

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,

BILL E. PONATH,
Bar No. 009543

Respondent.

No. PDJ-2017-9036

**FINAL JUDGMENT AND
ORDER OF SUSPENSION**

[State Bar No. 16-1105]

FILED NOVEMBER 14, 2017

The decision of the hearing panel was filed with the disciplinary clerk on October 18, 2017. The time for appeal has passed and no appeal has been filed.

Now Therefore,

IT IS ORDERED Respondent, **BILL E. PONATH, Bar No. 009543**, is suspended from the practice of law for four (4) months effective November 17, 2017.

IT IS FURTHER ORDERED Mr. Ponath shall immediately comply with the requirements relating to notification of clients and others, and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED Mr. Ponath shall pay restitution of \$1,000.00 plus interest at the statutory rate to Mr. Pataka within thirty (30) days of his suspension.

IT IS FURTHER ORDERED upon reinstatement, Mr. Ponath shall be placed on two (2) years of probation with the State Bar's Law Office Management

Assistance Program (LOMAP) and obtain a Member Assistance Program (MAP) assessment.

IT IS FURTHER ORDERED upon reinstatement, Mr. Ponath shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of his reinstatement order, to schedule a LOMAP and MAP assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. Mr. Ponath will be responsible for any costs associated with participation and compliance with LOMAP and MAP.

IT IS FURTHER ORDERED Mr. Ponath shall pay all SBA costs and expenses in the amount of \$4,628.05 as ordered by the Presiding Disciplinary Judge. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge.

DATED this 14th day of November, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 14th day of November, 2017 to:

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED
MEMBER OF THE STATE BAR OF
ARIZONA,

BILL E. PONATH,
Bar No. 009543,

Respondent.

PDJ 2017-9036

[State Bar File Nos. 16-1105]

**DECISION AND ORDER
IMPOSING SANCTIONS**

FILED OCTOBER 18, 2017

On September 19, 2017, the Hearing Panel, composed of Glen S. Thomas, volunteer attorney member, Marsha M. Sitterley, volunteer public member, and the Presiding Disciplinary Judge (“PDJ”) William J. O’Neil, held an evidentiary hearing, pursuant to Rule 58(k), Ariz. R. Sup. Ct.¹ Nicole S. Kasetta appeared on behalf of the State Bar of Arizona. Brian Holohan appeared on behalf of Mr. Ponath. Exhibits 1, 2, 4, 5, 9-35, 37-48, 50-76, 78-89, 91-95, 99-104, and 109-112 were admitted. The State Bar requested a six month and one day suspension and restitution. Mr. Ponath asserted his mental state was, at most, negligent and that he did not violate any ethical rules

I. SANCTION IMPOSED

**FOUR (4) MONTHS SUSPENSION, RESTITUTION, AND UPON
REINSTATEMENT, TWO (2) YEARS OF PROBATION**

¹ Unless stated otherwise, all Rule references are to the Ariz. R. Sup. Ct.

II. PROCEDURAL HISTORY

The State Bar of Arizona (“SBA”) filed its complaint on March 20, 2017. On March 22, 2017, notice of service was filed that the complaint was served on Mr. Ponath by certified, delivery-restricted mail, and by regular first-class mail, pursuant to Rules 47(c) and 58(a)(2). The PDJ was assigned to the matter on March 23, 2017. On April 17, 2017, Mr. Ponath’s answer was filed.

An initial case management conference was held on April 24, 2017. Scheduling orders issued the same day and the hearing date was scheduled. The parties filed a Joint Pre-Hearing Statement (“JPS”) on August 3, 2017. Each party filed a pre-hearing memorandum on August 9, 2017. The Respondent filed a post hearing memorandum on September 18, 2017. Both parties filed proposed findings of fact and conclusions of law on September 18, 2017.

III. FINDINGS OF FACT

Mr. Ponath is a lawyer licensed to practice in the state of Arizona, having been admitted to practice on May 12, 1984, primarily practicing bankruptcy law. [Hearing Testimony Day 1 (“HT1”) at 9:29:32 a.m.] This matter concerns Mr. Ponath’s representation of James Pataka. On April 29, 2014, Mr. Pataka obtained a loan from Green Tree Servicing, LLC. (“Green Tree”) in the amount of \$145,600, secured by a deed of trust on his residence (“property”). [JPS at 2.] The holder of the deed is Fannie Mae, and the servicer of the deed is Green Tree. [Id.] The deed of

trust provides that if the borrower breaches the agreement and the lender “invokes the power of sale, lender shall give written notice to Trustee of the occurrence of an event of default and of Lender’s election to cause the Property to be sold.” The trustee shall then record a notice of sale in the county where the property is located, and that trustee shall sell the property at a public auction to the highest bidder. [Exhibit 73 (“EX”) at SBA000633-34.]

