

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case Nos.: 09-O-18521-PEM (10-O-10839;
	)	11-O-10577; 11-O-11182;
	)	11-O-12544; 11-O-14266;
STEVAN JOHN HENRIOULLE,	)	11-O-19729; 12-O-11761;
Member No. 57282; and	)	12-O-11764; 12-O-13429);
	)	12-O-16519 [Henrioulle];
)	
RONALD VERIDIANO UY,	)	09-O-18520 (10-O-10838;
Member No. 177157,	)	11-O-11183; 11-O-14267;
	)	12-O-10521; 12-O-10523;
	)	12-O-11765; 12-O-12450);
Members of the State Bar.	)	12-O-16520 [Uy] (Cons.)
)	
	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
	)	ENROLLMENT
)	

Introduction¹

In this contested disciplinary proceeding, two attorneys and a resigned member of the State Bar exploited the plight of many financially distressed homeowners for their personal gain. Respondents Stevan John Henrioulle and Ronald Veridiano Uy are charged with 44 counts of misconduct involving loan modifications in nine client matters. The charged misconduct includes: (1) creating a scheme to defraud distressed homeowners; (2) making financial arrangements with non-lawyers; (3) maintaining unjust actions; (4) failing to perform services

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

competently; (5) failing to respond to client inquiries; (6) failing to inform client of significant developments; (7) failing to refund unearned fees; (8) aiding in the unauthorized practice of law; (9) charging unconscionable fees; (10) committing acts of moral turpitude; (11) failing to serve written notice that a resigned member will perform services; (12) failing to supervise resigned lawyers; and (13) failing to cooperate with the State Bar.

This court finds, by clear and convincing evidence, that respondents Henrioulle and Uy are culpable of most of the charges. Henrioulle and Uy have harmed the public, damaged public confidence in the legal profession, and failed to maintain the high professional standards demanded of attorneys. Based upon the serious nature and extent of culpability, as well as the applicable mitigating and aggravating circumstances, the court recommends that Henrioulle and Uy be disbarred and pay restitution totaling \$46,600.

Significant Procedural History

First Notice of Disciplinary Charges

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on December 12, 2012. On January 7, 2013, Uy filed a response to the NDC; on January 22, 2013, Henrioulle filed a response to the NDC.

Second Notice of Disciplinary Charges

On May 8, 2013, the State Bar filed a second NDC. On May 22, 2013, the court consolidated the two NDCs. On May 31, 2013, Uy filed a response and on June 3, 2013, Henrioulle filed a response to the second NDC.

On May 21, 2013, the parties filed a stipulation of undisputed facts.

A seven-day trial was held on May 21-24, and July 23, 24, and 26, 2013. The State Bar was represented by Senior Trial Counsel Manuel Jimenez. Henrioulle represented himself. Uy was represented by attorneys Edward O. Lear and Rizza D. Gonzales.

On August 12, 2013, following closing briefs, the court took this matter under submission.

Findings of Fact and Conclusions of Law

Henrioulle was admitted to the practice of law in California on December 19, 1973, and has been a member of the State Bar of California at all times since that date.

Uy was admitted to the practice of law in California on June 14, 1995, and has been a member of the State Bar of California at all times since that date.

First NDC

Case Nos. 09-O-18521 (10-O-10839; 11-O-10577; 11-O-11182; 11-O-12544; 11-O-14266; 11-O-19729; 12-O-11761; 12-O-11764; 12-O-13429) [**Henrioulle**]

Case Nos. 09-O-18520 (10-O-10838; 11-O-11183; 11-O-14267; 12-O-10521; 12-O-10523; 12-O-11765; 12-O-12450) [**Uy**]

Background Facts

Before 2006, Uy practiced primarily in family law, immigration, and personal injury. And before 2008, Henrioulle practiced primarily in estate planning, probate, and family law, and occasionally criminal defense.

At all times mentioned, Tarik Sami Soudani was not authorized to practice law. He is a former attorney who had resigned with charges pending on November 18, 1988. In 2006, when Uy started working with Soudani, Uy was fully aware that Soudani had resigned with charges pending and was not licensed to practice law. Soudani's primary duties were to gather documents, interview clients, and drum up business.

In or about 2006, many of Uy's clients approached him regarding problems with their mortgages. As a result, with Soudani's assistance, Uy started offering litigation and loan modification services to distressed homeowners.

Coincidentally, Henrioulle has known Soudani as early as 1994 when Soudani provided him with paralegal services. Henrioulle was also aware that Soudani had resigned with charges pending in 1988 and was not authorized to practice law.

At some point, Soudani brought Uy and Henrioulle together. From July 2009 to October 2011, Henrioulle associated himself with Uy's law firm and the firm became known as the Law Offices of Uy and Henrioulle (Firm). Uy and Henrioulle stipulated that they were de facto law partners and close associates. Uy and Henrioulle are collectively referred to as "respondents."

Facts (Count 1 – The Scheme to Defraud Distressed Homeowners)

From July 2009 to October 2011, respondents took on as many as 200 clients and entered into legal services agreements with these clients regarding loan modifications and the prosecution of lender lawsuits. Respondents acknowledge that clients would pay the Firm for litigation services an upfront payment of \$3,995 to \$4,500, followed by a monthly first payment initially set at \$500 and subsequently rose to \$650 and then \$850. Furthermore, most clients were making monthly payments with their credit cards so respondents had an interest in keeping the cases open as long as possible with doing as little work as possible.

Soudani was the office manager for the Firm and it is clear that respondents delegated the day-to-day functions of the office to Soudani. Clients often met with Soudani several times before being introduced to respondents. In some instances, respondents failed to meet with the client before the matter was filed, failed to review client files, and were unaware of the existing law regarding the cases filed. Moreover, Soudani, working on behalf of respondents, repeatedly made representations to the clients that the Firm would sue banks on their behalf and that they

would be able to get title to their properties free and clear. In each case, Soudani required the clients to pay \$600 for a “forensic analysis”; the utility of which was nonexistent.

Thus, the evidence showed that cases were not always filed to protect the clients but to generate income for the Firm. Respondents, either alone, or in concert with others, formulated, directed, controlled, authorized, and participated in a foreclosure rescue scheme to defraud distressed homeowners.

Conclusion

Count 1 – (§ 6106 [Moral Turpitude])

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

Respondents engaged in a scheme to defraud these clients by representing (1) that they would sue the banks and that the clients would obtain title to their properties free and clear; (2) that the clients had to pay \$600 for a forensic analysis that was useless; and (3) that they would file the prosecution of lender lawsuits if the clients paid an initial fee of \$3,995 to \$4,500 and a monthly fee from \$500 to \$850 without any intent to perform these services.

Thus, by engaging in a scheme to defraud financially distressed homeowners, by exploiting them for personal gain, and by accepting employment without intent to perform, respondents committed acts involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

Case Nos. 10-O-10838 and 10-O-10839 – The Agiaos Matter (Counts 2 – 5)

Upon motion by the State Bar, counts 2 to 5 are dismissed with prejudice.

Case No. 11-O-10577 – The Zakharova Matter (As to Respondent Henrioulle Only)

Facts (Counts 6 – 9)

Galina Zakharova was born and raised in Russia and her native language is Russian. She has lived in the Sacramento, California, area for 13 years. In 2004, she and her husband bought a home in Antelope, California, where she resided with her eight children. She and her husband both worked until her husband had a stroke. After his stroke, they began to have difficulty paying their mortgage. Sometime in November 2009, Zakharova heard on a Russian radio station that there were lawyers who were in the business of helping people save their homes. A Russian interpreter arranged for Zakharova to meet with Henrioulle and Soudani.

Zakharova credibly testified that when she came to respondents' office and met with Henrioulle and Soudani, both said with 100% certainty they could save her home and both introduced themselves as lawyers. To this end, on November 13, 2009, Zakharova hired Henrioulle to represent her in the home mortgage loan dispute with her lender. Henrioulle agreed to take responsibility for a lawsuit that Zakharova had already filed against her lender and other defendants.²

On November 30, 2009, Zakharova's house was lost to foreclosure and sold at an auction. The sale was recorded on March 16, 2010. Between November 2009 and August 2010, Zakharova paid respondent at least \$13,000 in legal fees. While Zakharova's house was sold at an auction in November 2009, the court docket indicated that there was no court action on the case from July 2009 until February 2010. The docket is consistent with Zakharova's testimony that in March she spoke with the bank and was told that they had never once received a call from any attorney regarding their home. The docket is also consistent with the fact that after

² On May 7, 2009, Zakharova filed a lawsuit, in propria persona, case number 34-2009-00043622, Sacramento County Superior Court, entitled *Zakharova v. Greenpoint Mortgage Funding, Inc., et al.*, alleging various causes of action regarding the loan on her home located in Antelope, California. At the time, the lender was in the process of foreclosing on the property.

