PUBLIC MATTER

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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of FRANCESCA ANGELA DE LA FLOR, A Member of the State Bar, No. 60953.	)	Case No. 15-O-14252-PEM DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

Introduction[1]

In this contested disciplinary proceeding, respondent Francesca Angela de la Flor is charged with 11 counts of professional misconduct based on her breach of a commercial lease, multiple fraudulent conveyances, and creation of alter ego entities. The charged misconduct includes: (1) committing acts of moral turpitude; (2) seeking to mislead a judge; (3) presenting false evidence to a court; and (4) giving false and misleading testimony during trial.

This court finds, by clear and convincing evidence, that respondent is culpable of the alleged misconduct, but dismisses five charged counts as duplicative. Based on the nature and extent of culpability, and the applicable mitigating and aggravating circumstances, the court recommends, among other things, that respondent be disbarred.

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Significant Procedural History

The Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on September 30, 2016. On November 6, 2016, respondent filed a response to the NDC.

A six-day trial was held on February 1, 2, and 3 and May 3, 4, and 5, 2017. On February 1, 2017, the parties filed a partial stipulation as to facts and admission of documents. Senior Trial Counsel Kimberly G. Anderson represented the State Bar. Respondent represented herself. On May 30, 2017, following closing briefs, the court took this matter under submission.

On May 31, 2017, the State Bar filed a motion to strike a document attached to respondent's closing brief, on the ground that the document was not identified or moved into evidence at trial and is not part of the record in this case. Good cause having been shown, the court hereby GRANTS the State Bar's motion to strike and ORDERS that the document attached to respondent's closing brief as exhibit A is STRICKEN.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 20, 1974, and has been a member of the State Bar of California at all times since that date.

Facts

The following facts are based on the parties' partial stipulation as to facts and the evidence and testimony admitted at trial.

Lease Dispute

Respondent and Ray Aldridge were the tenants in a building located at 330 South Fair Oaks Avenue in Pasadena, California (Premises). On July 22, 1997, they entered into a five-year lease agreement for the Premises with then lessors Takashi and Sachi Nakada (the Nakadas) to run a business under the d/b/a Antiques on Fair Oaks at the Premises.

The lease stated, in pertinent part, that:

> Lessor hereby grants to Lessee three (3) separate and irrevocable options to extend this lease for five (5) years each. Rent for each five (5) year option shall be based on 95% of market value. [¶] Lessee shall notify Lessor in writing of Lessee's intention to extend the lease ninety (90) days prior to the expiration of the primary lease term and each successive option as exercised by Lessee.

The lease did not provide for the manner in which fair market value of rent was to be determined in the event the lessees exercised the options.

On May 10, 2004, the superior court issued a statement of decision and judgment in the case entitled *Nakada v. Francesca de la Flor* et al., Los Angeles County Superior Court, case No. GC032258, finding that respondent and Aldridge had the right to exercise the first option and that they had validly exercised the first option. On December 26, 2006, the Nakadas assigned the lease to LoConte Partners, LLC (LoConte).

On November 20, 2007, respondent notified Dean Blomquist (Blomquist) of Delta Commercial Realty, the building manager for LoConte, of her intent to exercise the second option under the lease. The second option began on May 21, 2008. In her November 20, 2007 letter, respondent stated, in pertinent part:

> Please be advised that your tenants at 330 South Fair Oaks Avenue ... hereby exercise the second five-year option to extend the lease on the entire building (floor one and two). Please contact [me] to begin discussions regarding the new rent obligations during this option period.

On January 3, 2008, Clay Frazier (Frazier), a managing member of LoConte, replied to respondent and Aldridge at the Premises, stating:

> Please keep in mind that neither Dean [Blomquist] nor anyone else other than me, has any authority to negotiate any lease terms or to amend or modify the lease in any way.

On January 31, 2008, Frazier again wrote to respondent and Aldridge at the Premises:

> I have received your letter stating that you would like to exercise the option on the property, but I cannot acknowledge that you have validly

> exercised the option until I have reviewed the lease and discussed it with an attorney.

Frazier and Gerald Whitt (Whitt) were both members of LoConte at all relevant times and Whitt is and was a licensed California attorney who was admitted to the California Bar on December 22, 1976.

On February 21, 2008, Frazier wrote to respondent and Aldridge:

> I have still not hired an attorney, but am willing to follow up on the issue of rent, subject to an attorney reviewing the lease and your option notice.

On April 7, 2008, Frazier wrote to respondent and Aldridge at the Premises:

> I have still not formally acknowledged that the option was properly exercised and I will not do so until a real estate attorney can review the matter for me....There is one thing I ask you to do now with regard to the exercise of the option, before I take it to an attorney. Since you are both co-tenants under the lease, all the rights and obligations exist for both of you. Both of you need to exercise the option and both of you will need to agree on the terms of the lease during the option period.

On April 21, 2008, respondent received a letter from Frazier, which stated, in part:

> [T]he departure of Mr. Aldridge from the property makes it clearer to me that your rights under the current lease will end no later than May 20, 2008, if they have not already ended.

The letter also indicated that LoConte had retained attorney Scott Carlson.

On May 19, 2008, respondent received two letters dated May 19, 2008, from attorney Carlson, which stated in part:

> Without waiving any of its other contentions and reserving all of its rights, Lessor hereby elects to treat the purported transfer of Mr. Aldridge's interest in either the Lease or the unnamed partnership as a non-curable breach and hereby elects to terminate the Lease as of May 20, 2008.... [Moreover, without] waiving any of its other contentions and reserving all of its rights, Lessor hereby elects to treat each of the subleased as a non-curable breach and hereby elects to terminate the Lease as of May 20, 2008.

