

## IN RE:HENRY LEBENSBAUM

S.J.C. Order of Term Suspension entered by Justice Cordy on November 15, 2005, with an effective date of December 15, 2005.<sup>1</sup>

SUMMARY<sup>2</sup>

The respondent, Henry Lebensbaum, was admitted to the Bar of the Commonwealth in 1991. In April 2001, the client engaged the respondent to represent her in a divorce from her husband. In March 2001, the client and her husband had entered into an agreement whereby the client agreed to move out of the marital home. At the time the client contacted the respondent in April 2001, she and the husband had been separated for several weeks. The husband was living in the marital home, while the client was living in an apartment. On April 25, 2001, the respondent, on behalf of the client, filed a divorce action in the Essex County Probate Court. On May 16, the parties entered into a stipulation for temporary orders, barring either party from disposing of or wasting marital assets. On the same day, the court issued an order incorporating the stipulation.

Shortly after the respondent began representing the client, the respondent and the client commenced a sexual relationship. The sexual relationship continued from May 2001 until January 2002. During this time period, the respondent and the client had sexual relations on numerous occasions. The respondent did not at any time advise the client that his interest in a personal relationship with her might or would affect his professional responsibilities to her or that revelation of the relationship to the husband and his attorney could or would compromise her position in the divorce. The client did not give her informed consent to the respondent's conflict of interest.

On May 30, 2001, the client learned that the husband was out of the country. The client decided to return, with her son, to the marital home. Without the knowledge or consent of the husband, the client and her son moved into marital home on about June 1, 2001. The husband returned to the United States on or about June 7, 2001, and discovered that the client was living in the marital home. He promptly filed a motion in the Essex County Probate Court seeking an order that the client vacate the premises. The court granted the husband's motion on June 8, 2001, and ordered that the client vacate the premises by June 9, 2001, at 6:00 p.m.

While the client was packing to vacate the premises on June 9, 2001, the respondent went to the marital home. The respondent knew that the client had moved into the marital home without her husband's permission and that the court had ordered her to vacate the home by 6:00 p.m. that day. On June 9, 2001, the client and the respondent entered a locked ground-floor room that served as the office of the husband's contracting business. In the respondent's presence, the client searched the office and located \$2000 in cash, wrapped in aluminum foil, which appeared to them to have been purposely hidden. The respondent advised the client that she and the husband jointly owned the cash. Based on the respondent's advice that the money was joint property, the client took \$1900, and returned the remaining \$100 to its original hiding spot. The respondent did not adequately advise the client of the legal risks of taking the money. The respondent did not advise the client that if she did take the money, the court order of May 16 obligated her to preserve it as marital assets.

While in the husband's office, the respondent, or the client with the respondent's knowledge, logged on to the husband's computer, and searched his computer files for financial records of his contracting business. Upon locating such records, the respondent, or the client with the respondent's knowledge, sent several e-mails to the respondent's office e-mail address to which they attached or attempted to attach business financial records. The respondent did not adequately advise the client of the legal risks of logging on to the husband's computer and e-mailing the husband's documents to the respondent.

The husband moved back into the house on June 10, 2001. He discovered that \$1900 in cash was missing and that e-mails had been sent from his account to the respondent's e-mail address. The husband filed a police report accusing the client of stealing the money and of unauthorized use of his computer. In June 2001, a local police officer requested a clerk's hearing, on charges against the client for larceny over \$250 in violation of G. L. c. 266, § 30, and unauthorized access to a computer system in violation of G. L. c. 266, § 120(f).

The clerk's hearing took place on July 19, 2001. The respondent entered an appearance for the client and represented her at the clerk's hearing. The respondent's own interest in not revealing his presence during the commission of the acts charged as criminal offenses materially limited his representation of the client at the clerk's hearing. The respondent could not have reasonably believed that his representation of the client would not be materially limited. Even if the respondent could have continued to represent the client, he did not obtain her informed consent. The respondent was likely to be a necessary witness at the clerk's hearing to the client's state of mind at the time she allegedly committed the crimes charged.

On July 30, 2001, the clerk issued complaints against the client for larceny over \$250 and unauthorized access to a computer system. The client was arraigned on those charges on September 12, 2001. The respondent continued to represent the client with respect to the criminal charges until March 2002. The respondent did not advise the client that his representation of her in the criminal matter was or might be materially limited by his own interest in concealing his presence at the time the cash was taken, the computer files were accessed and the e-mails were sent to his office, and by his personal relationship with her. The respondent could not reasonably have believed that his own interests would not materially limit his representation of the client. The client did not at any time give her informed consent to the respondent's conflict of interest in representing her in the criminal matter.

On July 25, 2001, the client and the husband filed a stipulation in the Essex County Probate Court in which the husband agreed to deliver to the client by July 27, 2001, two round-trip tickets from Boston to Columbia that had been issued by Continental Airlines on February 12, 2001. The husband's attorney delivered the tickets to the respondent on August 31, 2001. The respondent did not deliver the tickets to the client. The respondent initially made a number of excuses to the client for not delivering the tickets and then falsely told the client he had misplaced the tickets. In the alternative, the respondent negligently misplaced the tickets. The client terminated the respondent's representation of her in March 2002. In March 2002, the client went to his office to retrieve her file. She found the plane tickets, enclosed in a bright blue plastic travel agency envelope, in her file.

By engaging in a sexual relationship with the client during a period of time in which he was representing her in her divorce from her husband, the respondent engaged in a conflict of interest, in violation of Mass. R. Prof. C. 1.7(b). The respondent's failure to explain to the client the legal risks of taking cash from her husband's office and logging onto and e-mailing financial records from her husband's computer on June 9, 2001, to the extent reasonably necessary to allow her make an informed decision, violated Mass. R. Prof. C. 1.4. The respondent's failure to advise the client that if she took cash from her husband's office, the probate court order prohibited her from wasting it, also violated Mass. R. Prof. C. 1.4. By e-mailing, or participating in the client's unauthorized e-mailing, of the husband's business

financial records to his e-mail address, in order to obtain information relevant to the divorce proceedings, the respondent violated the husband's legal rights, in violation of Mass. R. Prof. C. 4.4. The respondent's representation of the client in a criminal matter in which the respondent had a personal interest in concealing his participation in the allegedly unlawful conduct, and while the respondent was involved in a personal relationship with the client, and his failure to obtain informed consent if informed consent was possible, violated Mass. R. Prof. C. 1.7(b). The respondent's representation of the client in a criminal matter in which the respondent was likely to be a necessary witness violated Mass. R. Prof. C. 3.7(a). By failing to safeguard and by failing to promptly deliver to the client airplane tickets that had been delivered to the respondent on behalf of the client, the respondent violated Mass. R. Prof. C. 1.3, and Mass. R. Prof. C. 1.15(b)(3) and (c). In the alternative, by falsely telling the client that he had misplaced the tickets and by intentionally withholding the airplane tickets from the client, the respondent violated Mass. R. Prof. C. 1.15(c), and 8.4(c) and (h).

The matter came before the Board of Bar Overseers on a stipulation and joint recommendation by the parties for a six-month suspension. On October 17, 2005, the Board of Bar Overseers voted to recommend to the Supreme Judicial Court that the respondent be suspended for six months. The Court so ordered on November 15, 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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