

IN RE: LEE CASTIGNETTI, JR.

S.J.C. Order of Term Suspension entered by Justice Cowin on November 19, 2003, with an effective date of December 19, 2003.¹

SUMMARY²

On November 15, 1996, Vantage Development Corporation entered into a construction agreement to build a home located in Medfield, MA. The buyers agreed to pay Vantage \$300,000.00 in accordance with a schedule of payments attached to the agreement. Pursuant to the agreement, Vantage was to use the buyers' funds to pay for labor and materials for the construction of the house.

The respondent was the secretary and treasurer of Vantage. Between November 22, 1996, and March 10, 1997, the buyers gave the respondent a total of \$31,000.00 in checks payable to Vantage. The respondent endorsed the checks to himself as "attorney for Vantage Development Corporation" and deposited the checks into an account at BankBoston captioned "Lee Castignetti, Jr. Client Funds Account Vantage Development Corp". The BankBoston account was Vantage's construction working account, and the respondent was the sole signatory on the account.

A dispute arose between the buyers and Vantage, and, on July 9, 1997, counsel for the buyers sent a Chapter 93A letter to Vantage, the president of Vantage, and the respondent, individually. The buyers alleged that Vantage had breached its contract by walking off the job without completing the construction of the house, failing to comply with the buyers' request for the pricing of change orders, and misrepresenting its expertise in home construction. The buyers' damages were alleged to be at least \$125,000.00. The respondent, on behalf of all the parties, wrote to the buyers' counsel denying the allegations contained in the demand letter and that the buyers had suffered any damage.

On January 9, 1998, buyers' counsel filed a verified complaint in the Norfolk County Superior Court in which the respondent was named as a reach and apply defendant. The respondent did not represent himself or Vantage in this case.

The complaint requested that a temporary restraining order issue to prevent Vantage from disposing of its assets other than in the ordinary course of business and the respondent from disposing of assets payable or transferred to Vantage. The court entered the temporary restraining order on January 9th and set a hearing for January 14, 1998, on the plaintiffs' request for a preliminary injunction.

On January 14, 1998, the court entered a preliminary injunction against Vantage and the respondent incorporating the terms of the TRO. That same day, the respondent received a copy of the order.

In August 1998, buyers' counsel learned that the respondent might have transferred funds from the BankBoston account to an account in the name of Vantage at the Bristol County Savings Bank. On August 31, 1998, buyers' counsel filed a motion for trustee process attachment on the BankBoston account, which then had on deposit \$20,304.28. The respondent received notice of the buyers' motion. On the same day, the court approved an attachment on the BankBoston account. In order to defeat the attachment and in violation of the preliminary injunction, the respondent withdrew on August 31, 1998, all of the funds from the BankBoston

account and deposited them into his personal account.

On September 1, 1998, buyers' counsel caused a trustee summons to be served on BankBoston. On September 2, 1998, BankBoston filed its answer to the trustee summons stating that it did not have in its possession any funds that were the property of Vantage or the respondent.

In mid-September 1998, the respondent used all of Vantage's funds in his personal account to reduce the principal amount on an outstanding loan on two parcels of land in Easton, MA, the title to which was held by the Devon Street Realty Trust. The respondent was the sole trustee of the trust, and Vantage was the sole beneficiary. The respondent's use of the funds violated the preliminary injunction in that the payment exceeded the customary monthly payment.

On September 28, 1998, buyers' counsel obtained records for the BankBoston account and discovered the respondent's withdrawal from the account on August 31, 1998. On October 14, 1998, buyers' counsel filed a complaint for contempt against Vantage and the respondent alleging that the respondent's withdrawal of all of the funds in the BankBoston account on August 31, 1998, had violated the preliminary injunction. That same day, the court ordered the respondent to deposit \$20,304.38 with either the court or with buyers' counsel and scheduled a hearing on the contempt motion for November 10, 1998. The respondent received notice of Judge Butler's order in due course, but he intentionally failed to comply with it.

On November 24, 1998, after hearing, the court found that the respondent had violated the preliminary injunction "by withdrawing funds from [the BankBoston account] which were to become payable to Vantage and putting them in his own account[.]" The respondent was held in contempt of court for his failure to deposit \$20,034.38 with the court or buyers' counsel.

The respondent was ordered to deposit the funds with the court or with buyers' counsel by no later than November 25, 1998. The respondent complied with the order that day. On November 26, 2001, the buyers, Vantage, and the respondent entered into a settlement of the case, and the case was dismissed on December 14, 2001.

By removing the funds from the BankBoston account in violation of the preliminary injunction and to defeat the attachment and by failing to abide by the court's order to deposit the funds with the court or with opposing counsel, the respondent violated Mass. R. Prof. C. 8.4 (c), (d), and (h) (conduct involving dishonesty, fraud, deceit, or misrepresentation; conduct prejudicial to the administration of justice; and conduct that adversely reflects the fitness to practice law). By commingling Vantage's funds with his personal funds in his personal bank account, the respondent violated Mass. R. Prof. C. 1.15(a) (lawyer shall hold property of clients separate from the lawyer's own property).

On July 8, 2003, the parties submitted a stipulation to the Board of Bar Overseers. The parties recommended that the respondent be suspended from the practice of law for six months. On August 11, 2003, the Board of Bar Overseers voted to make a preliminary determination to accept the stipulation of the parties, but to reject the proposed disciplinary sanction. The Board instead recommended that the respondent be suspended from the practice of law of one year and a day because his "misconduct occurred in connection with the practice of law."

On August 28, 2003, the respondent filed his Brief in Support of Respondent's Amended Answer to Petition for Discipline and Stipulation of the Parties, in which he argued that his misconduct "regarded a matter of private conduct" that did not take place in connection with the practice of law. On October 20, 2003, the Board voted to accept the stipulation of the parties and recommended that the respondent be suspended from the practice of law for six months.

On November 19, 2003, the Supreme Judicial Court for Suffolk County ordered that the respondent be suspended from the practice of law for six months.

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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