

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 08-AE-13409-DFM
)	
DIANE M. BIGGERS)	ORDER GRANTING MOTION FOR
)	INVOLUNTARY INACTIVE
Member No. 222634)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

On September 2, 2008, the Presiding Arbitrator of the State Bar’s Mandatory Fee Arbitration Program, Arne Werchick (Presiding Arbitrator), and his designee, its Director and Special Deputy Trial Counsel, Jill A. Sperber, filed a motion seeking the involuntary enrollment of Award Debtor **DIANE M. BIGGERS** (Award Debtor), under Business and Professions Code section 6203, subdivision (d)¹ due to her failure to pay a fee arbitration award. The motion was properly served on August 29, 2008, at Award Debtor’s official membership records address, by certified mail, return receipt requested, and by regular mail. (Bus. & Prof. Code, §6002.1, subd. (c); Rules Proc. of State Bar, rule 701(b).²)

Award Debtor did not file a response to the motion or request a hearing. (Rules 702(a) and (b) and 704.)

¹References to “section” are to the provisions of the Business and Professions Code unless otherwise stated.

²References to “rule” are to the Rules of Procedure of the State Bar, unless otherwise noted.

The court ordered that the matter be submitted for decision without a hearing on September 24, 2008.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Award Debtor was admitted to the practice of law in California on December 4, 2002, and has been a member of the State Bar at all times since.

B. Facts

On or before May 27, 2007, the Riverside County Bar Association served a binding award in the proceeding naming *Jesus Verduzco* and *Dianne Biggers*, case no. 06-53. This award directed Award Debtor to make a refund of attorney's fees to his former client, Jesus Verduzco (Verduzco), in the sum of \$7,500.³

On May 28, 2007, Verduzco sent a letter to Award Debtor demanding payment of the award. Award Debtor did not pay any portion of the award to Verduzco, but instead offered Verduzco \$3,500 to settle the arbitration award. On or about December 3, 2007, Verduzco filed a Client's Request for Enforcement of an Arbitration Award ("Client Enforcement Request").

On April 8, 2008, the State Bar served the Client Enforcement Request on Award Debtor by certified mail and regular mail at her official membership records address, along with a letter notifying her of the potential consequences for failing to comply with the award or to respond to the enforcement request by May 8, 2008. The certified mailing was signed for and that signed receipt returned to the State Bar.

On May 8, 2008, Award Debtor replied in a handwritten letter to the State Bar, stating that she had sold her practice, that she had believed the debt would be handled by the purchaser, that she was depressed, and that she had fallen on hard economic times. In response, the State

³ The award bears a handwritten date of May 23, 2007. Inexplicably, the proof of service attached to the award states that it was served on "April 17", with no year given. This clearly was in error. That said, the evidence presented to this court includes both a declaration from Verduzco, stating that he received the award within several days of its May 23rd date, and a copy of a follow-up letter sent by Mr. Verduzco to Award Debtor on May 28, 2008. While it is not clear exactly what date the award was served, the court finds the evidence persuasive that it was served by at least May 27, 2007. At no time has Award Debtor ever contested being served with a copy of the award at or about the May 23, 2008 date.

Bar sent Award Debtor an Attorney's Financial Statement form to submit for the Presiding Arbitrator's consideration regarding her financial hardship claim. This letter also explained that Verduzco had a right to receive payment of his arbitration award, but that the Rules of Procedure allowed for financial hardship.

Award Debtor returned the financial statement to the State Bar on June 13, 2008.⁴ In response, the Presiding Arbitrator wrote Award Debtor on June 20, 2008, acknowledging receipt of the financial statement, noting that Award Debtor had failed to make any proposal of a payment schedule, and suggesting that payment of the proffered \$3,500 would be a suitable initial payment (together with a supplemental payment plan proposal). The letter concluded with the warning that the State Bar considers an award of unearned fees to be a fiduciary responsibility of the highest order, and a request that Award Debtor come forward with a proposed payment schedule within a reasonable period of time. In the absence of such a proposal, the Presiding Arbitrator made clear, enforcement proceedings would be initiated.

Regretfully, there was no follow-up by Award Debtor to this letter. There has been no payment toward the award to date; nor has Award Debtor proposed any payment schedule. As a consequence, this enforcement action was initiated.

C. 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. (Section 6203, subd. (d)(2)(A); rule 705(a).)

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. (Section 6203, subd. (d)(2)(B); rule 705(b).)

⁴ A copy of the financial statement has not been provided to this court to review.

III. Order of Involuntary Inactive Enrollment

Accordingly, **IT IS HEREBY ORDERED** that the State Bar's motion for involuntary inactive enrollment is **GRANTED** and that Award Debtor **DIANE M. BIGGERS** be enrolled as an inactive member of the State Bar of California pursuant to section 6203, subdivision (d)(1), effective five days from the date of service of this order. (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 Jesus Verduzco in the amount of \$7,500, plus interest at the rate of 10 percent per annum from May 27, 2007, the date of service of the award; and (2) the court grants a motion to terminate her inactive enrollment pursuant to rule 710.

Reasonable costs are awarded to the State Bar upon the Presiding Arbitrator's submission of a bill of costs. (Section 6203, subd. (d)(3); rule 708(b)(2).)

Dated: September 26, 2008

DONALD F. MILES
Judge of the State Bar Court