


(Do not write above this line.)

State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION

<p>Counsel For The State Bar</p> <p>Ashod Mooradian, bar no. 194283 Senior Trial Counsel 1149 S. Hill St. Los Angeles, CA 90015 (213) 765-1004</p> <p>Brooke Schafer, bar no. 194824 Senior Trial Counsel 1149 S. Hill St. Los Angeles, CA 90015 (213) 765-1051</p> <p>Bar #</p>	<p>Case Number(s): 04-O-14445-RAP</p>	<p>For Court use only</p> <p>FILED</p> <p>DEC 19 2013</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Julian Brew, bar no. 150615 Kaye Scholer LLP 1999 Ave. of the Stars Suite 1700 Los Angeles, CA 90067 (310) 788-1147</p> <p>Arthur Margolis, bar no. 57703 Margolis & Margolis LLP 2000 Riverside Dr. Los Angeles, CA 90039 (323) 953-8996</p> <p>Bar #</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: DAVID RICHARD SCHWARCZ</p> <p>Bar # 152896</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>kwiktag® 152 145 228</p> 	

MD

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 6, 1991.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 13 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: One billing cycle following the effective date of the Supreme Court order. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
 - (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline

(Do not write above this line.)

- (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See Stipulation Attachment, page 10
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See Stipulation Attachment, page 10
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.

(Do not write above this line.)

- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct. See Stipulation Attachment, page 10
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior Record of Discipline, See Stipulation Attachment, page 10
Passage of Time, See Stipulation Attachment, page 10
Pre-Trial Stipulation, See Stipulation Attachment, page 10

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of two (2) years.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.
- (2) **Probation:**
- Respondent must be placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3) **Actual Suspension:**
- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of sixty (60) days.

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

(Do not write above this line.)

- No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DAVID RICHARD SCHWARCZ
CASE NUMBER: 04-O-14445-RAP

FACTS AND CONCLUSIONS OF LAW.

DAVID RICHARD SCHWARCZ ("Respondent") admits that the following facts are true and that he is culpable of violation of the specified statute and/or Rule of Professional Conduct.

Case No. 04-O-14445 (Complainant: Scott P. Schomer obo Helene Lederman)

FACTS:

1. In February 1999 Mrs. Lederman was introduced to Respondent and his wife, Caroline Schwarcz ("the Schwarczes"). Mrs. Lederman knew the Schwarczes were interested in buying her home, located on Hillcrest Avenue in Beverly Hills, California (the "Hillcrest property.") At the time the Hillcrest property was worth an estimated \$1.5 million, although there were liens encumbering the house, incurred at least in part by Mrs. Lederman's ex-husband's misdeeds, which totaled approximately \$2.8 million.

2. The Schwarczes told Mrs. Lederman that they were aware there were \$2.8 million in liens encumbering the Hillcrest property, and that Mrs. Lederman was in danger of losing the home due to the liens greatly outweighing the home's value. Respondent told Mrs. Lederman that he could reduce or eliminate the liens on the Hillcrest property in a transaction whereby she would sell the Hillcrest property to the Schwarczes and receive some money, with the exact amount dependent on Respondent's success in reducing or eliminating liens.

3. After Mrs. Lederman's discussion with Respondent, in March 1999 Mrs. Lederman entered into a transaction whereby she retained Respondent to attempt to reduce the liens on the Hillcrest property, and agreed to transfer the Hillcrest property to the Schwarczes. The Schwarczes originally agreed that they would pay Mrs. Lederman \$125,000 at the time the title to the Hillcrest property was transferred. The balance of the purchase price would be paid over time, and would vary considerably depending on the extent to which Respondent could reduce the liens through negotiation or litigation. Respondent also explained to Mrs. Lederman that it could be five years before she received all of the payments because of the work required to reduce the various liens.

4. Respondent's purchase of the Hillcrest property was a business transaction between Respondent and his client Mrs. Lederman, in which Respondent knowingly acquired an ownership, possessory, security, or other pecuniary interest adverse to his client Mrs. Lederman.

5. During the next several months, Respondent prepared, and the parties agreed to, a series of agreements and documents memorializing the terms of the agreements for the transfer of the Hillcrest

property. The terms of the agreements were negotiated between Respondent and Mrs. Lederman, with some involvement by certain of her relatives, and at least some of the changes were at Mrs. Lederman's request. Ultimately, groups of documents were presented and/or signed by the parties on three separate occasions.

