

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos.: 10-O-00157-RAH
)	(10-O-01887; 10-O-04640;
STEVEN CRAIG FELDMAN,)	10-O-04641; 10-O-04648;
)	10-O-4933; 10-O-06919);
Member No. 103676,)	12-O-12764; 12-O-16854 (Cons.)
)	
A Member of the State Bar.)	DECISION AND FURTHER ORDER
)	
_____)	

Introduction¹

After respondent Steven Craig Feldman had practiced for 26 years without discipline, he decided to establish a loan modification practice in 2008. He examined the legal issues involved in this new area of law, and even hired a lawyer to give him legal counsel on his proposed venture. He also discussed the issues he expected to face with others. When the California Legislature began discussing laws that would impact the loan modification business, he met with the leading lawyers and journalists familiar with the meaning and purpose of these proposed changes in law. When new laws were passed in October 2009, those he met with all concluded that the new law allowed advanced fees by unbundling the loan modification work into segments or phases.

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.

Respondent, however, soon discovered that his new venture was going to result in problems with the State Bar of California. As a result, he stopped accepting loan modification matters, but continued to handle his existing cases through to a final resolution. Today, respondent no longer practices law in the loan modification sector.

Significant Procedural History

In December 2011, respondent and the Office of the Chief Trial Counsel of the State Bar of California (State Bar) entered into a stipulation to facts, conclusions of law, and disposition in case number 10-O-00157, et al. (the stipulation). The State Bar Court approved the stipulation shortly thereafter. In June 2012, the California Supreme Court returned the stipulation to the State Bar Court “for further consideration of the recommended discipline in light of the applicable attorney discipline standards.”

In September 2012, this court ruled that the parties were bound by findings of fact and conclusions of law in the stipulation, but were permitted to present certain limited evidence in mitigation and aggravation. The trial on these issues occurred in October 2012.

On October 5, 2012, a Notice of Disciplinary Charges (NDC) was filed in case number 12-O-12764. This case was subsequently consolidated with case number 10-O-00157, et al.

In January 2013, respondent sought to withdraw from the stipulation and to reopen the record so that he could submit additional evidence on the issue of his culpability. Respondent asserted that there was newly discovered evidence that showed that the State Bar had taken inconsistent positions on the applicability of section 6106.3 and Civil Code section 2944.7 (loan modification statutes). Respondent argued that the State Bar took a position in a federal civil case² on the applicability of the loan modification statutes that was inconsistent with the position

² *Duenas v. Brown, et al.*, U.S. District Court, Northern District of California, case number 10-CV-05884-RS.

taken by the State Bar in this case, and that the doctrine of judicial estoppel should therefore be applied to preclude the State Bar from prosecuting him for those charges in this case.

In the federal civil case referenced by respondent, the State Bar was a defendant and argued that the loan modification statutes applied only for negotiating, arranging, or otherwise performing loan modifications directly with the lender on the homeowner's behalf. The State Bar further argued that the statutes did not apply to attorneys representing homeowners in litigation or providing advice to homeowners regarding a lender's proposed modification of a mortgage.

In an order filed March 1, 2013, this court denied respondent's request to withdraw from the stipulation and reopen the record. In this order, the court ruled as follows:

The court first notes that it is not clear that the doctrine of judicial estoppel applies in a disciplinary proceeding to preclude an attorney from being held accountable for professional misconduct to which the attorney stipulated. Respondent cites no authority in support of this argument. In any event, respondent has failed to show that the requirements for applying the doctrine have been satisfied.

There are five requirements for the application of judicial estoppel: "(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 183.)

Respondent has not shown that the State Bar was successful in asserting its position regarding the statutes. The federal court order attached to respondent's motion indicates that the plaintiffs' complaint was dismissed with leave to amend, that the plaintiffs submitted a notice indicating that they no longer wished to pursue the matter, and that the case was dismissed. Neither this order nor the docket, also attached to respondent's motion, shows that the case was dismissed because the court adopted the State Bar's position or accepted it as true. In fact, it appears the opposite may be true as the State Bar's motion to dismiss requested dismissal *without* leave to amend.