On February 12, 2015, Green Tree recorded a notice of trustee’s sale of the property of Mr. Pataka for May 18, 2015. Around April 21, 2015, Mr. Pataka retained Mr. Ponath to file a bankruptcy petition to stop the sale from occurring. [JPS at 2.] Green Tree appointed Ron Horowitz as trustee of the trustee’s sale of Mr. Pataka’s deed. [Ex. 49; HT1 at 1:40:01 p.m.] Mr. Pataka requested Mr. Ponath to file a bankruptcy petition before the trustee’s sale, and paid Mr. Ponath \$1,000, which included the \$310 filing fee and \$33 for a credit report. [JPS at 2.] Mr. Pataka’s primary intention in retaining Mr. Ponath was to avoid the foreclosure sale of his property. [HT1 at 9:14:11 a.m.] The purpose of filing for bankruptcy was to prevent the trustee sale of the property [Id. at 9:35:10 a.m.]

Although Mr. Ponath confirmed that he would file the bankruptcy petition, he failed to do so, and on May 18, 2015, an entity named GLEA, LLC (“GLEA”) purchased the property of Mr. Pataka in the trustee’s sale. [JPS at 3.] GLEA is owned

by Greg Leach. That same day, Mr. Horowitz executed and recorded a trustee's deed conveying the property to GLEA. [Ex. 76].

Mr. Ponath testified that he did not file the bankruptcy petition because he relied on information provided by Cyndee Estrada, a certified loan counselor who assists attorneys with mortgage issues. [HT1 at 9:49:30 a.m.] He believed that Ms. Estrada is knowledgeable about mortgages and that he could rely on her knowledge, even though she is not an attorney. [Id.] Ms. Estrada testified that she spoke with Mr. Ponath, telling him that she communicated with Fannie Mae, and that Fannie Mae told her that the property was not listed for a foreclosure sale. [Hearing Testimony Day 2 ("HT2") at 10:19:26 a.m.]

Mr. Ponath stated that he believed Ms. Estrada had spoken to Fannie Mae, and he was under the impression that Fannie Mae had stated the sale was not going forward. Mr. Ponath stated he did nothing to verify or research the issue but only relied on Ms. Estrada and her research to come to his decision to not follow his client's directive, and instead concluded that Fannie Mae had not approved of a trustee's sale. [HT2 at 1:57:05 p.m.]

Ms. Estrada testified that she had never suggested to Mr. Ponath that he not file the bankruptcy petition. [HT2 at 10:25:06 a.m.] Moreover, Mr. Ponath and Mr. Horowitz both testified that Mr. Ponath never communicated with Mr. Horowitz,

Green Tree, or Fannie Mae prior to the trustee's sale. [HT1 at 9:51:35 a.m.; Id. at 1:49:05 p.m.]

Mr. Ponath testified that he knew that filing the bankruptcy petition prior to the trustee's sale would prevent the trustee's sale from occurring. [Id. at 9:36:05 a.m.] Mr. Ponath did nothing to verify the cancellation of the sale and chose not to attend the trustee's sale to verify its cancellation. [Id. at 9:54:08 a.m.] Mr. Ponath does not dispute that, under Arizona law, trustee's sales are completed when the bid price is paid. [Id. at 9:59:34 a.m.; Ex. 1.]

On May 18, Mr. Pataka informed Mr. Ponath that a trustee's sale occurred on his property, and Mr. Ponath again agreed to file a bankruptcy petition for Mr. Pataka. [Id.] The next day, Mr. Ponath filed a bankruptcy petition and a proposed plan for Mr. Pataka. [Ex. 10] In this proposed plan, Mr. Ponath proposed post-petition mortgage payments to Green Tree, in spite of the facts that Green Tree had already sold the property and Mr. Pataka had no income to pay Green Tree even if the sale was set aside. [Ex. 12 at SBA000292; Ex. 11 at SBA000287.] On June 9, Green Tree filed an objection to the confirmation of this plan.

On June 24, Mr. Green, attorney for GLEA's owner, filed a motion for relief from the automatic stay (an automatic stay on the sale is placed unless lifted by a motion for relief). [Id.] On July 13, Mr. Ponath emailed Mr. Green stating that he never received a copy of the motion to lift the stay and, on the same date, Mr. Ponath

filed an answer/objection to the motion for relief from automatic stay, asserting that the motion was never properly served as the copy was corrupted and unreadable. [Id.]

