

IN RE: RICHARD H. LIEBMAN

S.J.C. Order of Term Suspension entered by Justice Greaney on May 19, 2004, with an effective date of June 18, 2004.<sup>1</sup>

Summary<sup>2</sup>

The respondent was admitted to the Bar of the Commonwealth on April 24, 1963. On December 5, 1983, the respondent was appointed guardian of the person and estate of three elderly residents of a nursing home in Worcester, Massachusetts. On December 30, 1983, the respondent filed probate inventories reporting that each ward had less than \$1,000 in personal funds. In 1983, the respondent established personal needs accounts and burial accounts for each ward. The respondent failed to maintain complete records of the receipt, maintenance, and disposition of the funds he held on behalf of each ward.

The first ward died on November 18, 1984. Upon the ward's death, the respondent did not settle his account and deliver the funds he was holding as guardian to a public administrator, personal representative of the ward's estate, or other person or entity entitled to receive the funds, or notify a public administrator of the existence of the funds. The respondent did not notify the probate court of the ward's death until December 8, 1998.

In 1994, the respondent was the sole signatory of two accounts for the benefit of the second ward. The respondent failed to take action to prevent the accounts holding \$865 from escheating to the state on December 22, 1994, and did not reclaim the funds for his ward.

In 1989, the respondent was also the sole signatory for a burial account for the third ward. The respondent did not take steps to prevent \$392.97 in the burial account from escheating to the state on November 1, 1989, and did not promptly reclaim the funds for his ward.

On February 7, 1994, the probate court discharged the respondent as guardian for the third ward. At the time, the respondent was the sole signatory for a bank account for the ward with a balance of approximately \$674. After he was discharged as guardian, the respondent did not promptly deliver the funds he was holding on behalf of the ward to the probate court or to a person authorized by the court to receive the funds, and did not notify the court that the ward's burial account had previously escheated to the state and had not yet been claimed.

On or about June 17, 1994, after he had been discharged as guardian, the respondent made a claim at the abandoned property division for the third ward's burial account. In making this claim, the respondent intentionally misrepresented to the state treasurer's office that he was still serving as the ward's guardian and had authority to claim the funds. On or about June 17, 1994, the treasurer's office paid the respondent \$474.07 by check. The respondent never negotiated the check, and the funds again escheated.

Between 1983 and December of 1998, the respondent did not render any accounts as guardian for the three wards. The respondent filed his first and final accounts for the first ward on or about December 8, 1998. By letter dated December 9, 1998, the respondent, through counsel, intentionally misrepresented to Bar Counsel that the respondent had filed in the Probate Court accounts for the second and third wards. In fact, the respondent had never filed any probate accounts for the second ward. The respondent did not file his first and final account

for the third ward until on or about May 4, 1999.

The respondent had no or inadequate documentation to support the receipts and expenditures he listed in his accounts for the first and third wards. Beginning in 1999, a guardian ad litem (G.A.L.) appointed to review the accounts requested that the respondent provide her with documentation to support the receipts and disbursements he had reported in the accounts. The respondent did not provide the G.A.L. with the requested documentation, and in November of 2002, the G.A.L. filed reports with the Probate Court recommending that the respondent's accounts not be allowed.

On December 2, 2002, the respondent filed an amended first and final account as guardian for the first ward. The respondent had no or inadequate documentation to support the receipts and disbursements he listed in his amended account. He also intentionally misrepresented in the amended account that he had paid a public administrator \$1,630.46, when he had not made any payment to a public administrator for the ward.

On December 2, 1998, the respondent closed two interest-bearing accounts held in his name on behalf of the first ward, and one on behalf of the third ward, and deposited \$1,630.46 from these accounts to his IOLTA account. On or about September 6, 2000, the respondent closed his IOLTA account, and used the funds in the account, including \$1,630.46 of the wards' funds, to purchase a bank check payable to himself, with the intent to consolidate all of the funds he owed so that they could be turned over to the rightful owners.

The respondent negligently did not pay the wards' funds to public administrators for the wards' estates until March 16, 2004, resulting in deprivation to the wards' estates. By then, two of his wards had died.

