

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case No.: 09-O-12790-LMA (09-O-13162;  
) 09-O-13338; 09-O-13458;  
HOYT MICHAEL TORREY ) 09-O-13639; 09-O-13758;  
) 09-O-14162; 09-O-14872;  
Member No. 224045 ) 09-O-14971; 09-O-15052)  
) DECISION INCLUDING DISBARMENT  
) RECOMMENDATION AND ORDER OF  
) INVOLUNTARY INACTIVE  
) ENROLLMENT  
)  
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**I. INTRODUCTION**

In this disciplinary matter, Wonder J. Liang appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent HOYT MICHAEL TORREY did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be disbarred and that he be ordered to make specified restitution.

**II. SIGNIFICANT PROCEDURAL HISTORY**

The Notice of Disciplinary Charges (NDC) was filed on December 7, 2009, and was properly served on respondent on that same date at his official membership records address, by

certified mail, return receipt requested, as provided in Business and Professions Code section<sup>1</sup> 6002.1, subdivision (c) (official address) and by regular mail sent to an alternate address. Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) The return receipt was executed by “Megan Brower” indicating receipt on December 8, 2009. The copy sent by regular mail was not returned as undeliverable.

On December 11, 2009, respondent was properly served at his official address and at an alternate address with a notice advising him, among other things, that a status conference would be held on January 4, 2010. The court judicially notices its records pursuant to Evidence Code section 452, subdivision (d)(2), which indicate that these items were not returned as undeliverable.

Respondent did not appear at the January 4 status conference. On January 7, 2010, he was properly served with a status conference order at his official address by first-class mail, postage prepaid.

Respondent did not file a responsive pleading to the NDC. On January 13, 2010, a motion for entry of default was filed and properly served on respondent at his official address by certified mail, return receipt requested, and by regular mail to an alternate address. The motion advised him that minimum discipline of disbarment would be sought if he or she was found culpable. Respondent did not respond to the motion.

On February 1, 2010, the court entered respondent’s default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address on that same date by certified mail, return receipt requested. This correspondence was returned as undeliverable.

The State Bar’s and the court’s efforts to contact respondent were fruitless. The court

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<sup>1</sup>Future references to section are to the Business and Professions Code.

concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process.

(*Jones v. Flowers, et al.* (2006) 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415.)

The matter was submitted for decision without hearing on February 22, 2010.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (§6088; Rules of Proc. of State Bar<sup>2</sup>, rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

It is the prosecution's burden to establish culpability of the charges by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on December 28, 2002, and has been a member of the State Bar at all times since.

#### **B. Applicable to All Matters**

At all relevant times, respondent represented to the parties identified below that he maintained a 10-lawyer law firm located in Mountain View, CA. He made that claim to give the appearance that he was backed by a legitimate law practice supported by 10 lawyers and located in Mountain View. He also represented to these parties that he had relationships with loan processors and underwriters and that he maintained a loan processing department and loan underwriting department.

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<sup>2</sup>.Future references to the Rules of Procedure are to this source.

In reality, however, respondent was the only lawyer associated with his business and he relied upon his girlfriend and co-conspirators to assist him with his business. He did not have any relationship with loan processors or loan underwriters nor did he have a loan processing department or a loan underwriting department.

Further, the address respondent listed in Mountain View was a virtual office and did not contain respondent's law office. The only office respondent maintained was run out of the townhouse in which he resided located in Henderson, Nevada.

At all relevant times, respondent, through the Law Offices of H. M. Torrey, offered a variety of business funding agreements that offered loans in exchange for an up-front fee, including a 90-day business funding agreement (90-day BFA), a premium business funding agreement (Premium BFA) and a "Super Corp" business funding agreement (Super Corp BFA).<sup>3</sup>

The 90-day BFA provided that a party would pay respondent an up-front, 100%-refundable origination fee of 1% of the total loan amount in exchange for a loan of up to \$2,000,000. Respondent represented that the party would receive the loan within a 90-day "business funding cycle." If respondent did not obtain a loan within a 90-day business funding cycle, he promised that he would fully refund the party's origination fee within 10 business days of a written request for a refund.

Respondent represented that the Premium BFA was "by far the most attractive business venture financing/funding system available anywhere on the institutional or private lending/investor market today." Respondent claimed that the systems he had in place were proprietary, intellectual property of his law firm and were confidential, but utilized principles relied upon by major banks, hedge funds and international investors. Respondent contended that

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<sup>3</sup> Respondent referred to the Super Corp BFA as a joint venture program known as the Super Corp program.

the Premium BFA was “completely backed by a bona fide Law Firm which [was] second to none in its ability to perform in the area of business law and finance.”

The Premium BFA provided that a party would pay respondent an up-front, 100%-refundable origination fee of one percent of the total loan amount and respondent would provide the party with a loan. Respondent represented that the party would receive the first phase of financing, in the amount of \$100,000, within 30 business days, or less, from the date the party executed the Premium BFA. Thereafter, the party would receive additional \$100,000 loans every 30 business days, until the total loan amount desired was paid to the party. If respondent failed to obtain a loan for the party, respondent promised that he would fully refund the party’s origination fee.

Respondent stated in the Super Corp BFA that the joint venture program was a “unique opportunity [that] runs un-paralleled to any current program being offered anywhere else, bar none.” Respondent claimed the program “was completely backed and pushed through by a bona fide Law Firm, as [the party’s] direct joint venture business associate, in which [respondent’s firm was] second to none in its ability to perform in this area of business law and joint venture based finance.” Respondent represented in the Super Corp BFA that the Super Corp Program resulted in loan approval amounts three to four times greater than available elsewhere “especially during this economic credit crunch when lenders are tightening their lending criteria nationwide like never before.”

The Super Corp BFA required clients to pay respondent a start-up fee, ranging from \$30,000 to \$37,500, payable to respondent’s law firm. The BFA stated that the start-up fee was to cover the costs “to purchase a lender preferred/full doc corporation that will have the necessary, strong financial and D&B [Dunn and Bradstreet] scores to quickly fund [the party’s] business venture project” with funding of over \$1,000,000.

Respondent stated in the Super Corp BFA that the up-front fee was “fully, 100%-refundable” if the party “was unable to be funded within the few short weeks outlined ... in this business agreement.”

Respondent represented in the Super Corp BFA that the program provided the party with an unsecured business line of credit/loan in which no proof of income or personal assets was required for loan approval and funding. Respondent also promised that a Super Corp came fully documented and with financials. Respondent represented that the Super Corp was enhanced with assets attached, leased or assigned that provided lenders “absolute protection from short term and long term losses.- Respondent represented that the Super Corps were “aged, in full corporate compliance, lien and debt free, ready for funding.”

Respondent stated in the Super Corp BFA that the first phase of funding would take place in approximately 4-8 weeks, but could often happen much faster.

At all relevant times, respondent engaged in a scheme to defraud parties to the 90-day BFA, Premium BFA and Super Corp BFA by:

- (a) Falsely representing that respondent maintained a 10-person law firm located in Mountain View, California, when, in fact, he ran it out of a townhouse in Henderson, Nevada;
- (b) Using the clout of his law license to entice the parties to pay the up-front fees;
- (c) Falsely claiming that the up-front fees were 100% fully refundable;
- (d) Intending to misappropriate the up-front fees at the time he sought and collected them;
- (e) Collecting the up-front fees without arranging for parties to receive any loans and not taking any action to facilitate any loans for any party;
- (f) Collecting the up-front fees knowing that he did not have the access or ability to obtain any loans; and

(g) Collecting the up-front fees knowing that he did not have the access or ability to acquire Super Corps that parties to the Super Corp BFAs could use to secure a line of credit or a loan.

**C. Case no. 09-O-13338 (Miller)**

**1. Facts**

On November 6, 2008, Marshall Miller entered into a Super Corp BFA with “H. M. Torrey, attorney at law.” The Super Corp BFA promised Miller that he would receive a Super Corp and a loan of \$1,185,000 in exchange for a start up payment of \$33,500.

On November 17, 2008, respondent received \$33,500 from Miller.

At the time that respondent entered into the Super Corp BFA with Miller, respondent knew that Miller would not receive a Super Corp or a loan because respondent never intended to seek a loan on Miller’s behalf. Respondent knew that he intended to collect the \$33,500 up-front fee and take no further action on behalf of Miller.

