IN RE: PIUS AIREWELE

NO. BD-2012-062

S.J.C. Order of Term Suspension entered by Justice Gants on August 6, 2012.[1]
(S.J.C. Judgment of Reinstatement entered by Justice Gants on March 7, 2013)

SUMMARY[2]

After practicing in Massachusetts for a number of years, the respondent moved to Georgia. He did not seek admission there, and practiced in the office of another firm doing occasional work for them while pursuing his immigration law practice. Around 2007, the respondent became friendly with a businessman involved in energy projects around the world. The respondent saw the businessman as a contact presenting the opportunity for involvement in the global petroleum business.

The respondent represented the businessman's wife and daughter in immigration proceedings, and he became a sounding board for the businessman on matters of law and business.

Count One:

Around that time, the respondent gave the businessman advice concerning a proposed investment in Georgia. The respondent prepared a contract tailored to the businessman's needs, yet advised the businessman not to enter the deal. For various reasons, that deal did not close.

Also around this time, the respondent became acquainted through his church with a broker of petroleum products. At the broker's request to be connected with possible sources of financing, the respondent introduced the broker to the businessman. The two agreed on the terms of a loan from the businessman to the broker during conversations that also included the respondent's suggestion concerning the structure of the transaction and security for the loan. The respondent expected to receive some form of compensation from the broker if the transactions to be funded by the loan were profitable. The respondent had privately advised the businessman to make a loan rather than an investment, and he also assured the businessman that, based on his research, a mortgage on the broker's Georgia home would provide adequate security. He further advised the businessman that the mortgage deed had to be recorded before the loan funds were disbursed. In fact, the respondent had not performed the research and did not have a reasonable basis for providing the assurance about the adequacy of the security.

While the businessman was generally aware of the potential conflict involved in the respondent's simultaneous relationship with the broker and the businessman, the respondent did not obtain the businessman's informed consent.

The broker eventually defaulted on the loan. The businessman was unable to realize on the security because the mortgage deed was defective and the secured property apparently did not have adequate equity in any event. In addition, the underlying promissory note was usurious and possibly unenforceable. The respondent had not prepared the note or mortgage, but he had offer the erroneous opinion that the mortgage deed was adequate.

---

[1] The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

[2] Complied by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

Throughout these matters and the additional matters described below, the respondent did not inform the businessman that he was not admitted to practice in Georgia.

The committee found that: The respondent represented the businessman concerning the loan to the broker, and his expectation of some compensation or reward in the event of the broker's success materially limited his representation of the businessman, in violation of Mass. Rules Prof. C. 1.7(b) (conflict of interest) and 8.4(h) (conduct otherwise reflecting adversely on fitness to practice). The respondent's providing legal services in the two Georgia transactions violated Mass. R. Prof. C. 5.5(a) (unauthorized practice of law). The respondent violated Mass. Rules Prof. C. 8.4(c) (dishonesty, deceit, misrepresentation, or fraud) by failing to disclose he was not admitted to the Georgia bar, and by advising the businessman that the broker's home provided adequate security for the loan when the respondent did not know that to be the case. The respondent's erroneous advice about the adequacy of the security for the loan also violated Rules 1.1 (competence) and 1.3 (diligence).

Count Three:

The businessman sought the respondent's advice concerning his failing marriage. The respondent advised the businessman to commence divorce litigation in his home country of Nigeria because, in the respondent's view, a Georgia divorce would favor the wife and "destroy" the businessman, and also so that the Nigerian action would have priority. The respondent referred the businessman to the respondent's brother, a Nigerian attorney, who commenced divorce proceedings there.

The businessman's wife withdrew money from a London account and commenced a divorce action in Georgia. On learning this, the businessman contacted the respondent. The respondent told the businessman that the wife's effort to serve process on the businessman was invalid, and further advised the businessman to leave the country to avoid service of process. The businessman asked the respondent to manage the defense of the divorce action and to assemble a team of lawyers. The respondent took for himself $5,000 out of the $6,500 the businessman initially gave him to coordinate the divorce defense. The respondent also received $10,000 from the businessman to "domesticate" the outcome of London proceedings the businessman brought to recover the money his wife had withdrawn.

The respondent retained a Georgia attorney for a flat fee of $1,500 to pursue the respondent's strategy of seeking dismissal of the Georgia divorce in favor of the Nigerian action. Throughout the divorce, the respondent communicated with the businessman about case status and strategy, and he also communicated with the businessman's legal counsel in London. In correspondence with the London firm the respondent referred to the businessman as a common client. In addition, the respondent prepared the witnesses who testified at the evidentiary hearing on the motion to dismiss and he helped prepare the questions for their direct examination.

During the brief course of the Georgia divorce action, the respondent forwarded to his local Georgia counsel damaging information about the businessman's wife relevant to the wife's immigration proceedings the respondent had handled. The respondent first received the information from the businessman, which the businessman wanted forwarded to immigration officials. If the information had the desired effect of causing the wife to have difficulties with immigration, her removal from the United States would have prevented her from prosecuting the Georgia divorce. The respondent did not obtain the wife's permission to represent the businessman in the divorce.

The respondent's strategy succeeded, but not before disagreements about fees broke out between the respondent and Georgia counsel. The court ordered the businessman to provide extensive discovery while the motion to dismiss remained unresolved and Georgia counsel demanded significantly more than the $1,500 the respondent had paid.

At around the same time this disagreement was developing, the businessman was unsuccessfully attempting to collect the defaulted loan that was a subject of count one. The relationship between the respondent and the businessman broke down and the businessman both sued the respondent and filed charges with bar counsel.

The committee found that: The respondent's conduct in providing legal services to the businessman in his Georgia divorce, when he was not licensed to practice in Georgia, violated Mass. R. Prof. C. 5.5(a) (unauthorized practice). In the circumstances, the respondent's representation of the businessman in the divorce matter after representing that businessman's wife in her immigration matter violated Mass. R. Prof. C. 1.9(a) (conflict between current and former client).

Additional Counts:

Count Two:

The respondent eventually opened his own office in Georgia under the name "Airewele & Associates." He used a business card that gave a Massachusetts address on one side and his Georgia address on the other. The Georgia side stated "admitted to practice in Massachusetts." Neither side disclosed that the respondent was not admitted to practice in Georgia.

The committee found that the respondent used a false or misleading firm name in violation of Mass. R. Prof. C. 7.1 (misleading communication about lawyer or practice) and 7.5(a) (misleading firm name) and made a misleading communication by his business card.

Count Four:

The respondent and a client failed to appear at an immigration hearing, resulting in the client's being ordered deported *in absentia*. The respondent was in the process of preparing a motion to reopen when he received information suggesting the client was involved in immigration fraud. He told the client of her need to file a motion and ceased any further representation, but he did not formally withdraw from the case. Years later, the client retained successor counsel.

The committee found that the respondent's failure to attend the immigration hearing violated Mass. R. Prof. C. 1.1, 1.2(a) (pursue the client's lawful objectives), 1.3, and 8.4(h).

The respondent did not file objections to the hearing committee report. The board adopted the hearing committee's report and recommendation for a suspension of six months and a day. On August 6, 2012, the Court so ordered.