

BEFORE THE EVIDENTIARY PANEL 4-6 OF THE
STATE BAR DISTRICT NO. 4 GRIEVANCE COMMITTEE

FILED

APR 01 2019

STATE BAR OF TEXAS
HOUSTON CDC

COMMISSION FOR LAWYER
DISCIPLINE,
Petitioner

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201705202 [DINSMORE]

V.

TYESHA YVETTE ELAM,
Respondent

HARRIS COUNTY, TEXAS

JUDGMENT OF FULLY PROBATED SUSPENSION

Parties and Appearance

On March 20, 2019, came to be heard the above styled and numbered cause. Petitioner, Commission for Lawyer Discipline, appeared by and through its attorney of record and announced ready. Respondent, Tyesha Yvette Elam, Texas Bar Number 24026819, appeared in person and announced ready.

Jurisdiction and Venue

The Evidentiary Panel 4-6 having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 4, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Professional Misconduct

The Evidentiary Panel, having considered all of the pleadings, evidence, stipulations, and argument, finds Respondent has committed Professional Misconduct as defined by Rule 1.06(W) of the Texas Rules of Disciplinary Procedure.

Findings of Fact

The Evidentiary Panel, having considered the pleadings, evidence and argument of counsel, makes the following findings of fact and conclusions of law:

1. Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.
2. Respondent resides in and maintains her principal place of practice in Harris County, Texas.
3. Respondent was hired by Natalia Dinsmore (Dinsmore) to handle a real estate matter.
4. Respondent failed to keep Dinsmore reasonably informed about the status of her case and failed to promptly comply with reasonable requests for information.
5. Respondent represented Dinsmore in a matter adverse to her former client Edwards in a substantially related matter.
6. Respondent failed to hold funds belonging to Dinsmore that was in Respondent's possession in connection with the representation separate from Respondent's own property.
7. Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.
8. Upon termination of representation, Respondent failed to refund advance payments of fee that has not been earned.
9. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorneys' fees associated with this Disciplinary Proceeding in the amount of \$1,300.00.
10. Respondent owes restitution in the amount of \$1,300.00 payable to Natalia Dinsmore.

Conclusions of Law

The Evidentiary Panel concludes that, based on foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: 1.03(a), 1.09(a)(3), 1.14(a), 1.15(d), and 8.04(a)(3).

Sanction

The Evidentiary Panel, having found that Respondent has committed professional misconduct, heard and considered additional evidence regarding the appropriate sanction to be imposed against Respondent. After hearing all evidence and argument and after having considered the factors in Rule 2.18 of the Texas Rule of Disciplinary Procedure, the Evidentiary Panel finds that the proper discipline of the Respondent for each act of Professional Misconduct is a Probated Suspension.

Accordingly, it is ORDERED, ADJUDGED and DECREED that Respondent be suspended from the practice of law for a period of six (6) months, with the suspension being fully probated pursuant to the terms stated below. The period of probated suspension shall begin on **April 1, 2019** and shall end on **October 1, 2019**.

Terms of Probation

It is further ORDERED that during all periods of suspension, Respondent shall be under the following terms and conditions:

1. Respondent shall not violate any term of this judgment.
2. Respondent shall not engage in professional misconduct as defined by Rule 1.06(W) of the Texas Rules of Disciplinary Procedure.
3. Respondent shall not violate any state or federal criminal statutes.
4. Respondent shall keep State Bar of Texas membership department notified of current mailing, residence and business addresses and telephone numbers.
5. Respondent shall comply with Minimum Continuing Legal Education requirements.
6. Respondent shall comply with Interest on Lawyers Trust Account (IOLTA) requirements.
7. Respondent shall promptly respond to any request for information from the Chief Disciplinary Counsel in connection with any investigation of any allegations of professional misconduct.

