

IN RE: CHRISTOPHER NOLAN

S.J.C. Order of Indefinite Suspension entered by Justice Greaney on February 5, 2008.¹

SUMMARY²

This matter was before the Court on a stipulated recommendation for suspension based on five counts of misconduct, as follows.

Count I. From at least 2003 through October 2006, the respondent commingled trust funds with his own funds in his IOLTA account by repeatedly depositing business or personal funds to the account and by failing timely to withdraw all his earned fees. The respondent failed to keep complete records of his receipt, maintenance and distribution of all funds in his IOLTA account. From July 1, 2004, through October 2006, the respondent failed to reconcile his IOLTA account or maintain the required check register, client and bank charge ledgers, reconciliation reports and account documentation.

The respondent's conduct in commingling his own funds with trust funds in the IOLTA account, depositing personal or business funds to the IOLTA account, and failing to withdraw fees from the account promptly as they were earned violated Mass. R. Prof. C. 1.15(a) and (d)(2), as in effect through June 30, 2004, and Mass. R. Prof. C. 1.15(b)(2), effective July 1, 2004. Through June 30, 2004, the respondent's failure to maintain complete IOLTA account records violated Mass. R. Prof. C. 1.15(a), as then in effect. From July 1, 2004, through October 2006, the respondent's failure to reconcile his IOLTA account and maintain all required account records violated Mass. R. Prof. C. 1.15(f)(1)(B)-(F), as in effect since July 1, 2004.

Count II. In early 2004, the respondent was hired by the owners of rental property (landlords) to defend them in a suit by a former tenant to recover rent payments and a security deposit. During the spring of 2004, as a condition of continuing the trial of the action, the respondent and the tenant's lawyer agreed that the respondent would obtain \$2,000 from the landlords and hold the funds in escrow as security for any judgment in the tenant's favor. The landlords gave \$2,000 to the respondent as the escrow funds. The respondent knew that he would have to hold the escrow funds in trust for an indefinite period. The respondent failed to place the funds in an individual trust account with interest payable as directed by the parties. Instead, he deposited the funds to his IOLTA account and commingled them with his own funds in the account. Shortly after the deposit, the respondent negligently misused about \$100 of the funds to make restitution to another client as described in Count III below.

In August 2005, the court entered judgment against the landlords for about \$3,600 plus interest. No appeal was taken from the judgment. As of early September 2005, the escrow funds were due and owing to the tenant in partial satisfaction of the judgment. The tenant's lawyer made demand on the respondent for payment of the judgment. The respondent asked the landlords for additional funds to satisfy the judgment in full. The landlords provided no other funds, and the respondent did not remit any of the escrow funds to the tenant.

During November 2005, the respondent converted the remaining escrow funds to make partial restitution to other clients whose funds he converted as described in Count IV. The respondent misused the balance of the escrow funds intentionally and with resulting deprivation to the landlords and the tenant.

In January 2006, the tenant's lawyer made another demand for satisfaction of the judgment. The respondent intentionally misrepresented to the tenant's lawyer that he was then holding funds from the landlords. The respondent told the lawyer that he could not remit any funds because the landlords were seeking bankruptcy protection. Represented by other counsel, the landlords filed a bankruptcy petition in February 2006, but the petition was dismissed one month later. The tenant's lawyer subsequently informed the respondent of the dismissal and demanded the escrow funds in partial payment of the judgment. The respondent failed to reply.

In July 2006, the tenant's lawyer obtained a court order for the respondent's immediate release of the escrow funds. The respondent sent the lawyer an IOLTA check for \$2,000, but the check was dishonored for insufficient funds. On August 15, 2006, after further demand, the respondent made restitution by paying \$2,000 to the tenant's lawyer from his own funds. The respondent did not keep complete, required records of the escrow funds or account to the landlords for the funds, and he never disclosed to them his misuse or dissipation of the funds.

The respondent's conversion of the escrow funds violated Mass. R. Prof. C. 8.4(c). The respondent's intentional misrepresentation to the tenant's lawyer about the status of the funds and failure to disclose his misuse and dissipation of the funds violated Mass. R. Prof. C. 4.1(a) and (b) and 8.4(c). The respondent's failure to deposit the escrow funds to an individual trust account with interest payable as directed by the parties, failure to segregate the funds, and commingling of the funds with his own funds violated Mass. R. Prof. C. 1.15(a), (d) and (e) through June 30, 2004, and Mass. R. Prof. C. 1.15(b) and (e)(5) on and after July 1, 2004. The respondent's failure promptly to remit the funds due the tenant violated Mass. R. Prof. C. 1.15(b) through June 30, 2004, and Mass. R. Prof. C. 1.15(c) on and after July 1, 2004.

The respondent's failure to keep complete, required records of the escrow funds and to account for the funds violated Mass. R. Prof. C. 1.15(a) and (b) through June 30, 2004, and Mass. R. Prof. C. 1.15(f)(1) on and after July 1, 2004. His failure to inform his clients that he no longer held funds on their behalf, had misused and dissipated the funds, and was therefore unable to pay the funds to the tenant violated Mass. R. Prof. C. 1.4(a) and (b).

Count III. In the spring of 2004, a landlord hired the respondent to pursue summary process against a tenant. The respondent started a summary process action for the landlord. In early June 2004, the parties entered into an agreed judgment whereby the tenant was to pay \$1,800 to the landlord immediately in exchange for continued possession. The respondent received the \$1,800 payment from the tenant. Of that sum, at least \$1,500 was immediately due and owing to the landlord. The respondent did not remit any of the funds to the landlord or deposit them to a trust account. Instead, the respondent retained the funds paid by the tenant, commingled those funds with his own funds, and converted them to his own use. The respondent intentionally misused the funds with resulting deprivation to his client.

