

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No. 10-AE-01238-PEM
)	
KEITH GERMAIN JORDAN,)	ORDER GRANTING MOTION FOR
)	INVOLUNTARY INACTIVE
Member No. 171267,)	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 **Keith Germain Jordan** (“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 Presiding Arbitrator’s motion and supporting documents, the court finds that Award Debtor agreed to a payment plan and has failed to make one or more payments required by such payment plan.

II. SIGNIFICANT PROCEDURAL HISTORY

On February 9, 2010, 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 the

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

motion was properly served at Award Debtor's official State Bar membership records address ("official address") on February 9, 2010, by certified mail, return receipt requested, and by regular mail.² Award Debtor failed to respond to the Presiding Arbitrator's motion or request a hearing. (Rules of Procedure, rules 702 and 704.)

On February 12, 2010, 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 February 12, 2010, at his official address. The copy of said notice was not subsequently returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

This matter was submitted for decision on March 3, 2010. A copy of the Submission Order was properly served on Award Debtor at his official address on March 3, 2010. The copy of the Submission Order was not subsequently returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Award Debtor was admitted to the practice of law in California on June 7, 1994, and has been a member of the State Bar at all times since.

B. Facts

On December 1, 2007, Ruben Aponte ("Aponte") requested mandatory fee arbitration with the Santa Clara County Bar Association to resolve a fee dispute with Award Debtor. On January 18, 2008, the Santa Clara County Bar Association served a non-binding arbitration award on the parties. It awarded Aponte a refund in the amount of \$2,200. This award subsequently became final and binding because neither party filed a timely request for trial after arbitration.

On or about February 8, 2008, Aponte sent a letter to Award Debtor demanding payment of the award. Aponte did not receive a reply from Award Debtor.

² The court takes judicial notice of the State Bar's official membership records pursuant to Evidence Code section 452, subdivision (h).

On or about May 16, 2008, Aponte 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 Business and Professions Code section 6203, subdivision (d).

On or about May 27, 2008, the State Bar served the Client's Enforcement Request on Award Debtor by regular and certified mail at his official 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 June 27, 2008.

On June 27, 2008, Award Debtor sent the State Bar a reply stating that he was unable to pay the arbitration award in a lump sum. Award Debtor further advised that he had conveyed a proposed payment plan to Aponte's daughter, but had not heard back from Aponte or his family.

The State Bar conveyed Award Debtor's payment plan to Aponte by letter dated June 27, 2008. The State Bar did not receive a response from Aponte and therefore sent him a second letter dated October 29, 2008.

After again not receiving a response from Aponte, the State Bar closed its case on January 15, 2009, with a letter addressed to both Aponte and Award Debtor.

On January 20, 2009, Aponte's daughter called the State Bar and requested that her father's arbitration award enforcement case be re-opened. The State Bar therefore telephoned Award Debtor on January 22, 2009, and inquired about his previously proposed payment plan. The State Bar followed up this telephone call with a letter dated January 23, 2009.

When the State Bar did not receive a response from Award Debtor, it sent him a warning letter dated February 24, 2009. This letter advised Award Debtor of the ramifications associated with a failure to comply with a final and binding arbitration award. In response to this letter, Award Debtor called the State Bar.

On April 17, 2009, Award Debtor stated that he wished to offer a payment plan of \$200 a month until the arbitration award was paid in full. The State Bar asked Award Debtor to send his proposal in writing and Award Debtor responded that he would e-mail the proposal.

The State Bar did not receive Award Debtor's written proposal. On May 18, 2009, the State Bar called Award Debtor and left a message asking for the written proposal. Award Debtor did not respond to the State Bar's message. Therefore, on May 27, 2009, the State Bar wrote Award Debtor advising that it intended to file a motion to enroll him inactive due to his failure to either comply with the arbitration award or submit a written payment plan proposal.

Award Debtor replied to the State Bar's May 27, 2009 letter by telephone on June 29, 2009. Award Debtor advised the State Bar that he would e-mail his payment plan proposal within the week. The State Bar received Award Debtor's proposal that same day and contacted Aponte. Aponte consented to the proposal. The State Bar then e-mailed Award Debtor and advised him of Aponte's approval and that the first payment should be received by Aponte by August 1, 2009. On June 30, 2009, the State Bar sent a letter to Award Debtor formalizing the payment plan.

On September 2, 2009, Aponte informed the State Bar that Award Debtor had not made either the August or September 2009 payments. The State Bar, therefore, sent a letter dated September 2, 2009, to Award Debtor advising him that it intended to request his involuntary inactive enrollment because of his failure to make any payments on the payment plan.

Award Debtor sent the State Bar an e-mail on September 23, 2009. His e-mail stated that he needed Aponte's address and would send both missed payments. That same day, the State Bar e-mailed Aponte's address to Award Debtor.

On January 13, 2010, the State Bar received a telephone call from Aponte's daughter advising that Award Debtor had not made any payments on the payment plan. In response to Aponte's daughter's telephone call, the State Bar wrote to Award Debtor on January 13, 2010. In that letter, the State Bar advised Award Debtor of its intention to file a motion for involuntary

inactive enrollment. As of February 3, 2010, the State Bar had not received any reply to its January 13, 2010 letter.³

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 agreed to a payment plan and has failed to make one or more payments required by such plan. (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 Award Debtor has not met his burden of demonstrating by clear and convincing evidence that: (1) he is not personally responsible for making or ensuring payment of the award; (2) he is unable to pay it; or (3) he has proposed and agrees to comply with a payment plan which the State Bar has unreasonably rejected. (Bus. & Prof. Code, § 6203, subd. (d)(2); Rules of Procedure, rule 705(b).)

IV. ORDER

IT IS ORDERED that Award Debtor **Keith Germain Jordan**, 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 Procedure of State Bar, rule 708(b)(1).)

IT IS FURTHERED ORDERED that Award Debtor must remain involuntarily enrolled as an inactive member of the State Bar until: (1) he has paid the arbitration award to Ruben Aponte in the amount of \$2,200, plus interest at the rate of ten percent per annum from January 18, 2008, the date the award was served; (2) he has paid 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.

³ There is no indication in the record that Award Debtor has since replied to the State Bar's January 13, 2010 letter.

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: March __, 2010

PAT McELROY
Judge of the State Bar Court