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FILED

JAN 13 2016

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

Filed per Judge's order

In Pro Per

STATE BAR COURT

HEARING DEPARTMENT- SAN FRANCISCO

In the Matter of:) Case No.: 14-O-05941
)
ELIAS FRANCISCO PORTALES) **ANSWER**
NO. 230402,)
)
A Member of the State Bar.)

Respondent Elias Francisco Portales, answering the disciplinary charges, denies each allegation contained in the Notice of Disciplinary Charges. The complainant Dan Nelson was a toxic client who used the Respondent's prior discipline as a bargaining chip in attempt to get Respondent to pay for the underlying credit card debt owed by his business partner Daniel Kottke. Respondent is attaching a timeline of the relevant documents he will submit to the Court.

COUNT ONE

Respondent attempted several times over a 4 month period to get Nelson to provide both the underlying complaint and finally the filing fee for the collections matter. The default was entered because Nelson despite numerous promises did not provide the underlying filing fee.

While Mr. Kottke hired new counsel to demand that Respondent pay the balance on the underlying American Express Credit Card, Mr. Kottke did not attempt to set aside the underlying default judgment. Mr. Kottke did not want to pursue the American Express case on the merits.



The documents demonstrate that Mr. Nelson had no intention to fight the collections case on the merits.

COUNT TWO

Nelson represented to Respondent that he and Kottke were partners in Cobb Mountain Partners, LLC. Respondent was led to believe that the American Express Credit card was held by Cobb Mountain Partners with Kottke as the primary cardholder for the account. Furthermore, Respondent was led to believe that Nelson was a co-signer on the account. Additionally, Mr. Kottke informed Respondent over the phone that Mr. Nelson was to act as his representative. It was not until late in the representation that Respondent became aware that the underlying American Express Credit Card was not held by Cobb Mountain Partners. Respondent did not willfully violate Rule 3-1310(F) because he was not aware there was a potential conflict between Nelson and Kottke. Lastly, it is not clear that Kottke and Nelson's interests are adverse.

COUNT THREE

Respondent offered to repay the underlying fees however significant work was performed on the case. As demonstrated by the numerous communications with opposing counsel and Nelson. Additionally, Respondent was representing Nelson on two other matters simultaneously. Thus the fees were earned, and in fact as Nelson acknowledged he still owes a balance to Respondent for services rendered.

COUNT FOUR

Respondent's emails to Nelson are being taken out of context, there was a technical issue in August of 2012 that prevented Respondent from moving forward with the Motion to Set Aside the Default at that time. Additionally, as Respondent will demonstrate under the local procedures for Setting Aside a Default Respondent believed that he had the hearing set, however upon

checking his schedule Respondent realized he would be out of the Country on December 27,
2012.

Dated this January ~~12~~, 2016
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By: 

ELIAS PORTALES, ESQ.

PROOF OF SERVICE

I, the undersigned, am over the age of eighteen years and am a resident of Santa Clara County, California. I am not a party to this action. My business address is 560 S. Winchester Blvd, 5th Floor San Jose, CA 95128.

On January ~~12~~₁₃, 2016, I served the following document:

ANSWER

(BY MAIL) placing the envelope for collection and mailing on the date and at the place showing below following our ordinary business practices. I am readily familiar with the business practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

(BY FACSIMILE) I personally sent to the addressee's telecopier number a true copy of the above-described document(s).

(BY PERSONAL SERVICE) I personally delivered a true copy of the above-described document(s) to the person and at the address as set forth below.

(BY OVERNIGHT DELIVERY) A true copy of the above-described document(s) was placed in a sealed envelope, with delivery fees provided for, and delivered in the ordinary course of business to an overnight delivery carrier, addressed to the person(s) on whom it is to be served.

Executed January ~~12~~₁₃, 2016, at San Jose, California.

I declare under penalty of perjury under the law of the State of California that foregoing is true and correct.

Kottke Complaint

Timeline

- 1) **9/23/11** Email from Nelson indicating Amex was Cobb Mountain Partner Card LOE dated signed by Nelson (EFP says sorry to be a stickler but I need the LOE fully filled out. Furthermore at this point I have not seen the actual complaint, it is not until 12/21/11 that I actually receive a copy)
- 2) **9/23/11** Email from EFP to Martin Hoffman (Amex Counsel) stating EFP will accept service of complaint

9/24/11 (Nelson) says he hired EFP (**no documentation**)

