

IN RE: KENNETH J. PERLOW

S.J.C. Judgment of Term Suspension entered by Justice Cowin on January 20, 2004, with an effective date of February 19, 2004.¹

SUMMARY²

Between March 21, 2000, and September 18, 2002, the respondent failed to appropriately safeguard client funds in his IOLTA account. The respondent failed to maintain adequate or complete records of the receipt, maintenance and disposition of client funds, failed to reconcile the account, made disbursements from the account before supporting deposits were credited, commingled personal or business funds with trust funds by allowing earned fees to accumulate in the account and withdrew fees in round amounts without reference to particular client matters. The respondent's commingling of personal and business funds with trust funds and his inadequate and improper record keeping was in violation of Mass. R. Prof. C. 1.15(a).

In July 2001 the respondent received settlement proceeds but failed to notify his client. Specifically, due to neglect, he failed to post a letter that he had drafted to the client explaining the breakdown and transmitting the client's share of the proceeds. As a result of the respondent's inadequate record keeping, the respondent then negligently used the client's settlement funds to pay unrelated clients or for personal or business expenses unrelated to the client.

On January 8, 2002, the client complained to Bar Counsel that she had not received her share of the settlement proceeds. On January 16, 2002, the respondent first realized that the original check and letter were not transmitted to his client as intended. He then tendered to the client her share of the settlement proceeds.

The respondent's failure to promptly notify his client of receipt of client funds and his failure to promptly deliver to his client the client's funds was in violation of Mass. R. Prof. C. 1.3 and 1.15(b). The respondent's negligent misuse of client funds, without intent to deprive but with actual temporary deprivation resulting, was in violation of Mass. R. Prof. C. 1.15(a) and (b).

In an unrelated matter, in October of 1998, two sisters retained the respondent to pursue a wrongful death claim after their mother passed away in a nursing home. In August of 2001, the matter was settled and the clients executed a release. On August 31, 2001, the insurance company issued a settlement check in the amount of \$75,000.00 as payment of the settlement and forwarded the check to the respondent. On September 4, 2001, the respondent deposited the settlement check into his IOLTA account. The proceeds of the settlement were subject to a medical lien in the amount of \$200,000.00 in favor of the Commonwealth of Massachusetts, Division of Medical Assistance. The respondent was entitled to \$30,000.00 from the proceeds for his contingent legal fee. On September 7, 2001, the respondent withdrew \$15,000.00 from the IOLTA account in partial payment of his fee. However, he allowed the remaining \$15,000.00 to remain commingled in his account.

On February 13, 2002, the Division of Medical Assistance orally informed the respondent that it was willing to discuss waiver of the lien on the settlement proceeds. The respondent then

commenced to discuss resolution of the lien with the Division.

As a result of the respondent's inadequate record keeping, the respondent negligently used funds from the settlement to pay unrelated clients or for personal or business expenses unrelated to the clients. Also as a result of the respondent's inadequate record keeping, between December of 2001 and May of 2002, the respondent incorrectly assumed he was owed additional fees on the matter when he was not and substantially overdraw the amount due him as his fee in the matter.

On May 30, 2002, the clients complained to Bar Counsel that they had not received their share of the settlement proceeds. No settlement funds could be released to the clients absent a release from the Division of Medical Assistance. The respondent continued to pursue a release of the medical lien and on November 8, 2002, the Division of Medical Assistance formally released the lien. In October of 2002, the respondent caused \$45,000.00 of personal funds to be deposited into an account and, after release of the lien, the respondent distributed to the net settlement proceeds to the clients.

The respondent's negligent misuse of client funds, without intent to deprive, and without any deprivation resulting, as described above, was in violation of Mass. R. Prof. C. 1.15(a) and (b).

The respondent also failed to cooperate with the investigation of the above matters, requiring the service of two subpoenas to compel his appearance. His conduct in this respect was in violation of Mass. R. Prof. C. 8.1(b) and 8.4(g) and S.J.C. Rule 4:01, § 3(1).

In mitigation, the respondent was diagnosed as suffering clinical depression and was experiencing substantial marital and personal difficulties during this period.

The parties stipulated that the appropriate sanction for the respondent's misconduct was a suspension of one year and one day. On December 8, 2003, the Board of Bar Overseers voted to adopt the parties' stipulation and proposed sanction. On January 20, 2004, the Court entered an order suspending the respondent from the practice of law for a period of one year and one day.

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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