

IN RE: STEPHEN J. ELLIS

NO. BD-2012-081

S.J.C. Order of Term Suspension/Suspended entered by Justice Lenk on September 6, 2012.¹

SUMMARY²

A client hired the respondent's firm in 2008 to represent her in claims arising from serious injuries sustained in a slip and fall in a restaurant parking lot. The respondent filed suit for the client in the superior court in February 2009.

In May 2010, the defendant's counsel sent or intended to send to the respondent's office, pursuant to Superior Court 9A, copies of a motion for summary judgment and a supporting memorandum grounded on the assertion that the client's recovery was barred because she had fallen on a natural accumulation of snow or ice. The respondent did not receive those papers during the opposition period specified by Rule 9A. He subsequently learned of the motion and moved to file a late opposition, but the motion was denied for failure to comply with Rule 9A. A second motion filed by the respondent for the same purpose was denied for the same reason. The respondent then served a third motion for late filing under Rule 9A, and the defendant's counsel told him that he would not oppose the motion. The respondent failed to file that motion and failed to appear for a hearing on the summary judgment motion despite receipt of timely notice.

On July 22, 2010, the court allowed the summary judgment motion. Four days later, the Supreme Judicial Court issued its decision in *Papadopoulos v. Target Corp.*, 457 Mass. 368 (2010), abolishing the distinction between natural and unnatural accumulations of snow and ice and applying retroactively the standard of reasonable care to slip-and-fall injuries arising from snow and ice accumulations. On July 28, 2010, the superior court entered a judgment dismissing the client's claims. The respondent received timely notice of allowance of the summary judgment motion and the judgment, but he took no action to appeal or seek reconsideration in light of the *Papadopoulos* decision.

In the spring and summer of 2010, the respondent failed to respond to the client's inquiries about the status of her case. He never informed her of the summary judgment motion, his failure to oppose the motion, the dismissal, or the availability of reconsideration or appeal. The client learned of the dismissal by calling the court in August of 2010. She hired new counsel who filed a timely notice of appeal on her behalf. Despite subsequent requests by the new counsel, the respondent failed to turn over his file for the case until December 2010. In late 2011, the Appeals Court vacated the summary judgment in the client's case and remanded it for further proceedings under the *Papadopoulos* standards.

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.

By failing to oppose the summary judgment motion and, after the entry of judgment, by failing to seek reconsideration of or appeal the judgment, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3. By failing to reply to the client's inquiries and inform her of the summary judgment motion, the entry of judgment, and the availability of reconsideration and appeal, the respondent violated Mass. R. Prof. C. 1.4(a) and (b). By failing to make available the client's file within a reasonable time after it was requested, the respondent violated Mass. R. Prof. C. 1.16(d) and (e).

In a second case, the respondent was consulted by a disabled client whose father had died leaving the client and seven other grown children as beneficiaries under his will. The will named another daughter as executrix and left the client's share in trust with the executrix as trustee. The estate distributions were delayed by disputes among some beneficiaries over the decedent's real estate and bank accounts in the joint names of the decedent and some of the daughters.

The client engaged the respondent in April 2010 to inquire into the ownership of the joint accounts and to have her own daughter substituted as trustee of her testamentary share. At or about the same time, a partial estate distribution of \$5,000 became available to the client and was paid to the respondent as a \$5,000 flat fee for his services.

Over about the next eighteen months, the respondent attended some meetings of the beneficiaries and other counsel and reviewed the probate pleadings. He did not effect the substitution of the client's daughter as trustee or take other action of substance on her behalf. The respondent prepared a "living will" for the client that had no legal force or effect and a power of attorney that did not meet statutory requirements. The \$5,000 fee paid by the client was substantially unearned and clearly excessive in the circumstances.

Between about January and March 2012, the respondent failed to reply to inquiries from the client's daughter on her mother's behalf about the status of the estate. The client filed a request with bar counsel for investigation of respondent's conduct and asked, among other things, that the respondent account for the \$5,000 fee payment. In April 2012, after receiving a copy of the request, the respondent made a \$2,500 refund to the client and provided an accounting. The accounting included inaccurate estimates of time spent on the matter. In the course of bar counsel's investigation, the respondent made a full refund to the client.

The respondent's lack of competence in preparing instruments for the client and his failure to take substantial action on her behalf violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3. By failing promptly to reply to the client's inquiries, the respondent violated Mass. R. Prof. C. 1.4(a). By retaining a clearly excessive fee for his services, the respondent violated Mass. R. Prof. C. 1.5(a). By failing promptly to refund the full unearned portion of the fee, the respondent violated Mass. R. Prof. C. 1.16(d). By failing to provide an accurate accounting of the fee to the client, the respondent violated Mass. R. Prof. C. 1.15(d)(1).

The matter came before the Board of Bar Overseers on the respondent's acknowledgement that these facts could be proved by a preponderance of the evidence and a

stipulated recommendation for a suspension of six months, suspended for two years on condition that the respondent undergo an evaluation by the Law Office Management Assistance Program (LOMAP), follow the LOMAP directives, maintain malpractice insurance, and attend a course on ethics and law office management. The board voted to accept the stipulation and recommendation. On September 6, 2012, the Supreme Judicial Court for Suffolk County entered an order for a six- month suspension suspended on the stated conditions.