On June 5, 2008, respondent received a letter from attorney Carlson regarding her breach of the lease for failing to pay the increased rent.

Frazier and respondent entered into a fair market rental agreement, which respondent signed on October 16, 2008, and Frazier signed on October 30, 2008. The parties agreed to a method for calculating the fair market value for purposes of renting the property while they resolved other disputes between them. While resolving their disputes, respondent agreed to pay 95% of the fair market value of the rent, which they agreed would be $10,165 per month. The parties further agreed that, if the arbitrators determined the fair market rental value to be greater or less than $10,165 per month, then the rental would be adjusted retroactively so that LoConte would refund the difference if the rent was less and respondent would pay the difference if the rent was greater. The fair market rental agreement also stated, in part:

> Within five (5) days after the execution of this Agreement by both parties, the parties shall each select an independent licensed real estate broker of its or her choice to act as an arbitrator.... The two arbitrators so appointed shall immediately select a third real estate broker, mutually acceptable to the first two brokers...to act as a third arbitrator. The three arbitrators shall, within 30 days of the appointment of the third arbitrator, reach a decision as to the fair market rental value of the property.

2008 Lawsuit

On December 5, 2008, after the parties were unable to resolve the issue of the fair market rental value of the Premises, as well as whether respondent was also in breach of other terms of the lease, LoConte filed a lawsuit entitled *LoConte Partners, LLC v. Francesca de la Flor,* Los Angeles County Superior Court, case No. GC041943 (the 2008 lawsuit).

On July 22, 2009, the parties to the 2008 lawsuit stipulated that the trial judge in the 2008 lawsuit, instead of arbitrators, could determine the fair market rental value applicable to the lease pursuant to the fair market rental agreement that was signed in October 2008.

On May 24, 2010, the court bifurcated the trial in the 2008 lawsuit, so that it would first determine the fair rental value of the Premises during the second option period. And on May 27,

2010, the trial judge issued a minute order in the 2008 lawsuit determining the fair market value of the property to be $0.98 per square foot for rent beginning on May 21, 2008.

In short, the rent increased from $10,165.00 to $19,867.54. Therefore, respondent owed an arrearage for the period from May 21, 2008, to May 31, 2010, in the amount of $236,303.80. Respondent was present in court when the trial judge issued his ruling. After the judge issued the order, respondent came up to him and said she was not going to pay the new rent.[2] At that time, respondent did not advise that she had any concern over parking. The first time he saw that parking was an issue was in a 2010 pleading.

On May 28, 2010, Whitt sent respondent a letter regarding notice of new rent and the amount of arrearages ($236,303.80) for the period from May 21, 2008, through May 31, 2010. The May 28, 2010 letter also requested that respondent reconsider her decision not to pay the rent as determined by the trial judge on May 27, 2010. And on June 14, 2010, attorney Carlson sent respondent two notices of default for the balance of the June rent ($9,702.54), and the other for the arrearages for the period from May 21, 2008, through May 31, 2010. The last time respondent paid any rent on the Premises was June 2010 when a partial payment was made.

Respondent's Alter Egos: Oak Knoll Meadows Farm, Antiques Off Fair Oaks, and Rio Delux

Shortly after the trial judge issued the May 27, 2010 minute order in the 2008 lawsuit determining that the fair market value of the premise should be increased from $10,165 to $19,867, respondent on June 14, 2010, formed Oak Knoll Meadows Farm, Inc., a Kentucky corporation. Respondent also formed Antiques Off Fair Oaks, LLC (Antiques Off Fair Oaks), a Delaware limited liability company on June 14, 2010. And on June 28, 2010, respondent formed Rio Delux Audio, LLC, a Kentucky limited liability company (Rio Delux).

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[2] The court finds Whitt's testimony at trial to be credible.

The incorporator of Oak Knoll Meadows Farm, Inc., was respondent. The corporate secretary was her daughter, Tatiana van Souter; her husband, Rene van Souter, was the agent for service of process for the entity; and the entity used the same address as respondent's farm in Kentucky.

Antiques Off Fair Oaks was a single member Delaware LLC, formed and owned entirely by respondent. On June 1, 2012, Antiques Off Fair Oaks ceased to be in good standing with the Delaware Secretary of State's Office for failure to pay its annual tax.

The sole member of Rio Delux was Jaime Martinez (Martinez), respondent's brother. Rene van Sauter is the agent for service of process for the entity, and the entity used the same address as Oak Knoll Meadows Farm.[3] Rio Delux was administratively dissolved on September 10, 2011, by the Kentucky Secretary of State for failure to file any tax returns with the Kentucky Secretary of State.

2010 Lawsuit

Meanwhile, on June 22, 2010, LoConte filed another lawsuit against respondent in Los Angeles County Superior Court, case No. GC045468 (the 2010 lawsuit), which was initially commenced as an unlawful detainer action, based upon LoConte's allegations that respondent had not paid rent for the Premises.

By July 16, 2010, respondent entered into a lease agreement with Galapagos Holding Co. to lease a building located at 3570 E. Foothill Boulevard, Pasadena, California (the Foothill Premises). Respondent signed the lease for the Foothill Premises in the name of Antiques Off Fair Oaks, LLC, and respondent personally guaranteed the lease on behalf of Antiques Off Fair Oaks, LLC. At this point, respondent testified that she believed she was merely a holdover tenant who

[3] Respondent testified that she and family members controlled Oak Knoll Meadows Farm and that there were corporate officers. However, she produced no proof that there were any corporate officers other than members of her own family.

had not exercised the second option on the lease and that, consequently, the most she would be liable for was the arrearages for the period from May 21, 2008, to the time she vacated the Premises in the Fall of 2010.

