

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>13-ZE-14551-RAH</b>
	)	
<b>STEPHEN LYSTER SIRINGORINGO</b>	)	<b>DECISION AND ORDER OF TRANSFER</b>
	)	<b>TO ACTIVE ENROLLMENT</b>
<b>Member No. 264161</b>	)	<b>(Bus. &amp; Prof. Code § 6007, subd. (c)(5);</b>
	)	<b>Rules Proc. of State Bar, rule 5.240, et seq.)</b>
<u>A Member of the State Bar.</u>	)	

**Introduction**<sup>1</sup>

This matter is before the court on the verified petition of respondent Stephen Lyster Siringoringo (respondent) following this court’s July 26, 2013 order involuntarily enrolling him inactive in case number 13-TE-12378 (the TE Matter). In the TE Matter, the court found respondent’s conduct posed a substantial threat of harm to his clients and the public. The court also found that respondent’s involuntary inactive enrollment was merited for the benefit of the public, the courts, and the legal profession. The current matter addresses the issues of:

(1) whether the circumstances warranting respondent’s involuntary inactive enrollment no longer exist; and (2) whether transferring respondent back to active enrollment would create a substantial threat of harm to his clients or the public. (See Rules Proc. of State Bar, rule 5.242(B); and section 6007, subd. (c)(5).)

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<sup>1</sup> Unless otherwise indicated, all references to rules refer to the California Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

### **Legal Requirements for Transfer to Active Enrollment**

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 injury to the attorney's clients or the public in denying the application will be greater than any injury that would be suffered by the attorney if the application is granted or, alternatively, there is a reasonable likelihood that the harm will continue;<sup>2</sup> 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.)

That being said, an order of inactive enrollment pursuant to section 6007, subdivision (c) is not irreversible. The court must terminate the involuntary inactive enrollment upon proof—by clear and convincing evidence—that the circumstances warranting the inactive enrollment no longer exist and a conclusion that the attorney no longer poses a substantial threat of harm to the interests of the attorney's clients or the public. (See section 6007, subd. (c)(5), and Rules Proc. of State Bar, rule 5.242(B).)

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on July 28, 2009, and has been a member of the State Bar at all times since.

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<sup>2</sup> But 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.

In the underlying TE Matter, respondent was charged with violating Civil Code section 2944 in numerous client matters. Civil Code section 2944 section precludes attorneys from receiving fees from clients in loan modification matters before each and every contracted for service has been completed.

### **General Background of Respondent's Loan Modification Practice**

As was set forth in the court's order in the TE Matter, respondent is the owner of the Siringoringo Law Firm, a law firm working in the area of home mortgage loan modification. By respondent's estimates, the Siringoringo Law Firm has assisted thousands of distressed homeowners and obtained over 4,300 loan modifications.

On October 11, 2009, the California Legislature enacted SB 94, which was codified in the Civil Code as section 2944, et seq. Among other things, these sections precluded persons performing loan modifications (loan modification professionals) from charging or collecting advanced fees before negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a loan modification. Specifically, Civil Code section 2944.7, subdivision (a)(1), states that it is unlawful for loan modification professionals 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."

The Siringoringo Law Firm devised a retainer agreement splitting the loan modification representation into "stages." Stages 1 and 2 involved pre-qualification and completing a loan modification application. Stage 3 involved submitting the client's loan modification application, communicating with the lender, and negotiating on the client's behalf.

Clients would be required to pay the Siringoringo Law Firm a flat fee upon completion of the services rendered in stages 1 and 2. These services could be completed in as little as one day. In the TE Matter, the amount of the stages 1 and 2 fee ranged between \$2,000 and \$3,500.

Stage 3 was described in the retainer agreement as “optional.” In stage 3, a flat fee of \$495 would be collected from the client every 30 days. The retainer agreement stated that the client agreed to pay the stage 3 fee once the 30-day period had concluded or upon acceptance/rejection of modification. If the client elected to cancel the “optional” services of stage 3, he or she would need to do so in writing within three days after signing the retainer agreement. If stage 3 was canceled, a “fee of \$250 per hour worked on the file [would] be due.”<sup>3</sup>

In the TE Matter, none of the clients sought to cancel stage 3 within three days of the engagement letter/retainer agreement, or at any time. Therefore, even if respondent performed all of the services contained in stages 1 and 2 prior to charging the client a fee, respondent’s contracted loan modification services also included the services listed in stage 3. In each of the client matters, respondent was to be paid upon preparing the loan modification application and completing stages 1 and 2. He then continued to receive the monthly \$495 payments after each 30-day period while awaiting a decision by the lender.

