FILED JUNE 17, 2010

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **BRIAN JOHN COLOMBANA** **Member No. 238272** A Member of the State Bar.	)	Case No.: **10-TE-01310-RAH** **DECISION AND ORDER OF INACTIVE ENROLLMENT (BUS. & PROF. CODE SECTION 6007, SUBDIVISION (c)(1))**

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 Brian John Colombana ("respondent") as an inactive member of the State Bar pursuant to Business and Professions Code section[1] 6007, subdivision (c)(1) and rule 461 of the Rules of Procedure of the State Bar of California ("Rules of Procedure").

On May 10, 2010, respondent filed a response to the application. Although his response was untimely, the court considered it for the purposes of this decision. The Office of the Chief Trial Counsel was represented by Deputy Trial Counsel Timothy G. Byer. Respondent represented himself. A hearing was held on June 7, 2010; and this matter was submitted that same day. (Rules Proc. of State Bar, rule 464.)

[1] Future references to section(s) are to this source.

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 November 29, 2005, 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;[2] 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.)

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

[2] 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.

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 14 declarations with supporting evidence - 13 from individual clients. Based on the content of these declarations and their supporting exhibits, the court finds these declarations to be generally credible.

Respondent, on the other hand, did not submit a declaration. His verified response to the application, however, contained a declaration under penalty of perjury that respondent was under the information and belief that the statements made within his response were true and correct. For the purposes of this decision, the court will consider the factual portion of respondent's response as a declaration. That being said, respondent's "declaration", lacks credibility, as it is cursory and void of any supporting evidence.

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.

Since at least December 2008, respondent has operated a loan modification practice. Respondent's loan modification operation has been conducted under various names including: Loan Negotiators of America; Housing Law Center; and Mortgage Relief Law Center.

Through these loan modification companies, respondent convinced numerous cash-strapped homeowners to pay him thousands of dollars in hopes of 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.

B. Client Matters

The court's findings of fact and conclusions of law relating to each of the 13 client declarations are reflected below.

1. The Barbara Mervine Matter

Barbara Mervine ("Mervine") resided in Maryland.[3] In September 2009, Mervine went online looking for a loan modification company and found Housing Law Center ("HLC"). After providing her information, Mervine received an introductory letter from a HLC case manager on respondent's law office's letterhead.

On September 9, 2009, the HLC case manager called Mervine and told her that HLC could modify both of her home mortgages.[4] Mervine paid HLC $2,590 to modify her mortgages.

On November 13, 2009, Mervine received a modification on her second mortgage. Her payments on her second mortgage were reduced from $450.67 to $313.14.

Mervine, however, didn't hear back from HLC regarding her first mortgage. She has repeatedly attempted to communicate with HLC, but her calls and emails have not been returned. Mervine never received any direct communication from respondent.

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];[5] and

[3] Respondent had an attorney on his staff that was licensed to practice law in Maryland.

[4] Mervine had a first and second mortgage on her home.

[5] 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.

b. Rules of Professional Conduct of the State Bar of California, rule 3-110(A)[6] [Failure to Perform with Competence].[7]

2. The Mylene Alqueza Matter

Mylene Alqueza ("Alqueza") resided in California. In August 2009, Alqueza learned about the Mortgage Relief Law Center ("MRLC") from a friend. On August 24, 2009, a representative of MRLC, Jonathan Delgado ("Delgado"), came to Alqueza's home to discuss the loan modification process with her. Delgado implied that Alqueza should stop making her mortgage payments in order to demonstrate hardship and to get the bank's attention. Alqueza agreed to hire MRLC and paid Delgado $4,450.

Based on Delgado's suggestion, Alqueza stopped paying her mortgage from August through November 2009. During this time period, representatives of MRLC repeatedly told her that everything was fine, and that her case was either "under review" or being sent to another department.

In November 2009, Alqueza received a telephone call from her lender requesting documentation, because they had not received anything from MRLC. Alqueza became concerned and contacted Delgado on November 21, 2009. Delgado told Alqueza that MRLC was closing its doors. Delgado offered to help find Alqueza another attorney. Instead Alqueza told Delgado that she was going to file a complaint with the State Bar, and requested a full refund. Delgado told Alqueza that he was not an attorney, and therefore, she would not be able to go after him.

