

IN RE: CARL N. DONALDSON

S.J.C. Order of Term Suspension entered by Justice Sosman on November 13, 2006, with an effective date of December 13, 2006.¹

SUMMARY²

Bar counsel filed a four-count petition for discipline against the respondent in August 2005. Count One arose from the respondent's defense of a client in a collection matter. The respondent failed to act promptly on behalf of the client and falsely represented to the client that he had contacted the finance company and notified the company that he was representing the client. When the respondent finally did contact the finance company, the company requested certain documentation and an affidavit from the client in order to stop the negative reporting on the client's credit report. The respondent failed to prepare the affidavit and to request and collect the required information or to forward it to the finance company. When the client terminated the representation, requested a refund of his retainer and the file, the respondent failed to provide an accounting or a refund and failed to return the file to the client.

The respondent's conduct in failing to provide competent representation and failing to act diligently violated Mass. R. Prof. C. 1.1 and 1.3. The respondent's conduct in falsely representing to the client that he had contacted the finance company violated Mass. R. Prof. C. 8.4(c). The respondent's failure to keep the client reasonably informed about the status of his case and to explain the matter to the extent reasonably necessary to permit the client to make informed decisions violated Mass. R. Prof. C. 1.4 (a) and (b). The respondent's failure upon termination of his services to provide an accounting or to refund the unearned portion of the fee, and to return the file to his client, violated Mass. R. Prof. C. 1.15(d), as appearing in 426 Mass. 1301, 1363 (1997), effective through June 30, 2004, and 1.16(d) and (e).

In the second count, the respondent represented a client in an action against her former business partners and counsel for the business. The respondent filed a complaint on behalf of the client and served or caused to be served the complaint upon the defendants in October 2002. The respondent was served with a motion to dismiss by one of the defendants, but the respondent failed to respond or to oppose the motion. The court allowed the motion to dismiss in October 2003. The client instructed the respondent to file a motion to vacate the dismissal. The respondent agreed to do so but took no further action. Thereafter, the respondent was served with motions to dismiss by the second and third defendants. The respondent failed to respond and to oppose the motions. By March 2004, the court had entered judgments of dismissal as to the second and third defendants. The respondent received notice of the dismissals, but took no action to reinstate the case as to any of the defendants.

In March 2004, the respondent falsely informed the client that he had filed a motion to reconsider with the court, and that a hearing was scheduled for March 16, 2004. The client appeared, but the respondent did not. The client contacted the respondent, and he falsely informed her that the hearing had been postponed. The client learned from the clerk's office that the respondent had taken no action to reinstate her case, and that there was a judgment of dismissal as to these defendants. The client terminated the respondent's services and asked for the return of her file. The respondent failed to file a timely notice of

withdrawal, to return the client's file, or to refund unearned legal fees.

The respondent's conduct in failing to provide competent representation to the client and in failing to act with reasonable diligence resulting in the dismissal of her cause of action violated Mass. R. Prof. C. 1.1 and 1.3. The respondent's conduct in misrepresenting to the client that he had filed a motion to reconsider with the court, and that a hearing was scheduled on March 16, 2004, violated Mass. R. Prof. C. 8.4(c). The respondent's conduct in failing to promptly withdraw or to return his client's file and unearned legal fee, violated Mass. R. Prof. C. 1.15(b) and (c).

In the third count, the respondent undertook to represent a client who had been convicted of two counts of first-degree murder. The respondent did not represent the client at trial or on appeal. The client's mother engaged the respondent's services on behalf of her son to locate and interview four witnesses to the murders and provide her with a report of these interviews. The respondent received a \$6,000 retainer.

The respondent interviewed one of the four witnesses. He failed to interview the remainder of the witnesses or to provide a written report. By letters in December 2002 and again in May 2003, the mother requested an itemized bill and an accounting of the retainer. The respondent failed to provide an itemized accounting or to return the unearned portion of his fee.

The respondent's conduct in failing to act with reasonable competence, diligence and communication in representing the client violated Mass. R. Prof. C. 1.1, 1.3, and 1.4. The respondent's failure to render a full accounting or to pay over the unearned balance of the retainer due the client violated Mass. R. Prof. C. 1.15(b) and (c), as appearing in 426 Mass. 1301, 1363 (1997), effective through June 30, 2004.

In fourth count, the respondent was retained to represent a client in a drug-related offense in West Roxbury District Court. The client also retained the respondent to represent his friend ("the second client") on an unrelated drug charge. The client paid the respondent at least \$1,500 on behalf of the second client. The respondent filed an appearance on behalf of the second client in June 2004, and took no further action.

In about October 2004, the second client discharged the respondent for failing to take any substantive action on his behalf. Successor counsel filed an appearance on behalf of the second client on October 28, 2004. In December 2004, the client sought the return of the unearned portion of the fee for the second client. The respondent did not respond.

The respondent's conduct in failing to act with reasonable competence and diligence in representing the second violated Mass. R. Prof. C. 1.1, 1.3, and 1.4. The respondent's failure to render a full accounting or to return the unearned portion of his fee violated Mass. R. Prof. C. 1.15(b) and (c), as appearing in 426 Mass. 1301, 1363 (1997), effective through June 30, 2004.

The respondent has made restitution to the clients for the unearned portion of his fees. In mitigation, the respondent was suffering from emotional and physical problems during the relevant time period.

On May 19, 2006, the parties filed a stipulation and jointly recommended a two-month suspension from the practice of law. The respondent admitted in the stipulation that the material facts and disciplinary violations set forth in bar counsel's petition would be established by sufficient evidence. On October 16, 2006, after supplementary evidence on mitigation was submitted to the Board of Bar Overseers, the Board voted unanimously to recommend a two-month suspension from the practice of law. The court so ordered on November 13, 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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