

**State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION**

ORIGINAL

Counsel For The State Bar Kim Kasreliovich Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1378 Bar # 261766	Case Number(s): 13-O-11222, 13-O-17377, 14-O-01962 (Inv.)	For Court use only FILED DEC 12 2014 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent Paul J. Virgo Century Law Group 5200 W Century Blvd Los Angeles, CA 90045 (310) 666-9701 Bar # 67900	PUBLIC MATTER	
In the Matter of: ART HOOMIRATANA Bar # 247253 A Member of the State Bar of California (Respondent)		
Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 5, 2006**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **15** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



(Do not write above this line.)

- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - ☒ Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - ☐ Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline**
 - (a) ☐ State Bar Court case # of prior case
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☒ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **For a further discussion of Indifference, see page 11.**
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **For a further discussion of Multiple Acts, see page 11.**
- (8) ☒ **Restitution:** Respondent failed to make restitution. **For a further discussion of Restitution, see page 11.**
- (9) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and reasonable.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

- (13) ☒ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Discipline:

- (1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of **one year**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:
- (b) ☒ The above-referenced suspension is stayed.

- (2) ☒ **Probation:**

Respondent must be placed on probation for a period of **one year**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

- (3) ☒ **Actual Suspension:**

- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **60 days**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of

information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☒ The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

☐ No MPRE recommended. Reason:

- (2) ☐ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) ☒ **Other Conditions: Fee Arbitration**

A. Respondent's Duty to Initiate and Participate in Fee Arbitration

Respondent must initiate fee arbitration with the State Bar of California's Mandatory Fee Arbitration Program within thirty (30) days from the effective date of this matter, including making any payment(s) and filing fees required to start the process. The fee arbitration will be for the \$9,000 in fees that Robert Bauarschi paid Respondent between October 4, 2012 and February 26, 2013. Respondent must not request more fees than have already been paid by, or on behalf of, Robert Bauarschi.

Respondent must provide the Office of Probation with a copy of the conformed filing within forty-five (45) days from the effective date of this matter. Respondent must immediately provide the Office of Probation with any information requested regarding the fee arbitration to verify Respondent's compliance.

Respondent must fully and promptly participate in the fee arbitration as directed by the State Bar Mandatory Fee Arbitration Program. Respondent will not be permitted to raise the statute of limitations as a defense to the fee arbitration. Respondent understands and agrees that the Office of Probation may contact the Mandatory Fee Arbitration Program for information.

Respondent must accept binding arbitration on the arbitration request form. If the arbitration proceeds as non-binding, however, Respondent must abide by the arbitration award and forego the right to file an action seeking a trial de novo in court to vacate the award.

B. Disputed Funds Must be Held in Trust by Respondent

Respondent must keep the disputed funds in a separate interest-bearing trust account (not an IOLTA). If Respondent has removed the disputed funds from trust, Respondent must open a separate interest-bearing trust account and deposit the disputed funds into such account within fifteen (15) days from the effective date of discipline. Respondent must provide evidence, e.g. a copy of Respondent's bank statement showing that the disputed funds have been placed in trust within thirty (30) days from the effective date of this matter, and a statement under penalty of perjury that the funds have remained in trust with each of Respondent's quarterly and final reports.

C. Respondent's Duty to Comply with the Arbitration Award

Within fifteen (15) days after issuance of any arbitration award or judgment or agreement reflected in a stipulated award issued pursuant to a fee arbitration matter, Respondent must provide a copy of said award, judgment or stipulated award to the Office of Probation.

Respondent must abide by any award, judgment or stipulated award of any such fee arbitrator and agrees to provide proof thereof to the Office of Probation within thirty (30) days after compliance

with any such award, judgment or stipulated award. If the award, judgment or stipulated award does not set forth a deadline for any payment, Respondent is to make full payment within thirty (30) days of the issuance of any such award, judgment or stipulated award. Respondent must provide proof thereof to the Office of Probation within thirty (30) days after payment.

