

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>09-TE-19229-RAH</b>
	)	
<b>MARK ALAN SHOEMAKER</b>	)	<b>DECISION AND ORDER OF INACTIVE</b>
	)	<b>ENROLLMENT (BUS. &amp; PROF. CODE</b>
<b>Member No. 134828</b>	)	<b>SECTION 6007, SUBDIVISION (c)(1))</b>
	)	
<u>A Member of the State Bar.</u>	)	

**1. INTRODUCTION**

This matter is before the court on the verified application of the Office of the Chief Trial Counsel of the State Bar of California (“Office of the Chief Trial Counsel”) seeking to involuntarily enroll respondent Mark Alan Shoemaker (“respondent”) as an inactive member of the State Bar pursuant to Business and Professions Code section<sup>1</sup> 6007, subdivision (c)(1) and rule 461 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”).

The Office of the Chief Trial Counsel was represented by Deputy Trial Counsel Kimberly G. Anderson. Respondent represented himself. A hearing was scheduled for May 17, 2010; however, it was vacated after neither party timely requested a hearing. (Rules Proc. of State Bar, rule 464.)

On May 17, 2010, respondent’s filed a response to the application. Although his response was untimely, the court considered it for the purposes of this decision. Within the

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<sup>1</sup> Future references to section(s) are to this source.

response, respondent's requested a hearing, however, this request was denied. (Rules Proc. of State Bar, rule 462.) This matter was submitted for decision on May 17, 2010.

After reviewing and considering this matter, the court finds that respondent's conduct poses a substantial threat of harm to his clients or the public, and respondent is ordered involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(1).

## **2. JURISDICTION**

Respondent was admitted to the practice of law in California on June 14, 1988, and has been a member of the State Bar at all times since.

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

Section 6007, subdivision (c), authorizes the court to order an attorney's involuntary inactive enrollment upon a finding that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public. In order to find that an attorney's conduct poses a threat of harm, the following three factors must be shown: (1) the attorney has caused or is causing substantial harm to his clients or the public; (2) the injury to the attorney's clients or the public in denying the application will be greater than any injury that would be suffered by the attorney if the application is granted or, alternatively, there is a reasonable likelihood that the harm will continue;<sup>2</sup> and (3) there is a reasonable probability that the Office of the Chief Trial Counsel will prevail on the merits of the underlying disciplinary matter. (*Conway v. State Bar* (1989) 47 Cal.3d 1107; *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658, 661.)

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<sup>2</sup> But where the evidence establishes a pattern of behavior, including acts likely to cause substantial harm, the burden of proof shifts to the attorney to show that there is no reasonable likelihood that the harm will reoccur or continue.

Respondent was given notice of this proceeding pursuant to rule 461 of the Rules of Procedure. The application is based on matters not yet the subject of disciplinary charges pending in the State Bar Court. (Rules Proc. of State Bar, rule 461(a)(3).) The court's findings of fact are based on clear and convincing evidence.

The evidence before the court comes solely by way of declaration. (Rules Proc. of State Bar, rule 465(a).) The Office of the Chief Trial Counsel submitted 21 declarations with supporting evidence. Out of these 21 declarations, 18 were from individual clients. Based on the content of these declarations and their supporting exhibits, the court finds these declarations to be credible.

Respondent's declaration, on the other hand, was four-pages long and supported by only one exhibit - a single voluminous case file. Many of the contentions in respondent's declarations are conclusory and void of any supporting evidence. Consequently, the court finds that respondent's declaration lacks credibility.

#### **A. General Background of Respondent's Loan Modification Practice**

With the recent decline in the real estate market, more and more distressed homeowners are searching for relief from their existing home mortgage loans. Many of these homeowners have turned to mortgage relief companies for help. These companies generally represent that they can help homeowners navigate the uncertain waters of loan modification, revision, or rescission.<sup>3</sup>

Since 2008, respondent has owned and operated a loan modification business known as Advocate for Fair Lending, L.L.C. ("Advocate"). Respondent used Advocate and his status as an attorney to convince cash-strapped homeowners to pay him thousands of dollars in hopes of

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<sup>3</sup> For the purposes of this decision, the court will use the term "loan modification" to encompass the wide range of terminology utilized by companies offering mortgage relief services.

saving their homes from foreclosure. Respondent, however, often did little to nothing to help these clients. In fact, many of these homeowners were worse off after retaining respondent's services.

In his declaration, respondent claims that Advocate was not a law firm and, therefore, even though respondent was President of Advocate, he did not represent any of its clients. The evidence before the court, however, demonstrates otherwise.

Advocate advertised that it had a team of attorneys specializing in mortgage law, and that it may sue lenders on their clients' behalf to get an affordable mortgage payment. Advocate also flaunted its ability to initiate and pursue legal actions in its client correspondence and retainer agreements.

