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STATE BAR COURT
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA

PUBLIC MATTER

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 12-AE-16525-RAH
)	
MICHELLE A. PERFILI,)	ORDER GRANTING MOTION FOR
)	INVOLUNTARY INACTIVE
Member No. 107580,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Introduction

This matter is before the court on a motion filed by Joel Mark, Presiding Arbitrator of the Mandatory Fee Arbitration Program of the State Bar of California, seeking the involuntary inactive enrollment of award debtor **Michelle A. Perfili** (Award Debtor), pursuant to Business and Professions Code section 6203, subdivision (d),¹ and rule 5.360, et seq., of the Rules of Procedure of the State Bar of California² due to her 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. Accordingly, the motion is granted and Award Debtor is enrolled as an inactive member of the State Bar of California, effective five days from the date of service of this order. (Rule 5.368.)

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

² Unless otherwise indicated, all further references to rule(s) refer to provisions of the Rules of Procedure of the State Bar of California.



Significant Procedural History

On September 18, 2012, the Presiding Arbitrator filed a motion seeking the involuntary inactive enrollment of Award Debtor. (§ 6203, subd. (d); Rule 5.361 et seq.) A copy of said motion was properly served on Award Debtor at her official membership records address on September 17, 2012, by certified mail, return receipt requested, and by regular mail.³ Award Debtor did not file a response to the motion or request a hearing.

On September 20, 2012, the court filed a Notice of Assignment. That same day, a copy of said notice was properly served on Award Debtor by first-class mail, postage fully prepaid, at her 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.

The court ordered the matter submitted for decision on October 10, 2012.

Findings of Fact and Conclusions of Law

Jurisdiction

Award Debtor was admitted to the practice of law in California on December 3, 1982, and has been a member of the State Bar of California at all times since that date.

Facts

The San Diego Bar Association arbitrated a fee dispute between Award Debtor and client Ramon S. Garcia (Garcia). On August 23, 2011, the San Diego Bar Association served a non-binding arbitration award on the parties. It awarded Garcia, a refund of \$1,000 of unearned attorney fees, return of the \$75 filing fee, and pre-award interest of \$167, for a total award of

³ Exhibits 4 and 5, certified copies of Award Debtor's address history as of August 20, 2012, which are attached to the State Bar's motion, are not competent evidence to establish that documents served after August 20, 2012, 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 September 17, 2012, Award Debtor's official address has been, and remains, Law Offices of Michelle A. Perfili, P.O. Box 1034, Lakeside, CA 92040.

\$1,242. The award subsequently became final and binding, because neither party filed a timely request for trial after arbitration.

On September 25, 2011, Garcia sent a letter to Award Debtor requesting payment of the award. But, Award Debtor did not reply to the letter or pay any portion of the award to Garcia.

On September 29, 2011, the State Bar's Mandatory Fee Arbitration Program (State Bar) received Garcia's request for enforcement of the arbitration award.

On January 12, 2012, the State Bar served the enforcement request on Award Debtor by certified mail, return receipt requested, 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 arbitration award or to respond to the enforcement request by February 11, 2012.⁴ Award Debtor did not respond to the enforcement request.

By letter dated February 14, 2012, the State Bar confirmed Award Debtor's failure to reply and again notified her of the ramifications of her continued non-compliance with a final and binding fee arbitration award. The letter also advised that the matter was being forwarded to the Presiding Arbitrator for the issuance of an order imposing administrative penalties. Award Debtor did not respond to the letter.

On March 5, 2012, the Presiding Arbitrator issued an order imposing administrative penalties against Award Debtor in the amount of \$400 for her failure to comply with the award or respond to the enforcement request within the required time period. The order stayed the imposition of the penalty for 14 days to allow her a final opportunity to comply with the award. Copies of the order were properly filed and served on Award Debtor on March 6, 2012, at her

⁴ The letter sent by first class mail was not returned as undeliverable. The receipt for the certified letter was returned to the State Bar, signed for on February 13, 2012, by Michelle Perfili.

official membership records address by certified and regular mail.⁵ Since Award Debtor did not respond, the penalty of \$400 was imposed and added to her State Bar membership dues for the 2013 calendar year.

To date, Award Debtor has not paid the award, nor demonstrated that she has set aside the award.

Conclusions (§ 6203, subd. (d)(2); Rules 5.365-5.367)

The court finds that the Presiding Arbitrator has met the burden of demonstrating by clear and convincing evidence that the \$1,242 arbitration award became binding and final by operation of law 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. (§ 6203, subd. (d)(2); Rule 5.365(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. (§ 6203, subd. (d)(2)(B); Rule 5.365(B).)

Order of Involuntary Inactive Enrollment

ACCORDINGLY, IT IS ORDERED that the State Bar's motion for involuntary inactive enrollment is **GRANTED** and that Award Debtor **Michelle A. Perfili** be enrolled as an inactive member of the State Bar of California, effective five days from the date of service of this order. (§ 6203, subd. (d)(1); Rule 5.368(B)(1).)

IT IS FURTHER ORDERED that Award Debtor Michelle A. Perfili must remain involuntarily enrolled as an inactive member of the State Bar until: (1) she has paid the

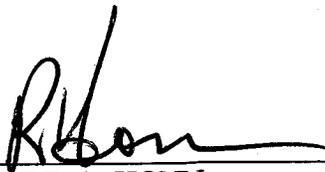
⁵ The copy sent via first class mail was not returned as undeliverable.

arbitration award to Ramon S. Garcia in the amount of \$1,242 plus interest at the rate of 10% per annum from August 23, 2011, the date the award was served; (2) she has paid the administrative penalty of \$400 assessed by the Presiding Arbitrator's order filed on March 6, 2012, and the costs subsequently ordered as a result of this proceeding; and (3) the court grants a motion to terminate her inactive enrollment pursuant to rule 5.370 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. (§ 6203, subd. (d)(3); Rule 5.368(B)(2).)

IT IS SO ORDERED.

Dated: November 6, 2012



RICHARD A. HONN
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 6, 2012, I deposited a true copy of the following document(s):

ORDER GRANTING MOTION FOR INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**MICHELLE A. PERFILI
LAW OFFICES OF MICHELLE A PERFILI
PO BOX 1034
LAKESIDE, CA 92040**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

JOEL MARK, Fee Arbitration, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 6, 2012.



Tammy Cleaver
Case Administrator
State Bar Court