9/?/11 EFP speaks with Kottke over the phone, Kottke states that Nelson is his agent and can act on his behalf in this matter
- 3) **9/26/11** Email from EFP providing settlement terms from Hoffman
- 4) **9/26/11** Email from IMS confirming charge to Nelson of \$3,000
- 5) **10/17/11** Email from EFP to Nelson, "Just sent him an email"
- 6) **10/18/11** Email from Nelson to EFP, "I have not heard from you at all"
- 7) **10/19/11** Email from Nelson saying they can pay the \$12k in 30 days
- 8) **10/20/11** Nelson check returned, "The check I wrote you came back because I had a hold on the funds in my account"
- 9) **10/21/11** Email from Nelson showing Nelson received confirmation from Kottke that the proposed deal of \$12k in 30 days is solid
- 10) **10/24/11** Email from Nelson stating that Kottke is being harassed, this is because Kottke reneged on the deal EFP negotiated
- 11) **10/24/11** Email from Nelson saying he will drop check by today for sure
- 12) **10/27/11** Email from Nelson claiming he will check his bank account regarding returned check

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- 13) **10/28/11** Email from Janet Brown (Counsel for Amex) accepting offer of \$12k but must be paid by 11/28/11 and Kottke must accept by 11/4/11; Nelson responds saying lets make it -told Daniel has to be paid by end of month- no problem
- 14) **11/2/11** Email from Nelson instructing EFP to keep bk filing confidential
- 11/11/11** (Nelson) Opposing counsel sent email stating no extension to file being granted
- 15) **11/14/11** Email from Nelson asks if we have signed deal with Amex good until the 26th [email from Brown was forwarded to Nelson on 10/28/11]
- 16) **11/21/11** Email from Nelson, "I have asked about Amex"
- 17) **11/29/11** Email from EFP to Nelson I talked to Amex yesterday and provides number for Nelson to make payment to satisfy settlement
- 18) **11/29/11** Nelson confirms that the Amex was a Cobb Mountain Partner Card
- 19) **12/1/11** Nelson in email says lets file a response to Amex immediately
- 20) **12/6/11** Nelson again blames EFP for not being on the docket, even though he is well aware that no answer has been filed
- 21) **12/6/11** EFP text to Nelson I don't have the complaint for Kottke
- 22) **12/13/11** Email from Nelson to EFP saying is this why you haven't responded to me or to contacted Alpha Cine
- 23) **12/13/11** Email from EFP to Nelson I've been a holding pattern because Alpha Cine and UD are much more complex
- 24) **12/18/11** Email from Nelson to EFP "Please send over AMX deal...Right in the middle of this big deal"
- 25) **12/19/11** EFP text to Nelson I don't have Amex complaint
- 26) **12/21/11** Nelson email to EFP Back today..here is AMX paperwork
- 27) **12/22/11** Email from Nelson confirming he will provide a card to pay for the filing fee

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- 28) **12/28/11** EFP email to Nelson, I am attaching the credit card authorization form, so the total will be the the \$370 for the filing fee and then the \$120 for the IMS fees (did we get this straightened out yet?). So the total will be \$490.
- 29) **12/30/12** Email from Nelson claiming default went to Kottke's house
- 30) **12/30/12** Email from EFP responds that we can still file ASAP before default is entered
- 31) **1/3/12** Amex finally enters default
- 32) **1/3/11** EFP text to Nelson what about Amex? Nelson reply I will email yu card to use
- 33) **1/16/12** EFP email to Brown my client was unable to gather the funds will you stipulate to set aside of default
- 34) **1/19/12** Email from Ms. Brown says AMEX will not agree to set aside default
- 35) **1/31/12** Email from Nelson asking whats happening with AMEX, When is the motion to set aside?
- 36) **1/31/12** Email from EFP stating AMEX will oppose (because counsel was representing Kottke)
- 37) **2/6/12** Email from Nelson to EFP saying I need only 30 days but wants set aside either way
- 38) **2/14/12** EFP text to Nelson we don't have a leg to stand on in defense of the lawsuit
- 39) **3/1/12** EFP text to Nelson Amex called me just the other day about settlement
- 40) **3/2/12** Email from Nelson I never heard anything from you yesterday
- 41) **3/12/12** Email from Nelson, I have sent you an email previous about this AMX matter and you have not responded to me.
- 42) **3/13/12** Email from EFP to Nelson, Dan you told me you were going to settle this thing..I will take the blame but you still need the cash to settle
- 43) **3/13/12** Email from Nelson we are going to get a loan to settle Amex but even harder because of default

