

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case No. **13-AE-16998-PEM**
)
GITTEL GORDON,)
) **ORDER GRANTING MOTION FOR**
) **INVOLUNTARY INACTIVE**
Member No. 65979,) **ENROLLMENT**
)
A Member of the State Bar.)
_____)

Introduction¹

This matter is before the court on motion filed by the Presiding Arbitrator of the State Bar’s Mandatory Fee Arbitration Program, Kenneth E. Bacon, seeking the involuntary inactive enrollment of award debtor **Gittel Gordon** (Award Debtor) pursuant to Business and Professions Code section 6203, subdivision (d), and rule 5.361 of the Rules of Procedure of the State Bar 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

¹ Unless otherwise indicated, all references to rules refer to the Rules of Procedure of the State Bar of California. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

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.)

Significant Procedural History

On November 14, 2013, 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 November 14, 2013, by certified mail, return receipt requested, and by regular mail. Award Debtor did not file a response to the motion or request a hearing.

The court ordered the matter submitted for decision on December 16, 2013.

Findings of Fact and Conclusions of Law

Jurisdiction

Award Debtor was admitted to the practice of law in California on December 18, 1975, and has been a member of the State Bar at all times since.

Facts

The San Diego County Bar Association arbitrated a fee dispute between Award Debtor and client Marine Avetisyan. On April 20, 2009, the San Diego County Bar Association served Award Debtor with a nonbinding fee arbitration award, awarding Avetisyan a refund of \$7,600 of unearned attorney fees and directing Award Debtor to pay to the San Diego County Bar Association Fee Arbitration Committee the filing fee of \$375.

Award Debtor filed a petition to vacate attorney fee arbitration award and a request for trial after attorney-client fee arbitration with the San Diego County Superior Court. However, despite the superior court's directive that she needed to file a complaint concurrently with the request for trial, Award Debtor did not do so. Consequently, the superior court denied Award Debtor's petition to vacate the award, rejected her request for de novo relief, and granted

Avetisyan's petition to confirm arbitration award. The superior court also awarded Avetisyan costs and fees as the prevailing party and entered a judgment in the amount of \$19,316.70 against Award Debtor on July 7, 2010.

Award Debtor appealed the judgment with the Court of Appeal, Fourth Appellate District, Division One. On September 30, 2011, the appellate court affirmed the superior court's judgment, finding, among other things, that because Award Debtor failed to file a complaint within 30 days of the award's issuance in order to obtain a trial de novo, she failed to meet the 30-day deadline and was thus precluded from seeking a trial following arbitration. Therefore, the award became final and binding. (Bus. & Prof. Code, § 6204.)

On January 5, 2012, the superior court granted Avetisyan's request for additional attorney fees in the amount of \$14,139 incurred to defend Award Debtor's appeal, adding to the previous judgment of \$19,316.70 for a total judgment of \$33,455.70.

On January 19, 2012, Avetisyan's attorney, Gerald W. Hokstad, sent a letter to Award Debtor demanding payment of the judgment. But Award Debtor did not reply to the letter or pay any portion of the judgment to him or Avetisyan.

On January 20, 2012, Avetisyan filed a request for enforcement of the arbitration award with the State Bar Mandatory Fee Arbitration Program (State Bar). On May 14, 2012, the State Bar served the enforcement request on Award Debtor by certified mail 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 award or to respond to the enforcement request.

On May 29, 2012, Award Debtor telephoned the State Bar, claiming financial hardship. On June 27, 2012, she requested to abate the matter and submitted an attorney's statement re financial status. She also stated that she would provide additional financial information. No proposed payment plan was provided.

By letter dated July 17, 2012, the State Bar advised Award Debtor that her request for abatement was denied and confirmed that no further communication or documentation had been received from her. The State Bar further advised her 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 August 1, 2012, the Presiding Arbitrator issued an order imposing administrative penalties against Award Debtor in the amount of \$3,500 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 served on Award Debtor at her official membership records address by certified and regular mail. The State Bar received a return receipt. Since Award Debtor did not respond, the penalty of \$3,500 was imposed and added to her State Bar membership dues for the 2013 calendar year.

On August 5, 2013, Award Debtor telephoned the State Bar asking if she would be returned to active status if she paid the administrative penalty; she was told that she would.

But to date, Award Debtor has not paid the penalty. She also has not paid the arbitration award of \$33,455.70 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 award has become binding by a judgment 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 Gittel Gordon 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 Gittel Gordon must remain involuntarily enrolled as an inactive member of the State Bar until:

1. Gittel Gordon has paid the arbitration award to Marine Avetisyan in the amount of \$33,455.70 plus interest at the rate of 10% per annum from January 5, 2012, the date of service of the San Diego County Superior Court judgment;
2. Gittel Gordon has paid the administrative penalty of \$3,500 assessed by the Presiding Arbitrator's order filed August 1, 2012; and
3. The court grants a motion to terminate Gittel Gordon's inactive enrollment (Rule 5.370).

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: January _____, 2014

PAT McELROY
Judge of the State Bar Court