However, Mr. Ponath testified that, although the email of the copy of the motion was corrupted and unreadable, he was still aware that a motion to lift the stay was made. [HT1 at 10:06:35 a.m.] Additional concern stems from an email Mr. Ponath sent to Ms. Estrada on July 14, in which he stated, “I need to answer the Motion for Relief by the end of the week. I need you to tell me why the sale was void according to Arizona law.” [Ex. 83.]

In a subsequent email dated July 15, Mr. Ponath stated to Ms. Estrada, “I actually got a call from the opposing counsel and he said that no matter what; the sale is done and cannot be reversed. PLEASE advise otherwise.” (Emphasis in original.) [Ex. 87.] Although an order to lift the automatic stay was originally granted, a hearing was held on July 22, where the court vacated the order lifting the automatic stay. [JPS at 5.] On July 23, Mr. Green re-filed his motion for relief from automatic stay, and on August 6, Mr. Ponath filed an answer/objection. [Id.] In his answer/objection, Mr. Ponath purported a “show me the note” argument, which has been rejected in Arizona. *See Diessner v. MERS*, 618 F.Supp.2d 1184, 1187 (D. Ariz. 2009).

On July 15, Mr. Ponath attempted to interplead Green Tree, writing that Green Tree was not the holder of the note and was only the servicer, and therefore the trustee's sale was not authorized. [Ex. 21.] However, Mr. Ponath testified that he did not know what evidence he had to support that assertion. [HT1 at 10:15:24 a.m.] Mr. Ponath also admitted that he was aware that Green Tree had the general authority to conduct trustee sales. [Id. at 10:16:02 a.m.] In the July 15 complaint against Green Tree, Mr. Ponath asked the court to find the trustee's sale null and void. [Ex. 22 at SBA000344.] Mr. Ponath acknowledged that the court told him the trustee's sale could not be set aside because the bankruptcy petition was filed after the sale. [HT1 at 10:23:35 a.m.] On July 18, Mr. Ponath wrote "I DESPARATELY need you to review attached and let me know if it is exactly correct. Do you know of absolute proof that Green Tree has never been an actual lender?" (Emphasis in original.) [Ex. 88.] In Green Tree's July 17 objection to Mr. Ponath's complaint, Green Tree stated that Mr. Ponath's allegations that Green Tree did not hold the note and could not conduct the sale of the property were "blatantly false," and wrote "[e]ven a cursory review of the public records recorded...would have verified such facts for the Debtor/his counsel." [Ex. 23 at SBA000348-349.] It is undisputed that there is no Arizona law that supports the contention that a court may set aside a trustee's sale after the sale has occurred.

On August 10, Mr. Ponath filed an adversary complaint against GLEA and Green Tree and on this same day, Mr. Ponath filed a motion for summary judgment, in which he alleged that Green Tree's Corporate Assignment of Deed of Trust was an "intentional misrepresentation," although he did not provide any facts to substantiate this. [JPS at 5; Ex. 9; HT1 at 11:12:05 a.m.] Green Tree opposed this motion and made a cross-motion for summary judgment because Green Tree was no longer owner of the property. [Ex. 13.] Mr. Ponath initially failed to open an adversary proceeding and because of this, he later withdrew his complaint. [Ex. 22; HT1 at 10:24:24 a.m.]

On September 29, Mr. Pataka emailed Mr. Ponath to notify him of a separate hearing relating to an eviction action (forcible detainer) that GLEA filed against him. [Ex. 63.] Mr. Ponath chose not to attend the eviction hearing. [JPS at 6.] He did not tell his client of that decision. On October 2, Mr. Ponath filed a motion to dismiss the bankruptcy case. [Id.]

Mr. Ponath testified that he agreed Mr. Leach should be compensated for the cost of his mistake, which was failing to file the bankruptcy petition. [HT1 at 11:36:52 a.m.] Mr. Horowitz testified that the harm, caused by Mr. Ponath's attempts to set aside the trustee's sale, was in the form of a significant amount of attorney's fees incurred by various parties. [Id. at 1:52:58 p.m.]

Mr. Ponath testified that he has never voided a trustee's sale after it has occurred and he is unable to identify any Arizona case law that overturns a trustee's sale. [Id. at 9:30:06 a.m.] In his late bankruptcy petition, Mr. Ponath represented to the Arizona Bar that *Motta v. Flagstar*, 2017 WL 2438064 (Ariz. App. 2017) involved a successful reversal of a trustee's sale. [HT1 at 10:01:20 a.m.] However, Mr. Ponath testified that he was aware that this was not the case, and that the court did not grant a reversal of a trustee's sale in *Motta*. [Id. at 10:00:39 a.m.]

