

**IN RE: JOSIAH WEISS**

**NO. BD-2019-023**

**S.J.C. Judgment of Disbarment entered by Justice Lowy on August 28, 2020.<sup>1</sup>**

*The respondent was disbarred, effective immediately, for multiple instances of intentional misuse of trust funds; misrepresentations to clients; lack of diligence; failure to cooperate with bar counsel's investigation; failure to comply with orders of administrative and temporary suspension; practicing law while administratively suspended; and failing to participate in bar discipline proceedings.*

**SUMMARY<sup>2</sup>**

The respondent defaulted under an eight-count petition for discipline. The Board notified the respondent that the letter he had submitted in lieu of an answer, purporting to raise a general denial of the charges, was not compliant, and that default could result. When the respondent did not file a new and compliant answer, his default established the factual allegations and the charges set forth in the petition for discipline, summarized as follows.

Under count one, the respondent intentionally misused, for his own business or personal purposes, proceeds of a sale of real estate in connection with a divorce that he was holding in escrow. Ultimately, he did not render required accountings, and he was unable to account for more than \$43,800 of escrow funds. He made no restitution.

Under counts two through seven, inclusive, the respondent caused unearned retainers to be deposited into non-trust accounts where they were commingled with personal funds. The respondent intentionally misused the retainer funds for personal or business purposes before they were earned and, in some instances, created negative client account balances. In one case, the respondent used a client's unearned retainer to refund another client. The misconduct under those counts was aggravated by neglect and misrepresentation to the clients concerning case status (in some cases, using fabricated documents), failure to render accountings, failure to refund unearned fees or to turn over files, and, in one instance, conditioning payment of a refund on the client dropping a complaint to Bar Counsel.

The foregoing misconduct violated Mass. R. Prof. C. 1.1 (competence); 1.2(a) (seek client's lawful objectives); 1.3 (diligence); 1.4(a) and (b) (keep client informed, explain matters, respond to client's reasonable requests for information); 1.15(b) (segregate trust funds), (b)(1) (trust funds to be held in trust account), (b)(2) (commingling), (b)(3) (retainer to be deposited into trust account and withdrawn as earned), (b)(4) (safeguard trust property); 1.15(c) (prompt notice and delivery of trust funds); 1.15(d)(1) (full accounting on final distribution of trust funds); 1.15(d)(2) (accounting on

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<sup>1</sup> The complete order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

withdrawal from trust to pay fees); 1.15(e)(4) (withdrawals from trust must be identified, not in cash or by atm); 1.15(f)(1)(C) (individual client records, no negative balances); 1.16(d) (steps to protect client on termination of representation, including refunding advance fees and surrendering property); 1.16(e) (making property available to client on termination of representation); 8.4(c) (dishonesty, deceit, misrepresentation, or fraud); 8.4(h) (other conduct reflecting adversely on fitness to practice); and SJC Rule 4:01, § 10 (conditioning settlement on client's withdrawal of disciplinary charges).

In two of those cases, the respondent requested and obtained an additional retainer after he had been administratively suspended, and without telling the client about his suspension. In one of those, he continued a hearing over the client's objection because of the administrative suspension; and he later misrepresented to the client that he could no longer represent the client because he had been diagnosed with cancer. The foregoing violated Mass. R. Prof. C. 1.2(a); 1.4(a)(5) (duty to advise client when client expects assistance not permitted by rules); 8.4(c), and 8.4(h). In another of those cases, the respondent failed to disclose his administrative suspension to the client and did not comply with client's request for work product, in violation of 1.4(a); 1.16(d); 8.4(c), and 8.4(h). In yet another of those six cases, the respondent engaged in a conflict by representing a number of family members with potentially conflicting interests without obtaining informed consent; sent a client into court on his own; and did not advise the clients of his administrative suspension, all in violation of Mass. R. Prof. C. 1.3; 1.4(a); 1.7(a) and 1.7(b)(3) and (4) (conflicts without informed consent); and 8.4(c) and (h).

Under count eight, the respondent: failed to respond to inquiries from the Office of Bar Counsel; failed to comply with the resulting subpoena; was administratively suspended for this non-cooperation; and failed to file the required affidavit of compliance with the administrative suspension when he failed to obtain reinstatement. He continued to practice law despite his administrative suspension, including accepting new cases, filing motions in court, and collecting retainers. He failed to notify all clients of his administrative suspension. The Court then ordered his temporary suspension on April 1, 2019. He failed to file the required affidavit of compliance with that order of suspension, also. This misconduct violated Mass. R. Prof. C. 1.4(b); 3.4(c) (knowing disobedience of obligation under rules of tribunal); 5.5(a) (unauthorized practice of law); 1.16(a)(1) (mandatory withdrawal if representation would violate rules); 1.16(d); 8.4(c); 8.4(d) (conduct prejudicial to the administration of justice); 8.4(g) (failure to cooperate with disciplinary investigation); and 8.4(h); as well as S.J.C Rule 4:01, §3(1)(b) (failure to respond to requests by Bar Counsel for information made in the course of processing a complaint).

