

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>12-TE-15580-RAP</b>
	)	
<b>CHANCE EDWARD GORDON</b>	)	<b>DECISION AND ORDER OF INACTIVE</b>
	)	<b>ENROLLMENT (BUS. &amp; PROF. CODE,</b>
<b>Member No. 198512</b>	)	<b>§ 6007, subd. (c)(1))</b>
	)	
<u>A Member of the State Bar.</u>	)	

**1. INTRODUCTION**

This case is before the court on the verified application of the Office of the Chief Trial Counsel of the State Bar of California (State Bar) seeking to involuntarily enroll respondent Chance Edward Gordon as an inactive member of the State Bar pursuant to Business and Professions Code section<sup>1</sup> 6007, subdivision (c)(1) and rule 5.226 of the Rules of Procedure of the State Bar of California (Rules of Procedure).

This matter involves a nationwide loan modification scheme that garnered respondent and his nonattorney partner approximately \$9.7 million in a little over two years and which, ultimately, resulted in the Consumer Protection Financial Bureau (CFPB) obtaining a temporary restraining order (TRO) freezing respondent’s assets and having a receiver appointed to operate the practice. Despite the TRO, it appears that respondent has relocated and continues to solicit clients at an unknown physical location.

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<sup>1</sup> 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. SIGNIFICANT PROCEDURAL HISTORY**

On October 4, 2012, the State Bar filed and properly served a verified application seeking respondent's involuntary inactive enrollment pursuant to section 6007, subdivision (c)(1) and supporting documents on respondent at his State Bar membership records address and at an alternate address by certified mail, return receipt requested. A courtesy copy was also sent to respondent's counsel, Arthur Margolis, in State Bar Court case nos. 10-O-05509, et al, a pending disciplinary matter.<sup>2</sup>

On October 9, 2012, copies of the notice of hearing were also properly served on respondent at his State Bar membership records address and at an alternate address by certified mail, return receipt requested. A courtesy copy was also sent to respondent's counsel, Arthur Margolis, in State Bar Court case nos. 10-O-05509, et al.

Respondent did not file a response to the application although he was given an extension of time to do so. Accordingly, no hearing was held and the matter was submitted for decision on October 25, 2012.

## **3. JURISDICTION**

Respondent was admitted to the practice of law in California on December 7, 1998 and has been a member of the State Bar at all times since.

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<sup>2</sup> The case numbers encompassed in this matter are set forth below as each matter is discussed.

#### 4. 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 substantial 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;<sup>3</sup> and (3) there is a reasonable probability that the State Bar 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 5.226(E) of the Rules of Procedure. The application is based on pending disciplinary matters encompassed in the Notice of Disciplinary Charges (NDC) in State Bar Court case nos. 10-O-05509, et al and on 14 investigative matters not yet the subject of disciplinary charges.<sup>4</sup> The court's findings of fact are based on clear and convincing evidence.

Evidence was submitted by declaration and transcripts. (Rules Proc. of State Bar, rule 5.230(A).) The court finds these declarations to be generally credible.

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<sup>3</sup> 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.

<sup>4</sup> As to the investigative matters, the application does not set forth alleged rule or statutory violations that would put respondent on notice of possible charges. This compromises due process. Accordingly, this decision and order are based on the misconduct and charges alleged in both the application and the NDC in State Bar Court case nos. 10-O-05509, et al, and aspects of the CFPB matter discussed in the application as to which possible charges are set forth.

## **A. RESPONDENT'S LOAN MODIFICATION SCHEME**

Since about March 2009, respondent operated a nationwide loan modification business with nonattorney partner Abraham Pessar using the names Resource Legal Group, Resource Law Group, National Legal Source and Gordon Law Firm, among others, interchangeably, preying on distressed homeowners by promising relief from unaffordable mortgage payments and foreclosures.

Between January 30, 2010 and April 30, 2012, respondent and Pessar took in about \$9.7 million from this loan modification practice.

On July 17, 2012, the CFPB filed a complaint and an ex parte application for a TRO against respondent, Pessar and other entities seeking an order freezing the practice's assets and the appointment of a temporary receiver for engaging in deceptive practices in violation of sections 1031 and 1036 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. sections 5531 and 5536 and for violating numerous provisions of the Mortgage Assistance Relief Services (M.A.R.S.) Rule (Regulation O), 16 C.F.R. Part 322, recodified as 12 C.F.R. Part 1015. (*CFPB v. Gordon, et al*, United States District Court, Central District of California, case no. CV12-6147-RSWL (MRWx).) The CFPB sought to prevent further harm to consumers, the dissipation of assets and destruction of evidence and to preserve the court's ability to provide effective final relief to consumers victimized by respondent's loan modification scheme.

