FILED MARCH 20, 2013

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case Nos.: **11-O-18357-RAH** (12-O-10962; 12-O-14399)
JOHN REFAAT HABASHY,	)	**DECISION**
Member No. 236708,	)	
A Member of the State Bar.	)	

Introduction and Significant Procedural History[1]

The Notice of Disciplinary Charges in this matter was filed on August 29, 2012. Respondent filed a response on September 28, 2012. The trial commenced December 18, 2012, and was submitted for decision on December 21, 2012. Anand Kumar represented the Office of the Chief Trial Counsel of the State Bar of California (State Bar), and respondent was represented by Edward O. Lear.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 7, 2005, and has been a member of the State Bar of California at all times since that date.

Case No. 11-O-18357 - The Roman Matter

Facts

[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.

Respondent had a rather large loan modification business, which commenced in 2005. He performed many successful loan modifications prior to October 2009. On October 11, 2009, the California Legislature enacted SB 94, which was codified in the Civil Code as section 2944, et seq. Among other things, these sections required persons performing loan modifications to notify the borrowers that they need not hire a third party to negotiate with the lender, but may do so themselves. Further, the sections precluded the person performing a loan modification from charging or collecting advance fees before negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a loan modification.

According to respondent, SB 94 dramatically changed the economics for lawyers performing loan modifications. Without the ability to obtain an advance fee, it was very difficult to commit to assist a borrower who, almost invariably, was in financial distress. As such, after the passage and enactment of SB 94, respondent's loan modification business precipitously dropped in volume.

In order to meet the challenges that SB 94 posed, respondent sought to modify his retainer agreement. He consulted with experts in the field, and he called the Ethics Hotline of the State Bar. He felt that he could properly "unbundle" his services to provide certain preliminary tasks for an advanced fee, with the actual loan modification discussions with the lender being compensated for only after completion of the services provided. One such client who executed this retainer agreement was Jose Roman (Roman).

Roman was facing a possible foreclosure on his home. He had filed bankruptcy within the last 12 months, was behind on his mortgage, and had already submitted financial information to his lender in an unsuccessful effort to obtain a loan modification.

Roman contacted respondent's firm, Legal Debt Solutions (LDS), to obtain a loan modification. On September 11, 2010, Roman signed a retainer agreement[2] which, on page 1, stated that Roman was hiring LDS to perform several services, including sending Roman's lender an explanation as to his eligibility for government assistance and an authorization to negotiate a loan modification, processing the loan modification package with the lender, and negotiating new terms with Roman's creditor(s).

On the second page of the retainer agreement, LDS broke down the various services it was to provide into three categories: Start up; Analysis; and Loan Modification. For the first two categories, LDS charged an advance fee of $750 for each category of work. For the third category–Loan Modification–LDS noted that the fee would be "$1,150.00 to be billed upon completion."

The retainer agreement also contained a standard "incorporation" clause, which stated that the agreement was the entire agreement of the parties, as well as a "severability" clause, which stated that if any provision of the agreement was found to be unenforceable, the balance would remain in effect. The agreement contained a provision guaranteeing that, if the firm did not successfully negotiate a mortgage restructure (as defined), the client would not be billed.

The retainer agreement also contained a provision required by Civil Code section 2944.6, giving notice to Roman that he need not use a third party to negotiate with the lender, but could do so on his own.

Respondent charged Roman $1,500 for work to be performed in categories one and two of his retainer agreement, by two payments of $750, made on September 16, 2010 and October 27, 2010. Roman paid these amounts in advance of respondent performing the work described in

[2] See State Bar's Exhibit 3.

each category. He never charged Roman the final payment of $1,150, since he did not successfully complete the "loan modification" phase of the retention.

The services set forth in categories one and two included, to varying degrees, actions proscribed by the language of SB 94. Advance payments would not be permitted for several of the activities described in the retainer agreement, including the following: "sending your lender an explanation of your eligibility for governmental assistance;" "'step-up' letter to lender if you qualify for governmental assistance;" and "TARP letter to your lender indicating your lender's responsibility for receiving assistance."[3] These acts represented part of the loan modification negotiation process respondent agreed to provide after receipt of an advance fee.

