

PUBLIC MATTER FILED

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STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No. 15-O-11045-PEM
)	
ANTHONY R. SALES,)	
)	DECISION AND ORDER OF
A Member of the State Bar, No. 218193.)	INVOLUNTARY INACTIVE
)	ENROLLMENT
)	
_____)	

Respondent Anthony R. Sales (respondent) was charged with six counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ He failed to appear at the trial of this case and his default was entered. The Office of Chief Trial Counsel (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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated



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.

within 45 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 California on December 13, 2001, and has been a member since then.

Procedural Requirements Have Been Satisfied

On December 22, 2015, the State Bar properly filed and served a notice of disciplinary charges (NDC) on respondent. The NDC notified respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. Respondent filed a response to the NDC on January 11, 2016.

At a status conference on February 1, 2016, the trial was set to start on April 19, 2016. The February 1, 2016 order setting the trial date was served on respondent at his membership records address by first-class mail, postage paid. (Rule 5.81(A).)

On April 19, 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 entered respondent's default by order filed April 19, 2016. The order notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code

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).)

section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].)

On June 27, 2016, the State Bar properly filed and served the petition for disbarment on respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with respondent since his default was entered; (2) there are 11 other investigations pending against respondent; (3) respondent has no record of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of respondent's misconduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on July 25, 2016.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of 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.) 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. 15-O-11045 (Garcia Matter)

Count 1 – Respondent willfully violated rule 1-400(C) of the Rules of Professional Conduct (solicitation of a prospective client) by making a solicitation or allowing one to be made on his behalf to a prospective client, Ezequiel Garcia, with whom respondent had no family or prior professional relationship.

Count 2 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to take any steps to obtain a mortgage loan modification on behalf of his client, Ezequiel Garcia.

Count 3 – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to promptly refund any part of the \$1,500 in unearned fees upon his termination of employment in January 2015.

Count 4 – Respondent willfully violated section 6106.3,⁴ subdivision (a) (mortgage loan modifications), by violating Civil Code section 2944.6, subdivision (a), when he entered into a fee agreement with Garcia without providing him with the information under the Civil Code section 2944.6 statement in 14-point font as a separate statement.

Count 5 – Respondent willfully violated section 6106.3, subdivision (a), by violating Civil Code section 2944.7, subdivision (a), when he collected \$1,500 from the client before he had fully performed each and every service he had been contracted to perform or represented that he would perform.

Count 6 – 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 the State Bar's August 25, 2015 letter.

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.

⁴ Section 6106.3, subdivision (a), provides that an attorney's conduct in violation of Civil Code section 2944.6 or 2944.7 constitutes cause for the imposition of discipline.

(2) Respondent had actual notice of this proceeding and had adequate notice of the trial date prior to the entry of his default.

(3) The default was properly entered under rule 5.81.

(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.

(5) Despite adequate notice and opportunity, respondent failed to appear for the trial of this disciplinary proceeding.

As set forth in the Rules of Procedure of the State Bar, the court recommends his disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent **Anthony R. Sales**, State Bar number 218193, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to Ezequiel Garcia in the amount of \$1,500 plus 10 percent interest per year from January 1, 2015.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

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 **Anthony R. Sales**, State Bar number 218193, 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: October 6, 2016


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 October 6, 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:

ANTHONY R. SALES
2333 W MARCH LN STE C2
STOCKTON, CA 95207

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

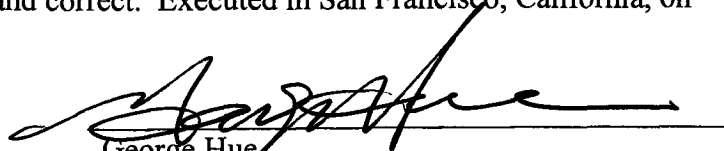
by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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 October 6, 2016.


George Hue
Case Administrator
State Bar Court