

1 Case No. 09-234-3382

FILED

2 **STATE BAR OF NEVADA**

3 **SOUTHERN NEVADA DISCIPLINARY BOARD**

JAN 28 2011



STATE BAR OF NEVADA

4 STATE BAR OF NEVADA,)
)
 5 Complainant,)
)
 6 vs.)
)
 7 GREGORY CORTESE, ESQ.,)
)
 8 Respondent.)
)

PUBLIC REPRIMAND

9 TO: GREGORY CORTESE, ESQ.
 10 866 Seven Hills Drive, Suite 201
 Henderson, NV 89052

11 You represented Angela Stabile ("Stabile"), among other defendants, in a lawsuit
 12 arising from a contract dispute with Marla Gomes ("Plaintiff"), who claimed to be an
 investor in Stabile's shows "X" and the "Men of X." The State Bar is informed and
 13 believes that Plaintiff signed a one-page contract with Stabile and her company, under
 the terms of which Plaintiff would invest \$150,000 in the production of the shows in
 14 exchange for 10 percent of the profits to be paid on a monthly basis.

15 On August 7, 2006, Plaintiff filed a lawsuit for breach of contract against Stabile in
 the Eighth Judicial District Court, styled *Marla Plaintiff v. 3rd Wish Entertainment, LLC,*
 16 *Angela Sampras, et al.*, Case No. A526081. On October 18, 2006, you filed a
 counterclaim.

17 You failed to communicate to your clients an Offer of Judgment served upon you
 18 by Plaintiff in or about October 2006.

19 On November 14, 2006, Plaintiff moved to dismiss the counterclaim pursuant to
 NRS 41.660, Nevada's "anti-SLAPP" statute, and moved for sanctions pursuant to NRS
 20 41.670. On December 14, 2006, you filed an Opposition to Plaintiff's Motion to Dismiss.

21 At a hearing on December 21, 2006, the Court granted Plaintiff's motion and
 awarded her attorney fees and costs in the amount of \$7,786. You failed to inform your
 22 clients of the award of sanctions and did not pay the sanctions.

23 Nearly a year later, on September 26, 2007, Plaintiff's counsel sent a letter to you
 regarding the unpaid sanctions. You failed to respond. On October 11, 2007, Plaintiff's
 24 counsel filed an Application for Order to Show Cause why Defendants should not be
 held in contempt and sanctioned for failing to pay the Court-ordered fees and costs.
 25

1 On October 25, 2007, the Court entered its Notice of Hearing Regarding Order to
2 Show Cause set for November 29, 2007. Although You were aware of the Plaintiff's
3 filing and the hearing date, you failed to file a written opposition to Plaintiff's Application
4 for Order to Show Cause and failed to appear at the November 29, 2007, hearing.

5 The Court ordered Defendants to pay the sanctions within fifteen (15) days. The
6 order specifically stated that if the sanctions were not paid within the fifteen (15) days,
7 Defendants would be subject to additional sanctions, including, but not limited to
8 awarding additional attorney fees and costs and the striking of Defendants' Answers.

9 You failed to inform your clients of the motion and hearing on the Order to Show
10 Cause or the Court's order that the sanctions be paid within fifteen (15) days of the
11 order. The sanctions were not paid.

12 Defendants also were sanctioned during a November 19, 2007, hearing in which
13 the Discovery Commissioner found that their discovery responses were inadequate and,
14 therefore, granted Plaintiff's Motion to Compel. During this hearing, Defendants were
15 sanctioned \$250 and ordered to provide adequate discovery responses.

16 You failed to inform your clients of these sanctions or the need to provide
17 adequate discovery responses. You failed to ensure that the adequate discovery
18 responses were provided or that the \$250 sanction was paid.

19 Considered as part of your inadequate response to discovery during the
20 November 19 hearing, were missed depositions of your clients and two (2) nonparty
21 witnesses for whom you had accepted service of the deposition subpoenas. Plaintiff
22 had scheduled depositions to take place from October 23 through October 26, 2007.

23 On October 14, 2007, you sent a fax to Plaintiff's counsel requesting that the
24 depositions be rescheduled. In the fax, you also asked that Plaintiff's counsel contact
25 you by October 15, 2007, in order to discuss possible settlement of the case. You
provided a copy of the fax and fax receipt in your response to the State Bar. There is
no indication that you spoke to opposing counsel on October 15 or made other
arrangements to address the pending depositions or inform your clients or the other
witnesses of the pending depositions or ensure their attendance.

A Status Check hearing was held on January 28, 2008. The Discovery
Commissioner found that Defendants still had not provided adequate discovery
responses as previously ordered nor had Defendants paid the prior sanction. The
Commissioner recommended that all Defendants' Answers be stricken for failure to
comply and failure to participate. Further, you were sanctioned personally an additional
\$100 for failing to appear at the January 28, 2008, hearing.

You failed to inform your clients of the Discovery Commissioner's
recommendations to strike their Answer or the effects of such a terminating sanction on
their case.

You failed to file a timely objection, and the District Court adopted and entered
the Discovery Commissioner's Report and Recommendations on March 5, 2008. You

1 failed to inform your clients of the District Court's entry of the order or its effect on their case.

2
3 On March 6, 2008, Plaintiff filed an Application for Entry of Default against Defendants, which the clerk entered on or about March 10, 2008. You failed to inform your clients of the entry of Default.

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5 Plaintiff moved to strike Defendants' remaining counterclaim. Following a hearing on May 22, 2008, the Court ordered Defendants to appear at their depositions the following week. You failed to inform your clients of the Court's order or ensure your clients' appearance.

6
7 A hearing on Plaintiff's Application for Default Judgment was held on January 15, 2009. You failed to file a written response to the Application. The hearing minutes indicate that you did appear at this hearing, but were not allowed to participate due to facts and circumstances of the case.

8
9 You failed to inform your clients of the hearing or the pending Application for Default or the Court's order granting the application.

10
11 An order granting Plaintiff's Application for Default Judgment was entered on March 30, 2009. The order awarded Plaintiff more than \$1.2 million which included the original amount of the investment, past and future profits from the show, punitive damages, interest charges, and attorney fees and costs. You failed to timely inform your clients of the judgment.

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14 The State Bar is informed and believes that Stabile was not aware of the Default Judgment or the amount until she received an e-mail on May 5, 2009, from a reporter requesting a comment on the Judgment.

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16 During a subsequent conversation between you and Stabile, you expressed surprise at the Default Judgment and represented to Stabile that you were previously unaware of it.

17
18 The first time that you discussed with Stabile the original award of attorney fees from 2006, or the missed deposition dates from 2007, is on or about May 21, 2009, during an e-mail exchange in which Stabile asked you why she was not aware of the award of attorney fees or the deposition dates. You responded that the award of attorney fees would have been revisited at trial.

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1 **Violation**

2 Based on the foregoing, you violated Rule of Professional Conduct ("RPC") 1.1
3 (Competence), RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 3.2(a) (Expediting
4 Litigation), and RPC 3.4 (Fairness to Opposing Party and Counsel) and are hereby
PUBLICLY REPRIMANDED.

5 DATED this 28th day of January 2011.

6 FORMAL HEARING PANEL

7 
8 Kim Mandelbaum, ESQ.
9 Formal Hearing Panel Chair
10 Southern Nevada Disciplinary Board
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