NO. BD-2009-085

IN RE: JOYCE M. COLLINS

S.J.C. Order of Term Suspension entered by Justice Ireland on September 22, 2009, with an effective date of October 22, 2009.[1]

(S.J.C. Judgment of Reinstatement with Conditions entered by Justice Duffly on August 2, 2011.)

SUMMARY[2]

From about December of 2002, the respondent maintained a sole practice devoted primarily to the practice of elder law. Between 2002 and 2009, the respondent served on numerous occasions as a guardian, executor or trustee. The respondent maintained separate interest-bearing trust accounts at banks for the fiduciary funds she was managing. The respondent served as the sole signatory for these bank accounts and her IOLTA account.

Between December of 2002 and April 2005, the respondent's stepdaughter was her office manager. The stepdaughter had considerable administrative experience and a master's degree in business administration. The office manager was responsible for maintaining all client and fiduciary trust account records, bookkeeping, collecting retainers, depositing funds to the business account and IOLTA account, posting billable time, preparing and mailing client invoices, paying vendors, balancing the bank accounts, and preparing and maintaining all financial reports for the firm. She was also a signatory on the respondent's office account.

Between at least January 2003 and April 2005, the respondent did not have in place measures giving reasonable assurance that her office manager was handling client funds and preparing accurate billing statements in a manner that was compatible with the respondent's own professional obligations, nor did she make reasonable efforts to ensure that her office manager's conduct was compatible with the respondent's professional obligations. The respondent failed to personally review her trust account records or to see that there were complete and accurate records of the transactions in the trust accounts. The respondent failed to maintain individual client matter ledgers showing the contemporaneous balance in the accounts, and she did not reconcile her trust accounts to the bank statements and individual trust records. In one instance, the respondent failed to hold estate funds in an interest-bearing bank account with the interest payable to the estate between October 2003 and April 2007.

Between 2003 and April 2005, the office manager misappropriated approximately $322,000 from various fiduciary accounts maintained by the respondent. The office manager effected these misappropriations in part by having the respondent sign blank checks drawn on the fiduciary accounts purportedly to reimburse expenses paid on behalf of the beneficiaries, or for alleged fees and expenses owed to the firm. The respondent signed these checks without taking any steps to assure that the amounts subsequently filled in corresponded to actual expenses legitimately incurred by or paid on behalf the fiduciary matters, or that the amounts of fees and expenses charged to the accounts were accurate. In fact, the office manager filled in amounts greater than the expenses or fees owed, deposited the checks to the respondent's office account, and converted the funds. The office manager did not accurately record in the client account registers the amounts of the checks she made payable to the office account and prepared false business reports for the firm to hide her defalcations. The office manager also deposited retainers in the office account and converted the unearned portion of those

retainers.

In April 2005, the respondent discovered that office manager had been embezzling funds from her office account and engaging in other misconduct. The respondent immediately terminated the office manager's employment, obtained assistance to balance the law firm's books, and took other steps to protect her practice. In May of 2005, the respondent reported the defalcations to her malpractice insurer. The respondent did not, however, undertake a prompt review to determine whether any funds were missing from her fiduciary accounts or take adequate steps to audit her fiduciary accounts. The respondent also failed to timely file probate and trust accounts for the fiduciary matters she was handling, and, as a result, she failed to discover the full extent of the defalcations until years after she terminated the office manager's employment.

In March 2008, the office manager was convicted of larceny over $250 and larceny over $250 from an individual over sixty. She received a suspended sentence and was required to pay $50,000 in restitution to an estate.

By failing to make sure that her office had in effect measures giving reasonable assurance that her employee's conduct was compatible with her professional obligations, the respondent violated Mass. R. Prof. C. 5.3(a). By failing to make reasonable efforts to ensure that her employee's conduct was compatible with her own professional obligations, the respondent violated Mass. R. Prof. C. 5.3(b). By failing to maintain complete and accurate records of her trust accounts and to reconcile her accounts, the respondent violated Mass. R. Prof. C. 1.15(a), as in effect prior to July 1, 2004, and 1.15(f), as in effect on and after July 1, 2004. By failing to safeguard client funds, the respondent violated Mass. R. Prof. C. 1.15(a), as in effect prior to July 1, 2004, and 1.15(b), as in effect on and after July 1, 2004.

