NO. BD-2010-0125

S.J.C. Order of Term Suspension entered by Justice Cordy on April 1, 2011, with an effective date of May 2, 2011.[1]

SUMMARY[2]

In March of 2007, the named executrix under the will of a woman who died in January of 2007, retained the respondent to settle the estate. The respondent agreed to probate the estate for a flat fee of $1,000.00, which the executrix paid. The estate consisted of stock accounts and an individual retirement account that had been turned over to the Secretary of State, Abandoned Property Division, for a total value of approximately $257,000.00.

At no time during his representation of the executrix did the respondent file the will for probate, file a claim with the Abandoned Property Division, set up an estate account, file the decedent's last income tax return or an extension, liquidate the stock holdings or otherwise diligently proceed to settle the estate.

In January of 2008, the respondent falsely informed the executrix that he had applied for a social security tax identification number for the estate (SS4) and that someone from his office would file the decedent's last income tax return. In April 2008, the executrix again inquired about the tax return and was told by the respondent's office that the respondent would file for an extension. On and after May 2008, the executrix made numerous calls to the respondent's office and cell phone and left messages asking for a return call. The respondent did not return all or most of the calls or file for any extension.

In October of 2008, the executrix sent a letter to the respondent discharging him and requesting that her file be sent to successor counsel. The respondent did not comply with her request. Successor counsel requested the file three times from the respondent but did not receive it. In November of 2008, after the executrix contacted bar counsel, the respondent hand-delivered his file to successor counsel. The file contained the original will but did not contain six original checks to the decedent that the executrix had previously given to the respondent and that the respondent lost.

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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.

The estate incurred penalties and interest from the Department of Revenue in the amount of $118.06 and from the I.R.S. Department of the Treasury, in the amount of $506.10.

On January 30, 2009, after the matter came to the attention of bar counsel, the respondent returned the $1,000.00 flat fee to the executrix, but did not reimburse the penalties and interest. During the respondent's neglect of the estate, the decedent's stock portfolio declined in value.

The respondent's failure to diligently process the estate and his failure to adequately communicate with his client, was in violation of Mass. R. Prof. C. 1.2(a), 1.3 and 1.4(a). The respondent's misrepresentation to his client that he had applied for a tax identification number, when he had not, was in violation of Mass. R. Prof. C. 8.4(c). The respondent's failure to timely remit to successor counsel his client's file upon discharge and upon her request, was in violation of Mass. R. Prof. C. 1.16(e). Finally, the respondent's failure to safeguard original documents in his client's file, was in violation of Mass. R. Prof. C. 1.15(b)(3).

In an unrelated matter, a woman died intestate in March of 2006, survived by six sons and two daughters. At time of death, the only significant asset of the decedent was a vacant building and land (not her domicile) on which the town had recorded a tax taking. The assessed value of the land portion of the property, without a building, was $136,900.00. The vacant building contained personal effects of unknown value.

Shortly before the decedent's death, the Town filed a petition to foreclose the right of redemption alleging $13,578.35 in unpaid taxes. In addition, the Town had a lien of $6,975.00 for costs to its Board of Health to secure the property. The answer to the Petition was due on or before June 26, 2006.

In June 2006, the respondent was retained by relatives of the deceased to free up the property for sale and salvage whatever value and personal property might be left in the property for the benefit of the eight heirs. The respondent asked for and received a fee of $1,000.00, but did not explain the scope of his services or the basis of the fee.

The respondent never filed an appearance or any pleadings in the Land Court case nor did he pursue the establishment of an estate. In October of 2006, the Town filed a motion for default judgment in the Land Court and in November of 2006, the Court entered a Final Judgment foreclosing the right to redeem. In January 2007, the Town demolished the home on the property and all its contents.

During his representation, the respondent did not adequately respond to questions from his clients.

On and after January 2008, on two or more times and occasions, one of the clients asked for a return of his $1,000.00 fee paid. The respondent did not return the fee or provide any itemization of his time or services. On July 15, 2008, after a complaint was filed with bar counsel, bar counsel also requested that the respondent provide an itemization of his time and services, justifying his retention of the $1,000.00 paid. The respondent did not provide any itemization.

The respondent's failure to explain to his clients the basis or rate of the fee before or within a reasonable time after commencing representation and his failure to explain to his client the scope of representation, was in violation of Mass. R. Prof. C. 1.2(c), 1.5(b) and 1.4. The respondent's failure to respond to his clients' inquiries and his failure to communicate with his clients the status of his representation, was in violation of Mass. R. Prof. C. 1.1, 1.3 and 1.4. The respondent's failure to take reasonable efforts to attempt to achieve his clients' objectives, including his failure to file an appearance and an answer in the Land Court case, his failure to negotiate with the Town for a delay in finalizing its tax taking, his failure to file a petition for administration of the estate and his failure to otherwise take any steps so that the property could ultimately be sold and personal items in the vacant building inventoried to the benefit of the estate, was in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.4. The respondent's failure to withdraw from representation when the clients' objectives could no longer be obtained, and his failure to protect the clients' interests by providing a copy of the file, an explanation of the status of the case, and accounting for and refunding any portion of the $1,000.00 fee paid that had not been earned, was in violation of Mass. R. Prof. C. 1.16(d).

During the course of bar counsel's investigation of three files, the respondent repeatedly failed to timely respond to requests for information from bar counsel without good cause, in violation of Mass. R. Prof. C. 8.4(d) and (g) and S.J.C. Rule 4:01 sec 3.

In aggravation, the respondent had a history of discipline that mirrored the misconduct that bar counsel alleged. On July 30, 1992, the respondent received a public censure (the predecessor to the current public reprimand) with two years probation for failure to cooperate with bar counsel's investigation of three matters. In 1989, the respondent received an informal admonition for failure to return a client's file and a failure to cooperate with bar counsel. On December 17, 1976, the respondent was placed on probation for neglect of two matters and a failure to cooperate with bar counsel. Prior to 1974, the respondent received a public censure for neglect.

On August 26, 2010, bar counsel filed a petition for discipline alleging the above misconduct. In aggravation, the respondent did not timely file an answer and was defaulted.

In November 2010, the respondent filed a memorandum of disposition arguing certain facts in mitigation and requesting a six-month suspension with conditions. Bar counsel filed a memorandum of disposition arguing for an eighteen-month suspension in light of the respondent's substantial prior discipline for non cooperation and other misconduct. On November 15, 2010, the Board voted to recommend to the Court that the respondent receive a suspension of one year and one day (requiring formal reinstatement). The Board did not accept the offered facts in mitigation because the alleged facts were not supported by an affidavit demonstrating good cause. After an Information was filed with the Court, the respondent filed a motion to remand with affidavits and on March 16, 2011, the case was argued before the Single Justice. The parties ultimately filed a stipulation with the Court recommending a one-year suspension with a requirement that the respondent file for formal reinstatement to be reinstated. On April 1, 2011, the Court so ordered, effective in thirty days.