

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>11-O-14396-RAP</b> (11-O-14432;
	)	11-O-14853; 11-O-15878)
<b>DAVID ALBERT ST. JOHN,</b>	)	
<b>Member No. 48746,</b>	)	<b>DECISION AND ORDER OF INVOLUNTARY</b>
	)	<b>INACTIVE ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

Respondent David Albert St. John (respondent) is charged with numerous violations of the Business and Professions Code and the Rules of Professional Conduct in connection with four separate client matters. He failed to participate either in person or through counsel, 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.<sup>1</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), 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>2</sup>

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<sup>1</sup> Except where otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar.

<sup>2</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).)

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 January 7, 1971, and has been a member since then.

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

On November 14, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at respondent's membership-records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The United States Postal Service returned the NDC to the State Bar.

On December 12, 2011, the State Bar (1) sent courtesy copies of the NDC to respondent by regular first class mail to respondent's membership-records address and to three alternative addresses that the State Bar obtained for respondent from a LexisNexis search; and (2) faxed the NDC to respondent at his membership-records fax number and received a confirmation that the fax transmission was successful.

In addition, on December 12, 2011, Deputy Trial Counsel Jessica A. Lienau (DTC Lienau) (1) sent, to respondent at the email address that he provided to the State Bar for its use and at an alternative email address, emails asking respondent to contact her;<sup>3</sup> (2) attempted to telephone respondent at his membership-records telephone number and two alternative telephone numbers that the State Bar obtained for respondent from a LexisNexis search; and (3) attempted

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<sup>3</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).)

to telephone respondent at two additional alternative telephone numbers and, at one of the two alternative numbers, was able to leave a message asking respondent to return her call.

On December 21, 2011, DTC Lienau again attempted to telephone respondent at the two additional alternative telephone numbers and again left a message at one of the alternative numbers asking respondent to return her call.

Respondent thereafter failed to file a response to the NDC. On December 22, 2011, the State Bar filed a motion for entry of respondent's default and properly served that motion on respondent at his membership-records address by certified mail, return receipt requested. The return receipt for the motion for entry of default was not signed. 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 13, 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),<sup>4</sup> effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent 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 20, 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) on June 20, 2012, the State Bar spoke to respondent by telephone and discussed this

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<sup>4</sup> All further statutory references are to the Business and Professions Code.

disciplinary proceeding, but respondent failed to seek to set aside his default or to otherwise participate in this proceeding; (2) there are five non-public disciplinary investigation matters pending against respondent; (3) respondent has one prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's misconduct. 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 August 15, 2012.

Respondent has one prior record of discipline.<sup>5</sup> In accordance with a Supreme Court order filed on November 9, 2011, respondent was placed on two years' stayed suspension and three years' probation with conditions, including that he be suspended for a minimum of two years and until he made restitution totaling more than \$12,000 in two matters and until he established his rehabilitation, fitness to practice and learning in the general law. Respondent was disciplined for four instances of failing to account for advanced attorney's fees; five instances of failing to cooperate with the State Bar's disciplinary investigations; two instances of failing to refund unearned fees; and one instance each of failing to competently perform legal services, failing to obey a court order, failing to report the imposition of court ordered sanctions, and failing to return a client's file. In his prior disciplinary matter, the discipline was imposed in accordance with a stipulation as to facts, conclusions of law, and disposition that respondent entered into with the State Bar.

### **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

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<sup>5</sup> The court admits into evidence the certified copy of respondent's prior record of discipline that is attached as exhibit 1 to the State Bar's July 20, 2012 petition for disbarment after default.

respondent is, except as otherwise noted, culpable of the rule and statutory violations as charged and that respondent, 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-14396 (Seeby Matter)**

Count One -- respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by not pursuing his clients' bankruptcy case after September 16, 2010, and by failing to seek the bankruptcy court's approval for a \$15,000 advanced fee that respondent collected from his clients.

Count Two -- respondent willfully violated section 6068, subdivision (m) (failing to communicate) by failing to communicate with his clients after about October 2010.

Count Three -- respondent willfully violated section 6103 (failure to obey a court order) by failing to obey a bankruptcy court order requiring that respondent disgorge, to his clients, the \$15,000 advanced fee he collected from them without court approval and that respondent pay the bankruptcy court coercive sanctions of \$2,000 a month until he disgorges the entire \$15,000 to his clients.

Count Four -- respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund the unearned portion of the \$15,000 advanced fee he collected from his clients.

Count Five -- respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond to the State Bar's letters or to otherwise cooperate in the State Bar's investigation of the Seeby matter.

