

PUBLIC MATTER

FILED

DEC 28 2017

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 15-C-15370-YDR
)	
MAYVELYN GARVIDA DIAZ,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 253182.)	ENROLLMENT
)	

Respondent Mayvelyn Garvida Diaz (Respondent) was convicted of violating Penal Code sections 470, subdivision (d) (forgery), 531a (fraudulent execution or filing of instrument purporting to convey real property), and 532, subdivision (a) (fraudulently obtaining money, property, or labor), misdemeanors which involve moral turpitude as a matter of law. Respondent was also convicted of violating Penal Code section 602, subdivision (k) (trespass), and subdivision (m) (entering and occupying property without consent) (two counts), misdemeanors which may or may not involve moral turpitude or constitute other misconduct warranting discipline. After finality of the conviction, the Review Department of the State Bar Court issued an order referring this matter to the hearing department for a hearing and decision recommending the discipline to be imposed. Respondent failed to appear at trial, and her default was entered. The Office of Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹



¹ Unless otherwise indicated, all references to rule(s) are to this source.

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of hearing on conviction, and the attorney fails to have the default set aside or vacated within 45 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in California on December 3, 2007, and has been a member since then.

Procedural Requirements Have Been Satisfied

On May 17, 2017, the State Bar Court filed and properly served on Respondent the notice of hearing on conviction (NOH) in case No. 15-C-15370 by certified mail, return receipt requested, to Respondent's membership records address. The NOH notified Respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.345.) Respondent filed an answer to the NOH on July 3, 2017.

On June 27, 2017, the court held a status conference that Respondent attended telephonically. The court set the trial for two days, commencing on September 12, 2017, at 10:00 a.m. On July 7, 2017, the court filed an order setting forth the forgoing trial date in this matter. The order was properly served on Respondent at Respondent's membership records address by first-class mail, postage prepaid.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

Respondent failed to appear for trial on September 12, 2017; however, the State Bar was in attendance. The court entered Respondent's default in an order filed on September 12, 2017. The order was properly served on Respondent at Respondent's membership records address by certified mail, return receipt requested. (Rule 5.81(B).) The order notified Respondent that, if she did not timely move to set aside her default, the court would recommend her disbarment. The order also placed Respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e),³ effective three days after service of the order, and Respondent has remained inactively enrolled since that time.

Respondent did not timely seek to have her default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].) On November 2, 2017, the State Bar filed and properly served the petition for disbarment on Respondent at her membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has had no contact with Respondent since the default was entered; (2) there are no disciplinary matters or disciplinary investigations pending against Respondent; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has not paid out any claims resulting from Respondent's conduct.

Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on November 28, 2017.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default, the factual allegations set forth in the State Bar's statement of facts and circumstances surrounding Respondent's conviction are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.346(D).) As set forth below in greater detail, Respondent's convictions of forgery, fraudulent execution or filing of

³ All further references to sections are to the Business and Professions Code.

instrument purporting to convey real property; fraudulently obtaining money, property, or labor; trespass; and entering and occupying property without consent support the conclusion that Respondent violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case Number 15-C-15370 - (Conviction Matter – Pen. Code, §§ 470, subd. (d), 531a, 532, subd. (a), 602, subds. (k) & (m))

Respondent was convicted of violating Penal Code sections 470, subdivision (d) (forgery), 531a (fraudulent execution or filing of instrument purporting to convey real property), 532, subdivision (a) (fraudulently obtaining money, property, or labor), and 602, subdivision (k) (trespass), and subdivision (m) (entering and occupying property without consent) (two counts).

On August 26, 2014, Cliff Liu (Cliff) returned to his family residence located in Los Angeles, California at 2:30 a.m. Cliff had departed his home on August 25, 2014, to go to the library to study for the Law School Admission Test. The residence is owned by Cliff's parents, Stephen and Faye Liu,⁴ who were out of town.