On December 16, 2008, Miller received an email from respondent’s office indicating that respondent had purchased a corporation for Miller.

Between December 2008 and February 2009, respondent or someone acting on his behalf represented to Miller that respondent had purchased a Super Corp for Miller and that Miller would receive loan funding very soon. However, respondent knew that he had not obtained a Super Corp for Miller and that Miller would never receive any loan funding.

Prior to March 26, 2009, respondent or someone acting at his request promised Miller that he would receive a loan by March 31, 2009. However, respondent knew that Miller would not receive a loan by March 31, 2009, or at all, because respondent did not have access to any loan funding sources.

On March 26, 2009, Miller sent respondent an email emphasizing that he required funds immediately because he could not make any payments due on March 31, 2009 and, therefore, his credit would be completely destroyed. On that same date, respondent sent Miller an email stating that Miller was “not very far off at all anymore in receiving funding for [Miller’s] corporation.” Respondent instructed Miller not to panic and asked him to realize how close Miller was to completion of his funding. In reality, respondent knew that Miller would not receive any funding because respondent did not have the access or ability to obtain any loans for Miller. Miller responded to this email stating that delay in funding was unexpected and “now has grave consequences for [Miller.]” Respondent sent Miller an email the next day stating that the funding was “imminent, and in large amounts” and that Miller would be a “happy man” when the funding occurred shortly.

On March 31, 2009, respondent replied to Miller’s inquiries regarding the loan status by sending him an email message indicating Miller’s funding was virtually finished and ready for lender submission. Respondent stated that any harm to Miller’s credit rating due to his missed mortgage payments would be remedied by the imminent loan and if necessary, Miller could rely upon credit repair. Respondent also stated that if respondent could not obtain a loan for Miller, then respondent would refund Miller his up-front fee. Respondent told Miller that he “had nothing to lose and everything to gain” by waiting for the loan. In reality, respondent knew that respondent had not obtained any funding for Miller; that Miller would never receive any funding; and that respondent had no intention of refunding the up-front fee to Miller.

On March 31, 2009, Miller sent respondent an email message requesting a full refund, indicating that his credit was ruined and that Miller had been reminding respondent for the past month of this eventuality.



On March 31, 2009, respondent sent Miller an email message indicating that he would honor Miller's request for a complete refund. Respondent stated that Miller was "close to finish line" and Miller's funding "would have transpired shortly hereafter."

On April 2, 2009, Miller sent respondent an email requesting that respondent expedite the refund of the up-front fee. On that same date, respondent sent Miller an email stating that Miller's corporation was finished and that it would be submitted for actual funding the following week "if [Miller] choose to wisely continue on." Respondent indicated that Miller would receive funding in approximately four weeks and that it was "a very quick and systematic process from here ..." Respondent stated that it would take up to six weeks for Miller to receive a refund of his up-front fees. Respondent emphasized that it made the most sense for Miller to authorize respondent to submit Miller's loan application so that Miller could receive "large amounts" in a couple of weeks.

On April 15, 2009, Miller sent respondent an email indicating that Miller had requested a refund and respondent had not provided it. On May 6, 2009, respondent indicated that he would be providing Miller with a refund by the end of May, 2009. In reality, respondent had no intention of issuing Miller a refund.

On May 20, 2009, respondent sent Miller an email indicating that he would be available only by email until further notice.

On June 3, 2009, Miller sent respondent an email inquiring about the status of the refund. On June 4, 2009, respondent sent Miller an email indicating that, "due to the ongoing poor economy and banking/lending crisis issues, [respondent's] law firm [was] unable to perform according to the terms of [Miller's] BFA." Respondent stated in the email that respondent was unable to refund the up-front fees at that time, but expected to do so as soon as possible. Respondent assured Miller in the email that respondent was "a man of integrity and high ethical

values” who would not run from his obligation to refund the up-front fees and that he was consulting with bankruptcy attorneys to set up an asset liquidation plan and repayment schedule. In reality, respondent had no intention of issuing any refund to Miller nor had he consulted with any bankruptcy attorneys to set up an asset liquidation plan or to set up a repayment schedule. Thereafter, respondent ceased all communication with Miller. He did not return any funds to Miller.

## **2. Conclusions of Law**

### **a. Count 1 - Section 6106 (Moral Turpitude)**

Section 6106 makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is clear and convincing evidence that respondent violated section 6106. By selling Miller a product that respondent had no intention or ability to provide and by falsely leading Miller to believe that funding was imminent, respondent engaged in a scheme to defraud Miller. By engaging in a scheme to defraud, respondent committed acts of moral turpitude, dishonesty and corruption in wilful violation of section 6106.

## **D. Case no. 09-O-13639 (Whitaker)**

### **1. Facts**

On May 21, 2008, Edward Parrish Whitaker entered into a 90-day BFA with “H. M. Torrey, attorney at law.” The 90-day BFA promised Whitaker that respondent would obtain unsecured financing of \$2,000,000 within 90 days in exchange for an up-front 100%-refundable funding origination fee of \$20,000. On May 21, 2008, Whitaker gave respondent a \$20,000 check payable to “The Law Offices of H. M. Torrey.” Respondent negotiated it the next day.

When respondent entered into the 90-day BFA with Whitaker, respondent knew that Whitaker would not receive a loan because respondent never intended to seek a loan on his behalf. Respondent knew that he intended to collect the \$20,000 up-front fee and take no further action on Whitaker's behalf.

On May 22, 2008, respondent sent Whitaker a facsimile indicating that Whitaker would receive his loan in approximately 100 business days or five calendar months. Respondent never sought a loan on Whitaker's behalf.

On February 24 and March 23 and 25, 2009, Whitaker sent respondent emails requesting that respondent refund the \$20,000 that he had paid him. Whitaker indicated that, without the refund, he would be unable to make his mortgage payment. Although respondent received the emails, he did not refund the \$20,000 to Whitaker.

On March 27, 2009, respondent sent Whitaker an email indicating that the funding was available and if Whitaker desired a refund, he could obtain one, but it would take 30 days to process the request due to "legal and accounting protocol" that needed to be followed. Respondent represented to Whitaker that the refund would be processed around May 1, 2009. In reality, at the time that respondent sent the email, he knew that he had no intention of issuing Whitaker a refund.

On March 31, 2009, Whitaker sent respondent an email indicating that he needed the refund immediately and that the delay in issuing the refund forced him to make a late mortgage payment.

On April 29, 2009, Whitaker sent respondent an email requesting confirmation that respondent sent the refund check.

On May 6, 2009, respondent sent Whitaker an email indicating that the refund was imminent as promised and that he would issue it by May 31, 2009. Respondent claimed that he

was too busy to take telephone calls and asked that Whitaker contact him by email because respondent was “tied up daily on the phone with lenders and processors.” In reality, respondent had no intention of issuing Whitaker a refund. Further, in reality, respondent was not tied up on the phone with lenders and processors since respondent did not make any effort to obtain loans or funding for any of his clients.

On June 3, 2009, Whitaker sent respondent an email indicating that he had retained an attorney and intended to file a lawsuit to recover his money. He asked that respondent reply to set up a payment schedule. Although respondent received the email, he did not answer it nor did he refund Whitaker’s money.

On June 4, 2009, respondent sent Whitaker an email indicating that “due to the ongoing poor economy and banking/lending crisis issues, [respondent’s] law firm [was] unable to perform according to the terms of [Whitaker’s] BFA.” He stated that he was unable to refund the origination fees at that time, but expected to do so as soon as possible. He assured Whitaker that he was “a man of integrity and high ethical values” and that he would not run from his obligation to refund the origination fees. He claimed that he was consulting with bankruptcy attorneys to set up an asset liquidation plan and repayment schedule. In reality, respondent had no intention of issuing any refund to Whitaker nor did he consult with any bankruptcy attorneys to set up an asset liquidation plan or to set up a repayment schedule. Thereafter, respondent ceased all communication with Whitaker and did not refund any of Whitaker’s funds.

## **2. Conclusions of Law**

### **a. Count 2 - Section 6106 (Moral Turpitude)**

There is clear and convincing evidence that respondent violated section 6106. By selling Whitaker a product that he had no intention or ability to provide and by making false promises regarding the issuance of a refund, respondent engaged in a scheme to defraud Whitaker. By

engaging in a scheme to defraud, respondent committed acts of moral turpitude, dishonesty and corruption in wilful violation of section 6106.

