

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 06-AE-14189-RAP
)	
HENRY ALAN PATTIZ,)	ORDER GRANTING MOTION FOR
)	INVOLUNTARY INACTIVE
Member No. 44073,)	ENROLLMENT [Bus. & Prof. Code, § 6203,
)	subdivision (d); Rules Proc. of State Bar,
<u>A Member of the State Bar.</u>)	rules 700, et seq.]

On September 1, 2006, the Presiding Arbitrator of the State Bar’s Mandatory Fee Arbitration Program, by and through his designee, Jill A. Sperber, Director of the Mandatory Fee Arbitration Program of the State Bar of California and Special Deputy Trial Counsel, filed a motion seeking the involuntary inactive enrollment of Award Debtor Henry Alan Pattiz (“Award Debtor”) pursuant to Business and Professions Code section 6203, subdivision (d), due to his failure to pay a fee arbitration award (“motion”). The motion was served at his official membership records address (“official address”) on August 31, 2006, by certified mail, return receipt requested, and by regular mail.¹

A Notice of Assignment was properly served on Award Debtor at his official address on September 14, 2006. It was returned by the U.S. Postal Service (“USPS”) bearing a sticker stating:

RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD

¹Exhibit 3, the certified copy of Award Debtor’s address history as of August 8, 2006, attached to the motion, is not competent evidence to establish that documents served after August 8, 2006, were properly served upon the Award Debtor. The court therefore takes judicial notice of the State Bar’s official membership records pursuant to Evidence Code section 452, subdivision (h). These records indicate that as of November 11, 2003, Award Debtor’s official address has been, and remains, P O Box 15688, Beverly Hills, CA 90209-1688.

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

This matter was submitted for decision on September 19, 2006. The Submission order was properly served on Award Debtor at his official address on September 19, 2006, and was returned by the USPS bearing a sticker stating:

RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD

Jurisdiction

Award Debtor was admitted to the practice of law in California on December 29, 1967.

Facts

On October 31, 2001, Marina Berchenko (“Berchenko”) requested mandatory fee arbitration with the Beverly Hills Bar Association to resolve a dispute that she had with Award Debtor concerning fees. A binding arbitration was held in this matter on March 26, 2002. Berchenko appeared at the hearing with counsel Stuart J. Neuville (“Neuville”). Respondent did not appear at the hearing. The Beverly Hills Bar Association served a binding arbitration award on Berchenko and Award Debtor on May 16, 2002. Pursuant to the arbitration award, Berchenko was awarded a refund of attorneys fees in the amount of \$27,554 plus the filing fee of \$2,128 for a total of \$29,672.

On May 21, 2002, Neuville sent a letter to Award Debtor demanding payment of the arbitration award on Berchenko’s behalf. The letter advised the Award Debtor that if payment was not received by May 28, 2002, a petition to confirm the award would be filed. Award Debtor did not respond to this letter or the demand for payment.

In early December 2002, Neuville filed to confirm the award. Shortly thereafter, Award Debtor demanded that Berchenko settle with him. Berchenko refused to do so.

On January 29, 2003, the Los Angeles Superior Court issued a judgment confirming the arbitration award and awarding interest, costs, and attorney’s fees to Berchenko by judgment in the amount of \$35,023.16. On March 19, 2003, Award Debtor appealed the judgment.

On July 21, 2003, Berchenko submitted a Client’s Request for Enforcement of an Arbitration Award form (“Client’s Enforcement Request”) to the State Bar. On that date, the State Bar

Mandatory Fee Arbitration Program filed the Client's Enforcement Request. As the judgment confirming the arbitration award was on appeal, the State Bar could not proceed with the Enforcement Request until the judgment on appeal became final.

The Court of Appeal filed an opinion on August 18, 2004, affirming the judgment and awarding costs and attorney fees on appeal to Berchenko.

On January 5, 2005, the Los Angeles Superior Court issued an amended judgment in the amount of \$49,269.36, including the original judgment in the sum of \$35,023.16, plus statutory interest in the amount of \$6,787.20, plus costs on appeal in the amount of \$284.00, plus \$7,175 in attorney fees awarded by the Court of Appeals. Notice of Entry of Amended Judgment was filed on January 7, 2005, and served on Award Debtor on January 6, 2005.

Under cover letter dated April 22, 2005, the State Bar served Award Debtor with, among other things, a copy of the Client's Enforcement Request. The letter advised the Award Debtor that as provided by rule 41.1 of the Rules of Procedure for Fee Arbitrations and the Enforcement of Awards by the State Bar of California ("fee arbitration rules"), he had 30 days from the April 22, 2005, service of the request for enforcement to: (1) provide satisfactory proof to the Mandatory Fee Arbitration Program of his payment of the arbitration award; (2) agree to a payment plan that is satisfactory to Berchenko or the State Bar; or (3) provide reasons, under Business and Professions Code section 6203, subdivision (d)(2)(B), why he should not be required to comply with the arbitration award. The Award Debtor was advised that his response was due to the Mandatory Fee Arbitration Program on or before May 23, 2005. The letter set forth that if no response was received on or before May 23, 2005, the Presiding Arbitrator of the State Bar's Mandatory Fee Arbitration Program could file a motion in the State Bar Court seeking to have Award Debtor involuntarily enrolled as an inactive member of the State Bar until such time as the Award Debtor pays the arbitration award and any assessed penalties. The Client's Enforcement Request and other items were served on Award Debtor at his official address by both regular and certified mail. The USPS returned the certified mail to the State Bar unclaimed. The regular mail was not returned as undeliverable. Award Debtor did not respond to this letter.

On May 26, 2005, the State Bar sent a letter to Award Debtor confirming his failure to

respond and notifying him that the matter was being forwarded to the Presiding Arbitrator for issuance of an order imposing administrative penalties in the amount of \$9,853.87. Award Debtor did not respond to this letter. The USPS did not return the letter to the State Bar as undeliverable.

On June 15, 2005, the State Bar filed and served an Order Re: Administrative Penalties on Award Debtor by regular and certified mail to his official address. The USPS returned the certified mail unclaimed. The regular mail was not returned as undeliverable. The order provided that imposition of penalties would be stayed for two weeks and not be imposed if Award Debtor complied with the award within that time.

As Award Debtor did not respond to the Order, administrative penalties were imposed and added to Award Debtor's State Bar membership dues for the next calendar year (2006).

As of August 3, 2006, the State Bar had not received any communication from Award Debtor or any evidence that he has paid the arbitration award and amended judgment.

As of August 26, 2006, Berchenko had not received any response from Award Debtor to her Request for Enforcement or payment of any portion of the award and amended judgment from Award Debtor.

Legal Conclusions

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

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

ORDER

IT IS ORDERED that Award Debtor Henry Alan Pattiz be enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6203, subdivision

(d)(1), effective five days from the date of service of this order. (Rules Proc. of State Bar, rule 708(b)(1).)

IT IS FURTHER ORDERED that Award Debtor must remain involuntarily enrolled as an inactive member of the State Bar until: (1) he has paid the arbitration award and amended judgment to Marina Berchenko in the amount of \$49,269.36, plus interest at the rate of ten percent per annum from January 6, 2005, the date the amended judgment was served; (2) he has paid the administrative penalty of \$9,853.87 assessed by the Presiding Arbitrator's order filed June 15, 2004, and reasonable costs, if any; and (3) the court grants a motion to terminate the inactive enrollment pursuant to rule 710 of the Rules of Procedure of the State Bar of California.

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

Dated: October 18, 2006

RICHARD A. PLATEL
Judge of the State Bar Court