

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: <b>13-O-14408 (13-O-16443;</b>
	)	<b>13-O-16629; 13-O-16985)</b>
<b>JOHN JASON GENTRY MULLINS</b>	)	<b>DECISION INCLUDING DISBARMENT</b>
	)	<b>RECOMMENDATION AND ORDER OF</b>
<b>Member No. 236485</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
A Member of the State Bar.	)	

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Respondent John Jason Gentry Mullins was charged with (1) misappropriation of entrusted funds; (2) not maintaining entrusted funds in a trust account; and (3) breaching the common law fiduciary duty. He did not file a response to the notice of disciplinary charges (NDC), 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 NDC and the attorney fails to have

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<sup>1</sup> Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar which were in effect prior to July 1, 2014. Among other amendments, the default rules were amended effective July 1, 2014. However, as respondent's default was entered prior to July 1, 2014, the rules which were in effect prior to July 1, 2014, are the operative rules in this matter.

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>

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 1, 2005 and has been a member of the State Bar of California since.

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

On April 1, 2014, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested to his membership records address (official address). The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The correspondence was returned marked unclaimed and unable to forward.

Respondent did not file a response to the NDC by April 28, 2014. However, the State Bar had made efforts to locate and contact respondent in late April and early May 2014, including (1) sending email to respondent's membership records and other email addresses and making telephone calls to his membership records telephone number and messages left at his brother's telephone numbers. A message could not be left at respondent's telephone number as the mailbox was full; (2) researching online and the Daily Journal's Directory of California Attorneys and calling the telephone number that was found online. The voicemail greeting indicated that the number had been changed. A call to the new number resulted in a message

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<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).)

stating that the call could not be completed as dialed; and (3) sending, on May 5, 2014, courtesy copies of the NDC by first-class mail to respondent's official address and three alternate addresses that were in respondent's case file or obtained by researching the Daily Journal's Directory of California Attorneys.

On May 5, 2014, the State Bar filed and properly served on respondent a motion for entry of his default by certified mail, return receipt requested, and by first-class mail to respondent's membership records address. Courtesy copies were also sent to three alternate addresses. The motion complied with the requirements for a default, including supporting declarations of reasonable diligence regarding 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 May 21, 2014. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested, and courtesy copies were sent to three alternate addresses. 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. The certified mail was returned to the State Bar Court marked "refused – unable to forward" and the copies sent to the alternate addresses were all returned as undeliverable.

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 December 1, 2014, the State Bar filed and properly served a petition for disbarment on respondent by certified mail, return receipt requested, and sent a courtesy copy by first-class mail to an alternate address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had contact with respondent since the default was entered; (2) there are six other disciplinary matters pending

against respondent; (3) respondent has no prior record of discipline; and (4) the Client Security Fund (CSF) has not made any payments resulting from respondent's conduct as set forth in the 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 January 6, 2015.

### **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.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable of the rule and statutory violations 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-14408 (Securo Capital/Atlanta Capital Matter)**

Count One – respondent willfully violated section 6106 (committing an act involving moral turpitude, dishonesty or corruption) by dishonestly or grossly negligently misappropriating \$296,921.94 that he was to maintain in escrow in his client trust account until the occurrence of specified events and without the consent of the parties to the transaction between May 15 and 28, 2013.

Count Two – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (not maintaining entrusted funds in a trust account) by withdrawing or transferring \$296,921.94 that he was to maintain in escrow in his client trust account until the occurrence of specified events and without the consent of the parties to the transaction between May 15 and 28, 2013.

Counts Three and Four alleging that respondent willfully violated sections 6106 and 6068, subdivision (a) (not complying with laws) by breaching his fiduciary duty owed to the

parties to the transaction because he did not safeguard the funds entrusted to him as an escrow agent are dismissed with prejudice as duplicative of Count One.

**Case Number 13-O-16443 (8153418 Canada Inc./Atlanta Capital Matter)**

Count Five – respondent willfully violated section 6106 by dishonestly or grossly negligently misappropriating \$147,000.00 that he was to maintain in escrow in his client trust account until the occurrence of specified events and without the consent of the parties to the transaction between July 3 and 11, 2013.

