



IN RE: MICHAEL S. SWARTZ

NO. BD-2013-089

S.J.C. Order of Term Suspension entered by Justice Duffly on February 9, 2016.¹

SUMMARY²

The respondent was admitted to practice in Massachusetts in 1990. Between 1990 and about July 2014, the respondent maintained a part-time solo law practice specializing in residential real estate transactions, estate planning matters, trust administration, and personal and fiduciary income tax preparation. Between 1990 and about July 2014, the respondent also served as a trustee for approximately twelve trusts. Pursuant to Mass. R. Prof. C. 5.7, the respondent was subject to the Rules of Professional Conduct with respect to his service as a trustee because the fiduciary services he provided were performed in conjunction with and were related to his provision of legal services and because those services were not distinct from his provision of legal services to clients.

From at least 1992 until about 2008, the respondent represented a husband and wife in their estate planning and tax matters. On February 17, 1982, the wife executed a revocable trust. From at least 1992 until November 2008, the respondent and the wife served as co-trustees of the trust. The wife died in November 2008. From November 2008 through June 2014, when the respondent resigned as trustee, he and the husband served as co-trustees of the trust.

On about December 5, 2008, the respondent agreed to represent the husband in the settlement of his wife's estate. Between December 2008 and March 2009, the respondent failed to file the will or prepare and file a petition for probate, or to respond to communications from his client.

On about February 25, 2009, the husband discharged the respondent and retained new counsel to represent him in the estate settlement and in other legal matters. The respondent remained as co-trustee of the trust. From 2008 to 2013, the respondent failed to render annual accounts to the husband, as required by the trust. Between November 2009 and at least 2013, the respondent failed to respond to requests from the trust beneficiaries and their representatives for information and documents regarding the administration of and accountings for the trust. The respondent also failed to take steps as trustee to secure the transfer of assets payable to the trust by reason of the wife's death, including stocks and IRA accounts.

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.

In about May 2014, the beneficiaries requested that a new professional trustee replace the respondent as trustee. Between at least June 2014 and October 2014, the respondent failed to turn over accountings and other records concerning the trust to the potential successor trustee.

On February 22, 2013, the couple's daughter filed a request for investigation with the Office of Bar Counsel. The respondent intentionally failed without good cause to respond to multiple letters from bar counsel requesting information and documentation. On August 9, 2013, the respondent was administratively suspended from the practice of law in Massachusetts in accordance with S.J.C. Rule 4:01, § 3(2), for failure to respond to requests for information made by bar counsel in the course of an investigation. He then knowingly failed without good cause to comply with the requirements of the administrative suspension order and S.J.C. Rule 4:01, § 17. Among other things, the respondent failed to resign his fiduciary appointments as trustee for at least nine trusts, failed to close his fiduciary accounts and IOLTA account, and failed to notify in writing approximately three dozen clients of his suspension.

On June 9, 2014, bar counsel filed a petition for civil contempt against the respondent with the Supreme Judicial Court for Suffolk County. The respondent appeared at a June 26, 2014 hearing before the single justice and agreed to comply with the order. On July 14, 2014, the respondent filed his compliance forms, together with documentation that he had closed his IOLTA account and sent the required notices to beneficiaries, co-fiduciaries, clients, and others; resigned his fiduciary positions; and notified financial institutions to take his name off the fiduciary accounts.

By failing to timely file the original will and a petition for probate of the will and for appointment of his client as executor, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a), 1.3, and 8.4(d). By failing to promptly comply with reasonable requests from his clients and trust beneficiaries and their representatives for information about a matter, the respondent violated Mass. R. Prof. C. 1.4(a) and 8.4(h). By failing to diligently prepare trust accountings on an annual basis, as required by the trust, and by failing to timely account to the trust beneficiaries or their representatives upon request, the respondent violated Mass. R. Prof. C. 1.1, 1.3, 1.15(d), and 8.4(h). By failing to promptly turn over his file and trust records upon the requests of his former clients, their representatives, and the successor trustee, the respondent violated Mass. R. Prof. C. 1.3, 1.15(c), 1.16(d) and (e), and 8.4(h). By knowingly failing without good cause to respond to bar counsel's requests for information in connection with an investigation, the respondent violated S.J.C. Rule 4:01, § 3(1)(b), and Mass. R. Prof. C. 3.4(c), 8.1(b), and 8.4(g). By failing to comply with the order of administrative suspension by resigning his fiduciary appointments, giving prompt notice of his suspension, and closing his IOLTA account, the respondent violated the order of administrative suspension, S.J.C. Rule 4:01, § 17(1), and Mass. R. Prof. C. 3.4(c), and 8.4(d).

In a second matter, from at least June 2001 until June 24, 2014, the respondent maintained an account designated as an IOLTA account at East Cambridge Savings Bank. From at least July 2004 through June 2014, the respondent failed to make and maintain required records for the IOLTA account, including a ledger for each client matter, a ledger for bank fees, and three-way reconciliation reports. The respondent also deposited and maintained excess personal funds in his IOLTA account and commingled those funds with client funds.

Between at least 2012 and June 2014, the respondent served as co-trustee of a trust. As such, he was responsible for making a monthly mortgage payment for the trust beneficiary from trust funds on deposit at a Vanguard account. The respondent arranged to have the monthly mortgage payment automatically paid from his IOLTA account, but then failed to transfer the necessary funds from the Vanguard account to his IOLTA account. Between May 2012 and October 2013, the respondent paid the monthly mortgage payment from the respondent's personal funds on deposit in the IOLTA account and subsequently transferred sufficient trust

funds from the Vanguard account to his IOLTA account to cover the already-paid mortgage charges. After October 2013, the respondent failed to transfer any Vanguard funds to his IOLTA account, as a result of which all the automatic monthly payments through June 2014 were rejected due to insufficient funds.

On January 16, 2014, bar counsel opened a file to investigate an insufficient funds report received from the bank concerning the IOLTA account. The respondent intentionally failed without good cause to respond to bar counsel's correspondence and to provide documentation in connection with bar counsel's investigation.

The respondent's failure to reconcile his IOLTA account and maintain required records for the account violated Mass. R. Prof. C. 1.15(f)(1)(C)-(E). By maintaining more personal funds in the IOLTA account than reasonably sufficient to pay bank charges, the respondent violated Mass. R. Prof. C. 1.15(b)(2)(i). By failing to hold trust property separate from the respondent's own property on deposit in the IOLTA account, the respondent violated Mass. R. Prof. C. 1.15(b). The respondent's payment of a client's monthly mortgage from the IOLTA account prior to depositing sufficient client funds to cover the charges, thereby creating negative balances for an individual client in the IOLTA account, violated Mass. R. Prof. C. 1.15(f)(1)(C). By knowingly failing without good cause to respond to bar counsel's requests for information in connection with an investigation, the respondent violated S.J.C. Rule 4:01, § 3(1)(b), and Mass. R. Prof. C. 3.4(c) and 8.1(b), and 8.4(g).

On July 24, 2015, bar counsel filed a petition for discipline against the respondent. The respondent failed to file an answer to the petition, and was defaulted. On October 19, 2015, the board voted to recommend that the respondent be suspended from the practice of law for one year and one day, retroactive to July 14, 2014. The parties filed a waiver of hearing and assent to the disciplinary sanction recommended by the board. On February 9, 2016, the Court (Duffly, J.) entered an order suspending the respondent for one year and one day retroactive to July 14, 2014, the date of his compliance with the August 9, 2013 order of administrative suspension.