Upon returning home, Cliff found a bike lock on the bike gate to the property which prevented him from accessing the residence. There was also a handwritten note posted on the gate of the residence which read:

To residents of 13320 Mulholland Drive,

This is official notice that I have taken legal possession of 13320 Mulholland Drive. I had previously delivered notice 40 hours previously of my purchase of an option to lease with an option to Purchase Estate. Do not step on the property. Doing so is trespassing and a felony. Those with a felony are not able to pass the character section for the CA State Bar. If you have any questions, please contact me at 818-679-1892.

Sincerely,
[Respondent]

⁴ First names are used for the sake of clarity; no disrespect is intended.

From the front gate of the residence, Cliff saw shadows of several people in the home. Cliff called the police because he believed that his home was possibly being burglarized. At 3:45 a.m., officers from the Los Angeles Police Department (LAPD) and the Los Angeles Fire Department (LAFD) arrived at the residence. The LAFD removed the bike lock from the front gate, and Cliff and officers from the LAPD went into the home. Once inside the home, Cliff recognized Respondent.

Cliff informed LAPD Officer Chen that his family had been involved in a dispute with their neighbor, Michael Edson, concerning legal ownership of an easement of a shared driveway, and that Respondent had held herself out as Mr. Edson's attorney in the dispute. Cliff demanded to know how Respondent gained access to the residence. Respondent stated that she responded to a Craigslist advertisement which listed the residence for lease. Respondent also advised him that after she responded to the Craigslist advertisement, she met with an individual named Robert Moss on July 23, 2014. She provided Moss with a One West Bank check for \$10,000, and an additional \$20,000 in cash as consideration.

Respondent provided an LAPD officer with a lease agreement between Chris McAllister as the landlord/lessor/agent/owner, and Moss as the tenant/buyer. The agreement was dated July 23, 2014. The lease included a purchase option for \$4,200,000 and a right of assignment by the tenant/buyer. An assignment agreement dated August 23, 2014, was attached to the lease. The assignment transferred the Option to Purchase Real Estate, dated June 15, 2010, between Moss and McAllister, to Respondent. Respondent further advised that Moss gave her a gate clicker and a set of keys to the residence. At the time, Respondent knew that the lease, option to purchase, and assignment were forged, false, and fraudulent and that Stephen and Faye never granted Respondent permission to occupy the residence.

Respondent informed LAPD Officer Chen that when she arrived at the residence on August 25, 2014, at 2:00 p.m., she was unable to locate her gate clicker so she jumped the gate and opened it from the inside. Respondent stated that she later found the gate clicker in the door pocket of her car. Upon entering the home, Respondent stated that she noticed that it was furnished, which led her to believe that someone was living there. Respondent then retrieved a bike lock to secure the front gate and posted the sign on the front gate which stated that she was in legal possession of the property and that trespassing would be illegal.

Cliff informed one of the LAPD officers that there were only three keys made for the home. Respondent consented to a search of her purse while at the residence. Two of the three residence keys were found in respondent's possession. Cliff had the remaining key. In addition, officers from the LAPD found in Respondent's purse a prescription bottle of Ibuprofen, belonging to Cliff's sibling, and a bottle of Advil, which also belonged to the Liu family.

LAPD officers attempted to gain access to the home security system for the residence; however, it was physically damaged and the interior was stripped of parts. Cliff advised one of the officers that the system was working prior to Respondent's trespass.

A subsequent investigation by the LAPD revealed that Respondent's cell phone contained photographs of Liu family identification documents, including bank cards, social security cards, checks, and photographs of Stephen's grant deed, certificate of title for Stephen's vehicle, and an immigration document. There were also photographs of prescription bottles of medicine and several close-up shots of Stephen's and Faye's signatures.

