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State Bar Court of California Hearing Department Los Angeles REPROVAL		
Counsel For The State Bar Kim Kasreliovich Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1378 Bar # 261766	Case Number(s): 12-O-14695 - DFM	For Court use only <div style="text-align: center;"> FILED AUG 26 2013 <i>YJC</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Counsel For Respondent Arthur Margolis Margolis & Margolis LLP 2000 Riverside Dr Los Angeles, CA 90039 (323) 953-8996 Bar # 57703	NOT FOR PUBLICATION	
In the Matter of: MARTIN CORNELIS BOBAK Bar # 110246 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PRIVATE REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 December 12, 1983.
- (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 10 pages, not including the order.



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- (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):
- Costs are added to membership fee for calendar year following effective date of discipline (public reproof).
 - Case ineligible for costs (private reproof).
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (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.
- (9) The parties understand that:
- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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

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- (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline.
- (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 page 7 for a further discussion of Harm.
- (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 page 7 for a further discussion of Multiple/Pattern of Misconduct.
- (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. See page 7 for a further discussion of No Prior Discipline.
- (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.

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- (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. See page 7 for a further discussion of Emotional/Physical Difficulties.
- (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.
- (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:

D. Discipline:

- (1) **Private reproof (check applicable conditions, if any, below)**
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) Respondent must comply with the conditions attached to the reproval for a period of one year.
- (2) During the condition period attached to the reproval, 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 condition period attached to the reprobation. 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 the reprobation during the preceding calendar quarter. Respondent must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reprobation.
- (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.

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) 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 within one year of the effective date of the reprobation.

No MPRE recommended. Reason:

- (11) 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:

10. While he informed Berry that there were procedural problems caused by Respondent's own personal difficulties, Respondent did not provide Berry with a full understanding of all aspects of the case relating to the defaults and the judgment.

11. On or about May 14, 2012, Berry was personally served with notice that he had failed to appear for a debtor's examination on May 9, 2012. The court ordered a bench warrant issued for Berry but withheld the release of the warrant for enforcement until a continued date for the debtor's examination. Respondent had never been served with notice of the debtor's examination and therefore did not notify Berry of it.

12. On June 21, 2012, Respondent signed substitution of attorney form, substituting out of *Power v. Berry*. Berry hired a new attorney who was able to set aside the second default and vacate the judgment.

CONCLUSIONS OF LAW:

13. By failing to answer the complaint on two separate occasions, by failing to appear at the hearing on July 1, 2011, by failing to move to set aside the second default, and by failing to timely move to set aside the default judgment, Respondent repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

14. By failing to fully inform Berry as to all aspects of the case relating to the defaults and the judgment, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in willful violation of Business and Professions Code section 6068(m).

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.2(b)(iv)): Berry had to hire new counsel and pay additional attorney's fees to have the default and judgment set aside. Significant harm can result when a client has to hire new counsel and incur additional attorney's fees. (*In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 126 [Significant harm was found where the client has to hire new counsel, incurred a significant amount of attorney's fees, and suffered three years of misery in an unsuccessful attempt to reclaim her condo].)

Multiple Acts of Misconduct (Std. 1.2(b)(ii)): Respondent is culpable of two counts of misconduct where one count involved multiple acts of failing to perform. Two acts of misconduct may constitute acts of misconduct. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-7.)

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Discipline (Std. 1.2(e)(i)): Respondent was admitted to the practice of law in December 1983 and has almost 32 years of practice without discipline.

Emotional/Physical Difficulties (Std. 1.2(e)(iv)): Respondent provided evidence of extreme emotional difficulties from which he has now recovered. During the time that Respondent represented Barry, he divorced from his wife, which estranged him from his children, and his father died. As a result of the divorce Respondent had to move his home office. He understood that all the files were delivered to him but Berry's file was inadvertently left at the home of his ex-wife. In addition, Respondent's

mother was elderly and rapidly declining due to dementia. After the death of Respondent's father he took on a larger role in caretaking his mother. As a result, Respondent was tremendously depressed and unable to function during this time so he sought out psychological counseling.

Respondent has been regularly attending psychological counseling from July 2011 through the present. According to Respondent's doctor, the extreme emotional difficulties caused by the family problems above, left Respondent unable to focus, indecisive, unmotivated and thereby unable to properly attend to his law practice. At present, the doctor reports that Respondent has closely adhered to the recommended course of treatment and has overcome his condition. The doctor reports that Respondent has a high desire to do what is best for his clients and that his past condition no longer affects his ability to represent clients.

