

PUBLIC MATTER

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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 14-O-03132-PEM; 14-H-03907
)	(Cons.)
JAY BRETT FREEDMAN,)	
)	DECISION AND ORDER OF
Member No. 183847,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Respondent Jay Brett Freedman (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

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.



(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

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 December 3, 1996, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 21, 2014, the State Bar properly filed and served the 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.) The State Bar received from the U.S. Postal Service the return receipt/signature card for the October 21st mailing, which was signed with the name "Jin Li."

In addition, reasonable diligence was used to notify respondent of this proceeding. The State Bar made several attempts to contact respondent without success. On November 24, 2014, the deputy trial counsel (DTC) assigned to respondent's case made several efforts to contact respondent, which included mailing a letter to respondent at his membership records email address, sending an email to respondent at the email address listed in his membership records, and leaving a voice mail message for respondent at his membership records telephone number. Each of the afore-mentioned communications from the DTC advised respondent that the DTC had been instructed by the State Bar Court to file a motion seeking entry of respondent's default

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).)

and that the DTC would do so unless respondent contacted the DTC to discuss respondent's plans regarding the filing of a response to the NDC. All of the DTC's communications also notified respondent that his membership records information did not include a fax number. The DTC did not receive any reply or contact from respondent in response to his various attempts to contact respondent.

Respondent failed to file a response to the NDC. On December 1, 2014, the State Bar properly served a motion for entry of respondent's default. Thereafter, on December 3, 2014, the motion was filed with the State Bar Court. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the deputy trial counsel, declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion; and, his default was entered on December 19, 2014. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. 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, and he has remained inactively enrolled since that time.⁴

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 April 13, 2015, the State Bar filed and properly served a petition for disbarment on respondent at his membership records address. 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 December 19, 2014; (2) there are no

⁴ The return receipt/signature card sent with the order of entry of default and order for involuntary inactive enrollment was returned to the State Bar Court, bearing the date, December 22, 2014. In the signature box, the name "Jin Li" was written.

disciplinary 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 May 11, 2015.

Prior Record Of Discipline

Respondent has one prior record of discipline.⁵ In March 2014, a private reproof was imposed on respondent after initiation of a State Bar Court proceeding.⁶

In March 2014, respondent was privately reproofed, with conditions attached for one year. Respondent stipulated to two counts of misconduct in a single client matter for: (1) failing to promptly release his client's file upon termination of employment and at the request of the client to be provided with the file and (2) failing to cooperate with a State Bar disciplinary investigation by not providing a substantive response to the State Bar's letters requesting his written response to the allegations of misconduct being investigated as a result of the client's complaint. The order of reproof was filed on March 7, 2014, in State Bar Court case No. 13- O- 13275.

⁵ On April 17, 2015, this court filed its "Order Directing the State Bar to Provide Authenticated Copy of Prior Record of Discipline," since the State Bar had not included an authenticated copy of respondent's prior record of discipline in this matter when it filed its petition for disbarment after default, as it was required to have done under rule 5.85. Thereafter, on April 22, 2015, the State Bar filed with the State Bar Court a pleading in this matter, entitled "State Bar's Exhibit to Petition for Disbarment, which included as an attachment an authenticated copy of respondent's prior record of discipline. The court now admits into evidence the April 22, 2015 "Exhibit to the Petition for Disbarment" and the attached certified copy of respondent's prior record of discipline.

⁶ A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is: (1) part of the respondent's official State Bar Court membership records; (2) disclosed in response to public inquiries; and (3) reported as a record of public discipline on the State Bar's web page.

FINDINGS AND CONCLUSIONS

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 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 14-O-03132 – The Askew Matter

Count One – respondent willfully violated Rules of Professional Conduct, rule 3-110(A) (failure to perform legal services with competence) by failing to prosecute a civil action for fraud (the *Askew* matter) on behalf of his clients, David and Julianne Askew (collectively “the Askews”) against those entities (collectively referred to as the “defendants”), who were involved in a sale to the Askews of real property. Specifically, respondent failed to competently perform the legal services for which he had been retained by the Askews by failing, among other things, to: (1) appear on the Askews' behalf for a hearing on an order to show cause regarding dismissal of the complaint in the *Askew* matter; (2) respond to discovery requests in the *Askew* matter, which were propounded by the defendants; (3) oppose the defendants' motions to compel the Askews' discovery responses; (4) appear at the hearing of defendants' motions to compel the Askews' discovery responses; and (5) seek a waiver of costs from defendants prior to his filing a request for voluntary dismissal of the *Askew* matter.

Count Two – respondent willfully violated section 6106 (moral turpitude – misrepresentation) by knowingly or with gross negligence making a false statement to a client when he stated to client David Askew that the defendants in the *Askew* matter admitted to having made misrepresentations to the Askews at a time that was concurrent with the sale of the real

property, when in fact respondent knew or was grossly negligent in not knowing that the defendants never made any such admission and that respondent's statement that the defendants had done so was false.

Count Three – respondent willfully violated section 6068, subdivision (m) (failure to communicate) when he did not keep his clients informed of significant developments in the matter in which he had agreed to provide legal services by failing to inform the clients that: (1) on December 18, 2012, the court had dismissed their complaint without prejudice in the *Askew* matter; (2) he filed an ex parte application requesting that the court set aside its dismissal of the *Askew* matter, which motion the court granted; (3) on June 11, 2013, the defendants in the *Askew* matter filed motions to compel the Askews' discovery responses; but, respondent failed to respond to the discovery or oppose the defendants' motions to compel; (4) on July 10, 2013, the court ordered respondent to serve discovery responses and also ordered that respondent and the Askews pay monetary sanctions; 5) he had never complied with the July 10, 2013 court order in that he neither served the discovery responses, nor paid the sanctions as ordered by the court; and (6) on November 22, 2013, the court entered judgment against the Askews in the *Askew* matter.

Count Four – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to promptly release the client file to his clients upon their request following termination of employment.

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-03132.

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 March 7, 2014 order in case No. 13-O-13275. Specifically, respondent failed to: (a) contact the Office of Probation and schedule a meeting within 30 days from the effective date of discipline, i.e., by April 27, 2014, to discuss the terms and conditions of probation with his assigned probation deputy; and (b) timely submit his first quarterly report to the Office of Probation by July 10, 2014.

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 Jay Brett Freedman be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

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.

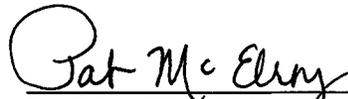
Costs

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 Jay Brett Freedman, State Bar number 183847, 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: July 21, 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 July 21, 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:

JAY B. FREEDMAN
THE LAW OFFICE OF JAY
FREEDMAN PC
2549 EASTBLUFF DR
NEWPORT BEACH, CA 92660

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

Timothy G. Byer, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 21, 2015.


Laretta Cramer
Case Administrator
State Bar Court