

FILED

Dec 3, 2020

Disciplinary
Board

Docket # 002

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

NADIA KATE KOUREHDAR,

Lawyer (Bar No. 45597).

Proceeding No. 20#00063

ODC File No. 18-01265

STIPULATION TO REPRIMAND

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to reprimand is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through senior disciplinary counsel Francesca D'Angelo and Respondent lawyer Nadia Kate Kourehdar.

Respondent understands that they are entitled under the ELC to a hearing, to present exhibits and witnesses on their behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that they are entitled under the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the Supreme Court. Respondent further understands that a hearing and appeal could result in an outcome more favorable or less favorable to them. Respondent chooses to resolve this proceeding now by entering into the following stipulation to facts, misconduct and sanction to avoid the risk,

1 time, and expense attendant to further proceedings.

2 I. ADMISSION TO PRACTICE

3 1. Respondent was admitted to practice law in the State of Washington on May 12,
4 2012.

5 II. STIPULATED FACTS

6 2. In 2012, Respondent was employed by Ark law group ("Ark"), a firm that offered
7 loan modification and short sale services.

8 3. In July 2016, Respondent purchased Ark. During the time that Respondent owned
9 Ark, Ark primarily represented clients in negotiating short sales, mortgage modifications,
10 agreements under the Washington Foreclosure Fairness Act through mortgage mediation,
11 homeowners association negotiations and other debt disputes.

12 4. Ark employed Ross Kilburn, a nonlawyer, as CEO/Marketing Director. Ross Kilburn
13 was also the CEO of Leadstack, LLC ("Leadstack"), a lead generation company.

14 5. Prior to the time that Respondent owned Ark, Ark had a relationship with Leadstack
15 which continued during the time that Respondent owned Ark. Leadstack sent direct mail to
16 distressed homeowners to solicit clients on behalf of Ark. Ark paid Leadstack a discounted rate
17 for the mailing services. In exchange, Ark agreed to refer clients to Leadstack if the client
18 decided to pursue a short sale of their property and did not have an agent that they wanted to use
19 for the transaction. Leadstack then referred the client to a real estate agent who was
20 knowledgeable in short sales. In exchange for the referral, the referred agent paid Leadstack
21 25% of the commission that the agent earned on the sale and agreed to use Ark for the short sale
22 negotiations. The commission was to be paid by the seller's lender.

23 6. Prior to and during the time that Respondent owned Ark, Leadstack shared an office

1 address and at least two employees with Ark. At all relevant times, the employees of Leadstack
2 had access to Ark client files and financial information, including Ark's QuickBooks file where
3 client financial information was maintained.

4 7. During the time that Respondent owned Ark, the fee agreement between Ark and Ark
5 short sale clients stated that Ark would charge the client \$200 per month for a negotiating a short
6 sale on their behalf. The fee agreement stated that Ark worked with Leadstack and that
7 Leadstack was owned by the son of Ark's CEO. The agreement stated that Leadstack would
8 receive a customary referral payment from the real estate agent.

9 8. Between July 1, 2016 and September 30, 2018, Ark referred approximately 83 Ark
10 short sale clients to Leadstack. Of these referrals, approximately 19 clients finalized short sales
11 with a real estate agent referred by Leadstack.

12 9. The referred agents were required to agree that, in listing the property for short sale,
13 they would place the following language in the listing, "Buyer to pay Ark Law Group short sale
14 fee of 1.5% (\$2,995 minimum), at time of closing."

15 10. Respondent did not inform Ark's short sale clients that Ark and Leadstack shared an
16 office address, financial information, including Ark's QuickBooks file, and employees with Ark
17 law group. Respondent did not inform Ark's short sale clients that the CEO of both Ark and
18 Leadstack was Ross Kilburn.

19 11. Respondent did not inform Ark's short sale clients that Leadstack had access to Ark's
20 client files and financial information.

21 12. Respondent did not inform Ark's short sale clients that in exchange for Leadstack's
22 direct mail services, Ark agreed to refer them to Leadstack.

23 13. Respondent did not inform Ark's short sale clients that, as a condition of the referral,

1 Leadstack required that the agents to whom it referred Ark short sale clients were required to use
2 Ark for the short sale negotiations.

3 14. Respondent did not inform Ark's short sale clients that, as a condition of the referral,
4 Leadstack required the agents to whom it referred Ark short sale clients to agree that, in listing
5 the property for short sale, they would place the following language in the listing, "Buyer to pay
6 Ark Law Group short sale fee of 1.5% (\$2,995 minimum), at time of closing." Ark Short sale
7 clients signed a document prior to closing that listed the Ark fee.

