FILED AUGUST 4, 2010

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **JOHN MICHAEL HARRISON** **Member No. 144964** A Member of the State Bar.	)	Case No.: **10-TE-06259-DFM** **DECISION AND ORDER OF INACTIVE ENROLLMENT (BUS. & PROF. CODE SECTION 6007, SUBDIVISION (c)(1))**

INTRODUCTION

This matter is before the court on the verified application of the Office of the Chief Trial Counsel of the State Bar of California (State Bar) seeking to involuntarily enroll Respondent John Michael Harrison (Respondent) as an inactive member of the State Bar pursuant to Business and Professions Code[1] section 6007, subdivision (c)(1), and rule 461 of the Rules of Procedure of the State Bar of California (Rules of Procedure).

After reviewing and considering this matter, the court finds that Respondent's conduct poses a substantial threat of harm to his clients and the public and that the other prerequisites of section 6007, subdivision (c)(1), have been met. Accordingly, it orders that Respondent be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(1).

[1] Future references to section(s) are to this source.

PROCEDURAL HISTORY

The State Bar filed its application for Respondent's involuntary inactive enrollment on July 8, 2010. On July 21, 2010, Respondent filed a response to the application. A hearing was held on July 28, 2010; and this matter was submitted that same day. (Rules Proc. of State Bar, rule 464.) The State Bar was represented by Deputy Trial Counsel Katherine Kinsey. Respondent represented himself and was assisted at the hearing by _____.

JURISDICTION

Respondent was admitted to the practice of law in California on December 13, 1989, and has been a member of the State Bar at all times since.

INTRODUCTION

Section 6007, subdivision (c), authorizes the court to order an attorney's involuntary inactive enrollment upon a finding that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public. In order to find that an attorney's conduct poses a threat of harm, the following three factors must be shown: (1) the attorney has caused or is causing substantial harm to his clients or the public; (2) the attorney's clients or the public are likely to suffer greater injury from the denial of the application than the attorney is likely to suffer if it is granted or there is a reasonable likelihood that the harm will reoccur and continue; and (3) there is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter. (*Conway v. State Bar* (1989) 47 Cal.3d 1107; *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658, 661.) Where the evidence establishes a pattern of behavior, including acts likely to cause substantial harm, the burden of proof shifts to the attorney to show that there is no reasonable likelihood that the harm will reoccur or continue. (Section 6007, subd. (c)(2)(B).)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings of fact are based on clear and convincing evidence.

Background

Respondent was given notice of this proceeding pursuant to rule 461 of the Rules of Procedure. The application is based on matters not yet the subject of disciplinary charges pending in the State Bar Court. (Rules Proc. of State Bar, rule 461(a)(3).)

The evidence before the court comes solely by way of declaration. (Rules Proc. of State Bar, rule 465(a).) The State Bar submitted 18 declarations—14 of which were from individual clients. Based on the content of these declarations and their supporting exhibits, the court finds these declarations to be credible.

Respondent, on the other hand, submitted only his own declaration—which incorporated his verified response to the application. Respondent's declaration did not specifically address any of the aforementioned client matters, and, as referenced below, lacked credibility.

Respondent's Loan Modification Practices

In or about early 2009, Respondent began offering loan modification services through his law firm, the Law Offices of John M. Harrison (Respondent's law office). Respondent's law office solicited clients by telephone and through television advertisements. Clients were enticed to hire Respondent's law firm with promises of significant savings on their monthly mortgage bills and money-back guarantees. Respondent's law office accepted representation and compensation for representing clients in states other than California, although Respondent was not authorized to practice in such states.[2]

In the summer and fall of 2009, Respondent's law office began to experience problems in treating Respondent's loan modification clients. These problems included failing to perform

[2] There is no indication in the record that anyone else in Respondent's law firm was entitled to practice law in any state other than California.

with competence or at all, failing to notify the clients of significant developments or respond to their requests for status reports, failing to account for fees, and failing to refund unearned fees. Respondent largely delegated responsibility for these clients to his non-attorney staff, but exercised little to no supervision over that staff.

