

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 09-AE-12355-RAP
)	
BENJAMIN ROBINSON,)	ORDER GRANTING MOTION FOR
)	INVOLUNTARY INACTIVE
Member No. 107550,)	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 **Benjamin Robinson** (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 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 May 11, 2009, 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 Procedure of State Bar, rule 700, et seq.) A copy of said motion

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

was properly served on award debtor at his official membership records address on May 11, 2009 by certified mail, return receipt requested, and by regular mail.² Award debtor failed to respond to the State Bar's motion, request a hearing or otherwise appear in this matter. (Rules Proc. of State Bar, rules 702(a), (b) and 704.)

The matter was submitted for decision on June 12, 2009.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Award Debtor was admitted to the practice of law in California on January 27, 1983, and has been a member of the State Bar at all times since.

B. Facts

The Los Angeles County Bar Association Fee Arbitration Committee arbitrated a fee dispute between award debtor and client Joseph Addison (Addison). On March 30, 2007, the Los Angeles County Bar Association Fee Arbitration Committee served award debtor with a non-binding arbitration award, which awarded Addison a refund of \$8,500 in unearned attorney fees and \$475 in program filing fees, for an award totaling \$8,975.

Unaware of any challenge of the award by award debtor, on July 5, 2007, Addison sent a letter to award debtor demanding payment of the \$8,975 award. Although award debtor had by that time filed a pleading to challenge the award in the superior court, Addison had not been served with the pleading, nor did award debtor reply to Addison's demand letter. Still unaware of award debtor's challenge of the award, Addison submitted a Client's Request for Enforcement of an Arbitration Award (Client's Enforcement Request) to the State Bar's Office of Mandatory

² Exhibit 3, the certified copy of Award Debtor's address history as of May 7, 2009, which is attached to the State Bar's motion, is not competent evidence to establish that documents served after May 7, 2009, 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 May 11, 2009, award debtor's official address has been, and remains, 3435 Wilshire Blvd # 1980, Los Angeles, CA 90010.

Fee Arbitration (State Bar). The Client Enforcement Request was received by the State Bar on October 15, 2007.

On October 16, 2007, the State Bar served the Client's Enforcement Request and the arbitration award, among other things, on award debtor by regular and certified mail at his official State Bar membership address. Also included in each of the mailings 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 on or before November 15, 2007. The mailing sent by certified mail was returned to the State Bar unclaimed; the mailing sent by first class mail (regular delivery) was not returned to the State Bar as undeliverable.

On November 15, 2007, the State Bar received award debtor's reply in the form of a letter sent via facsimile (under cover fax dated "September [sic] 15, 2007"). In his letter, dated November 13, 2007, award debtor advised the State Bar that on June 29, 2007, he had filed a petition to vacate the arbitration award with the Los Angeles County Superior Court. Award debtor faxed a conformed copy of his petition to vacate the arbitration award as an "attachment" to his letter.

Accordingly, on December 4, 2007, the State Bar abated enforcement of the arbitration award proceeding, pending outcome of the litigation regarding award debtor's petition to vacate the arbitration award in the Los Angeles County Superior Court.

On July 18, 2008, the Los Angeles County Superior Court ordered the dismissal of the petition to vacate without prejudice based on award debtor's failure to appear for five hearings and failure to prosecute. Award debtor did not notify the State Bar of the court's dismissal of his petition. Therefore, the State Bar proceeding remained in abated status.

In a letter dated August 25, 2008, Addison notified the State Bar of the superior court's order dismissing the petition to vacate and requested that the State Bar enforcement proceeding against award debtor be resumed.

On September 10, 2008, the State Bar wrote to award debtor and advised him that the abatement was lifted in view of the dismissal. The State Bar requested that award debtor either provide proof of payment of the award, propose a payment plan or provide a reason as to why he should not have to comply with the award. The State Bar letter requested a reply by October 10, 2008.

On September 29, 2008, the State Bar received award debtor's reply, dated September 16, 2008. In his reply, award debtor stated that he had prepared a motion to set aside the dismissal by the superior court and reinstate the case to the active calendar with a hearing date reserved for November 5, 2008. On October 1, 2008, the State Bar abated the enforcement proceeding for a second time pending the outcome of the ruling on award debtor's motion to set aside the dismissal.

By letter dated October 23, 2008, Addison informed the State Bar that he had made repeated attempts with the superior court to find out whether award debtor had filed a motion to set aside the dismissal. According the Addison, the court clerk confirmed that a hearing date of November 5, 2008, had been "penciled in" based on a telephone call from award debtor, but no pleadings had been filed. Accordingly, Addison again requested that the State Bar proceed with its enforcement of the arbitration award.