Respondent has also failed to show that the State Bar has taken two positions that are "totally inconsistent." The State Bar argued in the federal case that the loan modification statutes applied to any person who engages in

negotiating, arranging or otherwise performing loan modifications directly with the lender on the homeowner's behalf. The parties stipulated in this case that respondent violated the loan modification statutes by being employed by several clients "to negotiate and obtain for them a home loan modification" and being paid advanced fees prior to completing all of the work. The State Bar's position in the federal civil case was that the statutes applied to any person engaged in home loan modifications and the State Bar stipulated in this case that respondent violated the statutes by engaging in home loan modifications. The State Bar has not taken the position that respondent violated the statutes by engaging in litigation or providing advice to homeowners regarding a lender's proposed modification of a mortgage. The position taken by the State Bar in this case is therefore consistent with its prior position.

On March 4, 2013, a second NDC was filed in case number 12-O-16854. On April 25, 2013, the court granted respondent's March 7, 2013 motion to consolidate case number 12-O-16854 with the previously consolidated cases (10-O-00157, et al., and 12-O-12764). All of the consolidated cases involved similar issues and the alleged misconduct occurred at or around the same time period.

Trial in the consolidated cases commenced on July 3, 2013. That same day, the parties filed a partial stipulation of facts relating to the consolidated matters.

Findings of Fact and Conclusions of Law

Background

Respondent was admitted to the practice of law in California on May 7, 1982, and has been a member of the State Bar of California at all times since that date. From his date of admission to 2008, respondent handled legal matters on behalf of athletes without any public discipline. When the crisis involving foreclosures of loans hit the news, respondent felt that this area of law provided a potential business opportunity for his firm. However, the practice involved both a new area of law and potential issues involving representation of out-of-state clients. Because he had practiced in such a different area of law for the previous 26 years, respondent sought advice before engaging in this new venture.

Multijurisdictional Issues.

Respondent contacted Glenn M. Horan (Horan), an attorney in Costa Mesa, California, to provide him with an opinion regarding the propriety of assisting out-of-state residents in loan modification matters involving federally chartered lending institutions. In particular, Horan focused on ABA proposed Model Rule 5.5 allowing temporary practice in a state by out-of-state attorneys. Horan provided respondent with a detailed letter containing his conclusions and his recommendations for respondent to follow in attempting to stay within the boundaries of ethics. Horan also provided a detailed appendix containing the rules of each state as to the unauthorized practice of law.³ In addition to retaining Horan for the opinion letter and appendix, respondent hired him on a monthly retainer to assist respondent in handling individual problems as they came up. In that regard, respondent met with Horan approximately two to four times each week.

Pre-Performance Compensation Issues.

At the time respondent contacted Horan, there was no restriction on the manner in which fees could be taken by attorneys in loan modification matters. However, the California Legislature was considering a change.

Respondent began following SB 94, a bill sponsored by Senators Calderon and Corea, as well as AB 764, an alternative bill, both of which sought to limit pre-performance compensation in mortgage loan modifications.⁴ Respondent read the news and internet blogs, and joined a Commission on Homeowner Representation. He went to meetings to continually update himself on the legislative history and progress of the bill. He met with experts in the field, including

³ See exhibit A. This court does not adopt the opinions expressed in Horan’s opinion letter, nor the accuracy of the description of each state’s law. The factual background is relevant, however, as to respondent’s good faith belief as to the legality of his actions, as is described later in this decision in the discussion of mitigating circumstances.

⁴ For purposes of this decision, “pre-performance compensation” includes the notion of “unbundling” of services; that is, the compartmentalizing of the loan modification process into segments, with compensation allowed following each segment of the larger loan modification.

Mark Zanides, a former prosecutor, and Julia Greenfield (Greenfield), an expert hired by the State Bar of California to advise it on loan modification issues.