We credit Mr. Ponath for acknowledging in his closing memorandum his mistake in failing to file the bankruptcy petition to postpone the trustee sale. That is the reason he was hired and the directive his client gave him. We also credit him with acknowledging in his closing memorandum that it was a mistake for him not to attend the eviction hearing. That was also what his client directed be done and the reason he called Mr. Ponath to assure he knew of the hearing.

Mr. Ponath acknowledged that he had prior discipline for his lack of diligence. In 2015, Mr. Ponath received a reprimand for behavior related to diligence. [Id. at 11:37:05 a.m.]

IV. CONCLUSIONS OF LAW

The Hearing Panel finds by clear and convincing evidence that Mr. Ponath violated: Rule 42, ERs 1.1, 1.2, 1.3, 3.1, 3.2, 8.4(c), and 8.4(d).

1. Mr. Ponath violated ER 1.1 by filing an interpleader motion when what he really sought was to implead Green Tree; by filing a complaint against Green Tree without opening an adversary proceeding; by listing Green Tree as a debtor in the bankruptcy when the debtor no longer owned the property at issue; by objecting to the sale of the property without first obtaining an injunction to enjoin the sale; because he admits he is not knowledgeable about the statute permitting an injunction and that he knows of no Arizona cases permitting the setting aside of a trustee sale; by failing to confirm or obtain any documentation from Green Tree or Fannie Mae stating that the trustee sale would not occur; and by continually repeating to the court that Green Tree never held the note when there is a note listing Green Tree and when he subsequently admitted that he does not know what constitutes a note.

2. Mr. Ponath violated ER 1.2 by failing to file the bankruptcy petition prior to the trustee sale occurring, by failing to timely respond to Mr. Green's June 24, 2015 motion to lift the stay despite his client reminding him of the necessity to do so, and by failing to attend the eviction hearing.

3. Mr. Ponath violated ER 1.3 by failing to timely file the bankruptcy petition or a motion for a preliminary injunction to stop the trustee sale, by failing to follow up on the June 24, 2015 motion to lift the stay and by failing to timely file a response to such motion; by failing to attend the eviction hearing for his client; and

by failing to confirm with or obtain documentation from Fannie Mae or Green Tree that it did not intend to proceed with the trustee's sale.

4. We find there was nothing unreasonable in the \$1,000 collected for the filing of the bankruptcy petition, despite his failure to timely file it. We find no violation of ER 1.5(a).

5. Mr. Ponath violated ER 3.1 by seeking to set aside the trustee sale when there is no Arizona authority permitting as much; by naming Green Tree in the bankruptcy petition and in an adversary proceeding when the property was already sold to GLEA; by filing a motion to interplead when there were no disputed funds at issue; by continually asserting that Green Tree was not a lender and did not have authority to conduct the trustee's sale; by filing his August 6, 2015 response to Mr. Green's motion to lift stay when the court already informed Respondent that no good faith grounded existed to object to the motion; by filing an adversary complaint against Green Tree despite the court informing Respondent that it could not adjudicate the issue of the trustee sale; and by asserting a "show me the note" argument when such argument has been rejected in Arizona.

6. Mr. Ponath violated ER 3.2 by filing the aforementioned frivolous documents and making the aforementioned frivolous arguments. "The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay." A competent lawyer acting in

good faith would not have filed the motions. There was no substantial purpose in the filing of those motions. *See* Comment to ER 3.2.

7. We decline to find a violation of ER 3.3, as we do not believe Mr. Ponath knowingly made misrepresentations to the court. We believe he was incompetent, failed to do any meaningful research and as a result filed pleadings that a competent lawyer in good faith would not have filed. The same is true with his obvious inconsistencies in statements to the State Bar. When asked why he had asserted to the Court that Green Tree did not hold the note, when it was listed on the note dated April 29, 2014. This contradicted his testimony in the hearing. [Ponath Testimony at 10:24:57-25:32, 10:44:17-33, 10:44:51-45:47.] His testimony during the hearing concerned us to the extent that we believe an evaluation is warranted.

8. While we struggled regarding a violation of ER 8.4(c), Mr. Ponath made too many misrepresentations that were obviously untrue. While that may also go to competency, the nature of the misrepresentations convinces us legal incompetence was not the issue. Mr. Ponath repeatedly informed the court that Green Tree was never a lender despite there being a note and deed of trust identifying Green Tree as the lender. The misrepresentation is more apparent when he informed bar counsel that there is no note dated April 29, 2014 when such note was attached to filings in the bankruptcy case. It is troubling that Mr. Ponath grossly misrepresented to bar counsel that *Motta* involved a “successful reversal.”