8. Respondent shall pay all reasonable and necessary attorney's fees to the State Bar of Texas in the amount of \$1,300.00. The payment shall be due and payable on or before **June 1, 2019**, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).
9. Respondent shall pay restitution on or before **June 1, 2019**, to Natalia Dinsmore in the amount of \$1,300.00. Respondent shall pay the restitution by certified or cashier's check or money order made payable to Natalia Dinsmore and delivered to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).
10. In addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete thirty (30) additional hours of continuing legal education with fifteen (15) hours in the area of Ethics and fifteen (15) hours in Law Practice Management. These additional hours of CLE are to be completed between **April 1, 2019** and **April 1, 2020**. Within ten (10) days of the completion of these additional CLE hours, Respondent shall verify completion of the course to the State Bar of Texas, via USPS: Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Suite 200, Austin, TX 78701.
11. Within ten (10) days of Respondent's receipt of a copy of this judgment, Respondent shall schedule a full psychological assessment to be conducted by a mental health professional licensed in Texas as a psychiatrist, a psychologist, a master's level social worker (LCSW), or a licensed professional counselor (LPC). Respondent shall complete the assessment by **August 1, 2019**. Although the details of information disclosed during the assessment shall remain confidential, the conclusions, diagnosis and treatment plan recommendations of the mental health professional shall be reported to the State Bar of Texas within ten (10) days of the completion of the assessment. Respondent shall take all necessary action, including the execution of a valid release of information, to allow and direct the mental health professional to report such results and recommendations. Respondent shall be responsible for all costs and expenses incurred, directly or indirectly, by compliance with this term and shall pay all such costs and expenses as required by the provider.
12. Respondent shall submit to monitoring of her law practice for a period of six (6) months by an attorney monitor acceptable to the State Bar of Texas who shall provide law office management consultation. The practice monitor shall have no personal or professional relationship with the Respondent that would interfere with the monitor's ability to exercise independent judgment regarding Respondent's compliance with the terms of this judgment. The monitor shall make six (6) one hour visits with Respondent and shall report the status of

Respondent's compliance on a monthly basis on the form provided by the State Bar of Texas, with the initial report due by the 5th day of the month following the initial meeting. Subsequent reports shall be due by the 5th day of each month for the duration of the monitoring period and shall be sent to the State Bar of Texas, Office of Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487, or via delivery to the State Bar of Texas, 1414 Colorado St., Austin, TX 78701.

13. Respondent shall meet with the attorney monitor a minimum of once per month for six (6) months. The initial meeting shall be held not later than fifteen (15) days after Respondent receives written notification from the State Bar of Texas of the name and phone number of Respondent's assigned monitor. Such meetings shall be in person at a place and time as determined by the monitor. Exceptions must be approved in advance by the monitor and noted on the monthly report.
14. Not later than sixty (60) days after entry of the judgment, Respondent shall engage the services of an independent Certified Public Accountant (the CPA), approved by the State Bar of Texas, to assist Respondent in implementing an accounting method to properly maintain trust account records, and to properly balance any and all of Respondent's trust accounts. Respondent shall insure that written confirmation of the implementation of such accounting method is provided directly by the CPA to the State Bar of Texas not later than **August 1, 2019**. Respondent shall take all necessary action, including the execution of a valid release of information, to allow and direct the CPA to provide such confirmation.
15. Additionally, not later than sixty (60) days after entry of the judgment, Respondent shall have a review of any and all of Respondent's trust accounts completed by the CPA. Not later than **August 1, 2019**, Respondent shall insure that a report summarizing the results of the review, and specifically noting any irregularities in Respondent's handling of trust account funds, is provided by the CPA directly to the State Bar of Texas.
16. Respondent shall be responsible for all costs and expenses incurred in completing these terms and shall pay all reasonable costs and expenses to the CPA in the manner determined by the CPA.
17. All reports and verifications of compliance with the above shall be sent to the State Bar of Texas via USPS to: Office of the CDC, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Suite 200, Austin, TX 78701, or via FAX to: 512-427-4167.
18. Respondent shall make contact with the Chief Disciplinary Counsel's Offices' Compliance Monitor at 877-953-5535, ext. 1334 and Special Programs Coordinator at 877-953-5535, ext. 1323, not later than seven (7) days after receipt of a copy of this judgment to coordinate Respondent's compliance.

Probation Revocation

Upon information that Respondent has violated a term of this judgment, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation pursuant to Rule 2.23 of the Texas Rules of Disciplinary Procedure with the Board of Disciplinary Appeals ("BODA") and serve a copy of the motion on Respondent pursuant to Tex.R.Civ.P. 21a.

BODA shall conduct an evidentiary hearing. At the hearing, BODA shall determine by a preponderance of the evidence whether Respondent has violated any term of this Judgment. If BODA finds grounds for revocation, BODA shall enter an order revoking probation and placing Respondent on active suspension from the date of such revocation order. Respondent shall not be given credit for any term of probation served prior to revocation.

It is further ORDERED that any conduct on the part of Respondent which serves as the basis for a motion to revoke probation may also be brought as independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure.

Rehabilitative Terms

It is further ORDERED that within ten (10) days of Respondent's receipt of a copy of this judgment, Respondent shall schedule a full psychological assessment to be conducted by a mental health professional licensed in Texas as a psychiatrist, a psychologist, a master's level social worker (LCSW), or a licensed professional counselor (LPC). Respondent shall complete the assessment by **August 1, 2019**. Although the details of information disclosed during the assessment shall remain confidential, the conclusions,

diagnosis and treatment plan recommendations of the mental health professional shall be reported to the State Bar of Texas within ten (10) days of the completion of the assessment. Respondent shall take all necessary action, including the execution of a valid release of information, to allow and direct the mental health professional to report such results and recommendations. Respondent shall be responsible for all costs and expenses incurred, directly or indirectly, by compliance with this term and shall pay all such costs and expenses as required by the provider.

