

PUBLIC MATTER

FILED

AUG 01 2003

STATE BAR COURT CLERK'S OFFICE
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**STATE BAR COURT
HEARING DEPARTMENT – LOS ANGELES**

In the Matter of

**WILLIAM VAHAN TARKANIAN,
No. 144491**

A Member of the State Bar.

Case No. 02-O-13757 PEM

DECISION

INTRODUCTION

In this default proceeding, Respondent William Vahan Tarkanian is charged with multiple acts of misconduct in one client matter, including the failure to competently perform the legal services for which he was retained, the failure to adequately communicate with his client and improper withdrawal from employment.

For the reasons set forth below, this Court finds, by clear and convincing evidence, that Respondent is culpable of the charged acts of misconduct and will recommend that Respondent be suspended from the practice of law for a period of one year, that execution of that suspension be stayed and that Respondent be actually suspended from the practice of law for a period of thirty days and until the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar ("Rules of Procedure"). In the event the period of Respondent's actual suspension exceeds ninety days, the Court further recommends that Respondent be required to comply with the provisions of rule 955 of the California Rules of Court.



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1 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2 **A. Jurisdiction**

3 Respondent was admitted to the practice of law in California on December 11, 1989, and has
4 been a member of the State Bar of California since that time.

5 **B. Counts One through Three (The Kurzulian Matter)**

6 Respondent was employed by Sylvia Kurzulian on April 3, 2002, to represent the interests
7 of her company, Glenoaks Adult Day Care Center ("Glenoaks") in a negligence action entitled
8 *Haytayan v. Shvartsman, et al.*, Los Angeles Superior Court Case No. LC058087. The action
9 involved the defense of Kurzulian's former employee, who had been involved in a car accident that
10 occurred during the course and scope of his employment by Glenoaks. Kurzulian paid Respondent
11 the sum of \$1,500 as a retainer for his services.

12 On June 20, 2002, a default judgment was entered against Glenoaks in the *Haytayan v.*
13 *Shvartsman* action because Respondent failed to file an answer to a cross-complaint on Glenoaks'
14 behalf within the statutory period. Respondent never informed Kurzulian that he had not filed a
15 timely response to the cross-complaint.

16 Between June 20, 2002 and July 3, 2002, Kurzulian left several telephone messages and sent
17 faxes to Respondent's office to ask him about the default. Respondent did not reply to Kurzulian's
18 messages. When Kurzulian attempted to contact Respondent by telephone on July 3, 2002,
19 Respondent's telephone had been disconnected. Respondent never explained to Kurzulian why he
20 had not filed a response to the cross-complaint. Likewise, Respondent never provided Kurzulian
21 with a new telephone number or forwarding address where he could be reached. Kurzulian was
22 required to hire another attorney to set aside the default judgment.

23 **1. Count One (A) (Rule 3-110(A), Rules of Professional Conduct)**

24 Respondent is charged in Count One of the NDC with a wilful violation of rule 3-110(A) of
25 the Rules of Professional Conduct, which provides that a member of the State Bar shall not
26 intentionally, recklessly or repeatedly fail to perform legal services with competence.

1 The Court finds Respondent culpable, by clear and convincing evidence, of the charged
2 violation of rule 3-110(A). The admitted factual allegations of the NDC establish that, despite being
3 retained to represent the interests of Glenoaks Adult Day Care Center in the *Haytayan v. Shvartsman*
4 action, Respondent failed to file an answer to the cross-complaint, which resulted in the entry of a
5 default judgment against Glenoaks. By allowing Glenoaks' default to be entered, Respondent failed
6 to competently perform the legal services for which he was retained.

7 **2. Count Two (Business and Professions Code Section 6068, Subdivision (m))**

8 Respondent is charged in Count Two of the NDC with a violation of Business and
9 Professions Code section 6068, subdivision (m), which provides that it is the duty of a member of
10 the State Bar to promptly respond to the reasonable status inquiries of clients and to keep clients
11 reasonably informed of significant developments in their legal matters.

