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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Donald R. Steedman 180 Howard Street, 7th Floor San Francisco, CA 94105 Bar # 104927	Case Number(s): 10-O-09257 [10-O-10543; 10-O-10684; 10-O-10921; 11-O-16158; 11-O-19461]	For Court use only PUBLIC MATTER FILED <i>vs</i> MAR - 7 2012 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Samuel Bellicini Fishkin & Slatter LLP 1111 Civic Dr Ste 215 Walnut Creek, CA 94596 Bar # 152191	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: Anthony Bayard de Volo Bar # 210018 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted on December 4, 2000.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 14 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(Effective January 1, 2011)

Actual Suspension

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: 2013 and 2014. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious. Respondent was admitted twelve years ago.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. Respondent has been fully cooperative.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(Effective January 1, 2011)

Actual Suspension

- (13) No mitigating circumstances are involved.

Additional mitigating circumstances:

D. Discipline:

- (1) Stayed Suspension:

(a) Respondent must be suspended from the practice of law for a period of one year.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

(b) The above-referenced suspension is stayed.

- (2) Probation:

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

- (3) Actual Suspension:

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of 90 days .

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

E. Additional Conditions of Probation:

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

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

(3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of

information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: _____
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

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- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

Attachment language (if any):

DISCLOSURE OF PENDING INVESTIGATIONS

The disclosure mentioned in paragraph A7 was made by letter dated February 23, 2012.

FACTS AND CONCLUSIONS OF LAW

COUNT ONE

Case No. 10-O-10684

Rules of Professional Conduct, rule 3-110(A)

[Failure to Perform with Competence]

1. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:
2. Respondent represented Reinalda Chavez ("Chavez") in connection with her mortgage loan modification case between in or about July 2009 and February 24, 2010.
3. During that time, Chavez never met or spoke with respondent or any other lawyer connected with respondent's law practice. Instead, Chavez received all legal advice from non-attorney agents of respondent's law practice. Respondent delegated to non-attorneys the duty of signing Chavez up as a client, accepting advance fees from Chavez, explaining the terms of the fee agreement, and providing the initial legal advice concerning the legal engagement and potential outcomes. Respondent delegated to non-attorneys responsibility for negotiating the loan modification with Chavez's lender. Respondent never personally contacted the lender. Respondent delegated to a non-attorney the duty of explaining the lender's loan modification proposal and related documents.
4. Respondent failed to properly supervise his non-attorney staff, who engaged in incompetent legal services. This incompetence included but was not limited to the following: The above-mentioned non-attorneys led Chavez to believe that she was being represented by an attorney when this was not true.
5. By improperly delegating his duties to non-attorney staff, by failing to ever meet with the client, and by failing to properly supervise his non-attorney staff, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence.

COUNT TWO

Case No. 10-O-09257

Rules of Professional Conduct, rule 3-110(A)

[Failure to Perform with Competence]

6. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, and repeatedly failing to perform legal services with competence, as follows:

7. Respondent represented Kenneth Bousfield in connection with his mortgage loan modification case from on or about June 5, 2009 to in or about May 2010.

8. For most of the representation, Bousfield never met with respondent or any other lawyer connected with respondent's law practice. Instead, Bousfield received all of his legal advice from non-attorney agents of respondent's law practice. Respondent delegated to a non-attorney responsibility for signing Bousfield up as a client, accepting advance fees from Bousfield, explaining the terms of the fee agreement, and providing the initial legal advice concerning the legal engagement and potential outcomes. The fee agreement was particularly complex because, inter alia, it contained provisions which respondent later interpreted as advising the client that he did not qualify for a loan modification and, further, contained a provision by which the fee was said to be non-refundable and earned upon receipt. Respondent delegated to non-attorneys responsibility for negotiating the loan modification. Respondent never personally contacted the lender. Prior to January 2010, respondent delegated to non-attorneys the duty to provide information and advice to Bousfield concerning the firm's progress in obtaining the loan modification, including the provisions of the temporary loan modification. By the time respondent first spoke with Kahn, in or about January 2010, the loan modification had been denied and the foreclosure process had begun.

9. Respondent failed to properly supervise his non-attorney staff, who engaged in incompetent legal services and inappropriate actions including: the above-mentioned non-attorneys led Bousfield to believe that he was being represented by an attorney when this was not true.

10. By improperly delegating his duties to non-attorney staff, by failing to meet with the client until far into his representation, by failing to properly supervise his non-attorney staff, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence.

