

FILED MAY 1, 2013

**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT – LOS ANGELES**

In the Matter of	)	Case No.: <b>13-TE-11511-DFM</b>
	)	
<b>GENE WOOK CHOE,</b>	)	
	)	<b>DECISION AND ORDER OF INVOLUNTARY</b>
<b>Member No. 187704,</b>	)	<b>INACTIVE ENROLLMENT (Bus. &amp; Prof. Code,</b>
	)	<b>§ 6007, subd. (c)(1).)</b>
<u>A Member of the State Bar.</u>	)	

**Introduction**

This matter is before the court on the verified application of the Office of the Chief Trial Counsel of the State Bar of California (State Bar) to involuntarily enroll Respondent **GENE WOOK CHOE**<sup>1</sup> (Respondent) as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (c)(1).<sup>2</sup> Section 6007, subdivision (c)(1), authorizes the State Bar Court “to order the involuntary inactive enrollment of an attorney upon a finding that the attorney’s conduct poses a substantial threat of harm to the interests of the attorney’s clients or to the public . . . .” (See Rules Proc. of State Bar, rule 5.225 et seq.)

---

<sup>1</sup> Respondent was admitted to the practice of law in California on March 18, 1997, and has been a member of the State Bar of California since that time. Respondent does not have a prior record of discipline.

<sup>2</sup> Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

For the reasons set forth *post*, the court finds that the State Bar has established, by clear and convincing evidence, that Respondent's conduct poses a substantial threat of harm to the interests of his clients and the public. Accordingly, the court will order that Respondent be involuntarily enrolled as inactive member of the State Bar of California under section 6007, subdivision (c)(1).<sup>3</sup>

The Office of the Chief Trial Counsel was represented by Senior Trial Counsel Rizamari C. Sitton. Respondent was represented by Attorney Hanjin Jim Park.

### **Procedural History**

On March 22, 2013, the State Bar initiated this expedited proceeding by filing a verified application for involuntarily inactive enrollment against Respondent (application). The application has 18 supporting declarations attached to it.

The State Bar did not serve the application on Respondent by certified mail addressed to Respondent's address as shown on the membership records of the State Bar of California as required under Rules of Procedure of the State Bar, rules 5.226(E)(2) and 5.25(B). Instead, the State Bar served the application on Respondent's attorney in a different proceeding. Respondent did not move to dismiss the application for want of proper service, but instead filed an opposition to the application on the merits on April 4, 2013. Accordingly, the defect in service is waived. (Cf. Rules Proc. of State Bar, rule 5.124(B).)

---

<sup>3</sup> In his April 10, 2013, supplemental opposition to the application, Respondent contends that, in lieu of involuntarily enrolling him inactive, the court should impose interim remedies (§ 6007, subd. (h); Rules Proc. of State Bar, rule 5.231(C)) on him and his practice of law. The court, however, concludes that interim remedies are inadequate under the facts of this case, including (but not limited to) Respondent's lack of basic honesty in communicating with his clients (see discussion, *post*, of notices Respondent sent to hundreds of his clients stating that he would no longer be representing them because he was closing the foreclosure litigation department in his law offices when the real reason he would no longer be representing them was that he sold the law office at which the clients' cases were being handled) and Respondent's erroneous assertions (1) that he fully complies with the law proscribing advanced fees in home-mortgage-loan-modification matters and (2) that he need not refund an unearned fee if he designates the fee as nonrefundable in his fee agreements.

Attached to Respondent's opposition are five supporting declarations (one from Respondent and four from current employees of Respondent). In further opposition to the application, Respondent filed declarations from 22 of his current and former clients as well as numerous written evidentiary objections to the application and its 18 supporting declarations. In addition, Respondent filed declarations to counter each of the 18 declarations supporting the application. Thereafter, on April 10, 2013, Respondent filed a supplemental opposition to the application, which contains additional evidentiary objections.

On April 11, 2013, the State Bar filed a pleading designated as "State Bar's Additional Proposed Evidence in Support of Its Application for Involuntary Inactive Enrollment" (State Bar's April 11, 2013, additional evidence). On April 12, 2013, the State Bar filed its "First Set of Objections to and Motions to Strike Respondent's Proposed Evidence." And, on April 15, 2013, the State Bar filed yet a "Second Set of Objections to and Motions to Strike Respondent's Proposed Evidence."

On April 15, 2013, Respondent filed evidentiary objections and his reply to the State Bar's April 11, 2013, additional evidence.

