

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-O-15835-RAP
)	
DANIEL LARS PEARSON,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 157206,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Daniel Lars Pearson (respondent) was charged with three counts of misconduct stemming from one client matter. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

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 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² 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(E)(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 18, 1991, and has been a member since then.

Procedural Requirements Have Been Satisfied

On January 28, 2013, 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 returned to the State Bar signed by “Gabriella Santilla.”³

Thereafter, the State Bar: (1) attempted to reach respondent twice by telephone at his official membership records telephone number; and (2) sent written correspondence and a pleading to respondent at his official membership records address, by certified mail, return receipt requested.⁴

Respondent failed to file a response to the NDC. On March 11, 2013, the State Bar filed and properly served a motion for entry of respondent’s default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel 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

³ See Declaration of Rizamari C. Sitton attached to the State Bar’s motion for entry of respondent’s default.

⁴ On the same day the NDC was filed, a State Bar investigator telephoned an alternate telephone number and sent a letter to an alternate address for respondent located through internet and database inquiries.

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 May 20, 2013. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested.⁵ 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.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On November 25, 2013, the State Bar filed and properly served the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since March 28, 2013, before his default was entered was entered on May 20, 2013; (2) there are three investigation matters and one disciplinary matter pending against respondent; (3) respondent has no record of prior discipline; and (4) the Client Security Fund (CSF) has not made any payments resulting from respondent's conduct. 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 January 14, 2014.

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(E)(1)(d).)

⁵ The return receipt for the order entering default was returned to the State Bar Court, but the signature was not legible.

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Count One – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account), by failing to maintain entrusted client funds in his client trust account on several dates over a several year period.

Count Two - Respondent willfully violated section 6106 (moral turpitude), by misappropriating at least \$243,592.68⁶ of client funds from his client trust account.

Count Three - Respondent willfully violated section 6068, subdivision (i) of the Business and Professions Code (failure to cooperate), by failing to provide a written response to the State Bar investigator's letter and by not otherwise communicating with the State Bar.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) 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, as the State Bar (1) filed and properly served the NDC on respondent;
- (2) attempted to contact respondent by telephone on two occasions at his membership records telephone number; and (3) sent written correspondence and a pleading to respondent at his membership records address by certified mail, return receipt requested;⁷
- (3) the default was properly entered under rule 5.80; and

⁶ The NDC alleges this figure as \$243,592.67, but a review of the factual allegations and after calculating the amounts set forth in the NDC, the correct figure is \$243,592.68.

⁷ On the same day the NDC was filed, the State Bar telephoned an alternate telephone number and sent a letter to an alternate address for respondent.

(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.

RECOMMENDATION

Disbarment

The court recommends that respondent Daniel Lars Pearson 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 recommends that respondent be ordered to make restitution to Reliable Trust Deed Services, Inc. in the amount of \$243,592.68, plus 10 percent interest per year from December 31, 2008.

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.

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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 Daniel Lars Pearson, State Bar number 157206, 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: January 28, 2014

RICHARD A. PLATEL
Judge of the State Bar Court