

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No.: 12-O-10026-LMA
)	
PATRICK ALEXANDRE MISSUD,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 219614,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

Respondent Patrick Alexandre Missud was declared a vexatious litigant in 2012. He has no intentions of curbing his behavior and repeatedly said so and demonstrated so. He has total disdain for the legal profession and the judicial process. In this contested disciplinary proceeding, he stated: “I’m determined to catch even more judges ... I want to make it in the Guinness Book of World Records for the number of corporate judges netted in a single sting.”

Respondent Missud is charged with seven counts of professional misconduct: (1) maintaining unjust actions; (2) committing acts of moral turpitude; (3) communicating with a represented party; (4) failing to obey court orders; and (5) failing to report judicial sanctions.

This court finds, by clear and convincing evidence, that respondent is culpable of the alleged misconduct. Based upon the serious nature and extent of culpability and the evidence in

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.

aggravation, the court recommends that respondent be disbarred from the practice of law – the only solution for public protection.

Significant Procedural History

The State Bar of California, Office of the Chief Trial Counsel (State Bar), initiated this proceeding by filing a notice of disciplinary charges (NDC)² on December 17, 2012.

Respondent filed a response on February 14, 2013.

A five-day hearing was held on April 15-19, 2013. Senior Trial Counsel Erica L. M. Dennings represented the State Bar. Respondent represented himself.

On April 19, 2013, following closing arguments, the court took this matter under submission.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 4, 2002, and has been a member of the State Bar of California at all times since that date.

The following findings of fact are based on respondent's response to the NDC and the testimony and evidence presented at trial.

Background Facts

In 2004, respondent and his wife, Julie Missud ("Julie"), purchased a single family home in Henderson, Nevada ("the Nevada property"), built by D. R. Horton, Inc. ("Horton"). Shortly after respondent signed a written sales contract with Horton, an issue arose as to whether respondent had obtained a mortgage loan for the home purchase. This issue then gave rise to

² The NDC contains many typographical errors. For example, the name "Michael Mason" was repeated twice. (P. 2, line 20; p. 3, line 2.) Multiple defendants' first names were wrong. (P. 3, line 12: "Donald Mason" should be Michael Mason; "Michael Callihan" should be Daniel Callihan; and "Daniel Schankin" should be Annie Schankin). And the quoted material from the November 22, 2011 Order of Affirmance contains errors. (P. 4, lines 3-5: "issue" should be "challenge"; "Horton's" should be in brackets.)

respondent's litigious battle in at least eight lawsuits, multiple motions and appeals in California and Nevada during the next seven years. He failed to prevail in any of the litigations.

From August 2005 to July 2011, respondent sued the builder, its subsidiary (DHI Mortgage), its employees, state and federal officials, judges, courts, and even USA. His claims included infliction of emotional distress, property damage, fraud, breach of contract, racketeering violations, judicial corruption, conspiracy, and civil rights violations.

Finally, on March 22, 2012, the district court declared respondent a vexatious litigant, prohibiting him from filing any further complaints against any of these entities without permission from the court, and referred him to the State Bar for any appropriate disciplinary action. At the same time, several opposing counsel also referred respondent to the State Bar.

The matter is now before this court.

Facts

1. Lawsuits Re the Nevada Property

Respondent pursued eight lawsuits and other litigations arising out of his purchase of the Nevada property. When the trial court dismissed a case, he would continue his litigation battle and filed more frivolous lawsuits and endless appeals and motions over and over again. He was relentless in his baseless litigations in California and Nevada, even though he failed in all of them, as shown in the following:

(1) Filed **August 22, 2005**, *Patrice Missud*³ v. *D. R. Horton, DHI Mortgage, Michael Mason, Agent of DHI Mortgage, Daniel Callihan, Agent of DHI Mortgage, Anne Schankin, Agent of D. R. Horton*, San Francisco County Superior Court, case No. CGC 05-444247.

The complaint alleged two causes of action for infliction of emotional distress. Respondent filed the complaint in California even though the transaction occurred in Nevada, the

³ Respondent Patrick Missud is also known as Patrice Missud.

property is located in Nevada, and Horton does no business in California. The court sustained a motion to quash service of summons and complaint and dismissed the case without prejudice on November 9, 2005.