8 15. While Respondent did inform Ark's short sale clients that Leadstack would receive a
9 "customary referral fee," from the real estate agents to whom Leadstack referred their short sale,
10 Respondent did not inform Ark's short sale clients that the fee was 25% of the commission that
11 the referred agent received on the sale of their property. This commission was paid by the
12 seller's lender.

13 16. Respondent did not advise Ark's short sale clients in writing of the desirability of
14 seeking the advice of an independent lawyer on the referral.

15 17. Respondent did not obtain informed consent from Ark short sale clients to the
16 essential terms of the transaction with Leadstack or the real estate agents.

17 18. In five or more cases, after Ark clients retained Ark for short sale services and agreed
18 to pay a monthly flat fee to Ark, Respondent required current Ark short sale clients to sign an
19 additional agreement that allowed Ark to charge the buyer a fee of 1.5% of the purchase price,
20 with a minimum of \$2,995, and additional fees to the lien holder.

21 19. Respondent did not advise Ark's short sale clients in writing of the desirability of
22 seeking the advice of an independent lawyer on the additional agreement.

23 20. Respondent closed Ark in September 2018. At that time, Respondent terminated her

1 working relationship with Leadstack and Ross Kilburn.

2 III. STIPULATION TO MISCONDUCT

3 21. Respondent's conduct violated RPC 1.4 (failure to explain a matter to the extent
4 reasonably necessary to permit the client to make informed decisions regarding the
5 representation), RPC 1.6 (revealing related to the representation unless the client gives informed
6 consent or the disclosure is impliedly authorized in order to carry out the representation) and
7 RPC 1.8 (prohibiting a lawyer from entering a business transaction with a client or knowingly
8 acquiring a pecuniary interest adverse to the client unless the terms are fully disclosed,
9 transmitted in writing, the client is informed of the desirability of seeking independent legal
10 advice and the client gives informed consent in a writing signed by the client).

11 IV. PRIOR DISCIPLINE

12 22. Respondent has no prior discipline.

13 V. APPLICATION OF ABA STANDARDS

14 23. The following American Bar Association Standards for Imposing Lawyer Sanctions
15 (1991 ed. & Feb. 1992 Supp.) apply to this case:

16 *4.4 Lack of Diligence*

17 Absent aggravating or mitigating circumstances, upon application of the
18 factors set out in Standard 3.0, the following sanctions are generally appropriate
19 in cases involving a failure to act with reasonable diligence and promptness in
20 representing a client:

21 4.41 Disbarment is generally appropriate when:

- 22 (a) a lawyer abandons the practice and causes serious or potentially serious
23 injury to a client; or
- 24 (b) a lawyer knowingly fails to perform services for a client and causes serious
or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and
causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury
or potential injury to a client, or

1 (b) a lawyer engages in a pattern of neglect and causes injury or potential
2 injury to a client.

3 4.43 Reprimand is generally appropriate when a lawyer is negligent and does
4 not act with reasonable diligence in representing a client, and causes injury
5 or potential injury to a client.

6 4.44 Admonition is generally appropriate when a lawyer is negligent and does
7 not act with reasonable diligence in representing a client, and causes little
8 or no actual or potential injury to a client.

9 24. Respondent's conduct was knowing. "Knowledge" is the conscious awareness of the
10 nature or attendant circumstances of the conduct but without the conscious objective or purpose
11 to accomplish a particular result.

12 25. Respondent's short sale clients were injured in that they were not fully informed of
13 the relationship between Leadstack and Ark and the real estate agents, and were not fully
14 informed of the conditions and financial incentives of the referrals.

15 26. The presumptive sanction under ABA Standard 4.42 is suspension.

16 *4.3 Failure to Avoid Conflicts of Interest*

17 Absent aggravating or mitigating circumstances, upon application of the
18 factors set out in Standard 3.0, the following sanctions are generally appropriate
19 in cases involving conflicts of interest:

20 4.31 Disbarment is generally appropriate when a lawyer, without the informed
21 consent of client(s):

22 (a) engages in representation of a client knowing that the lawyer's interests are
23 adverse to the client's with the intent to benefit the lawyer or another, and
24 causes serious or potentially serious injury to the client; or

(b) simultaneously represents clients that the lawyer knows have adverse
interests with the intent to benefit the lawyer or another, and causes serious
or potentially serious injury to a client; or

(c) represents a client in a matter substantially related to a matter in which the
interests of a present or former client are materially adverse, and
knowingly uses information relating to the representation of a client with
the intent to benefit the lawyer or another and causes serious or potentially
serious injury to a client.

4.32 Suspension is generally appropriate when a lawyer knows of a conflict of
interest and does not fully disclose to a client the possible effect of that
conflict, and causes injury or potential injury to a client.

