

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 10-O-11347-PEM (11-O-10042;
)	11-O-10057; 11-O-11194;
PAUL WARREN PETERSEN,)	11-O-11487; 11-O-13531;
)	11-O-14249); 11-O-12503
Member No. 170922,)	(11-O-12720; 11-O-13990;
)	11-O-14203) (Cons.)
A Member of the State Bar.)	
)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
)	ENROLLMENT
)	

Respondent Paul Warren Petersen (respondent) was charged with 25 counts of misconduct involving 11 different clients. He failed to appear at the trial of this case 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.¹

Rule 5.85 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated

¹ Unless otherwise indicated, all references to rules are to this source.

within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

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 June 7, 1994, and has been a member since then.³

Procedural Requirements Have Been Satisfied

On December 12, 2011, the State Bar properly served on respondent and filed a notice of disciplinary charges (First NDC). On December 21, 2011, the State Bar properly served on respondent and filed a second notice of disciplinary charges (Second NDC). The NDCs notified respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. Respondent filed his responses to the NDCs.

By order filed January 11, 2012, the trial was set to start on March 27, 2012. The order setting the trial date was served on respondent's counsel, David C. Carr. (Rule 5.81(A).) By notice of change of counsel of record filed February 6, 2012, respondent, in pro per, replaced Attorney Carr. The State Bar appeared for trial but respondent did not.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default by order filed March 27, 2012. The order notified respondent that if he did

² 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).)

³ On March 23, 2012, respondent tendered his resignation with charges pending. On July 10, 2012, the Review Department recommended that the Supreme Court decline to accept his resignation. Respondent's resignation is currently pending before the Supreme Court.

not timely move to set aside his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), and he has remained inactive since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On June 29, 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) other than State Bar's contact with respondent on April 19, 2012,⁴ it has had no contact with respondent since the default was entered; (2) respondent has other non-public investigative matters pending against him at this time; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made payments resulting from respondent's conduct. Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on August 8, 2012.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a 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 here support the conclusion that respondent is culpable of violating a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

⁴ On April 19, 2012, Senior Trial Counsel Blithe Leece saw respondent in Los Angeles County Superior Court in connection with a proceeding brought against respondent by the State Bar under section 6190 et seq. (incapacity to attend to law practice). Respondent stated to Leece that he intended to file a response with the State Bar Court regarding his resignation.

First NDC

1. Case Number 10-O-11347 (Cisneros Matter)

Count One - respondent willfully violated Business and Professions Code section 6106.3, subdivision (a)⁵ (mortgage loan modifications: violation of Civil Code section 2944.6 or 2944.7), by agreeing to perform a mortgage loan modification for his client and receiving \$4,500 from her in advanced fees when he had not completed all loan modification services to be performed under the fee agreement, in violation of Civil Code section 2944.7, subdivision (a).⁶

2. Case Number 11-O-10042 (Xu Matter)

Count Two - respondent willfully violated rule 1-400 of the Rules of Professional Conduct (improper advertising and solicitation) by delivering, or causing to be delivered, a communication seeking professional employment for pecuniary gain, which was transmitted by mail or equivalent means, which did not bear the word "Advertisement," "Newsletter," or words of similar import in 12 point print on the first page, was presented or arranged in a manner or format which tended to confuse, deceive or mislead the public, contained untrue statements, and did not state the name of the member responsible for the communication.

Count Three - respondent willfully violated section 6106.3, subdivision (a) (hereafter section 6106.3(a)), by agreeing to perform a mortgage loan modification for his clients and receiving \$3,500 from them in advanced fees when he had not completed all loan modification services to be performed under the fee agreement, in violation of Civil Code section 2944.7(a).

⁵ All further references to section(s) are to the provisions of the Business and Professions Code.

⁶ Civil Code section 2944.7, subdivision (a) (hereafter Civil Code section 2944.7(a)) provides, in part, that it is unlawful for any person who negotiates, arranges or otherwise offers to perform a mortgage loan modification for a fee paid by the borrower, claim, demand, charge, collect or receive such fee prior to fully performing each and every service the person has contracted to perform or represented that he would perform.

3. Case Number 11-O-10057 (Hoggan Matter)

Count Four - respondent willfully violated section 6106.3(a), by agreeing to perform loan modification services for his client and receiving \$3,480 from him in advanced fees when he had not completed all loan modification services to be performed under the fee agreement, in violation of Civil Code section 2944.7(a).

Count Five - respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform services competently) by failing to perform any services of value on behalf of his client, including, but not limited to, negotiating, or obtaining a loan modification, or any other favorable terms as defined by the fee agreement.

Count Six - respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to refund promptly any part of a fee paid in advance that had not been earned. The parties stipulated that respondent had eventually refunded the unearned fees to the client.

4. Case Number 11-O-11194 (Sabell Matter)

Count Seven - respondent willfully violated section 6106.3(a) by agreeing to perform loan modification services for his client concerning the client's rental property and receiving \$2,495 from the client in advanced fees when he had not completed all loan modification services to be performed under the fee agreement, in violation of Civil Code section 2944.7(a).

Count Eight - respondent willfully violated section 6106.3(a) by agreeing to perform loan modification services for his client concerning the client's residential property and receiving \$2,495 from the client in advanced fees when he had not completed all loan modification services to be performed under the fee agreement, in violation of Civil Code section 2944.7(a).

