

IN RE: DAVID R. ARDITO

NO. BD-2012-102

S.J.C. Judgment of Disbarment entered by Justice Spina on July 12, 2013.¹

SUMMARY²

This matter came before the Supreme Judicial Court for Suffolk County on an affidavit of resignation submitted by the respondent under S.J.C. Rule 4:01, § 15. The respondent acknowledged in his affidavit of resignation that there were pending allegations against him and that the material facts in issue could be proved by a preponderance of the evidence, as follows.

The respondent had a longstanding friendship with a married couple from Rhode Island. The wife was injured twice during 2005 in Rhode Island, first in a two-car collision and then in a fall at a local store. The respondent was not admitted to the Rhode Island bar or otherwise authorized to represent the couple in the resulting claims, which were subject to Rhode Island law. In each case, however, the respondent offered his *pro bono* representation and intentionally misrepresented to the wife or misled her to believe that he was qualified to handle those claims. On that basis, she agreed to the representation in each case.

Between 2005 and 2007, the respondent initiated and pursued personal injury and consortium claims for the couple against the other driver in the collision and a claim against the store for the wife. The respondent thereby engaged in the unauthorized practice of law.

Unbeknownst to the clients, the respondent settled both cases in 2007. In June 2007, the respondent received a check for \$7,000 in settlement of the claim against the store, payable to him, the husband, and the wife. In September 2007, the respondent received a check for \$9,475, payable to him and the wife, as the proceeds of the collision settlement. Without the clients' knowledge or authority, the respondent endorsed or caused the endorsement of both checks in the names of all payees, deposited the proceeds to his IOLTA account, and applied the funds for unrelated purposes. The respondent misused those funds intentionally and with the intent to deprive the clients at least temporarily, and they were actually deprived of the funds.

From at least 2007 through late 2012, the wife repeatedly asked the respondent about the claims, but he failed to answer many of those inquiries. When he did reply, the respondent intentionally misrepresented to her that the claims were still pending, that they had been consolidated for litigation in the state or federal courts, that payment had been held up by the AIG bankruptcy, and that she would be receiving up to \$66,000 in settlement of the claims.

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.

The respondent never rendered an accounting to the clients or informed them of the settlements. When he signed the affidavit of resignation, the respondent owed restitution of \$9,475 to the couple and another \$7,000 to the wife, plus interest.

By agreeing to represent the clients in Rhode Island claims when he was not authorized to practice law in Rhode Island, the respondent violated Mass. R. Prof. C. 1.16(a)(1). By engaging in the unauthorized practice of law, the respondent violated Mass. R. Prof. C. 5.5(a). By settling the claims and endorsing or causing the endorsement of the clients' names on the proceeds checks without their knowledge or authority, the respondent violated Mass. R. Prof. C. 1.2(a), 1.4(a) and (b), and 8.4(c) and (h). By intentionally misusing the funds, the respondent violated Mass. R. Prof. C. 1.15(b)(1) and 8.4(c) and (h). By failing promptly to notify the clients of his receipt of their funds, the respondent violated Mass. R. Prof. C. 1.4(a) and (b) and 1.15(c). By failing promptly to deliver the funds to which the clients were entitled, the respondent violated Mass. R. Prof. C. 1.15(c).

In addition, by failing to account for the funds, the respondent violated Mass. R. Prof. C. 1.4(a) and (b) and 1.15(d)(1). By intentionally misrepresenting his qualifications and the status of the claims, the respondent violated Mass. R. Prof. C. 8.4(c). By failing to inform the clients that he was not licensed or authorized to handle their claims and that he had misused and dissipated the funds, the respondent violated Mass. R. Prof. C. 1.4(a) and (b).

In October 2012, the respondent was administratively suspended from practice in the Commonwealth, pursuant to S.J.C. Rule 4:01, § 3(2), for knowing failure without good cause to cooperate in bar counsel's investigation of a complaint by another client. Thereafter the respondent violated the suspension order and S.J.C. Rule 4:01, § 17, by failing to give notice of his suspension to these clients and failing timely to close his IOLTA account, among other things. In January 2013, he submitted an affidavit to bar counsel in which he intentionally misrepresented that he had complied with all of the provisions of the administrative suspension order and S.J.C. Rule 4:01. In addition, the respondent knowingly and without good cause failed to reply to a request for investigation filed by the wife.

By knowingly and without good cause failing to respond to bar counsel's requests for information, the respondent violated Mass. R. Prof. C. 3.4(c), 8.1(b), 8.4(d) and (g), and S.J.C. Rule 4:01, § 3(1)(b). By knowingly disobeying the administrative suspension order, the respondent violated Mass. R. Prof. C. 3.4(c) and 8.4(c) and (d). By submitting an intentionally false affidavit of compliance to bar counsel, the respondent violated Mass. R. Prof. C. 8.1(a) and 8.4(c), (d) and (h).

Bar counsel started formal disciplinary proceedings against the respondent before the Board of Bar Overseers by a petition for discipline filed in January 2013. The respondent failed to answer the petition and was defaulted. In May 2013, the respondent submitted his resignation affidavit to the board. The board voted in June 2013 to recommend that the affidavit be accepted and that the respondent be disbarred. By a judgment entered on July 12, 2013, the Supreme Judicial Court for Suffolk County accepted the resignation and disbarred the respondent effective immediately upon entry of the judgment.