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State Bar Court of California		
Hearing Department <input type="checkbox"/> Los Angeles		<input checked="" type="checkbox"/> San Francisco
Counsel for the State Bar Wonder J. Liang Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2372 Bar # 184357	Case number(s) 01-0-05118-PEM	(for Court's use) <div style="text-align: center;"> PUBLIC MATTER FILED  JUN 17 2005 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO </div>
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent Thomas Salciccia 870 North First Street San Jose, CA 95112 (408) 295-5555 Bar # 28206	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
in the Matter of MICHAEL S. MILLER Bar # 158019 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 8, 1992 (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 13 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) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) 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.

(Do not write above this line.)

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
- 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 in a separate attachment entitled "Partial Waiver of Costs"
- costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney 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 _____

(b) Date prior discipline effective _____

(c) Rules of Professional Conduct/ State Bar Act violations: _____

(d) Degree of prior discipline _____

(e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "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.

(Do not write above this line.)

- (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:

C. Mitigating Circumstances [see 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 with 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) **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.

(Do not write above this line.)

- (10) 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.
- (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:

Respondent paid the Quinns \$55,500.00 on or about December 24, 2004, without the necessity of a civil trial.

D. Discipline:

(1) Stayed Suspension:

- (a) Respondent must be suspended from the practice of law for a period of ONE (1) YEAR
- 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 as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following: _____
- (b) The above-referenced suspension is stayed.

(2) Probation:

Respondent must be placed on probation for a period of TWO (2) YEARS, which will commence upon the effective date of the Supreme Court order in this matter.
(See rule 953, Calif. Rules of Ct.)

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(3) Actual Suspension:

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of SIX (6) MONTHS

- 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 as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following: _____

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), 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.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must 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. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must 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.

- (6) Respondent must be assigned a probation monitor. Respondent must 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 must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation 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.

(Do not write above this line.)

- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation 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. Reason: _____
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. 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. Reason: _____
- (2) **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: _____
- (5) **Other Conditions:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Michael S. Miller, SBN 158019

CASE NUMBER(S): 01-O-05118-PEM

FACTS AND CONCLUSIONS OF LAW.

1. On or about November 1, 2000, Junior C. Quinn and Mary T. Quinn ("the Quinns"), an elderly married couple, employed respondent to represent them in a legal dispute with Junior C. Quinn's adult daughter, Cathrine Quinn. Both Junior C. Quinn and Cathrine Quinn claimed to own a house in Mountain View California, and Cathrine was living at the house.

2. In the written fee agreement they entered, respondent agreed to provide the following representation:

"Legal advice concerning cloud on title on real property located at 218 College Avenue, Mountain View, CA 94040 ("Property"). Initiate litigation to remove cloud and cancel quit claim deed. Defend against all counter-claims, if necessary. Initiate eviction proceedings against Cathrine Quinn and all others in possession of the Property."

3. In the written fee agreement, the Quinns agreed to pay respondent's legal fees at the rate of \$300.00 per hour. As stated in the contract, the Quinns agreed to provide respondent with an initial payment of \$2,000.00. In addition, they orally represented to respondent that they could pay a maximum of \$500.00 per month and respondent agreed to this arrangement. The written contract provided as follows:

"If Client is unable to pay 50% or more of the fees and costs for the Services at the time they are incurred, Lawyers, at Lawyers' option, may provide the Services on a contingent fee basis. If Lawyers choose this option, Lawyers' fee shall be 40% of the gross selling price of 218 College Avenue, Mountain View California..."

4. The fee agreement was unconscionable under all of the factors set forth in Rule of Professional Conduct 4-200(B) and, in particular, because of the following circumstances:

- a. The amount of proposed contingent fee was grossly excessive in comparison to the value, difficulty, quantity and complexity of the work to be performed;

Because he thought that the house would sell for more than it did, respondent expected to receive an even larger fee than he actually obtained;

- b. The proposed contingent fee was based on the gross selling price of the house, not the net selling price;
- c. Respondent secured the right to unilaterally change the fee structure from a fixed fee to a contingent fee; and
- d. The clients were comparatively unsophisticated.

5. Each month commencing on or about December 4, 2000, and continuing until on or about September, 2001, the Quinns faithfully made payments to respondent of \$500.00 per month. They paid respondent a total of approximately \$7,000.00. During this time, respondent never provided the Quinns with a written statement for services rendered or costs expended until May 3, 2001.

6. Respondent represented the Quinns in litigation in which Junior C. Quinn's ownership of the property was affirmed. In or about August, 2001, a writ of possession was filed authorizing the Quinns to obtain possession of the residence.

7. In or about September 2001, the property was sold for \$486,000.00 and the title company issued a check payable to the Quinns in the amount of \$238,036.90 representing the net proceeds of the sale. At respondent's request, the Quinns agreed to let respondent deposit the check in his client trust account.

8. On or about September 11, 2001, respondent deposited the check into his client trust account.

9. On or about September 13, 2001, respondent met with the Quinns and advised them that he was exercising the contingent fee provision of the fee agreement and that he was therefore entitled to a contingent fee based on the gross sales price of the property. Respondent took as his fee \$174,375.31. Thus, as his contingent fee, respondent took approximately 73% of the net sales price of the property.

