



FILED
MDS
JUN 19 2007
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO
PUBLIC MATTER

In the Matter of)	Case Nos.: 07-AE-12019-RAH
)	
JAMES R. MILLER, a/k/a)	
JAMES R. MILLER III,)	
)	DECISION & ORDER OF INVOLUNTARY
Member No. 198567,)	INACTIVE ENROLLMENT
)	(Bus. & Prof Code, § 6203, subd. (d).)
<u>A Member of the State Bar.</u>)	

On May 10, 2007, 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 "State Bar") filed a motion to involuntarily enroll award debtor **JAMES R. MILLER**¹ as an inactive member of the State Bar of California because he has failed to pay a final fee arbitration award. (Bus. & Prof. Code, § 6203, subd. (d);² Rules Proc. of State Bar, rule 700 et seq.)

Also, on May 10, 2007, the State Bar properly served a copy of its motion on debtor Miller 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 Miller did not receive it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108;

¹Miller was admitted to the practice of law in the State of California on December 6, 1998, 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.

but see also *Jones v. Flowers* (April 26, 2006) 547 U.S. ____, 126 S.Ct. 1708, 1713-1714, 1717.)

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

On June 4, 2007, the court took the State Bar's motion under submission for decision without a hearing.

FINDINGS OF FACT

The record establishes the following findings of fact by clear and convincing evidence. On December 20, 2005, the Fee Arbitration Committee of the San Diego County Bar Association properly mailed, to Miller and his former client Thomas Norton, copies of a written non-binding arbitration award that directed Miller (1) to refund to Norton \$3,000 in unearned attorney's fees together with interest thereon from August 16, 2004, until paid and (2) to reimburse Norton \$130 in arbitration costs (hereafter "\$3,130 award"). Neither Miller nor Norton sought a trial after arbitration under section 6204. Accordingly, the \$3,130 award became binding, on both Miller and Norton, by operation of law on January 19, 2006. (§ 6203, subd. (b).)

Thereafter, on January 30, 2006, Norton sent Miller a demand letter in an attempt to collect the \$3,130 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].)³ Miller, however, never paid any portion of the award to Norton. Accordingly,

³The Fee Arbitration Rules were amended and renumbered August 19, 2006. With respect to the events in the present proceeding that occurred before the August 19,

on May 5, 2006, Norton timely filed, with the State Bar, a request for enforcement of the \$3,130 award (hereafter "Norton's enforcement request"). (Fee Arbitration Rules, former rule 40.1 [now rule 44.1]).

On May 9, 2006, the State Bar properly served, on Miller at his official address, a copy of Norton's enforcement request (Fee Arbitration Rules, former rule 40.3 [now rule 44.3]) and, among other things, a letter notifying Miller that his response to Norton's enforcement request was due no later than June 8, 2006, (Fee Arbitration Rules, former rule 41.1 [now rule 45.1]). The State Bar served those items on Miller both by (1) certified mail, return receipt requested and (2) first class mail (regular delivery).

Thereafter, the State Bar received, from the United States Postal Service (hereafter "Postal Service"), a return receipt (i.e., green card) which establishes that the items the State Bar served on Miller by certified mail were actually delivered to Miller's official address on May 12, 2006, where they were accepted and signed for by Paul Zelechosc as Miller's Agent. Moreover, the items that the State Bar served on Miller by first class mail were not returned to the State Bar by the Postal Service as undeliverable or otherwise. Accordingly, the court finds that Miller also actually received the items served on him by first class mail. (Evid. Code, § 641 [mailbox rule].)

Miller failed to file a response to Norton's enforcement request. Accordingly, on June 9, 2006, the State Bar mailed, to Miller at his official address, a letter notifying him that it intended to file an order imposing administrative penalties on him. Miller, however, never responded to that letter. Therefore, on June 23, 2006, the State Bar filed

2006, amendments, the court cites to the applicable former rules and parenthetically notes the corresponding current rules.

an order in which it imposed \$1,000 in administrative penalties on Miller. (§ 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 Miller paid the \$3,130 award within the following 14 days.

