

IN RE: ANTHONY RAOUL BOTT

S.J.C. Order Accepting Affidavit of Resignation as a Disciplinary Sanction entered by Justice Sosman on April 1, 2005, with an effective date of May 1, 2005.¹

SUMMARY²

On or about February 1, 2002, a client fell and sustained serious injuries at premises owned and operated by a non-profit association. On February 26, 2002, the client retained the respondent to represent her in a personal injury claim against the association. On February 26, 2002, the client signed a power of attorney in favor of the respondent that gave the respondent the power to "handle, compromise, adjust, and do any and all necessary things in the prosecution of any claims..." The power of attorney did not authorize the respondent to sign the client's name to a release. On the same date, the client and the respondent signed a contingency fee agreement.

By March 1, 2002, the respondent had identified the company that insured the association. On or about April 25, 2002, the respondent sent a letter to the insurer, making a settlement demand of \$500,000. On May 24, 2002, the insurer's adjuster and the respondent agreed to settle the claim for \$115,000. The respondent did not tell the client that he had agreed to settle her case for \$115,000. On May 24, 2002, without notifying the client of the settlement, the respondent signed her name to a release and forwarded it to the insurer.

The insurer issued a check dated May 28, 2002, in the amount of \$115,000 payable to the respondent and the client, which the respondent received in due course. Without disclosing his receipt of the check to the client, and without the client's knowledge or authorization, the respondent signed his own name on the check and, on or about May 31, 2002, deposited it into his IOLTA account. The respondent did not turn over to the client the funds due to her.

Between July 23, 2002, and May 14, 2004, without the client's knowledge or authorization, the respondent withdrew at least \$75,000 of the settlement funds from his IOLTA account, commingled those funds with his personal funds, and converted those funds to his own use to pay personal or business expenses. The respondent misused the funds intentionally, with the intent to deprive the client of her share of the funds at least temporarily, and with actual deprivation resulting. During this time period, the respondent failed to distribute any of the proceeds of the settlement to the client and failed to pay an outstanding Medicare lien.

On or about December 3, 2003, another attorney engaged by the client telephoned the respondent to inquire about the status of the client's claim against the association. The respondent did not inform the second attorney that he had settled the client's claim for \$115,000. Instead, he misled the second attorney to believe that he had settled the claim for \$20,000, the maximum amount recoverable in Massachusetts from a charitable institution. The respondent informed the second attorney that once he had resolved a Medicare lien, he would distribute the remaining settlement proceeds to the client.

On or about March 30, 2004, the respondent sent a letter to the client enclosing a "statement" that falsely represented that the case had been settled for \$20,000. The statement advised that the respondent had deducted a one-third contingent fee of \$6,666.66 plus expenses of \$498.62 leaving a balance of \$12,834.82. The respondent enclosed a check

payable to the client in the amount of \$12,834.82.

The second attorney called and wrote to the respondent on April 16, 2004, expressing doubt about the respondent's representation that he had settled the client's claim for \$20,000. Shortly thereafter, the respondent admitted to the client that he had settled the case for \$115,000. The respondent subsequently made full restitution to the client of the settlement funds to which she was entitled.

By failing to keep the client informed of the status of her claim and failing to communicate to her any and all settlement offers, the respondent violated Mass. R. Prof. C. 1.4(a) and 1.4(b).

By entering into a settlement of the client's claims without her knowledge or consent, the respondent violated Mass. R. Prof. C. 1.2(a); failed to act with reasonable diligence in violation of Mass. R. Prof. C. 1.3; failed to keep his client reasonably informed about the status of a matter and failed to explain a matter to his client to the extent reasonably necessary to permit her to make informed decisions, in violation of Mass. R. Prof. C. 1.4(a) and (b); and engaged in conduct involving dishonesty, fraud, deceit and misrepresentation, and conduct adversely reflecting on his fitness to practice law, in violation of Mass. R. Prof. C. 8.4 (c) and (h).

By failing to notify the client that he had received \$115,000 in settlement of her claims against the association, and failing to promptly deliver to her the funds she was entitled to receive, the respondent violated Mass. R. Prof. C. 1.15(b).

By endorsing and negotiating the settlement check without the client's authorization, the respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, and conduct which adversely reflected upon his fitness to practice law, in violation Mass. R. Prof. C. 8.4(c) and 8.4(h).

By failing to promptly turn over the settlement funds to the client, and failing to promptly satisfy the Medicare lien, the respondent failed to act with reasonable diligence in representing a client in violation of Mass. R. Prof. C. 1.3, and failed to seek the lawful objectives of his client, in violation of Mass. R. Prof. C. 1.2 (a) 18.

By falsely stating or implying to the client and her attorney that the claim was subject to the \$20,000 charitable cap and that he had settled the claim for \$20,000, the respondent violated Mass. R. Prof. C. 1.4(a) and (b) and 8.4 (c) and (h).

By commingling his personal funds with funds he was holding on behalf of the client, the respondent violated Mass. R. Prof. C. 1.15 (a) and (d).

By intentionally converting to his own use the settlement funds received on the client's behalf, the respondent violated Mass. R. Prof. C. 1.15(a) and (c), and 8.4 (c), and (h).

The respondent executed an affidavit of resignation. On March 23, 2005, the Board of Bar Overseers filed the affidavit with the Supreme Judicial Court for Suffolk County. On April 1, 2005, the court (Sosman, J.) entered a Judgment Accepting Affidavit of Resignation as a Disciplinary Sanction, effective May 1, 2005.

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.

