STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **RICHARD CARROLL SINCLAIR,** **Member No. 68238,** A Member of the State Bar.	Case Nos.: **13-O-10657-PEM** 13-O-11618 (Cons.) **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

Introduction[1]

In this disciplinary proceeding, respondent Richard Carroll Sinclair is charged with seven counts of professional misconduct. The charged misconduct includes: (1) creating a scheme to defraud; (2) submitting an altered trial exhibit; (3) making misrepresentations at trial; (4) maintaining unjust actions; (5) failing to obey court orders; and (6) failing to report a judicial sanction.

The court finds, by clear and convincing evidence, that respondent is culpable of four of the seven counts of misconduct. In light of the serious nature and extent of respondent's misconduct, as well as the aggravating circumstances, the court recommends that respondent be disbarred.

Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on July 16, 2014, in case no.

[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.

13-O-11618. On July 31, 2014, respondent filed a response to the July 16, 2014 NDC. On October 30, 2014, the State Bar filed a second NDC in case no. 13-O-10657, and, on November 19, 2014, respondent filed a response to that NDC. These matters were subsequently consolidated for trial.

Trial was held on April 14, 15, 16, 17, & 28, 2015. The State Bar was represented by Senior Trial Counsel Esther Rogers. Respondent represented himself. On May 15, 2015, following closing briefs the court took this matter under submission.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on January 26, 1976, and has been a member of the State Bar of California at all times since that date.

Case no. 13-O-10657 – The Fox Hollow Property Matter

Preliminary Note

Most of the following findings of fact were originally found by the trial and appellate court in the underlying civil proceeding, *Richard C. Sinclair et al. v. Andrew Katakis et al.*, Fifth Appellate District Court of Appeal case no. F058822. While civil findings bear a strong presumption of validity if supported by substantial evidence, this court, nonetheless, must assess them independently under the more stringent standard of proof applicable to disciplinary proceedings. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947.)

In the present proceeding, this court heard testimony from respondent, Andrew Katakis, and Daniel Durbin. This court also considered the voluminous exhibits presented by the parties. Respondent was given a fair opportunity to contradict, temper, or explain the evidence and testimony from the civil proceedings with additional evidence. (*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195, 209.) However, as illustrated below, this court found much of respondent's testimony to be not credible.

Upon thorough consideration, this court concludes that the civil court findings were supported by substantial evidence, unless otherwise indicated. After independently reweighing the evidence based on the standard of clear and convincing evidence, this court issues the following findings of facts.

Findings of Fact

In 1988, respondent and his spouse purchased land with expectations of building an apartment complex for the production of rental income. After the purchase of the raw land respondent obtained approval from the City of Turlock to construct a 35-unit townhouse complex known as Fox Hollow. Respondent obtained a construction loan from Stockton Savings and Loan (Stockton S&L) secured by a First Deed of Trust. Construction of the apartment complex began in 1989, and was completed in 1991.

In July 1992, respondent defaulted on the loan. Several months later, despite the pending default, respondent transferred Fox Hollow to Sinclair Enterprises, which respondent and his wife owned.

In February 1993, respondent applied to the City of Turlock to subdivide Fox Hollow into 19 lots and a common area to convert it into a planned unit development to enhance its value. Once approved, the resulting 19 lots could be sold or financed individually. Respondent signed the application as the owner despite the property's transfer to Sinclair Enterprises.

In the spring of 1993, the City of Turlock Planning Commission approved the application subject to conditions that had to be met before the final subdivision map was recorded. The conditions included separate utility service for each unit, erection of firewalls between the units, and, upon subdivision of the site, formation of a homeowners association to maintain the common areas.

In August 1993, Stockton S&L recorded a notice of default stating $154,615.50 was due and that no loan payments had been made since July 1992. After the recordation, Stockton S&L scheduled a non-judicial foreclosure sale. One week before the sale, Sinclair Enterprises transferred Fox Hollow back to respondent and his wife. About an hour after the transfer deed was recorded, respondent and his wife filed bankruptcy.

In January 1994, respondent, through Sinclair Enterprises, asked to modify the condition requiring all building code revisions to be completed before the final map could be recorded. The City of Turlock denied the request a month later. Respondent wrote the City, stating "[t]here are sufficient funds within the homeowners association" to perform some of the modifications. This was a misrepresentation, as there was no homeowners association.[2]

Eventually, the bankruptcy court granted Stockton S&L relief from the automatic bankruptcy stay. Stockton S&L then foreclosed on Fox Hollow.

Flake's Ownership

Respondent has known Stanley Flake (Flake)[3] since at least 1985. Prior to his retirement, Flake operated a car dealership and respondent purchased cars from the dealership over the years. As of the early 1990's, Flake had invested in at least one of respondent's real estate syndications.

In 1993, as part of respondent's bankruptcy, Flake signed a letter of intent to exchange properties his car dealership owned with properties Sinclair Enterprises owned. Respondent used the letter in an unsuccessful attempt to convince lenders to allow Flake to assume Sinclair Enterprises's loans and properties. The court dismissed respondent's bankruptcy after

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[2] This court found respondent's explanation that he did not sign this letter and that he had no idea who signed it to be incredible. As noted below, the homeowners association was not actually formed until six years later.

[3] As noted above, only respondent, Andrew Katakis, and Daniel Durbin testified in the present proceeding.

concluding respondent had filed it in bad faith, writing that respondent's "egregious conduct in making the unauthorized postpetition transfers of the properties out of the Benbright estate to his individual bankruptcy after the meritorious motions for relief from stay were filed has caused further delay, harassment, and increased costs to the secured creditors." Flake filed objections to the court's order as did respondent and his wife. The objections were essentially identically worded, but respondent could not recall if he prepared Flake's objections.

In the civil trial, Flake did not recall how he learned of Fox Hollow, but he knew a number of real estate brokers who might have brought the property to his attention. He did not recall respondent's connection to the property when he purchased it. Respondent, on the other hand, testified in the civil trial that he "spoke to" Flake, and Flake arranged to buy Fox Hollow.

In October 1995, Flake, as trustee of the Julie Insurance Trust, purchased Fox Hollow from Stockton S&L for approximately $1,266,000. Flake did not recall subdividing Fox Hollow while he owned it. Documentary evidence, however, disclosed that within 10 days of purchasing the property, Flake signed a subdivision map—which was prepared by the same engineer respondent had used—that subdivided a portion of Fox Hollow and created lots 1, 11, 18, and 19 and a designated remainder. Flake also worked with architect Vernon Fergel (Fergel), who had begun the planned unit development conversion with respondent. Flake paid an invoice for work Fergel did for respondent while respondent owned Fox Hollow.

During the 16 months Flake owned Fox Hollow, respondent helped Flake process the subdivision application and obtain the first partial subdivision map that was recorded in 1996. Respondent also filed unlawful detainer actions against Fox Hollow tenants, listing Flake (as trustee) and respondent as owners of the property.

Flake signed covenants, conditions, and restrictions (CC&R's) for Fox Hollow, which were recorded in September 1996. The CC&R's defined the "Declarant" as Sinclair Enterprises.

