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In propria persona

FILED

SEP 10 2014

STATE BAR COURT CLERK'S OFFICE
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In the Matter of

ROBERT H. SACK
No. 165033,
Respondent,

A Member of the State Bar

Case No. 13-O-14697

RESPONSE TO FIRST AMENDED NOTICE OF DISCIPLINARY CHARGES

For each and every count, Respondent denies each and every allegation that it involved moral turpitude, dishonesty, or corruption, or engaged in such willful conduct.

1. RESPONSE TO COUNT ONE:

This allegation is denied. The OCTC claims that Respondent fraudulently collected mortgage assistance benefits from California Keep Your Home ("KYH"), a home mortgage assistance program. Respondent filed a financial declaration with the court voluntarily providing information that his house payments were made with government assistance. KYH was notified that Respondent became employed. Respondent's spouse filed for Employment Development Department ("EDD") benefits and was eventually approved. KYH requested that Respondent provide them with his spouse's award letter, which was eventually provided.

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Evidence and testimony will show that KYH has a policy, procedure and protocol where they are to routinely communicate with EDD to confirm eligibility of continued benefits with EDD for most or all homeowners that obtain mortgage assistance with KYH.

KYH was notified that Respondent went back to work and they were notified of his spouse's EDD status. KYH failed in their policies and procedures to recognize Respondent's employment status or his spouse's EDD status and should have had Respondent's spouse apply for mortgage assistance benefits.

Evidence will show that KYH further failed to follow their own policies, procedures, and protocols to communicate with EDD to confirm each month before benefit payments were sent to Respondent's mortgage lender, Wells Fargo, whether Respondent was still on EDD benefits.

KYH also violated or failed to adhere to their own policies, procedures, and protocols to verify with EDD that Respondent's benefits stopped with EDD in October 2012.

Respondent was employed by new attorneys in September 2012, and collected EDD benefits from on or about August 1, 2012, to about mid-October 2012. Respondent never kept his employment status or collection of EDD benefits a secret to anyone, particularly this Honorable court. On or about October 15, 2012, Respondent voluntarily telephoned EDD to inform them that it was believed Respondent was making too much income to qualify for further EDD benefits. On or about October 18, 2012, EDD sent Respondent a letter that his benefits were being stopped. KYH was notified that Respondent was working and collecting benefits at the same time. If certain protocols were followed by KYH, they would have also known that EDD stopped paying

Respondent benefits, and that he would no longer qualify for KYH mortgage assistance benefits, but his spouse would qualify.

KYH continued to pay benefits to Respondent through about July or August 2013, knowing that Respondent was not entitled to UMA benefits with KYH. This is evidence of KYH's own breach of their own policies, procedures, and protocols.

In early May 2013, The OCTC served KYH with a subpoena for all documents related to Respondent's mortgage assistance with KYH, thus alerting KYH that Respondent was allegedly fraudulently collecting mortgage assistance benefits. Evidence will show that KYH put Respondent's account on high alert, red-flagged the account, and set the file for Compliance Review. This alerted KYH that they should have made sure that Respondent was eligible for continued mortgage assistance benefits. Evidence will show that KYH again violated their own policies, procedures, and protocols and did nothing.

In late May 2013, KYH was served with a second subpoena from the OCTC, where KYH put Respondent's account again on high alert, red-flagged the account, and set the file for Compliance Review. It is reasonable to assume that having the account in red-flag status, in "high alert" and in compliance review based on multiple INVESTIGATIVE subpoenas from the California State Bar about an individual homeowner that is allegedly fraudulently receiving benefits from KYH, that KYH would confirm eligibility of continued benefits. Yet, evidence will show that KYH conducted no investigation, never contacted Respondent or his spouse, or EDD, and basically did nothing.

KYH failed in their own policies, procedures, and protocols. At both compliance reviews and red-flag status, KYH never conducted any investigation or discovery to determine if EDD benefits were still being paid. They never contacted Respondent to determine his current status. They did absolutely nothing. There is no known investigation being conducted by KYH nor is there any known claim of fraud by KYH.

KYH ignored Respondent's EDD status or that he was back to work and failed to convert the benefits to his spouse. For four months after KYH was served with multiple subpoenas knowing the case was red-flagged and after they were put on notice of a claimed alleged potential fraud by the state bar (early May 2013) after Respondent's file was in red-flag and compliance review status, KYH continued to pay benefits for another four months, again failing in their own policies, procedures, and protocols.

Evidence will show KYH knew of information as early as September 2012 of Respondent's status, that they eventually had the spouse's EDD approval and failed to convert the benefits into the spouse's name. They also knew that Respondent was no longer collecting EDD benefits.

On this count, the court should conclude that there is evidence that there is a dispute of what was said and done (or not done), but there is no dispute as to the major failures in policies, procedures, and protocols by KYH that demonstrate Respondent's conduct was not done with moral turpitude to such a degree that warrants disbarment or any discipline. KYH was informed Respondent was back to work, they were provided with his spouse's EDD award letter that in May 2013, despite a lack of any investigation or making any due diligent effort to contact EDD, KYH failed on many levels. Respondent's conduct in no way rises to a level of disbarment or disciplinary action. Finally, there would be absolutely no need to hide Respondent's employment status or refuse/fail to provide KYH with his spouse's EDD

award letter since the spouse would have qualified for UMA benefits just as Respondent did. KYH knew Respondent's spouse was going to get EDD benefits and based on that requested a copy of her EDD award letter. There would be no reason to keep that a secret.