(2) Filed **December 9, 2005**, *Patrice Missud v. D. R. Horton, DHI Mortgage, Michael Mason, Agent of DHI Mortgage, Daniel Callihan, Agent of DHI Mortgage, Anne Schankin, Agent of D. R. Horton*, San Francisco County Superior Court, case No. CGC 05-447499.

The complaint alleged causes of action for personal injury (emotional distress) and property damage. The court sustained a motion to quash service of summons and complaint on grounds of lack of personal jurisdiction against Horton and failure to effect proper service as to the remaining defendants (including DHI), and dismissed the case against Horton without prejudice on April 25, 2006. The court dismissed the action without prejudice as against all remaining defendants based on lack of personal jurisdiction on January 11, 2007.

(3) Filed **October 23, 2006**, *Patrice Missud and Julie Missud v. D. R. Horton, DHI Mortgage Company, Donald Horton, Donald Tomnitz, Michael Mason, Daniel Callihan, Annie Schankin, James Frasure*, San Francisco County Superior Court , case No. CGC 06-457207.

The complaint alleged a cause of action for fraud. The case was dismissed due to lack of personal jurisdiction as to all defendants on February 15, 2007.

(4) Filed **May 17, 2007**, *Patrice Missud and Julie Missud v. D. R. Horton, DHI Mortgage Company, Donald Horton, Donald Tomnitz, Michael Mason, Daniel Callihan, Annie Schankin, James Frasure*, United States District Court for the Northern District of California, case No. 07-cv-02625-SBA.

The complaint alleged breach of contract. On October 30, 2007, the case was dismissed for lack of personal jurisdiction, forum non conveniens, and statute of limitations.

(5) Filed **November 13, 2007**, *Patrick Missud and Julie Missud v. D. R. Horton, DHI Mortgage Company, Michael Mason, Daniel Callihan, Annie Schankin, James Frasure*, Nevada District Court, Clark County, case No. 07A551662 ("the Nevada case").

The complaint alleged breach of contract, deceptive trade practices, defamation, and personal injury. Respondent was held in contempt for knowingly and intentionally violating the terms of a stipulated protective order and for sending threatening communications to witnesses and counsel involved in the litigation. Respondent was sanctioned \$48,691.97 for attorney fees and costs in conjunction with enforcing the protective order and the contempt proceedings.⁴

The Nevada case was dismissed. In its November 22, 2011 order affirming the district court's imposition of sanctions and dismissing the case, the Nevada Supreme Court found that respondent failed to "raise any challenge on appeal as to the district court's findings that [Missud] engaged in abusive litigation tactics by contacting and threatening [Horton's] employees."

On November 16, 2010, D. R. Horton and DHI Mortgage Company sought to enter judgment based upon the sister-state judgment previously entered against respondent in the Nevada case (sanctions for \$48,691.97) in *Patrick Missud and Julie Missud v. D. R. Horton, DHI Mortgage Company, et al.*, San Francisco County Superior Court, case No. CPF 10-510876.

By order dated November 19, 2010, the judgment was entered. Respondent filed a motion to vacate the Nevada judgment, which was denied. He then appealed.

On November 22, 2011, the Court of Appeal affirmed the superior court's denial of respondent's motion to vacate, noting "Missud's briefs contain no comprehensible legal

⁴ Findings of fact regarding the protective order violations are discussed below under the subheading, "The Protective Order in the Nevada Case."

argument as to why the order he challenges should be reversed." Respondent filed a writ to the California Supreme Court which was denied.

(6) Filed **January 19, 2010**, *Patrick Missud v. D. R. Horton, DHI Mortgage Company, Donald Horton, Donald Tomnitz, Curtis Coltrane, Susan Eckhardt, Duane Waddill, Richard Perry, Greg Abbott, Sandra B. Armstrong, Roger Benitez, Berry Edenfield, Martin Reidinger, Yahoo, Inc., Wendel Rosen Black & Dean, LLC, Wood, Smith, Henning & Berman, LLC, Luce, Forward, Hamilton & Scripps, LLP, Ryan & Dawson, Strand Systems Engineering*, United States District Court for the Northern District of California, case No. 10-cv-00235-SI.

