

**IN RE: JOHN HIMMELSTEIN****NO. BD-2016-006****S.J.C. Order of Term Suspension/Stayed entered by Justice Cordy on March 17, 2016.¹****SUMMARY²**

The respondent, John Himmelstein, was admitted to the practice of law in Massachusetts on January 6, 1986. In this matter, the respondent was suspended from practice for three months, with the suspension stayed for two years, on the condition that he comply with recommendations made by Lawyers Concerned for Lawyers.

In October 4, 2012, the client engaged the respondent to represent her as a plaintiff in a premises liability action already pending in the Middlesex Superior Court. On or about January 22, 2013, the defendants served interrogatories and requests for production of documents on the respondent. As of May 30, 2013, the respondent had not prepared or served responses to the discovery. During this period, the respondent also failed to reply to his client's repeated attempts to reach him about the discovery.

On May 30, 2013, the defendants served the respondent with a motion to compel. The respondent began to work on responding to the discovery, but did not prepare or serve on defendants either discovery responses or an opposition to the motion to compel. On June 20, 2013, the court issued an order compelling the client to answer the discovery. The respondent did not comply with the order.

On August 13, 2013, the defendants moved to hold the client in contempt for failure to comply with the order. On August 21, 2013, the court dismissed the client's case as a sanction for failing to comply with the order. On August 22, 2013, the court issued a judgment of dismissal.

Shortly thereafter, the respondent prepared and provided the client with a draft motion for relief from the judgment. However, the client chose to terminate the respondent's representation, and did not file the motion until more than a year later. At that time, in October 2014, the court denied the motion.

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.

By failing to serve or file timely responses to the defendants' discovery, an opposition to the defendants' motion to compel, and a response to defendants' motion to hold the client in contempt; the respondent failed to provide competent representation, failed to seek the client's objectives, and failed to provide diligent representation, in violation of Mass. R. Prof. C. 1.1, 1.2(a), and 1.3, respectively.

By failing to return the client's telephone calls concerning the discovery, the respondent failed to promptly comply with her reasonable requests for information, in violation of Mass. R. Prof. C. 1.4(a).

In aggravation, the respondent had a history of discipline, including a 2008 suspension for neglect of two immigration matters, and an earlier public reprimand and private reprimand.

This matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations. On January 13, 2016, the board voted to recommend that the respondent be suspended for three months, with execution of the suspension stayed for two years on the condition that the respondent comply with recommendations made by Lawyers Concerned for Lawyers. On March 17, 2016, the Court entered an order imposing the recommended stayed suspension with conditions, and LCL is to issue its recommendation within sixty days of the entry of the order.