

IN RE: MICHAEL J. FENTON

NO. BD-2012-116

S.J.C. Order of Indefinite Suspension entered by Justice Ireland on February 25, 2014.¹

SUMMARY²

On October 13, 2011, the decedent's will was admitted to probate. The will named the decedent's three sons as equal beneficiaries, and named one of the sons as the executor. The decedent's estate consisted of real property owned at the time of death and minimal personal property. Shortly after the will was admitted to probate, the executor retained the respondent as his counsel.

In early 2012, the executor agreed to sell the decedent's house and the respondent was designated as the closing attorney. The closing took place on April 5, 2012. That same day, the lending bank wire-transferred \$93,777.31 into the respondent's IOLTA account.

After deductions for costs and expenses, the respondent was required to pay each of the three sons \$29,881.78. By the end of May 2012, the respondent had paid two of the three sons their share of the proceeds from the sale of the house. The respondent intentionally misused the third son's share of the funds to pay unrelated personal and business expenses. The respondent misused these funds with the intent to deprive the third son of the funds, and the third son was actually deprived of the funds.

In May 2012, the third son demanded the payment of his share of the proceeds from the sale of the decedent's house. The respondent falsely represented to the third son that he had sent a check to the son that might have been lost in the mail.

From May 2012 to September 2012, the third son and his wife left telephone and text messages for the respondent asking for the son's share of the net proceeds. The respondent failed to respond to these demands for payment.

In September 2012, the respondent informed the third son's wife that he did not have sufficient funds in his IOLTA account to pay her husband his share of the proceeds from the

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.

sale of the house. The respondent falsely represented to the son's wife that the cause of the shortage in the account was due to the respondent's accounting error.

On October 18, 2012, bar counsel received a request to investigate the respondent's failure to pay the third son his share of the sale proceeds. By letter dated October 25, 2012, bar counsel notified the respondent of the request for investigation and requested that he provide to bar counsel by November 15, 2012, a full explanation of his receipt and disposition of the estate's funds along with the records required to be kept by Mass. R. Prof. C. 1.15. The respondent received bar counsel's correspondence in due course but intentionally failed without good cause to respond to bar counsel. The respondent also failed to respond to a second request for information sent by bar counsel on November 19, 2012.

On December 5, 2012, bar counsel filed with the Supreme Judicial Court for Suffolk County a petition seeking the respondent's immediate suspension from the practice of law. On December 10, 2012, the county court entered an order administratively suspending the respondent from the practice of law, effective upon the entry of the order. On March 22, 2013, the respondent supplied the information previously requested by bar counsel, admitted that he had converted the funds under investigation, and filed the compliance forms required by Supreme Judicial Court Rule 4:01. The respondent agreed to remain on administrative suspension pending the resolution of the matter.

On June 4, 2013, the respondent paid the third son \$30,955.07, representing the son's share of the proceeds plus 5% interest to cover the delay in payment.

The respondent's failure to keep the third son's share of the proceeds from the sale of the house in a properly designated trust account violated Mass. R. Prof. C. 1.15(b) (lawyer shall hold trust property in a trust account separate from the lawyer's own property). The respondent's intentional misuse of the third son's funds violated Mass. R. Prof. C. 8.4(c) and (h) (conduct involving dishonesty, fraud, deceit, or misrepresentation and conduct that adversely reflects on a lawyer's fitness to practice law). The respondent's misrepresentations concerning his failure to timely pay the third son violated Mass. R. Prof. C. 8.4(c) and (h). The respondent's intentional failure without good cause to respond to bar counsel's requests for information violated Supreme Judicial Court Rule 4:01, § 3, and Mass. R. Prof. C. 8.1(b) (lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority) and 8.4(d) (conduct prejudicial to the administration of justice) and (h).

On January 14, 2014, the parties submitted a stipulation to the Board of Bar Overseers in which the respondent admitted to the truth of the allegations and the violations of the disciplinary rules set out in an attached petition for discipline. The parties recommended that the respondent be indefinitely suspended from the practice of law, retroactive to March 22, 2013. On January 27, 2014, the Board of Bar Overseers voted to accept the stipulation of the parties and their proposed sanction.

On February 14, 2014, the board filed an Information with the court. On February 25, 2014, the Supreme Judicial Court for Suffolk County ordered that the respondent be indefinitely suspended from the practice of law effective retroactive to March 22, 2013.