



**DANIEL G. BOOTH**

**BBO # 672090**

**Public Reprimand No. 2022-12**

**Order (public reprimand) entered by the Board of Bar Overseers of the Supreme Judicial Court on July 20, 2022.**

**SUMMARY<sup>1</sup>**

The respondent and his law partner represented a client in defense of fraudulent claims of copyright infringement in the U.S. District Court, District of Massachusetts. They obtained a default money judgment on counterclaims against the shell company plaintiff, awarding to the client attorney's fees and litigation costs, trebled pursuant to G.L. c. 93A. The court amended the default judgment in 2013 to add the names of key individuals as additional counter-defendants, including a former principal ("principal") of the shell company, from which the principal appealed.

In 2014, the law partner recorded the default judgment against the Minnesota home of the principal. In 2015, the principal filed a Chapter 13 petition for bankruptcy in Minnesota, which converted to Chapter 7 after the principal attempted to sell his real estate without notice. The law partner filed claims on behalf of the client and the firm as judgment creditors based on the default judgment. The trustee subsequently authorized the sale of the real estate, and the default judgment was satisfied in 2016 when the court distributed the sale proceeds to creditors.

Thereafter, the U.S. Court of Appeals for the 1<sup>st</sup> Circuit vacated the amended default judgment and remanded the case to the U.S. District Court of Massachusetts. Consequently, the bankruptcy trustee commenced an adversary proceeding against the respondent and the law partner's firm and the client to recover the money paid in satisfaction of the default judgment. The principal then settled with the trustee and acquired the bankruptcy estate's interest in the adversary proceeding. He moved successfully for summary judgment and, in March 2018, served several post-judgment discovery requests upon the respondent's firm and its client.

The law partner did not respond to the discovery requests, nor seek a protective order. Upon the advice of the respondent, he asserted that the requests did not comply with the procedural rules. The principal moved to compel the firm and its client to respond, and the law partner opposed based on noncompliance with the procedural rules. The bankruptcy court allowed the motion to compel and ordered the firm and the client to produce discovery responses within 14 days. The court authorized the principal to file an affidavit of non-compliance, if appropriate, which would trigger issuance of an order to show cause as to why a coercive civil sanction of \$250.00 per day per defendant should not issue.

The law partner then provided the principal with limited discovery responses accompanied by objections. The principal filed an affidavit alleging non-compliance, and the court issued an order to show cause and set a hearing. The law partner thereafter requested a protective order. After hearing, the court found that the discovery requests were proper; the discovery responses were non-responsive; and the firm and the client failed to comply with the order to compel. The firm and the client were found in contempt. The request for a protective order was denied.

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<sup>1</sup> Compiled by the Board of Bar Overseers' Office of General Counsel based on the record of proceedings before the board.

The court ordered the firm and the client to produce complete responses to the requests and remove any asserted objections as they had waived their right to object. The court further subjected the firm and the client to sanctions of \$250.00 per day of non-compliance. Despite the advice of the respondent, the law partner did not notice an appeal of the contempt order.

Thereafter, the law partner filed an affidavit attesting to his compliance with the order; however, the supplement included objections inconsistent with the contempt order. The respondent did not review the supplement prior to service. The principal objected to the supplement and filed a motion for contempt. In December 2018, after hearing, the court allowed his motion. The court found that the firm and the client remained in contempt and had failed to show that compliance was impossible. The court further found their non-compliance included continuing to assert objections, providing non-responsive answers, and failing to make payments on the civil contempt sanction. The court issued a second contempt order requiring the firm and the client to provide compliant responses to all discovery requests, with all objections removed, to pay the accrued sanctions of \$24,000 by dates certain, and to exchange specific financial information by 4:00 PM that day. The respondent was notified of the second contempt order the day it issued. Although the law partner reportedly produced additional documents the same day, neither he nor the respondent provided the financial information by 4:00 PM. The law partner noticed their appeal of the second contempt order.

Thereafter, the principal filed a declaration of non-compliance, and the court scheduled a hearing in January 2019. At hearing, the court rejected the law partner's claim that the contempt was justified and found that the firm and client still asserted objections in violation of both contempt orders, failed to produce sufficient responses to the requests, and failed to pay the civil contempt sanctions. The court ordered the firm and the client to comply by January 11, 2019, failing which it would file a report and recommendation with the U.S. District Court, District of Minnesota, recommending issuance of bench warrants for their conditional arrest. The respondent was timely notified of the court order. The respondent urged the law partner to provide a complete, responsive supplement. However, the law partner's supplemental response was late and remained non-compliant; the respondent did not review the supplement before it was served. On January 14, 2019, the Bankruptcy Court filed its Report and Recommendation recommending issuance of arrest warrants. On January 16, 2019, the law partner supplemented their discovery responses late. The responses remained non-compliant. The respondent did not review the supplement before it was served. Although the law partner timely appealed the court's order and filed objections to the Report and Recommendation, the respondent relied upon the appeal to resolve the contempt and neither he nor the law partner timely purged the contempt.

On April 25, 2019, the U.S. District Court, District of Minnesota, entered an order affirming in part and vacating in part the Bankruptcy Court's second contempt order and its sanctions order of January 2019, and adopting in part the Report and Recommendation. Where the firm and the client had failed to appeal the first contempt order, the District Court concluded that it lacked jurisdiction to consider that order and any prior underlying rulings. The District Court issued arrest warrants for the respondent, his partner, and the client. In May 2019, they were arrested in Massachusetts and released three days later upon entering a global settlement that purged the contempt.

Throughout the adversary proceeding, the respondent was on notice of the successive contempt orders and sanctions. Although the respondent at times discovered information after the fact, the respondent knew of the law partner's conduct and consequences at a time when the consequences could have been avoided or mitigated but failed to take reasonable remedial action at the time on behalf of the firm or the firm's client.

Where the respondent was a partner of a lawyer who violated the Rules of Professional Conduct and where the respondent knew of the conduct at a time when its consequences could have been avoided or mitigated but failed to take reasonable remediable action, the respondent violated Mass. R. Prof. C. 1.3 and 5.1(c)(2). Where the respondent knew or should have known of the second contempt order and did not take adequate steps to ensure that the attorney responsible complied, the respondent violated Mass. R. Prof. C. 3.4(c) and 8.4(d).

This matter came before the Board of Bar Overseers on a stipulation of the parties and a joint agreement to recommend discipline in the form of a public reprimand. On May 9, 2022, the Board of Bar Overseers voted to administer a public reprimand to the respondent.