The court held a hearing on the application on April 16 and 17, 2013. At that hearing, the court ruled on whether the declarations that the State Bar filed and served with the application and that Respondent filed and served with his opposition to the application were admissible as evidence. The court also ruled on each party's objections and motions to strike material in the opposing party's declarations. The court took the application under submission for decision at the end of the hearing on April 17, 2013.

#### **Requirements for Involuntary Inactive Enrollment**

As noted *ante*, under section 6007, subdivision (c)(1), the State Bar Court is authorized to "order the involuntary inactive enrollment of an attorney upon a finding that the attorney's

conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public . . . .” In order to make such an ultimate finding, the court must find each of the following:

- A. The attorney has caused or is causing substantial harm to the attorney's clients or the public.
- B. The attorney's clients or the public are likely to suffer greater injury from the denial of the involuntary inactive enrollment than the attorney is likely to suffer if it is granted, *or* there is a reasonable likelihood that the harm will reoccur or continue. Where the evidence establishes a pattern of behavior, including acts likely to cause substantial harm, the burden of proof shall shift to the attorney to show that there is no reasonable likelihood that the harm will reoccur or continue.
- C. There is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter.

(§ 6007, subd. (c)(2), italics added.)

Moreover, the State Bar bears the burden of establishing each of these three factors with clear and convincing evidence. (*Conway v. State Bar* (1989) 47 Cal.3d 1107, 1126; *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658, 661.)

Without question, hearsay is admissible to establish the foregoing three factors provided the hearsay possesses “sufficient indicia of reliability that a reasonable person would deem the [hearsay] trustworthy.” (*Conway v. State Bar, supra*, 47 Cal.3d at p. 1118.) Nonetheless, declarations made on *information and belief* are generally insufficient as evidence. (See Rules Proc. of State Bar, rule 5.230(A).) Furthermore, statements in a declaration amounting to conclusions of law are not evidence even in the absence of an objection. (*Ibid.*)

“The application must state with particularity facts showing that the member's conduct poses a substantial threat of harm to the member's clients or to the public as required under Business and Professions Code § 6007(c)(2)(A)-(C). It should be supported by declarations, transcripts, or requests for judicial notice.” (Rules Proc. of State Bar, rule 5.226(B).)

### **The Application**

The application in the present matter purports to be based on (1) Respondent's alleged misconduct in the seven client matters that are the subject of the disciplinary charges pending against Respondent in State Bar Court case number 12-O-11029-DFM; (2) Respondent's alleged misconduct in ten investigation matters (i.e., matters that are not yet the subject of any formal disciplinary charges against Respondent); and (3) various improper and deceptive practices that Respondent allegedly employs in his practice of law. The State Bar, however, failed to include, with the application, any evidence to support Respondent's involuntary inactive enrollment based on the misconduct alleged/charged in case number 12-O-11029-DFM. (Rules Proc. of State Bar, rules 5.226(B), 5.230(B) [evidence to be offered at the hearing must be attached to and served with either the State Bar's application for inactive enrollment or the Respondent attorney's response to the application].)

Instead, the State Bar included its evidence of the misconduct alleged/charged in case number 12-O-11029-DFM in its April 11, 2013, additional evidence. Thus, the evidence of the misconduct in case number 12-O-11029-DFM was filed 20 days after the application was filed. Moreover, the State Bar did not seek leave of court to file this evidence 20 days late. Furthermore, the evidence of the misconduct alleged/charged in case number 12-O-11029-DFM is not "additional proposed evidence" within the meaning of that term under Rules of Procedure of the State Bar, rule 5.230(B). Accordingly, at the hearing, the court sustained Respondent's objection to and excluded all of the State Bar's April 11, 2013, additional evidence except for the revised English translation of Jeff Shin's Korean declaration and the English translation of Miguel A. Rodriguez-Parra's Spanish declaration.

In the application, the State Bar alleges, inter alia, that:

Respondent charged all [of his home-mortgage-loan-modification] clients an advanced legal fee which he collected on the day the clients signed the

retainer agreement. In addition to the illegal upfront fee, Respondent charged and collected monthly legal fees from [these] clients, which he required to be in the form of postdated checks or ACH debit pre-authorization forms.

In his retainer agreements with many [of these] clients, Respondent agreed to provide lender litigation services. However, Respondent included such language merely to circumvent the requirements of Civil Code section 2944.7 [subdivision] (a).