On July 18, 2012, a TRO was granted, which included an order freezing assets, appointment of a temporary receiver and other equitable relief. The court found there was good cause to believe that respondent and the other co-defendants violated the CFPA and Regulation O and that the CFPB was likely to prevail on the merits of its action. On July 30, 2012, after the parties stipulated to submission of the preliminary injunction matter without oral argument, the federal court ordered that the TRO remain in full force and effect until the court issues a ruling

on the request for a preliminary injunction. Pessar stipulated to a preliminary injunction on August 29, 2012. On August 16, 2012, respondent filed an answer to the CFPB's complaint. He has also filed opposition to the request for entry of a preliminary injunction. The TRO remains in place against him.

According to the CFPB, respondent and Pessar lured distressed homeowners by mail, telephone calls and the internet, "falsely promising to secure substantial relief from unaffordable mortgage payments and threats of foreclosure and falsely claiming affiliation with government entities and program[s] designed to help [them]. [They] promised consumers their mortgage assistance relief services in exchange for an advance fee — a fee unlawfully charged to a consumer before loan modification efforts have borne fruit — ranging from \$2,500 to \$4,500." (CFPB's Supplemental Evidence and Memorandum of Points and Authorities in Support of Preliminary Injunction in *CFPB v. Gordon*, filed August 3, 2012, at p. 2:10-16.)

Respondent claimed that the loan modification services he provided in his Prelitigation Monetary Claims Program were free.<sup>5</sup> He also averred that the advance fees his operation collected from consumers were for "custom legal products"<sup>6</sup> exempt from the requirements of Regulation O and section 6106.3. Respondent's transparent attempt to avoid the ban on collecting advance fees was unsuccessful in the federal court. There is a reasonable probability that the State Bar will prevail in proving these alleged violations in the State Bar Court as well.

Respondent's high-pressured sales staff pushed loan modification services to vulnerable distressed homeowners who paid up-front fees based on respondent's promise to help them

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<sup>5</sup> Respondent claimed to provide clients of his Prelitigation Monetary Claims Program with (1) a demand letter; (2) a qualified written request; and (3) a draft federal court complaint. Respondent's websites and sales pitches also informed consumers that respondent would perform a detailed analysis to "create leverage" against the lender to help obtain an acceptable loan modification. These services constituted a forensic loan audit for which an advance fee cannot properly be collected pursuant to section 6106.3 and Regulation O.

<sup>6</sup> In reality, these were forensic audit services covered by Regulation O and section 6106.3.

reduce their mortgage payments and interest rates. The sales staff's scripts demonstrate that the initial pitch to distressed homeowners was for a loan modification, not for any free services. Potential clients were told that they were paying a fixed price for loan modification and forensic audit services. The amount of the sales staff's commissions increased proportionately with the amount of the sale of services: The higher the sale, the higher the commission.<sup>7</sup> It is reasonably likely that the forensic audit services respondent provided to "leverage" the loan modification process violated the prohibition against collecting advance fees in Regulation O and section 6106.3.

Moreover, there is a reasonable probability that the State Bar will prevail in proving violations of Rule of Professional Conduct, rules 1-310 and 1-320.<sup>8</sup> The CFPB successfully demonstrated, and it appears that the State Bar is reasonably likely to prevail in proving, that respondent operated a classic common enterprise with Pessar, a nonattorney, commingling finances and routinely splitting fees, using common facilities, sharing employees, sharing physical resources and acting with a common, singular purpose to unlawfully obtain advanced fees from clients for loan modification services.

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<sup>7</sup> Respondent's commission structure and bonus incentives led to aggressive telemarketing. Pursuant to the Prelitigation Payment Plan Commission Structure, for example, the Prelitigation service which sold for between \$0 through \$999, rendered a 10% commission, but a sale for at least \$3,000 could receive up to a 30% commission. Sales incentives were in place to push the closing of more deals every month. For example, the agent closing the most deals between May 9 and 31, 2012, would receive \$100 per closing. It is reasonably likely that respondent's commission structure and incentive program violate Rule of Professional Conduct, rule 1-320, which prohibits sharing fees, indirectly or directly, with a nonattorney.

<sup>8</sup> Rule 1-310 provides that "[a] member shall not form a partnership with a person who is not a lawyer if any of the activities of that partnership consist of the practice of law." In relevant part, rule 1-320 prohibits attorneys and law firms from sharing, directly or indirectly, legal fees with nonlawyers, with certain exceptions not applicable herein.

