

IN RE: NOAH HUBBARD STARKEY

NO. BD-2013-090

S.J.C. Order of Term Suspension entered by Justice Lenk on March 18, 2014.¹

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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-2013-090

IN RE: Noah Hubbard Starkey

MEMORANDUM OF DECISION

This matter came before me on a petition for reciprocal discipline by bar counsel pursuant to S.J.C. Rule 4:01, § 16, recommending that the respondent be reciprocally suspended from the practice of law in the Commonwealth. In April, 2013, the respondent was suspended from the practice of law in the State of Connecticut for a period of eighteen months, with reinstatement dependent on a number of conditions, including repayment of a judgment entered against him as a result of a civil action stemming from his misconduct. In violation of S.J.C. Rules 4:01, §§ 12(8) and 16(6), the respondent neither notified bar counsel nor the Board of Bar Overseers (board) of the imposition of discipline in Connecticut.

When bar counsel became aware of the imposition of discipline in Connecticut, she sought an order of notice requiring the respondent to show cause why reciprocal discipline should not be imposed on him in the Commonwealth. The respondent did not respond to the order to show cause, and subsequently has not taken any action to answer the petition for discipline; as a result, bar counsel's allegations are deemed admitted. See S.J.C. Rule 4.01 § 8(3)(a). Nor did the respondent appear at the hearing before me on October 30, 2013. Accordingly, the sole issue before me is the sanction to be imposed.

1. Background and procedural history. I summarize the Connecticut Superior Court's findings of fact, articulated in its Memorandum of Decision, concerning the Connecticut disciplinary proceedings that gave rise to this disciplinary action. See In re Bailey, 439 Mass. 134, 136 (2003), citing Matter of Lebbos, 423 Mass. 753, 755 (1996) ("In deference to the procedures of other States, 'we generally give effect to [their] disciplinary decisions . . . without undertaking the often difficult and protracted task of redoing the inquiry" into respondent's misconduct, absent evidence that prior procedure was defective); S.J.C. Rule 4.01, § 16(3) (another state's "judgment of suspension or disbarment" is "conclusive evidence" of misconduct, absent a finding of defect).

In 2008, the respondent's brother- and sister-in-law brought suit against the respondent and his wife in the United States District Court for the District of Massachusetts, alleging that they had committed conversion, fraud, negligence, and breach of fiduciary duty in connection with their handling of the estate of the respondent's mother-in-law. A Federal District Court judge found for the plaintiffs and ordered the respondent and his wife to pay damages totaling \$285,000, and the respondent individually to pay damages of \$16,328.26.

a. Connecticut disciplinary proceedings. In 2012, the Connecticut office of chief disciplinary counsel filed a petition for discipline in the Connecticut Superior Court. The petition alleged four violations of the Connecticut rules of professional conduct, committed in connection with the respondent's conduct in the disposition of the estate, the Federal District Court proceedings, and the disciplinary investigation.

After a hearing in February, 2013, a Connecticut Superior Court judge issued a decision in April, 2013, finding the respondent in violation of the rules of professional conduct and suspending him from the practice of law in Connecticut for eighteen months. The judge found that the disciplinary counsel had proved by clear and convincing evidence three of the four allegations. First, the judge found that the respondent

repeatedly had ignored the District Court judge's discovery orders and employed other dilatory tactics during the District Court proceedings against the respondent and his wife. Second, the judge found that the respondent had refused to pay the District Court judgment against him despite having exhausted all avenues of appeal; indeed, the respondent stated that he would continue to challenge the judgment, the exhaustion of his appeals notwithstanding. Third, the judge found that the respondent had failed to respond to the Connecticut grievance complaint or appear at the Connecticut reviewing committee hearing.

On the basis of these factual findings, the Connecticut Superior Court judge concluded that the respondent had engaged in conduct prejudicial to the administration of justice, in violation of the Connecticut Rules of Professional Conduct Rule 8.4(4), and knowingly had failed to respond to a disciplinary authority's lawful demands for information, in violation of Rule 8.1(2). Accordingly, the judge suspended the respondent from the practice of law in Connecticut for eighteen months.¹ He also imposed two conditions of reinstatement: that

¹ The respondent was admitted to the bar of Connecticut on October 7, 1975, and to the bar of the Commonwealth on June 15, 1976. Prior to the Connecticut disciplinary proceedings, the respondent had assumed retirement status in Connecticut; in July, 2009, the respondent assumed voluntary retirement status in Massachusetts. In May, 2011, he was administratively suspended

the respondent pass a multistate professional responsibility exam, and that he pay in full the Federal District Court judgment.

b. Disciplinary proceedings in Massachusetts. After learning of the respondent's suspension from the practice of law in Connecticut, in August, 2013, bar counsel filed a petition for reciprocal discipline.