Respondent blames much of the present misconduct on his health problems. In June 2009, Respondent suffered stroke which resulted in a weakened right arm and almost a total loss of vision.[3] Yet, despite these debilitating health problems,

On September 23, 2009, despite the problems he was already having with his existing law firm, Respondent purchased and assumed responsibility for a second loan modification business, the Waypoint Law Group, Inc. (Waypoint Law Group). At the time Respondent acquired Waypoint Law Group, it was already experiencing many of the same client service problems that were afflicting Respondent's law office. In several matters, Waypoint Law Group had agreed to represent loan modification clients, accepted up-front fees, and subsequently failed to communicate and perform. And like Respondent's law office, many of Waypoint Law Group's clients resided in other states.

Following Respondent's acquisition of Waypoint Law Group, he did not take any significant steps to supervise or oversee its business practices or employees. Waypoint Law Group continued to solicit out-of-state loan modification clients and demonstrated little regard for the welfare of these clients.

In numerous matters, Respondent and Waypoint Law Group failed to perform, failed to communicate, and failed to account for or refund unearned fees. The evidence also demonstrates that Respondent, as owner of Waypoint Law Group, engaged in the unauthorized practice of law and collected illegal fees by representing out-of-state clients without authority.

[3] Respondent stated that he continues to suffer from these severe medical problems.

Respondent failed to respond promptly to reasonable status inquires of his clients and to keep clients reasonably informed of significant developments in matters with regard to which he had agreed to provide legal services in willful violation of section 6068, subdivision (m), in, but not necessarily limited to, the following client matters: Loribeth Thomas; Harold Richmond; David Quinones; Jane Petrozzi; John Karp; Annette Kaipo; Rachel Jernigan; Brad Ingram; Kimberly Gifford; Bobby Flenoid; Daniel Donaldson; Belina Daniels; Florence Chambliss; and Jeffery Fletcher.

Respondent failed to respond promptly to reasonable status inquires of clients and to keep clients reasonably informed of significant developments in matters with regard to which he had agreed to provide legal services in willful violation of section 6068, subdivision (m), in, but not necessarily limited to, the following client matters: Loribeth Thomas; Harold Richmond; David Quinones; Jane Petrozzi; John Karp; Annette Kaipo; Rachel Jernigan; Brad Ingram; Kimberly Gifford; Bobby Flenoid; Daniel Donaldson; Belina Daniels; Florence Chambliss; and Jeffery Fletcher.

Respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of, rule 3-110(A)[4] of the Rules of Professional Conduct of the State Bar of California,[5] in, but not necessarily limited to, the following client matters: Loribeth Thomas; Harold Richmond; David Quinones; Jane Petrozzi; John Karp; Rachel Jernigan; Kimberly Gifford; Bobby Flenoid; Daniel Donaldson; Belina Daniels; and Jeffery Fletcher.

Respondent failed to refund unearned fees in willful violation of rule 3-700(D)(2) in, but not necessarily limited to, the following client matters: Loribeth Thomas; Harold Richmond;

[4] The duties set forth in rule 3-110(A) include the duty to supervise the work of subordinate attorney and non-attorney employees or agents.

[5] All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

David Quinones; John Karp; Brad Ingram; Kimberly Gifford; Bobby Flenoid; Daniel Donaldson; Belina Daniels; Florence Chambliss; and Jeffery Fletcher.

Respondent engaged in the practice law in jurisdictions where to do so would be in violation of regulations of the profession in that jurisdiction, in willful violation of Rule 1-300(B), in, but not necessarily limited to, the following matters: Loribeth Thomas; Harold Richmond; David Quinones; John Karp; Annette Kaipo; Rachel Jernigan; Brad Ingram; Kimberly Gifford; Bobby Flenoid; Daniel Donaldson; Belina Daniels; Florence Chambliss; and Jeffery Fletcher.

