

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 11-O-15030 (11-O-16191)-RAP
)	
STEVEN HOWARD HERTZ,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 153971,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Steven Howard Hertz (respondent) was charged with 10 counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ 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.²

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 further references to section(s) refer to provisions of the Business and Professions Code.

² 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.³

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 August 18, 1991, and has been a member since then.

Procedural Requirements Have Been Satisfied

On February 27, 2012, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address.⁴ A return receipt was not received by the State Bar. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Thereafter, the State Bar: (1) sent a copy of the NDC to respondent by regular, first-class mail to respondent's membership records address and to an address in Laguna Niguel, California contained in an internet search for respondent; (2) contacted respondent's assigned probation deputy; (3) attempted to reach respondent by telephone at his official membership records telephone number; and (4) telephoned directory assistance for the area which includes respondent's official membership records address.

³ 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).)

⁴ On February 8, 2012, the State Bar emailed respondent at his official membership records email address. 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).)

On March 12, 2012, respondent left a voicemail for Deputy Trial Counsel Jessica A. Lienau (DTC Lienau) asking whether he could resign. That same day, DTC Lienau called respondent back and left a voicemail message stating that respondent needed to call her back to discuss this matter. Respondent did not call back DTC Lienau.

Respondent failed to file a response to the NDC. On March 27, 2012, the State Bar properly filed and served on respondent at his membership records address, 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 April 13, 2012. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested.⁵ 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 October 18, 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 April 13, 2012; (2) there are other disciplinary matters pending against respondent (there are two pending investigative matters); (3) respondent has a prior record of discipline; and (4) the Client Security Fund has not made payments resulting from respondent's conduct as alleged in the

⁵ The order was returned to the State Bar Court unclaimed.

NDC. 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 November 15, 2012.

Respondent has a record of three prior impositions of discipline.⁶ Pursuant to a Supreme Court order filed on March 21, 2001, respondent was suspended for one year, the execution of which was stayed, and respondent was placed on probation for three years subject to certain conditions including restitution. Respondent stipulated that he willfully violated rules 4-100(B)(3), 3-110(A), and 4-100(A) of the Rules of Professional Conduct.

Pursuant to a Supreme Court order filed on June 13, 2011, respondent was suspended for one year, the execution of which was stayed, and respondent was placed on probation for two years subject to certain conditions including that he be suspended from the practice of law for the first 30 days of probation. Respondent stipulated in this matter that he willfully failed to pay promptly, as requested by a client, funds in his possession which the client was entitled to receive and willfully failed to render appropriate accounts to a client regarding funds coming into respondent's possession.

Pursuant to a Supreme Court order filed on May 23, 2012, respondent's probation was revoked, and he was suspended from the practice of law for a minimum of one year and until he provides to the Office of Probation proof that he has complied with a fee arbitration condition. Respondent did not participate in this matter. Respondent was found culpable of failing to comply with certain probation conditions imposed pursuant to the Supreme Court's June 13, 2011 disciplinary order.

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⁶ The court admits into evidence the certified copy of respondent's prior record of discipline that is attached as exhibits 1-3 to the State Bar's October 18, 2012 petition for disbarment after default.

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 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).)

1. Case Number 11-O-15030 (McGraw Matter)

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to transfer or register certain properties or perform any legal services of value on behalf of his client.

Count Two – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to promptly refund unearned fees) by failing to refund any portion of the \$4,409 advanced fee paid by his client.

Count Three – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client papers/property) by failing to return his client's documents, including copies of his family trust and LLC documents, as requested by the client.

Count Four – respondent willfully violated section 6068, subdivision (m) (duty to communicate) by failing to respond to his client's numerous requests for the status of his case, including a June 6, 2011 letter, email and fax.

Count Five – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond to a State Bar investigation.

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2. Case Number 11-O-16191 (Rukas Matter)

Count Six – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to file a Chapter 7 bankruptcy on his client’s behalf.

Count Seven – respondent willfully violated section 6068, subdivision (m) by failing to respond to his client’s telephone calls.

Count Eight – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund his client the unearned \$1,500 of advanced attorney fees.

Count Nine – 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 provide his client with an accounting of the advanced fees after respondent was terminated.

Count Ten – respondent willfully violated section 6068, subdivision (i) by failing to provide a written response to the State Bar about his client’s complaint.

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) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address; sent a copy of the NDC to respondent by regular, first-class mail to his membership records address and to an alternate address; contacted respondent’s assigned probation deputy and directory assistance; and attempted to reach respondent by telephone and email. Respondent left a voicemail for DTC Lienau asking whether he could resign;

(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, 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 Steven Howard Hertz 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) Dennis McGraw in the amount of \$4,409 plus 10 percent interest per year from July 12, 2010; and
- (2) Steven Rukas in the amount of \$1,500 plus 10 percent interest per year from October 11, 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 rule 9.20 of the California Rules of Court, 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 Steven Howard Hertz, State Bar number 153971, 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: January 23, 2013

RICHARD A. PLATEL
Judge of the State Bar Court