

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of ) Case No.: **10-O-10918-LMA**  
)  
**JEFFREY DAVID TOCHTERMAN,** )  
) **DECISION AND ORDER VACATING**  
**Member No. 170466,** ) **STIPULATION**  
)  
A Member of the State Bar. )

**Introduction**<sup>1</sup>

In this disciplinary matter, respondent Jeffrey David Tochterman and the Office of the Chief Trial Counsel of the State Bar of California (State Bar) stipulated to the disposition of one count of professional misconduct, and the State Bar Court approved the stipulation.

In June 2012, the California Supreme Court returned this disciplinary matter for further consideration of the recommended discipline in light of the applicable attorney discipline standards.

Thus, the sole issue in this matter is the level of discipline. Respondent caused significant harm to his clients and failed to maintain the high professional standards demanded of attorneys. However, respondent displayed spontaneous candor and cooperation with the State Bar and displayed great remorse for his misconduct. Also, respondent has no prior record of discipline. After further consideration of the recommended discipline in light of the applicable

---

<sup>1</sup> 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.

attorney discipline standards, case law, and aggravating and mitigating factors, the court concludes that the level of discipline of stayed suspension, as recommended in the original stipulated disposition, must be increased. Accordingly, the court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of suspension be stayed, that he be placed on probation for two years and that he be actually suspended for a minimum of the first 18 months of probation and until he makes restitution.

### **Significant Procedural History**

On November 30 and December 1, 2011, respondent and the State Bar, respectively, signed a Stipulation Re Facts, Conclusions of Law and Disposition. State Bar Court Hearing Judge Lucy Armendariz approved the stipulation on December 6, 2011. The Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving was filed on December 6, 2011.

On June 21, 2012, the Supreme Court issued an order returning the stipulation for further consideration of the recommended discipline in light of the applicable attorney discipline standards.

In August 2012, the court denied the State Bar's motion to consolidate this matter with three other attorneys' pending matters. In October 2012, the court denied the State Bar's request to withdraw from the stipulation, but granted its motion for limited modification.

Even though the parties were bound by the factual stipulations, the court allowed the parties to supplement the stipulation with evidence that did not contradict the stipulation. (Rules Proc. of State Bar, rule 5.58.)

A hearing was held on January 22-25, 2013. Trial Counsel Robin Brune and Steven F. Egler represented the State Bar. Respondent was represented by attorney Vicki H. Young. The case was submitted for decision on January 25, 2013.

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on June 6, 1994, and has been a member of the State Bar of California at all times since that date.

The following findings of fact and conclusions of law are based on the December 2011 stipulation and the supplemental facts established at the hearing. As stated in the court's October 18, 2012 order on State Bar's motion to modify or withdraw from the stipulation, the stipulation is binding and therefore, the parties are bound by the conclusions of law, and the court will not make any new culpability findings. (Rules Proc. of State Bar, rule 5.58.)

#### ***Stipulated Facts***

At all relevant times herein, "US Loan Auditors, LLC," "US Loan Auditors, Inc." and "My US Legal Services" (hereinafter "My US Legal") were companies owned, in part, by non-attorneys. Homeowners hired My US Legal to file predatory lender lawsuits and paid advanced attorney's fees in monthly installments to My US Legal. Thereafter, My US Legal hired outside attorneys ("contract attorneys") to handle the predatory lender lawsuits. My US Legal paid the contract attorneys \$250 per month per client as attorney's fees. The \$250 was paid from the monthly installments paid to My US Legal by the homeowners as advanced attorney's fees.

From December 2009 through October 2010, My US Legal hired respondent to handle predatory lender lawsuits on behalf of its clients. During that period, My US Legal paid respondent a total of \$58,500 as fees from a portion of the monthly installments paid to My US Legal by the homeowners as advanced attorney's fees. The \$58,500 represented an impermissible fee split with a non-attorney. Respondent did not earn any portion of the \$58,500 paid as fees.

On October 6, 2010, the Attorney General of California filed a complaint against My US Legal. Thereafter, My US Legal filed a petition for bankruptcy in the Estate of My US Legal

Services, Inc., U.S. Bankruptcy Court, Eastern District, Sacramento Division, case No. 10-51750. Susan K. Smith is the Trustee in the bankruptcy matter and is responsible for distributing the estate, in part, to the victims of respondent's misconduct.

