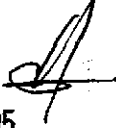




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State Bar Court of California Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar ERIC HSU Deputy Trial Counsel 1149 South Hill Street, 9 th Floor Los Angeles, CA 90015-2299 Telephone: (213) 765-1000 Bar # 213039	Case number(s) 03-O-02903-PEM; 03-O-03237-PEM (Consolidated)	(for Court's use) <div style="text-align: center;"> PUBLIC MATTER FILED  JUL 01 2005 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO </div>
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent THOMAS CHARLES LOFFARELLI 12400 Ventura Blvd. Suite 126 Studio City, California 91604-2406 Telephone: (818) 386-9921 Bar # 159724	<div style="text-align: center; font-size: 2em; font-weight: bold;">ORIGINAL</div>	
In the Matter of THOMAS CHARLES LOFFARELLI Bar # 159724 A Member of the State Bar of California (Respondent)	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	

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 August 21, 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 23 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."

See attached pages

(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.~~ (24) / 4
- (8) **No aggravating circumstances are involved.**

Additional aggravating circumstances: None

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.~~ (24) / E
- (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: NONE.

SEE

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of Five years

- 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 Five years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 953, Calif. Rules of Ct.) This period of probation shall run consecutively from the end of Respondent's prior discipline in connection with case number 02-0-10705.

(Do not write above this line.)

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of Three years
- 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: Respondent has already been ordered to complete the Ethics School in connection with case number 02-0-10705.

- (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 checked="" 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: Respondent has already been ordered to take and pass the MPRE in connection with case number 02-0-10705.

- (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:** SEE ATTACHED PAGES.

EH / E

(Do not write above this line.)

In the Matter of THOMAS CHARLES LOFFARELLI	Case Number(s): 03-0-02903; 03-0-03237-PEM (Consolidated)
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Law Office Management Conditions

- a. Within ___ days/ ___ months/ ___ years of the effective date of the discipline herein, Respondent must develop a law office management/ organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. Within ~~___~~ days/ 12 months ~~___~~ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 12 hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for ___ year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: THOMAS CHARLES LOFFARELLI
CASE NUMBER: 03-O-02903-PEM; 03-O-03237-PEM (Cons.)

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violating the specified statutes and California Rules of Professional Conduct. By this stipulation, the parties hereby waive any variance in the evidence that relates to the noticed charges.

I. Jurisdiction.

1. Respondent THOMAS CHARLES LOFFARELLI ("Respondent") was admitted to the practice of law in the State of California on August 21, 1992, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

II. Case Number 03-O-02903-PEM (the Cruz/Di Martino matter).

a. Facts.

2. In January 2001, Grace Cruz ("Cruz") and her brother Thomas DiMartino ("DiMartino") employed Respondent to represent them as plaintiff trustees in a trust matter involving a deceased sibling's estate ("the DiMartino Trust"). Respondent did not present Cruz and DiMartino with a written fee contract and none was executed by the parties at any time pertinent to these charges. Respondent did not provide Cruz and DiMartino with a copy of any fee contract relating to the DiMartino Trust matter.

3. Between January 2001 and March 2002, Respondent received a total of \$14,144.10 from Cruz and DiMartino in payments for advance legal fees and costs, as follows:

<u>Date of Payment:</u>	<u>Amount of Payment Received by Respondent:</u>
January 31, 2001	\$1,500;
June 1, 2001	\$1,000;
May 25, 2001	\$1,500;
September 25, 2001	\$2,044.10;

November 2, 2001	\$1,500;
November 15, 2001	\$2,600;
December 27, 2001	\$1,000;
January 26, 2002	\$1,000;
February 7, 2002	\$1,000; and
March 6, 2002	\$1,000.

