



PUBLIC MATTER

FILED

JUL 11 2017

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos. 15-O-15835
)	(16-O-10596)-DFM
KENNETH WILLIAM SZALONEK,)	
)	DECISION AND ORDER OF
A Member of the State Bar, No. 228803.)	INVOLUNTARY INACTIVE
)	ENROLLMENT

Respondent Kenneth William Szalonek (Respondent) is charged with violations of the Business and Professions Code¹ and the State Bar Rules of Professional Conduct. He failed to participate, either in person or through counsel, 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.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

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).)

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 2, 2003, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 31, 2016, the State Bar filed and properly served the 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.) The return receipt was not returned to the State Bar.

However, the State Bar took additional steps to notify Respondent of the proceeding. On November 17, 2016, Senior Trial Counsel Kim Kasreliovich (the STC) made efforts to reach Respondent by conducting a LexisNexis search for Respondent. The search yielded two additional possible addresses, two additional possible email addresses, and one additional possible phone number for Respondent.

Consequently, on November 22, 2016, a courtesy copy of the NDC was sent to Respondent by regular first class mail at his membership records address and to the two alternate addresses, which had been discovered through the LexisNexis search. The copies of the NDC, which were sent by regular first class mail, were not returned by the U.S. Postal Service.

The STC also emailed the NDC to each of the two alternate email addresses, which were found through the LexisNexis search, but to no avail. Finally, the STC tried to reach Respondent at his official membership telephone number. The membership records phone number was answered by a voicemail, which indicated that the mailbox was full; and, therefore, the STC was

unable to leave a message. The STC also called another possible number for Respondent, identified through her LexisNexis search, but received only fax sounds and so was unable to leave a message.

Despite the aforementioned efforts by the State Bar, Respondent failed to file a response to the NDC. Consequently, on December 14, 2016, the State Bar filed and properly served a motion for entry of Respondent's default. The motion complied with all of the requirements for a default, including a supporting declaration of reasonable diligence by the STC. (Rule 5.80.) The motion 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 January 3, 2017. The order also placed Respondent on involuntary inactive status 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. The order entering the default and enrolling Respondent inactive was served on Respondent at his membership records address by certified mail, return receipt requested.

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].) As a result, on April 13, 2017, 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) the State Bar has not had any contact with Respondent since his default was "served;"⁴ (2) there is one non-public disciplinary matter pending against Respondent; (3) Respondent does not have a prior record of discipline; and (4) the Client

⁴Rule 5.85(a)(1) requires that Office of the Chief Trial Counsel (State Bar) must file a petition supported by a declaration stating whether the respondent has had any contact with the State Bar since the default was "entered." In this matter, the STC's declaration in support of the petition for disbarment states that Respondent had not contacted her or the State Bar since the order of entry of default was "served." However, in the body of the petition for disbarment, the STC wrote that Respondent had failed to contact the State Bar since the default was "entered." As the default was both "entered" and "served" on the same date, the error in the declaration is de minimis.

Security Fund has not paid out 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 May 10, 2017.

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.) As set forth below in greater detail, the factual allegations in the NDC 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-O-15835 (Elmasri Matter)

Count One – Respondent, who was retained by Fawaz Elmasri (Elmasri) to review Elmasri's assets and liabilities for the purpose of determining whether bankruptcy would be the appropriate course of action for Elmasri, willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by recklessly: (1) filing a Chapter 7 bankruptcy petition instead of filing a Chapter 11 bankruptcy petition, causing Elmasri's gas station to be seized and put up for sale; (2) failing to appraise Elmasri's assets prior to filing the bankruptcy petition, which led to a significant undervaluation of Elmasri's gas station; (3) failing to provide Elmasri with the bankruptcy schedules for Elmasri's review prior to filing for bankruptcy; and (4) failing to obtain Elmasri's signature on the bankruptcy petition.

Count Two – Respondent, whose employment with his client, Elmasri, had terminated on January 7, 2015, willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to promptly release the client's file to the client upon the client's October 27, 2015 request for that file.

Count Three – Respondent, willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (maintain records of client property/render appropriate accounts) following the termination of his employment with his client, Elmasri, on January 7, 2015, by failing to render an appropriate accounting to his client regarding the \$1,790 of advanced fees Respondent received from his client on October 29, 2014.

Count Four – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to promptly refund, upon Respondent's termination of employment, any part of the above \$1,790 advanced fee, although Respondent had, in fact, earned no part of that advanced fee.

Count Five – Respondent willfully violated section 6106 (moral turpitude – misrepresentation) by falsely representing to the Bankruptcy Court that his client, Elmasri had reviewed and signed the bankruptcy schedules, when Respondent knew, or was grossly negligent in failing to know, that he had not shown the schedules to Elmasri and, instead, had signed the schedules himself without Elmasri's consent.

Count Six – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate), by failing to provide a substantive response to State Bar's letters of December 30, 2015, and February 9, 2016, which letters he received and which requested his response to allegations of misconduct being investigated in the instant matter, i.e., case No. 15-O-15835.

Case Number 16-O-10596 (Sternquist Matter)

Count Seven – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by repeatedly and recklessly failing to take any action to stop or delay the foreclosure of the real property of Michael Sternquist and DeAnna Sternquist (the Sternquists) after having been being retained on October 3, 2014, to represent them in a pending foreclosure matter for the specific purpose of taking action to stop or delay the foreclosure of their real property.

Count Eight – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct by failing to promptly release to the Sternquists all of their client papers and property after his employment with them had terminated on January 20, 2016, and after they had requested their client file on January 12 and 20, 2016.

Count Nine – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct following Respondent's termination of employment on January 20, 2016, by failing to render an appropriate accounting to his clients regarding the \$8,000 of advanced legal fees Respondent had received from them between October 3, 2014, and January 12, 2016.

Count Ten – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to promptly refund upon Respondent's termination of employment on January 20, 2016, any part of the \$8,000 of advanced fees he had received from his clients although Respondent had not earned any part of that fee.

Count Eleven – Respondent willfully violated section 6106 (moral turpitude – misrepresentation) when he made misrepresentations to his clients by stating in writing to the clients on March 11, 2015, April 1, 2015, and on January 7, 2016, that a request to rescind the foreclosure sale of their real property was under review by Wells Fargo, when Respondent knew, or was grossly negligent in not knowing, that the statements he made to his clients were false.

Count Twelve – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar's letter of March 8, 2015, which he received and which requested his response to the allegations of misconduct being investigated in the instant matter, i.e., case No. 16-O-10596.

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;
- (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
- (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 **Kenneth William Szalonek**, State Bar number 228803, 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 the following payees:

- (1) Fawaz Elmasri in the amount of \$1,790 plus 10 percent interest per year from October 29, 2014; and
- (2) Michael Sternquist and DeAnna Sternquist in the amount of \$8,000 plus 10 percent interest per year from January 12, 2016.

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 and that the costs be 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 **Kenneth William Szalonek**, State Bar Number 228803, 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: July 10, 2017



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 July 11, 2017, 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:

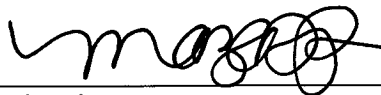
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

KENNETH W. SZALONEK
212 E ROWLAND ST #126
COVINA, CA 91723

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

KIMBERLY G. KASRELIOVICH, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 11, 2017.



Mazie Yip
Case Administrator
State Bar Court