

NDC in accordance with Rules of Procedure of the State Bar, rule 5.85.² Respondent did not file a response to the petition for disbarment. Thus, on January 21, 2015, the court took the State Bar's petition for disbarment under submission for decision. Even though respondent did not file a response to the petition for disbarment, respondent filed a motion to set aside his default before the court ruled on the petition for disbarment.

The applicable default rules (rule 5.80, et seq. [eff. Jan. 1, 2011, through Jun. 30, 2014]), including rule 5.85, do not mandate that the court exercise its judicial decision making to grant a petition for disbarment when the respondent files a response to the petition for disbarment or a motion to set aside default. (Cf. rule 5.83(H)(1)&(2) [Even after it has granted a petition for disbarment and filed a disbarment recommendation, the State Bar Court has the authority to vacate the default or set aside the default for a limited purpose]; *In the Matter of Carver* (Review Dept., Nov. 6, 2014, 11-H-16868) 5 Cal. State Bar Ct. Rptr. ___ [p.7] [when a respondent files a response to petition for disbarment after default, the hearing judge must consider “what, if any, relief is appropriate under the new default rules before recommending the respondent’s disbarment”].) Moreover, to conclude that the new default rules mandate that the court grant all petitions for disbarment would not only eliminate judicial discretion that is essential to advance the interests of justice, but would presumably “interfere with the adjudicatory independence of the State Bar Court to hear and decide the matters submitted to it fairly, correctly and efficiently” (rule 1015).

The new default rules were adopted in large part, if not exclusively, to eliminate the inefficiency of conducting multiple State Bar Court default proceedings against respondents who had essentially abandoned their law licenses and never sought to participate in the proceedings.

² Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar that were in effect from January 1, 2011, through June 30, 2014. A number of the rules of procedure, including the rules governing defaults, were amended effective July 1, 2014. Nonetheless, because respondent’s default was entered before July 1, 2014, the operative rules in this matter are those that were in effect before July 1, 2014.

(*In the Matter of Carver, supra*, 5 Cal. State Bar Ct. Rptr. at p. ___ [p.8].) Respondent Alborz is clearly not such a respondent because he has sought to set aside his default. Accordingly, disbaring respondent Alborz based solely on his default would not advance the ends of justice. In sum, the court will deny the petition for disbarment.

Respondent's Motion to Set Aside Default

On February 19, 2015, the State Bar filed an opposition to respondent's motion to set aside his default. Attached to the State Bar's opposition is a supporting declaration from Deputy Trial Counsel Adriana M. Burger (DTC Burger). On February 24, 2015, respondent filed both a reply to the State Bar's opposition and a set of evidentiary objections to DTC Burger's supporting declaration. Thereafter, on February 26, 2015, respondent filed two additional declarations in support of his reply to the State Bar's opposition.

In respondent's evidentiary objections, respondent objects to almost every statement in DTC Burger's declaration on the grounds of "Hearsay; secondary evidence rule; no personal knowledge." Respondent's objections are not well taken. First, such general and vague objections are not proper. Second, State Bar Court disciplinary proceedings are not governed by the formal rules of evidence. (Rule 5.104(C).) Third, DTC Burger aptly recites in her declaration how she acquired personal knowledge of the factual statements in her declaration. Accordingly, the court will overrule respondent's objections.

In respondent's motion, respondent seeks to have his default set aside under 5.83(C), which permits this court to set aside a respondent's default on the grounds of "mistake, inadvertence, surprise, or excusable neglect" as those terms are interpreted in civil matters under Code of Civil Procedure section 473. Respondent, however, failed to file his motion within 180 days after the service of the order entering his default as required under rule 5.83(C)(1).

