

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No. 14-AE-05748-LMA
)	
JEFFREY DAVID TOCHTERMAN,)	ORDER GRANTING MOTION FOR
)	INVOLUNTARY INACTIVE
Member No. 170466,)	ENROLLMENT [Bus. & Prof. Code,
)	§ 6203, subd. (d); Rules Proc. of State Bar,
<u>A Member of the State Bar.</u>)	rule 5.360, et seq.]

INTRODUCTION

This matter is before the court on 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 **Jeffrey David Tochterman** (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 a judgment following a post-arbitration trial. Based on the State Bar’s motion and supporting documents, the court finds that Award Debtor has failed to comply with the judgment and has not produced a payment plan acceptable to the client or the State Bar.

SIGNIFICANT PROCEDURAL HISTORY

On November 5, 2014, 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.) A copy of this motion was properly served at Award Debtor’s official membership records address, by certified mail, return receipt requested, and by regular mail.

Award Debtor failed to respond to the State Bar's motion or request a hearing (Rules of Procedure, rule 5.362).

On November 7, 2014, 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 his official membership records address. The copy of said notice was not 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 November 21, 2014. That same day, a copy of the Submission Order was properly served on Award Debtor at his official address and has not since been returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Award Debtor was admitted to the practice of law in California on June 6, 1994, and has been a member of the State Bar at all times since.

Facts

On March 3, 2011, Roderick Emmersen (Emmersen) requested mandatory fee arbitration with the Sacramento County Bar Association to resolve a fee dispute with Award Debtor. On October 4, 2011, the Sacramento County Bar Association served a non-binding arbitration award on the parties. It awarded Emmersen a refund in the amount of \$4,500 in attorneys' fees and costs. Because the award was non-binding, Award Debtor filed a request to overturn the award and for a new trial with the Sacramento County Superior Court. The Sacramento County Superior Court ultimately returned a judgment in Emmersen's favor, granting him not only the \$4,500 refund but his attorney's fees and costs associated with the trial de novo for a total judgment of \$9,393.75. This judgment became final and binding.

On or about October 2, 2012, Emmersen's new attorney sent a letter to Award Debtor demanding payment of the judgment. On January 10, 2013, Emmersen's new attorney filed a request for enforcement of the judgment (request for enforcement) with the State Bar pursuant to Business and Professions Code section 6203, subdivision (d).

On January 15, 2013, 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 judgment; and (2) failing to respond to the client's enforcement request by February 14, 2013.

Award Debtor did not respond to the State Bar's January 15, 2013 letter. On February 27, 2013, the State Bar sent another letter to Award Debtor. This letter was a warning letter, advising Award Debtor of the ramifications of his continued failure to either comply with the judgment or respond to the State Bar's correspondence.

The State did not receive a reply to the warning letter. Accordingly, the Presiding Arbitrator issued an Order re Administrative Penalties against Award Debtor in the amount of \$900. This order was served on Award Debtor by regular and certified mail on April 3, 2013. This order was stayed for fourteen days to give Award Debtor an opportunity to comply with the judgment or communicate with the State Bar. Award Debtor subsequently failed to comply with the judgment or communicate with the State Bar and the \$900 penalty was added to his 2014 State Bar membership dues.

On March 3, 2014, the State Bar wrote to Award Debtor advising him that the State Bar intended to proceed with the present motion. Award Debtor responded to the letter by calling the State Bar on March 7, 2014. Award Debtor advised the State Bar that he did not have the financial wherewithal to pay the judgment. The State Bar provided Award Debtor with a financial status form to substantiate his claim.

On March 26, 2014, the State Bar received Award Debtor's completed financial status form. After reviewing the financial status form and other documentation, the Presiding Arbitrator denied Award Debtor's request for abatement and proposed that he make monthly payments of \$500 to satisfy the judgment. Award Debtor rejected this proposal.

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

The Presiding Arbitrator then reconsidered the matter and offered that Award Debtor instead make \$200 monthly payments to satisfy the judgment.² On June 10, 2014, the State Bar received a letter from Award Debtor rejecting the revised proposal. The State Bar then invited Award Debtor to submit a monthly payment plan proposal, but he did not.

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 judgment following a post-arbitration trial 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.)

Since Award Debtor did not participate in this proceeding, the court finds he 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 judgment; 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 **Jeffrey David Tochterman**, 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 **Jeffrey David Tochterman** must remain involuntarily enrolled as an inactive member of the State Bar until: (1) he has paid the judgment to Roderick Emmersen in the amount of \$9,393.75, plus interest at the rate of ten percent per annum from September 25, 2012, the date the judgment was issued; (2) he has paid

² In the financial status form, Award Debtor stated that he spends \$200 a month on entertainment.

reasonable costs, if any; and (3) 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: December ____, 2014

LUCY ARMENDARIZ
Judge of the State Bar Court