Advocate's employees willingly accepted checks earmarked for legal fees and advised some prospective clients that respondent was Advocate's attorney. When clients retained Advocate, they were required to sign a power of attorney. This power of attorney purportedly gave Advocate the ability to perform numerous legal acts including making discovery demands, prosecuting and defending claims before a court or administrative agency, and settling litigation.

Consequently, many of Advocate's clients reasonably believed that respondent and Advocate lawfully represented them as their attorneys, or their attorneys in fact.

## **B. Client Matters**

The court's findings of fact and conclusions of law relating to each of the 18 client declarations are reflected below.

### **1. The Carnetta McGhee Matter**

In October 2008, Carnetta McGhee ("McGhee") met respondent at a seminar dealing with loan modifications. McGhee learned that respondent was the Chair and President of Advocate for Fair Lending, L.L.C. ("Advocate").

McGhee made an appointment with respondent and met with an Advocate staff member on October 30, 2008. McGhee was told that respondent's services would cost \$3,000, payable in three installments. McGhee retained respondent and Advocate to assist her in negotiating and obtaining a mortgage loan modification. McGhee paid Advocate \$2,000.

Between December 2008 and January 2009, McGhee and her daughter called Advocate numerous times to inquire about the status of her loan modification. McGhee and her daughter left messages with Advocate requesting a return call; however, their calls were not returned.

In mid-January 2009, McGhee received a request from Advocate for the final payment due on her account. In response, McGhee called Advocate and told them she would not be making the final payment unless someone returned her calls.

Approximately one week later, an Advocate staff member called McGhee and told her that Advocate was waiting for documents from Washington Mutual. The staff member again requested that McGhee make her final payment, but McGhee advised that she would not make her final payment until she received some results on her loan modification.

McGhee did not subsequently hear anything from the staff member she spoke to or respondent. On February 12, 2009, McGhee mailed a certified letter to Advocate requesting a full refund. Advocate received this letter, but did not respond to McGhee.

On March 3, 2009, McGhee went to Advocate's office and requested her loan documents and a refund. McGhee received her loan documents; however, she was told that the person who could authorize a refund was not in the office at that time.

Approximately five months later, in August 2009, McGhee received a full refund from Advocate.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate];<sup>4</sup> and
- b. Rules of Professional Conduct of the State Bar of California, rule 3-700(D)(2)<sup>5</sup> [Failure to Promptly Refund Unearned Fees].<sup>6</sup>

## **2. The Lupe Fabros Matter**

In July 2008, Lupe Fabros (“Fabros”) and her husband were seeking to reduce their mortgage payments. Fabros was referred to Advocate by a family member who provided her with a pamphlet from Advocate that stated, among other things, “[i]f we are unable to obtain any concession or benefit for you, [Advocate] will refund ALL payments made by you to us.”<sup>7</sup>

On July 22, 2008, Fabros went to Advocate’s office and met with a staff member who introduced himself as respondent’s legal assistant. The staff member explained that respondent was the attorney and owner of Advocate. Fabros retained Advocate and paid them \$2,000. The staff member advised Fabros that she would receive an update on her case within 30 days and instructed Fabros to stop making her mortgage payments.

After 30 days, Fabros made numerous calls to respondent’s office requesting a return call regarding the status of her matter. Fabros’ calls were not returned.

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<sup>4</sup> Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly 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.

<sup>5</sup> All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

<sup>6</sup> Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly refund any part of a fee paid in advance that has not been earned.

<sup>7</sup> This pamphlet also stated, “We will audit your loan to find cause to force your lender to re-negotiate your loan terms. We have a team of attorneys that specialize in mortgage loans. Our company may sue your lender on your behalf to get a mortgage payment that you can afford.”

In late September 2008, Fabros received a call from her lender who informed her that neither respondent nor Advocate had contacted them regarding a modification of her mortgage payments.

In October 2008, Fabros called respondent's office and left a message requesting a full refund. Respondent did not respond to Fabros' message.

On November 11, 2008, Fabros faxed a letter to respondent again requesting a full refund. On November 13, 2008, an Advocate staff member sent a response letter to Fabros. In this letter Fabros was advised that her file would be reviewed by Advocate and that she would hear from Advocate within 30 days. This letter was written on respondent's law firm's letterhead and the staff member identified himself as a legal clerk for respondent's law firm.<sup>8</sup>

On December 2008, Fabros received a check in the amount of \$1,000 as a partial refund. An Advocate staff member indicated that Fabros would receive the \$1,000 balance "shortly." However, by December 20, 2009, Fabros still had not received the balance of her refund.<sup>9</sup> In addition, Fabros has been unable to contact respondent or the staff member she was working with at Advocate.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate];
- b. Rule 3-110(A) [Failure to Perform with Competence];<sup>10</sup> and
- c. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

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<sup>8</sup> In his response, respondent states that Fabros never retained his law office.

<sup>9</sup> Fabros' declaration was dated December 20, 2009. There is no indication in the record that Fabros has since received any portion of her refund.

<sup>10</sup> Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence.

