

IN RE: JOSEPH E. NEALON

S.J.C. Order of Term Suspension/Suspended entered by Justice Gants on May 10, 2010.¹

SUMMARY²

This attorney discipline matter involves misconduct with respect to two separate clients. In the first matter, the respondent acted as the settlement agent and title agent on a home refinancing loan in March 2004. The borrowers were husband and wife, but only the husband was present at the closing.

The respondent offered to take the closing documents to the wife's home so that he could witness her signature, but the husband and the lawyer who appeared for the husband insisted on taking the documents to her instead to have them signed and notarized. The lender's agent at the closing did not object to this suggestion.

Two days after the closing, the respondent received the closing papers back with a signature purporting to be the wife's, but the signature was not notarized. The respondent notarized the wife's signature on all the closing documents. The respondent did not inform the bank or the title insurance company that he had notarized the wife's signature when the closing documents were returned to him without notarization.

The husband and wife failed to make payments on the note, and the lender began foreclosure proceedings. The wife objected that she had not attended the closing and that her signature was not genuine. No ultimate harm occurred to the lender as the property was sold and the loan repaid. In further mitigation, the wife was aware of the refinancing at the time it occurred, and it was not established that she did not assent to it.

By falsely attesting that the wife personally appeared before him and signed the closing documents, the respondent violated Mass. R. Prof. C. 1.2(a), and 8.4(c) and (h). By failing to inform the bank and title insurance company that the wife had not signed the closing documents in front of a notary, the respondent violated Mass. R. Prof. C. 1.4.

In the second matter, in June 2008, the respondent was retained by a husband and wife to represent them in pursuing a civil lawsuit alleging negligence and chapter 93A violations in connection with a real estate investment they had made in 2006. The clients paid the respondent a \$3,000 retainer. Between June 2008 and May 2009, the respondent performed no work of substance on behalf of the clients.

Between June 2008, and January 2009, the clients made numerous efforts to communicate with the respondent by telephone call and email for information on their case. The respondent did not respond to their requests for information or otherwise keep them reasonably informed about his actions in their matter.

In about December 2008, the clients asked another attorney to assist them in obtaining information about their case from the respondent. This attorney made several attempts to contact the respondent and left messages with the respondent to contact the clients; however, the respondent failed to contact the clients. In January 2009, the attorney finally reached the respondent and informed him that the clients were discharging him and wanted

their file and the fee payment returned. The respondent agreed to return the file and retainer, but he only returned the client file. In June 2009, he returned half of the fee.

In October 2009, the clients filed a request for investigation with the Office of the Bar Counsel. Bar counsel notified the respondent of the request for investigation and enclosed a copy of the client's complaint. Bar counsel twice requested information from the respondent, including that he account for his fee, but the respondent intentionally failed without good cause to respond to bar counsel's letters and did not provide an accounting for the fee he charged. He subsequently returned the rest of the fee.

For failing to perform any work of substance on the client's case, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a), and 1.3. By failing to respond to the client's reasonable requests for information and to keep them apprised of the status of their case, the respondent violated Mass. R. Prof. C. 1.4(a). By failing to account for the fee, the respondent violated Mass. R. Prof. C. 1.15(d)(1). By failing to return the unearned portion of the fee, the respondent violated Mass. R. Prof. C. 1.16(d), and he charged and collected a clearly excessive fee in violation of Mass. R. Prof. C. 1.5(a). By intentionally failing without good cause to cooperate with bar counsel's investigation, the respondent violated Mass. R. Prof. C. 8.1(b), 8.4(d), (g) and (h).

In mitigation of his lack of diligence, from the summer of 2008 until the spring of 2009, the respondent was distracted by numerous family difficulties that included the death of his mother. He also suffered from depression and adult attention deficit disorder, which caused disorganization in the management of his law practice, and for which he sought treatment.

The matter came before the Board of Bar Overseers on a stipulation of facts and rule violations and a joint recommendation for a three-month suspension, suspended for one year subject to the following conditions: 1) that the respondent continue with his individual therapy and treatment for depression and adult attention deficit disorder and 2) that the respondent be evaluated by the Law Office Management Assistance Program (LOMAP). On April 12, 2010, the board voted to accept the stipulation and joint recommendation.

An Information was filed with the Supreme Judicial Court for Suffolk County on April 16, 2010. On May 10, 2010, the county court (Gants, J.) entered an order suspending the respondent from the practice of law for three months, with the execution of the suspension stayed for a period of one year.

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.