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THE STATE BAR COURT
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In the Matter of)
WILLIAM V. TARKANIAN,)
Member No. 144491,)
A Member of the State Bar.)

Case No. 03-C-00403-PEM; 03-C-00498
(Consolidated)
DECISION INCLUDING DISBARMENT
RECOMMENDATION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT

INTRODUCTION

In these conviction referral matters, Jayne Kim and, later, Anthony Garcia, appeared for the Office of the Chief Trial Counsel of the State Bar of California ("OCTC"). Respondent William V. Tarkanian did not appear either in person or by counsel.

After considering the evidence and the law, the Court recommends that Respondent be disbarred.

SIGNIFICANT PROCEDURAL HISTORY

Case No. 03-C-00403

On February 10, 2003, the Review Department of the State Bar Court filed an order referring Respondent's misdemeanor conviction for violating Health and Safety Code section 11357(b) to the Hearing Department to determine whether the facts and circumstances of the conviction involved moral turpitude or other misconduct warranting discipline. The referral order was properly served on Respondent on February 11, 2003.

The Notice of Hearing on Conviction ("NHC") was filed on February 27, 2003, and was properly served on Respondent on the same day at his official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section

1 6002.1(c) ("official address"). At the same time, he was also properly served at his official address
2 with a notice advising him, among other things, that a status conference would be held on April 7,
3 2003. Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d
4 1181, 1186.) This correspondence was returned by the United States Postal Service as
5 undeliverable.

6 On May 5, 2003, the Review Department filed an order augmenting the February 10 referral
7 order instructing the Hearing Department to hold a hearing and make a recommendation regarding
8 discipline should it find that the misconduct constituted moral turpitude or other misconduct
9 warranting discipline. The Hearing Department served Respondent with a notice of this
10 augmentation order on May 15, 2003, at his official address and at an alternate address by first-class
11 mail, postage prepaid.

12 Case No. 03-C-00498

13 On April 21, 2003, the Review Department of the State Bar Court filed an order referring
14 Respondent's conviction for violating Penal Code section 484(a) for hearing and decision as to
15 whether the facts and circumstances surrounding it involved moral turpitude or other misconduct
16 warranting discipline, and, if so, for a recommendation as to the discipline to be imposed. Effective
17 May 22, 2003, Respondent was placed on interim suspension and was required to comply with rule
18 955, Cal. Rules of Court.

19 The NHC was filed on April 28, 2003, and was properly served on Respondent on the same
20 day at his official address, by certified mail, return receipt requested. At the same time, he was also
21 properly served with a notice advising him, among other things, that a status conference would be
22 held on June 2, 2003. The United States Postal Service returned this correspondence marked:
23 "Returned to Sender. Forward Expired."

24 Respondent did not file responsive pleadings to the NHCs nor did he appear at properly-
25 noticed status conferences held on April 7, May 5 and June 2, 2003. The United States Postal
26 Service returned as undeliverable the status conference orders served on Respondent.

27 On July 25, 2003, a motion for entry of default as to both cases was filed and properly served
28 on Respondent at his official address by certified mail, return receipt requested. The motion advised

1 him that minimum discipline of two years actual suspension would be sought if he was found
2 culpable. The motion also warned Respondent that this Court may recommend or impose and the
3 Supreme Court may impose lesser or greater discipline than OCTC sought in the motion. He did not
4 respond to the motion.

5 On August 12, 2003, the Court entered Respondent's default and enrolled him inactive
6 effective three days after service of the order. The order was properly served on him at his official
7 address on that same date by certified mail, return receipt requested. It was returned by the United
8 States Postal Service with a sticker stating, in relevant part: "Return to Sender. Moved Left No
9 Address. Unable to Forward."

10 OCTC's attempts to contact respondent have been fruitless.

11 The matter was submitted for decision on September 1, 2003, after OCTC waived hearing
12 and filed a brief addressing the level of discipline as to both matters. The documents submitted with
13 the brief are admitted into evidence.

14 For purposes of this decision, the Court consolidates the two cases.

15 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

16 Respondent's culpability is conclusively established by the record of his conviction. (Section
17 6101(a); *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.)

18 **Jurisdiction**

19 Respondent was admitted to the practice of law in California on December 11, 1989, and has
20 been a member of the State Bar at all times since.