Respondent performed rather extensive services for Roman. Respondent's unrebutted testimony was that he generated over 30 pages of "log notes," reflecting actions performed on behalf of Roman. As a result, Roman benefitted by having a foreclosure on his home postponed on at least one occasion. That being said, respondent acknowledged at trial that despite his efforts to comply with the new rules, he received advanced fees for services which were proscribed by SB 94.[4]

Conclusions

Count One - (Section 6106.3, subd. (a) [Failure to Comply with Civil Code Section 2944.7, subd. (a)])

Section 6106.3 provides that an attorney must not engage in any conduct in violation of Section 2944.7 of the Civil Code. Section 2944.7 of the Civil Code provides, in pertinent part, that notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a

[3] TARP is the Troubled Asset Relief Program. It was enacted to provide funds to purchase troubled mortgage debt from lenders. By doing so, the lender is placed in a better position to resume lending.

[4] The State Bar did not seek restitution in this matter.

mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.

By charging and receiving advanced fees in exchange for agreeing to perform loan modification services in violation of California Civil Code section 2944.7, subdivision (a)(1), respondent willfully violated Business and Professions Code section 6106.3.

Case No. 12-O-10962 - The Arellanez Matter

Facts

Maria Arellanez (Arellanez) owned real property located at 8985 Madison Avenue in South Gate, California. This was her primary residence. She became in arrears on the payments on the note secured by a deed of trust. On January 14, 2011, the Trustee under the deed of trust prepared, and, on January 19, 2011, recorded a Notice of Trustee's Sale, setting a sale date of February 14, 2011. That date was likely continued, because a Trustee's Deed Upon Sale was not signed until July 7, 2011, and recorded on July 11, 2011, at 8:00 a.m.

On July 7, 2011, the same day the Trustee's Deed was signed, Arellanez came into respondent's office with her "niece," Elizabeth Rojas (Elizabeth), to help Arellanez with English (Arellanez only spoke Spanish).[5] Arellanez wanted to obtain legal advice as to the foreclosure and her available legal remedies which would allow Arellanez to remain in the house as long as possible.[6] Elizabeth was already aware of the foreclosure at the time she met with respondent. Respondent explained the post-foreclosure process to Arellanez and Elizabeth, as well as his

[5] While Elizabeth referred to Arellanez as her "aunt," it appears that Elizabeth's father, Salvador, was Arellanez' cousin.

[6] The family had hired a previous attorney to assist with a loan modification, but they were unsuccessful in modifying the loan.

strategy: to defend the unlawful detainer as long as possible, then, if appropriate, file a bankruptcy proceeding, which would have the effect of staying the unlawful detainer proceeding and delaying the eviction. This strategy was consistent with Arellanez's goals, since she wanted to have time to remain in the home.

Although no unlawful detainer action had yet been filed, on July 11, 2011, Arellanez hired LDS to represent her in an unlawful detainer action regarding her home. She signed a retainer agreement to handle the unlawful detainer.[7] On July 12, 2011, Arellanez's cousin, Salvador Rojas (Salvador), issued a cashier's check to LDS on Arellanez's behalf for $1,149 to pay for respondent's legal services. On August 1, 2011, Salvador authorized LDS to charge an additional $1,250 on his credit card for legal services, for a total of $2,399.

Respondent immediately began preparing for the expected filing and service of the unlawful detainer complaint, because he was aware it was an expedited procedure. He prepared the draft answer to the complaint, based on what he expected would be a Judicial Council form unlawful detainer complaint. He also performed online research as to the status of the trustee's sale on the property.

On or around August 4, 2011, Elizabeth called respondent's office and spoke with Michael Joseph, respondent's assistant. She inquired as to the status of her case and appears to have discussed the fact that the trustee's sale may have been "rescinded."[8] After Mr. Joseph spoke with Elizabeth on August 4, 2011, he wrote her an email that clarified the nature of the

[7] The retainer agreement, Exhibit 5, is ambiguous as to the fee arrangement. Paragraph 3 states that $2,500 "will be considered 'earned' upon receipt…." However, paragraph 4 appears to call for an hourly rate with a required deposit of $1,149. The agreement also notes that respondent will be keeping a log of his hours.