Zakharova hired Henrioulle, he failed to file a substitution of counsel substituting himself into the matter as counsel of record in place of Zakharova until March 18, 2010.

On March 11, 2010, the defendant in the lawsuit filed a demurrer. On May 24, 2010, over two months after the demurrer was filed, Henrioulle filed an opposition to the demurrer. On June 10, 2010, the court sustained the demurrer, and gave the plaintiff leave to file an amended complaint, no later than June 21, 2010. Henrioulle received the court order, but failed to file an amended complaint.

In November 2010, Zakharova and her family had to vacate their home and find another place to live.

On November 5 and November 9, 2010, Zakharova sent Henrioulle written requests for a refund of the \$13,000 she had paid because she reasoned that he had promised to save her home or in the alternative litigate against the lender and that he had done nothing. Henrioulle received these requests shortly after they were sent, but did not provide a refund.

On February 16, 2011, the defendant in the case filed an ex parte motion to dismiss the case because of plaintiff's failure to file an amended complaint. On March 9, 2011, respondent Uy filed a request for dismissal. On that date, the case was dismissed.

Henrioulle did not inform Zakharova that her house had been foreclosed and sold, that the court had sustained defendant's demurrer, and that the Firm had requested the court to dismiss her lawsuit and had stopped working on her case.

On March 16, 2011, Zakharova sent another request to Henrioulle for a refund and an accounting of the \$13,000. Henrioulle answered the March 16 letter with a request for an additional \$7,742.50. To date, Henrioulle has failed to provide an accounting to Zakharova as to the \$13,000 respondent received in fees.

Conclusions

Count 6 – (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

By failing to file an answer to the amended complaint and failing to take appropriate steps to avoid an auction of the Zakharova home, Henrioulle intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 7 – (§ 6068, subd. (m) [Failure to inform Client of Significant Development])

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By failing to advise Zakharova that her house had been foreclosed and sold, that the court had sustained defendant's demurrer, that her lawsuit had been dismissed, and that he had stopped working on her legal matter, Henrioulle failed to notify a client of significant developments in a matter in which he had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

Count 8 – (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property.

Henrioulle stipulated that he did not give Zakharova an accounting. Therefore, Henrioulle willfully violated rule 4-100(B)(3) by failing to provide an accounting of the \$13,000 he had received from Zakharova.

Count 9 – (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

Henrioulle admitted that Zakharova demanded a refund of \$13,000 in fees and that he did not give her a refund. Henrioulle argued that because of the legal work he did on her behalf, she was allowed to stay in her home for a year after the home was foreclosed. This court does not find his argument persuasive. Henrioulle was hired to save the home and he performed no legal services of value that went toward saving the Zakharova home. Henrioulle earned little, if any, part of the advanced fee. Thus, Henrioulle failed to refund promptly any part of the \$13,000 fees paid in advance that was unearned in willful violation of rule 3-700(D)(2).

Case Nos. 11-O-11182 and 11-O-11183 – The Kovalevas Matter

Facts (Counts 10 – 12)

Sergey and Natalya Kovaleva, husband and wife, came to the United States from Ukraine in 2001. Their native language is Russian. In 2009, they ran into difficulties paying their mortgage when Sergey lost his job. Natalya testified she was the only working person in the family.

Like Zakharova in the previous matter (counts 6-9), Natalya heard on the Russian radio station that there were lawyers who could help her save her home through loan modification services. A Russian interpreter who worked for the radio station arranged for the Kovalevas to meet with Soudani at his office (interpreter's office) in April 2009.

In May 2009, the Kovalevas went to respondents' office and met with Henrioulle as they were looking for a way to save their home by way of a loan modification. On May 17, 2009, the Kovalevas signed a contract for representation by respondents. The contract called for respondents to negotiate with the lender with the goal of achieving what the Kovalevas desired. It also called for respondents to file a lawsuit to pursue the legitimate claims of the Kovalevas.

The retainer agreement between respondents and the Kovalevas provided for a retainer of \$4,500 payable with a payment of \$2,250 on May 17 and \$2,250 payable on June 17, 2009, with a monthly payment of \$500 beginning in July 2009. The Kovalevas paid an additional \$5,000 to respondents for fees after respondents consolidated their law practices, including \$600 for a forensic loan audit. Respondents stipulated that they received \$10,000 in fees from the Kovalevas.

On May 7, 2010, respondents filed a lawsuit on behalf of the Kovalevas in Sacramento County Superior Court, case number 34-2010-00077275-CU-OR-GDS, against the mortgage holder and related defendants.

In August 2010, the Kovalevas lost their home at a trustee sale. Afterward, Natalya credibly testified she talked with Henriouille and he told her he was very busy on vacation and missed the auction.

On June 30, 2011 the superior court set the matter for an order to show cause regarding dismissal because respondents failed to file an Attorney Compliance Statement and failed to have all answers/responsive pleadings or defaults on file in a timely manner.

On September 8, 2011, the court ordered the entire action dismissed for respondents' failure to comply with Case Management Program guidelines and prior orders of the court. The court specifically found that no sanctions short of dismissal were sufficient to obtain compliance with the relevant rules and orders.

The Kovalevas repeatedly demanded a refund since August 2010. Respondents have stipulated that they have not provided the Kovalevas with an accounting and have in fact advised the clients that they are not entitled to a refund.

In December 2010, the Kovalevas sued respondents for damages. In March 2012, respondents paid them \$3,000 as settlement.

Conclusions

Count 10 – (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By failing to competently prosecute the Kovalevas lawsuit, failing to timely file pleadings, failing to comply with court orders which resulted in the case dismissal, and failing to take appropriate steps to avoid the foreclosure, respondents intentionally, recklessly, and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

Count 11 – (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

Respondents stipulated that they failed to render appropriate accounts to the Kovalevas regarding all funds coming into respondents' possession in willful violation of rule 4-100(B)(3).

Count 12 – (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Respondents failed to perform any services of value on behalf of the Kovalevas.³ Respondents did not earn the full amount of the \$10,000 advanced fees. The clients had to sue them for a refund and finally received \$3,000 in March 2012, more than a year after the lawsuit in December 2010.

Therefore, by failing to promptly make a refund to the Kovalevas, respondents failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2).

Case Nos. 11-O-12544 and 12-O-10523 – The Nair Matter

Facts (Counts 13 – 16)

³ In count 12 of the NDC, reference to "Zakharova" should have been to "the Kovalevas."

Vinod M. Nair purchased a home in September 2006 in Concord, California, for \$450,000.⁴ After working with the bank for a while, he decided that he needed a lawyer to help him put pressure on the bank to give him a loan modification where the principal was reduced and the rate was fixed.

To this end, he consulted a foreclosure consultant who worked with respondents. The consultant told Nair that instead of paying the mortgage, he should pay respondents and in so doing, it was likely that respondents would file a lawsuit where he could get title to the home free and clear. The foreclosure consultant then arranged for Nair to meet with Soudani on March 14, 2009.

At the meeting, Nair assumed Soudani was a lawyer although Soudani never told him that he was a lawyer. Soudani advised him to stop making his mortgage payments. Soudani also suggested that he rent the home out to an elderly woman, explaining that if an elderly woman was the renter, respondents could stop any foreclosure action by the bank for his failure to pay the mortgage. Nair signed an attorney/client fee agreement for litigation services with Uy on that date; but Uy was not present at the meeting. In fact, Nair never met either Uy or Henriouille.

The agreement called for an initial payment of \$3,995 and monthly payments of \$500 a month. Nair also paid \$600 for a predatory lending forensic audit and thereafter issued two checks for \$1,500 on April 25, 2009. He also made a \$500 payment in January 2010.

As Nair was not making his monthly mortgage payments in the belief that respondents were working on obtaining a loan modification where the principal was reduced, the bank began to take foreclosure action. Nair credibly testified that if Soudani had not promised him that stopping payments could get the home free and clear based on a predatory lending lawsuit, he would not have stopped making mortgage payments.