### **3. The Ruben Tostado Matter**

On November 20, 2008, Ruben Tostado (“Tostado”) hired respondent to obtain a loan modification. Tostado made payments to Advocate in the total amount of \$7,215.

Between December 2008 and February 2009, Tostado called Advocate’s office on numerous occasions to inquire about the status of his loan modification. Tostado was informed that no one was available to speak with him.

In March 2009, Tostado went to Advocate’s office and requested his file and a full refund. An Advocate staff member told Tostado that Advocate could not give him his file or refund any money back to him. As of December 22, 2009, Tostado had yet to receive his file or any portion of the \$7,215 he initially paid Advocate.<sup>11</sup>

#### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate];
- b. Rule 3-700(D)(1) [Failure to Promptly Release All Client Papers and Property];<sup>12</sup> and
- c. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

### **4. The Ronald Williams Matter**

In April 2008, Ronald Williams (“Williams”) was trying to save his home from foreclosure. On April 30, 2008, Williams hired Advocate to obtain a modification of his home loan.

Williams agreed to make monthly payments to Advocate in the amount of \$1,900.

Williams gave his first payment to a man name “Bill,” who identified himself as respondent’s

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<sup>11</sup> Tostado’s declaration was dated December 22, 2009. There is no indication in the record that Tostado has since received his file or a refund.

<sup>12</sup> Rule 3-700(D)(1) states that a member whose employment has terminated shall promptly release to the client, at the request of the client, all the client papers and property.



representative. After paying Bill, however, Williams did not hear from him again. So Williams contacted respondent and learned that respondent's employee, Bill, had stolen Williams' money. Williams wanted to call the police, but respondent insisted that Williams allow him to continue the loan modification process. Respondent offered to reduce Williams' monthly payments from \$1,900 to \$1,200 and assigned a new staff member to his case. Williams paid respondent and Advocate a total of \$5,500.

In November 2008, Williams' new staff member informed Williams that his lender was in the process of selling his house because the loan had been rescinded. The staff member suggested that Williams file Chapter 13 Bankruptcy.

Respondent referred Williams to a bankruptcy attorney. The new attorney attempted to file bankruptcy on Williams' behalf, however, that matter was subsequently dismissed.

In November 2008, Williams lost his home to foreclosure. In January 2009, however, Williams' assigned staff member informed him that respondent was still trying to renegotiate the loan modification.

Between February 2009 and April 2009, Williams called respondent's office on numerous occasions to inquire about the status of the loan modification. Williams did not receive a response.

Thereafter, Williams emailed respondent and requested a full refund - as the agreement Williams signed stated that all of his money would be refunded if he did not obtain a loan modification. On May 8, 2009, Williams sent respondent a certified letter again requesting a full refund.

As of December 18, 2009, Williams had not received a refund or any type of response from respondent.<sup>13</sup>

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate];
- b. Rule 3-110(A) [Failure to Perform with Competence]; and
- c. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

### **5. The Barbara Romo Matter**

On November 10, 2008, Barbara Romo (“Romo”) hired respondent and his company, Advocate, to obtain a loan modification for her. Between November 2008 and April 2009, Romo paid respondent a total of \$4,956 for his services.

Thereafter, Romo called respondent’s office and was informed that they did not have a file for her or any record that she had paid respondent. In May 2009, Romo called respondent’s office again and learned that Advocate had located her file and that her loan modification had been rejected.

Romo requested a refund, but only received a partial refund in the amount of \$1,652.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

### **6. The Martin Moreno Matter**

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<sup>13</sup> Williams’ declaration was dated December 18, 2009. There is no indication in the record that Williams has since received a refund or a response from respondent.

On January 2, 2009, Martin Moreno (“Moreno”) retained respondent and Advocate to negotiate a loan modification on Moreno’s behalf. The total fee for respondent’s services was \$3,000. Moreno paid respondent \$2,000.

For the next several months, Moreno attempted to call Advocate for an update on his loan modification. Every time he called, Moreno was told that no one knew the status of his loan modification.

In May 2009, Moreno was informed by his lender that his house was being placed on the market for sale. Moreno immediately went to Advocate’s office in Fontana and was informed that the office was closing. Moreno was told to contact respondent in his Long Beach office.

In May 2009, Moreno contacted the Long Beach office and requested that they turnover his file. Moreno was told that his file would not be provided to him until he paid the \$1,000 balance on his account. Moreno advised Advocate that he had retained new counsel and did not need respondent’s services. Moreno requested a full refund and again requested the return of his file.

Moreno was subsequently told that his file had been mailed to him; however, he did not receive it. On July 16, 2009, Moreno went to Advocate’s Long Beach office and spoke with a staff member who claimed that Moreno’s file had been mailed to him on June 23, 2009. Moreno informed the staff member that he had not received the documents and requested another copy of his file. The staff member told Moreno that he would not provide him with a copy of his file because the \$1,000 balance had yet to be paid. Moreno advised the staff member that he had retained new counsel and that no work had been performed. At this point, the staff member provided Moreno with a portion of his file.

