

IN RE: HARLEY H. ANDERSON

S.J.C. Judgment of Disbarment entered by Justice Sosman on June 10, 2002.¹

SUMMARY²

On February 18, 1999, the respondent drafted an irrevocable trust for a client, naming the client as the life beneficiary and her nieces as remainder beneficiaries. The respondent was the sole trustee. Simultaneously, the client conveyed her residence to the trust. Thereafter, the client moved to another state to live near her nieces. On July 20, 1999, the respondent sold the residence in his capacity as trustee and received a check for the net proceeds of \$258,311.32.

Upon receiving the net proceeds of \$258,311.32 from the sale of the residence, and without the knowledge or consent of the client or her nieces, the respondent intentionally misappropriated all but \$2400 of those funds for his own personal or business use unrelated to the trust. The respondent concealed this misappropriation of funds by ignoring repeated demands from the beneficiaries for an accounting of the trust's assets.

The terms of the trust required the respondent to hold the net proceeds of the sale and to make distributions to the beneficiaries as directed. The trust further provided that it "shall terminate one year after or upon the death of [the client]," at which time the respondent would be required to distribute all assets equally to the remainder beneficiaries.

The client died on December 7, 1999. Prior to client's death, the respondent made no distributions to the beneficiaries of the trust. To date, the respondent has reimbursed the trust beneficiaries only \$10,000. An additional \$4,000 of the respondent's assets have been frozen pursuant to a trustee process attachment in pending civil litigation.

The respondent's actions in intentionally converting the funds of the trust with intent to deprive the trust or the beneficiaries of the funds at least temporarily and with actual deprivation resulting, as well as his further actions in refusing to account for the funds and ignoring the beneficiaries' demands for an accounting, constitute dishonesty, fraud, deceit, misrepresentation and conduct adversely reflecting on his fitness to practice law, in violation of Mass. R. Prof. C. 8.4(c),(h); failure to segregate, safeguard, and account for trust funds in violation of Mass. R. Prof. C. 1.15(a),(b); and failure to communicate in violation of Mass. R. Prof. C. 1.4(a),(b).

On April 10, 2002, the respondent submitted his affidavit of resignation from the practice of law. The respondent admitted in the affidavit that the material facts set forth in Bar Counsel's statement of disciplinary charges would be established by sufficient evidence at a hearing. On May 13, 2002, the Board of Bar Overseers voted to recommend that the affidavit of resignation be accepted and that an order of disbarment be entered. The Court so ordered on June 10, 2002.

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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