

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of) Case Nos.: **11-O-14909-PEM**
) (11-O-15301)
ZACHARY BRYANT REBER,)
) **DECISION**
Member No. 241534,)
)
A Member of the State Bar.)

Introduction¹

Respondent Zachary Bryant Reber stipulated to misconduct stemming from splitting fees with non-attorneys from April through October 2010. In addition, respondent stipulated to three additional counts of misconduct, including failing to perform legal services with competence, failing to refund unearned fees, and holding himself out as entitled to practice law when he knew or should have known that he was not entitled to practice law.

The parties' stipulation was transmitted to the California Supreme Court; however, it was subsequently returned for further consideration of the recommended discipline in light of the applicable attorney discipline standards. In this contested proceeding, while the parties remained bound by the facts and conclusions of law contained within the stipulation, they were permitted to add evidence at trial supporting mitigation and aggravation.

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

As illustrated below, the court finds respondent culpable on all the stipulated instances of misconduct. Based on the nature and extent of culpability, as well as the applicable mitigating and aggravating circumstances, this court recommends, among other things, that respondent be suspended for a minimum of 90 days.

Significant Procedural History

Respondent and the Office of the Chief Trial Counsel of the State Bar of California (State Bar) entered into a pre-notice stipulation of facts and conclusions of law in or about November 2011. The stipulation was accepted by the hearing judge and filed on December 2, 2011. The matter was then transmitted to the California Supreme Court.

On June 21, 2012, the Supreme Court returned the stipulation “for further consideration of the recommended discipline in light of the applicable attorney discipline standards.” After the matter was returned, the hearing judge held a status conference and set the matter for trial as to the level of discipline based on the stipulated facts and conclusions of law.

On September 20, 2012, the State Bar filed a motion for an order permitting limited withdrawal from the returned stipulation and the filing of a notice of disciplinary charges. On October 4, 2012, respondent filed an opposition to the motion. On October 9, 2012, the court denied the State Bar’s motion.

On October 25, 2012, the court filed an order amending its order of denial. The court found good cause to deny in part and to grant in part the State Bar’s motion. Essentially, the parties were bound by the stipulation, but allowed to supplement additional factors in aggravation and mitigation.

The matter proceeded to trial on March 6, 7, and 12, 2013. The State Bar was represented by Senior Trial Counsel Robin Brune and Deputy Trial Counsel Steven Egler.

Respondent was represented by Steven Lewis. Following closing argument, the matter was taken under submission on March 12, 2013.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on January 30, 2006, and has been a member of the State Bar of California at all times since that date.

Case No. 11-O-14909 – The My US Legal and Avila Matters

Facts

At all relevant times herein, “US Loan Auditors, LLC,” “US Loan Auditors, Inc.,” “US Legal Advisors,” and “My US Legal Services” were companies owned, in part, by non-attorneys.² Distressed 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 attorney \$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.

In February 2010, respondent answered an advertisement My US Legal posted on Craigslist. He met twice with Sean Babcock (Babcock), an employee of My US Legal, to discuss the business model of My US Legal. Respondent was told by Babcock that one of the most respected law firms in the United States was of the opinion that My US Legal’s fee structure did not involve illegal fee splitting with non-lawyers.

By April 2010, respondent signed on with My US Legal to handle predatory lender lawsuits on behalf of its clients. From April through October 2010, My US Legal paid respondent a total of \$21,000 as fees from a portion of the monthly installments paid to My US Legal by the homeowners as advanced attorney’s fees. The \$21,000 represented an impermissible fee split with a non-attorney.

² Hereafter, the court refers to all of these companies as “My US Legal.”

Prior to January 2010, Arlene Avila (Avila) hired My US Legal to file a predatory lender lawsuit on her behalf. In mid-spring 2010, My US Legal hired respondent to handle the Avila matter. At all relevant times herein, Avila paid My US Legal advanced attorney's fees in monthly installments. My US Legal forwarded \$1,250 (paid in installments of \$250 per month) to respondent for the Avila matter. The \$1,250 represented attorney's fee and was paid from a portion of the advanced attorney's fees paid by Avila to My US Legal. The \$1,250 represented an impermissible fee split with a non-attorney.

