NO. BD-2004-103

IN RE: BERNARD G. SYKES, III

S.J.C. Order of Term Suspension entered by Justice Spina on January 10, 2005, with an effective date of February 9, 2005.[1]

(S.J.C. Judgment of Reinstatement entered by Justice Spina on October 3, 2005.)

SUMMARY[2]

In October 1997, an individual ("the testator"), who was a longtime close family friend of the respondent and his wife, requested that the respondent prepare a will for him. The testator, who was a resident of Vermont, wished to change the terms of a prior will (not prepared by the respondent) because of a recent estrangement from his wife. The respondent prepared the will as requested and it was executed by the testator on October 23, 1997.

The October 1997 will included $10,000.00 specific bequests to both the respondent and the respondent's wife. In addition, the respondent, the respondent's wife, and three other persons were named as remainder beneficiaries. The will nominated the respondent and his wife as co-executors. The respondent's wife is not an attorney.

In November of 1999, the testator advised the respondent that he wanted to revise the October 1997 will. The respondent made the requested changes, and the new will was executed on December 7, 1999. The December 1999 will again included $10,000.00 specific bequests to both the respondent and the respondent's wife. The respondent, his wife, and two other persons were named as remainder beneficiaries. The respondent and his wife were nominated as co-executors.

On May 15, 2000, the testator died. The respondent and his wife retained Vermont counsel to probate the December 1999 will. By order dated July 12, 2000, the respondent and his wife were appointed co-special administrators pending further proceedings. The order appointing them as co-special administrators granted them authority to marshal the assets of the estate and to preserve the estate until an administrator or executor was appointed. Under the terms of the order and under Vermont statutory law, they did not have authority to make any disbursements to beneficiaries without prior court approval.

At a July 12, 2000 hearing on the allowance of the will, the testator's wife refused to consent to the allowance of the will and advised the parties that she contested the will. On July 27, 2002, counsel for the testator's wife filed pleadings stating that issues for consideration included whether the will was the result of undue influence, whether it was appropriate in the circumstances to appoint the respondent's wife or the respondent as co-executors, and whether the question of undue influence should lead to revocation or partial revocation of the bequests to the respondent and his wife.

On September 12, 2000, the respondent and his wife opened an estate account in Massachusetts. On September 14, 2000, despite the pending issues as to both the allowance of the will and whether the respondent and his wife should be appointed co-executors, the respondent wired $60,000.00 from the estate account for the purpose of making a payment on a boat in which he had an ownership interest. The respondent wired the funds from the estate account without discussing the matter with his wife or obtaining her agreement and without

obtaining authority from the court.

The respondent made the disbursement to himself without researching Vermont law on special administration or discussing his intentions with the estate's counsel. The respondent erroneously believed that he had authority to make this payment because the December 1999 will that the respondent had drafted authorized the co-executors to make loans without interest to any beneficiary.

On September 16, 2000, the respondent's wife learned of the withdrawal and questioned the respondent. The respondent consulted with counsel. On September 21, 2000, the respondent borrowed the funds and repaid $60,000.00 to the estate account.

Between October 2000 and August 2002, the parties litigated a number of issues including the validity of the will, the fees claims by the co-special administrators and whether the co-special administrators should be appointed as co-executors. On August 8, 2001, the respondent submitted his resignation as co-special administrator. In October 2001, the Court removed the respondent's wife as co-special administrator and in November 2001, a neutral special administrator was appointed. In August of 2002, all matters were settled in mediation. As part of the settlement, the respondent relinquished his rights to take under the will and compromised the amount of his claim for fees as fiduciary.

The respondent's conduct in preparing an instrument by which he and his wife received bequests from a person to whom they were not related was in violation of Canon Five, DR 5-108, and Mass. R. Prof. C. 1.8(c).

The respondent's withdrawal of funds from the estate account in violation of law and in violation of his fiduciary duties to the estate and to the court, without intent to deprive and with no deprivation resulting, was in violation of Mass. R. Prof. C. 1.15(a) -(d), as appearing in 426 Mass. 1301, 1363 (1997) effective 1/1/98 through 6/30/04, and Mass. R. Prof. C. 8.4(h).

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for discipline. On December 13, 2004, the Board of Bar Overseers voted to adopt the parties' stipulation and proposed sanction and to file an information with the Supreme Judicial Court recommending that the respondent be suspended from the practice of law for six months. On January 10, 2005, 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.