

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-C-13091–PEM
)	
STACIE JEAN BRUNET,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 188396,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Stacie Jean Brunet (respondent) was convicted of violating New York Vehicle and Traffic Code section 1192, subdivision (3) (driving while intoxicated (DWI) with a previous conviction within 10 years), a felony in New York, which is analogous to California Vehicle Code section 23540 (second offense driving under the influence (DUI) is a misdemeanor), which may or may not involve moral turpitude or constitute other misconduct warranting discipline. Upon finality of the conviction, the review department issued an order referring this matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the facts and circumstances surrounding the violations involved moral turpitude or other misconduct warranting discipline. Respondent failed to participate either in

person or through counsel, and her default was entered. The State Bar filed a petition for disbarment under the Rules of Procedure of the State Bar, rule 5.85.¹

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 hearing on conviction (NOH), 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 June 5, 1997, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 2, 2014, the State Bar Court filed and properly served the NOH on respondent by certified mail, return receipt requested, at her membership records address. The NOH notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.345.)

Respondent had actual notice of the proceedings. She appeared by telephone at a status conference on May 12, 2014 and was there afforded an extension of time to answer until May

¹ Unless otherwise indicated, all references to rules are to this source. Rule 5.345(C) makes the default procedures in rules 5.80-5.86, with certain exceptions, applicable in conviction proceedings.

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).)

19, 2014, when a further status conference would be held. She was also properly served with an order on May 13, 2014, memorializing these events.

Respondent failed to file a response to the NOH. On May 21 and 20, 2014, the State Bar filed and properly served, respectively, 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 she did not timely move to set aside her default, the court would recommend her disbarment. Respondent did not file a response to the motion, and her default was entered on June 12, 2014. The order entering the default was served on respondent at her membership records address by certified mail, return receipt requested. The return receipt, bearing a signature that appears to be "Stacie Brunet," indicates receipt on June 16, 2014. 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 she has remained inactively enrolled since that time.

Respondent also did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On December 19 and 17, 2014, the State Bar filed and served, respectively, the petition for disbarment.³ As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default as entered; (2) there are no pending disciplinary investigations against respondent; (3) respondent has no prior record of discipline; and (4) the Client Security Fund

³ Respondent had until December 19, 2014 to file a motion to set aside the default. The court finds the error in serving the disbarment petition two days early to be de minimis in this instance because she had actual notice of the proceedings, including participating in a status conference and receiving the ordering entering her default. Further, over three and one-half months have elapsed since December 19, 2014, and the court is unaware of an attempt, albeit untimely, to file a motion to set aside the default.

has not made any 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 January 30, 2015.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations set forth in the State Bar's statement of facts and circumstances surrounding respondent's conviction are deemed admitted and no further proof is required to establish the truth of such facts. (Rules 5.345(C) & 5.82.) As set forth below in greater detail, respondent's conviction for a second offense DUI supports the conclusion that respondent violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85, subd. (E)(1)(d).)

Case Number 13-C-13091 (Conviction Matter)

On February 13, 2013, respondent pled to and was convicted of violating New York Vehicle and Traffic Code section 1192, subdivision (3) (DWI with a previous conviction within 10 years), a felony, with a prior DWI conviction in 2011. On January 4, 2013, while attending a closing on real property, respondent was observed by her client's daughter (Keller) to be incoherent and slurring her speech. Respondent admitted that she had been drinking, got in her car and drove away. Keller called the police and followed respondent in her own car, observing that respondent was driving erratically and had nearly hit several power poles and mail boxes. The police caught up with her and pulled her over after observing her crossing over the center line of the road several times. Respondent showed obvious signs of intoxication and failed all standard field sobriety tests that were administered. She refused a Breathalyzer test at the scene, was arrested and transported to jail. Respondent had two prior DUI/DWI convictions in California and New York in 1999 and 2004, respectively.

A second offense DUI in California for disciplinary purposes is a misdemeanor that may or may not involve moral turpitude or other misconduct warranting discipline, depending upon the facts and circumstances surrounding the conviction. The court finds that the facts and circumstances surrounding respondent's conviction do not involve moral turpitude but do constitute other misconduct warranting discipline. Conviction of a crime involving other misconduct warranting discipline is grounds for discipline. (*Young v. State Bar* (1990) 50 Cal.3d 1204.)

Disbarment is Recommended 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 NOH was properly served on respondent under rule 5.25;

(2) respondent had actual notice of the proceedings as she appeared at a status conference on May 12, 2014 and was there afforded an extension of time to answer until May 19, 2014, when a further status conference would be held. She was also properly served with an order on May 23, 2014, memorializing these events. Also, the return receipt of the order entering default, bore a signature that appears to be "Stacie Brunet," indicated receipt of the order on June 16, 2014;

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

(4) the factual allegations in the statement of facts and circumstances surrounding respondent's conviction 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 her disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Stacie Jean Brunet be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

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 Stacie Jean Brunet, State Bar number 188396, 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. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: May _____, 2015

PAT McELROY
Judge of the State Bar Court