[6] All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

[7] Rule 3-110(A) provides that a member must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. The duties set forth in rule 3-110 include the duty to supervise the work of subordinate attorney and non-attorney employees or agents.

Alqueza never actually communicated with respondent. She did not receive a refund, and was ultimately forced to put her house up for sale.

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]; and

b. Rule 3-110(A) [Failure to Supervise the Work of Non-Attorney Employees].

3. The Kami Steed Matter

Kami Steed ("Steed") resided in Utah.[8] In March 2009, she received a loan modification mailer from MRLC. Steed was current with her mortgage, but was struggling with her payments. Therefore, in March 2009, she called MRLC and spoke to a representative named Terrance England ("England").[9] England took Steed's information over the phone and told her to stop making her mortgage payments. England further advised that by not making her mortgage payments, it ensured that Steed would get a 4.75% fixed interest rate on both of her loans.

On March 13, 2009, Steed received a letter from MRLC stating that once MRLC received all of her documentation, her modification would be completed within 30 to 60 days, at a fixed interest rate of 4.75%.

On March 16, 2009, Steed signed a retainer agreement with respondent's law office. On March 19, 2009, Steed paid MRLC $2,400.

In March and April 2009, England reassured Steed that she did not need to make her mortgage payments. England advised Steed that her failure to pay her mortgage would not

[8] There is no indication in the record that respondent or any subordinate attorney in his law office was licensed to practice law in Utah.

[9] In the evidence before the court, England's name is also spelled "Englund." To be consistent, the court will refer to him as "England."

negatively affect her credit, and that MRLC had a 99.99% success rate. England further advised, "[w]hen it comes to completing a loan modification you are going to get one completed else [*sic*] we would have not brought your file in because we do have a 100% money back guarantee so for us to do all that work and then give the money back it would not make sense for both parties."

Steed continued calling England trying to find out what was going on with her case. England would tell Steed that he'd have someone call her back, but no one did. On May 12, 2009, England responded to Steed's complaints that no one was calling her back by assuring her that respondent would call her that same day. Respondent, however, did not call.

By June 2009, Steed could not get a response from MRLC. She therefore wrote three letters to respondent expressing her dissatisfaction with his lack of service and communication. Respondent contacted Steed and told her that he would refund half of her money and only work on the modification of her first mortgage. On July 10, 2009, Steed received a $1,200 refund from MRLC.

On October 13, 2009, Steed received a letter from her lender denying her request for loan modification. After her loan modification was denied, Steed attempted to invoke the 100% guarantee England had promised. Respondent, however, rejected Steed's request for a 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. Rule 1-300 [Unauthorized Practice of Law][10];

b. Rule 4-200 [Illegal Fee][11];

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

[10] Rule 1-300 states that a member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

[11] Rule 4-200(A) states that a member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee.

d. Rule 3-110(A) [Failure to Supervise the Work of Non-Attorney Employees].

4. The Christina LaBrecque Matter

Christina LaBrecque ("LaBrecque") resided in Nevada.[12] In May 2009, LaBrecque was struggling with her mortgage, but was not behind on her payments. After receiving an email solicitation from MRLC, LaBrecque filled out an online questionnaire.

On May 28, 2009, LaBrecque received an email from a MRLC representative named John Kite ("Kite"). LaBrecque called Kite to learn more about MRLC's services. Kite told LaBrecque that MRLC could obtain a loan modification for LaBrecque if she stopped making her mortgage payments. LaBrecque was concerned about her credit and the effect not paying her mortgage payments could have on her husband's job - which required a security clearance. Kite assured LaBrecque that it would be fine, and that the process would take 90 days.

On June 14, 2009, LaBrecque signed a retainer agreement with respondent's law firm. LaBrecque paid MRLC $3,390.

After MRLC received LaBrecque's money, the communication stopped. LaBrecque or her husband would call MRLC every two or three days and leave a message, but no one would return their calls. On July 21, 2009, LaBrecque received an email from MRLC advising her how to obtain case status updates online. LaBrecque found this practice to be useless, as there were never any online updates.

LaBrecque and her husband continued to call MRLC and left messages almost weekly. None of their calls was returned.

