

IN RE: ENNIO CATALDO

S.J.C. Order of Term Suspension entered by Justice Cowin on June 2, 2009.¹

SUMMARY²

The respondent was indefinitely suspended for misconduct set forth in a six-count petition for discipline.

In Count One of the petition for discipline, the respondent was retained and given a power of attorney by a client to handle her financial affairs while she was incarcerated. Over an eleven-month period, the respondent received funds belonging to the client from various sources totaling \$9,305. He failed to keep chronological and accurate records for all deposits and all disbursements. As attorney-in-fact, the respondent used \$7,075 of these funds to pay the client's bills. Because of his inadequate recordkeeping, he was unaware of the exact amount of funds that he held for the client, and he made incorrect assumptions as to the amount he held for her. As a result, the respondent negligently misused \$2,230 of the client's money. Upon the client's release from custody, she demanded an accounting and the return of her unused funds. The respondent did not comply with the client's requests.

In three of the matters charged in the petition for discipline (Counts Two, Four, and Five), the respondent was paid a flat fee (ranging from \$750 to \$1,500) to represent clients in a divorce, a Chapter 7 voluntary bankruptcy, and a petition to modify child support, respectively. In Count Two, the respondent was retained to complete a divorce that the client had himself commenced. The client's wife was in parts unknown, and the client was about to ship overseas in the military. After filing his appearance, a financial statement, and a motion for service by publication, the respondent took no further action on behalf of the client. Despite the client's repeated efforts to communicate with the respondent before he left the country, the client never heard from the respondent again.

In Count Four, the respondent obtained a completed bankruptcy questionnaire from the clients and advised them that he would meet with them again after he had prepared the bankruptcy petition. Thereafter, the respondent did no substantive work on behalf of the clients and was unresponsive to their repeated attempts to contact him.

In Count Five, the respondent was retained to file a petition to modify child support but took no action in furtherance of his client's petition. Three months after his retention, the respondent falsely represented to the client that he had taken care of the matter and that the client need not pay any further child support. Shortly after the client stopped making child support payments, he began receiving notices from the state authorities advising him that he owed child support. Ultimately, the client retained successor counsel to file a petition for modification of child support and resolve the matter.

In Count Three, the respondent was retained to file a trademark application. The client paid the respondent to conduct a trademark availability search and to file an application. The respondent took no action in furtherance of the client's trademark application. The respondent falsely advised the client that he had filed the trademark application. Later, the respondent falsely advised the client that the application was delayed at the United States Patent and Trademark Office (USPTO). Finally, when pressed by the client, the respondent

admitted that he had not filed the application. The respondent and the client together filed the trademark application. The client used his credit card to pay the filing fee despite having previously given the filing fee to the respondent. Six months later, the respondent received a request for information from the USPTO, but he did not respond, and the USPTO deemed the application abandoned. When the client discovered this, he demanded a refund of all funds advanced to the respondent for the trademark application. When the respondent failed to refund the client's funds, the client sued the respondent in small claims court and won a judgment which the respondent failed to pay.

In Count One, the respondent's negligent misuse of his client's funds for unrelated personal or business purposes, his failure to account for or deliver the client's funds, and his failure to maintain contemporaneous records of the receipt, maintenance, and disposition of the client's funds was conduct in violation of Mass. R. Prof. C. 1.15(b), (c), (d), and (f). In Counts Two, Four, and Five, the respondent's conduct constituted lack of diligence, failure to communicate, and failure to seek the clients' lawful objectives in violation of Mass. R. Prof. C. 1.2(a), 1.3, and 1.4(b). In Count Three, the respondent's conduct constituted lack of diligence and failure to seek the client's lawful objectives in violation of Mass. R. Prof. C. 1.2(a) and 1.3. In Counts Two, Four, and Five, the respondent's conduct constituted charging a clearly excessive fee and a failure to refund the unearned portion of the fee in violation of Mass. R. Prof. C. 1.5(a), 1.15(c), and 1.16(d). In Count Three, the respondent's conduct constituted a failure to account for and refund the unexpended costs paid by the client and a failure to pay the client the full amount of the judgment as required by a court order in violation of Mass. R. Prof. C. 1.15(c), 3.4(c), and 8.4(d). In Counts Three and Five, the respondent's conduct in making misrepresentations to his clients was in violation of Mass. R. Prof. C. 8.4(c).

In Count Six, the respondent was charged with failing to respond to eight grievances, four of which were filed by the clients in Counts Two through Five. On January 22, 2008, the Supreme Judicial Court for Suffolk County entered an order of immediate administrative suspension of the respondent due to his failure to cooperate with bar counsel's investigations. The respondent did not send an affidavit of compliance to bar counsel or otherwise comply with the Court's order. He appeared in court on February 25, 2008, in one matter and on September 12, 2008, on another matter, knowing on both occasions that he was under administrative suspension. The respondent's knowing failure without good cause to cooperate with bar counsel's investigation was conduct in violation of Mass. R. Prof. C. 8.1(b), 8.4(d), (g), and (h) and S.J.C. Rule 4:01, § 3. The respondent's failure to comply with the order of immediate administrative suspension and his continuing to practice law while under administrative suspension in two matters violated Mass. R. Prof. C. 3.4(c), 5.5(a), and 8.4 (d).

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation that the respondent be suspended from the practice of law indefinitely. On May 11, 2009, the board voted to recommend that the Supreme Judicial Court accept the parties' stipulation and joint recommendation for discipline. The Court so ordered on June 2, 2009.

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.

