

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>13-J-13734-LMA</b>
	)	
<b>SHELLEY RACHEL Z. BARNETT,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 164219,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

On May 20, 2013, respondent Shelley Rachel Z. Barnett (respondent) was ordered disciplined by the Supreme Court of Illinois upon facts that established her culpability for acts of professional misconduct in that jurisdiction. As a result, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding on September 5, 2013. (Bus. & Prof. Code, § 6049.1; Rules Proc. of State Bar, rules 5.350-5.354.)

The issues in this proceeding are limited to: (1) the degree of discipline to be imposed upon respondent in California; (2) whether, as a matter of law, respondent's culpability in the Illinois proceeding would not warrant the imposition of discipline in California under the laws or rules applicable in California at the time of respondent's misconduct in Illinois; and (3) whether the Illinois proceeding lacked fundamental constitutional protection. (Section 6049.1, subdivision (b).)

Respondent bears the burden of establishing that the conduct for which she was disciplined by Illinois would not warrant the imposition of discipline in California and/or that the

Illinois proceedings lacked fundamental constitutional protection. Unless respondent establishes one or both of these, the record of discipline in the Illinois proceeding is conclusive evidence of respondent's culpability of misconduct in California. (Section 6049.1, subdivisions (a) & (b).)

Respondent failed to appear at trial, and her default was entered. The 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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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 3, 1993, and has been a member since then.

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

On September 5, 2013, the State Bar properly filed and served a notice of disciplinary charges (NDC) on respondent by certified mail, return receipt requested, to her membership records address. Respondent filed an answer to the NDC on September 30, 2013.

Respondent participated in a telephonic status conference on October 7, 2013, at which time trial was set for November 25-26, 2013, at 9:30 a.m. A status conference order setting forth

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<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).)

the trial dates was filed and properly served on respondent on October 7, 2013, by first-class mail, postage prepaid, to the address set forth in respondent's answer to the NDC.<sup>3</sup>

Respondent also appeared at a settlement conference held on October 28, 2013.

On November 4, 2013, following a status conference in which respondent did not participate, the court filed a status conference order setting forth trial dates of November 25-27, 2013,<sup>4</sup> at 9:30 a.m. The order was properly served on respondent by first-class mail, postage prepaid, on November 4, 2013, to the address set forth in respondent's answer to the NDC.

A pretrial conference at which respondent participated by telephone occurred on November 18, 2013, at which time the time of trial on November 25, 2013, was changed to 10:00 a.m., but the time of trial on November 26, 2013, remained at 9:30 a.m.

At the time of trial on November 25, 2013, the State Bar appeared for trial, but respondent did not. The court entered respondent's default in an order filed on November 25, 2013. The order was properly served on respondent by certified mail, return receipt requested, to respondent's membership records address. (Rule 5.81(B).) The order notified respondent that, if she did not timely move to set aside her default, the court would recommend her disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. She has remained inactively enrolled since that time. The return receipt for the order was returned to the State Bar Court by the U.S. Postal Service, reflecting receipt by respondent on December 17, 2013.

Respondent did not seek to have her default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].)

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<sup>3</sup> This address was respondent's membership records address.

<sup>4</sup> Trial was extended by one day.

On April 9 and 11, 2014, the State Bar properly served on respondent, and filed, respectively, a petition for disbarment.<sup>5</sup> 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 was entered;<sup>6</sup> (2) there are no other disciplinary matters pending against respondent; (3) respondent does not have a prior record of discipline; and (4) the Client Security Fund 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 May 12, 2014.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of a 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.) Business and Professions Code section 6049.1(a) provides, in pertinent part, that a certified copy of a final order by any court of record of any state of the United States, determining that a member of the State Bar committed professional misconduct in that jurisdiction shall be conclusive evidence that, subject to limited exceptions, the member is culpable of professional misconduct in this state.

The court finds, as a matter of law, that respondent's culpability in the Illinois proceeding would warrant the imposition of discipline in California under the laws or rules applicable in this state at the time of respondent's misconduct in the Illinois proceeding, as follows:

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<sup>5</sup> The petition for disbarment was served on respondent by certified mail, return receipt requested, to her membership records address.

<sup>6</sup> This is the same date that the order entering respondent's default was served on respondent.

**State Bar Rules of Professional Conduct, Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account & Commingling]**

By failing to maintain client funds in her trust account in three client matters, respondent willfully violated State Bar Rules of Professional Conduct, rule 4-100(A).<sup>7</sup>

**Rules of Professional Conduct, Rule 3-700(D)(2) [Failure to Return Unearned Fees]**

By failing to return unearned fees to a client, respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2).

**Business and Professions Code Section 6106 [Moral Turpitude - Misappropriation]**

By using client funds, without authority, for respondent's own business or personal purposes in three client matters, respondent engaged in an act of moral turpitude and dishonesty in willful violation of Business and Professions Code section 6016.<sup>8</sup>

**Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) respondent had actual notice of this proceeding and actual notice of the date set for the commencement of trial;
- (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.

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<sup>7</sup> However, there is no evidence that respondent commingled personal funds with client funds in willful violation of Rules of Professional Conduct, rule 4-100(A).

<sup>8</sup> The court does not find respondent culpable of willfully violating Rules of Professional Conduct, rule 4-100(B)(4) [Promptly Pay/Deliver Client Funds], as there is no evidence of any request by the client(s) for the funds.

Despite actual notice and opportunity, respondent failed to appear for trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

## **RECOMMENDATIONS**

### **Disbarment**

The court recommends that respondent Shelley Rachel Z. Barnett be disbarred from the practice of law in the State of California and that her 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) Asbury Woods Condominium Association in the amount of \$4,000 plus 10 percent interest per year from April 7, 2011;

(2) Asbury Woods Condominium Association in the amount of \$2,491 plus 10 percent interest per year from August 29, 2011;

(3) Asbury Woods Condominium Association in the amount of \$5,680 plus 10 percent interest per year from February 11, 2011;

(4) Bloomfield Club One Homeowners Association in the amount of \$830.32 plus 10 percent interest per year from April 24, 2009;

(5) Bloomfield Club One Homeowners Association in the amount of \$590.96 plus 10 percent interest per year from June 13, 2010;

(6) Bloomfield Club One Homeowners Association in the amount of \$1,199.21 plus 10 percent interest per year from February 11, 2011; and

(7) Granville Residential Corporation in the amount of \$1,313.04 plus 10 percent interest per year from May 18, 2011.

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 Shelley Rachel Z. Barnett, State Bar number 164219, 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: August \_\_\_\_\_, 2014

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LUCY ARMENDARIZ  
Judge of the State Bar Court