12 The Court finds Respondent culpable, by clear and convincing evidence, of failing to
13 promptly respond to his client's reasonable status inquiries and of failing to keep his client informed
14 of significant developments in his legal matter in violation of section 6068, subdivision (m). The
15 admitted allegations of the NDC establish that Respondent neither informed Kurzulian of the entry
16 of Glenoaks' default (a significant development in the *Haytayan v. Shvartsman* action) nor
17 responded to Kurzulian's multiple telephone messages seeking information about the default.

18 **3. Count Three (Rule 3-700(A)(2), Rules of Professional Conduct)**

19 Respondent is charged in Count Three of the NDC with a wilful violation of rule 3-700(A)(2)
20 of the Rules of Professional Conduct, which provides that a member shall not withdraw from
21 employment until he has taken reasonable steps to avoid reasonably foreseeable prejudice to the
22 rights of his client.

23 The Court finds Respondent culpable, by clear and convincing evidence, of a wilful violation
24 of rule 3-700(A)(2). The admitted allegations of the NDC establish that, on or before July 3, 2002,
25 Respondent's telephone was disconnected and Respondent did not inform Kurzulian of a forwarding
26 telephone number or address at which he could be reached. Coupled with his failure to perform the
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1 legal services for which he was retained, Respondent's abandonment of his telephone number and
2 office evidences an intent on his part to withdraw from his employment by Kurzulian. (*Baker v.*
3 *State Bar* (1989) 49 Cal.3d 804, 816-817 (fn.5).) Since Respondent took no steps to set aside the
4 default judgment against Glenoaks or to otherwise protect Glenoaks or Kurzulian from the
5 reasonably foreseeable prejudice that would be caused by his withdrawal from employment, he is
6 culpable of a wilful violation of rule 3-700(A)(2).

7 LEVEL OF DISCIPLINE

8 Factors in Mitigation

9 Respondent has no record of prior discipline in approximately twelve years of practice prior
10 to the commencement of his misconduct in this proceeding. Such a period of practice without prior
11 discipline is entitled to weight as a mitigating factor. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596
12 [active practice for more than 10 years without prior discipline is entitled to significant weight in
13 mitigation]; *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343, 350
14 [13 years of practice without prior discipline is an appropriate factor in mitigation].)

15 There are no additional mitigating factors presented by the record in this proceeding.

16 Factors in Aggravation

17 Respondent's misconduct significantly harmed his client, i.e., Ms. Kurzulian and Glenoaks
18 Adult Day Care Center. In addition to the entry of a default judgment against Glenoaks, Kurzulian
19 was compelled to hire another attorney to have the default judgment set aside. (Standard 1.2(b)(iv),
20 Standards for Attorney Sanctions for Professional Misconduct.)

21 Respondent demonstrated indifference toward rectification of or atonement for the
22 consequences of his misconduct. Respondent failed to respond to Kurzulian's telephone calls
23 inquiring about the default judgment that had been entered against Glenoaks and he failed to take
24 any action to have the default set aside. (Standard 1.2(b)(v).)

25 Discussion

26 The Standards applicable to this proceeding are 2.4(b) and 2.10.

1 Standard 2.4(b) provides that culpability of a member of wilfully failing to perform services
2 in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a
3 member of wilfully failing to communicate with a client shall result in reproof or suspension
4 depending upon the extent of the misconduct and the degree of harm to the client. In the present
5 case, Respondent has been found culpable of both failing to competently perform legal services and
6 of failing to communicate adequately with his client in the Kurzulian matter. The Court has found
7 that Respondent's misconduct significantly harmed his client since his failure to perform resulted
8 in the entry of a default judgment and his client was compelled to retain other counsel to have the
9 default judgment set aside.

