

PUBLIC MATTER

FILED

APR 11 2017

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-16604-YDR
)	
PATRICK ANTHONY ROSSETTI,)	ORDER OF INVOLUNTARY
)	INACTIVE ENROLLMENT
A Member of the State Bar, No. 170869.)	(Bus. & Prof Code, § 6203, subd. (d)(1).)
_____)	

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 PATRICK ANTHONY ROSSETTI¹ as an inactive member of the State Bar of California because Rossetti has failed to pay a \$15,000 fee arbitration award in favor of his former client Daniel Melcher. (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 Rossetti be involuntarily enrolled inactive until he, *inter alia*, complies with the award.

Relevant Procedural History

On September 28, 2016, the Presiding Arbitrator served his motion for involuntary inactive enrollment on Attorney Rossetti at Rossetti's address as it was then shown on the

¹ Attorney Rossetti was admitted to the practice of law in the State of California on June 7, 1994, and has been a member of the State Bar of California since that time.

² Except where otherwise indicated, 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.



official membership records of the State Bar of California by certified mail, return receipt requested. On September 28, 2016, the Presiding Arbitrator also sent a courtesy copy of his inactive enrollment motion to Rossetti at Rossetti's then membership-records address by first class mail, regular delivery. The Presiding Arbitrator filed his inactive enrollment motion in the State Bar Court the next day (i.e., September 29, 2016). Attorney Rossetti failed to file a response to the September 29, 2016, inactive enrollment motion or to request a hearing on the motion. Accordingly, on October 20, 2016, the court took the motion under submission for decision without a hearing.

Ordinarily, the Presiding Arbitrator's September 28, 2016, service of the motion on Attorney Rossetti at his membership-records address by certified mail, return receipt requested would have been deemed complete when mailed regardless of whether Rossetti received it. (§ 6002.1, subd. (c); rules 5.25, 5.361(B); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108.) However, in the present case, the court could not deem the September 28, 2016, service complete when mailed because the State Bar's Mandatory Fee Arbitration Program (State Bar Program) knew, no later than April 27, 2016, that Rossetti was no longer at his then membership-records address. (U.S. Const., 14th Amend.; *Jones v. Flowers* (2006) 547 U.S. 220, 230-231.) Accordingly, on November 15, 2016, the court filed an order dismissing the September 29, 2016, inactive enrollment motion without prejudice. In that same order, the court granted the Presiding Arbitrator 20 days' leave to file and serve an amended inactive enrollment motion that was accompanied by a declaration of reasonable/due diligence showing that the Presiding Arbitrator or his agents had taken additional steps that a reasonable person would take under the circumstances in an attempt to provide Rossetti with actual notice of the amended inactive enrollment motion so as to comport with due process under the Fourteenth Amendment to the United States Constitution.

The Presiding Arbitrator filed a motion for reconsideration of the court's dismissal order,³ which the court denied on January 10, 2017.

On January 27, 2017, the Presiding Arbitrator filed a motion for leave to late file an amended inactive enrollment motion and accompanying reasonable/due diligence declaration. In an order filed on March 1, 2017, the court granted the Presiding Arbitrator's motion for late filing. The court did so because it found that the Presiding Arbitrator's agents had undertaken sufficient additional steps in an attempt to provide Attorney Rossetti with actual notice of the proposed amended inactive enrollment motion and the motion for leave to late file it to comport with due process. (Rules Proc. of State Bar, rule 5.29(B).) In accordance with that order, the Presiding Arbitrator's amended motion for involuntary inactive enrollment was filed on March 1, 2017.

Attorney Rossetti did not file a response to the amended inactive enrollment motion, and the time for him to do so expired on March 16, 2017. By failing to timely file a response to the amended motion and to request a hearing, Rossetti waived his right to a hearing on his involuntary inactive enrollment. (Rule 5.364.) The court took the March 1, 2017, amended inactive enrollment motion under submission for decision without a hearing on March 16, 2017.

Findings

The amended inactive enrollment motion and its supporting documents establish the following facts. On February 12, 2015, the Orange County Bar Association's Mandatory Fee

³ Notably, the Presiding Arbitrator's motion for reconsideration did not contain an alternative request for an extension of the 20-day time period for filing an amended inactive enrollment motion in the event that his request for reconsideration was denied. Furthermore, in his motion for reconsideration, the Presiding Arbitrator's reported that both the service copy and the courtesy copy of the inactive enrollment motion that were mailed to Rossetti's membership-records address in September 2016 were returned to the Presiding Arbitrator/the State Bar Program by the United States Postal Service as being undeliverable.

