

IN RE: EDWARD HODKINSON

S.J.C. Order of Indefinite Suspension entered by Justice Spina on November 20, 2002, with an effective date of December 20, 2002.¹

SUMMARY²

This attorney discipline matter involves misconduct with respect to four separate matters. In the first matter, in or about January of 1997, the respondent agreed to represent Client A with respect to the settlement of his grandmother's estate. The grandmother had died on September 26, 1996. She left an estate valued at approximately \$58,000.00 to six heirs. On or about December 17, 1998, after four heirs withdrew their objection to the will, the probate court entered an order appointing Client A as executor.

On or about December 23, 1998, the respondent received a check in the amount of \$53,347.84, representing the estate's share of the net proceeds from the sale of certain real property. On or about December 24, 1998, the respondent deposited the real estate proceeds of \$53,347.84 to his IOLTA Account. Although by February of 1999 it had become clear that the real estate proceeds would not be promptly disbursed, the respondent did not deposit the real estate proceeds to a segregated, interest-bearing account in the name of the estate.

On or about February 10, 1999, the respondent deposited \$11,705.41 in additional estate funds to the IOLTA Account. After paying \$10,500.00 to one heir, and paying himself \$1,600.00 for legal fees and expenses, on February 17, 1999, the respondent was accountable for \$52,953.25 in estate funds that he had deposited to the IOLTA Account but had not yet disbursed on behalf of the estate. Between February 17, 1999, and May 12, 2000, the respondent intentionally used not less than \$42,000.00 of estate funds to make payments to himself and third parties unrelated to the estate, and thereby converted the funds to his own use. By May 12, 2000, only \$10,887.06 was on deposit in the IOLTA Account.

On or about March 9, 2000, Client A filed a grievance with the Office of Bar Counsel, alleging in substance that the respondent had failed to disburse his executor's fee from the estate proceeds. On or about May 30, 2000, the respondent paid Client A \$1,500.00 by a check drawn on the IOLTA Account for his executor's fee.

The respondent failed to maintain complete records regarding the receipt, maintenance, and disposition of the estate funds. On or about March 11, 1999, on the petition of an heir of the estate, the Probate Court ordered Client A to render an account on or before April 22, 1999. Client A contacted the respondent and requested that the respondent prepare the account. The respondent failed to timely prepare and file the account, and on or about May 12, 1999, the probate court ordered Client A to render an account on or before June 17, 1999. The respondent again failed to timely prepare and file the account. On or about June 28, 1999, five heirs of the estate filed a complaint for contempt against Client A and a petition to remove Client A as executor due to his failure to comply with the Court's orders to render an account.

On or about August 2, 1999, the respondent filed with the probate court a First Account that had been prepared by him and signed by Client A. In the First Account, the respondent intentionally misrepresented that \$58,534.85 in estate assets were being "invested/held in escrow". In fact, on August 2, 1999, the respondent had on hand no more than \$38,000.00 of estate funds.

On or about December 6, 2000, the respondent filed an amended First Account and a Second and Final Account on behalf of Client A, which the court subsequently allowed. On or about February 26, 2001, the respondent paid \$51,018.40 to the remaining heirs of the estate by checks drawn on the IOLTA Account. To make these payments, the respondent intentionally used and thereby converted the funds of other clients on deposit in the IOLTA Account, including the funds of Client B and Client C, as described below.

By failing to hold the estate funds in a segregated, interest-bearing account; by failing to maintain complete records regarding the receipt, maintenance, and disposition of said funds; by failing to render prompt, full accountings regarding said funds; by commingling the estate funds with his own funds; and by intentionally using the estate funds to make payments to himself and third parties unrelated to the estate, the respondent violated Mass. R. Prof. C. 1.15(a), 1.15(b), 1.15(d), 1.15(e), and 8.4(c). By failing to act with reasonable diligence and promptness in representing his client, the executor of the estate, the respondent violated Mass. R. Prof. C. 1.3. The respondent's misrepresentation to the probate court concerning the estate funds that he was supposed to be holding violated Mass. R. Prof. C. 3.3(a)(1), and 8.4(a), (c), and (d).

