

IN RE: MICHAEL A. FITZ

S.J.C. Order of Term Suspension entered by Justice Botsford on September 17, 2008, with an effective date of October 17, 2008.¹

(S.J.C. Judgment of Reinstatement with Conditions entered by Justice Botsford on March 12, 2013.)

SUMMARY²

The respondent was suspended for a year and a day for misconduct charged in a two-count petition for discipline.

Count One arose from the respondent's representation of debtors in bankruptcy matters. In nine cases filed in 2005, the respondent failed to competently and diligently represent consumer debtors in cases in the United States Bankruptcy Court. In all but one matter, the respondent initially filed only a skeletal petition. The clerk's office accordingly issued orders to update in each case, requiring bankruptcy schedules, statements, disclosures, agreements, or a Chapter 13 plan to be filed by a date certain. In each such case, the respondent failed to timely comply with the order to update. In the remaining case, the respondent failed to timely comply with the requirement to file a certificate of credit counseling.

The respondent had similarly failed to properly represent consumer debtors, and had been criticized or sanctioned by the same bankruptcy court, in at least five other cases in 2004 and 2005, in two of which the respondent was found in contempt.

On November 10, 2005, the bankruptcy court entered an order that the respondent show cause at an evidentiary hearing why, among other matters, the nine 2005 cases should not be dismissed for failure to comply with the orders to update and all compensation to the respondent in these cases be disallowed and compensation already received disgorged. At the hearing on December 8, 2005, the respondent undertook to continue representing the debtors in each of the nine cases without compensation and then to stop representing all clients in bankruptcy matters in Massachusetts. The respondent subsequently completed his representation of the debtors, disgorged his fees as ordered, and ceased handling bankruptcy matters.

The respondent's conduct in failing to represent clients competently and diligently was in violation of Mass. R. Prof. C. 1.1 and 1.3. His conduct in failing to comply with court orders, resulting in the court's finding him in contempt on two occasions, is in violation of Mass. R. Prof. C. 3.4(c).

Count Two of the petition for discipline arose from a business transaction between the respondent and a client. The respondent represented a client in a claim for damages arising out of a 2002 automobile accident. On or about April 29, 2005, the case was settled for \$15,000. The respondent received the \$15,000 settlement check from the insurer on May 6, 2005 and, a few days later, disbursed \$5000 to himself, representing his one-third contingent fee, and \$10,000 to the client.

On or before May 26, 2005, the respondent asked the client to make a loan of \$10,000 to certain homeowners facing foreclosure, with the respondent as guarantor. The loan was to be

for a term of one year at 10% interest. The respondent never advised the client of the names of the homeowners, never provided the client with any written documentation of the loan, and never provided or offered to provide the client with any security for the loan from the respondent or the homeowners.

The client agreed to the loan and provided the respondent with a bank check dated May 26, 2005 in the amount of \$10,000, which the respondent deposited to his IOLTA account. The respondent disbursed \$10,000 on behalf of the homeowners from the IOLTA account by check dated May 27, 2005, payable to the mortgage lender, to forestall foreclosure. The homeowners were a couple for whom the respondent had previously filed a Chapter 13 bankruptcy that was dismissed when the couple failed to provide the court with additional required information.

The loan transaction between the client and the respondent was a business transaction between lawyer and client. The terms of the loan were not transmitted in writing by the respondent to the client, who did not receive either a promissory note from the borrowers or a written guaranty from the respondent. The client did not consent in writing to the transaction.

At the time that the client made the loan, he was in the process of retaining successor counsel to take over as his attorney in three collection cases that the respondent had also been handling for him. The respondent agreed to remit \$2000 of the \$10,000 received from the client to successor counsel as a payment of fees from the client. The respondent remitted this \$2000 to successor counsel by check drawn on his IOLTA account dated June 10, 2005.

After the payment to successor counsel, the amount of the loan from the client was reduced to \$8000. Because \$10,000 had already been remitted to the mortgage lender, the \$2000 payment to successor counsel was paid from undisbursed fees remaining in the IOLTA account. The respondent could not identify the precise supporting deposits for the \$2000 disbursement because he failed to maintain complete records of his receipt, maintenance, and disposition of trust funds in the IOLTA accounts and failed to prepare and maintain all records required by Mass. R. Prof. C. 1.15(f).

In May 2006, approximately one year after making the loan, the client contacted the respondent seeking repayment. The respondent retained counsel and, on or about June 22, 2006, remitted \$9000 to the client in full payment of the debt.

The respondent's conduct in entering into a business transaction with the client on terms that were not transmitted in writing to the client, and as to which the client did not consent in writing, is in violation of Mass. R. Prof. C. 1.8(a). The respondent's conduct in remitting \$2000 to successor counsel from undisbursed fees in his IOLTA account, and his failure to maintain all required trust account records, is in violation of Mass. R. Prof. C. 1.15(b) and (e).

In aggravation, the respondent has been disciplined on four prior occasions. He received a public reprimand in 2004 for neglect of a personal injury case and an admonition in 1995 for operating a corporate real estate business without obtaining the proper license and violating other statutes regulating the conduct of real estate brokers. He also received two separate informal admonitions, one in 1988 and one in 1990.

In mitigation, the respondent was diagnosed with depression in 2005 and has received treatment. In further mitigation, the respondent repaid the client in Count Two and made restitution in full of all fees ordered returned in Count One.

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation for a suspension of a year and a day. On September 8, 2008, the Board voted to accept the stipulation and to recommend the agreed-upon disposition to the Supreme Judicial Court. The Court so ordered on September 17, 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.

Please direct all questions to webmaster@massbbo.org.

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