In addition, on June 23, 2006, State Bar served copies of its administrative penalties order on Miller at his official address both by (1) certified mail, return receipt requested and (2) first class mail (regular delivery).

Thereafter, the State Bar received, from the Postal Service, a return receipt which establishes that the copy of the order that was served on Miller by certified mail was actually delivered to Miller's official address on June 27, 2006, where it was again accepted and signed for by Mr. Zelechosc for Miller. Moreover, the copy that was served on Miller by first class mail, regular delivery was not returned to the State Bar as undeliverable or otherwise. Accordingly, the court finds that Miller also actually received the copy of the order that was served on him by first class mail. (Evid. Code, § 641.)

Miller did not pay the \$3,130 award within 14 days after the June 23, 2006, administrative penalties order. Nor did he pay the \$1,000 in penalties. Accordingly, the \$1,000 in penalties was added to Miller's annual State Bar membership fees for the following calendar year. (§ 6203, subd. (d)(3); Fee Arbitration Rules, former rule 45.0 [now rule 48.0.] To date, Miller has not paid any portion of the \$3,130 award.

In sum, the record establishes, by clear and convincing evidence, that the \$3,130 award is binding and final and that Miller has failed to comply with the \$3,130 award. (See § 6203, subd. (d)(2)(A); Rules Proc. of State Bar, rule 705(a).) What is more, Miller

has not demonstrated that he is not personally responsible for making or ensuring payment of the \$3,130 award; that he is unable to pay the \$3,130 award; or that he has proposed, and agreed 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).) Therefore, the court finds that all of the statutory and procedural rule prerequisites for involuntary inactive enrollment have been met.

ORDER

IT IS ORDERED that JEFFREY R. MILLER 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)).⁴ Miller is to remain on inactive enrollment under this order until: (1) he pays the arbitration award and judgment to Timothy Norton in the amount of \$3,000, together with interest thereon at the rate of 10 percent per annum from August 16, 2004, until paid (as provided for in the arbitration award) and \$130 together with interest thereon at the rate of 10 percent per annum from December 20, 2006, (the date the award was served) until paid; (2) he pays the \$1,000 in penalties imposed on him in the State Bar's June 23, 2006, administrative penalties order; (3) he pays the reasonable costs awarded to the State Bar below; and (4) he makes and the State Bar Court grants a

⁴Only active members of the State Bar may lawfully practice law in this state. (Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive involuntarily to practice law, to attempt to practice of law, or to even 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 are authorized to do so. (*Ibid.*; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)

motion to terminate his inactive enrollment. (Bus. & Prof. Code, § 6203, subd. (d)(4); Rules Proc. of State Bar, rule 710; but see also Rules Proc. of State Bar, rule 708(b)(2) [attorneys may seek relief from payment of costs].)

Reasonable costs are awarded to the State Bar upon the Presiding Arbitrator's prompt submission of a bill of costs. (Bus. & Prof. Code, § 6203, subd. (d)(3); Rules Proc. of State Bar, rule 708(b)(2).)

Dated: June 18, 2007.



RICHARD A. HONN
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 19, 2007, I deposited a true copy of the following document(s):

DECISION & ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

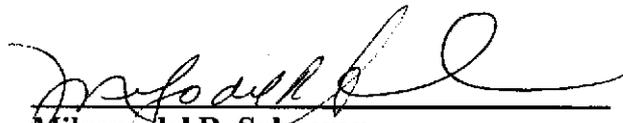
**JAMES R. MILLER
MILLER & LEDEBUR LLP
525 B ST #1500
SAN DIEGO, CA 92101**

**ARNE WERCHICK
WERCHICK & ERCHICK
135 CHELSEA CIR
PALM DESERT, CA 92260**

- [X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Jill A. Sperber, Director, Mandatory Fee Arbitration Program, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **June 19, 2007**.



Milagro del R. Sahmeron
Case Administrator
State Bar Court