As of January 1, 2010,<sup>14</sup> Moreno had not received a refund on his entire file.<sup>15</sup>

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate];
- b. Rule 3-110(A) [Failure to Perform with Competence];
- c. Rule 3-700(D)(2) [Failure to Refund Unearned Fees]; and
- d. Rule 3-700(D)(1) [Failure to Promptly Release All Client Papers and Property].

### **7. The Keith Jeske Matter**

On November 3, 2008, Keith Jeske (“Jeske”) retained respondent and Advocate to negotiate a loan modification on his behalf. Jeske paid Advocate \$2,152 for this service.

In March 2009, Advocate informed Jeske that they found “violations” and that they were in the process of mailing a demand letter to his lender. In mid-April 2009, Advocate informed Jeske that they had not heard from his lender. Jeske was therefore instructed to pay Advocate an additional \$1,000 in order to go to “legal.” On April 26, 2009, Jeske paid Advocate the additional \$1,000.

In June 2009, Jeske had a conference call with attorney Jeffrey Fung (“Fung”). Fung advised that he had been assigned by respondent to handle Jeske’s loan modification. Fung told Jeske that his lender had not yet filed a notice of demand, and that he would have to wait four to eight weeks before Advocate would work on his matter.

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<sup>14</sup> Moreno’s declaration was erroneously dated January 1, 2009. This is clearly a typographical error and is not prejudicial to respondent.

<sup>15</sup> There is no indication in the record that Moreno has since received a refund or a response from respondent.

In early to mid-June 2009, Jeske sent Fung three emails requesting immediate attention on his matter. In two of these emails, Jeske reiterated his desire that Advocate file its lawsuit against his lender as soon as possible, and not wait for his lender to first file a notice of demand.

On June 28, 2009, Jeske faxed and emailed a letter to Fung informing him that Jeske's lender had filed a notice of demand, and that a foreclosure proceeding against Jeske's home began on June 15, 2009. Jeske again instructed Fung to file the lawsuit against his lender.

On July 13, 2009, Jeske mailed a letter to respondent terminating his services and demanding a full refund. Jeske's letter stressed Advocate's failures to perform and communicate.

As of December 18, 2009, Jeske had not received a full<sup>16</sup> refund.<sup>17</sup>

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence]; and
- b. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

### **8. The Elizabeth Nunez Matter**

On May 30, 2009, Elizabeth Nunez ("Nunez") hired Advocate to negotiate a loan modification on her behalf. Nunez paid Advocate \$2,500.

On June 24, 2009, Nunez received a letter from Advocate. In this letter Nunez was advised that: (1) Advocate's audit had revealed "irregularities and/or violations within the structure of [her] loan that violate the Federal Truth-In-Lending Laws of [*sic*] the California Truth in Lending Laws;" (2) the legal process could be lengthy; and (3) she should contact

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<sup>16</sup> According to Jeske's declaration, he received \$976.25 from Advocate in December 2008.

<sup>17</sup> Jeske's declaration was dated December 18, 2009. There is no indication in the record that Jeske has since received any refunded monies from Advocate.

Advocate if she was requested to move from her premises by any individual, and that Advocate would pursue legal action against this individual if he or she does not cease and desist.<sup>18</sup>

Between July 2009 and August 2009, Nunez left numerous messages with Advocate requesting the status of her loan modification and/or a full refund. Nunez' messages were not returned.

Advocate did not obtain a loan modification for Nunez, and she lost her home in the process. As of December 18, 2009, Nunez had not received a refund from Advocate.<sup>19</sup>

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate];
- b. Rule 3-110(A) [Failure to Perform with Competence]; and
- c. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

### **9. The Brenda Factor Matter**

On August 28, 2008, Brenda Factor ("Factor") met with respondent, who identified himself as CEO of Advocate, to discuss the possibility of modifying her mortgage loan. Factor signed a retainer agreement with respondent and paid a legal fee of \$5,500.

Factor grew dissatisfied with the services that Advocate failed to perform. On March 20, 2009, Factor sent respondent an email requesting a full refund and the return of her complete file.

On March 23, 2009, respondent sent Factor a partial refund in the amount of \$1,000. The letter accompanying this check was written on respondent's law firm's letterhead. The letter stated, in part:

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<sup>18</sup> In his response, respondent states that his law office never represented Saravia.

<sup>19</sup> Nunez' declaration was dated December 18, 2009. There is no indication in the record that Nunez has since received a refund from Advocate.

Re: Legal Representation

Dear Ms. Factor,

Enclosed is check # 5737 from Advocate as a refund of your legal retainer. Per your request for the file and termination, this letter shall constitute revocation of the attorney-client agreement and this office shall not do any further work on your matter.

Very Truly Yours,

[Respondent]

The attached check (#5737) was from Advocate. In the memo line it stated, "Refund of Legal Retainer."

On April 8, 2009, Factor filed a small claims action against respondent in the Long Beach Superior Court. On July 31, 2009, a judgment was entered in Factor's favor for \$4,550 plus interest.

