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STATE BAR COURT  
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>13-O-14835 (13-O-15422);</b>
	)	<b>14-O-01008 (14-O-02316;</b>
<b>VITO TORCHIA, JR.,</b>	)	<b>14-O-02698)-YDR</b>
	)	
<b>Member No. 244687,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
A Member of the State Bar.	)	<b>ENROLLMENT</b>
	)	
	)	
	)	

Respondent Vito Torchia, Jr. ("Respondent") is charged with 19 violations of the Business and Professions Code and the Rules of Professional Conduct. Respondent failed to appear at the trial, and his default was entered. Thereafter, 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 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 if the attorney fails to have the default set aside or vacated within 45 days, then the State Bar will file a petition requesting that the State Bar Court recommend the attorney's disbarment.<sup>2</sup>

<sup>1</sup> Unless otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar of California.

<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(F)(2).)

In the instant case, the court concludes that all of 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 the practice of law in California on December 1, 2006, and has been a member of the State Bar of California since that time.

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

On July 7, 2014, the State Bar filed and properly served a notice of disciplinary charges (NDC) on Respondent in case Nos. 13-O-14835 and 13-O-15422. The State Bar served the NDC on Respondent at his membership records address by certified mail, return receipt requested. Respondent's counsel filed an answer to the NDC on Respondent's behalf on August 8, 2014. On November 20, 2014, the State Bar filed and properly served a second NDC on Respondent and Respondent's counsel in case Nos. 14-O-01008, 14-O-02316 and 14-O-02698. The NDC was served on Respondent at his membership records address by certified mail, return receipt requested and on Respondent's counsel in the same manner. Respondent's counsel filed a response on Respondent's behalf on January 12, 2015.

Respondent and his attorney appeared at a status conference on January 22, 2015. The court consolidated the matters in the first NDC with the matters in the second and set the trial for five days, commencing on May 14, 2015, at 10:00 a.m. On January 26, 2015, the court filed a status conference order setting forth the above-mentioned trial date in this matter. The order was properly served on Respondent's counsel by first-class mail, postage prepaid. (Rule 5.81(A)(2)(a).)<sup>3</sup>

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<sup>3</sup> On March 17, 2015, Respondent's counsel filed a motion to withdraw, which the court granted on March 27, 2015. Respondent substituted into the case, in pro per, on March 27, 2015.

Respondent failed to appear for trial on May 14, 2015. The State Bar appeared for trial. The court entered Respondent's default in an order filed on May 14, 2015. The order was properly served on Respondent at his membership-records address by certified mail, return receipt requested. (Rule 5.81(B).) The order notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed Respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e),<sup>4</sup> effective three days after service of the order, and Respondent has remained inactively enrolled since that time.

Respondent did not timely seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].) On July 13, 2015, the State Bar filed and properly served the petition for disbarment on Respondent at his membership records address.<sup>5</sup> As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar was contacted twice by Respondent after his default was entered – on May 26, 2015, twelve days after Respondent's default was entered, when Respondent called and left a voicemail message for the deputy trial counsel (DTC) handling this matter requesting information about his inactive status and advice on how to proceed, and on May 27, 2015, when Respondent called and left a voicemail message for the DTC asking the DTC to enter into a stipulation to set aside his default; the State Bar responded, but Respondent failed to contact the State Bar thereafter; (2) there are disciplinary matters and disciplinary investigations pending against Respondent; (3) Respondent has one prior record of

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<sup>4</sup> All further references to sections are to the Business and Professions Code.

<sup>5</sup> The petition's envelope was addressed to Respondent at his membership records address, but the law firm name in the address was incorrect. The court finds Respondent had adequate notice because there is no evidence that the petition was returned as undeliverable, and more importantly, Respondent filed a timely response to the petition.

discipline; and (4) the Client Security Fund has not paid out any claims resulting from Respondent's conduct.

On August 7, 2015, Respondent filed a response to the petition for disbarment seeking to set aside the May 14, 2015 default. On September 1, 2015, the court denied Respondent's request because Respondent failed to establish mistake, inadvertence, excusable neglect or surprise, as required under California Code of Civil Procedure section 473.