By failing to notify a public administrator or personal representative of the first ward's estate that he was holding funds on behalf of ward, and by failing promptly to pay or deliver said funds to the person(s) or entities entitled to receive said funds after his ward's death in 1984, the respondent violated Canon One, DR 1-102(A)(5) and (6), Canon Six, DR 6-101(A)(3), and Canon Nine, DR 9-102(B)(1) and (4), as to conduct occurring before January 1, 1998, and Mass. R. Prof. C. 1.3, 1.15(b), and 8.4(d) and (h), as to conduct occurring on and after January 1, 1998. By failing to take steps to prevent his wards' funds from escheating to the Commonwealth of Massachusetts, or to reclaim said funds, the respondent violated Canon Six, DR 6-101(A)(2) and (3), and Canon Nine, DR 9-102(B)(2), as to conduct occurring before January 1, 1998, and Mass. R. Prof. C. 1.1, 1.2(a), 1.3, and 1.15(a), as to conduct occurring on and after January 1, 1998.

By failing to pay or deliver the funds he was holding on behalf of the third ward to a court-appointed person after he was discharged as guardian on February 7, 1994, and by failing to notify the Probate Court at the time he was discharged that other funds he previously was holding on behalf of the ward had escheated to the state and had not yet been claimed, the respondent violated Canon One, DR 1-102(A)(5) and (6), Canon Six, DR 6-101(A)(3), and Canon Nine, DR 9-102(B)(1) and (4), as to conduct occurring before January 1, 1998, and Mass. R. Prof. C. 1.3, 1.15(b), and 8.4(d) and (h), as to conduct occurring on and after January 1, 1998. By failing to notify a public administrator or personal representative of the third ward's estate that he was holding funds on behalf of the ward, and by failing promptly to pay or deliver said funds to the person(s) or entities entitled to receive said funds after the third ward's death in 2002, the respondent violated Mass. R. Prof. C. 1.3, 1.15(b), and 8.4(d) and (h).

By intentionally misrepresenting to the State Treasurer's Office that he was still serving as guardian and had authority to claim the funds from the third ward's burial account when he had already been discharged as guardian, the respondent violated Canon One, DR 1-102(A)(4). By intentionally misrepresenting to Bar Counsel that he had filed documents with the Probate Court when he had not done so, the respondent violated Mass. R. Prof. C. 8.1(a), and 8.4(c)

and (d).

By failing to render accounts at least once a year regarding the guardianship estates as required by Massachusetts General Laws c. 206, §1, thereby neglecting his duties as guardian and engaging in conduct prejudicial to the administration of justice, the respondent violated Canon One, DR 1-102(A)(5), Canon Six, DR 6-101(A)(3), and Canon Nine, DR 9-102(B)(3), as to conduct occurring before January 1, 1998, and Mass. R. Prof. C. 1.3 and 8.4(d), as to conduct occurring on and after January 1, 1998. By failing to maintain complete records of the receipt, maintenance, and disposition of all funds and property he received as guardian, and by failing to account for his wards' funds when asked to do so by the G.A.L. appointed by the Probate Court, the respondent violated Canon Six, DR 6-101(A)(2) and (3), and Canon Nine, DR 9-102(B)(3), as to conduct occurring before January 1, 1998, and Mass. R. Prof. C. 1.1, 1.2(a), 1.3, 1.15(a) and (b), and 8.4(d) and (h), as to conduct occurring on and after January 1, 1998.

By filing accounts with the Probate Court under the pains and penalties of perjury that were inaccurate, negligently prepared, and contained intentionally misleading or inaccurate information, the respondent violated Mass. R. Prof. C. 3.3(a)(1) and 8.4(c), (d), and (h).

By failing to hold the wards' funds in interest-bearing client funds accounts clearly identified as fiduciary accounts for the wards after December 2, 1998, the respondent violated Mass. R. Prof. C. 1.15(a), (d) and (e). By failing to promptly pay the wards' funds to public administrators, with actual deprivation resulting, the respondent violated Mass. R. Prof. C. 1.15(a) and (b), and 8.4(h).

