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STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of)	Case No. 11-C-11854
)	
MARC S. WEISSMAN,)	RECOMMENDATION OF
)	SUMMARY DISBARMENT
A Member of the State Bar, No. 108128.)	
_____)	

On October 7, 2014, the State Bar's Office of Chief Trial Counsel (OCTC) filed a request for summary disbarment based on Marc S. Weissman's felony convictions. Weissman filed multiple oppositions, which included a claim that the post-conviction reduction of his felony convictions to misdemeanors and subsequent dismissal, warranted dismissal of this disciplinary action. We grant OCTC's request and recommend that Weissman be summarily disbarred.

On June 7, 2012, a jury found Weissman guilty of felony violations of Penal Code section 460, subdivision (b) (second degree burglary) and section 476 (making, passing, uttering or publishing a fictitious or altered check). As a result of Weissman's felony convictions, we placed him on interim suspension, effective November 19, 2012, and he has remained on interim suspension since that time. In April 2014, the Court of Appeal affirmed Weissman's conviction. On October 7, 2014, OCTC submitted evidence that the conviction had become final and requested Weissman's summary disbarment. Weissman filed an initial opposition on October 27, 2014, arguing the facts of his conviction. On December 5, 2014, we filed a recommendation for Weissman's summary disbarment. On January 2, 2015, Weissman filed an "Updated Opposition



to Request for Summary Disbarment,” asserting that since his felony convictions were reduced to misdemeanors and then expunged, his license to practice law should be “reinstated immediately.” On February 4, 2015, we issued an order requesting a certified copy of Weissman’s criminal records and allowing the parties to file supplemental briefs as to the significance of the post-judgment criminal proceedings to the request for summary disbarment. On February 13, 2015, Weissman filed an opposition attaching the criminal records and requesting dismissal “[a]s the felony conviction which was the sole basis for the State Bar action was reduced to a misdemeanor and that misdemeanor was dismissed” On February 20, 2015, OCTC filed a supplemental brief arguing that summary disbarment is appropriate under Business and Professions Code section 6102 since Weissman’s conviction was reduced and dismissed after his conviction was final.

After the judgment of conviction becomes final, “the Supreme Court shall summarily disbar the attorney if the offense is a felony . . . and an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude.” (Bus. & Prof. Code, § 6102, subd. (c).) The record of conviction establishes both criteria for summary disbarment.

First, Weissman was charged with and convicted of felony violations of Penal Code section 460, subdivision (b), and section 476. (Pen. Code, §§ 461, 473 [second degree burglary and forgery are punishable by imprisonment under the provisions of Pen. Code, § 1170, subd. (h)]; Pen. Code, § 17, subd. (a) [crime punishable by imprisonment under the provisions of Pen. Code, § 1170, subd. (h) is a felony].)

Second, both convictions involve moral turpitude.

Burglary is committed by every person who enters a house or other listed structure or vehicle with the intent to commit grand or petit larceny or any felony. (Pen. Code, § 459.)¹ “[W]hether or not the target felony itself evidences a moral defect, burglary remains in all cases the fundamentally deceitful act of entering a house or other listed structure with the secret intent to steal or commit another serious crime inside. A felony conviction of such an act demonstrates a ‘readiness to do evil’ and hence necessarily involves moral turpitude. [Citations.]” (*People v. Collins* (1986) 42 Cal.3d 378, 395, footnotes omitted [discussing classification of burglary for impeachment purposes].) Thus, the commission of acts in the nature of burglary “constitutes moral turpitude and dishonesty and that the protection of the courts and the integrity of the legal profession require that he be disbarred.” (*In re Hurwitz* (1976) 17 Cal.3d 562, 567.)

Forgery is committed by “[e]very person who makes, passes, utters, or publishes, with intent to defraud any other person, or who, with the like intent, attempts to pass, utter, or publish, or who has in his or her possession, with like intent to utter, pass, or publish, any fictitious or altered bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of any real or fictitious financial institution as defined in Section 186.9” (Pen. Code, § 476; *In re Johnson* (1992) 1 Cal.4th 689, 700, fn. 6 [forgery is an offense involving moral turpitude]; *Stanley v. State Bar* (1990) 50 Cal.3d 555, 560-562 [check fraud involves moral turpitude].)

Weissman’s oppositions do not support a different outcome. The October 27, 2014 opposition relies on arguments previously rejected by the jury and appellate court, and attempts to re-argue the facts of his conviction though “the record of conviction shall be conclusive evidence of guilt of the crime of which he or she has been convicted.” (Bus. & Prof. Code, §

¹ Pursuant to Penal Code section 460, subdivision (a), first degree burglary is burglary “of an inhabited dwelling house, vessel . . . which is inhabited and designed for habitation.” Under Penal Code section 460, subdivision (b), “[a]ll other kinds of burglary are of the second degree.”

6101, subd. (a).) The January 2 and February 13, 2015 oppositions show that after judgment and appellate decision affirming the judgment, Weissman's felony convictions were reduced to misdemeanors (Pen. Code, § 17, subd. (b)), and dismissed (Pen. Code, §1203.4). Under Business and Professions Code section 6102, subdivision (b), a crime is a felony "irrespective of whether in a particular case the crime may be considered a misdemeanor as a result of postconviction proceedings" Further, Business and Professions Code section 6102, subdivision (c), provides that once a conviction is final, "irrespective of any subsequent order under Section 1203.4 of the Penal Code or similar statutory provision," an attorney is subject to summary disbarment if the offense is a felony and an element of the offense involves the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude. Weissman's convictions were reduced to misdemeanors and dismissed only after the judgment became final. Thus, the convictions remain as felonies under Business and Professions Code section 6102, subdivisions (b) and (c).

When an attorney's conviction meets the requirements of Business and Professions Code section 6102, subdivision (c), "the attorney is not entitled to a State Bar Court hearing to determine whether lesser discipline is called for." (*In re Paguirigan* (2001) 25 Cal.4th 1, 7.) Disbarment is mandatory. (*Id.* at p. 9.)

We therefore recommend that Marc S. Weissman, State Bar number 108128, be disbarred from the practice of law in this state. We also recommend that he be ordered to comply with 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's order. Finally, we recommend that the costs be awarded to the State Bar in accordance with

section 6086.10 of the Business and Professions Code and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

PURCELL

Presiding Judge

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 Los Angeles, on March 10, 2015, I deposited a true copy of the following document(s):

ORDER FILED MARCH 10, 2015

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

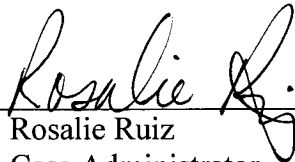
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MARC S. WEISSMAN
WEISS & WEISSMAN
927 LAGUNA CIR
FOSTER CITY, CA 94404

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

Allen Blumenthal, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 10, 2015.



Rosalie Ruiz
Case Administrator
State Bar Court