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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MARILYN S. SCHEER, Plaintiff and Appellant, v. CALIFORNIA CLIENT SECURITY FUND COMMISSION FOR THE STATE BAR OF CALIFORNIA et al., Defendants and Respondents.	B281926 (Los Angeles County Super. Ct. No. BS155243)

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Marilyn S. Scheer, in pro. per., for Plaintiff and Appellant.

Office of the General Counsel of the State Bar of California, Vanessa L. Holton, Robert G. Retana, and Saul Bercovitch, for Defendants and Respondents.

In 2014, the California State Bar (State Bar) found that plaintiff and appellant Marilyn S. Scheer engaged in the unauthorized practice of law and collected illegal fees in representing clients seeking loan modifications in states in which she was not licensed to practice law. (*In the Matter of Scheer* (Review Dept. Mar. 18, 2014, No. 11-O-10888) 2014 WL 1217969.) The State Bar also found that Scheer collected fees from California clients for loan modifications before fully completing the work, in violation of Civil Code section 2944.7, subdivision (a). The Review Department of the State Bar (the Review Department) recommended that Scheer be ordered to repay more than $120,000 in fees to clients, and that her bar license be suspended until she repaid the illegal funds, and in any case for at least two years. Scheer requested that the Supreme Court review the State Bar's recommendations, but the Court denied her petition for review, and the recommendations were filed as an order of the Supreme Court. (See Cal. Rules of Court, rule 9.16 (rule 9.16).)

Subsequently, 30 of Scheer's clients requested reimbursement of the fees they paid Scheer from the State Bar's Client Security Fund Commission (CSF). CSF issued final decisions ordering reimbursement of the fees Scheer collected. Scheer filed a petition for writ of administrative mandate in the trial court challenging CSF's decision. The trial court denied the petition, and this appeal followed. Scheer contends that the lack of mandatory review and a written opinion by the Supreme Court under rule 9.16 violated her constitutional rights. She also contends that CSF's decision was invalid because it denied her an oral hearing and was not based on a full investigation. We find no merit to Scheer's contentions. In addition, to the extent Scheer challenges the State Bar's disciplinary cases against her, those cases are the subject of an order of the Supreme Court, which we may not overrule. For these reasons, we affirm the trial court.

FACTS AND PROCEEDINGS BELOW

On March 18, 2014, the Review Department filed an opinion recommending that Scheer be suspended from the practice of law for a minimum of two years. (*In the Matter of Scheer*, *supra*, 2014 WL 1217969, at *10.) The Review Department found that Scheer entered into contracts to provide loan modification services for 26 clients who resided in 11 states in which Scheer was not licensed to practice law. (*Id.* at *2-*3.) The Review Department concluded that Scheer was culpable of collecting illegal fees in connection with the unauthorized practice of law for these clients, and that she was culpable of demanding and collecting fees prior to completing work for four clients in California. (*Id.* at *3.) Under Civil Code section 2944.7, subdivision (a)(1), in any agreement to perform mortgage loan modification services, a person may not "[c]laim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform."

The Review Department also recommended that Scheer be required to pay a total of $116,400, plus interest, to 30 different former clients, or to reimburse CSF to the extent CSF paid Scheer's clients the amount owed. (*In the Matter of Scheer*, *supra*, 2014 WL 1217969 at pp. *10-*11.) The Supreme Court denied Scheer's petition for review and issued an order confirming the recommendations of the Review Department.

Scheer filed suit in federal court pursuant to section 1983 of title 42 of the United States Code, challenging the constitutionality of the State Bar's procedures for adjudicating claims. The Ninth Circuit Court of Appeals rejected her claims. (See *Scheer v. Kelly* (9th Cir. 2016) 817 F.3d 1183.)

After our Supreme Court affirmed the Review Department's recommendations, CSF filed tentative decisions awarding Scheer's

clients the amounts the Review Department found they were owed. In each case, Scheer objected to the tentative decision, alleging that the procedures the State Bar followed were unconstitutional. Scheer requested oral hearings regarding her objections on the ground that the tentative decisions "appear[] to have adopted the erroneous findings and conclusions of the State Bar [R]eview [D]epartment." Scheer did not list any specific objections to the facts in the tentative decisions. CSF issued final decisions denying Scheer an oral hearing and confirming its tentative decisions.

