

IN RE: LAURENCE M. STARR

NO. BD-2012-107

S.J.C. Judgment of Disbarment entered by Justice Lenk on January 23, 2015.¹

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

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2012-0107

IN RE: LAURENCE M. STARR

MEMORANDUM OF DECISION

This matter came before me on an information and recommendation of the Board of Bar Overseers (board) that, pursuant to S.J.C. Rule 4:01, § 8(6), the respondent be disbarred from the practice of law in the Commonwealth. At a hearing before me on December 11, 2014, the respondent's counsel conceded, as he did before the hearing committee, that the facts set forth in bar counsel's petition for discipline are accurate, and that the respondent engaged in the misconduct alleged therein. Because the respondent does not challenge the board's findings of misconduct, the only issue to be addressed is the appropriate sanction. For the reasons discussed below, I agree with bar counsel and the board that disbarment is the appropriate sanction in this case. Accordingly, an order shall enter disbarring the respondent from the practice of law in the

Commonwealth, and his name shall be stricken from the roll of attorneys.

1. Procedural background. In November, 2012, the respondent was administratively suspended from the practice of law in the Commonwealth after he failed to comply with bar counsel's investigation into asserted improprieties involving his IOLTA account, including checks issued with insufficient funds. The respondent thereafter failed to respond to a subpoena duces tecum, and appeared at a hearing before bar counsel on February 14, 2013, without many of the requested documents. On March 18, 2013, bar counsel filed a petition for contempt in this court. After a hearing on June 6, 2013, this court entered an order on June 7, 2013, compelling the respondent to comply with the terms of the administrative suspension within thirty days. On June 19, 2013, the respondent filed an affidavit of compliance with attachments, and also filed a petition to vacate his administrative suspension and for reinstatement. Following another hearing before this court on June 25, 2013, the respondent's petition for reinstatement was denied, and bar counsel's petition for contempt was also denied. A letter from the respondent to the Chief Justice, regarding the respondent's petition for reinstatement, was thereafter referred to bar counsel for such action as bar counsel deemed appropriate.

On July 15, 2013, bar counsel filed a petition for discipline. The petition asserted that the respondent failed to maintain proper records of the funds in his IOLTA account; commingled client funds with his own; failed to make timely payment of settlement proceeds in a personal injury matter to his client; and intentionally misused client funds for his own purposes. Bar counsel asserted further that the respondent had engaged in a "check-kiting scheme" in which he intentionally deposited a minimal amount of money into a new bank account and then wrote checks that he knew would be dishonored; engaged in a "methodical, serial conversion of [a client's] funds for his own use"; deliberately disobeyed this court's order of administrative suspension and continued to practice law; and made material false statements concerning his bank accounts in letters to bar counsel and to the Chief Justice of this court.

Bar counsel stated that this conduct was in violation of Mass. R. Prof. C. 1.15(b) (trust property to be held separately), (c) (prompt notice and delivery of funds), (e) (making cash withdrawals from trust account), (f) (failure to keep individual ledgers and to reconcile bank statements); Mass. R. Prof. C. 1.16(a) (requirement to withdraw if continuing representation will result in violation of Rules of Professional Conduct); Mass. R. Prof. C. 1.4(a) (keeping client informed of status of client's

matter), (b) (explaining matter to extent necessary for client to make informed decisions); Mass. R. Prof. C. 3.3 (a) (knowing false statement of material fact to tribunal); Mass. R. Prof. C. 3.4(c) (knowing disobedience of rules of tribunal); Mass. R. Prof. C. 5.5(a) (practicing in violation of regulations of legal profession), (b) (holding out to public that lawyer is admitted to practice when lawyer is not so admitted); Mass. R. Prof. C. 8.1(a) (knowing false statement of fact in connection with bar disciplinary matter), 8.1(b) (knowing failure to respond to lawful demand for information from disciplinary authority); and Mass. R. Prof. C. 8.4(b) (criminal act that reflects adversely on lawyer's honesty), (c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), (d) (conduct prejudicial to administration of justice), (g) (failure without good cause to cooperate with bar counsel), (h) (conduct that reflects adversely on fitness to practice law).

A hearing committee conducted an evidentiary hearing on January 27 and 31, 2014, at which the respondent was the only witness. Forty-five exhibits were admitted. The parties thereafter filed their proposed findings and rulings. On May 21, 2014, the committee submitted its report. The committee found much of the respondent's testimony not to be credible, and did not credit his claims that he was confused or mistaken in his

handling of several bank accounts. The committee determined that the respondent had engaged in the misconduct asserted, and recommended disbarment based on the respondent's "broad and extensive misconduct," and the "range and severity" of his misconduct. The committee pointed in particular to the respondent's intentional misuse of client funds, without restitution; the fact that he "knowingly defrauded" two banks, engaging in a repeated "pattern of fraud"; his knowing misrepresentations in a letter to the Chief Justice of this court and to bar counsel; and his false statements to bar counsel.

