

FILED

AUG 18 2016

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES



PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of

PAUL VIRIYAPANTHU,

Member No. 220325,

A Member of the State Bar.

Case No. 16-AE-13814 YDR

**ORDER GRANTING MOTION FOR
INVOLUNTARY INACTIVE
ENROLLMENT [Bus. & Prof. Code,
§ 6203, subd. (d); Rules Proc. of 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 Paul Yukhon Viriyapanthu (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 of the State Bar.

SIGNIFICANT PROCEDURAL HISTORY

On June 7, 2016, the State Bar filed a motion seeking the involuntary inactive enrollment of Award Debtor. (Bus. & Prof. Code, section 6203, subd. (d), Rules of Proc. of State Bar, 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.

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On June 13, 2016, 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. On June 22, 2016, Award Debtor filed a response (Response) to the State Bar's motion and requested a hearing. (Rules of Proc. of State Bar, rule 5.362.) On July 18, 2016, the State Bar filed a reply to Award Debtor's Response.

This matter was heard and submitted for decision on July 20, 2016.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Award Debtor was admitted to the practice of law in California on July 1, 2002, and has been a member of the State Bar at all times since that date.

Facts

On July 14, 2009, Cesar Viveros (Viveros or Client) requested mandatory fee arbitration with the Orange County Bar Association (OCBA) to resolve a fee dispute with Award Debtor. The arbitration hearing was held on February 2, 2010. On June 3, 2010, the OCBA served a binding arbitration award which found in favor of Viveros and ordered Award Debtor to pay Viveros \$4,313 (the Award).¹ Viveros' counsel, John Nelson, requested payment of the Award by letter dated June 9, 2010. Instead of paying the Award, Award Debtor filed a request to vacate the Award with the Orange County Superior Court on July 2, 2010.

Viveros' request for enforcement of the arbitration award pursuant to Business and Professions Code section 6203, subdivision (d), was filed with the State Bar on September 14, 2010. The enforcement request was served on Award Debtor by regular and certified mail at his

¹ The Award was calculated as follows: \$4,500 in legal fees paid by Mr. Viveros, plus a \$500.50 filing fee, less \$687.50 for the reasonable value of legal services provided.

membership records address on September 22, 2010. Enclosed with the enforcement request was a cover letter from the State Bar advising Award Debtor of potential consequences for failing to comply with the Award and a copy of the Award. By a faxed letter dated October 18, 2010, Award Debtor advised the State Bar of his petition to vacate the Award, filed July 2, 2010. The State Bar then abated its arbitration enforcement matter on January 24, 2011.

On February 17, 2012, the Orange County Superior Court rendered a judgment which (1) denied Award Debtor's petition to vacate the Award; (2) confirmed the Award; and, (3) awarded additional costs and attorney's fees to Viveros, which amounted to a total judgment of \$7,045.50.

Award Debtor filed an appeal to the Orange County Superior Court on March 16, 2012. The Appellate Division of the Orange County Superior Court declined to certify the matter for transfer to the Fourth District Court of Appeal and affirmed the trial court's judgment. Subsequently, the Fourth District Court of Appeal, Division Three, denied Award Debtor's request to transfer his appeal from the Appellate Division of the Orange County Superior Court, by order filed June 6, 2013. The Orange County Superior Court issued an order on July 31, 2013, for Award Debtor to pay Viveros his attorney's fees and costs in the amount of \$3,989.50. The \$3,989.50 amount was incurred by Viveros in connection with his defense against Award Debtor's appeal of the Appellate Division matter. By a second order filed July 31, the Orange County Superior Court ordered Award Debtor to pay Viveros his attorney's fees and costs in the amount of \$1,674, incurred for Viveros' defense in the Fourth District Court of Appeals matter.

On July 9, 2013, Award Debtor filed a petition for writ of mandate with the California Supreme Court. Award Debtor's writ petition was denied on August 14, 2013. Subsequently, by letter dated August 21, 2013, the State Bar advised Award Debtor that it would move forward

with enforcement of the Orange County Superior Court judgment and Award Debtor was asked to either pay the Award in full or propose a payment plan by September 4, 2013. In response, Award Debtor submitted a financial status form for the State Bar Presiding Arbitrator to determine whether to abate the enforcement action based on Award Debtor's inability to pay the Award. The Presiding Arbitrator denied Award Debtor's abatement request by letter dated October 16, 2013.

