

IN RE: MARTIN J. GATELY

S.J.C. Order of Indefinite Suspension entered by Justice Greaney on November 5, 2007, with an effective date of December 5, 2007.¹

SUMMARY²

The respondent, Martin J. Gately, Esq., was admitted to the Bar of the Commonwealth on December 13, 1988. He was indefinitely suspended as a result of his conduct in one matter.

In or around September 1, 1998, the respondent was retained to represent a client in a personal injury claim as a result of a motor vehicle accident that occurred on or about August 28, 1998. The respondent settled the client's claim with for \$30,000 without obtaining the client's consent to the settlement or advising him that the claim had settled. The respondent received a settlement check payable to the client and the respondent in the amount of \$30,000 on or about September 24, 2002. He then signed or caused another person to sign the client's name to the back of the check without the client's knowledge or consent and deposited the check into his IOLTA account on or about September 26, 2002.

After September 26, 2002, without the client's knowledge or consent, the respondent intentionally expended the settlement funds for his own business or personal purposes or those of other clients. The respondent issued a check in the amount of \$5,150.00 from his IOLTA account to an attorney for Malden Hospital in payment of the client's hospital bill on or about December 18, 2002, but made no additional payments made to or for the benefit of the client. By March 31, 2003, the balance in the respondent's IOLTA account had been reduced to \$596.40.

In June 2006, the client telephoned the respondent seeking a status report regarding his claim. The respondent failed to return the client's telephone calls. The client then contacted the insurer and was informed that his claim had settled in September 2002, for \$30,000 and that the settlement check was paid on October 1, 2002. The client then filed a complaint against the respondent with the Office of Bar Counsel. After being informed of the client's complaint, the respondent on or about September 5, 2006, issued the client a check in the amount of \$14,850 representing two thirds of the \$30,000 settlement after deduction of the respondent's one-third legal fee and the client's \$5,150 medical bill that the respondent had paid to Malden Hospital.

By settling his client's personal injury claim and signing or causing the client's name to be signed to the settlement check without the client's knowledge or consent, the respondent violated Mass. R. Prof. C. 1.2(a), 1.4, and 8.4(c). By failing to account to the client for the settlement and intentionally converting settlement funds with intent to deprive the client of the use of the funds at least temporarily and with actual deprivation resulting, the respondent violated Mass. R. Prof. C 1.15(a) (in effect prior to July 1, 2004; now 1.15(b) and 8.4(c)).

In aggravation, the respondent received an admonition in 2002 for neglecting a criminal matter and for requiring the client to sign a release withdrawing the client's disciplinary claim against him as a condition of the settlement of the client's small claims action against him. See AD. No. 02-46, 18 Mass. Att'y. Disc. R. 720 (2002).

Bar Counsel filed a petition for discipline with the Board of Bar Overseers on June 22, 2007. The respondent filed a stipulation on September 10, 2007, admitting to the above-recited facts and disciplinary violations, and agreeing to an indefinite suspension.

On October 15, 2007, the Board of Bar Overseers voted to accept the parties' stipulation and recommendation for discipline. On October 30, the Supreme Judicial Court for Suffolk County entered an order indefinitely suspending the respondent.

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 before the Supreme Judicial Court.

Please direct all questions to webmaster@massbbo.org.

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