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State Bar Court of California
Hearing Department
San Francisco

Counsel For The State Bar Tammy Albertsen-Murray Deputy Trial Counsel 180 Howard Street San Francisco, California 94105 (415) 538-2527 Bar # 154248	Case Number (s) 06-O-11353-PEM	(for Court's use) <div style="text-align: center; font-size: 2em; font-weight: bold;">PUBLIC MATTER</div> <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div>  <div style="text-align: center;">FEB 21 2007</div> <div style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</div>
In Pro Per Respondent Ayal Abrams 88 Kearny Street, Suite 1000 San Francisco, CA 94108-5530 (415) 788-1900 Bar # 224469	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: Ayal Abrams Bar # 224469 A Member of the State Bar of California (Respondent)		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **March 5, 2003**.
- (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 consists of **9** pages, not including the order.
- (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."

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- (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.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ costs added to membership fee for calendar year following effective date of discipline (public reproof)
 - ☐ case ineligible for costs (private reproof)
 - ☐ costs to be paid in equal amounts 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
- (9) The parties understand that:
- (a) ☐ A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) ☐ A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) ☒ A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☐ State Bar Court case # of prior case
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

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- (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.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☒ ~~Proximate~~ **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.

- (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:

D. Discipline:

- (1) ☐ **Private reproof (check applicable conditions, if any, below)**
- (a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) ☐ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) ☒ **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) ☒ Respondent must comply with the conditions attached to the reproof for a period of **one year**.
- (2) ☒ During the condition period attached to the reproof, 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reprobation.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☒ 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 within one year of the effective date of the reprobation.
- ☐ No MPRE recommended. Reason: .
- (11) ☐ The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: AYAL ABRAMS

CASE NUMBER: 06-O-11353-PEM

FACTS AND CONCLUSIONS OF LAW.

Facts.

In early 2006, Respondent was the attorney of record for Brenlar Investments Inc. (hereinafter "Realtors") in a matter entitled *Marylee Stanley v. Bobby Tay; Alicia Knee; Pacific Union Real Estate; and Frank Howard Allen Real Estate*, Marin Superior Court Case No. CV 044687 (hereinafter "*Stanley v. Tay*").

The expert witness designations in the *Stanley v. Tay* matter were due by January 20, 2006.

On January 17, 2006, three days before the witness designations in *Stanley v. Tay* matter were due, Respondent telephoned and left a message for Lois Kadosh about serving as an expert witness on behalf of Realtors in the *Stanley v. Tay* matter. Ms. Kadosh is a real estate broker and consultant who often testifies as a expert witness in litigation matters.

On January 18, 2006, Ms. Kadosh returned Respondent's call and they discussed the possibility of Ms. Kadosh's serving as an expert for Realtors in the *Stanley v. Tay* matter. Respondent requested that Ms. Kadosh send to Respondent Ms. Kadosh's curriculum vitae (CV) and fee schedule for his review. Respondent did not hire Ms. Kadosh at that time.

On January 19, 2006 Ms. Kadosh faxed to and Respondent received her CV and a contract/fee schedule for retaining her services. That contract stated that a non-refundable fee of \$1,500 is required upon acceptance of the case and before Ms. Kadosh is designated as an expert witness.

On January 19, 2006, Respondent left a message on Ms Kadosh's answering machine that he wanted to hire her as his expert. On January 20, 2006, Ms. Kadosh telephoned Respondent and left a message on his answering machine that before she accepted employment as Respondent's expert and authorized Respondent to designate her as his expert, Respondent must first sign and return the contract/fee schedule and the non-refundable retainer for \$1,500. Respondent received this message.

Respondent, however, failed to sign and return the contract/fee schedule and he failed to send the non-refundable retainer for \$1,500.

On January 20, 2006, the same day Ms. Kadosh left her January 20, 2006 message, Respondent, without obtaining Ms. Kadosh's acceptance of employment to be Respondent's expert and without complying with her conditions that he send the signed contract/fee schedule and the non-refundable retainer to her, filed with the court and served on the other parties an expert designation declaration listing Ms. Kadosh as his designated expert, stating that Ms. Kadosh had agreed to testify at trial, that Ms. Kadosh had been retained to testify in this matter and that Ms. Kadosh was sufficiently familiar with the pending action to submit to a meaningful deposition concerning the matter. These statements were at least premature, because Respondent had not yet returned to her a signed contract/fee schedule or send the \$1,500 non-refundable retainer, nor had Ms. Kadosh reviewed any materials to prepare herself for deposition.

