IN RE: LAWRENCE M. SLATER

NO. BD-2015-019

S.J.C. Order of Term Suspension entered by Justice Hines on March 17, 2015, with an effective date of April 16, 2015.[1]

SUMMARY[2]

The respondent, who was admitted to practice in 1973, received a two-year suspension for his conduct in two matters. The respondent admitted that the following factual allegations were true, and that he violated the rules of professional conduct cited below.

In about August 2009, a client engaged the respondent to represent her as plaintiff in a tort claim. On December 24, 2009, the respondent filed the client's civil claim in the superior court. In about January or February 2010, the respondent engaged in preliminary settlement discussions with the defendant's counsel. The defendant offered to settle the case by paying the client $5,000. The client refused the $5,000 settlement offer, and the parties did not agree on a settlement figure. After the spring of 2010, the respondent and defendant's counsel did not discuss the case further.

In January 2010, the court notified the parties that a judgment of dismissal would be entered because the client's total damages were not likely to exceed $25,000. The respondent did not take steps to prevent the case from being dismissed, or notify the client of the issue. After a judgment of dismissal entered on February 8, 2010, the respondent did not notify the client and take steps to re-file the lawsuit in the district court. After February 2010, the respondent performed no work of substance on the client's claim.

Between about April 2010 and May 2011, the respondent on multiple occasions informed the client, or intentionally implied, that the superior court lawsuit was ongoing and that he was attempting to settle the claim. The respondent knew, and intentionally failed to disclose to the client, that the case had been dismissed, and that he had not discussed settlement with opposing counsel since the spring of 2010. The respondent's statements and omissions to his client were intentionally false, deceptive, and misleading.

In the spring of 2011, the client asked the respondent to attempt to settle the civil claim immediately. The respondent did not inform the client that the case had been

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[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.

dismissed or discuss options for re-filing the lawsuit. In about April or May 2011, the respondent intentionally misrepresented to the client that he had received a written settlement offer from the defendant. The respondent fabricated a settlement agreement purportedly authored by opposing counsel, offering to pay the client $30,000. On or about May 24, 2011, the respondent gave the fabricated agreement to his client.

Shortly thereafter, the client learned that the case had been dismissed, and she contacted the respondent. On or about May 27, 2011, the respondent acknowledged that there had never been a $30,000 settlement offer. The respondent told the client that he hoped to convince the defendant to pay $10,000 and that he would make up the difference. On or about May 31, 2011, the client terminated the respondent's representation of her in all matters. The respondent never made any payment to the client with respect to the tort matter.

By failing to handle his client's tort claim with the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation, the respondent violated Mass. R. Prof. C. 1.1. By failing to seek his client's lawful objectives, the respondent violated Mass. R. Prof. C. 1.2(a). By failing to act with reasonable diligence and promptness in representing his client, the respondent violated Mass. R. Prof. C. 1.3. By failing to keep his client reasonably informed about the status of her matter and by failing to explain the matter sufficiently to his client to allow her to make informed decisions about the representation, the respondent violated Mass. R. Prof. C. 1.4(a) and (b). By making intentional misrepresentations to his client and by fabricating a settlement agreement, the respondent violated Mass. R. Prof. C. 1.4(a) and (b), and 8.4(c) and (h).

The respondent also represented the client in her divorce. On February 8, 2010, the respondent filed a complaint for divorce on her behalf. The husband was represented by counsel. The parties agreed to sell the marital home, and the closing took place on September 14, 2010. The respondent and the husband's counsel orally agreed that the respondent would hold the proceeds from the sale of the marital home in escrow until the parties reached an agreement about the disposition of the funds, and that the respondent would not disburse any funds without notice to and consent from opposing counsel unless ordered by the court to do so. The respondent attended the closing and received checks for the sellers' net proceeds in the total amount of $157,325.64. On September 15, 2010, the respondent deposited the sales proceeds to his IOLTA account.

With the agreement of the husband's counsel, the respondent disbursed $10,000 to each party on about September 17, 2010, and $56,162.00 to each party on about December 3, 2010. After these disbursements, the respondent should have been holding $25,001.64 in escrow. Between about October 14, 2010 and December 9, 2010, the respondent intentionally misappropriated not less than $7,653 of the real estate escrow funds by making payments to himself from the IOLTA account. By December 9, 2010, the balance in the IOLTA account was only $17,347.96. The respondent disbursed the funds without notice to the husband's counsel and without authority from the court.

On March 11, 2011, the respondent paid $4,958 from the escrow funds to his client without notice to opposing counsel and without authority from the court. The respondent knew that he was not authorized to disburse these funds. Between about October 14, 2010,

and May 5, 2011, the respondent intentionally misappropriated not less than $19,929 of the real estate escrow funds by making payments to himself from the IOLTA account. By May 5, 2011, the balance in the IOLTA account was only $113.96. The respondent did not notify the opposing counsel that he was making payments to himself from the real estate escrow funds, and he made the payments to himself with the knowledge that he was not authorized to use the funds for this purpose.