6. On April 5, 1999, Respondent reduced to writing, and the parties agreed to, the first round of documents (the "April 5th Documents") which included: a) the Retainer Agreement; b) the Written Informed Consent, etc.; c) the Residential Purchase Agreement; and d) the Side Agreement.

7. On April 21, 1999, Respondent reduced to writing, and the parties agreed to, a second round of documents (the "April 21st Documents") which voided some or all of the April 5th Documents and included the following: a) a Revised Side Agreement; b) the FRNY Agreement; and c) the Grant Deed. Mrs. Lederman signed all of the April 21st Documents. The April 21st Documents contained materially different terms, including without limitation a variable purchase price, and calculation thereof, of the Hillcrest property.

8. In June 1999 Respondent reduced to writing, and the parties agreed to, a third round of documents (the "June 1999 Documents") which included the following documents: a) an Addendum (drafted by Mrs. Lederman or her close relatives; and b) a promissory note payable to Mrs. Lederman (drafted by Respondent). The June 1999 Documents replaced some of the terms of the parties' April 21st Documents, including without limitation the purchase price, and calculation thereof, of the Hillcrest property.

9. Prior to entering into the agreements of April 5, April 21 and June 1999, as set forth above, Respondent did not fully disclose in writing to Mrs. Lederman certain risks to Mrs. Lederman from the transactions, including: (i) the consequences of selling the Hillcrest property on an unsecured basis; (ii) the consequences of failing to use a formal escrow; (iii) given the five year term for payments, the consequences if, prior to the completion of the purchase transaction, Respondent went bankrupt, became divorced or died; (iv) the consequences if Mrs. Lederman's homestead exemption was deemed forfeited or the transfer of the title to the Hillcrest property to Respondent was set-aside as a result of a successful legal challenge by creditors; (v) the consequences if Respondent failed to pay or could not pay the existing mortgage payments for the Hillcrest property; and (vi) that Respondent stood to profit from the transaction if he was successful in reducing the liens on the Hillcrest property, among other risks. In addition, while Respondent advised Mrs. Lederman in writing that she may seek the advice of an independent lawyer of her choice at the time they entered into the April 5th Documents, Respondent failed to so advise her in writing at the time they entered into the April 21st and June 1999 Documents.

10. The April 5th Documents, April 21st Documents and June 1999 Documents each contained different maximum sales prices, depending upon the occurrence of different contingencies. However, under each of the agreements Mrs. Lederman was to receive no less than \$125,000 for the sale of the Hillcrest property, in cash or as down payment for purchase of a new home.

11. After June 1999, Mrs. Lederman found a condominium in which to live (the "Rexford property"). Due at least in part to the significant liens on the Hillcrest property, Mrs. Lederman was unable to obtain financing for the Rexford property. Respondent advised her that his wife could buy the property and Mrs. Lederman could live in it. Respondent further told Mrs. Lederman that if her financial situation improved, his wife would be open to selling the Rexford property to Mrs. Lederman.

Respondent's wife purchased the Rexford property using in part money from an account owned jointly by Respondent and his wife.

12. In July 1999, on Respondent's advice, Mrs. Lederman entered into a lease with Respondent's wife for the Rexford property for the cost of the monthly mortgage payment, homeowner's association dues and property taxes. At least part of these lease payments benefitted Respondent. Respondent knowingly had a pecuniary interest in the Rexford property and the lease payments that was adverse to his client Mrs. Lederman.

13. Prior to Mrs. Lederman entering into the Rexford property lease agreement with Respondent's wife, Respondent did not fully disclose in writing to Mrs. Lederman certain risks from the lease transaction, including: (i) if a dispute arose between Mrs. Lederman and Respondent's wife regarding the lease a conflict could be created precluding his continued representation; (ii) that nothing in the lease transaction provided Mrs. Lederman the right to purchase the Rexford property or preserved the terms of such a purchase transaction; and (iii) the nature and extent of Respondent's interest or anticipated profit or loss from the lease transaction. In addition, Respondent did not advise Mrs. Lederman in writing that she may seek the advice of an independent lawyer of her choice.

14. In October 2000, Mrs. Lederman requested that Respondent pay her at least \$125,000, pursuant to the Hillcrest property agreements. In response, Respondent made a \$60,000 payment to Mrs. Lederman.