[8] It is possible that Elizabeth was confused as to the purpose for which Arellanez originally retained respondent. She testified that she thought her "aunt" had hired respondent to help with the sale of the home or to stop the impending sale. In fact, the sale had already occurred when they met.

retention. He also gave her a breakdown of the fees and costs associated with an unlawful detainer.

For reasons not explained at trial, the trustee's sale was, in fact, rescinded. On August 18, 2011, respondent temporarily suspended his legal services then being performed for Arellanez. On September 30, 2011, Elizabeth again contacted Mr. Joseph and asked that the file be put "on hold" while the details of the property's legal status were worked out.[9]

Thereafter, on September 30, 2011, Mr. Joseph was contacted by Elizabeth, who restated that the foreclosure had been "rescinded" and that she wanted a refund of the fees her father had advanced on behalf of Arellanez.[10]

On October 12, 2011, William Cort (Cort), an attorney hired by Salvador, Elizabeth, and Arellanez, sent a letter to respondent requesting a refund of the $2,399. Respondent received the October 12, 2011 letter. Respondent prepared a draft letter in response to Cort's letter, but did not send it to Cort. Respondent also did not provide Arellanez or Cort with an accounting.

Respondent refunded the full amount of $2,399 on or about June 19, 2012.

Conclusions

Count Two - (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. Respondent properly did some

[9] The exact date of the telephone call from Elizabeth *first* informing LDS of the "rescission" is unclear in the record. Elizabeth testified that she called in late July 2011. Respondent's log notes indicated that the first discussion of the rescission was on August 4, 2011. The declaration of Michael Joseph (Exhibit J) indicates that the date was August 17, 2011. And the Stipulation as to Undisputed Facts states that it was "in or about September 2011." The court concludes that on August 4, 2011, as set forth in respondent's log notes, LDS was first informed of the possibility that a rescission occurred, and this was later confirmed on September 30, 2011. This finding does not contradict the parties' stipulated date of "in or about September 2011."

[10] Again, the court believes that Elizabeth's version of the events is incorrect, since she stated that her initial demand for a refund was in July 2011.

work on behalf of Arellanez after their initial meeting. It appears that the client came into the office with incorrect information about the status of the matter, in that she thought the property was still in foreclosure, but not yet sold. In fact, that was incorrect, as it had been sold at 8 a.m. on the day of their first visit. Given that fact, respondent focused on the inevitable unlawful detainer proceedings. When he formally learned that the foreclosure sale had been "rescinded," in or around August 17, 2011, he stopped doing work on the unlawful detainer. On October 12, 2011, he received a letter via fax from Cort, demanding a refund.

Respondent had a duty to promptly refund any unearned fees immediately after receipt of Cort's letter. He failed to do so until June 19, 2012, more than eight months later. As such, the State Bar has proven by clear and convincing evidence that respondent willfully violated rule 3-700(D)(2).[11]

Count Three - (Rule 4-100(B)(3) [Render Appropriate Accounts])

Rule 4-100(B)(3) provides that an attorney must render appropriate accounts to the client regarding property coming into the attorney's possession.

On August 4, 2011, respondent's office provided a breakdown of where the fees and costs charged to Arellanez would be spent. This breakdown, however, was not an accounting. On or about October 12, 2011, respondent received Cort's demand for a full refund. At this point, respondent should have either provided a full refund or a partial refund and accounting, but respondent did neither.

Although respondent provided Arellanez with a full refund eight months later, this fact does not absolve respondent of his responsibility to render appropriate accounts to Arellanez

[11] Because there was no clear and convincing proof as to the services he properly provided, and because he refunded more than he was obligated to refund by returning the entire amount of the fee, it would be inappropriate to assess interest on the delayed payment.

while he held her funds. By failing to render appropriate accounts to Arellanez regarding property coming into respondent's possession, respondent willfully violated rule 4-100(B)(3).