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**Case Number 11-O-14432 (Hawk Matter)**

Count Six -- respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to oppose multiple motions for his client, which resulted in the dismissal of the client's lawsuit against a bank and others for fraudulent lending practices.

Count Seven-- respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to appear at three bankruptcy court hearings and by failing to perform any legal service of value on his client's bankruptcy case.

Count Eight – charges that respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failing to release a file in accordance with client's request). The factual allegations fail to establish the charged violation because they do not allege that the client asked respondent for the file. Accordingly, count eight is DISMISSED with prejudice.

Count Nine -- respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund the unearned \$5,000 in advanced fees that respondent collected from his client.

Count Ten – respondent willfully violated section 6068, subdivision (i) by failing to respond to the State Bar's letters or to otherwise cooperate in the State Bar's investigation of the Hawk matter.

**Case Number 11-O-14853 (Gatzas Matter)**

Count Eleven -- respondent willfully violated section 6103 by failing to pay the court \$200 in sanctions or to file a declaration confirming that he had read all of the court's general orders and local rules as ordered on April 7, 2011, and by failing to file a response to an order to show cause (OSC) or to appear at the hearing on that OSC as ordered on May 13, 2011.

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Count Twelve – respondent willfully violated section 6068, subdivision (o)(3) (failing to report judicial sanctions of \$1,000 or more) by failing to report judicial sanctions of \$1,000 to the State Bar.<sup>6</sup>

Count Thirteen -- respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to oppose a motion to dismiss and by failing to comply with the court's orders of April 7, 2011, and May 13, 2011.

Count Fourteen – respondent willfully violated section 6068, subdivision (i) by failing to respond to the State Bar's letters or to otherwise cooperate in the State Bar's investigation of the Gatzas matter.

**Case Number 11-O-15878 (Dwyer Matter)**

Count Fifteen – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (illegal fee) by collecting, from his client, \$25,000 in advanced fees and \$2,000 to be paid to a non-attorney as a referral fee without bankruptcy court approval in violation of title 11 United States Code section 330(a).

Count Sixteen -- respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to render appropriate accounts of client funds) by failing to account to his client, as she requested, for the \$25,000 in advanced fees respondent collected from her.

Count Seventeen -- respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund the unearned \$25,000 in advanced fees that respondent collected from his client.

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<sup>6</sup> This count involves a different sanction than that involved in count eleven.

Count Eighteen -- respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct by failing to promptly return his client's file, upon her request at the termination of respondent's employment.

Count Nineteen – charges that respondent willfully violated rule 1-320(B) of the Rules of Professional Conduct (paying for employment referral). The factual allegations, however, do not allege that respondent paid for an employment referral. Accordingly, count nineteen is DISMISSED with prejudice.

Count Twenty – respondent willfully violated Code section 6106 (moral turpitude) by twice misrepresenting to a bankruptcy court that he had received \$25,000 in advanced fees from his client before respondent filed the client's bankruptcy petition (respondent actually collected the \$25,000 in fees post-petition).

Count Twenty-One – respondent willfully violated section 6068, subdivision (i) by failing to respond to the State Bar's letter or to otherwise cooperate in the State Bar's investigation of the Dwyer matter.

### **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 that respondent's disbarment must be recommended. In particular:

- (1) the NDC was 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, such as serving the NDC on respondent by certified mail at his membership-records address; leaving two telephone messages for respondent; attempting to telephone respondent at his membership-records telephone number and other alternative telephone numbers; mailing the NDC to respondent by regular first class mail to his membership-records address and to three alternative addresses; faxing the NDC to respondent at his membership-



records fax number; and sending respondent an email at two email addresses. In addition, prior to the filing of the petition for disbarment, respondent had actual notice of this proceeding as the State Bar spoke to respondent by telephone s on June 20, 2012;

(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 adequate notice and opportunity as well as actual notice, 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 David Albert St. John 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 further recommends, sua sponte, that David Albert St. John be ordered to make restitution to the following payees:<sup>7</sup>

1. Frederick Eugene Seeby and Loretta Margaret Muntz-Seeby in the amount of \$15,000 plus 10 percent interest per year from August 13, 2010;
2. Clifton Hawk in the amount of \$5,000 plus 10 percent interest per year from July 8, 2010; and
3. Alicia Dwyer in the amount of \$27,000 plus 10 percent interest per year from July 1, 2011.

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<sup>7</sup> The court does not recommend that respondent be required to make restitution for the \$2,000-a-month coercive sanctions in the Seeby matter because the State Bar failed to establish that a coercive sanction is a proper subject of a restitution order.

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 David Albert St. John, State Bar Number 48746, 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 25, 2012

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**RICHARD A. PLATEL**  
Judge of the State Bar Court