4. On March 29, 2001, Respondent filed an action on behalf of Cruz and DiMartino in the matter entitled *Grace Cruz v. Kathleen Acero* (the "Cruz matter"), Los Angeles Superior Court case number KC035515.
5. On October 1, 2001, the superior court in the Cruz matter ordered Cruz and DiMartino to interplead funds in the amount of \$16,778.97.
6. On February 5, 2002, a bench trial was conducted in the Cruz matter. The superior court delivered its statement of decision on February 6, 2002, rendering a judgment in favor of the defendant and against Cruz and DiMartino. The superior court found that the evidence was insufficient to establish that the subject promissory note and a second alleged debt between defendant Acero and decedent Leo DiMartino were property of the Trust estate. The superior court also found that there was no justiciable issue as to the subject condominium and no finding was made as to that condominium. The superior court further held that there were no conflicting claims as to the monies interpled in the Cruz matter, and that "those funds remain in the Trust as property of the Trust estate."
7. On March 6, 2002, Respondent filed with the superior court an Ex Parte Application for Release of Funds on behalf of Cruz and DiMartino.
8. On March 06, 2002, the superior court issued an order to release the \$16,778.97 to Cruz and DiMartino. In its order granting that ex parte application, the superior court made a finding that the proposed Order submitted by Respondent was insufficient, and thereupon further ordered Respondent to serve and submit a proposed Order which must include the following information and language: a) specific account number into which the funds is to be deposited when released; b) "funds on deposit with the Clerk are an asset of the Leo DiMartino Trust established 8-28-00"; and c) "that the Clerk is to deliver the funds to Grace Cruz and Thomas DiMartino as successor trustees and their attorney, to be deposited into the Trust."
9. On March 26, 2002, an order releasing the interpled funds was filed by the superior court in the Cruz matter. It was ordered that the funds be "deposited into the account of Leo DiMartino Living Trust 2000 at Washington Mutual account number 429-42-62616."

10. On March 27, 2002, a Judgment and Statement of Decision was signed and filed in the Cruz matter. No appeal was taken on the Cruz matter.
11. On April 19, 2002, the County of Los Angeles sent to Respondent a check in the amount of \$16,778.97, made payable to Cruz, DiMartino, and Respondent (the "County check").
12. On April 22, 2002, Respondent deposited the \$16,778.97 belonging to the DiMartino Trust into his client trust account ("CTA") with Washington Mutual Bank, account number 392-066820-5.
13. On April 30, 2002, Respondent's CTA balance was \$8,756.59.
14. By a letter dated May 2, 2002, Respondent notified Cruz and DiMartino of Respondent's receipt of the County check. Respondent also stated in his letter that he was maintaining the County check proceeds in his CTA "pending a judicial determination of entitlement thereto," as the opposing party "may have a legitimate claim against some or all of these funds."
15. By a facsimile letter dated June 14, 2002, Respondent notified Cruz and DiMartino that Respondent would send them a final bill and that, if the superior court approves, Respondent would then release the balance of the funds in his CTA.
16. Between May 2, 2002 and December 18, 2003, Cruz and Di Martino made several inquiries regarding the County check, but Respondent did not promptly respond to those inquiries.
17. By a letter dated December 18, 2003, which Respondent received, Cruz and Di Martino requested that Respondent return the \$16,778.97 to them and to provide them with an accounting for the \$14,144.10 previously paid to Respondent as advance fees and costs.
18. At all times relevant to these charges, Respondent did not respond to Cruz and Di Martino's December 18, 2003 letter, and Respondent did not provide a complete accounting to Cruz and Di Martino in a timely manner.
19. By a letter dated May 26, 2004, Respondent stated to Cruz and DiMartino that Respondent's office staff had prepared a bill in March 2003 for Cruz and DiMartino's review, which included work done up to February 2003. In that same letter, Respondent also stated that, after his review of the Cruz and DiMartino file "due to the inquiry of the State Bar," Respondent realized that he never sent a final bill to Cruz and DiMartino. Respondent further informed Cruz and DiMartino that Respondent was "putting together a final bill which should accurately reflect time spent on your case."

20. At all times relevant to these charges, Respondent did not return to his CTA any portion of the \$16,778.97 County check proceeds and maintain that \$16,778.97 in his CTA until that dispute is finally resolved.

21. At all times relevant to these charges, Respondent believed, although mistakenly and unreasonably, that he was entitled to keep the \$16,778.97 County check proceeds as his fees. By unilaterally determining his fees and satisfying his claim for fees, Respondent misappropriated the \$16,778.97 County check proceeds.

