

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 08-AE-12721-RAH
	)	
<b>DAVID SCHWARTZ,</b>	)	<b>ORDER GRANTING MOTION FOR</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 45914,</b>	)	<b>ENROLLMENT [Bus. &amp; Prof. Code,</b>
	)	<b>§ 6203, subd. (d); Rules Proc. of State Bar,</b>
<u>A Member of the State Bar.</u>	)	<b>rule 700, et seq.]</b>

On July 14, 2008, the Mandatory Fee Arbitration Program of the State Bar of California, appearing through Arne Werchick, its Presiding Arbitrator, and Jill Sperber, his designee and Director of the Mandatory Fee Arbitration Program of the State Bar of California<sup>1</sup> and Special Deputy Trial Counsel, filed a motion seeking the involuntary inactive enrollment of Award Debtor David Schwartz (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 a fee arbitration award (motion). A copy of the motion was properly served on respondent at his official membership records address (official address) on July 11, 2008, by certified mail, return receipt requested.<sup>2</sup>

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<sup>1</sup> Also known as the Office of Mandatory Fee Arbitration.

<sup>2</sup> Exhibit 3, the certified copy of the Award Debtor's address history as of July 2, 2008, attached to the motion, is not competent evidence to establish that documents served after July 2, 2008, were properly served on 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).

A copy of a Notice of Assignment was properly served on Award Debtor at his official address on July 23, 2008, and was not returned to the State Bar Court by the U.S. Postal Service (Postal Service) as undeliverable or for any other reason.

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 September 19, 2008.<sup>3</sup> A copy of the Submission Order was properly served on Award Debtor at his official address on August 14, 2008, 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 January 15, 1970.

### **Facts**

In April 2007, Frank Movroudis (Movroudis) requested arbitration of a fee dispute with Award Debtor.

On September 20, 2007, the Ventura County Bar Association Fee Arbitration Panel served a copy of its Findings and Award, which awarded Movroudis a refund of \$8,080, including the \$400 arbitration filing fee and \$7,680 in attorney's fees. The award was binding, as both parties agreed in writing to binding arbitration.

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These records indicate that as of September 10, 2007, Award Debtor's official address has been, and remains, 777 Viewcrest Dr., Ventura, CA 93003.

<sup>3</sup> This matter had previously been submitted for decision on August 14, 2008. However, the court filed an order on September 4, 2008, vacating the submission date and directing the court case administrator to schedule a status conference with the parties. A status conference was held on September 8, 2008. Respondent failed to participate in the status conference. The court ordered the State Bar's Mandatory Fee Arbitration Program (State Bar) to file a brief regarding certain issues by September 24, 2008. The State Bar filed its brief, as well as a request for judicial notice, on September 19, 2008. The court grants the State Bar's request for judicial notice.

On September 28, 2007, Movroudis sent a letter to Award Debtor demanding payment of the award; however, Award Debtor did not respond to his letter.

On January 3, 2008, the Ventura County Superior Court confirmed the arbitration award and judgment was entered in favor of Movroudis in the amount of \$8,080, with 10% interest per annum from September 1, 2007 (the date of the arbitration award), and costs of \$235. A copy of the Notice of Judgment, filed on January 31, 2008, was served on respondent by mail on January 15, 2008, addressed to respondent at his official address.

Having received no payment of the judgment, Movroudis 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 on January 29, 2008.

On January 29, 2008, the State Bar Mandatory Fee Arbitration Program filed the Client's Enforcement Request.

Under cover letter dated February 6, 2008, the State Bar served Award Debtor with, among other things, a copy of the Client's Enforcement Request and the arbitration award. The letter advised the Award Debtor that under rule 41.1 of the Rules of Procedure for Fee Arbitrations and the Enforcement of Fee Arbitration Awards by the State Bar of California (fee arbitration rules), he had 30 days from the February 6, 2008, service of the request for enforcement to: (1) provide satisfactory proof to the State Bar of his payment of the arbitration award; (2) agree to a payment plan that is satisfactory to Movroudis or the State Bar; or (3) provide reasons, under Business and Professions Code section 6203, subdivision (d)(2)(B), why he should not be required to comply with the arbitration award. The Award Debtor was advised that his response was due to the State Bar on or before March 7, 2008. The letter set forth that Award Debtor's failure 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 7, 2008, 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 his official address by both regular and certified mail, return receipt requested on February 6, 2008. The Postal Service return receipt was returned to the State Bar bearing an illegible signature. The Postal Service did not return the regular mail as undeliverable. However, Award Debtor did not respond to the February 6, 2008 letter.

On March 17, 2008, the State Bar sent a letter to Award Debtor confirming his failure to respond to the Client's Enforcement Request and notifying him that the matter was being forwarded to the Presiding Arbitrator for an order imposing administrative penalties against the Award Debtor. 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 he would then not be entitled to practice law in California until he complied with the arbitration award in full and paid any penalties imposed and costs awarded.

On March 27, 2008, 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 his official address. The copy of the order served by certified mail was returned to the State Bar as unclaimed by the Award Debtor. The Postal Service did not return the regular mail 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 the 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. Award Debtor did not respond.

As of May 15, 2008, Mavroudis has not received any response from Award Debtor to his Request for Enforcement or payment of any portion of the award and judgment from the Award Debtor.

As of June 3, 2008, the State Bar has not received any communication from Award Debtor in this matter or any evidence that he has made any payments toward the arbitration award and judgment in favor of Mavroudis.

**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 judgment 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 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. (Rules Proc. of State Bar, rule 705(b); Bus. & Prof. Code, § 6203, subd. (d)(2)(B).)

**ORDER**

IT IS ORDERED that Award Debtor David Schwartz 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) he has paid the judgment awarded to Frank Mavroudis in the amount of \$8,080 plus interest thereon at the rate of 10% per annum from September 1, 2007 (the date of the arbitration award), and costs of \$235 incurred in the Superior

Court proceeding; (2) he has paid the administrative penalty of \$1,000 assessed by the Presiding Arbitrator's order filed March 27, 2008, 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: October \_\_\_\_\_, 2008

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RICHARD A. HONN  
Judge of the State Bar Court