

**NO. BD-2011-014****S.J.C. Judgment Accepting Resignation in Lieu of Indefinite Suspension entered by Justice Spina on August 8, 2011, Retro to May 25, 2011.****SUMMARY**¹

This matter came before the Supreme Judicial Court for Suffolk County on an affidavit of resignation submitted by the respondent to the Board of Bar Overseers in June 2011 under S.J.C. Rule 4:01, § 15. The respondent acknowledged in his affidavit of resignation that there was a pending investigation of allegations of misconduct on his part and that material facts on which the allegations were based could be proved by a preponderance of the evidence, as follows.

A client for whom the respondent had drafted a will died in March 2004. The will nominated the respondent as executor and provided that, after payment of specific bequests, the residue of the estate was to be paid to the trustees of a trust created for the sole benefit of the client's fourteen-year-old son. The trustees were authorized to expend sums for the son's education and maintenance and to make specified distributions starting when the son reached the age of twenty-five.

The respondent was appointed as executor of the client's estate in July 2004 and came into possession at about \$578,500 of the decedent's funds. From those funds, the respondent paid himself an executor's fee and made ongoing disbursements for the son's maintenance and for debts and expenses of the estate.

Between September 2004 and July 2008, the respondent intentionally misused a total of at least \$371,600 of the estate funds with the intent to deprive the trust of those funds at least temporarily and with actual deprivation resulting. By the fall of 2008, the funds were depleted, and an account established by the respondent for the estate was in overdraft. Between about the fall of 2008 through December 2010, the respondent cured the overdraft and made partial repayment through periodic deposits of personal funds totaling nearly \$40,000 to the estate account.

From and after at least 2006, the trustees of the son's trust repeatedly asked the respondent to fund the trust and account for the decedent's assets. Prior to the fall of 2010, the respondent failed to file a probate inventory or accounts for the estate, wind up the estate, or turn over any part of the residue to the trustees.

In the fall of 2010, the son and the trustees, through counsel, obtained an order by the probate court requiring the respondent to render an inventory and an executor's account. They also obtained a \$400,000 attachment on a condominium owned by the respondent to secure the repayment of the balance of the misappropriated funds plus interest. The respondent furnished a list of his disbursements to counsel and filed an inventory in November 2010. He was removed as executor without objection in December 2010. In January 2011, the successor executor asked the respondent for all his books and records for the estate and the trust. The respondent turned

¹ Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

over only some of the records. He made a partial accounting to the successor executor but failed to file a probate account.

The respondent's misappropriation of the decedent's funds violated Mass. R. Prof. C. 1.15(b) and 8.4(c) and (h). The respondent's failure timely to file an inventory and account for the estate violated Mass. R. Prof. C. 1.1, 1.2(a), 1.3, and 1.15(d)(1). His failure promptly to turn over to the trustees the funds for the trust violated Mass. R. Prof. C. 1.15(c).

On May 25, 2011, the Court ordered the respondent's temporary suspension from the practice of law in the Commonwealth pursuant to S.J.C. Rule 4:01, § 12A. The respondent submitted his affidavit of resignation to the Board of Bar Overseers on June 20, 2011. He then owed the trustees over \$330,000 plus interest. Bar counsel requested a recommendation that the affidavit be accepted and that the respondent be disbarred retroactive to the date of his compliance with the order for his temporary suspension.

On June 29, 2011, while the matter of resignation was pending at the board, the respondent sold his condominium and made restitution of \$331,000 from the sale proceeds, with another \$69,000 placed in escrow pending a determination of the interest due and any other sums owed. The respondent asked the board to recommend an indefinite suspension on the resignation. Bar counsel opposed that request.

On July 11, 2011, the board voted to recommend that the respondent's affidavit of resignation be accepted in lieu of indefinite suspension, retroactive to the date of his compliance with the order for his temporary suspension. On August 8, 2011, the Court entered a judgment accepting the resignation in lieu of indefinite suspension and striking the respondent's name from the roll of attorneys in the Commonwealth retroactive to May 25, 2011, the date of his compliance with the temporary suspension order.