

# PUBLIC MATTER

FILED

MAR 29 2019

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of ) Case No.: 14-C-02964-YDR  
)  
PAMELA STACEY GERBER-GRESSIER ) DECISION AND ORDER OF  
) INVOLUNTARY INACTIVE  
State Bar No. 140353. ) ENROLLMENT

Respondent Pamela Stacey Gerber-Gressier (Respondent) was convicted of violating California Penal Code section 182, subdivision (a)(1) (conspiracy to commit a crime) in violation of California Civil Code section 2944.7, subdivision (a)(1) (unlawful advance loan modification fees), with an enhancement pursuant to Penal Code section 12022.6, subdivision (a)(3) (property damage over \$1,300,000). Respondent filed a notice of waiver of finality and request for referral to the Hearing Department. The Review Department issued an order referring this matter to the Hearing Department for a hearing and decision as to whether the facts and circumstances surrounding the violation of which Respondent was convicted involved moral turpitude or other misconduct warranting discipline, and if so found, the discipline to be imposed. Respondent failed to file a response to the Notice of Hearing on Conviction (NHC) in this matter and her default was entered. The Office of Chief Trial Counsel of the State Bar of California (OCTC) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if

<sup>1</sup> Unless otherwise indicated, all references to rules are to this source. Rule 5.345(C) makes the default procedures in rules 5.80-5.86, with certain exceptions, applicable in conviction proceedings.



an attorney's default is entered for failing to respond to the notice of hearing on conviction, and the attorney fails to have the default set aside or vacated within 90 days, the OCTC will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

## **FINDINGS AND CONCLUSIONS**

### **Jurisdiction**

Respondent was admitted to practice law in this state on June 6, 1989, and has been a licensed attorney of the State Bar since then.

### **Procedural Requirements Have Been Satisfied**

On or about July 28, 2017, Respondent was convicted of violating California Penal Code section 182, subdivision (a)(1) (conspiracy to commit a crime) in violation of California Civil Code section 2944.7, subdivision (a)(1) (unlawful advance loan modification fees), with an enhancement pursuant to California Penal Code section 12022.6, subdivision (a)(3) (property damage over \$1,300,000), a felony.

On March 20, 2018, the OCTC transmitted records and evidence of Respondent's conviction to the Review Department, classifying Respondent's felony as a crime which may or may not involve moral turpitude. By order filed on April 12, 2018, Respondent was suspended from the practice of law effective on May 7, 2018, pursuant to Business and Professions Code section 6102 (interim suspension). On August 7, 2018, Respondent filed a notice of waiver of finality, requesting referral to the Hearing Department for a hearing on the conviction.

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<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

On August 23, 2018, the Review Department referred the matter to the Hearing Department for a hearing and decision as to whether the facts and circumstances surrounding Respondent's violation involved moral turpitude or other misconduct warranting discipline, and, if so found, the discipline to be imposed. On August 24, 2018, the State Bar Court filed a NHC. That same day, the NHC was properly served on Respondent's counsel of record by certified mail, return receipt requested, at his official State Bar attorney records address, as well as by email transmission. The NHC notified Respondent that her failure to timely file a written answer to the notice would result in a disbarment recommendation. (Rule 5.345.)

Respondent had actual notice of this proceeding. Her counsel appeared at the September 4, 2018 status conference and indicated that Respondent intended to default. The OCTC was directed to file a motion to enter Respondent's default if Respondent failed to file a timely response to the NHC.

Respondent failed to file a timely response to the NHC. On September 20, 2018, the OCTC timely filed and properly served a motion for entry of Respondent's default. The motion complied with all the requirements for a default,<sup>3</sup> including a statement of facts and circumstances surrounding the conviction. (Rule 5.80.) It notified Respondent that, if she did not timely move to set aside her default, the court would recommend her disbarment. This motion was sent by certified mail, return receipt requested, addressed to Respondent's counsel at his official State Bar attorney records address.<sup>4</sup>

Respondent did not file a response to the motion and her default was entered on October 11, 2018. The court also ordered Respondent's involuntary inactive enrollment as a

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<sup>3</sup> Pursuant to rule 5.346(C)(1), when a default is entered in a criminal conviction matter for failure to file a timely response, the OCTC must recite, in its default motion, the facts and circumstances surrounding the conviction that it contends warrant the imposition of discipline and that it has clear and convincing evidence to prove.

<sup>4</sup> Although a signed return receipt was not received by the State Bar Court, on January 11, 2019, Respondent's counsel confirmed that he had received the default motion.

licensed attorney of the State Bar pursuant to Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and she has remained inactively enrolled since that time. The order entering the default and enrolling Respondent inactive was served by certified mail, return receipt requested, addressed to Respondent's counsel at his official State Bar attorney records address.

