

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No. 13-AE-12148-LMA
)	
SEAN DONRAD,)	ORDER GRANTING MOTION FOR
)	INVOLUNTARY INACTIVE
Member No. 242665,)	ENROLLMENT [Bus. & Prof. Code,
)	§ 6203, subd. (d); Rules Proc. of State Bar,
A Member of the State Bar.)	rule 5.360, et seq.]

INTRODUCTION

This matter is before the court on a motion filed by Kenneth E. Bacon, Presiding Arbitrator of the Mandatory Fee Arbitration Program of the State Bar of California (State Bar), seeking the involuntary inactive enrollment of Award Debtor **Sean Donrad** (Award Debtor), pursuant to Business and Professions Code section 6203, subdivision (d), and rule 5.360, et seq., 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.

SIGNIFICANT PROCEDURAL HISTORY

On April 22, 2013, the State Bar filed a motion seeking the involuntary inactive enrollment of Award Debtor. (Bus. & Prof. Code, section 6203, subd. (d), Rules of Procedure, rule 5.360, et seq.) That same day, a copy of the motion was properly served at Award Debtor's official membership records address, by certified mail, return receipt requested, and by regular mail. On May 3, 2013, Award Debtor filed a response to the motion and a request for a hearing. That same day, the court filed a notice, setting a hearing date of June 6, 2013.

On May 15, 2013, the State Bar filed a reply to Award Debtor's response. On June 6, 2013, a hearing was held and this matter was submitted for decision. Presiding Arbitrator Kenneth E. Bacon appeared for the State Bar. Award Debtor was represented by Scott J. Drexel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Award Debtor was admitted to the practice of law in California on June 1, 2006, and has been a member of the State Bar at all times since.

Facts

On June 22, 2009, Kevin Ward (Ward) requested mandatory fee arbitration with the Bar Association of San Francisco to resolve a fee dispute with Award Debtor. On December 10, 2009, the Bar Association of San Francisco served a non-binding arbitration award on the parties. It awarded Ward a refund in the amount of \$4,500 in attorneys' fees and costs, and required that Award Debtor pay the Bar Association of San Francisco a filing fee of \$250. This award subsequently became final and binding because neither party filed a timely request for trial after arbitration. (See Bus. & Prof. Code, section 6204.)

On December 16, 2009, Ward sent Award Debtor an email demanding that he pay the award. That same day, Award Debtor sent Ward an email stating that he was in the process of appealing the award. On February 24, 2010, Ward sent award debtor another email demanding that he pay the award. Award Debtor did not respond to this email or pay the award.

On February 25, 2010, Ward filed a request for enforcement of the arbitration award (request for enforcement) with the State Bar pursuant to Business and Professions Code section 6203, subdivision (d).

On March 25, 2010, the State Bar served the request for enforcement on Award Debtor by regular and certified mail.¹ 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

¹ All letters from the State Bar to Award Debtor were sent to his official State Bar membership records address.

arbitration award; and (2) failing to respond to the client's enforcement request by April 24, 2010.

After not receiving a reply from Award Debtor, the State Bar sent a letter to him on May 13, 2010, advising him of the ramifications of his continued non-compliance with a final and binding fee arbitration award. The letter advised that the State Bar may seek the imposition of administrative penalties.

On May 14, 2010, the State Bar received a telephone call from Award Debtor. Award Debtor told the State Bar that he intended to appeal the award. The State Bar advised Award Debtor that he was outside the statute of limitations to reject the award and request a trial de novo. Award Debtor asserted that he would propose a payment plan by fax the following day.

After not receiving a proposed payment plan from Award Debtor, the State Bar sent him another letter on May 24, 2010. In this letter, the State Bar gave Award Debtor until May 28, 2010, to submit a payment plan proposal. On May 24, 2010, Award Debtor faxed a lengthy letter to the State Bar, wherein he expressed his belief that the award should be vacated.

On June 18, 2010, the State Bar responded to Award Debtor's May 24, 2010 fax. In its response, the State Bar advised Award Debtor that his reply was non-responsive and requested that he propose a payment plan and complete a financial status form to support that proposal. Award Debtor, however, did not reply to the State Bar.

On August 12, 2010, the State Bar sent another letter to Award Debtor, again advising him of the consequences of his continued failure to respond to Ward's request for enforcement. On August 18, 2010, Award Debtor called the State Bar and requested a determination on what would be considered a reasonable monthly payment plan. On August 20, 2010, the State Bar sent Award Debtor an email stating that the State Bar considered a monthly payment plan of \$400 to be reasonable.