⁴ By 2011, the value of the home had plummeted to \$200,000.

As of October 2009, Nair became aware of SB 94⁵ and refused to make any more payments to respondents. By January 2010, respondents through Soudani sent Nair an email that until he became current with his account, they were not going to do any more legal work on his behalf.⁶ So in January 2010, respondents formally ceased performing any services for Nair.

In May 2010, Nair terminated respondents' services and demanded a \$5,000 refund. To date, respondents have failed to make any refund to Nair and have failed to provide any accounting to Nair for the funds respondents received for attorney fees.

Conclusions

Count 13 – (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

After they were hired for employment in March 2009, respondents failed to take diligent and competent steps to protect Nair's house from foreclosure or to obtain a modification of Nair's

⁵ In 2009, state laws were enacted to protect homeowners facing foreclosures. California legislators sought to curb abuses by “a cottage industry that has sprung up to exploit borrowers who are having trouble affording their mortgages, and are facing default, and possible foreclosure, if they are unable to negotiate a loan modification or any other form of mortgage loan forbearance with their lender.” (Sen. Com. on Banking, Finance, and Insurance, Analysis of Sen. Bill No. 94 (2009 Reg. Sess.) as amended Mar. 23, 2009, pp. 6-7.)

On October 11, 2009, Senate Bill No. 94 (SB 94) became effective, providing two safeguards for borrowers who employ the services of someone to help with a loan modification: (1) a requirement for a separate notice to borrowers that it is not necessary to use a third party to negotiate a loan modification (codified as Civ. Code, § 2944.6); and (2) a proscription against charging pre-performance compensation, i.e., restricting the collection of fees until all loan modification services are completed (codified as Civ. Code, § 2944.7). The new legislation was designed to “prevent persons from charging borrowers an up-front fee, providing limited services that fail to help the borrower, and leaving the borrower worse off than before he or she engaged the services of a loan modification consultant.” (Sen. Com. on Banking, Finance, and Insurance, Analysis of Sen. Bill No. 94 (2009 Reg. Sess.) as amended Mar. 23, 2009, p. 7.) A violation of either Civil Code provision constitutes a misdemeanor (Civ. Code, §§ 2944.6, subd. (c), 2944.7, subd. (b)), and is cause for imposing attorney discipline. (§ 6106.3.) (See *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 225-226.)

⁶ By this time, SB 94 was effective and it was illegal to collect a fee until the modification was completed.

mortgage. Instead, Nair was advised to stop making mortgage payments and respondents would take care of it.

Respondents presented no evidence to this court that they performed any legal services for Nair. By failing to properly supervise Soudani, by failing to competently perform the services for which they were employed, and by ceasing to perform services for Nair, respondents intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 14 – (Rule 1-400(C) [Solicitation]) (As to Respondent Uy Only)

Rule 1-400(C) prohibits an attorney from making a solicitation to a prospective client with whom the attorney has no family or prior professional relationship, with certain exceptions.

The State Bar alleged that by allowing his agent to improperly solicit Nair, a prospective client, without any relations to Uy, respondent Uy violated rule 1-400(C).

There is no clear and convincing evidence to establish how Nair met the foreclosure consultant or how the consultant was Uy's agent. Therefore, Uy did not willfully violate rule 1-400(C).

Count 15 – (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

By failing to provide an accounting to Nair, respondents failed to render appropriate accounts to a client regarding all funds coming into respondents' possession in willful violation of rule 4-100(B)(3).

Count 16 – (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

There is no evidence that respondents did any work of value on behalf of Nair. Nair had repeatedly asked for a refund. To date, respondents have not refunded any part of Nair's fee payment of \$5,000. By failing to make a refund to Nair, respondents failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2).

Case Nos. 11-O-14266 and 11-O-14267 – The Crisostomo Matter

Facts (Counts 17 – 21)

Sergio Crisostomo is a self-employed plumber by trade; but due to the recession, he lost most of his work. Crisostomo bought his house in December 2002. By 2009, Crisostomo had difficulty making his mortgage and was seeking legal services to get a loan modification.

On December 18, 2009, Crisostomo employed respondents to represent him in a home mortgage loan dispute with his lender. On that date, Crisostomo met with Soudani⁷ and signed a fee agreement whereby Crisostomo agreed to pay respondents \$4,500 (\$2,250 in December 2009 and \$2,250 in January 2010); pay an additional \$600 for a forensic loan audit; and pay respondents an additional \$650 per month until their representation had concluded. Pursuant to this agreement, Crisostomo made a series of payments to respondents for attorney fees totaling nearly \$15,000. Crisostomo was told in that meeting that the only way he could get a loan modification was through litigation.

In January 2010, respondents filed a lawsuit on behalf of Crisostomo, case number C10-00239, Contra Costa County Superior Court, entitled *Crisostomo v. Core Financial et al.* The complaint was boilerplate. It alleged that "Chase Home Finance" was Crisostomo's lender when there were other places in the complaint where it was alleged that "JP Morgan Chase" was the original lender. In short, it did not distinguish between service lenders. The defendant's demurrer to the first cause of action was sustained because there were insufficient facts to constitute a cause of action. The cause of action for fraud was not plead with any specificity. Defendant's demurrer to the cause of action for promissory estoppel was sustained because

⁷ Crisostomo testified that Henriouille was present when he signed the fee agreement but that Soudani did all the talking. According to Crisostomo, Soudani told him that he was a lawyer.

respondents failed to allege what promises were made. Thus, on May 28, 2010, the court sustained the demurrer with leave to amend.

On September 24, 2010, defendant prevailed on the demurrer to the first amended complaint because respondents had not met their burden of showing in what matter they could amend their complaint and how that amendment would change the legal effect of their pleading. In October 2010, respondents abandoned the lawsuit. And on December 8, 2010, the court dismissed the lawsuit. Respondents did not notify Crisostomo that the lawsuit had been dismissed.

Nevertheless, respondents continued sending invoices and collecting the \$650 per month payments from Crisostomo from October 2010 through March 2011 (six payments totaling \$3,900). It was a billing mistake.

Prior to March 2011, respondents and/or their staff led Crisostomo to believe that respondents were working on reinstating the lawsuit. But, in fact, respondents had stopped working on the matter.

In March 2011, Crisostomo started communicating directly with the bank. In April 2013, he received a final loan modification and was able to save his home through his own efforts.

In April 2011, Crisostomo, acting through his wife, terminated respondents' employment and demanded a refund of unearned fees. In May 2011, Crisostomo requested an accounting and refund both in person and in writing.

As of April 2011, respondents owed Crisostomo a refund of unearned fees. At the minimum, respondents owed Crisostomo a refund of the amount he paid after respondents stopped working on his legal matter (at least \$3,900). At all pertinent times, both respondents were aware of Crisostomo's request for a refund and an accounting. Finally, on June 1, 2012, Uy

sent Crisostomo a check for \$3,900 as a refund for the professional fee he had paid to respondents due to the billing error.

Conclusions

Count 17 – (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By failing to competently prosecute the lawsuit, abandoning the lawsuit, and failing to perform services for Crisostomo beginning in October 2010, respondents intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 18 – (§ 6068, subd. (m) [Failure to Communicate])

Prior to March 2011, respondents failed to advise Crisostomo that: (1) the lawsuit had been dismissed in December 2010; and (2) respondents had stopped working on Crisostomo's legal matter.

By failing to advise Crisostomo that the lawsuit had been dismissed and failing to notify Crisostomo that they had stopped working on his legal matter, respondents failed to notify a client of significant developments in a matter in which respondents had agreed to provide legal services in willful violation of section 6068, subdivision (m).

Count 19 – (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

By failing to provide an accounting to Crisostomo, respondents failed to render appropriate accounts to a client regarding all funds coming into respondents' possession in willful violation of rule 4-100(B)(3).

Count 20 – (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

As of April 2011, respondents owed Crisostomo a refund of unearned fees. It was not until June 1, 2012, more than a year later, that Uy sent Crisostomo a check for \$3,900 as a refund for the professional fee he had paid to respondents due to the billing error.

Therefore, respondents failed to refund promptly the unearned fees in willful violation of rule 3-700(D)(2).

Count 21 – (Rule 4-200(A) [Unconscionable Fee])

Rule 4-200(A) provides that an attorney must not charge, collect or enter into an agreement for an illegal or unconscionable fee.