### **This Court’s Order in the TE Matter**

In the TE Matter, the court found that there was a reasonable probability that the State Bar would prevail on the merits on 24 counts of misconduct, stemming from 14 client matters. The court also found that there was substantial harm to respondent’s clients by virtue of the fact that respondent billed and received money to which he was not then entitled. Finally, the court found that respondent’s business model allowed the continued collection of fees in advance of

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<sup>3</sup> This language was in respondent’s retainer agreement, but its meaning is unclear. It implies that additional fees could be due even if the client cancels stage 3.

full performance, and respondent did not demonstrate a willingness to change his model to comply with SB 94.

The court noted in footnote 20 of the order in the TE Matter that respondent seemed to be of the belief that his business model complied with SB 94, because he contended that the services performed in Stages 1 and 2 did not constitute “loan modification” since they were primarily involving research and preparation of the loan modification package to be sent to the lender. In other words, they did not include negotiation with the lender, which was done at Stage 3. The court disagreed with the contention that Stages 1 and 2 were not activities covered by SB 94, and further disagreed that the statute permitted respondent to be paid a monthly amount in Stage 3. All of these advanced payments violated the provisions of SB 94 regarding the timing of the collection of fees. Additionally, the court noted in that footnote that “[u]nless this characteristic of respondent’s business model is changed, respondent will continue to violate Civil Code section 2944.7” [citing *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221].

### **Evidence Presented in this Matter**

During the hearing in this matter, respondent credibly explained that he had misunderstood the import of SB 94. In his reading of the statute, preliminary work done to analyze the client’s particular mortgage or personal financial condition did not fall within the meaning of *negotiate, attempting to negotiate, arrange, or otherwise offer to perform a mortgage loan modification*, as intended by Civil Code section 2944.7(a). Therefore, his firm required advanced compensation for this preliminary work.<sup>4</sup>

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<sup>4</sup> Nevertheless, his policies required payment only after completion of all of the tasks in Stages 1 and 2. This policy was generally followed, with a few exceptions caused by clerical mistakes.

Respondent's handling of the "optional" Stage 3 work, that is, the follow up work with the lender after the loan package was submitted, presented a somewhat different problem. As noted above, respondent charged a monthly fee, payable in arrears (after completion of the work for the previous month). While payment was received monthly in arrears (and therefore, arguably, after each and every service in the preceding month was completed), this payment suffered from at least two problems. First, and most obvious, it violated the language of SB 94, since, almost by definition, each monthly payment came in before "each and every" contracted service had been provided. Second, the method by which the client agreed to exercise the "option" to retain respondent for Stage 3 work was decidedly one-sided and oppressive.<sup>5</sup>

### **Respondent's Revised Business Model**

Even up to just prior to the hearing in the TE Matter, respondent felt that his model of doing business was consistent with the requirements of SB 94. After this court's ruling in the TE Matter, respondent stated that he finally understood the reasons his business model violated SB 94. He now understands that the only way to comply with SB 94 is to receive payment only after: (1) an approval of a loan modification by the lender; (2) a rejection of a loan modification by the lender; or (3) a cancelation by the client of respondent's services.<sup>6</sup> As such, to the extent that respondent continues to take loan modification clients in the future, he has represented to the court that his business model will be changed to only allow payment after one of these three events occurs.

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<sup>5</sup> The client was obligated to *decline* the Stage 3 "option" within days of initially contracting with respondent's firm. Under the terms of the contract, a client's failure to do so waived the right to object to the monthly fee imposed in Stage 3.

<sup>6</sup> Presumably, upon cancelation by the client, respondent would only be entitled to the reasonable value of the services rendered up to the date of the cancelation.

