IN RE: WAYNE M. DZIEDZIC
NO. BD-2012-031
S.J.C. Judgment of Resignation entered by Justice Cordy on May 2, 2013.[1]
SUMMARY[2]

The respondent was admitted to the Massachusetts bar on January 14, 1981. His practice has been concentrated in the areas of trusts and estates, taxation and real estate.

In 1995, the respondent drafted a revocable trust for a client. He named himself as the trustee and the client's wife and two children as the beneficiaries. At the time of the client's death in 1999, the major assets of the trust were the decedent's residence, two life insurance policies and two individual retirement accounts. The total value of these assets was approximately $1.4 million.

Following the decedent's death in 1999, the respondent, acting in his capacity as trustee of the trust, sold the decedent's residence for $1,020,000. The respondent used a portion of this money to purchase a condominium in the name of the trust for the benefit of the wife. He deposited the remainder of the sale proceeds, $436,905.25, into his IOLTA account. These funds were not nominal in amount and were to be held in trust for more than a short period of time. By failing to deposit these proceeds into a separate interest-bearing account in the name of the trust or its beneficiaries, the respondent violated Mass. R. Prof. C. 1.15(e) for conduct prior to July 1, 2004, and Mass. R. Prof. C. 1.15(e)(5) for conduct on and after July 1, 2004.

The respondent did not take any action of substance to collect the proceeds of the two life insurance policies until 2003, and he failed to withdraw funds from one of the individual retirement accounts until 2006, more than the requisite five years after the death of the decedent, thereby causing the trust to incur penalty and interest charges assessed by the Internal Revenue Service. The respondent did not file federal or state fiduciary income tax returns for the trust for the tax years 2001 through 2008, and from 2002 to 2006 he failed to pay the real estate tax bills for the condominium that was owned by the trust and used by the wife. The respondent's failure to attend to these matters promptly and competently violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3.

Between March of 2004 and December of 2005, the respondent withdrew a total of $100,000 from the trust which he claimed as fees. This $100,000 included a check in the amount of $25,000 made payable to the respondent's wife which is prohibited by Mass. R.

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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.

Prof. C. 1.15(e)(4). The respondent's $100,000 fee was clearly excessive in violation of Mass. R. Prof. C. 1.5(a).

Although the express provisions of the trust required the respondent to furnish the beneficiaries with an annual accounting, the respondent never did so even though one of the beneficiaries made multiple requests for one starting in April of 2001 and continuing at least into 2005. By failing to respond to these requests and by failing to render a full written accounting of the trust funds, the respondent violated Mass. R. Prof. C. 1.4(a) and (b) and, for conduct before July 1, 2004, Mass. R. Prof. C. 1.15(b) and, for conduct on and after July 1, 2004, Mass. R. Prof. C. 1.15(d)(1).

In 2007, the beneficiaries filed suit against the respondent for an accounting, an order removing the respondent as the trustee of the trust, and the return of trust funds for which the respondent could not account, an amount estimated to be approximately $87,600. The amount could not be calculated with certainty because the respondent had failed to maintain complete records of his receipt, maintenance and distribution of trust funds, in violation of Mass. R. Prof. C. 1.15(a) for conduct before July 1, 2004, and Mass. R. Prof. C. 1.15(f) for conduct on and after July 1, 2004. In 2009, the beneficiaries and the respondent reached a settlement and the lawsuit was dismissed. The respondent resigned as trustee of the trust, transferred what monies he was still holding to a new trustee, and made restitution to the beneficiaries. By failing to maintain trust funds in a trust account and by failing to promptly turn over to the beneficiaries monies due them, the respondent violated Mass. R. Prof. C. 1.15(a) and (b) for conduct prior to July 1, 2004, and violated Mass. R. Prof. C. 1.15(b) for conduct on and after July 1, 2004.

In a second matter, the respondent was hired by two elderly brothers who were the beneficiaries of their nephew's estate, the sole asset of which was the nephew's house. In 2003, the Middlesex Probate Court appointed a public administrator who took sole responsibility for probating the nephew's estate. The public administrator hired a contractor to clean out and repair the nephew's house to prepare it for sale and hired a real estate broker who marketed the property. The respondent had little or no substantive involvement in any of these activities. In August, 2005, the nephew's house was sold and in March, 2006, the public administrator filed a first and final account which showed $200,000 to be distributed to the nephew's heirs.