Although respondents continued sending invoices and collecting the \$650 monthly payments from Crisostomo from October through March 2011, no credible evidence establishes that it was a collection of an unconscionable fee. Rather, it was a mistake in billing. Therefore, respondents did not collect an unconscionable fee in willful violation of rule 4-200(A).

Case Nos. 11-O-19729 and 12-O-10521 – The LaBrasca Matter

Facts (Counts 22 - 23)

Grace LaBrasca bought a home in Sacramento in 2001. In June 2010, she was in a mortgage that was upside down. At the point where her mortgage payment became untenable, she went to the Firm. Her goal was to keep her home for which she had an emotional attachment as she had lived in it for 13 years.

When she went to the Firm, she first met Soudani. At the meeting, Soudani presented LaBrasca with a fee agreement on behalf of respondents. While Soudani never told her he was a lawyer, LaBrasca assumed that he was a lawyer. LaBrasca signed the fee agreement after Soudani explained it, and thereby employed respondents to represent her in a home mortgage loan dispute with her lender.

On July 6, 2010, respondents filed a lawsuit on behalf of LaBrasca. However, the complaint was defective in that fraud claims were time-barred and lacked specificity. The injunctive relief claim should have been a remedy rather than a cause of action. The promissory estoppel claim was also time-barred. Respondents alleged a cause of action for a violation of the

Rosenthal Act, but the Act did not apply to foreclosure proceedings on a residential mortgage. The court held even if it did, respondents did not allege specific, nonconclusory facts which would establish a violation of the Act.

A demurrer was filed on September 8, 2010. On April 29, 2011, respondents filed a first amended complaint; but it did not resolve the problems with the original complaint. On May 17, 2011, defendants filed another demurrer. The case was ultimately dismissed on September 19, 2012. While the case was ongoing, LaBrasca repeatedly emailed respondents and asked them for an itemized billing statement on several occasions, including on December 2, 2010, July 10, 2011, and July 28, 2011.

To date, respondents have not provided LaBrasca with an itemized accounting. And in fact, on September 11, 2011, respondents sent LaBrasca an email informing her that she owed them \$3,757.35. Finally, in December 2011, respondents sent an email to LaBrasca, telling her that she was \$4,000 in arrears.

At some point LaBrasca's home was foreclosed on and a short sale was scheduled. LaBrasca believes that the only reason she was able to save her home and get a loan modification was that she fired respondents and hired another attorney whom the judge gave the opportunity to review the case. This opportunity allowed her to buy time and by January 2013, the law had changed where it was easier for underwater homeowners to get loan modifications.

In 2012, LaBrasca wrote to the Sacramento County Bar Association (county bar) about the actions of respondents. The county bar set the matter for a fee arbitration hearing and a hearing was held. At the hearing, respondents did not appear.

Although LaBrasca had paid respondents at least \$15,000, she determined that since respondents did some work, they were entitled to some payment. On March 10, 2013, LaBrasca

demanded that respondents refund her \$6,400 as unearned fees. Respondents have not made any refund.

Conclusions

Count 22 – (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Respondents filed a lawsuit on behalf of LaBrasca, but clearly performed incompetently, as some of their causes of action were time-barred, they failed to allege specific facts when specificity was required, and they alleged remedies as causes of action. The lawsuit did not benefit LaBrasca and it was ultimately dismissed.

By failing to provide competent legal advice and failing to file a well-pled complaint, respondents intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 23 – (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

By failing to provide an accounting to LaBrasca, despite her repeated requests, respondents failed to render appropriate accounts to a client regarding all funds coming into respondents' possession in willful violation of rule 4-100(B)(3).

Case Nos. 12-O-11761 and 12-O-12450 – The Escobar Matter

Facts (Counts 24 - 26)

Elizabeth Escobar is a self-employed housekeeper who bought a house in Pinole, California, six to seven years ago. Beginning in 2010, she was going through a very difficult time in her life because of her inability to pay the mortgage on her home. On the Spanish radio station she was told to contact a Hector Alvarez who could help her with loan modification services. She arranged to meet Alvarez in San Mateo. Alvarez told her that he knew an attorney who could fix her loan so that she would not lose her home. He took her to the office of the

attorney. Alvarez⁸ introduced her to Soudani and told her that Soudani was going to be her attorney.

On January 4, 2011, Escobar employed respondents, through their agent, Soudani, to represent her in a home mortgage loan dispute with her lender. Respondents were not present at the time of hire. On that date, Escobar signed a fee agreement that required her to pay \$2,250 on January 7, 2011, and \$2,250 on February 7, 2011, and thereafter make monthly payments of \$850. On that date, Soudani told Escobar that the Firm would help her get a loan modification and would sue the bank to force them to lower her monthly mortgage payments. At that meeting, Alvarez told her to stop her mortgage payments. Alvarez told her that Soudani would never personally tell her to stop making the mortgage payment because he was a lawyer.

In March 2011, Escobar could not make the monthly payment to respondents because she had a problem with her foot and was unable to work. But Escobar was able to make the April and May monthly payments. When she went back to the office in June, Alvarez suggested that she not make any more payments to respondents because there was nothing they could do with her loan and that since she was working with the bank on her own, she should just keep working with the bank.

By May 2011, Escobar had paid respondents \$6,200 in advance attorney fees. By June 2011, respondents had not filed any complaint. Escobar asked for a refund because she believed respondents had done nothing for her.

In September 2011, Escobar attended a convention for people who were having trouble with loan modifications. At the convention, she met a lawyer from a non-profit organization that offered loan modification services.

⁸ Alvarez acted as an interpreter as Escobar is not fluent in English.

Escobar took the lawyer to respondents' office where they waited for four hours to meet with Soudani. Shortly thereafter, Escobar met with Henriouille where he told her there was nothing they could do about her loan as she did not meet the qualifications for a modification.⁹

Escobar again asked for a refund. To date, she has not received any refund from respondents.

Conclusions

Count 24 – (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

After they were employed, respondents failed to provide any work of value to Escobar. In June 2011, respondents told her that they could not help her as she did not qualify for a loan modification. By failing to perform any work of value, respondents failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 25 – (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Respondents stipulated that during the summer of 2011, Escobar came to their office and requested a refund. To date, respondents have not refunded any fees to Escobar. By failing to make a refund to Escobar, respondents failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2).

Count 26 – (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

To date, respondents have failed to provide an accounting to Escobar for the funds respondents received for attorney fees in willful violation of rule 4-100(B)(3).

Case Nos. 12-O-11764 and 12-O-11765 - The Tran Matter

Facts (Counts 27 – 29)

⁹ Escobar with the help of the non-profit organization was able to reduce the principal on her loan by \$268,000 and get a fixed interest rate of 3.3% for 30 years.

Tuan A. Tran has been in the U.S. Navy for 16 years and is currently a petty officer stationed in San Diego. In June 2009, Tran attended a presentation given by Soudani and another individual named Ted Zumel. The presentation was given on behalf of respondents. The presentation recommended that the attendees get forensic audits of their loan documents to determine if there was any lender fraud within their loans. They were told that if such a fraud existed, respondents' Firm could represent them in lawsuits against their lenders. Respondents were not at the presentation. Tran also distinctly recalls Soudani and Zumel making the recommendation that they cease making payment on their mortgages because it was the only way the banks would take action.

In August 2009, Tran submitted forensic loan audit documentation for three separate pieces of California real property located in (1) Temecula, (2) San Diego, and (3) Murrieta. On that date, Tran paid \$1,800 (\$600 for each of the three properties) with a check made payable to the Law Offices of Uy and Henriouille, as fees for the loan audits for the loan on each property. Tran was subsequently told that he had good causes of action against his lenders and as result should hire respondents' Firm. Thereafter, Tran sought legal help from respondents regarding home loan mortgage disputes on the three properties.

On October 10, 2009, Tran signed a fee agreement concerning the San Diego property. The fee agreement required Tran to pay \$3,995, followed by monthly payments of \$500.

On February 19, 2010, Tran signed two additional fee agreements with respondents, involving the Temecula and Murrieta properties. Both fee agreements required Tran to pay \$4,000, followed by monthly payments of \$500 regarding each of the respective properties. Tran was told that the retainer agreement was to work towards either a loan modification or owning the property free and clear based on the violations reported in the forensic loan audit reports.

Between October 2009 and March 2010, respondents stipulated that Tran paid them \$5,997.50 in advanced attorney fees. Tran also paid an additional \$1,800 for the forensic loan audits.