On October 11, 2009, the California Legislature passed SB 94 on an emergency basis. Respondent compared the different language of the newly enacted Civil Code section 2944.7⁵ and Business and Professions Code section 10026⁶ (governing the regulation of real estate brokers and sales people) and he tentatively concluded that the restrictions on pre-performance compensation only applied to real estate professionals. To confirm his legal conclusion, respondent spoke with Martin Andelman, a prominent blogger on the subject; Eileen Newhall, the Staff Director to the Banking and Finance Committee responsible for drafting and interpreting legislation; and several other lawyers involved in loan modifications. All of these sources confirmed respondent's interpretation of the statutory scheme.

Respondent (or Horan on respondent's behalf) also contacted the State Bar Legal Ethics Hotline and was told that they were unaware of anything that would prevent unbundling the contracted-for services and receiving fees in stages. Finally, respondent directly contacted Greenfield, the State Bar advisor, who advised him that it was clear that pre-performance compensation for lawyers was allowed under SB 94.⁷

Respondent concluded that he could unbundle contracted-for services in loan modification cases and receive fees in stages, and commenced doing so in early November 2009. Thereafter, he was contacted by the State Bar. Respondent subsequently stopped taking new

⁵ See Exhibit I.

⁶ See Exhibit J.

⁷ Later, in June 2011, Greenfield would write a letter to Suzan Anderson of the State Bar Office of the Chief Trial Counsel explaining her conclusions regarding pre-performance compensation by lawyers. (See Exhibit G.) Respondent credibly testified that this letter reflects the same arguments and conclusions that emerged from his contact with Greenfield in 2009, and upon which he relied in his decision to unbundle his services.

clients, but continued working on his existing cases and finished each to completion, either by the granting of the loan modification or rejection by the lender.⁸

Aside from the present misconduct, respondent handled his clients in a proper fashion. In fact, blogger Martin Andelman contacted respondent and arranged a visit to his law office. His report of the office operations was very positive. (Exhibit LQ.)⁹

Case No. 10-O-00157 – The Wood Matter

Facts

On September 26, 2008, Florida resident Michael S. Wood (Wood) employed respondent and paid him an advanced fee of \$3,995 pursuant to a fee agreement under which respondent agreed to provide legal services to Wood in connection with Wood's request for a home mortgage loan modification. Also on September 26, 2008, Wood mailed correspondence prepared by respondent entitled "Authorization to Represent" in which Wood informed his lender that respondent was representing Wood in the matter regarding his home mortgage loan modification request.

Florida Statutes Title XXII, Chapter 454.23 (Penalties), provides that "Any person not licensed or otherwise authorized to practice law in this state who practices law in this state or holds himself or herself out to the public as qualified to practice law in this state, or who willfully pretends to be, or willfully takes or uses any name, title, addition, or description implying that he or she is qualified, or recognized by law as qualified, to practice law in this state, commits a felony of the third degree[.]"

⁸ It should be noted that it was not until 2011 that the State Bar formally announced its policy that unbundling of contracted-for services and fees was prohibited under the law. Immediately thereafter, respondent and his attorney in this matter met with Greenfield to discuss the State Bar's position on the subject. Greenfield thereafter wrote the aforementioned letter to the State Bar.

⁹ The date on this exhibit does not reflect the actual date of the visit.

Florida law holds that “giving legal advice and performing services which require legal skill and a knowledge of the law greater than that possessed by the average citizen is the practice of law.” (*State ex rel. The Florida Bar v. Sperry*, 140 So.2d 587, 591 (Fla. 1962), overruled on other grounds, *Sperry v. Florida*, 373 U.S. 379 (1963).) Under Florida law, the following are considered the “practice of law”: using a title such as “lawyer,” “attorney,” “attorney at law,” “esquire,” “counselor,” or “counsel” and “sending correspondence as the representative of a client regarding legal matters.” (*Florida Bar v. Gordon*, 661 So.2d 295, 296 (Ha. 1995).)

Respondent is not now, nor ever has been, licensed to practice law in the State of Florida. The record does not demonstrate that respondent has refunded the advanced fee paid by Wood.