In November and December LaBrecque communicated with respondent via email. LaBrecque requested a refund, but respondent rejected her request based on the fact that her loan modification submission was still being considered by her lender.

[12] There is no indication in the record that respondent or any subordinate attorney in his law office was licensed to practice law in Nevada.

In December 2009, LaBrecque accessed MRLC's online case information which listed the last entry as correspondence on August 14, 2009. In February 2010, however, LaBrecque learned that the online status of her case was listed as "closed." LaBrecque did not receive a refund from respondent or MRLC.

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 1-300 [Unauthorized Practice of Law];

b. Rule 4-200 [Illegal Fee];

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

d. Rule 3-110(A) [Failure to Supervise the Work of Non-Attorney Employees].

5. The David Stelter Matter

David Stelter ("Stelter") resided in California. In August 2009, he was referred to MRLC to help him with a loan modification. Stelter was current with his mortgage, but wanted to lower his payments. Stelter arranged a meeting with a MRLC representative.

On August 4, 2009, Delgado came to Stelter's home to discuss loan modification. Delgado told Stelter that MRLC had a success rate of 99.99%[13] and that they could obtain a 30% reduction in Stelter's monthly payment. After speaking with Delgado, Stelter signed a retainer agreement with respondent and paid Delgado $3,295.

In August and September 2009, Stelter called MRLC several times a week for a status report on his case. Stelter's calls, however, were not returned.

[13] MRLC also provided Stelter with an advertising brochure that stated, among other things, that MRLC had a 99% "completion rate."

On October 3, 2009, Stelter emailed Delgado regarding the status on his case. After Delgado failed to respond, Stelter, on November 2, 2009, sent an email to MRLC requesting a refund.

In December 2009, Stelter mailed respondent a letter complaining about MRLC's lack of service and demanding a refund. On February 2, 2010, respondent emailed Stelter and erroneously claimed that Stelter's check to MRLC had bounced. Respondent subsequently acknowledged that Stelter's check did not bounce and that Stelter was entitled to a refund; however, there is no indication in the record that Stelter has received a 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];

b. Rule 3-110(A) [Failure to Perform with Competence]; and

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

6. The Denise Evans Matter

Denise Evans ("Evans") resided in South Carolina.[14] Evans was about two months behind on her mortgage and was desperately trying to avoid losing her home. Evans went to HLC's website and submitted her information. The next day, Evans received an email from England stating that HLC could get Evans' interest rate down to 5.5%.

On September 28, 2009, Evans signed a retainer agreement with respondent. Evans paid HLC $1,750.

[14] There is no indication in the record that respondent or any subordinate attorney in his law office was licensed to practice law in South Carolina.

In late September 2009, Evans feared she would lose her home and emailed several questions to England. England assured Evans that any payments she missed would be put in the back of the loan and that her house could not be sold without her approval.

On September 30, 2009, Evans emailed England and told him that she had to make some payments on her home loan to avoid foreclosure. Evans also stated that she couldn't pay $600 a month to HLC and make her house payments. That same day, England responded by stating:

> Hey I totally understand it's a confusing process. You wont [*sic*] loose [*sic*] your home because your [*sic*] hired us to represent you. We are going to save you a [*sic*] your home and also get you a more affordable payment. If you cannot afford to make your mortgage that is O.K [*sic*] because we will put that in the back of the loan and get current.

On October 1, 2009, Evans sent an email to England stating:

> ok… I am so stressed I'm physically sick and scared beyond words. [P]lease let me know everything.

That same day, England sent a reply email stating:

> Yes I told you I would. You are in good hands. I am hoping when we are done taking care of you that you will bring more referrals to me.

By November 2009, Evans was becoming very scared. On November 17 and 25, 2009, Evans emailed England and asked for the status of her case as the online version of her case had no entries except for "Opened Oct 01, 2009 4:17 PM."

On December 10, 2009, Evans received an email from HLC stating that they had ceased operations effective November 1, 2009. This email also stated that existing clients' files would still be processed.

Not knowing what else to do, Evans cashed in some insurance policies to pay her past due mortgage payments. Evans never had any contact with respondent. Evans never received an accounting for the money she paid HLC.

