

IN RE: BRIAN J. FEENEY

S.J.C. Judgment of Disbarment entered by Justice Ireland on September 15, 2000.¹

SUMMARY²

This matter came before the Court on the respondent's affidavit of resignation pursuant to S.J.C. Rule 4:01, §15.

The respondent's client executed a will in 1991, designating the respondent as the executor of her estate and trustee of a pourover trust under the will for the benefit of her two adult children. The client died in November 1997. The respondent's petition to probate the will and for appointment as executor was filed with the Hampshire Division of the Probate and Family Court on December 12, 1997, and approved on January 28, 1998.

In his capacity as executor, the respondent took custody and control of the decedent's assets, including a brokerage account with a portfolio value of \$457,228.19 as of May 1998. Between May 27, 1998, and August 14, 1998, the respondent caused \$115,000.00 to be withdrawn from the brokerage account by checks payable to the trust or the estate. These checks were endorsed by the respondent and cashed or deposited to accounts unknown.

In addition, between November 19, 1998, and September 24, 1999, the respondent on various occasions caused funds totaling \$229,463.04 to be withdrawn from the brokerage account and wired into his own checking account. This account was not a designated IOLTA or client funds account. The respondent then knowingly expended this \$229,463.04 for his own personal or business purposes unrelated to either the decedent's estate or the trust under her will. As of September 30, 1999, the balance in the respondent's checking account was zero.

On November 24, 1999, the beneficiaries of the estate filed a complaint for contempt against the respondent with the Probate Court, alleging that the respondent had failed to comply with a September 27, 1999 court order to render an inventory and account, that he had not met with the beneficiaries since March 1998, that despite repeated requests he had failed or refused to provide the beneficiaries with information relating to the assets of the estate, that he had not made any payments to the beneficiaries pursuant to the terms of the trust, and that substantial withdrawals had been made from the brokerage account. A judgment of contempt and order of removal as executor was entered on December 23, 1999.

The respondent's conduct in commingling estate funds with personal funds and in converting not less than \$229,463.04 of funds belonging to the estate, with intent to deprive the estate or the beneficiaries of the funds at least temporarily and with actual deprivation resulting, is in violation of Mass. R. Prof. C. 1.15 and 8.4(c) and (h).

On June 29, 2000, the respondent submitted his affidavit of resignation from the practice of law. The respondent admitted in the affidavit that the material facts set forth in Bar Counsel's statement of disciplinary charges would be established by sufficient evidence at a hearing. On August 14, 2000, the Board of Bar Overseers voted to recommend that the affidavit of resignation be accepted and that an order of disbarment be entered. The Court so ordered on September 15, 2000.

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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