

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of	)	<b>Case No. 06-N-13425-PEM;</b>
	)	<b>06-O-10649 (Cons.)</b>
<b>MICHAEL THOMAS DELL'OSSO,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 103439,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this consolidated default matter, respondent **Michael Thomas Dell'Osso** is found culpable, by clear and convincing evidence, of (1) failing to return unearned fees; (2) failing to maintain an official address with the State Bar; and (3) failing to comply with California Rules of Court, rule 955,<sup>1</sup> as ordered by the California Supreme Court on January 20, 2006, in S138781 (State Bar Court case No. 04-O-13507 et al.).

In view of respondent's misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law and be ordered to make restitution.

**II. Pertinent Procedural History**

**A. First Notice of Disciplinary Charges (Case No. 06-N-13425)**

On August 22, 2006, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served via certified mail, return receipt requested, a Notice of Disciplinary Charges (NDC) on respondent at his official membership records address (official address). On that same date, the State Bar sent a courtesy copy of the NDC to respondent by regular

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<sup>1</sup>All references to rule 955 are to California Rules of Court, rule 9.20 (renumbered effective January 1, 2007). Because the Notice of Disciplinary Charges was filed prior to the change in the numbering of this rule, the original numbering will be used in this decision.

first class mail to 22 Stewart Road, Lathrop, CA 95330-9769 (the “Lathrop address”), which address was contained in respondent’s case file. On August 29, 2006, the United States Postal Service (USPS) returned the certified mailing to the State Bar, bearing the stamp, “Forward Time Exp. RTN to Send. Law Office of Michael Dellosso. 22 Stewart RD. Lathrop, CA 95330-9769.” The courtesy copy was not returned to the State Bar.

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

On September 20, 2006, the State Bar’s deputy trial counsel (DTC), who was assigned to the case, reached respondent by telephone. Respondent informed the assigned DTC that he intended to resign from the State Bar. On November 20, 2006, the DTC received correspondence from respondent, which consisted of a photocopy of a signed resignation dated, “4-4-06.” On November 20, 2006, the DTC wrote to respondent, requesting that respondent send him the original resignation. Since that date, the State Bar has had no further contact with respondent.

On the State Bar’s motion, respondent’s default was entered in case No. 06-N-13425 on April 18, 2007, and respondent was enrolled as an inactive member on April 21, 2007, under Business and Professions Code section 6007(e).<sup>2</sup> An order of entry of default was sent to respondent’s official membership records address by certified mail; a courtesy copy was sent by regular mail to respondent’s Lathrop address.

The matter was deemed submitted on May 28, 2007.

However, because of the filing of a second NDC against respondent, on February 28, 2007, the court ordered that the submission date of May 28, 2007, be vacated. The court also ordered that the matter be consolidated with case No 06-O-10649.

**B. Second Notice of Disciplinary Charges (Case No. 06-O-10649)**

On February 28, 2007, the State Bar properly filed and served on respondent a second NDC at respondent’s official membership records address.

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

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<sup>2</sup>All references to section (§) are to Business and Professions Code, unless otherwise indicated.

On the State Bar's motion, respondent's default was entered on May 16, 2007, and respondent was enrolled as an inactive member on May 19, 2007, under Business and Professions Code section 6007(e). An order of entry of default was sent to respondent's official membership records address by certified mail. A courtesy copy was sent to respondent by regular mail to the Lathrop address.

On July 3, 2007, the State Bar filed a brief on culpability and discipline in the consolidated matters.

Respondent did not participate in the disciplinary proceedings. The consolidated matters were submitted for decision on July 9, 2007.

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

All factual allegations of the two NDCs 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 June 10, 1982, and has been a member of the State Bar of California at all times since that date.

#### **A. The Bromberg Matter (Case No. 06-O-10649)**

On February 5, 2005, Selfa Alvarez Bromberg (Bromberg) employed respondent to represent her regarding a possible marital dissolution action. When Bromberg retained respondent, she was not certain that she wanted to divorce her husband and informed respondent of her uncertainty. Bromberg and respondent agreed that no marital dissolution would be filed until Bromberg decided that she wanted to proceed with the divorce. Respondent assured Bromberg that if she chose not to go forward with the dissolution action, she would receive a full refund of any advance fees.