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Case No. 12-O-14399 - The Romo Matter

Facts

On June 7, 2011, Salvador Romo (Romo) and his wife, Maria, hired LDS to file a bankruptcy petition on their behalf. According to the retainer agreement, Romo was to pay LDS a total of $2,497, comprised of $1,800 for attorney's fees and $279 for advanced filing fees. On June 7, 2011, Romo paid an initial deposit to LDS of $1,250, and on June 30, 2011, LDS debited $1,247 from Romo's bank account for the remaining balance due under the retainer agreement.

From June 2011 to January 2012, LDS employees requested information from the Romos to file a bankruptcy petition. (See Exhibits W, X, and Y.) In January 2012, LDS informed Romo that the bankruptcy petition was ready to file.

On February 21, 2012, respondent spoke with Romo and discussed Romo's bankruptcy case in detail. At this time, respondent advised Romo that a bankruptcy would not benefit him. Respondent and Romo discussed processing a refund, but respondent offered to have the entire fee paid for the bankruptcy petition applied to Romo's estate planning fees.

On March 15, 2012, respondent and Romo further discussed ways that an estate plan would accomplish his goals. These discussions continued on March 29 and April 15, 2012. In the April 15, 2012 conversation, Romo advised respondent that he was considering doing his estate plan with another attorney, but would advise respondent of his decision within 30 days (by May 15, 2012).

Respondent did not file the bankruptcy petition on behalf of Romo and did not prepare an estate plan. On May 13, 2012, having not yet heard from Romo, respondent began processing Romo's refund.

On May 24, 2012, Romo filed a State Bar complaint against respondent.

On June 21, 2012, respondent sent Romo a full refund by cashier's check in the amount of $2,497. With his refund, respondent sent a detailed email apologizing for any misunderstanding as to the bankruptcy and living trust arrangements. In this email, respondent acknowledged the refund delay and explained that there was confusion with his office staff and that his book-keeper had recently been ill.

Also on June 21, 2012, respondent sent Romo a note for his signature that stated as follows:

> "To whom it may concern,
>
> "I have resolved my issues with Mr. John Habashy. I do not wish to pursue any further complaint against him.
>
> "Sincerely
>
> "Salvador Romo
> [address]"

Attached to the note was a sticky note that asked Romo to sign the note and fax it back to respondent's office.

Between the date the note was sent and July 12, 2012, respondent realized, after consulting with State Bar defense counsel, that the note prepared for Romo's signature may violate section 6090.5, subdivision (a)(2). Immediately upon learning this, respondent contacted Romo and advised him to simply discard the note.

Conclusions

Count Four - (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.

Respondent's office prepared an entire bankruptcy petition after repeatedly requesting Romo provide financial and other information necessary for the petition. After Romo finally gave the requested information, respondent reviewed the information and determined that a chapter 7 bankruptcy would not benefit him. The parties then began discussing alternative ways to accomplish respondent's goals, including through estate planning. Eventually, Romo informed respondent that he would think about having him do estate planning, and would inform him of his decision in 30 days, or by May 15, 2012. Just before the 30 days elapsed, respondent began processing a full refund, which was given to Romo by cashier's check on June 21, 2012.

The State Bar did not present clear and convincing evidence that respondent violated rule 3-110(A). As such, Count Four is dismissed with prejudice for lack of proof.

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

As noted above, respondent offered to apply all the bankruptcy fees to the proposed estate plan. When Romo decided that respondent would not be retained to do the estate plan, respondent promptly refunded the entire amount of the fees, including his earned fees. The State Bar has failed to present clear and convincing evidence of a violation of rule 3-700(D)(2), and therefore, Count Five is dismissed with prejudice for lack of proof.

Count Six - (Rule 4-100(B)(3) [Render Appropriate Accounts])

The State Bar alleged that respondent violated rule 4-100(B)(3) by failing to provide Romo with an accounting of the services rendered on his behalf. The court disagrees.