Conclusions

Count One – (Rule 1-300(B) [Prohibition on Practicing Law in Violation of Other Jurisdiction’s Professional Regulations])

Rule 1-300(B) provides that an attorney must not practice law in a jurisdiction where to do so would be in violation of regulations of that jurisdiction’s profession. By accepting employment with Wood in order to perform legal services in connection with his home mortgage loan modification, respondent practiced law in the State of Florida, and thereby violated the regulations of the profession in the State of Florida, in willful violation of rule 1-300(B).

Count Two – (Rule 4-200(A) [Illegal Fee])

Rule 4-200(A) provides that an attorney must not charge, collect, or enter into an agreement for an illegal or unconscionable fee. By entering into an agreement for, charging, and collecting fees from Wood, when he was not licensed to practice law in Florida, respondent willfully violated rule 4-200(A).

Case No. 10-O-01887 – The Carey Matter

Facts

On September 17, 2008, Nevada resident Scott Carey (Carey) employed respondent to negotiate and obtain a home mortgage loan modification for Carey's Nevada property. Carey paid respondent an advanced fee of \$2,000. Nevada Rules of Professional Conduct, rule 5.5(b)(2) states, in pertinent part, that: "A lawyer who is not admitted to practice law in this jurisdiction shall not: ... [r]epresent or hold out to the public that the lawyer is admitted to practice law in this jurisdiction."

Respondent is not presently, and never has been, admitted to practice law in the State of Nevada. The record does not demonstrate that respondent has refunded the advanced fee paid by Carey.

Conclusions

Count Three – (Rule 1-300(B) [Prohibition on Practicing Law in Violation of Other Jurisdiction's Professional Regulations])

By accepting employment with Carey in order to perform legal services in connection with his home mortgage loan modification, respondent practiced law in the State of Nevada, and thereby violated the regulations of the profession in the State of Nevada, in willful violation of rule 1-300(B).

Count Four – (Rule 4-200(A) [Illegal Fee])

By entering into an agreement for, charging, and collecting fees from Carey, when he was not licensed to practice law in Nevada, respondent willfully violated rule 4-200(A).

Case No. 10-O-04640 – The Licari Matter

Facts

On March 25, 2010, Michigan residents Louis and Tracey Licari (the Licaris) employed respondent to negotiate and obtain for them a home mortgage loan modification for their Michigan property. The Licaris paid respondent an advanced fee of \$3,500.

Michigan Compiled Law section 600.916 provides, in pertinent part, that “a person shall not practice law or engage in the law business, shall not in any manner whatsoever lead others to believe that he or she is authorized to practice law or to engage in the law business, and shall not in any manner whatsoever represent or designate himself or herself as an attorney and counselor, attorney at law, or lawyer, unless the person is regularly licensed and authorized to practice law in this state. A person who violates this section is guilty of contempt of the supreme court and of the circuit court of the county in which the violation occurred, and upon conviction is punishable as provided by law.”

Respondent is not presently, and never has been, admitted to practice law in the State of Michigan. The record does not demonstrate that respondent has refunded the advanced fee paid by the Licaris.

Conclusions

Count Five – (Rule 1-300(B) [Prohibition on Practicing Law in Violation of Other Jurisdiction’s Professional Regulations])

By accepting employment with the Licaris in order to perform legal services in connection with a home mortgage loan modification, respondent practiced law in the State of Michigan, and thereby violated the regulations of the profession in the State of Michigan, in willful violation of rule 1-300(B).

Count Six – (Rule 4-200(A) [Illegal Fee])

By entering into an agreement for, charging, and collecting fees from the Licaris, when he was not licensed to practice law in Michigan, respondent willfully violated rule 4-200(A).

