NO. BD-2011-116

S.J.C. Judgment of Disbarment entered by Justice Cordy on November 25, 2011.[1]

SUMMARY[2]

This matter came before the Court on the respondent's affidavit of resignation pursuant to S.J.C. Rule 4:01, § 15. The respondent admitted in his affidavit that the following material facts described in bar counsel's statement of disciplinary charges could be proved by a preponderance of the evidence.

In November of 2003, a client retained a law firm to represent him for bodily injury claims resulting from a motor vehicle accident. Liability in favor of the client was reasonably clear and the client, who was operating a motorcycle at the time, was seriously injured.

In 2006, the respondent purchased and took over the law firm's practice. The client agreed to the respondent's representation. The respondent thereafter diligently pursued compensation from the client's insurer for underinsurance coverage and the insurer for the at-fault driver for bodily injury.

In April of 2007, the client signed a release for the maximum insurance available from the at-fault driver's policy, in the amount of $25,000. On September 28, 2007, the respondent deposited the settlement check in that amount into his IOLTA account. After September 28, 2007, the respondent intentionally misused the client's funds for business or personal purposes unrelated to the client, with actual deprivation resulting. As of October 31, 2007, the account balance in the respondent's IOLTA account had fallen to $9,578.03, without any distribution to or for the benefit of the client.

In February of 2009, the underinsurance carrier remitted to the respondent a check in the amount of $25,000 in full satisfaction of all claims, and the respondent deposited the check into his IOLTA account. The respondent distributed about $14,244 of the client's funds to third persons entitled to the funds. After March 30, 2009, the respondent intentionally misused the remaining balance of the client's funds for business or personal purposes unrelated to the client, with actual deprivation resulting. As of July 31, 2009, the account balance in the respondent's IOLTA account had fallen to $762.72, without any distribution made to the client.

The respondent's intentional misuse of settlement funds, with actual deprivation resulting and continuing, was in violation of Mass. R. Prof. C. 1.15(b), (c) and 8.4(c) and (h). The respondent's failure to promptly deliver to his client the funds that he was entitled to receive was in violation of Mass. R. Prof. C. 1.5(c) and 1.15(c) and (d).

On November 14, 2011, the board voted to recommend that the affidavit of resignation be accepted and that the respondent be disbarred, effective as of the date of the order. On November 25, 2011, the Supreme Judicial Court for Suffolk County so ordered.

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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.