FILED AUGUST 30, 2006

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	**Case No. 05-O-02581-RAH**
	)	
JOE ALFRED LEYVA,	)	
	)	
Member No. 175131,	)	**DECISION**
	)	
A Member of the State Bar.	)	

I. Introduction

In this default disciplinary matter, respondent **Joe Alfred Leyva** is charged with multiple acts of professional misconduct in a single client matter, including (1) failing to perform services competently; (2) committing acts of moral turpitude; (3) failing to communicate with a client; (4) violating court orders; and (5) failing to cooperate with the State Bar.

This court finds, by clear and convincing evidence, that respondent is culpable of the six alleged counts of misconduct. In view of respondent's misconduct and the evidence in aggravation, the court recommends, among other things, that respondent be suspended from the practice of law for one year, that execution of suspension be stayed, and that he be actually suspended from the practice of law for one year and until the State Bar Court grants a motion to terminate respondent's actual suspension. (Rules Proc. of State Bar, rule 205.)

II. Pertinent Procedural History

On February 10, 2006, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a six-count Notice of Disciplinary Charges (NDC) at his official membership records address. The NDC was returned as unclaimed. A courtesy copy of the NDC was mailed to another address and that was not returned as undeliverable.

Yet, respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

On the State Bar's motion, respondent's default was entered on May 18, 2006, and respondent was enrolled as an inactive member on May 21, 2006, under Business and Professions Code section 6007, subdivision (e).[1]

Respondent did not participate in the disciplinary proceedings. This matter was submitted for decision on June 6, 2006, following the filing of the State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Respondent was admitted to the practice of law in California on December 8, 1994, and has been a member of the State Bar of California at all times since that date.

A. The Davis Matter

In December 2001, Clifford and Francine Davis, husband and wife, employed the Law Offices of Loren C. Phillips to pursue an action against Bank of America and other parties involved in the foreclosure of their home (the foreclosure matter). The Law Offices of Loren C. Phillips assigned respondent to handle the foreclosure matter on behalf of Mr. and Mrs. Davis.

On December 14, 2001, respondent informed Diamond Realty Co. that he was representing Mr. and Mrs. Davis in the foreclosure matter.

On June 17, 2002, respondent informed EMC Mortgage Corporation (EMC) that he was representing Mr. and Mrs. Davis and demanded a full accounting of the proceeds from the foreclosure sale of the Davis home.

On July 18, 2002, Christopher Carman, Vice President and Associate General Counsel for EMC, told respondent to contact attorney Tammy Covellone, the foreclosure trustee, for an accounting of the foreclosure sale.

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[1]All references to section (§) are to the Business and Professions Code, unless otherwise indicated.

On August 7 and 20, 2002, respondent wrote to Covellone, requesting that the excess funds from the foreclosure sale be distributed to Mr. and Mrs. Davis. Thereafter, Mr. and Mrs. Davis received the excess funds from the foreclosure sale. After August 2002, respondent had no further contact with Bank of America or other defendants in the foreclosure matter.

In February 2003, respondent told Mr. and Mrs. Davis that he had filed a complaint on their behalf against the defendants in the foreclosure matter and gave them a nonconformed copy of the complaint. At the time respondent made this representation to them, he knew that he had not filed a complaint on their behalf.

Respondent did not file a breach of contract complaint until one year later on February 5, 2004, entitled *Cliff C. Davis and Francine Davis v. EMC Mortgage Corporation, Bank of America, et al.*, Los Angeles County Superior Court case number KC043658 (the breach of contract action). Respondent did not serve the named defendants in the breach of contract action with the summons and complaint.

On February 23, 2004, Mr. Davis wrote respondent and Loren C. Phillips regarding his matter. Mr. Davis complained about the delay in his case and advised respondent and Phillips that he had reviewed his file, and it appeared there had been no recent correspondence with the defendants in the breach of contract action.

On March 24, 2004, respondent wrote to Mr. Davis, stating that the defendants in the breach of contract action had been sent the complaint and that he was attempting to schedule a mediation, voluntary settlement conference (VSC) or arbitration. When respondent made this representation to Mr. Davis, he knew that the defendants in the breach of contract action had never been served with the complaint and that there were no efforts to schedule a mediation, VSC or arbitration.

On April 16, 2004, the court scheduled an order to show cause (OSC) hearing for May 20, 2004, regarding respondent's failure to serve the complaint and/or file a proof of service in the breach of contract action.

On the same day, the court served respondent with notice of the May 20, 2004 OSC and ordered respondent to give the named parties in the breach of contract action notice of the OSC. Respondent received the notice but did not notify the defendants.

On May 20, 2004, respondent appeared but none of the defendants appeared at the OSC in the breach of contract action. Respondent represented to the court that the defendants had been served a week earlier and asked the court to discharge the OSC. Based on respondent's representation, the court discharged the OSC and set a case management conference for July 12, 2004.

