

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 09-O-13833-PEM
)	
JAMES JAY SELTZER,)	
)	DECISION AND ORDER OF
Member No. 54533,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

Respondent **JAMES JAY SELTZER** (respondent) was charged with six counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.²

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC)

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to this source.

and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.³

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 14, 1972, and has been a member since then.

Procedural Requirements Have Been Satisfied

2011 – Notice of Disciplinary Charges

On November 4, 2011, the State Bar filed and properly served the Notice of Disciplinary Charges (NDC) on respondent. Respondent filed a response on December 14, 2011.

2012 – First Amended Notice of Disciplinary Charges

On the day of trial, February 28, 2012, respondent did not appear but his counsel, Jon S. Heim, was present. The court granted Mr. Heim's request to withdraw as respondent's counsel. On the same day, the State Bar filed a First Amended Notice of Disciplinary Charges (Amended NDC), but did not properly serve it on respondent by certified mail, return receipt requested, at his membership records address until November 30, 2012. Courtesy copies of the Amended NDC were also sent to his official address by regular first class mail and to his former counsel Heim by certified mail. The Amended NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) Copies of the Amended NDC sent to his official address were returned by the U.S. Postal Service as

³ If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

undeliverable. The Amended NDC sent to attorney Heim was not returned; a receipt card was also not returned.

2013 – Actual Notice; Entry of Default; Petition for Disbarment

On February 5, 2013, the State Bar also attempted to contact respondent at his official membership records telephone number but the number was disconnected/no longer in service. The next day, the State Bar also tried to contact respondent at another telephone number provided in the case file, but it was a wrong number.

On February 6, 2013, the State Bar sent an email to respondent, advising him that the State Bar would be filing a motion for entry of his default on February 11 and that he must file a response to the Amended NDC.

On February 7, 2013, respondent telephoned Senior Trial Counsel Robert A. Henderson. Respondent asked for a continuance due to his health issues. He also emailed to the State Bar information regarding his medical condition. The State Bar declined his request for a continuance and emailed him a copy of the Amended NDC.

To date, respondent has not contacted the State Bar since February 7, 2013.

Respondent failed to file a response to the Amended NDC. On February 11, 2013, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar senior trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on February 28, 2013. The order

entering the default was served on respondent at his membership records address⁴ by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. He has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].)

On September 11, 2013, the State Bar properly filed and served the petition for disbarment on Respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with respondent since his default was entered; (2) there are other investigations or disciplinary charges pending against respondent; (3) respondent has no record of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of respondent's misconduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on November 21, 2013.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the Amended NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the Amended NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

⁴ Respondent changed his official membership record address to an address located in the Philippines effective March 5, 2013.

Case Number 09-O-13833 (The Franks Matter)

Count One – Respondent willfully violated section 6106 (moral turpitude) by misappropriating \$310,536.54 of entrusted funds which the Franks were entitled to on March 2, 2009.

Count Two – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by allowing the balance of his City National Bank client trust account to dip to -\$11,287.21 on March 2, 2009, when he should have maintained \$310,536.54 for the benefit of his clients.

Count Three – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct by allowing the balance of his First Republic Bank client trust account to dip to \$370.71 on May 30, 2009, when he should have maintained \$141,666.66 for the benefit of his clients.

Count Four – Respondent willfully violated section 6106 by misappropriating \$141,295.95 of the settlement funds received on behalf of the Franks.

Count Five – Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failure to promptly pay client funds) by delaying full disbursement of the Frank family entrusted funds from April 21, 2009, until on or about July 3, 2009.

Count Six – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate with the State Bar in a disciplinary investigation) by failing to provide all the explanation, information and documents as requested by the State Bar investigator.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is recommended. In particular:

(1) the Amended NDC was properly served on respondent under rule 5.25;

(2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the Amended NDC was served on respondent at his membership records address; and the State Bar communicated with respondent by telephone and by email;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the Amended NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent James Jay Seltzer be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that James Jay Seltzer, State Bar number 54533, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: February _____, 2014

PAT McELROY
Judge of the State Bar Court