

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No. 07-AE-14510-PEM
)	
GREGORY CHANDLER,)	ORDER GRANTING MOTION FOR
)	INVOLUNTARY INACTIVE
Member No. 158260,)	ENROLLMENT [Bus. & Prof. Code,
)	§ 6203, subd. (d); Rules Proc. of State Bar,
A Member of the State Bar.)	rule 700, et seq.]

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 Sperber, Director of the Mandatory Fee Arbitration Program and Special Deputy Trial Counsel, seeking the involuntary inactive enrollment of Award Debtor **GREGORY CHANDLER** (“Award Debtor”), pursuant to Business and Professions Code section 6203, subdivision (d),¹ 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. Based on the State Bar’s motion, Award Debtor’s response, and their respective supporting documents, 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.

II. SIGNIFICANT PROCEDURAL HISTORY

On November 16, 2007, the Presiding Arbitrator, by and through his designee, Jill Sperber, filed a motion seeking the involuntary inactive enrollment of Award Debtor. (Bus. &

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

Prof. Code, section 6203, subd. (d), Rules Procedure of State Bar, rule 700, et seq.) A copy of the motion was properly served at Award Debtor's official membership records address on November 16, 2007, by certified mail, return receipt requested, and by regular mail.² On November 26, 2007, Award Debtor filed a peremptory motion to dismiss accompanied by his response to the State Bar's motion seeking his involuntary inactive enrollment.

On November 28, 2007, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in-person status conference for December 10, 2007. A copy of said notice was properly served on Award Debtor by first-class mail, postage fully prepaid, on November 28, 2007, at his official membership records address.

On December 6, 2007, the State Bar filed a reply brief opposing Award Debtor's motion for dismissal. On December 10, 2007, the parties appeared before the court for the scheduled status conference.³ At this status conference, the court scheduled a hearing on this matter for January 10, 2008.⁴

On December 13, 2007, the court filed an order denying Award Debtor's peremptory motion to dismiss. A copy of said order was properly served on Award Debtor by first-class mail, postage fully prepaid, on December 13, 2007, at his official membership records address.

² Exhibit 4, the certified copy of Award Debtor's address history as of November 15, 2007, which is attached to the State Bar's motion, is not competent evidence to establish that documents served after November 15, 2007, 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 June 22, 2007, Award Debtor's official address has been, and remains, 101 California St., #2450, San Francisco, CA 94111.

³ On this same day, Award Debtor filed an additional pleading entitled Status Conference Statement of Gregory Chandler.

⁴ On December 11, 2007, the court filed a status conference order noting the date and time of the January 10, 2008 hearing. A copy of said order was properly served on Award Debtor by first-class mail, postage fully prepaid, on December 11, 2007, at his official membership records address. The copy of said order was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

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On January 10, 2008, the State Bar appeared for the scheduled hearing. Award Debtor, however, failed to appear and this matter was submitted for decision on February 7, 2008.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Award Debtor was admitted to the practice of law in California on June 8, 1992, and has been a member of the State Bar at all times since.

B. Facts

In December 2006, Hyoung Ok Lee (“Lee”) requested mandatory fee arbitration with the Bar Association of San Francisco to resolve a fee dispute with Award Debtor. The fee dispute arbitration took place on April 25, 2007. Award Debtor, Lee, and Lee’s attorney, Robert I Simon (“Simon”), were all present. On May 21, 2007, the Bar Association of San Francisco served a non-binding arbitration award on the parties.⁵ It awarded Lee a refund in the amount of \$8,643.75.

On June 18, 2007, unbeknownst to Lee and Simon, Award Debtor filed a lawsuit against Lee in Marin County Superior Court, case number CV 072833 (“lawsuit #1”). In lawsuit #1, Award Debtor was seeking \$9,500.00 from Lee for the reasonable value of services and materials rendered at the special instance and request of Lee and for which Lee promised to pay Award Debtor.⁶

On June 27, 2007, Simon sent a letter to Award Debtor demanding payment of the arbitration award. On July 5, 2007, Award Debtor e-mailed a response to Simon telling him that the arbitration award had been rejected through the filing of lawsuit #1. That same day, Simon

⁵ Award Debtor acknowledges prompt receipt of the arbitration award.

⁶ The complaint in lawsuit #1 made no mention of the arbitration decision; nor did it request a trial de novo.

sent a reply e-mail to Award Debtor seeking information regarding lawsuit #1, including the case number and where it was filed. Award Debtor did not respond to Simon's July 5, 2007 e-mail.

On July 9, 2007, Simon sent a letter to Award Debtor again asking for the filing information regarding lawsuit #1. On July 16, 2007, Award Debtor e-mailed a response to Simon. In this e-mail, Award Debtor refused to reveal any of the filing information due to the fact that Simon was not attorney of record in lawsuit #1.

On July 26, 2007, Award Debtor sent a letter to Lee advising her that he had rejected the arbitration award by filing lawsuit #1. On July 30, 2007, Lee faxed a letter to Award Debtor telling him that she had not been served with any such lawsuit and requesting that Award Debtor fax the information regarding lawsuit #1 to Simon. That same day, Award Debtor sent Lee a second letter acknowledging that she had yet to be served, asking her if she would accept service through the mail, and informing her that he was considering dismissing lawsuit #1. Lee did not respond to Award Debtor's July 30, 2007 letter.