In addition, the CC&R's stated that, when recorded, they were to be mailed to "Mauctrst"[4] at respondent's address. Flake did not recall who prepared the CC&R's or why. The Fox Hollow property did not change physically in any significant way during the months Flake owned it.

Mauchley's Ownership

Gregory Mauchley (Mauchley) lived in Utah and owned a sheet metal fabrication shop and a Utah cattle ranch. He was respondent's friend and client. Mauchley wanted to buy property to offset his taxes. Respondent knew that Flake wanted to sell Fox Hollow, so he arranged the sale to Mauchley.

In February 1997, Flake's Julie Insurance Trust sold Fox Hollow to Mauchley through separate grant deeds, one each for lots 1, 11, 18, and 19, and a fifth deed for the remainder of the property that had not been subdivided. At the time of the sale, Flake anticipated it would take 12 months to complete the subdivision work and record a final map.

Mauchley agreed to pay Flake approximately $1.9 million for Fox Hollow in the form of cash plus a note and deed of trust for $444,888. The sale of Fox Hollow yielded Flake a sizeable profit. The beneficiary under the $444,888 deed of trust was Flake, as trustee of Capstone Trust, which Flake formed for the purpose of holding the Mauchley note and deed of trust.

Mauchley obtained five loans from GMAC Mortgage Corporation (GMAC) to purchase Fox Hollow. Respondent assisted Mauchley to obtain the financing, but, at the civil and present trials, did not recall what assistance he provided. Mauchley borrowed $119,000 for four lots for a total of $476,000. Each loan was secured by a deed of trust on the specified lot. Mauchley borrowed an additional $1 million, secured by a deed of trust, against the remainder of Fox Hollow, which was to be subdivided into 15 additional lots.

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[4] As discussed in more detail below, respondent formed Mauctrst for Gregory Mauchley in 1995.

While Mauchley owned Fox Hollow, he was not involved in the day-to-day operations. Respondent was paid $10,600 a month to manage the property. As manager, respondent's responsibilities included collecting rents, paying the lenders, and maintaining the property. Respondent was also responsible for completing the work needed to subdivide the remaining lots. Mauchley was aware the required modifications were not completed while he owned the property.

Final Subdivision Map

Even though the required modifications were not completed, respondent, on February 20, 1998, filed a "Notice of Completion" of the subdivision project. The notice stated that respondent was the "developer of said work" and the owner of the subdivision. At the civil and present trials, respondent said he had no idea why his name is on the notice of completion.[5] A week later, Mauchley signed the "Fox Hollow NO. 2" subdivision map, as owner of the property. The map – which created lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, and a common area – was recorded on July 21, 1998. At the civil trial, respondent did not recall whether he disclosed to City of Turlock employees that the conditions imposed for approval of the subdivision had not been completed, testifying it was common to complete the requirements after the map was recorded.[6]

Refinancing of the New Lots

Several days after the final subdivision map was recorded, respondent – with Mauchley's authorization – obtained financing on the 15 newly created lots. Respondent testified in the civil trial that Mauchley set up his own financing. But Mauchley testified he did not communicate

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[5] This court found respondent's testimony on this subject to be disingenuous at best. Respondent's assertions before this court that he has no idea who filed the notice of completion or why he was listed as the owner of the subdivision were not credible.

[6] This court finds the validity of respondent's testimony on this subject to be highly suspect.

with the refinance lenders, respondent did. Both the trial court and appellate court found that documentary evidence supported Mauchley's testimony. Mauchley borrowed approximately $1.8 million from four lenders secured by deeds of trust on each of the 15 lots. Fifteen escrows were opened and a portion of the proceeds of each was used to pay off the $1 million GMAC loan. In addition, a portion of the proceeds was used to pay Flake the principal and interest on his $444,888 note.

Granite Bay Funding, which made loans on lots 3, 7, 9, and 14, did not know the subdivision work had not been completed. Had it been aware of that fact, it would not have made the loans until the work was complete. The civil trial court concluded the July 1998 loans were obtained "on a false premise." This conclusion was also supported by the evidence contained in the present record.

Mauctrst's Ownership

In 1995, respondent formed Mauctrst for Mauchley as part of a tax plan. Mauchley was the owner and member manager of Mauctrst. Respondent was co-manager.[7] Respondent could not produce a signed operating agreement for Mauctrst.

Once the loans on the 15 newly created lots were funded in July 1998, Mauchley transferred Fox Hollow to Mauctrst. Mauctrst agreed to pay respondent a monthly salary of $10,600 for managing Fox Hollow. In the civil trial, Mauchley did not recall if the lenders were told of the transfer. He did not ask the lenders for consent to transfer the property, as required by the terms of the notes and deeds of trust. The owner of Granite Bay Funding testified in the civil trial that the loans had an acceleration clause, and he did now know Mauchley planned to transfer Fox Hollow to Mauctrst.

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[7] In testifying at trial in this matter, respondent denied any ownership of Mauctrst and stated that every once in a while he made a mistake and wrote "member/manager." This court finds respondent's testimony on this subject lacked credibility.

In July 1998, Mauctrst executed a note for $271,000 secured by a deed of trust with assignment of rents on all 19 lots to Flake's Capstone Trust. In March 1999, Mauctrst recorded another deed of trust for $300,000 secured by the Fox Hollow property. In addition, at some point, Mauchley provided Mauctrst $300,000 to meet an operating deficit. Mauctrst made only a few payments on the July 1998 loans, and the lenders began recording notices of default in April 1999.

Mauctrst's Bankruptcy

Respondent filed a chapter 11 bankruptcy petition for Mauctrst on July 1, 1999. The court appointed a chapter 11 trustee, whose status reports were critical of respondent's management of Mauctrst. Respondent failed to timely file the required bankruptcy disclosure statements; he had not provided Mauctrst with an accounting of his services and compensation for over a year; and, since January 1998, he had been paid $150,000, including $20,000 in the 90 days before Mauctrst filed the bankruptcy petition.

In addition, respondent failed to account for the proceeds of two fire insurance claims, and over 50 cancelled checks and two bank statements were missing. Finally, he failed to account to the trustee for $135,000 he had received from Mauctrst between August 1998 and June 1999.

In January 2000, the bankruptcy court granted the trustee's motion to abandon the Fox Hollow property back to Mauctrst because it was "severely over encumbered [sic]." The bankruptcy eventually was converted to a chapter 7 and closed by final decree in September 2002.

Respondent's Further Involvement

After Fox Hollow reverted to Mauctrst in January 2000, respondent attempted to purchase the notes from the foreclosing lenders for his "clients." At the civil trial, respondent

could not remember which clients. He offered a reduced price because many of the units securing the notes could not be resold individually since the subdivision work was not complete. For example, in January 2000, just 18 months after Mauchley borrowed $130,000 against lot 3, respondent offered to pay the lender $80,000 for the note because the lot was not individually saleable.

