

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 10-AE-05458-RAP
)	
DAVID ESTEL ALLEN, JR.)	ORDER GRANTING MOTION FOR
)	INVOLUNTARY INACTIVE
Member No. 73848)	ENROLLMENT (Bus. & Prof. Code § 6203,
)	subd. (d); Rules Proc. of State Bar, rule 700,
<u>A Member of the State Bar.</u>)	et seq.)

INTRODUCTION

On June 1, 2010, the Presiding Arbitrator of the State Bar’s Mandatory Fee Arbitration Program filed a motion seeking the involuntary inactive enrollment of Award Debtor David Estel Allen, Jr., pursuant to Business and Professions Code section 6203, subdivision (d)¹ due to his failure to pay pursuant to a post-mediation fee dispute settlement agreement. The motion was served at his official membership records address on that same date by certified mail, return receipt requested, and by regular mail.

The court’s notice of assignment was properly served on Award Debtor at his official address on June 7, 2010. It was not returned as undeliverable.

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

¹All future references to “section” are to the Business and Professions Code and to “rule” are to the Rules of Procedure of the State Bar unless otherwise stated.

The matter was submitted for decision on June 18, 2010.²

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Award Debtor was admitted to the practice of law in California on May 2, 1977, and has been a member of the State Bar at all times since.

Facts

On September 24, 2008, the Orange County Bar Association served a post-mediation fee dispute settlement agreement directing the Award Debtor to refund to his former client Sowuanee Buntutampol the sum of \$2500 in attorney fees. (*Buntutampol v. Allen*, Orange County Bar Association, case no. MA-08-4759.) The settlement was final by agreement of the parties.

On April 27, 2009, Buntutampol sent Award Debtor a certified letter demanding payment pursuant to the settlement agreement. He signed for the letter on May 7, 2007. Award Debtor did not respond to the demand. On May 26, 2009, submitted a request for enforcement of the settlement agreement pursuant to section 6203, subdivision (d) to the State Bar's Office of Mandatory Fee Arbitration (State Bar).

On June 19, 2009, the enforcement request was served on Award Debtor by certified mail, return receipt requested, and by regular mail at his official membership records address. Award Debtor also was notified of the consequences for failing to comply with the settlement agreement or to respond to the enforcement request by July 19, 2009. Award Debtor signed for the certified letter on June 24, 2009. He did not respond to the letter.

²The court's submission order, properly served on the Award Debtor at his official address on April 19, 2010, was not returned as undeliverable.

By letter dated July 27, 2009, the State Bar advised Award Debtor that the matter was being forwarded to the Presiding Arbitrator to issue an order imposing administrative penalties. Award Debtor did not respond to the letter.

On August 11, 2009, the State Bar served an order imposing \$1000 in administrative penalties on Award Debtor and staying their imposition for 14 days to allow him to provide pay pursuant to the settlement agreement or to propose a payment plan. Copies of the order were served on Award Debtor at his official membership records address by certified mail and by regular mail. He signed for the certified letter on August 18, 2009.

On May, 19, 2010, the State Bar sent Award Debtor a letter advising of its intent to file the instant motion because of his continued failure to pay the settlement or propose a payment plan.

Award Debtor has not paid the award or communicated with the State Bar as of May 28, 2010. He has not indicated that he is not personally responsible or unable to pay the refund pursuant to the settlement agreement.

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 settlement agreement 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 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. (Section 6203, subd. (d)(2)(B); Rule 705(b).)

ORDER

IT IS ORDERED that Award Debtor, David Estel Allen, Jr., 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 from the date of service of this order. (Rules Proc. of State Bar, rule 708(b)(1).)

IT IS FURTHER ORDERED that Award Debtor shall remain involuntarily enrolled as an inactive member of the State Bar until 1) he has complied with the settlement agreement by paying to Sowuanee Buntukampol the amount of \$2500 plus interest at the rate of ten percent per annum from September 24, 2008; 2) he has paid the administrative penalty of \$1000 assessed by the presiding arbitrator's order filed August 11, 2009; and 3) the court grants a motion to terminate the inactive enrollment pursuant to Rule 710, Rules Proc. of State Bar.

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, 2010.

RICHARD A. PLATEL
Judge of the State Bar court