The complaint alleged Racketeer Influenced and Corrupt Organization ("RICO") violations. On April 2, 2010, the court dismissed the claims against District Judges Armstrong, Benitez, Edenfield, and Reidinger on the grounds of absolute judicial immunity. The court dismissed the remaining claims against other defendants without prejudice based on respondent's voluntary dismissal.

(7) Filed **April 18, 2011**, *Patrick Missud v. San Francisco Superior Court, Judge Charlotte Woolard, Court Approved Mediator Michael Carbone, ADR Services, Inc., Judge Loretta Giorgi, State Bar of California, California State Commission on Judicial Performance*, United States District Court for the Northern District of California, case No. 11-cv-01856-PJH.

The complaint alleged judicial corruption and RICO violations. On February 13, 2012, the court dismissed the complaint with prejudice, concluding that respondent's claims were implausible and/or woefully deficient. Thereafter, respondent filed multiple appeals.

(8) Filed **October 28, 2011**, *Patrick Missud v. State of Nevada, D. R. Horton, Inc., Securities and Exchange Commission, SEC Chairwoman Mary Shapiro, Eighth Judicial District Court County of Clark, Clark County Court CEO Steven Grierson, Judge Elizabeth Gonzalez of the Clark County Courts of Nevada, Commissioner Bonnie Bulla, Division of Mortgage Lending*

Deputy Commissioner Susan Eckhardt, Clark County Sheriff Douglas Gillespie, Commission on Judicial Discipline, CJD Director David Sarnowski, Nevada State Bar, Nevada State Bar President Constance Akridge, Nevada Supreme Court, Nevada Supreme Court Justices Kristina Pickering, Mark Gibbons, James W. Hardesty, Ron Parraguirre, Michael L. Douglas, Michael Cherry, Nancy M. Saitta, South Carolina Special Magistrate Curtis Coltrane, San Francisco Superior Court Judges Charlotte Woolard and Loretta Giorgi, Judge Sandra Armstrong of the U.S. District Court for the Northern District of California, Judge Roger Hunt of the U.S. District Court for the District of Nevada, Judge Roger Benitez of the U.S. District Court for the Southern District of California, USA, et al., United States District Court for the Northern District of California, case No. 11-cv-03567- EMC.

The amended complaint alleged public corruption under 42 U.S.C. § 1983 and civil rights violations. Respondent made general claims of fraud and conspiracy by the defendants, but did not allege any facts to support his allegations.

Finally, on March 22, 2012, U.S. District Judge Edward M. Chen issued an order dismissing the action and declaring respondent a vexatious litigant. Respondent's claims were dismissed as to: (a) Horton for lack of personal jurisdiction; (b) the judicial defendants on the ground of judicial immunity and failure to state a claim; and (c) the unserved defendants for failure to effect proper service. The order forbade respondent from filing any complaints against Horton or any of its affiliates (including DHI Mortgage), subsidiaries, and/or employees without first obtaining a determination from a Duty Judge as to whether the complaint should be accepted for filing. The court also referred respondent to the State Bar for any appropriate disciplinary action.

Respondent filed a motion for reconsideration which was denied. Respondent filed a motion to recuse the judge which was also denied.

2. Websites Regarding Defendants

While these cases were pending, respondent repeatedly made statements to the media via e-mail and websites about the defendants that were false and had no basis in fact. Respondent made these statements for the purpose of harassing, intimidating, and annoying Horton and other defendants. Respondent filed the lawsuits to retaliate against Horton, to make the litigation expensive for Horton and other defendants, and as a platform to disparage the defendants.

From at least September 2007 and continuing to the present, respondent created, maintained, controlled, and posted information on several websites devoted to disseminating information about Horton, DHI, and its employees and associates, and numerous judges and government officials. The names of the websites were disparaging and misleading and designed to intimidate, harass and annoy as follows: drhortonfraud.com, drhortonhomelemon.info, drhortonhomeofhorrors.com, drhortonhomesstink.com, donaldtomnitzisacrook.com (Donald Tomnitz is the CEO of Horton), drhortonsucks.info, drhortonsjudges.com, drhortoncouldhavekilledme.com, and sfcourtfraud.com.