22. On July 29, 2002, Kathleen Acero filed a probate action against Cruz and DiMartino in Los Angeles County Superior Court Case Number KP008553, seeking an accounting, to remove of Cruz and DiMartino as trustees of the DiMartino Trust, and to appoint successor trustees ("the probate matter").

23. On January 27, 2003, Respondent filed a response on behalf of Cruz and DiMartino in the probate matter. Trial in the probate matter was conducted in March 2003, and the superior court entered a judgment on May 19, 2003, in favor of Kathleen Acero. Respondent did not advise Cruz and DiMartino regarding the judgment or about appealing that judgment. On August 31, 2004, attorney Michael Moran substituted into the probate matter as the attorney of record for Cruz and DiMartino. (24) / E

24. On July 21, 2003, the State Bar opened an investigation, case number 03-O-02903, based on a written complaint submitted by Cruz and Di Martino against Respondent ("the Cruz complaint").

25. On August 21, 2003, a State Bar investigator wrote to Respondent regarding the Cruz complaint. The investigator's letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Cruz complaint. Respondent received that August 21, 2003 letter, but he did not respond to it in a timely manner.

26. On September 9, 2003, Respondent sent a facsimile transmission to the State Bar, stating that he was preparing a written response to the investigation.

27. On September 9, 2003, Respondent sent another facsimile transmission to the State Bar, requesting an extension until September 17, 2003, for him to respond to the Cruz complaint.

28. On October 6, 2003, Respondent sent a facsimile transmission to the State Bar, promising a detailed explanation to the Cruz complaint.

29. Prior to December 22, 2003, the filing date of the Notice of Disciplinary Charges in case number 03-O-02903, Respondent did not provide the State Bar with a written response to specified allegations of misconduct being investigated by the State Bar in the Cruz complaint.

b. Conclusions of Law.

A. By failing to return to the client trust account any portion of the \$16,778.97 disputed by Cruz and Di Martino, and by failing to maintain that \$16,778.97 in a client trust account until that dispute is finally resolved, Respondent failed to maintain client funds in a client trust account, in willful violation of rule 4-100(A)(2) of the California Rules of Professional Conduct.

B. By failing to respond in a timely manner to Cruz and Di Martino's written request for an accounting, Respondent failed to render appropriate accounts to his clients regarding all funds of those clients in Respondent's possession, in willful violation of rule 4-100(B)(3) of the California Rules of Professional Conduct.

C. By failing to promptly respond to Cruz and Di Martino's inquiries about the \$16,778.97 County check, Respondent failed to respond promptly to reasonable status inquiries of his clients, in willful violation of California Business and Professions Code section 6068, subdivision (m).

D. By failing to provide a written response to the State Bar's investigation of the Cruz complaint against Respondent, Respondent failed to cooperate in a State Bar investigation, in willful violation of California Business and Professions Code section 6068, subdivision (i).

III. Case Number 03-O-03237-PEM (the Plascencia bankruptcy matter).

a. Facts.

30. On September 19, 2001, Respondent filed a lawsuit on behalf of Tommy Trojan Management, LLC ("Tommy Trojan"), a corporation owned by Respondent, against Oscar Plascencia ("Plascencia") to quiet title and for breach of contract ("the Tommy Trojan lawsuit"), Orange County Superior Court case number 01CC12117. The Tommy Trojan lawsuit claimed that Tommy Trojan had a 50 percent ownership interest in a property purchased by Plascencia, located at 5822 Gloucester Circle in Westminster, California ("the Gloucester property").

31. On May 7, 2002, the bankruptcy court dismissed the Tommy Trojan lawsuit as a result of the plaintiffs' failure to appear in that case.

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32. On May 8, 2002, Respondent filed a Voluntary Chapter 7 bankruptcy petition on behalf of Plascencia in the Santa Ana Bankruptcy Court, case number BK 02-13616. The purpose of that bankruptcy petition was to protect the Gloucester property from foreclosure.

33. In Plascencia's Chapter 7 petition, Respondent listed Tommy Trojan as one of Plascencia's creditors.

34. At all times relevant to these charges, Respondent did not disclose to the bankruptcy court that he was the owner of Tommy Trojan which claimed a 50 percent property interest in the Gloucester property in the Tommy Trojan lawsuit.