On October 22, 2015, Award Debtor faxed another completed financial status form and a letter to the State Bar which mentioned Award Debtor's and his mother's medical problems. Based on the financial information provided by Award Debtor, the Presiding Arbitrator notified Award Debtor that he had granted Award Debtor a temporary abatement of the State Bar enforcement matter until February 1, 2016. Award Debtor was required to provide a newly completed financial status form and documentation of his medical status by the end of the abatement period, if he wished to extend the abatement period. Award Debtor failed to do so and the State Bar advised Award Debtor of its intent to go forward with the enforcement action.

Award Debtor sent an email to the State Bar on February 29, 2016, advising that he and his mother were experiencing varied medical issues. Award Debtor produced medical records regarding his condition but none of the records stated that Award Debtor is unable to work due to his alleged medical condition(s). Nor did Award Debtor produce any current documentation of his financial condition.

To date, Award Debtor has not paid any of the Award or the amounts ordered by the court for attorney's fees.

Award Debtor's Contentions

Award Debtor contends he should not be responsible for payment of the judgment because he never personally received payment from Viveros and never performed legal work for Viveros. On multiple occasions (and to no avail), Award Debtor challenged the application of the successor liability doctrine, which was applied in the original arbitration proceeding and in the Orange County Superior Court appellate proceeding. In both proceedings, it as determined that the doctrine applied.²

Award Debtor further contends that due to certain unsubstantiated medical problems (thymus cancer, "presumed" Brugada Syndrome and his ICD implant), he is not able to pay the Award and/or judgments because he is not able to work full-time. He has stated that he is able to provide clients with legal services by working from home. In support of his contention that he is currently on Medi-Cal and eligible for public assistance, Award Debtor produced a California Benefits ID card issued to him on December 21, 2015.

Conclusions of Law

The court finds that the State Bar has met its burden of demonstrating by clear and convincing evidence that Award Debtor failed to comply with the arbitration award and has not proposed a payment plan acceptable to Mr. Viveros or the State Bar. (Bus. & Prof. Code, § 6203, subd. (d)(2); Rules of Proc. of State Bar, rule 5.365(A)(2).)

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 and judgments, that he is presently unable to pay them, or that he has

² This court sets forth Award Debtor's contentions challenging his liability for the Award and the grounds upon which the Award is based to ensure that the record is complete. However, this court notes that as the arbitration award is final, Award Debtor's challenge to the Award on these grounds, is not properly before this court and is not relevant here.

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 Proc. of State Bar, rule 5.365(B).)

ORDER

IT IS ORDERED that Award Debtor Paul Viriyapanthu, 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 Proc. of State Bar, rule 5.368(B)(1).)

IT IS FURTHER ORDERED that Award Debtor **PAUL VIRIYAPANTHU** must remain involuntarily enrolled as an inactive member of the State Bar until he has paid: (1) the arbitration award in favor of Cesar Viveros in the amount of \$4,313.00 plus interest at the rate of ten percent per annum from June 3, 2010; (2) the confirmation attorney's fees and costs of \$2,732.50 plus interest at the rate of ten percent per annum from February 12, 2012; (3) the appellate attorney's fees and costs of \$3,989.50 plus interest at the rate of ten percent per annum from July 31, 2013; (4) reasonable costs, if any; and until (5) 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: August 17, 2016


YVETTE D. ROLAND
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 August 18, 2016, I deposited a true copy of the following document(s):

**ORDER GRANTING MOTION FOR INVOLUNTARY INACTIVE ENROLLMENT
[Bus. & Prof. Code, § 6203, subd. (d); Rules Proc. of State Bar, rule 5.360, et seq.]**

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

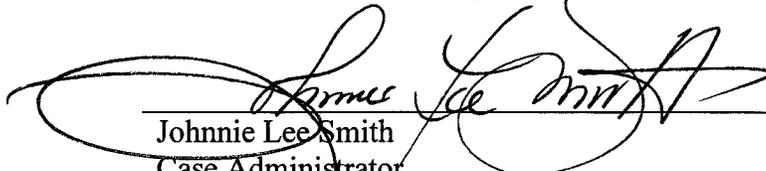
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**PAUL Y. VIRIYAPANTHU
PO BOX 1451
GARDEN GROVE, CA 92842**

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

KENNETH ERIC BACON, FEE ARB- SAN FRANCISCO

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 18, 2016.


Johnnie Lee Smith
Case Administrator
State Bar Court