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 1-300 [Unauthorized Practice of Law];

b. Rule 4-200 [Illegal Fee];

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

d. Rule 3-110(A) [Failure to Supervise the Work of Non-Attorney Employees].

7. The Henri Leleu Matter

Henri Leleu ("Leleu") resided in Nevada.[15] Leleu was struggling financially and discovered HLC through online research. In May 2009, Leleu spoke with a HLC representative. The HLC representative told Leleu that HLC could modify both of his loans in 30 days. Consequently, Leleu signed a retainer agreement with respondent and paid him $5,000.

In August 2009, Leleu called HLC and spoke to a representative. The representative assured him that his files were being processed.

Leleu called HLC over 20 times seeking a status update, but he did not receive one. Finally, in late October 2009, Leleu spoke to a HLC representative who assured him that everything was okay and that she would call the lenders and call Leleu back the next day.

Leleu did not receive the return call as promised. He therefore called the same HLC representative again on November 11, 2009. The HLC representative again told Leleu that she was going to call Leleu's lenders and call him back that next day. Once again, Leleu did not receive the update as promised.

Leleu continued to call HLC, but he only reached HLC's voicemail. Leleu has left numerous messages, but hasn't received any return calls. Leleu never had any contact with

[15] There is no indication in the record that respondent or any subordinate attorney in his law office was licensed to practice law in Nevada.

respondent. Respondent has not performed the work for which he was retained by Leleu. Leleu has not received a refund from respondent or HLC.

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 1-300 [Unauthorized Practice of Law];

b. Rule 4-200 [Illegal Fee]; and

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

8. The Xiao Ming Chen Matter

Xiao Ming Chen ("Chen") resided in New York.[16] In June 2009, Chen was under great financial hardship and was looking for some relief. Chen saw a television advertisement for MRLC and decided to call MRLC to see if they could help him modify his home loan.

On June 17, 2009, Chen entered into a retainer agreement with respondent and MRLC. A MRLC representative told Chen that the process would take three months, and if MRLC was not able to lower Chen's mortgage payment then they would fully refund his money. Chen paid MRLC $2,495.

In September 2009, a MRLC representative told Chen that his lender had not approved mortgage modification. Chen asked for a refund, but was told by the MRLC representative that there were other methods to pursue including a forensic audit.

Between September and December 2009, it became increasingly difficult for Chen to speak with someone at MRLC. Chen left numerous messages and sent several emails, but they were not returned. Chen never spoke directly with respondent and did not receive a refund.

[16] There is no indication in the record that respondent or any subordinate attorney in his law office was licensed to practice law in New York.

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 1-300 [Unauthorized Practice of Law];

b. Rule 4-200 [Illegal Fee]; and

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

9. The Michelle Briseno Matter

Michelle Briseno ("Briseno") resided in California. Briseno was under great financial hardship and was looking for some relief from her mortgage that was about to adjust.

In December 2008, Briseno's husband saw a billboard advertisement for Loan Negotiators of America ("LNA") and respondent's law office. Briseno's husband set up a meeting with LNA.

On January 5, 2009, Glen Malone ("Malone") from LNA came to Briseno's house to discuss loan modification. Malone told Briseno that the process would take four months, and advised Briseno to stop making her mortgage payments and not to contact her lender. Briseno agreed to retain LNA and paid Malone $2,790.

From February to May 2009, Briseno attempted to contact LNA on a regular basis in order to get a status update. Briseno seldom got a response. Malone subsequently sent Briseno an email informing her that he would look into her matter and contact her the following day. Briseno never received a follow-up response from Malone.

After several more calls and emails requesting a response, Briseno received an email from respondent on May 21, 2009. Respondent told Briseno that he was looking into her file and that she would get a response within an hour. Briseno, however, did not receive a response from respondent or his office.

Thereafter, Briseno contacted LNA and demanded a meeting with respondent as soon as possible. The LNA representative agreed to schedule a meeting, but did not provide Briseno with a confirmation. On May 28, 2009, Briseno sent the LNA representative a letter confirming her May 29, 2009 appointment with respondent.

On May 29, 2009, the LNA representative arrived late to the meeting and respondent did not appear at all. At this meeting, Briseno was not given an explanation as to what was happening with her modification.