To the extent that Respondent has paid any fee arbitration award, judgment or stipulated award prior to the effective date of this matter, Respondent will be given credit for such payment(s) provided satisfactory proof of such payment(s) is or has been provided to the Office of Probation.

D. Fee Arbitration Conditions can be Satisfied by Respondent's Full Payment to [Person's Name(s)]

The Fee Arbitration Conditions can also be satisfied by Respondent's full payment of \$9,000 in fees that Robert Bauarschi paid Respondent between October 4, 2012 and February 26, 2013, plus interest of 10% per annum from March 22, 2013, within thirty (30) days from the effective date of this matter. Satisfactory proof of payment must be received by the Office of Probation within forty-five (45) days from the effective date of this matter.

If the Client Security Fund ("CSF") has reimbursed Robert Bauarschi for all or any portion of the principal amount(s), Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs. To the extent the CSF has paid only principal amounts, Respondent will still be liable for interest payments to Robert Bauarschi. Any restitution to the CSF is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d). Respondent must pay all restitution to Robert Bauarschi before making payment to CSF. Satisfactory proof of payment(s) to CSF must be received by the Office of Probation within thirty (30) days of any payment.

E. Effect of Respondent's Failure to Comply with Fee Arbitration Conditions

Respondent understands that failure to strictly comply with these conditions regarding fee arbitration may result in this Court imposing additional discipline (with attendant costs) and conditions upon Respondent, including ordering Respondent to pay back the full amount of \$9,000 paid to Respondent by Robert Bauarschi plus 10% interest from March 22, 2013.

(Do not write above this line.)

In the Matter of: ART HOOMIRATANA	Case Number(s): 13-O-11222, 13-O-17377, 14-O-01962 (Inv.)
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Financial Conditions

a. Restitution

- ☒ Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Eddie Estavillo	\$7,500	July 12, 2012

- ☒ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than **one year from the effective date of the stipulation in this matter.**

b. Installment Restitution Payments

- ☐ Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- ☐ If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

- ☐ 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. **Client Trust Accounting School**

- ☐ Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ART HOOMIRATANA

CASE NUMBERS: 13-O-11222, 13-O-17377, 14-O-01962

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 13-O-11222 (Complainant: Eddie Estavillo)

FACTS:

1. On December 9, 2011, Eddie Estavillo ("Estavillo") employed Respondent to represent him in litigation against his California residential mortgage lender, Bank of America, and obtain a loan modification.
2. On January 4, 2012, Respondent's office faxed Bank of America an Authorization to Represent and to Release Loan Information on behalf of Estavillo.
3. Between January 15, 2012 and July 15, 2012, Estavillo paid Respondent \$15,000 in advanced attorney's fees.
4. On July 9, 2012, Respondent signed the HAMP loan modification application as Estavillo's attorney. On July 13, 2012, Respondent submitted a loan modification package to Bank of America on behalf of Estavillo. On July 25, 2012, Respondent e-mailed Estavillo and informed him that on July 13, 2012, Respondent's office received requested documents from Estavillo and faxed the documents to Estavillo's lender.
5. In October 2012, Estavillo received a loan modification offer from his lender which he accepted. Respondent never filed a lawsuit against Estavillo's lender on behalf of Estavillo.
6. On December 19, 2012, Estavillo sent an e-mail to Respondent and requested an itemization of costs and a refund. Respondent never provided Estavillo with a refund or an accounting.
7. On February 25, 2013, Estavillo filed a complaint with the State Bar of California regarding Respondent's conduct in his matter.
8. In December 2013, Respondent began making payments to Estavillo to refund the illegal fee. To date, Respondent has refunded \$7,500 to Estavillo.

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CONCLUSIONS OF LAW:

9. By collecting \$15,000 in attorney fees from Estavillo before Respondent had fully performed each and every service Respondent had been contracted to perform or represented to Estavillo that Respondent would perform, Respondent violated Civil Code section 2944.7, in wilful violation of Business and Professions Code section 6106.3.