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- 44) **3/19/12** Email from Brown to EFP Amex will agree to 4/24/12
- 45) **3/19/12** EFP text to Nelson I will cover cost of filing service but I need filing fee
- 46) **3/20/12** Motion to set aside default file by EFP
- 47) **3/22/12** EFP text to Nelson did you get confirmation of the filing..please take care of the \$370 this week
- 48) **4/9/12** Email from Nelson to EFP I know I still owe you money I can get that to you tomorrow
- 49) **4/9/12** EFP responds to Nelson says we rescheduled the hearing date as per local rules, I cannot be on the hook for filing fees (EFP did not want to proceed without filing fee from Nelson)
- 50) **4/13/12** EFP text to Nelson I'm not going to appear, I need to withdraw
- 51) **4/13/12** Nelson finally provides credit card info
- 52) **4/15/12** EFP emails Nelson credit card was declined
- 53) **4/16/12** EFP text to Nelson I am going to need to withdraw
- 4/19/12** (Nelson) hearing date set
- 54) **4/29/12** Nelson to EFP what happened with AMX set aside..have not heard from you
- 55) **5/30/12** Nelson to EFP, WHAT is up with AMX????
- 56) **6/3/12** Nelson to EFP, WHAT is going on with AMX????????????????
- 57) **6/3/12** EFP to Nelson, sorry I was out of the country
- 58) **6/3/12** Nelson to EFP, I figure if we win the set aside – they will probably take half or less...June 26th – is when we can pay it – but I would say July 5th in case hold on check!
- 59) **7/5/12** Nelson to EFP, I paid you to do a set aside with AMX and I did not see that done as of yet – what is going on with that- (Reply to EFP update on Alpha Cine and AMX)

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- 60) **7/11/12** EFP email to Nelson what is the best number to reach you at?
- 61) **8/15/12** Nelson email to EFP, "Have not heard from you on the set aside motion for AMX and its been months since we paid you to file that!"
- 62) **8/15/12** Nelson to EFP making complaint to Bar tomorrow
- 63) **8/16/12** (Nelson) EFP sent email stating hearing rescheduled due to technical issue
- 64) **8/17/12** Nelson text to EFP not responding, EFP response your voicemail is full
- 65) **8/21/12** Nelson to EFP this situation has costs us thousands of dollars, This is the final notice to get the full amount paid back to us in cash for the AMX case and full amount of trade back.
- 66) **8/23/12** EFP to Nelson, "I apologize I did not get a chance to respond yesterday I was swamped with an emergency filing. I regards to the refund I followed your instructions to stretch out the time for you to repay the debt to AMX. And I continue to get calls from Zwicker & Associates."
- 67) **8/24/12** EFP text to Nelson, spoke to Zwicker today they know AMX is the only late account on Kottke's credit" Nelson replies, "Thanks to you"
- 68) **8/24/12** Nelson texts he can payoff \$5,000 by end of next week unless EFP can get more time
- 69) **9/9/12** Nelson texts, "never heard back from you again", EFP replies Rep from "Zwicker is getting back to me this week"
- 70) **10/1/12** EFP purchases plane ticket to Mexico leaving 12/25/12
- 71) **10/15/12** EFP email to Nelson no response to offer of \$6,000..not really grounds for defense..."any questions about last invoice" (Again Nelson owes a balance)
- 72) **10/15/12** Brown to EFP 11/29/12 works for hearing
- 73) **10/17/12** Nelson email to EFP nothing on calendar (calendar not confirmed until other side agrees)
- 74) **10/31/12** EFP email to Nelson confirmed hearing is set
- 11/29/12** (Nelson) next motion date set but EFP stated it was continued to 12/27/12 because of untimely notice to opposing counsel

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75) **11/29/12** EFP email to Nelson, "The hearing is now set for 12/27/12, because the attorney for Amex claimed that they did not receive the notice in time. Rather than allow the court to dismiss our motion I was forced to reschedule. Again I am concerned that Daniel is being told that the motion to set aside will somehow erase the debt. I would suggest we schedule a conference call at your earliest convenience." (EFP later realized that he was leaving on 12/25/12 tried to contact Nelson)

76) **11/30/12** EFP email to Nelson, "Dan my apologies lets discuss on Monday. When is a good time to reach you?"

77) **12/5/12** EFP work history notice called clerk's office for date

12/27/12 -(Nelson) no record of 12/27/12 hearing

12/28/12 (Nelson) received email from EFP claiming not given another court date due to court rescheduling

78) **1/18/13** EFP to Nelson I am more than happy to refund IMS credit for default

79) **2/4/13** Nelson text can't do lunch will send someone to get files

80) **8/19/13** Elizabeth Mello email threatening report to State Bar unless EFP pays the Amex balance

81) **7/9/15** Nelson email attempting to circumvent the State Bar Investigation