On September 1, 2009, a writ of execution money judgment was issued, and Factor filed a bank levy with the Los Angeles Sheriff's Office to collect her judgment from respondent and Advocate's bank account. On September 16, 2009, Factor received a check from respondent in the amount of \$4,633.75 as payment of the judgment.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

### **10. The Carlos Padilla Matter**

On December 10, 2008, Carlos Padilla ("Padilla") employed respondent and his company, Advocate, to have his home loan modified. Padilla paid respondent \$6,090 for his services.

Between February 2009 and June 2009, Padilla did not hear from respondent or anyone else from Advocate, even though he called Advocate on numerous occasions to learn the status of his loan modification. Padilla left a message each time he called Advocate, but his calls were not returned.

In mid-June 2009, Padilla called Advocate and informed the director of operations that he wanted to cancel Advocate's services and receive a full refund. Thereafter, on numerous occasions, Padilla called Advocate and left messages for the director of operations. The director of operations did not return Padilla's calls.

On July 10, 2009, Padilla called his lender and asked if Advocate was negotiating a loan modification on his behalf. Padilla learned that his lender had not heard from Advocate and did not have any information regarding a loan modification on his behalf.

As of December 18, 2009, Padilla had not received a refund of any portion of the \$6,090 fee he paid Advocate.<sup>20</sup>

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate];
- b. Rule 3-110(A) [Failure to Perform with Competence]; and
- c. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

### **11. The Mack Cleveland Matter**

On June 13, 2008, Mack Cleveland ("Cleveland") paid Advocate \$2,400 to negotiate a loan modification on his behalf. Cleveland was told by Advocate's representative that respondent, as Advocate's attorney, would be negotiating the loan modification. Cleveland was

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<sup>20</sup> Padilla's declaration was dated December 18, 2009. There is no indication in the record that Padilla has since received a refund from Advocate.



also told that respondent would be in touch with him within 30 days regarding the status of the loan modification.

Between July 2008 and November 2008, Cleveland called Advocate's office to check the status of his loan modification. Cleveland was unable to speak to someone at Advocate regarding the status of his loan modification. In December 2008, Cleveland finally spoke to an Advocate representative who told him that his loan modification was "going well."

In January 2009, Cleveland's lender informed him that his mortgage payments were increasing. Cleveland immediately called Advocate's office, but was informed by Advocate's representative that they could not find a file with his name on it. The Advocate representative told Cleveland that they would continue to search for his file and call him back. No one from Advocate called Cleveland back.

On February 3, 2009, Cleveland went to Advocate's office to inquire about his loan modification. While there, Cleveland spoke to respondent. Respondent apologized for the way Advocate had handled Cleveland's matter, and assured Cleveland that if he signed a retainer agreement and paid respondent an additional \$1,000, that he would obtain the loan modification. Therefore, Cleveland signed a retainer agreement and paid respondent an additional \$1,000.

Thereafter, Cleveland did not receive a loan modification and respondent failed to respond to Cleveland's numerous messages requesting a full refund. Thereafter, Cleveland's home went into foreclosure.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate];
- b. Rule 3-110(A) [Failure to Perform with Competence]; and

c. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

## **12. The Darrius Pinkney Matter**

In August 2008, Darrius Pinkney (“Pinkney”) met with a representative of Advocate. The representative told Pinkney that respondent would start negotiating a loan modification on Pinkney’s behalf as soon as Pinkney made his first \$1,000 installment payment.

On October 3, 2008, Pinkney made his first \$1,000 installment payment. By May 16, 2009, Pinkney had made five installment payments - totaling \$5,000. After all the installment payments were made, Pinkney received a retainer agreement from respondent’s office.

Between May 2009 and October 2009, Pinkney went to respondent’s office on numerous occasions to meet with him and inquire about the status of Pinkney’s loan modification. Pinkney was never able to personally meet or speak with respondent - as he was always told that respondent was out of the office or unavailable.

On October 8, 2009, Pinkney called Advocate and requested to speak with their office manager. Pinkney was kept on the phone, but no one took his call.

As of December 29, 2009,<sup>21</sup> Pinkney’s home was in foreclosure and he was unable to learn anything from respondent or Advocate regarding the status of his loan modification.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate]; and
- b. Rule 3-110(A) [Failure to Perform with Competence].

## **13. The Dionisia Saravia Matter**

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<sup>21</sup> Pinkney’s declaration was executed on December 29, 2009.

On November 11, 2008, Dionisia Saravia (“Saravia”) retained Advocate to negotiate a loan modification on her behalf. Saravia was told by an Advocate representative that respondent would assist in the loan modification. Saravia paid Advocate \$6,666.

Between December 2008 and March 2009, Saravia did not hear from anyone at Advocate. During this time period, Saravia called Advocate numerous times to inquire about her loan modification. Saravia was simply told that they were working on her modification. Saravia never spoke to respondent.