San Diego Property Lawsuit

On June 21, 2010, respondents filed a complaint relating to the San Diego property in San Diego County Superior Court entitled *Tran v. American Home Mortgage et al.*, case number 37-2010-00056430-CU-OR-NC. Between June 21, 2010, and January 14, 2011, respondents failed to file a certificate of service, certifying that all defendants were served.

On September 17, 2010, the superior court issued an order to show cause (OSC) for failure to file a certificate of service. The OSC was set for November 12, 2010. The OSC was served on Henriouille at his membership records address. Respondents received the OSC. On November 12, 2010, respondents failed to appear at the scheduled OSC. On November 15, 2010, the court issued an OSC on plaintiff for failure to appear at the November 12, 2010 OSC and for failure to file a certificate of service. The OSC was set for December 20, 2010, and served on Henriouille at his membership records address. Respondents received the OSC.

On December 20, 2010, Henriouille appeared telephonically. The court did not impose sanctions for his failure to appear on November 12, 2010. The court continued the OSC for respondents' failure to file a certificate of service to January 14, 2011. And on January 14, 2011, respondents filed a certificate of service. The OSC was taken off calendar.

On January 21, 2011, the defendants in the case filed a demurrer and motion to strike the complaint. Respondents were served with and received the filings, but failed to oppose them or inform Tran about them. A hearing for the motion and demurrer was held on April 1, 2011. Respondents did not appear for the hearing. The court sustained the demurrer and gave plaintiff 10 days to amend. Respondents received the court order, but did not amend the complaint. Again respondents did not tell Tran that they failed to amend the complaint.

On May 10, 2011, Henrioulle filed a motion to be relieved as counsel. And on June 3, 2011, the court granted Henrioulle's motion. Tran was unaware that respondents filed the motion. Henrioulle filed the order on June 7, 2011. On June 29, 2011, the case was dismissed with prejudice.

Murrieta Property Lawsuit

On August 12, 2010, respondent filed a complaint in Riverside County Superior Court entitled *Tran v. Athome Consulting Group et al.*, case number RIC10016116. The lawsuit was meritless. Respondents failed to file a proof of service, declaring that all defendants had been served with the complaint. On November 12, 2010, the court issued an OSC as to why sanctions should not be imposed on plaintiff for failure to file proof of service of the summons on two of the four defendants. The court continued the hearing on the OSC until February 14, 2011. Respondents received notice of the continued OSC.

On February 14, 2011, respondent Uy appeared at the hearing telephonically and asked for a continuance. The court continued the hearing on the OSC until May 16, 2011. Respondents received notice of the continued OSC, but failed to appear at the May 16 hearing. The court issued sanctions against Tran and respondents in the amount of \$100. On that same date, the court set a Case Management Conference (CMC) for July 14, 2011, and issued another OSC returnable on that date. Respondents received the order.

On July 14, 2011, the court held the CMC. Attorney Errol Zshonack specially appeared telephonically on behalf of the plaintiff. At that time, Zshonack informed the court that respondents would be filing a motion to withdraw. The case and OSC were continued until September 14, 2011. On September 14, 2011, Zshonack again specially appeared telephonically on behalf of the plaintiff. He asked for a continuance. The matter was continued until November 16, 2011. And on November 16, 2011, respondent Henrioulle appeared

telephonically and requested that the case be dismissed and advised the court that he would be filing a motion to be relieved as counsel.

Respondents did not tell Tran that they had requested that his case be dismissed. The matter was continued until January 11, 2012. Respondents had notice of the next court date. On December 9, 2011, respondent Henriouille filed a motion to be relieved as counsel and did not tell Tran that he had made such a request.

On January 11, 2012, the court held a CMC. Respondents failed to appear at the CMC. The court issued an OSC as to why sanctions should not be issued against plaintiff for the failure to appear. The case was continued until February 6, 2012. Notice of the OSC was served on respondents, who received the notice. On February 6, 2012, the court held a hearing and granted respondents' motion to be relieved as counsel.

On June 18, 2012, the court dismissed the case for plaintiff's failure to prosecute the action. Respondents were aware of the dismissal. Subsequently, Tran lost both the San Diego and Murrieta properties to foreclosure.¹⁰ After Tran lost the San Diego and Murrieta properties, he repeatedly through phone messages requested a refund which was denied by respondents.

In January 2012, Jeffrey P. Rosenberg, an attorney hired by Tran to get a refund from respondents, sent a letter to respondents demanding a refund for Tran. Respondents received the letter. To date, Tran has not received a refund.

During the course of the representation, both Tran and his wife repeatedly called respondents to get status updates and left telephone messages requesting return telephone calls. Respondents received the messages, but never returned these telephone calls. Tran also sent numerous emails to respondents inquiring about the court process and they went unanswered.

¹⁰ Tran was only able to save his residential property in Temecula because he negotiated a loan modification with the bank on his own. The bank did not foreclose on the Temecula property because Tran was on active military duty.

Tran testified that he and his wife made numerous phone calls to respondents and they were always told that respondents were in meetings.

Conclusions

Count 27 – (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

While this court has no independent clear and convincing evidence that Tran's lawsuits were meritless, the court does have clear and convincing evidence that respondents failed to provide competent legal services beginning with something as simple as failing to file a proof of services declaring that all defendants had been served with the complaint and failing to appear at the CMC in the Murrieta property lawsuit. In the San Diego property lawsuit, it took respondents at least six months to file a certificate of service. Also, respondents failed to oppose the demurrer and the motion to strike the complaint. Furthermore, when given the opportunity to amend the complaint, respondents did not amend the complaint but instead filed a motion to be relieved as counsel.

Therefore, by failing to prosecute the Murrieta and San Diego property lawsuits as well as failing to perform any work of value as to those two pieces of property, respondents repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 28¹¹ – (§ 6068, subd. (m) [Failure to Communicate])

Respondents tell of the hardship of reaching Tran because he was often based on a ship near Hong Kong or otherwise on deployment where he could not receive phone calls.

Tran, on the other hand, tells a different story. He credibly testified that he sent numerous emails to respondents inquiring about the court process and they went unanswered. Tran testified that he and his wife made numerous phone calls to respondents and they were

¹¹ In the NDC, the case numbers in counts 28 and 29 incorrectly referred to the case numbers of the Escobar matter.

always told that respondents were in meetings. He also testified that when he pulled into port, he did have the capability to make phone calls and he did make phone calls to respondents.

Therefore, by failing to respond to Tran's numerous requests for status updates and by failing to advise Tran that: (1) respondents had stopped working on his legal matters; (2) respondents had failed to respond to the demurrer in the San Diego property lawsuit; (3) respondents had requested to be relieved as counsel in the Murrieta and San Diego property lawsuits; (4) respondents had requested that the Murrieta lawsuit be dismissed, respondents failed to respond to Tran's reasonable status inquiries and to keep him reasonably informed of significant developments in matters in which respondents had agreed to provide legal services in willful violation of section 6068, subdivision (m).

Count 29 – (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Despite Tran's and his new attorney Rosenberg's repeated demands for a refund, respondents ignored their requests. (Respondents stipulated to receiving \$5,997.50 in attorney fees from Tran). To date, respondents have failed to refund any portion of the unearned fees in willful violation of rule 3-700(D)(2).

Case No. 12-O-13429 – The Oliveira Matter (As to Respondent Henriouille Only)

Facts (Counts 30 – 31)

In February 2009, Maria L. Lima Oliveira and Carlos G. Lima Oliveira, mother and son, had a meeting at respondents' Firm to seek legal help from respondents regarding home loan mortgage disputes on their two properties located in Lodi, California: (1) Eilers Lane property, and (2) Fairchild Drive property. The Eilers property was a board and care home run by the Oliveira family. The Fairchild property was the home residence of the Oliveira family.

At some point, the loan on the Eilers property just became too much for the Oliveira family. To this end, they sought to engage the services of respondents. At their first meeting,

Maria and Carlos met with Soudani whom they believed to be an attorney. Soudani told them that they needed to have an independent forensic analysis on each of the properties. So, Carlos paid, on behalf of Maria, \$600 for an independent forensic analysis.

In April 2009, Maria formally hired Henrioulle to represent her in a home loan mortgage dispute with her lender for the Eilers property.¹²

On April 10, 2009, Conrado Oliveira¹³ hired Henrioulle to represent him in a home loan mortgage dispute with his lender for the Fairchild property. Although Conrado signed the fee agreement, it was presented and explained to Carlos by Soudani. No attorney was present. The fee agreement specified that respondents would file a lawsuit.