Deeds of Trust and Encumbrances of the Oak Knoll and Oceanus Properties

On July 18, 2010, respondent prepared (but did not record) a deed of trust to Rio Delux to encumber her real property located at 805 Oak Knoll Circle, Pasadena, California 91106 (the Oak Knoll property) in the amount of $3 million. There is no evidence that respondent ever received $3 million for the transfer to Rio Delux.

Furthermore, on July 18, 2010, respondent prepared (but did not record) a deed of trust to Rio Delux to encumber her real property located at 7935 Oceanus Drive, Los Angeles, California 90046 (the Oceanus property) in the amount of $2.75 million. The encumbrance on the Oceanus property in favor of Rio Delux was in excess of the equity in the property.

Quitclaim Deeds (Black Mountain Road, Stage Road, and Oregon Road)

On July 18, 2010, respondent prepared (but did not record) three quitclaim deeds, transferring real property to Oak Knoll Meadows Farm, Inc., from real property located at: (1) 33800 Black Mountain Road, Temecula, California 92592 (the Black Mountain Road property). The quit claim deed recited that there was no consideration for the transfer; (2) 34633 Stage Road, Temecula, California 92592 (the Stage Road property). Again, that quitclaim deed recited that there was no consideration for the transfer; and (3) 2315 Oregon Road, Versailles, Kentucky 40383 (the Oregon Road property). The grant deed stated that there was $600,000 in consideration for the transfer, but respondent did not produce any document to show she received $600,000 for the transfer.

On August 31, 2010, the trial in the 2008 lawsuit resumed on the remaining counts, which involved, among others, causes of action for damages regarding the consumer price index increase

and for failure to maintain the premises. LoConte (later known as 330 South Fair Oaks, LLC) dismissed all remaining counts against respondent, with the exception of the causes of action for damages regarding the consumer price index increase and for failure to maintain the premises. On September 1, 2010, the trial court issued its minute order, finding against LoConte on these two remaining causes of action.

On October 1, 2010, the trial judge issued its judgment in the 2008 lawsuit. The judge made the following ruling regarding fair market rent:

> The fair market rent is determined to be 98 cents per square foot as of May 21, 2008. Total square footage 21,340 for a total of $19,867.54 (.98 x 21,340 = $20,913.20 x .95 = $19,867.54) for the second option period. Defendant to pay that rent to plaintiff commencing May 21, 2008.

No appeal was taken from the October 1, 2010 judgment.

On November 23, 2010, respondent signed (but still did not record) the quitclaim deeds to the Black Mountain Road property and the Stage Road property. On November 23, 2010, respondent signed (but still did not record), the warranty deed to the Oregon Road property. On November 23, 2010, respondent signed (but still did not record) the deeds of trust on the Oak Knoll property and the Oceanus property. On January 26, 2011, respondent recorded documents representing she had secured a promissory note in the principal amount of $3 million recorded as Document No. 20110142411 for the Oak Knoll property for the benefit of Rio Delux.

On January 26, 2011, respondent recorded documents representing that she had secured a promissory note in the principal amount of $2.75 million, recorded as Document No. 20110142413, in favor of Rio Delux for the Oceanus property. Furthermore, on January 26, 2011, respondent transferred the Black Mountain Road property by quitclaim deed to Oak Knoll Meadows Farm, Inc., recorded as Document No. 2011-0041115. And on January 26, 2011, respondent transferred the Stage Road property to Oak Knoll Meadows Farm, Inc., recorded as

Document No. 2011-0041116. Finally, on February 18, 2011, respondent caused a warranty deed to be recorded with the Woodford County Recorder's Office in Kentucky as Deed No. 261, page No. 522, transferring the Oregon Road property from herself to Oak Knoll Meadows Farm, Inc.

330 South Fair Oaks Lawsuit

On February 4, 2011, while the 2010 lawsuit was pending, LoConte assigned the lease, all rights and interests under the lease, and the prior judgment in the 2008 lawsuit to 330 South Fair Oaks Avenue, LLC (330 South Fair Oaks). LoConte and 330 South Fair Oaks were owned by the same individuals and 330 South Fair Oaks was entitled to enforce all claims under the Lease.

On May 26, 2011, 330 South Fair Oaks filed a Second Amended Complaint in the 2010 lawsuit, which became entitled *330 South Fair Oaks Avenue, LLC v. Francesca de la Flor*, Los Angeles County Superior Court, case No. GC045468. The amended complaint was no longer a simple unlawful detainer. The complaint now sought to recover damages for the breach of a commercial lease, to set aside the alleged fraudulent transfer pursuant to Civil Code sections 3439.04 and 3439.05, and to have the entity defendants determined to be the alter egos of respondent. In short, LoConte now alleged that respondent had exercised the second option and was bound to the lease for the entire second option period, and that respondent had made fraudulent transfers of her properties to hinder, delay or defraud them in the collection of their claims.

The 2010 lawsuit went to trial in April and May 2013. And on August 28, 2013, the court issued a Judgment and entered a Statement of Decision in favor of LoConte and against respondent. The court issued a judgment against respondent in the amount of $935,062.41, plus interest, and imposed a constructive trust on all the fraudulently transferred properties.

