



IN RE: BENJAMIN J. MURAWSKI, JR.

NO. BD-2010-071

S.J.C. Judgment of Disbarment entered by Justice Duffly on February 13, 2012.¹

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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.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR THE COUNTY OF SUFFOLK
DOCKET NO. BD-2010-071

IN RE: BENJAMIN J. MURAWSKI, JR.

MEMORANDUM OF DECISION AND ORDER FOR JUDGMENT

This matter comes before me on an affidavit of resignation, dated March 29, 2011, and a revised affidavit of resignation, dated December 7, 2011, submitted by Benjamin J. Murawski, Jr., pursuant to S.J.C. Rule 4:01, § 15; a unanimous vote and recommendation of the Board of Bar Overseers (board), dated September 12, 2011, recommending that the respondent's affidavit of resignation be accepted; and a letter from bar counsel, dated January 13, 2012, opposing acceptance of the respondent's affidavit because, while the "respondent now acknowledges the true extent of the misconduct under investigation, which includes conversion of client funds with continuing deprivation . . . he continues his refusal to acknowledge even that bar counsel can prove all the material allegations by a preponderance of the evidence." Bar counsel is concerned that, since, in bar counsel's view the respondent has not admitted that bar counsel "could prove her allegations of conversion of client funds," there is a "potential burden" on bar counsel to "demonstrate the conversion of client funds at least more than eight years later

at a reinstatement proceeding."

The respondent's first affidavit of resignation, dated March 29, 2011, was accepted by the board at its September 12, 2011 meeting, notwithstanding bar counsel's letter of opposition dated July 12, 2011, submitted to the board on July 13, 2011, opposing acceptance of the resignation on similar grounds to bar counsel's most recent letter of opposition. On September 2, 2011, bar counsel requested a hearing before this court on its objection to the respondent's affidavit; on November 2, 2011, bar counsel submitted a letter of opposition, dated November 1, 2011. A hearing to consider bar counsel's opposition took place on November 29, 2011. As agreed at the hearing, thereafter, in consultation with bar counsel, the respondent revised his affidavit in an effort to address bar counsel's concerns. On January 13, 2012, after the revised affidavit was filed with this court, bar counsel filed the objection to the revised affidavit described above.

S.J.C. Rule 4:01, § 15, provides that a lawyer who is under disciplinary investigation may submit a resignation by delivering an affidavit stating that he or she desires to resign, and, as relevant here, that "the lawyer acknowledges that the material facts, or specified material portions of them, upon which the complaint is predicated are true or can be proved by a preponderance of the evidence." S.J.C. Rule 4:01, § 15 (c).

As bar counsel concedes in its most recent opposition, in his revised affidavit the respondent has "acknowledge[d] the true extent of the misconduct under investigation." An examination of the text of both affidavits and bar counsel's various oppositions shows that the respondent indeed included in the revised affidavit some of the precise language used by assistant bar counsel in framing his earlier oppositions. Moreover, paragraph 5 of the revised affidavit states that the respondent acknowledges that "the material facts upon which the foregoing charges . . . are predicated can be proved by a preponderance of the evidence adduced at a hearing." Thus, I conclude that the respondent's affidavit fulfills the requirements of S.J.C. Rule 4:01, § 15, and in particular the requirements of S.J.C. Rule 4:01, § 15 (c) that bar counsel contends are lacking.

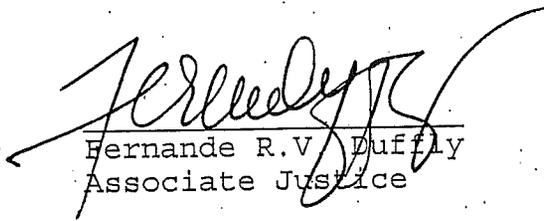
Assistant bar counsel asserts also that it will be bar counsel's burden to show the respondent's lack of fitness at any hearing on reinstatement, and that the affidavit establishes the basis of that unfitness. Assistant bar counsel misconstrues his burden. At any hearing on reinstatement, the respondent would have to establish his current good character and moral fitness; it is not bar counsel's burden to show lack of fitness, which is established in any event by the board's vote that the respondent be disbarred, and by the many admissions to misconduct in the respondent's affidavit. Nonetheless, to address bar counsel's

concerns that the affidavit of resignation does not set forth the alleged misconduct in sufficient detail, the judgment of disbarment shall include a requirement that the respondent submit an affidavit detailing such misconduct, in a form acceptable to bar counsel, as a condition of reinstatement.

ORDER

Upon consideration thereof, it is ORDERED that the affidavit of resignation be accepted, that a judgment shall enter disbarring Benjamin J. Murawski from the practice of law in the Commonwealth retroactive to the date of his administrative suspension, and that any petition for reinstatement will require submission of an affidavit acceptable to bar counsel further detailing the misconduct leading to the affidavit of resignation.

By the Court,


Bernande R.V. Duffy
Associate Justice

Entered: February 13, 2012