

State Bar Court of California  
Hearing Department  
Los Angeles

ORIGINAL

<p>Counsel For The State Bar</p> <p><b>Joseph R. Carlucci</b> Supervising Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 (213) 765-1053</p> <p>Bar # 172309</p>	<p>Case Number (s) 06-O-11922-RAP</p> <p><b>PUBLIC MATTER</b></p>	<p>(for Court's use)</p> <p><b>FILED</b></p> <p>AUG 29 2007 <i>[Signature]</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p><b>Arthur L. Margolis</b> MARGOLIS &amp; MARGOLIS 2000 Riverside Drive Los Angeles, CA 90039 (323) 953-8996</p> <p>Bar # 57703</p>	<p>Submitted to: <b>Assigned Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: <b>HOWARD B. ZISBLATT</b></p> <p>Bar # 122138</p> <p>A Member of the State Bar of California (Respondent)</p>		

**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 **December 30, 1985**.
- (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 12 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."



- (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.
- costs to be paid in equal amounts prior to February 1 for the following membership years: **two (2) membership years following the effective date of the Supreme Court order. If Respondent fails to pay any installment within the time provided herein, or as may be modified by the State Bar Court pursuant to section 6086.10, subdivision (c), the remaining balance of the costs is due and payable immediately and enforceable both as provided in section 6140.7 and as a money judgment unless relief has been granted under the Rules of Procedure of the State Bar of California. (Rules Proc. of the State Bar, rule 286).**  
(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."
- (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. **See Attachment.**
- (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. **See Attachment.**
- (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. **See Attachment.**
- (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.
- (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. **See Attachment.**
- (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)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of **two (2) 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:

The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent is placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

#### E. Additional Conditions of Probation:

- (1)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2)  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.
- (3)  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.
- (4)  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.

- (5)  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.
- (6)  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.
- (7)  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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8)  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.
- (9)  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:**

- (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 within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2)  **Other Conditions:**
- SEE ATTACHMENT.**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:       HOWARD B. ZISBLATT (No. 122138)

CASE NUMBER:           06-O-11922-RAP

**FACTS AND CONCLUSIONS OF LAW.**

Respondent Howard B. Zisblatt ("Respondent") admits that the following facts are true and that he is culpable of violations of the following sections of the California Business and Professions Code.

FACTS

1. From 2002 through 2004, Ari Ruchlin ("Ruchlin") was employed by Respondent.
2. As an employer that paid wages to employees, Respondent was required, by *Internal Revenue Code*, section 6672 to withhold funds from his employees' wages to pay federal income, Social Security, and Medicare taxes. Similarly, Respondent was also required pursuant to California *Unemployment Insurance Code*, section 2118 and 13020 to withhold funds to pay his employees' State Disability taxes.
3. In addition, as an employer, Respondent was legally required each year to file a Wage and Tax statement, commonly known as a "W-2 form," with the federal Social Security Administration ("SSA") for the purpose of reporting the wages he paid to each employee from whom he withheld income, Social Security, or Medicare taxes.
4. For the year 2002, the W-2 form provided to Ruchlin by Respondent stated that \$2,628.00 in Federal income taxes, \$1,545.59 in Social Security taxes, \$361.46 in Medicare taxes, and \$224.38 in

California State Disability Insurance were withheld from Ruchlin's earnings of \$24,930.64 for that year.

5. For the year 2003, the W-2 form provided to Ruchlin by Respondent stated \$2,347.03 in Federal Income tax, \$1,379.90 in Social Security taxes, \$322.72 in Medicare taxes, and \$200.20 in California State Disability Insurance were withheld from Ruchlin's earnings \$22,256.52 for that year.

6. For 2004, the W-2 form provided to Ruchlin by Respondent stated that \$1,842.57 in Federal income tax, \$1,129.02 in Social Security taxes, \$264.04 in Medicare taxes, and \$214.89 in California State Disability Insurance were withheld from Ruchlin's earnings of \$18,209.88 for that year.