On April 15, 2009, Saravia received a letter from Advocate’s “Legal Staff.” In this letter Saravia was advised that: (1) Advocate’s audit had revealed “irregularities and/or violations within the structure of [her] loan that violate the Federal Truth-In-Lending Laws of [*sic*] the California Truth in Lending Laws;” (2) the legal process could be lengthy; and (3) she should contact Advocate if she was requested to move from her premises by any individual, and that Advocate would pursue legal action against this individual if he or she does not cease and desist.<sup>22</sup>

In May and June 2009, Saravia called Advocate’s office on numerous occasions and requested a full refund.

As of February 24, 2010, Saravia had not received a refund or a response from Advocate.<sup>23</sup>

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate]; and

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<sup>22</sup> In his response, respondent states that his law office never represented Saravia.

<sup>23</sup> Saravia’s declaration was executed on February 24, 2010. There is no indication in the record that Saravia has since received a refund or a response from Advocate.

b. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

#### **14. The Diana Castro Matter**

On November 22, 2008, Diana Castro (“Castro”) retained respondent and his company, Advocate, to handle a forensic audit of her loan documents. Advocate advised Castro the audit would be done prior to December 21, 2008, at which time the statute of limitations was due to expire. Castro paid Advocate \$2,621 on November 22, 2008.

On April 14, 2009, Castro emailed Advocate regarding the status of her loan audit. An Advocate representative responded to Castro, informing her that the audit had been completed and that Advocate was in the process of generating a demand letter for her lender.

Between May 8, 2009 and June 6, 2009, Castro sent multiple emails to Advocate requesting a status update on her loan audit. Castro did not receive a status update.

On June 24, 2009, Castro emailed Advocate’s account manager. The account manager responded to Castro’s email and informed her that her file had been rejected on June 4, 2009, and that the statute of limitations expired on December 21, 2008.

On June 30, 2009, Castro emailed Advocate’s account manager and requested a full refund. On July 20, 2009, Castro received a full refund.

#### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate]; and
- b. Rule 3-110(A) [Failure to Perform with Competence].

#### **15. The Wanda Miranda Matter**

On December 30, 2008, Wanda Miranda (“Miranda”) hired Advocate to help her obtain a mortgage loan modification. Miranda paid Advocate \$3,000 for its services.

On July 18, 2009, Miranda paid respondent an additional \$1,000 and retained him to represent her in litigation relating to her property.

Between December 2008 and July 2009, Miranda was not aware of any services of value provided by respondent or Advocate.

On July 31, 2009, an Advocate representative called Miranda and told her that her lender was putting her condo up for sale the following Monday. The Advocate representative advised Miranda to find an attorney and file bankruptcy to avoid foreclosure.

In August 2009, Miranda emailed Advocate and requested a full refund. Miranda did not receive a response from Advocate.

On October 8, 2009, respondent sent Miranda a letter informing her that due to “economic considerations,” his law office could not represent her in the matter “under the current circumstances,” unless Miranda wanted to pay him an additional \$2,500.

On November 12, 2009, Miranda went to Advocate’s office and requested her file and a full refund. Miranda was told by an Advocate representative that no one was available to assist her with her requests.

As of February 27, 2010, Miranda had not received her file or a refund from Advocate.<sup>24</sup>

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate];
- b. Rule 3-700(D)(2) [Failure to Refund Unearned Fees]; and
- c. Rule 3-700(D)(1) [Failure to Promptly Release All Client Papers and Property].

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<sup>24</sup> Miranda’s declaration was executed on February 27, 2010. There is no indication in the record that respondent or Advocate have since provided Miranda with her file or any portion of her requested refund.

## **16. The Betty Johnson Matter**

On August 14, 2008, Betty Johnson (“Johnson”) retained respondent and Advocate to assist her with a loan modification. Johnson paid Advocate \$3,869.27 for this service.

On December 8, 2008, Advocate sent Johnson a copy of a demand letter that was purportedly sent to her lender.

Between January 2009 and March 2009, Johnson did not hear from Advocate. In March 2009, Johnson learned that her lender had not received any documents from Advocate and that her house had been placed in foreclosure.

On April 3, 2009, Johnson went to Advocate’s office and met with respondent. Johnson told respondent that her house was now in foreclosure. Respondent told Johnson that they were ready to go to court on her behalf if she paid him another \$1,000. Johnson told respondent that she didn’t have any more money to pay him, and reminded respondent that he already failed to protect her home from foreclosure.

On May 20, 2009, Johnson mailed a letter to respondent and Advocate requesting her file and a full refund. As of March 5, 2010, neither respondent nor Advocate has responded to this request.<sup>25</sup>

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence];
- b. Rule 3-700(D)(2) [Failure to Refund Unearned Fees]; and
- c. Rule 3-700(D)(1) [Failure to Promptly Release All Client Papers and Property].

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<sup>25</sup> Johnson’s declaration was executed on March 5, 2010. There is no indication in the record that respondent or Advocate have since provided Johnson with her file or any portion of her requested refund.

