



IN RE: ERNEST A. SOLOMON

NO. BD-2014-045

S.J.C. Order of Term Suspension entered by Justice Cordy on July 25, 2014.[†]

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[†] 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
No. BD-2014-045

IN RE: ERNEST A. SOLOMON

MEMORANDUM OF DECISION

The Board of Bar Overseers (board) has filed an information with this court recommending that the respondent, Ernest A. Solomon, be suspended from the practice of law for fifteen months. The conduct at issue involves the respondent's handling of monies (\$30,000 in all) posted as bail by a client in three criminal cases. The bail monies were subsequently returned to the respondent as assignee of the funds, and the client (an immigrant in the United States illegally) was taken into United States Immigration and Customs Enforcement (ICE) custody. The return of some of the bail monies followed false representations made by the respondent to the judge considering the client's failure to appear at the trial of one of his cases (as a result of ICE custody). See, e.g., Commonwealth v. Bautista, 459 Mass. 306 (2011) (case involving similar issues regarding return of bail when defendant unavailable because of ICE custody).

Bar counsel principally contends that the discipline imposed was substantially below that which is ordinarily imposed for the conduct in which the respondent engaged, and most particularly for misuse of his client's bail funds. Bar counsel essentially argues that the findings made by the hearing committee (committee) and adopted by the board, in the handling of the client's funds, constituted intentional conduct in violation of Mass. R. Prof. C. 8.4 (c) (dishonesty, fraud, deceit, or misrepresentation), rather than "reckless but not intentional" conduct, as characterized in the findings (and therefore not in violation of this provision of the Rules). Consequently, bar counsel seeks a finding under 8.4 (c) and term suspension of three years.

The respondent, on the other hand, agrees with the finding that any misuse of his client's funds was not done intentionally, but disagrees with the findings that he made "materially" false representations to the judge in connection with the posting (and ultimately return) of the bail in one of his client's cases. The respondent admits that his statements were false, but denies that they were "material." The board emphasized this misconduct in its ultimate conclusion that a fifteen month suspension was appropriate. The respondent seeks a term suspension of six months.

The hearing in this case appears to have been somewhat unique, with the committee ultimately concluding that the credibility of both the respondent and of his client (the complainant in the disciplinary matter) were "highly problematic." The committee went on to explain that "[f]raught with [the] topsy-turvy state of the evidence, and our general lack of confidence in the testimony of these two witnesses, aside from what we cite here in support of our findings, we do not credit any testimony from the respondent or his former client on dispositive issues."

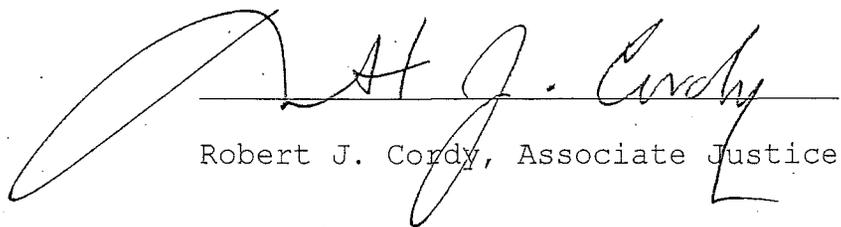
In spite of the committee's initial admonition, it went on to make detailed findings regarding the mishandling of the funds and the misrepresentations to the judge in a comprehensive decision. Those findings involved complex credibility determinations which I will not disturb. The board largely adopted the findings, conclusions, and sanction recommended by the committee, also in a thoughtful and thorough memorandum of decision.¹

Having heard the capable arguments of bar counsel and respondent's counsel, I decline to alter the board's findings and recommendation, where, viewed as a whole, the record fully supports them. Although it may be that bar counsel is correct

¹ Two members of the board dissented from the sanction, viewing it as insufficient.

that the extent of respondent's disregard for the rules of professional conduct in the handling of his clients' funds is so pervasive that it should be deemed intentional rather than merely reckless but not intentional, I am not inclined to rule as such on the state of the record and the obvious difficulties the committee faced in sorting out the conflicting and (apparently) largely noncredible testimony of the two central witnesses to the matter (the respondent and his client).

The respondent is therefore suspended for fifteen months.



Robert J. Cordy, Associate Justice

Date Entered: July 25, 2014