IN RE: JAMES E. SMALL, JR.

NO. BD-2013-069

S.J.C. Order of Term Suspension entered by Justice Lenk on July 8, 2013, with an effective date of August 7, 2013.[1]

(S.J.C. Judgment of Reinstatement entered by Justice Lenk on November 21, 2013.)

SUMMARY[2]

In 2000, a subcontractor who had sued a general contractor discharged his lawyer and hired the respondent, with whom he had a long-term business and personal relationship. The respondent undertook the representation for a fee of one-third of the amount collected for the client, but he failed to prepare a contingent-fee agreement in writing signed by himself and the client in violation of Mass. R. Prof. C. 1.5(c) as in effect prior to March 15, 2011.

The respondent represented the client in a mediation session where there was an offer to settle. The insurance company was to pay $7,500 and the general contractor $30,000. The client initially agreed to the settlement. After an order of dismissal entered, the client told the respondent he no longer consented to it. The respondent tried unsuccessfully to restore the matter to the trial list.

Each defendant sent the respondent a check for its share of the settlement. The respondent failed to inform the client that he had received the funds. He took no action to negotiate the checks and pay the client the funds he was due. By failing to notify the client that he had received the proceeds of the settlement from the defendant and by failing promptly to deliver the proceeds due the client, the respondent violated Mass. R. Prof. C. 1.4(a) and (b) and 1.15(c).

The checks became stale and non-negotiable. After four years, the insurance company reported the $7,500 to the Department of the State Treasurer, Abandoned Property Division (APD). The APD notified the client and the respondent that it had $7,500, and the respondent secured a check payable to him and the client. The respondent did not notify the client that he had received the check, and he negotiated the check without the client's signature.

The respondent retained the full amount of the check for $7,500 as his fee, instead of the one-third to which he was entitled. He therefore violated Mass. R. Prof. C. 1.5(a) by collecting a clearly excessive fee. He also failed to provide the written notice to the client required by Mass. R. Prof. C. 1.15(d)(2).

The general contractor had retained the $30,000. The client, through other counsel, collected the remaining $30,000 of the settlement. The respondent did not collect an additional fee from those funds.

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[1] The complete Oder 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.

On May 23, 2013, the parties filed with the Board of Bar Overseers a stipulation and joint recommendation that the respondent be suspended from the practice of law for three months. On June 3, 2013, the Board of Bar Overseers voted to recommend that the Supreme Judicial Court accept the parties' stipulation and recommendation. On July 8, 2013, the county court (Lenk, J.) entered an order suspending the respondent from the practice of law for three months.