Relevant Trial Testimony in the 2010 Lawsuit

Concern Over Parking

At the trial, respondent raised as an affirmative defense and in a cross complaint that LoConte had breached the lease by jeopardizing her parking spaces. Respondent argued that her lease with LoConte provided that LoConte must provide her with no less than 22 parking spaces at the parking lot located three doors south of the premises with the monthly cost for the subject lot to be agreed between her and John Flanders (Flanders), the owner of the subject parking lot. At some point in 2009, Flanders had a discussion with respondent that he was trying to lease his property and that she may lose her parking. Respondent testified that she felt Flanders made it clear that she was going to lose her parking if and when he leased his property.

In 2010, respondent requested that Flanders write a letter confirming when they started discussing the parking issue. Flanders testified that he wrote the letter at respondent's request and that he did not recall when he wrote the letter. At the trial, respondent testified that she received a letter from Flanders around May 8, 2010, regarding parking. However, it turned out that the letter was not actually written on that date, but was created at a later date and given that date at respondent's request.

Rio Delux's $5.7 Million Loan to Respondent

Although respondent testified that Rio Delux was a legitimate business set up at the request of her brother who wanted to get into the horse business, there is no evidence to support her assertion. Respondent never produced any documentary proof that Rio Delux was ever properly funded or capitalized as an LLC, or that it had any bank account.[4] Rio Delux did not make any of

[4] Martinez's testimony that he agreed to transfer $5.7 million to what he believed was respondent's husband's Swiss bank account but later found out that he had transferred the money to the husband's father's account is simply not credible without some documentary proof to substantiate the claim.

the corporate filings required by the Kentucky Secretary of State and did not file annual reports or income tax returns.

Horses Named Windwalker and Indelible

Respondent testified in the underlying litigation, and in this hearing as well, that she received horses named Windwalker and Indelible in exchange for transferring the Black Mountain, Stage Road and Oregon Road properties to Oak Knoll Meadows Farm. In the August 2013 Statement of Decision, the court found that both Windwalker and Indelible[5] were owned by respondent before she formed Oak Knoll Meadows Farm. More importantly, Windwalker was dead at the time of the purported transfer.[6]

Tatiana van Souter Opening Two Bank Accounts

On July 23, 2010, respondent opened two bank accounts at Union Bank Nos. xxxx8569 and xxxx8577 in the name of her daughter, Tatiana van Souter. Respondent transferred $10,023.30 from her Union Bank business account into the xxxx8569 account. Between July 23, 2010, and April 2, 2012, $706,598.02 was deposited into this account, $416,348.53 of which came directly from respondent.

On July 23, 2010, respondent also transferred $14,203.47 from her Union Bank personal account into the xxxx8577 account. Between July 23, 2010, and April 2, 2012, $312,802.36 was deposited into this account, $182,185.50 of which came directly from respondent. Tatiana was the only signatory on these two accounts.[7]

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[5] Records show that respondent purchased Indelible in 2007 and Windwalker in 2008. Windwalker raced under her name in 2009 and died in 2009.

[6] In the trial in this matter, respondent insisted against all evidence to the contrary that Windwalker had not died at the time of the purported transfer.

[7] At the hearing in this matter, respondent testified that she had Tatiana open up these bank accounts because respondent could hardly walk and was going to have hip replacement surgery. She wanted her daughter to take over the running of the store and all her accounts while she was having hip surgery.

Carmen Vasquez

On January 24, 2011, respondent wrote a check from her Oak Knoll Meadows Farm account to Carmen Vasquez for $3,500. As to that check, respondent at first testified that she thought Vasquez was someone who was related to her farm in Kentucky. However, it turned out that respondent was actually paying Vasquez for electrical work her husband did for Antiques Off Fair Oaks.

Horse Bill of Sale

Respondent testified that part of the consideration for the transfer of the Stage Road Property, Black Mountain and Oregon Road property to Oak Knoll Meadows Farm, Inc., was the horses Windwalker and Indelible. To support this claim, she introduced a horse bill of sale dated July 7, 2010. However, there was evidence that Windwalker was purchased by respondent in 2008 and that Indelible was purchased in 2007. Furthermore, the bill of sale said nothing about consideration.

The August 28, 2013 Statement of Decision

Breach of the Commercial Lease

As discussed above, the lease provided for an initial term of five years and for three additional option terms of five years each. On November 20, 2007, respondent exercised the second option under the lease for a period from May 21, 2008, to May 20, 2013. The lease provided that the rent would be adjusted for each option period to 95% of the fair market value. However, the lease did not provide how fair market was to be determined. The parties agreed that the rent for the second option period would be determined in the action entitled *LoConte Partners LLC v. Francesca de la Flor* and that respondent would pay within 10 days of the Court's determination. A finding was made that the fair market value was $19,867.54 per month and thus respondent owed $236,303 in arrearages for the period from May 21, 2008, through May 31, 2010.

Respondent breached the lease by vacating the premises in December 2010. Nor did respondent leave the premise clean of debris and the plaintiffs expended $39,438 in cleaning up the mess.

Respondent Failed to Prove Her Affirmative Defenses

First, respondent failed to prove that she was a holdover tenant who did not exercise the second option. Second, she failed to prove that the lease imposed a contractual obligation on the lessor to provide parking on an adjacent property, and that plaintiff's predecessor breached that obligation. Third, she failed to show that the plaintiff failed to mitigate its damages.

Respondent's Transfers Were Made with the Actual Intent to Hinder, Delay or Defraud

To determine whether transfers were made with actual intent to hinder, delay or defraud creditors, the focus of the inquiry is on the state of mind of the debtor. The fraudulent conveyance statutes are liberally construed to prevent debtors from placing property beyond the reach of the creditors. In determining actual intent, Civil Code section 3439.04 provides that consideration must be given to a number of factors.

