

IN RE: NEIL R. COLA

S.J.C. Judgment of Disbarment entered by Justice Cowin on February 12, 2003, with an effective date of March 14, 2003.¹

SUMMARY²

In February 2003, the respondent was disbarred based on the misconduct in three matters described below.

In the first matter, the respondent, on April 14, 1998 represented the seller of property at a real estate closing. After the closing, the respondent received two checks totaling \$330,752.93 on behalf of the client, one in the amount of \$330,648.44, representing the proceeds of the sale, and one in the amount of \$104.49, representing reimbursement for payment of utilities. He deposited the two checks into his IOLTA account on April 21, 1998, and did not remit the net proceeds from the sale of the property to the client.

The client died on November 30, 1998. On April 11, 2001, an administrator was appointed for the client's estate. The attorney for the estate wrote to the respondent on March 26, and April 24, 2001, to request an accounting of the proceeds from the sale of the decedent's real estate. The respondent failed to reply to those letters, and thereafter failed to remit the funds or to provide an accounting to the administrator.

Without the knowledge or consent of the client or the administrator, the respondent between 1998 and 2001 had intentionally expended all or most of the net proceeds of the sale for his own business or personal purposes or those of other clients.

On or about November 27, 2001, the administrator filed a civil action against the respondent in Superior Court on behalf of the client's estate. The respondent failed to file an answer to the complaint. On February 27, 2002, a default judgment entered in the amount of \$330,648.44 plus \$12,827.46 in interest and \$2,604 in attorney's fees. An execution was issued on May 1, 2002. The respondent has failed to pay the judgment.

By failing to disburse the proceeds from the sale of the client's property to the client or her estate, by failing to account to the client or her estate for the funds and by intentionally misappropriating the funds, with intent to deprive the client or her estate of the funds at least temporarily, and with actual deprivation resulting, the respondent violated Mass. R. Prof. C. 1.15(a)-(d) and 8.4(c) and (h).

In the second matter, the respondent was retained in or around July 1998 to represent a client in a personal injury action against a hair salon arising from services received by the client on July 6, 1998. The respondent filed suit on behalf of the client in district court on or about May 11, 1999. The respondent prepared the client's answers to the interrogatories propounded by the defendant, but failed to file them with the court. A judgment of dismissal was entered on November 8, 1999 for failure to answer interrogatories.

The respondent did not notify the client of the dismissal of her claim. Instead, he misrepresented to the client in November 2000, that he was waiting for a court date for her case. The client did not hear anything further from the respondent. She made numerous attempts to contact him and he failed to reply. The client discharged the respondent in or around the beginning of February 2001, and hired new counsel. Successor counsel wrote to the

respondent on or about February 9, 2001, requesting the client's file. The respondent failed to reply to counsel's letter or to counsel's subsequent telephone calls.

Upon learning that the client's personal injury claim has been dismissed, successor counsel filed suit against the respondent in Superior Court on April 4, 2001. The respondent failed to file an answer to the complaint. Default judgment entered on September 5, 2001 and damages were assessed at \$50,000 plus interest in the amount of \$2,525.07, plus \$100,000 for violation of M.G.L. c. 93A, plus costs. Execution was issued in the amount of \$154,847.15 on October 16, 2001. The respondent has failed to pay the judgment.

By failing to adequately communicate with his client, failing to file his client's answers to interrogatories and allowing the client's claim to be dismissed, and failing to advise the client of the dismissal of her claim, the respondent violated Mass. R. Prof. C. 1.3 and 1.4. By falsely advising the client that he was waiting for a court date, the respondent violated Mass. R. Prof. C. 8.4(c). By failing to provide the client's new attorney with the client's file, the respondent violated Mass. R. Prof. C. 1.16(e).

In the third matter, an attorney contacted the Office of Bar Counsel on September 28, 2001 on behalf of one of the respondent's former clients, and requested an investigation into the conduct of the respondent. The respondent did not reply to Bar Counsel's inquiries regarding the matter and failed to appear at the Office of Bar Counsel pursuant to a subpoena.

On or about January 17, 2002, Bar Counsel filed a petition in the Supreme Judicial Court for the respondent's administrative suspension based on his failure to cooperate with Bar Counsel's investigation. The Court issued an order of administrative suspension on January 24, 2002, and sent notice to the respondent on or about the same date. The respondent did not thereafter seek reinstatement or otherwise comply with the requirements of S.J.C. Rule 4:01, # 3. After his suspension on January 24, 2002, the respondent failed to notify the clients and third parties of his suspension and failed to complete and file an affidavit certifying compliance with the terms of the suspension within 20 days, all as required by S.J.C. Rule 4:01, # 17(1), (5), and (6). Bar Counsel on June 5, 2002, filed a petition for contempt against the respondent with the Supreme Judicial Court. On July 31, 2002, the court entered an order finding the respondent in contempt and referred the matter to the Board of Bar Overseers for disposition.

By failing to comply with the January 24, 2002, order of administrative suspension, by failing to timely notify clients and third parties of his suspension and failing to file a certificate of compliance, the respondent violated Mass. R. Prof. C. 8.4(d) and (h), and S. J. C. Rule 4:01, # 17 (1), (5), and (6).

The respondent was admitted to the Bar of the Commonwealth on December 11, 1973. On November 5, 1986, he was suspended for two years retroactive to September 1, 1983. Matter of Cola, 5 Mass. Att'y Disc. R. 79 (1986). The respondent's suspension was based on his July 22, 1983 conviction for conflict of interest in violation of MGL c. 268, § 4(c) and 6. The respondent was reinstated on February 11, 1987.

Bar Counsel filed a petition for discipline in the current matters on October 8, 2002. The respondent failed to file an answer and the charges were deemed admitted pursuant to Section 3.15(e) of the Rules of the Board of Bar Overseers. The Board voted to disbar the respondent on December 9, 2002. The court so ordered on February 12, 2003.

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.

Please direct all questions to webmaster@massbbo.org.
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