

IN RE: DANIEL BOYCE

S.J.C. Judgment of Disbarment entered by Justice Botsford on September 18, 2009.¹

MEMORANDUM AND ORDER FOR JUDGMENT

The Board of Bar Overseers (board) has filed an Information recommending that the respondent, Daniel Boyce, be disbarred. After hearing, and based on my review of the record before me, I conclude that the respondent should be disbarred.

Background. The respondent was admitted to the Massachusetts bar in January, 2002. On August 27, 2008, bar counsel filed a petition for discipline against him, alleging, inter alia, conversion of client funds with deprivation resulting, and failure to cooperate in bar counsel's investigation. A hearing committee of the board was appointed in December, 2008. Based on what it determined to be the respondent's failure to file an answer to the petition for discipline that complied with the board's rules within an extended deadline that the hearing committee set, the hearing committee allowed bar counsel's motion to deem certain facts admitted. A hearing on the petition for discipline was held on April 28, 2009, at which the respondent testified as the sole witness.²

In its report dated June 8, 2009, the hearing committee found that at all relevant times, the respondent and Daniel Skouras practiced law as part of North Shore Legal Associates, P.C. (North Shore), a professional corporation that the respondent had formed in 2002. In particular, the hearing committee found that in September, 2004, Skouras represented a client in the sale of certain real estate, depositing the funds in the North Shore IOLTA account, and a few months later Skouras agreed to represent the same client in relation to the purchase of other real estate that was encumbered with a mortgage to GreenPoint Mortgage Funding, Inc. (GreenPoint). Part of the representation included an agreement by Skouras to make (using the client's funds) monthly mortgage payments to GreenPoint until the closing, and to apply the remaining funds of the client to pay off the mortgage at the closing. The closing took place in late March, 2005, and both Skouras and the respondent represented the client in connection with the purchase. At the point that the deed for the property was recorded in April, 2005, the amount owed to GreenPoint to pay off the mortgage was \$224,900. The respondent and Skouras issued a check payable to GreenPoint on the North Shore IOLTA account in June, 2005, purporting to pay off the mortgage. The check, however, was dishonored because there were insufficient funds in the IOLTA account to cover the check. The hearing committee found that the respondent knew there were insufficient funds on deposit at the time the check issued. Ultimately, in January, 2006, Skouras paid the then remaining funds of the client in the North Shore IOLTA account (\$112,100) to GreenPoint, and the client paid the balance due on the mortgage with additional funds of his own.

The hearing committee found that the respondent and Skouras misused \$66,200 of this client's funds during the period from the spring of 2005 through December, 2005, and that the respondent himself converted at least \$27,300 of this total to his own use by writing and signing checks against the IOLTA account, some made out to himself and some payable to "cash." The hearing committee further found that the respondent misused these funds "with the intent to deprive the client of the funds at least temporarily and with actual deprivation resulting," and that the respondent has made no restitution of the converted funds.³ In addition, the committee found that the respondent had intentionally misrepresented to bar

counsel facts concerning the payoff check issued to GreenPoint, and had failed to cooperate with bar counsel's investigation.

The hearing committee concluded that: the respondent's intentional conversion of the clients funds violated Mass. R. Prof. C. 8.4 (c) (misrepresentation, fraud, deceit, dishonesty); his issuance of the payoff check to GreenPoint when he knew there were insufficient funds in the IOLTA account to cover it violated Mass. R. Prof. C. 1.15 (f) (1) (C) (records required for individual client trust funds; prohibition on negative balances) as well as rule 8.4 (c); the respondent's withdrawal of funds from the IOLTA accounts payable to "cash" violated Mass. R. Prof. C. 1.15 (e) (3) (prohibiting withdrawal from trust account by check payable to "cash"); his intentionally false representations to bar counsel violated rule 8.4 (c) as well as Mass. R. Prof. C. 8.1 (a) (knowingly false statement of material fact in connection with disciplinary matter); and his knowing failure without good cause to cooperate in the investigation conducted by bar counsel violated Mass. R. Prof. C. 8.1 (b) (knowingly fail to respond to lawful demand for information from disciplinary authority), 8.4 (d) (conduct prejudicial to administration of justice), 8.4 (g) (failure without good cause to cooperate with bar counsel), and S.J.C. Rule 4:01, § 3 (1) (failure without good cause to respond to requests for information by bar counsel).

Considering factors in mitigation and aggravation, the hearing committee declined to accept as mitigation the respondent's current, economically distressed circumstances or his explanation that Skouras had responsibility for the business side of the law practice. On the latter point, the committee concluded that it could not "accept the respondent's abdication to someone else of his ethical obligations as mitigation of a wrong the [r]espondent needed no special training to recognize." The committee took into account, as aggravating factors, that the respondent had committed multiple violations of the Rules of Professional Conduct, had life experience and training in business administration that should have made him aware of fiduciary duties owed in connection with funds held for others; the committee observed that "[a] lawyer's misconduct is aggravated where the attorney demonstrates that he lacks appreciation of his professional responsibility. Matter of Cobb, 445 Mass. 452, 480 (2005)."

The hearing committee recommended that the respondent be disbarred. The board thereafter voted unanimously to adopt the hearing committee's report and to recommend disbarment.

Discussion. Under the board's rules, "[a] party will be conclusively deemed to have waived all objections to the findings, conclusions and recommendations of the hearing committee ..." unless the party files a brief on appeal from the hearing panel's report within twenty days of receiving that report. Rules of the Board of Bar Overseers, § 3.50 (a), (c). Because the petitioner did not appeal from the hearing committee's report, I consider the panel's findings, as adopted by the board, to be established.⁴ Based on those findings, I accept the recommendation of disbarment that the hearing committee and the board have made. As the hearing committee observed, indefinite suspension or disbarment is the presumptive sanction for an attorney's intentional misuse of client funds where actual deprivation has resulted. Matter of Schoepfer, 426 Mass. 183, 187 (1997). In this case the respondent not only misused the client's funds intentionally, causing deprivation, but he committed other disciplinary violations as well, and no restitution has been made. Disbarment is the appropriate sanction.

ORDER

For the foregoing reasons, it is ORDERED that a judgment of disbarment enter.

FOOTNOTES:

¹ The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

² Bar counsel introduced a number of exhibits and relied on the admitted facts to prove the allegations in the petition for discipline.

³ The respondent testified that he did not know anything about the matter or matters of this particular client; the hearing committee did not credit this testimony at least insofar as it related to "the handling and fate of the client's money." The committee discredited also the respondent's testimony that he did not intentionally convert any client funds because he thought he was only drawing on earned legal fees that happened to be commingled in the IOLTA account.

⁴ At the hearing before me, the respondent argued that he believed he had been prevented by procedural rules from presenting his case. The hearing committee's findings, however, suggest that the sanction applied here – taking certain facts alleged in bar counsel's petition for discipline as admitted – was not imposed without giving the respondent repeated opportunities to avoid it. I conclude that the sanction was permissibly applied.

Please direct all questions to webmaster@massbbo.org.