



**IN RE: KENNETH A. MARTIN**  
**NO. BD-2013-039**

**S.J.C. Order of Term Suspension entered by Justice Lenk on June 26, 2013.<sup>1</sup>**

**SUMMARY<sup>2</sup>**

On March 28, 2013, the respondent, Kenneth A. Martin, was suspended from the practice of law for eighteen months by the District of Columbia Court of Appeals. The conduct of the respondent that resulted in the suspension was as follows.

The respondent represented a business client, ESI, in litigation against a former ESI consultant. The early stages of the litigation were covered by an hourly rate fee agreement. A contingent-fee agreement was then executed by which the respondent's fee would be 45% of any recovery.

Since the matter was pending in Florida, where the respondent was not admitted, the respondent arranged for Florida counsel to assist. The case settled, with ESI to receive \$2,200,000 but only from two brokerage accounts owned by the consultant in New York. Because the respondent was not admitted in New York, ESI retained New York lawyers to file an action to collect on the Florida judgment. The United States was also maintaining a civil forfeiture action against the same brokerage accounts. ESI and the United States settled, with ESI receiving \$656,464.30 from the accounts in satisfaction of the Florida judgment.

New York counsel received the settlement proceeds, paid itself its fees and costs and sent \$577,039.50 to the respondent. The respondent prepared an accounting for ESI, which among other costs listed his contingent fee of \$295,409.00 and other hourly-rate fees of \$68,959.80 (\$60,940.00 of which related to the litigation). After deduction of other costs, including the fees of the Florida and New York lawyers, ESI was due a net of \$90,749.74. The respondent sent the accounting to ESI, and in response ESI protested the respondent's fees. The respondent transferred his fees to his operating account and did not return them to escrow until eight months later.

ESI filed for arbitration of the fee dispute and received an award of \$165,313.00, which represented the amount of the respondent's fee that the arbitrator concluded was unreasonable. ESI filed a motion in court to confirm the award, but the respondent sought to have the award vacated and then appealed an order confirming the award. At some point during the arbitration process, ESI filed an ethics complaint against the respondent. While the appeal was pending, the respondent and ESI settled the fee dispute for half of the arbitration award. As part of the settlement, the respondent required ESI to withdraw its ethics complaint.

Upon its review of the record after contested proceedings before the D.C. Board of Professional Responsibility, the D.C. Court of Appeals suspended the respondent for eighteen months, with reinstatement to the D.C. bar conditioned on payment of the remainder of the arbitration award to ESI. In concluding that the respondent's fee was unreasonable,

---

<sup>1</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

the court noted that the respondent's total fee, contingent and hourly, represented 54% of ESI's total recovery and that the amount of his work on the case was relatively small in comparison to the work of the Florida and New York lawyers. The court also concluded that the respondent commingled funds by refusing to return the disputed fee to escrow for eight months, failed to return unearned fees to ESI promptly upon the arbitration award, testified falsely about advice he received from the D.C. Bar Ethics Hotline, and improperly conditioned a settlement with ESI upon withdrawal of ESI's ethics complaint.

On April 16, 2013, bar counsel filed a petition for reciprocal discipline with the Supreme Judicial Court for Suffolk County. The parties filed a waiver of hearing and assent to an order of reciprocal discipline. On June 26, 2013, the Court (Lenk, J.) entered an order suspending the respondent for eighteen months, effective immediately, with the respondent's reinstatement in Massachusetts conditioned upon his reinstatement in the District of Columbia.