

IN RE: ALAN MASON

S.J.C. Judgment of Disbarment entered by Justice Spina on April 12, 2006.¹

SUMMARY²

This matter came before the Court on an affidavit of resignation under S.J.C. Rule 4:01, § 15, that was submitted by the respondent to the Board of Bar Overseers in February 2006. The respondent was then the subject of pending disciplinary proceedings before a special hearing officer on a seven-count petition for discipline alleging misconduct from 1994 through 2003. The respondent acknowledged in his affidavit of resignation that the material facts on which the petition was predicated could be proved by a preponderance of the evidence and that the Board and the Court would conclude that he had committed the material acts of misconduct alleged in the petition, as follows.

At all relevant times, the respondent practiced law as the principal of a professional corporation specializing in residential conveyancing; was engaged in the business of buying and selling real estate; and was the subject of liens, judgments or claims by the IRS, the Massachusetts Department of Revenue, and other creditors. He sought bankruptcy protection in 1995 and 1996 and was discharged in bankruptcy in 2001.

Count I. Between 1994 and 2006, the respondent intentionally deposited over \$200,000 in business or personal funds to his IOLTA accounts and commingled those funds with trust funds on deposit in the account. The respondent made those deposits to conceal or shield his funds from his creditors. The respondent thereby violated Canon One, DR 1-102(A)(4) and (6) (conduct involving dishonesty, fraud, deceit or misrepresentation; other conduct adversely reflecting on fitness to practice), and Canon Nine, DR 9-102(A) and (C) (commingling; IOLTA violations).

In addition, from and after 1994, the respondent maintained non-IOLTA accounts to hold and disburse funds of multiple banks or other lenders in his conveyancing practice. The respondent's use of those accounts violated DR 9 102(C) and, after December 31, 1997, Mass. R. Prof. C. 1.15(e), both requiring that such non-IOLTA accounts be established in a lending bank for the exclusive use of that particular bank's transactions.

Count II. In 1995, the respondent was an obligor on two loans secured by mortgages on a condominium unit acquired initially by the respondent and subsequently transferred to his wife as record owner. The first mortgagee had foreclosed and was selling the property at auction. The respondent, as undisclosed principal, bought back the unit at the foreclosure auction through a straw in order to clear both encumbrances and conceal his continued control over the property. The respondent used business or personal funds deposited to his IOLTA account to finance the straw's acquisition of the property at the auction, effected the sale of the unit thereafter for his own benefit, misrepresented his status in the sale, and disbursed the sale proceeds through the IOLTA account in order to shield his profits and hinder, delay or defraud his creditors. His misconduct violated DR 1-101(A)(4) and (6) and DR 9-102(A) and (C).

Count III. In early 1995, the respondent was a defendant in a civil action brought against him in the superior court by a former client who alleged that he had engaged in fraud and legal

malpractice. After repeatedly refusing to appear for his deposition in the action, the respondent finally agreed to be deposed under threat of an order compelling his appearance.

Unbeknownst to the client, the superior court and the respondent's own lawyer in the action, the respondent had filed a bankruptcy petition about two weeks before agreeing to the deposition and then moved to dismiss the petition the next day. The bankruptcy court had entered an order of dismissal shortly thereafter and sent notice of the dismissal to the respondent. The respondent either knew that the bankruptcy petition had been dismissed or had intentionally failed to determine the status of his dismissal motion. Nevertheless, on the afternoon before his scheduled deposition, the respondent told his lawyer that he had filed for bankruptcy; gave the lawyer a copy of his bankruptcy petition; and, without disclosing the dismissal or his motion to dismiss, further informed his lawyer that he could not attend the deposition the next day. The respondent's lawyer so informed the opposing counsel. The respondent intentionally misrepresented the status of his bankruptcy in order to deceive both lawyers into believing that his deposition had been automatically stayed by a pending bankruptcy proceeding.

