

IN RE: DAVID A. REARDON

S.J.C. Judgment of Disbarment entered by Justice Ireland on September 8, 2006, with an effective date of October 8, 2006.¹

SUMMARY²

This matter came before the Court on the respondent's affidavit of resignation pursuant to Supreme Judicial Court Rule 4:01, § 15.

From approximately 1991 to 2000, the respondent represented an elderly client (Mary) on various legal matters. Mary's husband died on February 23, 1992. The husband's last will left his entire estate to his nephew.

From 1992 to 1998, the respondent represented Mary in a will contest challenging the husband's will. On July 21, 1998, the parties to the will contest filed a stipulation and agreement with the Probate Court, by which Mary agreed to withdraw her objections to the will and to the nephew's appointment as executor. The stipulation and agreement provided in relevant part that (a) the respondent would be responsible for the ancillary probate of the husband's estate in Maine in order to effect the transfer of certain Maine real property to Mary; (b) Mary would take a life estate in the marital home in Massachusetts; (c) upon the death of Mary, the Massachusetts property would be sold and the proceeds would go to the nephew, and the nephew would pay Mary's estate \$44,000; and (d) the husband's property in two safe deposit boxes would be shared equally by Mary and the nephew. On or about December 18, 1998, Mary paid the respondent \$10,000 as full payment of the legal fee he charged for his work on the will contest and related matters.

Between the settlement of the will contest in July 1998 and February 2, 2000, the respondent did not take any action of substance to distribute the safe deposit box property, or to complete the ancillary probate of husband's estate. However, the respondent represented Mary's relative (David) in obtaining David's appointment as the temporary guardian of the person and estate of Mary on November 15, 1999.

Mary died on February 2, 2000. At the time of her death, Mary's gross estate totaled approximately \$144,854, and was not subject to state or federal estate taxes. Her will nominated the respondent to serve as executor. On February 11, 2000, the respondent filed Mary's will with the Essex Probate Court, together with a petition for probate of her estate and for his appointment as executor. On February 11, 2000, the respondent was appointed temporary executor of Mary's estate for a limited period of ninety days. On May 11, 2000, the respondent's appointment as temporary executor expired, and he did not seek to renew the appointment, although he continued to act as personal representative for the estate after his appointment as temporary executor expired. Although no objections were filed to the respondent's appointment as permanent executor by the return date of March 27, 2000, the respondent did not file the return of service and his bond with the Probate Court until June 26, 2003. As a result, the Probate Court did not enter a decree appointing him executor of the estate until June 26, 2003, over two years after the decedent's death.

On or about February 12, 2000, while serving as temporary executor, the respondent opened an estate account. Between February 12, 2000, and September 11, 2002, the respondent

deposited a total of \$77,260.97 in estate assets to the estate account, and made payments totaling approximately \$16,591 for debts of the decedent and expenses of the estate. These payments included a \$4,000 flat fee the respondent paid to himself for his work on the estate, and \$1,200 he paid to himself for legal services related to the guardianship of Mary. Between February 12, 2000, and September 11, 2002, the respondent without entitlement intentionally commingled not less than \$56,580 of estate funds with his own funds and converted those funds to his own use, thereby depriving the estate and the estate's beneficiaries of the funds.

On September 23, 2002, the respondent deposited \$6,000 of his personal funds to the estate account. On or about September 30, 2002, using a portion of the funds he had just restored to the account, the respondent paid \$10,219.04 from the estate account to two residuary beneficiaries of the estate. After this payment, the residuary beneficiaries were still due not less than \$46,360.

The respondent did not make any further distributions to residuary beneficiaries between February 2000 and October 2003. On February 14, 2003, the respondent deposited an additional \$1,500 of his personal funds to the estate account. On or about March 18, 2003, using the funds he had just restored to the account, the respondent paid \$1,458.02 to David as reimbursement for real estate taxes David had paid on the Maine property.

Between February 2000 and June 2003, the respondent received a number of inquiries from beneficiaries regarding the status of the settlement of the estate. The respondent did not respond promptly to these inquiries, and he did not account to the beneficiaries for the assets he had received as fiduciary for the estate but had not distributed to the beneficiaries.

Between the decedent's death in February 2000 and June 2003, the respondent did not take any steps of substance to complete the ancillary probate proceedings in Maine, and did not pay all the real estate taxes due on the Maine property, with the result that the property went into tax title. During 2003, thirty-seven shares of stock owned by the decedent, and approximately \$434 in dividends payable to the decedent, escheated to the Massachusetts Abandoned Property Division of the Treasurer's Office. In 2004, an additional \$368 in dividends escheated to the state. By no later than June 10, 2004, the respondent was aware that some of the estate's assets had escheated to the Commonwealth, but the respondent did not take steps to reclaim the assets on behalf of the estate.

In June 2003, David filed a request for investigation with the Office of Bar Counsel concerning the respondent's handling of the estate. The respondent intentionally failed without good cause to respond to letters from bar counsel dated June 24, 2003, August 14, 2003, and August 26, 2003, each requesting that he respond in writing to the grievance. On June 26, 2003, after receiving notice of David's grievance, the respondent filed the return of service and his bond as executor with the Probate Court and was appointed permanent executor of the estate. Between June and November 2003, the respondent took steps to complete the ancillary probate proceedings in Maine.

In October 2003, the respondent deposited \$54,600 in personal funds to the estate account. Between October 1, 2003, and November 30, 2003, the respondent made payments to the estate's residuary beneficiaries totaling \$43,169.72, and made an additional \$6,064.83 in payments related to the estate.

