

# PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

FILED

MAY 05 2017

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

In the Matter of	)	Case Nos. 16-O-10353-CV
	)	16-O-12525 (Cons.)
CODY JAY BROWNSTEIN,	)	
	)	DECISION AND ORDER OF
A Member of the State Bar, No. 269551.	)	INVOLUNTARY INACTIVE
	)	ENROLLMENT
	)	

In this matter, respondent Cody Jay Brownstein was charged with eleven counts of misconduct stemming from two consolidated matters. Respondent failed to appear at trial and his default was entered. The Office of Chief Trial Counsel (OCTC) of the State Bar of California filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

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 within 45 days, OCTC will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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.

<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>2</sup> 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**

Respondent was admitted to practice law in this state on May 21, 2010, and has been a member since then.

### **Procedural Requirements Have Been Satisfied**

On September 9, 2016, OCTC filed and properly served a notice of disciplinary charges (NDC), in case no. 16-O-10353, on respondent at his membership records address by certified mail, return receipt requested. The NDC notified respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.41.) On October 3, 2016, respondent filed his response to the NDC.

On October 18, 2016, OCTC filed and properly served a second NDC, in case no. 16-O-12525, on respondent at his membership records address by certified mail, return receipt requested. The second NDC again notified respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. On November 7, 2016, respondent filed his response to the second NDC. The two NDCs were later consolidated.

Respondent participated in the initial status conference in this matter, but did not subsequently file a pretrial statement or appear at the pretrial conference. On January 10, 2017, OCTC appeared for trial but respondent did not. Finding that all of the requirements of rule 5.81(A) were satisfied, the court issued and properly served an order entering respondent's default that same day. The order notified respondent that if he did not timely move to set aside or vacate his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), and he has remained inactive 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 March 2, 2017, OCTC filed the petition for disbarment. As required by rule 5.85(A), OCTC reported in the petition that: (1) it has not had any contact with respondent since his default was entered; (2) respondent has no other disciplinary matters pending in investigation; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made payments resulting from 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 March 29, 2017.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of respondent's default, the factual allegations in the NDCs 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 NDCs support the conclusion that respondent is culpable as charged, except as otherwise noted, and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

#### **Case Number 16-O-10353**

Count One – the court does not find respondent culpable of willfully violating Rules of Professional Conduct, rule 3-110(A) (failure to perform) as there is no clear and convincing evidence that respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.<sup>3</sup>

Count Two – respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failing to promptly pay client funds) by failing to promptly pay out funds, in the amount of \$25,000, in respondent's possession which his clients were entitled to receive.

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<sup>3</sup> The act of failing to appear at a single hearing does not establish, by clear and convincing evidence, that respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

Count Three – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to maintain client funds in trust) by failing to maintain funds received for the benefit of his clients in a trust account.

Count Four – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to account) by failing to provide his clients with an accounting upon termination of employment.

Count Five – respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating client funds in the amount of \$24,361.

Count Six – 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 OCTC.

**Case Number 16-O-12525**

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to perform any of the services for which he was retained by his client.

Count Two – respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to respond to client inquiries) by failing to promptly respond to numerous reasonable client status inquiries.

Count Three – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to promptly refund unearned advanced fees.

Count Four – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to account) by failing to provide his client with an accounting upon termination of employment.

Count Five – 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 OCTC.

### **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 NDCs were 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 filed a response to both NDCs and appeared for the initial status conference;
- (3) the default was properly entered under rule 5.81; and
- (4) the factual allegations in the NDCs deemed admitted by the entry of 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 appear for trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

## **RECOMMENDATION**

### **Disbarment**

The court recommends that respondent Cody Jay Brownstein 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) Mikayel Mikayelyan and Artur Mikayelyan in the amount of \$25,000 plus 10 percent interest per year from April 29, 2014; and
- (2) Yakub Mulayev in the amount of \$600 plus 10 percent interest per year from March 17, 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 of California 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 Cody Jay Brownstein, State Bar number 269551, 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: May 5, 2017

  
CYNTHIA VALENZUELA  
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 May 5, 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:

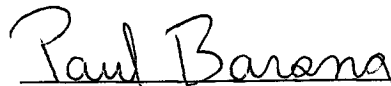
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**CODY J. BROWNSTEIN  
LAW OFFICES OF CODY J. BROWNSTEIN  
8726 S SEPULVEDA BLVD STE D  
# 289  
LOS ANGELES, CA 90045**

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

**RONALD K. BUCHER , Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 5, 2017.



Paul Barona  
Case Administrator  
State Bar Court