Prior to January 2010, Javier and Gloria Contreras hired My US Legal to file a predatory lender lawsuit on their behalf ("the Contreras matter"). In January 2010, My US Legal hired respondent to handle the Contreras matter. At all relevant times herein, the Contreras paid My US Legal advanced attorney fees in monthly installments. My US Legal forwarded \$2,500 (paid in installments of \$250 per month) to respondent for the Contreras matter. The \$2,500 represented attorney fees and was paid from a portion of the advanced attorney fees paid by the Contreras to My US Legal. The \$2,500 represented an impermissible fee split with a non-attorney.

My US Legal filed a complaint in the Contreras matter. Thereafter, respondent failed to perform any work in the Contreras matter. Respondent did not earn the \$2,500 paid as advanced fees.

#### ***Supplemental Facts (Background)***

In December 2009, respondent responded to an advertisement placed in Craigslist seeking attorneys to handle predatory mortgage lending litigation. Respondent met with Jim Sandison, one of the owners of My US Legal.

Respondent received the \$58,500 in about nine monthly installments from USLS.<sup>2</sup>

USLA/USLS referred clients to respondent. But USLA/USLS was not a legal referral service. USLS did not register their lawyer referral service with the State Bar or meet or operate

---

<sup>2</sup> USLS refers to US Legal Services. USLA refers to US Loan Auditors. These two were sister companies, both owned by James Donald Sandison, Shane Barker, and Jeffrey Allen Pulvino. Sandison was an attorney but the other two partners were not attorneys. The court takes judicial notice that Sandison was disbarred on October 9, 2011.

in conformity with the minimum standards established by the State Bar for a lawyer referral service, as required under Business and Professions Code section 6155.

As to each of the client matters that respondent received from USLA or USLS, respondent received an illegal referral.

The sales people at USLA, misleadingly called "fraud investigators," received a commission for each client they signed up for a loan audit and legal services through USLS. The commissions they received for the audit were reduced if the client did not subsequently sign up for the legal services.

Respondent did not inform his clients of the fee splitting arrangement that he had with USLS.

USLA/USLS ("fraud investigators") gave false information to the clients in order to induce them to sign up for USLA/USLS's services. These false statements included, but were not limited to, the following:

- the clients did not have to pay the mortgage during the pendency of their suit;
- the mortgage payments would be reduced by half during the suit;
- the lawsuit would "freeze" the mortgage;
- the banks would be precluded from foreclosing upon their home once a suit was filed; and
- the lawsuit would be a likely means to obtain a loan modification.

The non-attorney partners on the fee splitting, USLA, which is a sister company to USLS, would provide clients with a forensic loan audit as a means to induce them to sign up for legal services. The audit consists largely of a boilerplate rendition of laws, it was created by a non-attorney using a computer software program, and it provided negligible value to the client. The client would be charged several thousand dollars or more for the audit.

While the forensic audit generally detailed alleged violations of federal laws, such as Real Estate Settlement Procedures Act (RESPA) or Truth in Lending Act (TILA), respondent generally filed suit in state court with state causes of action.

Respondent did not explain to the client the discrepancies between the violations as identified in the forensic loan audit and the allegations as alleged in the state filed complaints.

Respondent did not draft the pleadings for the client matters he received from USLS. The complaints filed by respondent on behalf of USLS clients had virtually identical causes of action, and were generally boilerplate complaints prepared by non-attorneys at USLS.

In the summer of 2010, respondent met with State Bar investigators and fully cooperated with the State Bar and gave the State Bar information regarding My US Legal.

After meeting with the State Bar, respondent began to contact My US Legal and started requesting his client files from My US Legal.

***Supplemental Facts (The Contreras Matter)***

Javier and Gloria Contreras responded to an advertisement for USLA/USLA in September 2009. They met with a sales representative of USLA, Molly, in October 2009. Molly looked at their paperwork and told them that there was something wrong with their loan, and that USLA could help them get the mortgage company to modify their loan. Molly told them that a lawsuit would get them a loan modification.

The Contreras paid \$2,200 for an audit. The Contreras agreed to hire USLS and signed up for automatic debits on December 1, 2009. In December 2009, the Contreras' home went into default.

On January 15, 2010, the Contreras signed a Legal Services Agreement with respondent. The Contreras did not choose respondent; USLS assigned him to them.

Respondent never talked to the Contreras prior to October 2010, when the Attorney General filed a complaint against USLS.

USLS sent the Contreras a complaint in February 2010. They signed the verification to the complaint on February 22, 2010. Respondent never spoke to them about the complaint.

On October 24, 2010, the Contreras sent USLS a letter asking for their money back. They never received a response. They paid USLA/USLS approximately \$12,000.

The Contreras lost their home to foreclosure.