COUNT THREE

Case No. 10-O-10921

Rules of Professional Conduct, rule 3-110(A)

[Failure to Perform with Competence]

11. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, and repeatedly failing to perform legal services with competence, as follows:

12. Respondent represented Becky Lais ("Lais") in connection with her mortgage loan modification case from on or about November 2008 to in or about November 2009.

13. For most of the representation, Lais never met with respondent or any other lawyer connected with respondent's law practice. Instead, Lais received all of her legal advice from non-attorney agents of respondent's law practice. Respondent delegated to non-attorneys responsibility for signing Lais up as a client, accepting advance fees from Lais, explaining the terms of the fee agreement, and providing the initial legal advice concerning the legal engagement and potential outcomes.

14. Respondent delegated to non-attorneys responsibility for negotiating the loan modification. Respondent never personally contacted the lender. Prior to June 2009, respondent delegated to non-attorneys the duty to provide information and advice to Lais concerning the firm's progress in obtaining the loan modification.

15. In June 2009, respondent had his first and only conversation with Lais. At all times thereafter, respondent again delegated to the above-named non-attorneys his responsibility to provide legal advice and communication concerning the progress of the loan modification matter.

16. After his June 2009 telephone call with Lais, respondent failed to take competent actions to save Lais' property from foreclosure and the house was lost in foreclosure in or about November 2009.

17. Respondent failed to properly supervise his non-attorney staff, who engaged incompetent legal services and inappropriate actions including: (1) advising Lais to provide the lender with documentation indicating that she had rented rooms in her house when this was not so and (2) failing to respond to Lais' telephone calls and failing to provide status updates during the time Lais' house went into foreclosure.

18. By improperly delegating his duties to non-attorney staff, by failing to ever speak with his client except on one occasion, by failing to properly supervise his non-attorney staff, and by failing to take competent actions to save Lais' property from foreclosure, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence.

COUNT FOUR

Case No. 10-O-10543

Rules of Professional Conduct, rule 3-110(A)

[Failure to Perform with Competence]

19. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:

20. On or about September 22, 2009, Veilka Gallo ("Gallo") employed respondent to represent her in a mortgage home loan modification matter. Gallo paid respondent \$4,000.00 at that time for attorney fees.

21. On or about October 19, 2009, Gallo employed respondent represent her in a mortgage loan matter concerning a second piece of real property. On or about October 19, 2009, Gallo paid respondent an additional \$4,000.00 for legal fees.

22. Respondent represented Gallo until at least February, 2010. At all times through the conclusion of representation, Gallo never met or spoke with respondent or any other lawyer connected with respondent's law practice. Instead, Gallo received all of his legal advice from non-attorney agents of respondent's law practice. Respondent delegated to non-attorneys the responsibility for signing Gallo up as a client, accepting advance fees from Gallo, explaining the terms of the fee agreements, and providing the initial legal advice concerning the legal engagements and potential outcomes. This October 19, 2009, fee agreement was particularly complex because respondent subsequently interpreted it as authorizing him to take advance fees despite the language of the newly enacted Civil Code section 2944.7 subdivision (a). Respondent delegated to non-attorneys responsibility for negotiating the loan modifications with Gallo's

lender and providing legal advice and information to the client concerning the progress of the loan modification matters. Respondent never personally contacted the lender.

23. Respondent failed to properly supervise his non-attorney staff, who engaged incompetent and improper services as follows:

- Respondent's agents first advised Gallo to place funds with an escrow company. Then, on or about July 27, 2010, respondent or his agents caused the client's funds to be removed from escrow and given to respondents' agents in the amounts of \$782.50 and \$7,042.50, respectively. Respondent's agents took this action without Gallo's knowledge or consent. The funds were not returned to the client until September 10, 2010. However, neither respondent nor respondent's agents had any right to take the funds and their actions constituted overreaching and misappropriation of funds.
- Respondent's agents engaged in competent legal services because they did not accurately explain to the client the ramifications of the loan modifications they obtained.

COUNT FIVE

Case Nos. 10-O-09257 and 10-O-10543

Business and Professions Code, section 6090.5(a)(2)

[Seeking an Agreement to Not to File/Withdraw a State Bar Complaint]

24. Respondent, while acting as a party or as an attorney for a party, wilfully violated Business and Professions Code, section 6090.5(a)(2), by agreeing or seeking agreement that professional misconduct not be reported to the disciplinary agency and that a plaintiff would withdraw a disciplinary complaint or would not cooperate with the investigation or prosecution conducted by the disciplinary agency, as follows:

25. At all times mentioned, the State Bar of California was the agency charged with the investigation of disciplinary complaints against lawyers.

