

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 08-AE-12722-LMA
)	
STEVEN ROBERT LISS)	ORDER GRANTING MOTION FOR
)	INVOLUNTARY INACTIVE
Member No. 129527)	ENROLLMENT [Bus. & Prof. Code, §
)	6203, subd. (d); Rules Proc. of State Bar,
)	rule 700, et seq.]

Procedural History

On July 14, 2008, the presiding arbitrator of the State Bar’s Mandatory Fee Arbitration Program, by and through his designee, Jill A. Sperber (Sperber), Director of the Mandatory Fee Arbitration Program and Special Deputy Trial Counsel, filed a motion seeking the involuntary inactive enrollment of award debtor Steven Robert Liss (award debtor) pursuant to Business and Professions Code section 6203, subdivision (d)¹ and rule 701 of the Rules of Procedure of the State Bar² due to award debtor’s failure to pay a fee arbitration award (motion). A copy of the

¹All further statutory references are to the Business and Professions Code unless otherwise indicated.

²All further references to rules are to the Rules of Procedure of the State Bar unless otherwise indicated.

motion was served on award debtor at his official membership records address (official address) on July 14, 2008, by certified mail, return receipt requested, and by regular mail.³

A copy of a Notice of Assignment was properly served on award debtor at his official address by first-class mail, postage prepaid, on July 22, 2008, and was not returned to the State Bar Court by the United States Postal Service (USPS) as undeliverable or for any other reason.

Award debtor did not file a response to the motion or request a hearing. (Rules 702(a) and 704.) As a result, on July 30, 2008, the State Bar filed and served a Request for Issuance of Order re Submission (request for submission). This request for submission was served on respondent at his official address by regular mail.⁴

This matter was submitted for decision on August 6, 2008. A copy of the Submission Order was properly served on award debtor at his official address that day by first-class mail, postage prepaid, and was not returned to the State Bar Court by the USPS as undeliverable or for any other reason.⁵

Jurisdiction

Award debtor was admitted to the practice of law in California on September 15, 1987, and has been a member since that time.

³Exhibit 3, the certified copy of award debtor's address history as of July 9, 2008, attached to the motion, is not competent evidence to establish that documents served after July 9, 2008, were properly served upon the award debtor. The court therefore takes judicial notice of the State Bar's official membership records pursuant to Evidence Code section 452, subdivision (h). These records indicate that as of May 20, 2005, award debtor's official address has been, and remains, 7472 La Jolla Blvd., Suite A, La Jolla, CA 92037.

⁴Although there is no accompanying declaration authenticating it, attached to the State Bar's request for submission is a copy of an electronic mail (email) from award debtor to Sperber requesting a stipulation to an extension of time for respondent to respond to the State Bar's motion. However, the court notes although award debtor states in the email that he also contacted the court regarding an extension of time, he never filed a request for an extension of time or for late filing despite never obtaining a stipulation from the State Bar to an extension.

⁵The court hereby rescinds the filing of all documents filed after the date this matter was submitted. These documents will not be considered in this proceeding.

Facts

The San Diego County Bar Fee Arbitration Committee arbitrated a fee dispute between award debtor and client Dianne Gruneisen (client)⁶. On February 21, 2007, the San Diego County Bar Fee Arbitration Committee served a copy of its Findings and Award, which awarded client a refund of \$10,704.32, plus interest at the rate of 10 percent per annum from January 18, 2007, until paid in full, including \$8,409 in attorney fees, \$637.81 in program filing fees, and pre-award interest. The award was non-binding but became binding on March 23, 2007, because neither client nor award debtor filed for a trial rejecting the arbitration award.

On March 27, 2007, client sent an email to award debtor demanding payment of the arbitration award. On April 2, 2007, award debtor claimed that he and client had stipulated to a refund of \$8,500 at \$500 per month, or \$7,000 if paid in full. On May 16, 2007, award debtor offered to settle the matter with a payment of \$5,000 in two weeks. However, on June 19, 2007, client mailed a letter to award debtor requesting full payment of the arbitration award and informing award debtor that she was submitting to the State Bar a request for enforcement of the award.

Having received no response to her June 19, 2007, letter, client submitted a Client's Request for Enforcement of an Arbitration Award form (enforcement form) to the State Bar, which form was received and filed by the State Bar's Mandatory Fee Arbitration Program on June 21, 2007.