Count Six – respondent willfully violated rule 4–100(A) of the Rules of Professional Conduct by withdrawing or transferring \$147,000.00 that he was to maintain in escrow in his client trust account until the occurrence of specified events and without the consent of the parties to the transaction between July 3 and 11, 2013.

Counts Seven and Eight alleging that respondent willfully violated sections 6106 and 6068, subdivision (a) by breaching his fiduciary duty owed to the parties to the transaction because he did not safeguard the funds entrusted to him as an escrow agent are dismissed with prejudice as duplicative of Count Five.

**Case Number 13-O-16629 (Kongkia Investment Co./Atlanta Capital Matter)**

Count Nine – respondent willfully violated section 6106 by dishonestly or grossly negligently misappropriating \$149,984.56 that he was to maintain in escrow in his client trust account until the occurrence of specified events and without the consent of the parties to the transaction between June 14 and 19, 2013.

Count Ten – respondent willfully violated rule 4–100(A) of the Rules of Professional Conduct by withdrawing or transferring \$149,984.56 that he was to maintain in escrow in his client trust account until the occurrence of specified events and without the consent of the parties to the transaction between Jun 14 and 19, 2013.

Counts Eleven and Twelve alleging that respondent willfully violated sections 6106 and 6068, subdivision (a) by breaching his fiduciary duty owed to the parties to the transaction because he did not safeguard the funds entrusted to him as an escrow agent are dismissed with prejudice as duplicative of Count Nine.

**Case Number 13-O-16985 (Embrace Development/Atlanta Capital Matter)**

Count Thirteen – respondent willfully violated section 6106 by dishonestly or grossly negligently misappropriating \$100,000.00 that he was to maintain in escrow in his client trust account until the occurrence of specified events and without the consent of the parties to the transaction between July 31 and August 2, 2013.

Count Fourteen – respondent willfully violated rule 4–100(A) of the Rules of Professional Conduct by withdrawing or transferring \$100,000.00 that he was to maintain in escrow in his client trust account until the occurrence of specified events and without the consent of the parties to the transaction between July 31 and August 2, 2013.

Counts Fifteen and Sixteen alleging that respondent willfully violated sections 6106 and 6068, subdivision (a) by breaching his fiduciary duty owed to the parties to the transaction because he did not safeguard the funds entrusted to him as an escrow agent are dismissed with prejudice as duplicative of Count Thirteen.

**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) reasonable diligence was used to locate and notify respondent of the proceedings prior to the entry of his default, including: (a) sending email to respondent’s membership records and other email addresses and making telephone calls to his membership records telephone number

and messages left at his brother's telephone numbers. A message could not be left at respondent's telephone number as the mailbox was full; (b) researching online and the Daily Journal's Directory of California Attorneys and calling the telephone number that was found online. The voicemail greeting indicated that the number had been changed. A call to the new number resulted in a message stating that the call could not be completed as dialed; and (c) sending, on May 5, 2014, courtesy copies of the NDC by first-class mail to respondent's official address and three alternate addresses that were in respondent's case file or obtained by researching the Daily Journal's Directory of California Attorneys;

(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 recommends disbarment.

## **RECOMMENDATION**

### **Disbarment**

The court recommends that respondent John Jason Gentry Mullins 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 that John Jason Gentry Mullins must make restitution to the following payees. If the Client Security Fund (CSF) has reimbursed a payee for all or any portion of the principal amount, respondent must pay restitution to CSF of the

amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5:

- (1) Securo Capital Limited in the amount of \$296,921.94 plus 10 percent interest per year from May 28, 2013;
- (2) 8153418 Canada Inc. in the amount of \$147,00.00 plus 10 percent interest per year from July 11, 2013;
- (3) Kongkia Investment Co., Ltd., in the amount of \$149,984.56 plus 10 percent interest per year from June 19, 2013; and
- (4) Embrace Development & Management, LLC, in the amount of \$100,000.00 plus 10 percent interest per year from August 2, 2013.

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 John Jason Gentry Mullins, State Bar number 236485, 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: February \_\_\_\_\_, 2015

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PAT McELROY  
Judge of the State Bar Court