On or about May 31, 2011, the client discharged the respondent from her divorce case and retained new counsel, who asked the respondent to turn over the escrow funds to him. On May 31, 2011, the respondent deposited $35,000 in personal funds to the IOLTA account. On May 31, 2011, the respondent delivered to successor counsel an IOLTA check in the amount of $25,001.64.

By releasing escrow funds to his client and to himself without notice to, and before an agreement had been reached with, opposing counsel regarding disposition of the proceeds, or without first obtaining a court order, the respondent violated Mass. R. Prof. C. 1.15(b) and (c), and 8.4(c) and (h). By intentionally misappropriating at least $19,929 of the real estate escrow proceeds, the respondent violated Mass. R. Prof. C. 1.15(b) and (c), and 8.4(c) and (h).

From at least July 2004 through the present, the respondent failed to make and maintain all required records for his IOLTA account, including a contemporaneous check register, a ledger for each client or third person from whom he received trust funds, a ledger for his own funds deposited to the account, and reconciliation reports prepared at least every sixty days. The respondent's failure to reconcile his IOLTA accounts and maintain required records for the accounts violated Mass. R. Prof. C. 1.15(f)(1)(B)-(E).

In a second matter, a client retained the respondent in about July 2007 to represent her in connection with a dispute with two other condominium owners. On September 10, 2007, the respondent filed a civil action on the client's behalf against the other two unit owners, alleging breach of contract, breach of fiduciary duty, infliction of emotional distress, and discrimination.

On or about January 25, 2010, the respondent received a notice from the court that a final pre-trial conference in the case would be held on April 14, 2010, and that trial counsel were required to attend and submit a joint pre-trial memorandum to the court. The respondent told the client that she did not need to be present. The respondent did not appear at the pre-trial hearing, and he did not file a pre-trial memorandum. On April 16, 2010, the court entered a judgment of dismissal without prejudice for failure to prosecute. The respondent received the judgment of dismissal, but he did not notify the client and seek to have the case reinstated. After April 2010, the respondent performed no work of substance on the matter.

Between April 2010 and about July 2012, the respondent repeatedly intentionally misrepresented to the client that the case was ongoing and that he was attempting to settle it. In 2010, the respondent intentionally misrepresented to the client that he had negotiated a $35,000 settlement with the defendants' attorneys and that the defendants were to make an initial payment of $5,000 and would pay the remaining balance in installments. In fact, the

respondent did not engage in any settlement discussions with the defendants after the case was dismissed in April 2010, and did not receive any funds from the defendants. The respondent's statements were intentionally false, deceptive, and misleading.

In December 2011, the respondent asked the client to sign an affidavit to be used in ongoing settlement negotiations and to attempt to obtain a lien on property owned by the defendants in order to secure any judgment. In fact, the respondent was not engaging and had not engaged in any settlement discussions with the defendants. The respondent's preparation of the affidavit and his statements to her regarding the purpose of the affidavit were dishonest, false, fraudulent, and misleading.

In about July 2012, the respondent intentionally misrepresented to the client that he was meeting with the defendants to settle the case, and then that he had collected a total of $40,000 in settlement funds from the defendants. When the client asked the respondent to pay her the settlement funds, the respondent gave the client various intentionally false reasons why he could not turn over the funds. The client continued to call the respondent in August 2012 to ask about the supposed settlement. The respondent received the client's messages, but he did not return the calls and did not respond to a certified letter he received from the client.

By failing to handle his client's case with the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation, the respondent violated Mass. R. Prof. C. 1.1. By failing to seek the lawful objectives of his client, the respondent violated Mass. R. Prof. C. 1.2(a). By failing to act with reasonable diligence and promptness in representing his client, the respondent violated Mass. R. Prof. C. 1.3. By failing to keep his client reasonably informed about the status of her matter and to promptly comply with her reasonable requests for information, and by failing to explain the matter sufficiently to his client to allow her to make informed decisions about the representation, the respondent violated Mass. R. Prof. C. 1.4(a) and (b). By making intentional misrepresentations to his client and by providing her with an affidavit to sign when the respondent knew that he was not in negotiations on the client's behalf , the respondent violated Mass. R. Prof. C. 1.4(a) and (b), and 8.4(c) and (h).

In aggravation, the respondent was previously disciplined for similar misconduct. See *Matter of Slater*, 21 Mass. Att'y Disc. R. 6006 (2005) (public reprimand for failing to file a divorce action and to finalize a separation agreement for a client, and for making intentional misrepresentations to the client that he had filed the divorce complaint).

Bar counsel filed a petition for discipline on July 7, 2014. On January 30, 2015, the parties filed a stipulation of facts and disciplinary violations and a joint recommendation that the respondent be suspended for two years. On February 23, 2015, the board voted to recommend that the Supreme Judicial Court for Suffolk County accept the parties' stipulation and joint recommendation for discipline. On March 17, 2015, the county court (Hines, J.), ordered that the respondent be suspended from the practice of law for two years, effective thirty days from the date of the order.