

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

In the Matter of	)	<b>Case No. 06-AE-15192-RAP</b>
	)	
<b>JEFFREY S. MINTZ,</b>	)	<b>ORDER GRANTING MOTION FOR</b>
	)	<b>INACTIVE ENROLLMENT (Bus. &amp; Prof</b>
<b>Member No. 113467,</b>	)	<b>Code, § 6203, subd. (d); Rules Proc. of State</b>
	)	<b>Bar, rule 700 et seq.)</b>
<u>A Member of the State Bar.</u>	)	

On November 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 **JEFFREY S. MINTZ**<sup>1</sup> be involuntary enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6203, subdivision (d)<sup>2</sup> due to his failure to pay a fee arbitration award.

On November 14, 2006, the State Bar properly served a copy of its November 16, 2006, motion on debtor Mintz 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 Mintz 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.)

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<sup>1</sup>Mintz was admitted to the practice of law in the State of California on June 13, 1984, and has been a member of the State Bar of California since that time.

<sup>2</sup>Unless otherwise noted, all further statutory references are to this code.

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

On December 5, 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 12, 2006, the Riverside County Bar Fee Arbitration Panel properly mailed, to Mintz and his former client Timothy DeJurnett, copies of a written non-binding arbitration award (hereafter the January 12, 2006, award), which directed Mintz to refund, to DeJurnett, \$12,500 in attorney's fees. Neither Mintz nor DeJurnett sought a trial after arbitration under section 6204. Accordingly, the January 12, 2006, award became binding, on both Mintz and DeJurnett, by operation of law on February 11, 2006. (§ 6203, subd. (b).)

Thereafter, DeJurnett, sent three letters and made several telephone calls to Mintz in an attempt to collect the January 12, 2006, 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].)<sup>3</sup> Mintz responded to DeJurnett's communications on March 6, 2006, when he sent DeJurnett a letter stating that he (i.e., Mintz) would honor the January 12, 2006, award, but that he might not be able to precisely follow the payment plan that DeJurnett proposed. In that regard, Mintz also stated in his March 6, 2006, letter that, within the next few days, he expected to have \$3,000 to \$4,000, which he would send to DeJurnett. Mintz, however, never sent any money to DeJurnett. Accordingly, on May 22, 2006, DeJurnett timely filed, with the State Bar, a request for enforcement of the January 12, 2006, award (hereafter DeJurnett's enforcement request). (Fee Arbitration Rules, former rule 40.1 [now rule 44.1].)

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<sup>3</sup>The 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 23, 2006, the State Bar properly served, on Mintz at his official address, a copy of DeJurnett's enforcement request (Fee Arbitration Rules, former rule 40.3 [now rule 44.3]) and a letter informing Mintz (1) of his duty to file a response to DeJurnett'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 22, 2006.<sup>4</sup> More specifically, the State Bar mailed those items to Mintz 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 Mintz by certified mail were actually delivered to and signed for by Mintz on May 26, 2006. Moreover, the items that were served on Mintz by regular mail were not returned to the State Bar by the Postal Service as undeliverable or otherwise. Accordingly, Mintz also actually received the items that were served on him by regular mail. (Evid. Code, § 641 [mailbox rule].)

Mintz failed to file a response to DeJurnett's enforcement request. Accordingly, on June 23, 2006, the State Bar mailed, to Mintz at his official address, a letter notifying him that it intended to file an order imposing administrative penalties on him.

Mintz never responded to the State Bar's June 23, 2006, letter. Accordingly, on July 7, 2006, the State Bar filed an order in which it imposed \$2,500 in administrative penalties on Mintz. (§ 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 Mintz paid the January 12, 2006, award within the following 14 days.

In addition, on July 7, 2006, the State Bar properly served copies of its July 7, 2006, order on Mintz 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 indicates that the copy

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<sup>4</sup>In 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.*)

of the order that was served on Mintz by certified mail was actually received by Mintz on July 13, 2006. Moreover, the copy that was served on Mintz by regular mail was not returned to the State Bar as undeliverable or otherwise. Accordingly, Mintz also actually received the copy of the order that was served on him by regular mail. (Evid. Code, § 641 [mailbox rule].)

Mintz did not pay the January 12, 2006, award within 14 days following the service of the State Bar's July 7, 2006, order. Nor did he pay the \$2,500 in penalties. Accordingly, the \$2,500 in penalties were added to Mintz's annual State Bar membership fees for the next calendar year. (§ 6203, subd. (d)(3).) To date, Mintz has not paid any portion of the January 12, 2006, award.

In sum, the record establishes, by clear and convincing evidence, that the January 12, 2006, award is binding and final; that Mintz has failed to comply with the January 12, 2006, award; and that Mintz accepted a payment plan proposed to him by DeJurnett (albeit under somewhat modified terms) with respect to that award, but that Mintz has failed to make one or more of the payments required by the plan. (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 Mintz is not personally responsible for making or ensuring payment of the January 12, 2006, award; that Mintz is unable to pay the January 12, 2006, award or the payments due under the previously agreed-upon payment plan; or that Mintz 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).)

In sum, all of the statutory and rule prerequisites for involuntary inactive enrollment have been met.

### **ORDER**

**IT IS ORDERED** that **JEFFREY S. MINTZ** 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)).<sup>5</sup> Mintz will remain on inactive enrollment under this order until: (1) he pays the arbitration award and judgment to Timothy DeJurnett in the amount of \$12,500, plus interest thereon at the rate of 10 percent per annum from January 12, 2006, (the date the award was served) until paid; (2) he pays the \$2,500 in penalties imposed on him in the State Bar's July 7, 2006, order; (3) he pays the reasonable costs awarded to the State Bar *post*, and (4) 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; see also Rules Proc. of State Bar, rule 708(b)(2) [Mintz may seek relief from costs under Rules of Procedure of the State Bar, rule 282].)

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: January 4, 2007.

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RICHARD A. PLATEL  
Judge of the State Bar Court

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<sup>5</sup>Only 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).) Moreover, an attorney who has been involuntarily enrolled inactive may not lawfully represent others before any state agency or in any administrative hearing even if laypersons may do so. (*Ibid.*; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)