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7 Wisconsin Supreme Court

<p>8 In re Yi Tai Shao’s bar license (1014147)</p>	<p>Case No.:</p> <p>MOTION TO SET ASIDE SUSPENSION OF BAR LICENSE BASED ON VIOLATION OF DUE PROCESS GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE US CONSTITUTION</p>
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I. SUMMARY

Licensee Yi Tai Linda Shao ["Shao"] has been practicing law outside of the State of Wisconsin and has never been resided in the State of Wisconsin since admission to the Wisconsin bar on September 13, 1989. 20 years later, her license was suspended due to inadvertent failure to pay bar dues and reinstated in or about January 2017. There were many communications between the Board of Bar Examiners and Shao that were made via emails.

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For unknown reason, *without any fault of Shao*, the State Bar record was inconsistent with the profile of Shao, in that the suite number of 100 for the large complex commercial building of 4900 Hopyard Road, Pleasanton, California, was omitted from being shown on the record for the public. Therefore, in 2019 and 2020, SHAO did not receive notices by mail including bar dues.

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In early July 2020, Shao surprisingly received a Notice of Suspension of her Wisconsin bar license dated June 16, 2020 (Exhibit F, Page 7 of 10) despite SHAO had timely paid the bar dues. SHAO paid the bar dues because the Wisconsin State Bar notified her through email. Yet, there was not a single email from the BBE before suspension. There was a record from the BBE that its notice of MCLE report filing due date dated October 3, 2019 was returned to the BBE office on October 17, 2019.(Exhibit F, pp.1-2) Ms. Tammy McMillen had email contacts with Shao just about 2 months prior (Exhibit D, emails on August 9, 2019 regarding lack of any notice on bar due payment invoice), however, the BBE did not attempt to contact Shao via email under the circumstances.

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If the BBE had informed Shao their notice via email, SHAO would have timely reported the MCLE and there would have been no suspension.

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Shao is very serious on her bar license as she has been working on admission by motion to other states and applied for a Certificate of Good Standing from the Wisconsin Supreme Court who issued the Certificate on 2/12/2020. (Exhibit G) There

1 was a letter issued along with the Certificate, yet Shao tentatively unable to locate it. The
2 letter from Wisconsin Supreme Court stated the history of Shao's bar license but did not
3 mention any issue of passing due of MCLE reporting. Shao had no constructive notice
4 that her license would be suspended.

5 The fact that the BBE could have easily notify Shao via her email address of
6 attorneyshao@aol.com may be proven by (1) Before suspension, Ms. McMillen
7 contacted Shao via attorneyshao@aol.com on August 9, 2019 (Exhibit D) when was
8 about two months prior to the BBE's notices of MCLE due date. (2) on August 1, 2020
9 when Ms. McMillen was asked by Ms. Rothstein to send me all notices at issue, she
10 could immediately switch our contacting email from attorneyshao@outlook.com
11 (Exhibit E) to attorneyshao@aol.com. (Exhibit F, cover page of email)

12 SHAO is one of the virtual tenants of Regus who operated on Suite 100 of 4900
13 Hopyard Road in Pleasanton, California. Regus mailed to Shao weekly on the mails it
14 received. The suite 100 is located on the ground floor of part side of the huge office
15 building complex of 4900 Hopyard Road in Pleasanton, California. Its sizable mansion
16 can be easily seen on the internet. When there were no mails received from Wisconsin
17 regarding her bar license in 2019 and 2020, somehow maybe the mailman recalled my
18 name being for Suite 100 so that, in God's hands, Regus received the mail for notice of
19 suspension despite the address was wrong. Shao immediately contacted Ms. McMillen
20 inquiring if the suspension was in error. See Exhibit E, Shao's email of July 10, 2020
21 9:37 p.m. to BBE@WICOURTS.GOV ("I just received your mail of notice of
22 suspension. This must be a mistake ...(omitted) Further such surprising suspension
23 without any hearing nor any prior notice is for sure in violation of Due Process...") As
24 mentioned above, these emails were made through Shao's another new email of
25 attorneyshao@outlook.com and Ms. Tammy McMillen later switched contact to
26 attorneyshao@aol.com as shown in Exhibit F, the cover email of August 1, 2020. This
27 proves that Ms. McMillen could have easily contacted me via the email of
28 attorneyshao@aol.com.