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

Respondent engaged in deceptive practices regarding his operations. For example, the temporary receiver's report filed in the federal court action found that 42.2% of respondent's clients did not receive a completed loan modification and that very few received any refund.<sup>9</sup> It further noted that respondent had filed statements with the district court and in other public domains claiming a 91% successful completion rate.<sup>10</sup> Moreover, respondent and his associates periodically changed their operations' names and contact information to avoid scrutiny or detection by the Better Business Bureau and instructed their telemarketers to present these different names to the public.<sup>11</sup> Law firm names that telemarketers were instructed to use at various times in the two years prior to the federal court action included The Gordon Law Firm, P.C., National Legal Resource, Resource Legal Group, Resource Law Center, Resource Law Group, Resource Legal Team, Nationsource and Empire Legal Group.<sup>12</sup>

In short, it is reasonably likely that respondent and his nonattorney associates conducted an aggressive, deceptive sales and marketing scheme of loan modification services for the purpose of collecting illegal advance fees and otherwise defrauding vulnerable, desperate homeowners. In general, the State Bar is reasonably likely to prevail on the ethical violations set forth above and more specifically described below.

#### **B. The Client Trust Account Matter (Case no. 10-O-05509)**

Respondent misrepresented to the State Bar that his client trust account (CTA) check number 1088, made out to one of his employees for processing duties on a loan modification,

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<sup>9</sup> Report of Temporary Receiver's Activities July 19, 2012 through July 30, 2012, filed August 2, 2012, in *CFPB v. Gordon* at p. 18.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at pp. 3, 14-15.

<sup>12</sup> *Id.* at p. 14.

had been cashed at the counter. In reality, the check was written against insufficient funds and was returned twice by the bank for that reason.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

a. Section 6106 [Moral Turpitude/Misrepresentation/Misappropriation]: Section 6106 states, in part, that the commission of any act involving moral turpitude, dishonesty, or corruption constitutes cause for disbarment or suspension; and

b. Rule 4-100(A) [Not Maintaining Client Funds in Trust Account]: Rule 4-100(A) requires, in relevant part, that an attorney place all funds held for the benefit of clients, including advances for costs and expenses, in a CTA. With certain exceptions not applicable herein, no funds belonging to the attorney or law firm shall be deposited in the CTA or commingled therewith.

### **C. The Aguilar/Villa Matter (Case no. 10-O-06222)**

Respondent represented clients Anna Maria Aguilar and Esaul Villa in a federal multi-party lawsuit he filed naming them as plaintiffs along with other unrelated borrowers against a series of unrelated lenders. Aguilar and Villa had already been removed from their home. They paid respondent in excess of \$7,000 over seven months. Respondent indicated that if he did not get their house back for them, he would refund the entire retainer fee. The federal district court found that respondent misjoined the parties in the lawsuit and dismissed Aguilar, Villa and other plaintiffs from the lawsuit. He did not take subsequent action on Aguilar and Villa's behalf. Later, after retaining other counsel, Aguilar learned about the case being dismissed. She had not been apprised of the developments in the case by respondent, including the dismissal or the possibility of filing her own separate lawsuit.



## **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

a. Rule 3-110(A) [Failure to Perform with Competence]: Rule 3-110(A) provides that a member must not intentionally, recklessly, or repeatedly fail to perform legal services with competence; and

b. Section 6068, subdivision (m) [Failure to Communicate]: In relevant part, this section requires attorneys to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

### **D. The Pinoli Matter (Case no. 11-O-11993)**

Wayne Pinoli retained respondent to represent him regarding loan modification services for two of his properties. Prior to receiving communication from respondent's law firm, he had been in direct negotiations with his lender regarding loan modifications on the properties.

Regarding the "190" property, Pinoli paid respondent a total of \$8,000 in advanced attorney fees, \$500 for an initial loan evaluation and then \$7,500 to pursue litigation regarding lender liability issues. Payment was made in full in June 2010. Respondent only prepared a draft mass joinder lawsuit, naming many clients against a series of unrelated lenders and emailed a copy to Pinoli. Pinoli obtained a loan modification on his own as to this property. Based on communications with respondent's office, Pinoli believed that respondent was actively pursuing litigation on his behalf and that the matter had been assigned to an attorney. He was informed that, if the litigation was successful, he would obtain monetary damages and more favorable loan modification terms. Respondent did not do any additional work for Pinoli or take other action related to that property.

As to the “170” property, Pinoli sought respondent’s assistance in October 2010 after being unsuccessful in obtaining a loan modification. He first paid respondent a \$500 evaluation fee and then a \$2,500 retainer after being informed that his property qualified for representation by respondent. In November 2010, Pinoli had to pay an additional \$3,000 regarding this matter. Respondent filed a complaint and obtained a TRO in superior court alleging wrongful foreclosure. An order to show cause (OSC) re preliminary injunction was set but respondent did not appear. Accordingly, the court issued an order on January 7, 2011, that the case would be dismissed within two weeks if no further action was taken. Because respondent took no further action, the case was dismissed. Pinoli was unaware of this until February 2011, when the tenant at the “170” property received a posted notice indicating that the property was now owned by Fannie Mae. Pinoli repeatedly emailed respondent’s office about this, seeking guidance and information, only to be told that respondent would be taking action shortly to rectify the situation. He never saw any evidence of action by respondent or received any guidance.