Respondent did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On January 15, 2019, the OCTC properly filed and served a petition for disbarment. As required by rule 5.85(A), the OCTC reported in the petition that: (1) There has been contact with Respondent since the entry of her default;<sup>5</sup> (2) there are other investigations or disciplinary matters pending against Respondent; (3) Respondent does not have a prior disciplinary record; and (4) the Client Security Fund has not made payments resulting from Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on March 5, 2019.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of a Respondent's default, the factual allegations set forth in Respondent's conviction matter are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82(2).) As set forth below in greater detail, the factual allegations in Respondent's conviction matter support the conclusion that Respondent violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

#### **Case No. 14-C-02964**

On or about July 28, 2017, Respondent was convicted in Orange County Superior Court of a felony violation of California Penal Code section 182, subdivision (a)(1) (conspiracy to

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<sup>5</sup> On January 11, 2019, Respondent's counsel confirmed receipt of the motion for entry of default.

commit a crime) in violation of California Civil Code section 2944.7, subdivision (a)(1) (unlawful advance loan modification fees), with an enhancement pursuant to Penal Code section 12022.6, subdivision (a)(3) (property damage over \$1,300,000). Specifically, on June 3, 2014, "Indictment Amendment 1," case No. 14ZF0332, was filed. This indictment charged Respondent, three non-attorneys, and three sales managers with 81 felony counts. Respondent pled guilty to the aforementioned charges.

Beginning in or about June 2011, Respondent, with three non-attorneys, began operating a law office that was initially known as "Prudential Law Group" and later as "Prudent Law Group." Beginning in or about May 2012, and through in or about October 2013, Respondent, with the three non-attorneys, continued the operations of these offices under the name "Remedy Law," and later under a few other similar names (collectively, "Law Office"). The Law Office occupied three suites in a building. Respondent maintained an office in one of the suites. The sales department of telemarketers occupied the second suite, and there was a loan processing suite where employees worked on active files.

Respondent left the marketing to non-attorneys and failed to verify their false assurances.

The Law Office website advertised the services of "attorneys" when Respondent was the only attorney affiliated with the office. It did not bear the words "Advertisement," "Newsletter," or words of similar import, nor did it state the name of the person responsible for it.

Unsolicited advertisements were mailed to homeowners that offered loan modifications for residential mortgages. These mailers did not bear the words "Advertisement" or words of similar import, nor did they state the person responsible for them. The mailers were presented in a format that could reasonably lead recipients to believe they had been sent by their mortgage lenders. The mailers also stated that the Law Office had reviewed property information and determined that the addressee may be eligible to modify the terms of their mortgage when no

review of the mortgage had been done.

The non-attorneys hired three sales managers to oversee the telemarketers selling loan modification services. The telemarketers represented that the potential client was qualified for a loan modification and made representations concerning potential terms of such modification, without ability or authority. They represented that the Law Office had “attorneys” working on behalf of the customers when Respondent was the only affiliated attorney and did not negotiate with lenders (non-attorney processors performed the loan modification services). The telemarketers convinced some homeowners who were not eligible for loan modifications to employ the Law Office. They also made false promises about the potential terms of the mortgage modifications.

A payment system was set up where customers would sign a fee agreement to pay the full cost of the loan modification services. The customer would either pay the full cost upfront or write two or more post-dated checks, the first of which would be cashed prior to performing all (or any) of the loan modification services. Between in or about July 2011 and in or about October 2013, Respondent and the non-attorneys charged customers of Prudent Law and Remedy Law, advanced fees exceeding \$1.3 million for loan modification services. Respondent failed to make restitution of any portion of the illegal fees she collected from many of her clients.<sup>6</sup>

The facts and circumstances surrounding Respondent’s felony conviction warrant a finding that Respondent’s conviction is of a crime involving moral turpitude.

**Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied and Respondent’s disbarment is recommended. In particular:

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<sup>6</sup> The record lacks the information necessary to recommend restitution.

- (1) the NHC was properly served on Respondent;
- (2) Respondent had actual notice of the proceedings prior to the entry of her default;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in Respondent's conviction matter deemed admitted by the entry of the default support a finding that Respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, Respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

## **RECOMMENDATIONS**

### **Disbarment**

It is recommended that Pamela Stacey Gerber-Gressier, State Bar Number 140353, be disbarred from the practice of law in California and that her name be stricken from the roll of attorneys.

### **California Rules of Court, Rule 9.20**

It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this proceeding.<sup>7</sup> Failure to do so may result in disbarment or suspension.

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<sup>7</sup> For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension,

**Costs**

It is further 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. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a licensed attorney of the State Bar who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

**ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Pamela Stacey Gerber-Gressier, State Bar number 140353, be involuntarily enrolled as an inactive licensed attorney of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: March 28, 2019

  
YVETTE D. ROLAND  
Judge of the State Bar Court

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revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)



**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist 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 March 29, 2019, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

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 L. 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:

ELI D. MORGENSTERN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 29, 2019.



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Mazie Yip  
Court Specialist  
State Bar Court