On April 15, 2006, the public administrator issued a check in the amount of $200,000 payable to the respondent, who deposited the money into his IOLTA account and not into a separate interest-bearing client trust account as required by Mass. R. Prof. C. 1.15(e)(5). The respondent did not maintain records of his receipt, maintenance and disposition of these funds in violation of Mass. R. Prof. C. 1.15(f). On April 18, 2006, the

respondent withdrew $30,000 from this account by way of a check issued to his wife for payment his fees, in violation of Mass. R. Prof. C. 1.15(e)(4). In violation of Mass. R. Prof. C. 1.15(d)(2), the respondent failed, prior to or on the date he made a withdrawal from the estate funds, to provide his clients a written accounting showing his bills, the amount of the payment and the balance left in the account. It was not until May 22, 2006, that the respondent furnished his clients with an invoice for his $30,000 fee. In this invoice, the respondent intentionally inflated, concocted and otherwise misrepresented the services he provided to justify that fee. Among other things, the respondent billed for services which were actually provided by others including by the public administrator and by the contractor and broker whom the public administrator had hired and paid. The respondent also charged his full professional rate of $350 per hour for non-legal work. By charging for services he had not performed and for hours that he had not expended, and by charging for non-legal services at his legal rate, the respondent violated Mass. R. Prof. C. 1.5(a) and 8.4(c).

On May 22, 2006, the respondent paid each of his clients $68,750 and withheld from both $12,500. The respondent had no good-faith basis for withholding these funds and performed no services for his clients over the course of the next four years except for writing one check in the amount of $3,500 to pay a bill for cremation services.

The respondent's clients objected to his withholding these funds. Beginning in May of 2006 and continuing into 2010, the clients and, after their deaths, their children, repeatedly demanded that the respondent disburse the funds he was holding. The respondent at first ignored these requests, then later misrepresented the amount of money he was holding. Only after complaints were filed with the Office of the Bar Counsel did the respondent disburse all of the funds owed to his clients.

By failing to promptly pay his clients the funds due them, the respondent violated Mass. R. Prof. C. 1.15(c). By failing to respond to his clients' reasonable requests for information and by intentionally misrepresenting the amount he was holding, the respondent violated Mass. R. Prof. C. 1.4(a) and (b) and 4.1.

In a third matter, the respondent was hired by three siblings in 2006 to probate their father's estate, which also consisted primarily of a residence. After selling the residence in October of 2007, the respondent deposited the proceeds into his IOLTA account and not a separate interest-bearing client trust account in violation of Mass. R. Prof. C. 1.15(e)(5). Immediately thereafter, the respondent withdrew $22,500 from the account as his legal fee without providing his clients with a written accounting showing his bills, the amount of the payment or the balance left in the account, in violation of Mass. R. Prof. C. 1.15(d)(2).

From October of 2007 to August of 2008, the respondent collected additional monies belonging to the estate, paid certain expenses and made disbursements to the beneficiaries. The last disbursement was made in August of 2008, at which time the respondent informed the beneficiaries that he had paid them all monies due them. The respondent did not maintain complete records of his receipt, maintenance and disposition of estate funds, in violation of Mass. R. Prof. C. 1.15(f), and therefore did not know that he was still holding $14,900.08 in estate funds.

After August of 2008, the respondent ceased all work on the estate even though he had not yet filed an inventory, prepared a final account, filed all tax returns or obtained a federal estate tax closing letter, all in violation of Mass. R. Prof. C. 1.1, 1.3 and 3.4(c). In 2009, the beneficiaries were notified by the Massachusetts Department of Revenue that the decedent's residence had been incorrectly valued and that the estate would be assessed additional tax. The beneficiaries telephoned the respondent for assistance, but he did not reply to their attempts to reach him. In April of 2010, the beneficiaries hired a new attorney who also attempted to contact the respondent. When he finally reached the respondent, he requested that the respondent transfer his files to him. The respondent did not do so until after a complaint was filed with the Office of the Bar Counsel. During bar counsel's investigation, the respondent determined that he was still holding money belonging to his clients, which he then fully disbursed.

By failing to promptly pay his clients the funds due them, the respondent violated Mass. R. Prof. C. 1.15(c). The respondent violated Mass. R. Prof. C. 1.4(a) and (b) by not replying to his clients' reasonable requests for information and by not keeping his clients reasonably informed, and he violated Mass. R. Prof. C. 1.16(d) and (e) by failing to return the file to his clients or to successor counsel in a timely manner.

Bar counsel filed a petition for discipline on December 12, 2012. On April 12, 2013, bar counsel filed the respondent's affidavit of resignation and requested that it be accepted as a disciplinary sanction. On April 22, 2013, the board voted unanimously to recommend to the Supreme Judicial Court that the respondent's affidavit of resignation be accepted. On May 2, 2013, the county court (Cordy, J.) ordered that the respondent's resignation be accepted effective immediately upon entry of the judgment.