In the August 2013 Statement of Decision, the superior court looked at these relevant factors and ruled as follows:

1) *Whether the transfer was to an insider.*

The court found that Antiques Off Fair Oaks, LLC, was a single member Delaware LLC formed and owned entirely by respondent. Oak Knoll Meadows Farm was formed by respondent in Kentucky, and she and her husband were the sole owners of the company. Defendant Rio Delux Audio was formed by respondent in her brother's name and even though he lived in California, the entity was created in Kentucky. Moreover, no evidence was presented that he had any involvement with the company. Essentially, the court found that all her transfers were made to insiders and complicit family members.

2) *Whether the debtor retained possession or control of the property after the transfer.*

The court found that with respect to the Black Mountain Road property, the Stage Road property and the Kentucky farm property, which were quitclaimed to Oak Knoll Meadows Farm, Inc., respondent remained in possession and control. Moreover, the insurance for each property remained in respondent's name. With respect to the deeds of trust on the Oak Knoll Circle property, respondent was still the owner of both properties. She continued to reside at the Oak Knoll Circle property, and she continued to lease the Oceanus property.

3) *Whether the transfers or obligation was disclosed or concealed.*

The court specifically held that the transfers were concealed.

4) *Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with a lawsuit.*

The court found that all the transfers were completed after the lawsuit was filed on June 22, 2010.

5) *Whether the transfer was of substantially all the debtor's assets.*

The court found that, as a result of the transfers, respondent had no available assets to satisfy the plaintiff's claims, as respondent's net worth went from a positive net worth of $1,873,271 on May 27, 2010, to a negative net worth of $3,658,768 on February 18, 2011.

6) *Whether the debtor removed or concealed assets.*

The court found with respect to the business assets, respondent removed them from her prior business and transferred them to Antiques Off Fair Oaks and her daughter, Tatiana. Since Tatiana was the only signatory on her account, no creditor of respondent

could execute on them. Similarly, a creditor of respondent could not execute on the assets in the name of Antiques Off Fair Oaks.

7) *Whether the value of consideration received by the debtor was reasonably equivalent to the value of the assets transferred or the amount of the obligation incurred.*

The court found that there was no evidence of any consideration for any of the transfers. With respect to the business assets, respondent testified that she transferred the assets to her daughter and the new entity without receiving any consideration for them. With respect to the transfers of Black Mountain Road property and the Stage Road property, each quitclaim deed stated on its face that it was a transfer for "no consideration." While respondent claimed to have received two horses named Indelible and Windwalker for the transfer, there was no evidence to support the claim, as both horses were owned by respondent before she formed Oak Knoll Meadows Farm, Inc. More importantly, Windwalker was dead at the time of the purported transfer to respondent. With respect to the Oak Knoll Circle property and the Oceanus property, the amount of the deed of trust against each property exceeded its value. Respondent did not produce any documentary evidence establishing that she received any of the $5.75 million, purportedly evidenced by the deeds of trust.

8) *Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.*

The court found all transfers were initiated less than 30 days after the May 27, 2010 ruling increasing the rent.

9) *Whether the debtor was insolvent or became insolvent after a substantial debt was incurred.*

The court found that as a result of respondent's transfer, she was rendered insolvent. Her net worth dropped from $5,532,039 to a negative net worth of $3,658,768 in February 2011.

Furthermore, the court found that even if respondent lacked the actual intent to hinder, delay or defraud the plaintiff, the transfers were constructively fraudulent under Civil Code sections 3439.04 and 3439.05. The plaintiff had established that respondent did not receive reasonably equivalent value for the transfers; that she became insolvent as a result of making them; that she was about to engage in a business transaction for which the remaining assets were unreasonably small in relation to the transaction; and that she intended to incur or reasonably believed that she would incur debts beyond her ability to pay.

Court Voided the Transfers and Entered Judgment Against Respondent

Consequently, the court voided the encumbrances on the Oak Knoll Circle property and the Oceanus property to Rio Delux Audio, LLC. The court also voided the transfers of Black Mountain Road property and Stage Road property to Oak Knoll Meadows Farm. After voiding the encumbrances and transfers of the above named properties, the court imposed a constructive trust against all real properties and ordered that plaintiff's lien supersede any lien or interest of respondent.

Superior Court's Conclusions

Respondent created Oak Knoll Meadows Farm, Inc., Rio Delux Audio, LLC, and Antiques Off Fair Oaks, LLC, days after the May 27, 2010 minute order, where the court determined the rent for the second option period, for the sole purpose of transferring her assets to them to avoid paying the new rent. After balancing and weighing the evidence, the court found that there was substantial evidence that all three entities were respondent's alter ego organizations created for the

sole purpose of making respondent's assets unavailable to satisfy plaintiff's claims and the judgment against respondent.

Court of Appeal

On May 18, 2015, the Court of Appeal, Second Appellate District, Division Five, affirmed the trial court's findings in Appeal No. B252280, Remittitur issued July 23, 2015, and the findings were final. Finally, in December 2015, respondent paid Whitt two checks totaling $1,336,000, representing payment of the judgment and the pre-judgment interest.

Based upon the trial court's August 28, 2013 Statement of Decision and respondent's testimony in the underlying trial and the Court of Appeal's affirmance of the trial court's finding, the State Bar alleges that respondent fraudulently transferred five pieces of real property and made numerous false representations to the trial court in the 2010 litigation, including falsifying two pieces of evidence.

