

PUBLIC MATTER

FILED

FEB 08 2017

V.A.

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

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

In the Matter of)	Case No.: 14-O-05758-LMA
)	
EARL NELSON FELDMAN,)	AMENDED DECISION AND ORDER RE
)	INVOLUNTARY INACTIVE
Member No. 45125,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

In this matter, respondent Earl Nelson Feldman (Respondent) was charged with three counts of misconduct relating to his administration of a charitable trust. Despite his initial involvement in this proceeding, Respondent ultimately failed to participate and his default was entered. The Office of 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.¹

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 (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.²



¹ Unless otherwise indicated, all references to rules 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 January 15, 1970, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 13, 2015, the State Bar filed and properly served an NDC on Respondent's then-attorney by certified mail, return receipt requested. The NDC notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.41.) On November 2, 2015, Respondent, through his attorney, filed a response to the NDC.

Respondent and his attorney participated in the initial status conference on November 16, 2015. On January 20, 2016, Respondent filed a substitution of attorney indicating that he would represent himself in pro per.

On February 8, 2016, the State Bar appeared for trial but Respondent did not. Finding that all of the requirements of rule 5.81(A) were satisfied, the court issued and properly served an order entering Respondent's default that same day. The order notified Respondent that if he did not timely move to set aside or vacate 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).

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [upon service of order entering default for failure to appear at trial attorney has 45 days to file motion to set aside default].) On March 30, 2016, the State Bar filed a petition for disbarment. The case was submitted for decision on April 26, 2016.

On June 16, 2016, however, the State Bar filed a motion to set aside default, as well as a motion to file an amended NDC. On June 30, 2016, the court issued an order granting the State Bar's motions. Accordingly, the April 26, 2016 submission order was vacated and the State Bar's March 30, 2016 petition for disbarment was dismissed. In addition, Respondent's default was set aside, the inactive enrollment associated with his default was terminated, and the amended NDC was properly filed and served on Respondent.³

After his default was set aside, Respondent did not file a response to the amended NDC. Accordingly, on July 27, 2016, the State Bar filed and properly served a motion for entry of Respondent's default. The motion included a supporting declaration of reasonable diligence by the deputy trial counsel declaring the additional steps taken to provide notice to Respondent.⁴ (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 August 16, 2016. The order entering 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.

This matter was reassigned to the undersigned judge on October 21, 2016. Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [upon service of order entering default for failure to respond to NDC attorney has 90 days to file motion to set aside

³ The amended NDC contains a minor typographical error in its caption. Respondent's correct State Bar number is 45125.

⁴ In its declaration, the State Bar noted that on July 22, 2016, the State Bar received a letter that appeared to be signed by Respondent. The letter stated that Respondent would "not be attending any of the hearings or participating in any status conferences" for this matter, and that he would "accept the entry by the State Bar Court of California of a default judgment against" him.

default].) On November 22, 2016, the State Bar filed a petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since the default was entered; (2) Respondent has no other disciplinary matters pending; (3) Respondent does not have a prior record of 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 December 20, 2016.

On January 10, 2017, the court issued a Decision in this matter. In this Decision, the court recommended, among other things, that Respondent be ordered to make restitution. On January 13, 2017, the State Bar filed a motion to reopen the record in order to present additional evidence indicating that Respondent has already paid restitution. Respondent did not file a response to the motion to reopen the record. The court granted the State Bar's motion to reopen the record and issued this Amended Decision.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default, the factual allegations in the amended 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 amended 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-05758 – The Maury and Lillian Novak Trust Matter

Count One – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – breach of fiduciary duty) by knowingly or with gross negligence failing to administer the Maury and Lillian Novak Trust (Novak Trust), including failing to make

purported charitable donations and improperly disbursing \$882,600.49 in Novak Trust funds to himself.

Count Two – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by falsely reporting in the Novak Trust’s tax returns, which he submitted to the Internal Revenue Service, that Respondent made approximately 75 donations in the amount of \$535,757 to various charitable organizations on behalf of the Novak Trust, when Respondent knew or was grossly negligent in not knowing that these statements were false.

Count Three – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating Novak Trust funds in the amount of \$1,266,037.49.

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 amended NDC was properly served on Respondent under rule 5.25;
- (2) Respondent had actual notice 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 amended 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 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 Earl Nelson Feldman 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.

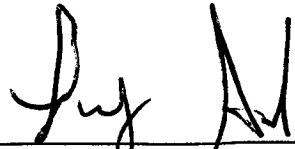
Costs

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 RE INVOLUNTARY INACTIVE ENROLLMENT

Respondent is to remain on involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4), as originally ordered in the court's Decision and Order of Involuntary Inactive Enrollment filed on January 10, 2017.

Dated: February 8, 2017



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 February 8, 2017, I deposited a true copy of the following document(s):

**AMENDED DECISION AND ORDER RE 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:

**EARL NELSON FELDMAN
14004 MERCADO DR
DEL MAR, CA 92014**

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

Eli D. Morgenstern, Office of Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 8, 2017.



Vincent Au
Case Administrator
State Bar Court