**E. Case no. 09-O-13162 (Roque)**

**1. Facts**

On June 25, 2008, Luis Roque paid \$30,000 to Cole Smith, a marketing representative for respondent, to purchase a corporation and obtain funding of up to \$1,000,000. Cole Smith worked for respondent and respondent agreed through Smith to provide the corporation and the funding for Roque. Cole Smith gave respondent with \$23,500 of Roque's \$30,000, which represented respondent's share of the proceeds.

On August 12, 2008, Roque entered into a Super Corp BFA with "H. M. Torrey, attorney at law." The Super Corp BFA promised Roque that he would receive a Super Corp and a loan of \$1,215,000 in exchange for the up-front payment. In reality, at the time that respondent entered into the Super Corp BFA with Roque, respondent knew that Roque would not receive a Super Corp or any loan because respondent never intended to seek a loan on Roque's behalf. Further, in reality, respondent knew that he intended to collect the up-front fee and take no further action on Roque's behalf.

Between July 2008 and February 2009, respondent or someone acting at respondent's request, informed Roque that he would receive his Super Corp and funding imminently. In reality, respondent knew that Roque would never receive a Super Corp; that respondent had made no efforts to obtain a Super Corp for Roque; and that Roque would never receive any loan funding.

On February 3, 2009, Roque sent respondent an email requesting that respondent inform Roque when Roque would receive the Super Corp and funding.

On February 4, 2009, respondent sent Roque an email explaining that the delay on Roque's matter was caused by one of respondent's ex-employees. Respondent stated that he now was personally handling Roque's file and respondent needed time to check with the lending underwriters to ascertain how quickly funding would occur. Respondent represented that he should have an answer within the next 5-10 business days and that, after he received the information from the loan underwriters, respondent would have the actual lender approval within 5-10 business days. He emphasized that he would "do everything in [his] power to finalize [Roque's] funding within the next 20-30 business days (or less), or [respondent would] simply refund [Roque's] origination fees, pursuant to [his] BFA." In reality, respondent knew that Roque would not receive a loan within the next 20-30 business days, or at all, because he did not have access to any loan funding sources and he never intended to seek any funding for Roque.

On February 19, 2009, Roque sent respondent an email asking him to contact Roque to discuss his file. The next day, respondent wrote back indicating that he was in the process of obtaining Roque's Super Corp but he needed to speak with his processors. Respondent assured Roque that his file would be given top priority. In reality, respondent knew that he would take no action on Roque's matter because respondent had no intention of obtaining a Super Corp or funding for Roque.

On March 4, 2009, respondent indicated that his processor, Andre Smith, was working on Roque's corporate funding "as we speak." Respondent assured Roque that his corporate funding was proceeding forward. In reality, respondent knew that Andre Smith was not working on Roque's corporation funding and that respondent was taking no action to obtain funding for Roque.

Between October 2008 and April 2009, Roque incurred additional monthly expenses of about \$223<sup>4</sup> because respondent required Roque to set up a virtual office prior to receiving his Super Corp as well as at least \$275 to obtain a business license..

On April 20, 2009, Roque sent respondent an email indicating that all respondent had done was give Roque the run around and that he had caused Roque to incur additional expenses of \$223 per month since October 2008 because respondent's office demanded that Roque pay a business license fee and set up a virtual office before he received his Super Corp. Roque requested that respondent refund the entire \$30,000 up-front payment and the additional monthly expenses Roque incurred to set up the Super Corp.

On April 22, 2009, respondent sent Roque an email indicating that his corporation's funding had been submitted to respondent's lenders and respondent was simply awaiting approvals. Respondent represented that the funding was "forthcoming shortly" after the end of April. Respondent stated that Roque's funding was "right around the corner." In reality, respondent knew that Roque's file had not been submitted to a lender and that Roque would never receive any funding because respondent had taken no action to obtain funding for Roque.

On May 1, 2009, Roque sent respondent an email requesting clarification on the amount of funding he would receive. On May 6, 2009, respondent wrote back stating that Andre Smith was working with the lenders for Roque's loan and suggested Roque contact Andre Smith for the details of the loan. Respondent stated that Roque should know that respondent was "diligently working on getting [Roque's] final approvals from [respondent's] lenders ..." In reality, respondent knew that Andre Smith was not working with any lenders and that respondent had made no effort to obtain a loan for Roque.

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<sup>4</sup> The NDC sets forth this amount as \$233 in one place and as \$223 in others. Also, in another part of the NDC, the time frame set forth was November 2008 to April 2009.

On June 3, 2009, Roque sent respondent an email requesting information on the process for cancelling the BFA. The next day, respondent wrote back indicating that “due to the ongoing poor economy and banking/lending crisis issues, [respondent’s] law firm is unable to perform according to the terms of [Roque’s] BFA.” He said that he was unable to refund the up-front fees at that time, but expected to do so as soon as possible. Respondent assured Roque that he was “a man of integrity and high ethical values” who would not run from his obligation to refund the up-front fees. He claimed that he was consulting with bankruptcy attorneys to set up an asset liquidation plan and repayment schedule. In reality, respondent had no intention of issuing any refund to Roque nor did he consult with any bankruptcy attorneys to set up an asset liquidation plan or to set up a repayment schedule. Thereafter, respondent ceased all communication with Roque. He did not refund any of Roque’s funds.

**2. Conclusions of Law**

**a. Count 3 - Section 6106 (Moral Turpitude)**

There is clear and convincing evidence that respondent violated section 6106. By selling Roque a product that he had no intention or ability to provide and by falsely leading Roque to believe that funding was imminent, respondent engaged in a scheme to defraud Roque. By engaging in a scheme to defraud, respondent committed acts of moral turpitude, dishonesty and corruption in wilful violation of section 6106.

**F. Case no. 09-O-13758 (Strong)**

**1. Facts**

On September 21, 2008, Cheryl Strong entered into a Super Corp BFA with “H. M. Torrey, attorney at law.” Pursuant to the Super Corp BFA, respondent agreed to provide Strong with a corporation and arrange for a loan of up to \$1,185,000.



On September 24, 2008, Strong arranged to borrow \$37,500 from her IRA, incurring a penalty, so that she would have funds she was required to pay pursuant to the Super Corp BFA and paid the funds to Cole Smith, who worked for respondent. Respondent, through Cole Smith, agreed to provide a corporation and funding. On that same date, Cole Smith provided respondent with at least \$30,000 of the \$37,500, which represented respondent's share of the proceeds received from Strong.

Strong was to receive a Super Corp and a loan of \$1,185,000 in exchange for the up-front payment according to the Super Corp BFA. In reality, at the time that respondent entered into the Super Corp BFA with Strong, respondent knew that Strong would not receive a Super Corp or any loan because respondent never intended to seek a loan on Strong's behalf. In reality, respondent knew that he intended to collect the up-front fee and take no further action on behalf of Strong.

Between October 2008 and February 2009, respondent, or someone acting at his direction, informed Strong that she would receive her Super Corp and funding imminently. In reality, respondent knew that Strong would never receive a Super Corp; that he had made no efforts to obtain a Super Corp for Strong; and that Strong would never receive any loan funding.

In October 2008, respondent, or someone acting at his direction, instructed Strong to purchase a virtual office in order to receive her Super Corp. Between November 2008 and February 2009, Strong incurred expenses of \$1,019.59 for her virtual office.

On January 29, 2009, Strong sent respondent an email requesting that either she receive her Super Corp by February 2, 2009 or a refund of the \$37,500 by February 6, 2009.

On February 4, 2009, respondent sent Strong an email claiming that the delay on her matter was caused by one of respondent's ex-employees. He said that he now was personally handling her file and needed time to check with the lending underwriters to see how quickly

funding would occur. Respondent represented that he would have an answer within the next 5-10 business days and that, after he received the information from the loan underwriters, he would have the actual lender approval within 5-10 business days. Respondent emphasized that he would “do everything in [his] power to finalize [Strong’s] funding within the next 20-30 business days (or less), or [he would] will simply refund [her] origination fees, pursuant to [his] BFA.” In reality, respondent knew that Strong would not receive a loan within the next 20-30 business days, or at all, because he did not have access to any loan funding sources and he never intended to seek any funding for Strong.