Case No. 10-O-04641 – The Hurlbut Matter

Facts

On December 9, 2009, John and Linda Hurlbut (the Hurlbuts) employed respondent to negotiate and obtain for them a home mortgage loan modification. On December 15, 2009, the Hurlbuts paid respondent \$2,000 as the initial installment on an advanced fee of \$3,950. On that date, respondent had not completed all the contacted-for services described in the engagement agreement with the Hurlbuts. On January 26, 2010, the Hurlbuts paid respondent a second installment toward their advanced fee, in the sum of \$1,495. On that date, respondent had still not completed all the contacted-for services described in the engagement agreement with the Hurlbuts. The record does not demonstrate that respondent has refunded the advanced fees paid by the Hurlbuts.

Conclusions

Count Seven – (Section 6106.3 [Failure to Comply with Civil Code Section 2944.7])

Section 6106.3 provides that an attorney must not engage in any conduct in violation of section 2944.7 of the Civil Code. Civil Code section 2944.7 provides, in pertinent part, that notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.

By charging and receiving advanced fees after October 11, 2009, in exchange for agreeing to perform loan modification services in violation of California Civil Code section 2944.7, subd. (a)(1), respondent willfully violated Business and Professions Code section 6106.3.

Case No. 10-O-04648 – The Haupt Matter

Facts

On January 1, 2010, Joseph and Carrie Haupt (the Haupt)s employed respondent to negotiate and obtain for them a home mortgage loan modification. On January 19, 2010, the Haupt)s paid respondent \$2,000 as the initial installment on an advanced fee of \$3,950. On that date, respondent had not completed all the contacted-for services described in the engagement agreement with the Haupt)s. On February 5, 2010, the Haupt)s paid respondent a second installment toward their advanced fee, in the sum of \$1,495. On that date, respondent had still not completed all the contacted-for services described in the engagement agreement with the Haupt)s. The record does not demonstrate that respondent has refunded the advanced fees paid by the Haupt)s.

Conclusions

Count Eight – (Section 6106.3 [Failure to Comply with Civil Code Section 2944.7])

By charging and receiving advanced fees after October 11, 2009, in exchange for agreeing to perform loan modification services in violation of California Civil Code section 2944.7, subd. (a)(1), respondent willfully violated section 6106.3.

Case No. 10-O-04933 – The Bernier Matter

Facts

On November 4, 2009, Stephen and Karla Bernier (the Bernier)s employed respondent to negotiate and obtain for them a home mortgage loan modification. On November 12, 2009, the

Berniers paid respondent \$2,950 as the initial installment on an advanced fee of \$3,450. On that date, respondent had not completed all the contacted-for services described in the engagement agreement with the Berniers. On January 4, 2010, the Berniers paid respondent a second installment toward their advanced fee, in the sum of \$500. On that date, respondent had still not completed all the contacted-for services described in the engagement agreement with the Berniers. The record does not demonstrate that respondent has refunded the advanced fees paid by the Berniers.

Conclusions

Count Nine – (Section 6106.3 [Failure to Comply with Civil Code Section 2944.7])

By charging and receiving advanced fees after October 11, 2009, in exchange for agreeing to perform loan modification services in violation of California Civil Code section 2944.7, subd. (a)(1), respondent willfully violated section 6106.3.

Case No. 10-O-06919 – The Brown Matter

Facts

On November 11, 2009, David and Kelly Brown (the Browns) employed respondent to negotiate and obtain for them a home mortgage loan modification. On November 20, 2009, the Browns paid respondent an advanced fee of \$2,950. On that date, respondent had not completed all the contracted-for services described in the engagement agreement with the Browns. The record does not demonstrate that respondent has refunded the advanced fee paid by the Browns.

Conclusions

Count Ten – (Section 6106.3 [Failure to Comply with Civil Code Section 2944.7])

By charging and receiving advanced fees after October 11, 2009, in exchange for agreeing to perform loan modification services in violation of California Civil Code section 2944.7, subd. (a)(1), respondent willfully violated section 6106.3.