Respondent denies these allegations both on the facts and the law. He insists that his fee/retainer agreements conform with the requirements of SB 94 (see *post*) and that he has not charged or collected advanced fees in home-mortgage-loan modification or forbearance matters in violation of Civil Code section 2944.7, subdivision (a). Respondent is correct that his fee/retainer agreements in his home foreclosure cases contain the consumer disclosure required under Civil Code section 2944.6, subdivision (a). But, as set forth *post*, the available evidence in nine of the ten investigation matters establishes that Respondent violated Civil Code section 2944.7, subdivision (a)(1) by charging and collecting advanced fees in home-mortgage-loan-modification and forbearance matters.<sup>4</sup> (The tenth investigation matter, in which Jeff Shin is the complainant, is not a home-mortgage-loan-modification matter.)

### **Findings of Fact and Conclusions of Law**

#### **Background**

In about early 1999, Respondent, as the sole owner, opened a state-wide legal practice limited primarily to home-mortgage-loan modifications and other forms of home-mortgage-loan forbearance, including bankruptcy and foreclosure defense. Respondent initially operated his

---

<sup>4</sup> In light of the expedited nature of these proceedings (Rules Proc. of State Bar, rule 5.225), the court considers only these properly alleged charges in the application, which more than satisfies the requirements of section 6007, subdivision (c). The court's decision and order in this matter is not a binding or preclusive determination of the issues to be litigated in the formal disciplinary proceedings, which will resume and follow. (*Conway v. State Bar, supra*, 47 Cal.3d at p. 1119.)

law practice under the business names “Choice Law Group” and “The Law Offices of Gene W. Choe.”

According to Respondent, at one point in time, he owned and “operated three (3) law offices with over 35 lawyers and 50 administrative staff, with approximately over 1300 active clients.” The State Bar began receiving complaints about Respondent and his law offices in 2011.

In July 2012, Respondent had law offices in San Jose and Los Angeles. In about mid-2012, the State Bar interviewed Respondent and some of his employees. According to Respondent, those interviews and rumors about the State Bar's investigation of Respondent's practice caused many of his employees to quit and forced Respondent to sell his San Jose law office to its manager, attorney Luis Camacho, in about July or August 2012. When Respondent sold his San Jose office, Respondent did not honestly and properly notify the affected clients of that fact. Nor did Respondent otherwise properly withdraw from employment in the affected clients' matters. Instead, Respondent sent the affected clients written notices stating that he was closing his foreclosure litigation department because he had made the decision to pursue other areas of practice. Those notices deliberately implied falsely that Respondent was no longer going to practice in the area of foreclosure law. In those notices, Respondent strongly recommended that the clients authorize Attorney Camacho's new law office to take over their matters.

In October 2012, the California Attorney General executed a search warrant and searched Respondent's Los Angeles office. The State Bar accompanied and assisted the Attorney General during that search. Respondent admits that “there continues to be a ‘pending criminal proceeding’ for his numerous alleged violations of California Civil Code section 2944.7(b) and other possible criminal violations.”

Between July and October 2012, more than 30 to 40 of Respondent's employees purportedly quit because of the State Bar's (and the Attorney General's) investigations of Respondent's law practice.

On December 7, 2012, the State Bar filed the notice of disciplinary charges (NDC) against Respondent in case number 12-O-11029-DFM. In that NDC, the State Bar charges Respondent with a combined total of 29 counts of misconduct in seven separate client matters.

Also in December 2012, Respondent moved his only remaining law office from the 4300 block of Wilshire Boulevard to 3699 Wilshire Boulevard, Suite 720, Los Angeles, California. At about that same time, Respondent also changed the business names under which he practices law. More specifically, Respondent began practicing law under the names of "GWC Group P.C." and "GWC Law Corporation." In short, Respondent now practices law representing primarily individuals seeking home-mortgage-loan modifications or other forms of mortgage-loan forbearance at a new address and using new business names.

### **Respondent Charged and Collected Improper Advanced Fees in Nine of the Ten Investigation Matters**

#### **1. Complainant: Francis Ayre, Jr. Investigative Case No.: 13-O-10172**

In November 2011, Frances Ayre, Jr. and Aida A. Ayre retained Respondent to help them keep their home of almost 20 years by obtaining a home-mortgage-loan modification from their lender. The Ayres signed one of Respondent's form fee agreement for homeowners.<sup>5</sup> In that fee agreement, the Ayres are collectively referred to as "Client" and the Law Offices of Gene W. Choe, P.C., are referred to as "Attorney," the "Firm," and "THE FIRM." The form fee agreement recites and provides, inter alia, the following:

///

---

<sup>5</sup> Respondent's fee/retainer agreements contain a number of confusing provisions.



