NO. BD-2010-007

S.J.C. Judgment of Disbarment entered by Justice Gants on August 4, 2011.[1]

SUMMARY[2]

The respondent, Brett Nathan Dorny, Esq., was duly admitted to the Bar of the Commonwealth on June 20, 1995, but currently lives in Colorado. The respondent was administratively suspended by the Supreme Judicial Court on February 8, 2010, for non-cooperation with bar counsel's investigations and has not been reinstated.

In summary, the respondent intentionally misused client funds (advance payments of fees and expenses) with deprivation, engaged in multiple instances of neglect of client matters, made intentional misrepresentations to one client to hide his neglect, falsified documents and made intentional misrepresentations to bar counsel in the course of her investigation, failed to cooperate with bar counsel's investigations and has been defaulted for failure to participate in these formal proceedings.

In September of 2007 a client retained the respondent to attempt to reinstate ("or revive") patents that had belonged to the client's late husband, but which had lapsed for failure to pay maintenance fees to the U.S. Patent and Trademark Office (USPTO). The client signed a fee agreement and promptly paid the respondent his requested flat fee of $2,000 plus the $6,900 in fees due in order to reinstate the lapsed patents. After receiving the funds, the respondent did not file a petition to revive the patents and did not pay the USPTO for the $6,900 in reinstatement fees until September or October of 2008. Between October 3, 2007 and September of 2008, the respondent intentionally misused the client funds that were supposed to have been paid to the USPTO. Between January of 2008 and September of 2008, the respondent intentionally misrepresented to the client's family that the petitions had been filed with the USPTO and that he was awaiting USPTO action on them.

In December of 2008, the USPTO denied the patent revival petitions. Once the patent petitions were denied, the client was entitled to a refund of the $6,900 paid in fees. However, the respondent did not request a refund of the $6,900 from the USPTO until

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[1] The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

[2] Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

August of 2009.

In a letter to bar counsel dated June 5, 2009, the respondent knowingly falsely stated that he had filed the petition to revive or reinstate the patents and had paid the $6,900 in fees to the USPTO by the end of 2007. The respondent also fabricated and provided to bar counsel a client ledger that purported to show an electronic funds transfer (EFT) to the USPTO on December 4, 2007. The respondent's conduct in this matter violated Mass. R. Prof. C. 1.2(a), 1.3, 1.15(c), 8.1(a) and (b), and 8.4(c) and (h).

From December of 2007 through early 2010, the respondent represented a corporate client in contract litigation that was filed in federal court in Boston. In November of 2009, the respondent sent a bill to the client, together with a request that the client pay an additional $20,000 as a retainer against future billings, which the client paid within a few days. The money was not deposited into an IOLTA account, trust account, or any other account in Massachusetts. Instead, the client's retainer was deposited into a personal account of the respondent in Colorado. Shortly after depositing the $20,000 received from the client, the respondent withdrew all of it and used it to pay his personal obligations unrelated to the client, thereby misappropriating the client's funds to his own use.

After receiving the additional $20,000 from the client, the respondent did no substantial work on the client's behalf, other than to appear in court to argue against the opponent's summary judgment motion and, after he lost, to file a one-page notice of appeal. The respondent's conduct in this matter violated Mass. R. Prof. C. 1.2(a), 1.3, 1.4, 1.5, 1.15(b), (c) and (e)(1), 1.16(d) and 8.4(c) and (h).

A third client retained the respondent to file a patent application for him, contingent on the outcome of a patent search to be conducted by the respondent. The client paid $2,500, of which $1,200 was a flat fee for the patent search. (If the patent was determined to be viable, the client was to pay the respondent an additional $2,500 as the balance of a flat fee to complete the patent application.) The respondent deposited the entire $2,500 into his business account, but thereafter never filed a patent application for the client or advised him that, after a search was conducted, a patent was not viable. The respondent also ceased communicating with the client and never returned any unused portion of the retainer as requested by the client. The respondent's conduct in this matter violated Mass. R. Prof. C. 1.2(a), 1.3, 1.4 and 1.16(d).

In a fourth client's matter, which the respondent had filed in federal court on that

client's behalf, the respondent failed to adequately prosecute the client's case and defend against counterclaims. He failed to keep the client reasonably informed about the status of the case. After summary judgment entered against the client, the respondent filed a notice of appeal but then took no further action, even though he was not terminated and did not seek to withdraw. In non-litigation matters for that fourth client, the respondent represented him before the USPTO with regard to patents, two of which were deemed abandoned by the USPTO due to the respondent's failure to submit materials. The respondent did not tell the client he had not responded to the USPTO or submitted materials to it, resulting in the USPTO's deeming the patents "abandoned." The respondent's conduct in this matter violated Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.4.

In all four of these matters, the respondent failed to cooperate with bar counsel's investigations. In the first matter, the respondent initially answered and provided documents, one of which was later discovered to be fabricated in an effort to conceal the respondent's misconduct and support his misstatements to bar counsel. In the other three matters, the respondent failed to answer the requests for investigation and failed to comply with subpoenas duces tecum. These failures resulted in the respondent's administrative suspension. The respondent's conduct in these matter violated Mass. R. Prof. C. 3.4(c), 8.1(b), 8.4(d), (g) and (h) and S.J.C. Rules 4:01, §17 and 4:03, §3.

On March 11, 2011, bar counsel filed a petition for discipline alleging this misconduct. The respondent thereafter failed to participate further in the disciplinary process and was defaulted.

On June 13, 2011, the Board of Bar Overseers voted to recommend that the respondent be disbarred. On June 27, 2011, information was filed in the county court. On August 4, 2011, after a hearing at which the respondent appeared and argued, the county court entered a judgment of disbarment.