Case No. 12-O-12764 – The Lee Matter

Facts

On December 30, 2009, Desmond and Belen Lee (the Lees) employed respondent and paid him \$2,950 pursuant to a fee agreement under which respondent agreed to analyze their income and expense documents and prepare an initial proposal to be presented to their mortgage holder in a request for a mortgage home loan modification. On March 14, 2010, the Lees paid respondent \$500. On May 13, 2010, the Lees paid respondent \$200. On May 20, 2010, the Lees paid respondent \$200. At the time these payments were made, respondent had not completed each and every service which he had contracted to perform. Respondent has not returned the fees he received to the Lees.

Respondent included within his retainer agreement with the Lees, a statement with language complying with Civil Code section 2944.6. (Exhibit LB, page 8.) The clients both placed their initials next to this language. Desmond Lee is a lawyer licensed in the State of California.¹⁰

Conclusions

Count One – (Section 6106.3 [Failure to Comply with Civil Code Sections 2944.7 and 2944.6])

By charging and receiving advanced fees after October 11, 2009, in exchange for agreeing to perform loan modification services in violation of California Civil Code section 2944.7, subd. (a)(1), respondent willfully violated section 6106.3.

¹⁰ Desmond Lee, an attorney, repeatedly threatened to report respondent to the State Bar unless respondent paid him far more than the amount of his fee. Initially, he demanded \$10,000 from respondent. Later that was reduced to \$6,000. Again it was dropped to \$4,000. The parties engaged in a series of emails where respondent sought to determine the origin of Desmond Lee's demands. Desmond Lee responded with more rancor, name calling, and threats, even after he was advised of the existence of rule 5-100. (Exhibit LK.) Apparently, after Desmond Lee realized the import of rule 5-100, he issued an apology. (Exhibit LL.)

The language in respondent's retainer agreement complied with Civil Code section 2944.6, though it was not contained in a statement which was separated from the retainer agreement. Civil Code section 2944.6, however, only requires that the attorney provide to the borrower the specified language "as a separate statement." This language is ambiguous as to whether: (1) the language itself is the "statement" referred to; or (2) the separate statement refers to the creation of a document separate from the retainer agreement. Nevertheless, respondent substantially complied with the terms of the Civil Code section, particularly in light of the fact that both Desmond Lee (a lawyer) and Belen Lee initialed the language. As such, the portion of Count One alleging the failure to comply with Civil Code section 2944.6 is dismissed with prejudice.

Count Two – (Rule 4-200(A) [Illegal Fee])

By charging and receiving advanced fees before each and every contracted-for service had been completed, as set forth above, respondent willfully charged an illegal fee.

Count Three – (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. Because the fees he received were illegal fees in violation of rule 4-200(A), respondent is required to refund those illegal fees. Respondent failed to refund the fees to the Lees, in willful violation of rule 3-700(D)(2).

Case No. 12-O-16854 – The Hechevarria Matter

Facts

On July 12, 2010, Kimberlee Hechevarria (Hechevarria) employed respondent and paid him \$1,000 pursuant to a fee agreement under which respondent agreed to analyze her income and expense documents and prepare an initial proposal to be presented to her mortgage holder in a request for a home mortgage loan modification. At the time the \$1,000 payment was made,

respondent had not completed each and every service which he had contracted to perform. The record does not demonstrate that respondent has refunded the advanced fee paid by Hechevarria.

Conclusions

Count One – (Section 6106.3 [Failure to Comply with Civil Code Section 2944.7])

By charging and receiving advanced fees after October 11, 2009, in exchange for agreeing to perform loan modification services in violation of California Civil Code section 2944.7, subd. (a)(1), respondent willfully violated Business and Professions Code section 6106.3.

Aggravation¹¹

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Although the court finds no pattern of misconduct, there were multiple client matters for which misconduct was found.

Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)

Although not considered as an aggravating factor in the original stipulation, the State Bar requests that the court consider the harm that it argues accrued to the complaining witnesses. In that regard, the State Bar offered several written victim statements. Counsel for respondent and the Deputy Trial Counsel conferred off the record as to whether these witnesses would be required to testify on cross examination. As an alternative to cross examining the witnesses, the parties agreed that certain portions of the victim statements would not be considered by the court. The parties then identified those portions not to be considered on the record.