Arbitration Program (Orange County Program)⁴ properly served, on Attorney Rossetti by mail, the statement of decision and award of arbitrators in its case number JN-014-5912, styled *Daniel Melcher v. Patrick A. Rossetti*. That statement and award, which is signed by three Orange County Program arbitrators, requires that Rossetti refund to Melcher \$15,000 in unearned advanced fees that Melcher paid Rossetti. The award does not provide for post-award interest even though such interest should have been awarded.⁵

Even though the award was initially nonbinding, it became binding and final on about Monday, March 16, 2015, because neither Rossetti nor Melcher sought a trial after arbitration within 30 days after service of the award. (§§ 6203, subd. (b), 6204, subd. (a); Code Civ. Proc., §§ 12, 12a [when last day to act is a Saturday, time to acts is extended to the next day that is not a holiday].) Even though the award is binding and final, Rossetti has not paid any portion of the award despite Melcher's reminders and requests for payments. Therefore, on June 4, 2015, Melcher submitted, to the State Bar Program, a client's request for enforcement of an arbitration award.⁶

On June 16, 2015, the State Bar Program served Melcher's request for enforcement on Attorney Rossetti. On July 14, 2015, the State Bar Program received a letter from Rossetti in which Rossetti stated that he was unable to pay the award. Then, on July 14, 2012, Rossetti submitted, to the State Bar Program, a financial status form establishing that he then lacked the

⁴ The Orange County Program is a State Bar of California approved fee arbitration program.

⁵ Since May 2010, the last sentence in paragraph 16 of the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs (reprinted in 23 pt. 5 West Ann. Court Rules – State Bar (2017 supp.) at p. 112), has provided 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.”

⁶ Melcher's request was timely because he submitted it after May 23, 2012, which 100 days after the signed statement and award was served, but within four years after the service of the award. (§ 6203, subd. (d)(5).)

financial ability to pay award. Rossetti never proposed a payment plan. (§ 6203, subd. (d)(2)(B).) Nonetheless, in light of Rossetti's poor financial status, the Presiding Arbitrator abated the enforcement of the award for six months from August 26, 2015, through February 26, 2016. Thereafter, Rossetti submitted a financial declaration establishing his inability to pay the award. And, on August 14, 2015, the Presiding Arbitrator abated the enforcement of the award until February 26, 2016. The Presiding Arbitrator made clear to Rossetti that, after February 26, 2016, enforcement of the award would resume unless Rossetti either paid the award, proposed a payment plan, or submitted another financial status form that established that he continued to lack the ability to pay the award. After February 26, 2016, respondent did none of these things. Thus, on April 19, 2016, the Presiding Arbitrator issued an order imposing a \$300 administrative penalty on Rossetti for his failure to pay the award. (§ 6203, subd. (d)(3).)

Finally, in the present proceeding, Attorney Rossetti has not produced any evidence that demonstrates that he is not personally responsible for making or ensuring payment of the \$15,000 refund of advanced legal fees or that he lacks the ability to pay the \$15,000 refund award. (§ 6203, subd. (d)(2).) In short, 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 amended inactive enrollment motion and order Attorney Rossetti's involuntary inactive enrollment.

Order of Involuntary Inactive Enrollment

The court orders that the Presiding Arbitrator's March 1, 2017, amended motion for involuntary inactive enrollment is GRANTED. Accordingly, the court further orders that **PATRICK ANTHONY ROSSETTI**, State Bar number 170869, be INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER of the State Bar of California under Business and

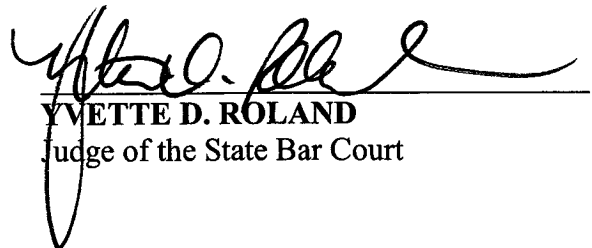
Professions Code section 6203, subdivision (d) effective five calendar days after the service of this order by mail (Rules Proc. of State Bar, rule 5.368(B)(1)).⁷

Patrick Anthony Rossetti will remain involuntarily enrolled inactive under this order until: (1) he complies with the statement of decision and award of arbitrators in the Orange County Bar Association's Mandatory Fee Arbitration Program case number JN-014-5912, styled *Daniel Melcher v. Patrick A. Rossetti*, which was served by mail on February 12, 2015, by paying Daniel Melcher \$15,000;⁸ (2) he pays the reasonable costs awarded to the State Bar; 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.)

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 Patrick Anthony Rossetti's State Bar membership fee for the year 2018 in accordance with Business and Professions Code section § 6203, subdivision (d)(3).

Dated: April 7, 2017.


YVETTE D. ROLAND
Judge of the State Bar Court

⁷ 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.)

⁸ As noted *ante*, the award does not include interest.

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 April 11, 2017, I deposited a true copy of the following document(s):

ORDER OR INVOLUNTARY INACTIVE ENROLLMENT

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

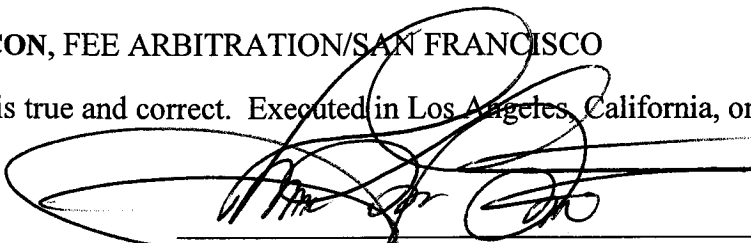
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

PATRICK A. ROSSETTI
LAW OFC PATRICK A ROSSETTI
5347 5TH ST
FALLBROOK, CA 92028

- ☒ 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 April 11, 2017.



Johnnie Lee Smith
Case Administrator
State Bar Court