

IN RE: BARBARA B. CLURMAN

S.J.C. Order of Term Suspension entered by Justice Ireland on December 6, 2001.¹

SUMMARY²

The respondent was suspended for eighteen months for conduct described in Bar Counsel's petition for discipline, as follows.

Count One of the petition for discipline arose from the respondent's management of a client's condominium unit beginning in or about 1990, after the client moved to California.

In the fall of 1996, a California attorney requested information from the respondent on behalf of the client regarding the current tenancy. The respondent failed to answer. In May 1997, the California attorney retained Massachusetts counsel to obtain the information sought. The respondent turned over the client's files to the Massachusetts attorney by late June 1997. However, the files did not contain any information regarding the rental agreement or lease for the period of May 1, 1993 through July 31, 1994. In September 1997 the client complained to Bar Counsel. Thereafter, the respondent provided the missing information to Bar Counsel, who forwarded the information to the client.

After reviewing the documents provided by the respondent, the client learned for the first time that the respondent had occupied his condo from May 1993 through mid-July 1994 at the rent level of the prior tenant and without signing a lease. Because she failed to disclose her tenancy and its terms to the client, the respondent did not obtain the client's informed consent to the potential conflict of interest. In addition, although the respondent had collected the last month's rent from other tenants at the outset of their tenancy, she herself had not paid the last month's rent into a rent escrow account, and during most months she had been late making rental payments into the rent escrow account.

On August 25, 1994 the respondent paid herself a fee of \$900. Except for preparing the condo for rent to a new tenant during the latter half of July 1994, the only work she had done for the client during the previous 15 months had been in connection with her own occupancy of the condo.

The respondent's conduct in this matter violated Canon One, DR 1-102(A)(4), Canon Five, DR 5-101(A) and DR 5-104(A), Canon Six, DR 6-101(A)(2) and (3) Canon Seven, DR 7-101(A)(1), (2) and (3), Canon Nine, DR 9-102(B)(3) and DR 9-102(C).

Count Two of the petition for discipline arose from six separate matters between 1997 and 1999 in which the respondent, upon discharge, failed to account to clients for the earned portion of the retainers, failed to turn over the files, and failed to refund the unearned portion of the retainers. In addition, the respondent neglected to pursue claims of two of these clients. The respondent's conduct in these various matters violated Mass. R. Prof. C. 1.1, 1.3, 1.4, 1.15(b), and 1.16(a)(2), (d) and (e).

Count Three of the petition for discipline arose from the respondent's failure to cooperate with Bar Counsel's requests for information, necessitating the issuance of two subpoenas. The respondent's conduct in failing to cooperate with Bar Counsel's investigation violated Mass. R. Prof. C. 8.4(g) and Supreme Judicial Court Rule 4:01, § 3.

At the time of the respondent's temporary suspension on June 19, 2000, by agreement of the

parties, the Supreme Judicial Court for Suffolk County entered an order of temporary suspension pending further disciplinary proceedings and a commissioner was appointed pursuant to Supreme Judicial Court Rule 4:01, § 17(2). In October 2000, the commissioner took possession of the respondent's client files, which he then returned to the clients.

In December 2000, the commissioner took custody of the respondent's IOLTA account, which contained a total of \$7,149.75. Thereafter, through counsel, the respondent remitted an additional \$2,500 to the commissioner. This total amount is sufficient to meet the respondent's obligations to refund unearned retainers.

The respondent was admitted to practice in 1971. In aggravation, the respondent received a private reprimand in 1992 for neglect of an estate.

A petition for discipline was filed with the Board of Bar Overseers on October 2, 2001, together with the respondent's answer and the stipulation of the parties. On October 15, 2001, the Board voted to recommend to the Court that the respondent be suspended for eighteen months, retroactive to the date of her temporary suspension, June 19, 2000. The Court so ordered on December 6, 2001.

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 before the Court.

Please direct all questions to webmaster@massbbo.org.

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