

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of ) Case Nos.: **05-O-04218**  
)  
**JOHN ANTHONY LUETTO,** )  
) **DECISION AND ORDER SEALING**  
**Member No. 71747,** ) **CERTAIN DOCUMENTS; ORDER OF**  
) **INVOLUNTARY INACTIVE**  
A Member of the State Bar. ) **ENROLLMENT**  
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**I. Introduction**

In this original disciplinary proceeding, respondent **John Anthony Luetto** was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). As the court has now terminated respondent from the ADP, the court will recommend to the Supreme Court that respondent be disbarred from the practice of law in California and that he be ordered to comply with certain other requirements.

**II. Pertinent Procedural History**

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) against respondent on August 24, 2006. On August 31, 2006, the matter was assigned to the Hon. Richard A. Honn.

Respondent filed a response to the NDC on September 18, 2006. On December 28, 2006, the undersigned judge, who was at that time the settlement judge in this matter, referred this

matter for evaluation of respondent's eligibility for participation in the State Bar Court's Alternative Discipline Program.

In furtherance of his participation in the ADP, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) on December 28, 2006, to assist him with his mental health issues.

In January 2007, this matter was reassigned to the undersigned judge for all further proceedings.

On June 22, 2007, respondent signed a LAP Participation Plan. On July 16, 2007, respondent also submitted a declaration (John Anthony Luetto's First Amended Nexus Statement), which met with the approval of the court and which established a nexus between respondent's mental health issues and his misconduct in this matter.

Thereafter, in October 2007, respondent executed a Stipulation Re Facts and Conclusions of Law (Stipulation), which set forth the factual findings, legal conclusions and mitigating and aggravating circumstances in this matter.

In December 2007, the court received the brief submitted by the State Bar regarding its disciplinary recommendation, as well as respondent's brief regarding discipline.

On April 7, 2008, the State Bar executed the Stipulation, which respondent had previously signed. The court then advised the parties of (1) the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and (2) the discipline which would be recommended if respondent failed to successfully complete or was terminated from the ADP. After agreeing to those alternative possible dispositions, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court executed a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) formally advising the parties in writing of the alternative discipline recommendations

in this matter; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on April 7, 2008.<sup>1</sup>

On April 7, 2008, the court also issued an order pursuant to Business and Professions Code section 6233 enrolling respondent as an inactive member of the State Bar of California effective August 22, 2008, and until further order of the court.

Respondent thereafter participated in both the LAP and the State Bar Court's ADP. However, on September 28, 2010, the State Bar filed a motion for the issuance of an Order to Show Cause (OSC) as to why respondent should not be terminated from the ADP. On October 14, 2008, the court received respondent's unsigned reply to the State Bar's motion.

On October 26, 2008, an Alternative Discipline Program Status Conference was held. Respondent appeared telephonically and the State Bar deputy trial counsel, who was assigned to this matter, appeared in-person. At that conference, respondent stipulated to termination from the ADP. Consequently, on October 26, 2010: (1) the court filed an order, terminating respondent from the ADP; (2) the parties' Stipulation Re Facts and Conclusions of Law was filed; and (3) this matter was submitted for decision.

The court now issues this decision recommending the high level of discipline set forth in the Confidential Statement.

### **III. Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on December 22, 1976, and has been a member of the State Bar of California at all times since.

The parties' Stipulation, including the court's order approving the Stipulation, is attached hereto and incorporated by reference, as if fully set forth herein. The Stipulation sets forth the factual findings, legal conclusions and aggravating and mitigating circumstances in this matter.

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<sup>1</sup> The parties' Stipulation, the Confidential Statement, and the ADP Contract were all lodged on April 7, 2008.

In brief, in case No. 05-O-04218, respondent stipulated in a single client matter to the following willful violations of the State Bar of California's Rules of Professional Conduct and/or the State Bar Act: (1) section 6106 of the Business and Professions Code<sup>2</sup> for committing acts of moral turpitude, dishonesty or corruption by misappropriating \$43,656.28 in client funds and making misrepresentations; (2) rule 4-100(A) of the Rules of Professional Conduct of the State Bar of California<sup>3</sup> for not maintaining funds received on behalf of a client in a client trust account; (3) rule 4-100(B)(4) for failing to promptly pay client funds as requested by a client; (4) rule 4-100(B)(1) for failing to notify a client promptly of the receipt of the client's funds; (5) rule 3-110(A) for failing to perform legal services with competence; and (6) section 6068, subdivision (i) for failing to cooperate and participate in a disciplinary investigation pending against him.

The parties also stipulated to certain aggravating and mitigating factors in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>4</sup> stds. 1.2(e) and (b).)

In aggravation, respondent has a prior record of discipline. (Std. 1.2(b)(i).) Effective May 20, 2004, respondent, among other things, was privately reprovved in case No. 02-O-11512. Discipline was imposed for respondent's violations of rule 4-100(B)(4) and section 6068, subdivision (m). As further aggravating circumstances, respondent's current misconduct evidences multiple acts of misconduct (std. 1.2(b)(ii)); trust property funds were involved, and respondent was unable or refused to account to the client or person who was the object of the

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<sup>2</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

<sup>3</sup> Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

<sup>4</sup> All further references to standard(s) or std. are to this source.

misconduct for improper conduct toward the property or funds (std. 1.2(b)(iii)); and respondent's misconduct significantly harmed a client (std. 1.2(b)(iv)).

In mitigation, respondent suffered emotional and physical difficulties at the time of the acts of professional misconduct, which expert testimony would establish were directly responsible for the misconduct (std. 1.2(e)(iv)); and, respondent's 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 misconduct (std. 1.2(e)(vi)). However, as respondent failed to successfully complete the ADP, he receives no mitigation credit for his participation in either the ADP or the LAP.

#### **IV. Discussion**

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

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(a), 2.2(a), 2.3, 2.4(b), and 2.6 and *Harford v. State Bar* (1990) 52 Cal.3d 93, *In the Matter of Spaiith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, and *Himmel v. State Bar* (1971) 4 Cal.3d 786.

Accordingly, because respondent has been terminated from the ADP, this court recommends to the Supreme Court the imposition of the discipline set forth in the Confidential Statement of Alternative Dispositions and Orders relating to a termination from or failure to successfully complete the ADP.

## **V. Recommendations**

### **A. Discipline**

It is hereby recommended that respondent **John Anthony Luetto**, State Bar No. 71747, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

### **B. Rule 9.20, California Rules of Court**

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within thirty (30) and forty (40) calendar days, respectively, after the effective date of the Supreme Court's final disciplinary order in this matter.

### **C. Costs**

It is 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.

## **VI. Order of Involuntary Inactive Enrollment**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Said inactive enrollment will be effective upon the filing of this decision and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.<sup>5</sup>

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<sup>5</sup> The court also orders that respondent's inactive enrollment pursuant to Business and Professions Code section 6233 be terminated upon the filing of this decision.

## **VII. Direction Re Decision and Order Sealing Certain Documents**

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(C) of the Rules of Procedure of the State Bar of California (Rules of Procedure), all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosures. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

**IT IS SO ORDERED.**

Dated: January 118, 2011.

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RICHARD A. PLATEL  
Judge of the State Bar Court