

IN RE: SCOTT L. GELLER

S.J.C. Judgment of Disbarment entered by Justice Cordy on October 4, 2005, with an effective date of November 3, 2005.<sup>1</sup>

SUMMARY<sup>2</sup>

The respondent was admitted to the Bar of the Commonwealth on December 15, 1992. In about May 2000, a client engaged the respondent to represent him with respect to a real estate purchase, and paid the respondent \$1,000.00 as a retainer. The client had entered into a contract to purchase certain real property in Lynn, Massachusetts, with a closing date of on or before August 29, 2000. In May and June of 2000, the client paid a total of \$8,500 to the real estate broker as a deposit. In about July 2000, after the seller refused to go forward with the sale of the property, the respondent agreed to assist the client to obtain the return of his deposit, and to recover damages for the losses he incurred as a result of the failure of the seller to perform.

On August 1, 2000, the respondent filed a civil suit in Essex Superior Court on behalf of the client against the seller. On or about August 7, 2000, the parties through counsel entered into a stipulation to hold the \$8,500.00 deposit in escrow pending disposition of the civil matter. On or about August 11, 2000, the real estate broker paid the funds to the respondent by check, to be held in escrow. On or about August 17, 2000, the respondent deposited \$8,500.00 in escrow funds to an IOLTA account for which he was the sole signatory.

Between August 2000 and February 2004, the respondent represented the client in preparing the case for trial. During this period, the respondent did not hold the escrow funds in an interest-bearing trust account. Between August 17, 2000, and February 6, 2004, the respondent intentionally withdrew not less than \$8,498.28 of the escrow funds from the IOLTA account, commingled these funds with his own funds, and intentionally converted these funds to his own use. The respondent withdrew the escrow funds from the IOLTA account without notice to the parties, and without authorization from the parties.

February 6, 2004 was the date of trial. On that day, the parties settled the case and entered into an agreement for judgment, by which the seller agreed to pay the client \$48,000.00 within sixty days, and to waive any claim to the escrow funds held by the respondent. The respondent agreed with the client to reduce his bill for legal services by \$2,000.00.

On or about March 18, 2004, the respondent sent the client a bill for his legal services in the matter. In the bill, the respondent stated that his total legal fees were \$9,898.50 and total expenses were \$739.25. After crediting the client with an advance fee payment of \$800.00, and the \$8,500.00 escrow, the respondent charged the client a balance of \$1,337.75. The bill did not credit the client with the promised reduction in the fee of \$2,000.00.

On or about April 5, 2004, the respondent received a check payable to the respondent in the amount of \$48,000.00 as the seller's payment of the judgment to the client ("settlement funds"). The respondent deposited the settlement funds to his IOLTA account on or about April 8, 2004.

By April 8, 2004, the respondent had received a total of \$57,500.00 in funds from or on behalf

of the client, including the \$1,000.00 fee advance, the \$8,500.00 escrow deposit, and \$48,000.00 in settlement funds. Even after giving the respondent credit for a total \$10,637.75 in fees and expenses he claimed he was owed for his work on the client's case, as of April 8, 2004, the client was due not less than \$46,862.25 from the funds the respondent had received on his behalf.

The respondent did not notify the client that he had received the settlement funds, and he did not promptly pay to the client his share of the settlement funds. Between April 8, 2004, and October 12, 2004, the respondent intentionally withdrew not less than \$46,311.53 of the client's funds from the IOLTA account, commingled these funds with his own funds, and intentionally converted these funds to his own use. The respondent intended to deprive the client of his funds at least temporarily, and actual deprivation resulted.

Between April 2004 and November 2004, the client left telephone messages for the respondent, and attempted to contact the respondent by email and regular mail, asking the respondent to account for and pay him his share of the settlement funds. The respondent did not reply to these requests, and did not render a full accounting to the client for his funds.