On August 11, 2007, Award Debtor sent Lee a follow-up letter noting that she had not responded to his July 30, 2007 letter and informing her that he had filed a dismissal of lawsuit #1. Enclosed with Award Debtor's August 11, 2007 letter was a copy of the dismissal of lawsuit #1. The dismissal was voluntarily filed by Award Debtor on August 7, 2007.

On September 5, 2007, Lee 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 ("State Bar") pursuant to section 6203, subdivision (d).

On September 5, 2007, the State Bar served the Client's Enforcement Request on Award Debtor by regular and certified mail at his official State Bar membership address. Included in this mailing was a cover letter from the State Bar advising Award Debtor of the potential consequences for: (1) failing to comply with the arbitration award and (2) failing to respond to the Client's Enforcement Request by October 5, 2007.

On September 10, 2007, Award Debtor faxed the following one-paragraph response to the Client's Enforcement Request:

“The non-binding arbitration award at issue was rejected upon the timely filing of lawsuit #07-2833 in the Marin County, California Superior Court against [Lee] on June 18, 2007. After communications with [Lee], the lawsuit against her was dismissed without prejudice on August 7, 2007. [Lee] has not informed me that she wants the lawsuit re-instated against her. If [Lee] desires, the lawsuit that was dismissed without prejudice can be re-instated against her.”

Between September 11 and October 31, 2007, Award Debtor and the State Bar exchanged several letters regarding the merits of the arbitration award. In this series of letters, Award Debtor informed the State Bar that he would not be making any payments to Lee and the State Bar advised Award Debtor that this matter would be referred to the State Bar Court.

Additionally, on October 5, 2007, Award Debtor filed a second lawsuit, case number CV074749, against Lee in the Marin County Superior Court (“lawsuit #2”). In lawsuit #2, Award Debtor alleged five counts as follows: (1) common counts for reasonable value of work performed (outstanding attorney’s fees in the amount of \$11,000.00); (2) common counts for money paid and owed (recovery for litigation costs Award Debtor had advanced); (3) breach of contract (with damages in the amount of \$5,000.00); (4) fraud (with damages in the amount of \$10,000.00); and (5) abuse of process (by attempting to enforce the arbitration award after it was “rejected” by Award Debtor).⁷

C. Conclusions of Law

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 produced a payment plan acceptable to the client or the State Bar. (Bus. & Prof. Code, § 6203, subd. (d)(2); Rules Procedure of State Bar, rule 705(a).)

⁷ On December 3, 2007, the Marin County Superior Court issued a tentative ruling sustaining a demurrer with leave to amend on four of these five counts.

Award Debtor argues that the arbitration award is not binding due to the fact that he filed a lawsuit against Lee within 30 days of the arbitration award.⁸ The court disagrees for several reasons.

First, the complaint in lawsuit #1 does not appear to be sufficient to constitute a rejection of the fee arbitration award pursuant to Business and Professions Code section 6204. Rather, the complaint appears to be seeking damages for services rendered that were above and beyond attorney's fees already paid by Lee. Additionally, the complaint makes no mention of the arbitration award or the fees previously paid by Lee, and it fails to request a trial de novo.

Second, even if Award Debtor's complaint in lawsuit #1 was sufficient to constitute a rejection of the arbitration award, by voluntarily dismissing the unserved complaint, the Award Debtor repudiated any request for trial de novo he may have made by filing the complaint and, therefore, restored the arbitration award. (*Corell v. Law Firm of Fox and Fox* (2005) 129 Cal. App. 4th 531, 537-538.)

Third, the complaint filed in lawsuit #2 on October 5, 2007, was not filed within 30 days after mailing of the notice of the arbitration award. (Bus. & Prof. Code, § 6203, subd. (b).) Therefore, the arbitration award is binding.

Consequently, 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); Rules Procedure of State Bar, rule 705(b).)

IV. ORDER

IT IS ORDERED that Award Debtor **GREGORY CHANDLER**, be enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code

⁸ Although Award Debtor did not appear for the hearing on this matter, he has repeatedly made this argument in his pleadings filed with this court and in his correspondence with the State Bar.

section 6203, subdivision (d)(1), effective five days after the date of service of this order. (Rules Procedure of State Bar, rule 708(b)(1).)

IT IS FURTHERED ORDERED that Award Debtor **GREGORY CHANDLER** must remain involuntarily enrolled as an inactive member of the State Bar until: (1) he has paid the arbitration award to Hyoungh Ok Lee in the amount of \$8,643.75, plus interest at the rate of ten percent per annum from May 21, 2007, the date the award was served; (2) he has paid costs, in the amount of \$255.92, as ordered below;⁹ 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.

The State Bar has submitted a bill of costs in the amount of \$255.92. The court finds these costs to be reasonable and therefore awards \$255.92 in costs to the State Bar. (Bus. & Prof. Code, § 6203, subd. (d)(3); Rules Proc. of State Bar, rule 708(b)(2).)

Dated: February __, 2008

PAT McELROY
Judge of the State Bar Court

⁹ Based on the evidence before the court, there is no indication that any administrative penalties were assessed in this matter.