

PUBLIC MATTER

FILED
AUG 22 2016
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 16-AE-15159-WKM
)	
DANIEL JAMES DeWIT,)	ORDER OF INVOLUNTARY
)	INACTIVE ENROLLMENT
Member No. 207954,)	(Bus. & Prof Code, § 6203, subd. (d)(1).)
)	
<u>A Member of the State Bar.</u>)	

In this fee arbitration award enforcement proceeding, the Presiding Arbitrator of the State Bar of California's Mandatory Fee Arbitration Program Kenneth E. Bacon requests an order involuntarily enrolling Attorney **DANIEL JAMES DeWIT**¹ as an inactive member of the State Bar of California because DeWit has failed to pay a fee arbitration award in favor of his former client Ann Marie Strom. (Bus. & Prof. Code, § 6203, subd. (d); Rules Proc. of State Bar, rule 5.360 et seq.)² For the reasons set forth *post*, the court will grant the Presiding Arbitrator's request and order that DeWit be involuntarily enrolled inactive until he, inter alia, complies with the award.

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¹ Attorney DeWit was admitted to the practice of law in the State of California on June 25, 2000, and has been a member of the State Bar of California since that time.

² All further statutory references are to the Business and Professions Code. All further references to rules are to the Rules of Procedure of the State Bar.

Relevant Procedural History

On July 28, 2016, the Presiding Arbitrator properly served his inactive enrollment motion on Attorney DeWit at DeWit's latest address shown on the official membership records of the State Bar of California by certified mail, return receipt requested. (§ 6002.1, subd. (c); rules 5.25, 5.361(B).) That service was deemed complete when mailed even if DeWit did not receive it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108; but see *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.) Thereafter, on July 29, 2016, the Presiding Arbitrator filed his inactive enrollment motion in the State Bar Court.

Attorney DeWit failed to file a response to the inactive enrollment motion, and the time for him to do so has now expired. (Rules 5.28(A), 5.362(A).) Furthermore, DeWit did not otherwise appear or participate in this proceeding. By failing to timely file a response to the motion and to request a hearing, DeWit waived his right to a hearing on his involuntary inactive enrollment. (Rule 5.364.) The court took the inactive enrollment motion under submission for decision without a hearing on August 16, 2016.

Findings

The inactive enrollment motion and its supporting documents establish the following facts. On December 5, 2011, an arbitrator from the Mandatory Fee Arbitration Committee of the Orange County Bar Association, which is a State Bar approved fee arbitration program, signed a fee arbitration award in its case number AP-11-5383, styled *In the Matter of the Arbitration of Ann Marie Strom and Daniel DeWit, Esq.*, requiring Attorney DeWit to pay Strom \$9,450 (\$9,000 in unearned advanced fees Strom paid DeWit plus the \$450 arbitration filing fee Strom paid the Orange County Bar Association). Regrettably, the award does not provide for

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post-award interest as expressly required under paragraph 16 of the State Bar's Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs.³

The award was properly served on Attorney DeWit by mail on January 17, 2012. Even though the award was initially nonbinding, it became binding and final on February 16, 2012, (30 days after service by mail) because neither DeWit nor Strom sought a trial after arbitration within 30 days after service of the award. (§§ 6203, subd. (b), 6204, subd. (a).) Even though the award was binding and final, DeWit did not pay the award despite Strom's reminders and requests for payments. Therefore, on May 3, 2012, Strom submitted to the State Bar a Client's Request for Enforcement of an Arbitration Award.⁴

In response to Strom's request for enforcement, the State Bar contacted Attorney DeWit, but he did not timely respond to the State Bar's inquiries. Thus, on July 26, 2012, the Presiding Arbitrator imposed a \$1,000 administrative penalty on DeWit for his failures to pay the award. (§ 6203, subd. (d)(3).)