Case No. 13-O-17377 (Complainant: Bauarschi)

FACTS:

10. On October 7, 2012, Robert Bauarschi ("Bauarschi") hired Respondent to represent him in civil litigation, specifically, filing a lawsuit against Bauarschi's lender, OCWEN. Between October 4, 2012 and February 26, 2013, Bauarschi paid Respondent in six installments totaling \$9,000.

11. On October 9, 2012, Respondent filed a lawsuit against OCWEN and Lis Pendens on behalf of Bauarschi. On November 19, 2012, OCWEN filed a motion to expunge the lis pendens and a demurrer to complaint. On December 24, 2012, Respondent filed oppositions to both the motion to expunge and the demurrer. A reply to Respondent's opposition was filed on December 28, 2012. On January 7, 2013, the court sustained OCWEN's demurrer with leave to amend within 20 days.

12. On January 15, 2013, Respondent filed a First Amended Complaint. On February 14, 2013, a demurrer was filed to the amended complaint. On March 12, 2013, Respondent filed an Opposition to the Demurrer.

13. On March 22, 2013, Bauarschi e-mailed Respondent and terminated his services. On October 18, 2013 and November 4, 2013, Bauarschi wrote letters to Respondent and requested a full refund of the \$9,000 in advance fees that Bauarschi paid Respondent. Respondent received the letters.

14. On July 17, 2014, Respondent provided an accounting to the State Bar for his work in the Bauarschi matter. There remains a dispute between Respondent and Bauarschi about whether Respondent earned his fees.

15. Respondent failed to provide Bauarschi with a timely accounting of his services upon termination of the attorney-client relationship.

CONCLUSIONS OF LAW:

16. By failing to account for the sum of \$9,000 Respondent received as advanced fees for legal services to be performed after Bauarschi terminated Respondent on March 22, 2013, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, in willful violation of the Rules of Professional Conduct, rule 4-100(B)(3).

Case No. 14-O-01962 (Complainant: Joseph Schiro)

FACTS:

17. On September 10, 2013, Joe Schiro ("Schiro") employed Respondent to represent him in filing a lawsuit against his mortgage lender, Nationstar Mortgage ("Nationstar"). Schiro paid

Respondent \$1,500 for the representation. The fee agreement states that Respondent is being retained to file a civil lawsuit against Nationstar.

18. Between September 10, 2013 and March 6, 2014, Respondent did not perform any work on Schiro's case.

19. On March 6, 2014, Schiro sent an e-mail to Brett Patton, an employee of Respondent's office, informing him that if the lawsuit was not filed within seven days Schiro would file a complaint with the State Bar of California. On March 17, 2014, Schiro sent an e-mail to Respondent indicating that Respondent had failed to honor his contractual obligation to represent Schiro in a matter against his lender. Schiro demanded Respondent refund the \$1,500 Schiro paid him.

20. In his reply, Respondent agreed to the refund or alternatively, offered to keep working for Schiro and file the lawsuit. On April 21, 2014, Schiro reiterated his desire to terminate Respondent's services and receive a full refund.

21. Respondent failed to file anything on Schiro's behalf. Respondent did not provide a refund until June 19, 2014, after Schiro complained to the State Bar.

CONCLUSIONS OF LAW:

22. By failing to file a lawsuit against Schiro's mortgage lender, Nationstar Mortgage, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

23. By failing to refund the \$1,500 in advanced fees that Schiro paid to Respondent until after Schiro complained to the State Bar, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, willful violation of the Rules of Professional Conduct, rule 3-700(D)(2).

AGGRAVATING CIRCUMSTANCES.

Indifference (Std. 1.5(g)): Respondent in this matter appears to act only in direct proportion to the pressure put on him by the State Bar. Respondent has not completed restitution to Estavillo, only completed restitution to Schiro only after the State Bar became involved and has failed to provide any of the necessary accountings.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent engaged in four separate acts of misconduct which constitutes multiple acts.