Respondent collected an illegal fee in willful violation of rule 4-200(A), in, but not necessarily limited to, the following matters: Loribeth Thomas; Harold Richmond; David Quinones; John Karp; Annette Kaipo; Rachel Jernigan; Brad Ingram; Kimberly Gifford; Bobby Flenoid; Daniel Donaldson; Belina Daniels; Florence Chambliss; and Jeffery Fletcher.

Section 6106.3 states that an attorney's violation of Civil Code section 2944.7 constitutes cause for the imposition of discipline. Respondent willfully violated Civil Code section 2944.7(a)(1) by collecting advanced fees, after October 10, 2009, in, but not necessarily limited to, the following mortgage loan modification matters: Jane Petrozzi; Annette Kaipo; Harold Richmond; Rachel Jernigan; Kimberly Gifford; and John Karp.

In his response to the application for involuntary inactive enrollment, Respondent stated that he was only "involved" with Waypoint Law Group for 20 days—from September 23, 2009 to October 13, 2009. He claimed that Waypoint Law Group was "shut down" on October 13,

2009, as a result of a cease and desist order from the Attorney General's Office and Senate Bill 94.[6]

The court finds, however, that these claims are factually inaccurate. The evidence before the court clearly demonstrates that Waypoint Law Group did not cease to operate on October 13, 2009. Instead, it continued to solicit clients and collect advanced fees (in violation of the new law prohibiting the collection of such fees) into at least November 2009. At the hearing of this matter, Respondent acknowledges that the operations of Waypoint continued well into 2010, well after October 13, 2009.

Even if Waypoint Law Group had ceased operations on October 13, 2009, Respondent, as the attorney-owner of Waypoint Law Group, did not have the luxury of simply walking away. Respondent was responsible for all his clients' money and files in Waypoint Law Group's possession, and he was not relieved from these responsibilities (or his fiduciary duties) simply because he "shut down" the operation or purported to walk away from it.

Despite Respondent's repeated failures to perform (both at Waypoint Law Group and Respondent's law firm), he has declined or ignored numerous client refund requests. In his declaration, Respondent claimed that he is willing to pay restitution "should the [court] deem such to be warranted."

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges (among others):

Failure to Communicate section 6068, subdivision (m),

Failure to Perform

Failure to Refund

[6] Senate Bill 94 precluded attorneys from receiving upfront fees for loan modification services after October 10, 2009.

Unauthorized Practice of Law

Charging an Illegal Fee

Violating Civil Code Section 2944.7(a)(1)

DISCUSSION

The evidence before the court establishes that Respondent, in his capacity as an attorney, has committed numerous acts of attorney misconduct relating to his loan modification businesses.

As mentioned earlier in this decision, section 6007, subdivision (c)(2) sets forth three factors for determining whether an attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or the public. All of the following factors must be found:

1. The attorney has caused or is causing substantial harm to his clients or the public;

2. The attorney's clients or the public are likely to suffer greater injury if the involuntary inactive enrollment is denied than the attorney is likely to suffer if it is granted, or that there is a reasonable likelihood the harm caused by the attorney will reoccur or continue; and

3. That it is reasonably probable that the State Bar will prevail on the merits of the underlying disciplinary matter.

Substantial Harm to the Public or the Attorney's Clients

Respondent's misconduct has caused substantial harm to his clients and the public. Each of the aforementioned clients turned to Respondent in their time of need. However, instead of helping these clients, Respondent accepted thousands of dollars in fees and provided his clients with little to nothing in return. Despite his unauthorized representation of out-of-state clients and his failure to perform the services for which he was retained, Respondent has failed to refund tens of thousands of dollars in illegal or unearned fees.

Accordingly, the court finds that the State Bar has established, by clear and convincing evidence, that Respondent has caused substantial harm to his clients and the public.]

Reasonable Probability the State Bar will Prevail

In the above Findings of Fact and Conclusions of Law, this court made findings and conclusions with respect to the third of the above factors; that is, the likelihood of the State Bar prevailing on the merits of the charges presented in the application. As established above, the court finds that there is a reasonable probability that the State Bar will prevail on the aforementioned misconduct.