7. For the years 2002, 2003, and 2004, Respondent withheld funds from Ruchlin's wages for the purposes of paying Ruchlin's federal and state taxes. However, though Respondent withheld those funds, Respondent did not pay those taxes to the federal or state government as required.

8. In or about March 2006, Ruchlin received a copy of his Social Security Statement. This Statement set forth Ruchlin's earnings as zero for the years 2002, 2003, and 2004.

9. As Ruchlin's employer, Respondent was responsible for and required to file a copy of Ruchlin's W-2 form with the SSA.

10. Respondent did not file a copy of Ruchlin's W-2 form with the SSA for the years 2002, 2003, and 2004.

#### CONCLUSIONS OF LAW

11. By failing to pay the federal income, Social Security, and Medicare taxes, as well as California Disability taxes that had been withheld from Ruchlin's wages for the years 2002, 2003, and 2004; and by failing to file Ruchlin's W-2 form with the SSA for the years 2002, 2003, and 2004, Respondent violated *Internal Revenue Code*, section 6672 and California *Unemployment Insurance Code*, sections 2118 and 13020, and thereby violated *Business and Professions Code*, section 6068(a).

**WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY**

The parties waive any variance between the Notice of Disciplinary Charges filed on December 27, 2006, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(7), was August 16, 2007.

**DISMISSALS.**

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

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
06-O-11922-RAP	One	Business and Professions Code, section 6106
06-O-11922-RAP	Two	Business and Professions Code, section 6106

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 15, 2007, the costs in this matter are \$4,920.00. 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.

**AUTHORITIES SUPPORTING DISCIPLINE.**

The recommended discipline in this matter is supported by the standards and case law.

Standard 1.3 - The primary purpose of discipline is the protection of the public, the



courts and legal profession; maintenance of high professional standards; and the preservation of public confidence in the legal profession.

Standard 2.6 - Culpability of a member of a wilful violation of *Business and Professions Code*, section 6068 shall result in suspension or disbarment depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

In re Brown (1995) 12 Cal.4th 205 - In *In re Brown* (1995) 12 Cal.4th 205, the Supreme Court, in a conviction proceeding held that attorney Brown's "willful failure, for a period of 2 years, to account for and pay over to the state the funds required to be withheld from employee wages for state tax obligations, without deceptive acts or an intent to permanently avoid payment, was not moral turpitude, but "other misconduct warranting attorney discipline," for which the appropriate sanction is suspension from the practice of law for a period in the range of 18 months to 2 years, stayed, with a probationary period in the range of 18 months to 2 years, and an actual suspension of 60 days or less." (*Id.* at p. 220.) Brown had no prior history of discipline over more than 20 years of practice.

#### **AGGRAVATING CIRCUMSTANCE**

##### **Harm to Respondent's Employee (Standard 1.2(b)(iv))**

Respondent's misconduct herein harmed his employee, Ari Ruchlin, by causing the Social Security Administration to erroneously calculate Ruchlin's income and benefits for the years 2002, 2003 and 2004 as zero. Respondent's misconduct also exposed Ruchlin to potential problems with and/or inquiries from the Internal Revenue Service and California Franchise Tax Board.

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## **MITIGATING CIRCUMSTANCES.**

### **No Prior Discipline**

Although Respondent's misconduct herein is serious in nature, Respondent is nonetheless entitled to mitigating credit for having no record of prior discipline since his admission to the State Bar on December 30, 1985.

### **Candor/Cooperation (Standard 1.2(e)(v))**

Respondent was candid and cooperative with the State Bar during its investigation and prosecution of this matter. In particular, Respondent was cooperative and diligent in responding to the State Bar's questions and requests for information relevant to this proceeding.

### **Good Character/Community Service (Standard 1.2(e)(vi))**

Respondent provided the State Bar with letters from five references attesting to his good character and community service: Stuart Kelin, Rabbi Yakkov Burk, Ychuda L. Frischman, Rabbi Tuvyah Shirken, and Chaya Shirken. All five references demonstrated a full awareness of the nature and extent of Respondent's misconduct herein.