In March 2011, Pinoli terminated respondent and sought a refund of the \$14,000 he had paid respondent as well as additional compensation for damages respondent caused him.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence].

### **E. The Valdepena Matter (Case no. 11-O-18827)**

Respondent did not perform legal services competently in three litigated matters for Vincent and Jennyfer Valdepena; did not respond to their reasonable status inquiries or advise them of significant developments; and essentially abandoned their matter.

The Valdepenas had entered into a trial loan modification with their lender pursuant to the Making Homes Available Program (MHAP) thereby stopping a foreclosure action.

In July 2010, their lender advised them that they were being switched from MHAP to another program. They were instructed not to make the July 2010 mortgage payment and that they would be instructed as to making the first payment under the new program.

Vincent Valdepena believed that he was current under the terms of MHAP. He had made eight payments to the bank pursuant to MHAP.

On August 4, 2010, the Valdepenas received a notice to vacate their home. Vincent was shocked because he thought he was current under the terms of MHAP.

On August 6, 2010, the Valdepenas received a letter from respondent's office setting forth the services he would be providing as their lawyer. These services included representing them in an unlawful detainer proceeding (UD) to stay the eviction; filing a federal lawsuit to regain title to their property; and completing a loan modification through the Prelitigation Monetary Claims Program offered through respondent's office. On August 10, 2010, respondent was paid a \$2,000 deposit for his representation. Respondent was given copies of the notice to vacate and other related documents.

The Valdepenas retained respondent after a second meeting with respondent at his office wherein respondent detailed his belief in their case and laid out his legal strategy. He reiterated repeatedly that they had a strong case and that the documentation provided would allow respondent to defend the UD and successfully sue their lender. Vincent relied on respondent to live up to his word and to vigorously defend his interests.

When he retained respondent, Vincent also explained that he had been advised by the federal government after calling into their hotline to seek legal counsel to stay the foreclosure.

Vincent understood that respondent would work with both the lender and the federal government to secure his rights to the property and reverse the foreclosure.

Respondent did not file a response to the UD. The Valdepenas were served with an eviction order and locked out of their home by the Sheriff. On November 22, 2010, after being served with the writ of possession, Vincent faxed it to respondent's office and sought his legal advice. He was told that a lawsuit would be filed.

While locked out of the property, the Valdepenas' property was burglarized and they lost their most valuable possessions.

The Valdepenas continued to make the required retainer fee payments to respondent even after being evicted. Vincent believed that respondent was actively litigating their case and fighting to return them to their home. Payments of \$2,000, \$1,000, \$1,000 and \$1,500 were made on August 10 and 31, November 5 and December 18, 2010, respectively. Respondent cashed the \$1,500 payment after the Valdepenas had been evicted from their home.

Respondent did not provide the Valdepenas with copies of all court documents as they had requested. They received some documentation but respondent did not inform them of the status of the litigation.

After the eviction, Victor was told that an ex parte hearing was set for December 17, 2010, to set aside the eviction. After this was unsuccessful, Victor was told by a representative from respondent's office that a state court action would be filed on his behalf, including a quiet title action to regain title to the property. Victor received a conformed copy of the lawsuit in February 2011.

Sometime during 2011, Victor was informed that the federal court action had been dismissed due to a technical issue and that respondent would continue to pursue remedies to return them to their home in the state court action.

The few status updates Victor received came from staff members and not from respondent. Respondent and his staff did not respond to most of my telephone calls seeking status updates. Victor does not believe that he spoke with respondent between November 2010 and February 2011 when he and Jennyfer made 99 calls to respondent's office.

In November 2011, Victor filed a complaint with the State Bar against respondent because of his lack of communication and nonperformance on the cases.

In early 2012, Victor received a copy of respondent's motion to be relieved as counsel in the state court action. The motion used the State Bar complaint as its basis. It is Victor's understanding that the motion was denied and that respondent is still his counsel of record in that matter.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence];
- b. Rule 3-700(A)(2) [Improper Withdrawal from Representation]: Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until he or she has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of a client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D) and with other applicable laws and rules; and
- c. Section 6068, subdivision (m) [Failure to Communicate].

### **F. The Burchert Matter (Case no. 12-O-10074)**

In September 2010, David M. Burchert retained respondent for loan modification services on two properties, including his primary residence, in Rolling Meadows, Illinois. He had been put in touch with respondent's office after responding to a post card solicitation from

The Relief Council. Respondent is not admitted to practice law in any state other than California.