Tactics to Delay Foreclosure – Lots 3, 7, 9, and 14

Granite Bay Funding held the notes on lots 3, 7, 9, and 14 for about two weeks before assigning them to Allied American Funding, Inc. At least one of the assignments was not recorded. Eventually, the notes and deeds on the four lots were transferred to ContiMortgage Corporation (ContiMortgage). Respondent had not disputed the validity of the ContiMortgage security interests in the Mauctrst bankruptcy proceeding. After the bankruptcy trustee abandoned the property, however, respondent refused to make payments for Mauctrst to ContiMortgage, claiming he was dissatisfied with ContiMortgage's documentation establishing that it held the notes and deeds of trust.

After the property reverted to Mauctrst, the lenders again pursued foreclosures. Respondent on behalf of Mauchley and Mauctrst, filed 15 actions against the lenders to delay foreclosure. In an action against ContiMortgage and Lonestar Mortgagee Services, LLC (Lonestar), Stanislaus Superior Court, case no. 254996, Mauchley and Mauctrst sought a restraining order and preliminary injunction barring foreclosures on lots 9 and 14. The pleading respondent prepared pertained to lots 9 and 14 only. The order respondent prepared for the judge's signature after the hearing, however, states that defendants were enjoined from conducting a foreclosure sale on lots 9 and 14 "or any Lots in the Fox Hollow subdivision ...." At the civil trial, respondent and Mauctrst contended the preliminary injunction also applied to lots 3 and 7.

The preliminary injunction ordered Mauchley and Mauctrst to make regular monthly payments on the promissory notes. From June 2000 through June 2003, when the injunction was dissolved and the case dismissed, Mauctrst had possession of the lots and collected rents but made no mortgage payments. Despite the court order to make monthly payments, respondent refused to pay on the basis that he did not believe ContiMortgage owned the notes and deeds of trust.

Tactics to Delay Foreclosure – Lots 1, 11, 18, and 19

In a suit against GMAC, respondent sought a temporary restraining order barring foreclosure sales set for lots 1, 11, 18, and 19. While respondent successfully obtained a temporary restraining order, two months later the trial court denied a preliminary injunction and dissolved the earlier order because Mauchley and Mauctrst did not comply with its terms to make regular payments on the notes. GMAC completed the foreclosures on September 29, 2000. The GMAC foreclosures eliminated the property securing Flake's $271,000 note.

Homeowners Association

Despite the City of Turlock's subdivision approval condition in 1996 that required the formation of a homeowners association and similar language in the CC&R's, respondent testified at the civil trial that the Fox Hollow Owners' Association (FHOA) had to be formed only upon the sale of the first lot to a second owner. Therefore, when the first foreclosure by a lender was imminent, respondent held the first meeting of the FHOA on June 1, 2000, and prepared the minutes. The minutes state that respondent, Brandon, and Mauchley were present, and each was elected to the board of directors. In one area the minutes state the directors elected Brandon president, Mauchley treasurer, and respondent secretary, but the last page states Brandon was elected president and respondent was elected secretary-treasurer.

The directors agreed to waive respondent's conflict of interest as a manager of Mauctrst and employed him as the association's legal counsel at $225 per hour or approximately $50,000 for his services that year to assist with the FHOA formation. At the second FHOA meeting on August 1, 2000, the board approved a motion to begin collecting dues of $150 per unit or $300 per duplex lot for the next six months, commencing that day, and authorized payments to respondent for his legal work. The minutes state Mauchley was present at both meetings, but Mauchley testified at the civil trial that he never attended an FHOA board meeting.

Court Appoints a Receiver

In February 2001, Ocwen Federal Bank, F.S.B. (Ocwen Bank), a lender on four of the foreclosed lots, applied to have a receiver appointed for the FHOA because of deterioration of the buildings and common area. The court-appointed investigator reported that Fox Hollow was in very poor condition. The property was littered with garbage, discarded furniture, disabled vehicles, and abandoned shopping carts. The landscaping and pool were not maintained, and the pool had a strong sewage odor. In addition, the FHOA had shoddy bookkeeping practices and had grossly misused its funds. That misuse included paying respondent $15,266 for attorney fees while spending only $9,419 on property-related matters. Over respondent's opposition, a receiver was appointed. The receiver was discharged in September 2002.

GMAC Settlement Agreement

After GMAC foreclosed on lots 1, 11, 18, and 19, the Mauchley/Mauctrst lawsuit against GMAC for damages remained. In May 2001, GMAC, Mauchley, Mauctrst, and Flake (for Capstone Trust) entered into a settlement agreement. GMAC agreed to sell lots 1, 11, 18, and 19 to Flake, as trustee of Capstone Trust, for $114,000 per lot. Capstone Trust participated in the agreement because Flake hoped to get his $271,000 note paid off by purchasing the lots and then immediately reselling them to respondent at a profit.

Respondent set up double escrows for the purchase of lots 1 and 19.[8] He testified in the civil trial that Mauchley and Mauctrst owed him substantial attorney fees and wanted those fees to be paid. As payment for those fees, respondent agreed to take the lots and give one lot to his son, Brandon, because he had worked "on the project." Accordingly, Flake would resell the lots to respondent and Brandon for $190,000 each, crediting respondent's fees and reducing the amount owed on the $271,000 note by about $15,000.

Respondent testified in the civil and present trials that GMAC was aware of the double escrows and it did not matter to them.[9] GMAC's attorney, who had approved the settlement agreement for GMAC, testified in the civil trial that she never would have agreed to the double escrows had she been aware of them. Her goal for GMAC was "to get rid of respondent, Mauchley, et cetera, people for all time." Further, she believed double escrows "[are] akin to fraud" and lead to litigation.

Escrow closed on lot 1 on August 1, 2001, and on lot 19 in December 2001. On the same days that the GMAC-Capstone Trust escrows closed, Flake, as trustee, conveyed lot 1 to Brandon and lot 19 to respondent. In February 2002, respondent transferred lot 19 to his company, Lairtrust, LLC, and Brandon transferred lot 1 to his company, Capstone, LLC (no relation to Flake's Capstone Trust).

The GMAC settlement agreement, dated May 14, 2001, in its title, recites that escrow would close on the four lots within 60 days of execution of the agreement. In July 2001, GMAC became concerned and impatient with respondent's repeated assurances that the transactions were progressing followed by failure to follow through, including not placing the funds in

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[8] A double escrow generally involves two contracts of sale for the same property, to two different back-to-back buyers, set to close on the same day.

[9] Respondent's assertion that GMAC did not care about a double escrow is unbelievable. Respondent's testimony on this subject lacks credibility.

escrow to purchase the lots. Respondent repeatedly assured GMAC the escrows would close soon and then failed to meet every projected date of completion. On August 7, 2001, GMAC's attorney wrote respondent, "The agreement is canceled." Respondent did not respond to the letter or dispute that the agreement was cancelled.

The settlement agreement had provided that GMAC would deliver possession of the lots to Capstone Trust at the close of escrow. Because the escrows on lots 11 and 18 did not close before GMAC cancelled the settlement agreement, GMAC continued to own lots 11 and 18. Despite this, Brandon entered into at least four written leases for the units on those lots and collected rents. Brandon testified in the civil trial that he did so for respondent. He could not explain why he leased property he did not own. GMAC was unaware that Brandon leased the units and did not give Brandon permission to lease the units or collect rents.

