

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-O-16490-YDR
)	
DANIEL KRISTOF LAK,)	
)	DECISION AND ORDER OF
Member No. 216983,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	
_____)	

Respondent Daniel Kristof Lak (“Respondent”) was charged with six counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ He failed to appear at the trial of this case 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.²

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

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.

within 45 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.³

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 December 3, 2001, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 30, 2014, the State Bar properly filed and served a notice of disciplinary charges ("NDC") on Respondent. The NDC notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation.

Respondent filed his response to the NDC on May 20, 2014.

By order filed September 2, 2014, the trial was set to start on November 17, 2014, and this matter was consolidated with another matter, case No. 14-O-04073. The order setting the trial date was served on Respondent's membership records address by first-class mail, postage paid. (Rule 5.81(A).) The State Bar appeared for trial but Respondent did not.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered Respondent's default by order filed November 17, 2014. 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

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).)

Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled 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].)

By order filed December 1, 2014, the court severed case No. 14-O-04073 from this matter.

On February 4, 2015, the State Bar properly filed and served the petition for disbarment on Respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) there are 10 other disciplinary matters pending against Respondent; (3) Respondent has two records of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of Respondent's misconduct but there are two applications for reimbursement currently pending.

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 9, 2015.

Respondent has been disciplined on two prior occasions.⁴ Pursuant to a Supreme Court order filed on May 31, 2013, Respondent was suspended for two years, the execution of which was stayed, and placed on probation for three years subject to conditions including that he be suspended from the practice of law for 60 days. Respondent was culpable of commingling his client trust account with his funds and issuing insufficiently funded checks. Respondent and the State Bar entered into a stipulation in this matter.

⁴ The court admits into evidence the certified copies of Respondent's prior records of discipline that were attached to the State Bar's February 4, 2015 petition for disbarment after default.

Pursuant to a Supreme Court order filed on November 25, 2014, Respondent was suspended for three years, the execution of which was stayed, and placed on probation for four years subject to conditions including that he be actually suspended from the practice of law for a minimum of the first two years of probation and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. Respondent was culpable of eight counts of misconduct in three matters, including failing to perform legal services with competence; failing to inform a client of significant developments; moral turpitude – misrepresentation to a client; failing to render accounts of client funds; practicing law while suspended; misusing a client trust account; failing to maintain respect for the court; and seeking to mislead a judge.

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(F)(1)(d).)

Case No. 13-O-16490 (Sullivan Matter)

Count 1 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to properly prepare and file the necessary documents to incorporate Daniel Sullivan's business.

Count 2 – Respondent willfully violated section 6068, subdivision (m) (failure to respond to reasonable client status inquiries and to inform client of significant development), by failing to inform his client that the Secretary of State had rejected the Articles of Incorporation because the

documents contained an error and that he was not entitled to practice law while he was representing Sullivan.

Count 3 – Respondent willfully violated section 6106 (moral turpitude) by making multiple misrepresentations to his client and the client's general counsel regarding the incorporation of the client's business.

Count 4 – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to return any portion of the \$1,295 unearned attorney fees to Daniel Sullivan.

Count 5 – Respondent willfully violated sections 6125 and 6126 (unauthorized practice of law) and thereby violated section 6068, subdivision (a) (support the laws of the State of California), by holding himself out as entitled to practice law and actually practicing law when he was not an active member of the State Bar of California and not entitled to practice law from May 22 to June 14, 2013, and from June 30 to September 17, 2013 (Respondent's termination of employment).

Count 6 – Respondent willfully violated section 6106 by holding himself out as entitled to practice law and actually practicing law when he was not entitled to practice law, thereby committing an act involving moral turpitude.

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) Respondent had actual notice of this proceeding and had adequate notice of the trial date prior to the entry of his default.
- (3) The default was properly entered under rule 5.81.

(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.

(5) Despite adequate notice and opportunity, Respondent failed to appear for the trial of this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends his disbarment.

RECOMMENDATION

Disbarment

The court recommends that Respondent Daniel Kristof Lak, State Bar number 216983, 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 Daniel Sullivan in the amount of \$1,295 plus 10 percent interest per year from September 17, 2013. 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, 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 Kristof Lak, State Bar number 216983, 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 21, 2015

YVETTE D. ROLAND
Judge of the State Bar Court