On January 27, 2006, Ms. Kadosh telephoned Respondent and left a message on his voice machine reiterating her requirements for retention, including receiving the signed contract and the \$1,500 non-refundable fee. She also stated that if she is hired, she must review the expert declaration before it is filed.

On January 30, 2006, Ms. Kadosh telephoned Respondent again and this time they spoke directly. Respondent apologized for not getting back to Ms. Kadosh and sought to confirm that the \$1,500 was non-refundable. Ms. Kadosh reiterated that the \$1,500 fee was non-refundable.

Subsequently, Ms. Kadosh learned that Respondent had filed a declaration designating her as his expert.

Respondent never returned to Ms. Kadosh the signed contract/fee schedule and the non-refundable fee. Ms. Kadosh never actually accepted employment as Respondent's expert.

On February 2, 2006, Ms. Kadosh sent by U.S. mail and fax a letter to Respondent demanding that he remove her name as his expert immediately and informing him that she was going to be complaining to the State Bar about his conduct. In or about March 2006, Respondent amended his declaration replacing Ms. Kadosh with another expert.

By failing to obtain an expert prior to the expert designation filing date and by not contacting Ms. Kadosh until three days prior to the time for designating an expert with the court and other parties and by filing a declaration of designation of expert without obtaining the expert's express authorization and agreement to do so, to the potential detriment of his client if Respondent had not been allowed to amend his expert designation, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was January 23, 2007.

DISMISSALS.

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

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
06-O-11353	One	Business and Professions Code, section 6106 [Moral Turpitude]
06-O-11353	Two	Bus. and Prof. Code, section 6068(d) [1] [Employing Means Inconsistent with Truth] and [2] [Seeking to Mislead a Judge]

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of January 23, 2007, the estimated prosecution costs in this matter are approximately \$2,296.00. Respondent acknowledges that this figure is an estimate only and that it does not include additional State Bar Court costs which may be included in any final cost assessment. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase because of the cost of further proceedings.

AUTHORITIES SUPPORTING DISCIPLINE.

- Standard 2.4 (b), Rules of Procedure of the State Bar of California, Title IV, Part B [Standards Pertaining to Sanctions for Professional Misconduct]; and
- *In re Silverton* (2005) 36 Cal. 4th 81, 89-92.

STATE BAR ETHICS SCHOOL.

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

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In the Matter of
Ayal Abrams

Case number(s):
06-O-11353-PEM

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 Fact, Conclusions of Law and Disposition.

2/6/07
Date

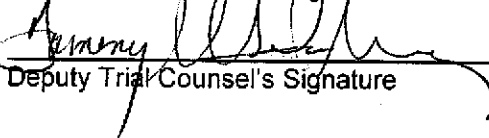

Respondent's Signature

Ayal Abrams
Print Name

2/7/07
Date

Respondent's Counsel Signature

Print Name


Deputy Trial Counsel's Signature

Tammy Albertsen-Murray
Print Name

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In the Matter Of Ayal Abrams	Case Number(s): 06-O-11353-PEM
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ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- ☒ All court dates in the Hearing Department 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 125(b), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Feb. 21, 2007
Date

Cat McElroy
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. 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 February 21, 2007, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING**

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

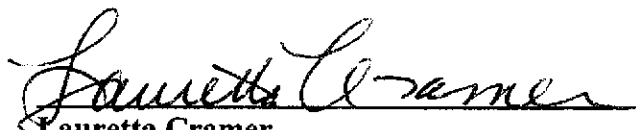
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**AYAL ABRAMS
MURPHY, PEARSON, BRADLEY & FEENEY
88 KEARNY ST STE 1000
SAN FRANCISCO, CA 94108 - 5530**

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

TAMMY ALBERTSEN-MURRAY , Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 21, 2007.


Lauretta Cramer
Case Administrator
State Bar Court