By failing to adequately supervise her employee, enabling her employee to misappropriate fiduciary funds between 2003 and 2005, and by failing to have measures in place to ensure that the fiduciary funds were kept intact, the respondent violated Mass. R. Prof. C. 5.3(a) and (b), 8.4(d) and (h), 1.15(a), as in effect prior to July 1, 2004, and 1.15(b), as in effect on and after July 1, 2004. By signing blank checks and failing to ensure that the fiduciary accounts were properly billed for services rendered and expenses incurred, the respondent violated Mass. R. Prof. C. 1.1, 1.3, 1.5(a), and 8.4(d). By failing to take adequate steps promptly to determine the extent of the shortages in the fiduciary accounts, the respondent violated Mass. R. Prof. C. 1.1, 1.3, and 8.4(d).

By failing to maintain fiduciary funds in client trust accounts and by failing promptly to turn the funds over to the persons entitled to receive them when due, the respondent violated Mass. R. Prof. C. 1.15(b)(1) and (c) and 8.4(d). By failing to ensure that the amounts charged for legal fees accurately reflected the fees to which she was entitled and by charging and collecting fees to which she was not entitled, the respondent violated Mass. R. Prof. C. 1.1, 1.5(a), and 8.4(d). By failing to hold estate funds in an interest-bearing bank account with the interest payable to the estate, the respondent violated Mass. R. Prof. C. 1.15(e)(ii), as in effect prior to July 1, 2004, and Mass. R. Prof. C. 1.15(e)(5)(ii), as in effect on and after July 1, 2004.

By knowingly failing to timely file guardianship and estate accounts on an annual basis, as required by M.G.L. c. 206, § 1, the respondent violated Mass. R. Prof. C. 1.3, 3.4(c) and 8.4(d). By failing to render her accounts as trustee on an annual basis, as required by the trust, the respondent violated Mass. R. Prof. C. 1.1, 1.3, and 8.4(d) and (h). By failing to render an account upon the final distribution of the trust property, the respondent violated Mass. R. Prof. C. 1.15(d)(1).

The respondent was admitted to practice on June 10, 1987, and had no record of discipline. The respondent filed for bankruptcy protection in November 2006 and was discharged in 2009. In aggravation, some of the individuals whose funds were embezzled have not been made whole. In mitigation, the respondent and her husband made a timely, good faith effort to make restitution to the individuals whose funds were embezzled. They liquidated a retirement account, remortgaged their home, and exhausted their savings. In 2006, the respondent sold her office condominium to repay clients after she discovered further misappropriations by her stepdaughter. The respondent timely notified her professional malpractice carrier and eventually notified all of the beneficiaries and other interested parties, including the courts and the Attorney General's Office, of the defalcations, and sought to resign her fiduciary appointments.

In mitigation of her failure promptly to audit her fiduciary accounts and notify interested persons of the defalcations, the respondent suffered from remorse, severe depression and anxiety after discovering her stepdaughter's misconduct. The entire family was disrupted by these criminal actions and the likely impact they would have on the respondent and her family. The respondent was also preoccupied by her efforts to cover the losses from her and her husband's personal assets. The respondent sought professional assistance for her depression.

The matter came before the Board on a stipulation of facts and disciplinary violations and a joint recommendation for discipline by suspension for six months, with the requirement that the respondent not be eligible for automatic reinstatement but be required to petition for reinstatement pursuant to S.J.C. Rule 4:01, § 18(2). On September 14, 2009, the Board voted to recommend that the Court accept the parties' stipulation and joint recommendation for discipline. On September 22, 2009, the Court ordered that the respondent be suspended from the practice of law for six months, effective thirty days from the date of entry of the order, and that her reinstatement to the practice of law in the Commonwealth of Massachusetts be pursuant to S.J.C. Rule 4:01, § 18(2).

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.