15. In December 2003, following disputes over both the Hillcrest property and the Rexford property transactions, Mrs. Lederman filed suit against the Schwarczes in Los Angeles Superior Court ("the civil lawsuit"). After a favorable jury award and subsequent appeal, Mrs. Lederman settled with Respondent on terms which included title to the Hillcrest property and the Rexford property as well as money damages; in return Mrs. Lederman agreed to vacate the judgment and dismiss the civil lawsuit. Pursuant to the parties' agreement, the judgment was ordered vacated by the presiding judge.

CONCLUSIONS OF LAW:

16. By failing to fully disclose and transmit in writing to his client, prior to entering into the agreements of April 5th, April 21st and June 1999, to purchase the Hillcrest property, the nature and extent of the risks that his client faced in connection with each of those agreements; and by failing to advise his client in writing that she may seek the advice of an independent lawyer of her choice prior to executing the April 21st and June 1999 agreements, Respondent knowingly entered into a business transaction with a client without complying with the requirements that the transaction or acquisition and its terms were fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and the client was advised in writing that the client may seek the advice of an independent lawyer of the client's choice, in wilful violation of Rules of Professional Conduct, rule 3-300.

17. By failing to fully disclose and transmit in writing to his client, prior to entering into the Rexford property lease, the nature and extent of the risks that his client faced in connection with the lease agreement and by failing to advise his client in writing that she may seek the advice of an independent lawyer of her choice prior to executing the Rexford property lease agreement, Respondent knowingly entered into a business transaction with a client without complying with the requirements that the transaction or acquisition and its terms were fully disclosed and transmitted in writing to the client in

a manner which should reasonably have been understood by the client; and the client was advised in writing that the client may seek the advice of an independent lawyer of the client's choice, in wilful violation of Rules of Professional Conduct, rule 3-300.

AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.2(b)(iv)): Mrs. Lederman had to resort to hiring counsel to bring suit against Respondent following his representation. Moreover, Respondent failed to pay Mrs. Lederman approximately \$65,000 owing under their agreement until 2009 when the civil lawsuit was settled.

Multiple Acts (Std. 1.2(b)(ii)): Respondent failed to provide proper disclosures to his client with respect to four separate transactions with his client. Three of which also contained material changes and needed to be fully explained.

MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline: Respondent has no prior record of discipline but had only been practicing law for approximately eight years when the first misconduct in this matter occurred. Prior to that Respondent had practiced law in New York, with no record of public discipline. Even though the misconduct here is serious, Respondent is entitled to mitigation for lack of prior record of discipline. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [ten years' practice prior to misconduct entitle to "significant weight" in mitigation].)

Pretrial Stipulation: Respondent has agreed to enter into this pre-trial stipulation to fully resolve this matter without the necessity of a complex and lengthy trial, thereby saving the State Bar time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [mitigative credit given for entering into a stipulation as to facts and culpability].)

Good Character: Respondent has provided the State Bar with several good character declarations which provide a demonstration of Respondent's good character attested to by a wide range of references in the legal and general communities who are aware of the full extent of his misconduct. (Std. 1.2(e)(vi).)

Passage of Time: Several years have passed since the acts of professional misconduct occurred. (Std. 1.2(e)(viii).) There is no evidence that Respondent has committed any further misconduct from 1999 up through the present date. (*In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737 [lack of prior record of discipline in only eight years' practice not entitled to significant weight, however attorney practiced without incident for another twelve years after misconduct and thus the court took this into account, concluding that the misconduct was aberrational and unlikely to recur].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the

preservation of public confidence in the legal profession.” (*In re Morse* (1995) 11 Cal.4th 184, 205; std. 1.3.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.)

In this matter, the applicable standard is standard 2.8 which provides that culpability “of a member of a wilful violation of rule 3-300, Rules of Professional Conduct, shall result in suspension unless the extent of the member’s misconduct and the harm to the client are minimal, in which case, the degree of discipline shall be reproof.”

Here, Respondent’s violation of rule 3-300 was not minimal, and so actual suspension is warranted. As discussed above, there were at least four separate instances where Respondent had an obligation to comply with rule 3-300 disclosure requirements but failed to do so. First, at the time of the purchase agreement documents executed on April 5, 1999. Second, at the time of the revised purchase agreement on April 21, 1999. Third, at the time of the revised purchase agreement in June 1999. And fourth, at the time of the Rexford property lease agreement in July 1999. Also, the harm to Mrs. Lederman was not minimal. Mrs. Lederman suffered significant financial harm in that she was guaranteed a minimum payment of \$125,000 under the agreement but received only \$60,000 until she hired an attorney to pursue Respondent.

