

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

In the Matter of)	Case No. 06-AE-14258-RAH
BESSIE MAE CARR,)	ORDER GRANTING MOTION FOR
Member No. 121368,)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT [Bus. & Prof. Code, § 6203,
)	subd. (d); Rules Proc. of State Bar, rule 700,
)	et seq.]

On September 11, 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 Bessie Mae Carr (“Award Debtor”) pursuant to Business and Professions Code section 6203, subdivision (d), and rule 701 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”) due to her failure to pay a fee arbitration award (“motion”). A copy of the motion was served at her official membership records address (“official address”) on September 11, 2006, by certified mail, return receipt requested, and by regular mail.¹

A copy of a Notice of Assignment was properly served on Award Debtor at her official address on September 21, 2006, and was not returned to the State Bar Court by the U.S. Postal Service (“Postal Service”) as undeliverable or for any other reason.

¹Exhibit 3, the certified copy of Award Debtor’s address history as of August 31, 2006, attached to the motion, is not competent evidence to establish that documents served after August 31, 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 March 15, 2000, Award Debtor’s official address has been, and remains, 6161 El Cajon Blvd #B-405, San Diego, CA 92115 3922.

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 October 11, 2006. A copy of the Submission Order was properly served on Award Debtor at her official address on October 11, 2006, and was not returned to the State Bar Court by the Postal Service as undeliverable or for any other reason.

Jurisdiction

Award Debtor was admitted to the practice of law in California on December 10, 1985.

Facts

In March 2005, Darren Patton (“Patton”) requested mandatory arbitration of a fee dispute with his former attorney, Award Debtor.

On September 8, 2005, the San Diego County Bar Association served a copy of its Findings and Award, which awarded Patten a refund of \$1,075, including \$1,000 in attorney’s fees and \$75 in program filing fees. The award was non-binding, yet it became binding on October 8, 2005, because neither Patton nor Award Debtor filed for a trial rejecting the arbitration award.

In October 2005, Patton faxed a letter several times to Award Debtor requesting payment of the arbitration award; however, Award Debtor did not respond to his faxes.

Having received no response to his demand from Award Debtor, Patton submitted a Client’s Request for Enforcement of an Arbitration Award form (“Client’s Enforcement Request”) to the State Bar on February 6, 2006.

On February 6, 2006, the State Bar Mandatory Fee Arbitration Program filed the Client’s Enforcement Request.

Under cover letter dated February 17, 2006, the State Bar served Award Debtor with, among other things, the Client’s Enforcement Request and the arbitration award. The letter advised the Award Debtor that under 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”), she had 30 days from the February 17, 2006, service of the request for enforcement to: (1) provide satisfactory proof to the State Bar’s Office of Mandatory Fee Arbitration of her payment of the arbitration award and interest;

(2) agree to a payment plan that is satisfactory to Patton or the State Bar; or (3) provide reasons, under Business and Professions Code section 6203, subdivision (d)(2)(B), why she should not be required to comply with the arbitration award. The Award Debtor was advised that her response was due to the Office of Mandatory Fee Arbitration on or before March 20, 2006. The letter set forth that if no response was received on or before March 20, 2006, 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, including the arbitration award, were served on Award Debtor at her official address by both regular and certified mail, return receipt requested, on February 17, 2006. The Postal Service return receipt was returned indicating that the documents were received by Lou Khoury; however, the date of delivery was not indicated. The documents sent by regular mail were not returned as undeliverable. However, Award Debtor did not respond to the letter.

On March 21, 2006, the State Bar sent a letter to Award Debtor confirming her failure to respond and notifying her that the matter was being forwarded to the Presiding Arbitrator for issuance of an order imposing administrative penalties in the amount of \$1,000. The letter also advised the Award Debtor that the Presiding Arbitrator might proceed by moving the State Bar Court for an order placing the Award Debtor on involuntary inactive status, and that she would then not be entitled to practice law in California until she complied with the arbitration award in full and paid any penalties imposed and costs awarded.

Award Debtor and Alan Bloom of the State Bar's Mandatory Fee Arbitration Program spoke on April 3, 2006.

Award Debtor sent a letter to the State Bar dated April 4, 2006, proposing to pay the award in monthly installments of \$100 until paid in full. The State Bar notified Patton of the Award Debtor's proposed payment plan. Patton rejected the offer and countered with an offer to accept the principal balance of \$1,075 as payment in full, if received by June 7, 2006.

On April 11, 2006, the State Bar sent a letter to Award Debtor informing her of Patton's

rejection and counter-offer. Award Debtor did not respond to this letter.

On May 3, 2006, the State Bar sent a letter to Award Debtor confirming her failure to respond and reminding her that to avoid the imposition of administrative penalties, she must provide a response forthwith.

On May 16, 2006, the State Bar filed and served a copy of an Order Re: Administrative Penalties on Award Debtor by regular and certified mail, return receipt requested, to her official address. The Postal Service return receipt was signed by an agent but not dated. The copy of the order sent by regular mail was not returned as undeliverable. The order provided that imposition of a penalty in the amount of \$500 would be stayed for 14 days from the filing of this order and not be imposed if the State Bar received evidence on or before that date that Award Debtor had fully complied with the award.

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.

As of September 6, 2006, Patton had not received any further response from Award Debtor to his Request for Enforcement, his counterproposal, or any payment of any portion of the award from Award Debtor.

As of September 8, 2006, the State Bar had not received any further communication from Award Debtor regarding the Client's Enforcement Request, nor any evidence that she has paid the arbitration award.

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 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 she is not personally responsible for making or ensuring payment of the

award; that she is unable to pay it; or that she 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, subd. (d)(2)(B).)

ORDER

IT IS ORDERED that Award Debtor Bessie Mae Carr 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) she has paid the arbitration award to Darren Patton in the amount of \$1,075, plus interest at the rate of ten percent per annum from September 8, 2005, the date the arbitration award was served; (2) she has paid the administrative penalty of \$500 assessed by the Presiding Arbitrator's order filed May 16, 2006, 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: November ____, 2006

RICHARD A. HONN
Judge of the State Bar Court