The websites contained information which was false, disparaging, and defamatory.

To date, the drhortonsucks.info website states: "I can't be more emphatic....if you buy a home from DR Horton, you will likely be defrauded. D R Horton is a RICO operating company."

On the drhortonhomelemon.com site, respondent caused to be posted the statement: "Patrick has found hundreds of victims like me across the country and has discovered that DR Horton runs its RICO business like the mafia."

On October 30, 2007, respondent wrote a letter to defense counsel promising that "he will now contact defendants' employees directly in violation of Nevada Rule of Professional Conduct 4.2."

In 2009, respondent maintained the website www.mnmlawyers.com for his law firm, Missud and Missud. Under the Construction Defects section of the website, respondent wrote: "As an example of M&M's persistence in pursuing a nationwide contractor and the United States' largest residential builder please visit www.drhortonsucks.info."

On January 6, 2010, respondent sent an e-mail to defense counsel and state and federal officials including the U. S. Department of Justice, regarding his RICO action against Horton and others. Respondent wrote in the subject line: "\$\$\$Fortune 500, D R Horton RICO updates\$\$\$."

In the January 6, 2010 e-mail, respondent indicated that his response to an interrogatory propounded by Horton regarding settlement was "that the criminals on DHI's Board can either surrender to federal authorities, or your agency can indict within 12 days. Otherwise, I will file a completed RICO action and protect America from 'America's builder.'" Respondent had no factual basis for referring to DHI board members as criminals. Respondent had no factual basis to request that the U. S. Attorney General indict Horton board members. Respondent's statements were intended to harass, intimidate, and annoy the Horton board members.

On January 28, 2010, respondent posted the following statement on his website, drhortonjudges.info: "My intent is to ruin the reputations of the named individuals and corporations and to expose the various governmental entities responsible."

On August 2, 2011, respondent sent an e-mail to Horton defense counsel, several Nevada state court officials, Clark County (Nevada) officials, the Nevada Attorney General's office, California state court officials, Nevada State Bar officials, California State Bar officials, and to reporters and staff at the San Francisco Chronicle. In the e-mail, respondent claimed that San Francisco Superior Court Judge Woolard was responsible for theft of over \$825,000 from two cases she presided over, that San Francisco Court Judge Loretta Giorgi was responsible for theft of over \$875,000 from cases she presided over, that Judges Woolard and Giorgi liked to rubber

stamp each other's fraudulent rulings, and that the judges were thieves and financially dangerous to all Californians and Americans. Respondent also stated that he hoped the judges would get substantial prison time for their crimes and corruption. There was no factual basis for any of respondent's claims.

3. Respondent Declared a Vexatious Litigant

On December 1, 2011, in *Missud v. State of Nevada, Horton et al.*, Horton filed a motion to dismiss based on lack of personal jurisdiction, or in the alternative for forum non conveniens.

On January 5, 2012, the judge issued a Report and Recommendation ("R & R") recommending: (1) that Horton's motion to dismiss for lack of personal jurisdiction be granted; (2) that respondent's complaint be dismissed with prejudice as to judicial defendants on the basis of judicial immunity; and (3) that respondent's complaint be dismissed without prejudice as to unserved defendants on the basis of respondent's failure to serve them within 120 days.

Respondent received the R & R shortly after it was filed and was aware of its contents.

Respondent objected to the R & R and filed voluminous documents with the court, including several requests for judicial notice.

On January 25, 2012, Horton filed a reply in support of the R & R along with a motion to declare respondent a vexatious litigant.

On March 22, 2012, Judge Chen of the United States District Court found that respondent's litigation against Horton and its affiliates, subsidiaries, and employees had been abusive and frivolous. The court found that respondent's claims against Horton lacked any credible factual basis and that respondent refused to comply with court rules and procedures. The court also found that respondent seemed to be more motivated by obtaining press for himself and causing expense for Horton than by advancing any legitimate claim for relief, citing as an

example respondent's statements that he intended to make things "horrendously expensive" for Horton and that he would initiate as many class action lawsuits and investigations as possible.