4.33 Reprimand is generally appropriate when a lawyer is negligent in
determining whether the representation of a client may be materially
affected by the lawyer's own interests, or whether the representation will

1 adversely affect another client, and causes injury or potential injury to a
2 client.

3 4.34 Admonition is generally appropriate when a lawyer engages in an isolated
4 instance of negligence in determining whether the representation of a client
5 may be materially affected by the lawyer's own interests, or whether the
6 representation will adversely affect another client, and causes little or no
7 actual or potential injury to a client.

8 27. Respondent was negligent in determining that the referral and compensation
9 agreements between Leadstack, Ark, and the real estate agents relating to Ark's short sale clients
10 constituted a conflict of interest. Ark's short sale clients were injured by Respondent's conduct
11 in that they were not provided adequate information to be able to give informed consent to the
12 essential terms of the transaction and were not advised of the desirability of seeking the advice
13 of an independent lawyer.

14 28. The presumptive sanction under ABA Standard 4.33 is reprimand.

15 *4.2 Failure to Preserve the Client's Confidences*

16 Absent aggravating or mitigating circumstances, upon application of the
17 factors set out in 3.0, the following sanctions are generally appropriate in cases
18 involving improper revelation of information relating to representation of a client:

19 4.21 Disbarment is generally appropriate when a lawyer, with the intent to
20 benefit the lawyer or another, knowingly reveals information relating to
21 representation of a client not otherwise lawfully permitted to be disclosed,
22 and this disclosure causes injury or potential injury to a client.

23 4.22 Suspension is generally appropriate when a lawyer knowingly reveals
24 information relating to the representation of a client not otherwise lawfully
permitted to be disclosed, and this disclosure causes injury or potential
injury to a client.

Reprimand is generally appropriate when a lawyer negligently reveals
information relating to representation of a client not otherwise lawfully
permitted to be disclosed and this disclosure causes injury or potential
injury to a client.

Admonition is generally appropriate when a lawyer negligently reveals
information relating to representation of a client not otherwise lawfully
permitted to be disclosed and this disclosure causes little or no actual or
potential injury to a client.

29. Respondent was negligent in allowing Leadstack access to information related to the
representation of Ark's short sale clients to Leadstack. Ark's short sale clients were potentially

1 injured. The presumptive sanction under ABA Standard 4.23 is reprimand.

2 30. The following aggravating factors apply under ABA Standard 9.22:

3 (d) multiple offenses.

4 31. The following mitigating factors apply under ABA Standard 9.32:

5 (a) absence of a prior disciplinary record;

6 (f) inexperience in the practice of law;

(l) remorse.

7 32. It is an additional mitigating factor that Respondent has agreed to resolve this matter
8 at an early stage of the proceedings.

9 33. It is an additional mitigating factor that Respondent took corrective action by closing
10 Ark and terminating her working relationship with Leadstack. Respondent has taken measures
11 in her current practice to prevent similar issues from arising by changing her fee agreements and
12 not referring clients to a third party for real estate referrals.

13 34. Based on the factors set forth above, the presumptive sanction of suspension should
14 be mitigated to reprimand.

15 VI. STIPULATED DISCIPLINE

16 35. The parties stipulate that Respondent shall receive a reprimand.

17 VII. CONDITIONS OF PROBATION

18 36. Respondent will be subject to probation for a period of two years beginning when
19 this stipulation receives final approval and shall comply with the specific probation terms set
20 forth below:

21 a) For all client matters, Respondent shall have a written fee agreement signed by the
22 client, which agreements are to be maintained for least seven years (see RPC
1.15B(a)(3)).

23 b) On a quarterly basis, Respondent shall provide the probation administrator with 1) all
24 fee agreements entered into during the quarter, 2) All HUD1s on completed short

1 sales during the quarter, and 3) all contracts and referral agreements between
2 Respondent and any lead generation service or real estate agents entered into during
the quarter:

- 3 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
4 commencement of probation, Respondent shall provide the records from the
date of commencement of probation to the end of the third full month.
- 5 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
6 commencement of probation, Respondent shall provide the records from the
end of the previously provided quarter through the end of month six.
- 7 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
8 commencement of probation, Respondent shall provide the records from the
end of the previously provided quarter through the end of month nine.
- 9 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
10 the commencement of probation, Respondent shall provide the records from
the end of the previously provided quarter through the end of month twelve.
- 11 v) Months 13 – 15. By no later than the 30th day of the sixteenth month after
12 the commencement of probation, Respondent shall provide the records from
the end of the previously provided quarter through the end of month fifteen.
- 13 vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
14 the commencement of probation, Respondent shall provide the records from
the end of the previously provided quarter through the end of month
eighteen.
- 15 vii) Months 19 – 21. By no later than the 30th day of the twenty-second month
16 after the commencement of probation, Respondent shall provide the records
from the end of the previously provided quarter through the end of month
twenty-one.

