

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of)	Case No. 06-N-10280-JMR
PHILIP HARVEY BUDA,)	
Member No. 83369,)	DECISION AND ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT

I. Introduction

In this default matter, respondent **PHILIP HARVEY BUDA** is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 955,¹ as ordered by the California Supreme Court on November 3, 2005, in case No. S136730 (State Bar Court case No. 03-O-02802 et al. (Cons.)).

The court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

This proceeding was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar). The Notice of Disciplinary Charges (NDC) was filed and properly served via certified mail, return receipt requested, on respondent at his official membership records address (official address) on February 22, 2006. The mailing was returned as undeliverable.

On March 13, 2006, the State Bar sent courtesy copies to respondent at 1000 Continentals Way, Apt. 110, Belmont, CA 94002-3127, and at 3 Scudder Ave., Kingston, NY 12401-47201. The courtesy copies were not returned as undeliverable.

The State Bar also attempted to reach the respondent by telephone on March 13, 2006, by

¹All references to rule 955 are to California Rules of Court, rule 955.

calling him at his official membership records number and an alternative number contained in respondent's case file. A message at respondent's official membership records number was that of a male voice, but did not provide a name. The State Bar left a message at that number, informing respondent that the NDC had been filed and providing the case number and a phone number for respondent to call. The State Bar also tried to reach respondent at the alternative phone number, but it had been disconnected.

Additionally, the State Bar called directory assistance for the area that includes respondent's official membership records address and asked for all listings for respondent. Directory assistance had a listing for respondent which the State Bar had not previously tried. However, the receptionist at that phone number stated that no one by the name of Philip Buda worked there since she had started working at that office four years prior.

The State Bar also checked Parker's Directory. However, it did not have any address for respondent of which the State Bar was not already aware.

On March 20, 2006, the State Bar left a message for respondent's defense counsel in an underlying criminal case. On March 21, 2006, respondent's defense counsel returned the State Bar's call. He provided the State Bar with a home phone number and a cell phone number, which is respondent's official membership records number. The home number was disconnected. The State Bar again called the official membership records number and left a detailed message, stating that the current matter would proceed by default and likely lead to disbarment, if respondent did not respond.

At 5:51 p.m., on March 21, 2006, respondent left a message at the State Bar, stating that he had received the message the State Bar had left earlier that day, and that he would try to call again the following day. The State Bar returned respondent's call on March 22 or March 23, 2006. Since the respondent left his message with the State Bar on March 21, 2006, it has had no further contact with respondent. The State Bar did, however, attempt to locate respondent using a computer search, but was unsuccessful.

On motion of the State Bar, respondent's default was entered on April 19, 2006. The order of entry of default was properly mailed to respondent's official address. Respondent was enrolled

as an inactive member under Business and Professions Code section 6007(e)² on April 22, 2006.

Respondent never filed a response to the NDC. (Rules Proc. of State Bar, rule 103.)

Respondent did not participate in the disciplinary proceedings. The court took this matter under submission on May 9, 2006, following the filing of the State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on November 29, 1978, and has been a member of the State Bar since that time.

B. Violation of California Rules of Court, Rule 955

On November 3, 2005, in case No. S136730 (State Bar Court case No. 03-O-02802 et al. (Cons.)), the California Supreme Court suspended respondent from the practice of law for one year, stayed the execution of the suspension, and actually suspended respondent for 90 days and until the State Bar Court grants a motion to terminate his actual suspension under rule 205 of the Rules of Procedure of the State Bar. Among other things, the Supreme Court ordered respondent to comply with rule 955, subdivisions (a) and (c), within 30 and 40 days respectively, after the effective date of the Supreme Court order. The order became effective December 3, 2005, and was duly served on respondent.

Rule 955(c) mandates that respondent "file with the Clerk of the State Bar Court an affidavit showing that he . . . has fully complied with those provisions of the order entered pursuant to this rule."

On November 3, 2005, the Office of the Clerk of the California Supreme Court served upon

²All references to sections are to the Business and Professions Code, unless otherwise indicated.

respondent a copy of the Supreme Court order imposing discipline and directing respondent to comply with rule 955.

On November 10, 2005, the State Bar's Office of Probation wrote a letter to respondent reminding him of his obligation to comply with rule 955.

Respondent was to have filed the rule 955 affidavit by January 12, 2006, but to date, he has not done so, and has offered no explanation to this court for his noncompliance. Whether respondent is aware of the requirements of rule 955 or of his obligation to comply with those requirements is immaterial. "Wilfulness" in the context of rule 955 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred attorneys whose failure to keep their official address current prevented them from learning that they had been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Therefore, the State Bar has established by clear and convincing evidence that respondent wilfully failed to comply with rule 955 as ordered by the Supreme Court.³

C. Violation of Business and Professions Code Section 6103

Accordingly, respondent's failure to comply with rule 955 constitutes a violation of section 6103, which requires attorneys to obey court orders and provides that the wilful disobedience or violation of such orders constitutes cause for disbarment or suspension.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating evidence was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁴

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent has two prior records of discipline. (Std. 1.2(b)(i).)

³Specifically, rule 955(d) provides that a suspended attorney's wilful failure to comply with rule 955 constitutes cause for disbarment or suspension and for revocation of any pending probation.

⁴All further references to standards are to this source.

1. In Supreme Court case No. 85-I-30 (State Bar Court case No. 85-2-155 SM), respondent was publicly reprovved for violations of former rules 6-101(2), 2-111(A)(2,) and sections 6068(a) and 6103 in one client matter. Not much weight is given to this disciplinary record as it is 20 years old. (*In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96, private reprovval more than 20 years earlier was too remote in time to merit significant weight on the issue of degree of discipline.)
2. In the underlying matter, the Supreme Court ordered that respondent be suspended from the practice of law for one year, stayed, and that he be actually suspended from the practice of law for 90 days and until he complies with rule 205 of the Rules of Procedure of the State Bar. His misconduct involved three client matters, failure to perform legal services competently, improper withdrawal from representation, failure to cooperate with the State Bar, failure to support the laws of this state by engaging in the unauthorized practice of law, an act involving moral turpitude, the charging of an illegal fee, failure to maintain a current address with the State Bar, and failure to communicate with a client.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by failing to comply with rule 955(c) even after the NDC in the instant proceeding was filed. (Std. 1.2(b)(v).)

Respondent's failure to participate in this disciplinary matter prior to the entry of his default is a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

Respondent's wilful failure to comply with rule 955(c) is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such failure undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar*, (1988) 45 Cal.3d 1181, 1187.) Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although he has been

given opportunities to do so. Moreover, he has failed to participate in the underlying matter and in the instant case.

Therefore, respondent's disbarment is necessary to protect the public, the courts and the legal community, to maintain high professional standards and to preserve public confidence in the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his wilful disobedience of the Supreme Court order.

VI. Recommended Discipline

The court recommends that respondent **Philip Harvey Buda** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with California Rule of Court, rule 955, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.

VII. Costs

The court recommends that costs be awarded to the State Bar in accordance with section 6086.10 and are enforceable both as provided in section 6140.7 and as a money judgment.

VIII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007(c)(4) and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: August 7, 2006

JOANN M. REMKE
Judge of the State Bar Court