In fact, respondent knew the representation was false because he knew that they had not been served with a summons and complaint.

At the May OSC hearing, the court ordered respondent to give the defendants notice of the July 12 case management conference. Respondent did not do so.

On July 12, 2004, respondent appeared at the case management conference. As of July 12, 2004, the defendants in the breach of contract action had not been served with the summons and complaint and did not appear at the case management conference.

On July 12, 2004, respondent represented to the court that the breach of contract action may proceed by way of binding arbitration. As a result, the court continued the matter to August 10, 2004 while awaiting a stipulation to binding arbitration.

In fact, when respondent represented to the court that the matter may proceed by arbitration, respondent knew the representation was false and misleading because he knew the defendants had not agreed to binding arbitration.

On August 10, 2004, respondent failed to appear at the continued case management conference, the court scheduled an OSC re sanctions hearing for September 16, 2004, and the court ordered respondent to give notice of the September 16 OSC hearing to all parties of record in the matter. The court's order was properly served on respondent. Respondent received the notice but failed to give notice to the parties.

On September 16, 2004, respondent appeared by telephone at the OSC and told the court that he had submitted a dismissal of the breach of contract action on September 15, 2004. In fact, when respondent made this representation to the court, respondent knew it was false because he knew he had not filed a dismissal of the breach of contract matter. Respondent did not submit a dismissal of the breach of contract action without prejudice until January 7, 2005. Based on respondent's

representation that a dismissal as to the entire action had been submitted, the court discharged the OSC.

On December 10, 2004, the court ordered respondent to appear at an OSC hearing on January 10, 2005, regarding his failure to file a dismissal or a judgment in the breach of contract action. The court's order was properly served on respondent and respondent received the order.

On January 10, 2005, the court discharged the OSC re failure to file dismissal and dismissed the entire breach of contract action. Respondent did not tell Mr. and Mrs. Davis that their breach of contract action had been dismissed without prejudice.

On February 25, 2005, respondent represented to Mr. Davis that he had requested binding arbitration. In fact, when respondent made this representation to Mr. Davis, he knew it was false because he knew the breach of action matter had already been dismissed.

In March 2005, respondent provided a document to Mr. Davis which purportedly was drafted and signed by EMC's counsel, Carman, entitled "Request for Hearing Before IVAMS" (Request for Hearing). In the Request for Hearing, Carman purportedly asked the court to schedule a hearing in the breach of contract action. Respondent represented to Mr. Davis that the Request for Hearing had been filed with the court by EMC.

The Request for Hearing purportedly contained Carman's signature. However, Carman had not drafted or signed the document.

At the time respondent presented the purported Request for Hearing to Mr. Davis, respondent knew Carman had not drafted or signed the document, and respondent knew Carman and EMC had not requested a hearing in the breach of contract action.

In January 2005, respondent signed, or caused to be signed, the signature of Carman on the purported Request for Hearing without Carman's knowledge or consent.

On March 16, 2005, respondent, without warning, sent Mr. Davis his file and a substitution of attorney form, which was executed by respondent.

On June 30 and July 14, 2005, the State Bar wrote to respondent regarding the Davis matter. The letters were addressed to respondent at his current State Bar membership records address. The United States Postal Service did not return the State Bar's letters as undeliverable or for any other

reason.

The letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Davis matter. Respondent did not respond to the letters or otherwise communicate with the State Bar.

B. Conclusions of Law

Count 1: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))[2]

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence.

Although respondent filed a complaint on behalf of Mr. and Mrs. Davis, he never served the summons and complaint on the defendants. Thus, respondent intentionally and recklessly failed to perform legal services with competence, in wilful violation of rule 3-110(A), by failing to serve the defendants in the breach of contract action and by failing to otherwise pursue the breach of contract action on behalf of Mr. and Mrs. Davis.

Count 2: Misrepresentations (Bus. & Prof. Code, § 6106)

Section 6106 provides that a member's commission of any act of moral turpitude, dishonesty or corruption constitutes grounds for suspension or disbarment.

There is clear and convincing evidence that respondent committed acts of moral turpitude in wilful violation of section 6106 by making multiple misrepresentations to the court and to his clients, including as follows:

(1) By misrepresenting to Mr. and Mrs. Davis that he had filed a complaint on their behalf when he had not; (2) by misrepresenting to them and the court that he had served the defendants in the breach of contract action when he had not; (3) by misrepresenting to the court that the matter would proceed by arbitration when he had not even served the defendants and the defendants had not agreed to arbitration; (4) by misrepresenting to the clients that he was pursuing the breach of contract action when he knew he had dismissed the case; and (5) by misrepresenting to the court that

[2]References to rule are to the current Rules of Professional Conduct, unless otherwise noted.

he had dismissed the breach of contract action when he had not.