On February 6, 2009, Strong sent respondent an email asking that he reimburse her for the virtual office expenses she incurred as a result of his delay in obtaining the funding.

On February 10, 2009, respondent sent Strong an email indicating that he was working “very diligently and in good faith, including late night tonight and every night, to help ensure [Strong’s] success.” He promised that a loan processor would contact her that week to finalize her funding documents. In reality, respondent knew that he would take no action on Strong’s matter because he had no intention of obtaining a Super Corp or funding for Strong.

On March 26, 2009, Strong sent respondent an email expressing her frustration with his failure to obtain funding. The next day, respondent wrote back stating that she was unrealistic in her expectations and that she should be “appreciative rather than critical” about his efforts to obtain funding for her. He ended his email by stating that Strong should “work with [respondent] as a team player, especially with [her] funding around the corner.” In reality, respondent knew that he had expended no efforts to obtain Strong a loan and that Strong never would receive funding.

On March 31, 2009, respondent sent Strong an email indicating that Andre Smith, respondent’s loan processor, spoke directly with the lenders and that her funding was imminent.

In reality, respondent knew that Andre Smith was not speaking with any lenders and that Strong never would receive funding because respondent had not taken any action to obtain funding for her.

On April 8, 2009, respondent sent Strong an email indicating that her corporation was being submitted for funding that week. He concluded the email by stating that “Your funding is imminent, so relax and understand that you are extremely close at this point. In reality, he knew that he had not obtained a corporation for Strong; that her corporation was not being submitted for financing; and that she never would receive funding because he had not taken any action to obtain funding for her.

On April 23, 2009, Andre Smith represented to Strong, at respondent’s direction, that she would receive her corporation within the next five business days. In reality, respondent knew that he had not obtained a corporation for Strong and that she never would receive a corporation because he had not taken any action to obtain a corporation for her.

On May 27, 2009, Strong requested a refund of the \$37,500 that she paid for the Super Corp because respondent was in violation of the BFA provision that required respondent to provide the funding within 120 days of execution of the agreement.

On June 4, 2009, respondent sent Strong an email indicating that “due to the ongoing poor economy and banking/lending crisis issues, [respondent’s] law firm is unable to perform according to the terms of [Strong’s] BFA.” He stated that he was unable to refund the up-front fees at that time, but expected to do so as soon as possible. Respondent assured Strong in the email that he was “a man of integrity and high ethical values” who would not run from his obligation to refund the up-front fees. He claimed that he was consulting with bankruptcy attorneys to set up an asset liquidation plan and repayment schedule. In reality, respondent had

no intention of issuing any refund to Strong. In reality, respondent did not consult with any bankruptcy attorneys to set up an asset liquidation plan or to set up a repayment schedule. Thereafter, respondent ceased all communication with Strong and did not refund any of her funds.

## **2. Conclusions of Law**

### **a. Count 4 - Section 6106 (Moral Turpitude)**

There is clear and convincing evidence that respondent violated section 6106. By selling Strong a product that respondent had no intention or ability to provide and by falsely leading Strong to believe that funding was imminent, respondent engaged in a scheme to defraud Strong. By engaging in a scheme to defraud, respondent committed acts of moral turpitude, dishonesty and corruption in wilful violation of section 6106.

## **G. Case no. 09-O-12790 (Stewart)**

### **1. Facts**

On October 16, 2008, Ty Stewart entered into a Premium BFA with “H. M. Torrey, attorney at law.” The Premium BFA promised Stewart that respondent would obtain unsecured financing of \$250,000 in exchange for an up-front 100%-refundable origination fee of \$7,500.

On October 16, 2008, Stewart borrowed the \$7,500 up-front fee from his line of credit on his credit card and was charged 29% interest on the outstanding balance. On that same date, respondent received a \$7,500 check payable to “The Law Offices of H. M. Torrey.” In reality, at the time that respondent entered into the Premium BFA with Stewart, respondent knew that Stewart would not receive a loan because respondent never intended to seek a loan on Stewart’s behalf. In reality, respondent knew that he intended to collect the \$7,500 up-front fee and take no further action on Stewart’s behalf.

Between December 2, 2008 and January 30, 2009, respondent falsely represented to Stewart that he was working on obtaining Stewart's funding.

On February 4, 2009, respondent sent Stewart an email explaining that the delay on Stewart's matter was caused by one of respondent's ex-employees. He stated that he now was personally handling Stewart's file and needed time to check with the lending underwriters to see how quickly funding would occur. Respondent represented that he would have an answer within the next 5-10 business days and that, after he received the information from the loan underwriters, he would have the actual lender approval within 5-10 business days. Respondent emphasized that he would "do everything in [his] power to finalize [Stewart's] funding within the next 20-30 business days (or less), or [he would] simply refund [Stewart's] origination fees, pursuant to [his] BFA." In reality, respondent knew that Stewart would not receive a loan within the next 20-30 business days, or at all, because respondent did not have access to any loan funding sources and he never intended to seek any funding for Stewart.

On February 5, 6, 13 and 18, 2009, respondent made repeated promises to Stewart that respondent's loan processors were working on Stewart's file. In reality, respondent knew that there were no loan processors working on Stewart's file and that Stewart never would receive a loan.

On February 19, 2009, respondent sent Stewart an email listing the information he required in order to process the loan. Respondent concluded the email by claiming that his "relationship with lenders [was] very strong, and [respondent] could get [Stewart] funded very quickly hereafter ...." On that same date, Stewart sent respondent an email providing the information requested. Stewart concluded the email by requesting the return of his \$7,500 as soon as possible, since Stewart was paying 29% interest, if respondent was unable to obtain a loan for Stewart.

Between February 20 and March 13, 2009, respondent sent Stewart several email messages indicating that he was working with the processors and Stewart's loan was close to completion. In reality, respondent was not working with any processors and he knew that Stewart never would receive a loan since respondent had taken no action to obtain a loan for him.

On March 13, 2009, Stewart sent respondent an email pleading with respondent to return the \$7,500 that Stewart paid respondent. Stewart informed respondent that due to respondent's failure to provide Stewart with the loan during the past five months, his marriage was suffering and his wife intended to leave him.

On March 27, 2009, respondent sent Stewart an email informing Stewart that "patience is your biggest virtue here and you will be very happy with the results ...." He claimed that his processors were backed up, but that Stewart's funding should occur very shortly. In reality, respondent had no processors working on a loan for Stewart and respondent knew that Stewart never would receive funding since respondent had not taken any action to obtain a loan for him.

On March 31 and April 8, 2009, respondent sent Stewart email indicating that he was on track" to secure funding for Stewart, but that the funding was about two weeks out. In reality, respondent knew that Stewart never would receive funding since respondent had not taken any action to obtain a loan for him.

On April 8, 9, 14, 16 and 21, 2009, Stewart sent respondent an email requesting an immediate refund of the \$7,500 Stewart paid pursuant to the terms of the Premium BFA.

On April 22, 2009, respondent sent Stewart an email indicating that he intended to refund the funds, but respondent was "simply backlogged" at the time. Respondent concluded the email by stating that "[Stewart's] refund [was] imminent."

On April 22 and 30 and May 1, 2009, Stewart sent respondent emails repeating his request for an immediate refund. On May 6, 2009, respondent sent Stewart an email indicating

that respondent intended to issue the refund by the end of May 2009. Respondent asked Stewart to work with respondent “for a little while longer, as complaints will do neither of us any good right now, as haste makes waste.” Thereafter, respondent ceased all communication with Stewart and did not refund any of Stewart’s funds.

## **2. Conclusions of Law**

### **a. Count 5 - Section 6106 (Moral Turpitude)**

There is clear and convincing evidence that respondent violated section 6106. By selling Stewart a product that respondent had no intention or ability to provide and by making false promises regarding the issuance of a refund, respondent engaged in a scheme to defraud Stewart. By engaging in a scheme to defraud, respondent committed acts of moral turpitude, dishonesty and corruption in wilful violation of section 6106.