Approximately one week later, Briseno learned from her lender that her loan was in foreclosure. Briseno attempted to contact respondent, but it was to no avail. Briseno then contacted her lender and learned that they had only received a third party authorization from LNA, and that they had not received a modification packet.

On June 4, 2009, Briseno wrote a letter to respondent requesting that he stop the modification process and issue her a full refund. Briseno did not receive a refund and, at the time she drafted her declaration, her house was in foreclosure and was being sold through a short sale.

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].

10. The Jose Leonel Argueta Matter

Jose Leonel Argueta ("Argueta") resided in California. In early 2009, Argueta was current on his home loan, but was under financial pressure. Argueta was interested in loan modification and met with Malone from LNA. Argueta paid Malone $2,580.

Following Malone's recommendation, Argueta stopped paying his mortgage. As time passed Argueta became worried because no one at LNA would return his telephone calls. Argueta then went to LNA's offices and discovered that they were closed. Argueta subsequently learned from his friend that LNA had moved to Irvine, California.

Argueta began calling Malone three to four times a week, and was told each time that he would get a return telephone call. Argueta's calls, however, were not returned.

In September 2009, Argueta received notice that his home was being put up for sale in a trustee's sale. Argueta called Malone and was told, by Malone's brother, that there was nothing they could do.

On December 3, 2009, Argueta received a letter from respondent stating, in part, that Argueta hired respondent to facilitate a loan modification on his behalf on March 5, 2009. This letter went on to state that respondent was unable to successfully modify Argueta's loan because Argueta did not supply respondent with all the "requested documents" prior to the sale date of Argueta's property.

On January 28, 2010, Argueta received a notice to vacate from the Los Angeles County Sheriff's Department. Argueta never spoke directly with respondent and did not receive an accounting of the advanced fees he paid.

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 Supervise the Work of Non-Attorney Employees]; and

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

11. The Joyce Meck Matter

Joyce Meck ("Meck") resided in New Mexico.[17] After her husband's passing, Meck was under great financial hardship.

In June 2009, Meck called HLC after receiving a postcard advertisement. The HLC representative told Meck that the lawyers at HLC could help her modify her loan and get a lower interest rate. It was also recommended by a HLC representative that Meck stop making payments on her mortgage.

On July 21, 2009, Meck signed a retainer agreement with respondent. Meck paid HLC $2,438.

After several weeks of not hearing anything from HLC, Meck called HLC and was told that her documents had been sent to her lender. Meck subsequently called her lender and discovered that they had not received any paperwork on her loan modification matter.

Over the course of five months, Meck sent HLC numerous copies of her financial documents and spoke with many people at HLC who promised her that they were working on her case. During this time period, Meck called her lender several times and discovered that they had not received any paperwork on Meck's behalf.

On November 10, 2009, Meck called her lender and was informed that they finally received her paperwork and would review it. Meck's lender informed her that they had no record of anyone from HLC calling them on her behalf.

[17] There is no indication in the record that respondent or any subordinate attorney in his law office was licensed to practice law in New Mexico.

On November 20, 2009, Meck wrote a letter to HLC indicating her dissatisfaction and requesting a full refund. Meck did not receive a response to this letter.

Thereafter, Meck did an internet search and discovered that HLC's offices were closed. Even after this discovery, however, Meck still received calls from HLC requesting an additional $500.

Meck never spoke directly with respondent.

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 1-300 [Unauthorized Practice of Law];

b. Rule 4-200 [Illegal Fee];

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

d. Rule 3-110(A) [Failure to Supervise the Work of Non-Attorney Employees].

12. The Linda Stone Matter

Linda Stone ("Stone") resided in Minnesota.[18] Stone began experiencing difficulty paying her home loan, and feared that she would lose her house to foreclosure.

In April 2009, Stone's husband heard an advertisement for MRLC on the radio. On April 21, 2009, Stone called MRLC and spoke to a MRLC representative. The MRLC representative told Stone that she would receive her money back if MRLC was not able to obtain a modification. The MRLC representative also explained that Stone's situation would be better if she had not made her mortgage payments. The MRLC representative further stated that Stone would reduce her mortgage payment by $800 a month and that her home loan would be modified to a 4% interest rate. Stone was also told that the complete process would take 90 days.