There are aggravating and mitigating circumstances present as well. As mentioned, there are multiple acts. Moreover, the seriousness of misconduct is aggravated by the resulting harm that Respondent caused his client. However the misconduct is mitigated by Respondent’s willingness to enter into a full stipulation and the attestation to good character, in addition to mitigation for lack of prior discipline and passage of time since the misconduct.

Therefore, after considering Respondent’s misconduct pursuant to standard 2.8, giving due consideration to the aggravating and mitigating circumstances present in this matter, the appropriate level of discipline is an actual suspension of 60 days, among other conditions set forth herein. This level of discipline will fulfill the purposes of the Standards, which primarily are the protection of the public. (Std.1.3).

Case law involving similar violations of rule 3-300 is consistent with this level of discipline. In *Ritter v. State Bar* (1985) 40 Cal.3d 595, 604, footnote 9, the Supreme Court noted that violations of rule 5-101 [predecessor rule to 3-300] have resulted in a wide range of discipline, ranging from private reproof in *Ames v. State Bar* (1973) 8 Cal.3d 910, to two years’ actual suspension imposed in *Krieger v. State Bar* (1954) 43 Cal.2d 604. In *Beery v. State Bar* (1987) 43 Cal.3d 802, which is among those cases that imposed the highest levels of discipline, there was not only a violation of the disclosure rule, but also an abandonment of two clients and a finding of moral turpitude and violation of court order. In other cases involving moral turpitude, such as *Hunnecutt v. State Bar* (1988) 44 Cal.3d 362, although that case included extensive mitigation, the Court imposed discipline in three client matters of 90-days actual suspension. In *Ritter v. State Bar* (1985) 40 Cal.3d 595, the Court found that, although the transaction was reasonable, there was a violation of the disclosure rule, because no opportunity was given for the client to discuss the transaction with outside counsel in that the loan agreement between Ritter and the

client was simply signed upon presentation. Discipline of 60 days actual suspension was imposed by the Supreme Court.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
04-O-14445	Three	Business and Professions Code section 6106

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 3, 2013, the prosecution costs in this matter are \$9,815.81. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

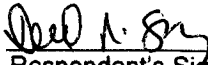
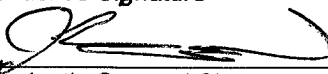

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: DAVID RICHARD SCHWARCZ	Case number(s): 04-O-14445-RAP
---	-----------------------------------

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>12/05/13</u> Date	<u></u> Respondent's Signature	<u>David Richard Schwarcz</u> Print Name
<u>12/5/13</u> Date	<u></u> Respondent's Counsel Signature	<u>Julian Brew</u> Print Name
<u>12/6/13</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Ashod Mooradian</u> Print Name

(Do not write above this line.)

In the Matter of: DAVID RICHARD SCHWARCZ	Case Number(s): 04-O-14445-RAP
---	-----------------------------------

ACTUAL SUSPENSION ORDER


Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

On page 12 of the Stipulation, under the heading "EXCLUSION FROM MCLE CREDIT," line 2, "suspension" is deleted, and in its place is inserted "probation

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

12/19/13
Date


DONALD F. MILES
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 Los Angeles, on December 19, 2013, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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 Los Angeles, California, addressed as follows:

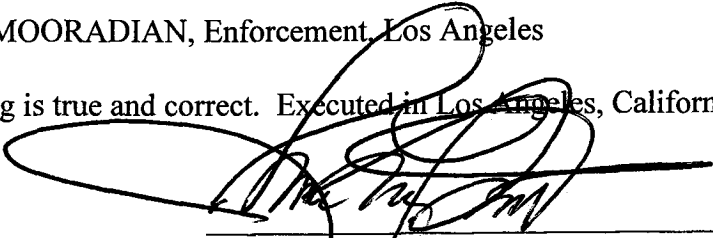
ARTHUR LEWIS MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

JULIAN BREW
KATE SCHOLER ET AL
1999 AVENUE OF THE STARS
LOS ANGELES, CA 90067

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

ASHOD MOORADIAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 19, 2013.



Johnnie Lee Smith
Case Administrator
State Bar Court