\* \* \*

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ THE FIRM to negotiate with their current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability;

\* \* \*

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only,

\* \* \*

**Performance of Services.** Upon completion of THE FIRM's analysis and research efforts, THE FIRM shall present to Client the options which are, as a result of such research, available, including but not limited to practical ways to improve Clients [sic] present debt structure.

**Client agrees to pay THE FIRM \$2500.00 on November 14, 2011 and \$1,500.00 monthly on the 15th day of each month, until the resolution of the case and services.** "Resolution of the case or services" is defined as either 1) loss of title to the [subject] property ... and loss of possession of the subject property, or 2) Client begins payments on a Loan Modification of their home mortgage loan.

\* \* \*

(Original bolding and underscoring.)

Respondent attaches a form fee rider to his form fee agreements for homeowners. The form fee rider that is attached to the Ayres' fee agreement repeats that Client is to pay Respondent a \$2,500 "initial deposit" and \$1,500 on the 15th of every month until the case is completed. The form fee rider also provides that the "Initial deposit is non-refundable."

In addition, the form fee rider not only provides for a \$75 fee anytime a client check is returned unpaid because of insufficient funds, but the rider also provides that Respondent "may

terminate services *without any refunds or liability*” to the client if the client fails to make an NSF check good within three business days. (Italics added.)

The form fee rider also provides that “There is NO FEE for Loan Modification Services” and that, as to the scope of services, “We will prepare and file a Lawsuit in Superior Court for Temporary Restraining Order. We will also seek a Preliminary Injunction.”

Mr. Ayre paid Respondent the \$2,500 initial deposit on November 29, 2011, and thereafter paid Respondent an additional \$9,075 in monthly payments between December 2011 and May 2012. In total, the Ayres paid Respondent \$11,575 in advanced legal fees.

Notwithstanding the statements in the form fee rider attached to the Ayres’ fee agreement, that there is no fee for Respondent’s loan-modification services and that Respondent’s law office will file a lawsuit for a temporary restraining order and preliminary injunction, the recitals and provisions from the Ayres’ fee agreement that are quoted *ante* establish that home-mortgage-loan-modification or other loan-forbearance services were to have been a substantial part of the services performed under the fee agreement. In fact, the recital: “WHEREAS Client wishes to employ THE FIRM to negotiate with their current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability” alone all but compels this conclusion. Thus, the language in Respondent’s fee rider that there were no fees for Respondent’s loan modification services and that Respondent’s law office was to file a lawsuit for a temporary restraining order and preliminary injunction was bogus and was designed to insulate Respondent from the prohibitions of Civil Code section 2944.7, subdivision (a). Furthermore, Respondent’s attempt to include in the contract other services, in addition to the loan modification services, does not insulate respondent from a violation of the statute when fees are charged and collected prior to the performance of all the contracted services (both loan-modification and non-loan modification services).

The Ayres obtained a home-mortgage-loan modification directly from their lender and, therefore, ignored Respondent's letters stating that he was closing his foreclosure litigation department. Respondent has not refunded any portion of the \$11,575 in advanced fees he charged and collected from the Ayres.

On October 11, 2009, California Senate Bill number 94 (SB 94) became effective. SB 94 provides two safeguards for a homeowner/borrower who seeks help in obtaining a home-mortgage-loan modification or other forms of home-mortgage-loan forbearance for a fee or other compensation to be paid by the homeowner/borrower. First, SB 94 requires that the homeowner/borrower be given a written consumer disclosure that it is not necessary to pay a third party to negotiate a loan modification or forbearance. (Civ. Code, § 2944.6, subd. (a).)

Second, SB 94 prohibits advance compensation for any home-mortgage-loan-modification or other loan forbearance services. More specifically, SB 94 precludes an attorney from claiming, demanding, charging, collecting, or receiving *any* compensation for negotiating, attempting to negotiate, arranging, or attempting to arrange a home-mortgage-loan modification or other forms of home-mortgage-loan forbearance until the attorney has fully performed each and every service the attorney contracted to perform or represented would be performed. (Civ. Code, § 2944.7, subd. (a)(1); *In the Matter of Taylor* (Review Dept., Nov. 9, 2012, mod. Jan. 9, 2013, 10-O-05171) 5 Cal. State Bar Ct. Rptr. \_\_\_, \_\_\_ [typed opn. at p.16].)