For the reasons set forth below, I conclude, as bar counsel and the board recommend, that the sanction imposed in Connecticut, an eighteen-month period of suspension from the practice of law, with conditions for reinstatement, is appropriate. The respondent shall be suspended from the practice of law in the Commonwealth for eighteen months, with reinstatement dependent on his prior reinstatement in Connecticut.

2. Appropriate sanction. In determining the appropriate sanction to be imposed in a petition for reciprocal discipline, the undertaking involves more than replicating the sanction imposed in the foreign jurisdiction. I "may impose the identical discipline unless (a) imposition of the same discipline would result in grave injustice; (b) the misconduct established does

from the practice of law in Massachusetts, and has not sought reinstatement.

not justify the same discipline in this Commonwealth; or (c) the misconduct established is not adequately sanctioned by the same discipline in this Commonwealth." S.J.C. Rule 4:01, § 16(3).

Thus, the task is "to mete out the sanction appropriate for this jurisdiction," In re Steinberg, 448 Mass. 1024, 1025 (2007), such that the sanction "is not markedly disparate from that ordered in comparable cases," In re Kersey, 444 Mass. 65, 70 (2005), even if it "exceeds, equals, or falls short of the discipline imposed in [the other] jurisdiction." In re Watt, 430 Mass. 232, 234 (1999).

In bar discipline cases, "the primary factor is the effect upon, and perception of, the public and the bar." Matter of Alter, 389 Mass. 153, 156 (1983). The respondent's misconduct at issue, in repeatedly defying the orders and the judgment of the Federal District Court and, as the Connecticut Superior Court judge characterized it, "thumb[ing] his nose at the judicial process," is the type of misconduct that damages the public's belief in and respect for the courts and the judicial system. The essence of the respondent's misconduct is a "complete disregard of . . . procedure and finality of judgments," for which an eighteen-month suspension is warranted and is not "markedly disparate" from sanctions imposed in similar cases. See, e.g., Matter of Tobin, 417 Mass. 92, 101 (1994) (eighteen-

month suspension where respondent solicited and filed "repetitive, incomprehensible, and irrational" appeals and disregarded court admonitions and orders).

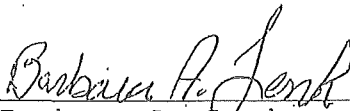
Moreover, under S.J.C. Rule 4:01, § 16(3), it is incumbent on the respondent to demonstrate why the imposition of a reciprocal eighteen-month period of suspension would be a "grave injustice." Matter of Jones, 425 Mass. 1005, 1007 (1997) (holding that respondent who presented no argument "ha[d] not established, as he [was] required to do pursuant to § 16(3), that there would be a grave injustice if the Pennsylvania discipline were imposed in Massachusetts"). In light of the respondent's failure to advance his case and his total disregard of the disciplinary proceedings against him in Massachusetts, as well as the similarity between the respondent's misconduct and "misconduct in Massachusetts which has been held to warrant a suspension of [eighteen months]," he cannot meet this burden and reciprocal discipline is appropriate. See id.

In other cases involving attorneys who have defrauded clients or third parties, restitution has been required as an appropriate part of a disciplinary sanction. See, e.g., In re Lupo, 447 Mass. 345, 346, 360-362 (2006) (imposing indefinite suspension and order to pay restitution where respondent defrauded relatives in estate sale). Here, however, it is only

necessary that the respondent's reinstatement in Massachusetts be contingent upon his reinstatement in Connecticut; under the terms of his suspension in Connecticut, the respondent must pay the Federal District Court judgment prior to any application for reinstatement to the Connecticut bar.

3. Disposition. An order shall enter suspending the respondent from the practice of law in the Commonwealth for eighteen months, with reinstatement contingent on the respondent's prior reinstatement to the practice of law in Connecticut.

By the Court


Barbara A. Lenk
Associate Justice

Entered: March 18, 2014