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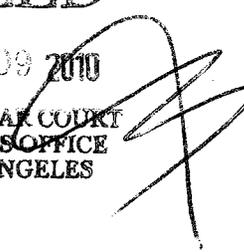
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State Bar Court of California
Hearing Department
Los Angeles

PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>Elina Kreditor Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015</p> <p>Bar # 250641</p>	<p>Case Number (s) 06-O-13392</p>	<p>(for Court's use)</p> <p>FILED</p> <p>SEP 09 2010</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> 
<p>In Pro Per Respondent</p> <p>Mohamad Toufic Nehmeh 19162 Huntington Street, # D-2 Huntington Beach, CA 92648</p> <p>Bar # 121883</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: Mohamed Toufic Nehmeh</p> <p>Bar # 121883</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 January 6, 1986.
- (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 11 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):
- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - costs to be paid in equal amounts prior to February 1 for the following membership years: three membership billing cycles following the effective date of discipline.
(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 94-O-18760
 - (b) Date prior discipline effective May 20, 1998
 - (c) Rules of Professional Conduct/ State Bar Act violations: 4-100(B)(4); 3-110(A); 4-100(A); 3-310(C)
 - (d) Degree of prior discipline 90 days stayed suspension, three years probation.
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (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.
- (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) **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.
- (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 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:
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

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

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of thirty (30) days.
- 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:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, 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 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.

- (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 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.
- (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 probation conditions.
- (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) 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 during the period of actual suspension or within one year, whichever period is longer. **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) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

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- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule **9.20**, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:

- (5) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MOHAMAD TOUFIC NEHMEH

CASE NUMBER(S): 06-O-13392

FACTS AND CONCLUSIONS OF LAW

Mohamad Toufic Nehmeh (“Respondent”) admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

I. Facts

1. On or about May 4, 2004, Faye Gillentine (“Gillentine”) employed Respondent to prepare and file a Chapter 13 bankruptcy on her behalf. During the initial consultation, Respondent informed Gillentine that he had a buyer for her house if she decided to sell her home (“the home”) rather than file for bankruptcy. Gillentine declined Respondent’s offer.
2. On May 5, 2004, Respondent filed a Chapter 13 Bankruptcy Petition (“the petition”) on Gillentine’s behalf.
3. Approximately a month later, Gillentine decided that she did not want to file for bankruptcy. Respondent prepared a dismissal of the petition. At the same time, Respondent again informed Gillentine that he knew potential buyers for the home. Gillentine again declined Respondent’s offer.
4. On or about June 16, 2004, the petition was dismissed.
5. Approximately two weeks after the petition was dismissed, Gillentine’s vehicle was repossessed. At that point she contacted Respondent and told him that she would like to sell her home to Respondent’s buyer in order to obtain funds to pay off her vehicle loan.
6. On or about June 29, 2004, Respondent informed Gillentine that he had a buyer, Mona Mitchell (“Mitchell”) who would pay \$10,000 for the home to Gillentine, in addition to paying all outstanding liens and encumbrances on the home. Gillentine agreed to the sale.
7. On or about June 29, 2004, Respondent drove Gillentine to a notary where Gillentine signed various documents transferring the home to Mitchell (“the real estate transaction”).
8. After Gillentine signed the documents, Respondent drove her to a Western Union so that Gillentine could purchase a moneygram to pay off her vehicle loan. During the drive to the Western Union, Respondent informed Gillentine that he was not her attorney in the real estate transaction and that he represented Mitchell.
9. Respondent and Mitchell are friends and have known each other for a number of years. Respondent did not disclose, orally or in writing, his personal relationship with Mitchell to Gillentine.

10. In the course of the State Bar's investigation into Gillentine's complaint against Respondent, on October 5, 2006, Respondent provided a "Waiver of Conflict" ("Waiver") document purportedly signed by Faye Gillentine.
11. Although Gillentine's purported signature appears on the Waiver, Respondent did not provide the Waiver for Gillentine's review, nor did she actually review or sign the Waiver.
12. In the course of the State Bar's investigation into the complaint, on October 5, 2006, Respondent provided a letter from attorney Dennis Baranowski ("the letter"), purportedly provided by Gillentine to Respondent as evidence that she consulted with Baranowski regarding the potential sale of her home. Gillentine has never met or consulted with Baranowski. Gillentine did not tell Respondent that she met with Baranowski and did not provide the letter to Respondent.

II. Conclusions of Law

By failing to disclose to his client (Gillentine), that he had a legal, business, financial, professional, or personal relationship with a party in the same matter (Mitchell), Respondent willfully violated Rules of Professional Conduct, rule 3-310(B)(1).

By submitting the Waiver he purported to have been signed by Gillentine, the letter that he purported had been provided by Baranowski to Gillentine, and misrepresenting to the State Bar that Gillentine signed the Waiver and consulted with another attorney prior to entering into the real estate transaction with Mitchell, Respondent willfully committed acts involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code, section 6106.

DISMISSALS

The parties respectfully request that the Court dismiss, in the interest of justice, Count 2 of the Notice of Disciplinary Charges in the instant matter: Business and Professions Code, Section 6106, Moral Turpitude—Misrepresentation, Concealment, Scheme to Defraud.

