IN RE: STEPHEN R. FOLLANSBEE

NO. BD-2014-030

S.J.C. Order of Term Suspension entered by Justice Duffly on March 12, 2014, with an effective date of April 11, 2014.[1]

SUMMARY[2]

The respondent received a term suspension of one year and one day for the conduct described below.

The respondent represented a client (Smith) in potential commercial real estate transactions, defense of collection matters and other transactional matters such as the drafting of incorporation papers and a real estate trust, from approximately August 2011 through December 2011. Smith claimed to be president and CEO of an ongoing investment firm and a person of means who bought and sold real estate. Smith provided the respondent with a character reference who was the local branch manager of the bank where the respondent had his accounts.

On a number of occasions from August through October of 2011, the respondent deposited funds of Smith into his IOLTA account, to be disbursed as requested by Smith. Smith informed the respondent that the funds deposited were to be used to satisfy obligations that he had incurred. The total amount of Smith's funds that the respondent deposited to his IOLTA account was $97,160.87. In addition, Smith offered to make some deposits to the respondent's IOLTA account himself and asked the respondent for deposit slips for that

[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.

purpose. The respondent gave to Smith deposit slips to enable Smith to make direct deposits into the respondent's IOLTA account.

On four occasions from August through October of 2011, Smith showed the respondent some deposit items that he said that he would deposit, and subsequently informed the respondent that he had deposited them to the IOLTA account. On each occasion, the respondent instructed his paralegal to note the deposits in the IOLTA check register, and they were so noted in the register. The total of these four deposits was $186,250.

At no time did the respondent confirm that the four deposits were made by Smith. The respondent did not ask that a receipt or other proof of deposit be returned to him or his law office, and he did not instruct his paralegal to confirm the deposits with the bank. Between August and November of 2011, the respondent issued various checks to or for the benefit of Smith from his IOLTA account, in the total amount of $283,410.87. In fact, however, Smith had not made any of the four deposits he told the respondent he had made. Thus, during this time frame, the respondent disbursed funds not supported by any Smith deposits in the IOLTA account totaling $186,250.

During the time of the above disbursements, the IOLTA account held substantially in excess of $186,250 in funds of other clients. No client was deprived of any funds for any length of time. None of the unsupported disbursements were to the benefit of the respondent or his law firm.

The respondent delegated the responsibility to maintain records of the IOLTA account to his paralegal and did not make reasonable efforts to assure that the paralegal was conducting proper reconciliations. The paralegal did not in fact perform adequate reconciliations and did not realize that the above four deposits had not been made until December of 2011. In the last week of December 2011, the respondent learned from his paralegal that the checks described above had never been deposited. After he was told that the items had not been deposited, the respondent withdrew from representation of Smith, demanded reimbursement, filed civil litigation against Smith, notified law enforcement of the situation and began to wind down his IOLTA account. Further, the respondent ceased use of his IOLTA account and transferred the balance to a new IOLTA account. On January 20,

2012, after confirmation of the amount, the respondent reimbursed his new IOLTA account from funds borrowed from a family member in the amount of $186,250.

The respondent's failing to make reasonable efforts to assure that his paralegal conducted proper reconciliations is conduct in violation of Mass. R. Prof. C. 5.3(a) and 1.15(f)(1)(E). The respondent's conduct in issuing disbursement checks without first confirming that the deposit items to support the checks had in fact been deposited and credited with good funds, resulting in the negligent misuse of client funds without deprivation, is the failure to safeguard client trust funds, in violation of Mass. R. Prof. C. 1.15(b) and 8.4(h).

In aggravation, on July 22, 2002, the respondent received a public reprimand for failing to timely account to a client for trust funds in his possession and for failing to cooperate with bar counsel. On January 2, 2007, the respondent received a thirty-day suspension subject to probationary terms for disciplinary violations in two matters. In the first matter, the respondent failed to provide competent representation, failed to seek the client's lawful objectives, failed to act with reasonable diligence and failed to adequately communicate with his client, in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.4. He also failed to withdraw from representation upon discharge in violation of Mass. R. Prof. C. 1.16(a) and, after his services were terminated, failed to return the client's file upon request in violation of Mass. R. Prof. C. 1.16(d) and (e). In the second matter, the respondent failed to provide competent representation, to seek the client's lawful objectives and to act with reasonable diligence, in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.4. The respondent successfully completed probation.

This matter came before the board on a stipulation of facts and disciplinary violations and a joint recommendation for a suspension of one year and one day. The Board of Bar Overseers accepted the parties' recommendation, and on March 13, 2014, the Court so ordered, effective thirty days from the date of the order.