My US Legal filed a complaint on behalf of Avila. Thereafter, respondent failed to perform any work of value in the Avila matter. Respondent did not earn the \$1,250 paid as advanced 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 *Estate of My US Legal Services, Inc.*, U.S. Bankruptcy Court, Eastern District, Sacramento Division, case no. 1051750.³

Although respondent did not promptly refund the \$1,250 in attorney's fees he received in the Avila matter, he has since refunded the money to Avila.

Conclusions

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, respondent shared a legal fee with a person who is not a lawyer, in willful violation of rule 1-320(A).

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³ Susan K. Smith is Trustee in the bankruptcy matter and is responsible for distributing the estate, in part, to the victim's of respondent's misconduct.

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

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. By failing to perform any work of value on behalf of Avila, respondent intentionally and recklessly failed to perform legal services with competence, in willful violation of rule 3-110(A).

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

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. By failing to promptly refund the \$1,250 to Avila, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

Case No. 11-O-15301 – The Adkins Matter

Facts

Prior to July 2011, respondent was hired to represent Doran Adkins (Adkins) in the matter *Adkins v. Bear Stearns Residential Mortgage Corporation*, Contra Costa County Superior Court case no. MSC10-01661 (the civil case). At all relevant times herein, respondent was attorney of record on behalf of Adkins in the civil case.

From July 1 through July 20, 2011, respondent was enrolled inactive for failing to comply with his minimum continuing legal education requirements. During that time period, respondent was not permitted to practice law. From July 1 through July 20, 2011, respondent continued to represent Adkins, including filing an opposition to a demurrer in the civil case on July 7, 2011.

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Conclusions

§§ 6068, subd. (a) & 6125 [Unauthorized Practice of Law]

Section 6125 provides that only active members of the State Bar may lawfully practice law in California. Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. By continuing to practice law and by holding himself out as entitled to practice law in California from July 1 through July 20, 2011, when he knew or should have known that he was not entitled to practice law in California, respondent held himself out and practiced law when he was not an active member of the State Bar of California. Respondent willfully violated sections 6125 and 6126 and thereby failed to support the laws of the State of California, in willful violation of section 6068, subdivision (a).

Aggravation⁴

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

Respondent was found culpable of four acts of misconduct. Multiple acts of misconduct are an aggravating factor.

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

Respondent's misconduct resulted in significant harm to two of his clients.⁵

Avila testified in regard to the extensive harm caused by My US Legal. Avila paid \$23,000 to My US Legal with the primary goal of staying in her home. When she was served with the unlawful detainer that My US Legal was expected to take care of, My US Legal had been shut down. Avila then came to respondent because he was her attorney of record. Respondent, however, told Avila that his job was to pursue a predatory lawsuit, and he did not do

⁴ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

⁵ The State Bar argued that respondent caused significant harm to 19-23 clients. The State Bar, however, only produced testimony from two clients.

unlawful detainers. Consequently, Avila was forced to hire another lawyer to handle the unlawful detainer. While not all the harm suffered by Avila was directly attributable to respondent, his relationship with My US Legal and his inaction were contributing factors.

Another client, Byron Johnson (Johnson), also testified regarding the harm he suffered as a result of retaining My US Legal. Johnson went to My US Legal to try to save his home from foreclosure. Similar to Avila's experience, My US Legal took large fees from Johnson and did not perform. Although respondent was not assigned to Johnson's case for the first three months, respondent still garners some responsibility for the resulting harm to Johnson. Fortunately for Johnson, NACA, a non-profit organization, stepped in and helped him save his home. The court acknowledges that respondent helped Johnson stay in his home until NACA stepped in. Respondent also refunded the attorney's fees he received from Johnson.

Mitigation

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

A lack of a prior record over *many* years of practice warrants consideration in mitigation. (See std. 1.2(e)(i); see also *In re Naney* (1990) 51 Cal.3d 186, 196 [in practice only seven years prior to misconduct not a strong mitigating factor]; *Kelly v. State Bar* (1988) 45 Cal.3d 649, 658 [seven and one-half years without misconduct insufficient mitigation]; *Smith v. State Bar* (1985) 38 Cal.3d 525, 540 [six years without prior discipline not strong mitigation]; *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, 837 [six years prior to misconduct not enough]; *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 417 [six or seven years not enough time to be considered as substantial mitigation].) Respondent was in practice for less than five years prior to his misconduct. Consequently, his lack of a prior record of discipline is not a weighty mitigating factor.

