

**IN RE: JOHN S. TARA****NO. BD-2011-074****S.J.C. Order of Term Suspension entered by Justice Spina on October 5, 2011, with an effective date of November 4, 2011.¹**

(S.J.C. Judgment of Reinstatement with Conditions entered by Justice Spina on February 27, 2013)

SUMMARY²

The respondent was admitted to practice in 1970, and practiced as a solo practitioner. Since 1985, the respondent also served as a public administrator for Plymouth County.

In December 2006, the respondent was assigned to act as public administrator for the estate of an elderly man. Shortly after his appointment as special administrator on December 18, 2006, the respondent learned that the decedent had owned at least one AIG annuity, and that he had an eighty-six-year-old female friend who lived in Massachusetts.

On December 19, 2006, the respondent telephoned AIG. He learned that the decedent owned two annuities at the time of death. One annuity was payable to the estate, and the second annuity, issued in 2005, named the female friend as beneficiary and was payable to her directly. The respondent requested that AIG mail the claim paperwork for both policies to his office, although as public administrator he did not have authority to collect the 2005 annuity because it was not payable to the estate.

On December 21, 2006, the friend telephoned AIG to ask about a third AIG policy issued to the decedent in 2003 for which she had been named as a beneficiary. AIG informed her that the decedent had cashed in the 2003 annuity before his death but did not inform her that she was the beneficiary of a 2005 annuity.

On about January 26, 2007, the respondent telephoned the friend and identified himself as the special administrator for the decedent's estate seeking information about the existence of any heirs and any will. The friend confided to the respondent that she had expected to receive a substantial amount as a result of the decedent's death but had learned that he had cashed in a 2003 AIG annuity that named her beneficiary. The respondent did not disclose that he had already found the 2005 annuity and that her entitlement to the funds was not disputed. Instead, the respondent offered to assist her in searching for non-probate assets to which she was entitled in exchange for a contingent fee.

On February 6, 2007, the respondent met with the friend at her home to discuss the scope of the representation and the proposed contingent-fee agreement. He again failed to disclose that he had already found the 2005 annuity and that she was entitled to it. They signed an agreement that gave the respondent one-third of any funds that he recovered for her. The client also signed a limited power of attorney authorizing the respondent to liquidate any annuities naming her as beneficiary.

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.

On February 8, 2007, the respondent was appointed public administrator of the decedent's estate. On February 16, 2007, the respondent filed with AIG a claim for the 2005 annuity and the power of attorney, requesting that AIG send him the proceeds as attorney for the beneficiary. On about March 30, 2007, the respondent received a check from AIG payable to his client in the amount of \$281,555.63, and deposited the check to his IOLTA account.

On about April 16, 2007, the respondent notified the client that he had found an AIG annuity that named her as beneficiary, intentionally and deceptively implying that he had found the policy after he was retained. On April 20, 2007, the respondent sent the client a check for \$187,797.61 as her share of the proceeds from the 2005 annuity and notified her that he had taken a contingent fee of \$93,758.02.

On about July 20, 2007, the client informed the respondent that she disputed the contingent fee that he had charged her. The respondent did not refund any part of the fee, and the client retained counsel to secure restitution. On about October 1, 2008, the respondent refunded \$60,000 to the client to settle the dispute. The client died shortly thereafter.

After his mother's death, the client's son filed a complaint with bar counsel. On about March 4, 2011, the respondent paid the mother's estate \$41,158.02, for the remainder of the contingent fee and the attorneys' fees incurred in resolving the fee dispute.

By entering into an agreement for, charging, and collecting a contingent fee for filing a claim for an annuity when there was no contingency, the respondent charged a clearly excessive fee in violation of Mass. R. Prof. C. 1.5(a). By failing to explain to his client in advance of entering into the contingent-fee agreement that he had already discovered the existence of the annuity for which she was a beneficiary, the respondent failed to explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation in violation of Mass. R. Prof. C. 1.4(b). By concealing from his client that he was already aware of the existence of the annuity naming her as a beneficiary before entering into the contingent-fee agreement, the respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of Mass. R. Prof. C. 8.4(c). In aggravation, the respondent had substantial experience in the practice of law, and a selfish motive for the misconduct.

The case came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation that the respondent be suspended for three months. On April 11, 2011, the board voted to make a preliminary determination to reject the stipulation of the parties and confirmed its decision on May 9, 2011. On June 21, 2011, the parties filed an amended stipulation jointly recommending that the respondent be suspended for one year and one day.

On July 11, 2011, the board voted to recommend that the Supreme Judicial Court for Suffolk County accept the parties' amended stipulation and joint recommendation for discipline. On October 5, 2011, the county court (Spina, J.) ordered that the respondent be suspended from the practice of law for one year and one day, effective thirty days from the date of the order.