Under cover letter dated June 22, 2007, the State Bar served award debtor with, among other things, the enforcement form and the arbitration award. The State Bar's letter advised award debtor that under rule 45.1 of the Rules of Procedure for Fee Arbitrations and the Enforcement of Awards by the State Bar of California (fee arbitration rules), he had 30 days

⁶The client subsequently changed her name to Dianne Feureisen.

from the June 22, 2007, service of the enforcement form to: (1) provide satisfactory proof to the State Bar's Office of Mandatory Fee Arbitration of his payment of the arbitration award and interest; (2) agree to a payment plan satisfactory to client or the State Bar; or (3) provide reasons, under section 6203, subdivision (d)(2)(B), why he should not be required to comply with the arbitration award. The award debtor was advised that his response was due to the Office of Mandatory Fee Arbitration on or before July 23, 2007. The letter set forth that if no response was received by that date, the presiding arbitrator of the State Bar's Mandatory Fee Arbitration Program could file a motion in the State Bar Court seeking to have award debtor involuntarily enrolled as an inactive member of the State Bar until such time as the award debtor pays the arbitration award and any assessed penalties. The enforcement form and other items, including the arbitration award, were served on award debtor at his official address by both regular and certified mail, return receipt requested, on June 22, 2007. The USPS return receipt was returned indicating that the documents were delivered on June 25, 2007.

On July 24, 2007, award debtor left a voice mail message with the State Bar, stating that he could not afford to pay the award all at once and asking what his options were. On July 26, 2007, the State Bar sent a letter to award debtor acknowledging his message and asking him to make a payment plan proposal. Award debtor did not respond to this letter.

On August 9, 2007, the State Bar sent a letter to award debtor confirming his failure to respond and notifying him that the matter was being forwarded to the presiding arbitrator for issuance of an order imposing administrative penalties. The letter also advised the award debtor that the presiding arbitrator might proceed by moving the State Bar Court for an order placing award debtor on involuntary inactive status and that award debtor would then not be entitled to practice law in California until he complied with the arbitration award in full and paid any penalties imposed and costs awarded.

Award debtor sent a facsimile transmission (fax) to the State Bar on August 10, 2007, in which he proposed a payment plan of \$500 per month. The State Bar forwarded this proposed plan to client, who rejected the proposal by letter dated August 27, 2007. Client countered with a proposal that award debtor make one lump sum payment of \$6,000 by September 30, 2007, with the remainder of the award paid in monthly installments of \$1,000. The State Bar forwarded client's response to award debtor under cover letter dated August 30, 2007. The State Bar also enclosed a financial disclosure form and instructed award debtor that, if he did not accept client's proposal, he should submit it so that it would be received no later than September 10, 2007, in order for the presiding arbitrator to accept a reasonable plan over client's objection.

On September 10, 2007, award debtor faxed to the State Bar an unsigned copy of a 2006 California state income tax return. On the fax cover sheet, award debtor stated that he needed another week to complete the financial disclosure form.

Not having received a financial disclosure form within the week, on September 19, 2007, the State Bar sent a letter to award debtor informing him that, based on the tax information provided, the presiding arbitrator would approve a payment plan of \$600 per month. Award debtor did not respond, but on September 25, 2007, client faxed a letter to the State Bar vigorously opposing the proposed plan.

On October 10, 2007, the State Bar sent a letter to award debtor with a copy of its September 19 letter, confirming that he had not yet provided the financial disclosure form and advising that due to the lack of any response, it would proceed with enforcement.

On October 29, 2007, award debtor faxed to the State Bar copies of the State Bar's October 10 and September 19, 2007, letters. On the bottom of the October 10 letter, award debtor had written: "We've been out due to fires. \$601/month [sic] acceptable." At the bottom of the September 19 letter, award debtor wrote: "Never received but is acceptable." On October

31, 2007, the State Bar sent a letter to award debtor acknowledging his acceptance of the payment plan for \$600 monthly and instructing him to make the October payment immediately, the November payment in two weeks, and future payments no later than the 15th day of each month. Award debtor was also instructed to send payments directly to client and to send a photocopy of each payment to the State Bar.

On November 16, 2007, client faxed the State Bar and award debtor, stating that she had not received any payments. On the same date, award debtor faxed the State Bar a photocopy of a \$600 check to client dated November 15, 2007. There was no cover letter, fax cover sheet, or any explanation regarding the failure to make the October payment.