On December 9, 1992, the respondent was appointed the temporary guardian, and on September 2, 1993, he was appointed the permanent guardian, of the person and estate of another elderly woman. At the time of the respondent's appointment, the ward owned a house with an assessed value of \$48,000. Between 1993 and July 1998, the respondent filed no inventory or accounts with the probate court concerning the guardianship estate. The respondent failed to keep complete records of the receipt, maintenance, and disposition of all funds he was holding on behalf of the ward. On July 9, 1998, the respondent filed an inventory in which he reported that the house had fallen into disrepair and that local authorities were moving to condemn the property. The respondent sought a license to sell the property for \$12,000 for his ward's maintenance. The Court issued a citation on the respondent's petition for a license to sell, and no objections were filed. After July 9, 1998, the respondent took no further steps to sell the property, which remained vacant, non-income-producing, and uninsured. The respondent also failed to pay real estate taxes on the property.

On September 6, 2000, the respondent was the sole signatory of an account for the benefit of the ward. On September 6, 2000, the respondent closed the account, and used the proceeds to buy a bank check in the amount of \$233.25 payable to the ward. The respondent did not deliver the funds to anyone entitled to receive the funds on behalf of the ward until March 16, 2004. During this period, the funds were not held in an interest-bearing client funds account, and the respondent took no action of substance to determine if the ward needed the funds for her personal expenses. The respondent did not file any accounts as guardian of the ward. After the petition for discipline was filed, a successor guardian was appointed for the ward, and her real property was sold.

By failing to timely render his inventory as guardian, and by failing to render accounts at least once a year regarding the guardianship estate as required by Massachusetts General Laws c. 206, §1, thereby neglecting his duties as guardian and engaging in conduct prejudicial to the administration of justice, the respondent violated Canon One, DR 1-102(A)(5), Canon Six, DR 6-101(A)(3), and Canon Nine, DR 9-102(B)(3), as to conduct occurring before January 1, 1998, and Mass. R. Prof. C. 1.3 and 8.4(d), as to conduct occurring on and after January 1, 1998. By failing to maintain complete records of the receipt, maintenance, and disposition of all funds

and property he received on behalf of the ward, the respondent violated Canon Six, DR 6-101(A)(2) and (3), and Canon Nine, DR 9-102(B)(3), as to conduct occurring before January 1, 1998, and Mass. R. Prof. C. 1.1, 1.2(a), 1.3, and 1.15(a), as to conduct occurring on and after January 1, 1998. By failing to sell or appropriately maintain his ward's real property, and by failing to make available for the use of his ward the funds he is holding on her behalf, the respondent has violated his fiduciary obligations as guardian of the ward and neglected a legal matter entrusted to him, in violation of Canon One, DR 1-102(A)(5), and Canon Six, DR 6-101(A)(3), as to conduct occurring before January 1, 1998, and Mass. R. Prof. C. 1.1, 1.2(a), 1.3, and 8.4(d), as to conduct occurring on and after January 1, 1998. By failing to hold the funds represented by the \$233.25 Fleet bank check in an interest-bearing client funds account clearly identified as a fiduciary account after September 6, 2000, the respondent violated Mass. Rule Prof. C. 1.15(a), (d), and (e). By failing to pay the real estate taxes on the ward's property, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a), and 1.3.

On July 21, 1988, the respondent was appointed administrator of an estate. On or about July 12, 1988, the respondent opened a bank account for the estate, and deposited at least \$1,300 to the account. A will was found, and on July 27, 1989, the respondent was appointed executor of the estate. As executor, the respondent failed to maintain complete records of the receipt, maintenance, and disposition of all funds he received on behalf of the estate, and he did not promptly distribute the estate assets. The respondent failed to take steps to prevent \$1,346.48 in the estate account from escheating to the state on October 19, 2001. On or about April 4, 2002, the respondent filed a claim with the state treasurer's office for the abandoned funds, with the intention to secure the funds for the estate. On or about May 1, 2002, the respondent received a check from the treasurer's office that included \$1,352.16 in estate funds, together with other funds claimed by the respondent on his own behalf. The respondent cashed the check and negligently did not turn over the estate funds to the probate court until March 16, 2004, with actual deprivation to the estate resulting. After May 1, 2002, the respondent did not hold the funds in an interest-bearing client funds account. The respondent did not file an inventory or any accounts as executor of the estate.

