

IN RE: BERYL W. COHEN

S.J.C. Order of Term Suspension entered by Justice Cordy on May 1, 2007, with an effective date of May 31, 2007.¹

(S.J.C. Judgment of Reinstatement entered by Justice Cordy on September 11, 2007.)

SUMMARY²

Commencing in 1995, the respondent represented two co-workers in separate employment discrimination claims, first before the Equal Opportunity Employment Commission, and then in civil litigation. One client paid the respondent a fee of \$5950 and the other paid him a fee of \$7500. In each case, the respondent's oral fee agreement with the client was that his total fee would be the greater of \$10,000 or the amount of any ultimate fee award and that the clients would be credited with the amount of any fees that they had paid against any fees awarded.

In March 2001, the first case settled for \$115,000, with an additional fee award to the respondent of \$75,000. In May 2001, the second case settled for \$140,000, with an additional fee award to the respondent of \$55,000. In both cases, the respondent received a check from the employer for the client's settlement and a separate check for his fee award. In both cases, the respondent forwarded the settlement check to the client and retained the check for the fee award, but did not refund the fees previously paid by the clients of \$5950 and \$7500, respectively.

Over the next several months, both clients made multiple written demands on the respondent for reimbursement of the fees that they had paid him. The respondent did not reply to any of their correspondence and did not refund the money. In September 2001, the clients complained to bar counsel's Attorney and Consumer Assistance Program (ACAP). After being contacted by ACAP, the respondent met with the first client in October 2001 and the second client in November 2001. He agreed to make a partial repayment to the first client in March 2002, with the balance on a date to be agreed upon in 2002. He told the second client that he could not afford to pay both clients at the same time and she agreed that he could repay her in September 2002.

The respondent refunded \$3000 to the first client in April 2002 but thereafter, and despite further demands, did not pay the balance. The client again called ACAP in July 2002. The respondent was again contacted by ACAP and indicated that he would pay the balance but, when only partial payment was forthcoming, the client filed a complaint with bar counsel. Bar counsel sent the complaint to the respondent on September 17, 2002, and on October 24, 2002, the respondent repaid the client the balance that she was due.

Also in September 2002, the respondent sent the second client a check for \$5000. The second client at this point paid another attorney to commence collection efforts as to the money still owed. On October 29, 2002, after the first client filed her complaint, the respondent met with bar counsel to discuss both matters. On November 14, 2002, he remitted the balance due to the second client.

In both cases, the respondent's conduct in retaining fees beyond the amounts agreed upon

with the clients constitutes charging a clearly excessive fee in violation of Mass. R. Prof. C. 1.5(a) and failure to refund an unearned fee in violation of Mass. R. Prof. C. 1.16(d). His conduct in failing to reply to his clients' inquiries until contacted by ACAP constitutes failure to communicate with the client, in violation of Mass. R. Prof. C. 1.4. His failure to refund the fees as promised, even after the intervention by ACAP, is conduct adversely reflecting on his fitness to practice law, in violation of Mass. R. Prof. C. 8.4(h).

In aggravation, the respondent has been disciplined on several prior occasions. Matter of Cohen, 3 Mass. Att'y Disc. R. 43 (1983) (public censure for failure to communicate with client and repeated failure to cooperate with bar counsel); Matter of Cohen, 5 Mass. Att'y Disc. R. 69 (1988) (one year suspension, stayed, with indefinite probation, including peer review agreement, for failure to pay clients, misrepresentations, and failure to communicate with clients); Matter of Cohen, 7 Mass. Att'y Disc. R. 54 (1991) (public censure for negligent misuse of client funds). In addition, the respondent acted with a selfish motive in delaying refunding the amounts due the clients.

A petition for discipline was filed on September 4, 2003. The matter was tried before a hearing committee, which on February 27, 2006, filed a report with the board recommending that the respondent be suspended for three months. While appeals were pending, the parties entered into a stipulation, accepting the recommendation of a three-month suspension but agreeing to additional disciplinary violations not found by the committee. On April 9, 2007, the board voted to accept the stipulation of the parties to adopt the hearing committee report as modified and to recommend to the Supreme Judicial Court that the respondent be suspended for three months. The Court so ordered on May 1, 2007.

FOOTNOTES:

¹The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

²Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

Please direct all questions to webmaster@massbbo.org.

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