

IN RE: PETER B. DION

S.J.C. Order of Term Suspension entered by Justice Spina on July 23, 2009.¹

SUMMARY²

On July 23, 2009, the Supreme Judicial Court for Suffolk County ordered that the respondent Peter B. Dion, who was admitted to the bar in December 1997, be indefinitely suspended from the practice of law. The sanction arose from the respondent's conduct in a real estate matter and a divorce case.

In August 2006, the respondent represented a property owner in negotiating a purchase and sale agreement concerning real estate the client owned. The purchase and sale agreement required the buyer to pay a \$5,000 deposit to bind the agreement, designated the respondent as escrow agent to hold the deposit in an interest-bearing account, and permitted the buyer to terminate the agreement and receive back the deposit plus accrued interest any time prior to the granting of permits.

In September 2006, the respondent opened a savings account in which he deposited the \$5,000 from the buyer. In September 2007, the respondent improperly transferred \$4,500 of the escrow funds from the trust account into his IOLTA account and intentionally misused the funds to pay business expenses unrelated to the real estate transaction. In June 2008, the respondent withdrew an additional \$400 from the trust account and intentionally misused those funds.

On November 10, 2008, the buyer notified the seller and the respondent that he was terminating the purchase and sale agreement and asked that the \$5,000 deposit be returned. The respondent failed to repay any of the \$5,000 to the buyer until after bar counsel filed a petition for discipline against the respondent on March 25, 2009. Thus, the respondent's intentional misuse of escrowed funds resulted in actual deprivation. The respondent's conduct in this matter violated Mass. R. Prof. C. 1.15(b) and (c), and 8.4(c) and (h).

In the divorce case, in November 2007, the wife paid the respondent \$2,500 as a retainer and agreed to pay the respondent \$180 per hour for his services. The respondent deposited the \$2,500 retainer into his IOLTA account. After January 2008, the respondent failed to respond to the client's inquiries about the status of her case.

Between November 2007 and January 22, 2008, the respondent withdrew all of the client's retainer funds from his IOLTA account before he had earned the funds. The respondent did not provide written notice to the client of the dates and amounts of the withdrawals he made from her retainer, a statement of the balance of her funds that remained in the account after the withdrawals, or an itemized bill or other accounting showing the services he had provided on her behalf.

In May 2008, the client informed the respondent that she was discharging him and requested that he file a withdrawal of his appearance in her case. The respondent signed a withdrawal of appearance, which the client filed in court. The client also demanded that the respondent return her entire retainer except for the \$220 that he had paid for a filing fee and a summons. The respondent did not refund any of the retainer.

In early June 2008, the client asked the respondent when she would receive a refund of her retainer. The respondent misrepresented to her that he had sent a check several days earlier, but would send a replacement as his check apparently had been lost in the mail. On June 23, 2008, the respondent issued a check to the client for \$2,280 from his business account, knowing that he did not have sufficient funds. The check was dishonored. The respondent did not repay the retainer funds to the client until after bar counsel filed the petition for discipline.

The respondent's failure to communicate adequately with his client about the status of her case and his failure to reply to his client's efforts to communicate with him violated Mass. R. Prof. C. 1.4(a). The respondent's misleading statement that he had sent a check to refund the retainer and that he would send another check to replace one that had apparently been lost in the mail violated Mass. R. Prof. C. 8.4(c). By converting his client's retainer to his own use before the funds had been earned, the respondent violated Mass. R. Prof. C. 1.15(b) and (d), and 8.4(c) and (h). By failing to refund the unearned portion of the client's retainer after he was discharged, the respondent violated Mass. R. Prof. C. 1.15(c) and 1.16(d).

On July 29 and August 28, 2008, in the course of investigating the complaint of the respondent's divorce client, bar counsel sent the respondent copies of the client's complaint and request for a response. The respondent received bar counsel's correspondence, but knowingly failed without cause to respond to them. On September 19, 2008, bar counsel filed a petition for administrative suspension based on the respondent's failure to provide information requested by bar counsel in the course of the investigation of a complaint.

On September 26, 2008, the Supreme Judicial Court for Suffolk County entered an order suspending the respondent from the practice of law pursuant to S.J.C. Rule 4:01, § 3(2). The respondent intentionally failed to comply fully with the order of administrative suspension. The respondent's knowing failure without good cause to respond to requests for information from bar counsel violated S.J.C. Rule 4:01, § 3(1)(b) and Mass. R. Prof. C. 8.1(b) and 8.4(g). The respondent's intentional failure to comply with the requirements of S.J.C. Rule 4:01, §§ 3(3) and 17, violated Mass. R. Prof. C. 3.4(c) and 8.4(h).

This matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation for an indefinite suspension from the practice of law. On July 13, 2009, the Board voted to accept the stipulation and recommend the agreed-upon disposition to the Supreme Judicial Court. The court so ordered on July 23, 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.

Please direct all questions to webmaster@massbbo.org.

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