

IN RE: BRIAN W. CHANCE

S.J.C. Judgment of Disbarment entered by Justice Ireland on October 3, 2001.¹

SUMMARY²

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

The respondent was duly admitted to the Bar of the Commonwealth of Massachusetts on August 3, 1988. On May 11, 2001, the respondent was temporarily suspended from practice pending final disposition of disciplinary proceedings.

The respondent prepared estate planning instruments for an elderly client in the fall of 1999. The client died on January 31, 2000, survived by one son who is mentally retarded and requires services. The client's estate plan left all of her assets in trust for her son.

An attorney employed as an associate at the respondent's firm was named trustee of the client's trust, and was also nominated to serve as the client's executor. Shortly after the client's death, the associate engaged the respondent to represent her as executor of the estate and as trustee of the trust. The associate was appointed executor on July 6, 2000.

On July 10, 2000, as executor of the estate, the associate closed the client's bank account and turned \$204,585.19 from the account over to the respondent as her attorney to deposit to his IOLTA account until an estate account could be established. The respondent deposited these funds to his IOLTA account, for which the associate was not a signatory.

Between July 2000 and February 2001, the respondent expended not less than \$120,000.00 in estate funds for purposes unrelated to the estate, including a \$20,000 payment to a trustee in another client matter. When the respondent failed to account to the associate or her successor counsel for the estate funds, on February 12, 2001, the associate filed a civil action as trustee and as executor seeking the return of \$125,429.69 from the respondent.

In a second matter, an elderly woman retained the respondent in or about November of 1995 to prepare a will and trust, which she executed in December of 1995. The settlor named a friend to serve as trustee of her trust. In or about March of 1998, the trustee retained the respondent to represent her with respect to the funding and management of the trust. In the summer of 1998, the trustee, at the direction of the respondent, closed the settlor's bank and investment accounts. The respondent deposited \$17,500.00 from the settlor's funds to his IOLTA account. Between July 29, 1998, and September 30, 1998, the respondent paid himself not less than \$8,900.00 from these funds without authorization.

On August 21, 1998, the trustee and the respondent opened a trust account, for which they were both signatories. The settlor died on October 9, 1998. The respondent agreed to continue to represent the trustee, both in her role as executor of the settlor's estate and as trustee of the trust. The trustee was also the beneficiary of the settlor's estate and trust.

Between August 21, 1998 and November 17, 2000, a total of \$118,489.35 in assets belonging to the settlor or her estate were deposited to the trust account. Between August 21, 1998 and November 17, 2000, the respondent withdrew \$67,000.00 from the trust account by fourteen checks payable to himself, which he then deposited to his law office account, where the trust funds were commingled with the respondent's personal funds. The trustee was not aware that

the respondent had made these payments to himself from the trust account, and she did not authorize these payments. The respondent did not account to the trustee for this money, despite repeated requests from the trustee and her successor counsel.

By June 30, 2000, the trust account balance was \$27.78. On that same date, the respondent's IOLTA account balance was \$66.95. Neither account had sufficient funds to make a further distribution to the beneficiary. By June 30, 2000, the respondent had transferred not less than \$74,400.00 to his law office account from funds held in his IOLTA account and in the trust account on behalf of the estate and trust. By December 29, 2000, the respondent's law office account was overdrawn, with a negative balance of -\$577.06.

On or about July 5, 2000, the trustee wrote to the respondent discharging him, and requesting her file, a notice of his withdrawal, and any assets he was holding which were not in the trust. The respondent did not respond to this letter, or withdraw his appearance from the Probate Court action.

On or about July 28, 2000, the respondent made an additional distribution of \$20,000.00 to the beneficiary. This payment to the beneficiary would not have been possible without the use of \$20,000.00 in unrelated funds from the first client matter, which the respondent had deposited to his IOLTA account on or about July 10, 2000. On or about January 30, 2001, the trustee received her file from the respondent. The respondent, however, did not pay to or account to the trustee for not less than \$54,400.00 from the trust and estate.

The respondent's intentional misuse of client trust funds for personal and business purposes unrelated to the client matter, resulting in actual and continuing deprivation, violated of Rules 1.15(a), (d), and (e) and 8.4(c) of the Massachusetts Rules of Professional Conduct. The respondent's failure to pay to or account for client trust funds violated Rules 1.1, 1.2(a), 1.3, 1.4(a), 1.15(b) of the Massachusetts Rules of Professional Conduct. The respondent's failure to keep client trust funds intact and in appropriate client trust accounts separate from his own property violated Rules 1.15(a), (d), and (e) and 8.4(c) of the Massachusetts Rules of Professional Conduct. The respondent's misrepresentations to clients and others violated Rule 8.4(c) of the Massachusetts Rules of Professional Conduct. The respondent's failure to withdraw his appearance after being discharged by his client and his failure to timely return his client's file and property upon demand violated Rules 1.16(a)(3), (d), and (e) of the Massachusetts Rules of Professional Conduct.

On August 6, 2001, the respondent submitted his affidavit of resignation from the practice of law. In the affidavit, the respondent acknowledged that sufficient evidence existed to warrant findings that the facts summarized above would be proved by a preponderance of the evidence. On September 10, 2001, the Board of Bar Overseers unanimously voted to recommend that the affidavit of resignation be accepted, and that an order of disbarment enter forthwith. The Supreme Judicial Court so ordered on October 3, 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.