At a hearing on October 6, 2014, after reviewing the record in the case, the board voted to file an information with this court, recommending that the respondent be disbarred. The parties thereafter appeared before me at a hearing on December 11, 2014, at which the respondent conceded his misconduct and the sole issue raised was the sanction to be imposed.

Respondent's misconduct. I summarize the facts found by the hearing committee and adopted by the board; as stated, the respondent does not contest the board's findings. The respondent was admitted to the Massachusetts bar in May, 1969, and operated a solo practice beginning in 1983 and continuing through the disciplinary proceedings at issue. The committee found that the respondent's practice has been "broad and varied," and involved,

inter alia, real property matters, estate administration, probate, domestic relations, guardianships, bankruptcies, worker's compensation, personal injury, and landlord tenant matters. Over the past decade, he has had no employees or accountants, has handled all bookkeeping matters, and, as sole signatory, has written all checks on his business and IOLTA accounts.

The committee's report details the respondent's intentional misuse of two of his former clients' funds. In one instance, the respondent deposited in his IOLTA account, then misused, a \$6,500 settlement check that the respondent received in a personal injury matter, without advising the client that the check had been received, or disbursing any of the funds to the client. In the other instance, the respondent received a check in the amount of \$1,000 that was to be used to pay a client's medical expenses, and, instead, wrote various checks to himself for \$956.97 of this money. The respondent repaid \$5,000 to the first client, via a cashier's check and not from his IOLTA account, after bar counsel began an investigation into the respondent's business practices.¹ Although the respondent's counsel stated at the hearing before me

¹ The fee agreement in that client's matter provided that the respondent was to receive "reasonable" compensation, not to exceed one-third of any settlement agreement, plus expenses.

that the respondent knows he must make restitution to the other client, counsel said that the respondent has yet to do so because of his serious financial difficulties, including the potential loss of his home.

The committee further found that, between June 22, 2010, and May 23, 2012, the respondent deposited personal funds into his IOLTA account, held personal and client funds in the account, wrote thirteen checks to personal creditors from the account, and made forty cash withdrawals totaling \$10,175.46.

The committee's report also details a complex scheme by the respondent to defraud two banks, in which the respondent deposited checks he wrote from one account into another account at a different bank, knowing that the account on which he wrote the checks did not contain sufficient funds for the total amount of the checks written. The respondent then withdrew funds in cash before the checks were dishonored. The respondent also wrote \$14,557 in checks from his IOLTA account to a business associate who was no longer a client; although the respondent testified that he had hired the business associate in part as a consultant to refer clients, he was unable to produce a written agreement, invoice, or statement of time expended, and pointed to only one client referral. Between July 9, 2012, and September 11, 2012, the respondent deposited \$68.00 into one account, and

wrote checks totalling \$13,009.65. As to the other account, between July 20, 2012, and September 7, 2012, the respondent deposited \$6,500 in client funds, and a false check in the amount of \$3,000, from a personal account he knew had no available funds, and wrote checks in the amount of \$13,490.75. The respondent has not reimbursed the banks for the dishonored checks. The respondent claimed that he was confused over closed accounts, missing checkbooks, duplicate checks, and his multiple sets of accounts. The committee discredited this testimony, and discredited the respondent's assertions that he did not intend to misuse client funds.

In making its recommendation of disbarment, the committee concluded that there were no factors in mitigation. The committee did not find the respondent's medical problems, or asserted mental health issues of "stress" to be mitigating, and also did not find the respondent's advanced age and financial difficulties to be mitigating. The committee noted that much of the asserted misconduct occurred before the medical issues the respondent experienced in October, 2012, and concluded that, in any event, the medical conditions noted would not have caused the misuse of clients funds, a failure to cooperate with bar counsel, or misrepresentations to a tribunal. The committee found that the respondent had not provided any evidence in support of a

mental health condition.

In aggravation, the committee noted the respondent's extensive experience, much of it as a solo practitioner. See Matter of Luongo, 416 Mass. 308, 312 (1993). The committee also pointed to the respondent's lack of candor before it, and what it deemed to be an intent to deceive the hearing committee. See Matter of Eisenhower, 426 Mass. 448, 457, cert. denied, 524 U.S. 919 (1998). In addition, the committee cited the respondent's multiple violations. See Matter of Saab, 406 Mass. 315, 326-327 (1989).

