

**NO. BD-2010-127****S.J.C. Judgment of Disbarment entered by Justice Cordy on March 23, 2011.**<sup>1</sup>**SUMMARY**<sup>2</sup>

This matter came before the Court on the respondent's affidavit of resignation pursuant to S.J.C. Rule 4:01, § 15. The respondent acknowledged in his affidavit that the material acts set forth in bar counsel's petition for discipline would be established by a preponderance of the evidence.

The respondent was admitted to practice in the Commonwealth of Massachusetts on December 1, 1972. He was temporarily suspended from the practice of law on January 5, 2011.

On March 4, 2009, the respondent undertook to represent a collection agency located in Alabama, to collect \$51,000 in past due rent on behalf of their client from a Massachusetts corporation. On July 23, 2009, the respondent filed a civil action on behalf of the agency's client against the Massachusetts corporation in Middlesex Superior Court.

On or about August 14, 2009, the parties agreed to settle the matter for a payment of \$41,000. The respondent did not inform the collection agency or their client, the plaintiff, of the settlement.

On or about August 14, 2009, the respondent received the settlement funds by check from the defendant's counsel. The respondent did not inform the collection agency or the plaintiff of the receipt of the settlement funds.

On the same date, counsel for the defendant forwarded to the respondent a release for signature by the plaintiff. By e-mail to the defendant's counsel, the respondent approved the release. The respondent agreed to hold the settlement funds in escrow until he received the executed release by the plaintiff.

The respondent sent a signed stipulation of dismissal to the defendant's counsel, and the stipulation of dismissal was filed with the court.

On August 17, 2009, the respondent deposited the settlement check to a client trust account. Between August 17 and November of 2009, the respondent intentionally misused the settlement proceeds for business and personal purposes.

The respondent delayed obtaining the agreed-upon release until December 2009. Between November and December 2009, the client attempted to contact the respondent by telephone and e-mail requesting information about the status of the settlement funds. The respondent failed to respond to these requests for information.

On December 7, 2009, the client contacted the Middlesex Superior Court and learned that the action was settled. On the same date, the client contacted opposing counsel and learned that the settlement check had been sent to the respondent in August 2009.

By e-mail to the respondent, the client informed the respondent that he had spoken with the defendant's counsel who confirmed that the \$41,000 was sent in August 2009. The client demanded immediate payment.

By fax to the client dated December 8, 2009, the respondent requested that the client have the plaintiff sign a release, and indicated that he would then forward the settlement

---

<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.

funds. On the same date, the plaintiff executed the corrected release and provided it to the respondent.

On December 10, 2009, the respondent sent to the client the net settlement funds. The respondent's payment to the client was made possible by the deposit of unrelated clients' funds to the client funds account in December 2009.

By failing to promptly notify the client of his receipt of the settlement funds, the respondent violated Mass. R. Prof. C. 1.15(c).

By failing to respond to the client's requests for information regarding the status of the settlement, the respondent violated Mass. R. Prof. C. 1.4.

By failing to safeguard the client's settlement funds in an interest-bearing account; by failing to maintain and to properly account for the client's settlement funds; by intentionally misusing the client's funds for his own business and personal use with temporary deprivation resulting; and by using unrelated clients' funds to make restitution, the respondent violated Mass. R. Prof. C. 1.15(b)-(e) (5) and Mass. R. Prof. C. 8.4(c) and (h).

At all relevant times, the respondent maintained a pooled non-IOLTA client account denominated "Arnowitz and Goldberg Client Trust Account" at Bank of America (the "client trust account"). Between July 2009 to February 2011, the respondent failed to prepare and maintain complete records of the receipt, maintenance, and disposition of clients' funds in the client trust account.

Commencing at least as of August 2009 and continuing through August 2010, the respondent routinely transferred funds in round numbers from the client trust account to his firm's operating account without any client attributions.

As of September 7, 2010, there was a shortfall of no less than \$71,593.40 due clients in the respondent's client trust account. The shortfall represents escrow funds the respondent received on behalf of multiple clients which were deposited to the client trust account and which the respondent intentionally expended for business and personal purposes. To date, the respondent has failed to reimburse clients for funds owed.

On or about September 29, 2010, the respondent opened an account denominated "Massachusetts IOLTA Trust Accounts Arnowitz and Goldberg TRTEE" at the Bank of America. The respondent continued transferring funds in round numbers from the IOLTA account to the operating account without records showing client attributions.

The respondent failed to prepare and maintain a check register for the IOLTA account that complies with Rule 1.15 and that recorded in chronological order the date and amount of all deposits; the date, check or transaction number, amount, payee of all disbursements; the date and amount of every other credit or debit of whatever nature; the identity of the client matter for which funds were deposited or disbursed; and the current balance in the client trust account after each deposit or withdrawal.

The respondent's failure to deposit trust funds in an interest bearing account violated Mass. R. Prof. C. 1.15(e)(5).

The respondent's failure to maintain complete records of the receipt, maintenance, and disposition of clients' funds in the client trust account and the IOLTA account violated Mass. R. Prof. C. 1.15(f) (1) (A)-(G).

The respondent's failure to prepare and maintain a check register that recorded in chronological order the date and amount of all deposits; the date, check or transaction number, amount, payee of all disbursements; the date and amount of every other credit or debit of whatever nature; the identity of the client matter for which funds were deposited or disbursed; and the current balance in the client trust account after each deposit or withdrawal violated Mass. R. Prof. C. 1.15(f) (1) (B).

The respondent's failure to prepare and maintain a chronological ledger for each client or third person matter for which he received trust funds, documenting each receipt and disbursement of funds of the client or third person, the identity of the client matter for which funds were deposited or disbursed, and the balance held for the client or third person in that matter violated Mass. R. Prof. C. 1.15(f) (1) (C).

The respondent's failure to prepare and maintain reconciliation reports at least every sixty days showing the required reconciliation of the check register, individual ledgers, and bank statements for the client trust account violated Mass. R. Prof. C. 1.15(f)(1)(E).

By failing to safeguard the clients' settlement funds in an interest-bearing account and by intentionally misusing clients' funds for his own business and personal use with actual deprivation resulting, the respondent violated Mass. R. Prof. C. 1.15(b)-(e)(5) and Mass. R. Prof. C. 8.4(c) and (h).

On March 21, 2011, the board voted to recommend that the affidavit of resignation be accepted and that an order of disbarment be entered retroactive to January 5, 2011, the effective date of the respondent's temporary suspension. On March 23, 2011, the Supreme Judicial Court so ordered.