In total, Burchert paid respondent \$29,000 for loan modification services on 11 properties. The loan modification was successful as to the primary residence. Respondent also facilitated short sales on two of Burchert's income properties.

Respondent continued to represent Burchert in 2010 and 2011. However, Burchert became dissatisfied with respondent's sporadic communication and nonexistent follow-through on any promised course of action. Burchert terminated respondent's services and demanded a refund. He received an accounting on respondent's behalf from The Relief Council, but no refund.

After obtaining his client file from respondent's office, Burchert discovered the financial income disclosures setting forth his income hardship which he had prepared in support of his loan modification applications. The applications submitted by respondent's office were not the ones Burchert had prepared. The income and expense declarations had been altered and Burchert's signature forged on the applications. He had no knowledge about and did not authorize any such alterations or signatures. Changes were made to all of the statements submitted to Burchert's lenders. He was informed by the lenders that he was denied the modifications due to fraudulently submitted documents.

Burchert also learned that respondent's office had forged his name on an IRS authorization for the release of past tax returns. Burchert did not authorize respondent to sign his name under penalty of perjury nor was he informed that respondent's office had done so.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

a. Rule 1-300(B) [Unauthorized Practice of Law]: Rule 1-300(B) prohibits an attorney from practicing law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction; and

b. Rule 4-200(A) [Illegal Fee]: Rule 4-200(A) prohibits an attorney from entering into an agreement for, charging or collecting an illegal or unconscionable fee.

**G. The Wall Matter (Case no. 12-O-10539)**

James R. Wall retained respondent for loan modification services in June 2010 and was quoted a \$2,500 fee. Wall and his property are in High Point, North Carolina. Respondent is not admitted to practice law in any state other than California.

On June 6, 2010, Wall received an email setting forth the services and results that respondent would achieve on the loan modification. He was led to believe that respondent would obtain a 2% interest via modification.

Wall could not ascertain what services, if any, respondent was performing on his behalf, and so, terminated his services in August 2011 and requested a full refund of the retainer fee. There was no response or refund from respondent.

After complaining to the North Carolina Department of Justice, Wall was informed that respondent had been found in violation of the state's unauthorized practice of law statute and issued him a cease and desist letter. He was referred to the State Bar for possible disciplinary action.

**Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 1-300(B) [Unauthorized Practice of Law]; and
- b. Rule 4-200(A) [Illegal Fee].

#### **H. The Alvaro Gonzalez Matter (Case no. 12-O-10634)**

In December 2009, Alvaro Gonzalez and his wife, Concepcion, retained respondent to represent them in two lawsuits against their mortgage lender and other parties relating to their home in Sylmar. Alvaro was told that the lawsuits would prevent the lenders from taking their home and that he would regain title to their property. They paid a total of \$9,500 in two installments in December 2009 and January 2010. The Gonzalezes primarily speak Spanish and are not fluent in English. Communications with respondent and his staff were facilitated by their adult children who served as translators.

For the next six months, Alvaro's status inquiries to respondent's office were met with assurances that they were on the case and that he had nothing to worry about.

Alvaro immediately informed respondent's office when he received a notice of a June 12, 2010, trustee's sale of his home. He was assured that he had nothing to fear because respondent had filed a lawsuit and, therefore, Alvaro could not be evicted from his home.

On June 12, 2010, the Gonzalez family was evicted from their home by the sheriff. Respondent said that the judge had refused to issue an order halting the eviction. Alvaro was informed that the state court case would be dismissed and that a new federal lawsuit would be filed. He had little or no contact with respondent after June 12, 2010.

At a meeting with respondent in December 2010, Alvaro was informed that the federal lawsuit would be filed in March 2011. He did not receive a copy of the lawsuit nor any status updates for the next six months.

In March 2011, Alvaro, through his son, wrote to respondent asking for an itemized accounting and a refund of any unearned advanced fees. There was no response other than staff emails indicating that the accounting would be prepared.



At a September 2011 meeting with respondent, Alvaro was told not to worry and that the case was progressing.

Alvaro went to a scheduled meeting with respondent in December 2011, but respondent did not attend. He was told by respondent's staff that the federal lawsuit had been dismissed but that a new lawsuit would be filed on his behalf.<sup>13</sup> Alvaro declined the suggestion that he file for bankruptcy.

In February 2012, Alvaro filed a State Bar complaint because he had lost all confidence in respondent's ability to represent him and his family competently.

