

## IN RE: SUSAN A. WATTS

S.J.C. Order of Indefinite Suspension entered by Justice Spina on July 8, 2005, with an effective date of August 8, 2005.<sup>1</sup>

SUMMARY<sup>2</sup>

In March of 1999, the sole heir to an estate hired the respondent to serve as administratrix for a flat fee of \$10,000. The respondent's law office was hired to represent the estate and those legal services were to be billed on an hourly basis. On March 4, 1999, the respondent was appointed administratrix by the probate court.

As of January of 2000, the estate had paid fees totaling \$26,000 to the law office as well as the respondent's \$10,000 fee as administratrix. In addition to these payments, and without the authorization or knowledge of the beneficiary, the respondent intentionally misappropriated another \$16,136.07 of estate assets by writing checks to herself and withdrawing funds in cash from the estate accounts.

Between December 2000 and November 2001, the beneficiary's attorney made repeated requests for an accounting and a copy of all bank records for estate accounts. The respondent had not maintained a complete set of bank statements and did not produce the requested records. In January of 2002, the beneficiary's attorney filed a complaint with bar counsel seeking an accounting.

On April 8, 2002, after receiving notice from bar counsel that a complaint had been filed, the respondent wrote the beneficiary directly, without sending a copy of the letter to the beneficiary's attorney. The respondent asked the beneficiary to sign and approve a draft First and Final Account for the estate that proposed to close the estate with a payment to the beneficiary of \$243.89. The beneficiary did not sign or approve this April 8, 2002 draft account.

The respondent provided the April 8, 2002 draft account to bar counsel and advised him that she had given copies of everything that she had done to the beneficiary's attorney and that the estate was ready to be closed. However, the April 8, 2002 draft account that the respondent had prepared was false. That draft account purported to balance by listing total amounts received in the Schedule A of \$276,550.31, total payments in Schedule B of \$276,550.31, and a zero balance for Schedule C. In fact, the respondent had received and disbursed not less than \$291,816.32 in assets. The April 8, 2002 draft account falsely listed payment to the respondent of only the agreed upon administratrix fee of \$10,000. Unbeknownst to the beneficiary or her attorney, as of that date the respondent had in fact made additional withdrawals and written additional checks to herself totaling \$16,136.07.

In November of 2002, after bar counsel subpoenaed bank records for the estate accounts, the respondent prepared a revised First and Final Account that proposed to close the estate with a payment of \$10,477.73 to the beneficiary. The revised account was intentionally false and failed to include the entire \$26,136.07 that the respondent had paid herself between May 6, 1999, and February 6, 2000.

In September of 1999, a CPA firm that the beneficiary hired sent the respondent a completed

federal estate tax return with a check from the beneficiary to pay the taxes due on November 26, 1999. The respondent failed to send the executed federal estate tax return and check payable to the IRS in payment of the taxes due until January of 2000. As a result, the IRS assessed substantial interest and penalties against the estate that became the subject of a lengthy appeal process. Ultimately, on April 22, 2003, the IRS issued an abatement of \$20,135.52 to the estate. However, there was no abatement for the late payment penalty and on May 22, 2003, the respondent paid that penalty in the amount of \$6,343.51 from her personal funds.

In March 2005, the respondent made restitution in full to the estate for the \$16,136.07 that she had misappropriated.

The respondent's intentional misuse of estate assets, with intent to deprive the estate or the beneficiary of the funds at least temporarily and with actual deprivation resulting, violated Mass. R. Prof. C. 1.15 (a), (b) as appearing in 426 Mass. 1301, 1363 (1997), effective 1/1/98 through 6/30/04, and Mass. R. Prof. C. 8.4(c) and (h).

The respondent's preparation and attempt to obtain the beneficiary's signature to a false First and Final Account in April of 2002, and the respondent's preparation in November of 2002 of a revised First and Final Account that again was false, violated Mass. R. Prof. C. 8.4(c) and (h). The respondent's direct written communication in April of 2002 with the beneficiary when that beneficiary was represented by counsel violated Mass. R. Prof. C. 4.2.

The respondent's failure to discharge her duties as administratrix promptly and timely, including her failure to render a timely, complete, and accurate accounting for the disposition of estate assets, failure to file timely the estate tax return and pay the estate tax, and her failure timely to distribute the estate assets violated Mass. R. Prof. C. 1.1, 1.3, and 1.15(a), (b) as appearing in 426 Mass. 1301, 1363 (1997), effective 1/1/98 through 6/30/04. The respondent's failure to maintain a complete set of estate bank records and further failure to obtain and provide a complete copy of those bank records to the beneficiary's representative upon request violated Mass. R. Prof. C. 1.1, 1.3, C. 1.4, and 1.15 (a).

This matter came before the Board on a stipulation of facts and disciplinary violations and a joint recommendation for an indefinite suspension. On June 20, 2005, the Board of Bar Overseers voted to accept the stipulation and to recommend the agreed upon disposition to the Supreme Judicial Court. The Court so ordered on July 8, 2005.

<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 before the Court.

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

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