Likeliness that Harm will Continue

Respondent has demonstrated a lack of understanding or appreciation of his ethical and fiduciary duties. In addition, Respondent continues to harm his clients by failing to refund their unearned fees and communicate with them. Absent the court's intervention, it is likely that Respondent's misconduct will continue to harm his present and future clients.

The court also finds that Respondent's conduct demonstrates a pattern of behavior, including acts likely to cause substantial harm. Accordingly, the burden of proof shifts to Respondent to demonstrate that there is no reasonable likelihood that the harm will reoccur or continue. (Section 6007, subdivision (c)(2)(B).)

In his defense, Respondent asserted that he no longer accepts representation of loan modification clients. Respondent, however, fails to recognize that the gravamen of his misconduct is not unique to loan modification matters. Respondent's mistreatment of his clients is what is critical to the court.

Respondent also argued that his severe medical problems greatly contributed to the present misconduct. Respondent, however, still suffers from these same medical problems, and the court has little reason to believe that the present misconduct will not reoccur.

Consequently, there is no clear and convincing evidence that Respondent has met his burden under Section 6007, subdivision (c)(2)(B).

Therefore, the court finds that each of the factors prescribed by Business and Professions Code section 6007, subdivision (c)(2), has been established by clear and convincing evidence. The court concludes that Respondent's conduct poses a substantial threat of harm to his clients and the public. The court further finds that the involuntary inactive enrollment of Respondent is merited for the benefit of the public, the courts, and the legal profession.

ORDER

Accordingly, **IT IS ORDERED** that Respondent John Michael Harrison be enrolled as an inactive member of the State Bar of California, pursuant to Business and Professions Code section 6007, subdivision (c)(1), effective three days after service of this order by mail. (Rules Proc. of State Bar, rule 466(b).) State Bar Court staff is directed to give written notice of this order to Respondent and to the Clerk of the Supreme Court of California. (Bus. & Prof. Code, § 6081.)

IT IS FURTHER ORDERED that:

1. Within 30 days after the effective date of the involuntary inactive enrollment, Respondent must:

(a) Notify all clients being represented in pending matters and any co-counsel of his involuntary inactive enrollment and his consequent immediate disqualification to act as an attorney and, in the absence of co-counsel, notify the clients to seek legal advice elsewhere, calling attention to the urgency in seeking the substitution of another attorney or attorneys in his place;

(b) Deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to the urgency of obtaining the papers or other property;

(c) Provide to each client an accounting of all funds received and fees or costs paid, and refund any advance payments that have not been either earned as fees or expended for appropriate costs; and

(d) Notify opposing counsel in pending matters or, in the absence of counsel, the adverse parties of his involuntary inactive enrollment, and file a copy of the

notice with the court, agency, or tribunal before which the matter is pending for inclusion in the respective file or files;

2. All notices required to be given by paragraph 1 must be given by registered or certified mail, return receipt requested, and must contain Respondent's current State Bar membership records address where communications may thereafter be directed to him;

3. Within 40 days of the effective date of the involuntary inactive enrollment, Respondent must file with the Clerk of the State Bar Court: (1) an affidavit (containing Respondent's current State Bar membership records address where communications may thereafter be directed to him) stating that he has fully complied with the provisions of paragraphs 1 and 2 of this order; and (2) copies of all documents sent to clients pursuant to paragraph 1(c) of this order; and

4. Respondent must keep and maintain records of the various steps taken by him in compliance with this order so that, upon any petition for termination of inactive enrollment, proof of compliance with this order will be available for receipt into evidence. Respondent is cautioned that failure to comply with the provisions of paragraphs 1 - 4 of this order may constitute a ground for denying his petition for termination of inactive enrollment or reinstatement, or for imposing sanctions.

Dated: September _____, 2010

DONALD F. MILES
Judge of the State Bar Court