An attorney cannot avoid the application of Civil Code section 2944.7, subdivision (a)(1), by dividing or unbundling mortgage-loan-modification or forbearance services into their component parts and then charging separately for each component part after it is performed. (*In the Matter of Taylor, supra*, 5 Cal. State Bar Ct. Rptr. at pp. \_\_\_ [typed opn. at pp. 15-17].) Concomitantly, an attorney cannot avoid the application of Civil Code section 2944.7,

subdivision (a)(1) by bundling his or her home-loan-modification or other loan forbearance services with non-modification or non-forbearance services and charging one fee for the bundle.

The court finds that there is a reasonable probability that the State Bar will prevail on the charge that Respondent violated Civil Code section 2944.7, subdivision (a) by charging and collecting advanced fees from the Ayres for home-mortgage-loan-modification and other loan forbearance services before Respondent fully performed each and every service he contracted to perform. Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

**2. Complainant: Maria Mariscal**  
**Investigative Case No.: 12-O-16064**

In early 2012, Maria Mariscal retained Respondent for home-mortgage-loan modification and lender-litigation services. On February 7, 2012, Mariscal executed a form fee agreement virtually identical to the one in the Ayres investigation matter *ante*, except that the fee payment provision in Mariscal's fee agreement provides: **"Client agrees to pay THE FIRM \$3500.00 on January 30, 2012, and \$2,500.00 monthly on the 20th day of each month, until the resolution of the case and services."** (Original bolding and underscoring.)

Mariscal's fee agreement with Respondent, just like the Ayres' fee agreement, establishes that home-mortgage-loan-modification and other loan-forbearance services were to have been a substantial part of the services Respondent was to perform for Mariscal.

The form fee rider attached to Mariscal's fee agreement is virtually identical to the fee rider attached to the Ayres' fee agreement *ante*, except that the fee rider attached to Mariscal's fee agreement provides that Mariscal is to pay Respondent an initial retainer of \$3,500 and

monthly payments of \$2,500 on the 20th of every month until the case is completed and (2) the scope of services on Mariscal's fee rider also provides the following: "THE FIRM WILL FILE A LAWSUIT TO CHALLENGE THE VALIDITY OF THE FORECLOSURE PROCESS AND/OR FORECLOSURE DOCUMENTS. [¶] SHOULD IT BECOME NECESSARY, LAW FIRM WILL FILE A PETITION UNDER THE BANKRUPTCY CODE. FURTHER, IT MAY PROVIDE EVICTION DEFENSE." (Original capitalization.)

Mariscal paid Respondent's law office a \$3,500 initial deposit the day she retained him and thereafter paid Respondent's law office an additional \$8,500 in monthly payments between March and July 2012. In total, Mariscal paid Respondent's law office \$12,000 in advanced legal fees. Mariscal terminated Respondent's employment on August 17, 2012. Respondent has not refunded any portion of the \$12,000 in advanced fees that he charged and collected from Mariscal.

In accordance with section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail on the charge that Respondent violated Civil Code section 2944.7, subdivision (a) by charging and collecting advanced fees from Mariscal for home-mortgage-loan-modification and other loan-forbearance services before Respondent fully performed each and every service he contracted to perform. Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a).

**3. Complainant: Victoria Smiser**  
**Investigative Case No.: 12-O-16108**

Victoria Smiser retained Respondent for home-mortgage-loan-modification and lender-litigation services on September 22, 2011. Also, on September 22, 2011, Smiser executed one of Respondent's form fee agreements for homeowners that is virtually identical to the one in the Ayres investigation matter *ante*, except that the fee-payment provision in Smiser's fee agreement

provides the following: “**Client agrees to pay THE FIRM \$4000.00 on September 22, 2011, and \$2,000.00 monthly on the 15th day of each month, until the resolution of the case and services.**” (Original bolding and underscoring.)

Smiser’s fee agreement with Respondent, just like the Ayres’ fee agreement with Respondent, establishes that home-mortgage-loan–modification and other loan-forbearance services were to have been a substantial part of the services Respondent was to perform for Smiser.

The form fee rider attached to Smiser’s fee agreement is virtually identical to the fee rider that is attached to the Ayres’ fee agreement *ante*, except that the fee rider attached to Smiser’s fee agreement provides that Smiser is to pay Respondent an initial retainer of \$4,000 and monthly payments of \$2,000 on the 15th of every month until the case is completed and (2) the scope of services on Smiser’s fee rider also provides that Respondent’s law office would prepare and file a lawsuit for a temporary restraining order and will also seek a preliminary injunction.