2. RESPONSE TO COUNT TWO:

This allegation is denied. The original NDC indicated one allegedly false financial declaration with a phantom June 30, 2013 date. After repeated good faith efforts to obtain the allegedly false information Respondent was to have stated in an alleged June 30, 2013, financial declaration, the OCTC instead filed a First Amended NDC indicating other allegedly false financial declarations.

The claim by the OCTC is that Respondent provided the court with false information to the extent it rose to the level of moral turpitude, dishonesty to the court, or with such an evil and corrupt state of mind with the intent to deceive the court, that the conduct warrants disbarment.

Respondent was employed in early September 2012, by two attorneys. One of the supervising attorneys was Michael T. Lyons, who conducted all the bookkeeping, payroll, accounting, handling of money, and dealt with all receivables and payables. During the time Respondent worked for the attorneys Respondent did not deal with any of the above nor have any control. For less than a year, Respondent was paid as a 1099 employee. In very early 2013, there were serious discussions to convert to a W2 Employee. During the time of the 1099, Respondent's father, a 50-year CPA veteran and former IRS Agent, suggested that the employer should pay some of that compensation of Respondent's 1099 tax liability, which was about 7.9%. It is Respondent's father who came up with the 7.9% amount.

Respondent did not mean to say that his checks were shorted, rather it was the amount of the 7.9% tax liability reimbursement by the employer to Respondent that was meant, which at the time was $237. It was the amount of that tax liability (7.9%) that Respondent meant that he would have to pay to the IRS and/or state. Each month the employer would pay the Respondent money of an amount totaling 7.9% of each pay period, which would have been Respondent's tax liability. Respondent could have been clearer, but either way the 7.9% was meant as that being a tax liability to Respondent, and that is what was meant in each of the three declarations at #5, sub (b) (1). Each of the 3 financial declarations claim this 7.9% but was meant as a tax liability and not that as a W2 deduction.

If the court takes the OCTC's position literally, then Respondent is self-employed as a 1099 employee. If that were the case, then in each of the 3 allegedly false declarations (April 10, 2013, April 27, 2013, and June 5, 2013, at #5, sub (d), Respondent would most certainly have included the following in the financial declaration:

1. Federal income tax at 1.5%, which was not indicated in the declarations;
2. Social security/medical at about 7.65%; and
3. State disability at 1%, which is not indicated in the declarations.
4. As a disclaimer and for clarification purposes, items 1-3 above are believed to be the W2 deductions but are subject to change or clarification. The figures may not be a perfect exact amount and should not be construed as providing the court with false information or information committed with moral turpitude.

There was no indication of W2 wage deductions in any of the three financial declarations at #5, sub (d) W2 deductions.

In each of the 3 financial declarations Respondent never represented that he was a W2 employee. There was also no request by the OCTC or the Hearing Department for further clarification on the allegedly false text.

Clearly, there was bad accounting going on by the attorney Michael T. Lyons, but that does mean there was bad conduct on the part of Respondent.

To have provided the three declarations to the court as the OCTC claims, would have to mean that the court believes that Respondent provided such information with such dishonesty and corruption to a degree that the conduct was with such bad behavior that gravely violated accepted moral standards, and that the conduct being dishonest is relevant to fitness of Respondent to practice law. The information provided in each of the three declarations, according to the OCTC is analogous to engaging in a covert, deceitful act made with the intent to deceive the court.

The legislative intent on moral turpitude with regards to disciplinary proceedings is "any crime or misconduct reflecting dishonesty, particularly when committed in course of practice, is clearly relevant to fitness of attorney to continue to practice law, and thus is conduct involving "moral turpitude" for purposes of State Bar disciplinary proceedings." To hold that the information in the three declarations constitutes moral turpitude (which includes fraud) is to characterize Respondent as unsuitable to practice law.

On this count, the court should conclude that the context of each of the three declarations, were not provided with moral turpitude to such a degree that warrants disbarment or any discipline. Looking back Respondent should have provided a better or clearer explanation, but it was not provided to trick or deceive the court nor was the information provided with dishonesty or a

corrupt mind. There should have been a better clarification on the 7.9% and $237 dollar amount, but evidence will show the figures were to indicate a tax liability by Respondent rather than there being W2 deductions. There was no intent to deceive the court. A poor explanation, but certainly not moral turpitude.

DATED: September 8, 2014

BY: _____
ROBERT H. SACK, Respondent

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STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

I am a resident in the county of San Luis Obispo, State of California. I am over the age of eighteen years and not a party to the within action. My resident/business address is 1635 13th Street, Los Osos, California 93402

On September 8, 2014, I caused to be served the foregoing document described as:

RESPONSE TO FIRST AMENDED NOTICE OF DISCIPLINARY CHARGES

On the interested parties or their attorneys in this action:

XX by placing a true copy thereof in sealed envelopes addressed via United States

OFFICE OF CHIEF TRIAL COUNSEL
THE STATE BAR OF CALIFORNIA
845 S. Figueroa St.
LOS ANGELES, CA 90017-2515

Executed on September 8, 2014 at Los Osos, California, but mailed from ~~San Simeon~~ Cambria, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct in this proof of service.

Tammy Saek, Declarant