

**IN RE: ROBERT VENTURO****NO. BD-2014-028****S.J.C. Order of Term Suspension entered by Justice Spina on March 7, 2014, with an effective date of April 7, 2014.¹****SUMMARY²**

This matter came before the Board of Bar Overseers on the parties' stipulation of facts and rule violations and an agreed recommendation for discipline. The stipulation was based on three counts of misconduct.

The respondent was employed by a law firm from January to August 2011, when the firm's principal assumed retirement status, closed the practice, and terminated the respondent's employment effective at the end of that month. At all relevant times thereafter, the respondent practiced law from a home office.

Count I. In January 2011, the respondent was assigned to handle a client's ongoing litigation against her property damage insurer. The respondent entered an appearance for the client in the course of opposing a motion by the defendant for judgment on the pleadings. The principal also had an appearance in the case.

The motion for judgment on the pleadings was denied in June 2011. Thereafter the respondent took no action of substance to pursue the client's claims or monitor her case. As a result, he did not learn on a timely basis that the defendant had propounded discovery and did not respond to the discovery requests, to a final request for interrogatory answers under Mass. R. Civ. P. 33(a) served in July 2011, or to a motion to compel documents served in August 2011. That motion was allowed on August 31, 2011. The respondent did not inform the client of the discovery requests, the final application, or the motion or its allowance.

As of the end of August 2011, the respondent knew that the principal was no longer handling and expected him to assume sole responsibility for the case. He took no action of substance to keep the client apprised or ensure that he would receive all pleadings and papers from the court and opposing counsel. The respondent did not inform the client of the principal's retirement and his departure or give client his new address until October 2011. He did not furnish his new address to the court or the opposing counsel, as required by Mass. R. Civ. P. 11(d), until December 2011.

The court had entered a final judgment dismissing the client's claims under rule 33(a) in September 2011. Notice was sent to the respondent at the principal's former office address, forwarded to the principal, and then sent on to the respondent at his home office. The respondent failed to inform the client of the dismissal, but she found out from other sources in early October 2011, located the respondent, and called him to ask about the dismissal. The respondent erroneously

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.

informed the client that the dismissal was without prejudice and assured her that he would promptly attend to setting it aside. Prior to the end of November 2011, however, he did not file or serve any motion to vacate the judgment or otherwise seek relief from the dismissal.

During October and November 2011, the client asked the respondent about the status of the matter. The respondent told her that he had served a motion to vacate on the defendant's counsel, that the motion had been returned as undeliverable, that he had sent the motion again, and that he was waiting for the expiration of the opposition period under rule 9A before filing the motion. He later represented to the client that he had not received notice of a hearing date and would call the court to inquire. Those representations were intentionally false, deceptive or misleading.

The respondent filed a motion to vacate in late November, 2011, citing difficulties arising from the closing of the practice and the termination of his employment. He did not obtain a supporting affidavit from the principal or submit an affidavit of his own. The motion was opposed by the defendant and denied in December 2011 on the stated basis that the principal was still an attorney of record and had provided no affidavit or other explanation. The respondent received notice of the denial but failed to inform the client or take further action in the matter.

Count II. The respondent was assigned to handle ongoing litigation arising from a client's wrongful termination and employment discrimination claims. In July 2011, the defendants moved for summary judgment. The respondent filed an opposition, and a hearing was scheduled for the fall of 2011.

By the end of August 2011, the respondent knew that he was the only lawyer with an appearance for the client and that the principal expected him to assume sole responsibility for the case. The respondent did not report his address change to the court or take other action of substance to ensure his timely receipt of pleadings and papers. In October 2011, he appeared for a hearing on the summary judgment motion, and the matter was taken under advisement. The respondent informed the client, then living out of state, that he would forward the decision as soon as it was rendered.

In December 2011, the respondent told the client that that he had checked the court docket a day earlier, that the decision was still pending, and that he would continue to check and notify the client of the outcome. Later that same day, the court issued a memorandum and order allowing the summary judgment motion and entered final judgment for the defendants. The respondent did not check the docket again or take other action of substance to determine the outcome. Copies of the decision and the judgment were sent to the respondent at the former office address, forwarded to the principal, and sent on to the respondent. He received the papers by or about early February 2012.

In early February 2012, the client asked the respondent about the outcome of the summary judgment motion and hearing. By then, the respondent had received notice of the judgment. He replied that the judge had ruled in favor of the defendants and that he had mailed the decision to the client weeks earlier, possibly to the wrong address. The respondent's representation that he had sent or tried to send the decision was intentionally false, deceptive, and misleading. The respondent never informed the client that the client's right to appeal had expired in January 2012.

Count III. In the spring of 2011, the respondent was assigned to handle ongoing litigation arising from a client's tort claims against the Commonwealth and the Department of Corrections. The respondent never informed the client that he would be working on the case and failed to enter his appearance or take other action of substance before the closing of the practice. By the end of August

2011, the respondent knew that the principal was no longer handling the case and expected him to assume sole responsibility. He took no action to keep the client apprised of these developments.

In late September 2011, opposing counsel learned of the principal's retirement and the closing of the practice and located the respondent's home address. In October 2011, the respondent was served at that address with interrogatories from the defendants to the client. The respondent took no action of substance to respond to the interrogatories or to a final request for answers pursuant to rule 33(a). He did not inform the client of the interrogatories or the final request.

In January 2012, the defendants applied for the entry of final judgment under rule 33(a) and served the respondent. The respondent entered his appearance for the client but took no action thereafter in the case. The court entered a final judgment dismissing the client's claims. The respondent received timely notice of the judgment but did not inform the client. He never sought to vacate the judgment and took no other action to protect or preserve the client's rights.

By failing to render competent and diligent services and pursue the client's lawful objectives in these cases, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a), and 1.3. By failing to maintain adequate communication with the clients, the respondent violated Mass. R. Prof. C. 1.4(a) and (b). In the first and second cases, the respondent's intentionally false, deceptive or misleading representations to the clients violated Mass. R. Prof. C. 8.4(c) and (h). By failing to take adequate steps in those cases to ensure his receipt of pleadings and papers from the court and opposing counsel, and by violating a court rule requiring him to give notice of his address change, the respondent violated Mass. R. Prof. C. 1.1, 1.3, 3.4(c), and 8.4(d).

In aggravation, the clients in Counts I and III lost the opportunity to pursue their causes of action. In mitigation of the respondent's lack of diligence only, the principal's unexpected retirement took the respondent by surprise and left him without resources or support to handle the cases for which he was expected to assume sole responsibility; the respondent had no experience or training in operating a law practice; and he was therefore unable to cope adequately with the demands of handling the cases on his own.

Bar counsel commenced formal disciplinary proceedings against the respondent in August 2013. In February 2014, the parties filed an amended petition for discipline and an answer and stipulation whereby the respondent acknowledged that the facts alleged in the amended petition could be proved by a preponderance of the evidence. The parties recommended that the respondent be suspended for nine months, and the board voted to accept the stipulation and the recommendation. On March 7, 2014, the Supreme Judicial Court entered an order for a nine-month suspension effective in thirty days.