



IN RE: THOMAS A. LANDRY, ESQ.

NO. BD-2015-075

S.J.C. Order of Term Suspension entered by Justice Botsford on October 27, 2015, with an effective date of November 26, 2015.¹

SUMMARY²

The respondent was suspended for nine months for charging and collecting a clearly excessive fee; failing to explain sufficiently the contingent fee agreement to his clients so that they could make an informed decision; and giving knowingly false answers to the clients' questions about the fee agreement.

The respondent had known a woman for many years and, beginning in the 1980's, he represented her and her husband in various matters. Throughout his representation of both the client and her husband prior to 2001, the respondent billed them on an hourly basis at a rate of \$100 to \$200 per hour, or less.

Through his representation of the client, the respondent learned that she had inherited 33% of the shares in a successful closely-held corporation of which her two brothers each owned 33%; the remaining shares were owned in a family trust. He was aware that her shares were subject to a 1986 stock purchase agreement. On numerous occasions throughout the 1990s, the client told the respondent that she hoped to be bought out of the company.

In the spring of 2001, the client and her husband met with the respondent in his office to retain him to represent her in selling her shares in the corporation to her brothers. She told the respondent she had four objectives in the transaction: (1) that she obtain the highest possible purchase price for her shares; (2) that the discount rate to be applied to the "book value" of the shares be lowered from 35% as was established in the stock purchase agreement; (3) that the interest rate for any payments the corporation would make to her be as high as possible; and (4) that she retain control over her shares until the corporation made the final payment under any agreement.

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 March 26, 2001, the respondent met with the client and her husband in his office, where he presented them with a one-page contingent fee agreement, which was a pre-printed form with typed-in language. It provided that he would handle the “[v]aluation, negotiation, and contract for purchase and sale of all stock shares held in [the] Corporation held by or on behalf of [the client],” for which she would pay him 1.5% of the amount collected, plus a \$10,000 down payment to the respondent for “preliminary work.” At the hearing, the respondent testified that the \$10,000 was an advance on expenses.

At the meeting, the respondent did not explain to his clients his reasons for requiring a contingent fee agreement instead of billing them at an hourly rate, as they had done historically. He instructed the clients to read the agreement and notify him of any questions, but did not explain the agreement or any of its terms.

The husband asked the respondent: (a) whether it was customary in the field to charge a contingent fee to handle a corporate stock repurchase transaction; and (b) whether another lawyer would present them with the same type of agreement. The respondent gave knowingly false affirmative replies to both questions. In fact, the respondent had never used a contingency fee agreement for a corporate transaction and had never heard of one being used by any other lawyer in such circumstances. The clients and the respondent all signed the contingent fee agreement that day. At the time the clients retained the respondent, he had very little experience in corporate work.

Soon after the March 26, 2001 meeting, the respondent hired an individual to appraise the client’s interest in the corporation. The appraiser estimated the value of client’s shares to be between \$19.5 million and \$21.2 million, assuming a 35% discount rate, and reported it to the respondent and clients in August and September of 2001. Between March and mid-November, 2001, the respondent did very little else of substance on the matter aside from meeting with the appraiser.

In the time leading up to the sale, client negotiated directly with one of her brothers for a reduction in the discount rate for purchase of her shares from 35% to 25%. The corporation obtained an appraisal of the client’s shares, which valued the shares at \$17,882,100, applying a 25% discount rate. This appraisal report was provided to the client in September of 2001.

The corporation had separate counsel. In a letter dated November 17, 2001, the respondent informed the corporation’s counsel that the corporation’s appraisal figure of \$17,882,100 was acceptable to the client. Attorneys from the corporation’s counsel drafted the repurchase agreement and sent the first draft to the respondent on or about December 28, 2001.

The closing took place on January 8, 2002, at the corporation's counsel's offices. The respondent wanted the closing to be on or before January 8 because he was leaving for a vacation in Hawaii on January 9, 2002.

The corporation purchased the client's shares for \$17,882,100. Payments were to be made over time at the interest rate initially proposed by the corporation. On the date of closing, the client had to surrender all control over her shares.

As payments were made to the clients, the respondent billed them for 1.5% of the amounts they received from the corporation. When the client received a payment from the corporation, she would report the amount received to the respondent. In turn he would bill her for 1.5% of that amount. Beginning in 2002 and continuing through the summer of 2004, client and her husband paid the respondent in a timely manner as they were billed, resulting in his collection of \$121,689.07 in legal fees.

The respondent's fee was substantially in excess of a reasonable fee for the services rendered and was clearly excessive. The stock transaction did not present any novel or difficult questions or issues. The matter did not preclude the respondent from taking other employment or impose unusual time limitations. The fee charged was not justified by the results obtained or by the experience, reputation or abilities of the respondent. Contingent fees are not customarily charged in the locality for similar legal services. There was no real contingency in the transaction, since there was no risk that client would receive less than book value for her shares as determined by a formula contained in the stock purchase agreement.