Respondent continued to sue Horton in California despite multiple court rulings that Horton is not subject to personal jurisdiction in California. The court found respondent's conduct in bringing multiple lawsuits harassing.

The court concluded that respondent had demonstrated intent to continue frivolously litigating against Horton and others despite judicial rulings against him.

Based on the foregoing findings and conclusions, the court granted Horton's motion to declare respondent a vexatious litigant.

In the March 2012 order declaring respondent a vexatious litigant, the district court cited a few examples of what other courts had written regarding respondent's unmeritorious contentions that were full of sweeping, frivolous and harassing accusations without factual support:

- Respondent's complaint "does not set forth clear causes of action, but lambastes prior judicial decisions against [respondent], corporate influence in American politics, and pervasive corruption in the judiciaries and regulatory agencies of the United States, California, and Nevada."
- "[T]he details of [respondent's] allegations are elusive; the complaint is loaded with vague, conclusory, and hyperbolic statements, as well as what appear to be nonsensical and far-flung facts. The court also notes that some of the allegations are quite reckless given [respondent's] status as an officer of the very court he is suing."

- Respondent “continuously and unrelentingly refused to comply with this Court’s various Orders” and he had engaged in “continuous improper conduct,” which drove up the cost of litigation.
- “Mr. Missud’s filings in this matter have been voluminous and meritless thus far. We caution him that further abuse will result in the imposition of sanctions.”
- Respondent “has continued to file voluminous and procedurally improper documents with this Court.”
- Respondent’s “litigation against Defendant Horton and its affiliates, subsidiaries, and employees has been abusive and frivolous.”
- “Defendant sums up the problems with Mr. Missud’s tautological claims against Horton succinctly: ‘[H]e alleges that he lost his prior six cases against D.R. Horton because the courts were “corrupt.” As proof, he points to the fact that he lost these six prior cases.’”
- Respondent “continues to attempt to sue Horton in California despite multiple court rulings that Horton is not subject to personal jurisdiction in California. Such conduct is harassing.”

A few examples of respondent's incredulous accusations against the defendants and general references to racketeering in his pleadings include:

- Horton has “caused thousands of consumers’ financial evisceration through illegal means and by corrupting public figures.”
- “This has already become a landmark case. It already showcases absolute corruption of 23 judges made possible by the Citizen\$-United ruling which has paved a long, tortuous path for ordinary, real, flesh-and-blood, non-corporate, fleece-able, citizen-litigants.”

- Comparing the defendants, “[n]ot even Hosni Mubarak financially raped Egypt quite so much.”
- “Billion dollar DHI was not content with just the purchase of Nevada’s di\$trict and \$upreme court\$. DHI also had to prove that it could buy California’s.”

4. Communications with Represented Defendants

At all relevant times the defendants in all of the lawsuits were represented by counsel and respondent was aware that the defendants were represented by counsel.

In each of the lawsuits, respondent made unsubstantiated allegations of wrongdoing against each defendant. These allegations were not investigated by respondent or substantiated in any way.

On October 14, 2005, Horton defense counsel sent a letter to respondent requesting that he refrain from contacting Horton defendants directly. Respondent reviewed the letter shortly after October 14, 2005. Thereafter, respondent ignored the letter and repeatedly contacted Horton employees directly throughout the litigation regarding the subject of the litigation even though he knew they were represented by counsel.

5. The Protective Order in the Nevada Case

On April 19, 2010, the court in the Nevada case approved a stipulated protective order executed by the parties.

The stipulated protective order:

- prohibited the parties from posting documents and claims about the parties, witnesses, attorneys, or judges to any website;
- required that respondent immediately remove information from his website that contained claims about the case, the witnesses, the defendants, their counsel, and judicial and governmental officials;

- required the immediate removal from any websites of any information that disparaged counsel, the court, or the judges; and
- required the parties to immediately remove statements that disparaged the State Bars of Nevada, Texas or California, any judges, any parties to this case or any other cases or other judicial proceedings from any websites controlled by any party to the case.

Respondent received and was aware of the protective order shortly after it was filed on April 21, 2010.