35. On June 18, 2002, Respondent filed a Motion to Convert from Chapter 7 to Chapter 13 on behalf of Plascencia. On June 27, 2002, the bankruptcy court filed an order granting the conversion.

36. On June 25, 2002, a Section 341(a) Meeting of Creditors and Appearance of Debtor was held, but Plascencia did not appear and none of the delinquent mortgage payments was tendered on behalf of Plascencia at that time.

37. On September 11, 2002, Plascencia's bankruptcy petition was dismissed by the Santa Ana Court with a 180-day bar against refiling without prior court approval.

38. On September 24, 2002, Respondent appeared in the bankruptcy court on behalf of Plascencia, on an ex parte application to vacate the dismissal or the 180-day bar, for the purpose of delaying a foreclosure sale scheduled for September 25, 2002. The bankruptcy court did not grant the application because Respondent did not have the missing mortgage payments.

39. On September 24, 2002, in support of his ex parte application, Respondent submitted a declaration executed by Plascencia, which stated that Plascencia's failure to attend the Section 341(a) Meeting was due to family illness.

40. On September 25, 2002, an Involuntary Chapter 7 petition concerning the Gloucester property was submitted for filing in the Woodland Hills Bankruptcy Court, case number MI 02-0004-GM. A check in the amount of \$200, to be drawn against Respondent's client trust account, was tendered as the filing fee for that Involuntary Chapter 7 petition. Tommy Trojan was listed as a petitioning creditor in that petition. That involuntary petition was rejected for filing by the bankruptcy court.

41. On November 26, 2002, Respondent filed a Response to Order to Show Cause in case number MI 02-0004-GM, stating that the September 2002 filing of an Involuntary Chapter 7

petition concerning the Gloucester property was not an attempt to circumvent the prior court order imposing the 180-day bar.

42. In support of his November 26, 2002 response to the Order to Show Cause, Respondent submitted a declaration executed by Plascencia on November 24, 2002, stating that Plascencia leased the Gloucester property to a tenant and that Plascencia went to Mexico to stay with his family.

43. On November 26, 2002, Respondent also submitted his declaration in case number MI 02-00004-GM, stating that at the time of the filing of the involuntary bankruptcy petition, Respondent was aware that the debtor had leased the Gloucester property to a third party, but that Respondent was unaware of the debtor's current address and that Respondent was unable to contact the debtor.

44. Contrary to Respondent November 26, 2002 declaration that he was unaware of the debtor's current address and that he was unable to contact the debtor, Respondent had previously submitted a declaration executed by Plascencia in Los Angeles on September 23, 2002, in support of Respondent's September 24, 2002 ex parte application to lift the 180-day bar.

45. Contrary to Respondent's November 26, 2002 declaration that he was unaware of the debtor's current address and that he was unable to contact the debtor, Respondent had previously submitted a declaration executed by Plascencia on November 24, 2002, in support of Respondent's November 26, 2002 Response to Order to Show Cause in case number MI 02-00004-GM.

46. On February 6, 2004, an escrow account was established with Westfield Escrow Inc. to purchase the Gloucester property.

47. On March 11, 2004, Respondent, while acting as a real estate broker, received \$16,750 in sale commission from Westfield Escrow Inc. for brokering the Gloucester property sale.

48. On March 11, 2004, Respondent's corporation, Tommy Trojan, received a check, which was endorsed and negotiated by Respondent, for \$69,745.36 from Westfield Escrow Inc.

49. Title 11 United States Code section 327(a) provides that, with the court's approval, an attorney may be employed by a debtor in possession or a trustee, only if the attorney does not hold or represent an interest adverse to the estate and that the attorney is a disinterested person.

50. Rule 2014(a) of the Federal Rules of Bankruptcy Procedures requires disclosure to the bankruptcy court and to the trustee, an attorney's connections with the debtor, creditors, or other party in interest, their respective attorneys and accountants.

51. As the owner of Tommy Trojan, a creditor of Plascencia, Respondent held an interest adverse to Plascencia's estate.

52. As the owner of Tommy Trojan and as the real estate broker who brokered the sale of the Gloucester property, Respondent had a substantial interest in the debtor's property.