Conclusions of Law

Count 1 – (§ 6106 [Moral Turpitude]) (Oak Knoll Property)

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

The State Bar alleges and the court so finds:

On January 26, 2011, respondent caused a deed of trust to be recorded with the Los Angeles County Recorder's Office as Document No. 20110142411 purporting to secure a promissory note in the amount of $3 million against her interest in the Oak Knoll property, and in favor of an entity she created, Rio Delux Audio, LLC, with the fraudulent purpose and intent of encumbering her interest in the Oak Knoll property, so that it could not be encumbered to satisfy, in whole or in part, an October 1, 2010 judgment entered against her and in favor of 330 South Fair Oaks Avenue, LLC, in *LoConte Partners, LLC v. Francesca de la Flor,* Los Angeles County

Superior Court, case No. GC041943 (2008 lawsuit), and any future judgment obtained against her in *330 South Fair Oaks Avenue, LLC v. Francesca de la Flor*, Los Angeles County Superior Court, case No. GC045468 (2010 lawsuit), and thereby clearly and convincingly committed an act involving moral turpitude in willful violation of section 6106.

Count 2 – (§ 6106 [Moral Turpitude]) (Oceanus Property)

The State Bar alleges and the court so finds:

On January 26, 2011, respondent intentionally caused a deed of trust to be recorded with the Los Angeles County Recorder's Office as Document No. 20110142413 purporting to secure a promissory note in the amount of $2.75 million against her interest in the Oceanus property and in favor of an entity she created, Rio Delux Audio, LLC, with the fraudulent purpose and intent of encumbering her interest in the Oceanus property, so that it could not be encumbered to satisfy, in whole or in part, an October 1, 2010 judgment entered against her and in favor of 330 South Fair Oaks Avenue, LLC, in the 2008 lawsuit, and any future judgment obtained against her in the 2010 lawsuit, and thereby clearly and convincingly committed an act involving moral turpitude in willful violation of section 6106.

Count 3 – (§ 6106 [Moral Turpitude]) (Black Mountain Road Property)

The State Bar alleges and the court so finds:

On January 26, 2011, respondent intentionally caused a quitclaim deed to be recorded with the Riverside County Recorder's Office as Document No. 2011-0041115 purporting to transfer her interest in the Black Mountain Road property in favor of an entity she created, Oak Knoll Meadows Farm, Inc., a Kentucky Corporation, with the fraudulent purpose and intent of encumbering her interest in the Black Mountain Road property, so that it could not be encumbered to satisfy, in whole or in part, an October 1, 2010 judgment entered against her and in favor of 330 South Fair Oaks Avenue, LLC, in the 2008 lawsuit, and any future judgment obtained against her

in the 2010 lawsuit, and thereby clearly and convincingly committed an act involving moral turpitude in willful violation of section 6106.

Count 4 – (§ 6106 [Moral Turpitude]) (Stage Road Property)

The State Bar alleges and the court so finds:

On January 26, 2011, respondent intentionally caused a quitclaim deed to be recorded with the Riverside County Recorder's Office as Document No. 2011-0041116 purporting to transfer her interest in the Stage Road property in favor of an entity she created, Oak Knoll Meadows Farm, Inc., with the fraudulent purpose and intent of encumbering her interest in the Stage Road property, so that it could not be encumbered to satisfy, in whole or in part, an October 1, 2010 judgment entered against her and in favor of 330 South Fair Oaks Avenue, LLC, in the 2008 lawsuit, and any future judgment obtained against her in the 2010 lawsuit, and thereby clearly and convincingly committed an act involving moral turpitude in willful violation of section 6106.

Count 5 – (§ 6106 [Moral Turpitude]) (Oregon Road Property)

The State Bar alleges and the court so finds:

On February 18, 2011, respondent intentionally caused a warranty deed to be recorded with the Woodford County Recorder's Office in Kentucky as Deed No. 261, page No. 522, purporting to transfer her interest in Oregon Road property, in favor of an entity she created, Oak Knoll Meadows Farm, Inc., with the fraudulent purpose and intent of encumbering her interest in the Oregon Road property, so that it could not be encumbered to satisfy, in whole or in part, an October 1, 2010 judgment entered against her and in favor of 330 South Fair Oaks Avenue, LLC, in the 2008 lawsuit, and any future judgment obtained against her in the 2010 lawsuit, and thereby clearly and convincingly committed an act involving moral turpitude in willful violation of section 6106.

Count 6 – (§ 6106 [Moral Turpitude]) (False Testimony at Trial)

The State Bar alleges and the court so finds:

In April and May 2013, during her trial testimony as a defendant in the 2010 lawsuit, respondent made the following false and misleading statements when respondent knew or was grossly negligent in not knowing that each of the statements was false:

1. That Rio Delux Audio, LLC, was a legitimate business enterprise she had set up at the request of her brother when, in fact, it was, at all relevant times, a sham entity created by respondent for the purposes of facilitating fraudulent transfers of her assets. This court rejects respondent's argument that she let Rio Delux dissolve because LoConte sued Rio Delux and she did not want to get her brother involved in a lawsuit;
2. That she had borrowed $2.75 million and $3 million from Rio Delux Audio, LLC, in exchange for deeds of trust recorded on January 26, 2011, on the Oceanus property and the Oak Knoll property owned by respondent when, in fact, respondent had not borrowed any money from Rio Delux Audio, LLC;
3. That Oak Knoll Meadows Farm, Inc., was a legitimate business enterprise she had set up, when in fact it was, at all relevant times, an entity created by respondent for the purposes of facilitating fraudulent transfers of her assets;
4. That she received a horse named Windwalker in July 2010 as partial consideration for her transfer of the Stage Road property and the Black Mountain Road property, in favor of an entity she created, Oak Knoll Meadows Farm, Inc., a Kentucky corporation, when, in fact, she had already received Windwalker in 2008, and Windwalker had died in 2009;
5. That there were two horses named Windwalker born in 2007, when in fact there was only one thoroughbred horse named Windwalker born in 2007, and it died in 2009;

