

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

In the Matter of	)	<b>Case No. 06-AE-15437-RAP</b>
<b>MARLENE GERDTS,</b>	)	
<b>Member No. 93815,</b>	)	<b>ORDER GRANTING MOTION FOR</b>
<b>A Member of the State Bar.</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT [Bus. &amp; Prof. Code, § 6203,</b>
	)	<b>subd. (d); Rules Proc. of State Bar, rule 700,</b>
	)	<b>et seq.]</b>

On December 13, 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 Marlene Gerdts (“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 Award Debtor’s official membership records address (“official address”) on December 12, 2006, by certified mail, return receipt requested, and by regular mail.<sup>1</sup>

A copy of a Notice of Assignment was properly served on Award Debtor at her official address on December 14, 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.

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<sup>1</sup>Exhibit 3, the certified copy of Award Debtor’s address history as of December 5, 2006, which is attached to the motion, is not competent evidence to establish that documents served after December 5, 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 April 20, 2006, Award Debtor’s official address has been, and remains, 433 N. Camden Dr. 6FL, Beverly Hills, CA 90210.

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 January 5, 2007. A copy of the Submission Order was properly served on Award Debtor at her official address on January 5, 2007, 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 16, 1980.

### **Facts**

In May 2003, Vlastimil Klimes (“Klimes”) requested mandatory arbitration of a fee dispute with his former attorney, Award Debtor.

On September 14, 2004, the State Bar served a copy of its Findings and Award, which awarded Klimes a refund of \$2,100, including \$2,000 in attorney’s fees and \$100 in program filing fees. The award was non-binding, yet it became binding on October 14, 2004, because neither Klimes nor Award Debtor filed for a trial rejecting the arbitration award.

On October 17, 2004, Klimes sent a letter to Award Debtor demanding payment of the arbitration award. However, Award Debtor did not respond to the letter.

Having received no communication from Award Debtor, Klimes submitted a Client’s Request for Enforcement of an Arbitration Award form (“Client’s Enforcement Request”) to the State Bar on January 26, 2005.

On February 2, 2005, the State Bar Mandatory Fee Arbitration Program filed the Client’s Enforcement Request.

Under cover letter dated February 2, 2005, 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 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 2, 2005, 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 Klimes 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 4, 2005. The letter set forth that failing to comply with a final and binding fee arbitration award can result in the imposition of administrative penalties. The letter also set forth that if no response was received on or before March 4, 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, including the arbitration award, were served on Award Debtor at her official address by both regular and certified mail, return receipt requested, on February 2, 2005. The Postal Service return receipt was returned indicating that the documents were received on February 7, 2005, by "Robert [last name illegible]." However, Award Debtor did not respond to the letter.

On March 7, 2005, 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 against Award Debtor 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. The Postal Service did not return the letter to the State Bar as undeliverable. Award Debtor did not respond to this letter.

On March 29, 2005, 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 indicates that the order was received on April 1, 2005, by "D. Devine." 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 \$1,000 would be stayed for 14 days from the filing date 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 November 29, 2006, Klimes had not received any response from Award Debtor to his Request for Enforcement or payment of any portion of the award from Award Debtor.

As of December 12, 2006, the State Bar had not received any communication from Award Debtor regarding the Client's Enforcement Request or 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 Marlene Gerdtts 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 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 Vlastimil Klimes in the amount of \$2,100, plus interest at the rate of ten percent per annum from September 14, 2004, the date a copy of the arbitration award was served; (2) she has paid the administrative penalty of \$1,000 assessed by the Presiding Arbitrator's order filed March 29, 2005, 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: January 31, 2007

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RICHARD A. PLATEL  
Judge of the State Bar Court