Carlos made the following payments to respondents as attorney fees for representation on the two properties:

<i>Date</i>	<i>Amount</i>	<i>Property</i>
April 17, 2009	\$2,250	Fairchild
May 15, 2009	\$2,250	Fairchild
June 19, 2009	\$2,250	Eilers
July 17, 2009	\$2,250	Eilers
June - November 2009	\$3,000	Fairchild and Eilers

Between April 2009 and July 2011, respondent Henrioulle provided no services of value in relation to the Fairchild property. On his own, Carlos arranged for a short sale of the Fairchild property on July 29, 2011.

¹² State Bar exhibit 64 states that the loan modification was for the Eilers property and the litigation involved the Fairchild property. However, at trial, Carlos testified that the documents were a mistake as the agreements were to a loan modification on the Fairchild property and litigation involved the Eilers property. The evidence is consistent with Carlos's testimony. Also, although the fee agreement was signed by Uy, subsequent work was performed by Henrioulle and communications were between Henrioulle and Carlos.

¹³ Conrado is the brother of Carlos. He signed the fee agreement because his name was on the loan. In order to get his signature, Carlos had to send the fee agreement to Conrado in Minnesota.

On November 9, 2009, approximately seven months after being retained, Henrioulle filed a lawsuit on behalf of Maria in regards to the Eilers property in San Joaquin County Superior Court entitled *Maria Lima Oliveira v. California Homes & Mortgage et seq.*, case number 39-2009-00229703-CU-OR-STK. The lawsuit was meritless and Henrioulle provided incompetent legal services by pursuing it because the Eilers property had already been foreclosed and sold in September 2009. Carlos testified that he did not know that the Eilers property had been sold in September 2009, until he was preparing for an arbitration hearing in 2012. The lawsuit did not benefit Maria and was ultimately dismissed with prejudice.

From August through November 2011, Carlos testified that he sent emails and telephone calls to get a status on the Eilers and Fairchild properties. Henrioulle did not answer the phone calls or emails.

In 2012, Carlos took Henrioulle to fee arbitration.

Conclusions

Count 30 – (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By failing to perform any services of value to Maria and Carlos and by prosecuting a meritless lawsuit on the Eilers property in November 2009 when the property was previously sold in September 2009, Henrioulle willfully violated rule 3-110(A).

Count 31 – (§ 6068, subd. (m) [Failure to Communicate])

By failing to return Carlos's repeated telephone calls and emails requesting a status update between August and November 3, 2011, Henrioulle failed to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which he agreed to provide legal services in willful violation of section 6068, subdivision (m).

More importantly, Henrioulle failed to tell Carlos that the Eilers property had been sold in September 2009. Carlos only learned of the sale in 2012.

Case Nos. 09-O-18521 (10-O-10839; 11-O-10577; 11-O-11182; 11-O-12544; 11-O-14266; 11-O-19729; 12-O-11761; 12-O-11764; 12-O-13429) [**Henrioulle**]

Case Nos. 09-O-18520 (10-O-10838; 11-O-11183; 11-O-14267; 12-O-10521; 12-O-10523; 12-O-11765; 12-O-12450) [**Uy**]

Facts (Counts 32 – 37)

As found in count 1, Soudani was not authorized to practice law in any court of this state or the United States. Soudani was a member of the State Bar of California prior to November 18, 1988, when the California Supreme Court accepted his resignation from the practice of law with disciplinary charges pending. Both respondents knew that Soudani was not authorized to practice law.

In each of the aforementioned cases, Soudani held himself out to the clients as entitled to practice law, provided legal advice to clients, and engaged in other conduct involving the practice of law. Both respondents assisted Soudani in the unauthorized practice of law by employing Soudani in their law office, failing to tell clients that Soudani was not a lawyer, allowing Soudani to give legal advice and otherwise engage in the unauthorized practice of law and allowing Soudani to hold himself out as entitled to practice. Respondents admit that Soudani's responsibilities included being the primary drafter of recurring pleadings, such as complaints, oppositions to demurrers, and applications for TROs.

Conclusions

Count 32 – (Rule 1-300(A) [Aiding the Unauthorized Practice of Law])

Rule 1-300(A) provides that an attorney must not aid any person or entity in the unauthorized practice of law. By allowing Soudani to practice law in their Firm, despite

knowing that he had previously resigned with charges pending and that he was not authorized to practice law, respondents aided Soudani in the unauthorized practice of law in willful violation of rule 1-300(A).

Count 33 – (Rule 1-311(D) [Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member])

Rule 1-311(D) provides that prior to employing a disbarred, suspended, resigned, or involuntarily inactive member, the attorney must serve upon the State Bar and each client written notice that a resigned member of the State Bar has been employed to work on the client's specific matter and must obtain proofs of service of the client's written notice and maintain those proofs of service for two years following termination of the member's employment with the client.

At all pertinent times, respondents knew that Soudani was a former member of the State Bar who had resigned with disciplinary charges pending. During the time respondents were employed by the clients, Soudani worked on each of the specific client matters mentioned above in counts 1 through 31. The work Soudani performed on each of the client matters was of the nature requiring notice to the client and that the work went beyond the physical and clerical duties described under rule 1-311(E). Respondents employed Soudani to perform the above-mentioned work on the client matters discussed in counts 1 through 31. The written notice required by rule 1-311(D) was not provided to any of the clients. Moreover, respondents have stipulated that they did not ensure that written notice as required by rule 1-311(D) was sent to clients who have submitted complaints to the bar.

Therefore, there is clear and convincing evidence that respondents willfully violated rule 1-311(D).

Count 34 – (§ 6133 [Supervision of Disbarred, Suspended or Resigned Attorney])

Section 6133 provides that any attorney employing a disbarred, suspended or resigned attorney must not permit that attorney to practice law or so advertise or hold himself or herself out as practicing law and must supervise him or her in any other assigned duties.

Here, when Soudani worked on the client matters as discussed above, he practiced law and held himself out as entitled to practice law. In fact, many of the clients believed that Soudani was an attorney. Thus, respondents permitted Soudani to practice law and hold himself out as practicing law. They also failed to supervise Soudani from engaging in activities that constituted the practice of law, such as rendering legal consultation or advice to the clients. Therefore, by failing to supervise Soudani and permitting him to engage in the practice of law, respondents willfully violated section 6133.

Count 35 – (Rule 1-311(B)(1), (4), and (6) [Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member])

Rule 1-311(B) provides that an attorney must not employ a disbarred, suspended, resigned, or involuntarily inactive member to perform the following on behalf of the client:

- (1) Render legal consultation or advice to the client;
- (4) Negotiate or transact any matter for or on behalf of the client with third parties; and
- (6) Engage in activities which constitute the practice of law.

There is clear and convincing evidence that respondents employed Soudani to render legal consultation or advice to clients; to negotiate on behalf of the clients with third parties; and to engage in activities which constitute the practice of law in willful violation of rule 1-311(B)(1), (4) and (6). But because the charge is based in large part on the same misconduct as found in counts 32 and 34, count 35 is hereby dismissed as duplicative. (*Bates v. State Bar* (1990) 51 Cal.3d 1056 [little, if any, purpose is served by duplicate misconduct allegations].)

Count 36 – (§ 6068, subd. (c) [Attorney's Duty to Counsel/Maintain Only Legal or Just Actions or Defenses])

Section 6068, subdivision (c), provides that an attorney has a duty to counsel or maintain those proceedings, actions, or defenses only as appear to the attorney legal or just, except the defense of a person charged with a public offense.

The State Bar alleges that respondents violated their duty to maintain only just causes by filing meritless lawsuits in order to continue to collect fees, in willful violation of section 6068, subdivision (c). But because the charge is based in large part on the same misconduct as found in the counts involving failure to perform services competently (filing meritless lawsuits violated rule 3-110(A)), section 6068, subdivision (c), violation is essentially redundant, for purposes of assessing degree of discipline; thus, count 36 is hereby dismissed as duplicative.

Count 37 – (§ 6106 [Moral Turpitude])

Respondents repeatedly failed to provide competent legal services in eight matters, failed to communicate, failed to provide accountings, and failed to supervise Soudani, allowing him to engage in the unauthorized practice of law. These failures together constituted habitual disregard of clients' interests and amounted to moral turpitude in willful violation of section 6106. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.)