MPRE CONDITIONS

With respect to the MPRE condition on page 5 of the instant Stipulation, Respondent shall have eighteen (18) months from the effective date of discipline in this matter to provide proof of passage of the MPRE to the Office of Probation.

PENDING PROCEEDINGS

The disclosure date referred to, on page 2, paragraph A(7), of the instant Stipulation, was September 2, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of June 16, 2010, the costs in this matter are \$4920.00. 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

A. Standards

Standard 1.3 provides that the primary purposes of attorney discipline are, “the protection of the public, the courts and the legal profession; the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession.”

Standard 2.3 culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact of a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it related to the members; acts within the practice of law.

Standard 2.6(a) of the Standards provides that violations of section 6068 shall result in disbarment or suspension depending upon the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline.

Standard 1.6(a) of the Standards provides that where two or more acts of misconduct are found or acknowledged, and different sanctions are prescribed by the Standards for these acts of misconduct, the more severe of the applicable sanctions shall apply.

Standard 1.7(a) provides that where a member has previously been found culpable of any misconduct, the degree of discipline imposed shall be greater than that imposed in the prior proceeding.

B. Case law

In *In re Silvertown* (2005) 36 Cal. 4th 81, 92, the California Supreme Court held that the Standards for Attorney Sanctions for Professional Misconduct are entitled to “great weight” and the Court will “not reject a recommendation arising from the Standards unless [it has] grave doubts as to the propriety of the recommended discipline.” The Standards are not binding but “they promote the consistent and uniform application of disciplinary measures.” (Id.) The “presumptively appropriate level of discipline” for any misconduct is as set forth in the standards (See *Morgan v. State Bar* (1990) 51 Cal. 3d 598, 607).

In *In the Matter of Gillis* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 387, Respondent was found culpable of violating rule 3-300 of the Rules of Professional Conduct in the course of selling real property to his client. Further, the court found that Respondent committed an act of moral turpitude by deliberately attempting to mislead a State Bar investigator in the course of the State Bar investigation of the real estate transaction between Respondent and the client. In mitigation, the court considered Respondent’s 26 years of practice without any prior discipline. In aggravation, the court relied on Respondent’s multiple offenses in the course of the real estate transaction and his dealing with the State Bar. Respondent was suspended from the practice of law for three years, stayed, and placed on probation for three years.

Noting that “acts of moral turpitude include concealment as well as affirmative misrepresentations”, the Review Department, in *In the Matter of Dale* (Review Department 2005) 4 Cal. State Bar Ct. Rptr. 798, suspended Respondent for one year, stayed, and placed him on probation for two years with conditions, including a four month actual suspension. The discipline stemmed from Respondent making misleading statements to an incarcerated individual in order to obtain an incriminating declaration.

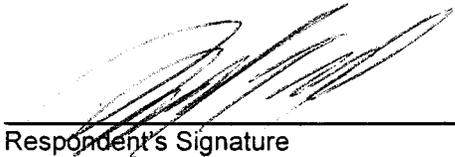
The Supreme Court of California has noted in the past that fraudulent and contrived misrepresentations to the State Bar may perhaps constitute a greater offense than misappropriation. *Chang v. State Bar*, 49 Cal. 3d 114, 128 (Cal. 1989).

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In the Matter of MOHAMAD TOUFIC NEHMEH	Case number(s): 06-0-13392
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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>9-2-06</u> Date	 Respondent's Signature	<u>MOHAMAD TOUFIC NEHMEH</u> Print Name
<u>9-2-06</u> Date	 Deputy Trial Counsel's Signature	<u>ELINA KREDITOR</u> Print Name

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In the Matter Of MOHAMAD TOUFIC NEHMEH	Case Number(s): 06-0-13392
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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.)**

9-8-10
Date


Judge of the State Bar Court

RICHARD A. HONN

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 September 9, 2010, 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:

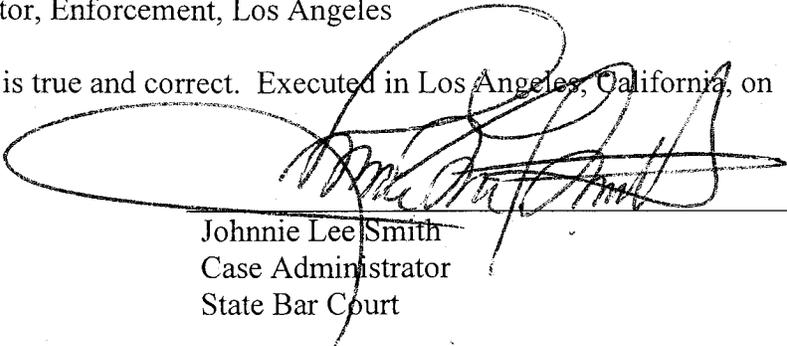
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MOHAMAD TOUFIC NEHMEH
19162 HUNTINGTON ST #D-2
HUNTINGTON BEACH, CA 92648

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

Elina Kreditor, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 9, 2010.



Johnnie Lee Smith
Case Administrator
State Bar Court