In the second matter, in or about February 1994, Client B engaged the respondent to represent her in her divorce. On or about February 12, 2001, the parties to the divorce entered into a separation agreement that included a division of the proceeds from the sale of the marital home. On or about February 14, 2001, the respondent received a check for \$44,315.00 as Client B's share of the proceeds from the marital home, and deposited the same to his IOLTA Account. The respondent knew that Client B's funds would be held for more than a nominal period of time. The respondent did not deposit Client B's funds to an interest-bearing account with the interest payable to Client B.

Between February 14, 2001 and March 19, 2001, the respondent intentionally used not less than \$42,000.00 of Client B's funds in the IOLTA Account to make payments to himself and third parties unrelated to Client B's legal matter, including the payments to the heirs of Client A's grandmother's estate described above, and thereby converted the funds to his own use. By March 19, 2001, only \$1,447.04 was on deposit in the IOLTA Account. On or about February 21, 2002, the respondent closed the IOLTA Account in connection with wrapping up his practice, without having made any distributions of Client B's funds to or on behalf of Client B.

In July of 2002, at the respondent's urging, the probate court appointed a temporary guardian with authority to receive the funds on behalf of Client B. On or about July 19, 2002, the respondent's attorney forwarded \$46,091.58 to Client B's temporary guardian. This amount represented the full amount of Client B's funds plus interest.

By failing to hold Client B's funds in a segregated, interest-bearing account; by commingling Client B's funds with his own funds; and by intentionally using the Client B's funds to make payments to himself and to third parties unrelated to Client B's legal matter, the respondent violated Mass. R. Prof. C. 1.15(a), 1.15(d), 1.15(e), and 8.4(c).

In the third matter, in or about November of 1999, Client C engaged the respondent to represent him in a bankruptcy proceeding. On or about February 14, 2000, the respondent filed a voluntary Chapter 13 Petition on behalf of Client C. On April 14, 2000, the Bankruptcy Court approved the sale and assignment of the future income stream from Client C's lottery winnings to a purchaser. On April 14, 2000, the Bankruptcy Court ordered that \$50,000.00 of the purchase price be paid to the respondent to be held in escrow until the expiration of the August 14, 2000 bar date by which creditors were required to file claims. The Court further ordered that in the event that any additional creditors filed a claim on or before August 14, 2000, the respondent would turn over such additional funds to the Chapter 13 Trustee as might be necessary to cover such claims, and pay the balance of the funds to Client C.

On May 15, 2000, consistent with the Court's order, the respondent received a wire transfer of

\$50,000.00 to his IOLTA Account. The funds were not nominal in amount and were to be held for at least four months. The respondent did not deposit Client C's funds to an interest-bearing account with the interest payable to or on behalf of Client C. On or about June 9, 2000, the respondent paid himself \$1,200.00 by a check drawn on the IOLTA Account for a portion of his legal fee for the bankruptcy matter. The respondent made this payment to himself from Client C's funds in intentional violation of the Court order that the respondent hold the funds in escrow until August 14, 2000.

Between May 15, 2000, when the respondent deposited Client C's funds to his IOLTA Account, and February 21, 2002, when the respondent closed the IOLTA Account, the respondent intentionally used not less than \$9,626.15 of Client C's funds to make payments to himself and third parties unrelated to Client C's legal matter, including the payments to the heirs of Client A's grandmother's estate as described above, and thereby converted the funds to his own use. The respondent misused these funds with the intent to deprive Client C of the funds at least temporarily and with actual deprivation resulting.