On August 25, 2010, Award Debtor responded to the State Bar's email, stating that he could afford a monthly payment plan of \$200. Award Debtor's proposal was forwarded to Ward on August 26, 2010.

On September 1, 2010, the State Bar advised Award Debtor that Ward had rejected his proposal. The State Bar also advised that Ward made a counter proposal of one-half of the award to be paid on Award Debtor's acceptance of the proposal with the remaining half to be paid within two weeks. With this letter, the State Bar also provided Award Debtor with a blank copy of a financial status form in the event that Award Debtor did not accept Ward's counter proposal and wished for the State Bar to consider his proposal over Ward's objection.

The State Bar received Award Debtor's reply and completed financial status form by fax on September 10, 2010. In his reply, Award Debtor stated that he did not have the financial wherewithal to pay the award. Based on the documentation provided by Award Debtor, the State Bar granted his request for abatement. In a letter to Award Debtor dated September 30, 2010, the State Bar advised him that abatement was temporary and would end on March 31, 2011. In this letter, Award Debtor was also advised that he would need to either show proof of payment or propose a satisfactory payment plan by March 31, 2011.

The State Bar did not hear from Award Debtor by March 31, 2011. On September 28, 2012, the State Bar wrote Award Debtor and gave him until October 5, 2012, to either provide proof of payment of the award or propose a payment plan. In this letter, the State Bar also advised that Award Debtor's failure to respond to the letter would prompt the present motion.

On October 10, 2012, Award Debtor called the State Bar and advised that he did not feel that he needed to pay the award due to pending litigation. The State Bar subsequently contacted Ward and confirmed that there was no longer any pending litigation. On October 24, 2012, the State Bar again wrote Award Debtor. In this letter, the State Bar advised that there is not any pending litigation and gave Award Debtor until November 7, 2012, to either provide proof of payment of the award or to propose a payment plan.

Award Debtor did not respond to the State Bar's October 24, 2012 letter. On November 19, 2012, the State Bar wrote to Award Debtor one final time. In this letter, the State Bar advised that it intended to go forward with the present motion. Award Debtor did not subsequently pay the award or communicate further with the State Bar.

Award Debtor's Contentions

Award Debtor contends that he is unable to pay the arbitration award. Award Debtor supported this assertion by attaching a single financial declaration. This declaration, however, is dated "April 27, 1203." In addition, Award Debtor's declaration is extremely brief. Instead of drafting a declaration or using a financial declaration similar to the one previously provided to him by the State Bar, Award Debtor used the State Bar Court declaration for a motion for relief from or an extension of time to pay disciplinary costs. The only information contained within this declaration is that Award Debtor is "presently" entitled to practice law, not employed, and receiving financial assistance in the form of food stamps.

Award Debtor has not demonstrated by clear and convincing evidence that he is unable to pay the arbitration award. His declaration is improperly dated and devoid of any information regarding his assets, expenses, or other income. Consequently, Award Debtor did not demonstrate, by clear and convincing evidence, an inability to pay the arbitration award.

Conclusions of Law

The court finds that the State Bar 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 the State Bar. (Bus. & Prof. Code, § 6203, subd. (d)(2); Rules of Procedure, rule 5.360, et seq.)

In addition, the court finds that 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 of Procedure, rule 5.365(B).)

ORDER

IT IS ORDERED that Award Debtor **Sean Donrad**, 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 of Procedure, rule 5.368(B)(1).)

IT IS FURTHER ORDERED that Award Debtor **Sean Donrad** must remain involuntarily enrolled as an inactive member of the State Bar until: (1) he has paid the arbitration award to Kevin Ward in the amount of \$4,500, plus interest at the rate of ten percent per annum from December 10, 2009, the date the award was served; (2) he has paid the filing fee of \$250 to the Bar Association of San Francisco; (3) he has paid reasonable costs, if any; and (4) the court grants a motion to terminate the inactive enrollment pursuant to rule 5.370(A) 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. (Bus. & Prof. Code, § 6203, subd. (d)(3); Rules Proc. of State Bar, rule 5.368(B)(2).)

Dated: June ___, 2013

LUCY ARMENDARIZ
Judge of the State Bar Court