After examining the witness statements as well as the entire record, the court is not convinced that the complaints of the clients in the victim statements rise to the level of

¹¹ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

significant harm within the meaning of Std. 1.2(b)(iv). As such, the court does not find any aggravating impact under this standard.

Mitigation

No Prior Record (Std. 1.2(e)(i).)

At the time of the misconduct, respondent had been a member of the State Bar of California for over 26 years, and had no prior record of discipline. The court considers this a highly significant mitigating factor. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [more than 20 years of practice with an unblemished record is highly significant mitigation].)

Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)

Respondent agreed to settle this matter at an early stage in the disciplinary proceedings. This is important, because it saved the court's valuable resources. Although the matter was returned by the Supreme Court, this does not minimize respondent's cooperation with the State Bar in this regard. Further, respondent entered into a second stipulation of facts in the consolidated matters. These efforts on respondent's part to expedite the proceeding are entitled to some weight in mitigation.

However, respondent did not promptly pay restitution to his clients, so his cooperation to the victims was not impressive, and is given no weight in mitigation.

Remorse/Recognition of Wrongdoing (Std. 1.2(e)(vii).)

Respondent has expressed some remorse for his misconduct, but did not promptly pay restitution to his victims. Therefore, the court gives this mitigating factor minimal weight.

Good Faith (Std. 1.2(e)(ii).)

Respondent sought out the advice of experts in the area of law which is the subject of this proceeding. He retained counsel to prepare a formal opinion on the ethical unauthorized practice of law issues presented and the appropriateness of "unbundling" the tasks to perform to receive

incremental fees prior to full completion of the loan modification. (Exhibit A .) He also contacted the State Bar for advice on whether it was proper to “unbundle” his tasks and receive fees prior to full completion. He acted prudently on what he felt was competent legal advice received from others. Given the lack of judicial precedent in this area at the time he committed the misconduct, he had little to guide his conduct. (See *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 633; and *Hildebrand v. State Bar* (1950) 36 Cal.2d 504, 514.) Further, respondent only took cases in the loan modification area for a limited period of time, during which time he learned of the problems associated with “unbundling” the work. Ultimately, respondent stopped taking new loan modification cases, and fully completed the cases he had already accepted. Consequently, respondent’s good faith efforts warrant some consideration in mitigation.

Good Character (Std. 1.2(e)(vi).)

The State Bar stipulated that respondent’s good character was attested to by a wide range of references in the general and legal communities who were aware of the full extent of respondent’s misconduct.

Discussion

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 provides that the primary purposes of disciplinary proceedings “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.”

Standard 2.10 is applicable to the misconduct in this matter. Standard 2.10 provides that culpability of a member of a violation of section 6106.3, or rules 1-300(B), 3-700(D)(2), or

4-200 shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim.

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.) As 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.)

The court also looked to the case law for guidance. The court found *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, to be helpful.

In *Taylor*, the attorney, in eight client matters, was found culpable of charging illegal fees in violation of section 6106.3. No moral turpitude was involved. In aggravation, the attorney committed multiple acts of misconduct, caused significant harm, and demonstrated indifference. In mitigation, the attorney presented good character evidence. The Review Department recommended that the attorney be suspended for a period of two years, with the execution stayed, and that he be placed on probation for two years including a six-month period of actual suspension and/until full payment of restitution.

The present case is similar to *Taylor* in that it involves violations of Civil Code section 2944.7 and a similar number of clients. *Taylor*, however, involves more aggravation and less mitigation than the present matter. Specifically, respondent’s extensive legal career prior to the present misconduct is a significant distinguishing factor. Another significant difference between the present matter and *Taylor* is the great efforts respondent made to determine the propriety of his business model. As detailed above, the issue of whether an attorney could unbundle

advanced fees in loan modification matters was confusing and uncertain. It wasn't until the review department's decision in *Taylor* that this issue was adequately addressed and clarified.

