

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case Nos.: **10-O-02814 (10-O-05408;**  
) **10-O-07182; 10-O-10766;**  
**DEBORAH JOY PIMENTEL,** ) **11-O-11112; 11-O-11768) - LMA**  
)  
) **DECISION AND ORDER OF**  
) **INVOLUNTARY INACTIVE**  
A Member of the State Bar. ) **ENROLLMENT**  
)  
\_\_\_\_\_ )

Respondent Deborah Joy Pimentel (respondent) was charged with 16 counts of violations of the Rules of Professional Conduct and the Business and Professions Code.<sup>1</sup> She failed to participate either in person or through counsel, and her 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.<sup>2</sup>

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),

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

<sup>2</sup> 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.<sup>3</sup>

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 3, 1984, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

Respondent had actual notice of this proceeding. In April 2011, the assigned deputy trial counsel (DTC) met with respondent telephonically regarding the proposed charges. In May 2011, the DTC sent respondent an Early Neutral Evaluation (ENE) statement, with a draft NDC, to her official membership records address. The ENE statement was not returned by the postal service. Thereafter, respondent and the DTC attended an ENE in May 2011, and the parties engaged in settlement discussions.

Thereafter, on August 19, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at her membership records address. The United States Postal Service returned the NDC bearing the stamp "Addressee Unknown." A courtesy copy of the NDC was also sent by email to respondent at the email address listed on her official membership records address which was also the email address from which respondent corresponded with the DTC during settlement negotiations.<sup>4</sup> This email was not returned or

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<sup>3</sup> 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).)

<sup>4</sup> Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

refused through the internet. The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Respondent failed to file a response to the NDC. On September 14, 2011, the State 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 deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if she did not timely move to set aside her default, the court would recommend her disbarment. Respondent did not file a response to the motion, and her default was entered on October 3, 2011. The order entering the default was served on respondent at her membership records address by certified mail, return receipt requested. The order, however, was returned to the State Bar Court by the U.S. Postal Service. 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, and she has remained inactively enrolled since that time.

Respondent also did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On April 3, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the DTC or the State Bar since the default was entered on October 3, 2011; (2) there are nine additional disciplinary matters (which have not been filed with the State Bar Court) identified in the State Bar system regarding respondent; (3) respondent has no prior record of discipline; and (4) the Client Security Fund (CSF) has not made payments resulting from respondent's conduct; however, there are 10 pending CSF matters related to respondent. 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 May 1, 2012.

## **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of respondent's default, the factual allegations in the 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 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).)

### **1. Case Number 10-O-02814 (U. S. Bankruptcy Court Matter)**

Count One – respondent willfully violated section 6103 (violation of court order) by failing to appear at an Order to Show Cause hearing on February 26, 2010, as ordered by the Bankruptcy Court.

Count Two – respondent willfully violated section 6068, subdivision (d) (attorney's duty to employ means consistent with truth) by representing to the Bankruptcy Court that she charged no fees for bankruptcy cases when, in fact, she charged money for the bankruptcy cases as part of her loan modification package.

Count Three – respondent willfully violated section 6068, subdivision (b) (attorney's duty to maintain respect due to courts and judicial officers) by filing fraudulent petitions with the Bankruptcy Court for the sole purpose of using the proof of electronic filing to forestall foreclosure for her clients.

Count Four – respondent willfully violated section 6103 by failing to pay sanctions of \$3,500 as ordered by the Bankruptcy Court.

Count Five – respondent willfully violated section 6068, subdivision (o)(3) (failure to report sanctions) by failing to report the \$3,500 Bankruptcy Court sanctions against her to the State Bar within 30 days of her knowledge of the sanctions.

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**2. Case Number 10-O-10766 (Gobea Matter)**

Count Six – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (illegal fee) by obtaining \$17,050 in advance for loan modification services from her client in violation of Civil Code section 2944.7.

Count Seven – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to perform any loan modification services on behalf of her client.

Count Eight – respondent willfully violated section 6068, subdivision (m) (failure to communicate) by failing to respond to her client’s telephone calls and emails.

**3. Case Number 11-O-11112 (Curran Matter)**

Count Nine – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by filing a lawsuit on behalf of her clients and thereafter failing to respond to the defendants’ demurrer or amend the complaint, resulting in the complaint’s dismissal; by failing to take action to modify her clients’ loan; and by filing for bankruptcy on her clients’ behalf without their knowledge or consent.

Count Ten – respondent willfully violated section 6068, subdivision (m) by failing to advise her clients of the demurrer, her failure to respond to the demurrer, and the dismissal of the lawsuit in Superior Court, and by failing to notify her clients that she intended to file a bankruptcy matter on their behalf and her failure to consult with her clients prior to filing the bankruptcy matter.

**4. Case Number 11-O-11768 (Pai Matter)**

Count Eleven – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct by obtaining \$9,687 in advance for loan modification services from her client in violation of Senate Bill 94. (Civ. Code, § 2944.7.)

Count Twelve – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to promptly refund unearned fees) by failing to refund \$9,687 to her client although the fee was voidable as an illegal fee.

**5. Case Number 10-O-05408 (Banglan Matter)**

Count Thirteen – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct by obtaining \$1,068 in advance for loan modification services from her clients after Senate Bill 94 (Civ. Code, § 2944.7) was enacted.

**6. Case Number 10-O-07182 (Schey Matter)**

Count Fourteen – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct by obtaining \$6,200<sup>5</sup> in advance for loan modification services from her client in violation of Senate Bill 94. (Civ. Code, § 2944.7.)

Count Fifteen – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform legal services on her client’s loan modification.

Count Sixteen – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund her client \$6,200, although the fee was voidable as an illegal fee.

**Disbarment is Mandated under the Rules of Procedure**

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

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

(2) respondent had actual notice of this proceeding as the DTC met with respondent telephonically regarding the proposed charges; the DTC sent respondent an ENE statement with

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<sup>5</sup> Although the charging paragraph of count fourteen refers to this amount as \$6,218.75, the factual allegations deemed admitted by the entry of respondent’s default allege that the client paid respondent \$6,200 for loan modification services.

a draft NDC; respondent and the DTC attended an ENE; and the parties engaged in settlement discussions;

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

(4) the factual allegations in the 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 actual 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 her disbarment.

## **RECOMMENDATION**

### **Disbarment**

The court recommends that respondent Deborah Joy Pimentel be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

### **Restitution**

The court also recommends that respondent be ordered to make restitution to the following payees:

(1) United States Bankruptcy Court for the Northern District of California in the

amount of \$3,500 plus 10 percent interest per year from March 18, 2010;

(2) Vivek Pai in the amount of \$9,687 plus 10 percent interest per year from February 15, 2010; and

(3) Rachel Schey in the amount of \$6,200 plus 10 percent interest per year from July 15, 2010.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

**Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, 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 Deborah Joy Pimentel, State Bar number 115182, 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. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: June \_\_\_\_\_, 2012

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LUCY ARMENDARIZ  
Judge of the State Bar Court