

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: **13-O-14787, 14-H-02248 -DFM**
)
GREGORY KWOCK CHEONG APO,) **DECISION AND ORDER OF**
) **INVOLUNTARY INACTIVE**
Member No. 200288,) **ENROLLMENT**
)
A Member of the State Bar.)

Respondent **Gregory Kwock Cheong Apo** (Respondent) was charged with six 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 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.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) 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.³

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.

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(F)(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

Jurisdiction

Respondent was admitted to practice law in this state on December 30, 1998, and has been a member since then.

Procedural Requirements Have Been Satisfied

On June 17, 2014, the State Bar filed and properly served the Notice of Disciplinary Charges (NDC) on Respondent by certified mail, return receipt requested, at his membership records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On June 20, 2014, the return receipt/signature card, which had been attached to the service copy of the NDC, was received by the State Bar, bearing Respondent's name in the signature box.

Thereafter, on July 30, 2014, the assigned State Bar Deputy Trial Counsel (DTC) sent a letter with a courtesy copy of the NDC to Respondent at his membership records address by regular first class mail. Neither the letter nor the enclosed NDC was returned as undeliverable. Also on July 30, 2014, the DTC emailed the July 30th letter with the courtesy NDC to Respondent's membership email address. This email "bounced back" as undeliverable. However, on July 30, 2014, the DTC also emailed the July 30th letter with the courtesy NDC to Respondent's private email address on file with the State Bar. That email did not "bounce back."

At the direction of the assigned DTC, a State Bar investigator conducted a confidential Lexis person-locator search for Respondent's home address, home and cellular telephone numbers, and any alternate email address. The DTC reviewed the search results obtained by the

investigator and noted that Respondent's home address and home and cellular telephone numbers were the same as his membership records address and telephone number. However, there were also two additional email addresses attributable to Respondent.

On August 7, 2014, the DTC attempted to reach Respondent by telephone at his membership records telephone number and was connected to a recorded message for Respondent. The DTC left a voicemail message for Respondent, indicating that the State Bar would be filing a motion for entry of default if Respondent failed to file a response to the NDC.

As Respondent currently has a probation deputy assigned to his reprobation matter, i.e., case number 14-H-02248, the DTC contacted and spoke with that assigned probation deputy to ascertain whether the Office of Probation had any additional address or phone number for Respondent. The Office of Probation, however, had no contact information for Respondent other than his official membership records address and telephone number.

On August 14, 2014, the DTC emailed her July 30, 2014 letter with the courtesy NDC to both of the alternate email addresses that she had previously noted in the results of the Lexis person-locator search. However, both of these emails were bounced back as undeliverable.

Despite the extensive efforts of the DTC, Respondent failed to file a response to the NDC. On August 15, 2014, the State Bar filed and properly served 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 DTC. (Rule 5.80.) The motion notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent still did not file a response to the motion, and his default was entered on September 15, 2014. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar pursuant to section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time. The

order entering the default and enrolling Respondent inactive was served on Respondent at his membership records address by certified mail, return receipt requested.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On January 22, 2015, the State Bar filed and properly served a petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) Respondent had not contacted the State Bar since his default was entered on September 15, 2015; (2) there are no other disciplinary investigations or matters pending against Respondent; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments as a result of 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 February 24, 2015.

Prior Record of Discipline

Respondent has one prior record of discipline.⁴ In August 2013, he was publicly reprimanded, with conditions attached for one year. Respondent stipulated in that matter to three counts of misconduct in a single client matter: (1) failing to perform legal services competently; (2) failing to respond promptly to reasonable status inquiries of a client, and (3) failing to return promptly to a client an unearned advance fee. The order of public reprimand was filed on August 27, 2013, in State Bar Court case No. 12- O-14918.

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(2).) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that

⁴ The court admits into evidence the certified copies of Respondent's prior record of discipline attached to the January 22, 2015 petition for disbarment.

Respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case Number 13-O-14787 (Churton Matter)

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to perform the legal services for which he was retained, i.e., failing to take any action on behalf of his client regarding the I-130 Petition for Alien Relative or to follow up with the National Visa Center at any time from June 2012 through September 2013.

Count Two – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment/client abandonment) by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his clients by effectively terminating his employment on or about June 4, 2012, without taking any action on his clients' behalf to pursue an I-130 Petition for Alien Relative after being notified on or about June 4, 2012, by the U.S. Citizenship and Immigration Service that the approved petition had been forwarded to the National Visa Center, and by, thereafter, failing to inform his clients that he was withdrawing from employment.

Count Three – Respondent, who performed no services of value on behalf of his clients willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees), when he failed to return promptly any of the \$1,920 in unearned fees after the termination of his employment on June 4, 2012.

Count Four – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render appropriate account of client funds) by failing to render an appropriate accounting for the \$1,920 in advanced fees he received, following the termination of his employment in June 2012.

Count Five – Respondent willfully violated section 6068, subdivision (i), by failing to provide substantive responses to two letters from the State Bar sent to and received by Respondent regarding the allegations of misconduct being investigated in case No. 13-O-14787.

Case No. 14-H-02248 (Reproval Conditions Matter)

Count Six – Respondent willfully violated rule 1-110 of the Rules of Professional Conduct by failing to comply with certain specified reproval conditions imposed by the State Bar Court in its August 27, 2013 order. Specifically, Respondent failed to: (a) submit two quarterly reports by their due dates; (b) contact the Office of Probation and schedule a meeting within 30 days from the effective date of discipline; and (c) pay restitution in the amount of \$2,000, plus 10% interest to his client from April 1, 2011, and provide satisfactory proof of payment to the Office of Probation no later than 90 days from the effective date of discipline.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) 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 notify Respondent of the proceedings prior to the entry of his default;
- (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.

RECOMMENDATIONS

Disbarment

The court recommends that respondent **Gregory Kwock Cheong Apo**, State Bar number 200288, 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: (1) Marion Churton and Nigel Churton in the amount of \$1,920, plus 10 percent interest per year from June 4, 2012; and (2) Hiroaki Morise in the amount of \$2,000, plus 10 percent interest from April 1, 2011; or (3) the Client Security Fund to the extent of any payment from the fund to either payee, in accordance with Business and Professions Code section 6140.5. 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.

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ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **Gregory Kwock Cheong Apo**, State Bar number 200288, 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: May _____, 2015

DONALD F. MILES
Judge of the State Bar Court