

PUBLIC MATTER

FILED

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MAY 29 2018

STATE BAR COURT OF CALIFORNIA

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 10-C-02778-LMA
)	
JAMES STEWART RICHARDS,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 51410.)	ENROLLMENT
_____)	

Respondent James Stewart Richards (Respondent) was convicted of violating title 26 United States Code section 7201 (tax evasion), a felony for which probable cause exists to believe it involves moral turpitude or other misconduct warranting discipline. After finality of the conviction, the Review Department of the State Bar Court issued an order referring this matter to the hearing department for a hearing and decision recommending the discipline to be imposed. Respondent failed to appear at trial, and his default was entered. The Office of Chief Trial Counsel of the State Bar of California (OCTC) 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 appear in person or by counsel at trial, and the

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¹ Unless otherwise indicated, all references to rule(s) are to this source.

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.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 California on January 5, 1972, and has been a member since then.

Procedural Requirements Have Been Satisfied

On August 8, 2017, the State Bar Court filed and properly served on Respondent the notice of hearing on conviction (NOH) in case No. 10-C-02778 by certified mail, return receipt requested, to Respondent's membership records address. The NOH notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.345.) Respondent filed an answer to the NOH on August 28, 2017.

On October 23, 2017, the court held a status conference that Respondent attended telephonically. The court set the trial four days, commencing on February 6, 2018, at 9:30 a.m. On October 23, 2017, the court filed an order setting forth the forgoing trial date in this matter. The order was properly served on Respondent at Respondent's membership records address by first-class mail, postage prepaid.

Respondent failed to appear for trial on February 6, 2018; however, OCTC was in attendance. The court entered Respondent's default in an order filed on February 6, 2018. The order was properly served on Respondent at Respondent's membership records address by

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(F)(2).)

certified mail, return receipt requested. (Rule 5.81(B).) 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 section 6007, subdivision (e),³ effective three days after service of the order, and Respondent has remained inactively enrolled since that time.

Respondent did not timely 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 April 3, 2018, OCTC filed and properly served the petition for disbarment on Respondent at his membership records address. As required by rule 5.85(A), OCTC reported in the petition that: (1) OCTC has had no contact with Respondent since the default was entered; (2) there are no disciplinary matters or disciplinary investigations pending against Respondent; (3) Respondent has one prior record of discipline; and (4) the Client Security Fund has not paid out any claims 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 May 1, 2018.

Prior Record of Discipline

Respondent has one prior record of discipline. Pursuant to a stipulation and order of the Hearing Department filed on June 10, 1993, Respondent received a private reproof with conditions. Respondent stipulated that his misconduct in the state of Hawaii was conclusive evidence that he was culpable of professional misconduct in California. The facts and circumstances of the misconduct in Hawaii demonstrated that Respondent willfully violated rule 3-110(A) (failing to perform with competence) of the Rules of Professional Conduct.

³ All further references to sections are to the Business and Professions Code.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default, the factual allegations set forth in OCTC's statement of facts and circumstances surrounding Respondent's conviction are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.346(D).) As set forth below in greater detail, Respondent's conviction of tax evasion supports 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 10-C-02778 - (Conviction Matter – 26 U.S.C. § 7201)

Respondent was convicted of violating title 26 United States Code section 7201. From April 1995 through 2004, Respondent owed federal income taxes totaling \$177,575. During that time, Respondent filed false federal income tax returns with the intention to evade paying taxes owed to the Internal Revenue Service (IRS). The IRS made numerous attempts to collect owed taxes from Respondent. Beginning November 2000 through May 2005, the IRS pursued a civil action against Respondent to collect unpaid taxes for tax years 1994 through 1999. As taxes became due, the IRS sought to collect payment of taxes for tax years 2000, 2001, 2002, and 2003.

Between 2000 through 2001, an Internal Revenue Officer (RO) met, had telephone conversations, and exchanged letters with Respondent regarding taxes owed for the tax years 1993 through 1997. On July 2, 2001, Respondent filed a Collection Information Statement accompanying an Offer in Compromise, under penalty of perjury, wherein he concealed his ownership interest of six rental properties and two Wells Fargo bank accounts, one of which held more than \$8,000 as of June 2001.