## **H. Case no. 09-O-14162 (Peng)**

### **1. Facts**

On October 24, 2008, Bi Jung Peng entered into a Premium BFA with “H. M. Torrey, attorney at law.” The Premium BFA promised Peng that respondent would obtain unsecured financing of \$250,000 in exchange for an up-front, 100%-refundable funding origination fee of \$7,500. It stated that the funding would take approximately 10-20 business days. On October 24, 2008, Peng provided respondent with a \$7,500 check. In reality, at the time that respondent entered into the Premium BFA with Peng, respondent knew that Peng would not receive a loan because respondent never intended to seek a loan on Peng’s behalf. In reality, respondent knew that he intended to collect the \$7,500 up-front fee and take no further action on behalf of Peng.

On March 13, 2009, respondent sent Peng’s representative, Bill Hurst, an email indicating that respondent was in the final stage of the funding process. It requested that Peng sign an application and included a list of the information respondent required in order to process

his loan. Respondent concluded the email by claiming that “once [Peng] completed all of the [paperwork], one final time, [Peng’s] funding will be literally only days away.

Between March 27 and April 16, 2009, respondent sent Hurst several email messages indicating that respondent was working with the processors and Peng’s loan was close to completion. In reality, respondent was not working with any processors and he knew that Peng never would receive a loan since he had taken no action to obtain a loan for Peng.

On April 21, 2009, Hurst sent respondent an email requesting that respondent provide an immediate refund since it had been six months since Peng submitted his initial paperwork.

On April 22, 2009, respondent sent Hurst an email indicating that respondent would issue a refund, but respondent “has a refund protocol that needs to be followed on [respondent’s] end. As such, [Peng’s] refund will be issued within 20 business days, pursuant to [the] BFA terms.” In reality, respondent had no intention of issuing any refund to Peng.

On May 20, 2009, respondent sent Hurst an email indicating that respondent would respond to Peng’s refund request by May 26, 2009. Thereafter, respondent ceased all communication with Hurst and Peng and he did not refund any funds to Peng.

## **2. Conclusions of Law**

### **a. Count 6 - Section 6106 (Moral Turpitude)**

There is clear and convincing evidence that respondent violated section 6106. By selling Peng a product that respondent had no intention or ability to provide and by making false promises regarding the issuance of a refund, respondent engaged in a scheme to defraud Peng. By engaging in a scheme to defraud, respondent committed acts of moral turpitude, dishonesty and corruption in wilful violation of section 6106.



## **I. Case no. 09-O-14971 (Bryant)**

### **1. Facts**

On November 20, 2008, Erick Bryant entered into a Super Corp BFA with “H. M. Torrey, attorney at law.”

On November 24, 2008, Bryant paid \$37,500 to Cole Smith for the purposes of purchasing a corporation and obtaining funding of up to \$1,185,000. At this time, Cole Smith worked for respondent and respondent, through Cole Smith, agreed to provide the corporation and the funding. On that same date, Cole Smith provided respondent with \$23,500 of the \$37,500, which represented respondent’s share of the proceeds received from Bryant. In reality, at the time that respondent entered into the Super Corp BFA with Bryant, respondent knew that Bryant would not receive a Super Corp and would not receive any loan because respondent never intended to seek a loan on Bryant’s behalf. In reality, respondent knew that he and Cole Smith intended to collect the \$37,500 up-front fee and take no further action on behalf of Bryant.

On February 12, 2009, Bryant asked respondent to provide him with a refund of \$37,500 since respondent had lied to Bryant on numerous occasions regarding the status of the loan.

On February 13, 2009, respondent sent Bryant an email asking that Bryant give respondent “one final opportunity to perfect” Bryant’s loan. Respondent claimed that funding Bryant’s project was respondent’s “absolutely #1 priority, as quickly as possible at this point in time.” In reality, respondent had no intention of taking any action to obtain a loan for Bryant and respondent knew that Bryant never would receive a loan because respondent had no access or ability to obtain a loan.

On February 13, 2009, Bryant sent respondent an email requesting that respondent immediately refund the \$37,500. On that same date, respondent wrote back indicating that

respondent would issue a refund within 10 business days and that the amount that respondent would refund was \$23,500 since that was the amount that respondent received from Cole Smith.

On February 23, 2009, respondent sent Bryant an email demanding that Bryant sign a release before respondent would process Bryant's refund request.

On February 25, 2009, Bryant provided respondent with the signed release. On that same date, respondent confirmed that Bryant would receive a refund within 10 days. In reality, respondent knew that Bryant would not receive a refund because respondent had no intention of issuing a refund to Bryant.

On March 4, 2009, respondent claimed that he would not be able to process Bryant's refund request "pursuant to our legal and accounting protocol for approximately 20 business days from today." In reality, respondent knew that Bryant would not receive a refund because respondent had no intention of issuing a refund to Bryant.

On March 27, 2009, respondent sent Bryant an email claiming that "due to many circumstances on our end at present, your refund cannot be processed for approximately another 30 days. We are looking to be able to duly process your refund request around May 1." In reality, respondent knew that Bryant would not receive a refund because respondent had no intention of issuing a refund to Bryant.

On May 6, 2009, respondent sent Bryant an email asking Bryant to "please bear with me until the end of this month (May) and your refund is imminent as promised." In reality, respondent knew that Bryant would not receive a refund because respondent had no intention of issuing a refund to Bryant.

On May 19, 2009, Bryant sent respondent an email informing him that Bryant rescinded his acceptance of \$23,500 and, pursuant to the terms of the Super Corp BFA, Bryant demanded a

refund of \$37,500. Thereafter, respondent ceased all communication with Bryant and he did not refund any funds to Bryant.

## **2. Conclusions of Law**

### **a. Count 7 - Section 6106 (Moral Turpitude)**

There is clear and convincing evidence that respondent violated section 6106. By selling Bryant a product that respondent had no intention or ability to provide and by falsely leading Bryant to believe that funding was imminent, respondent engaged in a scheme to defraud Bryant. By engaging in a scheme to defraud, respondent committed acts of moral turpitude, dishonesty and corruption in wilful violation of section 6106.

## **J. Case no. 09-O-15052 (Guevara)**

### **1. Facts**

On August 21, 2008, Hector Guevara entered into a Premium BFA with “H. M. Torrey, attorney at law.” The Premium BFA promised Guevara that respondent would obtain unsecured financing of \$500,000, in increments of \$100,000, paid every 30 days, in exchange for an up-front 100%-refundable origination fee of \$5,000. On that same date, Guevara paid respondent with a \$5,000 check payable to “The Law Offices of H. M. Torrey.” In reality, at the time that respondent entered into the Premium BFA with Guevara, respondent knew that Guevara would not receive a loan because respondent never intended to seek a loan on Guevara’s behalf. In reality, respondent knew that he intended to collect the \$5,000 up-front fee and take no further action on behalf of Guevara.

On January 30, 2009, Guevara sent respondent an email inquiring about the status of his loan.

On February 4, 2009, respondent sent Guevara an email explaining that the delay on Guevara’s matter was caused by one of respondent’s ex-employees. Respondent stated that he

now was personally handling Guevara's file and needed time to check with the lending underwriters to see how quickly funding would occur. He represented that he would have an answer within the next 5-10 business days and that, after he received the information from the loan underwriters, he would have the actual lender approval within 5-10 business days. He emphasized that he would "do everything in [his] power to finalize [Guevara's] funding within the next 20-30 business days (or less), or [he would] simply refund [Guevara's] origination fees, pursuant to [his] BFA." In reality, respondent knew that Guevara would not receive a loan within the next 20-30 business days, or at all, because respondent did not have access to any loan funding sources and he never intended to seek any funding for Guevara.

On February 6, 2009, Guevara sent respondent an email asking that respondent refund the \$5,000. On February 10, 2009, respondent wrote back indicating that he would issue Guevara a refund within the next 10 business days. In reality, respondent knew that Guevara would not receive a refund because he had no intention of issuing a refund to Guevara.

On February 25, 2009, Guevara sent respondent an email reminding respondent that the refund was due that day. On March 3, 2009, respondent wrote back stating that his processing department was extremely backed up and he would be unable to process Guevara's refund for approximately 20 business days. In reality, respondent knew that Guevara would not receive a refund because he had no intention of issuing a refund to Guevara.

On March 27, 2009, respondent sent Guevara an email stating that he could not process Guevara's refund for approximately another 30 days, or around May 1, 2009. Guevara wrote back on the same day demanding that respondent refund the money immediately. Thereafter, respondent ceased all communication with Guevara and did not refund any funds to Guevara.

