IN RE: ANTHONY R. DIFRUSCIA
NO. BD-2015-027
S.J.C. Order of Term Suspension/Stayed entered by Justice Hines on May 11, 2015.[1]

SUMMARY[2]

Anthony R. DiFruscia (the respondent) was admitted to the practice of law in Massachusetts on June 1, 1967.

William S. (William) died intestate on April 3, 1997. William's heirs at law were his four siblings, Natina, Benito, Guido, and Velina. In August 1997, Natina was appointed to be administratrix of William's estate. The respondent represented Natina as administratrix.

In September 2000, the respondent settled a wrongful death suit on behalf of William's estate for $450,000. After payment of legal fees and expenses, the remaining estate funds totaled $285,164.49. The respondent did not cause or advise Natina to distribute to the other heirs funds that they were entitled to receive. Until March 31, 2011, the respondent did not file, or advise Natina or her successor to file, on her behalf, an inventory for William's estate.

Commencing in 2000, the respondent used $200,000 of settlement funds to purchase a certificate of deposit in the name of the estate. The respondent rolled over the CD funds on several occasions until September 2009, when he transferred $221,876.45, representing the original amount of the CD plus interest, into his IOLTA account. He maintained those funds in that account for several years. The estate funds held by the respondent in his IOLTA account were not nominal in amount and were held in the IOLTA account for a more than a short time period. As a consequence, the respondent was required to hold those funds in a separate interest-bearing account with the interest accruing to the estate. In December 2013, at the direction of bar counsel, the respondent transferred what remained of those funds, $190,000, to a separate estate account.

---

[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.

On January 6, 2007, Natina died. On July 23, 2010, the respondent filed a petition for the appointment of Natina's daughter, Deborah, as administratrix of William's estate. Deborah was appointed on September 17, 2010. The respondent did not at any time prepare for Deborah any account, tax return or affidavit of no tax due, and he did not distribute any assets of William's estate to the surviving heirs.

On October 10, 2007, Deborah, represented by the respondent, was appointed executrix of Natina's estate. The respondent, on behalf of Deborah, filed an inventory for Natina's estate on November 29, 2007, indicating that the estate had a total of $115,567 in assets. Although Deborah distributed some of Natina's estate assets to the heirs, the respondent did not transfer to the estate or distribute to Natina's heirs that portion of the assets of William's estate that were due to Natina. The respondent never prepared an account for Deborah to file in Natina's estate.

By failing on behalf of Deborah, to file accounts, marshal all of the estate's assets, and to distribute the assets that were marshaled in a timely manner, in William and Natina's estates, the respondent failed to represent his client diligently and to seek her lawful objectives through reasonably available means, in violation of Mass. R. Prof. C. 1.1, 1.2(a) and 1.3.

Benito, another heir to William's estate, died intestate on March 20, 2009. In April 2010, Deborah engaged the respondent to obtain her appointment as administratrix and assist her in administering the estate. On May 3, 2010, the respondent filed a petition for administration and for appointment of Deborah, and she was appointed on July 15, 2010. After July 15, 2010, the respondent took no further action regarding the estate. He did not prepare an inventory or any accounts for Deborah to file, and he did not file any required tax returns or affidavit of no tax due. The assets of the estate were, at least, Benito's share of William's Estate. The respondent did not marshal those funds for Benito's estate.

By failing to file an inventory and account, marshal the assets, distribute the assets to the heirs, and file any necessary tax returns or statement of no taxes due with respect to Benito's estate, the respondent failed to represent Deborah with reasonable diligence and to seek her lawful objectives through reasonably available means, in violation of Mass. R. Prof. C. 1.1, 1.2(a) and 1.3.

In 2009, the respondent, representing Deborah and her husband, filed motions to have them appointed temporary, and then permanent, guardians of Guido. The court appointed Deborah and her husband as permanent guardians of Guido in March 2009. Guido's assets included at least his share of William's estate. The respondent failed to marshal those funds or

distribute them to the guardianship estate. Guido died in August 2011. The respondent never prepared or filed an account on behalf of the guardians.

By failing to marshal the assets of the guardianship estate or file an account, the respondent failed to act with reasonable diligence and promptness in administering the guardianship, in violation of Mass. R. Prof. C. 1.1 and 1.3.

On or about March 1, 2014, without consulting or obtaining the consent of his client, Deborah, the respondent transferred all of the files from the estates of Natina, William, Benito and the guardianship of Guido to an attorney unaffiliated with his office. By sharing the contents of confidential files with an attorney not affiliated with his office without the consent of his client, the respondent violated Mass. R. Prof. C. 1.6(a).

The respondent, at all relevant times, failed to keep records of the estate funds and other client funds that he held in compliance with Mass. R. Prof. C. 1.15(f)(1)(B), (C), (D) and (E); and he commingled client funds with his own funds, in violation of Mass. R. Prof. C. 1.15(b).

In mitigation, the respondent has now brought his IOLTA record-keeping into compliance with the applicable rules.

This matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation that the respondent be suspended for six months, with the execution of the suspension stayed for two years (probationary period) with specified conditions, including that during the probationary period, the respondent retain an accountant at his own expense, who would examine the respondent's trust account records every four months and certify to bar counsel that a three-way reconciliation had been performed and balanced, and that the respondent was maintaining compliant records.

On March 9, 2015, the board voted to accept the stipulation of the parties and file an information with the Supreme Judicial Court recommending discipline as set out in the stipulation. On May 11, 2015, the Court entered an order suspending the respondent for six months, with the execution of the suspension stayed for a probationary period of two years from the date of entry of the order, conditioned on compliance with the probationary conditions contained in the stipulation. The Court further ordered that if the respondent failed to comply with any of the terms and conditions of the order, bar counsel may petition the Court for immediate imposition of the six-month suspension on the respondent.