

IN RE: IRWIN KWIAT

S.J.C. Judgment of Disbarment entered by Justice Botsford on September 26, 2008.¹

SUMMARY²

The respondent was disbarred for misconduct set forth in a three-count petition for discipline. In Counts One and Two, the respondent intentionally converted client funds to his own use and failed to make restitution. In Count Three, the respondent failed to cooperate with bar counsel's investigation.

In Count One, the respondent was paid an \$8,000 retainer in April 2007 to represent a client in a criminal matter and to handle the client's personal affairs while the client was in custody. The client gave the respondent a power of attorney and access to his checking and passbook savings accounts.

From April 2007 to August 2007, the respondent used the client's ATM card and PIN on 63 occasions to withdraw a total of \$23,464 in cash from the client's checking account and used the ATM card as a debit card to charge \$285 in goods and services which were debited from the client's checking account. The client had left three pre-signed blank checks for the respondent to use in paying the client's monthly bills. The respondent took an additional \$5,400 by making himself the payee and negotiating these three checks. Finally, the respondent withdrew a total of \$830 from the client's passbook savings account.

The respondent did not use any of the funds he withdrew from either bank account to pay the client's monthly bills with the sole exception of one cash payment of \$796 in partial satisfaction of the client's mortgage. The respondent intentionally used the client's funds for his own purposes. In August 2007, the client terminated the representation, revoked the power of attorney, and requested a detailed accounting of the funds handled by the respondent and a refund of all monies taken by the respondent. The respondent never provided the client with any accounting for his funds and never returned to the client any of the client's funds or refunded any unused portion of the legal fees paid.

The respondent's intentional misappropriation of client funds, with intent to deprive the client of the funds at least temporarily and with actual deprivation resulting, was conduct in violation of Mass. R. Prof. C. 8.4(c) and (h). The respondent's failure to account for and refund the unearned fee was conduct in violation of Mass. R. Prof. C. 1.15(c) and Mass. R. Prof. C. 1.16(d).

In Count Two, a client retained the respondent in May 2006 for representation in a criminal matter and paid him \$7,000. The court set the client's bail at \$20,000. In February 2007, the client's girlfriend delivered to the respondent a check for \$21,040 for the bond. The respondent deposited the check into his bank account and told the girlfriend that he would post the bond as soon as the check cleared.

The respondent did not ever post bond for his client. Both the girlfriend and the client repeatedly asked the respondent to post bond or, in the alternative, to return the funds to the girlfriend so that she could do so. The respondent did not ever return the bail money. The respondent intentionally used the funds for his own purposes.

The respondent was administratively suspended on October 1, 2007 and shortly thereafter was replaced by successor counsel in the criminal matter. The respondent failed to return to the client any unused portion of the legal fees paid.

The respondent's intentional misappropriation of client funds, with intent to deprive the client of the funds at least temporarily and with actual deprivation resulting, was conduct in violation of Mass. R. Prof. C. 8.4(c) and (h). The respondent's failure to carry out the client's instructions and post bond promptly upon receipt of funds given to him for that purpose was conduct in violation of Mass. R. Prof. C. 1.2(a) and Mass. R. Prof. C. 8.4 (c), (d), and (h). The respondent's failure to refund the unearned fee was conduct in violation of Mass. R. Prof. C. 1.15(c) and Mass. R. Prof. C. 1.16(d).

In Count Three, the respondent was charged with failing to respond to the grievance filed in July 2007 by the client in Count Two. The respondent failed to respond to bar counsel's repeated requests for information in this matter. On October 1, 2007, the Supreme Judicial Court for Suffolk County entered an order of immediate administrative suspension of the respondent due to the respondent's failure to cooperate with bar counsel's investigation. The respondent did not comply with the Court's order. The respondent's conduct in knowingly failing without good cause to cooperate with bar counsel's investigation was in violation of Mass. R. Prof. C. 8.1(b), 8.4(d), (g), and (h), and S.J.C. Rule 4:01, § 3.

Bar counsel filed a petition for discipline against the respondent on May 6, 2008. The respondent failed to file an answer to the petition. By letter dated May 29, 2008, the Board of Bar Overseers notified the respondent that the allegations in the petition were deemed admitted and that he had waived his right to be heard in mitigation.

The respondent was admitted to the bar of the Commonwealth on November 14, 1967. In 1986, the respondent received a private reprimand for negligent misuse of escrow funds held back from a real estate sale pending resolution of a broker's claim to commission. PR-86-26, 5 Mass. Att'y Disc. R. 465 (1986). In 2006, the respondent received a public reprimand for misconduct in five unrelated matters where the respondent failed to adequately communicate with his clients and failed to withdraw or account for his fee upon termination in four of the matters and failed to maintain adequate records of his receipt of funds and provide timely accounting upon request in the fifth matter. Matter of Kwiat, 22 Mass. Att'y Disc. R. 434 (2006). On June 25, 2008, the respondent was suspended from the practice of law in the State of Connecticut based on the 2006 reprimand in Massachusetts and the respondent's failure to notify the authorities in Connecticut of the Massachusetts discipline.

On August 11, 2008, the board voted to recommend to the Supreme Judicial Court that the respondent be disbarred. The Court so ordered on September 26, 2008.

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 filed with the Supreme Judicial Court.