Smiser paid Respondent’s law office a \$4,000 initial deposit the day she retained him and thereafter paid Respondent’s law office an additional \$18,000 in monthly payments between March and July 2012. In total, Smiser willingly paid Respondent’s law office \$22,000 in advanced legal fees. Smiser terminated Respondent’s employment on July 13, 2012, and instructed his law office not to cash the \$2,000 post-dated check she had given for her July 2012 monthly payment. But Respondent’s law office improperly cashed Smiser’s post-dated check for her July 2012 monthly payment. Respondent has not refunded any portion of the \$24,000 (\$22,000 that she willingly paid, plus \$2000 that Respondent collected without authorization) in advanced fees that he charged and collected from Smiser.

The court finds that there is a reasonable probability that the State Bar will prevail on the charge that Respondent violated Civil Code section 2944.7, subdivision (a) by charging and

collecting advanced fees from Smiser for home-mortgage-loan-modification and other loan-forbearance services before Respondent fully performed each and every service he contracted to perform. Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a).

**4. Complainant: Tina Young Park**  
**Investigative Case No.: 12-O-16213**

In July or August 2010, Sank Ouk and Tina Young Park retained Respondent to effectuate a home-mortgage-loan modification. On July 28, 2010, Mr. Park executed one of Respondent's form fee agreements for homeowners that is virtually identical to the one in the Ayres investigation matter *ante*, except that the fee-payment provision in the Parks' fee agreement was not filled out and the fee rider attached to the Parks' fee agreement provided that the Parks were to pay Respondent a total of \$15,000 in advanced fees (\$2,000 as an initial deposit and the remainder paid monthly at the rate of \$1,000 (cash) per month. The Parks' fee agreement discloses, on its face, that Mr. Parks executed it both on his own behalf and on behalf of his wife, Tina Young Park. Thus, Respondent's contention that Mr. Park was his only client in the Parks matter is meritless.

The Parks' fee agreement with Respondent, just like the Ayres' fee agreement with Respondent, establishes that home-mortgage-loan-modification and other loan-forbearance services were to have been a substantial part of the services Respondent was to perform for the Parks.

The Parks paid Respondent an initial deposit of \$2,000 and an additional \$15,500 in monthly payments from September 2011 through May 2012. Park paid Respondent a total of \$17,500 in advanced fees before Respondent had performed all of the services he agreed to perform. Respondent has not refunded any portion of the \$17,500 in advanced fees that he collected from the Parks.

The court finds that there is a reasonable probability that the State Bar will prevail on the charge that Respondent violated Civil Code section 2944.7, subdivision (a) by charging and collecting advanced fees from the Parks for home-mortgage-loan-modification and other loan-forbearance services before Respondent fully performed each and every service he contracted to perform. Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a).

**5. Complainants: Bijan Mikaeli & Janet Khachi**  
**Investigative Case No. : 13-O-10149**

In April 2012, Bijan Mikaeli and Janet Khachi (collectively Mikaeli) retained Respondent to provide them with home-mortgage-loan-modification and lender-litigation services. Mikaeli signed Respondent's form retainer agreement for homeowners. Mikaeli's fee agreement with Respondent establishes that home-mortgage-loan-modification or other loan-forbearance services were a substantial part of the services Respondent was to perform in the Mikaeli matter. In addition, the successful rescission of an invalid foreclosure sale of a home involves reinstating and modifying the underlying debt (i.e., the mortgage loan). This form retainer agreement is similar, but not identical to Respondent's form fee agreement that is described in the Ayre investigation matter, *ante*. In any event, Mikaeli's retainer agreement with Respondent states that the legal services to be provided are those necessary to represent the client in challenging the validity of the foreclosure proceedings by the lender, including debt counseling and restructuring (e.g., mortgage-loan modification).

The fee rider attached to Mikaeli's retainer agreement require Mikaeli to pay Respondent an initial deposit of \$5,000 plus a monthly fee of \$1,000 until the case is resolved. In addition, the fee rider provides: "THE FIRM CHARGES NO UP FRONT FEES FOR LOAN MODIFICATION SERVICES. All payments made under this Retainer are considered **fully**



**earned and non-refundable** flat or fixed fees.” (Original capitalization, bolding, and underscoring.)

Mikaeli paid Respondent the \$5,000 initial deposit and made additional \$1,000 monthly payments to Respondent. In total, Respondent collected \$8,000 in advanced fees from Mikaeli before Respondent had performed all of the services he promised to perform. Respondent has not refunded any of the \$8,000 to Mikaeli.