Case Nos. 09-O-18521 (10-O-10839; 11-O-10577; 11-O-11182; 11-O-12544; 11-O-14266)

Count 38 – (§ 6068, subd. (i) [Failure to Cooperate]) (As to Respondent Henriouille Only)

Section 6068, subdivision (i), provides that an attorney has a duty to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney.

Upon motion by the State Bar, count 38 is hereby dismissed with prejudice.

Second NDC

Case Nos. 12-O-16519 and 12-O-16250 – The Montoyas Matter

Facts (Counts 1 – 5)

Sergio and Guadalupe Montoya (Montoyas) owned their home. However, when Sergio lost his job, they began to have trouble making their monthly mortgage payments. In July 2010, after hearing an advertisement on a Spanish radio station that there was a man who could help them out, they contacted and met with David Mostny. They gave Mostny their loan papers. After reviewing their papers, Mostny told the Montoyas they needed to work with a lawyer and referred them to respondents.

On July 21, 2010, the Montoyas employed respondents through Soudani, who was the only person at their meeting at the Firm. Soudani presented the Montoyas with the fee agreement. On that date, the Montoyas signed the fee agreement that required them to pay an initial fee of \$3,000, payable on July 23, 2010, and August 24, 2010, and a monthly fee of \$800.

On July 23 and August 24, 2010, the Montoyas wrote their checks payable to respondents. However, after August 24, 2010, the Montoyas wrote their monthly \$800 checks payable to Soudani. In fact, between September 22, 2010¹⁴ and February 18, 2011, the Montoyas made six payments of \$800 each, totaling \$4,800 to Soudani, because they believed he was their attorney. As late as April 2011, the Montoyas made a payment of \$1,016.72 to Soudani. In total, the Montoyas paid respondents \$8,816.72.

On November 30, 2010, respondents filed a lawsuit on behalf of the Montoyas in Alameda County Superior Court, entitled *Sergio Montoya and Guadalupe Montoya v. Bank of America, N.A.; PRLP, Inc., Old Republic Title, Freddie Mac, and Quality Loan Service Corp.*, case number RG10548896. On December 30, 2010, the main defendants, Bank of America and Freddie Mac, filed a demurrer to the complaint. And on January 31, 2011, respondents filed a plaintiffs' opposition to defendants' demurrer.

¹⁴ The NDC indicated "September 22, 2011" and "February 18, 2012." The correct years should have been "2010" and "2011," respectively.

On February 14, 2011, the defendants filed a reply to opposition to demurrer. On February 14, 2011, Judge John M. True III issued an order sustaining the entire demurrer with leave to amend most causes of action on several grounds, including: (1) plaintiffs failed to set forth specific obligations of banks; (2) plaintiffs failed to comply with their obligations to plead facts with specificity; (3) plaintiffs set forth cause of actions that should have been a prayer for relief; and (4) plaintiffs failed to plead sufficient facts to support their request for equitable relief.

On March 4, 2011, respondents filed a first amended complaint. And on April 20, 2011, defendants Bank of America, N.A., and Freddie Mac filed a demurrer to first amended complaint. Respondents did not file an opposition to the demurrer. On June 13, 2011, Judge True sustained the entire demurrer without leave to amend and dismissed the matter as to defendants Bank of America, N.A., and Freddie Mac. And on June 29, 2011, the order was entered. Respondents received the order.

On July 8, 2011, judgment was entered against the Montoyas on behalf of defendants Bank of America, N.A., and Freddie Mac. And on January 12, 2012, Judge True held a case management conference for the remaining defendants. Respondents did not appear, and the entire matter was dismissed without prejudice. The order of dismissal was served on respondents on or about January 13, 2012.

Conclusions

Count 1 – (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

In the action against the banks, respondents failed to set forth specific obligations of the banks, failed to comply with their obligations to plead facts with specificity, failed to set forth cause of actions that should have been a prayer for relief, and failed to plead sufficient facts to support their request for equitable relief. Respondents also failed to appear at the case management conference. Consequently, the lawsuit was dismissed.

Therefore, there is clear and convincing evidence that respondents recklessly and repeatedly failed to perform legal services with competence by filing a complaint that was demurred due to their failure to plead properly and by failing to appear in court which resulted in the case dismissal, in willful violation of rule 3-110(A).

Count 2 – (§ 6068, subd. (c) [Attorney's Duty to Counsel/Maintain Only Legal or Just Actions or Defenses])

The State Bar alleges that respondents violated their duty to maintain only just causes by filing a meritless lawsuit in order to continue to collect fees, in willful violation of section 6068, subdivision (c).

There is no clear and convincing evidence that the lawsuit was frivolous or unjust. The case was dismissed because of respondents' failure to properly amend the complaint and to appear in court, not because it lacked merit. Thus, respondents did not violate section 6068, subdivision (c), in count 2.

Count 3 – (Rule 1-300(A) [Aiding the Unauthorized Practice of Law])

As found above, Soudani was not authorized to practice law since November 18, 1988, and respondents were fully aware of that. Soudani held himself out to the Montoyas as entitled to practice law and required the Montoyas to pay for his legal advice. Respondents assisted Soudani in the unauthorized practice of law by employing Soudani in their law office, failing to tell clients that Soudani was not a lawyer, allowing Soudani to give legal advice and otherwise engage in the unauthorized practice of law, and allowing Soudani to hold himself out as entitled to practice. Therefore, respondents aided Soudani in the unauthorized practice of law in willful violation of rule 1-300(A).

Count 4 – Rule 1-311(D) [Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member])

Respondents knew that Soudani was a former member of the State Bar who had resigned with disciplinary charges pending. During the time respondents were employed by the clients, Soudani did the legal work for the Montoyas. The work Soudani performed for the Montoyas was of the nature requiring notice to the client pursuant to rule 1-311(D), i.e., that work went beyond the physical and clerical duties described under rule 1-311(E). Respondents employed Soudani to perform the above-mentioned work on the behalf of the Montoyas. The written notice required by rule 1-311(D) was not provided to the Montoyas, as admitted by respondents.

Therefore, there is clear and convincing evidence that respondents willfully violated rule 1-311(D).

Count 5 – (§ 6133 [Supervision of Disbarred, Suspended or Resigned Attorney])

By allowing Soudani to hold himself out as entitled to practice law and having him practice law, respondents failed to supervise Soudani's performance of the duties he was assigned in willful violation of section 6133.

Count 6 – (§ 6068, subd. (i) [Failure to Cooperate]) (As to Respondent Henrioulle Only)

The State Bar alleges that respondent Henrioulle failed to cooperate in a disciplinary investigation by not providing a written response to the State Bar investigator's letters regarding the Montoyas' complaint in violation of section 6068, subdivision (i).

Absent any clear and convincing evidence that respondent failed to cooperate with the State Bar, respondent did not violate section 6068, subdivision (i).

Aggravation¹⁵

Prior Record of Discipline (Std. 1.2(b)(i).)

¹⁵ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Respondent Uy has a prior record of discipline. On October 23, 2006, he was privately reprimanded for failing to perform services competently and to promptly pay client funds in one client matter. (State Bar Court case No. 05-O-00674.)

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Respondents' multiple acts of misconduct in nine client matters are an aggravating factor. Respondents participated in a scheme to defraud financially distressed homeowners; failed to perform services competently; failed to communicate with clients; failed to refund unearned fees; failed to provide an accounting; aided in the unauthorized practice of law; failed to serve written notice that a resigned member will perform services; failed to supervise a resigned lawyer; and committed acts of moral turpitude.

Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)

Respondents' misconduct harmed the clients, the public and the administration of justice. Their vulnerable clients were desperate to keep their homes and respondents took advantage of their misfortune. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813 [parties in a fiduciary or confidential relationship do not deal on equal terms because trusted person is in superior position to exert unique influence over dependent party].) Facing foreclosure, these distressed homeowners fell prey to respondents, Soudani, and other agents and were further victimized by paying thousands of dollars in fees when they could have been paying that money toward their mortgages. The only clients (Crisostomo, Escobar, Tran and LaBrasca) who were able to save their homes were the ones who negotiated directly with the banks themselves.

Respondents have yet to provide full refunds of the clients' much needed funds to Escobar, LaBrasca, Nair, Oliveira, Tran and Zakharova.

Moreover, respondents' filing insufficiently pled lawsuits and failing to prosecute the actions adversely impacted the legal system, wasting valuable judicial time and resources.