After the case was submitted for decision on September 2, 2015, Respondent filed a Petition for Interlocutory Review in the Review Department on September 21, 2015. Respondent sought review of the court's order denying his request to set aside the default. The Review Department denied Respondent's petition, finding Respondent failed to show an abuse of discretion or error of law.

#### **Prior Record of Discipline**

Respondent does not presently have a prior record of discipline.<sup>6</sup> However, on August 6, 2014, a Hearing Department decision was filed recommending Respondent be suspended for four years, stayed, with four years of probation with conditions, including a two-year period of actual suspension. Respondent was found culpable of sixteen counts of misconduct in seven client matters, which included six counts of failing to provide an accounting of client funds; three counts of failing to perform competent legal services; five counts of failing to refund unearned fees; and two counts of failing to return a client's file. Respondent has appealed the decision, which is pending in the Review Department.

#### **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

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<sup>6</sup> The court admits into evidence the certified copy of Respondent's prior record of discipline attached to the July 13, 2015 petition for disbarment.

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(F)(1)(d).)

**Case Number 13-O-14835 (The Guadarrama Matter)**

Count One – The court does not find Respondent culpable of willfully violating rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) as the facts deemed admitted as a result of Respondent's default do not support a finding by clear and convincing evidence that Respondent intentionally, recklessly, or repeatedly failed to perform with competence.

Count Two – Respondent willfully violated section 6068, subdivision (m) (failure to communicate significant developments), by failing to inform his client that he did not add him to the mass joinder litigation before the action was dismissed, and failing to advise the client of the action's dismissal.

Count Three – Respondent willfully violated rule 3-700(D)(2) (failure to refund unearned fees) by failing to promptly refund, upon termination of his employment, any part of the unearned \$5,750 advanced fee paid by his client, as Respondent performed no services of value on behalf of his client.

Count Four – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate), by failing to provide substantive responses to two State Bar letters received by Respondent that requested a response to the allegations of misconduct being investigated in case No. 13-O-14835.

**Case Number 13-O-15422 (The Calderon Matter)**

Count Five – The court does not find Respondent culpable of willfully violating rule

3-110(A) of the Rules of Professional Conduct as the facts deemed admitted as a result of Respondent's default do not support a finding by clear and convincing evidence that Respondent intentionally, recklessly, or repeatedly failed to perform with competence.

Count Six – Respondent willfully violated section 6068, subdivision (m), by failing to inform his clients: (1) that he failed to add them to the mass joinder litigation; (2) that the action was dismissed; and (3) that Respondent failed to pursue the restoration of his clients' loan modification trial terms with the clients' lender.

Count Seven – Respondent willfully violated section 6106.3, subdivision (a) (violation of Civil Code section 2944.7), by charging and collecting \$6,895 in advanced fees prior to completing all services in a loan modification matter.

Count Eight – Respondent willfully violated section 6068, subdivision (i), by failing to provide substantive responses to two State Bar letters received by Respondent that requested a response to the allegations of misconduct being investigated in case No. 13-O-15422.

Count Nine - Respondent willfully violated rule 3-700(D)(2) by failing to promptly refund, upon termination of his employment, any part of the unearned \$6,895 advanced fee paid by his clients, as Respondent performed no services of value on his clients' behalf.

**Case Number 14-O-01008 (The Madrigal Matter)**

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by: (1) failing to file a mass joinder action against the client's lender; and (2) failing to appear and participate at the client's unlawful detainer trial.

Count Two – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to promptly refund, upon termination of his employment, any part of the unearned \$13,115 advanced fee paid by his client, as Respondent failed to perform any legal services on his client's behalf.

Count Three – Respondent willfully violated section 6068, subdivision (i), by failing to provide substantive responses to three State Bar letters received by Respondent that requested a response to the allegations of misconduct being investigated in case No. 14-O-01008.

Count Four – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render appropriate accounts of client funds) by failing to account to his client, as she requested, for \$13,115 in advanced fees that the client paid Respondent for legal services.

**Case Number 14-O-02316 (The DeMagnus Matter)**

Count Five - The court does not find Respondent culpable of willfully violating section 6104 (appearing for a party without authority) as the facts deemed admitted as a result of Respondent's default do not support a finding by clear and convincing evidence that Respondent corruptly or willfully, and without authority, appeared as an attorney for a party.

