

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case No.: **11-O-15899-PEM**
)
MICHAEL KENNETH BEYRIES,)
) **DECISION AND ORDER OF**
) **INVOLUNTARY INACTIVE**
Member No. 187562,) **ENROLLMENT**
)
A Member of the State Bar.)
_____)

Respondent Michael Kenneth Beyries (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 the Rules of Procedure of the State Bar which were in effect prior to July 1, 2014. Among other amendments, the default rules were amended effective July 1, 2014. However, as respondent's default was entered prior to July 1, 2014, the rules which were in effect prior to July 1, 2014, are the operative rules in this matter.

within 90 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 this state on February 3, 1997, and has been a member since then.

Procedural Requirements Have Been Satisfied

On July 19, 2012, the State Bar properly served on respondent and filed a notice of disciplinary charges (NDC).⁴ 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.

Trial dates were scheduled and continued four times at respondent's request: November 2012, March 2013, July 2013, and November 2013. Finally, at the November 18, 2013 status conference, this matter was ordered and set for trial for March 11, 2014, a fifth time. On March 11, 2014, the State Bar appeared for trial but respondent did not.⁵

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default by order filed March 11, 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

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(E)(2).)

⁴ On March 11, 2014, the State Bar filed amendments to the NDC.

⁵ Respondent's March 7, 2014 motion to dismiss is hereby denied for no good cause appearing.

also placed respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), and he has remained inactive since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On June 20, 2014, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since his default was entered; (2) there are no other investigations or disciplinary charges pending against respondent; (3) respondent has no record of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of respondent's misconduct. 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 July 16, 2014.

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 here support the conclusion that respondent is culpable of violating a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 11-O-15899 (Northbay Wellness Group Matter)

Count One – respondent willfully violated section 6106 (moral turpitude) by misappropriating Northbay Wellness Group's (NWG) \$25,000 legal defense for his own use and benefit.

Count Two – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform services competently, including, but not limited to, negotiating

an option to buy on NWG's commercial lease, form the business as a non-profit corporation, and advise NWG as to its tax-exempt status.

Count Three - respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to promptly refund any part of a fee paid in advance that had not been earned. Respondent did not earn any portion of the \$37,337 in legal fees paid by NWG. On September 18, 2008, respondent refunded NWG in the amount of \$23,898.50. Thus, respondent still owes NWG the remaining balance of \$13,438.50 (\$37,337 - \$23,898.50) in unearned fees.

Count Four – respondent willfully violated section 6106 (dishonesty) by misrepresenting the status of NWG's lease to Dona Frank.

Count Five – respondent willfully violated section 6106 (dishonesty) by misrepresenting to NWG that he had filed the appropriate non-profit and tax-exempt documents and that NWG was a non-profit and tax-exempt organization.

Count Six - respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render accounts of client funds) by failing to provide accountings for NWG's legal fees paid to respondent.

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) respondent had actual notice of this proceeding and of the trial date prior to entry of the default;
- (3) the default was properly entered under rule 5.81; 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 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 must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Michael Kenneth Beyries 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 the following payee:

- (1) Northbay Wellness Group, Inc., in the amount of \$13,438.50 plus 10 percent interest per year from September 18, 2008.

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 Michael Kenneth Beyries, State Bar number 187562, 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: October _____, 2014

PAT McELROY

Judge of the State Bar Court

*cited in Northbay Wellness Group, Inc. v. Beyries
No. 13-17381 archived on June 15, 2015*