

IN RE: FREDERICK C. DIAMOND

NO. BD-2011-084

S.J.C. Order of Term Suspension entered by Justice Gants on August 29, 2011, with an effective date of September 28, 2011.¹

SUMMARY²

Frederick C. Diamond (the respondent) was admitted to the practice of law in Massachusetts on June 6, 1973.

In March 2005, the client engaged the respondent to draft an irrevocable trust and a deed for signature for her elderly aunt. The aunt had a history of dementia and depression. She had been living in a nursing home since December 2004. Medicare covered the costs of the nursing home through February 28, 2005. On March 1, 2005, the aunt became a private pay patient.

The client advised the respondent that her aunt was to be the donor of the trust, the client would be the primary beneficiary, and the client's son would be the trustee. The aunt was to deed her home to the trust and retain only a life estate. The respondent never met or spoke to the aunt, but proceeded to draft a trust and deed for her signature. He did not make any assessment of or inquiry into her competency to sign the documents; nor did he attempt to determine if she was acting under undue influence. The aunt executed the deed, and she and the client signed the trust on March 20, 2005.

On March 28, 2005, the documents were recorded at the Middlesex Registry of Deeds. Three days prior, acting on behalf of National Lenders, the respondent recorded a mortgage on the aunt's property that purportedly secured a loan from National Lenders to the aunt for \$300,000. In fact, National Lenders had not made any loan to the aunt.

Several weeks later, the aunt applied for Medicaid benefits. The application was denied because the aunt's transfer of her home to the trust was found to have been a "disqualifying transfer of resources." The respondent appealed from the denial. At 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.

hearing on the appeal, the respondent argued that the aunt was entitled to a hardship exemption because she had no assets from which to pay her nursing home expenses. The hearing officer upheld the denial of benefits.

The respondent then appealed from the denial of benefits to the Superior Court under G. L. c. 30A. He alleged that the aunt was under a hardship because the mortgage funds of \$300,000 had been dissipated, and that the aunt, after “due and diligent efforts, has attempted to reverse the transfer of her property but has been unable to retransfer or dissolve the trust and pay off the mortgage.” Those allegations were not true, and the respondent took no steps to verify that those allegations were true.

On December 15, 2006, the aunt’s nursing home filed suit against her, the trustee, and National Lenders for payment of approximately \$200,000 in unpaid nursing home bills. The nursing home alleged that the mortgage given by the aunt to National Lenders was a sham and sought to set aside the mortgage and the deed to the trust and obtain access to the aunt’s home to pay the nursing home bills.

The respondent entered appearances on behalf of all the defendants in the lawsuit, even though the interests of the defendants were directly adverse and the representation of each of the defendants was materially limited by the respondent’s responsibilities to the other defendants. In answering the nursing home complaint on behalf of all of the defendants, the respondent denied that the mortgage was not bona fide and denied that the defendant knew or had reason to know that the mortgage was not bona fide. The denials were not true and the respondent took no steps to ascertain whether or not the denials were true.

In preparing the deed and trust for the aunt’s signature at the request of her niece; and by concurrently representing the ward, the trustee and the mortgagee as defendants in the litigation filed by the nursing home, the respondent engaged in conflicts of interest, in violation of Mass. R. Prof. C. 1.7(a) and 1.7(b).

The respondent violated Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.4(b) in failing to take adequate steps to assure that the aunt understood the import of the documents, agreed to their terms, was competent to sign the documents and was not subject to any undue influence; and by failing to take steps to determine if there was a basis for the representations he made to

MassHealth and to the Superior Court, concerning the dissipation of the \$300,000 and the *bona fides* of the mortgage.

In mitigation, the respondent is eighty-one years of age and his misconduct resulted in no personal gain other than his legal fee.

In aggravation, the respondent had a prior reprimand in 1996 for neglect of his client's affairs and failing to represent a client zealously and a three-month suspension in December 2000 for use of inappropriate and offensive language in open court.

This matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation for discipline by suspension for six months and a day, with the requirement that the respondent not be eligible for automatic reinstatement but be required to petition for reinstatement pursuant to S.J.C. Rule 4:01, § 18(2). On August 8, 2011, the board voted to recommend that the Court accept the parties' stipulation and joint recommendation for discipline. On August 29, 2011, the Court entered an order suspending the respondent for six months and a day, with the requirement that the respondent be required to petition for reinstatement pursuant to S.J.C. Rule 4:01, § 18(2).