In June 2004, the respondent issued an IOLTA check to the landlord for \$1,500, representing the tenant's payment less a \$300 deduction for outstanding fees claimed by the respondent. The respondent knew that the payment funds had not been deposited to the IOLTA account and that his check to the landlord would or might draw on funds belonging to other clients. The respondent had insufficient funds in the account to cover that check. On two occasions, the landlord tried to negotiate the check and was informed that there were insufficient funds on deposit to cover it. The respondent subsequently deposited the escrow funds described in Count I and about \$1,700 in earned fees or other non-trust funds. When the landlord again presented the \$1,500 check, it was honored and paid by drawing, in part, on the escrow funds. The respondent thereby made restitution to the landlord. At the landlord's request, the respondent also refunded the \$300 deducted for fees. The respondent did not keep adequate records of his receipt, handling and disposition of the landlord's funds.

The respondent's conversion of the landlord's funds violated Mass. R. Prof. C. 8.4(c). The respondent's failure to deposit those funds to a trust account or segregate the funds and his commingling of the funds with his own funds violated Mass. R. Prof. C. 1.15(a), (d) and (e), as in effect through June 30, 2004. The respondent's failure promptly to remit the funds due his client violated Mass. R. Prof. C. 1.15(b), as in effect through June 30, 2004. The respondent's failure to keep complete records of the funds violated Mass. R. Prof. C. 1.15(a), as in effect through June 30, 2004.

Count IV. In early 2005, roommates hired the respondent to represent them in lease disputes with their landlord. The mother of one of the roommates was a guarantor of the lease. The landlord's counsel started a summary process action against the roommates and the mother. The respondent represented the roommates and the mother (the clients) in the action. In the spring of 2005, the clients agreed to a judgment against them for \$3,290. The respondent told the landlord's lawyer that the judgment would be paid promptly.

The clients gave the respondent \$3,290 to pay the judgment. As of August 2005, that sum was immediately due and owing to the landlord. The respondent did not remit the funds to the landlord or deposit them to a trust account. Instead, the respondent retained those funds, commingled the funds with his own funds and converted them to his own use. The respondent intentionally misused the funds with resulting deprivation to the clients.

Starting in late August 2005, the landlord's lawyer made repeated demands on the respondent to satisfy the judgment. The respondent failed to reply to those demands. The landlord's lawyer obtained an execution and had it served on the clients, who told the lawyer that they had already given funds to satisfy the judgment to the respondent. In November 2005, after further demands, the respondent sent the lawyer an IOLTA check for \$2,500 in partial satisfaction of the judgment. The respondent funded that check by intentionally misusing the escrow funds described in Count II. The respondent represented to the lawyer that he would remit the balance due by December 1, 2005, but did not make further payment by that date.

The landlord's lawyer informed the respondent that he would seek judicial relief against the clients absent full payment by December 12, 2005. The respondent made no further payment. The lawyer had the execution recorded and thereby levied on real estate owned by the mother, with further action suspended. Thereafter the lawyer started supplementary process against the mother. Notice of the seizure and the supplementary process was served on the mother in January 2006, at which time she so informed the respondent and demanded his immediate satisfaction of the judgment. A few days later, the respondent paid \$1,220.21 to the landlord's lawyer from his own funds to satisfy the balance due plus costs of enforcement and thereby made restitution of the funds received from the clients. The respondent did not keep required records of the clients' funds or account to the clients for their funds, and he never disclosed to the clients his misuse or dissipation of their funds.

The respondent's conversion of the clients' funds violated Mass. R. Prof. C. 8.4(c). The respondent's failure to deposit the funds to a trust account and his commingling the funds with his own funds violated Mass. R. Prof. C. 1.15(b) and (e)(5), as in effect on and after July 1, 2004. The respondent's failure promptly to remit the funds due the landlord pursuant to his clients' instructions violated Mass. R. Prof. C. 1.15(c), as in effect on and after July 1, 2004. The respondent's failure to keep required records of the funds and to account for the funds violated Mass. R. Prof. C. 1.15(f)(1), as in effect on and after July 1, 2004. His failure to inform the clients of his misuse and dissipation of the funds violated Mass. R. Prof. C. 1.4(a) and (b).

Count V. On November 8, 2006, the respondent was administratively suspended from practice in the Commonwealth pursuant to S.J.C. Rule 4:01, § 3(2), for his knowing failure without good cause to cooperate in bar counsel's investigation. The respondent received timely notice of the order for his administrative suspension. He did not seek reinstatement, and, on December 9, 2006, the respondent became subject to additional requirements of the

suspension order and S.J.C. Rule 4:01, § 17. The respondent received notice of those obligations in due course but knowingly failed without good cause to comply in full until April 30, 2007.

The respondent's knowing failure without good cause to cooperate in bar counsel's investigation and comply timely with the terms of his administrative suspension violated Mass. R. Prof. C. 3.4(c), 8.1(b) and 8.4(g), and S.J.C. Rule 4:01, § 3(1).

The matter came before the Board of Bar Overseers on a stipulated recommendation for an indefinite suspension, retroactive to the date of compliance with the administrative suspension order, and the respondent's acknowledgement that the facts and rule violations alleged could be proved by a preponderance of the evidence. The Board voted to accept the stipulation and recommendation. On February 5, 2008, the Court ordered the respondent's indefinite suspension retroactive to April 30, 2007.

FOOTNOTES:

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.
© 2005. Board of Bar Overseers. Office of Bar Counsel. All rights reserved.