

# PUBLIC MATTER

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SEP 11 2017

STATE BAR COURT  
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No. 15-O-15474-DFM
	)	
JOHN THOMAS DZIALO,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 159996.	)	ENROLLMENT
_____	)	

Respondent John Thomas Dzialo (Respondent) was charged with violations of the Business and Professions Code<sup>1</sup> and the State Bar Rules of Professional Conduct. He failed to participate, either in person or through counsel, and his default was entered. The Office of Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>2</sup>

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 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>3</sup>

<sup>1</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

<sup>2</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>3</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).)



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**

### **Jurisdiction**

Respondent was admitted to practice law in this state on October 29, 1992, and has been a member since then.

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

On February 13, 2017, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at his membership records address. A courtesy copy of the NDC was also served on Respondent by e-mail to an e-mail address that was contained in Respondent's case file.<sup>4</sup> The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The State Bar, on February 27, 2017, received a return receipt signed by Terri Risley<sup>5</sup> on February 22, 2017.

Thereafter, Senior Trial Counsel Murray B. Greenberg received an e-mail on February 13, 2017, from Respondent, indicating "I will not contest your charges, and I will not participate, in any fashion, in the process."<sup>6</sup>

Respondent failed to file a response to the NDC. On March 27, 2017, 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 assigned senior trial counsel. (Rule 5.80.) The motion notified Respondent that, if he did not

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<sup>4</sup> Effective February 1, 2010, all attorneys are required to maintain a current e-mail address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

<sup>5</sup> There is no evidence as to how this person is connected, if in any way, to Respondent.

<sup>6</sup> Declaration of Murray B. Greenberg, attached to the State Bar's motion for entry of Respondent's default, page 5, lines 21-22.

timely move to set aside his default, the court would recommend his disbarment. Respondent still did not file a response to the motion, and his default was entered on April 12, 2017. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar pursuant to section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time. The order entering the default and enrolling Respondent inactive was served on Respondent at his membership records address by certified mail, return receipt requested.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On July 24, 2017, the State Bar filed and properly served a petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had any contact from Respondent since his default was entered; (2) there are no other disciplinary matters pending against Respondent; (3) Respondent does not have a prior record of discipline; and (4) the Client Security Fund has not paid out any claims as a result of Respondent's misconduct. 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 August 21, 2017.

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

Upon entry of a 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(2).) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged, except as indicated, and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

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**Case Number 15-O-15474 (Agalos Matter)**

Count One - This count charges Respondent with willfully violating rule 3-300 of the State Bar Rules of Professional Conduct (avoiding interests adverse to a client) “[b]y knowingly acquiring an ownership adverse to his client.” However, the State Bar failed to prove by clear and convincing evidence that Respondent acquired an “ownership” interest in Respondent’s funds.<sup>7</sup> The State Bar, therefore, failed to prove by clear and convincing evidence that Respondent willfully violated rule 3-300 of the State Bar Rules of Professional Conduct, and count one is dismissed with prejudice.

Count Two – Respondent willfully violated rule 4-100(A) of the State Bar Rules of Professional Conduct (failure to maintain client funds in trust account) by failing to maintain \$7,475 in client funds in his client trust account.

Count Three – Respondent willfully violated section 6106 (moral turpitude) by misappropriating, for his own purpose, \$7,475 of his client’s funds that his client was entitled to receive.

Count Four – Respondent willfully violated rule 3-700(D)(1) of the State Bar Rules of Professional Conduct (failure to return client papers/property) by failing to promptly release to his client or his client’s new attorney, his client’s files following his client’s request for his files, through his new attorney, on numerous occasions.

**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;

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<sup>7</sup> While the NDC alleges that Respondent was “allegedly told” that his client, Agalos, had authorized a loan to Respondent of \$40,000, the NDC then alleges that Agalos did not authorize the loan.

(2) reasonable diligence was used to notify Respondent of the proceedings prior to the entry of his default, and Respondent had actual notice of this proceeding;

(3) the default was properly entered under rule 5.80; and

(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 actual and 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.

## **RECOMMENDATIONS**

### **Disbarment**

The court recommends that respondent John Thomas Dzialo, State Bar number 159996, 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 James Agalos in the amount of \$7,475, plus 10 percent interest per year from September 30, 2015. 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 John Thomas Dzialo, State Bar number 159996, 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: September 11, 2017



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DONALD F. MILES  
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 September 11, 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:

JOHN T. DZIALO  
LAW OFFICE OF JOHN THOMAS DZIALO  
200 W SANTA ANA BLVD  
STE 900  
SANTA ANA, CA 92701

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

MURRAY B. GREENBERG, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 11, 2017.



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Mazie Yip  
Case Administrator  
State Bar Court