## **17. The Maria Ramirez Matter**

On November 11, 2008, Maria Ramirez (“Ramirez”) employed Advocate to start a loan modification process on her behalf. Ramirez paid Advocate \$3,000 for this service.

Advocate instructed Ramirez to stop making mortgage payments. Ramirez followed Advocate’s advice and stopped making her mortgage payments.

On June 20, 2009, Ramirez was told by a representative of Advocate that in order to protect her home from foreclosure she would need to hire respondent and pay him an additional \$1,000. It was further represented that respondent would file suit on Ramirez’ behalf against her lender.

On June 27, 2009, Ramirez signed an attorney-client retainer agreement with respondent and paid him an additional \$1,000.

On September 5, 2009, Ramirez’ lender informed her that her home was in foreclosure, and that her home would be sold on September 15, 2009. Ramirez immediately called respondent and was told by a staff member not to worry about it and that it was just a threat. Ramirez was assured by the Advocate staff member that respondent was working on her case.

In October 2009, Ramirez called her lender to inquire about the status of her loan modification. Ramirez’ lender informed her that she no longer owned her home and that it was sold on September 15, 2009.

On October 8, 2009, Ramirez received a letter from respondent informing her that due to “economic considerations,” his law office could not represent her in the matter “under the current circumstances,” unless he was paid an additional \$2,500. After receiving this letter, Ramirez called respondent and requested a full refund.

As of March 5, 2010, neither respondent nor Advocate had responded to Ramirez' request for a refund.<sup>26</sup>

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate];
- b. Rule 3-110(A) [Failure to Perform with Competence]; and
- c. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

### **18. The Mario Felix Matter**

In the fall of 2008, Mario Felix ("Felix") saw an advertising pamphlet for Advocate. Advocate's pamphlet stated that they would give a full refund if they were not able to benefit the customer. The pamphlet also stated, "[w]e have a team of auditors and attorneys here to help you!"

On October 28, 2008, Felix met with an Advocate staff member. This staff member looked at Felix's loan documents and pointed out a number of errors in the documents. The staff member told Felix that he had a 90% chance of saving his home if he exercised his right of rescission. Felix hired Advocate and paid them \$3,000 for their services.

Felix is not aware of any work that Advocate did to prevent the foreclosure of his home. Felix subsequently hired another attorney, Daniel Lickel ("Lickel") to represent him with respect to filing bankruptcy.

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<sup>26</sup> Ramirez' declaration was executed on March 5, 2010. There is no indication in the record that respondent or Advocate have since provided Ramirez with any portion of her requested refund.



It appeared to Lickel that Felix did not benefit in any way from his \$3,000 payment to Advocate. On March 2, 2009, Lickel emailed respondent and requested, on Felix's behalf, that he be provided with his client file and full refund.

On March 2, 2009, Lickel received an email from respondent, which stated:

Dear Counsel,  
You may want to refer to the agreement between [Felix] and [Advocate]. You may also want to make sure that your E&O is current when you malpractice [Felix] in the Chap. 7 by failing to avail him of certain remedies unique to his situation which I am sure you are unaware. Finally, Your [*sic*] request for a refund is denied with prejudice. You are on formal notice that [Advocate's] attorneys [*sic*] are [*sic*] Alejandro Angulo, Esq. of Rutan & Tucker. (*Sic.*) His number is (714) 641-5100.

Lickel subsequently made multiple requests to respondent that Felix's money be refunded and that his client file be returned. As of February 15, 2010, Lickel had not received Felix's client file or any portion of the requested refund.<sup>27</sup>

#### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence]; and
- b. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

#### **4. DISCUSSION**

Since 2008, respondent has owned and operated Advocate, a non-attorney mortgage loan relief operation. Advocate, under the guise of a power of attorney, represented clients seeking mortgage relief. The evidence before the court establishes that respondent, as owner and President of Advocate, has committed numerous acts of attorney misconduct.

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<sup>27</sup> Lickel's declaration was executed on February 15, 2010. There is no indication in the record that respondent or Advocate have since provided Lickel with Felix's file or any portion of the requested refund.

Respondent has attempted to absolve himself of liability for any of the legal misconduct that occurred under his watch at Advocate. Respondent asserts that he was merely the President of Advocate and that he did not represent any of Advocates clients in a legal capacity. Instead, respondent argues, Advocate represented all of its clients through power of attorney.

Respondent's assertions, however, are misguided. Power of attorney does not permit an agent to act as an attorney at law. (*People ex rel. Dept. of Public Works v. Malone* (1965) 232 Cal.App.2d 531, 536.) Respondent's interpretation of the Power of Attorney Act would sanction criminal conduct, as it is inconsistent with the laws prohibiting the unauthorized practice of law. (See *Drake v. Superior Court* (1994) 21 Cal.App.4<sup>th</sup> 1826, 1830.) Consequently, respondent's effort to represent clients as an attorney in fact rather than an attorney in law is invalid.

