

PUBLIC MATTER

1 STATE BAR OF CALIFORNIA
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FILED

JUL 07 2014

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of:

VITO TORCHIA, Jr.,
No. 244687,

A Member of the State Bar.

Case Nos. 13-O-14835 and 13-O-15422

NOTICE OF DISCIPLINARY CHARGES

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NOTICE - FAILURE TO RESPOND!

IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:

- (1) YOUR DEFAULT WILL BE ENTERED;**
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;**
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE, AND;**
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE. SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN ORDER RECOMMENDING YOUR DISBARMENT WITHOUT FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ., RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

1 The State Bar of California alleges:

2 JURISDICTION

3 1. Vito Torchia, Jr. ("Respondent") was admitted to the practice of law in the State of
4 California on December 1, 2006, was a member at all times pertinent to these charges, and is
5 currently a member of the State Bar of California.

6 GENERAL BACKGROUND

7 2. Brookstone Law is and was at all times herein, a professional law corporation
8 established and owned by Respondent, wherein Respondent performs the duties and
9 responsibilities of managing attorney for the operation. Brookstone and Respondent are one and
10 the same for purposes of the following charging allegations.

11 COUNT ONE

12 Case No. 13-O-14835
13 Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

14 3. On or about April 27, 2012, Gerardo Guadarrama ("Guadarrama") employed
15 Respondent to participate within a mass joinder litigation against his lender, which Respondent
16 intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of
17 Rules of Professional Conduct, rule 3-110(A), by failing at any time between on or about May
18 18, 2012 and January 23, 2013 to add Guadarrama as a plaintiff to the mass joinder litigation or
19 providing any other legal service of value on behalf of Guadarrama.

20 COUNT TWO

21 Case No. 13-O-14835
22 Business and Professions Code, section 6068(m)
[Failure to Inform Client of Significant Development]

23 4. Respondent failed to keep Respondent's client, Gerardo Guadarrama, reasonably
24 informed of significant developments in a matter in which Respondent had agreed to provide
25 legal services, in willful violation of Business and Professions Code, section 6068(m), by failing
26 to inform the client that he had failed to add the client to the mass joinder litigation prior to the
27 action being dismissed and failed to advise the client of the dismissal.

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COUNT THREE

Case No. 13-O-14835
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

5. Between on or about April 27, 2012 and April 19, 2013, Respondent received total advanced fees and costs of \$5,750 from a client, Gerardo Guadarrama, to perform legal services, namely, to add the client as a plaintiff to the mass joinder litigation against the client's lender. Respondent performed no services of value on behalf of the client and therefore earned none of the advanced fees paid. Respondent failed to refund promptly, upon Respondent's termination of employment on or about September 5, 2013, any part of the \$5,750 fee, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

COUNT FOUR

Case No. 13-O-14835
Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar Investigation]

6. Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent by failing to provide a substantive response to the State Bar's letters of September 5, 2013, September 23, 2013, which Respondent received, that requested Respondent's response to the allegations of misconduct being investigated in case no. 13-O-14835, in willful violation of Business and Professions Code, section 6068(i).

COUNT FIVE

Case No. 13-O-15422
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

7. On or about March 6, 2013, Arturo and Rochelle Calderon ("Calderon") employed Respondent to pursue the restoration of trial loan modification terms with their lender, which Respondent thereafter intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A), by actions and inactions including the following:

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- a. failing to work with Calderon's lender to restore the trial loan modification terms Calderon requested;
- b. convincing Calderon to participate within mass joinder litigation as a plaintiff in order to secure the restoration of his loan modification trial terms; and
- c. failing to add Calderon to the mass joinder litigation until after he had made his State Bar complaint.

COUNT SIX

Case No. 13-O-15422
Business and Professions Code, section 6068(m)
[Failure to Inform Client of Significant Development]

8. Respondent failed to keep Respondent's clients, Arturo and Rochelle Calderon ("Calderon") reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m), by failing to inform the client of the following:

- a. failing to advise Calderon that he was not added as a plaintiff to the mass joinder litigation and that the mass joinder litigation had been dismissed; and
- b. failing to advise Calderon that nothing had been done with Calderon's lender to restore of the loan modification trial terms.

COUNT SEVEN

Case No. 13-O-15422
Business and Professions Code, section 6106.3
[Violation of Civil Code section 2944.7(a)(1)-Illegal Advanced Fee]

9. On or about March 28, 2013, Respondent agreed to negotiate a home mortgage loan modification for a fee for his clients, Arturo and Rochelle Calderon, and thereafter on or about between March 16, 2013 through July 30, 2013, charged and received \$6,895 from the client before Respondent had fully performed each and every service Respondent contracted to perform or represented to the clients that Respondent would perform, in violation of Civil Code, section 2944.7, and in willful violation of Business and Professions Code, section 6106.3.

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COUNT EIGHT

Case No. 13-O-15422
Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar Investigation]

10. Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent by failing to provide a substantive response to the State Bar's letters of October 16, and October 31, 2013, which Respondent received, that requested Respondent's response to the allegations of misconduct being investigated in case no. 13-O-15422, in willful violation of Business and Professions Code, section 6068(i).

COUNT NINE

Case No. 13-O-15422
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

11. On or about between March 16, 2013, and July 30, 2013, Respondent received total advanced fees of \$6,895 from a client, Arturo and Rochelle Calderon, to perform legal services, namely, to attempt to negotiate a home mortgage loan modification for a fee for his clients and to add the client as a plaintiff to the mass joinder litigation against the client's lender. Respondent performed no services of value on behalf of the client and therefore earned none of the advanced fees paid. Respondent failed to refund promptly, upon Respondent's termination of employment on or about September 5, 2013, any part of the \$5,750 fee, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

NOTICE - INACTIVE ENROLLMENT!

YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT.

NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS

1 **INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING**
2 **AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND**
3 **PROFESSIONS CODE SECTION 6086.10.**

4 Respectfully submitted,

5 THE STATE BAR OF CALIFORNIA
6 OFFICE OF THE CHIEF TRIAL COUNSEL

7
8 DATED: July 7 '14

9 By: Hugh G. Radigan
10 Hugh G. Radigan
11 Deputy Trial Counsel

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DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 13-O-14835; 13-O-15422

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

- By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))
By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))
By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))
By Fax Transmission: (CCP §§ 1013(e) and 1013(f))
By Electronic Service: (CCP § 1010.6)

- (for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)
(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 71969008911110069392 at Los Angeles, addressed to: (see below)
(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: addressed to: (see below)

Table with 4 columns: Person Served, Business-Residential Address, Fax Number, Courtesy Copy to: and a sub-row for Electronic Address.

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS').

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: July 7, 2014

SIGNED:

Handwritten signature of Juli Finnila

JULI FINNILA
Declarant