9. Mr. Ponath violated ER 8.4(d) by filing the aforementioned frivolous documents and making the aforementioned frivolous arguments.

ABA STANDARDS ANALYSIS

The American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the following factors should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *See Standard 3.0*.

Duties violated:

Mr. Ponath violated his duty to his client by violating ERs 1.1, 1.2, and 1.3. He violated his duty to the legal system by violating ERs 3.1, 3.2, 8.4(c), and 8.4(d).

Mental State and Injury:

Mr. Ponath violated his duty to his client which implicates *Standards 4.4 and 4.5*. *Standard 4.42* provides that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. Mr. Ponath knowingly failed to follow his client's directive to timely file the bankruptcy petition or a motion for a preliminary injunction to stop the trustee sale, he knowingly failed to attend the eviction hearing for his client, and knowingly failed to confirm with or obtain documentation from Fannie Mae or Green Tree that

it did not intend to proceed with the trustee's sale. Mr. Ponath's conduct caused actual harm to his client. Mr. Pataka lost his home.

Standard 4.52 provides that suspension is generally appropriate when a lawyer engages in an area of practice which the lawyer knows he or she is not competent, and causes injury or potential injury to a client. Respondent engaged in real property law and trustee's sales when Respondent knew he was not competent in this area. Respondent admitted that he did not know what a note was, that real estate law was "Greek" to him, and that he was not familiar with the statute governing preliminary injunctions to stop a trustee sale. His conduct injured his client, others and the administration of justice.

AGGRAVATING AND MITIGATING FACTORS

The Hearing Panel finds the following aggravating factors are present in this matter:

- *Standard 9.22(a)*, prior disciplinary offenses. (Exhibits 97-103; and Respondent's Testimony, 8/16/17 Recording at 11:37:02-11:44:10);
- *Standard 9.22(c)*, a pattern of misconduct. Respondent was recently disciplined for diligence issues. (Exhibits 101-103).
- *Standard 9.22(g)*, refusal to acknowledge wrongful nature of conduct. (HT1 at 11:36:53-11:37:02).
- *Standard 9.22(i)*, substantial experience in the practice of law. (JPS at ¶ 1).

The Hearing Panel finds that suspension is the presumptive sanction with terms of probation are appropriate sanctions.

V. CONCLUSION

The Supreme Court “has long held that ‘the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.’” *In re Alcorn*, 202 Ariz. 62, 74, 41 P.3d 600, 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It has also concluded that the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). Furthermore, a goal of lawyer regulation is to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

The Hearing Panel has determined the sanction using the facts, application of the *Standards*, including the aggravating and mitigating factors, and the goals of the attorney discipline system. The Hearing Panel orders:

1. Mr. Ponath be suspended for four (4) months effective thirty (30) days from this date.
2. Mr. Ponath shall immediately pay restitution to Mr. Pataka in the amount of \$1,000 within thirty (30) days of his suspension.

3. Mr. Ponath be placed on two (2) years of probation upon reinstatement with the State Bar's Law Office Management Assistance Program (LOMAP) and obtain a Member Assistance Program (MAP) assessment.
4. Upon reinstatement, Mr. Ponath shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of his reinstatement order, to schedule a LOMAP and MAP assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. Mr. Ponath will be responsible for any costs associated with participation and compliance with LOMAP and MAP.
5. Mr. Ponath shall pay all costs and expenses incurred by the SBA. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office with these disciplinary proceedings.

A final judgment and order will follow.

DATED this 18th day of October 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Marsha M. Sitterley

Marsha M. Sitterley, Volunteer Public Member

Glen S. Thomas

Glen S. Thomas, Volunteer Attorney Member

Copy of the foregoing e-mailed/mailed
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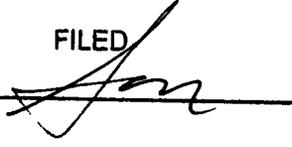
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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

MAR 20 2017

BY _____

FILED 

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,**

**BILL E. PONATH,
Bar No. 009543,**

Respondent.

PDJ 2017-9036

COMPLAINT

[State Bar No. 16-1105]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on May 12, 1984.

COUNT ONE (File no. 16-1105/Leach/Pataka)

2. On April 29, 2014, James Pataka (debtor) obtained a loan from Green Tree Servicing LLC (Green Tree) in the amount of \$145,600 secured by a deed of trust on his property (property).