Scheer filed a petition for a writ of administrative mandamus seeking review of CSF's decisions, which the trial court denied.

DISCUSSION

Scheer contends that the trial court erred by denying her writ petition. She argues that our Supreme Court's summary denial of her petition for review, pursuant to its authority under rule 9.16, violated her constitutional rights to due process, equal protection, and to petition for redress of grievances. In addition, Scheer contends that CSF's decision was invalid because CSF denied her an oral hearing and did not conduct a proper investigation of her claims. We find no merit in Scheer's claims and affirm.

I. Constitutionality of Rule 9.16

Rule 9.16 establishes the procedure for Supreme Court review of State Bar recommendations for disbarment or suspension of California attorneys. It requires the Supreme Court to order review "when it appears: [¶] (1) [n]ecessary to settle important questions of law; [¶] (2) [t]he [California] State Bar Court [(State Bar Court)] has acted without or in excess of jurisdiction; [¶] (3) [p]etitioner did not receive a fair hearing; [¶] (4) [t]he decision is not supported by the weight of the evidence; or [¶] (5) [t]he recommended discipline is not appropriate in light of the record as a whole." (Rule 9.16(a).) If

the Court finds that review is not warranted, "[d]enial of review of a decision of the State Bar Court is a final judicial determination on the merits and the recommendation of the State Bar Court will be filed as an order of the Supreme Court." (Rule 9.16(b).) In this case, the Supreme Court issued an order stating, "[t]he petition for review is denied," and did not explain its reasoning.

Scheer contends that this summary denial of her petition pursuant to rule 9.16 violated several of her constitutional rights. She argues that because the State Bar does not exercise judicial power (*In re Rose* (2000) 22 Cal.4th 430, 436), and Supreme Court review is discretionary and in practice almost always denied, the system established by rule 9.16 denies her due process right to judicial review. She also argues that the lack of guaranteed Supreme Court review violates the state constitutional requirement that "[d]ecisions of the Supreme Court and [C]ourts of [A]ppeal that determine causes shall be in writing with reasons stated." (Cal. Const., art. VI, § 14.) Next, Scheer contends that, because other licensed professionals in California are entitled to judicial review of adverse administrative decisions (see Gov. Code, § 11523), but attorneys are not, her Fourteenth Amendment right to equal protection has been violated. Finally, she argues that the denial of judicial review violates her First Amendment right to petition for redress of grievances.

We have grave doubts regarding our authority to decide these points in this appeal. Scheer's petition for administrative mandate seeks review of CSF's decision ordering her to reimburse CSF for funds CSF paid to Scheer's clients. It is authorized under rule 3.450 of the Rules of the State Bar, which provides that "[t]he Final Decision of the Commission to grant or deny reimbursement to an applicant may be reviewed in superior court pursuant to a request for review filed by the applicant or attorney in accordance with Code of Civil Procedure section 1094.5."

Scheer's challenges to rule 9.16 argue essentially that CSF's decisions to reimburse Scheer's clients are invalid because the procedure by which she was found culpable in the prior disciplinary proceedings was itself invalid. In other words, she seeks to relitigate her disciplinary proceedings, which ended in the Supreme Court's denial of her petition for review. That denial "is a final judicial determination on the merits and the recommendation of the State Bar Court [has been] filed as an order of the Supreme Court." (Rule 9.16(b); accord, *In re Rose*, *supra*, 22 Cal.4th at p. 446 ["our summary denial of [an attorney's] petition amounts to an exercise of our jurisdiction and a judicial determination on the merits."]) Apart from any issues of res judicata or collateral estoppel (which we need not decide), we may not overturn an order of a court of superior jurisdiction. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