The court finds that there is a reasonable probability that the State Bar will prevail on the charge that Respondent violated Civil Code section 2944.7, subdivision (a) by charging and collecting advanced fees in the Mikaeli matter for home-mortgage-loan-modification or other loan-forbearance services before Respondent fully performed each and every service he contracted to perform. Respondent’s violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a).

**6. Complainant: Javier Gonzalez  
Investigative Case No.: 12-0-15738**

In February 2012, Javier Gonzalez retained Respondent to reverse the foreclosure sale of his home and to defend him in the resulting unlawful detainer action. The record also establishes that home-mortgage-loan-modification or other loan-forbearance services were a substantial part of the services Respondent agreed to perform for Gonzalez. From February through August 2012, Gonzales paid Respondent a total of \$11,500 in advanced legal fees before Respondent had performed all of the services he promised to perform. On August 1, 2012, Gonzalez terminated Respondent’s employment and requested a refund of the advanced fees. Respondent has not refunded any portion of the \$11,500 in advanced fees he collected from Gonzalez.

The court finds that there is a reasonable probability that the State Bar will prevail on the charge that Respondent violated Civil Code section 2944.7, subdivision (a) by charging and

collecting advanced fees from Gonzalez for home-mortgage-loan-modification or other loan-forbearance services before Respondent fully performed each and every service he contracted to perform. Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a).

**7. Complainant: Donald W. Smith**  
**Investigative Case No. 12-0-15738**

In October 2011, Donald W. Smith retained Respondent to recover his home, which had been sold at a foreclosure sale, and to obtain a modification of the underlying mortgage loan. Respondent charged and Smith paid Respondent a \$3,000 initial deposit and \$2,600 in monthly payments. In total, Smith paid Respondent \$5,600 in advanced fees before Respondent had performed all of the services Respondent promised to perform.

The record establishes that home-mortgage-loan-modification or other loan-forbearance services were a substantial part of the services Respondent agreed to perform for Smith. In addition, the successful rescission of an invalid foreclosure sale of a home involves reinstating and modifying the underlying debt (i.e., the mortgage loan).

The court finds that there is a reasonable probability that the State Bar will prevail on the charge that Respondent violated Civil Code section 2944.7, subdivision (a) by charging and collecting advanced fees from Smith for home-mortgage-loan-modification or other loan-forbearance services before Respondent fully performed each and every service he contracted to perform. Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a).

**8. Complainant: Hans Weigel**  
**Investigative Case No.: 12-0-17981**

In November 2011, Hans Weigel retained Respondent to provide home-mortgage-loan modification and lender-litigation services. Weigel executed one of Respondent's form fee

agreements for homeowners that is virtually identical to the one in the Ayres investigation matter *ante*, except that there is no fee payment provision in Weigel's fee agreement. The fee rider attached to Weigel's fee agreement provides that Weigel make 12 payments beginning on November 11, 2011, totaling \$16,000. And Weigel paid Respondent a total of \$16,000 in advanced fees before Respondent had performed all of the services he promised to perform.

The record establishes that home-mortgage-loan-modification and other loan-forbearance services were to have been a substantial part of the services Respondent was to perform for Weigel.

The court finds that there is a reasonable probability that the State Bar will prevail on the charge that Respondent violated Civil Code section 2944.7, subdivision (a) by charging and collecting advanced fees from Weigel for home-mortgage-loan-modification and other loan-forbearance services before Respondent fully performed each and every service he contracted to perform. Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a).

**9. Complainant: Icylyn Williams**  
**Investigative Case No. 12-0-16175**

In April 2012, Icylyn Williams retained Respondent to stop the foreclosure sale of her home and to provide home-mortgage-loan-modification and other loan-forbearance services.

The record establishes that home-mortgage-loan-modification and other loan-forbearance services were to have been a substantial part of the services Respondent was to perform for Williams.

Respondent charged Williams and Williams paid Respondent a \$2,000 initial deposit and \$3,000 in additional payments. In total, Respondent collected \$5,000 in advanced fees from Williams before he had performed all of the services he promised to perform for Williams. Respondent has not refunded any of the \$5,000 to Williams.

The court finds that there is a reasonable probability that the State Bar will prevail on the charge that Respondent violated Civil Code section 2944.7, subdivision (a) by charging and collecting advanced fees from Williams for home-mortgage-loan-modification or other loan-forbearance services before Respondent fully performed each and every service he contracted to perform. Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a).