On November 28, 2007, the State Bar sent a letter to award debtor confirming his failure to respond to the State Bar's October 31, 2007, letter and his failure to provide evidence of an October payment. The State Bar also advised award debtor that the November check had been returned for insufficient funds and that client's bank had assessed a \$15 fee against her. The State Bar instructed award debtor that he must now make all future payments by cashier's check or money order and urged him to cure his default by submitting evidence of the October and November payments no later than ten days after the date of the letter.

On December 18, 2007, the State Bar received a fax from award debtor of a copy of a business check (rather than a cashier's check or a money order) to client for \$1,815, dated November 29, 2007. No explanation was provided, but it appeared to be the October, November, and December payments, plus the reimbursement for the \$15 insufficient funds fee.

On January 17, 2008, client sent a fax to the State Bar and award debtor stating that she had not received the January payment. The State Bar sent a letter to award debtor on January 18, 2008, advising him to cure this default and reminding him to pay by cashier's check or money order. Shortly after the State Bar's letter, client received a business check from award debtor for

the payment, but the State Bar received no response to its letter and no information that respondent had paid.

On February 19, 2008, client sent a letter to the State Bar and award debtor stating that she had not received the February payment. On March 17, 2008, client sent a letter to the State Bar and award debtor stating that she had not received the March payment. On March 21, 2008, the State Bar sent a letter to award debtor advising him to provide evidence of the January, February, and March payments by cashier's check or money order no later than ten days from the date of that letter. On March 28, 2008, the State Bar received a fax from award debtor of its March 21, 2008, letter, with the words "All payments were paid and received" hand written across the bottom. Attached were copies of three business checks to client dated January 14, February 15, and March 13, 2008.

On April 16, 2008, client sent a letter to the State Bar and award debtor stating that she had not received the April payment. Client sent a second letter to the State Bar and award debtor on April 24, 2008, stating that she still had not received the April payment. Award debtor eventually made the payment after the second reminder.

Client received her last payment from award debtor, the May payment, on May 23, 2008, after she complained to the State Bar. Although award debtor sent a check for the June payment on June 16, 2008, client could not cash the check due to insufficient funds in award debtor's account. In total, award debtor paid client a total of \$4,815, \$15 of which was to reimburse client for a returned check fee.⁷

As of May 12, 2008, the State Bar had received neither further communication from award debtor nor any evidence that he had made further payments.

⁷The court finds that paragraph 19 of the client's declaration establishes this total amount that award debtor paid, notwithstanding that paragraph 15 states that award debtor paid only \$4,200.

Legal Conclusions

The court finds that the presiding arbitrator has met the burden of demonstrating by clear and convincing evidence that award debtor agreed to a payment plan and has failed to make one or more payments required by such plan. (Rule 705(a); § 6203, subd. (d)(2)(A).) Not only has award debtor failed to make timely payments in accordance with the plan, he has also failed to make any payments since May 2008.

The court also finds that award debtor has not met the burden of demonstrating by clear and convincing evidence that he is not personally responsible for making or ensuring payment of the award; that he is unable to pay the award or the payments due under his payment plan; or that he has proposed and agrees to comply with a payment plan which the State Bar has unreasonably rejected as unsatisfactory. (Rule 705(b); §6203, subd. (d)(2)(B).)

ORDER

IT IS ORDERED that award debtor Steven Robert Liss 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 from the date of service of this order. (Rules Proc. of State Bar, rule 708(b)(1).)

IT IS FURTHER ORDERED that award debtor remain involuntarily enrolled as an inactive member of the State Bar until: (1) he has paid the arbitration award to Dianne Feureisen in the amount of \$5,904.32,⁸ plus interest at the rate of ten percent per annum from January 18, 2007, as provided in the arbitration award; (2) he has paid any administrative penalty assessed by

⁸This amount represents the full amount of the arbitration award, less the eight payments of \$600 each made by award debtor. Although the State Bar's motion appears to give award debtor credit for the additional \$15 paid, the court determines that that amount was not paid to satisfy the award, but rather to reimburse client for the returned check fee, and that therefore the \$15 should not be deducted from the original award.

order of the presiding arbitrator and reasonable costs, if any; and (3) the court grants a motion to terminate the inactive enrollment pursuant to rule 710 of the Rules of Procedure of the State Bar.

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 708(b)(2).)

Dated: October _____, 2008

LUCY ARMENDARIZ
Judge of the State Bar Court