10. The fee that petitioner charged and collected was unconscionable under all of the factors set forth in Rule 4-200(B) and, in particular, because of the following circumstances:

- a. The amount of the proposed fee was grossly excessive in light of the value, difficulty, quantity and complexity of the work that respondent performed;

- b. The contingent fee was based on the gross selling price of the house, not the net selling price;
- c. Respondent unilaterally changed the fee structure from a fixed fee to a contingent fee;
- d. Respondent changed the fee structure from a fixed fee to a contingent fee even though the condition precedent for doing so had not been satisfied. Specifically, because respondent had never billed the clients for his services, there was no proof that the clients had become unable to pay respondent "...50% or more of the fees and costs for the Services at the time they are incurred..." Moreover, because respondent never provided billings, the Quinns had no warning of the danger that respondent might invoke the contingent fee provision. By unilaterally and unfairly transforming the fee structure to a contingent fee, respondent engaged in overreaching and bad faith conduct; and
- e. The clients were comparatively unsophisticated.

Conclusions of Law: Count One:

By entering the November 1, 2000 fee agreement, respondent entered into an agreement for an unconscionable fee and by charging and collecting a \$174,375.31 fee on or about September 13, 2001, respondent entered into, charged and collected an unconscionable fee in violation of rule 4-200(A) of the Rules of Professional Conduct.

Facts: Count Two:

11. The allegations contained in Count One are hereby incorporated by this reference.

12. In or about May 2001, respondent convinced the Quinns to execute several deeds of trust securing fictitious obligations. Respondent then recorded the deeds of trust against the Quinn's Mountain View residence, as follows:

<u>Amount</u>	<u>Beneficiary</u>
\$150,000.00	De Rosa Family Trust
\$ 25,000.00	Respondent
\$ 25,000.00	Huberto J. Acevedo

13. The Quinns had no knowledge of or dealings with Acevedo or the De Rosa Family Trust, and they never borrowed any amount from Acevedo, the DeRosa Family Trust, or respondent. Respondent told the Quinns that the documents were intended to discourage

Cathrine Quinn from recording a further *lis pendens* against the property and to discourage her from proceeding with further litigation. Respondent claims to have created a contemporaneous document dated May 1, 2001, in which he (1) acknowledged that the purpose of the deeds of trust was to discourage Cathrine Quinn, (2) promised to reconvey the Deeds of Trust and cancel the promissory notes, and (3) stated that the beneficiaries were not taking a security interest. However, respondent did not have the May 1 document notarized or recorded.

Conclusions of Law: Count Two:

By respondent's action in recording the above-mentioned deeds of trust, respondent failed to employ means only as are consistent with truth in violation of section 6068(d) of the Business and Professions Code for the following reason:

It was an attempt to mislead Cathrine Quinn or her attorneys to believe that the Quinns had heavily encumbered the Mountain View property.

By respondent's collection of an unconscionable fee, as alleged in Count One, respondent committed acts in violation of section 6106 of the Business and Professional Code.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was May 9, 2005.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
01-O-05118	III	Rules of Professional Conduct, rule 3-300

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of May 9, 2005, the estimated prosecution costs in this matter are approximately \$4,135.95. Respondent acknowledges that this figure is an estimate only and that it does not

include State Bar Court costs which will be included in any final cost assessment. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.7 of the Standards for Attorney Sanctions for Professional Misconduct provides,

Culpability of a member for a wilful violation of that portion of rule 4-200, Rules of Professional Conduct re entering into an agreement for, charging or collecting an unconscionable fee for legal services shall result in at least a six-month actual suspension from the practice of law, irrespective of mitigating circumstances.

In the Matter of Chesnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, respondent was charged for violating sections 6068(d) and 6106 of the Business and Professions Code for falsely representing to two different judges on two different occasions that he had served the summon and complaint in a family law matter. (*Id.* at 169.) Respondent had a prior record of discipline. (*Id.*) Following it's review of the record, the Review Department recommended that respondent be actually suspended from the practice of law for a period of six months.

STATE BAR ETHICS SCHOOL.

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

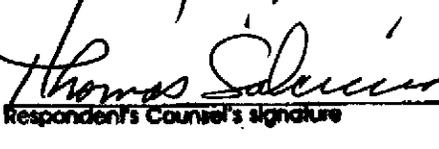
Respondent admits that the above facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

(Do not write above this line.)

In the Matter of Michael S. Miller	Case number(s): 01-0-05118-PEM
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law and Disposition.

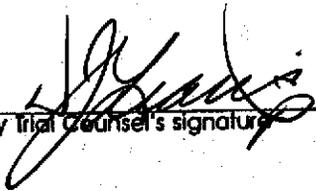
<u>May 25, 2005</u> Date	 Respondent's signature	<u>Michael S. Miller</u> Print name
<u>May 25, 05</u> Date	 Respondent's Counsel's signature	<u>Thomas Salciccia</u> Print name
_____ Date	_____ Deputy Trial Counsel's signature	<u>Wonder J. Liang</u> Print name

(Do not write above this line.)

In the Matter of Michael S. Miller	Case number(s): 01-0-05118-PEM
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law and Disposition.

Date	Respondent's signature	Michael S. Miller Print name
Date	Respondent's Counsel's signature	Thomas Salciccia Print name
Date <u>5/26/05</u>	 Deputy Trial Counsel's signature	Wonder J. Liang Print name

(Do not write above this line.)

In the Matter of Michael S. Miller	Case number(s): 01-0-05118-PEM
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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.
- All Hearing dates are vacated.

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.)

6/17/05
Date

John M. Benke
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 San Francisco, on June 17, 2005, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed June 17, 2005**

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

- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**THOMAS A. SALCICCIA
870 N 1ST STREET
SAN JOSE CA 95112-6368**

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

WONDER LIANG, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **June 17, 2005**.


George Hue
Case Administrator
State Bar Court