Based on the aforementioned conduct, the court finds that Advocate's clients were also respondent's clients. For an attorney cannot use a power of attorney form to absolve themselves of the ethical mandates they have sworn to uphold.

As mentioned earlier in this decision, section 6007, subdivision (c)(2) sets forth three factors for determining whether an attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or the public. All of the following factors must be found:

1. The attorney has caused or is causing substantial harm to his clients or the public;
2. The attorney's clients or the public are likely to suffer greater injury if the involuntary inactive enrollment is denied than the attorney is likely to suffer if it is granted, or that there is a reasonable likelihood the harm caused by the attorney will reoccur or continue; and
3. That it is reasonably probable that the Office of the Chief Trial Counsel will prevail on the merits of the underlying disciplinary matter.

**A. Reasonable Probability the Office of the Chief Trial Counsel will Prevail**

Throughout the above Findings of Fact and Conclusions of Law, this court has made findings and conclusions with respect to the third of the above factors; that is, the likelihood of

the Office of the Chief Trial Counsel prevailing on the merits of the charges presented in the application. Consequently, those findings and conclusions will not be repeated here. However, as established above, the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail on over 40 counts of misconduct involving 18 client matters.

### **B. Substantial Harm to the Public or the Attorney's Clients**

Respondent's misconduct has caused substantial harm to his clients and the public. In his representation of struggling homeowners, respondent has repeatedly failed to perform with competence, failed to communicate, and failed to timely refund unearned fees. Out of the 18 witness declarations, 3 have lost their homes to foreclosure, 2 had to obtain new counsel to perform the work that respondent was hired to complete, 4 have received only a partial refund, and 11 have not received any refund at all.

Accordingly, the court finds that the Office of the Chief Trial Counsel has established, by clear and convincing evidence, that respondent has caused substantial harm to his clients and the public.

### **C. Likelihood that Harm will Continue**

Respondent has demonstrated a lack of understanding or appreciation of his ethical and fiduciary duties. In addition, respondent continues to harm his clients by failing to refund their unearned fees or communicate with them. Absent the court's intervention, it is likely that respondent's misconduct will continue to harm his present and future clients.

The court finds that respondent's conduct demonstrates a pattern of behavior, including acts likely to cause substantial harm. Accordingly, the burden of proof shifts to respondent to demonstrate that there is no reasonable likelihood that the harm will reoccur or continue.

(Section 6007, subdivision (c)(2)(B).) There is no clear and convincing evidence that respondent has met his burden under Section 6007, subdivision (c)(2)(B).

Therefore, the court finds that each of the factors prescribed by Business and Professions Code section 6007, subdivision (c)(2), has been established by clear and convincing evidence. The court concludes that respondent's conduct poses a substantial threat of harm to his clients and the public. The court further finds that the involuntary inactive enrollment of respondent is merited for the benefit of the public, the courts, and the legal profession.

## **5. ORDER**

Accordingly, **IT IS ORDERED** that respondent Mark Alan Shoemaker be enrolled as an inactive member of the State Bar of California, pursuant to Business and Professions Code section 6007, subdivision (c)(1), effective three days after service of this order by mail. (Rules Proc. of State Bar, rule 466(b).) State Bar Court staff is directed to give written notice of this order to respondent and to the Clerk of the Supreme Court of California. (Bus. & Prof. Code, § 6081.)

### **IT IS FURTHER ORDERED** that:

1. Within 30 days after the effective date of the involuntary inactive enrollment, respondent must:
  - a. Notify all clients being represented in pending matters and any co-counsel of his involuntary inactive enrollment and his consequent immediate disqualification to act as an attorney and, in the absence of co-counsel, notify the clients to seek legal advice elsewhere, calling attention to the urgency in seeking the substitution of another attorney or attorneys in his place;
  - b. Deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to the urgency of obtaining the papers or other property;
  - c. Refund any part of any fees paid in advance that have not been earned; and
  - d. Notify opposing counsel in pending matters or, in the absence of counsel, the adverse parties of his involuntary inactive enrollment, and file a copy of the notice with the court, agency, or tribunal before which the matter is pending for inclusion in the respective file or files;

2. All notices required to be given by paragraph 1 must be given by registered or certified mail, return receipt requested, and must contain respondent's current State Bar membership records address where communications may thereafter be directed to him;

3. Within 40 days of the effective date of the involuntary inactive enrollment, respondent must file with the Clerk of the State Bar Court an affidavit showing that he has fully complied with the provisions of paragraphs 1 and 2 of this order. The affidavit must also contain respondent's current State Bar membership records address where communications may thereafter be directed to him; and

4. Respondent must keep and maintain records of the various steps taken by him in compliance with this order so that, upon any petition for termination of inactive enrollment, proof of compliance with this order will be available for receipt into evidence. Respondent is cautioned that failure to comply with the provisions of paragraphs 1 - 4 of this order may constitute a ground for denying his petition for termination of inactive enrollment or reinstatement.

Dated: June \_\_\_\_\_, 2010

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RICHARD A. HONN  
Judge of the State Bar Court