Katakis's Ownership

Andrew Katakis (Katakis) is a real estate broker. He owned and was president of California Equity Management Group, Inc. (CEMG). For over twenty years he has bought distressed property.[10]

Katakis learned of Fox Hollow when a real estate agent brought the property to his attention. He had experience renovating rundown properties. In May 2002, he acquired lots 2, 4, 5, 13, and 15, which were then owned by the lender Ocwen Bank.

On June 25, 2002, CEMG acquired lots 11 and 18 from GMAC. When respondent learned of this, he faxed Katakis a copy of the GMAC-Capstone Trust settlement agreement and accused him of interfering with the agreement. In the civil trial, respondent testified he notified Katakis of the settlement agreement before CEMG acquired the lots, and he presented an

[10] Contrary to much of respondent's testimony, this court found Katakis's testimony was logical, rational, and credible.

undated fax to substantiate his testimony. Katakis produced the actual fax he received, which had a date stamp of July 17, 2002, weeks after CEMG acquired the lots.

When CEMG purchased its first lots, the receiver was operating the FHOA. On September 30, 2002, the receiver notified the Fox Hollow property owners that he was discharged and they must elect a board of directors immediately to continue operating the FHOA. The receiver's letter included a notice of special meeting set for October 15, 2002, at 6:00 p.m., and a three-page agenda of business to be transacted. The meeting notice was signed by Katakis, as owner of 5 percent of the total voting power of the FHOA.

On October 4, 2002, respondent wrote Katakis asking to have the meeting rescheduled because he would be in trial in Fresno. He stated he represented himself; Mauctrst; Brandon; Mauchley; Capstone, LLC; Lairtrust, LLC; and Flake collectively, who owned more than 5 percent of Fox Hollow. He did not assert that he, Brandon, and Mauchley were the current board of directors. And, three months earlier in July 2002, respondent wrote in a statement filed with the court that the FHOA board members had resigned when the receiver was appointed, and it was logical to hold elections for a board of directors to carry out the work of the FHOA.

The FHOA meeting was held as scheduled. The minutes of the meeting reflect that those in attendance elected Katakis president, Gary Alldrin vice president, and Dave Konecny secretary-treasurer. Among other things, the new board discussed the need for a reserve study, hiring an accountant and a property manager, and hiring a project manager to address deferred maintenance issues. The next meeting was set for noon on October 24, 2002.

Respondent notified the board of directors he would be out of town and unable to attend the October 24 meeting. He objected to the board's actions, which he claimed were outside the scope of board authority under the CC&R's and bylaws.

At the October 24 meeting, the board hired a management company for Fox Hollow and agreed to request that respondent deed the common area to the FHOA. Respondent returned a deed to the common area, but, according to Katakis, the deed did not contain a proper legal description and was not valid.

On December 16, 2002, respondent sent a letter to Katakis and the FHOA claiming that the former board—himself, Mauchley and Brandon—had not resigned, and he had not been given credit for attorney fees that the FHOA owed to him while the receiver was in place.

Despite respondent's protests, the FHOA board of directors began to repair Fox Hollow and to complete the work the City of Turlock required to convert Fox Hollow to a planned unit development. The work required to meet Turlock's building code was completed in 2004 at a cost of approximately $312,000 to the FHOA and $1,007,000 to CEMG.

Respondent believed that Katakis and the FHOA were treating him and his lot unfairly. His lot was not included in the improvements and his reports of a leaking roof were ignored. The chief executive officer of the management company for the FHOA testified that the amended CC&R's permitted the association to decline to maintain or repair items for lots that were delinquent in paying dues or special assessments. For those units, the owner was obligated to maintain and repair the unit. Respondent received a letter from the attorney for the association notifying him that because he had not paid dues, the association would not repair his units.

FHOA Dues and Special Assessments Accounting

In January 2003, the board of directors, through Katakis, hired an accounting firm to prepare an accurate set of books for the FHOA. As president of the association, Katakis gathered documents for the accountants and met with them regarding the reports. The accountants did not believe that Katakis was withholding information or was requesting special accounting for the

lots he owned. Katakis, however, sent an e-mail that was misinterpreted, resulting in an accounting error.

The accountant prepared a report that tracked dues and special assessment payments made in relation to each lot from August 1, 2000, through December 31, 2002. In March 2003, Katakis sent the accountant an e-mail regarding the lots owned by Mauchley, respondent, and their companies stating, "please make the assumption that payments have not been make [sic] to April 1, 200[3].... This will give the attorney final numbers to start the lien process with." Katakis intended the accountant to update the reports to show respondent's entities had made no payments in January, February, and March 2003. The accountant, however, struck all payments made on behalf of those lots, which resulted in an overstatement of the delinquencies. Although the accountant knew the revised calculations were not consistent with source documents Katakis had provided, he did not recall why he had interpreted the e-mail as he had.

In April 2003, the FHOA attorney notified Capstone, LLC, Brandon's company, the owner of lot 1, and Lairtrust, LLC, respondent's company, the owner of lot 19, that the association would institute collection procedures if the outstanding dues and special assessments were not paid within 30 days. Respondent responded that the delinquency figures cited were incorrect, but did not provide the amount he opined was correct nor did he offer to pay anything.

FHOA Foreclosures on Lots 1 and 19

In June 2003, the FHOA recorded a notice of delinquent assessment with respect to both lots. In the civil trial, respondent continued to dispute the amount owed, but acknowledged that neither Brandon nor he had paid any dues or special assessments to the FHOA from May 2002 through March 2004. Respondent contended he had a credit for legal fees the FHOA owed him, and the special assessments had been improperly enacted and imposed. He also stopped paying dues because Katakis had told him that Katakis would own his lots no matter what he did. In

March 2004, the FHOA foreclosed on lots 1 and 19. Subsequently, CEMG purchased the note and deed of trust on lot 19, foreclosed, and became record title owner in 2008.

Respondent Files a Lawsuit

In April 2003, Mauctrst;[11] Lairtrust, LLC; Capstone Trust; Flake, as trustee; respondent, Mauchley, and Brandon filed a lawsuit. It alleged 12 causes of action against Katakis, CEMG, and the FHOA. Flake authorized respondent to file the lawsuit on behalf of himself and as trustee of Capstone Trust as a way to recover the amount he was owed on the $271,000 note that had been secured by the Fox Hollow property. At the time of trial in December 2008, Katakis's CEMG owned 18 of the lots and respondent's Lairtrust, LLC owned one lot. Eight of Fox Hollow's 19 residential lots were at issue in the lawsuit: lots 1, 3, 7, 9,11,14, 18, and 19.