1 The BBE did have the record of mail return for wrong address (Exh.F, p.2). SHAO
2 has also provided to BBE an email from Regus's Community Manager that the person
3 signed on Certified mail receipt for "4900 Hopyard Road, Pleasanton, California 94588"
4 is not an employee of that office (See Exhibit H, p.8 (last page)). Despite many efforts
5 to meet or confer with the BBE, only until August 10, 2020 then the BBE raised the
6 issue that this was "the last known address shown on the State Bar" then both parties
7 discovered that all of BBE's notices in 2019-20 to SHAO contained a wrong address.
8 Without Shao's fault, State Bar of Wisconsin failed to publish the suite number.
9 Therefore, all written notices of the BBE were either returned or not received by SHAO,
10 except the Notice of Suspension. SHAO did not receive notice of MCLE compliance,
11 did not receive Notice of Non-compliance. The BBE eventually found out the error
12 being of the State Bar and had directed the State Bar to make correction on August 11,
13 2020. (Exhibit H, p.2)

14 Nevertheless, despite the undisputed fact of lack of notice for MCLE non-
15 compliance, the BBE persisted on maintaining suspension and required Shao to file a
16 Petition for Reinstatement plus \$200. The BBE, however, would submit to the Board of
17 Trustees for determination on Shao's motion to vacate suspension based on violation of
18 due process guaranteed by the Fourteenth Amendment of the US Constitution. (Exhibit
19 I, p.1, email of Ms. McMillen)

20 In February 2020, SHAO applied admission to New York Bar by using
21 Wisconsin's license and received from this Court a Certificate of Good Standing. There
22 was never a mentioning that the license may be threatened with a suspension. Shao will
23 suffer substantial prejudice if there were a suspension record of this bar license as this
24 notice of suspension will adversely impact and cancel all efforts of Shao in paying
25 money applying for the bar admission to reciprocal states of Wisconsin. Due to Covid-
26 19, the New York Court of Appeal delayed its approval process and approved Shao's
27 initial qualification, awaiting for additional application materials. This notice of
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1 suspension, without Shao's fault, will also foreclose Shao's application for admission on
2 motion to other States' bar which is planned to take place by end of this year.

3 As stated above, if the BBE had contacted Shao when its mail notice was returned
4 for wrong address on 10/13/2019, there would not have been a suspension.

5 The BBE required this motion to be filed in order to let its Board of Trustee to
6 decide, despite of undisputed fact that the suspension was made without notice, actual or
7 constructive. The BBE's ground of persistence on maintaining suspension was that they
8 could not do anything after suspension of a bar license, even if that was made in error.
9 This does not conform to the Due Process and the prevailing laws. In contrast, the BBE
10 has actual notice and constructive notice that SHAO never practiced law in Wisconsin
11 since admission to Supreme Court in September 1989 and Shao's affidavit that she "will
12 remain practice outside of the State of Wisconsin (Exhibit A, Letter of 1/20/2015, the
13 last sentence above signature). SHAO respectfully prays relief from the Supreme Court.

14 **II. STATEMENT OF RELEVANT FACTS**

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16 Because of divorce, after paying bar dues for 20 years, Shao inadvertently missed
17 paying bar dues and was suspended her license in 2009. In the 20 years before
18 suspension, Shao recalled that she never needed to go to the website of the Board of Bar
19 Examiner to report MCLE exemption but simply signed some preprinted paper by the
20 government to verify that she did not practice law in Wisconsin, which was
21 accompanying the invoices for the bar dues. SHAO is not a computer person.

22 In 2014, SHAO petitioned for reinstatement of her license, which took almost three
23 years in processing. In January 2015, SHAO requested waiver of MCLE compliance;
24 SHAO asked "waiver" based on SCR 31.40 which was a confusion with "exemption".
25 See a copy of the Request in **Exhibit A**. The BBE was made known that since 1989
26 SHAO has never resided nor practiced law inside Wisconsin and would not in the future
27 (Exhibit A, letter, last sentence (the 6th page of the exhibit)), either. At that time, SHAO
28 was a student enrolled in the LL.M. program of Washington University, St. Louis. On

1 March 7 2016, this Court ordered SHAO to communicate with the BBE to use her
2 LL.M. courses to substitute for MCLE courses. See in **Exhibit B** for a copy of
3 November 14, 2016's Order.