On November 14, 2003, the respondent paid himself \$1,000 from the estate account. Because the respondent had previously paid himself a flat fee for his work on the estate settlement, he was not entitled to any additional payments from the estate. The respondent commingled the estate funds with his own funds, and converted the funds to his own use, with resulting deprivation to the estate and the estate's beneficiaries.

As of November 30, 2003, the respondent was required to make approximately \$20,000 in distributions to the residuary beneficiaries but there were insufficient funds in the estate

account to do so due to his conversion of estate funds. The respondent's conversion of the estate funds deprived the estate beneficiaries of the funds.

The Board of Bar Overseers issued a subpoena on September 17, 2003, requiring the respondent to appear for questioning with his files and records concerning the estate. On November 6, 2003, the respondent appeared and answered questions under oath at a meeting with bar counsel. The respondent intentionally failed without good cause to comply with the subpoena's requirement that he produce bank statements for the estate account and complete records regarding his handling of the estate funds. By letters dated September 20, 2004, November 15, 2004, December 3, 2004, and December 23, 2004, bar counsel requested that the respondent provide additional information and documentation. The respondent intentionally failed without good cause to reply to these letters.

In January 2004, the respondent liquidated 400 shares of stock standing in the name of the decedent, and received a check in the amount of \$6,638.90 payable to himself as executor. On January 20, 2004, the respondent negotiated the check, commingled the funds with his own funds, and converted the funds to his own use. The respondent's conversion of the funds deprived the estate beneficiaries of the funds.

On December 7, 2004, the respondent filed a first and final account as executor with the Essex Probate Court. The respondent intentionally misrepresented in the probate account that he had made a distribution of \$5,295.28 to an estate of one of the residuary beneficiaries who had died.

Between 1998 and 2005, the respondent failed to respond to demands from the husband's nephew that the husband's safe deposit box property be distributed in accordance with the terms of the will contest settlement. In November 2003, the respondent closed the safe deposit box and took possession of the contents. Thereafter, between November 2003 and June 2005, the respondent failed to distribute the property and wrongfully maintained the property in his sole control, thereby converting the property to his own use, with resulting temporary deprivation to the nephews and the beneficiaries of Mary's estate. In July 2005, the respondent distributed the property to the nephew.

In January 2005, after depositing \$4,500 in personal funds to the estate account, the respondent distributed approximately \$5,644 to nine residuary beneficiaries. On September 19, 2005, the respondent deposited an additional \$3,600 in personal funds to the estate account, but did not make any further distributions. The respondent never paid approximately \$5,196 owed to the estate of one residuary beneficiary.

By failing to timely complete the ancillary probate proceedings in Maine and appraise and distribute the safe deposit box property, the respondent violated Mass. R. Prof. C. 1.1, 1.3, 1.15(b) of the rule in effect from January 1, 1998, through June 30, 2004, and 1.15(c) of the rule in effect on and after July 1, 2004. By continuing to act as personal representative for the estate after his appointment as temporary executor expired; by failing to timely file his bond and obtain confirmation of his appointment as executor; by failing to timely collect, secure and distribute estate assets; by failing to take steps to prevent estate assets from escheating to the state; by failing to reclaim escheated assets on behalf of the estate; and by delaying the settlement of the estate, the respondent violated Mass. R. Prof. C. 1.1, 1.3, 8.4(d), and 8.4(h).

By converting estate funds to his own benefit, the respondent violated Mass. R. Prof. C. 8.4(c), 8.4(d), and 8.4(h). By commingling estate funds and property with his own property, the respondent violated Mass. R. Prof. C. 1.15(a) of the rule in effect from January 1, 1998, through June 30, 2004, and 1.15(b) of the rule in effect on and after July 1, 2004. By failing promptly to turn over funds and property to the beneficiaries entitled to receive them, the respondent violated Mass. Rules of Prof. C. 1.15(b) of the rule in effect from January 1, 1998 through, June 30, 2004, and 1.15(c) of the rule in effect on an after July 1, 2004. By failing to

promptly render a full written accounting regarding the estate's property and the safe deposit box contents upon request by persons on whose behalf he was supposed to be holding the property, the respondent violated Mass. R. Prof. C. 1.15(b) of the rule in effect from January 1, 1998, through June 30, 2004, and 1.15(d)(1) of the rule in effect on and after July 1, 2004.

By filing a first and final account with the Probate Court that intentionally misrepresented that the respondent had distributed funds to a beneficiary's estate when no such distributions had been made, the respondent violated Mass. R. Prof. C. 3.3(a)(1), and 8.4(c). By knowingly failing without good cause to cooperate with bar counsel's investigation, the respondent violated Mass. R. Prof. C. 3.4(c), 8.1(b), 8.4(g), and S.J.C. Rule 4:01, § 3.

The respondent was admitted to the Bar of the Commonwealth on June 10, 1987, and was administratively suspended from the practice of law in Massachusetts on April 13, 2005, in accordance with S.J.C. Rule 4:01, § 3(2). The respondent did not file an affidavit of compliance after his administrative suspension, and was not reinstated to practice. On August 1, 2006, the respondent submitted his affidavit of resignation from the practice of law. In the affidavit, the respondent acknowledged that sufficient evidence existed to warrant findings that the material facts summarized above could be proved by a preponderance of the evidence. On August 14, 2006, the Board of Bar Overseers voted to recommend that the affidavit be accepted, and that a judgment of disbarment be entered. The Supreme Judicial Court entered a judgment of disbarment on September 8, 2006.

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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