NO. BD-2011-039

S.J.C. Judgment of Disbarment entered by Justice Spina on April 28, 2011.[1]

SUMMARY[2]

This matter came before the Court on an affidavit of resignation submitted by the respondent to the Board of Bar Overseers under S.J.C. Rule 4:01, § 15, and bar counsel's request that the board recommend to the Court acceptance of the affidavit of resignation and entry of a judgment of disbarment. The respondent sought to resign after bar counsel had commenced formal disciplinary proceedings against him on a seven-count petition for discipline. The respondent acknowledged in his resignation affidavit that the material facts on which the petition for discipline was based could be proved by a preponderance of the evidence, as follows.

In one case, the respondent converted to his own use about $6,000 entrusted to him by a client in 2008 to pay back taxes owed to the Massachusetts Department of Revenue. The respondent made intentional misrepresentations to the client to procure the funds, failed to keep required records of the funds, and failed to account for the funds. The respondent also failed to render competent and diligent services to the client and failed to explain to the client the basis or rate of any fees to be charged after an initial flat fee payment. He did not disclose his dissipation of the funds to the client or make any restitution.

In a second case, the respondent was hired by a client in the fall of 2008 to handle the conveyance of property in Puerto Rico owned by the client's mother to the client and her brother. The mother was terminally ill and wanted to dispose of the property while living. The client, her brother, and her mother agreed that the client would acquire the house for $20,000, of which $10,000 would be paid to the brother when the conveyance was completed. The client was to use the remaining $10,000 to pay for her mother's funeral and burial and retain any remaining funds. The client obtained $20,000 from a loan taken by her husband to finance the acquisition.

The respondent was not licensed in Puerto Rico and failed to secure the services of a Puerto Rico attorney, but he misrepresented to the client that he had done so. In December 2008, the respondent drafted a purported deed for the conveyance, had the mother sign it, and disbursed $10,000 to the brother upon signing. The respondent misrepresented to the client that the transaction was complete and that he had to disburse the brother's share immediately. In fact, the deed was invalid under Puerto Rico law and had no legal effect, title remained in the mother, and nothing was due the brother. When the client asked for verification of the transaction, the respondent had the mother sign another invalid deed, attached to that deed a certification of the genuineness of his signature as a notary, gave the document to the client, and misrepresented to the client that the deed was properly certified for transfer of the property in Puerto Rico.

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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 respondent intentionally misrepresented to the client that he had to retain her $10,000 to assure that the funds were used for the mother's benefit. He then converted those funds to his own use. The client's mother died in January 2008, and she client repeatedly asked the respondent for funds to defray the funeral expenses. Over the next two months, the respondent gave the client a total of $7,500 from his own funds. The respondent failed to keep required records of the funds and account for them to the client. He never disclosed his dissipation of the funds to the client and did not make restitution of the remaining funds.

The respondent's conversion of the clients' funds in these cases violated Mass. R. Prof. C. 1.15(b) and 8.4(c) and (h). His intentional misrepresentations violated Mass. R. Prof. C. 8.4(c) and (h). The respondent's failure promptly to remit the funds when due violated Mass. R. Prof. C. 1.15(c). His failure to keep required records of the funds, account for the funds, and inform the clients of the dissipation of their funds violated Mass. R. Prof. C. 1.4(a) and (b) and 1.15(d)(1) and (f).

The respondent's failure to render competent and diligent services to these clients and seek their lawful objectives violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3. His failure to communicate adequately with the clients violated Mass. R. Prof. C. 1.4(a) and (b). To the extent that the respondent charged or collected clearly excessive fees in either case, he violated Mass. R. Prof. C. 1.5(a). In the first case, the respondent's failure to communicate the basis or rate of any fees after the initial payment violated Mass. R. Prof. C. 1.5(b).

At the relevant times, the respondent used an account at a credit union as a pooled trust account and deposited client funds, including the clients' funds in the foregoing cases, to that account. The credit union did not have an agreement to report dishonored checks to the Board of Bar Overseers. The account was interest-bearing with interest payable to the respondent. The respondent at times deposited personal or business funds to the account, made cash withdrawals, and withdrew claimed fees by payments to third parties. The respondent failed to reconcile the account and maintain required account records.

By placing and holding trust funds in an account at a financial institution with no agreement to report instruments dishonored for insufficient funds, the respondent violated Mass. R. Prof. C. 1.15(h)(1). By keeping pooled trust funds in an account with interest paid to the respondent and failing to pay the accumulated interest to the clients, the respondent violated Mass. R. Prof. C. 1.15(c), (e)(5) and (g)(2). By depositing personal or business funds to the account, the respondent violated Mass. R. Prof. C. 1.15(b)(2). By making cash withdrawals from the account, the respondent violated Mass. R. Prof. C. 1.15(e)(3). By withdrawing funds as fee payments through payments to third parties, the respondent violated Mass. R. Prof. C. 1.15(e)(4). By failing to perform three-way reconciliations and keep required account records, the respondent violated Mass. R. Prof. C. 1.15(f)(1).

In addition, the respondent engaged in additional misconduct between 2008 and 2010 in two immigration cases, a real estate case, and a bankruptcy. He violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3 by failing to take prompt and diligent action for the clients and failing to seek their lawful objectives. The clients suffered damage or prejudice. In violation of Mass. R. Prof. C. 8.4(c) and (h), the respondent made intentional misrepresentations to one of the immigration clients to conceal his misconduct. In another immigration case, the respondent limited the scope of his representation to the extent that he could not provide competent representation, in violation of Mass. R. Prof. C. 1.2(a) and (c). He failed to keep

the clients reasonably informed and explain the status of their cases to the extent reasonably necessary to permit the clients to make informed decisions, in violation of Mass. R. Prof. C. 1.4(a) and (b). In three of the cases, the respondent violated Mass. R. Prof. C. 1.5(a) by collecting clearly excessive fees.

In May 2010, the respondent was administratively suspended from practice in the Commonwealth, pursuant to S.J.C. Rule 4:01, § 3(2), for knowing failure without good cause to cooperate in bar counsel's investigation of his conduct. He did not seek reinstatement. In violation of the suspension order and S.J.C. Rule 4:01, § 17, the respondent knowingly and without good cause failed to give written notice of his suspension to all clients, make available to all clients the papers and property to which they are entitled, refund all unearned fees, and otherwise comply in full with the order. The respondent also failed to respond to subsequent requests for investigation of his conduct. By knowingly and without good cause failing to respond to bar counsel's requests for information, the respondent violated Mass. R. Prof. C. 3.4(c), 8.1(b), and 8.4(g). By knowingly and without good cause failing to comply with the administrative suspension order, the respondent violated Mass. R. Prof. C. 3.4(c) and 8.4(d).

The Board of Bar Overseers voted to recommend that the respondent's affidavit of resignation be accepted and that the respondent be disbarred. By a judgment entered on April 28, 2011, the Supreme Judicial Court for Suffolk County accepted the resignation and disbarred the respondent effective immediately upon entry of the judgment.