Regarding lots 1 and 19, respondent claimed Katakis, through the FHOA, instituted wrongful foreclosure proceedings using overstated dues and assessment amounts and defective notices. In addition, it was alleged that Katakis improperly reconstructed the FHOA board of directors to oust respondent and his son and to foreclose wrongfully on the lots. Defendants claimed respondent's and the other plaintiffs' unclean hands in relation to the lots was sufficient to deny their claims for wrongful foreclosure.[12]

Regarding lots 3, 7, 9, and 14, respondent asserted: (1) the lots were foreclosed in violation of the automatic stay in the Mauctrst bankruptcy; (2) the foreclosure of lot 3 violated the preliminary injunction issued by the Stanislaus Superior Court; (3) CEMG never acquired the notes and deeds of trust and therefore never had the right to foreclose; (4) the notices of

[11] The appeal was dismissed as to Mauctrst for lack of standing after the company filed a certificate of cancellation with the Secretary of State and its powers, rights, and privileges ceased. (Corp. Code, § 17350.5, subd. (c).)

[12] The clean hands doctrine dictates "that a party cannot seek equitable relief or assert an equitable defense if that party has violated an equitable principle, such as good faith." (Black's Law Dict. (7th ed. 1999) p. 244, col. 2.)

foreclosure contained numerous defects rendering the foreclosures wrongful; and (5) Lonestar had no authority to conduct the foreclosure sales because "Loanstar" executed the trustee's deed for lots 9 and 14. Respondent and the other plaintiffs sought to set aside the foreclosures and asked for monetary damages for lost gross rental income. Defendants countered that plaintiffs' failure "to do equity" precluded relief. In addition, plaintiffs had failed to establish they were not in default, failed to show any procedural irregularities were prejudicial, failed to prove CEMG did not hold title, and failed to show any lost net rental income, the proper measure of damages.

Regarding lots 11 and 18, respondent and the other plaintiffs contended that Katakis and CEMG intentionally or negligently interfered with contract or economic advantage by interfering with the settlement agreement between GMAC, Mauchley, and Flake whereby GMAC was to sell the lots to respondent. Respondent and the other plaintiffs sought monetary damages. Defendants claimed the plaintiffs failed to show the agreement had not been cancelled long before Katakis and CEMG purchased the lots.

Finally, Katakis and CEMG cross-complained for abuse of process against respondent, Mauchley, and Mauctrst, who generally denied the allegations.

Prior to trial, the parties tried to reach a settlement, which respondent sought to enforce through two separate motions. The trial court denied the motions to enforce because the settlement agreement was not enforceable in that it was too uncertain and there was no meeting of the minds.

After a 36-day court trial and posttrial briefing, the trial court issued a detailed statement of decision and entered judgment for defendants and judgment for cross-defendants on the cross-complaint. The trial court found respondent's and the other plaintiffs' unclean hands in relation to Fox Hollow barred recovery on every claim. The trial court found the following 28 wrongful

acts constituting a pattern of misconduct and deception on the part of respondent and the other plaintiffs regarding Fox Hollow:

> 1. In April 1994, [respondent] wrote to the City of Turlock to advise them that there were sufficient funds in the [homeowners association (HOA)]. [Citations.] [Respondent] testified that he never told the City that there was an HOA before 1998 [citation] and that there was no HOA before 2000. [Citations.] [Respondent's] 1994 letter to the City of Turlock that there was an HOA was false.
>
> 2. From November 1995 through February 1997, [respondent] and Mr. Flake worked closely together to develop Fox Hollow. [Citations.] Yet, Mr. Flake testified he had no involvement with [respondent] during this time. Clearly, this was not true.
>
> 3. In March 1996, Plaintiffs subdivided Fox Hollow by recording Map No. 1. [Citation.] The City required as a condition that a homeowner's association be formed. [Citation.] In September 1996, Plaintiffs recorded the CC&Rs. [Citation.] The CC&Rs required formation of an HOA. The Plaintiffs did not do this.
>
> 4. In February 1997, Mr. Flake sold Fox Hollow to Mr. Mauchley by selling four separate lots through four separate deeds. [Citations.] Although the CC&Rs required him to convey the common area to the HOA before doing this, he did not do it.
>
> 5. In 1998, [respondent] worked to secure financing at Fox Hollow. Mr. Mauchley testified that [respondent] handled this work and that he, Mr. Mauchley, 'didn't talk to any lenders.' [Respondent] testified that Mr. Mauchley was 'arranging for the most part the financing.'
>
> 6. On or about July 21, 1998, Plaintiffs caused Subdivision Map No. 2 to be recorded creating an additional 15 lots. [Citation.] Plaintiffs knew that they had failed to complete the conditions imposed by the City for recording such a map. [Citations.] Plaintiffs also knew that the City had previously rejected their request to complete the required work after the map was recorded. [Citations.]
>
> 7. In July 1998, immediately upon recording Map No. 2, Plaintiffs caused 15 loans to be placed against the 15 new lots. Mr. Mauchley signed fifteen deeds of trust [citations] that contained Planned Unit Development riders representing that there was a [homeowners association]. Yet, 'there was no intention to start it then.' [Citation.]
>
> 8. In July 1998, Plaintiffs obtained these 15 new loans based on values that were 'subject to final completion of subdivision firewalls and underground relocation of utilities to accommodate individual ownership ....' [Citations.] This

material information was not disclosed to the lenders. Plaintiffs' [sic] secured these loans [] on a false premise.

9. In late 1998 and early 1999, Plaintiffs began defaulting on the loans and were further encumbering the property with a $300,000 loan. [Citation.] Mr. Mauchley testified he knew that Plaintiffs were late on a [sic] more than a couple of payments, but [respondent] insisted that he had made wire transfers or other sorts of direct payments, but later recanted this testimony.

10. In April, May and June of 1999, lenders began to record notices of default on the July 1998 loans. [Citations.] On July 1, 1999, Mauctrst LLC filed bankruptcy. Plaintiffs claimed that the bankruptcy filing had nothing to do with the pending non-judicial foreclosures and 'that wasn't the consideration at all.' [Citations.] .

11. In July 1999, [respondent] filed bankruptcy for Mauctrst LLC representing that it was owned 50% by Mr. Mauchley and 50% by Mrs. Mauchley. Mr. Mauchley testified at trial these statements were false. [Respondent] and Gregory Mauchley then had recently filed unlawful detainer actions verifying under oath that they owned the property. Since July 1999, Plaintiffs have asserted that the automatic stay of the Mauctrst LLC bankruptcy should prevent Fox Hollow lenders from pursuing collection efforts even though (1) [respondent] and Gregory Mauchley, not Mauctrst LLC, owned the property, (2) Mr. Mauchley, not Mauctrst LLC, was the obligor on the notes and deeds of trust.

12. [Respondent] has testified in deposition, at trial and in letters that he sent that he is a member/manager of Mauctrst LLC and that member/manager means owner. [Respondent] has divulged that he directly benefited in the amount of $160,000 from the Fox Hollow endeavor in the year before the July 1, 1999 [bankruptcy]. Yet, he continues to claim he has no ownership interest in it.

13. In January 2000, Plaintiffs began to attempt to negotiate significant discounts on their loans by drawing the lenders attention—18 months after they obtained the loans—to the fact that their collateral was impaired for reasons solely attributable to Plaintiffs' misconduct. [Citations.]