Additional Aggravation:

Failure to Make Restitution (Std. 1.5(i)): Respondent has paid Estavillo a significant portion of what he owes Estavillo but only at the behest of the discipline system; \$7,500 is still outstanding.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across

cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, Respondent admits to committing four acts of professional misconduct. Standard 1.7(a) requires that where a Respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

The most severe sanction applicable to Respondent’s misconduct is found in Standard 2.14, which applies to Respondent’s violation of section 6106.3 of the Business and Professions Code for charging and collecting a fee for services related to a loan modification prior to performing each and every service contracted to perform. Standard 2.14 provides that disbarment or actual suspension is appropriate for any violation of a provision of Article 6 of the Business and Professions Code, not otherwise specified in the Standards.

In the case at hand, Respondent collected \$15,000 from Estavillo prior to completing work on Estavillo’s loan modification. Ultimately, Respondent did secure a loan modification for Estavillo and Estavillo accepted the loan modification. However, Estavillo was charged an illegal fee which Respondent has only partially repaid.

The second act of misconduct is Respondent’s failure to provide an accounting to Bauarschi. Like in the Estavillo matter, Respondent performed work in the Bauarschi matter but failed to account to the client upon termination. Bauarschi clearly terminated his relationship with Respondent and requested a refund. Therefore, it was incumbent upon Respondent to provide, at a minimum, an accounting. To date, Respondent has failed to do so.

Finally, Respondent failed to perform and timely refund fees in the Schiro matter. Unlike the other client matters (Estavillo and Bauarschi), Respondent did not perform any services for Schiro

despite Schiro's repeated demands for performance from Respondent until he finally terminated the relationship. After termination, it took a State Bar complaint to convince Respondent to refund the fees.

In aggravation, Respondent engaged in multiple acts, has failed to complete restitution, and has demonstrated indifference. There are no mitigating factors present. Given the number of client matters and acts of misconduct which occurred in this case, a 60 day actual suspension is appropriate.

Case law also supports this level of discipline. In *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, the Supreme Court imposed a six-month stayed suspension on an attorney who had practiced law for approximately five and one-half years before committing misconduct that spanned one year and involved a single act of failing to perform in a marital dissolution matter. The Court noted that Van Sloten failed to take the necessary steps to either complete the work or to exit the case. In the present case, Respondent was also only in practice a short time but has committed misconduct in addition to his failure to perform. In light of the increased number of client matters and further aggravation present in this case, a higher level of discipline is appropriate.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of October 29, 2014, the prosecution costs in this matter are \$5,407. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of:
ART HOOMIRATANA

Case number(s):
13-O-11222, 13-O-17377, 14-O-01962 (Inv.)

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

11-17-14
Date

Art Hoomiratana
Respondent's Signature

Art Hoomiratana
Print Name

11/20/2014
Date

Paul J. Virgo
Respondent's Counsel Signature

Paul J. Virgo
Print Name

11-24-2014
Date

Kim Kasreliovich
Deputy Trial Counsel's Signature

Kim Kasreliovich
Print Name

(Do not write above this line.)

In the Matter of: ART HOOMIRATANA	Case Number(s): 13-O-11222, 13-O-17377, 14-O-01962 (Inv.)
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ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☒ All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

12-11-14
Date


GEORGE E. SCOTT, JUDGE PRO TEM
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 Los Angeles, on December 12, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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

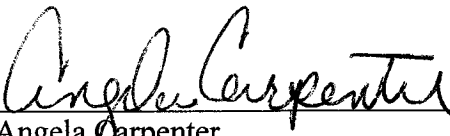
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

PAUL JEAN VIRGO
9909 TOPANGA BLVD # 282
CHATSWORTH, CA 91311

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

KIMBERLY KASRELIOVICH, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 12, 2014.



Angela Carpenter
Case Administrator
State Bar Court