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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO



In the Matter of)
)
MICHAEL T. MORRISSEY)
)
Member No. 62195)
)
A Member of the State Bar.)

Case No.: **10-O-09718**

**ORDER ON MOTION TO SET ASIDE
DEFAULT AND SETTING PRETRIAL
AND TRIAL DATES**

By order filed October 11, 2011, respondent Michael T. Morrissey's default was entered for failing to appear at trial and he was enrolled as an inactive member of the State Bar under Business and Professions Code section 6007, subdivision (e). On October 20, 2011, respondent filed a motion to vacate his default. The Office of the Chief Trial Counsel (State Bar) opposes the motion.

Respondent asserts that he did not know of this discipline proceeding because his wife intercepted all mail and telephone communications from the State Bar and didn't inform him about the case. He further asserts that without his knowledge, his wife forged his name on, and filed, the response to the notice of disciplinary charges (NDC) that was filed on June 28, 2011. Respondent's wife submitted a declaration which supports these assertions. Respondent further states that he first learned of this case on October 2, 2011.¹

¹ In a letter to the court dated October 3, 2011, respondent stated that on October 2 he was advised of the discipline case and that there was a hearing set for October 3. The October 3 hearing was the pretrial conference. Respondent failed to appear at the pretrial conference. The court issued an order on October 4, 2011, that, among other things, informed respondent that the trial was scheduled for October 11, 2011, at 10:30 a.m., and that if he failed to appear at trial, his default would be entered. Respondent did not contact the court or the State Bar after learning about the pendency of the case. He failed to appear at trial and his default was entered.

The law favors a trial on the merits. Doubts in deciding whether to grant a motion to set aside a default are resolved in favor of the party seeking relief, and if that party has moved promptly for relief, only slight evidence will justify an order granting relief. (See e.g., *Lott v. Franklin* (1980) 206 Cal.App.3d 521, 526.) Although respondent's failure to take steps to protect his interests after learning of this case on October 2 is troubling, the court concludes that sufficient evidence has been presented to grant relief.

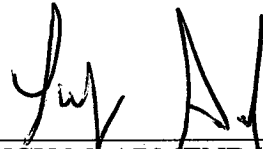
Accordingly, the default entered by order filed October 11, 2011, is set aside. Further, respondent's inactive enrollment under Business and Professions Code 6007, subdivision (e)(1), is terminated, effective upon the filing of this order. (Bus. & Prof. Code, § 6007, subd. (e)(2).) The response to the NDC filed June 28, 2011, is stricken. The clerk is directed to file the response that respondent submitted on October 20, 2011, with his motion to set aside the default.

The court notes that respondent failed to comply with rules 1223 and 1224 of the Rules of Practice of the State Bar Court regarding his pretrial statement and trial exhibits. His failure to comply fully and timely with these rules or his failure to appear in person or through counsel at the pretrial conference may result in sanctions precluding him introducing evidence at trial.

Trial is set for December 2, 2011, at 9:30 a.m., and will continue on December 5 and 6, 2011, as needed. A pretrial conference is set for November 28, 2011, at 11:30 a.m. Pretrial statements are due on November 16, 2011. Trial exhibits are to be exchanged at least five days before the pretrial conference.

IT IS SO ORDERED.

Dated: November 4, 2011



LUCY M. ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. 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 4, 2011, I deposited a true copy of the following document(s):

ORDER ON MOTION TO SET ASIDE DEFAULT AND SETTING PRETRIAL AND TRIAL DATES

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:

MICHAEL THOMAS MORRISSEY
PO BOX 2549
CUPERTINO, CA 95015

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

CHRISTINE A. SOUHRADA, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 4, 2011.



Bernadette C.O. Molina
Case Administrator
State Bar Court