### **Conclusions**

#### ***Count One – (Rule 1-320(A) [Sharing Fees with Non-Lawyers])***

Rule 1-320(A) provides, with limited exceptions, that an attorney must not directly or indirectly share legal fees with a non-lawyer.

By splitting the legal fees with My US Legal and receiving the \$250 monthly fee in the Contreras matter, respondent shared a legal fee with a non-attorney entity, in willful violation of rule 1-320(A).

#### **Aggravation<sup>3</sup>**

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

Respondent's misconduct harmed the clients, the public and the administration of justice. The Contreras were desperate to keep their home and respondent's misconduct caused significant harm to his financially troubled clients.

---

<sup>3</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

## **Mitigation**

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

Respondent's lack of a prior record of discipline in 15 years of practice at the time of his misconduct is a mitigating factor. (*In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343 [Thirteen years of practice without discipline is an appropriate factor in mitigation].)

### **Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)**

Respondent's candor and cooperation with the State Bar during investigation and proceedings, including entering into a stipulation as to facts, conclusions of law and disposition, is given great weight in mitigation since he fully cooperated with the State Bar early on during the investigation.

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

Respondent presented evidence of good character. One witness testified and four wrote letters regarding his good character, including a friend, an attorney and three deputy district attorneys. Favorable character testimony from employers and attorneys are entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.) Because judges and attorneys have a "strong interest in maintaining the honest administration of justice" (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319), "[t]estimony of members of the bar . . . is entitled to great consideration." (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.)

The witnesses wrote of respondent's integrity, honesty, trustworthiness, and dedication. They have known respondent for many years and opined that he is respectful, professional, cooperative, and helpful. One witness believed that he has owned up to his mistake. They also praised his commitment to the community and his family.



Although respondent's character evidence was not from a wide range of references, it is entitled to some weight in mitigation.

**Remorse/Recognition of Wrongdoing (Std. 1.2(e)(vii).)**

Respondent displayed remorse for his misconduct. He tried to rectify his misconduct by attempting to get the files from My US Legal.

**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.

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.)

Respondent stipulated that he is culpable of sharing legal fees with non-lawyers in one

client matter. He contends an actual suspension of no more than six months and no payment of restitution would be appropriate.

The State Bar urges that respondent should be actually suspended for two years and until he makes restitution.

“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.)

The court found instructive *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. In *Jones*, 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 attorney was suspended for three years, stayed, placed on a three-year probation and was actually suspended 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.)

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.)

In the present case, respondent along with My US Legal had clearly swindled vulnerable, desperate homeowners.

Accordingly, having further considered the evidence, the supplemental facts, the standards, the case law, and the mitigating and aggravating factors, the court concludes that the one-year stayed suspension and five-year probation previously recommended in the original stipulated disposition was inadequate to protect the public, the courts and the legal profession. The court recommends that respondent be actually suspended for 18 months and until he makes full restitution to the Contreras and to the trustee for the estate of My US Legal Services, Inc.

### **Recommendations**

It is recommended that respondent Jeffrey David Tochterman, State Bar Number 170466, be suspended from the practice of law in California for two years, that execution of that period of

suspension be stayed, and that respondent be placed on probation<sup>4</sup> for a period of two years subject to the following conditions:

1. Respondent Jeffrey David Tochterman is suspended from the practice of law for a minimum of the first 18 months of probation, and respondent will remain suspended until the following requirement(s) are satisfied:
  - a. Respondent must make restitution to Javier and Gloria Contreras in the amount of \$2,500 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Javier and Gloria Contreras, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles; and
  - b. Respondent must make restitution to Susan K. Smith, Trustee for Estate of My US Legal Services, Inc., U.S. Bankruptcy Court, Eastern District, Sacramento Division, case No. 10-51750, in the amount of \$56,000 and furnish proof to the State Bar's Office of Probation in Los Angeles.
2. If respondent remains suspended for two years or more as a result of not satisfying the preceding requirement(s), he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
3. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
4. Within 30 days after 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. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
6. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April

---

<sup>4</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

7. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
8. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
9. At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

#### **Multistate Professional Responsibility Exam**

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination during the period of his suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

#### **California Rules of Court, Rule 9.20**

It is further recommended that respondent 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. Failure to do so may result in disbarment or suspension.

**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 Vacating Stipulation**

The order filed December 6, 2011, approving the parties' Stipulation Re Facts, Conclusions of Law and Disposition in the above-entitled matter is hereby vacated.

Dated: May \_\_\_\_\_, 2013

---

LUCY ARMENDARIZ  
Judge of the State Bar Court