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Public Matter

STATE BAR COURT

CLERK'S OFFICE

LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. SBC-21-O-30192-YDR
)	
THOMAS VINCENT GIRARDI,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
State Bar No. 36603.)	ENROLLMENT
)	

In this matter, Thomas Vincent Girardi (Respondent) was charged with numerous violations of the State Bar Act and Rules of Professional Conduct in three client matters, including several acts of moral turpitude. He did not file a response to the notice of disciplinary charges (NDC), 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 respond to the 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.²

¹ Unless otherwise indicated, all references to rules are to this source.

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).)

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 January 13, 1965, and has been a California attorney since then.

Procedural Requirements Have Been Satisfied

On March 30, 2021, OCTC properly filed and served the NDC on Respondent by certified mail, return receipt requested, at his official State Bar records address.³ Additionally, since Respondent was under a temporary conservatorship at the time, OCTC also sent a copy to the attorney for Respondent's temporary conservator by certified mail, return receipt requested, and by regular first class mail. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

That same day, March 30, 2021, the Los Angeles Times published an article reporting that the State Bar of California had filed public disciplinary charges against Respondent.

On April 5, 2021, OCTC received both of the above-referenced certified mail return receipts from the United States Postal Service (U.S.P.S.), each of which was signed by an unidentifiable recipient. The copies of the NDC sent by regular first-class mail were not returned by the U.S.P.S.

Despite having adequate notice and opportunity, Respondent did not file a response to the NDC or otherwise participate in these proceedings. Accordingly, on April 27, 2021, OCTC filed and properly served a motion for entry of Respondent's default. This motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the

³ OCTC also sent a courtesy copy to Respondent by regular first-class mail.

Deputy Trial Counsel. (Rule 5.80.) The motion also notified Respondent that if he did not timely move to set aside his default, the court would recommend his disbarment.

On April 30, 2021, the attorney for Respondent's temporary conservator sent a letter to the State Bar Court and OCTC indicating that he was in receipt of the notice of the initial status conference and motion for entry of default. The letter also specifically noted that he was not counsel for Respondent and, as he had previously indicated, his client (Respondent's temporary conservator) does not intend to participate in the State Bar Court proceedings.

Respondent did not file a response to the motion for entry of his default, and his default was entered on August 6, 2021.⁴ The order entering default was served on Respondent at his official State Bar records address by certified mail, return receipt requested. The court also ordered Respondent's involuntary inactive enrollment as an attorney of the State Bar under Business and Professions Code⁵ section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent did not subsequently 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 November 10, 2021, OCTC filed the petition for disbarment. OCTC reported in the petition that: (1) it had not had any contact with Respondent since the default was entered; (2) Respondent has other non-public disciplinary matters pending; (3) Respondent has one prior record of discipline; and (4) the Client Security Fund has not made any payments 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 December 7, 2021.

⁴ The matter was abated on the court's own motion by order dated May 13, 2021. The court issued an order terminating the abatement on August 2, 2021.

⁵ All further statutory references are to this source unless otherwise specified.

Respondent's Prior Record of Discipline

Effective November 28, 1999, in case Nos. 93-O-14209; 95-O-11864; 96-O-01837, a private reproof was imposed, and Respondent was ordered to comply with the conditions attached to such reproof for one year. Respondent stipulated to misconduct in three client matters. In the first matter, Respondent advanced funds to his client without obtaining his client's written promise to repay the loan in violation of former rule 4-210(A)(2) of the Rules of Professional Conduct. In the second matter, Respondent placed his client's settlement funds into Certificates of Deposit and thereby failed to maintain client funds in trust in violation of former rule 4-100(A) of the Rules of Professional Conduct. Finally, in the third matter, Respondent failed to communicate significant developments to his client in violation of section 6068, subdivision (m). In aggravation, trust funds were involved and Respondent's accountings to his client were sometimes confusing and inadequate. In mitigation, Respondent received credit for no prior record of discipline, no client harm, candor and cooperation, and good character.

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, subd. (F)(1)(d).)

OCTC Case No. 20-O-15684 (Judy Selberg matter)

Count One – Respondent committed an act of moral turpitude, dishonesty, or corruption in willful violation of section 6106 by stating on March 5, 2020, in his client's settlement disbursement sheet, that Respondent's firm was entitled to a 40 percent contingency fee, or \$200,000, when Respondent knew that statement was false and misleading because, pursuant to

the fee agreement signed on August 19, 2019, his firm was only entitled to a 33.33 percent contingency fee, or \$166,650.

