



PUBLIC MATTER

FILED *210*

JAN 19 2016

STATE BAR COURT OF CALIFORNIA STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 14-O-00910-PEM (14-O-00916)
)	
KEVIN JOHN SENN,)	
)	DECISION AND ORDER OF
Member No. 136226,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	
_____)	

Respondent Kevin John Senn (respondent) was charged with four counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ He initially appeared in court for trial, but then walked out of the courtroom and did not return. 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.²

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 45 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

Respondent was admitted to practice law in California on December 7, 1988, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 29, 2015, the State Bar properly filed and served a notice of disciplinary charges (NDC) on respondent. The NDC notified respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation.

Respondent filed his response to the NDC on May 26, 2015.

Following a pretrial conference attended by the State Bar and respondent and by order filed July 21, 2015, the trial was set to start on August 6, 2015. The order was served on respondent's membership records address by first-class mail, postage paid. (Rule 5.81(A).) The State Bar appeared for trial. Respondent initially appeared at trial, executed a stipulation as to facts and admission of documents, and filed a motion for abatement. But after the court denied his motion, respondent left the courtroom and did not return.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default by order filed August 6, 2015. 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), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent did not 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 October 2, 2015, the State Bar properly filed and served the petition for disbarment on respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with respondent since his default was entered; (2) there are no other disciplinary matters pending against respondent; (3) respondent has no prior record of discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of 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 28, 2015.

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(F)(1)(d).)

Respondent stipulated that he received \$1,065,000 in settlement funds on behalf of his clients, Randolph and Mona McConville.

Case No. 14-O-00910 (Woodbridge Baric Matter)

Count 1 – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by failing to maintain a balance of \$136,820 in a client trust account on behalf of his clients Randolph and Mona McConville's lienholder, Woodbridge Baric.

Count 2 – Respondent willfully violated section 6106 (moral turpitude) by misappropriating \$136,820 of client funds.

Case No. 14-O-00916 (New Prime, Inc., Matter)

Count 3 – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct by failing to maintain a balance of \$172,500 in a client trust account on behalf of his clients Randolph and Mona McConville's lienholder, New Prime, Inc.

Count 4 – Respondent willfully violated section 6106 by misappropriating \$172,500 of client funds.

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 had adequate notice of the trial date prior to the entry of his default.
- (3) The default was properly entered under rule 5.81.
- (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.
- (5) Despite adequate notice and opportunity, respondent failed to appear for the trial of this disciplinary proceeding.

As set forth in the Rules of Procedure of the State Bar, the court recommends his disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Kevin John Senn, State Bar number 136226, 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 the following payees:

- (1) Woodbridge Baric in the amount of \$136,820; and
- (2) New Prime, Inc., in the amount of \$172,500.

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

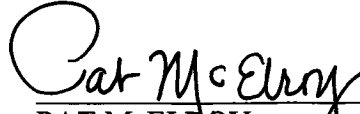
The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Kevin John Senn, State Bar number 136226, 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: January 19, 2016


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 January 19, 2016, 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:

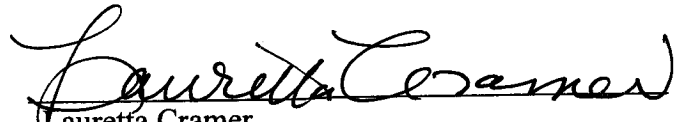
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

KEVIN J. SENN
SENN LAW, A PROF CORP
1990 N CALIFORNIA BLVD FL 8
WALNUT CREEK, CA 94596

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

Erica L. M. Dennings, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 19, 2016.


Laurretta Cramer
Case Administrator
State Bar Court