

IN RE: STUART R. ABRAMS*

S.J.C. Judgment of Disbarment entered by Justice Cowin on May 22, 2002.¹

SUMMARY²

This matter came before the Court on an information and recommendation for the respondent's disbarment upon default for failure to file an answer in compliance with Section 3:15 of the Rules of the Board of Bar Overseers.

The respondent was admitted to the Massachusetts bar in 1977. He was temporarily suspended from practice on January 17, 2001, pursuant to S.J.C. Rule 4:01, § 12A. The temporary suspension order was subsequently affirmed on appeal. *Matter of Abrams*, 436 Mass. 650, ___ Mass. Att'y Disc. R. ___ (2002).

Bar counsel commenced formal disciplinary proceedings against the respondent by a five-count petition for discipline filed on July 31, 2001. The respondent filed an answer that did not comply with the pleading requirements of Section 3.15. He was ordered by the Board to comply and then filed a second nonconforming answer. In October 2001, the respondent was defaulted on bar counsel's motion. In November 2001, the respondent filed a motion to remove the default and submitted a third nonconforming answer. The motion was denied without prejudice, and the respondent was afforded a further opportunity to file an answer in compliance with the rules. In January 2002, after the respondent had filed a fourth nonconforming answer, the Board entered an order deeming the factual allegations of the petition admitted and granting the respondent leave to offer facts in mitigation by affidavit. The respondent submitted no affidavits or other response.

The facts deemed admitted under the Board's rulings are as follows:

Count I: During 2000, the respondent, as co-administrator of an estate and attorney for one of the beneficiaries, commingled \$17,500 in estate funds with his own funds and converted the funds to his own use, failed to maintain adequate records of or account for the funds, and lied to the other administrator to cover up his malfeasance. After he was temporarily suspended, the respondent executed a fiduciary deed and settlement statement for the sale of estate property without any disclosure of his suspension and his obligation to withdraw and resign his appointment. Despite repeated demands, the respondent has made no restitution to the estate beneficiaries, who remain deprived of \$17,500 plus interest.

Count II: Between about the fall of 1999 and the spring of 2000, the respondent commingled and converted \$50,000 held back in escrow from the proceeds of sale of a client's real estate. The respondent ignored the client's requests to release the funds until the summer of 2000, when he converted other trust funds to make disbursements of \$12,000 in accordance with the escrow agreement. Thereafter the respondent ignored the client's further requests and demands to remit the remaining funds. After receiving the petition for temporary suspension in November 2000, the respondent, acting through an associate, tried to condition his repayment of the funds on the withdrawal of the client's bar discipline complaint. The respondent finally restored the escrow with funds borrowed from the associate in December 2000.

Counts III and IV: From and after the mid-1980s, the respondent managed a trust he had established to hold the proceeds of a lottery prize won by a family in 1986. From 1990

through 1997, the respondent failed to safeguard or account adequately for a total of about \$885,000 in lottery payments with which he had been entrusted. During 1998 and 1999, he commingled and converted at least \$88,000 in additional payments. In 2000, after demands to account for the lottery payments, the respondent furnished the trust beneficiaries and bar counsel with a false accounting, and he claimed entitlement to fees that were clearly excessive. The respondent has made no restitution of the trust funds and still owes the beneficiaries at least \$88,000 plus interest from the funds converted in 1998 and 1999.

The respondent had also represented a member of the family in the acquisition of mortgage financing on her home to provide funds for investments undertaken with the lottery winnings. The mortgage fell into arrears due to the respondent's conversion of funds intended for the mortgage payments. In 1999, the mortgagee obtained a foreclosure judgment and put the house up for auction. The respondent arranged for his associate, who was then also a creditor of the respondent's, to bid for the house at auction. The respondent represented the associate in the acquisition and converted an additional \$11,000 in trust funds to secure the associate's purchase of the property. The respondent did not make adequate disclosure to the property owner or the associate of the conflicts inherent in his representation of their adverse interests or obtain their consent to the common or successive representation. The family bought the property back from the associate in 2001, paying him almost \$36,000 more than the auction price.

Count V: After his temporary suspension, the respondent failed to give notice of his suspension, withdraw from all representation, resign all fiduciary appointments, close his trust accounts, distribute and account for trust funds, or file an affidavit of compliance, all in violation of S.J.C. Rule 4:01, § 17, and the order of temporary suspension. In February 2001, the respondent filed a late affidavit in which he falsely averred that he then had no clients and held no fiduciary appointments except as principal of trusts or other like entities. In May 2001, the respondent was adjudicated in contempt of court for violations of the suspension order. He failed thereafter to effect full compliance. In addition, the respondent failed to cooperate in bar counsel's investigation and failed to comply with subpoenas duces tecum.

The respondent's misconduct in those matters through December 31, 1997, violated Canon One, DR 1-102(A)(4) and (6); Canon Seven, DR 7-101(A)(1)-(3); and Canon Nine, DR 9-102(A)-(C). From and after January 1, 1998, the respondent violated Mass. R. Prof. C. 1.2(a) and (d); 1.3; 1.4; 1.5(a); 1.15(a)-(e); 1.6(a); 1.7(a) and (b); 1.8(b); 1.9(a); 1.16(a)(1), (c), (d) and (e); and 8.4(a),(c), (d) and (h). In addition, the respondent violated S.J.C. Rule 4:01, §§ 3(1), 10 and 17.

On March 11, 2002, the Board voted to recommend the respondent's disbarment upon his default. The respondent contested the default before the Court and sought a remand to the Board for an evidentiary hearing. On May 22, 2002, the Court, Cowin, J., issued an order denying the remand request and a judgment of disbarment effective immediately upon entry.

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.