Count Two – Respondent willfully violated rule 1.15(a) of the Rules of Professional Conduct by failing to maintain a balance of \$284,144.55, to which his client was entitled, in his client trust account, after deducting attorney’s fees and costs and disbursing \$50,000 of the \$504,400 settlement on July 28, 2020. Then, after disbursing another \$100,000 to his client on November 20, 2020, Respondent again willfully violated rule 1.15(a) of the Rules of Professional Conduct, by failing to maintain a balance of \$184,144.55, to which his client was entitled, in his client trust account.

Count Three – Respondent committed an act of moral turpitude in willful violation of section 6106 by intentionally misappropriating \$269,759.70, that his client was entitled to receive, between July 28 and December 4, 2020, which Respondent had received on behalf of the client and deposited into his account.

Count Four – Respondent willfully violated rule 1.15(d)(7) of the Rules of Professional Conduct by failing to promptly pay, as requested several times by the client between June 2020 and October 29, 2020, the sum of \$334,144.55, to which the client was entitled, out of the \$504,400 settlement check that Respondent received on his client’s behalf on June 25, 2020.

Count Five – Respondent willfully violated section 6068, subdivision (i), by failing to cooperate and participate in a disciplinary investigation when he failed to respond to OCTC’s letters of December 10, 2020, and January 6, 2021, which he received, that requested his response to the allegations of misconduct in OCTC case No. 20-O-15684.

OCTC Case No. 20-O-17192 (Lion Air matter)

Count Six – Respondent willfully violated section 6103 by disobeying an order of the court requiring him to do an act connected with or in the course of his profession, which he knew

was final and binding and which he ought in good faith to do, when he failed to comply with the court's orders, issued between February 24 and March 9, 2020, in *In Re: Lion Air Flight JT 610 Crash*, United States District Court, Northern District of Illinois, Lead Case No. 18-cv-07686 ("Lion Air matter"), requiring that Respondent place the settlement funds received on behalf of the Plaintiffs' minor children in a trust account established by his firm and send such proceeds as soon as practicable via wire transfer to the Plaintiffs' financial institutions.

Count Seven – Respondent willfully violated rule 1.15(a) of the Rules of Professional Conduct by failing to maintain a balance of \$2,000,000, to which the Plaintiffs' minor children were entitled, in his client trust account, after receiving settlement funds in the Lion Air Matter on behalf of the Plaintiffs' minor children between March 4 and March 30, 2020.

Count Eight – Respondent committed an act of moral turpitude in willful violation of section 6106 by intentionally misappropriating \$1,985,615.15, that the Plaintiffs' minor children were entitled to receive, between September 3 and December 4, 2020, which Respondent had received on behalf of the Plaintiffs' minor children and deposited into his account.

Count Nine – Respondent committed an act of moral turpitude, dishonesty, or corruption in willful violation of section 6106 by stating on January 4, 2021, in a voicemail message for an attorney of the Edelson, P.C. law firm, that Respondent's firm had paid all of the people in the Lion Air matter, when Respondent knew that statement was false and misleading because Respondent knew that he still owed a total of \$2,000,000 to the Plaintiffs' minor children at the time that he made such statement.

Count Ten – Respondent willfully violated section 6068, subdivision (i), by failing to cooperate and participate in a disciplinary investigation when he failed to respond to OCTC's letters of January 25 and February 18, 2021, which he received, that requested his response to the allegations of misconduct in OCTC case No. 20-O-17192.

OCTC Case No. 20-O-17505 (Josefina and Michael Hernandez matter)

Count Eleven – Respondent willfully violated rule 1.15(a) of the Rules of Professional Conduct by failing to maintain a balance of \$98,362.00 to which his clients and several third parties were entitled, in his client trust account, after receiving settlement funds on behalf of his clients on May 22, 2020.

Count Twelve – Respondent committed an act of moral turpitude in willful violation of section 6106 by intentionally misappropriating \$83,977.15, that his clients and several third parties were entitled to receive, between May 22 and December 4, 2020, which Respondent had received on behalf of his clients and deposited into his account.

Count Thirteen – Respondent willfully violated rule 1.15(d)(7) of the Rules of Professional Conduct by failing to promptly pay, as requested several times by his clients between May 22 and December 18, 2020, the sum of \$55,944.02, to which the clients were entitled, out of the \$128,750 in settlement funds that Respondent received on his clients' behalf on May 22, 2020.