## **2. Conclusions of Law**

### **a. Count 8 - Section 6106 (Moral Turpitude)**

There is clear and convincing evidence that respondent violated section 6106. By selling Guevara a product that respondent had no intention or ability to provide and by making false promises regarding the issuance of a refund, respondent engaged in a scheme to defraud Guevara. By engaging in a scheme to defraud, respondent committed acts of moral turpitude, dishonesty and corruption in wilful violation of section 6106.

## **K. Case no. 13458 (Surface)**

### **1. Facts**

On September 30, 2008, Cole Smith provided Geraldine Surface with a Super Corp BFA. On that same date, Surface entered into a Super Corp BFA with “H. M. Torrey, attorney at law.” The Super Corp BFA promised Surface that she would receive a Super Corp and a loan of \$1,185,000 in exchange for a start up payment of \$37,500.

On October 6, 2008, Surface paid \$37,500 to Cole Smith for the purposes of purchasing a Super Corp and obtaining funding of up to \$1,185,000. At that time, Cole Smith worked for respondent, who, through Cole Smith, agreed to provide the corporation and funding. On October 7, 2008, Cole Smith provided respondent with \$23,500 of the \$37,500, which represented respondent’s share of the proceeds received from Surface. In reality, at the time that respondent entered into the Super Corp BFA with Surface, he knew that she would not receive a Super Corp and would not receive any loan because he never intended to seek a loan on her behalf. In reality, respondent knew that he and Cole Smith intended to collect the \$37,500 up-front fee and take no further action on behalf of Surface.

In February 2009, respondent promised Surface that she would receive funding within 15 business days. In reality, respondent knew that Surface would never receive a Super Corp; that

he had made no efforts to obtain a Super Corp for Surface; and that she would never receive any loan funding.

Between March and May 2009, respondent represented to Surface that her funding was imminent. In reality, respondent knew that Surface's funding was not imminent and that she would never receive any loan funding because he had made no effort to obtain funding for her.

On June 1, 2009, Surface sent respondent an email asking that he immediately refund the \$37,500 she paid in up-front fees. On June 4, 2009, respondent wrote back stating that "due to the ongoing poor economy and banking/lending crisis issues, [respondent's] law firm is unable to perform according to the terms of [Surface's] BFA." He said that he was unable to refund the up-front fees at that time, but expected to do so as soon as possible. Respondent assured Surface in the email that he was "a man of integrity and high ethical values" who would not run from his obligation to refund the up-front fees. He claimed that he was consulting with bankruptcy attorneys to set up an asset liquidation plan and repayment schedule. In reality, he had no intention of issuing any refund to Surface and he did not consult with any bankruptcy attorneys to set up an asset liquidation plan or to set up a repayment schedule. Thereafter, he ceased all communication with Surface and he did not refund any funds to her.

Surface relied upon respondent's representation that funding would occur within four to eight weeks when Surface funded the up-front payment by obtaining a line of credit on her credit cards. When funding did not come through as promised, Surface's credit rating was damaged because she was unable to make payments on her credit cards.

## **2. Conclusions of Law**

### **a. Count 9 - Section 6106 (Moral Turpitude)**

There is clear and convincing evidence that respondent violated section 6106. By selling Surface a product that respondent had no intention or ability to provide and by falsely leading

Surface to believe that funding was imminent, respondent engaged in a scheme to defraud Surface. By engaging in a scheme to defraud, respondent committed acts of moral turpitude, dishonesty and corruption in wilful violation of section 6106.

**L. Case no. 09-O-14872 (The Aroll Matter)**

**1. Facts**

On March 11, 2008, Morton Aroll entered into a 90-day BFA with “H. M. Torrey, attorney at law.” The 90-day BFA promised Aroll that respondent would obtain unsecured financing of \$1,000,000 within 90 days in exchange for an up-front 100%-refundable funding origination fee of \$10,000. On that same date, Aroll provided respondent with the \$10,000 origination fee. In reality, at the time that respondent entered into the 90-day BFA with Aroll, respondent knew that Aroll would not receive any loan because he never intended to seek a loan on Aroll’s behalf. In reality, respondent knew that he intended to collect the \$10,000 up-front fee and take no further action on behalf of Aroll.

On August 4, 2008, respondent promised Aroll that he would receive funding within 15 business days. In reality, respondent knew that Aroll would never receive any loan funding.

On August 4, 2008, respondent claimed he was introducing two new funding programs that were “lender preferred” despite the recession and tightening credit market. One of the funding programs was a BFA that provided the purchaser with a Super Corp.

On August 14, 2008, Aroll cancelled his 90-day BFA and entered into a Super Corp BFA with “H. M. Torrey, attorney at law.” The Super Corp BFA promised Aroll that he would receive a Super Corp and a loan of \$975,000 in exchange for a start up payment of \$32,500. On that same date, Aroll paid \$22,500 to respondent, for a total amount of \$32,500 (the \$10,000 paid for the 90-day BFA plus the \$22,500). In reality, at the time that respondent entered into the Super Corp BFA with Aroll, respondent knew that Aroll would not receive a Super Corp and

would not receive any loan because he never intended to seek a loan on Aroll's behalf. In reality, respondent knew that he intended to collect the \$32,500 up-front fee and take no further action on behalf of Aroll.

The Super Corp BFA included a provision which stated that as an added benefit, Aroll was entitled to take advantage of a "very unique opportunity to actively participate in one of [respondent's] highly secured investment platforms, in which [Aroll] could easily repay [his loan] as well as give [himself] a huge positive cash flow each and every month (a return each month of approximately up to 10-50% of whatever [Aroll has] in the investment platform)." Respondent stated that the investment platform "completely secures [Aroll's] investment principal, and [Aroll's] investment principal never leaves the bank/attorney escrow account. Thus, it is never at risk, and [Aroll] can receive approximately up to 10-50% returns each and every month." In reality, respondent did not have any investment platform; did not intend to pay any interest; and did not intend to maintain any funds he received in an escrow account. In reality, he intended to collect funds under the guise of a highly secure investment platform and apply them to his own use and benefit.

On September 23, 2008, Aroll provided respondent with \$400,000 for the purposes of investing in the investment platform. At the time that Aroll provided respondent with the \$400,000, respondent promised Aroll that respondent would maintain the funds in his escrow account and that Aroll's funds were not at risk because respondent intended to maintain the funds in respondent's escrow account. In reality, at the time respondent made these representations, he knew he would not deposit the funds in any escrow account, and, instead, intended to take Aroll's funds and use them for his own personal use and benefit.

On September 29, 2008, respondent sent Aroll an email indicating that he was in the process of finalizing Aroll's investment paperwork, which would be complete by October 7,



2008. He claimed that, 30 days thereafter, Aroll would receive his first interest payment. In reality, respondent was not finalizing any paperwork and he knew that Aroll would never receive any interest payments since he did not intend to invest Aroll's funds but, instead, intended to use them for his own personal use and benefit.

On November 10, 2008, respondent sent Aroll an email indicating that respondent was experiencing a delay on funding the investment platforms due to the current banking crisis. However, respondent represented that funding was back on track and Aroll could expect to receive his first payout no later than December 12, 2008. Respondent reminded Aroll that his principal was "100% safe and secure, with no risk of loss." In reality, respondent knew that Aroll would never receive any interest payments since he did not intend to invest Aroll's funds in any investment platform and he knew that Aroll's funds were not safe because respondent had already used them for his own use and benefit and had not maintained them in his escrow account.

Respondent's email also indicated that Aroll's Super Corp funding also was impacted by the banking crisis and that the Super Corp would be funded around December 12, 2008 also. In reality, respondent knew that Aroll would never receive a Super Corp because he had taken no action to obtain a Super Corp or a loan for him.

On December 12, 2008, respondent sent Aroll an email indicating that the payout had been rescheduled to January 6, 2009 due the holiday season. Respondent claimed that during the holiday season the banking and trading industry slowed down and that was the cause of the "minor delay." Respondent stated that he, too, was a principal in the trading platform and his payout also was delayed. In reality, respondent knew that Aroll would never receive any interest payments since respondent did not intend to invest Aroll's funds in any investment platform.

