

## IN RE: TERRENCE E. BURKE

S.J.C. Order of Indefinite Suspension entered by Justice Ireland on August 1, 2007, with an effective date of August 31, 2007.<sup>1</sup>

SUMMARY<sup>2</sup>

In 1988, a client who had been appointed conservator of the property of his father several years earlier retained the respondent to assist him in managing the father's finances. When the client was appointed conservator, the court ordered him to post a bond for the performance of his duties, which he did. G.L. c. 206, § 1, requires the filing of annual accounts by a conservator who has been required to post a bond unless a court excuses that obligation. The respondent incorrectly advised the client that such accounts were unnecessary unless there was an adversary proceedings, and he did not prepare or file any annual accounts for the client or the conservatorship. The hearing committee and the Board of Bar Overseers determined that the respondent's failure either to file accounts or to advise his client to file accounts violated Canon Six, DR 6-101(A)(1) and (3), for conduct occurring before January 1, 1998, and Mass. R. Prof. C. 1.1 and 1.3 for conduct on and after January 1, 1998.

After he retained the respondent, the client added him as a signatory on a checking account at Sovereign Bank in which the client maintained conservatorship assets. With the client's approval, the respondent changed the mailing address for the account to his law office. Checks drawn on the account required the signatures of both the client and the respondent. Pursuant to the client's instructions, monthly retirement checks for the client's father were sent to the respondent and deposited into the Sovereign account.

On June 22, 1989, with the client's consent, the respondent used \$20,000 of conservatorship funds to purchase a three-month certificate of deposit at Shawmut Bank on behalf of the conservatorship. The respondent was the only person who received information from the bank regarding the CD. The CD was automatically renewed every three months between June 1989 and May 1993, with the interest on the CD added to the principal upon renewal.

On May 17, 1993, Shawmut notified the respondent that the CD would mature and be automatically renewed on June 21, 1993. The principal balance of the certificate as of that date was \$24,364.37. On June 28, 1993, the bank sent another notice to the respondent informing him that the CD had been renewed and that the principal balance as of that date was \$19,129.99, a \$5,129.99 decrease in the balance of the certificate. The respondent did not review the June 28, 1993, notice from the bank or subsequent notices showing the balance in the CD. As a result, he did not notice the decrease in the value of the CD and made no inquiry of the depository or the client regarding the missing \$5,129.99. The respondent never accounted for the missing funds. The respondent's failure to safeguard the funds in the CD and to maintain adequate records concerning those funds violated Canon Six, DR 6-101(A)(1) and (3), and Canon Nine, DR 9-102(B)(3).

Between May 14, 2003, and July 19, 2004, the respondent converted \$22,373.47 from the Sovereign account to pay his own business and personal expenses. The respondent knew he was not entitled to these funds and he knew the client did not consent to his taking the money. The respondent took the funds by issuing nine checks to himself in various amounts. The respondent wrote "interim billing" on the memo section of each of the nine checks and

then deposited the checks into his business account. The respondent wrote these checks in specific, irregular amounts to conceal his misuse of funds to deprive the conservatorship of the funds.

In December 2003, the client informed the respondent that he wanted quarterly accountings of all payments the respondent received and checks the respondent issued on behalf of the conservatorship during the preceding quarter. In February 2004, the client asked the respondent to start providing the quarterly accountings by the end of that month. The respondent did not provide an accounting or otherwise respond to the client's request. Of the nine checks representing funds converted by the respondent, three, totaling \$8,463.26, were written after the client's February 2004 request.

The client met with the respondent on October 12, 2004, to review his father's finances. At the meeting, the respondent agreed to provide the client with a full accounting of his father's funds and records from both the CD and the Sovereign account by the end of that month, but he failed to do so.

On November 2, 2004, the respondent deposited \$2,785.48 of his personal funds into the Sovereign account. On November 10, 2004, the respondent deposited an additional \$2,891.46 of his personal funds into the Sovereign account. That same day the respondent sent a letter to the client in which he provided some of the information the client had requested.

On November 24, 2004, the client sent another letter to the respondent demanding all Sovereign account statements for 2004, all invoices and checks written from the Sovereign account in 2004, all CD statements, and the source of the two deposits the respondent made to the account in November 2004. On December 6, 2004, the client wrote to the respondent stating that he was unhappy with the respondent's inadequate responses to his request and setting deadlines for the respondent's compliance.

In December, the respondent continued to repay the funds he had taken from the Sovereign account. He deposited \$2,786.32 of his personal funds into the account on December 10, 2004, and \$2,596.21 on December 16, 2004. By that date, the respondent had restored to the account approximately half the funds he had converted.

On December 16, 2004, the respondent admitted during a phone call with the client that he had made withdrawals from the Sovereign account without the client's knowledge or permission. The respondent then sent the client a letter confirming his admission and listed his nine unauthorized withdrawals and the four deposits he had made to reimburse the account. In January and February 2005, the respondent restored another \$4,132 to the account, but he still owed \$7,182 to the conservator.

In February 2005, the client retained an attorney to assist him in collecting the remaining funds the respondent owed to the client. The attorney sent the respondent a G.L. c. 93A demand letter on February 26, 2005, seeking \$13,500 for the remaining funds the respondent had withdrawn from the Sovereign account, the funds missing from the CD account, interest lost on the funds the respondent had taken, and legal fees. In a response to the attorney, the respondent agreed to pay the \$13,500 demand. The client complained to the Office of Bar Counsel about the respondent's conduct on March 18, 2005. The respondent did not make complete restitution of the funds he took until May 27, 2005.

The respondent's conversion of the client's funds from the Sovereign account violated Mass. R. Prof. C. 1.15(b) (lawyer shall promptly deliver funds client is entitled to receive) for his conduct prior to July 1, 2004, and 1.15(c) (same) for conduct after July 1, 2004; and 8.4(c) (dishonesty, fraud, deceit, or misrepresentation) and (h) (conduct adversely reflecting on fitness to practice). The respondent's intentional misrepresentations on the checks withdrawing funds from the account, his concealment of his misuse of client funds, and his failure to provide an accounting of the client's funds promptly upon request violated Mass. R.

Prof. C. 1.3 (diligence and zealous representation); 1.4(a) (lawyer to keep client reasonably informed about status of matter and promptly comply with requests for information) and (b) (lawyer to explain matter to extent reasonably necessary to enable client to make informed decisions about representation); 1.15(d)(1)-(2) (lawyer shall provide full accounting upon request, deliver itemized bill, provide written notice of withdrawal and statement showing balance of client funds); and 8.4 (c) and (h).

On May 31, 2007, the Board of Bar Overseers filed an Information with the Supreme Judicial Court for Suffolk County recommending that the respondent be indefinitely suspended from the practice of law for his misconduct. On August 1, 2007, the county court (Ireland, J.) entered an order indefinitely suspending the respondent from the practice of law effective thirty days after the entry of the order.

#### FOOTNOTES:

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

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record before the Supreme Judicial Court.

Please direct all questions to [webmaster@massbbo.org](mailto:webmaster@massbbo.org).

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