53. At all times relevant to these charges, Respondent did not disclose to the bankruptcy court and to the trustee that Respondent was the owner of Tommy Trojan, which claimed a 50 percent property interest in the Gloucester property belonging to the debtor.

b. Conclusions of Law.

E. By encouraging or maintaining Plascencia's voluntary bankruptcy action, when Respondent had no reasonable belief that Plascencia could forestall the foreclosure on the Gloucester property, because Respondent knew or should have known that Plascencia did not have the requisite mortgage payments to prevent the foreclosure, Respondent willfully violated Business and Professions Code section 6068, subdivision (g).

F. By failing to disclose to the bankruptcy court and to the trustee that Respondent held or represented an interest adverse to Plascencia, and that Respondent was not a disinterested person in the Plascencia bankruptcy matter, Respondent failed to comply with Title 11 United States Code section 327(a) and rule 2014(a) of the Federal Rules of Bankruptcy Procedure, in willful violation of Business and Professions Code section 6068, subdivision (a).

G. By failing to disclose to the bankruptcy court that Respondent held or represented an interest adverse to Plascencia and that Respondent was not a disinterested person in the Plascencia bankruptcy matter, Respondent sought to mislead a bankruptcy judge, in willful violation of Business and Professions Code section 6068, subdivision (d).

H. By submitting to the bankruptcy court a declaration in which Respondent stated that he was unaware of Plascencia's current address and that Respondent was unable to contact Plascencia, when Respondent was in communication with Plascencia only two days before Respondent's declaration, Respondent sought to mislead a bankruptcy judge, in willful violation of Business and Professions Code section 6068, subdivision (d).

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DISMISSALS.

The parties respectfully request this court to dismiss the following alleged violations, in the interest of justice:

<u>Case Number</u>	<u>Count</u>	<u>Alleged Violation</u>
03-O-02903	Four	Business and Professions Code section 6106;
03-O-03237	One	Rule 3-310(B)(1);
03-O-03237	Four	Business and Professions Code section 6103; and
03-O-03237	Seven	Business and Professions Code section 6106.

PRIOR DISCIPLINE.

Although Respondent has three prior records of discipline, the nature and chronology of his prior misconduct must be evaluated, to properly fulfill the purposes of lawyer discipline set forth in standard 1.3.¹ Merely declaring that an attorney has three impositions of discipline, without more analysis, may not adequately justify disbarment.² Respondent's prior records are summarized as follows:

- 1) (a) State Bar Court case number of prior case: 96-C-01397
- (b) Date prior discipline effective: February 21, 1998

¹ *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.

² *In the Matter of Miller, supra*, 1 Cal. State Bar Ct. Rptr. at p. 136. In *Miller*, the attorney had two prior records of discipline. In his first prior, Miller was publicly reprimanded and ordered to pass the Professional Responsibility Examination ("PRE") within one year. Miller had stipulated in that prior case, that he failed to complete services in a personal injury case, resulting in that client's cause of action being time-barred. Miller's second prior arose from his failure to timely pass the PRE, for which he was suspended for two years, stayed, conditioned on sixty days of actual suspension or until he passes the PRE, whichever is greater. In the third disciplinary proceeding, after considering the nature and chronology of Miller's prior records, the Review Department determined that the referee's disbarment recommendation was excessive and, instead, recommended three years of stayed suspension, conditioned on a period of actual suspension for one year.

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

On February 23, 1996, Respondent was convicted of violating California Penal Code section 166(a)(4), a misdemeanor, for violating a restraining order. The facts and circumstances surrounding Respondent's violation of the restraining order did not involve moral turpitude, because his violation of that order resulted from his accompanying an associate to a restaurant where prospective witnesses for a hearing to modify the restraining order were meeting, but where the opposing party was also present. Respondent's conduct in going to the restaurant was for the purpose of effectuating service of subpoenas on his witnesses, to secure their appearance at the hearing.

(d) Degree of prior discipline: One year of stayed suspension and two years of probation with conditions.

2) (a) State Bar Court case number of prior case: 00-O-10084

(b) Date prior discipline effective: January 11, 2001

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

Business and Professions Code sections 6103 and 6068, subdivision (k). This prior disciplinary record arose from Respondent's failure to promptly file, for four quarterly reporting periods, the required written statements from a treating psychiatrist, clinical psychologist, or clinical social worker in accordance with the terms and conditions of Respondent's disciplinary probation in connection with case number 96-C-01397.

