

IN RE: DAVID P. SWAN

S.J.C. Order of Indefinite Suspension entered by Justice Spina on November 2, 2001.¹

SUMMARY²

In July of 2000, the respondent met with his client at his home for the purpose of discussing Medicaid and estate planning. At the meeting, the respondent was given a copy of a bank statement from the client's checking account.

In July of 2000, the client executed a durable power of attorney which appointed the respondent as his attorney in fact. The document contains the signature of a witness and notary. However, the witness was not present when the document was executed and the respondent affixed the signature of the notary without her knowledge or consent.

In August of 2000, the respondent delivered the power of attorney to the bank and changed the address on the client's accounts to the respondent's mailing address. The accounts consisted of an investment account, two checking accounts, a passbook account, a savings account and two certificates of deposit. The total of the investment and deposit accounts was approximately \$200,000.00. The respondent subsequently wrote checks for his own personal and business expenses drawn on his client's accounts. The checks were written without the client's knowledge or consent. The total amount paid to the respondent for the respondent's personal or business purposes was not less than \$69,224.46. In addition, without the knowledge or consent of his client, the respondent incurred a penalty of \$1,640.80, for the early withdrawal of a certificate of deposit in the amount of \$49,001.00.

The respondent acknowledged his indebtedness to his client and his obligation to make full restitution. As of July 3, 2001 full restitution had been made, including all funds misappropriated, lost interest, attorney fees, reimbursement of the early withdrawal penalty and other costs.

The respondent's intentional misuse of client funds for his own personal or business expenses with the intent to deprive the client of the funds, at least temporarily, and with actual deprivation resulting is in violation of Mass. R. Prof. C. 1.15(a) and (b) and Mass. R. Prof. C. 8.4(c) and (h).

In mitigation, the respondent suffered severe affective or mood disorder during the time that he deprived his client of funds. The respondent has sought and continues to receive treatment for these conditions with marked improvement.

This matter came before the Board on October 15, 2001 on a stipulation of facts and disciplinary violations and a joint recommendation for discipline by indefinite suspension. The Board accepted the parties' recommendation and imposed an indefinite suspension. On November 5, 2001, the Supreme Judicial Court for Suffolk County so ordered.

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.

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