On or about November 4, 2004, the client filed a request for investigation with bar counsel. On or about November 23, 2004, the respondent mailed the client a check drawn on the IOLTA account in the amount of \$9,033.67, as partial payment for the funds due to the client. In his cover letter to the client, the respondent stated that this payment "represents the deposit . . . plus interest", and that he would forward to the client "under separate cover, the settlement balance, plus a detailed invoice". On or about December 21, 2004, the client attempted to negotiate the \$9,033.67 check from the respondent, but it was returned unpaid due to insufficient funds in the IOLTA account. The client was charged a \$5.00 fee for the returned check.

On or about April 19, 2005, the respondent paid the client \$9,033.67, in partial restitution for the funds that are owed to him. The respondent did not pay the client at least \$37,828.58 due and owing to the client from the settlement.

By letters dated November 10, 2004, December 1, 2004, December 23, 2004, January 7, 2005, and January 21, 2005, bar counsel requested that the respondent respond to the client's grievance and render a full accounting regarding the funds he had received on behalf of the client. The respondent received these requests for information from bar counsel in due course, but failed without good cause to respond to bar counsel's requests for information, and did not render a full accounting for the client's funds. On April 1, 2005, the Board of Bar Overseers issued a subpoena directing the respondent to appear with his files and records to testify concerning the matter on April 13, 2005, at the Office of the Bar Counsel. The respondent received actual notice of the subpoena. The respondent failed without good cause to appear.

By failing to promptly notify his client that he had received funds on behalf of the client, the respondent violated Mass. R. Prof. C. 1.4(a) and 1.15(b). By failing to promptly deliver to his client funds that the client was entitled to receive, the respondent violated Mass. R. Prof. C. 1.15(b) as to conduct occurring before July 1, 2004, and Mass. R. Prof. C. 1.15(c) as to conduct occurring on and after July 1, 2004. By failing to promptly render a full accounting regarding the property upon request by the client and by bar counsel, the respondent violated Mass. R. Prof. C. 1.4(a) and 8.4(g), Mass. R. Prof. C. 1.15(b) as to conduct occurring before July 1, 2004, and Mass. R. Prof. C. 1.15(d) as to conduct occurring on and after July 1, 2004.

By failing to hold escrow funds that were in his possession as escrow agent separate from the respondent's own property and in an individual, interest-bearing client funds account, by commingling the escrow funds with personal funds, and by intentionally using the escrow funds for his own personal or business purposes, the respondent violated Mass. R. Prof. C. 8.4(c) and 8.4(h), and Mass. R. Prof. C. 1.15(a) and 1.15(c) - (e). By failing to hold property of a client

that was in his possession in connection with a representation separate from the respondent's own property and in an individual, interest-bearing client funds account, by commingling client and personal funds, and by intentionally using the client's funds for his own personal or business purposes, the respondent violated Mass. R. Prof. C. 8.4(c) and 8.4(h), Mass. R. Prof. C. 1.15(a) and 1.15(c) - (e) as to conduct occurring before July 1, 2004, and Mass. R. Prof. C. 1.15(b), 1.15(e)(2), and 1.15(e)(5) as to conduct occurring on and after July 1, 2004.

By failing to keep his client reasonably informed about the status of a matter, and promptly comply to his client's reasonable requests for information, the respondent violated Mass. R. Prof. C. 1.4(a) and (b). By failing to cooperate in bar counsel's investigation, the respondent violated Mass. R. Prof. C. 8.4(g) and (h), and S.J.C. Rule 4:01, § 3.

On May 5, 2005, bar counsel filed a petition for discipline against the respondent. The respondent failed to file an answer to the petition or otherwise to participate in the disciplinary process and, pursuant to S.J.C. Rule 4:01, § 8(3), the allegations were therefore deemed admitted. The respondent's failure to participate in the disciplinary proceedings was considered as a matter in aggravation. On July 18, 2005, the Board of Bar Overseers voted to recommend to the court that the respondent be disbarred. On July 28, 2005, the Board filed an information and record of proceedings with the Court, together with its vote and recommendation for discipline. After a hearing on September 29, 2005, at which the respondent did not appear, the Supreme Judicial Court for Suffolk County (Cordy, J.) entered a judgment of disbarment.

<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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