ROBERT S. WOLFE

PUBLIC REPRIMAND NO. 2014-6

Order (public reprimand) entered by the Board June 25, 2014.

SUMMARY[1]

The respondent was admitted to the Massachusetts bar on April 26, 1971.

Pursuant to a written contingent-fee agreement dated April 5, 2007, the respondent agreed to represent a client in bringing claims against the client's lender, who the client alleged had wrongfully refused to extend credit to his company, resulting in the company's bankruptcy. Before the respondent was able to file a lawsuit against the lender, the lender initiated its own action against the client on April 13, 2007. The respondent prepared an answer and a counterclaim, which asserted affirmative claims against the lender for breach of contract, conspiracy, unfair and deceptive trade or business practices, and interference with contractual relations. These affirmative claims were the same claims the respondent would have brought had he initiated suit against the lender first. The respondent continued to represent the client in this matter until March of 2011, when final judgment was entered in the lender's favor.

During the course of the representation, the client tendered to the respondent $10,000 to pay out-of-pocket costs and expenses incurred by the respondent. The respondent deposited the $10,000 into his IOLTA account. The respondent failed to maintain complete records of his receipt, maintenance and disposition of those funds, failed to prepare regular and periodic reconciliation reports, failed to maintain a chronological check register or individual client matter ledgers, and failed to reconcile his trust account every sixty days in violation of Mass. Prof. C. 1.15(f)(1),(B),(C),(E) and (F). On multiple occasions during the representation, the client requested that the respondent provide an accounting setting forth the manner in which his $10,000 payment had been applied. Despite these requests, the respondent never supplied the client with an accounting, in violation of Mass. R. Prof. C. 1.5(c) and 1.15(d)(1). The respondent did, in fact, incur in excess of $10,000 in costs and expenses in connection with his representation of the client and was ultimately able to account for those expenses to the client and to bar counsel.

---

[1] Compiled by the Board of Bar Overseers based on the record of proceedings before the board.

In May of 2009, the respondent agreed to represent the same client in a separate matter involving the client's attempted purchase of claims belonging to his company from the bankruptcy trustee. These were claims that his company had against a supplier who had refused to deliver product to the company after the client's lender had refused to extend credit to the company.

On May 29, 2009, the client tendered to the respondent $20,000 to be used for the purchase of these claims from the bankruptcy trustee. The respondent deposited the $20,000 into his IOLTA account. The respondent failed to maintain complete records of his receipt, maintenance and disposition of these funds, failed to prepare regular and periodic reconciliation reports, failed to maintain a chronological check register or individual client matter ledgers, and failed to reconcile his trust account every sixty days, in violation of Mass. Prof. C. 1.15(f)(1),(B),(C),(E) and (F). Due to the respondent's failure to maintain complete records for the funds deposited into his IOLTA account, between May 29, 2009, and September 9, 2009, the respondent negligently misused $9,247.80 in funds belonging to the client in violation of Mass. R. Prof. C. 1.15(b). The respondent's misuse of the client's money was not intentional and the client was never actually deprived of these funds. On multiple occasions during the respondent's representation of the client in the bankruptcy matter, the client requested that the respondent provide an accounting setting forth the manner in which the $20,000 payment had been applied. The respondent never supplied the client with an accounting, in violation of Mass. R. Prof. C. 1.15(d)(1).

On September 22, 2009, the bankruptcy court denied the bankruptcy trustee's motion for authorization to sell the company's claims to the client. The client thereafter authorized the respondent to apply $15,000 of the $20,000 that he was holding to the client's outstanding legal fees incurred in a third, unrelated legal matter in which the respondent was representing the client. The respondent refunded to the client the remaining $5,000 that he was holding.

In aggravation, the respondent had received an admonition in 2012 for trust account violations. *Admonition No. 12-15*. In mitigation, the respondent's trust account violations in this matter predated and, in some instances, overlapped the conduct that gave rise to the respondent's 2012 admonition. Since his admonition in 2012, the respondent has maintained his trust account in compliance with Mass. R. Prof. C. 1.15. Also in mitigation, the respondent provided other legal services to the client that were not compensated; refunded $7,000 in funds advanced by the client; and has now accounted for all monies given him by the client.

Disciplinary proceedings were commenced against the respondent with the filing of a petition for discipline with the Board of Bar Overseers on April 3, 2014. On April 23, 2014, an amended petition for discipline, an answer to the petition for discipline and stipulation of the parties was filed with the board. The parties jointly recommended that the respondent receive a public reprimand. On June 2, 2014, the Board of Bar Overseers voted unanimously to accept the parties' stipulation and recommendation for discipline.