IN RE: RICHARD BARTLETT JOHANSEN

NO. BD-2015-026

S.J.C. Order of Term Suspension entered by Justice Botsford on March 19, 2015, with an effective date of April 18, 2015.[1]

SUMMARY[2]

The respondent received an eighteen-month suspension from the practice of law for intentional misuse of clients' funds, without deprivation, in two unrelated matters; failure to properly maintain IOLTA records over a four-year period; and failing to respond to a subpoena resulting in a finding of contempt.

The respondent was retained by clients in 2008 to file a chapter 7 bankruptcy petition on their behalf. At the time the bankruptcy was filed, the clients were plaintiffs in a pending class action lawsuit and the value of the claim was not determined. The clients were represented by a Buffalo, New York, law firm in the class action litigation and had entered into a contingent fee agreement with the Buffalo firm.

By February 2010, during the pendency of the bankruptcy matter, the class action lawsuit was settled. The Buffalo firm sent settlement proceeds in the amount of $50,470.08 to the respondent, who in turn forwarded the proceeds to the chapter 7 trustee. The Buffalo firm claimed $14,998.16 in fees and costs but did not withhold that amount from the proceeds, as both the respondent and the trustee knew.

The respondent and the trustee then negotiated disbursement of the settlement proceeds. The trustee sent a final distribution check for $18,563.90 to the respondent, who deposited the check into his IOLTA account on September 1, 2010. The respondent disbursed $3,565.74 to the clients and retained $14,998.16, the amount he knew the Buffalo firm was claiming in attorneys' fees and costs. The respondent was uncertain as to whether the Buffalo firm was entitled to the funds based upon the bankruptcy disposition. The respondent did not transfer these funds into a separate interest-bearing trust account.

The respondent thereafter knowingly misused some or all of the retained funds for unrelated client, business or personal obligations. By September 17, 2010, the balance in the IOLTA account was $6,515.06 without any further payments made to or for the benefit of the clients.

From 2011 until September of 2013, the Buffalo law firm unsuccessfully attempted to resolve the matter of their attorneys' fees and costs with the respondent. In September of

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

[2] Complied by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court

2013, the firm filed a motion to reopen the clients' bankruptcy matter to resolve their claim. The bankruptcy court denied the motion on October 16, 2013, based upon lack of jurisdiction over the funds at issue. On October 17 and 18, 2013, the respondent distributed the remaining funds to which the clients were entitled from the IOLTA account.

The Buffalo law firm filed a civil lawsuit against the respondent in the State of New York to recover the $14,998.16 they claimed they were owed. The respondent unsuccessfully attempted to dismiss the New York civil action and failed to timely file an answer to the complaint. In March of 2014, the New York court entered a default judgment against the respondent of $15,243.16 plus interest. An informational subpoena was served upon the respondent in April of 2014 pursuant to New York civil procedural rules. The respondent knowingly failed to respond to the subpoena and failed to attend a hearing on the Buffalo firm's motion for contempt. On June 6, 2014 an order of contempt was entered against the respondent for failure to respond to the informational subpoena.

By intentionally misusing trust funds, the respondent violated Mass. R. Prof. C. 1.15(b) and 8.4(c) and (h). By failing to maintain the trust funds in a separate interest-bearing account, the respondent violated Mass. R. Prof. C. 1.15(e)(5)(ii). By knowingly failing to respond to the informational subpoena, resulting in a finding of contempt, the respondent violated Mass. R. Prof. C. 3.4(c) and 8.4(d) and (h).

In the second matter, the respondent received a check in the amount of $50,322.30 payable to him as administrator of an estate. The respondent deposited these funds into his IOLTA account on January 26, 2011, and did not transfer the funds to an estate account or other individual, interest-bearing trust account. For reasons outside of the respondent's control, he did not complete distribution of the estate funds until May of 2014. Before the beneficiaries were paid, the respondent knowingly misused some or all of the estate funds to pay unrelated client, business or personal obligations.

By intentionally misusing estate funds, the respondent violated Mass. R. Prof. C. 1.15(b) and 8.4(c) and (h). By failing to maintain the estate funds in a separate interest-bearing trust account, the respondent violated Mass. R. Prof. C. 1.15(e)(5)(ii).

From 2008 through at least December 2012, the respondent failed to keep adequate records of his receipt, maintenance and disbursement of clients' funds held in his IOLTA account. He also withdrew earned fees from his IOLTA account without rendering to clients in writing an itemized bill of services rendered, notice of the date and amount withdrawn, and a statement of the balance of client funds left in the account. This conduct was in violation of Mass. R. Prof. C. 1.15(f)(1) and 1.15(d).

The matter came before the Board of Bar Overseers on a stipulation of facts and rule violations and a joint recommendation for an eighteen-month suspension. On February 23, 2015, the board voted to accept the stipulation and joint recommendation.

An Information was filed with the Supreme Judicial Court for Suffolk County on March 16, 2015. On March 19, 2015, the county court (Botsford, J.) entered an order suspending the respondent from the practice of law for eighteen months.