

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

In the Matter of	)	<b>Case No. 06-AE-14991-RAP</b>
<b>ELI ALAN KITT,</b>	)	<b>ORDER GRANTING MOTION FOR</b>
<b>Member No. 217753,</b>	)	<b>INVOLUNTARY INACTIVE</b>
<b>A Member of the State Bar.</b>	)	<b>ENROLLMENT [Bus. &amp; Prof. Code,</b>
	)	<b>§ 6203, subd. (d); Rules Proc. of State Bar,</b>
	)	<b>rule 700, et seq.]</b>

**I. INTRODUCTION**

This matter is before the Court on motion filed by 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 and Special Deputy Trial Counsel, seeking the involuntary inactive enrollment of Award Debtor **ELI ALAN KITT** ("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 his failure to pay an arbitration award. After a hearing in this matter, the court finds that Award Debtor has failed to comply with the arbitration award and has not produced a payment plan acceptable to the client or the State Bar.

The State Bar's Mandatory Fee Arbitration Program ("State Bar") was represented at the hearing by Presiding Arbitrator Arne Werchick, Esq. Award Debtor represented himself in this matter.

**II. SIGNIFICANT PROCEDURAL HISTORY**

On November 1, 2006, the Presiding Arbitrator, by and through his designee, Jill A. Sperber, filed a motion seeking the involuntary inactive enrollment of Award Debtor. (Bus. & Prof. Code, section 6203, subd. (d), Rules Proc. of State Bar, rule 700, et seq.) A copy of the

motion was served at Award Debtor's official membership records address on October 31, 2006. On November 14, 2006, Award Debtor filed a response to the motion, requesting a hearing on the matter. On November 22, 2006, the State Bar filed a supplement to its motion, and on January 23, 2007, Award Debtor filed a supplement to his response.

A hearing was scheduled for January 3, 2007. The matter was continued for hearing to January 23, 2007. The case was submitted on January 23, 2007.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **A. Jurisdiction**

Award Debtor was admitted to the practice of law in California on December 6, 2001, and has been a member of the State Bar at all times since.

#### **B. Facts**

In October 2004, Alex Mylyavsky requested mandatory fee arbitration with the State Bar to resolve a fee dispute with Award Debtor. On October 14, 2005, the State Bar served a non-binding arbitration award on the parties. It awarded a refund in the amount of \$21,000 in attorney's fees and \$1,100 for the fee arbitration filing fee, for a total award of \$22,100.

On November 22, 2005, Lawrence Hoodack, attorney for Mylyavsky, sent a letter to Award Debtor demanding payment of the award. Award Debtor did not respond. On May 9, 2005, Mylyavsky obtained a judgment from the Los Angeles Superior Court confirming the award, including fees and costs in the amount of \$2,801.40, for a total judgment of \$24,901.40. Award Debtor did not pay the judgment.

On June 9, 2006, Mylyavsky submitted a Client's Request for Enforcement of an Arbitration Award form ("Client's Enforcement Request") to the State Bar Office of Mandatory Fee Arbitration pursuant to Business and Professions Code section 6203, subdivision (d).

On June 12, 2006, the State Bar served the Client's Enforcement Request and the arbitration award, among other things, on Award Debtor by regular and certified mail at his official State Bar membership address. The State Bar also advised Award Debtor by letter of the potential consequences of failing to comply with the arbitration award or responding to the Client's Enforcement Request by July 12, 2006. The certified mail return receipt indicates these

materials were received on June 14, 2006. The Client's Enforcement Request sent by regular mail was not returned to the State Bar as undeliverable. Award Debtor did not respond to the enforcement request.

On July 13, 2006, the State Bar sent a letter to Award Debtor at his official State Bar membership record's address, confirming his failure to reply to the Client's Enforcement Request and advising him that the matter was being forwarded to the Presiding Arbitrator for issuance of an order imposing administrative penalties against Award Debtor. Award Debtor did not respond to this letter.

On August 1, 2006, the State Bar filed and served an Order Re: Administrative Penalties on Award Debtor at his official State Bar membership records address by both certified and regular mail. The certified mail return receipt indicates that it was received on August 7, 2006. The regular mail was not returned as undeliverable. The order provided that administrative penalties in the amount of \$2,500 would not be imposed if Award Debtor complied with the arbitration award within two weeks of the date of service of the order. Because Award Debtor did not respond to the order, penalties were imposed and added to his membership dues for 2007.

Award Debtor produced several pay stubs totaling about \$15,000 in wages for the year 2006 and testified these were his only wages for the year. No other evidence was produced to verify the exact amount of Award Debtor's earnings for 2006. Award Debtor did not produce any additional evidence regarding his finances for the year 2006. The court finds that Award Debtor failed to produce clear and convincing evidence that he is unable to pay the arbitration award. The court also finds that Award Debtor has failed to submit a payment plan that is acceptable to the State Bar or his former client.

**C. Conclusions of Law**

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

The court finds the Award Debtor has not met his burden of demonstrating by clear and

convincing evidence that he is not personally responsible for making or ensuring payment of the award; 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. (Bus. & Prof. Code, § 6203, subd. (d)(2))B); Rules Proc. of State Bar, rule 705(b).)

#### **IV. ORDER**

**IT IS ORDERED** that Award Debtor **ELI ALAN KITT**, 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 after the date of service of this order. (Rules Proc. of State Bar, rule 708(b)(1).)

**IT IS FURTHERED ORDERED** that Award Debtor **ELI ALAN KITT** must remain involuntarily enrolled as an inactive member of the State Bar until: 1) he has paid the judgment to Alex Mylyavsky in the amount of \$24,901.40, plus interest at the rate of ten percent per annum from October 14, 2005, the date the award was served; 2) he has paid the administrative penalty of \$2,500 assessed by the Presiding Arbitrator's order filed on August 1, 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: February 2, 2007

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RICHARD A. PLATEL  
Judge of the State Bar Court