26. On or about September 10, 2010, Gallo's attorney Carlos Martinez ("Martinez") filed a lawsuit against respondent on behalf of Gallo. Thereafter, on or about September 30, 2010, in the course of negotiating a settlement of Gallo's civil lawsuit against respondent, respondent sent an email to Martinez stating "Can yu [sic] retract any other complaints to DA or Bar." On or about October 8, 2010, the State Bar received a discipline complaint against respondent which had been submitted by Martinez on behalf of Gallo. By making the communication on or about September 30, 2010, respondent sought agreement that a plaintiff would not cooperate with an investigation or prosecution conducted by the disciplinary agency and sought agreement that professional misconduct not be reported to the State Bar.

27. On or about August 13, 2010, Bousfield filed a disciplinary complaint against respondent with the State Bar. Thereafter, respondent became aware of the complaint and the State Bar's investigation. Thereafter, on or about November 3, 2010, respondent had a telephone conversation with Bousfield in which respondent offered Bousfield \$2,000.00 if Bousfield would drop his State Bar complaint. By making the communication on November 3, 2010, respondent sought agreement that Bousfield would withdraw a

disciplinary complaint and would not cooperate with the investigation or prosecution conducted by the disciplinary agency.

COUNT SIX

Case No. 11-O-16158

Rules of Professional Conduct, rule 3-110(A)

[Failure to Perform with Competence]

28. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:

29. Respondent represented Tida Turay in connection with her mortgage loan modification case between in or about April 2009 and May 2010.

30. During that time, Turay never met or spoke with respondent or any other lawyer connected with respondent's law practice. Instead, Turay received all legal advice from non-attorney agents of respondent's law practice. Respondent delegated to a non-attorney the duty of signing Turay up as a client, accepting advance fees from Turay, explaining the terms of the fee agreement, and providing the initial legal advice concerning the legal engagement and potential outcomes. Respondent delegated to non-attorneys, responsibility for negotiating the loan modification with Turay's lender. Respondent never personally contacted the lender. Respondent delegated to these non-attorneys the duty of explaining the lender's responses to the loan modification requests.

31.. Respondent failed to properly supervise his non-attorney staff, who engaged in incompetent legal services. This incompetence included but was not limited to the following: Respondent's agents advised Turay to provide documentation indicating that Turay's sister was living in the residence and was providing financial assistance in paying the mortgage, when none of this was true.

32. By improperly delegating his duties to non-attorney staff, by failing to ever meet with the client, and by failing to properly supervise his non-attorney staff, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence.

COUNT SEVEN

Case No. 11-O-16158

Rules of Professional Conduct, rule 3-400(B)

[Limiting Liability to a Client]

33. Respondent wilfully violated Rules of Professional Conduct, rule 3-400(B), by settling a claim or potential claim for respondent's liability to the client for respondent's professional malpractice, without informing the client in writing that the client may seek the advice of an independent lawyer of the client's choice regarding the settlement and giving the client a reasonable opportunity to seek that advice, as follows:

34. On or about May 25, 2010, in response to the Turay's request for a refund, respondent (acting through his agent) asked Turay to sign a broad release. This document purported to release respondent from all liability in connection any cause of action including the "...acts and omissions or other false..." of respondent and thus was sufficiently broad to cover liability for professional malpractice.

35. Turay signed the document on or about May 25, 2010, and provided it to respondent's agent.

36. Respondent obtained this document without informing Turay in writing that she could seek the advice of an independent lawyer of the client's choice regarding the settlement and without giving the Turay a reasonable opportunity to seek that advice.

37. By obtaining the May 25, 2010 release, respondent settled a claim or potential claim for respondent's liability to the client for respondent's professional malpractice, without informing the client in writing that the client may seek the advice of an independent lawyer of the client's choice regarding the settlement and giving the client a reasonable opportunity to seek that advice.