On March 2, 2005, Bromberg paid respondent \$2,000 in advance fees for future services in the possible marital dissolution. After March 2, 2005, however, Bromberg decided not to proceed with the marital dissolution action and informed respondent that she and her husband were reconciling.

On January 26, 2006, Bromberg sent respondent a letter, both by certified mail and regular U.S. mail. In that letter, Bromberg informed respondent that she no longer wished to go forward

with the marital dissolution and was terminating his services. She also requested a refund of her \$2,000 in advance fees.

The January 26, 2006 certified letter was returned to Bromberg as undeliverable by the United States Postal Service. It was stamped “Returned to Sender.” The box stamped “Unclaimed” was checked and a sticker attached to the certified letter, dated January 30, 2006, stated: “NOTIFY SENDER OF NEW ADDRESS DELLOSSO’ MICHAEL 22 STEWART RD LATHROP CA 95330-9769.” Respondent, however, did receive the letter mailed by regular U.S. mail. But, he did not respond.

Between February 5, 2005, and January 26, 2006, respondent and Bromberg had only two conversations. Respondent did not provide any legal services for Bromberg, nor did he provide any services of value. Yet, at no time did respondent refund any portion of the \$2,000 paid by Bromberg, despite her request that respondent refund the fees she had paid to him.

From April 11, 1997, through the February 28, 2007 filing date of the NDC, respondent’s official membership records address remained 120 E. 12th Street, Tracy, CA 95376. At no time since April 11, 1997, has respondent informed the State Bar of a change of address.

On February 2, 2007, a State Bar Deputy Trial Counsel sent a letter to respondent’s official membership records address. The letter was returned as undeliverable.

Respondent never informed the State Bar that he had moved and that his address was no longer valid. He never informed the State Bar of a new address.

***Count 1: Failure to Return Unearned Fees (Rule 3-700(D)(2))<sup>3</sup>***

Rule 3-700(D)(2) requires an attorney whose employment has terminated to refund promptly any part of a fee paid in advance that has not been earned. As respondent did not provide any legal services for Bromberg, nor provide any services of value for her, he did not earn any portion of the advance fee she paid to him. Yet, despite Bromberg’s January 26, 2006 letter to respondent, in which she notified him that she was terminating his employment and requested that respondent

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<sup>3</sup>References to rule are to the current Rules of Professional Conduct, unless otherwise noted.

return the \$2,000 advance fees that she had paid him, respondent never refunded any portion of those fees. Respondent, therefore, wilfully violated rule 3-700(D)(2) by failing to return any portion of the \$2,000 advance fees he received from Bromberg.

***Count 2: Failure to Update Membership Address (§ 6068, Subdivision (j))***

Section 6068, subdivision (j), states that a member must comply with the requirements of section 6002.1, which provides that respondent must maintain on the official membership records of the State Bar a current address and telephone number to be used for State Bar purposes.

By clear and convincing evidence, respondent wilfully violated section 6068(j) when he failed to maintain a current official membership records address. His official address has not been changed since 1997, and the State Bar mailings sent to that address were returned as undeliverable.

**B. Violation of California Rules of Court, Rule 955 (Case No. 06-N-13425)**

On January 20, 2006, in California Supreme Court case No. S138781 (State Bar Court case No. 04-O-13507 et al.), the Supreme Court suspended respondent from the practice of law for two years and until he shows proof satisfactory to the State Bar Court of rehabilitation, present fitness to practice, and present learning and ability in the law, pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, stayed the execution of the suspension, placed him on probation for two years, and actually suspended him for six months. Among other things, the Supreme Court ordered respondent to comply with rule 955, subdivisions (a) and (c), within 30 and 40 days, respectively, after the effective date of the Supreme Court order. The order became effective February 19, 2006, and was duly served on respondent.

Rule 955(c) mandates that respondent “file with the Clerk of the State Bar Court an affidavit showing that he ... has fully complied with those provisions of the order entered pursuant to this rule.”