4 In 2018, SHAO received a notice to report the MCLE on a website. SHAO did
5 so, but inadvertently clicked a wrong button of "waiver" when she should have clicked
6 "exemption." SHAO tried to make correction and contacted the BBE's CLE Records
7 Manager, Tammy McMillen Ms. McMillen contacted Shao via the email of
8 attorneyshao@aol.com on April 5, 2018. Yet, she required extra payment of a late fee
9 of \$100 plus a letter to "amend" Shao's 2016-17 CLE report despite it was timely
10 reported in the beginning. See **Exhibit C** for the emails on April 5, 2018 through April
11 11, 2018 which were communicated through Shao's email of attorneyshao@aol.com.

12 For unknown reason, *without SHAO's fault*, Wisconsin Bar record for the public's
13 view did not show the correct address by omitting the suite number, which is different
14 from what had been recorded in SHAO's Profile. As a result, SHAO did not receive any
15 mail notice regarding her Wisconsin bar license in 2019 nor 2020, except for the Notice
16 of Suspension. Therefore, on August 6, 2019, she sent an email to Ms. Tammy
17 McMillen at the BBE to inquire about the invoice for state bar dues. See **Exhibit D**
18 Ms. McMillen directed her to contact the State Bar of Wisconsin.

19 According to the records produced by Tammy recently (**Exhibit F**), the mail for
20 MCLE compliance due date was mailed out on 10/3/2019 and returned on 10/17/2019,
21 which was about 2 months following the email contact as shown in Exhibit D, yet Ms.
22 McMillen did not email me when mail did not work. As mentioned above in
23 INTRODUCTION, Ms. McMillen was able to immediately locate the email of
24 attorneyshao@aol.com upon direction by her boss, Ms. Rothstein, to send me all proofs
25 of notices on August 1, 2020, when before August 1, 2020, I had contacted her by
26 another email of attorneyshao@outlook.com (**Exhibit E**).

27 In 2020, SHAO received many **emails** from State Bar of Wisconsin to remind
28 payment of bar dues. Yet there was no email notices from the BBE. SHAO in fact

1 confused the relationship of State Bar of Wisconsin and BBE as in California where
2 SHAO has been actively practicing law, In California, the BBE is under State Bar of
3 California.

4 In early July 2020, SHAO suddenly received a notice to suspend her bar license
5 from June 16, 2020. On July 10, 2020, SHAO sent an email inquiry if the suspension
6 was made in error. On July 13, 2020, SHAO affirmed no notice and telephoned
7 telephoned Ms. Tammy McMillen. See emails in **EXHIBIT E**

8 SHAO contacted the Head of the Board of Bar Examiner Ms. Rothstein. Ms.
9 McMillen then sent SHAO proof of mailing of notices on August 1, 2020. See the
10 BBE's records in **Exhibit F**. SHAO provided proof to them that Regus located at 4900
11 Hopyard Road, Ste. 100; Pleasanton, CA 94588, the business providing virtual offices
12 and small executive offices, did not receive the certified mail shown signed in April
13 2020. According to Regus located on 4900 Hopyard Road, Ste. 100, there is no
14 employee with the name of "Cindy Lozane" in their office. It was discovered that the
15 mailing addresses of SHAO on the envelopes were all wrong in that the suite number for
16 this large complex office building was missing.

17 SHAO actually recorded in her profile for the address being 4900 Hopyard Road,
18 Ste. 100; Pleasanton, CA 94588 in her State Bar profile but the State Bar omitted from
19 posting the suite number to the public page for unknown reason. With many efforts to
20 meet or confer, Ms. McMillen directed the State Bar to correct the mistake on August
21 11, 2020. On August 19, 2020, Ms. McMillen responded that the BBE will present to
22 its Board of Trustee about Shao's motion, in response to Shao's email asking her "Dear
23 Tammy, in response to my confirmation of the undisputed facts that the mailing
24 addresses for the notices from the BBE were wrong. See in **Exhibit I** for a true copy of
25 emails August 11 through 19, 2020.
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1 **III. LAW AND ARGUMENT**