21 **Case No. 03-C-00403**

22 **Facts**

23 **The Conviction**

24 On January 15, 2003, Respondent was convicted in Whittier Municipal Court, Case No.
25 2WH03899. Respondent pleaded guilty to one count of violating Health and Safety Code section
26 11357(b). He was sentenced to a \$60.00 fine or two days in county jail, less credit for one day, plus
27 a state penalty fund assessment, an administrative screening fee, and \$100 restitution to the state
28 restitution fund. Respondent paid the total amount due on January 15, 2003.

1 **Facts and Circumstances Surrounding the Conviction**

2 On the afternoon of July 1, 2002, Respondent entered the Whittier Municipal Court and
3 walked through a metal detector, setting it off. Security guard Anthony Rubalcava ("Rubalcava")
4 directed Respondent to empty all the items out of his pockets. Respondent removed his keys and
5 three wallets from his pockets. Respondent then walked around the metal detector and walked
6 through the detector again, setting the detector off once more. Rubalcava then saw Respondent
7 remove a small cardboard package from his right front pocket, place it in his left hand, and then
8 place it back in his left front pocket. The small cardboard package was recognized by Rubalcava as
9 a packet of ZigZag cigarette rolling papers. As Respondent had set off the metal detector twice,
10 Rubalcava did a pat down check of Respondent for weapons. While Rubalcava was checking the
11 area of Respondent's front pocket, Respondent became very resistant and began moving his left hip
12 and leg away from Rubalcava in an attempt to keep Rubalcava from checking the pocket. As
13 Respondent was being uncooperative in permitting Rubalcava to check his front left pocket,
14 Rubalcava removed the items from Respondent's left front pocket. One of the items removed from
15 Respondent's pocket was a clear plastic baggy containing a green leafy substance that resembled
16 marijuana. Rubalcava then notified the sheriffs, and Respondent was taken into custody and
17 transported to the Los Angeles County Sheriff's Department Court office where he was detained
18 until the Whittier Police Department arrived.

19 Sheriff deputies removed from Respondent a packet of ZigZags, a clear plastic baggy
20 containing what appeared to be a cigar wrapper, and a clear plastic baggy which contained a green
21 leafy substance resembling marijuana. Respondent told a Whittier police officer that a client had
22 earlier asked him to hold the marijuana for him while in court. Respondent said that he had forgotten
23 about it being in his pocket prior to him entering the court later on that afternoon. Respondent said
24 that he could not provide the name of his client that had given him the marijuana. As Respondent
25 did not have any proper California identification on him, he was taken into custody, along with his
26 personal items and the clear plastic baggy containing the green leafy substance. Respondent was
27 transported to the Whittier Police Department for booking. During the booking, a warrant for the
28 arrest of Respondent in the amount of \$2,500.00 was found. Respondent was booked for possession

1 of marijuana and the foreign warrant.

2 On August 13, 2002, a misdemeanor complaint was issued entitled *People v. Tarkanian*, Los
3 Angeles County Superior Court Case No. 2WH03899, charging Respondent with one count of
4 violation of Health and Safety Code section 11357(b), possession of 28.5 grams or less of marijuana.

5 On September 4, 2002, the case was called for arraignment. Respondent failed to appear at
6 the time of the arraignment without sufficient excuse and was not represented by counsel. As a
7 result, by order of Judge Yvonne Sanchez, a bench warrant in the amount of \$30,000.00 was issued.

8 On October 31, 2002, the bench warrant was recalled.

9 The matter was called for further proceedings on November 5, 2002. Respondent did not
10 appear and was not represented by counsel. By order of Judge Yvonne Sanchez, a bench warrant
11 in the amount of \$30,000.00 was issued.

12 On December 5, 2002, the bench warrant was recalled.

13 On December 23, 2002, the matter was called for a bench warrant hearing. Respondent
14 appeared at the hearing in propria persona. Respondent waived further arraignment and pled guilty
15 to count one, a violation of Health and Safety Code section 11357(b). The bench warrant was
16 recalled.

17 On January 15, 2003, the matter was called for a pretrial hearing. Upon Respondent's
18 motion, Respondent's plea was vacated and set aside, and a new and different plea of guilty was
19 entered. The court accepted Respondent's plea, and Respondent was sentenced to a \$60.00 fine or
20 two days in county jail, less credit for one day, plus a state penalty fund assessment, an
21 administrative screening fee, and \$100 restitution to the state restitution fund. Respondent paid the
22 total amount due on January 15, 2003.

23 **Conclusions of Law**

24 The Court finds that Respondent, an attorney and the subject of a previous warrant, entered
25 the courthouse carrying an illegal substance and became uncooperative during a pat down search.
26 The Court finds that the facts and circumstances surrounding Respondent's conviction of violating
27 Health and Safety Code section 11357(b) do not constitute moral turpitude but do constitute other
28 misconduct warranting discipline.