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

Respondent entered into a stipulation as to facts and conclusions of law in this matter and is entitled to mitigation for his cooperation.

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

Respondent has shown remorse and a willingness to accept responsibility for his acts of misconduct. Throughout the trial, respondent credibly demonstrated the depth of his remorse. He regrets working with an organization that has caused so much harm. He expressed a great deal of regret that clients did not get the services they paid for and were promised.

Respondent has made efforts to help refund his former clients, albeit, after the commencement of the State Bar's investigation. Respondent has made restitution to Johnson and Avila. He has also deposited \$19,750 in his attorney's client trust account, awaiting distribution to clients who paid My US Legal \$250 a month on his behalf.

Respondent's demonstrated remorse and recognition of wrongdoing warrant some consideration in mitigation.

Youth and Inexperience

The court gives some consideration to respondent's inexperience and the role it played in the present misconduct. (See *Matthew v. State Bar* (1989) 49 Cal.3d 784, 791 [youth and inexperience may warrant milder discipline].) Respondent was a young attorney and was duped by My US Legal. Prior to joining My US Legal, respondent's only legal work consisted of representing parolees at parole hearings for a flat fee. He was looking to expand his practice when he saw My US Legal's posting on Craigslist. Respondent thought he was going to be a crusader and go after predatory lenders. Respondent was assured that he would receive proper training from My US Legal and that they would adequately support him. Of course, My US Legal's assurances and promises never materialized.

While we give some mitigation for respondent's inexperience, the court does not accept respondent's argument that he acted in good faith. Respondent ignored the warning signs and his own concerns regarding My US Legal. He never examined My US Legal's assertion that their business model did not constitute fee splitting with non-attorneys. He remained unaware of My US Legal's operating practices, including the representations that were being made to the clients. Respondent admits that he should have done more investigation into My US Legal.

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

The following witnesses testified regarding respondent's integrity and good character. (Std. 1.2(e)(vi).) Each was very supportive of respondent and aware of his misconduct.

Brett Fischer (Fischer) is a Senior Development Executive of Aimco Company (a real estate company with offices across the country). Fischer has known respondent since they were ten years old. Fischer describes respondent as an honest and hard-working individual. Fischer is aware of respondent's misconduct, but believes respondent was duped by My US Legal. Respondent has expressed remorse to Fischer.

Ronald Herron (Herron) is a recently retired Deputy Commissioner of the Parole Board. He has known respondent since 2006. Herron observed respondent representing parolees at parole hearings, where it was respondent's job is to see that parolees received a fair hearing. Herron found respondent to be very reliable, truthful, and vigorous in representing parolees. Herron understands the misconduct and found it to be totally out of character. Respondent expressed his remorse to Herron.

Geoffrey Buchheister (Buchheister) is the director of the Park City Ski Resort in Utah. Buchheister has known respondent since they were teenagers. Buchheister praised respondent's honesty and hard work. Buchheister is aware of the misconduct, and finds it inconsistent with respondent's normal values. Respondent has expressed his remorse to Buchheister.

David White (White) is a building inspector for the City of Pittsburgh. He and respondent have been friends since high school. White has observed that respondent has always been interested in improving the lives of people who have had a tough time in life. White is aware of the present misconduct, and considers it to be aberrational. White continues to believe in and trust respondent.

Jessie Fischer (Jessie) is a medical malpractice attorney. Jessie met respondent in 2007. Jessie described respondent as honest, truthful, and invested in social justice. Jessie is aware of the present misconduct, but considers it to be outside respondent's normal character. Respondent has expressed his regret to Jessie, and his misconduct has not changed her opinion of him.

Dr. Joshua William Nolting (Nolting) is a manager and research scientist. Nolting has known respondent since they were teenagers, and even lived with him for a month in 2007. Nolting has found respondent to be candid and hard working. Nolting noted respondent's propensity not to take shortcuts. Nolting is aware of the present misconduct, and it does not change his opinion of respondent. Respondent has expressed his remorse to Nolting.