As of August 14, 2000, the Chapter 13 Trustee did not receive any additional claims that would require the respondent to pay over any of the escrow funds to the Chapter 13 Trustee. On or about October 5, 2000, the Bankruptcy Court entered an order confirming the Chapter 13 plan. As of that date, the respondent was to pay Client C the \$50,000 in escrow funds. Between October 5, 2000 and December 15, 2000, the respondent paid Client C \$37,748.85 by four checks drawn on the IOLTA Account. On February 21, 2002, the respondent closed the IOLTA Account in connection with wrapping up his practice without having disbursed to Client C \$9,626.15 due to him. Between June of 2002 and September of 2002, the respondent made restitution to Client C for the full \$9,626.15 plus interest using personal funds.

By failing to hold Client C's funds in a segregated, interest-bearing account; by commingling the funds with his own funds; and by intentionally using the funds to make payments to himself and third parties unrelated to Client C's legal matter, with actual deprivation to Client C resulting, the respondent violated Mass. R. Prof. C. 1.15(a), 1.15(d), 1.15(e), and 8.4(c). By violating the Bankruptcy Court's April 14, 2000 order to hold Client C's funds in escrow until the expiration of the August 14, 2000 bar date, the respondent violated Mass. R. Prof. C. 8.4(c) and (d).

In the fourth matter, in or about 1996, Client D engaged the respondent to represent her in the sale of certain real property in connection with the settlement of her late husband's estate. In about September of 1997, the respondent received on behalf of the estate a check for \$17,695.44 from sale of the first lot, which the respondent was to use to satisfy a lien held by the Massachusetts Department of Revenue (DOR). The respondent deposited the proceeds to his operating account, which contained his personal funds, rather than to a client funds account. The respondent did not use the proceeds to pay the DOR lien. Instead, the respondent intentionally used the funds for personal and business expenses unrelated to the estate, thereby converting the funds to his own use. The respondent misappropriated the funds with an intent to deprive the estate of the funds at least temporarily and with actual deprivation resulting.

On or about March 24, 1998, the estate sold a second lot. At the closing, the respondent received a check for \$17,606.08, which the respondent was to use to satisfy a lien held by the DOR. The respondent deposited the proceeds to his IOLTA Account, and did not use the proceeds to pay the DOR lien. Instead, the respondent intentionally used the funds for personal and business expenses unrelated to the estate, thereby converting the funds to his own use. By May 7, 2001, the respondent had reduced the balance in the IOLTA Account to \$406.69 without making any payments on behalf of the estate. The respondent misappropriated the funds with an intent to deprive the estate of the funds at least temporarily and with actual deprivation resulting.

In 2001, another potential buyer of one of the lots discovered that the DOR liens from the first

two sales had not been discharged and contacted the respondent. On or about May 17, 2001, the respondent paid the DOR \$37,459.58 by a check drawn on his IOLTA Account to satisfy the outstanding DOR liens plus interest on the properties. By this payment, the DOR liens on the properties were fully paid, and the liens were released. The respondent made this payment from his IOLTA Account by intentionally using the funds of other clients and personal funds that he was maintaining in the IOLTA Account.

By commingling the estate funds with his own funds and by converting client funds to his own use and to satisfy the DOR liens in the estate matter, the respondent violated Canon One, DR 1-102(A)(4) and (6), and Canon Nine, DR 9-102(A), (B), and (C), as to conduct prior to January 1, 1998, and Mass. R. Prof. C. 1.15(a), 1.15(d), 1.15(e), and 8.4(c), as to conduct on and after January 1, 1998.

The respondent was admitted to practice on May 12, 1989 and had no history of prior discipline. In mitigation, the respondent made complete restitution to all persons whose trust funds he had misused, using personal funds and funds which he was given or borrowed from a family member.

This matter came before the Board on a stipulation of facts and disciplinary violations and a joint recommendation for discipline by indefinite suspension. On October 21, 2002, the Board voted to accept the parties' stipulation and to recommend the agreed upon disposition to the Supreme Judicial Court. On November 20, 2002, the Court 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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