2 **A. Due Process as guaranteed to be applied to the States through the**
3 **Fourteenth Amendment of the US Constitution requires the bar license**
4 **suspension be set aside.**

5 The court of appeals has held that: "Judgments entered contrary to due process are
6 void." *Wengerd v. Rinehart*, 114 Wis. 2d 575, 587, 338 N.W.2d 861, 868 (Ct. App.
7 1983), citing *United States v. McDonald*, 86 F.R.D. 204, 208 (N.D. Ill. 1980), and
8 *DeCesare-Engler Productions, Inc. v. Mainman Ltd.*, 81 F.R.D. 703, 704 (W.D. Pa.
9 1979).

10 It has long been established that a state may not suspend a professional license without a
11 pre-deprivation hearing. See, e.g., *Guillemard-Ginorio v. Contreras-Gomez*, 490 F.3d
12 31, 40 (1st Cir. 2007). In *Jordan v. Silverman*, 294 F.2d 916, 918 (D.C. Cir. 1961), the
13 Court held that "It is fundamental that an insurance agent's license, once issued and
14 acted upon, may not be suspended or revoked without procedural and substantive due
15 process of law." See, also, *Bell v. Burson*, 402 U.S. 535, 539, 91 S.Ct. 1586, 29 L.Ed.2d
16 90 (1971) ("Suspension of issued licenses thus involves state action that adjudicates
17 important interests of the licensees. In such cases the licenses are not to be taken away
18 without that procedural due process required by the Fourteenth Amendment.")

19 Now the issue is whether the suspension should be vacated as the statutory
20 requirement of giving Notice of Non-compliance did not meet? It is undisputed that the
21 Due Process requirement of notice was not satisfied and SCR 31's notice for non-
22 compliance was not met. Therefore, the order of suspension should be void and void
23 order should be set aside.

24 The BBE's theory that it could not do anything once suspension was done is not
25 supported by any legal authority but only violated the Due Process. The BBE may
26 easily resolve this issue if it had sent an email to SHAO on October 17, 2019 when they
27 received the mail of MCLE notice was returned to them. Yet they failed to do so. They
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1 should be able to do so as Ms. McMillen was able to send an email to Shao on August 9,
 2 2019, less than 2 months prior to their issuing notice regarding MCLE compliance due
 3 date. Moreover, Ms. McMillen was able to find the email of attorneyshao@aol.com and
 4 switch to this email in contacting me immediately upon her being asked by Ms.
 5 Rothstein to send to me all proofs of mailing as shown in Exhibit F.

6 Since 2015, BBE was appraised of the fact that SHAO had been and will continue
 7 being out of state as shown in Exhibits A and B attached hereto.

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 9 **B. SHAO SHOULD BE GIVEN WAIVER OR EXTENSION OF TIME TO**
 10 **COMPLY WITH THE MCLE REPORTING UNDER SCR 31.12**

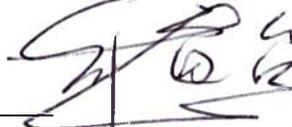
11 SCR 31.12 Extensions and waivers. (1) The board may extend time deadlines for
 12 completion of attendance and reporting requirements in cases of hardship or for other
 13 compelling reasons. (2) The board may waive attendance and reporting requirements
 14 where to do otherwise would work an injustice.

15 This case when notices were not given for reasons not attributable to SHAO,
 16 should constitute compelling reason that either SHAO may be waived of the reporting
 17 requirement or given an extension after the suspension is vacated to make the report on
 18 line.

19 I swear under the penalty of perjury under the laws of the State of Wisconsin that the
 20 foregoing is true and correct to the best of my knowledge.

21 Dated: September 1, 2020

Respectfully submitted

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 25 Yi Tai Linda Shao

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PROPOSED ORDER

Based on undisputed fact that the notices of the Board of Bar Examiners regarding Notice of Non-compliance of CLE report requirement were defective, it is ORDERED that the suspension of Yi Tai Shao's Bar License of 1014147 be vacated, and that Ms. Shao's CLE reporting for 2018-19 be waived, or, extended to be completed within 30 days following this Order.

Dated: _____

Honorable Justice