[18] There is no indication in the record that respondent or any subordinate attorney in his law office was licensed to practice law in Minnesota.

On April 26, 2009, Stone signed a retainer agreement with respondent's law office. Stone paid MRLC $2,990.

After Stone's money was received, Stone heard very little from MRLC. She would call MRLC three or four times a week requesting to talk to someone, but the only response she would get was "not to worry" and that her case "was in the process." The MRLC representatives repeatedly promised to get back to her, but Stone never received any follow-up telephone calls.

On June 19, 2009, Stone received an email from MRLC informing her that her "bank [had] been called and [her] loan modification [was] still in review." After not receiving any more information from MRLC, Stone contacted her lender. Stone learned that her lender had not received anything from anyone at MRLC on her behalf. Stone then called a MRLC representative who told her that she had "screwed up" and that she should not have contacted the bank directly.

On or about October 2009, Stone requested a full refund from MRLC. Stone did not receive a refund or an accounting. Stone never had any communication with respondent.

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 1-300 [Unauthorized Practice of Law];

b. Rule 4-200 [Illegal Fee];

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

d. Rule 3-110(A) [Failure to Supervise the Work of Non-Attorney Employees].

13. The Cyrilla Wall Matter

Cyrilla Wall ("Wall") resided in Minnesota. In May 2009, Wall received a cold call from an individual offering loan modification. The sales person identified himself as Zev Nadler

("Nadler"), and told Wall that he was a representative of MRLC. Nadler told Wall that respondent would actually be handling the loan modification.

In June 2009, Wall received a purported copy of respondent's retainer agreement. This retainer agreement, however, differed from the retainer agreements attached to the declarations of the other complaining witnesses. The retainer agreement received by Wall appears to have been modified by deleting the language permitting credit card payments and the line for respondent's signature.[19] In June 2009, Nadler called Wall and told her that the fee for respondent to handle her loan modification would be $3,598.

Wall paid Nadler two installments of $1,200. Nadler instructed Wall to make the checks out to "My Daddy's Muny." After Wall made her payments, she tried to communicate with Nadler, but her telephone calls were not returned. Wall also faxed a letter demanding a refund, but she did not receive a response. The record, however, fails to indicate what telephone numbers Wall was using when she was attempting to communicate with MRLC. Wall never spoke to respondent.

Legal Conclusions

The evidence before the court indicates that Nadler was not affiliated with MRLC and, instead, was simply defrauding Wall. This conclusion is supported by the following factors: (1) Nadler instructed Wall to make the checks payable to "My Daddy's Muny;" (2) the retainer agreement was modified to remove respondent's signature line and the option to pay by credit card; and (3) Wall never communicated with respondent, and there is no indication in that record that Wall spoke to any other MRLC representative. Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is not a reasonable probability that the Office of the Chief Trial Counsel will prevail on any charges relating to the Wall matter.

[19] A copy of respondent's retainer agreement was available on the internet.

4. DISCUSSION

The evidence before the court establishes that respondent, in his capacity as an attorney, has committed numerous acts of attorney misconduct relating to his loan modification businesses.

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 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. As established above, the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail on 39 counts of misconduct involving 12 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. Respondent's loan modification business catered to clients who were in dire need of financial assistance. Respondent convinced these clients to part with thousands of dollars, but provided them little to no service in return. Worse yet, many of respondent's clients, who were current

with their mortgages when they hired him, followed his advice that they stop paying their mortgage. Soon these clients were behind on their mortgage payments and facing foreclosure, and respondent wasn't there to help.

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. Likeliness 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 and 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 also 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 Brian John Colombana 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) Provide to each client an accounting of all funds received and fees or costs paid, and refund any advance payments that have not been either earned as fees or expended for appropriate costs; 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: (1) an affidavit (containing respondent's current State Bar membership records address where communications may thereafter be directed to him)

stating that he has fully complied with the provisions of paragraphs 1 and 2 of this order; and (2) copies of all documents sent to clients pursuant to paragraph 1(c) of this order; 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, or for imposing sanctions.

Dated: March _____, 2011

RICHARD A. HONN
Judge of the State Bar Court