On May 11, 2020, the Board of Bar Overseers voted to recommend that the respondent be disbarred, effective upon his compliance with his order of temporary suspension. On August 28, 2020, the Court (Lowy, J.) ordered the respondent disbarred immediately, with his reinstatement conditioned on compliance with his obligations for reinstatement from the various orders of administrative and temporary suspension and disbarment.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
NO: BD-2019-023

IN RE: Josiah Weiss

JUDGMENT OF DISBARMENT

This matter came before the Court, Lowy, J., on an Information and Record of Proceedings pursuant to S.J.C. Rule 4:01, § 8(6) and the Recommendation and Vote of the Board of Bar Overseers (Board) filed by the Board on June 22, 2020.

On July 9, 2020, an Order of Notice issued, and was served on the lawyer in the manner specified pursuant to S.J.C. Rule 4:01, §21, directing him to participate in a telephone hearing scheduled for August, 27, 2020. After the telephone hearing, participated by assistant bar counsel, but not the lawyer;

It is ORDERED that:

1. Josiah Weiss is hereby disbarred from the practice of law in the Commonwealth effective immediately upon the entry of this Judgment, and the lawyer's name is forthwith stricken from the Roll of Attorneys.

It is FURTHER ORDERED that:

2. Within fourteen (14) days of the date of entry of this Judgment, the lawyer shall:

a) file a notice of withdrawal as of the effective date of the disbarment with every court, agency, or tribunal before which a matter is pending, together with a copy of the notices sent pursuant to paragraphs 2(c) and 2(d) of this Judgment, the client's or clients' place of residence, and the case caption and docket number of the client's or clients' proceedings;

b) resign as of the effective date of the disbarment all appointments as guardian, executor, administrator, trustee, attorney-in-fact, or other fiduciary, attaching to the resignation a copy of the notices sent to the wards, heirs, or beneficiaries pursuant to paragraphs 2(c) and 2(d) of this Judgment, the place of residence of the wards, heirs, or beneficiaries, and the case caption and docket number of the proceedings, if any;

c) provide notice to all clients and to all wards, heirs, and beneficiaries that the lawyer has been disbarred; that he is disqualified from acting as a lawyer after the effective date of the disbarment; and that, if not represented by co-counsel, the client, ward, heir, or beneficiary should act promptly to substitute another lawyer or fiduciary or to seek legal advice elsewhere, calling attention to any urgency arising from the circumstances of the case;

d) provide notice to counsel for all parties (or, in the absence of counsel, the parties) in pending matters that the lawyer has been disbarred and, as a consequence, is disqualified from acting as a lawyer after the effective date of the disbarment;

e) make available to all clients being represented in pending matters any papers or other property to which they are entitled, calling attention to any urgency for obtaining the papers or other property;

f) refund any part of any fees paid in advance that have not been earned; and

g) close every IOLTA, client, trust or other fiduciary account and properly disburse or otherwise transfer all client and fiduciary funds in his possession, custody or control.

All notices required by this paragraph shall be served by certified mail, return receipt requested, in a form approved by the Board.

3. Within twenty-one (21) days after the date of entry of this Judgment, the lawyer shall file with the Office of the Bar Counsel an affidavit certifying that the lawyer has fully complied with the provisions of this Judgment and with bar disciplinary rules. Appended to the affidavit of compliance shall be:

a) a copy of each form of notice, the names and addresses of the clients, wards, heirs, beneficiaries, attorneys, courts and agencies to which notices were sent, and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise requested in writing by the lawyer or ordered by the court;

b) a schedule showing the location, title and account number of every bank account designated as an IOLTA, client, trust or other fiduciary account and of every account in which the lawyer holds or held as of the entry date of this Judgment any client, trust or fiduciary funds;

c) a schedule describing the lawyer's disposition of all client and fiduciary funds in the lawyer's possession, custody or control as of the entry date of this Judgment or thereafter;

d) such proof of the proper distribution of such funds and the closing of such accounts as has been requested by the bar counsel, including copies of checks and other instruments;

e) a list of all other state, federal and administrative jurisdictions to which the lawyer is

admitted to practice; and

f) the residence or other street address where communications to the lawyer may thereafter be directed.

The lawyer shall retain copies of all notices sent and shall maintain complete records of the steps taken to comply with the notice requirements of S.J.C. Rule 4:01, § 17.

4. Within twenty-one (21) days after the entry date of this Judgment, the lawyer shall file with the Clerk of the Supreme Judicial Court for Suffolk County:

a) a copy of the affidavit of compliance required by paragraph 3 of this Judgment;

b) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice; and

c) the residence or other street address where communications to the lawyer may thereafter be directed.

5. The lawyer's reinstatement to the practice of law in the Commonwealth of Massachusetts shall be contingent upon his full compliance with S.J.C. Rule 4:01, § 17 and S.J.C. Rule 4:01, § 18 (2)(4) and (5).

By the Court, (Lowy, J.)

/s/ Maura S. Doyle  
Maura S. Doyle, Clerk

Dated: August 28, 2020