

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>13-O-10213-DFM</b>
	)	
<b>GAGUIK BAGDASSARIAN,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 157237,</b>	)	<b>ENROLLMENT</b>
	)	
A Member of the State Bar.	)	
_____	)	

In this matter, respondent Gaguik Bagdassarian was charged with three counts of misconduct stemming from a single client matter. He failed to appear at the trial of this case 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.<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>

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source. A portion of the rules were revised on July 1, 2014. For the purposes of this decision, the court applies the rules as written prior to the July 1, 2014 revisions.

<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 December 16, 1991, and has been a member since then.

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

On November 26, 2013, the State Bar filed and properly served a notice of disciplinary charges (NDC) on Respondent at his membership records address by certified mail, return receipt requested.<sup>3</sup> The NDC notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.41.) On January 15, 2014, Respondent participated telephonically in a status conference. On April 10, 2014, Respondent filed his response to the NDC.

By order filed February 4, 2014, trial was set to begin on May 19, 2014. The order setting the trial date was properly served on Respondent. (Rule 5.81(A).)

On May 12, 2014, the court filed an order to show cause regarding why Respondent's trial evidence should not be excluded due to his failure to file a pretrial conference statement. Respondent did not respond to the order to show cause and, on May 19, 2014, the court issued an order precluding Respondent from presenting exhibits and testimony at trial.

On May 19, 2014, the State Bar appeared for trial, but Respondent did not. Finding that all of the requirements of rule 5.81(A) were satisfied, the court issued and properly served an order entering Respondent's default that same day. The order notified Respondent that if he did not timely move to set aside or vacate his default, the court would recommend his disbarment.

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<sup>3</sup> On May 19, 2014, the court issued an order amending the NDC to correct the name of Respondent's client.

The order also placed Respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), and he has remained inactive since that time.

Respondent did not seek to have his 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].) On September 24, 2014, the State Bar filed the petition for disbarment. 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; (2) Respondent has other disciplinary matters pending in investigation; (3) Respondent has no record of prior discipline; and (4) the Client Security Fund has not made any payments resulting from Respondent's misconduct. Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on October 31, 2014.

### **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).)

#### **Case Number 13-O-10213 – The Dada Matter**

Count One – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by knowingly or with gross negligence misappropriating \$42,397 in client funds, earmarked for his client's medical providers.

Count Two – Respondent willfully violated Rules of Professional Conduct, rule 4-100(A) (failure to maintain client funds in trust) by failing to maintain in his client trust account a balance of \$47,500 in client funds, earmarked for his client's medical providers.

Count Three – Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failing to promptly pay client funds) by failing to promptly pay out funds in Respondent’s possession which his client’s medical providers were entitled to receive.

### **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 the proceedings prior to the entry of his default, as he filed a response to the NDC, appeared in court on multiple occasions, and was properly served with notice of the trial date;
- (3) the default was properly entered under rule 5.81; and
- (4) the factual allegations in the NDC deemed admitted by the entry of default support a finding that Respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

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

### **RECOMMENDATION**

#### **Disbarment**

The court recommends that respondent **Gaguik Bagdassarian**, State Bar number 157237, 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 Osama Dada in the amount of \$22,600<sup>4</sup> plus 10 percent interest per year from April 21, 2014. 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 **Gaguik Bagdassarian**, State Bar number 157237, 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: November \_\_\_\_, 2014

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DONALD F. MILES  
Judge of the State Bar Court

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<sup>4</sup> Respondent ultimately settled with several of his client's medical providers. Respondent and Dada's subsequent attorney agreed that \$22,600 remained outstanding as of April 21, 2014. (See Ex. 12.)