Count Six – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to promptly return his client's file, in accordance with his client's request upon the termination of Respondent's employment.

Count Seven – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct by failing to account to his client, as she requested, for \$5,145 in advanced fees that the client paid Respondent for legal services.

Count Eight – Respondent willfully violated section 6068, subdivision (i), by failing to provide substantive responses to two State Bar letters and one email received by Respondent that requested a response to the allegations of misconduct being investigated in case No. 14-O-02316.

Count Nine – Respondent willfully violated section 6068, subdivision (m), by: (1) failing to discuss an amendment to a mass joinder complaint with his client; (2) failing to inform his client that the action was dismissed; and (3) failing to advise his client that she would continue to be a plaintiff in a refiled mass joinder action even though she terminated Respondent.

**Case Number 14-O-02698 (Disciplinary Investigation Matter)**

Count Ten – Respondent willfully violated section 6068, subdivision (i), by failing to provide substantive responses to two State Bar letters and an email received by Respondent that requested a response to the allegations of misconduct being investigated in case No. 14-O-02698.

**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) Respondent had actual notice of this proceeding and was properly given notice of the trial date before the entry of the default;
- (3) the default was properly entered under rule 5.81; 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 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.

**RECOMMENDATION**

**Disbarment**

The court recommends that Respondent Vito Torchia, Jr., State Bar number 244687, 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 Vito Torchia, Jr. be ordered to make restitution to the following payees:<sup>7</sup>

- 1) Gerardo Guadarrama in the amount of \$5,750 plus 10 percent interest per year from April 19, 2013;
- 2) Arturo and Rochelle Calderon in the amount of \$6,895 plus 10 percent interest per year from July 30, 2013; and
- 3) Maria Madrigal in the amount of \$13,115 plus 10 percent interest per year from December 17, 2012.

## **California Rules of Court, Rule 9.20**

The court also recommends that Respondent be ordered to comply with the requirements of 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.

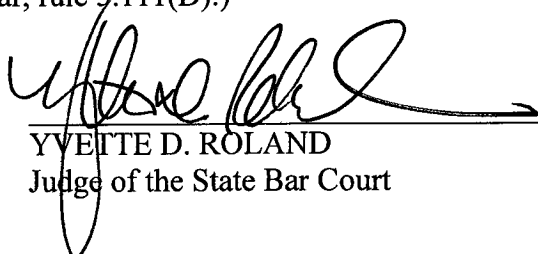
## **Costs**

The court further recommends that costs be awarded to the State Bar in accordance with section 6086.10 and enforceable as provided in 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 Vito Torchia, Jr., State Bar number 244687, 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: November 10, 2015.

  
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YVETTE D. ROLAND  
Judge of the State Bar Court

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<sup>7</sup> Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 12, 2015, I deposited a true copy of the following document(s):

### DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

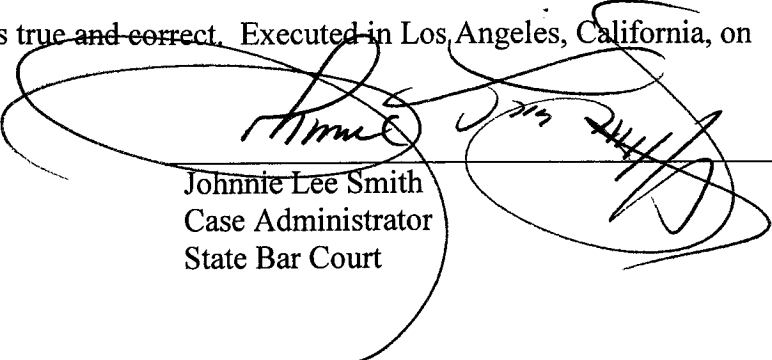
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**VITO TORCHIA JR  
LAW OFFICES OF VITO TORCHIA, JR.  
1503 S COAST DR STE 100  
COSTA MESA, CA 92626**

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**HUGH RADIGAN, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 12, 2015.

  
Johnnie Lee Smith  
Case Administrator  
State Bar Court