10 Standard 2.10 provides, in pertinent part, that culpability of a member of a wilful violation
11 of any Rule of Professional Conduct not specified in the Standards shall result in reproof or
12 suspension according to the gravity of the offense or the harm, if any, to the victim. In this
13 proceeding, Respondent has been found culpable of improperly withdrawing from employment in
14 the Kurzulian matter in wilful violation of rule 3-700(A)(2) because he ceased performing the legal
15 services for which he was retained, stopped communicating with his client and changed his office
16 address and telephone number without notifying his client of the new address or telephone number
17 at which he could be contacted. Respondent significantly harmed his client by this conduct.

18 The State Bar recommends that Respondent should be actually suspended from the practice
19 of law for a period of 90 days. In support of its recommendation, the State Bar cites *In the Matter*
20 *of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, *Conroy v. State Bar* (1991) 55 Cal.3d
21 495 and *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

22 The Court finds each of the cases cited by the State Bar to be distinguishable from the present
23 case. In both *Miller* and *Conroy*, the attorney had a record of at least one prior imposition of
24 discipline and both attorneys were found culpable of making misrepresentations to their respective
25 clients. By contrast, in the present case, Respondent has no prior record of discipline in more than
26 10 years of practice and has neither been charged with nor found culpable of making any
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1 misrepresentations to his client.

2 In *Nees*, the client was incarcerated and the attorney was found culpable of abandoning his
3 *habeas corpus* proceeding. The attorney was also found culpable of keeping \$7,000 in advanced fees
4 without performing any legal services on the client's behalf. In the present case, although Kurzulian
5 paid \$1,500 to Respondent as advanced fees, Respondent has not been charged with a violation of
6 rule 3-700(A)(2) [failure to promptly refund unearned fees] nor is there any evidence from which
7 this Court could determine, by clear and convincing evidence, that any portion of the \$1,500 in
8 advanced fees was unearned.

9 The Court finds other cases to be more analogous to the present case. In *Matthew v. State*
10 *Bar* (1989) 49 Cal.3d 784, the Supreme Court imposed an actual suspension of sixty days on an
11 attorney who had been found culpable of abandoning two clients and retaining unearned fees from
12 them. Although the attorney completed the legal work in a third matter, he took him a protracted
13 period of time to complete the work. The attorney had no record of prior discipline.

14 Additionally, in *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, the Supreme Court imposed
15 a six-month stayed suspension, one year probation and no period of actual suspension on an attorney
16 who was found culpable in a single client matter of failure to perform services and failure to
17 communicate with the client. The attorney had no record of prior discipline and the client did not
18 suffer any serious adverse consequences as a result of the attorney's abandonment.

19 In the present case, the Court finds Respondent's conduct in the present case to be less
20 serious than the misconduct in *Matthew* (since that case involved multiple clients) but more serious
21 than the misconduct in *Van Sloten* (since Respondent's client suffered significant harm and
22 Respondent improperly withdrew from employment in the present case). On balance, the Court
23 concludes that the appropriate discipline to be imposed is an actual suspension of thirty days and
24 until the State Bar Court grants a motion to terminate the actual suspension pursuant to rule 205 of
25 the Rules of Procedure.

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CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on August 1, 2003, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

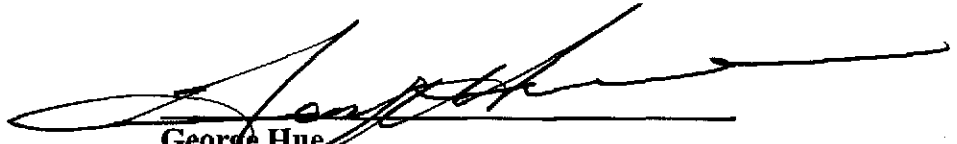
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**WILLIAM V TARKANIAN
301 N LAKE AVE #800
PASADENA CA 91101**

- [X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

JAYNE KIM, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 1, 2003.


George Hue
Case Administrator
State Bar Court