

IN RE: WILFRED J. DALEY, III.

S.J.C. Order of Term Suspension entered by Justice Cordy on April 27, 2007. ¹

SUMMARY²

On August 14, 1995, a judgment of divorce nisi was entered in the matter of Guptill v. Guptill, No. 94D0716-D1. A marital agreement signed by the parties and incorporated into the judgment of divorce provided, among other things that, on the sale of the marital home, the net proceeds from the sale would be divided between the parties equally. Although the respondent did not represent either party in the divorce proceeding, he was subsequently hired to represent the ex-wife's interests.

On February 25, 2000, the marital home was sold for \$272,900.00. On March 21, 2000, counsel for the ex-husband sent the respondent a check in the amount of \$82,087.44, which represented the ex-wife's share of the net proceeds from the sale. On March 27, 2000, the respondent deposited the check to an IOLTA account.

The respondent did not notify the client promptly that he had received funds in her behalf nor did he promptly turn over the funds due her. Instead, between March 27, 2000 and April 20, 2000, the respondent withdrew at least \$34,139.91 of the ex-wife's money from the IOLTA account, commingled the funds with his own funds, and converted the funds to his own use.

On April 15, 2000, the respondent sent the ex-wife a check for \$47,000.00 drawn on his IOLTA account. In his cover letter, the respondent intentionally misrepresented that this amount was \$30,000.00 less than the ex-wife would have received had there not been a dispute over the distribution of the sale proceeds, and that the balance of the proceeds would be held in escrow pending a court's resolution of the dispute.

On or about May 1, 2000, the ex-wife requested that the respondent provide her with an accounting of the funds the respondent had received from the sale of the marital home. The respondent never provided her with an accounting.

Between May 2000 and March 1, 2006, the respondent paid the ex-wife an additional \$24,000.00 as proceeds from the sale of the marital home, using personal funds to do so. The respondent made no further payments to the ex-wife after March 1, 2006.

The ex-wife then hired new counsel to recover the funds from the respondent. On March 28, 2006, the ex-wife's new lawyer wrote to the respondent that he had been retained to recover funds that the respondent was currently holding in escrow from the sale of the marital home and demanded that the respondent immediately forward a check in the amount of \$18,000.00, together with an accounting and a copy of the ex-wife's files. The respondent did not reply to this request.

On April 11, 2006, the client's new lawyer filed with bar counsel a request for investigation alleging that the respondent had failed to provide an accounting or documents relative to the sale of the marital home. The client's lawyer claimed that the respondent continued to owe the client no less than \$18,000.00. The respondent made restitution of the \$18,000.00 on June

23, 2006.

The respondent, without good cause, intentionally failed to answer or otherwise respond to bar counsel's request for information. On May 30, 2006, bar counsel filed with the Supreme Judicial Court for Suffolk County a petition for the respondent's administrative suspension from the practice of law pursuant to S.J.C. Rule 4:01, § 3, due to the respondent's failure to respond to bar counsel's requests for information.

On June 6, 2006, the county court entered an Order administratively suspending the respondent from the practice of law. Matter of Daley, S.J.C. No. BD-2006-048.

The Order provided that if the respondent was not reinstated within thirty days, he would have to comply with the requirements of Supreme Judicial Court Rule 4:01, §§ 17(1) and (5), including providing notice to "all clients...that the [respondent] had been administratively suspended" from the practice of law. A copy of the Court's Order was sent to the respondent by the clerk's office. Between June 7, 2006 and July 7, 2006, the respondent did not comply with the applicable provisions of Supreme Judicial Court Rule 4:01, § 17, nor did he comply with the requirements of the Order or the § 17 thereafter.

The respondent's failure promptly to notify his client that he had received funds in her behalf and his failure promptly to turn the funds over to her violated Mass. R. Prof. C. 1.4 (a) and (b) (lawyer shall keep a client reasonably informed about the status of the matter, promptly comply with requests for information, and explain a matter to the client) and Mass. R. Prof. C. 1.15 (a) and (b) as in effect prior to July 1, 2004 (lawyer shall hold client's property separate from the lawyer's own property and promptly notify a client of his receipt of property in which the client has an interest). The respondent's commingling client funds with his own funds and his conversion of the ex-wife's funds to his own use violated Mass. R. Prof. C. 1.15 (a) and (b), as in effect prior to July 1, 2004, and 8.4(c) and (h) (lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, or any other conduct that adversely reflects on his fitness to practice law.)

The respondent's false representations regarding the amount of money he had received on his client's behalf and that there was a dispute that had to be resolved before she could receive the remainder of her funds violated Mass. R. Prof. C. 8.4(c) and (h).

The respondent's failure to account for his receipt and disbursement of the ex-wife's funds upon her request for an accounting violated Mass. R. Prof. C. 1.3 (lawyer shall act with reasonable diligence and promptness in representing a client), 1.4(a), and 1.15(c), in effect on and after July 1, 2004 (lawyer shall promptly notify a client of his receipt of trust property in which the client has an interest).

The respondent's failure without good cause to comply with the terms of his suspension from the practice of law and his failure to respond to bar counsel's letters violated Mass. R. Prof. C. 3.4(c) (knowingly disobey an obligation under the rules of a tribunal); 8.1(b) (fail to respond to a lawful demand for information from a disciplinary authority); and 8.4 (d), (g), and (h) (lawyer shall not engage conduct prejudicial to the administration of justice or fail without good cause to cooperate with bar counsel).

On January 8, 2007, the respondent filed an affidavit of resignation pursuant to Supreme Judicial Court Rule 4:01, § 15, acknowledging that a judgment of disbarment would be recommended by bar counsel and likely entered by the county court. On February 12, 2007, the Board of Bar Overseers voted to recommend to the Supreme Judicial Court that the affidavit of resignation be accepted in lieu of an indefinite suspension.

On March 29, 2007, the parties filed in the county court a stipulation in which the respondent acknowledged that he was the subject of a criminal proceeding charging him with larceny and that a judgment of disbarment was the appropriate sanction. The parties waived hearing.

On April 27, 2007, the Supreme Judicial Court for Suffolk County entered an Order accepting the respondent's affidavit of resignation and a judgment that the respondent be disbarred, effective immediately upon the entry of the Court's 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 Supreme Judicial Court.

Please direct all questions to webmaster@massbbo.org.

© 2001. Board of Bar Overseers. Office of Bar Counsel. All rights reserved.