(d) Degree of prior discipline: One year of stayed suspension and one year of probation with conditions.

3) (a) State Bar Court case numbers of prior case: 02-O-10705 and 02-O-13935 (Cons.)

(b) Date prior discipline effective: January 4, 2004

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

In case number 02-O-10705, Respondent stipulated to the following violations, which arose from misconduct during the period of 2001 to 2002: By failing to maintain client funds in a trust account, Respondent violated rule 4-100(A); by failing to promptly pay medical providers, Respondent violated rule 4-100(B)(3); by failing to render appropriate

accounts at a client's request, Respondent violated rule 4-100(B)(4); and by misappropriating at least \$5,700 of client's funds, Respondent violated Business and Professions Code section 6106.

In case number 02-O-13935, Respondent stipulated to the following violations, which arose from misconduct in 2002: By filing a bankruptcy petition on behalf of a person who was not Respondent's client, without that person's authorization, Respondent violated Business and Professions Code section 6104; by failing to report to the State Bar within 30 days of court imposed sanctions in the amount of \$1,500, Respondent violated section 6068, subdivision (o)(3); by knowingly submitting inaccurate schedules in a bankruptcy matter, Respondent sought to mislead a bankruptcy judge, in violation of section 6068, subdivision (d), and that such conduct involved moral turpitude, dishonesty, or corruption, in violation of section 6106.

(d) Degree of prior discipline: 18 months actual suspension, three years of stayed suspension and four years of probation, and until Respondent makes restitution.

CALIFORNIA RULES OF COURT, RULE 955 EXCLUSION.

It is not recommended that the California Supreme Court order Respondent to comply with the provisions of rule 955 of the California Rules of Court, because Respondent has already been ordered to comply with rule 955 in connection with case number 02-O-10705.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A(7), was June 2, 2005.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of June 2, 2005, the estimated prosecution costs in this matter are approximately \$7,190.31. Respondent acknowledges that this figure is an estimate only. 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.

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AUTHORITIES SUPPORTING DISCIPLINE.

a. Standards.

Standard 1.7(b) provides that, where a member has a record of two prior impositions of discipline, the degree of discipline imposed in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominates.

Standard 2.2(a) provides that culpability of a member of willful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominates, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances.

Standard 2.2(b) provides that a violation of rule 4-100 not resulting in the wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

Standard 2.3 provides that culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a client or another person shall result in actual suspension or disbarment, depending on the gravity of harm.

Standard 2.6(a) provides that a violation of Business and Professions Code section 6068 shall result in disbarment or suspension, depending on the gravity of the offense or harm to any victim, with due regard to the purposes set forth in standard 1.3.

b. Case Law.

An attorney's honest belief that he is entitled to retain client funds as his fees, although his belief is mistaken, unreasonable, or unsubstantiated, does not necessarily warrant a conclusion that his conduct is an act involving moral turpitude or dishonesty.³ While such state of mind may absolve that attorney of moral turpitude in connection with misappropriating client funds, it is not a defense to the misappropriation charge itself.⁴

³ *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar. Ct. Rptr. 480, 490-492.

⁴ *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar. Ct. Rptr. 1,10; and *Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 332: the good faith of an attorney in believing that she was authorized to use client trust funds for the payment of fees is not a defense to a charge of

The following cases are instructive on the appropriate level of discipline in this case:

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar. Ct. Rptr. 185.

In *Lilly*, the attorney was disciplined for misappropriating \$20,000 of client funds, which he did not maintain in a trust account, and for misrepresenting to a bank that the funds were held in a trust account. Lilly was found culpable of violating former rule 8-101(A) [which is congruent to current rule 4-100(A)], for his failure to keep client funds in a proper trust account, and section 6106, for his commission of an act involving dishonesty or moral turpitude. In mitigation, the Lilly had no prior disciplinary record in 21 years of law practice. In aggravation, Lilly used funds from a probate estate, without prior court approval, to make restitution.

