Fidelity in the amount of \$27,457.70 was granted in or about January 1996.

19. In or about April 1996, Respondent and Attorney "B" lodged a Notice of Appeal on behalf of Clients in *Fidelity II*.

20. In or about June 1997, the Court of Appeal affirmed the lower court's judgment in *Fidelity II* and awarded attorneys' fees and costs to Fidelity. In or about July 1997, the Appellants' Petition for Rehearing in *Fidelity II* was denied. In or about September 1997 the California Supreme Court denied Appellants' Petition for Review. In or about October 1997, the remittitur issued and the judgment in *Fidelity II* in the amount of \$27,457.70 subsequently became final.

21. In or about April 1996, judgment in favor of defendant Fidelity was granted in *Fidelity I*, decreeing that Plaintiffs take nothing and that Defendant shall recover its costs of suit from Plaintiffs. In or about June 1996, defendant Fidelity's Motion for Attorney's Fees and Costs was granted in *Fidelity I* in the amount of \$106,137.59.

22. In or about August 1996, Respondent and Attorney "B" lodged a Notice of Appeal on behalf of Clients in *Fidelity I*.

23. In or about June 1997, the appeal in *Fidelity I* was dismissed pursuant to [former] Rule 10(c) of the California Rules of Court. In or about August 1997, the remittitur issued and the judgment in *Fidelity I* in the amount of \$106,137.59 subsequently became final.

24. When judgments were granted against Clients in favor of the defendants in *Fidelity I*

in or about April 1996; in *Fidelity II* in or about January 1996; and in the *Downey* matter in or about December 1995, neither Respondent nor anyone else acting on behalf of Clients notified Clients at any time of the respective judgments entered against Clients.

25. Neither Respondent nor anyone else acting on behalf of Clients notified Clients at any time that appeals had been lodged in *Fidelity I*, *Fidelity II*, and the *Downey* matter.

26. Neither Respondent nor anyone else acting on behalf of Clients notified Clients at any time about the outcome of the appeals in *Fidelity I*, *Fidelity II*, and the *Downey* matter.

27. Upon conclusion of the *Fidelity I*, *Fidelity II*, and the *Downey* matter appeals, and the respective judgments in those matters becoming final in or about the fall of 1997, neither Respondent nor anyone else acting on behalf of Clients notified Clients at any time of the finality of the judgments in *Fidelity I*, *Fidelity II*, and the *Downey* matter against Clients.

28. Respondent took no steps to ensure that Clients would be kept informed of the progress of the *Fidelity* and *Downey* litigation, or verified that anyone was in fact communicating significant developments in the litigation to Clients, including but not limited to informing Clients of the entries of judgment; of the filing of Notices of Appeal; of the dismissals of the appeals; and of the finality of the judgments in the *Fidelity* and *Downey* lawsuits. Respondent merely assumed that Attorney "B" would keep Clients duly informed of the progress and outcome of all litigation. Attorney "B" did not, however, do so. As a result, no one communicated with Clients concerning the progress and outcome of each of the three lawsuits.

Legal Conclusions:

29. By failing to inform Clients either personally, or alternatively to verify that Clients

had in fact been informed by someone else, of the judgments entered against them by the trial courts in *Fidelity I*, *Fidelity II*, and the *Downey* matter; of the lodging of appeals in *Fidelity I*, *Fidelity II*, and the *Downey* matter; of the outcome of the appeals in *Fidelity I*, *Fidelity II*, and the *Downey* matter; and of the finality of the judgments against in *Fidelity I*, *Fidelity II*, and the *Downey* matter, Respondent failed to keep Clients reasonably informed of significant developments in the Clients' cases, in wilful violation of section 6068(m) of the California Business and Professions Code.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was December 16, 2003.

Date DEC. 22, 2003


Respondent's signature

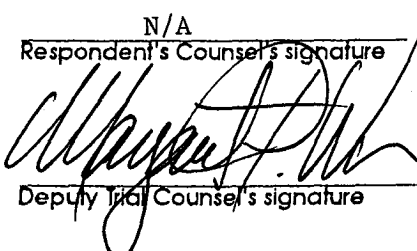
Selwyn J. Monarch
print name

Date _____

N/A
Respondent's Counsel's signature

N/A
print name

12/29/03
Date


Deputy Trial Counsel's signature

Margaret P. Warren
print name

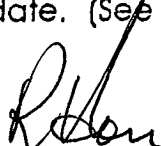
ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)

1-29-04
Date


Judge: RICHARD A. HONN
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on February 4, 2004, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed February 4, 2004**

in a sealed envelope for collection and mailing on that date as follows:


- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**SELWYN J MONARCH ESQ
4321 MATILIJA AVE #8
SHERMAN OAKS, CA 91423**

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

MARGARET P. WARREN ESQ, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 4, 2004**.


Milagro del R. Salmeron
Case Administrator
State Bar Court