

IN RE: PAUL J. WAHLBERG

S.J.C. Judgment of Disbarment entered by Justice Spina on August 2, 2001.¹

SUMMARY²

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

As of March 24, 2000, the respondent held \$2,000 in trust funds received from certain clients. On March 28, 2000, the respondent received a check for \$9,570.00 payable to these clients. On the same day, the respondent cashed the check. The check presented for payment had affixed to the back what purported to be the signatures of his clients, the payees. However, at no time did the payees sign the back of the check, authorize the respondent to cash the check, or authorize the respondent to sign their names to the back of the check.

On April 3, 2000, the clients learned for the first time that the respondent had received a check on their behalf. The clients were unaware that the respondent had cashed the check. The payees thereafter made repeated demand on the respondent to return their funds.

As of March 28, 2000, the respondent owed the payees \$11,570.00 (\$2,000.00 received from the clients plus the proceeds of the \$9,570.00 check). On April 26, 2000, the respondent tendered to the clients a check from his personal account in the amount of \$9,271.26 in partial satisfaction of his obligation to them. The check was presented for payment but was returned as unpaid on May 2, 2000, because the account on which it was drawn was closed.

On May 8, 2000, the respondent tendered to the clients a check from his IOLTA account in the amount of \$11,500.00. At the time that the respondent tendered this check, the IOLTA account had a balance of less than \$1,000.00. At no time did the respondent deposit any funds of the clients in his IOLTA account to cover this check. The check was not presented for payment.

On May 9, 2000, the respondent tendered to the payees a bank check in the amount of \$11,500.00. He also provided the payees with cash to reimburse them for the fee associated with the returned check. The payees accepted the check and cash in satisfaction of their civil claims against the respondent.

In a second matter, on or about November 17, 1999, the respondent received a check from an insurer dated November 16, 1999, in the amount of \$8,500.00 payable to the respondent and his client. The check represented the proceeds of a bodily injury automobile accident claim.

On November 17, 1999, the respondent cashed the check. The check presented for payment had affixed to the back of the check what purported to be the signature of his client. At no time did the respondent's client sign the back of the check, authorize the respondent to cash the check, or authorize the respondent to sign her name to the back of the check.

On July 12, 2000, the respondent's client learned from the insurance company that the insurance company had issued a check on November 16, 1999, and that the check had been cashed. To the date of filing the petition for discipline, the respondent's client had not received any portion of the funds that she was entitled to receive.

In a third matter, on or prior to August 14, 2000, the respondent received a check dated

August 8, 2000, in the amount of \$25,000.00 payable to the respondent and his client. The check represented the proceeds of a bodily injury claim resulting from an automobile accident.

The respondent did not inform his client of receipt of the check and on August 14, 2000, the respondent deposited the check into his IOLTA account. The deposited check had affixed to the back of the check what purported to be the signature of the respondent's client. At no time did the respondent's client sign the back of the check. Between August 14, 2000, and August 31, 2000, the respondent withdrew all but \$242.59 of the funds deposited in the account, without any distribution from the account being made to or for the benefit of his client. As of the date of filing the petition for discipline, the respondent had paid his client approximately \$6,000.00 of the funds that he was is entitled to receive.

In a fourth matter, the respondent represented a client in a claim for bodily injuries resulting from an automobile accident that occurred on June 28, 1999. On October 17, 2000, without the knowledge or authority of his client, the respondent forwarded to the insurance carrier a release and settlement of claim purporting to contain the signature of his client. The respondent's client did not give the respondent authority to settle her case or to sign her name to this document.

On or about October 19, 2000, the carrier sent to the respondent a check in the amount of \$4,200.00 representing release of all bodily injury claims. The check was made payable to the respondent and to his client. On October 24, 2000, the respondent presented the check for payment at the drawer bank and cashed the check. The check presented for payment had affixed to the back of the check what purported to be the signature of his client. At no time did the respondent's client sign the back of the check, authorize the respondent to cash the check, or authorize the respondent to affix her signature to the back of the check. To the date of filing the petition for discipline, the respondent had not reimbursed his client the funds that she was entitled to receive.

The respondent's conduct of intentionally converting client funds, with intent to deprive his clients of the use of the funds at least temporarily and with actual deprivation resulting, was in violation of Mass. R. Prof. C. 1.15(a)-(d) and 8.4 (c) and (h). The respondent's conduct of tendering checks to his clients representing funds that the clients were entitled to receive, knowing or having reason to know that the checks would not be honored, was in violation of Mass. R. Prof. C. 8.4(c) and (h). The respondent's unauthorized endorsements of checks payable to his clients and his unauthorized settlement of his client's case was in violation of Mass. R. Prof. C. 8.4(c) and (h).

The respondent also failed to cooperate with Bar Counsel's investigation resulting in his administrative suspension from the practice of law. The respondent's conduct in this regard was in violation of Mass. R. Prof. C. 8.4(g) and S.J.C. Rule 4:01. § 3.

On March 4, 2001, Bar Counsel filed a petition for discipline against the respondent. On June 13, 2001, the respondent submitted his affidavit of resignation together with his answer to the petition for discipline. In his affidavit, the respondent acknowledged that sufficient evidence existed to warrant findings that the facts summarized above could be proved by a preponderance of the evidence. On July 9, 2001, the Board of Bar Overseers voted to recommend that the affidavit of resignation be accepted and the respondent be disbarred. The Supreme Judicial Court so ordered on August 2, 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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