Charles Reber (Reber) is respondent's father. Reber is a retired lawyer and businessman. Reber noted his son's values regarding social justice and honesty. When My US Legal shut down, Reber observed his son's concern about his clients. Respondent has expressed remorse and regret that the clients did not receive what they had bargained for. Reber praised respondent's reputation for honesty, integrity, and hard work.

Respondent's good character evidence warrants some consideration in mitigation.

Discussion

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of

disciplinary proceedings and sanctions as “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

In addition, standard 1.6(b) provides that the specific discipline for a particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

Standards 2.4(b), 2.6, and 2.10 are applicable to the misconduct in this matter. Standard 2.4(b) provides that a member’s culpability of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or a member’s culpability of willfully failing to communicate with a client must result in a reproof or suspension, depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that culpability of a member of a violation of section 6068 shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim.

Standard 2.10 provides that culpability of a member of a violation of rules 1-320(A), 3-110(A), or 3-700(D)(2) shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim.

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.) As 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.)

The State Bar recommended that respondent be suspended for two years. In support of its recommendation, the State Bar cited, among other cases, *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920 [disbarment warranted for moral turpitude surrounding attorney's felony convictions involving his 14-month criminally reckless involvement in a capping and fee splitting operation based on staged accidents], *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635 [18-month suspension for attorneys who committed moral turpitude by hiring non-attorney cappers to solicit clients, dividing legal fees with those cappers, and attempting to enforce an unconscionable provision in their contingent fee agreements], and *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411 [2 years' suspension for attorney who committed moral turpitude for 2 years by permitting an unsupervised non-attorney to conduct all aspects of a large scale personal injury practice involving capping, forgery, and other fraudulent practices in the attorney's name]. Each of these cases, however, involves moral turpitude and is considerably more serious than the present matter.

Although it also involved a moral turpitude finding, the court found more guidance in *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. In *Nelson*, six months' actual suspension was imposed for misconduct including forming a law partnership with a non-lawyer; dividing legal fees between them; using the non-lawyer as a "runner" and "capper"; not notifying clients of the receipt of funds; improperly withdrawing from employment; and not promptly communicating a written settlement offer to a client. Because the attorney's involvement in capping was pervasive and his law practice was built entirely on this illegal practice, the court found that the attorney's conduct involved moral turpitude. The attorney presented substantial, impressive mitigation, including remorse, rehabilitation, restitution, and extreme candor and cooperation during the State Bar investigation and proceedings. "But for

[the attorney's] strong mitigating evidence," the court "would have recommended considerably greater discipline for what is demonstrably very serious misconduct." *Id.* at 182.

Respondent's misconduct herein, although serious, is not as egregious as that in *Nelson* and does not involve a finding of moral turpitude. Unlike the attorney in *Nelson*, respondent, who was a young and inexperienced member, was deluded into believing that he could lawfully split fees with My US Legal. Respondent was candid, demonstrated remorse, and gained insight into his wrongdoing, all of these factors indicate a smaller likelihood of recidivism.

Accordingly, having considered the evidence and the law, the court believes that a 90-day period of actual suspension, among other things, is sufficient to protect the public, the courts, and the legal profession.

Recommendations

It is recommended that respondent Zachary Bryant Reber, State Bar Number 241534, 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 probation⁶ for a period of two years subject to the following conditions:

1. Respondent Zachary Bryant Reber is suspended from the practice of law for the first 90 days of probation, and he will remain suspended until the following requirement is satisfied:
 - i. Respondent must make restitution to Susan K. Smith, as trustee for the Estate of My US Legal Services, Inc., in the amount of \$19,750 plus 10 percent interest per year from June 1, 2013 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Susan K. Smith, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles; and
 - ii. If respondent remains suspended for two years or more as a result of not satisfying the preceding requirement, he must also provide proof to the

⁶ 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.)

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).)

2. Respondent must also comply with the following additional conditions of probation:

- i. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
- ii. Respondent must submit written quarterly reports to the State Bar's Office of Probation (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 he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, the report must be submitted on the next following quarter date, and cover the extended period.

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

- iii. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein;
- iv. Within 10 days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California 94105-1639, **and** to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
- v. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with his 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; and
- vi. 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.)

3. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of respondent's suspension, whichever is longer 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.

Dated: June _____, 2013

Pat McElroy
Judge of the State Bar Court