3. The note lists Green Tree as the lender.

4. The deed of trust also lists Green Tree as the lender and MERs as a “nominee for Lender and Lender’s successors and assigns.”

5. On June 25, 2014, Fannie Mae allegedly sent a letter to debtor stating that the “ownership of your first lien mortgage loan . . . has been transferred by GREEN TREE SERVICING, LLC to Fannie Mae. . . . The transfer of ownership of your mortgage loan to Fannie Mae has not been publicly recorded. Fannie Mae does not service your loan. . . . The servicer of your mortgage loan is GREEN TREE SERVICING.” (emphasis in original).

6. On October 10, 2014, Green Tree filed with the Maricopa County Recorder a Corporate Assignment of Deed of Trust pursuant to which MERs assigned to Green Tree the deed of trust relating to debtor’s property.

7. On February 12, 2015, Green Tree recorded a notice of trustee’s sale on debtor’s property for May 18, 2015.

8. On or about April 21, 2015, debtor retained Respondent to file a bankruptcy petition to stop the trustee sale from occurring on May 18, 2015.

9. Debtor paid Respondent \$1,000.

10. Debtor asked Respondent to file the bankruptcy petition before the trustee's sale.

11. Respondent confirmed to debtor that he would do so.

12. Respondent did not file the bankruptcy petition for debtor prior to the trustee's sale.

13. Accordingly, on May 18, 2015, an entity named GLEA, LLC purchased the property at the trustee's sale.

14. Greg Leach owned GLEA, LLC at this time.

15. On May 18, 2015, Mr. Leach informed debtor of the sale of the property.

16. On the same date, debtor informed Respondent of the sale and Respondent informed debtor that he would file his bankruptcy petition the next day.

17. The next day, on May 19, 2015, Respondent filed a bankruptcy petition and proposed plan for debtor.

18. In the proposed plan, Respondent proposed post-petition mortgage payments to Green Tree even though Green Tree already sold the home.

19. Respondent also listed Green Tree as a creditor.
20. On June 9, 2015, Green Tree filed its objection to the confirmation of the debtor's plan because Green Tree sold the property to GLEA, LLC.
21. Green Tree alleged that the plan is improper because the debtor no longer owns the home and Green Tree is no longer a secured creditor.
22. On June 10, 2015, Greg Leach's attorney (Leach) sent a letter to Respondent notifying Respondent that he intended to file a motion to lift the automatic stay.
23. Leach's letter includes legal analysis regarding why the debtor was estopped from contesting the trustee's sale, including because Respondent failed to obtain an injunction stopping the sale of the property before it occurred.
24. On June 24, 2015, Leach filed a motion for relief from the automatic stay based on Respondent's failure to obtain an injunction before the sale occurred.
25. The certificate of service on this motion indicates that Leach served Respondent through ECF on June 24, 2015.
26. On July 4, 2015, Respondent admitted receiving the motion.
27. Specifically, in an email dated July 4, 2015, Respondent wrote: "I need to answer the Motion for Relief by the end of the week."

28. Additionally, in an email dated July 8, 2015, debtor wrote to Respondent: “It’s been 14 days since [M]r. Leach filed the motion to lift the stay.”

29. On July 13, 2015, Leach lodged an order with the court regarding his motion for relief from automatic stay.

30. On the same date, Respondent sent Leach an email stating that he never received a copy of his motion to lift the automatic stay.

31. On the same date, Respondent filed his answer to Leach’s motion for relief from the automatic stay.

32. In his response, Respondent claimed that he did not receive a copy of the motion, that he received blank documents that were represented to be the motion, that he telephoned an unnamed person and left a message asking for a copy of the same, and that he failed to subsequently follow up on this.

33. On July 14, 2015, Leach filed a motion to strike Respondent’s answer to the motion for relief from the automatic stay as untimely.

34. In his motion to strike, Leach argued that Respondent never called him and that he served the motion on Respondent through ECF.

35. In his motion to strike, Leach further argued that Respondent could have obtained a copy of the motion from PACER but he failed to do anything for 19 days.

36. On July 14, 2015, the court entered an order terminating the automatic stay.

37. On July 15, 2015, Respondent filed a motion to vacate the order terminating the stay and argued that he was not properly served with the motion for relief from the automatic stay.

38. On the same date, Leach sent Respondent an email stating: "Pursuant to our conversation, my client's position is that your client has no legal basis to object to the trustee's sale. . . . Further, be advised that if you file a motion to set aside the order for relief from stay, make sure you provide a factual and legal basis for doing so. If you fail to, my client will seek sanctions against you. . . ."

