

IN RE: JOHN ALAN ROBERTS

S.J.C. Judgment of Disbarment entered by Justice Ireland on April 20, 2006.¹

SUMMARY²

The respondent was disbarred for conversion of \$160,000 from a physically and mentally disabled client, without restitution. After the client died, the respondent engaged in a conflict of interest in serving as executor of the client's estate while concealing the estate's claim against him for the return of the funds. The respondent failed to cooperate with bar counsel's investigation, failed to comply with an order of administrative suspension and failed to respond to formal proceedings.

The respondent represented the client from at least 1980 through his death at age seventy-eight in 1999. The client suffered from several physical infirmities, including cerebral palsy, hypertension and coronary artery disease, and was of borderline normal intelligence. From at least 1995 onward, the respondent assisted the client in managing his finances.

In early 1996, the respondent was in default on a first mortgage loan on his house and also owed past due real estate taxes. In March of 1996, he assisted the client in borrowing \$160,000 from a credit union where the client banked. The loan was secured by the client's funds in four accounts in his name at the credit union. The respondent caused \$136,608.92 of the loan funds to be paid to his mortgagee bank in full satisfaction of his mortgage, and \$10,000 to be applied toward his outstanding real estate taxes. The remaining \$13,391.08 was paid to the respondent and his wife.

The respondent knew that he had no authority to use the client's funds to pay off his personal debts. Given the client's physical infirmities and limited intelligence, he was incapable of giving consent to the respondent's use of his funds.

From April of 1996 through the client's death in May of 1999, the respondent made fifteen interest-only payments totaling \$19,000 to the credit union on the client's loan. All other required periodic payments, totaling \$12,605.17, were transferred by the credit union from the client's accounts, as permitted by the terms of the loan.

As of the date of the client's death, he had \$236,068.27 on deposit at the credit union. Repayment of the loan was due, and in June of 1999, the credit union transferred \$161,308.05 from the client's accounts to pay the loan in full.

The respondent had prepared and was in possession of the client's will and a codicil, which named the respondent as executor. The respondent did not file them with the probate court within thirty days of the client's death, as required by G.L. c. 191, § 13.

Shortly after the client's death, the respondent discussed the estate with a beneficiary under the will. He intentionally failed to disclose that he had taken \$160,000 of the client's money in 1996 and that the estate had a claim against him for repayment of those funds.

In April of 2000, the respondent filed the client's will and codicil and a petition to be appointed executor, which was granted. He also filed a bond without surety in which he intentionally failed to disclose that the estate had a claim against him for repayment of the

client's funds. The respondent had a personal interest in concealing his misuse of \$160,000 of the client's funds and the claim the estate had against him for the return of those funds.

From May of 2000 through late 2001, the respondent took no steps of substance to probate the client's estate. In January of 2002, the respondent was removed as executor and replaced by a successor executor. In July of 2002, the respondent sent to the new executor's lawyer an inventory of the client's estate in which he intentionally failed to disclose that the estate had a claim against him for the return of the client's funds. The respondent did not file this inventory with the court.

Later in 2002, the respondent was ordered by the probate court to file an inventory and an account for the client's estate and was held in contempt for his failure to do so. Finally in June of 2003, he filed an inventory and an account. In both filings, the respondent intentionally failed to disclose that the estate had a claim against him for the return of the client's funds.

In June of 2002, the new executor filed an equity action against the respondent and his wife alleging that the respondent had converted \$160,000 of the client's funds. The respondent and his wife did not answer or otherwise respond to the action, and a default judgment was entered. Execution was issued on that judgment and was levied on a second home owned by the respondent and his wife. The respondent made no restitution to the client's estate.

The respondent failed without good cause to cooperate with bar counsel's investigation of the matter. In October of 2002, he was administratively suspended for failure to cooperate with bar counsel's investigation. He did not comply with the order of administrative suspension and was not reinstated.

The respondent's conduct in converting \$160,000 of the client's funds without authority for his own purposes, with deprivation resulting to the client and his estate, was in violation of Canon One, Disciplinary Rule 1-102(A)(4) and (6), and Canon Nine, Disciplinary Rules 9-102(A) and (B), and, for conduct on and after January 1, 1998, Mass. R. Prof. C. 1.15(a)-(c), 8.4(c) and 8.4(h).

The respondent's conduct in failing to file the client's will with the probate court within thirty days of the client's death, in violation of the requirements of G.L. c. 191, § 13, and in failing to take any steps of substance to probate the client's estate was in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3, 8.4(d) and 8.4(h). His conduct in serving as executor of the client's estate when he had a personal interest in concealing his misuse of \$160,000 of the client's funds and the claim the estate had against him for the return of those funds was in violation of Mass. R. Prof. C. 1.7(b), 8.4(d) and 8.4(h).

The respondent's conduct in intentionally failing to disclose to the estate beneficiary that he had taken \$160,000 of the client's money in 1996 and that the estate had a claim against him for repayment of those funds, and his conduct in providing the new executor's lawyer with an inventory in which he intentionally failed to disclose that the estate had a claim against him for repayment of the client's funds he had taken, was in violation of Mass. R. Prof. C. 4.1(a), 4.1(b), 8.4(c) and 8.4(h). His conduct in intentionally failing to disclose in his bond and in his inventory and account that the estate had a claim against him for repayment of the client's funds was in violation of Mass. R. Prof. C. 3.3(a)(1), 3.3(a)(2), 8.4(c), 8.4(d) and 8.4(h).

The respondent's contempt of court in intentionally failing to comply without good cause with court orders requiring him to file an inventory and account was in violation of Mass. R. Prof. C. 3.4(c), 8.4(d) and 8.4(h). His conduct in failing without good cause to cooperate with bar counsel's investigation of this matter was in violation of Mass. R. Prof. C. 8.1(b), 8.4(d), 8.4(g) and 8.4(h) and S.J.C. Rule 4:01, § 3. His conduct in failing to comply with the order of administrative suspension was in violation of Mass. R. Prof. C. 3.4(c), 8.4(d) and 8.4(h), and S.J.C. Rule 4:01, §§ 3 and 17.

Bar Counsel filed and served a petition for discipline in August of 2005. As a matter in aggravation, the respondent failed to file a timely answer to the petition. After a motion by the respondent to remove a default was granted, the respondent filed no further pleadings with the board and was again defaulted.

On January 9, 2006, the Board of Bar Overseers voted unanimously to recommend that the respondent be disbarred forthwith for his misconduct. On April 12, 2006, a hearing was held before the Supreme Judicial Court for Suffolk County (Ireland, J.), at which the respondent failed to appear. On April 20, 2006, the Court entered an order disbaring the respondent from the practice of law, effective immediately, and striking his name from the Roll of Attorneys.

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.

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