On October 9, 2002, Respondent opened a L.A.P. Bypass Trust Account (Nominee Account) associated with a client's lawsuit. Although the client's case settled and settlement

funds were disbursed, Respondent did not close the Nominee Account. From October 2002 through January 2005, Respondent used the Nominee Account to conceal his own assets. For instance, on June 1, 2004, Respondent sold a condominium he owned and wire transferred approximately \$235,410 of the sale proceeds into the Nominee Account. The next day, Respondent withdrew approximately \$100,000 from the Nominee Account in form of a cashier's check.

Upon discovering the Nominee Account, the RO mailed a summons to Wells Fargo Bank pertaining to the account on December 29, 2004. The bank informed Respondent of the summons which triggered Respondent to engage in a series of acts to conceal the Nominee Account and the assets therein from the IRS. On January 11, 2005, Respondent contacted the bank and requested the bank not to disclose any records to the IRS. That same day, Respondent withdrew approximately \$100,000 and purchased five cashier's checks in the amount of \$20,000 each.

On March 30, 2005, the RO sent Respondent a final notice of taxes due for tax years 2001 through 2002 including tax years 1993 through 1999. On May 18, 2005, Respondent submitted a Collection Information Statement for Wage Earners and Self-Employed Individuals, under penalty of perjury, falsely representing to the RO that Respondent had approximately \$300 in cash when in fact he had at least \$60,000 in cashier's checks. In July 2005, Respondent used his funds to purchase a yacht for \$92,000. By January 2006, the yacht was registered and titled in the name of another individual in an attempt to conceal the asset from the IRS.

On November 15, 2005, Respondent falsely represented to a bankruptcy court and to the IRS in a creditor's meeting that Respondent had paid approximately \$90,000 to the IRS in 2003. Respondent further stated that he never had a checking account in El Dorado Savings Bank, that

he did not own a yacht, and that he did not have knowledge of any withdrawals in 2005 from the Nominee Account.

Furthermore, from February 2002 through June 2007, Respondent purchased at least 14 cashier's checks in amounts ranging from approximately \$10,000 to \$145,000 in an attempt to avoid paying his federal income taxes.

On May 10, 2015, Respondent entered into a plea agreement with the United States Attorney's Office for the Eastern District of California wherein Respondent pled guilty to one count of tax evasion under title 26 United States Code section 7201. As a result of the conviction, Respondent was sentenced to a 24-month prison term in federal prison.

The court finds that the facts and circumstances surrounding Respondent's conviction involve moral turpitude because they involve intentional misrepresentations and dishonesty, as well as, concealment. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 910 [moral turpitude "includes creating a false impression by concealment as well as affirmative misrepresentations"]; *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786 [misrepresentations made in writing under penalty of perjury constitute acts of moral turpitude]; *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 220-221 [moral turpitude involves acts of dishonesty, including intentional misrepresentation].)

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 NOH was properly served on Respondent under rule 5.25;
- (2) Respondent had actual notice of this proceeding and was properly given notice of the trial date before the entry of the default;

(3) the default was properly entered under rule 5.81; and

(4) the factual allegations in the statement of facts and circumstances surrounding

Respondent's conviction 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 and 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 Respondent's disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent James Stewart Richards, State Bar number 51410, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

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 James Stewart Richards, State Bar number 51410, 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 29, 2018



LUCY ARMENDARIZ
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 Court Specialist 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 May 29, 2018, 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:

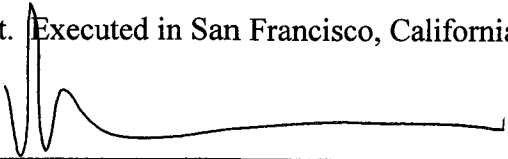
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JAMES STEWART RICHARDS
C/O SUSAN COUCH
2605 BELBURN PL
SIMI VALLEY, CA 93065

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

Jamie J. Kim, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 29, 2018.



Vincent Au
Court Specialist
State Bar Court