



PUBLIC MATTER

FILED
AUG 10 2015

**STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO**

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No.: 14-O-03100-LMA
)	
JOHN YAHENG TU,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 146945,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

In this matter, respondent John Yaheng Tu was charged with five counts of violations of the Rules of Professional Conduct and the Business and Professions Code in a single client matter. He failed to appear at the trial of this case 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.¹

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.²

¹ Unless otherwise indicated, all references to rule(s) are to this source.

² 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 this state on June 11, 1990, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 29, 2014, the State Bar filed and properly served the Notice of Disciplinary Charges (NDC) on respondent at his membership records address by certified mail, return receipt requested. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) Respondent filed an Answer to the NDC on November 21, 2014.

At a status conference on December 8, 2014, at which respondent appeared telephonically, the court, among other things, set a further telephonic status conference for January 12, 2015. At that December 8th status conference, the trial was set for March 3, 4, 5, and 6, 2015, at 9:30 a.m. Thereafter, at the scheduled January 12, 2015 status conference, at which respondent appeared telephonically, the court again issued an order setting forth March 3, 4, 5, and 6, 2015, at 9:30 a.m. as the dates and time for the trial in this matter. The order was properly served on respondent. (Rule 5.81(A)(2)(b)&(c).)

Trial commenced on March 3, 2015. Deputy Trial Counsel Anand Kumar appeared for the State Bar. Respondent did not appear. As a result, the court entered respondent's default in an order filed on March 3, 2015. The order entering the default was properly served on respondent at his membership records address by certified mail, return receipt requested. The order notified respondent that if he did not timely move to set aside his default, the court would

recommend his disbarment. 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.³ Respondent 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 to file motion to set aside default].) On April 23, 2015, the State Bar properly served the petition for disbarment on respondent at his membership records address by certified mail, return receipt requested and filed the petition for disbarment the following day. As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent had not contacted the deputy trial counsel assigned to this matter or the State Bar since the default was served on March 3, 2015; (2) there are no other disciplinary matters pending against respondent; (3) respondent has a record of prior discipline; and (4) the Client Security Fund has not made any payments resulting from 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 May 19, 2015.

Prior Record of Discipline

Respondent has been disciplined on four prior occasions.

In April 2004, the Hearing Department of the State Bar Court (hearing department) imposed a private reproof with conditions attached for a period of one year. Respondent stipulated to two counts of misconduct in a single client matter for: (1) failing to competently perform legal services in willful violation of rule 3-110(a) of the Rules of Professional

³ The return receipt/signature card for the certified mailing containing the order of entry of default and the order of involuntary inactive enrollment was returned to the State Bar bearing a handwritten signature, which appears to be identical to that which appears on the signature line of respondent's Answer to the Notice of Disciplinary Charges in this matter.

Misconduct and (2) failing to promptly communicate a written settlement offer to his client in willful violation of section 3-510(A)(2) of the Business and Professions Code. The order of reproof, which was filed on April 12, 2004, in State Bar Court case No. 03-O-01980, became effective on May 4, 2004.

Pursuant to a Supreme Court order, filed on January 18, 2007, in case No. S148041 (State Bar Court case No. 05-H-03835), respondent was suspended for one year, the execution of which was stayed and he was placed on probation for two years. In this second disciplinary matter, respondent stipulated that by failing to timely provide proof of passage of the Multistate Professional Responsibility Examination, he had failed to comply with the terms and conditions of a reproof condition in his first disciplinary matter, State Bar Court case No. 03-O-01980, in willful violation of rule 1-110 of the Rules of Professional Misconduct.

Pursuant to a Supreme Court order, filed on April 2, 2010, in case No. S179830 (State Bar Court case No. 06-O-11095), respondent was suspended for three years, the execution of which was stayed and he was placed on probation for three years on condition that he be suspended from the practice of law for the first 18 months of his probation. In this third disciplinary matter, respondent stipulated that: (1) he willfully violated rule 3-300 of the Rules of Professional Misconduct by entering into a business transaction with a client and acquiring a pecuniary interest adverse to the client without meeting specified requirements of rule 3-300; and (2) he willfully violated section 6106 of the Business and Professions Code by engaging in acts of moral turpitude, dishonesty, or corruption when he entering into transactions with a client that involved self-dealing and overreaching by respondent

Pursuant to a Supreme Court order, filed on May 22, 2012, in case No. S199713 (State Bar Court case No. 11-O-12837), respondent was suspended for three years, the execution of which was stayed, and he was placed on probation for three years on condition that he be

suspended from the practice of law for a minimum of six months and will remain suspended until he provides proof to the State Bar Court of his fitness to practice and learning and ability in the general law. In this fourth disciplinary matter, respondent stipulated that by failing to comply with specified conditions attached to his disciplinary probation, he willfully violated section 6068, subdivision (k) of the Business and Professions Code.

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).)

Case No. 14-O-03100 – (The Chang Matter)

Count One – respondent willfully violated Business and Professions Code section 6068, subdivision (a) (failure to comply with all laws – unauthorized practice of law) between March 22, 2013 and May 5, 2014, during which time period he was not an active member of the State Bar, by holding himself out as entitled to practice law and actually practicing law by providing legal services to his client and corresponding with the client via email, while failing to inform the client that during that time period, he was not entitled to practice law in willful violation of Business and Professions Code sections 6125 and 6126.

Count Two – respondent willfully violated section 6106 (moral turpitude) by holding himself out as entitled to practice law and actually practicing law between March 22, 2013 and May 5, 2014, when he knew, or was grossly negligent in not knowing, that he was not an active member of the State Bar when he provided legal services to his client, corresponded with her via

email, and failed to disclose to her that he was not entitled to practice law, thereby committing an act or acts involving moral turpitude, dishonesty, or corruption.

Count Three – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to promptly turn over the client file to the client after termination of employment and following the client’s request.

Count Four – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (illegal fee) by charging and collecting \$1,435 for legal work performed while he was suspended and not entitled to practice law.

Count Five – respondent willfully violated section 6068, subdivision (i), by failing to provide substantive responses to two letters from the State Bar, which had been sent to and received by respondent, and which requested respondent’s response to the allegations of misconduct being investigated in case No. 14-O-03100.

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 of the trial date prior to 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 adequate 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.

RECOMMENDATIONS

Disbarment

The court recommends that respondent John Yaheng Tu 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 Rachel Chang in the amount of \$1,435 plus 10 percent interest per year from April 21, 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

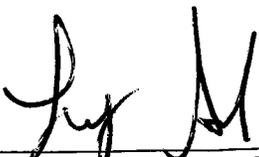
The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that John Yaheng Tu, State Bar number 146945, 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: August 10, 2015



LUCY ARMENDARIZ
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 August 10, 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 San Francisco, California, addressed as follows:

JOHN Y. TU
119 S ATLANTIC BLVD #305
MONTEREY PARK, CA 91754

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

ANAND KUMAR, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 10, 2015.



Bernadette C.O. Molina
Case Administrator
State Bar Court