

IN RE: MERRILL D. GOLDFARB

S.J.C. Judgment of Disbarment entered by Justice Cowin on April 5, 2005.<sup>1</sup>

SUMMARY<sup>2</sup>

The respondent was disbarred for intentional misappropriation of funds entrusted to him by a client for remittance to an out-of-state attorney, failing to comply with the terms of a prior order of suspension, and filing a false affidavit of compliance misrepresenting that his clients with pending matters had been notified of the earlier suspension.

The respondent was admitted to practice in Massachusetts on December 18, 1979. He was suspended from the practice of law for six months on August 7, 2002, effective September 7, 2002, as a consequence of multiple instances of neglect of legal matters, failure to communicate with clients and related violations, as well as failure to cooperate with bar counsel. Matter of Goldfarb, 18 Mass. Att'y Disc. R. 260 (2002). He has never sought reinstatement.

The facts underlying the order of disbarment are as follows. The respondent was the longtime attorney for a corporation. He was retained in 2002, prior to his suspension, to represent the client in certain Nebraska federal court litigation and, because he was not admitted to practice in Nebraska or the Nebraska federal court, to act as liaison with Nebraska local counsel.

The respondent did not notify the client, its principal, or Nebraska local counsel of his subsequent suspension in August 2002. His failure to do so was in violation of Supreme Judicial Court Rule 4:01, § 17, and of the order of suspension. He instead continued to act as co-counsel. In addition, in his affidavit of compliance dated October 18, 2002, filed with bar counsel, the respondent falsely certified that he had given notice of his suspension to clients with legal matters pending, when in fact he had not given the required notice in this case.

The client remitted a total of \$6000 to the respondent in late August and September 2003, a year after the order of suspension. The respondent deposited the funds to a personal or business account. The client sent the money to the respondent in trust, with the understanding that \$5000 of this sum was to be paid to the Nebraska attorney (both for past services and as a retainer against future services) and \$1000 was to be retained by the respondent. The respondent forwarded only \$2000 to Nebraska counsel and intentionally misappropriated the balance. By December 5, 2003, the bank account to which the respondent had deposited the \$6000 was in overdraft, without any further payment by the respondent to Nebraska counsel.

The respondent's intentional misappropriation of trust funds, with intent to deprive the client or the intended recipient of the funds at least temporarily and with actual deprivation resulting and continuing, is conduct in violation of Mass. R. Prof. C. 1.15(a) and (b) in effect prior to July 1, 2004 (now Rule 1.15(b) and (c)) and Mass. R. Prof. C. 8.4(c) and (h).

The respondent's intentional misrepresentation in his affidavit of compliance filed with bar counsel that clients with pending matters had been notified of his suspension is conduct in violation of Mass. R. Prof. C. 8.4(c), (d), and (h).

The respondent's failure to comply with the August 7, 2002 order of suspension by failing to notify the client of his suspension as required by Supreme Judicial Court Rule 4:01, §17 (7), and by continuing after his suspension to hold himself out as co counsel in the Nebraska federal court litigation to the corporate client, its principal, and Nebraska local counsel, is conduct in violation of Mass. R. Prof. C. 8.4(c), (d), and (h).

Bar counsel filed a petition for discipline against the respondent on December 2, 2004. The respondent failed to file an answer to the petition. By letter dated December 27, 2004, the Board of Bar Overseers notified the respondent that the allegations in the petition were deemed admitted and that he had waived his right to be heard in mitigation. The respondent's failure to cooperate in the disciplinary process and his prior suspension were considered as matters in aggravation.

On February 14, 2005, the Board voted to recommend to the Supreme Judicial Court that the respondent be disbarred. The Court so ordered on April 5, 2005.

<sup>1</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record before the Court.

Please direct all questions to [webmaster@massbbo.org](mailto:webmaster@massbbo.org).

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