On August 26, 2015, the Los Angeles City Attorney filed a 15-count misdemeanor criminal complaint in the Los Angeles County Superior Court, case No. 5WA01552, charging Respondent with the following: eight violations of Penal Code section 530.5(c)(1) (identity theft); Penal Code section 470, subdivision (d) (forgery); Penal Code section 459 (burglary);

Penal Code 602, subdivision (m) (entering and occupying property without consent); Penal Code section 602, subdivision (k) (criminal trespass); Penal Code section 484(a)-490.2(a) (petty theft); Penal Code section 531a (fraudulent execution or filing of instrument purporting to convey real property); and Penal Code section 532, subdivision (a) (fraudulently obtaining money, property, or labor). On November 28, 2016, the misdemeanor criminal complaint was amended by interlineation to add another violation of Penal Code section 602, subdivision (m), as the sixteenth count.

On November 28, 2016, respondent pleaded guilty to the following six misdemeanors: forgery (Penal Code section 470, subdivision (d)); trespass (Penal Code section 602, subdivision (k)); two counts of entering and occupying property without consent (Penal Code section 602, subdivision (m)); fraudulent execution or filing of instrument purporting to convey real property (Penal Code section 531a), and fraudulently obtaining money, property, or labor (Penal Code section 532(a)).

Crimes involving the intent to defraud involve moral turpitude per se. (*In re Kelley* (1990) 52 Cal.3d 487, 494; see also *In re Prantil* (1989) 48 Cal.3d 227, 234 [forgery is a serious crime involving moral turpitude].) Respondent's convictions of forgery; fraudulent execution or filing of instrument purporting to convey real property; and fraudulently obtaining money, property, or labor involve moral turpitude as a matter of law. Trespass and entering and occupying property without consent may or may not involve moral turpitude or other misconduct warranting discipline, depending upon the facts and circumstances surrounding the conviction. The court finds that the facts and circumstances surrounding Respondent's convictions involve moral turpitude because they involve intentional dishonesty and fraud. (*In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 220-221 [moral turpitude involves acts of

dishonesty, including intentional misrepresentation]; *In re Kelley, supra*, 52 Cal.3d at p. 494 [fraud]; see also *In re Prantil, supra*, 48 Cal.3d 227 at p. 234 [forgery].)

Disbarment Is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied, and Respondent's disbarment is recommended. In particular:

(1) the NOH was properly served on Respondent under rule 5.25;

(2) Respondent had actual notice of this proceeding and was properly given notice of the trial date before the entry of the default;

(3) the default was properly entered under rule 5.81; and

(4) the factual allegations in the statement of facts and circumstances surrounding Respondent's conviction deemed admitted by the entry of the default, support a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate and actual notice and opportunity, Respondent failed to appear for trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends Respondent's disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Mayvelyn Garvida Diaz, State Bar number 253182, be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and

(c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

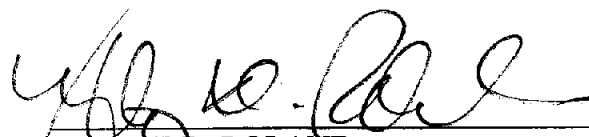
Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Mayvelyn Garvida Diaz, State Bar number 253182, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: December 27, 2017


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 December 28, 2017, I deposited a true copy of the following document(s):

DECISION AND 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:

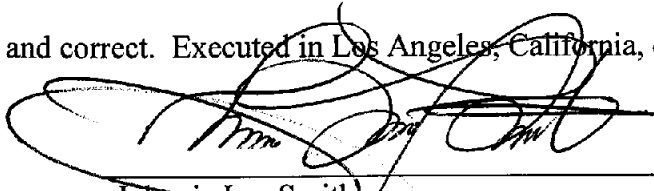
MAYVELYN G. DIAZ
1022 CALLE AZUL
GLENDAL, CA 91208 - 3009

MAYVELYN GARVIDA DIAZ
1022 CALLE AZUL
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- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

CAITLIN MARIE ELEN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 28, 2017.



Johnnie Lee Smith
Case Administrator
State Bar Court