6. That she received a horse named Indelible in July 2010 as partial consideration for her transfer of the Stage Road property and the Black Mountain Road property, in favor of Oak Knoll Meadows Farm, Inc., when, in fact, respondent had purchased Indelible in 2007, before she had transferred her interests in the Stage Road and Black Mountain Road properties to Oak Knoll Meadows Farm, Inc.;
7. That her daughter, Tatiana, opened two bank accounts at Union Bank Nos. xxxx8569 and xxxx8577 in her own name on July 23, 2010, instead of in respondent's own name due to respondent's medical issues and for ease of having Tatiana handle the business accounts for respondent's antique business when, in fact, respondent had Tatiana open the bank accounts in her own name at Union Bank for the purpose of concealing her assets from creditors; and
8. That Carmen Vasquez, who was a payee on a check drawn on the Oak Knoll Meadows Farms, Inc., bank account No. xxxx8569 at Union Bank, was being paid for services at Oak Knoll Meadows Farm in Kentucky when, in fact, respondent was paying Vasquez for work related to her antique business in California.

In summary, by making each of these eight statements, when respondent knew that they were false and misleading, respondent clearly and convincingly committed acts involving moral turpitude in willful violation of section 6106.

However, there is no clear and convincing evidence that these two statements rise to the level of moral turpitude or dishonesty in willful violation of section 6106:

a. That one of the reasons she vacated the Premises was due to a concern over losing her parking when, in fact, she did not lose her parking at any time prior to vacating the premises; and

b. That she received a letter dated May 8, 2010, from John Flanders regarding potential loss of her parking near the Premises, which she faxed to the property management company the same date when, in fact, respondent knew that Flanders had backdated the letter at her request, that the letter did not exist on May 8, 2010, and that she had not faxed it to the property management company on May 8, 2010, or at any other time.

Count 7 – (§ 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth])

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact.

The State Bar alleges and the court so finds that respondent made false and misleading statements to the court during her trial in the 2010 lawsuit.

However, because these facts also support the moral turpitude culpability finding in count 6, the court dismisses count 7 with prejudice as a duplicative allegation. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060 [Little, if any, purpose is served by duplicate allegations of misconduct].)

Count 8 – (§ 6106 [Moral Turpitude—Presentation of False Evidence to Court])

The State Bar alleges and the court so finds that respondent offered into evidence and gave false testimony regarding the two horses as partial consideration for transferring real properties to the court during her trial in the 2010 lawsuit.

However, because these facts also support the moral turpitude culpability finding in count 6, the court dismisses count 8 with prejudice as a duplicative allegation. (*Bates v. State Bar, supra,* 51 Cal.3d at p. 1060.)

Count 9 – (§ 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth])

The State Bar alleges and the court so finds that respondent made false and misleading statements regarding the two horses as partial consideration for transferring real properties to the court during her trial in the 2010 lawsuit.

Again, because these facts also support the moral turpitude culpability finding in count 6, the court dismisses count 9 with prejudice as a duplicative allegation. (*Bates v. State Bar, supra,* 51 Cal.3d at p. 1060.)

Count 10 – (§ 6106 [Moral Turpitude - Presentation of False Evidence to Court])

The State Bar alleges that respondent testified and offered into evidence to the Los Angeles County Superior Court a letter dated May 8, 2010, from John Flanders regarding her parking near the Premises, to mislead the court into believing that her parking rights had been terminated when, in fact, respondent knew that Flanders had not written the letter on May 8, 2010.

However, because there is no clear and convincing evidence that respondent backdated the letter with the purpose of misleading the court, respondent did not commit an act of moral turpitude in willful violation of section 6106. Accordingly, count 10 is hereby dismissed with prejudice.

Count 11 – (§ 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth])

Similarly, as discussed in count 10, because there is no clear and convincing evidence that respondent backdated the letter with the purpose of misleading the court, respondent did not mislead the court in willful violation of section 6068, subdivision (d). Accordingly, count 11 is hereby dismissed with prejudice.

Aggravation[8]

There are three factors in aggravation.

Multiple Acts (Std. 1.5(b).)

Respondent's multiple acts of misconduct, involving acts of moral turpitude and false and misleading testimony during trial, are a significant aggravating factor.

Significant Harm to Client/Public/Administration of Justice (Std. 1.5(j).)

While respondent's misconduct did not harm any client, her fraudulent transfers and creation of alter egos hindered, delayed and defrauded creditors, thus causing significant harm to the creditors and administration of justice.

Indifference Toward Rectification/Atonement (Std. 1.5(k).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of her misconduct. "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for [her] acts and come to grips with [her] culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

Respondent expressed no remorse or recognition of her misbehavior. Contrary to the Court of Appeal's affirmation on the fraudulent conveyance causes of action, she maintained that she did not hinder, delay or defraud the creditors.

Therefore, respondent's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered a significant aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.)

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[8] All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Mitigation

No Prior Record (Std. 1.6(a).)

