

IN RE: KIRK Y. GRIFFIN**NO. BD-2013-081****S.J.C. Order of Temporary Suspension entered by Justice Spina on September 13, 2013.¹****Page Down to View Memorandum of Decision**

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

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
DOCKET NO. BD-2013-0081

IN RE: KIRK Y. GRIFFIN

MEMORANDUM OF DECISION

Bar Counsel has filed a petition for temporary suspension, pursuant to S.J.C. Rule 4:01, § 12A, alleging that the respondent has failed to pay Robert Falanga, a client, some \$510,000 from the proceeds of a sale of a business owned by Falanga; that he has failed to provide compliant trust account records for his IOLTA account, see Mass. R. Prof. C. 1.15 (f) (1); that his improper management of his IOLTA account resulted in a \$1,909.09 overdraft on that account; that his improper management of his IOLTA account renders him unable to confirm that he is holding all other client funds intact; and that by virtue of the aforesaid conduct the respondent poses a threat of substantial harm to clients or to prospective clients, S.J.C. Rule 4:01, § 12A.

The factual background is complex, but there appears to be no dispute that the respondent has not paid as much as \$510,000 to Falanga from the proceeds of the sale of Falanga's business, subject to a claim of \$100,000 by the respondent for legal fees and expenses. See petition, ¶¶20, 21; Exh. A-7; copies of two checks (#10157 and #10158) referred to in Exh. A-7, dated October 17, 2012, payable to Robert Manning, Esq., who is current counsel to Falanga, drawn on respondent's IOLTA account, in the amounts of \$410,000 and \$100,000, respectively; ¶7 of respondent's answer to Falanga's lawsuit. It

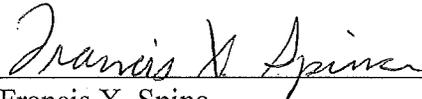
is reasonable to infer, and I so infer, that the respondent used Falanga's funds deposited to his IOLTA account for other purposes, as there are insufficient funds to cover the aforesaid two checks totalling \$510,000.

The respondent has admitted to bar counsel that he has not paid Falanga \$410,000 from the sale of Falanga's business, and does not have the funds to do so in his IOLTA account. The respondent has failed to provide bar counsel with documentation accounting for the remaining funds owing to Falanga, and has failed to provide bar counsel with compliant trust account records, despite repeated requests therefore, needed to confirm that he is holding intact all funds properly due his clients, including Falanga. See Affidavit of Albert C. Nolan, ¶¶18, 19, 20.

The evidence also shows that the respondent paid a personal \$20,000 IRS obligation with a check drawn on his IOLTA account.

Based on the foregoing, and after hearing from bar counsel and the respondent on September 4, 2013, I am satisfied that bar counsel has shown that the respondent poses a threat of substantial harm to clients or prospective clients, and that he should be immediately suspended from the practice of law pending final disposition of disciplinary proceedings commenced by bar counsel.

An order of temporary suspension shall issue forthwith.



Francis X. Spina
Associate Justice

ENTERED: September 13, 2013

A True Copy

Attest

9-13-13
Date


Assistant Clerk