Alvaro was not adequately, substantively informed of the status of the state and federal litigation, including important developments such as the issuance of discovery sanctions against him and his wife for discovery violations. He was told in the vaguest terms of the state court action's dismissal because respondent could not serve one of the defendants. Respondent did not take responsibility for the dismissal due to his inaction.<sup>14</sup> Alvaro was also told that the dismissal would not affect his ability to regain title to his home because respondent could pursue RICO violations in federal court.

In June 2012, Alvaro's son informed him that respondent had sent an email indicating that his client file would be mailed to his home. When the file arrived, it was incomplete. All information regarding discovery issues in the state court lawsuit was missing.

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<sup>13</sup> Respondent's noncompliance with court rules ultimately led to dismissal of the federal action.

<sup>14</sup> In the state court action, respondent did not respond to discovery, oppose discovery motions, demurrers, motions to strike and motions for judgment on the pleadings. Respondent's actions led to sanctions being imposed against the Gonzalezes. Respondent's filing of a request to dismiss the entire state court action without prejudice still resulted in a judgment against the Gonzalezes for \$2,095, the amount of sanctions imposed against them.

## **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence];
- b. Rule 3-700(A)(2) [Improper Withdrawal from Representation]; and
- c. Section 6068, subdivision (m) [Failure to Communicate].

### **I. The Senat Matter (12-O-10940)**

Vilaine Senat, a Florida resident, retained respondent regarding loan modification services for her primary residence in Florida. Respondent is an attorney admitted to practice law in California, not in any other state.

Senat received a postcard solicitation for mortgage relief services in October 2011. When she contacted the telephone number on the card, she spoke with Patrick Soria of the Qualification Intake Department who referred her to respondent and quoted her a \$3,000 fee for his services.

On October 11, 2011, Senat received an email from Soria at Resource Law Center containing a retainer agreement and requesting supporting documentation. She responded on October 12, 2011, with the signed retainer agreement and included a \$1,000 money order made out to respondent. Further \$1,000 payments to respondent were made on November 9 and December 14, 2011, the latter by electronic debit.

On about December 5, 2011, Senat received notice from respondent's office that a loan modification had been obtained. However, the terms of the modification called for both a substantial down payment and a higher monthly payment than she had been paying prior to hiring respondent. She declined it.

On December 14, 2011, Senat received a further solicitation for loan modification services from respondent's office but she did not pursue it. After this, she contacted a local Florida attorney who informed her that respondent was not admitted to practice law in Florida. She terminated respondent's services and retained local Florida counsel. She also put a "stop payment" order on the December 14, 2011, electronic payment to respondent.

Senat did not request a refund from respondent. She has had no further contact with him.

After dealing directly with her lender, she was enrolled in a three-month trial modification in March 2012.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 1-300(B) [Unauthorized Practice of Law]; and
- b. Rule 4-200(A) [Illegal Fee].

### **J. The False Advertising Matter**

Respondent operated and was the owner of the website domain name [resourcelawcenter.com](http://resourcelawcenter.com), but the website did not identify him as such. Although the website's home page claimed that Resource Law Center (RLC) complied with section 6106.3 (California Senate Bill 94) and the M.A.R.S. Rule, it appears that it does not since, for example, fees appear to be charged and collected prior to the completion of loan modification services. It also claimed that RLC provided nationwide real estate legal services although respondent is only admitted to practice law in California and most jurisdictions require individuals providing loan modification services to be admitted in their state.

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## **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

a. Rule 1-400(D)(2) [Deceptive Advertising]: Rule 1-400(D)(2) prohibits an attorney's use of communications or solicitations, as defined, which contain any matter or present or arrange any matter in a manner or format which is false, deceptive or which tends to confuse, deceive or mislead the public.

b. Rule 1-400(D)(3) [Misleading Omission in Advertising]: Rule 1-400(D)(3) prohibits an attorney's use of communications or solicitations, as defined, which omit to state any fact necessary to make the statements made, in the light of circumstances under which they are made, not misleading to the public.

### **K. The Baudelia Gonzalez Matter**

In July 2011, Baudelia Gonzalez received a postcard from the Qualification Intake Department in Washington, D.C., entitled "Notice of HUD Rights" and bearing a design consisting of the outline of a house with an "equal" sign in the empty space in its middle. This notice was not from the United States Department of Housing and Urban Development.

After contacting the telephone number on the postcard, Baudelia received a call from Alex Martinez from respondent's office, who told her that respondent could help her get a 2% interest rate on her mortgage. She retained respondent in July 2011 and, pursuant to Alex's instructions, returned the requested documents to respondent's office along with three checks, each in the amount of \$1,100 and payable on the 18<sup>th</sup> of July, August and September, 2011. Respondent cashed the first check. Baudelia requested the second check be returned.