Additional Continuing Legal Education (CLE)

It is further ORDERED that in addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete thirty (30) additional hours of continuing legal education with fifteen (15) hours in the area of Ethics and fifteen (15) hours in Law Practice Management. These additional hours of CLE are to be completed between **April 1, 2019** and **April 1, 2020**. Within ten (10) days of the completion of these additional CLE hours, Respondent shall verify completion of the course to the State Bar of Texas, via USPS: Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Suite 200, Austin, TX 78701.

Additional Conditions

It is further ORDERED that Respondent shall submit to monitoring of her law practice for a period of six (6) months by an attorney monitor acceptable to the State Bar of Texas who shall provide law office management consultation. The practice monitor shall have no personal or professional relationship with the Respondent that would interfere with

the monitor's ability to exercise independent judgment regarding Respondent's compliance with the terms of this judgment. The monitor shall make six (6) one hour visits with Respondent and shall report the status of Respondent's compliance on a monthly basis on the form provided by the State Bar of Texas, with the initial report due by the 5th day of the month following the initial meeting. Subsequent reports shall be due by the 5th day of each month for the duration of the monitoring period and shall be sent to the State Bar of Texas, Office of Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487, or via delivery to the State Bar of Texas, 1414 Colorado St., Austin, TX 78701.

It is further ORDERED that Respondent shall meet with the attorney monitor a minimum of once per month for six (6) months. The initial meeting shall be held not later than fifteen (15) days after Respondent receives written notification from the State Bar of Texas of the name and phone number of Respondent's assigned monitor. Such meetings shall be in person at a place and time as determined by the monitor. Exceptions must be approved in advance by the monitor and noted on the monthly report.

It is further ORDERED that not later than sixty (60) days after entry of the judgment, Respondent shall engage the services of an independent Certified Public Accountant (the CPA), approved by the State Bar of Texas, to assist Respondent in implementing an accounting method to properly maintain trust account records, and to properly balance any and all of Respondent's trust accounts. Respondent shall insure that written confirmation of the implementation of such accounting method is provided directly by the CPA to the State Bar of Texas not later than **August 1, 2019**. Respondent shall take all necessary action, including the execution of a valid release of information, to allow and direct the CPA to provide such confirmation.

Additionally, not later than sixty (60) days after entry of the judgment, Respondent shall have a review of any and all of Respondent's trust accounts completed by the CPA. Not later than **August 1, 2019**, Respondent shall insure that a report summarizing the results of the review, and specifically noting any irregularities in Respondent's handling of trust account funds, is provided by the CPA directly to the State Bar of Texas.

It is further ORDERED that Respondent shall be responsible for all costs and expenses incurred in completing these terms and shall pay all reasonable costs and expenses to the CPA in the manner determined by the CPA.

All reports and verifications of compliance with the above shall be sent to the State Bar of Texas via USPS to:, Office of the CDC, State Bar of Texas, P.O. Box 12487, Austin, TX 78711-2487; or via Delivery: Office of the CDC, State Bar of Texas, 1414 Colorado St., Suite 200, Austin, TX 78701, or via FAX to: 512-427-4167.

Restitution and Attorney's Fees

It is further ORDERED Respondent shall pay restitution on or before **June 1, 2019**, to Natalia Dinsmore in amount of \$1,300.00. Respondent shall pay the restitution by certified or cashier's check or money order made payable to Natalia Dinsmore and delivered to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further ORDERED Respondent shall pay all reasonable and necessary attorney's fees to the State Bar of Texas the amount of \$1,300.00. The payment shall be due and payable on or before **June 1, 2019**, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-

2487 (1414 Colorado St., Austin, TX 78701).

It is further ORDERED that all amounts ordered herein are due to the misconduct of Respondent, are assessed as a part of the sanction in accordance with Rule 1.06(Z) of the Texas Rules of Disciplinary Procedure. Any amount not paid shall accrue interest at the maximum legal rate per annum until paid and the State Bar of Texas shall have all writs and other post-judgment remedies against Respondent in order to collect all unpaid amounts.

Publication

This suspension shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 1st day of April, 2019.

**EVIDENTIARY PANEL 4-6
DISTRICT NO. 4
STATE BAR OF TEXAS**



**ANUJ ARUN SHAH
District 4-6 Presiding Member**