

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

In the Matter of)	Case No. 06-AE-14701-RAP
JOSEPH AUGUSTINE HACKETT,)	ORDER GRANTING MOTION FOR
Member No. 68965,)	INACTIVE ENROLLMENT (Bus. & Prof
A Member of the State Bar.)	Code, § 6203, subd. (d); Rules Proc. of State
)	Bar, rule 700 et seq.)

On October 16, 2006, Arne Werchick, the Presiding Arbitrator of the State Bar's Mandatory Fee Arbitration Program by and through his designee Special Deputy Trial Counsel Jill A. Sperber (hereafter the State Bar) filed a motion for inactive enrollment seeking an order directing that award debtor **JOSEPH AUGUSTINE HACKETT**¹ be involuntary enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6203, subdivision (d)² due to his failure to pay a fee arbitration award.

On October 13, 2006, the State Bar properly served a copy of its October 16, 2006, motion on debtor Hackett at his latest address shown on the official membership records of the State Bar of California (hereafter official address) by certified mail, return receipt requested in accordance with section 6002.1, subdivision (c) and Rules of Procedure of the State Bar, rules 60 and 701(b). That service was deemed complete when mailed even if respondent did not receive it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108; but see also *Jones v. Flowers* (April 26, 2006) 547 U.S. ____, 126 S.Ct. 1708, 1713-1714, 1717.) On October 13, 2006, the State Bar also served a copy of its motion on Hackett at his official address by "regular

¹Hackett was admitted to the practice of law in the State of California on June 25, 1976, and has been a member of the State Bar of California since that time.

²Unless otherwise noted, all further statutory references are to this code.

mail” (presumably, first class mail, regular delivery).

Hackett failed to file a response (Rules Proc. of State Bar, rule 702) or otherwise appear in this matter. Accordingly, Hackett is deemed to have waived his right to a hearing. (Rules Proc. of State Bar, rule 704.)

On October 31, 2006, the court took the matter under submission for decision without a hearing.

FINDINGS OF FACT

The record establishes the following findings of fact by clear and convincing evidence.

On January 6, 2006, the Ventura County Bar Association Fee Arbitration Panel properly mailed, to Hackett and his former client Jody L. Allen, copies of a written non-binding arbitration award dated December 19, 2005 (hereafter the December 19, 2005, award). That December 19, 2005, award directed Hackett to refund, to Allen, \$1,000 in attorney’ fees and to waive collection of \$1,038 in additional attorney’s fees that Hackett previously billed Allen.³ Neither Hackett nor Allen sought a trial after arbitration under section 6204. Accordingly, the December 19, 2005, award became binding by operation of law, on both Hackett and Allen, on February 5, 2006. (§ 6203, subd. (b).)

On March 16, 2006, Attorney Denise Houghton, who represents Allen, mailed a letter to Hackett at his official address demanding that Hackett pay the December 19, 2005, award. (See Rules Proc. for Fee Arbitrations and Enforcement of Awards by State Bar [hereafter Fee Arbitration Rules], former rule 40.2 [now rule 44.2].)⁴ Hackett, however, failed to respond to Attorney Houghton’s letter. Thereafter, on May 8, 2006, Allen timely filed, with the State Bar, a request for enforcement of the December 19, 2005, award (hereafter Allen’s enforcement request). (Fee Arbitration Rules, former rule 40.1 [now rule 44.1].)

³Moreover, the award specified that Hackett was to “retain total payment of not more than \$15,038” in attorney’s fees from Allen.

⁴The Fee Arbitration Rules were amended August 19, 2006. With respect to the events in the present proceeding that occurred before the August 19, 2006, amendments, the court cites to the applicable former rules and parenthetically notes the corresponding current rules.

On May 9, 2006, the State Bar properly served, on Hackett at his official address, a copy of Allen's enforcement request (Fee Arbitration Rules, former rule 40.3 [now rule 44.3]) and a letter informing Hackett (1) of his duty to file a response to Allen's enforcement request (Fee Arbitration Rules, former rule 41.1 [now rule 45.1]) and (2) of the actions the State Bar would pursue against him if he failed to file such a response by June 8, 2006.⁵ More specifically, the State Bar mailed those items to Hackett both by certified mail, return receipt requested, and by regular mail. The State Bar received, from the United States Postal Service (hereafter Postal Service), a return receipt (i.e., green card) that establishes that the items that were served on Hackett by certified mail were actually delivered to Hackett's official address on May 15, 2006, where they were accepted and signed for by a "B. Skinner," as agent for Hackett. Moreover, the items that were served on Hackett by regular mail were not returned to the State Bar by the Postal Service as undeliverable or otherwise. Accordingly, Hackett also actually received the items that were served on him by regular mail. (Evid. Code, § 641 [mailbox rule].)

