

IN RE: MICHAEL L. HOWARD

S.J.C. Judgment Accepting Affidavit of Resignation As A Disciplinary Sanction entered by Justice Spina on June 26, 2008, with an effective date of July 28, 2008.¹

SUMMARY²

This matter came before the Court on the respondent's affidavit of resignation pursuant to S.J.C. Rule 4:01, § 15. The respondent admitted in his affidavit of resignation that the material facts set forth in bar counsel's statement of disciplinary charges were true and that a hearing committee, the board, and the Court could conclude that he had committed the acts set forth in the statement.

In all four of the matters that comprised the statement of disciplinary charges, the clients retained the respondent for bankruptcy matters and paid him a flat fee, ranging from \$1,799 to \$2,924. In Counts One, Two, and Four, the respondent filed "skeleton" Chapter 13 voluntary bankruptcy petitions, without Chapter 13 plans or any of the required schedules. In Count Three, the respondent filed a skeleton Chapter 7 voluntary bankruptcy petition, also without the required schedules. In all four cases, the court issued orders to update, requiring the respondent to file the required schedules and various specified documents to supplement the petitions by a certain date. In Counts One, Three, and Four, the respondent failed to file these documents, and the court dismissed the petitions. In Count Two, the respondent did file a Chapter 13 plan and various schedules and documents. However, the Chapter 13 trustee filed a motion to dismiss, citing the debtor's failure to file certain required documents. The respondent failed to file documentation responsive to the trustee's motion, and the Court dismissed that petition as well. The respondent did not advise any of the four clients that their bankruptcy petitions had been dismissed.

In Count One, the client's repeated calls to the respondent went unanswered, but she eventually learned from a creditor that her bankruptcy petition had been dismissed. She asked the respondent to re-file the petition, which he did, but then failed to appear for the first meeting of creditors. The client appeared alone and shortly thereafter retained successor counsel in the matter. In Count Two, the client learned from the court that his petition had been dismissed. He repeatedly called the respondent with no meaningful response. The respondent never re-filed the petition, and the client's property was foreclosed. In Count Three, the client also learned from the court that his petition had been dismissed. The client repeatedly called the respondent, eventually reaching him. The respondent sought to reopen the case without success. In Count Four, the client learned from the court that her petition had been dismissed. The respondent re-filed the petition in skeleton form, and again failed to file the required schedules and documents by the date specified in the order to update. The court again dismissed the petition. The respondent did not advise the client that her second petition had been dismissed. Once she learned of the dismissal from the court, she filed a letter with the court, which the Court treated as a motion to reconsider its dismissal order. The request was granted, and the client thereafter retained successor counsel in the matter.

In Counts One, Two, and Three, the respondent was non responsive to the clients' repeated efforts to communicate with him about the status of their bankruptcy matters.

In all four matters, the respondent failed to complete the legal work for which he had been

retained and paid in advance. Despite this, the respondent failed to refund any of his fees in Counts One, Three, and Four. In Count Two, he refunded some, but not all, of his fee.

The respondent's conduct in all four matters constituted lack of diligence, failure to provide competent representation, and failure to seek the clients' lawful objectives in violation of Mass. R. Prof. C. 1.3, 1.1, and 1.2(a). In all four matters, the respondent's conduct also constituted failure to refund an unearned fee and failure to promptly deliver funds due a client in violation of Mass. R. Prof. C. 1.16(d) and 1.15(c). In Counts One, Two, and Three, the respondent's failure to advise his clients of the dismissal of their bankruptcy cases and to respond to their repeated calls about their bankruptcy matters was conduct in violation of Mass. R. Prof. C. 1.4(a) and (b).

The respondent was admitted to the bar of the Commonwealth on December 17, 1975. In 1995, the respondent received an admonition for failure to refund an unearned fee and neglect of a legal matter in Admonition 95-68, 11 Mass. Att'y Disc. R. 444 (1995), and in 2000 he received a public reprimand for neglect of a legal matter and failing to represent a client zealously in Matter of Howard, 16 Mass. Att'y Disc. R. 278 (2000).

The affidavit of resignation was filed with the Board of Bar Overseers on June 3, 2008. On June 9, 2008, the Board voted to recommend that the affidavit of resignation be accepted as a disciplinary sanction, and on June 26, 2008, the Supreme Judicial Court so ordered.

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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