39. On the same date, Respondent filed a complaint against Green Tree to void the trustee's sale.

40. Respondent, however, failed to open an adversary proceeding for this complaint.

41. In the complaint, Respondent argued that Green Tree never held the note.

42. On July 15, 2015, Respondent also filed a motion to interplead Green Tree.

43. In his motion to interplead Green Tree, Respondent alleged that Green Tree did not hold the note and was only a sub-servicer of the loan when the sale occurred.

44. Despite his assertion that Green Tree did not hold the note, Respondent sent an email to a loan counselor three days later stating: "I DESPERATELY need you to review the attached [objection to interpleader] and let me know if it is exactly correct. Do you know of absolute proof that Green Tree has never been an actual lender? . . . [C]an you find something that proves that?"

45. On July 17, 2015, Green Tree filed an objection to the motion to interplead.

46. In its objection, Green Tree argued that the court did not have jurisdiction over it because the property was not the property of the estate and the factual basis for the motion was false and contrary to publicly available resources.

47. In its objection, Green Tree further argued that debtor waived his right to challenge the sale because he did not obtain an injunction to stop the sale.

48. In its objection, Green Tree explained that it was the original lender under the note and that the deed of trust was subsequently assigned to Green Tree pursuant to a corporate assignment of deed of trust.

49. Bar counsel asked Respondent why he asserted that Green Tree did not hold the note given that Green Tree is listed as the lender on the note dated April 29, 2014.

50. In response, Respondent denied the existence of such a note even though it is included in the bankruptcy filings.

51. On July 20, 2015, Leach filed a motion to strike and/or objection to debtor's motion to vacate order lifting stay and an objection to debtor's complaint against Green Tree contending that debtor's pleadings lacked any basis in law or fact.

52. In his July 20, 2015 motion to strike and/or objection, Leach argued "[a]ll public records reflect that Green Tree is in fact the beneficiary of the deed of trust."

53. On July 21, 2015, Leach filed a motion for sanctions against Respondent.

54. In his motion for sanctions, Leach stated that Respondent filed multiple frivolous pleadings, including because "all publicly recorded documents conclusively establish that Green Tree is the beneficiary of the deed of trust and properly noticed and held its trustee's sale."

55. On the same date, Respondent filed his answer to Green Tree's objection to his motion to interplead.

56. In his answer to Green Tree's objection, Respondent alleged that "Green Tree is not and never has been a lender.

57. On July 22, 2015, the court held a hearing on the motion to vacate the order lifting the stay and on Respondent's motion to interplead Green Tree.

58. During the hearing, the court observed that Respondent filed a complaint against Green Tree which “perplexed” the court because he filed it on the administrative docket and not as an adversary proceeding.

59. During the hearing, Respondent argued that the sale of the home was illegal.

60. The court responded that the sale occurred prior to the bankruptcy so that it could not adjudicate this issue and could not void the foreclosure sale.

61. The court explained that there are state court mechanisms in place that the debtor had to comply with, including seeking a temporary restraining order prior to the sale “so I don’t know how you can come in and ask this court to undo the trustee sale.”

62. Respondent replied and again asserted that the sale was illegal.

63. The court responded “how is that a bankruptcy court issue.”

64. During the hearing, the court questioned Respondent about whether the debtor waived the argument about the legality of the sale when the debtor did not request a preliminary injunction.

65. During the hearing, Respondent again asserted that he did not receive the motion to lift the automatic stay although he received the ECF notification regarding the motion.

66. The court confirmed that Leach did not serve the motion on Respondent, other than via ECF, held that service was deficient, and vacated the order lifting the stay.

67. The court observed, however, that Respondent was on notice of the filing and stated that it was troubled that Respondent did not follow up more regarding it.

68. The court stated that Leach could refile the motion for relief from the automatic stay.

69. The court further stated that Respondent could object to this motion but that the court did not believe grounds existed to object because the court does not have the ability to unwind a foreclosure sale that occurred pre-bankruptcy.

70. The court further observed that the interpleader motion “was improper” because there is no adversary pleading to attach it and is “mooted by my prior ruling.”

71. The court found that Respondent withdrew his motion to interplead.

72. Respondent also withdrew his administrative complaint against Green Tree.

73. On July 23, 2015, Leach re-filed his motion for relief from the automatic stay.

74. On August 6, 2015, Respondent filed an answer/objection to the motion and again argued that the sale was not done by the entity that held the note.

75. In his answer/objection to the motion, Respondent attached as an exhibit a printout from a web page titled “knowyouroptions.com/loanlookup” where it states that “[i]t appears Fannie Mae owns your loan, based on the information you entered.”

