NO. BD-2011-051

S.J.C. Order of Term Suspension entered by Justice Spina on June 7, 2011, with an effective date of July 7, 2011.[1]

SUMMARY[2]

The respondent concentrated his law practice in elder law, estate planning, and guardianships and conservatorships. He also held fiduciary appointments for numerous wards and beneficiaries and oversaw the investment of their assets.

For many years until 2006, the respondent obtained investment advice from a registered stockbroker and invested with the broker fiduciary funds under the respondent's control. In 2003, the broker was convicted of misdemeanor charges of conspiracy to commit motor vehicle insurance fraud and filing a false police report. The convictions rendered the broker statutorily disqualified from affiliation in the brokerage industry until 2013. The broker's federal and state securities registrations were terminated in 2006, and his employment as a stockbroker was terminated in 2007.

In 2008, the broker started a hedge fund and asked the respondent to make investments in the new fund, including investments of fiduciary funds. The respondent then understood that the broker would be operating and controlling the fund, had pleaded guilty to a criminal charge in some way related to insurance, and had lost his employment as a broker due to alleged failure to report the criminal charge. The respondent also understood that the broker's license had been suspended. The respondent made no further inquiry.

The respondent received documents from the broker disclosing that the new fund was to be exempt from federal and state regulation, was designed for sophisticated investors meeting specific financial qualifications, and was not intended as a broadly diversified or complete investment program. The documents also disclosed, among other things, that investment in the fund was speculative and unsuitable for investors who needed liquidity or could not bear the risk of complete loss of their capital. The broker falsely assured the respondent that the fund nonetheless was safe and suitable for fiduciary investments. The respondent had not previously invested in a hedge fund and did not obtain advice other than from the broker about investing in this fund.

In June 2008, the respondent invested in the hedge fund a total of over $4,400,000 held by him as trustee or attorney in fact in nine matters. The amounts invested ranged from about 32% to 97% of the total assets in those matters. In eight of the matters, the wards and beneficiaries did not meet the financial qualifications for investment in the fund. In six matters, the respondent had been appointed initially as guardian or conservator and had subsequently obtained court approval for the establishment of estate plans with trusts for the

[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.

wards' primary benefit and the respondent as trustee. In two of those matters, the wards had died before the fund investments.

For the living wards and beneficiaries in the nine matters, the respondent understood his primary obligation to be the protection and conservation of their assets to pay for their care, comfort, maintenance and support during their lifetimes. The respondent understood that he was required to preserve the assets of the deceased wards for the remainder beneficiaries and distribute the assets to those beneficiaries within a reasonable time after death.

When he made the investments, the respondent relinquished control over the liquidity, management and disposition of the funds invested. Thereafter the respondent did not adequately monitor the performance of the investments, which were high-risk and not diversified. By the summer of 2009, when the respondent closed the fund accounts in four of the matters, the investments on behalf of the wards and beneficiaries had decreased in value by about 32% to 40% of the initial investment. From the summer of 2009 through the first quarter of 2010, the remaining investments sustained continuous and escalating losses. In April 2010, the respondent instructed the broker to close the remaining fund accounts and remit all balances. The wards and beneficiaries in those matters lost from about 63% to 97% of the capital investments.

By making the fund investments when the wards and beneficiaries did not qualify as investors and when he should have known that the investments were not safe, suitable or in keeping with the needs and goals of the wards and beneficiaries, the respondent violated Mass. R. Prof. C. 1.1 and 8.4(h). By failing to investigate adequately the broker's suitability to manage the fund and the safety and suitability of the investments, entrusting control over the funds to the broker without adequate safeguards, failing adequately to monitor the investments, failing to protect and preserve the assets, and breaching his fiduciary duties, the respondent violated Mass. R. Prof. C. 1.1, 1.3, and 8.4(h).

In one matter the respondent had become trustee for a ward under an estate plan, the trust declaration required the respondent, as trustee, to file annual accounts in the probate court. The respondent filed no trustee accounts for that ward prior to June 2010. In other matters, the trust declarations required the respondent to account annually to the beneficiaries not under a legal disability. The respondent failed to render accounts in those matters before June 2010. In addition, in two matters where the wards had died, the respondent failed timely to terminate the trusts and distribute the remaining assets.

By failing to file timely trustee accounts in the probate court as required for one of the trusts, the respondent violated Mass. R. Prof. C. 1.3, 1.15(d)(1), and 8.4(d) and (h). By failing to render timely accounts to the beneficiaries of the other trusts, the respondent violated Mass. R. Prof. C. 1.3, 1.15(d)(1) and 8.4(h). By failing timely to terminate the trusts of the deceased wards and promptly turn over to the beneficiaries the funds due them, the respondent violated Mass. R. Prof. C. 1.3, 1.15(c), and 8.4(h).

In aggravation, the respondent had extensive legal and fiduciary experience, and most of the wards and beneficiaries whose assets he invested suffered severe harm. In mitigation, the respondent realized no personal financial gain from the investments, other than fees for his fiduciary services, and his misconduct was not the product of intentional malfeasance.

The matter came before the Board of Bar Overseers on a stipulated recommendation for a one-year suspension and the respondent's acknowledgement that the facts alleged could be proved by a preponderance of the evidence. The board voted to accept the stipulation and recommendation. On June 7, 2011, the Supreme Judicial Court ordered the respondent's suspension for one year. The Court also ordered that the respondent's reinstatement be conditioned on his furnishing a plan that provides reasonable assurance, in bar counsel's judgment, of repayment of the losses sustained by the wards and beneficiaries and that demonstrates the respondent's best efforts to implement the plan.