Furthermore, our Supreme Court has explicitly rejected Scheer's arguments regarding due process and article VI, section 14 of the California Constitution in *In re Rose*, *supra*, 22 Cal.4th 430. The Court held that "the absence of a written opinion and of an opportunity for oral argument does not deprive an attorney of due process of law." (*Id.* at p. 456.) The Court explained that "[a]lthough providing an opportunity for oral argument in this court and issuance of a written opinion would require this court to allocate more time and resources to reviewing a disciplinary recommendation, these additional procedures would do little to minimize the risk of an erroneous result in such matters. As we repeatedly have emphasized, when an attorney petitions for review of a State Bar Court decision recommending disbarment or suspension, we thoroughly review the attorney's contentions and the entire record, and reach an independent determination whether he or she should be disciplined as recommended. We will order review of the State Bar Court's decision whenever it appears

that one or more of the grounds enumerated in rule [9.16(a)] are present." (*Id.* at pp. 456-457.) In addition, the Court rejected the claim that its summary denial of review of State Bar cases violated the requirement that "[d]ecisions of the Supreme Court and [C]ourts of [A]ppeal that determine causes shall be in writing with reasons stated." (Cal. Const., art. VI, § 14.) The Court stated, "[a]lthough the term 'cause' is not susceptible to precise definition, we conclude that our denial of a petition for review of the State Bar Court's recommendation of disbarment or suspension does not decide a cause within the meaning of this constitutional provision, and that the order denying such a petition need not include a written opinion explaining the reasons for the ruling." (*In re Rose*, *supra*, 22 Cal.4th at p. 449.) We are bound by the Supreme Court's decision on these points. (See *Auto Equity Sales, Inc. v. Superior Court*, *supra*, 57 Cal.2d at p. 455.)

The Supreme Court in *In re Rose* did not address challenges to rule 9.16 on the basis of equal protection or the right to petition, but Scheer's claims on these points are equally without merit. Scheer is correct that the First Amendment protects citizens' access to the courts. But rule 9.16 does not deprive attorneys of that right. Under the rule, an attorney may petition for review from the Supreme Court, and the Court "thoroughly review[s] the attorney's contentions and the entire record, and reach[es] an independent determination whether he or she should be disciplined as recommended." (*In re Rose*, *supra*, 22 Cal.4th at p. 457.) As for Scheer's equal protection claim, we agree with the Ninth Circuit Court of Appeals that "Scheer has not identified a First Amendment right burdened by [the State Bar's] regulations, so the proper level of scrutiny to apply is rational basis review. [Citation.] The regulatory scheme survives this review because the historically unique role of lawyers allows states to treat legal practice differently from other professions. Lawyers 'are essential to the

primary governmental function of administering justice, and have historically been "officers of the courts." ' [Citation.] Given both this particular function of lawyers and the tradition of state court regulation of lawyers, California's decision to regulate lawyers principally via a judicially supervised administrative body attached to the State Bar of California, the organization of all state-licensed lawyers, is rational and so constitutional." (*Scheer v. Kelly*, *supra*, 817 F.3d at p. 1189.)[1]

II. CSF Hearing and Investigation

Scheer contends that we must vacate CSF's decision ordering reimbursement because CSF denied her request for an oral hearing and failed to investigate her claims properly. Scheer argues that the denial of a hearing violated her right to due process. In addition, she claims that state law requires a hearing in all cases like hers regardless of the State Bar of California rules to the contrary. We are not persuaded.

Our Supreme Court has held that the State Bar need not hold an oral hearing in order to satisfy due process. In *Saleeby v. State Bar* (1985) 39 Cal.3d 547, 566, the Court stated that, in order to satisfy due process requirements in CSF cases, "the bar is not required to hold a formal hearing, but is required to give petitioner and other applicants an opportunity to respond to the bar's proposed disposition of the request for reimbursement." Although CSF denied Scheer's request for a hearing, it gave her an opportunity to respond to its tentative decisions for reimbursement, which included an opportunity to state her legal and factual

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[1] We cite the Ninth Circuit's opinion in Scheer's case solely as persuasive authority. Because we reject Scheer's claims on the merits, we need not address CSF's contention that they are also barred by collateral estoppel as a result of Scheer's prior litigation before the Ninth Circuit Court of Appeals.

objections and to provide documentation of her claims. (See Rules of State Bar, tit. 3, rule 3.443(B).)