76. On August 10, 2015, despite the court already informing Respondent that it could not adjudicate the issue of the foreclosure sale, Respondent filed an adversary complaint naming Leach and Green Tree.

77. Respondent’s adversary complaint seeks to void the trustee’s sale on the property based on the assertion that Green Tree did not hold the note.

78. On August 10, 2015, Respondent filed a motion for summary judgment in the adversary proceeding again arguing that the sale was illegal.

79. On the same date, Leach filed a motion to strike Respondent’s answer/objection to his motion for relief from the automatic stay.

80. In this motion to strike, Leach again argued that it was inappropriate for Respondent to try and defend against the sale in the bankruptcy court.

81. On September 4, 2015, Green Tree responded to Respondent’s summary judgment motion and cross-motivated for summary judgment.

82. In its September 4, 2015 filings, Green Tree included an affidavit from its bankruptcy director.

83. The affidavit states that Fannie Mae originally owned the loan pursuant to a deed of trust, that Green Tree is listed as the Lender on the Note, that Green Tree was the servicer pursuant to a power of attorney, and that the power of attorney provided that Green Tree could foreclose on the deed of trust.

84. On September 8, 2016, the court held another hearing regarding lifting the stay.

85. The court repeated its discussion with Respondent from the last hearing about his arguments regarding the trustee sale and how the court cannot grant the relief that Respondent sought regarding the same.

86. The court further stated that Green Tree is actually on the loan documents.

87. The court commented that the cases that Respondent relies upon are factually distinguishable because they dealt with notice of the trustee's sale, and notice has never been an issue in this matter.

88. The court lifted the stay to permit Leach to proceed with eviction proceedings against the debtor.

89. The court observed that Respondent's argument basically eviscerates the statutory provision requiring a homeowner to obtain a temporary restraining order to stop a trustee sale.

90. The court further stated that Respondent's "show me the note argument" has been rejected by federal courts in Arizona although Respondent cited no cases regarding this argument.

91. The court observed that its ruling probably affects Respondent's adversary proceeding but Respondent stated that he still intended to proceed with it.

92. On September 13, 2015, Respondent emailed debtor and indicated that he would assist him if Leach sought to evict him from the property.

93. On September 17, 2015, Leach moved to dismiss Respondent's adversary complaint arguing that the property was sold at the sale and Respondent never moved to enjoin the sale.

94. Leach further argued that the cases Respondent cited actually supported Leach's position.

95. On September 29, 2015, debtor informed Respondent of a hearing relating to an eviction action that Leach filed against him.

96. On October 2, 2015, Respondent filed a motion to dismiss the bankruptcy case but requested that the adversary proceeding remain open.

97. The court subsequently notified Respondent that the motion to dismiss contained errors or deficiencies and wrote: "You will need to refile the motion in proper format. . . ."

98. Respondent subsequently filed an amended motion to dismiss and the court granted it on October 29, 2015.

99. On October 3, 2015, Leach informed Respondent that he was seeking fees, costs, and damages in the eviction action.

100. Respondent subsequently stipulated to dismissing the bankruptcy and the adversary proceeding.

101. Respondent's actions harmed Leach and debtor.

102. Respondent's actions caused Leach to incur approximately \$20,000 in costs and fees.

103. Respondent failed to attend an eviction hearing for debtor, even though Leach provided Respondent notice of this hearing.

104. The hearing resulted in a judgment against debtor in the amount of approximately \$7,000.

105. Respondent's conduct in this count violated Rule 42, Ariz. R. Sup. Ct., Ethical Rules 1.1, 1.2, 1.3, 1.5(a), 3.1, 3.2, 3.3(a), 8.4(c), and 8.4(d).

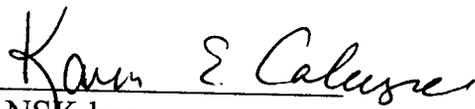
DATED this 20th day of March, 2017.

STATE BAR OF ARIZONA



Nicole S. Kaset
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 20th day of March, 2017.

by: 
NSK:kec

BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,

BILL E. PONATH,
Bar No. 009543,

Respondent.

No. 16-1105

PROBABLE CAUSE ORDER

FILED

FEB 21 2017

BY



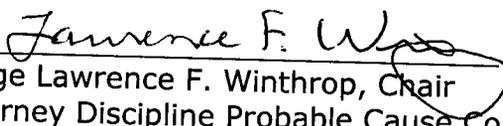
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on February 10, 2017, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-1105.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 21 day of February, 2017.


Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

Original filed this 21st day
of February, 2017 with:

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by: Karen E. Calcagno