Hackett failed to file a response to Allen's enforcement request. Accordingly, on June 9, 2006, the State Bar mailed, to Hackett at his official address, a letter notifying him that it intended to file an order imposing administrative penalties on him.

Hackett never responded to the State Bar's June 9, 2006, letter. Accordingly, on June 23, 2006, the State Bar filed an order in which it imposed \$500 in administrative penalties on Hackett. (§ 6203, subd. (d)(3); Fee Arbitration Rules, former rule 44.0 [now rules 45.2 and 45.3].) That order provided that the penalties would not be imposed if Hackett paid the December 19, 2005, award within the following 14 days.

On June 23, 2006, the State Bar properly served a copy of its June 23, 2006, order imposing \$500 in administrative penalties on Hackett at his official address. More specifically,

⁵In a matter before the State Bar of California's Office of Mandatory Fee Arbitration, service by mail on an attorney is to be at his or her official address unless otherwise expressly required by the rules. (Fee Arbitration Rules, former rule 46.2 [now rule 51.2].) Moreover, except when otherwise required, service by mail on an attorney in such a matter need not be made by certified mail, return receipt requested, but may be made by first class mail, regular delivery. (Cf. *id.*)

the State Bar mailed copies of that order to Hackett at his official address both by certified mail, return receipt requested and by regular mail. The State Bar received, from the Postal Service, a return receipt that establishes that the copy of the order that was served on Hackett by certified mail was actually delivered to and received at Hackett's official address on June 26, 2006. Moreover, the copy that was served on Hackett by regular mail was not returned to the State Bar as undeliverable or otherwise. Accordingly, Hackett also actually received the copy of the order that was served on him by regular mail. (Evid. Code, § 641 [mailbox rule].)

Hackett did not pay the December 19, 2005, award within 14 days following the service of the State Bar's June 23, 2006, order. Nor did he pay the \$500 in penalties. Accordingly, the \$500 in penalties were added to Hackett's annual membership fees for the 2007. (§ 6203, subd. (d)(3).) To date, Hackett has not paid any portion of the December 19, 2005, award.

In sum, the record establishes, by clear and convincing evidence, that the December 19, 2005, award is binding and final; that Hackett has failed to comply with the December 19, 2005, award; and that Hackett has never proposed, to Allen or the State Bar, a payment plan with respect to that award. (See § 6203, subd. (d)(2)(A); Rules Proc. of State Bar, rule 705(a).) What is more, the record does not establish, by clear and convincing evidence (or otherwise), that Hackett is not personally responsible for making or ensuring payment of the December 19, 2005, award; that Hackett is unable to pay the December 19, 2005, award or the payments due under a previously agreed-upon payment plan; or that Hackett has proposed, and agrees to comply with, a payment plan which the State Bar has unreasonably rejected as unsatisfactory. (See § 6203, subd. (d)(2)(B); Rules Proc. of State Bar, rule 705(b).)

ORDER

IT IS ORDERED that **JOSEPH AUGUSTINE HACKETT** be enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6203, subdivision (d), effective five days from the date of service of this order (Rules Proc. of State

Bar, rule 708(b)(1)).⁶ Hackett will remain on inactive enrollment under this order until: (1) he pays the arbitration award and judgment to Jody Allen in the amount of \$1,000, plus interest thereon at the rate of 10 percent per annum from January 6, 2006, (the date the award was served) until paid; (2) he pays the \$500 in penalties imposed on him in the State Bar's June 23, 2006, order; and (3) he makes and this court grants a motion to terminate his inactive enrollment. (Bus. & Prof. Code, § 6203, subd. (d)(4); Rules Proc. of State Bar, rule 710.)

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 28, 2006.

RICHARD A. PLATEL
Judge of the State Bar Court

⁶Only active members of the State Bar may lawfully practice law in this state. (Bus. & Prof. Code, § 6125.) And it is a crime for an attorney who has been enrolled inactive involuntarily to practice law, to attempt to practice of law, or to merely hold himself or herself out as entitled to practice law. (Bus. & Prof. Code, § 6126, subd. (b).)