

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PUBLIC MATTER

FILED 

MAR 16 2005

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

THE STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of
ERIC A. COVER,
Member No. 183959,
A Member of the State Bar.

Case No. 05-AE-00407-PEM

**ORDER GRANTING MOTION FOR
INVOLUNTARY INACTIVE
ENROLLMENT**

I. INTRODUCTION

On January 31, 2005, the Presiding Arbitrator of the State Bar's Mandatory Fee Arbitration Program filed a motion seeking the involuntary inactive enrollment of Award Debtor **ERIC A. COVER** pursuant to Business and Professions Code section 6203, subdivision (d),¹ due to his failure to pay a fee arbitration award. The motion was properly served on January 31, 2005, at Award Debtor's official membership records address, by certified mail, return receipt requested, and by regular mail. (Bus. & Prof. Code, § 6002.1, subd. (c); Rules Proc. of State Bar, rule 701(b).)

Award Debtor did not file a response to the motion or request a hearing. (Rules Proc. of State Bar, rules 702(a) and (b) and 704.)

The court ordered the matter submitted for decision without a hearing on February 23, 2005.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Award Debtor was admitted to the practice of law in California on December 3, 1996, and

¹References to "section" are to the provisions of the Business and Professions Code unless otherwise stated.



1 has been a member of the State Bar at all times since.

2 **B. Facts**

3 On April 13, 2004, the Fresno County Bar Association served a nonbinding fee arbitration
4 award in *In the Matter of Howard H. Masters, Client, and Eric Cover, Attorney*, directing Award
5 Debtor to refund to his former client, Howard H. Masters, \$7,500 forthwith.

6 The award became binding and final by operation of law on May 13, 2004, when the time
7 for Award Debtor to move for trial after arbitration pursuant to section 6204 expired.²

8 On June 2, 2004, Masters sent a letter to Award Debtor demanding payment of the award.
9 But Award Debtor did not reply to the letter or pay any portion of the award to Masters.

10 On July 6, 2004, the Office of Mandatory Fee Arbitration (State Bar) received Masters's
11 request for enforcement of the arbitration award pursuant to section 6203, subdivision (d)(5). On
12 July 26, 2004, the State Bar served the enforcement request on Award Debtor by certified mail and
13 regular mail at his official membership records address, along with a letter notifying him of the
14 potential consequences for failing to comply with the award or to respond to the enforcement request
15 by August 25, 2004. The certified mail was returned and marked "Refused, Return to Sender" in
16 August 2004. The regular mail was not returned as undeliverable. Award Debtor did not respond
17 to the enforcement request.

18 By letter dated August 26, 2004, the State Bar confirmed Award Debtor's failure to reply and
19 advised him that the matter was being forwarded to the Presiding Arbitrator for the issuance of an
20 order imposing administrative penalties in the amount of \$1,500 under section 6203, subdivision (d).
21 Award Debtor did not respond to the letter.

22 On September 13, 2004, the Presiding Arbitrator issued an order imposing administrative
23 penalties against Award Debtor in the amount of \$1,500 for his failure to comply with the award or
24

25
26 ²Although the award becomes binding by operation of law 30 days after service of the
27 award, the binding award may still be corrected or vacated by a court within 100 days from the
28 date of service of the award. (Bus. & Prof. Code, § 6204; Code Civ. Proc., § 1288.) Here, there
is no evidence that a petition to correct or vacate the award was filed within 100 days from the
date of service of the award.

1 to respond to the enforcement request within the required time period. The order stayed the
2 imposition of the penalty for 14 days to allow him a final opportunity to comply with the award.
3 Copies of the order were served on Award Debtor at his official membership records address by
4 certified and regular mail. The mailings were not returned as undeliverable. Since Award Debtor
5 did not respond, the penalty of \$1,500 was imposed and added to his State Bar membership dues for
6 the 2005 calendar year.

7 To date, Award Debtor has not paid the award nor demonstrated that he has set aside the
8 award.

9 **C. Legal Conclusions**

10 The court finds that the Presiding Arbitrator has met the burden of demonstrating by clear
11 and convincing evidence that Award Debtor has failed to comply with the arbitration award and has
12 not proposed a payment plan acceptable to the client or to the State Bar. (Bus. & Prof. Code, § 6203,
13 subd. (d)(2)(A); Rules Proc. of State Bar, rule 705(a).)

14 The court also finds that Award Debtor has not met the burden of demonstrating by clear and
15 convincing evidence that he is not personally responsible for making or ensuring payment of the
16 award; that he is unable to pay it; or that he has proposed and agrees to comply with a payment plan
17 which the State Bar has unreasonably rejected as unsatisfactory. (Bus. & Prof. Code, § 6203, subd.
18 (d)(2)(B); Rules Proc. of State Bar, rule 705(b).)

19 **III. ORDER**

20 **ACCORDINGLY, IT IS ORDERED** that Award Debtor **ERIC A. COVER** be enrolled
21 as an inactive member of the State Bar of California pursuant to section 6203, subdivision (d)(1),
22 effective five days from the date of service of this order. (Rules Proc. of State Bar, rule 708(b)(1).)

23 **IT IS FURTHER ORDERED** that Award Debtor must remain involuntarily enrolled as an
24 inactive member of the State Bar until (1) he has paid the arbitration award to Howard H. Masters
25 in the amount of \$7,500 plus interest at the rate of 10% per annum from April 13, 2004, the date of

26 //


27 //

28 //

1 service of the award,³ (2) he has paid the administrative penalty of \$1,500 assessed by the Presiding
2 Arbitrator by order filed September 13, 2004, and (3) the court grants a motion to terminate his
3 inactive enrollment pursuant to rule 710 of the Rules of Procedure of the State Bar.

4 Reasonable costs are awarded to the State Bar upon the Presiding Arbitrator's submission
5 of a bill of costs. (Bus. & Prof. Code, § 6203, subd. (d)(3); Rules Proc. of State Bar, rule 708(b)(2).)
6
7
8

9
10 Dated: March 14, 2005
11


12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
PAT McELROY
Judge of the State Bar Court

³Howard H. Masters is entitled to receive interest from the date of the underlying arbitration award in this matter. (See *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 26-27; *Britz, Inc. v. Alfa-Laval Food & Dairy Co.* (1995) 34 Cal. App.4th 1085, 1106-1107; Civ. Code, § 3287.)

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator 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, in the City and County of San Francisco, on March 16, 2005, I deposited a true copy of the following document(s):

ORDER GRANTING MOTION FOR INVOLUNTARY INACTIVE ENROLLMENT, filed March 16, 2005

in a sealed envelope for collection and mailing on that date as follows:


- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**ERIC A. COVER
330 N FULTON ST
FRESNO CA 93701**

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

**JILL SPERBER AND JOHN CHANG,
MANDATORY FEE ARBITRATION, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 16, 2005.



**Lauretta Cramer
Case Administrator
State Bar Court**