Thereafter, respondent did not remove disparaging information about witnesses from his websites, and respondent posted additional content about witnesses, linking them to disparaging remarks about Horton, such as “drhortonhomestink.com.”

After April 21, 2010, respondent did not take down his website, drhortonsjudges.info, in which he disparaged various judges. He did not remove the websites – drhortonfraud.com, drhortoncouldhavekilledme.com, and drhortonhomesstink.com – in which he made false claims about Horton.

On April 29, 2010, Horton defense counsel filed a motion requesting that the court issue an order to show cause as to why the plaintiffs should not be held in contempt in the Nevada case.

Prior to July 20, 2010, Horton filed a motion for sanctions against respondent for violating the protective order. Respondent received the motion and was aware of its contents.

On July 20, 2010, a hearing was held on the motion for sanctions. At the hearing, respondent admitted that he had not removed disparaging information from his websites, that one of the main purposes of the lawsuit was to ruin the reputation of the judges, and that he

repeatedly sent threatening communications to witnesses and counsel in connection with the litigation.

By order dated July 20, 2010, the court found respondent in contempt for violating the protective order and dismissed his case.

By order dated October 4, 2010, the court awarded Horton a total of \$48,691.97 in attorney fees and costs as a sanction for respondent's violation of the protective order.

Thereafter, respondent appealed the sanction order and the award was affirmed on appeal. To date, respondent has not paid any portion of the \$48,691.97.

At no time did respondent report the \$48,691.97 sanction award to the State Bar of California.

Conclusions

Count One - (§ 6068, subd. (c) [Attorney's Duty to Counsel/Maintain Only Legal or Just Actions or Defenses]

Section 6068, subdivision (c), provides that an attorney has a duty to counsel or maintain those proceedings, actions, or defenses only as appear to the attorney legal or just.

“[A]s officers of the court, attorneys ... have a duty to judicial system to assert only legal claims or defenses that are warranted by the law or are supported by a good faith belief in their correctness.” (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591.)

The purpose of the vexatious litigant statutes “is to address the problem created by the persistent and obsessive litigant who constantly has pending a number of groundless actions and whose conduct causes serious financial results to the unfortunate objects of his or her attacks and places an unreasonable burden on the courts.” (*Morton v. Wagner* (2007) 156 Cal.App.4th 963, 970–971.)

“The constant suer ... becomes a serious problem to others than the defendant he dogs. By clogging court calendars, he causes real detriment to those who have legitimate controversies to be determined and to the taxpayers who must provide the courts. Arguably, one who has repeatedly relitigated groundless claims against one defendant could be required to give security before pressing to trial an apparently unfounded claim against a new victim.”
(Taliaferro v. Hoogs (1965) 237 Cal.App.2d 73, 74.)

Here, respondent had no legal claims against any of the defendants regarding the Nevada property. After having at least eight lawsuits dismissed and losing multiple appeals, in which the courts had repeatedly chastised him for filing unmeritorious papers, respondent continued to assert that he was fighting on behalf of consumers and that the defendants and the courts were all corrupt and would go to prison. He unreasonably believed that he had the right to continuing litigating until he got the result he wanted regardless of the law or the facts.

Therefore, by repeatedly filing lawsuits without merit, filing lawsuits to subject Horton to jurisdiction in California without basis, refusing to comply with court rules and procedures, and engaging in abusive litigation tactics resulting in an order declaring him a vexatious litigant, and by repeatedly making false statements about witnesses, parties, judges, and officials, which respondent knew were false, for the purpose of harassment and intimidation, repeatedly posting false and defamatory information on his websites, and engaging in conduct for the purpose of ruining the reputation of witnesses, parties, judges, and government officials, respondent failed to counsel or maintain such action, proceedings, or defenses only as appear to him legal or just, in willful violation of section 6068, subdivision (c).

Count Two - (§ 6106 [Moral Turpitude])

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

It is well settled that “serious, habitual abuse of the judicial system constitutes moral turpitude in violation of section 6106.” (*In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186.)

Respondent's actions of filing frivolous lawsuits and making false statements about Horton and other defendants for the purpose of harassment and intimidation constituted acts of moral turpitude and dishonesty, in willful violation of section 6106.

