

IN RE: MICHAEL J. YERARDI

S.J.C. Judgment of Disbarment entered by Justice Spina on November 29, 2002.¹

SUMMARY²

The Board of Bar Overseers recommended disbarment after the respondent defaulted on a three-count Petition for Discipline.

Count One - In September, 1998, the respondent pleaded guilty to a charge of structuring currency transactions to avoid currency reporting requirements, in violation of 18 U. S. C. § 371. He was sentenced to a period of home confinement and a \$10,000 fine. He did not report the conviction to Bar Counsel as required by S.J.C. Rule 4:01, § 12(8).

Since the respondent's conviction took place after the Rules of Professional Conduct had been adopted, but the crime was committed prior to their adoption, the respondent was charged with violation of both DR 1 102(A)(4), and (6) and Mass. R. Prof. C. 8.4(b), (c), (d), and (h). His failure to report was conduct prejudicial to the administration of justice in violation of Mass. R. Prof. C. 8.4(c), as well as a violation of S.J.C. Rule 4:01, § 12(8).

Count Two - The respondent represented a woman and her elderly aunt in transferring an interest in real property from the aunt to the niece. He also represented the niece in placing her own home in a realty trust. Finally, he provided advice and assistance to both in obtaining long-term care for the aunt.

The respondent then offered to assist the niece in obtaining a buyer for the property which had been transferred from the aunt. He told the niece that he had located a buyer who would pay \$200,000 for the property, without a broker's fee. The niece agreed to sell, and the respondent served as her counsel at the sale. The respondent did not inform the niece that the buyer whom he had produced was a straw for the respondent himself. On the same day that the niece transferred the property to the straw, the respondent reconveyed a portion to a third party for \$210,000. A few months later, he transferred the remainder of the property to another purchaser for an additional \$162,000.

The respondent's misconduct constituted dishonesty, deceit, fraud, and misrepresentation in violation of DR 1 102(A)(4) and (6); conflict of interest in violation of DR 5-101(A); doing business with a client in violation of DR 5-104(A); and failure to seek the lawful objectives of his client and prejudicing his client in violation in violation of DR 7 101(A)(1) and (3).

Count Three - The respondent did not promptly remit the \$200,000 proceeds of the sale; despite numerous demands from the niece, he never provided any accounting. Approximately a year after the closing, he told the niece that he had invested the proceeds on her behalf, even though she had never asked him to do so. About five months later, he gave her a check for \$50,000. Added to some small payments which the respondent had made for the benefit of the aunt, this brought the total remitted to no more than \$84,000. The respondent has never accounted for the remainder of the funds. When called before Bar Counsel, he refused to provide any accounting, citing his privilege under the Fifth Amendment of the United States Constitution

The respondent's failure to deposit the niece's funds in an identified, segregated account, his intentional misuse of the funds with intent to deprive, his failure to remit the funds on

demand, and his failure to account constituted dishonesty, fraud, deceit, and misrepresentation in violation of DR 1 102(A)(4) and (6); and failure to segregate, safeguard, and account for clients' funds in violation of DR 9 102(A) and (B); his continuing actions after January 1, 1998, constituted a violation of Mass. R. Prof. C. 1.15(a) and (d) and 8.4(c) and (h).

A justice of the Supreme Judicial Court entered an order of disbarment.

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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