IN RE: JOHN P. GALLAGHER

BD-2011-006

S.J.C. Order of Term Suspension entered by Justice Botsford on May 10, 2013.[1]

SUMMARY[2]

The respondent was designated by the lender as the closing attorney for the refinancing of a residential property. At the time, the respondent suffered from a mental condition that materially impaired his ability to represent the lender. The respondent failed to inform the lender of his mental condition and did not decline the representation.

After the closing on the refinancing, the respondent failed to pay a municipal tax lien that was shown on the HUD-1. The lender subsequently discovered that the tax payment had not been made and made the payment from the borrower's escrow funds. The lender paid the accumulated interest from its own funds.

The lender sent the mortgage broker an invoice for the interest payment it had made. The broker sent the invoice to the respondent and demanded that the respondent forward payment to the lender. The respondent did not respond to the broker, and he did not remit payment to the lender until after the broker contacted bar counsel's ACAP program and an ACAP attorney spoke by telephone with the respondent. The respondent then paid the lender and reimbursed the borrower for the funds the lender had used to pay the tax.

The respondent failed to respond to bar counsel's requests for information and was administratively suspended from the practice of law on January 26, 2011. The order of suspension required, if the respondent were not reinstated within thirty days, that he comply with all the provisions of S.J.C. Rule 4:01, § 17. The respondent was served with a copy of the suspension order.

The respondent was not reinstated within thirty days. Bar counsel sent the respondent the compliance forms that he was required to complete pursuant to Rule 4:01, § 17. The respondent did not file the compliance forms.

From March 2008 through August 2011, the respondent maintained an IOLTA account. The proceeds from the refinancing had been deposited to this account. The respondent failed timely to withdraw earned fees from the account and maintained those fees in the account.

On May 25, 2012, a petition for discipline was served on the respondent by certified mail and first-class mail. The petition charged that the respondent's failure to inform the lender that his mental condition materially impaired his ability to represent the lender and his acceptance of employment under these circumstances violated Mass. R. Prof. C. 1.4(b) and

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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.

1.16(2); his failure to timely pay the municipal tax lien violated Mass. R. Prof. C. 1.1, 1.2(a and 1.15(c); his knowing failure without good cause to respond to bar counsel's request for information violated Mass. R. Prof. C. 8.1(b) and 8.4(d) and (g); his failure to comply with the court's order of administrative suspension and the requirements of Rule 4:01, § 17, violated Mass. R. Prof. C. 3.4(c) and 8.4(d) and (h); and his failure timely to withdraw his earned fees from the IOLTA account violated Mass. R. Prof. C. 1.15(b).

The respondent did not file an answer to the petition. On June 18, 2012, the Board of Bar Overseers sent the respondent notice that the allegations in the petition were deemed admitted and that he had waived his right to present any evidence in mitigation unless he moved to set aside the default for good cause and filed an answer within twenty days. The respondent received the notice, but did not respond to or take any other action.

On September 10, 2012, upon the default of the respondent, the Board of Bar Overseers voted to file an Information with the Supreme Judicial Court for Suffolk County recommending that the respondent be suspended from the practice of law for six months and be required to undergo a hearing on reinstatement.

The Information was filed with the Supreme Judicial Court for Suffolk County on January 10, 2013. The respondent signed a waiver of hearing and assent to the board's recommendation, which was filed with the Court on January 10, 2013. A corrected waiver of hearing and assent to entry of order was filed with the Court on May 6, 2013. On May 10, 2013, the county court (Botsford, J.) entered an order suspending the respondent from the practice of law for six months, retroactive to January 10, 2013, with the requirement that the respondent apply for reinstatement pursuant to S.J.C. Rule 4:01, § 18(2), as a condition of resuming the practice of law.