Consequently, the court finds appropriate a lower level of discipline than that which was recommended in *Taylor*. The court is encouraged by respondent's good faith and the proactive steps he has taken to bring his law office into compliance. That being said, respondent's extensive misconduct and outstanding restitution still warrant a period of actual suspension.

Therefore, the court recommends, among other things, that respondent be suspended from the practice of law for one year, that execution of that period of suspension be stayed, and that he be placed on probation for two years, including a minimum period of actual suspension of 60 days and until respondent pays restitution.¹²

Recommendations

It is recommended that respondent Steven Craig Feldman, State Bar Number 103676, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that respondent be placed on probation¹³ for a period of two years subject to the following conditions:

1. Respondent Steven Craig Feldman is suspended from the practice of law for the first 60 days of probation, and he will remain suspended until the following requirements are satisfied:
 - i. Respondent must make restitution to Michael S. Wood, in the amount of \$3,995 plus 10 percent interest per year from September 26, 2008 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Michael S. Wood, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;

¹² Respondent will receive credit for any portion of the restitution paid prior to the effective date of the Supreme Court order imposing discipline in this matter. To receive credit, respondent must provide the Office of Probation of the State Bar with satisfactory proof of payment.

¹³ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

- ii. Respondent must make restitution to Scott Carey, in the amount of \$2,000 plus 10 percent interest per year from September 17, 2008 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Scott Carey, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
- iii. Respondent must make restitution to Louis and Tracey Licari, in the amount of \$3,500 plus 10 percent interest per year from March 25, 2010 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Louis and Tracey Licari, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
- iv. Respondent must make restitution to John and Linda Hurlbut, in the amount of \$3,495 plus 10 percent interest per year from December 15, 2009 (or reimburse the Client Security Fund, to the extent of any payment from the fund to John and Linda Hurlbut, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
- v. Respondent must make restitution to Joseph and Carrie Haupt, in the amount of \$3,495 plus 10 percent interest per year from January 19, 2010 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Joseph and Carrie Haupt, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
- vi. Respondent must make restitution to Stephen and Karla Bernier, in the amount of \$3,450 plus 10 percent interest per year from November 12, 2009 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Stephen and Karla Bernier, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
- vii. Respondent must make restitution to David and Kelly Brown, in the amount of \$2,950 plus 10 percent interest per year from November 20, 2009 (or reimburse the Client Security Fund, to the extent of any payment from the fund to David and Kelly Brown, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
- viii. Respondent must make restitution to Desmond and Belen Lee, in the amount of \$3,850 plus 10 percent interest per year from December 30, 2009 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Desmond and Belen Lee, in accordance with Business

and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;

- ix. Respondent must make restitution to Kimberlee Hechevarria, in the amount of \$1,000 plus 10 percent interest per year from July 12, 2010 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Kimberlee Hechevarria, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles; and
- x. If respondent remains suspended for two years or more as a result of not satisfying the preceding requirements, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

2. Respondent must also comply with the following additional conditions of probation:

- i. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
- ii. Respondent must submit written quarterly reports to the State Bar's Office of Probation (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 he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, the report must be submitted on the next following quarter date, and cover the extended period.

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

- iii. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein;
- iv. Within 10 days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California 94105-1639, **and** to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

- v. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with his 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; and
 - vi. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
3. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for one year will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of respondent's suspension, whichever is longer and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

Conditional California Rules of Court, Rule 9.20

It is further recommended that if respondent remains suspended for 90 days or more, he must also comply with rule 9.20 of the 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 this order.

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

The order filed on January 4, 2012, approving the parties' Stipulation Re Facts, Conclusions of Law and Disposition, in case number 10-O-00157, et al., is hereby **VACATED**.

The Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving, which was filed on January 4, 2012, is hereby converted to a stipulation as to facts and conclusions of law only, and State Bar Court staff is directed to remove the Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving, filed on January 4, 2012, from the State Bar's website.

Dated: October _____, 2013

RICHARD A. HONN
Judge of the State Bar Court