

# **BLUE FOLDER ITEM**

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## **CITY COUNCIL MEETING August 3, 2021**

### **J.1 PUBLIC PARTICIPATION ON NON-AGENDA ITEMS**

Zein Obagi, Jr.'s Statement re: Bar Charges

## Zein Obagi, Jr.'s Statement re: Bar Charges

The Bar has charged me with acts of misconduct including, but not limited to, violations of Business and Professions Code sections 6106 [Moral Turpitude – Misappropriation of Entrust Funds] and 6106 [Moral Turpitude – Breach of Fiduciary Duty], in addition to violations of Rules of Professional Conduct, former rules 3-310(C)(3) [Potential Conflict - Representing Multiple Clients], 3-310(E) [Conflict - Representation Adverse to Former Client], 4-100(B)(1) [Failure to Notify of Receipt of Client Funds], 4-100(B)(3) [Failure to Render Accounts of Client Funds], and 4-100(A) [Failure to Maintain Funds in Trust Account].

First and foremost, it is important to note what the Bar does on its website:

**DISCLAIMER: Any posted Notice of Disciplinary Charges, Conviction Transmittal or other initiating document, contains only allegations of professional misconduct. The licensee is presumed to be innocent of any misconduct warranting discipline until the charges have been proven.**

The allegations are that I did not disburse the monies to an individual who was a former client Dominguez upon receipt (which is defensible), and instead wired the monies to my client's new attorneys' client trust account on his demand, and that I represented one client against a former client without informed written consent.

I vehemently deny the Bar's characterization and charges, and have retained a career State Bar prosecutor to defend me. The events, in short, were as follows and transpired between 2017 and 2019.

Partners in one aspect of a cannabis dispensary hired me to represent the dispensary in a sale. I did, and eventually, the buyer breached the agreement. While gearing up to file suit, the partners had a split. One partner, "Dominguez" told me to continue represent the other "Cullen". I did. We filed suit on the purchase and sale contract to collect the balance of the purchase price for the dispensary.

Dominguez filed suit against Cullen. I continued to represent Cullen against Dominguez, not having any confidential knowledge from Dominguez that would give Cullen an unfair advantage by having me as his counsel. After the most rigorous, active litigation of my career, the case settled on the record before the judge presiding over it. In the on the record settlement, the dispensary purchasers agreed to pay Cullen \$1.9 million. Cullen agreed to pay Dominguez about \$515,000 from that sum. The settlement sum was to be paid within 6 months.

In the leadup to the deadline, I got married and went on my honeymoon. During that time, senior counsel at my firm consummated the dispensary sale to a third party because the purchasing defendant liable for the \$1.9 million was not going to be able to pay that price without selling the dispensary yet again. Eventually, about \$1.8 million (\$1.9 million less

satisfaction of outstanding BOE taxes) was paid to our client trust account. I returned to the U.S. on or about that day.

Prior to my return, Cullen retained other counsel who asked for all our bills that justified our outstanding and past due fees and demanded the entire settlement be wired to the new attorneys' client trust account. I reviewed the settlement agreement relative to its terms that were 6 months old, and saw that it stated that Cullen was to receive the settlement and then pay Dominguez.

So, I prepared a calculation that withheld back in trust the funds that Cullen disputed he owed for fees, and sent the balance to Cullen's new attorney, Michael Levin's client trust, with instructions to pay Dominguez his share. Levin then confirmed that he was conducting a calculation of an offset and there would be a slight delay in paying Dominguez.

Dominguez was never paid by Cullen and Dominguez proceeded to sue me and my firm. About 7 months after I wired out the funds to Cullen's attorney, Levin, my client trust receives a wire for \$657,000.00 for Cullen's benefit. Cullen claimed the money belonged to two other individuals. Dominguez sought to levy on the funds in trust. With disputes as to whom the money belonged, I deposited \$532,000 with the Superior Court in an interpleader action. The rest I remitted to the person to whom Cullen said it belonged.

In the Dominguez suit against me, my insurance-appointed counsel was ineffective: did not do discovery and did not designate an expert. Dominguez was awarded a \$700,000 judgment which insurance paid. Eventually, the insurer recovered money from the interplead funds.

I have filed suit against my former counsel, and Mr. Levin, but of course, the State Bar seeks to use the state court decision that resulted from my prior counsel's ineffective representation against me in this proceeding. We will fight this to the end, and expect to prevail.