The contingent fee, proposed by the respondent and accepted by the clients, created what the superior court later described as a "true financial windfall" for him at the expense of his clients. For his own financial gain, the respondent knowingly took advantage of the trust and friendship of the clients, with whom he had a longstanding relationship.

The hearing committee did not credit the respondent's testimony that there was a contingency that the stock repurchase might not occur and that the clients would then sue client's brothers, resulting in costly and problematic litigation. The contingency fee agreement did not include such litigation within the scope of services to be provided. In fact, there was no mention of litigation at the time the respondent met with the clients to have them sign the fee agreement. Moreover, the stock repurchase agreement provided the basic terms and the client, who had been waiting for years for the opportunity to sell her stock, would never have authorized such litigation against her brothers or the corporation. In fact,

the client yielded on three of the four conditions she had previously set, presumably in order to conclude the transaction. While the client was able to negotiate a lower discount rate herself, she did not get a purchase price or interest rate on payments higher than offered by the corporation. She was also not able to retain control over her shares, as she surrendered them at the closing.

In July, 2004, after speaking with their accountant, the clients stopped paying the respondent. In November, 2004, the respondent brought a civil action in Middlesex Superior Court to recover \$186,116.94, the remainder of his fee due under the contingent fee agreement, representing a total of \$307,806.01 in legal fees for his work in the transaction. The clients filed a counterclaim alleging breach of contract, charging an excessive fee, and violations of G.L. c. 93A.

After trial, the jury found that a reasonable fee was \$50,000, and judgment entered against the respondent for \$71,689.07, the difference between what he had collected and \$50,000. The trial judge separately found that the respondent had violated G.L. c. 93A, trebled the damages, and awarded \$250,000 in attorneys' fees to client and her husband. Adding interest and costs, judgment entered for the defendants in the amount of \$502,756.28. The respondent appealed and the decision was affirmed.

On November 11, 2008, the respondent filed for bankruptcy in the United States Bankruptcy Court and attempted to discharge his financial obligation to the clients. The clients thereafter filed an adversary proceeding in the respondent's bankruptcy case, contesting the dischargeability of his outstanding debt to them.

In October of 2013, the parties settled that proceeding and the superior court judgment with payments by the respondent to the clients totaling \$70,000.

The hearing committee found no special factors in mitigation. The respondent's repayment of \$70,000 (far less than the amount owed) and only after losing at trial and on appeal, and unsuccessfully attempting to have his debt discharged in bankruptcy, is not mitigating. See *Matter of LiBassi*, 449 Mass. 1014, 1017, 23 Mass. Att'y Disc. R. 396 (2007) (recovery after a lawsuit or settlement "is not 'restitution' for purposes of choosing an appropriate sanction"); *Matter of Hollingsworth*, 16 Mass. Att'y Disc. R. 227, 236 (2000) (restitution achieved by client through court action is not mitigating); *Matter of Concemi*, 422 Mass. 326, 330, 12 Mass. Att'y Disc. R. 63, 69 (1996) (court-ordered restitution is not a special mitigating factor).

The respondent claimed that the clients initially did not object to the fee and offered

to pay the full fee in advance, rather than waiting for the installment payments to be made by the buyers. However, a client's acquiescence to an unreasonable fee does not afford him a "safe harbor." *Matter of Fordham*, 423 Mass. 481, 491-491, 12 Mass. Att'y Disc. R. 161, 175-177 (1996), *cert. denied* 519 U.S. 1149 (1997).

In aggravation, the hearing committee noted the respondent's substantial experience in the practice of law; the harm caused to the clients; that his misrepresentation of the use of a contingent fee agreement was motivated by selfish pecuniary interest; his "complete lack of awareness of and refusal to acknowledge the wrongful nature of his conduct"; and his "complete lack of remorse and candor while testifying before" the hearing committee.

The respondent's failure to explain sufficiently the contingent fee agreement to his clients such that they could make an informed decision violated Mass. Rule Prof. C. 1.4(b). His knowingly false responses to the husband's questions about the customary use of contingent fee agreements in corporate stock repurchase transactions violated Mass. Rule Prof. C. 8.4(c). By entering into an agreement for, charging, collecting and attempting to collect up to \$307,806.01 for his work in the stock repurchase transaction between the corporation and his clients, the respondent violated Mass. Rule Prof. C. 1.5(a).

Based on the respondent's other misconduct in addition to his having made intentional misrepresentations to the clients, charged a clearly excessive fee and without making full restitution, together with the factors in aggravation, the hearing committee recommended that the respondent be suspended for nine months.

On July 13, 2015, the Board voted to adopt the hearing committee's report and recommendation to file an information with the Supreme Judicial Court, recommending that the respondent be suspended from the practice of law for nine months. The Court so ordered on October 27, 2015.