



PUBLIC MATTER

FILED
JUN 14 2018
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

P.B.

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 16-O-15606-CV
)	
ART HOOMIRATANA,)	DECISION AND ORDER OF INVOLUNTARY
)	INACTIVE ENROLLMENT
)	
<u>A Member of the State Bar, No. 247253.</u>)	

Respondent Art Hoomiratana (Respondent) is charged, in a single count, with violating Business and Professions Code¹ section 6068, subdivision (k) [failure to comply with conditions of probation]. He failed to participate, either in person or through counsel in this proceeding, and his default was entered. The State Bar's Office of Chief Trial Counsel (OCTC) 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 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)

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¹ All statutory references are to the Business and Professions Code.

² Except where otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar.

and if the attorney fails to have the default set aside or vacated within 90 days, OCTC 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 5, 2006, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

OCTC originally filed and served on Respondent the NDC in this proceeding on March 13, 2017. Thereafter, Respondent failed to file a response to the NDC, and his default was entered on OCTC's motion. However, on October 11, 2017, the court filed an order in which it, inter alia, vacated the entry of Respondent's default because the due process requirements in rule 5.80(B) had not been met.

On October 27, 2017, the assigned Deputy Trial Counsel (the DTC) left Respondent a voicemail message on Respondent's private cell phone number and sent Respondent an email at Respondent's membership-records email address. In that email, the DTC stated, in part: "I am going to send you via certified mail a copy of the notice of disciplinary charges. Though I am required to send [a copy of the notice of disciplinary charges] to your membership records address, which is still the Pasadena [California] office, I would like to send you a copy to whatever Utah address at which you can receive mail. Would you please provide me with an address that I may use?" The DTC's October 27, 2017, email was not returned as undeliverable.

³ If the court determines that any due process requirement is 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).)

When Respondent failed to respond to the DTC's October 27, 2017, email, the DTC conducted an internet search to locate Respondent on November 3, 2017. The DTC believes that Respondent lives in Salt Lake City, Utah. During his search, the DTC discovered an email address that might belong to Respondent. That email address is hoomiratana@gmail.com. On November 3, 2017, the DTC sent an email to Respondent at hoomiratana@gmail.com stating: "I hope this is a correct email address for you. ... I am looking for an address where I can send official State Bar mail certified return receipt." Two minutes later, the DTC received a reply email from hoomiratana@gmail.com stating: "You can send them to 2106 e Parleys Terrace, Salt Lake City, ut 84109" (Respondent's Salt Lake City mailing address).

On November 3, 2017, OCTC properly re-served the NDC on Respondent at Respondent's membership-records address, which is in Pasadena, California, by certified mail, return receipt requested. On that same day, OCTC also sent courtesy copies of the NDC to Respondent (1) by certified mail, return receipt requested, to Respondent's Salt Lake City mailing address and (2) by email to hoomiratana@gmail.com. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

OCTC received return receipts for both the copy of the NDC that it served on Respondent at his membership-records address and the courtesy copy of the NDC that OCTC mailed to Respondent's Salt Lake City mailing address. The return receipt for the copy served on Respondent's membership-records address was signed by May Rosendale. The return receipt for the courtesy copy of the NDC sent to Respondent's Salt Lake City mailing address bears an unknown signature.

On November 14, 2017, the DTC sent an email to hoomiratana@gmail.com asking whether Respondent had received the NDC. On November 15, 2017, the DTC received a reply

email from hoomiratana@gmail.com, which states, in part: “Yes I have received it. Sorry about the delay, I will send it back to you here in the next few days.”

Respondent thereafter failed to file a response to the NDC. On November 30, 2017, OCTC filed and served a motion for entry of default on Respondent at his membership-records address by certified mail, return receipt requested. On that same day, OCTC also sent courtesy copies of the motion for entry of default to Respondent (1) by certified mail, return receipt requested, to Respondent’s Salt Lake City mailing address and (2) by email to hoomiratana@gmail.com.

The motion complied with all the requirements for a default, including a supporting declaration from the DTC that sets forth the additional steps that OCTC took in an attempt to provide notice to Respondent. (Rule 5.80.) The court finds that those additional steps establish that OCTC used reasonable diligence to notify Respondent of this proceeding. OCTC's motion for entry of default also notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment.