On October 27, 2008, the State Bar sent a letter to award debtor, requesting that by October 31, 2008, he provide the State Bar with a conformed copy of his motion to set aside the dismissal, as well as proof that the matter was calendared with the court. The State Bar advised that if award debtor failed to provide the documents as requested, it would resume the proceedings for enforcement of the arbitration award. Award debtor did not reply to the State Bar's October 27, 2008 letter.

The State Bar attempted to contact award debtor on November 10, 2008, to ascertain whether he had filed a motion to set aside the court's dismissal. A State Bar staff member left a voicemail message for award debtor. The message requested a copy of the filed motion and an update as to the status of the civil matter. On November 17, 2008, in a phone call to the State

Bar, award debtor admitted that he had not filed a motion to set aside the dismissal. Award debtor advised that he would immediately file the motion, as he was still within the time period to do so, and would send a conformed copy of the filed document to the State Bar no later than November 21, 2008. The State Bar did not receive any documents from award debtor.

The certified docket for the superior court (Memorandum of Points & Authorities Supporting the State Bar's Motion for Involuntary Inactive Enrollment, Exh. 6) reveals that on December 17, 2008, award debtor filed a motion to set aside the order of dismissal, which motion was denied by the superior court by order filed on January 12, 2009. The superior court found that award debtor had failed to establish any grounds under section 473, subdivision (b) of the Code of Civil Procedure for the failure to file and serve the Petition to Vacate the Arbitration Award and the Notice of Hearing on the Petition.

On February 9, 2009, award debtor again called the State Bar. He stated that his motion to set aside the dismissal of his petition to vacate the arbitration award had been dismissed. Award debtor also stated that he would re-file the motion and send a copy of the filed motion to the State Bar by facsimile or e-mail. The State Bar advised award debtor that it would resume formal enforcement of the award proceedings. Award debtor did not provide any documents to the State Bar.

Award debtor did not re-file his motion on February 9, 2009, but rather on that date filed an appeal of the superior court's order dismissing his motion to set aside the dismissal of his petition to vacate the award. On February 20, 2009, the clerk of the court gave notice of default on appeal for failure to pay fees, designate the record on appeal, and provide proof of service. The deadline to perfect the appeal was March 9, 2009. On April 7, 2009, the court dismissed the appeal for failure to procure the record on appeal and failure to cure the default. Award debtor, however, never advised the State Bar that the appeal had been dismissed by the court.

As of May 11, 2009, the State Bar had received neither further communication from award debtor, nor any evidence that he has paid any portion of the award to the client.

C. Conclusions of Law

The court finds that the Presiding Arbitrator has met the burden of demonstrating by clear and convincing evidence that the \$8,975 arbitration award had become binding and final by operation of law³ and that award debtor has failed to comply with the arbitration award and has not proposed a payment plan acceptable to the client or the State Bar. (Bus. & Prof. Code, § 6203, subd. (d)(2); Rules Proc. of State Bar, rule 705(a).)

The court also 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 Proc. of State Bar, rule 705(b).)

IV. Order of Involuntary Inactive Enrollment

ACCORDINGLY, IT IS ORDERED that award debtor **Benjamin Robinson**, 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 FURTHERED ORDERED that award debtor **Benjamin Robinson** must remain involuntarily enrolled as an inactive member of the State Bar until: (1) he has paid the arbitration award to Joseph Addison in the amount of \$8,975 and (2) the court grants a motion to terminate the inactive enrollment pursuant to rule 710 of the Rules of Procedure of the State Bar.

³ The court finds by clear and convincing evidence that the arbitration award became binding by operation of law as neither party filed an action in court seeking a trial de novo rejecting the non-binding award. (Bus. & Prof. Code, § 6203, subd. (b).) As discussed, although award debtor filed a petition to vacate the award, he failed to prosecute the petition, thus resulting in an order of dismissal on July 18, 2008. Subsequent attempts to set aside the dismissal were equally unsuccessful. (See discussion of facts, *ante*.) Although award debtor filed an appeal from the court's dismissal of his motion to set aside the dismissal of his petition to vacate the award, he fell into default almost immediately. The clerk of the court gave notice of default on appeal for failure to pay fees, designate the record on appeal, and provide valid proof of service. On April 7, 2009, the court dismissed award debtor's appeal. Assuming, *arguendo*, that award debtor's petition to vacate is construed as a request for a trial de novo, his failure to prosecute the petition to vacate to conclusion effectively repudiated said request. (See *Correll v. Law Firm of Fox and Fox* (2005) 129Cal.App.4th 531.)

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: July 7, 2009

RICHARD A. PLATEL
Judge of the State Bar Court