By failing to promptly pay the estate funds to the person(s) or entities entitled to receive said funds, with actual deprivation resulting; by commingling the estate funds with his own funds; and by failing to maintain the estate funds in an interest-bearing client funds account clearly identified as a fiduciary account for the estate, the respondent violated Mass. R. Prof. C. 1.15(a), (b), (d), and (e), and 8.4(h). By failing to take steps as executor to prevent the estate's funds from escheating, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a), 1.3, and 1.15(a). By failing to maintain complete records of the receipt, maintenance, and disposition of all funds and property he received on behalf of the estate, the respondent violated Canon Six, DR 6-101(A)(2) and (3), and Canon Nine, DR 9-102(B)(3), as to conduct occurring before January 1, 1998, and Mass. R. Prof. C. 1.1, 1.2(a), 1.3, and 1.15(a), as to conduct occurring on and after January 1, 1998. By failing to file an inventory, and by failing to render accounts at least once a year regarding the estate as required by Massachusetts General Laws c. 206, §1, thereby neglecting his duties as executor and engaging in conduct prejudicial to the administration of justice, the respondent violated Canon One, DR 1-102(A)(5), Canon Six, DR 6-101(A)(3), and Canon Nine, DR 9-102(B)(3), as to conduct occurring before January 1, 1998, and Mass. R. Prof. C. 1.3 and 8.4(d), as to conduct occurring on and after January 1, 1998. By failing to complete the settlement of the estate in a timely manner, the respondent violated Canon Six, DR 6-101(A)(3), as to conduct occurring before January 1, 1998, and Mass. R. Prof. C. Mass. R. Prof. C. 1.1, 1.2(a), and 1.3, as to conduct occurring on and after January 1, 1998.

The respondent failed without good cause to provide documentation requested by Bar Counsel in its investigation of these matters, and to produce records called for in a subpoena duces tecum. On June 22, 1999, the Supreme Judicial Court entered an order administratively suspending the respondent from the practice of law pursuant to Supreme Judicial Court Rule 4:01, § 3(2), for noncooperation. The administrative suspension order required the respondent to take a number of actions if he was not reinstated in thirty days, including resigning all

fiduciary appointments, closing all client or fiduciary accounts, and properly disbursing all client and fiduciary funds in his possession, custody, or control.

On November 10, 1999, the respondent filed an affidavit of compliance with Bar Counsel concerning the administrative suspension order in which he intentionally misrepresented that he had filed resignations as fiduciary in a number of probate court matters, and that he had properly disbursed the client or fiduciary funds he was holding at the time of his administrative suspension.

By failing to cooperate with Bar Counsel's investigation without good cause, the respondent violated Supreme Judicial Court Rule 4:01, § 3, and Mass. R. Prof. C. 8.4(d) and (g). By failing to comply with the terms of the Supreme Judicial Court's June 22, 1999 Administrative Suspension Order, the respondent engaged in conduct prejudicial to the administration of justice in violation of Mass. R. Prof. C. 8.4(d). By falsely representing under oath in his affidavit of compliance that he complied with the Supreme Judicial Court's June 22, 1999 Administrative Suspension Order, the respondent violated Mass. R. Prof. C. 8.4(c).

Bar Counsel filed a petition for discipline alleging these facts and disciplinary violations with the Board of Bar Overseers on August 4, 2003. On October 10, 2003, the respondent filed an answer to the petition for discipline. On March 7, 2004, the respondent filed an amended answer to the petition for discipline admitting to the above-recited facts and disciplinary violations, and agreeing to a three-year suspension effective on the date of the order of suspension.

On April 12, 2004, the Board of Bar Overseers voted to accept the parties' stipulation and recommendation for discipline. On May 19, 2004, the Supreme Judicial Court for Suffolk County (Greaney, J.) entered an order suspending the respondent from the practice of law for three years.

<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 filed with the Supreme Judicial Court.

Site Index

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

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