IN RE: DONALD C. KUPPERSTEIN

NO. BD-2011-086

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 entered by Justice Spina on December 18, 2012.)

SUMMARY[2]

The respondent was admitted to the bar on January 17, 1985. Between September 2002 and July 2008, he deposited client funds and his own personal funds in a business account. The respondent did not identify this account as a trust account, failed to notify the depository that the account was a trust account, and failed to keep adequate records of the client funds in the account. This conduct violated Mass. R. Prof. C. 1.15(a), (d), and (e) as then in effect.

After July 1, 2004, the respondent failed to keep records required by Mass. R. Prof. C. 1.15. He did not keep individual ledgers for trust funds he received and disbursed for each client matter, nor did he maintain a ledger for personal funds in the account. He also failed to reconcile and prepare reconciliation reports for the account. This conduct violated Mass. R. Prof. C. 1.15(b), (e)(2) and (e)(5), and (f)(1)(B-E).

In November 2002, the respondent represented a wife in a divorce trial. The court entered a judgment of divorce in the case in December 2002. The court rejected the wife's alimony claim, ordered the parties to sell their marital home and a vacation property in Florida, and divided two corporations between the wife and the husband.

The client asked the respondent to appeal from the divorce judgment, and the respondent charged her $8,000 to prosecute the appeal. The client also agreed to pay the respondent $16,000 to file a civil complaint against her former husband alleging diversion of corporate assets. The respondent agreed to accept payment from the client's share of the proceeds of the sale of the Florida property.

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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.

In November 2003, the respondent received a check for $42,527 as the client's share of the proceeds from the sale of the Florida property. The respondent deposited the check into his business account. After paying himself for fees and expenses and issuing checks for the benefit of the client, the respondent should have held $10,390. Between November 2003 and January 30, 2004, the respondent negligently misused these funds. The respondent restored the client's funds to the account in early February by depositing personal funds into the account.

The respondent violated Mass. R. Prof. C. 1.15(a) and (d), as in effect prior to July 1, 2004, by depositing the client's trust funds into an account that was not properly designated as a trust account. The respondent's negligent misuse of the client's funds violated Mass. R. Prof. C. 1.3 and 1.15(a), as in effect prior to July 1, 2004.

The superior court set a trial in the civil case against the husband for January 2008. Following an unsuccessful attempt to mediate the matter, the client discharged the respondent and retained new counsel to represent her. The respondent did not account for his time in the case and did not refund the unearned portion of his fee. This conduct violated Mass. R. Prof. C. 1.15(d)(1) and 1.16(d).

In connection with another matter involving a different client, the respondent received a check for $15,000 on behalf of the client in May 2008 and deposited the funds into his business account. The following day, the respondent mailed a check for $15,000 to the client, but the client was not in Massachusetts at the time. The client instructed the respondent to preserve the funds until the client returned to Massachusetts.

In June and July, the respondent intentionally used the client's funds to pay his own expenses. The respondent also gave his wife $5,000 of the client's money, which she deposited into her personal money market accounts. The respondent had no control over his wife's accounts and he was not an authorized signatory on the accounts.

In July, the client returned to Massachusetts and attempted to negotiate the original $15,000 check, but it was dishonored for insufficient funds. When the respondent learned the check had been dishonored, he obtained $15,000 from his wife and deposited it into his business account. The client successfully negotiated the check a few days later.

The respondent violated Mass. R. Prof. C. 1.15(b) and (e) by failing to keep the client's funds separate from his own funds and by depositing the client's funds into an account that was not a properly labeled trust account. The respondent violated Mass. R. Prof. C. 1.15(b) and 8.4(c) by intentionally misusing the client's funds to pay his own business and personal expenses and by transferring a portion of the client's funds into accounts over which he had no authority or control.

This matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation for a one-year suspension from the practice of law, with six months and one day to be served and the balance of the suspension stayed for one year under probationary conditions. The conditions included the requirement that, after he is reinstated, the respondent retain a certified public accountant to review at least every two months the respondent's IOLTA and other trust accounts and to report to bar counsel whether the respondent is in compliance with Mass. R. Prof. C. 1.15.

On August 8, 2011, the board voted to accept the stipulation and recommend the agreed-upon disposition to the Supreme Judicial Court. On October 5, 2011, the Supreme Judicial Court for Suffolk County entered an order suspending the respondent for one year with six months and one day to be served and the balance of the suspension stayed for one year under the probationary conditions recommended by the Board of Bar Overseers.