

PUBLIC MATTER
STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

FILED
AUG 23 2016
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of)	Case Nos.: 15-C-13251-DFM;
)	15-C-13253 (Cons.)
RACHELLE SHALOM VISCONTE,)	
)	DECISION AND ORDER OF
Member No. 182158,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	
)	

This decision addresses two disciplinary actions, now consolidated, resulting from convictions of respondent Rachelle Shalom Visconte (Respondent) in two separate criminal matters. The first disciplinary action, State Bar case No. 15-C-13251, arises out of Respondent's criminal conviction for violating Health and Safety Code sections 11350, subdivision (a) (possession of a controlled substance), and 11364.1, subdivision (a) (possession of a controlled substance paraphernalia), misdemeanors that may or may not involve moral turpitude. Upon the finality of that conviction, the Review Department of this court issued an order referring that matter to the Hearing Department of this court for a hearing and decision recommending the discipline to be imposed if the facts and circumstances surrounding the misdemeanor violations involved moral turpitude or other misconduct warranting discipline.

The second action, case No. 15-C-13253, arises out of Respondent's criminal conviction for violating Penal Code sections 476 (fictitious instruments); sections 459-460, subdivision (b) (burglary); section 475, subdivision (c) (possession of a completed check with intent to defraud); and section 530.5, subdivision (a) (identity theft), misdemeanors that do involve moral turpitude.



Upon finality of that conviction, the Review Department again issued an order referring the matter for a hearing and decision recommending the discipline to be imposed in the matter.¹

Because Respondent failed to participate, either in person or through counsel, in the proceeding, her default was entered. The State Bar of California, Office of the Chief Trial Counsel (State Bar), has now 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 hearing on conviction 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 the practice of law in California on June 3, 1996, and has been a member of the State Bar of California at all times since that date.

Procedural Requirements Have Been Satisfied

On December 9, 2015, the State Bar Court filed and properly served the notice of hearing on conviction (NOH) for case No. 15-C-13251 by certified mail, return receipt requested, as well as by regular first class mail on Respondent at her membership records address. The NOH for

¹ The Review Department order also placed Respondent on suspension from the practice of law, effective December 22, 2015, pending final disposition of this proceeding. Additionally, the order required that Respondent comply with rule 9.20 of the California Rules of Court.

² Unless otherwise indicated, all references to rule(s) 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).)

case No. 15-C-13251 notified Respondent that her failure to participate in this proceeding would result in a disbarment recommendation. (Rule 5.345.)

On December 4, 2015, the State Bar Court filed and properly served the NOH for case No. 15-C-13253 by certified mail, return receipt requested, as well as by regular first class mail on Respondent at her membership records address. The NOH for case No. 15-C-13253 also notified Respondent that her failure to participate in this proceeding would result in a disbarment recommendation.

The State Bar took additional steps to notify Respondent of these proceedings. On December 29, 2015, the deputy trial counsel (DTC) attempted to contact Respondent at her membership records telephone number. An unidentified person picked up the phone and then hung up.

On January 4, 2016, an initial status conference was held in this matter. At this status conference, the two cases were consolidated. Respondent, however, did not appear at that conference. Consequently, on January 4th, the DTC attempted to contact Respondent by email regarding the results of the conference. The DTC sent an email to Respondent at Respondent's email address listed by Respondent with the State Bar as her State Bar email of record.⁴ This email notified Respondent of the trial dates set by the court. The email also reminded Respondent that her responses to the notices of hearing were overdue and that, if she failed to file a response by January 15, 2016, the State Bar would file a motion seeking entry of her default.

On January 11, 2016, the DTC received an email from a State Bar investigator, who confirmed that Respondent had provided a valid email address at which the investigator had been able to contact Respondent. That email address was the same address that the DTC had used to send her January 4, 2016 email to Respondent.

⁴ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

Respondent failed to file a response in either of the cases consolidated in this proceeding. On January 20, 2016, the State Bar properly filed and served a motion for entry of Respondent's default in the consolidated matter. The motion complied with the requirements for a default, including a supporting declaration of reasonable diligence by the DTC declaring the additional steps taken to provide notice of the proceedings to Respondent. (Rule 5.80.) The motion also notified Respondent that, if she did not timely move to set aside her default, the court would recommend her disbarment.

Respondent did not file a response to the motion, and her default was entered on February 10, 2016. The order entering the default was served on Respondent at her membership records address by certified mail, return receipt requested and by regular first class mail. 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. She has remained inactively enrolled since that time. Since the date that her default was entered, Respondent has not sought to have that default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].)

On May 19, 2016, the State Bar properly filed and served a petition for disbarment on Respondent at her official membership records address.⁵ As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with Respondent since her default was entered; (2) there are no other disciplinary matters pending against Respondent; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has not paid any claims as a result of Respondent's misconduct. 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 June 15, 2016.

⁵ Respondent's official membership records address and telephone number were updated in the State Bar official membership records, effective March 25, 2016.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default, the factual allegations set forth in the State Bar's statement of facts and circumstances surrounding Respondent's convictions are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.346(D).) As set forth below in greater detail, Respondent's convictions support the conclusion that Respondent violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case Number 15-C-13251

On December 4, 2013, in response to a report made to the Orange County Sheriff's Department, three sheriff's deputies entered a residence and a bedroom within that residence. When they entered the bedroom, the deputies saw Respondent with several boxes and personal items. While searching the room, one of the deputies found an eyeglass case containing four hypodermic needles, one Norco pill (a schedule 3 narcotic), and one Fentanyl Transdermal System patch (a schedule 2 narcotic). Respondent did not have any prescriptions for the narcotics and denied using the needles. However, on being directed by one of the deputies to pull up the sleeves of her shirt, the deputy saw a recent injection site on the inside of Respondent's left arm.