Respondent's email also indicated that Aroll's Super Corp was still in process and that he was waiting for the "requisite approval" from his lenders. Respondent claimed that the delay was due to the extended holiday season. In reality, respondent knew that Aroll would never receive a Super Corp because he was not taking any action to obtain a Super Corp or a loan for Aroll.

On January 7, 2009, respondent sent Aroll an email indicating that there was a delay in the interest payouts but that he expected to receive a report within a few days from the bankers. Respondent reminded Aroll that his principal remained protected and was not at risk. In reality, respondent knew that Aroll would never receive any interest payments since he did not intend to invest Aroll's funds in any investment platform.

On January 8, 2009, respondent sent Aroll an email contending that his law firm was not part of a "scam" and that it had more integrity than any business Aroll would ever do business with. Respondent accused Aroll of "shooting the messenger" because it was the lending industry, and not respondent, that was responsible for the payout delay.

Respondent also claimed that if Aroll would like, respondent would return his principal. Respondent claimed that he would be out of the office for the week and would be unable to provide Aroll with any updates until he returned. In reality, respondent knew that Aroll would never receive any interest payments since respondent did not intend to invest Aroll's funds in any investment platform and he knew that Aroll's funds were not safe because respondent had already used them for his own use and benefit and had not maintained them in his escrow account.

On January 16, 2009, respondent forwarded an email to Aroll which, respondent contended, he received from the lenders involved in the investment platform. The purported email claimed that there was a delay on the payout because of the need to payout profits to the

\$500 million investors before the bank paid out respondent and Aroll. The forwarded email claimed that Aroll's payout was "in queue" and the payout would be released from the queue by the end of the month. In reality, respondent fabricated the email from the lender since he had no lenders and had never invested any of Aroll's money in an investment platform.

On January 27, 2009, respondent sent Aroll an email indicating that the Super Corp was with respondent's lender awaiting final approval and that payouts on the investment platform would be finalized by February 6, 2009. In reality, respondent knew that Aroll would never receive any interest payments since he did not invest Aroll's funds in any investment platform and he knew that Aroll would not receive a Super Corp because he was not taking any action to obtain a Super Corp or a loan for Aroll.

On February 11, 2009, respondent sent Aroll an email indicating that the Super Corp was with respondent's underwriter and they would be contacting him that week. He also indicated that he had spoken with his "trading group" and the "queues" were released that week, and the payouts should be administered within the next 5-10 business days. In reality, respondent knew that Aroll would never receive any interest payments since he did not invest Aroll's funds in any investment platform and he knew that Aroll would not receive a Super Corp because he was not taking any action to obtain a Super Corp or a loan for Aroll.

On February 20, 2009, respondent sent Aroll an email indicating that the Super Corp was ready for funding. He also indicated that due to the U.S. Government Office of Foreign Assets Controls' closer scrutiny of transactions, the payout on the investment platform was delayed. However, payouts were imminent once the payout clears the "new homeland security rules." In reality, respondent knew that Aroll would never receive any interest payments since he did not invest Aroll's funds in any investment platform and he knew that that Aroll would not receive a Super Corp because he had taken no action to obtain a Super Corp or a loan for Aroll.

On March 27, 2009, respondent sent Aroll an email indicating that the payouts were in the final stages, but there was “unfortunate red tape” delaying them. He claimed that Aroll was “well on [his] way with both funding [of the Super Corp] and investment payouts.” In reality, respondent knew that Aroll would never receive any interest payments since he did not invest Aroll’s funds in any investment platform and he knew that Aroll would not receive a Super Corp because he was not taking any action to obtain a Super Corp or a loan for Aroll.

On May 6, 2009, respondent sent Aroll an email claiming that the delay to the Super Corp funding was due to the need for “credit repair” and that the delay in the investment platform payout was due to Homeland Security “dragging their feet on releasing funds ....” In reality, respondent knew that Aroll would never receive any interest payments since he did not invest Aroll’s funds in any investment platform and he knew that Aroll would not receive a Super Corp because he was not taking any action to obtain a Super Corp or a loan for Aroll.

On May 6, 2009, Aroll requested that respondent return the \$400,000 that Aroll provided for the investment platform. On May 28, 2009, respondent sent Aroll an email indicating that he would be wiring at least \$118,000 to Aroll’s account the following week, and would “put together a reasonable timetable” for the return of the balance of the \$400,000. In reality, respondent knew that Aroll would never receive any funds because respondent had no intent to wire any funds to Aroll.

On June 1, 2009, respondent claimed that Aroll would receive the first installment of \$118,000 no later than June 5, 2009. Respondent also claimed that he was liquidating assets to fund the return of the remaining \$400,000 and would return those funds no later than the end of June 2009. In reality, respondent knew that Aroll would never receive any funds because he had no intention of wiring any funds to Aroll and had no intention of liquidating any assets to fund the return of money to Aroll.

On June 4, 2009, respondent sent Aroll an email claiming that he was on schedule to wire funds to him the following day. In reality, respondent knew that Aroll would never receive any funds because he had no intent to wire any funds to Aroll.

On June 5, 2009, respondent claimed that the bank was unable to complete the transaction that day, but the bank “fully assured” respondent that the funds would reach respondent’s account the following week. Respondent assured Aroll that the funds would be forthcoming the following week, by June 12, 2009, and that he had the necessary funds to pay to Aroll. In reality, respondent knew that Aroll would never receive any funds because he had no intent to wire any funds to Aroll.

On June 12, 2009, respondent sent Aroll an email indicating that respondent’s bank stated that the funds would be available by June 16, 2009, when respondent would have a wire confirmation number for Aroll. In reality, respondent knew that Aroll would never receive any funds because had no intent to wire any funds to Aroll.

On June 17, 2009, respondent sent Aroll an email indicating that respondent would have a tracking number on the initial \$118,000 payment within the next two days. In reality, he knew that Aroll would never receive any funds because he had no intent to wire any funds to Aroll.

On June 22, 2009, respondent sent Aroll an email indicating that the bank was delaying the transfer of the \$118,000. In reality, respondent knew that Aroll would never receive any funds because he had no intent to wire any funds to Aroll.

On June 29, 2009, respondent sent Aroll an email indicating that he had an appointment with his bankers to resolve the issue of the wire transfer of the \$118,000. Respondent also claimed that he would refund the balance of the \$400,000 by July 3, 2009. In reality, respondent knew that Aroll would never receive any funds because he had no intent to wire any funds to Aroll.

On July 2, 2009, respondent claimed that the entire \$400,000 would be cleared for wire transfer by the end of the following week. In reality, respondent knew that Aroll would never receive any funds because he had no intent to wire any funds or issue any refund to Aroll. Thereafter, respondent ceased all communication with Aroll and he did not refund any funds to Aroll.

Respondent made misrepresentations to Aroll when respondent claimed or repeatedly claimed that:

(1) Aroll could invest in the investment platform and receive returns of 10 to 50% per month;

(2) Respondent would maintain Aroll's funds in his escrow account and therefore the investment was risk free;

(3) Aroll's investment platform payout was delayed, when respondent knew that Aroll never would receive a payout;

(4) Respondent was wiring \$118,000 when respondent had no intention of wiring any funds to Aroll; and

(5) Respondent would refund Aroll's \$400,000 by July 3, 2009, when respondent knew that he had no intention of making any refund to Aroll.

In reality, respondent never intended to invest any of Aroll's money; never deposited or maintained Aroll's funds in an escrow account; and never intended to refund any funds to Aroll. Respondent made the misrepresentations to Aroll for the purposes of hiding his scheme to defraud Aroll of \$400,000.

## **2. Conclusions of Law**

### **a. Counts 10 and 14 - Section 6106 (Moral Turpitude)**

There is clear and convincing evidence that respondent violated section 6106. By enticing Aroll to enter into a 90-day BFA, Super Corp BFA and investment platform, when respondent had no intention or ability to perform under the terms of the 90-day BFA, Super Corp BFA and investment platform and by falsely leading Aroll to believe that funding was imminent for the Super Corp and investment platform, respondent engaged in a scheme to defraud Aroll. By engaging in a scheme to defraud and by making the misrepresentations to Aroll as set forth above, respondent committed acts of moral turpitude, dishonesty and corruption in wilful violation of section 6106.