17 **If there are no new fee agreements, HUD 1s on completed short sales or contracts/referral**
18 **agreements between Respondent and any lead generation service or real estate agents**
19 **entered into during the relevant time period, Respondent shall so inform the probation**
administrator in writing on the same schedule set forth above.

20 **CLEs**

- 21 c) During the probationary period, Respondent shall complete a minimum of 6 credit
22 hours of continuing legal education courses, at Respondent's own expense, in the area
of conflicts of interest.
- 23 d) Respondent shall provide evidence of attendance at such courses to the Probation
24 Administrator no later than 30 days after the conclusion of the course. Proof of

1 attendance shall include the program brochure, evidence of payment, and a written
2 statement that includes the date and time of attendance.

3 Ethics School

- 4 a) Respondent shall attend Ethics School by webinar (approximately 7.5 hours), or by
5 obtaining the recorded product, and pay registration costs of \$150 plus applicable
6 sales tax. Respondent will receive all applicable approved CLE credits for time in
7 attendance at the Ethics School.
- 8 b) Attendance at Ethics School is in addition to and shall not fulfill any continuing legal
9 education (CLE) requirements set out in this stipulation.
- 10 c) Respondent shall contact the Ethics School Administrator, currently Thea Jennings,
11 at theaj@wsba.org, within 30 days of final approval of this stipulation to confirm
12 enrollment in Ethics School and related logistics.
- 13 d) Respondent shall complete the ethics school requirement by March 30, 2021.
- 14 e) Respondent shall provide evidence of completion of ethics school to the Probation
15 Administrator no later than 30 days after the conclusion of the course. Proof of
16 attendance shall include the program brochure, evidence of payment, and a written
17 statement that includes the date and time of attendance.
- 18 f) The Ethics School Administrator may respond to inquiries from the Probation
19 Administrator regarding Respondent's compliance with these conditions.

20 **VIII. RESTITUTION**

21 37. No restitution is required by this stipulation.

22 **IX. COSTS AND EXPENSES**

23 38. In light of Respondent's willingness to resolve this matter by stipulation at an early
24 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in
accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)
if these costs are not paid within 30 days of approval of this stipulation.

25 **X. VOLUNTARY AGREEMENT**

26 39. Respondent states that prior to entering into this Stipulation they have consulted
27 independent legal counsel regarding this Stipulation, that Respondent is entering into this

1 Stipulation voluntarily, and that no promises or threats have been made by ODC, the Association,
2 nor by any representative thereof, to induce the Respondent to enter into this Stipulation except
3 as provided herein.

4 40. Once fully executed, this Stipulation is a contract governed by the legal principles
5 applicable to contracts, and may not be unilaterally revoked or modified by either party.

6 XI. LIMITATIONS

7 41. This Stipulation is a compromise agreement intended to resolve this matter in
8 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
9 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer
10 and ODC acknowledge that the result after further proceedings in this matter might differ from
11 the result agreed to herein.

12 42. This Stipulation is not binding upon ODC or the respondent as a statement of all
13 existing facts relating to the professional conduct of the respondent lawyer, and any additional
14 existing facts may be proven in any subsequent disciplinary proceedings.

15 43. This Stipulation results from the consideration of various factors by both parties,
16 including the benefits to both by promptly resolving this matter without the time and expense of
17 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
18 such, approval of this Stipulation will not constitute precedent in determining the appropriate
19 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
20 subsequent proceedings against Respondent to the same extent as any other approved
21 Stipulation.

22 44. Under ELC 3.1(b), all documents that form the record before the Chief Hearing
23 Officer for review become public information on approval of the Stipulation by the Hearing

1 Officer, unless disclosure is restricted by order or rule of law.

2 45. If this Stipulation is approved by the Chief Hearing Officer, it will be followed by the
3 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
4 Enforcement of Lawyer Conduct will be made.

5 46. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have
6 no force or effect, and neither it nor the fact of its execution will be admissible as evidence in
7 the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil
8 or criminal action.

9 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation to
10 Reprimand as set forth above.

11 *Nadia Kourehdar*

Dated: 12/2/2020

12 Nadia Kate Kourehdar, Bar No. 45597
13 Respondent

14 *Francesca D'Angelo*

Dated: 12/2/2020

15 Francesca D'Angelo, Bar No. 22979
16 Senior Disciplinary Counsel