In denying Scheer a hearing, CSF acted in accordance with State Bar rules. Those rules allow, but do not require, CSF to order a hearing before rendering a decision. (See Rules of State Bar, tit. 3, rule 3.441(C) ["[i]n considering applications for reimbursement, the Commission *may* . . . conduct hearings at which it receives evidence"], italics added.) Scheer contends that this lack of a hearing requirement renders CSF procedures inadequate under state law. The State Bar rules provide that "[t]he [f]inal [d]ecision of [CSF] to grant or deny reimbursement to an applicant may be reviewed in superior court pursuant to a request for review filed by the applicant or attorney in accordance with Code of Civil Procedure section 1094.5." (Rules of State Bar, tit. 3, rule 3.450.) In turn, Code of Civil Procedure section 1094.5 allows for review by writ of "any final administrative order or decision made as the result of a proceeding in which *by law a hearing is required to be given*." (Code Civ. Proc., § 1094.5, subd. (a), italics added.) Because the rules allow CSF to render a decision without a hearing, Scheer contends that the rules fail to comply with Code of Civil Procedure section 1094.5.

We disagree. "[C]ourts and commentators have found that purely documentary proceedings can satisfy the hearing requirement of Code of Civil Procedure section 1094.5, so long as the agency is required by law to accept and consider evidence from interested parties before making its decision." (*Friends of the Old Trees v. Department of Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383, 1391.) Scheer argues that CSF procedures were insufficient pursuant to *300 DeHaro Street Investors v. Department of Housing & Community Development* (2008) 161 Cal.App.4th 1240 (*300 DeHaro*), but that case does not hold that an oral hearing is required. Instead, the court reasoned that

for a documentary hearing to be valid, "there must . . . be something in the nature of a hearing, i.e., an adversarial process in which the agency resolves disputed facts after affording interested parties an opportunity to present evidence." (*Id.* at p. 1251.) By allowing Scheer to state factual and legal objections to its tentative decision, CSF procedures met this requirement.

Scheer also contends that CSF procedures were invalid because they relied on applications that were not notarized. But she cites no law requiring notarized statements.

Finally, Scheer objects to CSF's factual findings, contending that CSF failed to investigate the cases sufficiently. In particular, she objects to CSF's finding that she "failed to perform more than an insignificant amount of the services she agreed to perform for" her clients. Because an attorney has no property right in CSF funds, we review CSF's findings under the substantial evidence standard. (See *Johnson v. State Bar* (1993) 12 Cal.App.4th 1561, 1566-1567.) In this case, the administrative record is replete with evidence that Scheer and her firm performed little or no work on behalf of her clients. Thus, one client wrote that he had "numerous conversations concerning" his mortgage with some of Scheer's associates, but that "nothing significant was happening." Later, every time he called Scheer's office, the phone was busy. Another client wrote that he received no communication from Scheer for two and a half months after paying her $5,500 for loan modification services. When he called his bank to inquire about the status of his loan, a representative told him "that no one had spoken to anyone at Scheer Group." Yet another client submitted a letter he wrote to Scheer in 2011 complaining that "for the past two month[s] I can[']t get any[]body from the firm to answer my calls."

Upon issuing its tentative decisions, CSF informed Scheer that she had 30 days to file objections, and that her "objection should be specific and include copies of any supporting documentation that you have not previously submitted." Scheer filed objections to each of CSF's tentative decisions, but she did not object specifically to the finding that she failed to perform more than an insignificant amount of services for her clients. Nor did she produce documentation of any work she actually performed on behalf of her clients. In her brief on appeal, Scheer claims that "[i]t was undisputed in [her] disciplinary case . . . that substantial services were performed for her clients." But the issues in her disciplinary case concerned the unauthorized practice of law and illegal collection of fees, not the amount of work she performed on behalf of her clients.

Thus, there was ample evidence to support CSF's findings. Furthermore, rule 3.441(A) of the Rules of the State Bar provides that CSF "may investigate an application as it deems appropriate." There is no support for Scheer's claim that CSF failed to investigate her claims adequately.

DISPOSITION

The judgment of the trial court is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.