

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No. 07-AE-14836-LMA
)	
HOKYUNG KIM,)	ORDER GRANTING MOTION FOR
)	INVOLUNTARY INACTIVE
Member No. 151373,)	ENROLLMENT [Bus. & Prof. Code,
)	§ 6203, subd. (d); Rules Proc. of State Bar,
<u>A Member of the State Bar.</u>)	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 **HOKYUNG KIM** (“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. Based on the State Bar’s motion and 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 December 7, 2007, the Presiding Arbitrator, by and through his designee, Jill Sperber, filed a motion seeking the involuntary inactive enrollment of Award Debtor. (Bus. & Prof. Code, section 6203, subd. (d), Rules of Procedure, rule 700, et seq.) A copy of the motion was properly served at Award Debtor’s official membership records address on December 7, 2007,

by certified mail, return receipt requested, and by regular mail.¹ Award Debtor failed to respond to the State Bar's motion or request a hearing (Rules of Procedure, rules 702(a), (b) and 704).

On December 11, 2007, the court filed a Notice of Assignment. A copy of said notice 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 notice was subsequently returned to the State Bar Court by the U.S. Postal Service as undeliverable.

This matter was submitted for decision on January 8, 2008. A copy of the Submission Order was properly served on Award Debtor at his official address on January 8, 2008. The copy of the Submission Order was subsequently returned to the State Bar by the U.S. Postal Service as undeliverable.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Award Debtor was admitted to the practice of law in California on December 6, 1990, and has been a member of the State Bar at all times since.

B. Facts

In June 2006, Young Ae Song ("Song") requested mandatory fee arbitration with the Santa Clara County Bar Association to resolve a fee dispute with Award Debtor. On April 2, 2007, the Santa Clara County Bar Association served a binding arbitration award on the parties. It awarded Song a refund in the amount of \$3,750 in attorney's fees.

On April 6, 2007, Song sent a letter to Award Debtor demanding payment of the award. Award Debtor did not respond. On July 16, 2007, Song submitted a Client's Request for Enforcement of an Arbitration Award form ("Client's Enforcement Request") to the State Bar

¹ Exhibit 3, the certified copy of Award Debtor's address history as of December 6, 2007, which is attached to the State Bar's motion, is not competent evidence to establish that documents served after December 6, 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 January 5, 2007, Award Debtor's official address has been, and remains, 14125 Capri Dr., Ste 5, Los Gatos, CA 95032.

Office of Mandatory Fee Arbitration (“State Bar”) pursuant to Business and Professions Code section 6203, subdivision (d).

On July 17, 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 August 16, 2007. The Postal Service return receipt indicates that this mailing was received on August 3, 2007. The Postal Service did not return the enforcement request sent by regular mail as undeliverable. Award Debtor did not respond to the Client’s Enforcement Request.

On August 17, 2007, the State Bar sent another letter to Award Debtor at his official State Bar membership records address. This letter confirmed Award Debtor’s failure to reply to the Client’s Enforcement Request and advised him that the matter was being forwarded to the State Bar Presiding Arbitrator for the issuance of an order imposing administrative penalties against him. Award Debtor did not respond to this letter and the letter was not returned as undeliverable.

On September 4, 2007, the State Bar filed and served, by both certified and regular mail, an Order Re: Administrative Penalties on Award Debtor at his official State Bar membership records address. The Postal Service return receipt indicates that this mailing was received on September 14, 2007. The order provided that administrative penalties would not be imposed if Award Debtor complied with the arbitration award within two weeks of the date the order was filed. Because Award Debtor did not pay the award, administrative penalties were imposed and added to his State Bar membership dues for the next calendar year.

As of December 7, 2007, the State Bar had not received any communication from Award Debtor or any evidence that he has paid the arbitration award.

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 of Procedure, rule 705(a).)

Since Award Debtor did not participate in this proceeding, 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 of Procedure, rule 705(b).)

IV. ORDER

IT IS ORDERED that Award Debtor **HOKYUNG KIM**, 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 of Procedure, rule 708(b)(1).)

IT IS FURTHERED ORDERED that Award Debtor **HOKYUNG KIM** must remain involuntarily enrolled as an inactive member of the State Bar until: (1) he has paid the arbitration award to Young Ae Song in the amount of \$3,750, plus interest at the rate of ten percent per annum from April 2, 2007, the date the award was served; (2) he has paid the administrative penalty of \$500, assessed by the Presiding Arbitrator's order filed on September 4, 2007, 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 __, 2008

LUCY ARMENDARIZ
Judge of the State Bar Court