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.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Respondent admits to committing two acts of professional misconduct. Standard 1.6 (a) requires that where a Respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable standards.

The most severe sanction applicable to Respondent's misconduct is found in Standard 2.4(b) which applies to Respondent's violation of Business and Professions Code section 3-110(A) as well as his failure to communicate with his client. Standard 2.4(b) provides that culpability of a member of willfully failing to perform services in an individual client matter or matters not demonstrating a pattern of misconduct shall result in reproof or suspension depending on the extent of the misconduct and the degree of harm to the client.

Analyzed under the standards, the misconduct which Respondent committed is limited to an individual client matter. There was some harm to the client because as a result of Respondent's misconduct the client had to hire a new attorney to set aside the default and judgment. However, Respondent has significant mitigation which justifies a low level of discipline and would still satisfy the purposes of attorney discipline. Respondent's long history in the practice of law without discipline

suggests that this is aberrational misconduct. In consideration of Respondent's lengthy career, and his other mitigation, a private reproof will satisfy the purposes of attorney discipline.

Case law supports this same proposition. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, Riordan failed to perform with competence when he failed to file an appellate brief, failed to obey Supreme Court orders, and failed to report sanctions to the State Bar; all in a single client matter. The Court found varying degrees of mitigation for Riordan's 17 years of practice without discipline, his lack of new misconduct since the case at issue, his character witnesses, and his cooperation with the State Bar by entering into a stipulation of facts prior to trial. In aggravation, the Court gave weight to Riordan's multiple acts of misconduct as well as the significant harm he caused to his client. After finding that Riordan's misconduct appeared to be limited to this case and a situation in which he was "in over his head" but failed to timely extricate himself, the Court imposed six months of stayed suspension and one year of probation.

Riordan is a case which closely aligns with the present case. Both respondents failed to perform in single client matters which appear to be the result of circumstances from which the respondents each failed to take the appropriate action to remove themselves from or to correct. However, where *Riordan* had 17 years of practice without discipline, the Respondent in this case has nearly 32 years.

In *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, the Supreme Court imposed a six-month stayed suspension on an attorney who had practiced law for approximately five and one-half years before committing misconduct that spanned one year and involved a single act of failing to perform in a dissolution matter. Similar to *Riordan* and the present case, the Court noted that Van Sloten failed to take the necessary steps to either complete the work or to exit the case. However, Respondent has a significantly longer period of practice than Van Sloten which carries more significant weight in mitigation.

Like *Riordan* and *Van Sloten*, there is nothing in the present case to suggest that this is something more than anomalous misconduct. Under Standard 2.4(b), the misconduct is limited to one client and one case and caused harm to the client. There is however, significant mitigation which supports the lowest available level of discipline under the standard.

EXCLUSION FROM MCLE CREDIT

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

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was July 24, 2013.

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In the Matter of: MARTIN CORNELIS BOBAK	Case number(s): 12-O-14695
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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>8-5-13</u> Date	<u><i>Martin C Bobak</i></u> Respondent's Signature	<u>Martin C. Bobak</u> Print Name
<u>8/20/13</u> Date	<u><i>Arthur L. Margolis</i></u> Respondent's Counsel Signature	<u>Arthur L. Margolis</u> Print Name
<u>8/23/13</u> Date	<u><i>Kim Kasrelievich</i></u> Deputy Trial Counsel's Signature	<u>Kim Kasrelievich</u> Print Name

(Do not write above this line.)

In the Matter of: MARTIN CORNELIS BOBAK	Case Number(s): 12-O-14695
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REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

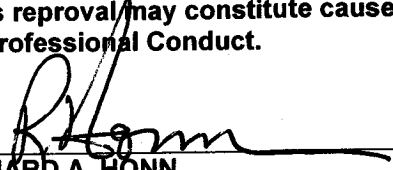
- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

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.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date

8/26/13


RICHARD A. HONN
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 August 26, 2013, I deposited a true copy of the following document(s):

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

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**

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

KIM KASRELIOVICH, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 26, 2013.



Tammy Cleaver
Case Administrator
State Bar Court