While Romo and respondent had discussed his receiving a refund after he learned that a bankruptcy would not serve his needs, the parties immediately began discussing estate planning as an alternative to the bankruptcy filing. When a final decision was made that Romo would go

elsewhere for estate planning, a full refund was promptly made. Since a full refund was promptly made and no services were billed to Romo, respondent could not be expected to provide Romo with an accounting of services rendered.[12] Accordingly, the record does not contain clear and convincing evidence of a violation of rule 4-100(B)(3), and therefore, Count Six is dismissed with prejudice for lack of proof.

Count Seven - (Rule 4-100(B)(4) [Promptly Pay/Deliver Client Funds])

Rule 4-100(B)(4) requires an attorney to promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the attorney's possession which the client is entitled to receive. As noted above, respondent provided a full refund within 35 days after Romo finally decided he did not wish to continue with respondent's services. The court concludes that 35 days to process a refund is reasonably prompt. Therefore, the State Bar has failed to prove by clear and convincing evidence that respondent violated rule 4-100(B)(4), and Count Seven is dismissed with prejudice.[13]

Count Eight - (§ 6090.5, subd. (a)(2) [Agreement to Withdraw a State Bar Complaint or Not Cooperate with State Bar])

Section 6090.5, subdivision (a)(2), prohibits an attorney, whether as a party or as an attorney for a party, from agreeing or seeking agreement, in a civil matter, that the plaintiff will withdraw a disciplinary complaint or will not cooperate with the investigation or prosecution conducted by the State Bar.

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[12] This count is different than Count Three in that respondent communicated with Romo and refunded the fees in full within a reasonable time period, instead of holding the fees for over eight months.

[13] The court considered and distinguished *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725. In *Berg*, the attorney violated rule 4-100(B)(4) by receiving a settlement, taking his share, and waiting–without a compelling reason–for six weeks before disbursing his client's share. Here, Romo received his refund less than six weeks from the date he was to advise respondent regarding his decision to hire a different attorney. In addition, respondent explained that the delay was due, in part, to his office staff's confusion and his book-keeper's absence.

Respondent correctly asserted at trial that the cashier's check sent to Romo in no way was connected to the request that he withdraw the complaint with the State Bar; that is, there was no *quid pro quo*. But a violation of Section 6090.5, subdivision (a)(2) occurs when an attorney agrees or *seeks agreement* to withdraw a disciplinary complaint. Therefore, respondent is culpable of willfully violating Section 6090.5, subdivision (a)(2).

Aggravation[14]

Multiple Acts (Std. 1.2(b)(ii).)

Respondent was found culpable of four acts of misconduct stemming from three client matters. Multiple acts of misconduct are an aggravating factor.

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

Respondent's delay of payment caused Arellanez financial harm, as she was denied the use of her money. This harm, however, was mitigated by the fact that respondent refunded Arellanez's entire retainer amount, despite performing work on her case. Consequently, the court gives this factor limited weight in aggravation.

Mitigation

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

Respondent had practiced law in California for approximately five years prior to the commencement of the instant misconduct. During that span, he had no prior record of discipline. Respondent's relatively short tenure of discipline-free practice is entitled to great weight in mitigation. (*Smith v. State Bar* (1985) 38 Cal.3d 525, 540 [six years of blemish-free practice "not a strong mitigating factor"].)

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

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

Respondent agreed to enter into a partial stipulation of facts, which saved court resources. As such, he is entitled to some mitigation for cooperation with the State Bar.

Respondent also refunded the entire retainer amounts in the Arellanez and Romo matters, albeit after commencement of State Bar proceedings. Payment of restitution following the onset of disciplinary proceedings warrants little to no consideration in mitigation. (See *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 519 [restitution paid under the force or threat of disciplinary proceedings does not have any mitigating effect].) That being said, respondent's payment of full restitution gives the court reason to believe that he has already begun his process of rehabilitation. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1093 [restitution is an indicator of rehabilitation].)