Rule 5.83(D) provides that, if a respondent files a motion to set aside default more than 180 days after the service of the order entering default, the respondent must prove by clear and

convincing evidence (1) that he or she did not receive or learn of the NDC until after the 180-day period in 5.83(C)(1) expired; (2) that he or she filed the motion to set aside default promptly after learning of the NDC; and (3) that the respondent's failures to file a response to the NDC and to file a motion to set aside the default within the 180-day period in rule 5.83(C)(1) are excused by compelling circumstances beyond the respondent's control. Moreover, even when a respondent files a motion to set aside his or her default after the expiration of the 180-day period in rule 5.83(C) and after the State Bar has filed a petition for disbarment, " 'any doubts ... must [still] be resolved in favor of [the respondent].' [Citations.]" (*In the Matter of Carver, supra*, 5 Cal. State Bar Ct. Rptr. at p. ___ [p.9].) Likewise, when ruling on a motion to set aside default that is filed after the 180-day period and after a petition for disbarment has been filed, "[t]he hearing judge may require 'very slight' evidence to justify it, as long as the granting of such relief will not cause prejudice. [Citation.]" .]" (*In the Matter of Carver, supra*, 5 Cal. State Bar Ct. Rptr. at p. ___ [p.9].)

Respondent has established, by clear and convincing evidence, that he did not receive or learn of the NDC until after November 17, 2014, which was 180 days after the service of the order entering his default plus an additional 5 days because the service was by mail (rule 5.28(A)). Respondent has also clearly established that he did not learn of the NDC until January 2015 and that he thereafter promptly filed his motion to set aside default on February 5, 2015. Finally, respondent also clearly established that his failure to timely file a response to the NDC and his failure to file a motion to set aside his default before November 17, 2014, are excused by compelling circumstances beyond his control such as his serious mental and physical health issues, his financial difficulties, his providing full-time care for his incapacitated mother, and the closing of his post office box without his knowledge.

Furthermore, the State Bar has not identified a single resulting prejudice if respondent's default is set aside, and the matter permitted to proceed on the merits. Thus, the court concludes

that the State Bar will not be prejudiced if respondent's default is set aside and the matter proceeds on the merits.

In sum, the court finds, in light of all the relevant facts and circumstances, that granting respondent's motion to set aside his default will advance the ends of justice and that denying respondent's motion will defeat those ends. In sum, the court finds good cause to grant respondent's motion to set aside the default.

ORDER

The court orders as follows:

1. The January 21, 2015 submission of this matter for decision is VACATED;
2. The State Bar's December 17, 2014 petition for disbarment after default is DENIED;
3. Respondent MEHRDAD ALBORZ'S February 24, 2015 evidentiary objections to DTC Burger's declaration are OVERRULED;
4. Respondent's February 5, 2015 motion to set aside default is GRANTED;
5. The court's May 16, 2014 entry of respondent's default is SET ASIDE;
6. Respondent's proposed response to the NDC, which the court received with respondent's motion to set aside default on February 5, 2015, is ordered FILED as of the date of this order;
7. Respondent MEHRDAD ALBORZ'S involuntary inactive enrollment under Business and Professions Code section 6007, subdivision (e)(1) pursuant to this court's May 16, 2014 order is TERMINATED FORTHWITH; and
8. The case is set for telephonic status conference on March 30, 2015 at 9:30 am.

PAT MCELROY

Dated: March 16, 2015.

PAT McELROY
Judge of the State Bar Court

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 San Francisco, On March 16, 2015, I deposited a true copy of the following document(s):

ORDER VACATING SUBMISSION; OVERRULING EVIDENTIARY OBJECTIONS;
SETTING ASIDE DEFAULT; FILING PROPOSED RESPONSE TO NDC; TERMINATING
INVOLUNTARY INACTIVE ENROLLMENT; AND SETTING CASE FOR STATUS
CONFERENCE

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 San Francisco, California, addressed as follows:

BEHROUZ SHAFIE
BEHROUZ SHAFIE & ASSOCIATES
1575 WESTWOOD BLVD STE 200
LOS ANGELES, CA 90024

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

Adriana Margaret Burger, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 16, 2015.


Laretta Cramer
Case Administrator
State Bar Court