

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 11-O-12391-RAH
)	11-O-10127 (11-O-11708) Cons.
PHICH KONG TAING,)	
)	DECISION AND ORDER OF
Member No. 244372,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Respondent Phich Kong Taing (respondent) was charged with (1) committing acts involving moral turpitude, dishonesty or corruption by misappropriating nearly \$30,000 in client funds; (2) failing to maintain the balance of funds received for the benefit of his clients in a trust account; (3) failing to release a client file; and (4) failing to cooperate with State Bar investigations. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (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 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 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.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 November 21, 2006, and has been a member since then.

Procedural Requirements Have Been Satisfied

On September 15 and 27, 2011, the State Bar filed and properly served an NDC on respondent in case no. 11-O-12391 (NDC #1), and an NDC on respondent in case nos. 11-O-10127 and 11-O-11708 (NDC #2), respectively, by certified mail, return receipt requested, at his membership records address. The United States Postal Service returned both NDC #1 and NDC #2 as undeliverable. Both NDC #1 and NDC #2 notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Respondent is no longer at his membership records address or telephone number. Mail sent to that address has been returned as undeliverable, and respondent's telephone number is disconnected.³ However, reasonable diligence was used to notify respondent of this proceeding. A search of various internet-based search databases for alternate addresses for respondent revealed two other possible addresses. The State Bar sent letters to both of the possible

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 Prior to the filing of NDC #1, a State Bar investigator went to respondent's membership records address and found the suite empty. The investigator identified other possible addresses for respondent in a Lexis-Smartlinks search. He traveled to those addresses, but was unable to locate respondent or anyone else who was aware of respondent's whereabouts.

addresses for respondent, but did not receive a response.⁴ The State Bar also emailed NDC #1 and NDC #2 to respondent at the two email addresses listed in his official membership records.⁵ The State Bar did not receive a response; however, there was no indication that the email did not arrive at its intended destinations.

Respondent failed to file a response to NDC #1 or NDC #2. On November 28, 2011, NDC #1 and NDC #2 were consolidated. That same day, 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 deputy 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 January 5, 2012. The order entering the default was served on respondent at his membership records address 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, and he has remained inactively enrolled since that time.

Respondent also 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 July 17, 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 State Bar since the default was entered on January 5, 2012; (2) there are other matters pending that have not been filed with the State Bar Court; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made

⁴ One of these two letters was returned to the State Bar as undeliverable.

⁵ 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).)

payments resulting from respondent's conduct. 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 September 7, 2012.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in NDC #1 and NDC #2 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 NDC #1 and NDC #2 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).)

Case Number 11-O-12391 (The Lam Matter)

Count One – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to maintain client funds in trust) by failing to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled as a trust account.

Count Two - respondent willfully violated Business and Professions Code section 6106 (moral turpitude, dishonesty or corruption) by misappropriating \$9,705 in entrusted funds.⁶

Count Three – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to promptly release his client's file upon termination of employment and at the request of the client.

Count Four - respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failure to cooperate in a State Bar investigation) by failing to respond to the State Bar investigator's May 19 and June 22, 2011 letters.

⁶ Although the client was entitled to receive \$10,000, respondent was charged with misappropriating \$9,705 because a small amount of money remained in respondent's client trust account.

Case Number 11-O-11708 (The Chen Matter)

Count One – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct by failing to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled as a trust account.

Count Two - respondent willfully violated Business and Professions Code section 6106 by misappropriating \$9,830.78 in entrusted funds.⁷

Count Three - respondent willfully violated Business and Professions Code section 6068, subdivision (i) by failing to respond to the State Bar investigator's May 17 and June 3, 2011 letters.

Case Number 11-O-10127 (The Han Matter)

Count Four – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct by failing to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled as a trust account.

Count Five - respondent willfully violated Business and Professions Code section 6106 by misappropriating \$9,705.78 in entrusted funds.⁸

Count Three - respondent willfully violated Business and Professions Code section 6068, subdivision (i) by failing to respond to the State Bar investigator's January 21 and February 10, 2011 letters.

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:

⁷ Although the client was entitled to receive \$10,125, respondent was charged with misappropriating \$9,830.78 because a small amount of money remained in respondent's client trust account.

⁸ Although the client was entitled to receive \$10,000, respondent was charged with misappropriating \$9,705.78 because a small amount of money remained in respondent's client trust account.

(1) NDC #1 and NDC #2 were 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 State Bar made various efforts to locate respondent, including emailing copies of the NDC to respondent at his two membership records email addresses and mailing correspondence to him at two additional possible addresses;

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

(4) the factual allegations in NDC #1 and NDC #2 are deemed admitted by the entry of default and 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 Phich Kong Taing 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) Henry Lam in the amount of \$10,000 plus 10 percent interest per year from September 2, 2010;
- (2) Jun Chen in the amount of \$10,125 plus 10 percent interest per year from December 20, 2010; and
- (3) Cheng Han in the amount of \$10,000 plus 10 percent interest per year from January 12, 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 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 Phich Kong Taing, State Bar number 244372, 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: October ____, 2012

RICHARD A. HONN
Judge of the State Bar Court