



PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

FILED

APR 15 2016

**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

In the Matter of)	Case No.: 14-O-05439-WKM
)	
THOMAS PAUL FRIEDMAN)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 205407,)	ENROLLMENT
)	
A Member of the State Bar.)	
_____)	

Respondent Thomas Paul Friedman (Respondent) was charged in three counts with 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 (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.

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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).)

FINDINGS AND CONCLUSIONS

Jurisdiction

Respondent was admitted to practice law in California on December 6, 1999. He has continuously been a member of the State Bar since that date.

Procedural Requirements Have Been Satisfied

On September 1, 2015, the State Bar filed and properly served the Notice of Disciplinary Charges (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.) Deputy Trial Counsel Jaime Kim (DTC), who was assigned to this matter at the time, stated in her September 21, 2015, declaration of reasonable diligence, which was filed with the motion for entry of default in this matter, that the State Bar had received the return receipt for the NDC, "indicating" that Respondent had received the NDC on September 17, 2015.⁴

Thereafter, the assigned DTC made several efforts to contact Respondent, including (1) making telephone calls to Respondent; (2) conducting an internet search for any information that would assist in locating him, including a business or residential address; and (3) sending emails to Respondent at his official membership email address.

Specifically, on October 8, 2015, the DTC telephoned Respondent at his latest telephone number shown on his State Bar membership records. The call was not completed, because the phone number had been disconnected. On the same day, the DTC also attempted to find information that would assist in locating Respondent by means of an internet search. However, the search did not yield any information that would help to locate Respondent.

⁴ There is, however, no clear and convincing evidence that the return receipt for the NDC was actually signed or, if it was signed, by whom it had been signed. The DTC's declaration merely states that "[o]n September 21, 2015, the State Bar received the return receipt *indicating* [emphasis added] that Respondent had received the NDC on September 17, 2015."

On October 9, 2015, the DTC again attempted to reach Respondent by telephoning him at his official membership records telephone number. The recording at that number stated that the number had been disconnected and was no longer in service. The DTC also sent an email to Respondent at "thomas_friedman@live.com"⁵ on October 9, 2016; however, she received no response to that email.

The initial status conference was held in this matter on October 9, 2015. The DTC appeared for the conference; Respondent failed to appear.

On October 23, 2015, the DTC attempted to send a second message to Respondent at his official membership records email address. The DTC's email was returned to her with a message stating that her email could not be delivered to the recipient's address, and that the mailbox was "unavailable."

Respondent did not file a response to the NDC. On October 23, 2015, the State Bar filed and properly served a motion for entry of default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the DTC 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, this court would recommend his disbarment.

Respondent did not file a response to the motion, and his default was entered and served on November 10, 2015. The order entering the default was served on Respondent at his membership records address by certified mail, return receipt requested. On November 10, 2015, 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.

⁵ This court notes that the email address specified in the DTC's declaration is the same email address as that listed in the State Bar's official membership records for Respondent.

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 February 23, 2016, the State Bar filed and properly served 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 November 10, 2015, the date on which Respondent's default was entered; (2) no investigations or disciplinary charges are pending against Respondent; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments as a result of Respondent's misconduct (although a claim for payment is pending with the Client Security Fund stemming from the instant matter).

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.

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 No. 14-O-05439 (Houhou "Kevin" Xu Matter)

Count One – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to render appropriate accounts of client funds) by failing to provide an appropriate accounting to the client of the \$3,500 in advanced legal fees, which Respondent had received from the client. Specifically, the client made two requests for such an accounting: the first request made on August 14, 2014, the date on which Respondent's employment with the client terminated, and the second request made on October 15, 2014.

Count Two – Respondent, on June 8, 2014, received from his client the sum of \$3,500 as an advanced fee for legal services to file an answer in a civil matter and, thereafter, failed to file the answer in the civil matter or perform any legal services for the client. Respondent failed to earn any part of the advanced fee, and, therefore, willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to promptly refund unearned fees) by failing to promptly refund, upon his termination of employment on August 14, 2014, any part of the \$3,500 fee which the client had advanced to him.⁶

Count Three – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate with the State Bar in a disciplinary investigation), by failing to provide a substantive response to numerous contacts from the State Bar. Specifically, Respondent failed to answer the State Bar’s emails of November 5, 2014, November 13, 2014, January 13, 2015, March 17, 2015, and March 23, 2015, or to the State Bar’s November 19, 2014 letter, all of which Respondent received and which requested his response to the allegations of misconduct being investigated in State Bar case No. 14-O-05439.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied and that 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

⁶ The court does not recommend that Respondent be required to pay restitution of the unearned fee he received, since the NDC does not allege that Respondent has failed to return the unearned fee, but instead only alleges that “Respondent failed to refund *promptly*” (italics added) any part of the \$3,500 unearned fee he had received.

(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 **Thomas Paul Friedman**, State Bar number 205407, 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

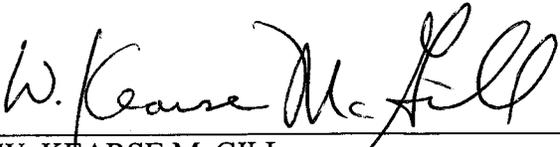
In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **Thomas Paul Friedman**, State Bar number 205407, be involuntarily enrolled

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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 15, 2016



W. KEARSE MCGILL
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 Los Angeles, on April 15, 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:

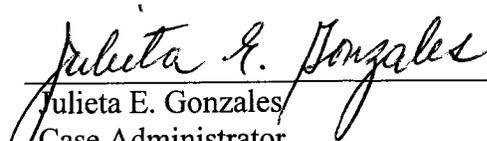
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

THOMAS P. FRIEDMAN
THE LAW OFFICES OF THOMAS P.
FRIEDMAN
600 N ROSEMEAD BLVD STE 211
PASADENA, CA 91107

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

Jamie J. Kim, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 15, 2016.



Julieta E. Gonzales
Case Administrator
State Bar Court