14. In February 2000, lenders filed additional notices of default regarding Fox Hollow. [Citations.] In March 2000, Plaintiffs began suing lenders and seeking restraining orders to delay those foreclosures. [Citations.] In total, they filed seven lawsuits and lost nearly all of them.

15. On June 6, 2000, Plaintiffs obtained a preliminary injunction which listed Lots 9 and 14 at Fox Hollow, but which they have claimed also pertained to Lots 3 and 7. [Citation.] The injunction was conditioned on Plaintiffs making 'the required monthly payments on the promissory note as it comes due.' Plaintiffs failed to make a single payment and enjoyed the benefit of the injunction until 2003.

16. Although Plaintiffs prepared HOA minutes indicating that Mr. Mauchley was present at the first two HOA meetings [citation], Mr. Mauchley testified that he did not attend meetings. Plaintiffs' minutes indicate work was being done on and [respondent] billed Fox Hollow for doing work on Articles of Incorporation [citation] during the time period of August 2000 to December 2000. Yet, the Articles of Incorporation were signed and completed in July 2000, but simply not filed with the Secretary of State until December 2000. [Citation.]

17. In October 2000, Plaintiffs provided the outstanding dues to escrow and volunteered to escrow that 'title to the lots cannot be transferred at the present time.' [Citation.] [Respondent] provided a declaration under penalty of perjury to the Court that this letter was sent '[o]ut of courtesy to new owners and to elicit their cooperation.' [Citation.] This is not credible. A month later, Plaintiffs sent out a HOA dues statement with a note at the bottom that there were potential purchasers interested in purchasing the lots at their 'as is where is' price. [Citation.]

18. In February 2001, a receiver was appointed over Plaintiffs' objection. [Citations.] The receiver appointment hearing reflects Plaintiffs' misleading conduct. [Citation.]

19. In May 2001, Plaintiffs entered a settlement agreement with GMAC that they secretly set up as a double escrow without disclosing to GMAC that [respondent and his son] were the actual purchasers. In July 2001, Plaintiffs failed to close with GMAC. [Respondent] informed Mr. Mauchley that they missed the deadline. [Respondent] even wrote correspondence acknowledging that the escrow 'must close' within a time certain. [Citation.] However, Plaintiffs still claim that the date for the close of escrow was not a condition of their agreement with GMAC. [Citation.]

20. In December 2001, Brandon Sinclair took out a loan against Lot 1 at Fox Hollow [citation] and then transferred the property to an LLC [citation] that he and [respondent] formed to protect [Brandon] from credit damage (Testimony of Brandon Sinclair) when they defaulted.[13]

21. In May 2002, Plaintiffs stopped making dues payments to the HOA.

22. In June 2002, over 10 months after the Plaintiffs were to close escrow on Lots 11 and 18 and after GMAC had canceled the Settlement Agreement with Plaintiffs [citation], CEMG entered into a contract with GMAC to purchase those two lots. During trial, Plaintiffs deleted information from an exhibit showing that [respondent] had not sent a copy of the GMAC settlement agreement until July 17, 2002. [Citations.] This was done in an attempt to create the impression

[13] When this issue was raised in the present matter, respondent's reaction was effectively, "so what?"

that Plaintiffs had claimed they had a contract to purchase the properties before GMAC and CEMG completed their sale. [Respondent's] testimony regarding what he told Mr. Katakis before CEMG closed escrow was false.

23. On July 31, 2002, Plaintiffs advised the Court in writing that: (a) after the Court appointed a receiver, 'the Board resigned'; (b) there was 'no board of directors to represent' the HOA; (c) 'no direction has been provided'; and (d) elections should be held. [Citation.] Plaintiffs failed to advise the HOA for two months after the new Board was elected that they believed they were the Board and only did so when it was apparent that the new Board was going to begin collecting dues and gather estimates for the repair work at Fox Hollow. [Citation.]

[Respondent] explained why he told the Court this: "What I must have ineloquently represented to the Court was Mr. Katakis was buying us out. He had made us an offer of about $1 million. We were waiting to finalize that. And everybody wanted to get rid of this case because it had no other purpose. And so we weren't going to go to trial. We weren't going to go forward with it. And so I was telling the Court, you know, this is kind of done with." [Citations.] Thus, rather than admit that he had lied to the Court, [respondent] made up this story. First, the document he stated to the Court suggests nothing remotely like [respondent's] testimony. Second, the evidence is unequivocally clear that Mr. Katakis never offered them $1 million as [respondent] claims.

24. In October 2002, when the new Board and officers were elected at Fox Hollow, Fox Hollow was in a very poor condition. [Citation.] It had been in the same condition when the Court was required to appoint a receiver for the homeowner's association. [Citations.] It had been in a deteriorating condition since as early as 1993. [Citation.] [Respondent] even admitted the deferred maintenance. [Citations.] Yet, Plaintiffs continue to claim that they had no role in the condition of Fox Hollow.

25. In December 2002, Plaintiffs threatened the new Board with a number of baseless charges while claiming that the prior Board had in fact not resigned.

26. In March 2003, Plaintiffs doctored a Summons [citation] and prepared an Amended Complaint [citation] and served both documents on CEMG and Mr. Katakis without Court approval, without them being filed and then allowed the litigation to proceed for months.

27. In May 2003, Plaintiffs complained about Fox Hollow being in a state of disrepair. [Citation.] Yet, Plaintiffs still refused to pay dues. In July 2003, as the HOA attempted to move forward with a rehabilitation project, Plaintiffs wrote to the HOA and advised that the HOA's actions were done to damage Plaintiffs. [Citation.] Plaintiffs' claims that the HOA and other defendants were harming them by the rehabilitation project were false.

28. In November 2003, Plaintiffs tendered $0 to the HOA when clearly Plaintiffs knew that they had not paid dues since May 2002. [Citations.]

The civil trial court concluded that each of the plaintiffs, particularly respondent, were deserving of the application of the unclean hands doctrine. The court described the plaintiffs' pattern of unclean hands conduct as "pervasive as well as endemic to the entire Fox Hollow project." Accordingly, the civil trial court found for the defendants on their unclean hands defense and found in favor of the defendants on each of the causes of action contained in the civil complaint.

Respondent, on behalf of "Plaintiffs," filed a timely notice of appeal. Defendants filed a timely cross-appeal. The appellate court ultimately upheld the findings of the trial court and affirmed the judgment. The appellate court's decision was filed on January 23, 2013.

Conclusions

Count One – § 6106 [Moral Turpitude – Scheme to Defraud]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The evidence before this court demonstrates that respondent engaged in a fraudulent real estate scheme involving the Fox Hollow complex, including but not limited to: (1) creating the false appearance of a homeowners association and individually saleable lots; (2) seeking and obtaining loans secured by portions of Fox Hollow based on false pretenses and misrepresentations; (3) skimming off loan proceeds, dues collected in the name of the FHOA, rental income, and tenant deposits; (4) filing bankruptcies and lawsuits to try and delay foreclosures and/or keep the lots; and (5) providing false testimony and misrepresentations to the civil courts to conceal and perpetuate the scheme to defraud. By engaging in the scheme to defraud, including perpetuation of the scheme through an alter ego, respondent committed acts involving moral turpitude, dishonesty, and corruption, in wilful violation of Business and Professions Code, section 6106.