The respondent did not appear for his deposition even after the dismissal of his bankruptcy petition came to light. The client moved in the superior court for entry of judgment against the respondent pursuant to Mass. R. Civ. P. 37(b). The respondent opposed the motion on claims that he had not received notice of the dismissal of the bankruptcy petition and that he would appear for a deposition at a time and place of his own choosing. The respondent's claims were wholly insubstantial, frivolous and not advanced in good faith. He was subsequently defaulted in the civil action with a money judgment entered against him in 1996 as a sanction for his willful noncompliance and misrepresentations about his bankruptcy filing. Immediately thereafter, the respondent filed another bankruptcy petition and thereby obtained an automatic stay of that judgment. The client then brought an adversary action against the respondent, who entered into an agreement in 1998 for the nondischargeability of the underlying judgment. The respondent never made any payment to the client on the judgment.

The respondent's intentional misrepresentations about the pendency of his 1995 bankruptcy petition, concealment of the true status of the bankruptcy proceeding, intentional violation or disregard of his discovery obligations, and assertion of insubstantial and frivolous defenses in bad faith in opposition to the default judgment violated DR 1 102(A)(4), (5) (prohibiting conduct prejudicial to the administration of justice), and (A)(6).

Count IV. From and after 1999, the respondent, in conducting a real estate business for his personal benefit, effected numerous purchases and sales through sham trusts with his law office employees as straw trustees and his wife and mother as stated beneficiaries. On occasion, the respondent processed the proceeds of those transactions through his IOLTA or conveyancing accounts and commingled his own funds derived from the transactions with client or fiduciary funds in those accounts. The respondent effected the transactions through the sham trusts and his IOLTA or conveyancing accounts to conceal his interest in the properties; preserve the profits for his own benefit; shield his assets from the reach of creditors; and thereby hinder, delay or defraud the creditors

The respondent's deposit of his own sale proceeds into his IOLTA or conveyancing accounts and use of the accounts to shield the funds from the reach of creditors violated Mass. R. Prof. C. 1.15(a) and (c) (failure to safeguard funds; IOLTA violations) and 8.4(c) and (h) (dishonesty, fraud, deceit or misrepresentation; other conduct adversely reflecting on fitness to practice). His use of the sham trusts to conceal his assets and thereby defraud or frustrate his creditors violated Mass. R. Prof. C. 8.4(a) (violating or attempting to violate the Rules of Professional Conduct through acts of others), (c) and (h).

Count V. During 2000, the respondent identified a house in foreclosure as a target for one of his real estate flips and negotiated with the owner, through her attorney, for his acquisition

of the property. The respondent actually intended to pass title to the property through one of his sham trusts, simultaneously sell the property to a third party, pay off the owner's mortgage from the proceeds of the sale, and retain the net proceeds for his own benefit in fraud of his creditors. The respondent never disclosed his true intentions and instead misrepresented his status in the transactions to the owner, the owner's attorney, her lender, and the ultimate buyers of the property. In addition, without the owner's knowledge or permission, the respondent altered the deed given to him by the owner to name the trustee as the buyer, and he submitted fabricated documents to her lender.

In early 2001, the respondent made an agreement with the owner under which, among other things, he was required to cover her moving costs, pay her \$4,500 when she moved out, and, when he sold the property, give her a portion of the net proceeds of the sale. The respondent sold the property through the trust to a third party in the spring of 2001. Under his agreement with the owner, the respondent was then obligated to pay her \$4,500 and turn over another \$1,750 as her share of the net proceeds. The respondent failed to make any payment at that time and instead applied the entire net proceeds for his own benefit, thereby converting the owner's net share of the proceeds to his own use. The respondent processed the sale proceeds through one of his IOLTA accounts and an account in his mother's name in order to shield those proceeds from the reach of his creditors.

The respondent subsequently concealed his sale from the owner and her attorney, refused to pay even the \$4,500 due upon her move, and falsely represented to the attorney that he was placing that sum in escrow pending the resolution of a supposed dispute over the owner's moving costs. After the owner complained to bar counsel, the respondent repaid her in full, with interest, in December 2001. The respondent failed to make or maintain adequate records of all funds in connection with the transactions and failed to account adequately for all those funds.