Notice of the order was duly and properly served upon respondent in the manner prescribed by California Rules of Court, rule 29.4 (a),<sup>4</sup> at his address as maintained by the State Bar in

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<sup>4</sup>All references to rule 29.4(a) are to California Rules of Court, rule 8.532(a) (renumbered effective January 1, 2007). Because the Notice of Disciplinary Charges was filed prior to the change in the numbering of this rule, the original numbering will be used in this decision.

accordance with section 6002.1.

Respondent was to have filed the rule 955 affidavit by March 31, 2006, but to date, he has not done so and has offered no explanation to this court for his noncompliance. Whether respondent is aware of the requirements of rule 955 or of his obligation to comply with those requirements is immaterial. “Wilfulness” in the context of rule 955 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Therefore, the State Bar has established by clear and convincing evidence that respondent wilfully failed to comply with rule 955, as ordered by the Supreme Court.<sup>5</sup>

### ***Violation of Section 6103***

Accordingly, respondent’s failure to comply with rule 955 constitutes a violation of section 6103, which requires attorneys to obey court orders and provides that the wilful disobedience or violation of such orders constitutes cause for disbarment or suspension.

## **IV. Mitigating and Aggravating Circumstances**

### **A. Mitigation**

No mitigating evidence was offered or received. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>6</sup>

### **B. Aggravation**

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

Respondent has four prior records of discipline. (Std. 1.2(b)(i).)

1. In 2003, respondent was privately reprovved for: (a) failing to respond promptly to reasonable client status inquiries (in two matters) and also failing to keep a client reasonably informed of a significant development in the client’s legal matter (in one

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<sup>5</sup>Specifically, rule 955(d) provides that a suspended attorney’s wilful failure to comply with rule 955 constitutes a cause for disbarment or suspension and for revocation of any pending probation.

<sup>6</sup>All further references to standards are to this source.

of those two matters; (b) failing to cooperate and participate in a disciplinary investigation (in three matters); and (c) failing to refund an unearned fee (one matter). (State Bar Court case Nos. 02-O-14361; 02-O-14363; 02-O-15179, effective May 9, 2003)<sup>7</sup>

2. In 2005, upon stipulation, respondent was publicly reprovved for failing to comply with conditions attached to his prior private reproof, to wit, failing to provide any quarterly compliance reports, a final compliance report, proof of passage of the MPRE, and proof of Ethics School attendance and passage of the test given at the end of said course. (State Bar Court case No. 03-H-04989, effective January 12, 2005.)
3. In 2006, in the underlying matter, respondent was suspended from the practice of law for two years and until he complies with standard 1.4(c)(ii), stayed, placed on probation for two years on conditions including that he be actually suspended for six months for failing to respond to his client's reasonable status inquiries and for practicing law when he was not entitled to do so. (Supreme Court case No. S138781, effective February 19, 2006; State Bar Court case Nos. 04-O-13507; 04-O-13950.)
4. In 2006, respondent was suspended for two years, stayed, and actually suspended for one year and until respondent files and the State Bar Court grants a motion to terminate his actual suspension for failing to comply with the conditions attached to his 2005 public reproof (Supreme Court case No. S146419, effective December 15, 2006; State Bar Court case No. 05-H-05229.)<sup>8</sup>

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<sup>7</sup>Given that the State Bar did not submit a copy of respondent's first and fourth record of discipline, the court will take judicial notice of those records pursuant to Evidence Code section 452. (See, Rules Proc. of State Bar, rule 216.) The court, however, strongly cautions that it is the responsibility of the State Bar to submit a certified copy of all prior records of discipline before the case is submitted.

<sup>8</sup>As noted, in footnote 7, *ante*, the State Bar submitted only two of respondent's four prior records of discipline. The State Bar failed to submit the fourth prior record of discipline, which decision was filed July 21, 2006, and became final on December 15, 2006. (Rules Proc. of State Bar, rule 216 [a prior record of discipline consists of decisions, whether or not final, recommending imposition of discipline on a party who is presently the subject of a State Bar

Respondent committed multiple acts of wrongdoing, including failing to return unearned fees, failing to update his membership address, and failing to obey a court order by failing to comply with rule 955. (Std. 1.2(b)(ii).)