The Review Department recommended five years of stayed suspension and five years of probation, conditioned on three years of actual suspension and until proof of rehabilitation under standard 1.4(c)(ii) is established, along with other probation conditions. Compliance with rule 955 was also recommended.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar. Ct. Rptr. 652.

In *Tindall*, the attorney was disciplined for misappropriating \$24,842 of client funds, in violation of section 6106; for failing to promptly pay those funds to the client, in violation of former rule 8-101(B)(4) [which is congruent to current rule 4-100(B)(4)]; for failing to promptly respond to client inquiries, in violation of section 6068(m); for failure to complete the work for which he was hired, in violation of former rule 6-101(A)(2) [which is congruent to current rule 3-110(A)]; and for failure to properly withdraw from employment, in violation of former rule 2-111(A)(2) [which is congruent to current rule 3-700(A)(2)]. In mitigation, Tindall had served poor and disadvantaged clients in his practice. In aggravation, Tindall breached other duties owed to the client and he lacked appreciation for his duty as an attorney.

The Review Department recommended five years of stayed suspension and five years of probation, conditioned on three years of actual suspension and until restitution is made to the client, and until proof of rehabilitation under standard 1.4(c)(ii) is established, along with other probation conditions. Compliance with rule 955 was also recommended.

misappropriation. See also, *Dudugjian v. State Bar* (1991) 52 Cal.3d 1092, 1099: "petitioners honestly believed that the [clients] had given them permission to retain the settlement funds. But the fact remains that an honest belief is simply not a defense for purposes of rule 8-101 [which is congruent to current rule 4-100]."

OTHER CONDITIONS NEGOTIATED BY THE PARTIES.

Within 30 days from the effective date of discipline, Respondent must send to Grace Cruz and Thomas DiMartino an itemized final bill and any refund to which Grace Cruz and Thomas DiMartino are entitled. Respondent must include a notification to Grace Cruz and Thomas DiMartino that Grace Cruz and Thomas DiMartino may request fee arbitration to resolve any fee dispute. Respondent must provide the Office of Probation with a copy of his accounting, notice of fee arbitration, and satisfactory proof of payment, if any, within 10 days of mailing.

Within 10 days of any objection to the accounting by Grace Cruz and Thomas DiMartino, Respondent must offer to Grace Cruz and Thomas DiMartino in writing, via certified mail, to arbitrate the fee matter pursuant to Business and Professions Code section 6200 et seq. Pursuant to section 6204, subdivision (a), of the Business and Professions Code, Respondent also must offer to be bound by the award of the arbitrator. Respondent must provide the Office of Probation with a copy of the letter within 10 days of mailing.

Respondent waives any objection of payment to Grace Cruz and Thomas DiMartino by the State Bar Client Security Fund based on a binding fee award.

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In the Matter of THOMAS CHARLES LOFFARELLI	Case number(s): 03-0-02903; 03-0-03237-PEM (Consolidated)
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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.

JUNE 24, 2005
Date


Respondent's signature

THOMAS CHARLES LOFFARELLI
Print name

Date

Respondent's Counsel's signature

Print name

JUNE 24, 2005
Date


Deputy Trial Counsel's signature

ERIC H. HSU
Print name

(Do not write above this line.)

In the Matter of THOMAS CHARLES LOFFARELLI	Case number(s): 03-0-02903; 03-0-03237-PEM (Consolidated)
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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.)

Date

6/27/05

Judge of the State Bar Court


RICHARD A. HONN

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 July 1, 2005, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed July 1, 2005**

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

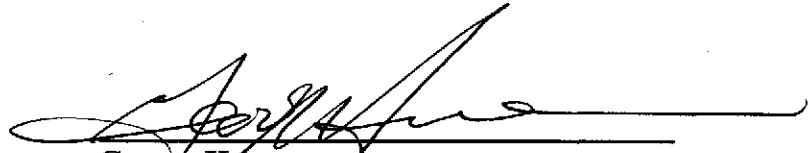
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**THOMAS C. LOFFARELLI
12400 VENTURA BLVD #126
STUDIO CITY CA 91604-2406**

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

ERIC HSU, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **July 1, 2005**.



**George Hue
Case Administrator
State Bar Court**