## **Restitution**

Respondent and the State Bar have stipulated that respondent has made full restitution of all fees and costs that his firm retained from the clients that are the subjects of this proceeding.<sup>7</sup>

## **Notice to Clients of Inactive Enrollment**

Respondent was ordered to provide certain notices to clients regarding his inactive enrollment. Respondent filed an affidavit testifying that he sent letters to all his present clients, informing them that he was inactive and that they may obtain their files if they wished to do so. He also testified in the affidavit and in the hearing that he provided a refund and an accounting to all of the clients in the TE Matter.<sup>8</sup>

## **Discussion**

It is important not to confuse the present proceeding with a standard disciplinary proceeding. The purpose of the petition for involuntary inactive enrollment in the TE Matter was to stop respondent—on an expedited basis and under exigent circumstances—from continued conduct which harmed the public or his clients. While it provided sufficient due process safeguards to accomplish this purpose (See *Conway v. State Bar, supra*, 47 Cal.3d 1107, 1123),

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<sup>7</sup> At the hearing in this matter, there was evidence that a few of respondent's refund checks were inadvertently sent to his own office, instead of the client's address. Despite the State Bar's implication that this was an intentional act by respondent to permit him to say that he had "mailed" the checks, the court finds that this was simply an administrative error. In fact, before all the refund checks were sent, respondent's office called the recipients on the telephone to inform them that a check was coming, and then the office followed up with a call after mailing to assure that the check was received. This conduct is inconsistent with an intent to deceive the clients or the State Bar.

<sup>8</sup> Respondent also testified that he provided refunds to other clients in a matter previously adjudicated.

it was not a substitute for a full disciplinary hearing. (See Rules Proc. of State Bar, rule 5.236 [expedited disciplinary proceedings following an order of inactive enrollment].)<sup>9</sup>

Further, a respondent who has been enrolled inactive in actions under section 6007, subsection (c), has the opportunity to seek to be transferred back to active status upon a showing that the underlying reason for his inactive enrollment no longer exists. Such a petition can be filed at any time after his or her inactive enrollment; there is no need to wait until a final disposition of the matter at a full disciplinary hearing. (*Conway, supra*, 47 Cal.3d 1107, 1122, fn. 8; rules 5.240, et seq.)

For this court to enroll respondent inactive in the TE Matter, it needed to find all of the following:

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.

To order respondent's return to active status, the court must find "clear and convincing evidence [establishing] that the circumstances warranting the original involuntary inactive enrollment no longer exist and a conclusion of law about whether transferring the member to active enrollment will create a substantial threat of harm to the member's clients or the public." (Rule 5.242(B).) The original basis for the involuntary inactive enrollment in the TE Matter was respondent's failure to comply with the proper timing of his fees and costs, as set forth in SB 94.

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<sup>9</sup>Although not directly analogous, the parties can draw parallels to the civil concept of injunctive relief, followed by a full hearing on the merits. (See *Conway, supra*, 47 Cal.3d 1107, 1119, fn. 6.)



Respondent has credibly shown by clear and convincing evidence that he has changed his business model to comply with these requirements. Specifically, he has modified the timing of all client payments to occur after either a loan modification has occurred, has been rejected by the lender, or respondent's representation has been terminated by the client.<sup>10</sup> In addition, he has made full restitution to all the clients in this proceeding.

**Conclusions of Law**

The court finds that the circumstances warranting the original inactive enrollment no longer exist. Further, respondent has refunded all money paid by all of the clients in this proceeding. As such, the court finds that there is no evidence that transferring respondent to active status will create a substantial threat of harm to his clients or the public.

**ORDER**

The involuntary inactive enrollment of respondent Stephen Lyster Siringoringo, ordered by this court on July 26, 2013, is terminated and respondent is transferred to active status, effective upon the filing of this order.

Dated: October \_\_\_\_\_, 2013

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RICHARD A. HONN  
Judge of the State Bar Court

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<sup>10</sup> This court finds this language acceptable with the understanding that respondent's business model allows no payment until **all** contracted services are performed. Obviously, in the event of termination, respondent would be precluded from providing any outstanding contracted services.