On September 28, 2015, Respondent plead guilty to two misdemeanor counts of possession of a controlled substance in violation of Healthy and Safety Code section 11350, subdivision (a), and one misdemeanor count of possession of controlled substance paraphernalia in violation of Healthy and Safety Code section 11364.1, subdivision (a). Imposition of sentence was suspended for three years pending successful completion of informal probation. Among other conditions of probation, Respondent was ordered to serve 180 days in Orange County Jail, participate in supervised electronic confinement, and pay fines and restitution.

The court finds that the facts and circumstances surrounding Respondent's conviction do not involve moral turpitude, but do constitute other misconduct warranting discipline.

Case Number 15-C-13253

On January 9, 2012, the Santa Ana Police Department responded to a "forgery call" from Ace Cash Express (Ace). An employee at Ace reported that Respondent and a male suspect arrived together and tried to pass a fraudulent check from Sunset Mortgage in the amount of \$1,295.15. The employee contacted Sunset Mortgage to check on the validity of the check and was told the check did not match the company's records. The employee then notified the Santa Ana Police Department. Officer # 1 responded to the call.

Another Santa Ana police officer (Officer # 2) contacted Sunset Mortgage and spoke with the business manager, who confirmed that no company checks had ever been made out to Respondent or the other suspect with Respondent.

Two minutes after the original call from Ace was received by the Santa Ana Police Department, two Santa Ana police sergeants (Officer # 3 and Officer # 4) arrived on the scene at Ace. They observed Respondent exiting Ace and entering the driver's side of a vehicle. Respondent attempted to flee the scene, but was stopped and detained by the police sergeants. A male suspect was seated in the front passenger seat. Five minutes after the originating phone call to the police department had been made, Officer #1 arrived on the scene. Respondent and the suspect in the front passenger seat were detained and removed from the vehicle. While the male suspect who had been in the front seat of the vehicle was exiting the car, a check fell from inside the vehicle onto the ground. The check (check # 3482) was also a fraudulent Sunset Mortgage check in the amount of \$1,423.06.

While searching the vehicle, Officer #1 found two white envelopes. One envelope contained an additional Sunset Mortgage check (check # 3473) in the amount of \$1,423.06, as well as two check cashing rejection receipts and a handwritten note explaining why the check

was not cashed. A second white envelope contained a "Green's Gardening" business check (#4427) in the amount of \$1,850. Officer # 1 contacted the owner of Green's Gardening and asked about check #4427. The owner did not recall writing the check and stated that his briefcase containing incomplete, individual checks had been stolen a few weeks prior. The owner stated that he is the only person who has access to the business checks. Also, inside a plastic bag, Officer # 1 found yet another Sunset Mortgage Check in the amount of \$1,377.61.

When Respondent was actually arrested, Officer #1 looked through her cellular phone. Respondent's cell phone contained a text message sent earlier that same day at 1:51 a.m., which read, "He is here and we are cashing tomorrow."

On October 16, 2013, Respondent plead guilty to one misdemeanor count of making/passing a fictitious check in violation of Penal Code section 476 (making/passing a fictitious check); one misdemeanor count of second degree commercial burglary in violation of Penal Code sections 459-460, subdivision (b); three misdemeanor counts of possessing a completed check with intent to defraud in violation of Penal Code section 475, subdivision (c); and one misdemeanor count of identity theft in violation of Penal Code section 530.5, subdivision (a). Imposition of sentence was suspended for three years pending successful completion of informal probation. Among other conditions of probation, Respondent was ordered to serve 365 days in Orange County Jail and pay fines and restitution.

On February 20, 2014, Respondent failed to report for the 365 days jail sentence. On May 19, 2014, the court ordered that Respondent's probation be revoked, based on a subsequent case number 14CF1086. On September 28, 2015, the court ordered that the 365 days of jail imposed on October 16, 2013, be vacated. The court also ordered that Respondent serve 180 days in Orange County Jail with the jail sentence to run concurrent with that in case number 14CF1086.

As set forth in the Review Department's referral order in this matter, the facts and circumstances surrounding Respondent's conviction for the criminal acts of which she was found guilty in Orange County Superior Court case number 12CF0093 involve moral turpitude. Conviction of a crime involving moral turpitude is cause for discipline. (Bus. & Prof. Code, § 6101, subd. (a).)

Disbarment Is Recommended

Based on the above, this court concludes that the requirements of rule 5.85(F) have been satisfied, and Respondent's disbarment is recommended. In particular:

- (1) each notice of hearing 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 her default;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the statement of facts and circumstances surrounding Respondent's convictions, 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 fully participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends Respondent's disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent **Rachelle Shalom Visconte**, State Bar number 182158, be disbarred from the practice of law in the State of California and that her 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 **Rachelle Shalom Visconte**, State Bar number 182158, 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 23, 2016



DONALD F. MILES
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 August 23, 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:

RACHELLE S. VISCONTE
38 PASEO VIENTO
RANCHO SANTA MARGARITA, CA 92688

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

TIMOTHY BYER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 23, 2016.



Rose M. Luthi
Case Administrator
State Bar Court