Count Two – § 6106 [Moral Turpitude – Submission of Altered Trial Exhibit]

The NDC alleges that respondent knowingly, or through gross negligence, caused to be submitted in the civil matter an altered trial exhibit "'to create the impression that Plaintiffs had claimed they had a contract to purchase properties before GMAC and CEMG completed their sale.'" This allegation stems from respondent's civil trial testimony that he sent Katakis a copy of the GMAC settlement agreement before CEMG acquired lots 11 and 18 on June 25, 2002. Respondent attempted to bolster his testimony by referencing an undated fax, as the letter he sent Katakis. However, after respondent testified, Katakis introduced the actual fax he received with a date stamp of July 17, 2002. The trial court concluded that respondent, "was not only willing to alter a summons, but he was willing to alter evidence that he deleted the July 17, 2002 date stamp from the document he submitted to trial court. Upon cross examination, respondent refused to acknowledge that July 17, 2002, was the first time he sent the GMAC settlement agreement to Katakis."

Reviewing the appellate court decision, the findings on this issue are somewhat confusing. If respondent sent the fax to Katakis, he would presumably have the original, not a date-stamped copy. This is significant since it relates to the issue of whether or not respondent altered a trial exhibit.[14]

While fax machines typically produce a confirmation sheet, there is no indication that respondent submitted an altered confirmation sheet. In an effort to resolve these questions, this court attempted to locate copies of the two faxes (both the one produced by respondent and the other produced by Katakis) in the voluminous record. This court, however, was unable to readily locate this information, and was therefore unable to independently and adequately assess the civil

[14] Respondent's civil court trial testimony that he sent Katakis a copy of the GMAC settlement agreement before CEMG acquired lots 11 and 18 was clearly erroneous.

court's finding based on the more stringent standard of clear and convincing evidence. Accordingly, Count Two is dismissed with prejudice.

Count Three – § 6106 [Moral Turpitude – Misrepresentation]

In Count Three, the State Bar alleged that respondent committed various acts of misrepresentation constituting moral turpitude. However, this court already relied on these same facts to establish respondent's culpability in Count One. The appropriate resolution of this matter does not depend on how many rules of professional misconduct or statutes proscribe the same misconduct. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) Count Three is therefore dismissed with prejudice, as duplicative.

Count Four – § 6068, subd. (c) [Duty to Maintain Only Legal or Just Actions]

Section 6068, subdivision (c), provides that an attorney has a duty to counsel or maintain those proceedings, actions, or defenses only as appear to the attorney legal or just, except the defense of a person charged with a public offense. As noted above, while civil findings bear a strong presumption of validity if supported by substantial evidence, this court, nonetheless, must assess them independently under the more stringent standard of proof applicable to disciplinary proceedings. (*Maltaman v. State Bar*, *supra*, 43 Cal.3d 924, 947.)

Here, the appellate decision referenced a finding made in respondent's 1993 bankruptcy matter that he filed that matter in bad faith. This court presently lacks the evidence to adequately and independently assess the bankruptcy court's two-decade-old finding that respondent's bankruptcy filing was in bad faith. The only percipient testimony on this subject came from respondent, who indicated that he took steps to rectify the situation after consulting with a bankruptcy attorney who advised that respondent's actions were improper. Accordingly, Count Four is dismissed with prejudice.

Case No. 13-O-11618 – Court Orders & Sanctions

Facts

Respondent represented Leonard Madrid in *Madrid v. Bank of America*, Nevada County Superior Court, case no. 76124. In *Madrid v. Bank of America*, defendants filed a motion for sanctions against respondent. On October 28, 2011, the court filed a tentative ruling granting defendant's motion and ordering respondent to pay defendant's counsel, Charles Katz (Katz), $1,500 for violating a court order. In addition, the court issued an order after the hearing requiring respondent to appear at an Early Mandatory Settlement Conference on December 12, 2011.

Respondent did not appear on December 12, 2011, and the court ordered, on December 20, 2011, a hearing on the order to show cause (OSC) for respondent's failure to appear and failure to file a mandatory settlement agreement. The OSC was set for January 23, 2012. On January 23, 2012, respondent again failed to appear. The court found no good cause for respondent's failure to appear and to participate in case management. The court then assessed sanctions against respondent personally in the amount of $1,150 payable to Katz and an additional $250 payable to the court.

Respondent has not paid the sanctions of $1,150 to Katz, nor did respondent report the imposition of those sanctions to the State Bar. Respondent asserted that he has not paid the sanctions because Madrid has not paid his legal bills. As a consequence, respondent does not have the money to pay the sanctions.[15] Respondent admits that he did not report the imposition of sanctions because he was unaware of his responsibility to report such sanctions.

[15] There is no indication in the record that respondent has ever sought and obtained judicial relief based on his inability to pay a sanction order.

Respondent represented Maria Stein (Stein) in *Stein v. Bank of America*, United States District Court, Eastern District of California, case no. 2:10-cv-02827-GEB-EFB. In *Stein v. Bank of America,* the court issued, among others, the four following orders:

1. A November 15, 2012 order requiring respondent to file a joint pretrial statement and show cause why sanctions should not be imposed;

2. A November 21, 2012 order requiring respondent to file a joint pretrial statement and pay $200 to the clerk of the court;

3. A December 5, 2012 order requiring respondent to show cause why sanctions should not be imposed for failure to file a timely pretrial statement; and

4. A December 11, 2012 order striking plaintiffs pretrial statement and imposing monetary sanctions requiring respondent to pay $700 to the clerk of the court.

To date, respondent has not paid the $700 sanction to the court because, as respondent asserts, Stein has not paid him. As a consequence, respondent does not have the money to pay the court.

Respondent testified that he failed to appear at the hearings due to medical conditions. He asserted that beginning in 2008 he had four major skeletal surgeries and had to re-learn how to walk on various occasions. While respondent presented evidence of his medical history, including his four surgeries, his last two surgeries were on March 11, 2011, and September 27, 2011, well before the present misconduct. The note from the doctor as to the September 27, 2011 surgery states that respondent should not engage in work for ten days.

Respondent further argues that he filed notices of disability with the courts. Respondent produced copies of the alleged notices; however, they are unsigned and not file stamped. There is no credible evidence that respondent's alleged notices of disability were actually filed. Further, even if he did file notices of disability, his notices in view of the courts' rulings, were not accepted.

In addition, Daniel Durbin, an attorney for Katakis, gave reliable testimony in the present matter that during the period of August 2010 through June 2011, respondent filed 22 complaints, amended complaints, cross complaints, answers, or petitions; filed 44 disclosure motions or applications, notices of appeal or removal, and appellate briefs; opposed 25 motions or applications; made at least 27 court appearances; and conducted a 5-day jury trial. As proof of the 5-day jury trial, Durbin presented court records. On the other hand, respondent claims to have no memory of a jury trial in April 2011.