On July 31, 2012, Attorney DeWit submitted to the State Bar an Attorney's Statement Re: Financial Status claiming that he lacked the financial ability to pay award. DeWit never proposed a payment plan to Strom or the State Bar. (§ 6203, subd. (d)(2)(B).) Nonetheless, in light of DeWit's poor financial status, the Presiding Arbitrator abated the enforcement of the award for six months beginning on August 7, 2012. After that six-month abatement terminated, DeWit never sought any additional period of abatement or further asserted an inability to pay the award. Furthermore, in the present proceeding, DeWit has not demonstrated that he is not

³ Since its May 15, 2010, amendments, paragraph 16 of the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs (which is reprinted in volume 23, part 5 of West's Annotated California Codes, Court Rules -- State Bar (2016 supp.) at page 112), has mandated that "[a]n award requiring a payment must also include interest in the amount of ten percent per annum from the 30th day after the date of service of the award."

⁴ Strom's request was timely because she filed it more than 100 days after the signed award was served, but within four years after the service of the award. (§ 6203, subd. (d)(5).)

personally responsible for making or ensuring payment of the \$9,000 refund of fees or that he is lacks the ability to pay the refund award. (§ 6203, subd. (d)(2).)

In sum, the court finds that the statutory requirements for involuntary inactive enrollment under section 6203, subdivision (d) are satisfied. Accordingly, the court will grant the Presiding Arbitrator's inactive enrollment motion and order Attorney DeWit's involuntary inactive enrollment.

Order of Involuntary Inactive Enrollment

The court orders that the Presiding Arbitrator's July 29, 2016, motion for involuntary inactive enrollment is GRANTED. Accordingly, the court further orders that **DANIEL JAMES DeWIT**, State Bar number 207954, be INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER of the State Bar of California under Business and Professions Code section 6203, subdivision (d) effective five calendar days after the service of this order by mail (Rules Proc. of State Bar, rule 5.368(B)(1)).⁵

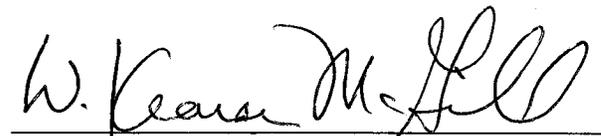
Daniel James DeWit will remain involuntarily enrolled inactive under this order until: (1) he complies with the December 5, 2011, arbitration award in Orange County Bar Association case number AP-11-5383 by paying Ann Marie Strom \$9,450; (2) he pays the reasonable costs awarded to the State Bar *post*; and (3) he makes and the State Bar Court grants a motion to terminate his involuntary inactive enrollment. (Bus. & Prof. Code, § 6203, subd. (d)(4); Rules Proc. of State Bar, rule 5.370.)

⁵ Of course, only active members of the State Bar of California may lawfully practice law in this state. (Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive to practice or to even attempt to practice law or to advertise or hold himself or herself out to be an attorney or lawyer or counselor at law or otherwise entitled to practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b).) Moreover, an attorney who has been involuntarily enrolled inactive may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are authorized to do so. (*Ibid.*; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)

Reasonable Costs

Upon the Presiding Arbitrator's *prompt* submission of a bill of costs, reasonable costs are awarded to the State Bar under Business and Professions Code section 6203, subdivision (d)(3). (Rules Proc. of State Bar, rule 5.368(B)(2).) Any costs not paid are to be added to Daniel James DeWit's State Bar membership fee for the year 2018 in accordance with Business and Professions Code section § 6203, subdivision (d)(3).

Dated: August 19 2016



W. KEARSE MCGILL
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 22, 2016, I deposited a true copy of the following document(s):

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

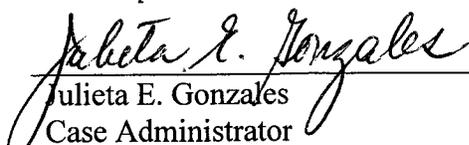
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DANIEL J. DEWIT
2323 N TUSTIN AVE STE L
SANTA ANA, CA 92705

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

Kenneth Eric Bacon, Fee Arbitration, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 22, 2016.



Julieta E. Gonzales
Case Administrator
State Bar Court