Count Three - (Rule 2-100(A) [Communication with a Represented Party])

Rule 2-100(A) provides that an attorney, while representing a client, must not directly or indirectly communicate about the subject of the representation with a party the attorney knows is represented by another attorney, unless the attorney has the consent of the other attorney.

Respondent ignored Horton's October 2005 letter requesting him to refrain from contacting his employees. He directly and repeatedly contacted Horton employees throughout the litigation even though he knew they were represented by counsel.

Therefore, by repeatedly contacting Horton defendants directly regarding the subject of the litigation although he knew they were represented by counsel, respondent communicated with a party he knew was represented by another lawyer without the consent of that lawyer, in willful violation of rule 2-100(A).

Count Four - (§ 6103 [Failure to Obey a Court Order])

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

By repeatedly posting false information about witnesses, parties, and judges in the case on his websites, not removing his websites that contained claims about the case, not taking down

websites containing false information, respondent violated the April 19, 2010 protective order and therefore willfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of his profession which he ought in good faith to do or forbear, in willful violation of section 6103.

Count Five - (§ 6106 [Moral Turpitude])

By repeatedly engaging in conduct that violated the protective order by deliberately posting false information about Horton, witnesses, judges and other government entities, respondent committed acts involving moral turpitude, corruption, and dishonesty, in willful violation of section 6106.

Count Six - (§ 6103 [Failure to Obey a Court Order])

By not paying any portion of the \$48,691.97 sanctions order, respondent willfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103.

Count Seven - (§ 6068, subd. (o)(3) [Failure to Report Sanctions])

Section 6068, subdivision (o)(3), provides that within 30 days of knowledge, an attorney has a duty to report, in writing, to the State Bar the imposition of judicial sanctions against the attorney of \$1,000 or more which are not imposed for failure to make discovery.

By not reporting the \$48,691.97 sanction award to the State Bar, respondent failed to report to the State Bar, in writing, within 30 days of the time respondent had knowledge of the imposition of any judicial sanctions against him, in willful violation of section 6068, subdivision (o)(3).

Aggravation⁵

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

Respondent's misconduct constitutes multiple acts of wrongdoing, including multiple acts of moral turpitude, filing unjust actions, communications with represented parties, and failure to obey court orders. Such multiple acts of misconduct constitute an aggravating factor.

In addition, respondent's multiple violations, disdain for rules and disobeying court orders demonstrate a pattern of misconduct. "Only the most serious instances of repeated misconduct over a prolonged period of time could be characterized as demonstrating a pattern of wrongdoing." (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1149, fn. 14, citing *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367.) His misconduct is egregious and has been ongoing since 2004.

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

Respondent significantly harmed the public and the administration of justice. His vexatious litigation required the courts to repeatedly rule on meritless lawsuits and motions, wasting valuable judicial time and resources. The cumulative effect of his conduct over the course of at least six years of meritless litigation in California and Nevada is prejudicial to the administration of justice, taking judicial resources away from other meritorious cases. Moreover, respondent's misconduct caused harm to the legal profession. He used the courts as a means of intimidating and oppressing people by his endless litigations against the builder and its employees.

Based on his repeated, baseless claims and arguments, respondent has failed to demonstrate any respect for the process and rule of law. Moreover, his actions caused extreme

⁵ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

harm to Horton and others, forcing them to spend tens of thousands of dollars in legal fees defending themselves in his obsessive and baseless campaign to fight corruption.

Indifference Toward Rectification/Atonement (Std. 1.2(b)(v).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. “The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

Respondent expressed no remorse or recognition of the serious consequences of his misbehavior. He was relentless in pursuit of his claims, refusing to acknowledge that his arguments were not supported by the law or fact. Instead, he contended that his goal was to protect the consumers and send the judges and corporate officers to prison. He would continue contacting represented parties and would not pay any sanctions. In fact, respondent admitted that he would not stop and does not plan to stop this course of misconduct. Respondent was unapologetic. Indeed, there is no indication that he realized the gravity of his violations.

Respondent’s failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.)

Lack of Candor/Cooperation to Victims/State Bar (Std. 1.2(b)(vi).)