Conclusions

Count One – § 6103 [Failure to Obey a Court Order]

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. Clearly respondent disobeyed or violated an order of the court requiring respondent to do or forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear, in willful violation of section 6103, by failing to comply with the aforementioned court orders in *Madrid v. Bank of America*, Nevada County Superior Court, Case No. 76124.

Count Two – § 6068, subd. (o)(3) [Failure to Report Sanctions]

Section 6068, subdivision (o)(3), provides that within 30 days of knowledge, an attorney has a duty to report, in writing, to the State Bar the imposition of judicial sanctions against the attorney of $1,000 or more which are not imposed for failure to make discovery. Respondent willfully violated section 6068, subdivision (o)(3), by failing to report to the State Bar the $1,500 sanctions the court imposed on respondent on January 23, 2012, in connection with respondent's failure to appear and participate in *Madrid v. Bank of America*.

Count Three – § 6103 [Failure to Obey a Court Order]

Respondent disobeyed or violated an order of the court requiring respondent to do or forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear, in willful violation of section 6103, by failing to comply with the aforementioned court orders in *Stein v. Bank of America.*

Aggravation[16]

Prior Record of Discipline (Std. 1.5(a).)

Respondent has one prior record of discipline. (Std. 1.5(a).) Effective May 16, 2014, respondent was publicly reproved with conditions in State Bar Court case no. 12-O-17698. In that matter respondent stipulated to misconduct in a single client matter. Respondent's misconduct included providing loan modification services without issuing the legally mandated disclosure statement, accepting advanced loan modification fees, failing to perform legal services of value, and failing to promptly issue a refund. This misconduct primarily occurred between 2011 and 2012. In mitigation, respondent had no prior record of discipline and entered into a pre-filing stipulation. In aggravation, respondent committed multiple acts of misconduct and caused significant financial harm to his client.

As most of the present misconduct pre-dates the misconduct comprising respondent's prior discipline, the court assigns this factor reduced weight in aggravation. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)

Pattern of Misconduct (Std. 1.5(c).)

In the Fox Hollow matter, the trial and appellate courts concluded that respondent's and the other plaintiffs' conduct constituted a pattern of misconduct and deception. This court

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

agrees, noting that respondent's misconduct spanned from 1994 through the underlying civil trial. During this time respondent has consistently and repeatedly engaged in deceptive and improper conduct in an effort to procure personal financial gain. The length and extent of respondent's pattern of misconduct warrant significant weight in aggravation.

Indifference Toward Rectification/Atonement (Std. 1.5(g).)

Respondent's actions demonstrate his indifference toward rectification or atonement for the consequences of his misconduct. Despite overwhelming evidence to the contrary, respondent maintains he did nothing wrong and sees himself as the victim. Further, respondent has not taken any steps to rectify the harm he has caused. Consequently, respondent's indifference toward rectification or atonement for the consequences of his misconduct warrants significant consideration in aggravation.

Harm to Client/Public/Administration of Justice (Std. 1.5(f).)

Respondent's misconduct resulted in significant harm to Katakis and the administration of justice. Fighting and unwinding respondent's pattern of misconduct has cost Katakis over $1.3 million dollars in attorney's fees and has taken a toll on his emotional and physical wellbeing. Further, respondent's misconduct and stalling tactics have resulted in a waste of judicial resources. Consequently, respondent's significant harm to Katakis and the administration of justice warrants some consideration in aggravation.

Mitigation

Community Service

Among other community activities, respondent served as a pro-tem judge for the Stanislaus County Superior Court, Small Claims division from 2000 to 2013. His community service warrants some consideration in mitigation.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d. 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d. 1016, 1025; Std. 1.1.)

In determining the level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d. 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d. 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7 provides that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors.

In this case, the standards call for the imposition of a minimum sanction ranging from suspension to disbarment. (Standards 2. 7 and 2.8.) The most severe sanction is found at standard 2.7 which provides that disbarment or actual suspension is appropriate for an act of moral turpitude.

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 urges the court to disbar respondent from the legal profession. Respondent, on the other hand, argued for exoneration and dismissal.

Disbarment often has been imposed in those instances, such as here, where an attorney has engaged in a pattern of serious misconduct because "only the most serious instances of repeated misconduct over a prolonged period of time" are characterized as demonstrating such a pattern. (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1150, fn. 14; *Garlow v. State Bar* (1988) 44 Cal.3d 689, 711-712 [disbarment warranted where attorney's behavior of making false statements to the courts, failing to communicate with clients, failing to competently perform, failing to return client documents and property, and inducing others to testify falsely constituted a serious pattern of misconduct involving recurring types of wrongdoing]; *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 686-687 [disbarment recommended where attorney's 10-year pattern of neglecting client matters indicated a continuous course of professional misconduct].)

Respondent's numerous and repeated instances of deception and fraud relating to the Fox Hollow property demonstrate that he is unable or unwilling to conduct himself in a manner consistent with settled standards of professional responsibility in this state. Based on his testimony and demeanor, there is little indication that respondent has gained any insight and understanding regarding the present misconduct. "A most significant factor . . . is respondent's complete lack of insight, recognition, or remorse for any of his wrongdoing. To the present time, he accepts no responsibility for what happened and only seeks to blame others." (*In the Matter of Wyshak* (Review Dept. 1999) 4 Cal State Bar Ct. Rptr. 70, 83; accord, *Weber v. State Bar* (1988) 47 Cal.3d 492, 508 [despite absence of prior disciplinary record, disbarment appropriate where attorney committed serious misconduct, exhibited complete failure to appreciate gravity of

misconduct, expressed no remorse, denied all responsibility for any wrongdoing, and demonstrated continuing contempt for disciplinary proceedings].

While not directly on point, this court finds some guidance in *In re Aquino* (1989) 49 Cal.3d 1122, a conviction referral matter where an attorney engaged in a fraudulent scheme aimed at obtaining permanent resident status for citizens of the Philippines. Although he had no prior disciplinary record and provided evidence of good character, cooperation with the State Bar, and subsequent practice without further misconduct, the Supreme Court determined that the attorney's "pattern of serious misconduct in the course of his law practice warrants disbarment absent compelling mitigating circumstances." (*Id.* at p. 1133.) Finding no compelling mitigation, the Supreme Court adopted the Review Department's recommendation that Aquino be disbarred. Here, too, respondent's case is devoid of any compelling mitigation or indication of meaningful reform.

Therefore, after weighing the evidence, including the factors in aggravation and mitigation, the court finds no compelling reason to recommend a level of discipline short of disbarment. Additionally, the court finds that the interests of public protection mandate a recommendation of disbarment.

Recommendations

It is recommended that respondent Richard Carroll Sinclair, State Bar Number 68238, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

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.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective thirty (30) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: July 28, 2015

Pat McElroy
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on July 28, 2015, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

RICHARD CARROLL SINCLAIR
PO BOX 1628
OAKDALE, CA 95361

☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

☐ by overnight mail at , California, addressed as follows:

☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Esther J. Rogers, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 28, 2015.

George Hue
Case Administrator
State Bar Court