Count 3: Misrepresentations (Bus. & Prof. Code, § 6106)

By preparing or causing to be prepared the Request for Hearing by signing Carman's name to the Request for Hearing, or causing Carman's name to be signed to the Request for Hearing, without Carman's knowledge or consent and by presenting the Request for Hearing to Davis as having been filed by a defendant in the breach of contract action when he knew it had not, respondent committed acts involving moral turpitude, dishonesty or corruption in wilful violation of section 6106.

Count 4: Failure to Obey Court Orders (Bus. & Prof. Code, § 6103)

Section 6103 requires attorneys to obey court orders and provides that the wilful disobedience or violation of such orders constitutes cause for disbarment or suspension.

The court in the breach of contract action ordered respondent to notify opposing parties regarding certain court appearances in April, May, August and December 2004. Respondent failed to comply with those orders. By repeatedly disobeying the court orders in the breach of contract action, respondent wilfully violated section 6103.

Count 5: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients with regard to which the attorney has agreed to provide legal services.

By failing to inform Mr. and Mrs. Davis that he had not served the defendants and that he had dismissed the breach of contract action, respondent failed to inform them of significant developments in a matter in which respondent had agreed to provide legal services in wilful violation of section 6068, subdivision (m).

Count 6: Failure to Cooperate With the State Bar (Bus. & Prof. Code, § 6068, subd. (i))

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney.

By failing to provide a response to the State Bar's letters in the Davis matter, respondent failed to cooperate in a disciplinary investigation, in wilful violation of section 6068, subdivision (i).

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)[3]

However, respondent has no prior disciplinary record in 8 years of practice at the time of his misconduct in 2003, which is a mitigating factor. (Std. 1.2(e)(i).)

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent committed multiple acts of wrongdoing, including failing to perform competently, failing to communicate with clients, making misrepresentations to the court and to the clients, and failing to obey court orders. (Std. 1.2(b)(ii).)

Respondent's misconduct harmed the clients and the administration of justice. (Std. 1.2(b)(iv).) His failure to perform and dismissal of the matter without clients' authorization or knowledge harmed the clients' ability to pursue their matters. Respondent's multiple misrepresentations to the court wasted the court's resources with unwarranted hearings, harming the administration of justice.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Although the court repeatedly ordered respondent to notify the opposing parties concerning court appearances, he ignored the court's orders. After the case was dismissed, respondent executed a substitution of attorney without the clients' consent.

Respondent's failure to participate in this disciplinary matter before the entry of his default is also a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

The purpose of disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v.*

[3]All further references to standards are to this source.

State Bar (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

The standards provide a broad range of sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the victim. (Stds. 2.3, 2.4, and 2.6.) While the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges one year actual suspension, citing *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73, *In the Matter of Chestnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, and *Reznik v. State Bar* (1969) 1 Cal.3d 198 in support of its recommendation. The court agrees. Respondent's repeated acts of deceit over a period of two years are egregious.

In *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166, the attorney was actually suspended for six months, with two years' stayed suspension and three years' probation, for falsely representing to two judges that he had personally served papers on opposing party. He had a prior record of discipline and was in practice less than five years at the time of his second instance of misconduct.

In *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73, the attorney was actually suspended for one year with a one-year stayed suspension and a one-year probation for his misconduct in three matters spanning over three years and he had practiced for only about six years when he commenced his client abandonment and misrepresentations. The Review Department found his repeated and protracted deceit on his clients even more serious than the harm that he had caused them.

In view of the case law and the standards, the court agrees that a lengthy period of actual suspension is necessary to protect the public.

Failing to appear and participate in this hearing shows that respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) His failure to participate in this proceeding leaves the court without information about the underlying cause of respondent's misconduct or of any mitigating circumstances surrounding his misconduct.

Balancing all relevant factors, respondent's misconduct, the case law, the standards, and the mitigating and aggravating evidence, placing respondent on an actual suspension for one year would be appropriate to protect the public and to preserve public confidence in the profession.

VI. Recommended Discipline

Accordingly, the court hereby recommends that respondent **Joe Alfred Leyva** be suspended from the practice of law for one year, that said suspension be stayed, and that respondent be actually suspended from the practice of law for one year and until he files and the State Bar Court grants a motion to terminate his actual suspension (Rules Proc. of State Bar, rule 205).

It is also recommended that respondent be ordered to comply with any probation conditions hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension. (Rules Proc. of State Bar, rule 205(g).)

It is also recommended that if respondent is actually suspended for two years or more, he will remain actually suspended until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii).

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination during the period of his actual suspension. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 955, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter. Wilful failure to comply with the provisions of rule 955 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.[4]

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[4]Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

VII. Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: August ___, 2006

Richard A. Honn
Judge of the State Bar Court