## **OTHER RELEVANT FACTS**

After conferring with the IRS, on June 1, 2007, Respondent filed all outstanding state and federal payroll tax returns. On that same day, Respondent paid all outstanding state and federal payroll taxes, plus an additional estimated amount for any penalties that may be assessed.

On August 7, 2007, Respondent provided to the State Bar a letter from his accountant, Seth Gersten, C.P.A., in which Mr. Gersten states that Respondent and he have been advised by the IRS that it will take an additional six to eight weeks for it to review his returns and payments to determine whether Respondent owes any additional money.

## OTHER CONDITIONS NEGOTIATED BY THE PARTIES

If and when Respondent receives notice from the IRS regarding whether it believes that Respondent owes additional money, including but not limited to penalties and interest, as a result of his failure to file and pay Ruchlin's payroll taxes, Respondent shall provide a copy of what he receives from the IRS to the Office of Probation within 30 days of the date the IRS mails such notice to Respondent and/or his accountant. If the IRS notifies Respondent that additional money is owed, Respondent shall at that time also provide information to the Office of Probation as to whether he intends to pay the money or challenge the IRS determination.

If Respondent intends to pay the additional money assessed, he must pay it by the deadline set forth by the IRS, or within 60 days of the date the IRS mailed notice to him and/or his accountant. Within 30 days of payment, Respondent must provide proof adequate proof of receipt of payment to the Office of Probation.

If Respondent challenges the IRS's determination, he shall report the status of that challenge in each subsequent quarterly report until the challenge is resolved or Respondent's probation expires. If Respondent's challenge is resolved during the period of probation, Respondent shall disclose the resolution of the challenge in the next quarterly report.

If, after Respondent's challenge is resolved and he is still found to owe additional money, Respondent must pay the additional money assessed, he must pay it by the deadline set forth by the IRS, or within 60 days of the date the IRS mailed notice to him and/or his accountant. Within 30 days of payment, Respondent must provide proof adequate proof of receipt of payment to the Office of Probation.

(Do not write above this line.)

In the Matter of HOWARD B. ZISBLATT (No. 122138)	Case number(s): 06-O-11922-RAP
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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 Fact, Conclusions of Law and Disposition.

<u>8-28-07</u> Date	<u>Howard B. Zisblatt</u> Respondent's Signature	<u>HOWARD B. ZISBLATT</u> Print Name
<u>8/28/07</u> Date	<u>Arthur Margolis</u> Respondent's Counsel Signature	<u>ARTHUR L. MARGOLIS</u> Print Name
<u>8/28/07</u> Date	<u>Joe B. Carlucci</u> for Deputy Trial Counsel's Signature	<u>JOSEPH R. CARLUCCI</u> Print Name

(Do not write above this line.)

In the Matter Of  
HOWARD B. ZISBLATT (No. 122138)

Case Number(s):  
06-O-11922-RAP

### 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 9.18(a), California Rules of Court.)**

August 29, 2007  
Date

  
\_\_\_\_\_  
Judge of the State Bar Court

**RICHARD A. PLATEL**

**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 Los Angeles, on August 29, 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:

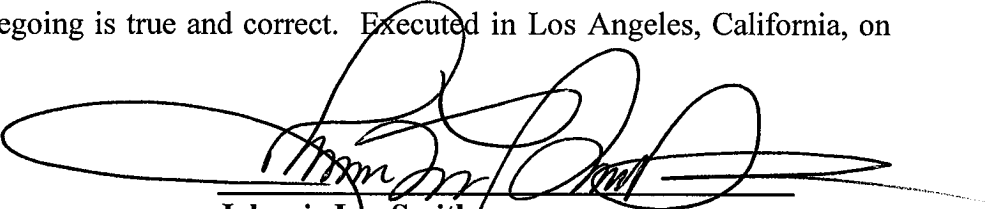
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ARTHUR LEWIS MARGOLIS  
MARGOLIS & MARGOLIS LLP  
2000 RIVERSIDE DR  
LOS ANGELES, CA 90039**

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

**JOSEPH CARLUCCI, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 29, 2007.

  
**Johnnie Lee Smith**  
Case Administrator  
State Bar Court