NO. BD-2011-030

S.J.C. Judgment of Disbarment entered by Justice Cordy on April 21, 2011, with an effective date of May 21, 2011.[1]

SUMMARY[2]

On four separate occasions in 2005 and 2008, the respondent intentionally misused trust funds, as follows:

1) In July of 2005, the respondent received $25,000 from a potential buyer of real estate in Clinton, Massachusetts, to be held in escrow by the respondent as attorney for the seller. The respondent deposited the funds to an IOLTA account and then misappropriated the funds by writing a series of checks to herself and entities she owned or controlled for her own business or personal purposes unrelated to the real estate transaction. The purchase of the Clinton property was cancelled in early August of 2005.

2) Also in July of 2005, the respondent represented the sellers of property in Sterling, Massachusetts. Because the report of the property's septic system raised questions about its adequacy, the parties entered into an escrow agreement, which provided that the respondent would hold $20,000 from the sellers' sale proceeds in escrow for three years. The respondent deposited the escrow funds of $20,000 to her IOLTA account in early August 2005. She then misappropriated the funds by writing a series of checks unrelated to the Sterling property, using some of the funds to return the deposit of the potential buyer of the Clinton property. In November of 2007, the respondent paid $20,000 to the sellers of the Sterling property, in satisfaction of the escrow, from personal funds.

3) In March of 2008, the respondent was settlement agent and attorney for the borrowers in a mortgage refinance. The loan proceeds were deposited into the respondent's IOLTA account. The respondent withheld $1,296.77 to pay real estate taxes due to the Town of Sterling. The respondent did not pay the tax bill and misappropriated the funds, thereby depriving the clients of funds to which they were entitled.

4) In August of 2008, the respondent received $2,500 as a payment of last

[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.

month's rent and security deposit from tenants of a condominium owned by the respondent's brother-in-law. The respondent deposited the funds into her IOLTA account and not into a separate interest-bearing account, as required by G.L. c. 186, §15B. She then misappropriated the funds for her own business or personal purposes unrelated to the tenants. In May of 2009, a mortgagee foreclosed on the property. Thereafter, the respondent failed to pay the last month's rent and security deposit to either the tenants or the new owner as required by G.L. c. 186, § 15B.

By intentionally misusing trust funds in the above four instances, with deprivation resulting to the mortgage refinance clients and the tenants, the respondent violated Mass. R. Prof. C. 1.15(b) and (c), and 8.4(c) and 8.4(h). By not holding the septic system escrow funds and the tenants' security deposit in separate interest-bearing accounts, the respondent violated Mass. R. Prof. C. 1.15(e)(5)(ii).

In January of 2008, in connection with the respondent's own divorce, the Worcester Probate and Family Court entered an order that the respondent "pay forthwith the sum of $650,966.00 and the sum of $100,000" to her ex-husband, with "payment to be made in full within 60 days." However, the respondent made no payments to the ex-husband.

After hearings on the ex-husband's complaint for contempt, the Court found the respondent "guilty of contempt" and sentenced her to ninety days in M.C.I. Framingham. The sentence was suspended based upon certain conditions, with which the respondent did not comply. As the respondent again made no payments as ordered, further evidentiary hearings were held on the complaint for contempt. In March of 2009, the court issued a supplemental judgment of contempt against respondent, again finding the respondent "guilty of contempt" for her failure to comply with court orders. The court sentenced the respondent to 112 days in M.C.I. Framingham. The respondent was also ordered upon release to pay to her ex-husband $850,709.96 plus accruing statutory interest along with $93,556.25 in attorney's fees. The court later dismissed all of the respondent's pending appeals with prejudice.

Through at least August 26, 2010 (the date of the petition for discipline in this matter), the respondent had willfully failed to comply with the probate court orders, in violation of Mass. R. Prof. C. 3.4(c) and 8.4(a), (c) (d) and (h).

In order to avoid her obligations to make payment as required by the probate court's order of January 2008, the respondent filed for personal bankruptcy in Florida in April of

2008 and then in Massachusetts in August of 2008. These proceedings were frivolous and were for no substantial purpose other than to delay or burden third persons, including the respondent's ex-husband, and were dismissed by each bankruptcy court.

After the respondent's personal bankruptcy filings were dismissed, the respondent caused or assisted in the filing of involuntary bankruptcies against her by creditors. These proceedings were frivolous and were for no substantial purpose, other than to delay or burden third persons, including the respondent's ex-husband.

By bringing proceedings without a basis for doing so that was not frivolous, the respondent violated Mass. R. Prof. C. 3.1. By filing or causing to be filed serial bankruptcy petitions for the purpose of delay, the respondent violated Mass. R. Prof. C. 8.4(d) & (h).

On numerous occasions from at least March of 1997 through June of 2009, the respondent knowingly testified falsely and submitted false documents concerning her income, assets and expenses. These occasions included deposition testimony and testimony before the Worcester Probate and Family Court in connection with her divorce and contempt proceedings; the filing of financial statements in connection with her Florida bankruptcy; and testimony at two section 341 creditors' meetings and on two occasions before the bankruptcy court in connection with her personal bankruptcy filings. In giving intentionally false, misleading or deceitful testimony in the probate court and the bankruptcy court, the respondent violated Mass. R. Prof. C. 3.3(a)(1) and (4), 8.4(c), 8.4(d) and 8.4(h). By causing or permitting the false financial statements to be prepared and/or to be filed with the United States Bankruptcy Court, the respondent violated Mass. R. Prof. C. 3.3(a)(4), 3.4(b), 8.4(c), 8.4(d) and 8.4(h).

Between 2007 and 2008 respondent wrote several IOLTA checks made payable to "Cash." During the same time, she caused external withdrawals to be made from her IOLTA account in order to pay personal bills, and she deposited earned legal fees into her IOLTA account. By depositing into her IOLTA accounts funds belonging to the respondent, other than funds sufficient to pay bank charges and other than funds belonging in part to the respondent and in part to a client or third person, the respondent violated Mass. R. Prof. C. 1.15(d). By writing IOLTA account checks to cash and making external withdrawals from her IOLTA account for personal expenses, the respondent violated Mass. R. Prof. C. 1.15(b)(1).

On August 26, 2010, bar counsel filed a petition for discipline alleging this

misconduct. The respondent initially wrote that, on advice of counsel, a default could enter against her. The respondent thereafter moved to vacate the default, which was allowed, but she then did not file an answer. The respondent thereafter failed to participate further in the disciplinary process and was defaulted.

On March 14, 2011, the Board of Bar Overseers voted to recommend that the respondent be disbarred. On March 23, 2010, information was filed in the county court. On April 21, 2011, after a hearing at which the respondent failed to appear, the county court entered a judgment of disbarment.