1 **Case No. 03-C-00498**

2 **Facts**

3 **The Conviction**

4 On January 28, 2003, Respondent pled "no contest" to one count of violating Penal Code
5 section 484(a) (theft of personal property) for stealing from Fry's Electronics property worth less
6 than \$400. (Los Angeles Superior Court case no. BU01657, filed May 25, 2002.) He was sentenced
7 to 36 months probation on conditions including one day in county jail, less credit for one day, and
8 a total of \$1343 ¹payable in \$50 installments or 14 days in county jail.

9 **Facts and Circumstances Surrounding the Conviction**

10 On May 25, 2002, Javier Arellano, a loss prevention officer at Fry's Electronics, saw
11 Respondent, who was in the computer department of the store, open a package, remove a TV tuner
12 and other materials and place the empty box back on the shelf. Respondent walked to another aisle
13 and concealed the TV tuner in his left front pants pocket and a manual an installation CD in his right
14 rear pants pocket.

15 Arellano then saw Respondent walk around the store for about 20 minutes. When he entered
16 aisle number 12, he removed computer cables from their packaging and placed them in his front right
17 pants pocket.

18 Respondent left the store without paying for or attempting to pay for the merchandise he had
19 hidden in his pants.

20 Outside the store, Arellano and a colleague stopped Respondent and identified themselves
21 as loss prevention officers for Fry's. They asked Respondent to remove the stolen items from his
22 pockets. In response to Arellano's question about why he took the merchandise, Respondent said
23 he did not have any money to pay for the items. In reality, Respondent had \$201.77 in cash at the
24 time he was detained. Respondent was handcuffed and escorted back into the store. During a search
25 of Respondent, Arellano found other Fry's merchandise in his pockets. The Burbank Police
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27 ¹This amount includes a \$425 fine as well as \$100 in restitution and other penalty
28 assessments and fees.

1 Department arrested Respondent.

2 **Conclusions of Law**

3 The Court finds the facts and circumstances surrounding the conduct leading to the
4 conviction for violation of Penal Code section 484(a) involved moral turpitude. Respondent stole
5 merchandise and then lied about not having the money to pay for it. Honesty is a fundamental
6 requirement for attorneys and Respondent has demonstrated his untrustworthiness.

7 **FINDINGS AND CONCLUSIONS AS TO AGGRAVATING CIRCUMSTANCES**

8 Respondent has one prior instance of discipline. (Standard 1.2(b)(i), Rules of Procedure
9 of the State Bar of California, Title IV, Standards for Attorney Sanctions for Professional
10 Misconduct ("standards").) In case no. 02-O-13757, the State Bar Court recommended a stayed
11 suspension of one year with actual suspension of 30 days and until Respondent complies with
12 rule 205, among other things.² In one client matter, Respondent failed to perform and to
13 communicate and abandoned his client. The misconduct occurred in June and July 2002, around
14 the same time as the misconduct in the instant case. Accordingly, the aggravating effect of this
15 prior discipline is diminished as it is not indicative of Respondent's inability to conform to
16 ethical norms and the Court will consider the totality of the findings in both cases to ascertain
17 what the discipline would have been had the matters been brought as one case. (*In the Matter of*
18 *Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)

19 Respondent's multiple acts of wrongdoing are an aggravating factor. (Standard
20 1.2(b)(ii).)

21 Respondent's failure to participate in proceedings prior to the entry of default is also an
22 aggravating factor. (Standard 1.2(b)(vi).) Although he was afforded notice of status conferences
23 held on April 7, May 5 and June 2, 2003, he did not participate in the proceedings. He has
24 demonstrated his contemptuous attitude toward disciplinary proceedings as well as his failure to
25 comprehend the duty of an officer of the court to participate therein, a serious aggravating factor.

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27 ²The State Bar Court's decision was filed on August 1, 2003, and modified on October
28 22, 2003. Although the recommendation has not yet been considered or approved by the
Supreme Court, it is still considered a prior instance of discipline. (Standard 1.2(f).)

1 (In the Matter of Stansbury (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109 - 110.)

2 **FINDINGS AND CONCLUSIONS AS TO MITIGATING CIRCUMSTANCES**

3 Since Respondent did not participate in these proceedings and he bears the burden of
4 establishing mitigation by clear and convincing evidence, the Court has been provided no basis
5 for finding mitigating factors.

