

IN RE: THOMAS J. LYNCH

S.J.C. Judgment of Indefinite Suspension entered by Justice Greaney on July 13, 2007, with an effective date of August 13, 2007.¹

SUMMARY²

The respondent was indefinitely suspended for misconduct as trustee of three unrelated trusts. The respondent was also defaulted for failure to respond to the Petition For Discipline.

In the mid-1990's, the respondent became the trustee of three trusts funded by personal injury settlements. Two of the trusts involved adult beneficiaries who had been injured, one in a work-related accident and the other in an automobile accident. The third trust involved a minor beneficiary and the settlement of a medical malpractice case against his mother's obstetrician.

For each of these trusts, the respondent invested the settlement proceeds through a fund manager specializing in tort settlements. The respondent also maintained a checking account in the name of each trust. He would have funds transferred from the investment accounts to the checking accounts to cover any disbursements made for the beneficiaries pursuant to the terms of the trusts.

The respondent's accounting records concerning his maintenance of the checking accounts for each trust were uniformly inadequate to document his receipt, maintenance and disbursement of the funds of each trust. He did not maintain check registers that included information on the purpose of disbursements or a running balance after each entry. He also did not maintain and preserve adequate records supporting payments he made to himself for purported fees earned and expenses incurred on behalf of the trusts. The respondent's failure to maintain adequate records concerning his receipt, maintenance and disbursement of trust funds was in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.15(a) for conduct prior to July 1, 2004 and 1.15(f) for conduct on and after that date.

Each trust required the respondent to provide its beneficiary with annual accountings of the trust's funds. The respondent did not provide any beneficiary with any annual accounting until 2004, when he provided one beneficiary with summary and incomplete accountings for 1996 through 2003. After repeatedly promising a lawyer for another beneficiary that he would provide accountings, he only provided that beneficiary with summary and incomplete accountings in 2005. The respondent's failure to render annual accountings of his administration of the trusts was in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.15(b) for conduct prior to July 1, 2004 and 15(d)(1) for conduct on and after that date.

As trustee, the respondent was responsible for filing required state and federal income tax returns for income earned by the trusts and/or for providing the beneficiaries with information concerning income and distributions attributable for tax purposes to the beneficiaries. The respondent did not file any tax returns for income earned by the trusts and he did not provide the beneficiaries with any information concerning income and distributions attributable for tax purposes to them. His failure to prepare and file state and federal income tax returns for the trusts and/or to provide the beneficiaries with tax information was in violation of Mass. R. Prof. C. 1.1, 1.2(a) and 1.3.

In connection with one of the trusts, the respondent agreed to provide the beneficiary with monthly payments for living expenses. On a number of occasions the respondent did not make the monthly payments as agreed, did not inform the beneficiary that the payments would not be made and did not respond to telephone calls from the beneficiary concerning the missing payments. The respondent also failed to make timely payments of insurance premiums on that beneficiary's specially equipped van, resulting in the cancellation of insurance at least three times. This conduct was in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3, 1.4(a) and 1.4(b).

In connection with the third trust, the respondent represented the minor beneficiary's mother in a divorce action against the beneficiary's father from 2001 through 2003. As trustee, the respondent had a fiduciary obligation to use independent judgment in managing the trust's funds in accordance with the trust. His continued service as trustee was or could have been materially limited by the respondent's representation in the divorce action of the mother, who had been laid off from her employment and was not receiving sufficient financial support from the father. The respondent did not obtain the consent after consultation of the beneficiary to his representation of the mother in the divorce, nor was the beneficiary competent to consent to the conflict. The respondent had also represented the father on a consortium claim in the original malpractice action against the obstetrician. The mother's divorce was substantially related to the father's consortium claim, and the respondent did not obtain the consent after consultation of the father to his representation of the mother in the divorce. The respondent's representation of the mother in the divorce was a conflict of interest in violation of Mass. R. Prof. C. 1.7(a), 1.7(b) and 1.9(a).

After the respondent began representing the mother in the divorce, he transferred the trust's funds to a joint checking account on which both he and the mother were signatories, and both he and the mother disbursed trust funds from the account. This was in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.7(a), 1.7(b) and 1.15(a) for conduct prior to July 1, 2004 and 1.15(b) for conduct on and after that date. The respondent also made substantial payments of trust funds for the mother's attorneys' fees, including his own, in violation of the terms of the trust. While the respondent made these payments with the understanding that the mother would repay the trust if and when the marital home was sold, this loan arrangement was undocumented and unsecured. This conduct was in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.7(a) and 1.7(b).

Finally, on three occasions in 2001 and 2003, the respondent advanced funds from trusts, including two not otherwise involved in this matter, to cover debts or expenses of another trust. The respondent caused these advances to be repaid from the appropriate trust within weeks or months of the advance. These transfers were not authorized by any of the trust documents involved, and the respondent did not pay any interest when he caused the advances to be returned. The respondent's misuse of trust funds for unrelated payments was in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.7(a), 1.7(b), 1.15(a) (for conduct prior to July 1, 2004; now 1.15(b)), 8.4(c) and 8.4(h). To the extent that the respondent advanced the funds as loans, his engaging in unauthorized loans and his failure to document the loans or pay interest were in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.7(a) and 1.7(b).

In aggravation, the respondent failed to file a timely answer to the Petition For Discipline. After the respondent's motion to remove the initial default was granted, the respondent filed no further pleadings and was again defaulted.

On June 11, 2007, the Board of Bar Overseers voted unanimously to recommend that the respondent be indefinitely suspended for his misconduct. On July 13, 2007, a single justice of the Supreme Judicial Court for Suffolk County entered an order of indefinite suspension.

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 filed with the Supreme Judicial Court.

Please direct all questions to webmaster@massbbo.org.

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