

IN RE: ROBERT G. MOORE

NO. BD-2013-013

S.J.C. Order of Term Suspension/Stayed entered by Justice Botsford on March 15, 2013.¹

SUMMARY²

Robert G. Moore (the respondent) was admitted to the practice of law in Massachusetts on June 7, 1979.

In early 2006, two brothers, who were the sole beneficiaries of the estate of their father, engaged the respondent to administer the estate. On April 26, 2006, the respondent petitioned to have himself appointed administrator. On May 4, 2006, the court allowed the petition. At all relevant times, the respondent also acted as his own attorney in the administration of the estate.

The estate consisted of a small house that was in need of substantial repairs and filled with various items from the decedent's flea market business, in addition to a car and some bank accounts. Following his appointment, the respondent undertook to marshal the decedent's assets and prepare the house for sale. During 2006, the respondent took possession of approximately \$39,000 in cash and deposited those funds to his IOLTA account. After selling the house in June 2007, the respondent also deposited the proceeds of the sale, \$222,541, to his IOLTA account. Estate funds remained in the respondent's IOLTA account for more than a year. The funds were not nominal in nature, and the respondent could not have reasonably believed that he would hold those funds for only a short time.

After the respondent sold the decedent's home, he arranged for some of the proceeds of the sale to be transmitted by the closing agent directly to creditors of the estate, but he failed to monitor adequately the distribution of those funds. Several years after the closing, and after he had filed his final account, the respondent discovered that \$7,000 of the proceeds should have been, but had not been, refunded to the estate. In 2011, the respondent obtained a check for \$7,000, which he disbursed to the beneficiaries.

By April 2008, there were no impediments to distributing the remaining funds to the beneficiaries, filing a final account and closing the estate. The respondent failed to accomplish those tasks in a timely way. In December 2008, an attorney representing one of the brothers filed a petition to compel the respondent to render his account. The respondent did not file the Second and Final Account until April 2009.

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.

Between 2006 and April 2009, the respondent paid himself approximately \$47,000 in administrator's and attorney's fees. The respondent withdrew some of the funds by checks that were not pre-numbered. Prior to withdrawing his legal fees, the respondent did not create and place in the estate file an itemized bill or accounting of his services, written notice of the amount and date of the withdrawal or a statement of the balance after the withdrawal.

The respondent billed all of his time at the legal rate of \$225 per hour. That hourly rate was clearly excessive for hundreds of hours of non-legal tasks, including appraising and selling the decedent's flea market merchandise, attending an auction, hiring various contractors and supervising their work, and making arrangements with brokers.

Between 2006 and 2011, the respondent distributed estate funds to the beneficiaries. He distributed \$123,245 to one brother and \$117,510 to the other. The respondent did not provide any satisfactory explanation for the inequality of the distributions. During 2012, the respondent made an additional distribution from personal funds to equalize the amounts remitted to the two brothers.

After one of the brothers filed an objection to the respondent's Second and Final Account, in July 2009, the respondent intermittently engaged in negotiations with the brother concerning the refund of some of his fees to the estate. However, as of February of 2013, the negotiations had not been successful and the respondent had not taken timely action to have his accounts allowed by the court.

By failing to probate the estate in a timely manner, failing to take steps to obtain \$7,000 that was due the estate, failing to make equal distribution to both beneficiaries prior to filing his Second and Final Account, and failing to close the estate by pursuing the allowance of the Second and Final Account, the respondent failed to provide competent representation, in violation of Mass. R. Prof. C. 1.1; failed to provide diligent representation, in violation of Mass. R. Prof. C. 1.3; and failed to seek the lawful objectives of his client by reasonably available means, in violation of Mass. R. Prof. C. 1.2(a).

By maintaining a greater than nominal amount of estate funds in his IOLTA account for more than a year, the respondent violated Mass. R. Prof. C. 1.15 (e)(5).

By withdrawing funds from the IOLTA and estate account to pay his legal fee, without first or simultaneously creating and delivering: (a) an itemized bill or accounting of his services, (b) written notice of the amount and date of the withdrawal and (c) a statement of the balance after the withdrawal, the respondent violated Mass. R. Prof. C. 1.15(d)(2).

By initially charging the estate his usual hourly legal rate for tasks that did not constitute legal work, the respondent violated Mass. R. Prof. C. 1.5(a).

By making withdrawals from his trust account by checks that were not pre-numbered, the respondent violated Mass. R. Prof. C. 1.15(e) (3) and (4).

In aggravation, the respondent received a public reprimand in 2009 [Matter of Moore, 25 Mass. Att’y Disc. R. 392 (2009)], for drafting a will for a client which named him as executor, contained bequests to the respondent’s wife and her daughters and made them residual beneficiaries.

This matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation for discipline by suspension for three months, with the execution of the suspension stayed on several conditions: participation in an audit by Law Office Management Assistance Program, attendance at an ethics continuing education program, a resolution of the fee issue with the beneficiaries (for which the respondent placed funds in escrow), and the allowance by the court of the respondent’s Second and Final Account.

On February 20, 2013, the board voted to accept the parties’ stipulation, and on March 19, 2013, the Supreme Judicial Court for Suffolk County (Botsford, J.) ordered the respondent be suspended from the practice of law for three months, stayed for one year on the conditions set forth in the stipulation.