Although respondent was admitted to the State Bar in 1974, some 43 years ago, she has not always practiced law. She had practiced law for about 12 years when she was placed on inactive status in 1986. Thereafter, she was not eligible to practice law on and off for about 23 years at the time of her misconduct in 2010 (for reasons including failure to pay membership dues).

Thus, respondent's lack of a prior record of discipline in 13 years of practice at the time of her misconduct in 2010 is a minimal mitigating factor since 12 of those 13 years took place between 1974 and 1986, and thereafter she did not actively practice law, other than representing herself at times in this commercial lease dispute.

Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)

Respondent's stipulation as to facts is a mitigating factor. Where stipulated facts were not difficult to prove and did not admit culpability, but were extensive, relevant and assisted the State Bar's prosecution of the case, respondent's factual stipulation was a mitigating circumstance. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41.) Here, the parties' stipulation as to facts saved the court time.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards "great

weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.7(a) provides that, when a member commits two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction must be imposed.

However, standard 1.7(b) provides that if aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities in the future.

In this case, standard 2.11 provides that "[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law."

The State Bar urges disbarment, arguing that respondent's misconduct not only involved five separate fraudulent transfers of real property and the creation of sham entities, but it also involved many protracted acts of dishonesty and elaborate efforts to create sham corporations, to

falsify documents, and to testify falsely at the underlying trial. The State Bar cited several cases in support of its disbarment recommendation, including *In re Glass* (2014) 58 Cal.4th 500 [admission to State Bar denied for multiple acts of dishonesty and concealment]; *Yokozeki v. State Bar* (1974) 11 Cal.3d 436 [five years' actual suspension and until restitution was made where the attorney had converted to his own use an apartment building and a note secured by a deed of trust on a client's residence]; and *In the Matter of Schooler* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 494 [disbarment for acts of moral turpitude and substantial harm to beneficiaries of a trust where the attorney was a trustee and executor of her parents' estate and trusts].

Respondent contends that she did not commit any act of moral turpitude and asserts that, at the age of 68, she would never practice law again and is contemplating resignation from the practice of law. She argues, among other things, that her state of mind was a desire to expand her horse business, that she had no intent to hinder, delay or defraud creditors, and that she was solvent at the time of the property conveyances.

This court finds her contentions without merit. Based on the court of appeal's affirmation of the superior court's statement of decision, which is supported by substantial evidence, respondent had indeed breached a commercial lease, fraudulently transferred real properties, and created three entities which were her alter egos. Whether respondent was solvent at the time of her fraudulent conveyances or whether her career plan is to resign from the practice of law is irrelevant to this court's finding of her culpability and recommendation of the level of discipline to be imposed in fulfilling the purpose of these State Bar disciplinary proceedings.

It is well settled that acts of moral turpitude are those contrary to honesty and good morals and that they are a cause for discipline whether or not they are committed in the practice of law. (*In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186.) Thus, even though respondent was on inactive status at the time of her fraudulent conveyances in January

2011, she was required to conform to the ethical standards required of attorneys. (*Crawford v. State Bar* (1960) 54 Cal.2d 659, 668 ["Attorneys must conform to professional standards in whatever capacity they are acting in a particular matter."].) Yet, she failed to do so.

In fact, respondent was on active status and appeared in pro per at an April 8, 2011 hearing in the 2010 lawsuit, in which LoConte sought to attach respondent's properties. There, Judge Laura A. Matz questioned respondent's honesty:

> Let me stop you for one second. If you did all this in January, why did you say in your papers to me that you've owned the property for 18 years and made no effort to dispose of them. You took them out of your name and put them in the names of other entities and moved ownership from California to Kentucky. I don't find that statement to be true; and your obligation, as an officer of the court, is to be honest in your paperwork.

Attorney Carlson wrote in his April 6, 2011 reply brief to respondent's opposition to attachment: "[S]he is an attorney and knows better than to commit a crime by filing a fraudulent declaration. One can only hope that one day a judge will be upset enough to act upon it."

Six years later, respondent's misconduct is now before this disciplinary court. Here, the record clearly and convincingly established that respondent had created multiple alter ego entities and made fraudulent conveyances to prevent the landlord from collecting outstanding rent payments from her. Her abuse of the law involving moral turpitude and dishonesty was extensive and serious, albeit she finally paid $1,336,000 to the creditor in December 2015. Such practice of deceit and concealment is inimical to the high ethical standards of honesty and integrity required of members of the legal profession and to the promotion of confidence in the trustworthiness of members of the profession. (*In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.)

Accordingly, in recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) Respondent's claim of intending to resign with charges pending is irrelevant and does not

serve the purpose of State Bar disciplinary proceedings. The court finds the State Bar's disbarment recommendation is appropriate and within standard 2.11. Therefore, in view of respondent's six violations of moral turpitude, the case law, lack of compelling mitigation, and the standards, the court concludes that respondent's "long-running, extremely harmful, and serious misconduct, along with the aggravating factors, supports disbarment." (*In the Matter of Schooler, supra,* 5 Cal. State Bar Ct. Rptr. at p. 504.)

Recommendations

It is recommended that respondent **Francesca Angela de la Flor**, State Bar Number 60953, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule

5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: August 24, 2017

Pat McElroy

PAT McELROY
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 San Francisco, On August 24, 2017, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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 San Francisco, California, addressed as follows:

FRANCESCA A. DE LA FLOR
630 ALAMEDA ST
ALTADENA, CA 91001 - 3002

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

Kimberly G. Anderson, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 24, 2017.

Lauretta Cramer
Case Administrator
State Bar Court