COUNT EIGHT

Case No. 11-O-19461

Rules of Professional Conduct, rule 3-400(A)

[Limiting Liability to a Client]

38. Respondent wilfully violated Rules of Professional Conduct, rule 3-400(A), by contracting with a client prospectively limiting respondent's liability to the client for respondent's professional malpractice, as follows:

39. On or about December 16, 2008, Luis S. Sousa and respondent entered a written fee agreement in which Sousa employed respondent to represent him in loan modification matters. In his written fee agreement, respondent inserted a provision whereby Sousa "...irrevocably and unconditionally release and forever discharges Representative and their agents, officers and employees from any and all charges and complaints that I have against them in connection with the services performed under this Fee Agreement."

40. By entering the fee agreement with Sousa with the above quoted language, respondent contracted with a client prospectively limiting respondent's liability to the client for respondent's professional malpractice.

SUPPORTING AUTHORITY

This case bears some similarities to In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178, wherein a six month suspension was imposed upon an attorney who improperly delegated his law practice to non-attorneys. However, the State Bar is recommending a lower level of discipline here, because the Nelson case involved capping and solicitation and because respondent has agreed to this early settlement.

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In the Matter of: Anthony Bayard de Volo	Case Number(s): 10-O-09257 et al
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Nolo Contendere Plea Stipulations to Facts, Conclusions of Law, and Disposition

The terms of pleading nolo contendere are set forth in the Business and Professions Code and the Rules of Procedures of the State Bar. The applicable provisions are set forth below:

Business and Professions Code § 6085.5 Disciplinary Charges; Pleas to Allegations

There are three kinds of pleas to the allegations of a notice of disciplinary charges or other pleading which initiates a disciplinary proceeding against a member:

- (a) Admission of culpability.
- (b) Denial of culpability.
- (c) Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere will be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court will find the member culpable. The legal effect of such a plea will be the same as that of an admission of culpability for all purposes, except that the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based.

Rules of Procedure of the State Bar, rule 5.56. Stipulations to Facts, Conclusions of Law, and Disposition

“(A) **Contents.** A proposed stipulation to facts, conclusions of law, and disposition must comprise:

[1] . . . [1]


(5) a statement that the member either:

- (a) admits the truth of the facts comprising the stipulation and admits culpability for misconduct; or
- (b) pleads nolo contendere to those facts and misconduct;

[1] . . . [1]

(B) **Plea of Nolo Contendere.** If the member pleads nolo contendere, the stipulation must also show that the member understands that the plea is treated as an admission of the stipulated facts and an admission of culpability.”

I, the Respondent in this matter, have read the applicable provisions of Business and Professions Code section 6085.5 and rule 5.56 of the Rules of Procedure of the State Bar. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea will be considered the same as an admission of culpability except as stated in Business and Professions Code section 6085.5(c).



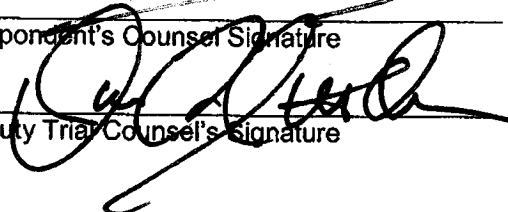
2/28/12  Anthony Bayard de Volo
Date Respondent's Signature Print Name

(Do not write above this line.)

In the Matter of: Anthony Bayard de Volo	Case number(s): 10-O-09257
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>2/28/12</u> Date	 Respondent's Signature	<u>Anthony Bayard de Volo</u> Print Name
<u>29 Feb 2012</u> Date	 Respondent's Counsel Signature	<u>Samuel Bellicini</u> Print Name
<u>March 1, 2012</u> Date	 Deputy Trial Counsel's Signature	<u>Donald R. Steedman</u> Print Name

(Do not write above this line.)

In the Matter of:
ANTHONY BAYARD DE VOLO
SBN 210018

Case Number(s):
10-O-09257 et al.

ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

On page 4 of the stipulation, an "X" is inserted in the box next to paragraph D.(1)(b).

On page 4 of the stipulation, the "X" in the box next to paragraph E.(1) is deleted.

On page 10 of the stipulation, in the final paragraph of numbered section 23, "agents engaged in competent legal services" is deleted, and in its place is inserted "agents engaged in incompetent legal services".

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

March 7, 2012


LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on March 7, 2012, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

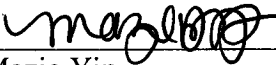
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

SAMUEL C. BELLICINI
FISHKIN & SLATTER, LLP
1111 CIVIC DR STE 215
WALNUT CREEK, CA 94596

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

DONALD R. STEEDMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 7, 2012.



Mazie Yip
Case Administrator
State Bar Court