3. Appropriate sanction. The primary consideration in determining the appropriate sanction to be imposed in attorney disciplinary proceedings "is the effect upon, and perception of, the public and the bar." Matter of Crossen, 450 Mass. 533, 573 (2008), quoting Matter of Finnerty, 418 Mass. 831, 829 (1994). See Matter of Alter, 389 Mass. 153, 156 (1983). The appropriate sanction is one which is necessary to deter other attorneys from the same type of conduct and to protect the public. See Matter of Foley, 439 Mass. 324, 333 (2003), citing Matter of Concemi, 422 Mass. 326, 329 (1996). In addition, the sanction imposed must not be "markedly disparate" from sanctions imposed on other attorneys for similar misconduct. See Matter of Goldberg, 434 Mass. 1022, 1023 (2001), and cases cited. Ultimately, however,

"[e]ach case must be decided on its own merits, and every offending attorney must receive the disposition most appropriate in the circumstances." Matter of the Discipline of an Attorney, 392 Mass. 827, 837 (1984).

The presumptive sanction for intentional misappropriation of client funds, resulting in actual deprivation, is indefinite suspension or disbarment. Matter of McBride, 449 Mass. 154, 163-164 (2007); Matter of Schoepfer, 426 Mass. 183, 187 (1997). In choosing between these two sanctions, the court "generally considers whether restitution has been made." Matter of LiBassi, 449 Mass. 1014, 1017 (2007). Where an attorney has failed to make restitution, and in the absence of mitigating factors, disbarment, rather than indefinite suspension, is the appropriate sanction. Matter of LiBassi, *supra*. See Matter of McCarthy, 23 Att'y Discipline Rep. 469, 470 (2007) (making restitution "is an outward sign of the recognition of one's wrongdoing and the awareness of a moral duty to make amends to the best of one's ability. Failure to make restitution, and failure to attempt to do so, reflects poorly on the attorney's moral fitness"). Making restitution as a result of court action is not considered a factor in mitigation. Matter of Bauer, 452 Mass. 56, 75 (2008).

As the board noted, in addition to the intentional misappropriation of client funds, many of the respondent's other

violations of the rules of professional conduct would themselves warrant a lengthy suspension. See Matter of Luongo, *supra* (indefinite suspension for multiple violations where at least two violations themselves warranted term suspension). Knowingly defrauding two banks (absent a criminal conviction) would warrant a suspension of more than one year. See, e.g., Matter of Hilson, 448 Mass. 603, 618-619 (2007) (indefinite suspension for misappropriation of third party's funds within attorney's practice of law); Matter of Leo, 17 Mass. Att'y Disc. R. 371, 376-377 (2001) (thirteen-month suspension for conversion of one certificate of deposit belong to bank). Deliberate false statements to a court, with the intent to deceive, would also warrant a suspension of more than one year. See, e.g., Matter of Shaw, 427 Mass 764, 769-770 (1998); Matter of McCarthy, 416 Mass 423, 431 (1993). Practicing while administratively suspended, coupled with intentionally false statements under oath to bar counsel, also warrant such a sanction. See, e.g., Matter of Linnehan, 26 Mass. Att'y Disc. R. 310 (2010) (eighteen-month suspension for practicing while administratively suspended, false statement under oath to bar counsel that attorney had not engaged in practice of law while administratively suspended, failure to deposit settlement funds into IOLTA account and failure to maintain proper records).

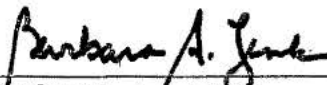
The respondent seeks a sanction of a term of suspension, without specifying what that term might be. The respondent, however, has not shown any reason why disbarment should not be imposed. See Matter of Cobb, 445 Mass. 452, 479 (2005) (presumption of disbarment "is bolstered by the seriousness of [the respondent's] additional misconduct"). See also Matter of Bauer, supra at 74-75, citing Matter of Tobin, 417 Mass. 81, 88 (1994) (in deciding sanction, it is appropriate to consider cumulative effective of multiple violations).

The respondent's arguments that he has already "paid a heavy price" for his misconduct and is suffering financially because he has been unable to practice, that he has expressed remorse, that he has a lengthy history of practice, and that he intends to make restitution at some point, are not mitigating. Indeed, as discussed, the board properly considered the respondent's extensive experience as a factor in aggravation, see Matter of Luongo, supra, and payment of restitution as a result of disciplinary proceedings, even if restitution were in fact to be paid at some point in the future, is not mitigating. See Matter of Bauer, supra at 75; Matter of Johnson, 444 Mass. 1002, 1004 (2005). Nor did the hearing committee or the board give much weight to the respondent's statements of purported remorse, coupled, as they were, with his ongoing intent to deceive. The

board noted also that, notwithstanding the respondent's asserted inability to practice law, he had deliberately practiced law in violation of this court's order of administrative suspension for a substantial period. The board's conclusions on these points are persuasive.

3. Disposition. An order shall enter barring the respondent from the practice of law in the Commonwealth.

By the Court



Barbara A. Leik
Associate Justice

Entered: January 23, 2015