Mitigation

No Prior Record (Std. 1.2(e)(i).)

Respondent Henrioulle was admitted to the practice of law in December 1973, and has no prior record of discipline. Henrioulle's 36 years of discipline-free practice at the time of his misconduct in 2009 is a mitigating factor even though his misconduct is serious. (*In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93.)

Extreme Emotional/Physical Difficulties (Std. 1.2(e)(iv).)

Respondent Uy was suffering from emotional difficulties and family tragedies during the time of his misconduct from 2009 through 2011. He and his wife separated after 21 years of marriage; he became the primary caretaker of his children in addition to his adult-special-needs brother; and two of his brothers passed away within six months of each other. These difficulties are considered in mitigation.

Good Character (Std. 1.2(e)(vi).)

Respondent Henrioulle presented evidence of good character. Five witnesses testified and three wrote regarding his integrity and good moral character, including one attorney and mostly former clients. They have known Henrioulle for many years and found him to be honest.

Respondent Uy presented eight character witnesses who testified to his honesty, remorsefulness, and willingness to help those in need, particularly in the Filipino community. He also submitted three declarations that attested to his integrity and professionalism. The witnesses consisted of one attorney and mostly former clients; all of whom have known Uy for years. They praised his commitment to the community and his family.

Respondents' character evidence is entitled to mitigation.

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. Standards 1.7, 2.2(b), 2.3, 2.4(b), 2.6 and 2.10 apply in this matter.

Standard 1.7(a) applies to respondent Uy and provides that, when an attorney has one prior record of discipline, “the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.”

Standard 2.2(b) provides that commingling or another violation of rule 4-100 must result in at least a three-month actual suspension, irrespective of mitigating circumstances.

Standard 2.3 provides that culpability of an act of moral turpitude, fraud or intentional dishonesty, or of concealment of a material fact, must result in actual suspension or disbarment depending upon the degree of harm to the victim, the magnitude of the misconduct, and the extent to which it relates to the member’s practice of law.

Standard 2.4(b) provides that a member’s culpability of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or a member’s culpability of willfully failing to communicate with a client must result in reproof or suspension, depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that violation of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the

harm to the victim, with due regard for the purposes of discipline.

Standard 2.10 provides that violations of any provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproof or suspension depending upon the gravity of the misconduct or harm to the victim, with due regard to the purposes of imposing discipline.

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.)

Respondents acknowledge responsibility for some of their acts of malfeasance and contend that a three-month actual suspension would be the appropriate level of discipline, in light of their mitigation and the enormous financial impact they have already sustained.

The State Bar urges that respondents should be disbarred for preying on vulnerable and sometimes unsophisticated people in financial crisis, particularly in view of their acts of moral turpitude under standard 2.3.

“In a society where the use of a lawyer is often essential to vindicate rights and redress injury, clients are compelled to entrust their claims, money, and property to the custody and control of lawyers. In exchange for their privileged positions, lawyers are rightly expected to exercise extraordinary care and fidelity in dealing with money and property belonging to their clients. [Citation.] Thus, taking a client’s money is not only a violation of the moral and legal standards applicable to all individuals in society, it is one of the most serious breaches of professional trust that a lawyer can commit.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221.)

In *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411, the attorney was relatively inexperienced and had been admitted about two years when his misconduct began. The attorney was a full-time associate at a law firm. At the same time and for a two-year period, he entered into an agreement with a non-lawyer to establish a law corporation and to split fees. The non-lawyer handled all aspects of the personal injury practice without appropriate supervision. The non-lawyer used illegal means to solicit clients and, without Jones's knowledge, practiced law, collected over \$600,000 in attorney fees although no attorney had performed services and misused nearly \$60,000 in settlement funds withheld to pay medical providers, all in Jones's name. Jones did not take realistic action to stop these practices even after receiving reliable information that they were occurring. Jones eventually reported the non-lawyer to the police, turned himself in to the State Bar and cooperated fully in the prosecution of his discipline case as well as the criminal case against the non-lawyer. Mitigating factors include substantial, spontaneous candor and cooperation, good character, community activities and paying \$57,000 from his own funds to lienholders unpaid by the non-lawyer.

The Review Department suspended Jones for three years, stayed, placed him on a three-year probation and actually suspended him for two years and until he complied with standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct, for abdicating "basic professional responsibilities and allow[ing] a non-lawyer almost free rein to perform such responsibilities in the lawyer's name." (*Id.* at p. 415.) *Jones* is distinguishable from the present case by the significant mitigation offered by Jones, notably, his substantial, spontaneous candor and cooperation and restitution. And the aggravating factors in this matter are more egregious than that of *Jones*.

In the present case, respondents along with Soudani caused significant harm to the clients, the public and the administration of justice. They had clearly took advantage of

vulnerable, desperate homeowners. What is most disturbing to the court are the facts that respondents essentially let Soudani take over their office when they knew he was not entitled to practice law and that while all of their clients were under tremendous financial stress, respondents were charging them anywhere from \$500 to \$800 a month for doing nothing.

In *Hulland v. State Bar* (1972) 8 Cal.3d 440, 449, the Supreme Court observed that the legal profession is “more than a mere ‘money-getting trade.’” “[T]he right to practice law ‘is not a license to mulct the unfortunate.’” (*Bushman v. State Bar* (1974) 11 Cal.3d 558, 564.)

Here, respondents had clearly defrauded and mulct the unfortunate. Accordingly, having considered the egregious nature and extent of the misconduct, the aggravating circumstances, as well as the case law and the standards, the court recommends that respondents be disbarred for the protection of the public, the profession, and the courts, maintenance of high professional standards, and preservation of public confidence in the legal profession.

Moreover, respondents Henrioulle and Uy must share equal responsibility to make restitution to the following four clients:

<i>Payees</i>	<i>Total Restitution</i>	<i>Amount to be Paid by Each Respondent</i>
Elizabeth Escobar	\$6,200	\$3,100
Grace LaBrasca	\$6,400	\$3,200
Vinod M. Nair	\$5,000	\$2,500
Tuan A. Tran	\$6,000	\$3,000

Because only respondent Henrioulle was charged with and found culpable of misconduct in the Oliveira and Zakharova matters, Henrioulle must make restitution to them as follows:

<i>Payees</i>	<i>Restitution to be Paid by Henrioulle</i>
Carlos G. Lima Oliveira	\$10,000
Galina Zakharova	\$13,000

Therefore, the court recommends that: (1) respondents Henrioulle and Uy be disbarred from the practice of law; (2) Henrioulle make restitution in a total amount of \$34,800; and (3) Uy make restitution in a total amount of \$11,800. The total restitution amount is \$46,600.

Recommendations

It is recommended that respondents Stevan John Henrioulle, State Bar Number 57282, and Ronald Veridiano Uy, State Bar Number 177157, be disbarred from the practice of law in California and their names be stricken from the roll of attorneys.

Restitution

It is also recommended that respondent **Henrioulle** be ordered to make restitution to the following payees:

- (1) **Elizabeth Escobar** in the amount of \$3,100 plus 10 percent interest per year from May 1, 2011;
- (2) **Grace LaBrasca** in the amount of \$3,200 plus 10 percent interest per year from June 1, 2011;
- (3) **Vinod M. Nair** in the amount of \$2,500 plus 10 percent interest per year from May 1, 2009;
- (4) **Carlos G. Lima Oliveira** in the amount of \$10,000 plus 10 percent interest per year from November 1, 2009;
- (5) **Tuan A. Tran** in the amount of \$3,000 plus 10 percent interest per year from March 1, 2010; and
- (6) **Galina Zakharova** in the amount of \$13,000 plus 10 percent interest per year from November 1, 2010.

It is further recommended that respondent **Uy** be ordered to make restitution to the following payees:

- (7) **Elizabeth Escobar** in the amount of \$3,100 plus 10 percent interest per year from May 1, 2011;

- (8) **Grace LaBrasca** in the amount of \$3,200 plus 10 percent interest per year from June 1, 2011;
- (9) **Vinod M. Nair** in the amount of \$2,500 plus 10 percent interest per year from May 1, 2009; and
- (10) **Tuan A. Tran** in the amount of \$3,000 plus 10 percent interest per year from March 1, 2010.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

It is further recommended that respondents be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

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.

Order of Involuntary Inactive Enrollment

Respondents Henrioulle and Uy are ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondents' inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: October _____, 2013

PAT McELROY
Judge of the State Bar Court