6 **LEVEL OF DISCIPLINE**

7 The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to
8 protect the public, to preserve public confidence in the profession, and to maintain the highest
9 possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111;
10 *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

11 Standard 1.6 provides that the appropriate sanction for the misconduct found must be
12 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of
13 imposing discipline. If two or more acts of professional misconduct are found in a single
14 disciplinary proceeding, the sanction imposed shall be the most severe of the applicable
15 sanctions. (Standard 1.6(a).) Discipline is progressive. (Standard 1.7.)

16 In a conviction referral proceeding, "discipline is imposed according to the gravity of the
17 crime and the circumstances of the case." (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State
18 Bar Ct. Rptr. 502, 510.) An attorney's commission of a crime involving moral turpitude is
19 always a matter of serious consequence but does not always result in disbarment; the sanction
20 imposed is determined in each case depending on the nature of the crime and the circumstances
21 presented by the record. (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct.
22 Rptr. 96, 103.)

23 In the instant case, the most severe discipline recommended by the standards is
24 disbarment unless the most compelling mitigation clearly predominates, in which case, the
25 discipline shall be no less than two years actual suspension prospective to any interim suspension
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1 imposed. (Standard 3.2.)³ The standards, however, are guidelines from which the Court may
2 deviate in fashioning the most appropriate discipline considering all the proven facts and
3 circumstances of a given matter. (*In re Young* (1989) 49 Cal.3d 257, 267 (fn. 11); *Howard v.*
4 *State Bar* (1990) 51 Cal.3d 215.) They are "not mandatory 'sentences' imposed in a blind or
5 mechanical manner." (*Gary v. State Bar* (1988) 44 Cal. 3d 820, 828.)

6 OCTC seeks a disbarment recommendation. Having considered the matter and noting
7 that the most compelling mitigating circumstances do not clearly predominate in this case, the
8 Court recommends disbarment.

9 Respondent's nearly 12 years of discipline-free practice at the time his misconduct
10 commenced in the prior disciplinary case do not constitute a most compelling mitigating
11 circumstance. Respondent did not participate in these two proceedings or in the prior
12 disciplinary matter and no explanation has been offered for his misconduct. His repeated
13 inattentiveness to the disciplinary process may indicate a reasonable likelihood of recurring harm.
14 No explanation has been offered that might render disbarment inappropriate and the Court can
15 glean none. The Court has no reason to believe that Respondent could or would conform his
16 behavior to the ethical rules, particularly in light of his failure to participate herein.

17 It would undermine the integrity of the disciplinary system and damage public confidence
18 in the legal profession if Respondent were not disbarred for his misconduct. Disbarment is the
19 only sanction that guarantees that the public and the courts will be protected from his
20 misconduct. If he desires to practice law again, he will bear the heavy burden of demonstrating
21 by the most clear and convincing evidence his rehabilitation and fitness to practice. Accordingly,
22 the Court recommends disbarment.

23 **DISCIPLINE RECOMMENDATION**

24 **IT IS HEREBY RECOMMENDED** that Respondent **WILLIAM V. TARKANIAN**

25 _____
26 ³The Supreme Court has effectively modified the standard calling for a minimum two-
27 year prospective suspension in matters arising from the commission of crimes of moral turpitude
28 by rejecting the requirement that the suspension be automatically prospective. (*In the Matter of*
Lybbert (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297, 307.)

1 **DISBARRED** from the practice of law in the State of California and that his name be stricken from
2 the rolls of attorneys in this state.

3 It is also recommended that the Supreme Court order Respondent to comply with rule 955,
4 paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the
5 Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph
6 (c) within 40 days of the effective date of the order showing his compliance with said order.

7 **COSTS**

8 The Court recommends that costs be awarded to the State Bar pursuant to Business and
9 Professions Code section 6086.10, and that those costs be payable in accordance with section 6140.7.

10 **ORDER REGARDING INACTIVE ENROLLMENT**

11 It is ordered that Respondent be transferred to involuntary inactive enrollment status pursuant
12 to section 6007(c)(4). The inactive enrollment shall become effective three days from the date of
13 service of this order and shall terminate upon the effective date of the Supreme Court's order
14 imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary
15 jurisdiction.

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20 Dated: November 26, 2003



PAT McELROY
Judge of the State Bar Court

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 November 26, 2003, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION AND
ORDER OR INVOLUNTARY INACTIVE ENROLLMENT**

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

- 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**

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

ANTHONY GARCIA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 26, 2003.


Laretta Cramer
Case Administrator
State Bar Court