

**IN RE: RICHARD A. FAIRBROTHERS****NO. BD-2010-031****S.J.C. Order of Term Suspension entered by Justice Spina on May 23, 2012.<sup>1</sup>****SUMMARY<sup>2</sup>**

The respondent was retained in July 2005 to represent a woman who had given two loans totaling \$138,600 to her son, Christopher, to allow his corporation to purchase and put in operation sandwich shop franchises. The loans were documented by unsecured promissory notes signed by Christopher and his wife. The mother alleged that the loans were unpaid and that she had not received a promised interest in the corporation.

The mother had been referred to the respondent by another attorney who was representing Michael, the partner of the mother's other son, William. Michael had provided to Christopher \$87,150 in connection with a franchise in return for what Michael believed was an investment in a company that held title to the franchise. By the time the respondent was hired, the other attorney had filed suit against Christopher and Christopher's wife and his father-in-law alleging fraud and other causes of action and had secured a \$75,000 attachment on property owned by Christopher and his wife. Michael had no documentation of the loans, and the mother had provided an affidavit to Christopher in connection with Michael's lawsuit averring that she had not been "duped" into making loans and investments.

The respondent filed suit on behalf of the mother in August 2005 against Christopher and his wife and father-in-law alleging breach of contract, misrepresentation and deceit, and fraud. He also secured an attachment on the same property in the amount of \$200,000. In addition, the respondent moved to consolidate the mother's action with Michael's although it was not in the mother's interest to have the actions consolidated. The respondent and the other lawyer worked together to pursue the two matters.

In October 2005, the defendant son and wife filed for bankruptcy, listing the mother and Michael as creditors. The filings showed that they had approximately \$88,666 in equity in the real estate exclusive of the \$275,000 in attachments secured by the mother and Michael. The state court proceedings were automatically stayed by the bankruptcy filing.

The respondent and the other attorney each filed an adversary complaint in the bankruptcy court alleging that the debts were not dischargeable due to fraud and asked for relief from the automatic stay to allow the state court actions to proceed. The bankruptcy court lifted the automatic stay in April 2006.

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<sup>1</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

The respondent and Michael's attorney agreed that the attorney would handle the state court proceedings for both plaintiffs. Between 2006 and 2008, there was little or no progress in the state court proceedings, but the respondent failed to take any action of substance to sever his client's case from that of the partner's case or to see that her case progressed to trial or resolution.

In February 2008, Michael asked the respondent to represent him and whether the representation would involve a conflict of interest. The respondent advised him that there was no conflict interest when, in fact, his representation was materially limited by his obligations to both clients. Michael discharged his lawyer and hired the respondent, who filed an appearance for Michael in the bankruptcy court adversary proceedings and in the state court action. The respondent did not get informed consent to the conflicts of interest from either the mother or Michael.

There was still no progress in either matter. In October 2008, the state court revoked on its own the consolidation order so that the cases could proceed separately to trial. The mother's case was eventually set for June 2009 and Michael's for August 2009. In June 2009, the father-in-law filed for bankruptcy, and in July, he filed a suggestion of bankruptcy in state court, automatically staying both proceedings.

Both the mother and Michael attempted unsuccessfully to contact the respondent by telephone and email to have the stay lifted, but the respondent did not reply to them until the end of October 2009. At that time, the clients requested that the respondent file a complaint against the father-in-law in bankruptcy court and have the stay lifted. The respondent filed the adversary complaint in November 2009, but he failed to comply with the bankruptcy court's local rule requiring a cover sheet. He also violated bankruptcy court rules by failing to serve the summons and complaint on the father-in-law.

On November 4, 2009, the bankruptcy court ordered the respondent to file a cover sheet. He failed to do so. He also failed to respond to an order issued by the bankruptcy court to show cause why sanctions including dismissal of the adversary complaint should not be imposed. The respondent did not inform Michael or the mother of these developments.

Michael discovered in mid-November that the filings in the bankruptcy court were deficient. He contacted the respondent, who left a telephone message for Michael that he would take care of the problem. The respondent took no further action of substance and never contacted either client again. He did not request the courts' permission to withdraw from the cases.

The respondent failed to inform the clients that the bankruptcy court had scheduled a hearing for January 26, 2010, on the question of sanctions for the respondent's procedural failures. Michael and William learned on their own of the hearing and appeared without counsel. The clients sent a letter to the respondent demanding the return of their files, but the respondent failed to return the files.

The respondent's conduct in representing both plaintiffs when his representation of one was, or might be, materially limited by his responsibilities to the other client without obtaining informed consent and without explaining the implications of the common representation and the advantages and risks involved violated Mass. R. Prof. C. 1.4(b) and 1.7(b). The respondent's lack of diligence in representing both plaintiffs in the state court and bankruptcy proceedings violated Mass. R. Prof. C 1.1, 1.2(a), 1.3, and 8.4(h). The respondent's conduct in failing to serve the father-in-law with a summons and complaint, failing to appear as ordered by the bankruptcy court, and in withdrawing without the courts permission in violation of the rules of the bankruptcy court, violated Mass. R. Prof. C. 1.16(c), 3.4(c) and 8.4(d). The respondent's conduct in failing to keep his clients reasonably informed about the status of their matters and his failure promptly to respond to their requests for information violated Mass. R. Prof. C. 1.4(a). By withdrawing from representation and abandoning his clients' cases without giving the clients notice and an opportunity to employ new counsel, making their files available to them and otherwise taking necessary steps to protect the clients' interests, the respondent violated Mass. R. Prof. C. 1.4(a) and (b) and 1.16(d).

On February 26, 2010, bar counsel received a request to investigate the respondent's conduct in the above matter. The respondent had moved from the address he had registered with the Board of Bar Overseers, and he failed to respond to bar counsel's requests for information. On April 9, 2010, he was administratively suspended by order of the Supreme Judicial Court for failure to cooperate with bar counsel's investigation. The respondent's failure to respond to requests for information violated Mass. R. Prof. C. 8.4(d) and (h). The respondent's failure to notify the registration division of the Board of Bar Overseers of his new address was in violation of S.J.C. Rule 4:02, §1, and Mass. R. Prof. C. 8.4(d).

On December 1, 2011, bar counsel filed a petition for discipline with the Board of Bar Overseers. The respondent failed to answer the petition for discipline or otherwise participate in the disciplinary process, and he was defaulted on December 29, 2011.

On February 16, 2012, the Board of Bar Overseers voted to suspend the respondent for one year and one day. An information was filed with the Supreme Judicial Court for Suffolk County on March 2, 2012. On May 22, 2012, a hearing was scheduled before a single justice of the Supreme Judicial Court, and the respondent defaulted. On May 23, 2012, the county court (Spina, J.) entered an order suspending the respondent from the practice of law for one year and one day, effective immediately.