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PUBLIC MATTER

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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **DANIEL ROBERT MILLER,** **Member No. 109634,** A Member of the State Bar.	)))))))	Case No.: **14-O-02716-LMA** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In this matter, respondent Daniel Robert Miller (Respondent) was charged with five counts of misconduct stemming from his practice as a certified public accountant. Respondent 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.[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]

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[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 December 12, 1983, and has been a member since then.

Procedural Requirements Have Been Satisfied

On March 4, 2015, the State Bar properly filed and served an amended NDC[3] on Respondent by certified mail, return receipt requested, at his membership records address. The amended NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The amended NDC was not returned to the State Bar by the U.S. Postal Service as undeliverable or for any other reason.

In addition, Respondent had actual notice of this proceeding. On April 2, 2015, the State Bar emailed a courtesy copy of the amended NDC to Respondent. In this email, the State Bar informed Respondent that a response to the amended NDC had not been received, and a default motion would be forthcoming. That same day, Respondent emailed the State Bar advising that he was on a trip to Asia. Respondent stated, "I'm 65 and finished with public accounting work, have never actually practiced law and have no plans to, so what's the point?" Nonetheless, Respondent assured the State Bar that later that day he would "get something back to [them] … to help close out [their] files."

[3] One day earlier, on March 3, 2015, the State Bar filed and served what appears to be a virtually identical NDC under this same case number. The only discernable difference between the two NDCs is that the filed copy of the latter NDC contained an original declaration from the custodian of records relating to the attached exhibit. Although not labeled as such, the March 4, 2015 NDC was an amended NDC.

Respondent subsequently failed to file a response to the amended NDC. On October 30, 2015, the State Bar filed and properly served a motion for entry of Respondent's default.[4] 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 November 17, 2015. 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.

Respondent also 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 February 25, 2016, the State Bar filed the 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 another disciplinary matter pending; (3) Respondent has no 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 March 22, 2016.

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[4] This was the second default motion filed in this matter. The first was initially granted, but later vacated on procedural grounds.

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-02716 – The California Board of Accountancy Matter

Count One – Respondent willfully violated Business and Professions Code section 6068, subdivision (a) (failure to comply with all laws) by: (1) committing acts of gross negligence when he failed to prepare his client's 2010 tax returns and failed to respond to his client's multiple inquiries regarding the status of the tax returns, in willful violation of Business and Professions Code section 5100, subdivision (c); (2) committing acts of gross negligence when he failed to prepare his client's 2011 tax returns, failed to respond to his client's multiple inquiries regarding the status of the tax returns, and failed to return his client's records upon request, in willful violation of Business and Professions Code section 5100, subdivision (c); (3) providing false information to a Board of Accountancy investigator on October 21, 2011, by stating he had not been in the practice of public accountancy for several years and that he did not do tax returns when, in fact, he did do tax returns, in willful violation of Business and Professions Code section 5037 and California Code of Regulation Title 16, section 52; (4) practicing public accountancy while his license was expired, in willful violation of Business and Professions Code section 5050; (5) practicing public accountancy under an unregistered firm name from 2011 until 2013, in willful violation of Business and Professions Code section 5060; and (6) advertising under an unregistered firm name when his license was expired, in willful violation of Business and Professions Code section 5060 and California Code of Regulation Title 16, section 63.

Count Two – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by making statements to a Board of Accountancy investigator that Respondent had not been in the practice of public accountancy for several years and did not prepare returns when Respondent knew or was grossly negligent in not knowing the statements were false.

Count Three – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by advertising with signs, business cards, brochures, calendars, and on the internet when Respondent knew or was grossly negligent in not knowing the advertisements were false, fraudulent, or misleading in that they gave the impression that Respondent and his firm were licensed accountants in good standing with the Board of Accountancy when, in fact, they were not.

Count Four – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation) by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by the State Bar.

Count Five – Respondent willfully violated Business and Professions Code section 6068, subdivision (o)(6) (failure to report the imposition of discipline by a professional or occupational disciplinary agency or licensing board) by failing to report to the State Bar the March 27, 2014 revocation of his certified public accountant license.

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, as he communicated with the State Bar regarding the present proceedings;

(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 Daniel Robert Miller 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.

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ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Daniel Robert Miller, State Bar number 109634, 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: April 25, 2016

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 April 25, 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:

DANIEL ROBERT MILLER
P O BOX 281
HALF MOON BAY, CA 94019 - 0281

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

MANUEL JIMENEZ, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 25, 2016.

Mazie Yip
Case Administrator
State Bar Court