Despite repeated attempts to find out what was going on in her matter, she was not informed of any progress, but rather, was scolded for calling too much. She does not believe that

respondent performed any work on her loan modification matter. She terminated respondent in August 2011 and put a stop payment order on the remaining check.

In August 2011, Baudelia retained Keith Ogden of the Community Legal Services of East Palo Alto to assist her with the loan modification and to obtain a refund from respondent. He has made repeated, unsuccessful requests for the return of her file, an accounting and a refund of any unearned fees. She still has not received an accounting, refund, or release of her file from respondent.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 1-400(D)(2) [Deceptive Advertising];
- b. Rule 3-700(D)(2) [Not Returning Unearned Fees]: Rule 3-700(D)(2) requires an attorney whose employment has terminated to promptly return any part of a fee paid in advance that has not been earned. This rule does not apply to true retainer fees paid solely for the purpose of ensuring the availability of an attorney to handle a matter;
- c. Rule 4-100(B)(3) [Failure to Account]: Rule 4-100(B)(3) requires, in relevant part, that an attorney maintain complete records of all client funds, securities or other property coming into the attorney's or law firm's possession and render appropriate accounts to the clients regarding them. The attorney is to preserve such records for no less than five years after final appropriate distribution of the funds or property; and
- d. Rule 3-700(D)(1) [Failure to Return Client Papers or Property]: Rule 3-700(D)(1) requires an attorney whose employment has been terminated to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes correspondence, pleadings, deposition transcripts, exhibits,

physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

**L. The Arena Matter (Case no. 12-O-12422)**

In February 2010, Salvatore J. Arena retained respondent for loan modification services and paid \$3,000 in advanced legal fees.

On February 27, 2010, Arena received a Pro Bono Legal Services agreement and information as to Respondent's Prelitigation Monetary Claims Program. Arena was instructed to cease communicating with his lender, IndyMac, as respondent's office would be handling all aspects of the loan modification process.

Beginning in March 2010 and continuing through June 2011, Arena was in constant email contact with respondent's office, including receiving repeated requests for documentation that he had previously provided. No progress was made on Arena's loan modification.

In May 2011, Jorge Ochoa, Arena's primary contact at respondent's office, contacted Arena about the need to show an increase in his monthly income by \$1,400 per month and suggested that Arena get a tenant to increase his income. Arena informed Ochoa that he was involved in buying airline tickets for others and could show funds being deposited into his bank account for this purpose. On June 2, 2011, Arena emailed Ochoa informing him that he had made a \$1,400 deposit into his bank account for the purchase of airline tickets.

On June 9, 2011, Arena attended the NACA convention being held in Los Angeles and met with representatives of IndyMac to discuss his pending loan modification application. While reviewing his file there, Arena discovered that respondent submitted a false room rental agreement on Arena's behalf in support of his application. The agreement was for \$700 per month for a room rental from tenant Donald Green. Arena did not have a tenant; was not receiving \$700 a month in rent; did not know nor had he ever met a Donald Green. The

agreement had what purported to be Arena's signature, but he had never signed nor even seen the agreement before June 9, 2011. Arena terminated respondent's legal representation and asked for a refund. After Arena's filing of a complaint with the State Bar, he renewed his demand for a full refund, which he received on May 1, 2012.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence]; and
- b. Section 6106 [Moral Turpitude].

### **M. The Robinson Matter**

On February 2, 2011, Diane Robinson received an email from Patrick Soria at reliefcouncil.com regarding respondent's Prelitigation Monetary Claims Program and retaining respondent on two loan modification matters. On that same date, she retained respondent to represent her in legal claims against the lenders on her rental property. Robinson paid respondent a total of \$8,566 in fees in installments in February and April 2011.

On February 4, 2011, Robinson executed a pro bono legal services retainer agreement for loan modification services regarding her primary residence.

On July 30, 2011, respondent sent Robinson a letter informing her that he negotiated a successful workout agreement with Robinson's lender which would require a new monthly payment of \$11,738.55 (up from the former monthly payments of \$4,214.25) with a down payment of \$12,000 due by August 9, 2011, to start a trial loan modification period. There was no reduction in the interest rate on the mortgage. These terms were less favorable than the terms Robinson already had and they were the same as the terms Robinson herself had worked out with the lender and previously advised respondent about.

Thereafter, Robinson received two draft civil complaints from respondent. In August 2011, she was referred to the Law Office of Gene Choe for lender liability litigation.

On September 1, 2011, Robinson received a foreclosure notice from Chase Bank, her lender on her rental property. She repeatedly called and wrote to respondent's office for a status report on her mater, but received no response. Sometime after November 9, 2011, Robinson was informed by respondent's representative of the identity of the person with whom they had been dealing at Chase. When Robinson contacted that person, Tracy, she denied having received all of the required documentation from respondent and said she was unable to forward the file to underwriting for consideration of a loan modification. The rental property was lost to foreclosure.