Respondent's misconduct significantly harmed a client. (Std. 1.2(b)(iv).) Respondent's failure to return unearned fees deprived Bromberg of her funds.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) He has yet to refund any portion of the unearned fees he received. Respondent also demonstrated indifference by failing to comply with rule 955(c), even after the first NDC in the instant proceeding was filed.

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

Respondent's misconduct involved his failure to return unearned fees, his failure to maintain a current membership records address, and failure to comply with rule 955. The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. (Stds. 1.6, 1.7(b), 2.6(a) and 2.10.)

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at p. 251.) The court will look to applicable case law for guidance. Nevertheless, while the standards

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Court proceeding[.]) Moreover, the fourth prior record of discipline had become final prior to the State Bar's filing of the second Notice of Discipline (Case No. 06-O-10649) in the instant matter. Thus, as indicated, this court sua sponte notes respondent's fourth prior record of discipline and takes judicial notice of the decision in State Bar Court case No. 05-H-05229 and of the Supreme Court order case No. S146419 filed November 15, 2006. (Evid. Code, § 452, subd. (d).)



are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges disbarment, citing several cases, including *Lydon v. State Bar* (1988) 45 Cal.3d 1181; *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439; *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593; *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382; and *Bercovich v. State Bar* (1990) 50 Cal.3d 116.

The court agrees with the recommendation of disbarment.

Here respondent failed to return unearned fees causing significant harm to his client. The harm to his client weighs heavily in assessing the appropriate level of discipline. Additionally, respondent's rule 955 violation is extremely serious. "[D]isbarment is generally the appropriate sanction for a willful violation of rule 955." (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent's wilful failure to comply with rule 955(c) undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys, although he has been given opportunities to do so. "Absent strong mitigating circumstances, a rule 955 violation warrants disbarment. (*In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 296.) In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.)

Moreover, respondent has failed to participate in the instant case. 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.

Further, respondent has four prior records of discipline and is actually suspended for one year, effective December 2006. Under standard 1.7(b) if a member has two prior records of

discipline, the degree of discipline in the current proceeding should be disbarment unless the most compelling mitigating circumstances predominate. In the instant matter, respondent failed to appear and did not submit any mitigating circumstances.

Accordingly, lesser discipline than disbarment is not warranted. In view of the serious and unexplained nature of respondent's misconduct, the lack of participation in these proceedings, the lack of any mitigating factors, the existence of a prior disciplinary record, and respondent's repeated failure to comply with the orders of the California Supreme Court, the court recommends disbarment as the only adequate means of protecting the public and the integrity of the legal profession.

Finally, it has long been held that "[r]estitution is fundamental to the goal of rehabilitation." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.) Restitution is a method of protecting the public and rehabilitating errant attorneys because it forces an attorney to confront the harm caused by his misconduct in real, concrete terms. (*Id.* at 1093.) Therefore, respondent should refund all legal fees to his client.

## **VI. Recommended Discipline**

Accordingly, the court hereby recommends that respondent **Michael Thomas Dell'Osso** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this State.

It is recommended that respondent make restitution to Selfa Alvarez Bromberg in the amount of \$2,000 plus 10% interest per annum from January 26, 2006 (or to the Client Security Fund to the extent of any payment from the fund to Selfa Alvarez Bromberg, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes proof thereof to the State Bar's Office of Probation. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective

date of its order imposing discipline in this matter.<sup>9</sup>

## **VII. Costs**

The court recommends 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.

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

It is ordered that respondent be transferred to involuntary inactive enrollment status. (Bus. & Prof. Code, § 6007(c)(4), and Rules Proc. of State Bar, rule 220(c).) The inactive enrollment will become effective three calendar days after service of this order.

Dated: September \_\_\_, 2007

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PAT McELROY  
Judge of the State Bar Court

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<sup>9</sup>Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar*, *supra*, 44 Cal.3d 337, 341.)