Count Fourteen – Respondent committed an act of moral turpitude, dishonesty, or corruption in willful violation of section 6106 by stating on August 22, 2020, in a voicemail message for his clients, that his clients had not received their portion of the settlement funds yet because certain orders, which needed to be signed by the court, had not yet been signed by the court, and it was not Respondent's firm's fault, when Respondent knew that statement was false and misleading because Respondent had received a wire transfer of the clients' settlement funds in the amount of \$128,750 on May 22, 2020, and the court did not need to sign any orders before Respondent was permitted to disburse his clients' funds.

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 adequate notice of the proceedings prior to the entry of his default;
- (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 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.

Monetary Sanctions are Recommended

As the NDC provided Respondent with notice that he could be subject to monetary sanctions, and the NDC was filed after April 1, 2020, the court recommends that Respondent be ordered to pay \$5,000 in monetary sanctions. This amount is warranted given the repeated and serious nature of the violations, specifically that Respondent committed several acts of moral turpitude by the intentional misappropriation of client funds in three separate matters, totaling over two million dollars in client funds. Further, Respondent did not participate in this proceeding, despite adequate notice, and he allowed his default to be entered. Finally, this amount is appropriate under the guidelines set forth in rule 5.137 for monetary sanctions in disbarment matters. (Rule 5.137(E)(2)(a) [up to \$5,000 for disbarment].)

RECOMMENDATIONS

It is recommended that Thomas Vincent Girardi, State Bar Number 36603, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

Restitution

It is further recommended that Thomas Vincent Girardi make restitution to the following payees or such other recipient as may be designated by the Office of Probation or the State Bar Court (or to the Client Security Fund to the extent of any payment from the Fund to such payees, in accordance with Business and Professions Code section 6140.5):

- (1) Judy Selberg in the amount of \$184,144.55 plus 10 percent interest per year from November 20, 2020;
- (2) The minor children of each of the following four plaintiffs in the Lion Air Matter: Anise Kasim, Septiana Damayanti, Dian Daniaty Binti Udin Zaenudin, and Bias Ramadhan A.S. Bin Misyadi, in the amount of \$500,000 each (for a total of \$2,000,000) plus 10 percent interest per year from September 3, 2020;
- (3) Josefina and Michael Hernandez in the amount of \$55,944.02 plus 10 percent interest per year from December 4, 2020;
- (4) Timothy J. Yoo, Chapter 7 Trustee, Case No. 2:11-bk-54999 in the amount of \$35,000 plus 10 percent interest per year from December 4, 2020;
- (5) Anthem, Inc. in the amount of \$6,491.66 plus 10 percent interest per year from December 4, 2020;
- (6) Medicare in the amount of \$301.32 plus 10 percent interest per year from December 4, 2020;
- (7) Garretson Resolution Group in the amount of \$625 plus 10 percent interest per year from December 4, 2020;

CALIFORNIA RULES OF COURT, RULE 9.20

It is further recommended that Thomas Vincent Girardi 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 imposing discipline in this matter.⁶

MONETARY SANCTIONS

It is further recommended that Thomas Vincent Girardi be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of \$5,000 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a condition of reinstatement or return to active status, unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

COSTS

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

⁶ For purposes of compliance with rule 9.20(a), the operative date for identification of “clients being represented in pending matters” and others to be notified is the filing date of the Supreme Court order, not any later “effective” date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Thomas Vincent Girardi is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney’s failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

INVOLUNTARY INACTIVE ENROLLMENT

Thomas Vincent Girardi is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). His inactive enrollment will be effective three calendar days after this order is served and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.



Dated: January 10, 2022

YVETTE D. ROLAND
Judge of the State Bar Court

CERTIFICATE OF ELECTRONIC SERVICE

(Rules Proc. of State Bar, rule 5.27.1.)

I, the undersigned, certify that I am a Court Specialist of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, on January 10, 2022, I transmitted a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

by electronic service to THOMAS V. GIRARDI at the following electronic service address as defined in rule 5.4(29) and as provided in rule 5.26.1 of the Rules of Procedure of the State Bar:

tgirardi@girardikeese.com

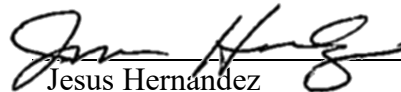
by electronic service to ELI D. MORGENSTERN at the following electronic service address as defined in rule 5.4(29) and as provided in rule 5.26.1 of the Rules of Procedure of the State Bar:

eli.morgenstern@calbar.ca.gov

The above document(s) was/were served electronically. My electronic service address is ctroomB@statebarcourt.ca.gov and my business address is 845 South Figueroa Street, Los Angeles, CA 90017

I declare, under penalty of perjury under the laws of the State of California, that the information above is true and correct.

Date: January 10, 2022



Jesus Hernandez
Court Specialist
State Bar Court