

**IN RE: PAUL D. McCARTHY****NO. BD-2016-038****S.J.C. Judgment of Disbarment entered by Justice Botsford on August 12, 2016.¹****SUMMARY²**

The respondent was disbarred for, among other conduct, intentionally misusing client funds and failing to make restitution.

The respondent, Paul D. McCarthy, was admitted to the bar of Massachusetts on June 14, 1999. On May 19, 2016, the Supreme Judicial Court issued an order temporarily suspending the respondent from the practice of law in Massachusetts, pending further proceedings before the Board of Bar Overseers and further order of the Court. On June 14, 2016, the respondent submitted to the Board of Bar Overseers, pursuant to S.J.C. Rule 4:01, §15, an affidavit of resignation. In that affidavit, the respondent admitted bar counsel could prove, by a preponderance of the evidence, the material facts upon which the motion for temporary suspension was predicated. On August 12, 2016, the Supreme Judicial Court issued an order disbarring the respondent from the practice of law in Massachusetts, effective immediately upon entry.

The facts alleged in the petition for temporary suspension are as follows:

On or about July 5, 2013, the clients engaged the respondent to represent them in a bankruptcy proceeding. At that time, the clients had substantial debt and their chief asset was a multi-story residential building in Lawrence, Massachusetts, which they held as income property. The clients had defaulted on their mortgage on the property. On August 13, 2013, the respondent on behalf of the clients filed a Chapter 13 Voluntary Petition.

The respondent advised the clients that they should attempt to arrange a “short sale” of the real estate to pay off the mortgage and other debt. Thus, on September 11, 2013, the respondent filed a liquidation plan with the bankruptcy court, by the terms of which the clients would sell the Lawrence property, valued at \$575,000. In October, the mortgage holder moved for relief from the automatic stay. Eventually, the clients located a buyer and the mortgage holder agreed to accept an amount somewhat lower than he claimed was due to him. The clients and mortgage holder submitted to the court a stipulation concerning the sale and payoff of the mortgage.

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.

At the closing on April 24, 2014 the closing attorney disbursed a check for \$380,000 to the mortgage holder. She disbursed checks for \$86,323 and \$4,427 to the respondent, who deposited them to his IOLTA account. After the closing and approval by the court of the parties' stipulation, the mortgage holder's counsel sent the respondent a check for \$21,602. The respondent also deposited that check into his IOLTA account.

After receiving all of the payments, the respondent should have been holding \$104,575.49 in trust for the bankruptcy estate. He made no further disbursement of those funds to any creditor of the clients. Between May 28, 2014 and November 20, 2014, however, the respondent drew funds from his IOLTA account in IOLTA checks made out to himself or to his law firm in even amounts such as \$500, \$1000, and \$2000. None of those checks contained any notation indicating the client on whose behalf the checks are written. A substantial portion of the funds withdrawn by the respondent from the IOLTA account by means of those checks belonged to the clients' bankruptcy estate.

On November 5, 2014, acting on the trustee's motion, the bankruptcy court dismissed the client's case for failure of the debtor to make plan payments. By December 1, 2014, as a result of his steady withdrawal of funds, the respondent's IOLTA balance was \$22,052.66. Putting aside any funds that the respondent was holding for others, the balance was \$82,787 less than the \$104,575.49 the respondent should have been holding for the clients.

In December 2014, the clients requested that the respondent remit to them the proceeds of the sale of the Lawrence real estate. After depositing personal funds into the IOLTA account, the respondent disbursed to the clients a total of \$54,000. He never remitted additional funds to the clients or accounted to them for the remainder of the funds, which amounted to more than \$50,000.

In May 2015, the clients made two written requests for their file from the respondent. The respondent never furnished a copy of the file to the clients. On July 21, 2015, the clients submitted a written request for investigation. In the course of bar counsel's investigation, the respondent admitted, among other matters, that he had not maintained during the relevant time period the IOLTA records required by Mass. R. Prof. C. 1.15(f)(1).

By intentionally misusing funds belonging to the clients' bankruptcy estate, the respondent engaged in conduct involving dishonesty, deceit, fraud and misrepresentation in violation of Mass. R. Prof. C. 8.4(c).

By failing to deliver to the clients all the funds they were entitled to receive upon the dismissal of the bankruptcy, the respondent violated Mass. R. Prof. C. 1.15(c).

By failing to provide to the clients a full written accounting of the proceeds of the sale of their real estate, upon final distribution of the property, the respondent violated Mass. R. Prof. C. 1.15(d)(1).

By failing to create and/or maintain a chronological check register, individual client records, a bank fee ledger and reconciliation reports for his Citizens Bank IOLTA account, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(B)(C), (D) and (E).