Count Nine - respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any services of value on behalf of his client.

Count Ten - respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund promptly any part of a fee paid in advance that had not been earned. He had refunded \$2,495 to his client, but he still owes the client the remaining unearned fees of \$2,495.

5. Case Number 11-O-11487 (Lowe Matter)

Count Eleven - respondent willfully violated rule 1-400 of the Rules of Professional Conduct by delivering, or causing to be delivered, a communication seeking professional employment for pecuniary gain, which was transmitted by mail or equivalent means, which did not bear the word "Advertisement," "Newsletter," or words of similar import in 12 point print on the first page, was presented or arranged in a manner or format which tended to confuse, deceive or mislead the public, contained untrue statements, and did not state the name of the member responsible for the communication.

Count Twelve - respondent willfully violated section 6106.3(a), by agreeing to prepare a loan modification request package for his client and receiving \$1,990 from him in advanced fees when he had not completed all loan modification services to be performed under the fee agreement, in violation of Civil Code section 2944.7(a).

Count Thirteen - respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to adequately supervise respondent's employee, and thereby permitting the employee to make inaccurate representations concerning the scope of respondent's firm's representation of the client, and by failing to provide any services of value on behalf of the client.

Count Fourteen - respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund promptly any part of a fee paid in advance that had not been earned.

6. Case Number 11-O-13531 (Light Matter)

Count Fifteen - respondent willfully violated section 6106.3(a) by agreeing to prepare a loan modification request package for his client and receiving advanced fees from him when he had not completed all loan modification services to be performed under the fee agreement, in violation of Civil Code section 2944.7(a).

Count Sixteen - respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to supervise adequately respondent's employee, and thereby allowing her to make misrepresentations concerning the scope of his firm's legal services and its refund policy.

7. Case Number 11-O-14249 (Nielsen Matter)

Count Seventeen - respondent willfully violated section 6106.3(a) by agreeing to perform a mortgage loan modification for his client and receiving \$4,500 from her in advanced fees when he had not completed all loan modification services to be performed under the fee agreement, in violation of Civil Code section 2944.7(a).

Count Eighteen - respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any services of value on behalf of his client, including, but not limited to, negotiating and obtaining a loan modification.

Count Nineteen - respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund promptly any part of a fee paid in advance that had not been earned.

Second NDC

1. Case Number 11-O-12503 (Ayon Matter)

Count One - respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failure to pay funds to client) by failing to refund, as requested by Ayon, 50% of the

fee paid by Ayon as provided in the fee agreement, in respondent's possession which the client is entitled to receive.

2. Case Number 11-O-12720 (Dixon Matter)

Count Two - respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by allowing his clients' bankruptcy matter to be dismissed for failure to file the required schedules and documents.

Count Three - respondent willfully violated section 6068, subdivision (m) (failure to communicate) by failing to inform his clients of the dismissal of their bankruptcy matter.

Count Four - respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund promptly any part of the advanced fees paid by his clients that had not been earned.

3. Case Number 11-O-13990 (Skaggs Matter)

Count Five - respondent willfully violated section 6106.3(a), by negotiating, arranging or otherwise offering to perform a mortgage loan modification for a fee paid by the borrower, and demanding, charging, collecting or receiving fees from his client prior to fully performing each and every service he had contracted to perform or represented that he would perform, in violation of Civil Code section 2944.7(a).

4. Case Number 11-O-14203 (Frye Matter)

Count Six - respondent willfully violated section 6106.3(a), by negotiating, arranging or offering to perform a mortgage loan modification for a fee paid by a borrower, and demanding, charging, collecting and receiving fees from his clients prior to fully performing each and every service he had contracted to perform or represented that he would perform, in violation of Civil Code section 2944.7(a).

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 and of the trial date prior to entry of the default;
- (3) the default was properly entered under rule 5.81; 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 adequate notice and opportunity, respondent failed to appear for the trial of 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 Paul Warren Petersen be disbarred from the practice of law in the State of California and that his 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) Maria Cisneros in the amount of \$4,500 plus 10 percent interest per year from June 24, 2010;
- (2) Gary Hunt and Zhong Li Xu in the amount of \$3,500 plus 10 percent interest per year from February 1, 2010;
- (3) Fred Sabell in the amount of \$2,495 plus 10 percent interest per year from March 29, 2010;

- (4) Leland Lowe in the amount of \$1,990 plus 10 percent interest per year from July 18, 2010;
- (5) Hal Light in the amount of \$3,000 plus 10 percent interest per year from November 30, 2010;
- (6) Lizette Nielsen in the amount of \$4,500 plus 10 percent interest per year from May 10, 2010;
- (7) Henry Ayon in the amount of \$2,000 plus 10 percent interest per year from May 26, 2011;
- (8) Michael and Simone Dixon in the amount of \$2,226 plus 10 percent interest per year from December 2, 2010;
- (9) Laurie Skaggs in the amount of \$2,500 plus 10 percent interest per year from August 31, 2010; and
- (10) Daniel and Lollie Frye in the amount of \$4,000 plus 10 percent interest per year from June 28, 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).

California Rules of Court, 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 Paul Warren Petersen, State Bar number 170922, 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: September _____, 2012

PAT McELROY
Judge of the State Bar Court