## **M. All Cases**

### **1. Facts**

Respondent made misrepresentations to the parties identified in counts 1 to 10 when he falsely claimed or repeatedly claimed:

(1) That he maintained a 10-lawyer law firm, located in Mountain View, CA. In reality, respondent was the only lawyer associated with his law firm and he ran from his residence, a townhouse in Henderson, Nevada and that he had relationships with loan processors and underwriters and that he maintained a loan processing department and loan underwriting department. In reality, respondent had no relationships with any loan processors or underwriters and did not maintain a loan processing department or loan underwriting department;

(2) That he was working diligently to obtain loans for the parties and that their loans were imminent and that the parties would receive refunds of their up-front fees. In reality, respondent made no effort to obtain any loans for any of the parties. He knew that they never would receive a loan and that they never would receive a refund of their up-front fees.

Respondent made the misrepresentations for the purposes of hiding his scheme to defraud the parties indentified in counts 1 to 10.

Respondent made misrepresentations in the 90-day BFA when he claimed that he would provide a loan within 90 days in exchange for an up-front, 100%-refundable origination fee of one percent of the total loan. In reality, at the time that respondent provided the parties with the 90-day BFAs, he never intended to provide any loans and never intended to refund the up-front fees.

Respondent made misrepresentations in the Premium BFA when he claimed that he would provide a loan within 30 days in exchange for an up-front, 100%-refundable origination fee of one percent of the total loan. In reality, at the time that respondent provided the parties with the Premium BFAs, respondent never intended to provide any loans and never intended to refund the up-front fees.

Respondent made misrepresentations in the Super Corp BFA when he claimed that he would provide a Super Corp and a loan in approximately four to eight weeks in exchange for a fully 100%-refundable up-front fee. In reality, at the time that respondent provided the parties with the Super Corp BFAs, he never intended to provide any Super Corp or loan and never intended to refund the up-front fee.

Respondent made the misrepresentations in the 90-day BFA, Premium BFA and Super Corp BFA for the purposes of inducing the parties identified in counts 1 to 10 to pay the up-front fees. Those parties relied upon respondent's misrepresentations in the 90-day BFA, Premium BFA and Super Corp BFA when they paid the up-front fees.

## **2. Conclusions of Law**

### **a. Counts 11, 12 and 13 - Section 6106 (Moral Turpitude)**

There is clear and convincing evidence that respondent violated section 6106 by making



misrepresentations to the parties identified in counts 1 to 10 regarding:

- (a) The nature of his law practice and his association with loan processors and underwriters;
- (b) The funding of their loans and the status of the refund of their up-front fees; and
- (c) The provisions of the 90-day BFA, Premium BFA and Super Corp BFA.

Accordingly, he committed acts of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

#### **IV. LEVEL OF DISCIPLINE**

##### **A. Aggravating Circumstances**

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct<sup>5</sup>, std. 1.2(b).)

Respondent has engaged in a pattern of dishonest conduct, namely defrauding his clients and making misrepresentations to them. (Std. 1.2(b)(ii)).

Respondent's misconduct significantly harmed clients. (Std. 1.2(b)(iv).) Miller's reliance on respondent's representation that funding was imminent caused significant harm to Miller's and Surface's credit ratings. Whitaker's reliance on respondent's representations caused him to make late mortgage payments. Roque incurred the additional cost to obtain a business license and the additional monthly expense of about \$223 from about October 2008 to April 2009 to maintain a virtual office. Strong borrowed money from her IRA to obtain the up-front fees and incurred a penalty by not repaying those funds within 90 days. She also incurred expenses of \$1,019.59 for her virtual office. Stewart borrowed the \$7,500 up-front fee from his line of credit on his credit card and was charged 29% interest on the outstanding balance.

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<sup>5</sup>.Future references to standard or std. are to this source.

Moreover, due to respondent's failure to provide Stewart with the loan, Stewart's marriage suffered and his wife intended to leave him. All of the clients were strung along over a period of time with regard to the obtaining of their funds pursuant to the BFAs or the refund of their up-front fees.

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (Std. 1.2(b)(vi); *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 104, 109.)

#### **B. Mitigating Circumstances**

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors.

#### **C. Discussion**

The purpose of State Bar 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.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).) Discipline is progressive; however, the standards do not require a prior

record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.7(c).)

Standard 2.3 applies in this matter. It recommends actual suspension or disbarment for culpability of an act of moral turpitude, fraud, intentional dishonesty or of concealment of a material fact from a court, client or other person, depending on 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 relates to the attorney's acts within the practice of law.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

The State Bar recommends disbarment. The court agrees.

An attorney’s dishonesty “violates ‘the fundamental rule of ethics-that of common honesty without which the profession is worse than valueless in the place it holds in the administration of justice’ [Citations.]” (*Rhodes v. State Bar* (1989) 49 Cal.3d 50, 60.) Respondent has engaged in a “serious pattern of misconduct involving recurring types of wrongdoing.” (*Garlow v. State Bar* (1988) 44 Cal.3d 689, 711.) He has been found culpable, in 10 matters, of repeatedly defrauding his clients and making misrepresentations to them in order to benefit himself. “[W]hen an attorney commits multiple acts of similar misconduct or recurring types of wrongdoing ... the gravity of each successive violation increases. [Citation.]” (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498 (dis. opn. of O'Brien, J.)) Due to the nature and extent of this misconduct, the court finds that respondent’s

disregard of his clients' interests is habitual and that his misconduct evidences a pattern of acts of moral turpitude, dishonesty and corruption. Respondent's matter is devoid of mitigation which could justify a discipline recommendation short of disbarment.

The serious and unexplained nature of the misconduct, the lack of participation in these proceedings as well as the self-interest underlying respondent's actions suggest that he is capable of future wrongdoing and raise concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. Having considered the evidence, the standards and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, the court so recommends.

#### **V. DISCIPLINE RECOMMENDATION**

IT IS HEREBY RECOMMENDED that respondent HOYT MICHAEL TORREY be DISBARRED from the practice of law in the State of California and that his or her name be stricken from the rolls of attorneys in this state.

It is recommended that respondent make restitution to the following clients within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, rule 291):

1. to Marshall Miller in the amount of \$33,500 plus 10% interest per annum from November 17, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Marshall Miller, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
2. to Edward Parrish Whitaker in the amount of \$20,000 plus 10% interest per annum from May 21, 2008 (or to the Client Security Fund to the extent of any

- payment from the fund to Edward Parrish Whitaker, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
3. to Luis Roque in the amount of \$30,000 plus 10% interest per annum from June 25, 2008; and in the amount of \$1836<sup>6</sup> plus 10% interest per annum from February 1, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Luis Roque, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
  4. to Cheryl Strong in the amount of \$37,500 plus 10% interest per annum from September 24, 2008; and in the amount of \$1019.59 plus 10% interest per annum from February 1, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Cheryl Strong, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
  5. to Ty Stewart in the amount of \$7500 plus 10% interest per annum from October 16, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Ty Stewart, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
  6. to Bi Jung Peng in the amount of \$7500 plus 10% interest per annum from October 24, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Bi Jung Peng, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
  7. to Erick Bryant in the amount of \$37,500 plus 10% interest per annum from November 24, 2008 (or to the Client Security Fund to the extent of any payment

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<sup>6</sup> \$275 for business license and \$223 per month for seven months (\$1561)

from the fund to Erick Bryant, plus interest and costs, in accordance with Business and Professions Code section 6140.5);

8. to Hector Guevara in the amount of \$5000 plus 10% interest per annum from August 21, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Hector Guevara , plus interest and costs, in accordance with Business and Professions Code section 6140.5);
9. to Geraldine Surface in the amount of \$37,500 plus 10% interest per annum from October 6, 2008(or to the Client Security Fund to the extent of any payment from the fund to Geraldine Surface , plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
10. to Morton Aroll in the amount of \$10,000 plus 10% interest per annum from March 11, 2008; and in the amount of \$22,500 plus 10% interest per annum from August 14, 2008; and in the amount of \$400,000 plus 10% interest per annum from September 23, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Morton Aroll, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

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 rule 9.20, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.

## **VI. COSTS**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

## **VII. ORDER REGARDING INACTIVE ENROLLMENT**

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: May \_\_\_\_\_, 2010

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LUCY ARMENDARIZ  
Judge of the State Bar Court