Respondent’s unrestrained personal abuse and disruptive behavior characterized his conduct during these disciplinary proceedings. (See *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23, 45.) His disrespect to the State Bar Court, constantly using offensive language throughout the proceedings, is significant aggravation.

Mitigation

There is no mitigation.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 1.6(a), 2.3, 2.6 and 2.10 apply.

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.) Although 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.)

Standard 1.6(a) provides, in pertinent part, that when two or more acts of misconduct are found in a single disciplinary proceeding, and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court or a client must result in actual suspension or disbarment.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

Standard 2.10 provides that violations of any provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproof or suspension depending upon the gravity of the misconduct or harm to the victim, with due regard to the purposes of imposing discipline.

Respondent contends that all charges against him should be dismissed. He maintains that he is completely free of any wrongdoing. He asserts that he is a champion of consumers and a federal informant, and that the judges are corrupt.

The State Bar urges disbarment, citing *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179 in support of its recommendation.

In *Varakin*, the attorney was disbarred for filing frivolous motions and appeals in four different cases over 12 years solely for the purpose of delay and harassment of his ex-wife and others who became embroiled in his vendetta against her and was proud of his conduct. He persisted in this pattern of misconduct despite many sanctions. In fact, within four years, he received at least 14 sanctions, totaling \$80,000. He also intentionally refused to report sanctions and to cooperate with the State Bar investigation. Stressing respondent's abuse of the judicial system, lack of repentance, and obdurate persistence in misconduct, the Review Department concluded that no discipline less than disbarment was consistent with the goals of maintaining high ethical standards for attorneys and preserving public confidence in the legal profession.

Like *Varakin*, respondent filed all those eight lawsuits and multiple appeals regarding the Nevada property for the sole purpose of delay or harassment of the builder and others. He was clearly vengeful and spiteful. He has so far refused to pay sanctions of more than \$48,000

awarded in the Nevada case. Respondent engaged in unmeritorious litigations over six years in eight cases. He failed to report his sanctions to the State Bar and refused to cooperate with the State Bar investigation. Thus, his misconduct is as egregious as the misconduct in *Varakin*.

In another case, *Rosenthal v. State Bar* (1987) 43 Cal.3d 612, the Supreme Court disbarred an attorney because of the egregious nature of his misconduct and the need to protect the public from further injury. Like respondent, the attorney maintained unjust actions and committed acts of moral turpitude. Rosenthal also engaged in transactions rife with undisclosed conflicts of interest, taken positions adverse to former clients, overstated expenses and double-billed for legal fees, failed to return client files or provide access to records, failed to give adequate legal advice or provide his clients with the opportunity to obtain independent counsel, filed fraudulent claims and given false testimony, and engaged in conduct intended to harass his former clients, delay court proceedings, obstruct justice and abuse the legal process.

In this matter, respondent's frivolous lawsuits and appeals burdened the court, opposing parties and counsel, causing substantial harm to the administration of justice and the public. The enormous harm to the administration of justice and to the public weighs heavily in assessing the appropriate level of discipline. Respondent is unrepentant, relentless and spiteful; he continued to demonstrate such unprofessional conduct during these disciplinary proceedings with his unwarranted attacks against this court, the State Bar and the entire judicial process.

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) The court also had the opportunity to assess respondent's character and conduct over five days of trial. While the court is sympathetic with his determination to rid of fraud and be a champion for consumers, respondent's volatility is indeed troubling, especially since his misconduct began only two years after he became a member of the bar. Based on the court's observation and the

record, disbarment is absolutely necessary to protect the public, preserve confidence in the profession, and maintain high professional standards. The total absence of any recognition by respondent of his misconduct shows that there is little hope that he would conform his method of practicing law to the professional standards of this state.

Therefore, having considered the egregious nature and extent of the misconduct, the aggravating circumstances, as well as the case law and the standards, the court must recommend that respondent be disbarred to protect the courts, the public and the profession.

Recommendations

It is recommended that respondent Patrick Alexandre Missud, State Bar Number 219614, be disbarred from the practice of law in California and respondent's 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 rule 9.20 of the California Rules of Court, 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 in this proceeding.

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 of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the

effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: July _____, 2013

LUCY ARMENDARIZ
Judge of the State Bar Court