On December 29, 2011, Robinson demanded a full refund of the funds paid to respondent and asked respondent to contact her or she would file a small claims court action. She took the latter step in June 2012.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence]; and
- b. Section 6068, subdivision (m) [Failure to Communicate].

### **N. The Helping Hands Referral Program Matter**

In his welcome package to clients, including Salvatore J. Arena, respondent included an offer of a \$100 reward for each new client that Arena referred to him. Respondent referred to this \$100 referral reward as the Helping Hands Referral Program. Respondent's February 18, 2010 Helping Hands Referral Program flyer constituted a promise to compensate Arena for referring clients to respondent.



## **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

a. Rule 1-320(B) [Financial Arrangements with Non-Lawyers]: Rule 1-320(B) prohibits compensation, giving or promising something of value to a person or entity for the purpose of recommending or securing an attorney's or his or her law firm's employment by a client or as a reward for having made a recommendation resulting in such employment.

## **5. DISCUSSION**

The evidence before the court establishes that respondent, in his capacity as an attorney, has committed numerous acts of misconduct in the aforementioned matters.

As mentioned above, 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 it is reasonably probable that the State Bar will prevail on the merits of the underlying disciplinary matter.

### **A. Reasonable Probability the State Bar will Prevail**

The court has made factual findings and legal conclusions, set forth above, as to the likelihood that the State Bar will prevail on the merits of the charges presented in the application. Accordingly, the court finds that there is a reasonable probability that the State Bar will prevail on the allegations of misconduct in the aforementioned matters.

## **B. Substantial Harm to the Public or the Attorney's Clients**

The evidence amply supports the conclusion that respondent's misconduct has caused substantial harm to his clients and the public. Respondent's scheme preyed on distressed homeowners, promising relief from unaffordable mortgages and foreclosures. He acted for his personal benefit, reaping thousands of dollars, with little concern for his clients' welfare or the adverse consequences of his actions. Homeowners lost their homes and their hopes because of respondent's selfish, predatory tactics.

Respondent's conduct also harmed the public by wasting scarce court resources, filing inappropriate cases and inadequately handling others.

Finally, respondent's misconduct has also harmed the legal profession. Respondent's unwillingness or inability to follow the laws of this state has tarnished the reputation of other attorneys and the legal community as a whole.

Accordingly, the court finds that the State Bar has established, by clear and convincing evidence, that respondent has caused substantial harm to his clients and the public.

## **C. Likelihood that Harm will Continue**

Respondent has demonstrated a lack of understanding or appreciation of his ethical duties and the consequences of his misconduct. Absent the court's intervention, it is likely that respondent's conduct will continue to harm clients and the public. For example, he used different names for his business in order to escape detection. He recently moved his business to an address that is a mailbox drop, but the physical address is unknown. His State Bar membership records address remains unchanged from that which was taken over by federal authorities after the TRO was issued. Respondent appears to continue to solicit clients at his new location. On August 21, 2012, he posted a letter on Facebook for California and non-California clients of his Prelitigation Monetary Claims Program seeking from each fully-paid client \$2,000

in additional attorney fees to fund multi-party lawsuits against their lenders. Clients who had not fully paid their attorneys fees had to do so before participating in the lawsuit. The letter also noted that respondent would have a toll-free telephone number by week's end and offered email contact as well. The letter indicated that he would be mailing a substantively-identical copy of the letter to all active customers. Respondent's letter also offered a dedicated email address for those who would like to be plaintiffs in a class action against the federal temporary receiver. Moreover, the State Bar represents that there are at least 14 other open investigations alleging similar misconduct against respondent.

The court also finds that respondent's conduct demonstrates a pattern of behavior, including acts likely to cause substantial harm. The burden of proof, therefore, shifts to respondent to demonstrate that there is no reasonable likelihood that the harm will reoccur or continue. (Section 6007, subdivision (c)(2)(B).) Since respondent did not participate in these proceedings, he has not met this burden.

Accordingly, 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.

## **6. ORDER**

Accordingly, **IT IS ORDERED** that respondent Chance Edward Gordon 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 5.231(D).) 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 after 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.

**IT IS ALSO ORDERED** that the State Bar initiate disciplinary proceedings on an expedited basis as to those matters not encompassed by the NDC in State Bar Court case no. 10-O-5509, et al. As to those matters, a Notice of Disciplinary Charges must be filed within 45 days following the effective date of the involuntary inactive enrollment. (Rules Proc. of State Bar, rule 5.236(A).)

Dated: November 16, 2012

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RICHARD A. PLATEL  
Judge of the State Bar Court