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

Respondent presented several credible witnesses attesting to his good character, including attorneys. While among the witnesses were an employee, his mother, and his fiancé, that did not diminish the overall mitigation that is appropriately applied to their testimony. Respondent's character witnesses were drawn from a broad cross-section of the public and each was aware of the charges brought against respondent.

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 the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

In this case, the standards provide for the imposition of a minimum sanction ranging from suspension to disbarment. (Standards 2.2(b) and 2.10.) Standard 1.6(a) states, in pertinent part, "If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions."

Standard 2.10 provides that culpability of a member of a violation of rule 3-700 and sections 6090.5 and 6106.3 shall result in reproval or suspension according to the gravity of the offense or the harm, if any, to the victim. And standard 2.2(b) states that a violation of rule 4-100 warrants a three-month actual suspension, irrespective of mitigating circumstances.

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar requested, among other things, that respondent be suspended for six months. On the other hand, respondent–who argued that he should only be found culpable on Count One–sought a private reproval. The court looked to the case law for guidance. While the court was unable to locate any case law directly on point, the court found *In the Matter of Taylor*

(November 9, 2012, No. 10-O-05171) __ Cal. State Bar Ct. Rptr. ___ [2012 WL 5489045 (Cal.Bar Ct.)], to be somewhat helpful.

In *Taylor*, the attorney, in eight client matters, was found culpable of charging illegal fees in violation of section 6103.3. No moral turpitude was involved. In aggravation, the attorney committed multiple acts of misconduct, caused significant harm, and demonstrated indifference. In mitigation, the attorney presented good character evidence. The Review Department recommended that the attorney be suspended for a period of two years, with the execution stayed, and that he be placed on probation for two years including a six month period of actual suspension and/until full payment of restitution.

Like *Taylor*, the present case involves a violation of section 6103.3. However, *Taylor* involves considerably more extensive misconduct than is reflected here. The court concludes that a six-month period of actual suspension, as recommended in *Taylor*, far exceeds the purposes of disciplinary proceedings and sanctions.

The court also found some guidance in *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. In *Fonte*, the attorney, in two client matters, was found culpable of failing to account, obtaining adverse interests in client property, and representing clients with conflicting interests. In aggravation, the attorney committed numerous instances of overreaching and uncharged misconduct, including soliciting a hospitalized client, misleading a court, and inducing clients to dismiss their State Bar and civil complaints. It was also found that the attorney committed multiple acts of misconduct, caused significant harm to one of his clients, and was unable to recognize his ethical accountability to clients. In mitigation, the attorney practiced 25 years with no prior discipline, engaged in extensive civic and bar association activities, and presented some good character evidence. The Review Department recommended

that the attorney be suspended for one year, stayed, with two years' probation, including a 60-day period of actual suspension.

Similar to *Fonte*, respondent failed to provide a client with an accounting and solicited an agreement for a client to withdraw his State Bar complaint. The present case involves less aggravation and mitigation than *Fonte*. And while it involves two charges not seen in *Fonte* (failing to promptly refund an unearned fee and charging an advanced fee for a mortgage loan modification), it does not include the conflict of interest issues, which were central in *Fonte*.

Altogether, the facts in the present case are less egregious than *Fonte*. In addition, respondent has demonstrated a better demeanor and attitude, and already appears to be on the road to rehabilitation. Consequently, the court finds that the present case warrants less discipline than *Fonte*.

Having considered the parties' contentions, as well as the facts, standards, relevant law, mitigation, and aggravation, the court determined that, among other things, a 30-day period of actual suspension is the appropriate level of discipline to protect the public and preserve public confidence in the profession.

Recommendations

It is recommended that respondent John Refaat Habashy, State Bar Number 236708, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that respondent be placed on probation[15] for a period of two years subject to the following conditions:

1. Respondent John Refaat Habashy is suspended from the practice of law for the first 30 days of probation.

2. 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.

[15] 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.)

3. 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.

4. 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 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.

5. 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.

6. 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.

7. 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.)

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 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 and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

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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: March _____, 2013

RICHARD A. HONN
Judge of the State Bar Court