**Findings Regarding Required Section 6007, Subdivision (c)(2) Factors**

**Respondent Has Caused Substantial Harm to His Clients**

The record clearly establishes that Respondent's misconduct in charging and collecting illegal, advanced fees in nine investigation matters involving home-mortgage-loan modification or other loan-forbearance services caused substantial harm to his clients in each of those nine matters. Respondent repeatedly violated loan modification statutes designed to protect vulnerable consumers. The plain language of the statute put Respondent on notice not to collect any advanced fees for home-mortgage-loan-modification or other loan-forbearance services. Yet Respondent drafted fee agreements in an attempt to circumvent the protections of SB 94. He collected illegal fees, refuses to acknowledge it, and has failed to provide full refunds.

**Likelihood of Greater Injury and Likelihood that Harm Will Continue**

The record clearly establishes that Respondent's clients and the public will likely suffer greater injury from a denial of the application than Respondent is likely to suffer if it is granted. Respondent fails to acknowledge his violations of Civil Code section 2944.7, subdivision (a)(1). That failure is strong evidence that there is a substantial likelihood that the client harm will continue.

Further, Respondent's conduct demonstrates a pattern of behavior, including acts likely to cause substantial harm. Accordingly, the burden of proof shifted to Respondent to demonstrate that there is no reasonable likelihood that the harm will reoccur or continue. (§ 6007, subd. (c)(2)(B).) Respondent failed to meet that burden.

### **Reasonable Probability that State Bar Will Prevail in Disciplinary Action Against Respondent**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail at least as to the charge of violating Civil Code section 2944.7, subdivision (a)(1).

### **Conclusion**

The court finds that Respondent's conduct poses a substantial threat of harm to the interests of his clients and the public. Furthermore, the court finds that Respondent's involuntary inactive enrollment is both appropriate and necessary for the protection of the public, the courts, and the legal profession during the pendency of the disciplinary proceedings against Respondent in case number 12-O-11029-DFM.

### **Order**

The court orders that Respondent **GENE WOOK CHOE**, State Bar number 187704, is involuntarily enrolled as inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (c)(1), effective three days after service of this order by mail (Rules Proc. of State Bar, rule 5.231). The court's case administrators are directed to promptly give written notice of this order to Respondent Gene Wook Choe and to the Clerk of the Supreme Court of California. (Bus. & Prof. Code, § 6081.)

The court further orders that:

1. Within 30 days after the effective date of his involuntary inactive enrollment, Respondent **GENE WOOK CHOE** must:

- a) Notify, in writing, all clients being represented in pending matters and any co-counsel of his involuntary inactive enrollment and his consequent immediate disqualification to act as an attorney and, in the absence of co-counsel, notify the clients to seek legal advice elsewhere, calling attention to the urgency in seeking the substitution of another attorney or attorneys in his place;
  - b) Deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to the urgency of obtaining the papers or other property;
  - c) Provide to each client a written accounting of all funds received and fees or costs paid and refund any advance payment that has not been earned as fees or expended for appropriate costs; and
  - d) Notify, in writing, opposing counsel in pending matters or, in the absence of counsel, the adverse parties of his involuntary inactive enrollment, and file a copy of the notice with the court, agency, or tribunal before which the matter is pending for inclusion in the respective file or files.
2. All notices required to be given under paragraph 1 of this order, *ante*, must be given by registered or certified mail, return receipt requested, and must contain Respondent's current official State Bar membership records address where communications may thereafter be directed to him.
  3. Within 40 days after the effective date of his involuntary inactive enrollment, Respondent **GENE WOOK CHOE** must file with the Clerk of the State Bar Court an affidavit containing his current official State Bar membership records address where communications may thereafter be directed to him and stating whether he has fully complied with all of the requirements in paragraphs 1 and 2 of this order, *ante*.
  4. Respondent must keep records of each step undertaken to comply with this order and attach those records to any petition for transfer from inactive to active enrollment under Rules of Procedure of the State Bar, rule 5.240 et seq. (Rules Proc. of State Bar, rule 5.240(B).) Failure to comply with any provision of this order may constitute grounds for denying a petition to transfer from inactive to active enrollment, denying a petition for reinstatement after disbarment (cf. Cal. Rules of Court, rule 9.20(d)), or for imposing discipline (Bus. & Prof. Code, § 6103).

Dated: May 1, 2013.

---

**DONALD F. MILES**  
Judge of the State Bar Court