Respondent did not file a response to the motion for entry of default or to the NDC, and his default was properly entered on January 18, 2018. The order entering default was properly served on Respondent at his membership-records address by certified mail, return receipt requested. In addition, a courtesy copy of the court’s order was sent to Respondent at Respondent’s Salt Lake City mailing address by certified mail, return receipt requested.

In its January 18, 2018, order entering Respondent’s default, the court also ordered Respondent’s involuntary enrollment as an inactive member of the State Bar of California under section 6007, subdivision (e), effective three days after service of the order by mail.

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Accordingly, Respondent was involuntarily enrolled inactive on January 21, 2018, and Respondent has continuously been enrolled inactive under section 6007, subdivision (e) since that time.

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].) Thus, on April 25, 2018, OCTC filed and served a petition for disbarment on Respondent at his membership-records address by certified mail, return receipt requested. On that same day, OCTC also sent a courtesy copy of the petition for disbarment to Respondent by email to hoomiratana@gmail.com. OCTC did not send a courtesy copy of the petition for disbarment to Respondent's Salt Lake City mailing address presumably because the United States Postal Service returned, to OCTC, the courtesy copy of the motion for entry of default that was sent to that address marked "Unclaimed" and "Return to Sender – Not Deliverable as Addressed – Unable to Forward."

As required by rule 5.85(A), OCTC reported in the petition that: (1) Respondent has failed to contact OCTC after his default was entered on January 18, 2018; (2) there are two non-public matters pending against Respondent; (3) Respondent has two prior records of discipline; and (4) the Client Security Fund has not paid out any claims resulting from Respondent's misconduct, but there are four open matters pending with the fund.

Respondent did not respond to the petition for disbarment. On May 23, 2018, the court took OCTC's petition for disbarment under submission for decision.

Prior Record of Discipline

As OCTC reported, Respondent has been disciplined on two prior occasions. On April 28, 2015, the Supreme Court filed an order placing Respondent on one year stayed suspension and one year probation on conditions, including sixty days actual suspension. In that matter,

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Respondent stipulated to violating section 6106.3 (charging advanced fees in home-loan-mortgage-modification matters) and Rules of Professional Conduct, rules 3-110(A) (failure to perform legal services competently), 3-700(D)(2) (failure to refund unearned fees), and 4-100(B)(3) (failure to account).

On January 30, 2017, the Supreme Court filed an order placing Respondent on one year stayed suspension and two years' probation on conditions, including a minimum actual suspension of ninety days and until Respondent pays, in three separate client matters, restitution totaling \$45,000 plus interest. In that matter, Respondent stipulated again to having violated section 6106.3 and Rules of Professional Conduct, rules 3-110(A) and 3-700(D)(2).

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.) 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 Number 16-O-15606 (Probation Matter)

Count One: Respondent willfully violated section 6068, subdivision (k) (duty to comply with probation conditions) by failing to comply with all of the conditions of the one-year disciplinary probation that the Supreme Court imposed on him in its April 28, 2015, order in case number S224371 (State Bar Court case number 13-O-11222, etc.). Specifically, Respondent failed to timely submit four quarterly probation reports, failed to submit a final probation report, failed to pay restitution, failed to deposit disputed attorney's fees into a trust account, failed to submit proof that the disputed attorney's fees was maintained in a trust account; and failed to timely submit copies of fee arbitration awards.

Disbarment is Recommended

In light of the foregoing, the court finds that the requirements of rule 5.85(F) have been satisfied and that it is appropriate to recommend Respondent's disbarment. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) reasonable diligence was used to notify Respondent of this proceeding before the entry of his default;
- (3) Respondent's default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC deemed admitted by the entry of Respondent's 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 will recommend disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Art Hoomiratana 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 further recommends that respondent Art Hoomiratana 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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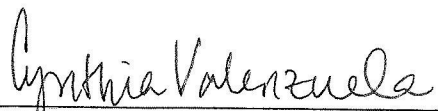
Costs

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be 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 Art Hoomiratana, State Bar number 247253, 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 by mail (rule 5.111(D)).

Dated: June 14, 2018.



CYNTHIA VALENZUELA
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 Los Angeles, on June 14, 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 Los Angeles, California, addressed as follows:

ART HOOMIRATANA
LAW OFFICES OF ART HOOMIRATANA
750 E GREEN ST STE 333
PASADENA, CA 91101

ART HOOMIRATANA
2106 E. PARLEYS TERRACE
SALT LAKE CITY, UT 84109

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

SCOTT D. KARPFF, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 14, 2018.



Paul Barona
Court Specialist
State Bar Court