The respondent's conversion of the owner's funds with resulting temporary deprivation of the owner; fabrication of documents sent to her lender; alteration of her deed; intentional misrepresentation of his true status in the transactions; and use of the sham trust, his IOLTA account, and the account in his mother's name to conceal his interest and benefit from his creditors violated Mass. R. Prof. C. 8.4(a), (c) and (h). His commingling and failure to segregate the owner's share of the proceeds, failure to keep adequate records of the funds, failure to hold the owner's funds in trust and at interest pending resolution of their dispute, failure to notify the owner of his receipt of funds in which she had an interest, failure timely to remit the funds to which she was entitled, and failure to account adequately for the funds violated Mass. R. Prof. C. 1.15(a)-(e).

Count VI. During the course of the bar discipline investigation, the respondent failed to provide timely, accurate and complete responses to bar counsel's requests for information and documentation. The respondent's failure without good cause to cooperate in the investigation violated Mass. R. Prof. C. 8.4(d) (conduct prejudicial to the administration of justice) and (h) and S.J.C. Rule 4:01, § 3(1) (providing that failure to cooperate constitutes misconduct).

Count VII. In early 2003, after bar counsel had commenced the disciplinary proceedings, the respondent wrongfully acquired property then in foreclosure and owned jointly by an estranged husband and wife. The respondent caused or permitted the wife to sign her husband's name on a deed purportedly conveying the property to the trust without the husband's knowledge or permission, and he notarized and caused the recording of the deed even though he knew that the husband had neither signed it nor authorized the conveyance. Although the wife claimed to be acting under a power of attorney from her husband, the respondent then knew that the husband had revoked the power and did not want to convey the property.

The respondent subsequently had the wife sign a false affidavit, and he executed a false affidavit reciting that the husband had not revoked the power of attorney. Both affidavits

were recorded at the respondent's direction. The respondent also misrepresented himself as the husband's attorney in his dealings with the foreclosing lender and made further misrepresentations about his status and activities to the husband's mother and a relative who was trying to help the husband retain the property.

The respondent effected the sale of the property to a third party, retained the net proceeds without any payment to the husband, and thereby converted the husband's interest in the property to his own use or for the benefit of his own family. Thereafter, the respondent tried to condition a settlement offer to the husband on his mother's agreement to refrain from complaining to bar counsel about his conduct. The respondent never made any restitution to the husband.

By misappropriating the husband's property with the intent to deprive the husband of the property at least temporarily and with actual deprivation resulting, the respondent violated Mass. R. Prof. C. 8.4(c) and (h). By obtaining the wife's signature on the deed and her execution of the husband's signature without the husband's knowledge or authority, executing a false notarization of the deed, effecting the wife's false affidavit of non-revocation and his own false affidavit, recording the false deed and affidavits, fraudulently obtaining title to the property in the name of the trust, intentionally misrepresenting his status and authority in the transactions, and using the sham trust to conceal his interest and assets from his creditors, the respondent violated Mass. R. Prof. C. 8.4(a), (c), (d) and (h).

By early 2006, the disciplinary hearings had been concluded, and the parties were awaiting the hearing officer's report and recommendation for discipline. On February 6, 2006, the respondent was temporarily suspended from practice based on new allegations of conversion of conveyancing funds in an unrelated matter. The respondent submitted his affidavit of resignation shortly thereafter. The Board voted on March 20, 2006, to recommend that the affidavit be accepted and that the respondent be disbarred. By a judgment entered on April 12, 2006, the Supreme Judicial Court for Suffolk County accepted the respondent's resignation and disbarred him effective immediately upon entry of the judgment.

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.

Please direct all questions to webmaster@massbbo.org.

© 2006. Board of Bar Overseers. Office of Bar Counsel. All rights reserved.