

IN RE: CARLOS M. SOUSA

NO. BD-2014-022

S.J.C. Order of Term Suspension entered by Justice Lenk on February 21, 2014, with an effective date of March 24, 2014.¹

SUMMARY²

The respondent was admitted to the Massachusetts Bar on December 17, 2004. On February 21, 2014, the Supreme Judicial Court for Suffolk County entered an order suspending the respondent for two years effective thirty days after the entry date of the order. The order of suspension arose from the respondent's misconduct in five separate matters involving neglect, conflict of interest, trust account violations, and dishonesty.

The first matter began on January 12, 2010, when the client engaged the respondent to represent him before the Immigration Court in a removal hearing. The respondent was inexperienced in immigration cases and did not familiarize himself with the procedures and law applicable to the client's case. Thus, he failed to take the proper steps to file his appearance and a change of venue motion. As a result, on April 28, 2010, the client was ordered removed in absentia. The respondent's failure to file a proper notice of appearance and timely and proper motion to change venue violated Mass. R. Prof. C. 1.1, 1.2(a), and 1.3. His failure to inform his client that he was not experienced in immigration law violated Mass. R. Prof. C. 1.4(a) and (b).

In the second matter, in February 2009, the respondent agreed to represent a mother and son as defendants in a civil matter. The son owned a construction business and his mother worked for him as his bookkeeper. The plaintiff in the civil case alleged construction defects and improper billing and use of his funds.

Because the mother and son could potentially blame the other for the plaintiff's alleged injuries, the respondent's representation of each client was materially limited by the respondent's responsibilities to the other client. Even if consent were possible, the respondent failed to inform either client of the risks involved in joint representation and did not obtain their consent to his conflict of interest. This conduct violated Mass. R. Prof. C. 1.4(b), 1.7(a) and (b) and 1.16(a)(1).

The respondent failed to file a timely answer to the complaint. On April 10, 2009, the court entered a default as to all defendants. The respondent informed the clients that he would get 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.

default removed, but took no action of substance to do so and failed to inform his clients that he would be taking no action. The respondent's conduct in failing to maintain reasonable communications with his clients concerning the status of their case and in failing to explain the matter sufficiently to allow them to make informed decisions regarding the representation violated Mass. R. Prof. C. 1.4(a) and (b).

An assessment hearing was scheduled for September 15, 2009. The respondent sought a continuance of the assessment hearing so that his clients could seek to remove the default, pursuant to Rule 60(b). Although the court allowed the continuance, the respondent failed to file a motion to vacate the default. This conduct violated Mass. R. Prof. C. 1.1, 1.2(a), and 1.3.

On September 16, 2009, a judgment by default entered against the clients. The respondent failed to inform his clients of the judgment. The court then ordered the parties to participate in mediation. The respondent understood by this time that it was a conflict of interest to represent both clients, but failed to inform his clients of the conflict. Instead, the respondent told his clients that it would be strategic for one of them to retain separate counsel. The respondent's conduct in dropping one client and continuing to represent the other without the first client's informed consent violated Mass. R. Prof. C. 1.7(b) and 1.9(a).

In the third matter, in November 2010, the respondent was retained by the owner of a transmission repair business to file an injunction and civil complaint against an ex-employee who had set up a competing business and was soliciting the company's established clients. The respondent failed to file a complaint or seek an injunction.

At the end of January 2011, the respondent requested additional retainer funds, which he immediately deposited into his operating account. Prior to depositing the retainer to his operating account, the respondent failed to provide written notice to his client that he had taken retainer funds and failed to provide his client with a bill. This conduct violated Mass. 1.15(b) and 1.15(d)(2) and 8.4(c) and (h).

In March 2011, the respondent intentionally misrepresented to his client that he had filed a complaint and motion for injunctive relief and that a hearing was scheduled for March 17, 2011. On March 17, 2011, the respondent directed his secretary to misinform his client that the hearing had been cancelled. The respondent's misrepresentations violated Mass. R. Prof. C. 1.4(a) and (b) and 8.4(a) and (c).

In April 2011, the respondent falsely told his client that he would file an amended complaint to correct mistakes in his original complaint. On May 2, 2011, the client discovered that the respondent had failed to file anything on her behalf. On May 3, 2011, the respondent filed a complaint. The respondent's conduct in failing to take any action of substance on behalf of his client from November 2010 to May 2011 violated Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 3.2.

On or about May 4, 2011, the respondent sent a bill to his client that included a false entry for March 17, 2011. The false entry was designed to create the impression that the client knew as of that date that no complaint had been filed. The respondent later sent that bill to bar counsel and

misrepresented to bar counsel that he had not made misrepresentations to his client. The respondent's conduct in creating and sending a bill with a false entry to the client, in falsely denying to bar counsel that he had made any misrepresentations to LaRue, and in providing to bar counsel the bill with the false entry violated Mass. R. Prof. C. 3.4(b), 8.1(a) and 8.4(a), (c), (d), and (h).

In the fourth matter, in 2006, the respondent represented a couple in pursuing a claim against the developer of their home for various construction defects. On October 25, 2006, the respondent filed a complaint on his clients' behalf against the developer, but did not effect service. When the court ultimately dismissed the lawsuit, the respondent failed to tell his clients. The respondent's failure to effect service of the complaint violated Mas. R. Prof. C. 1.1, 1.2(a) and 1.3. The respondent's failure to inform his clients that their case had been dismissed violated Mass. R. Prof. C. 1.4(a) and (b).

From March 2006 to July 2007, the client repeatedly requested an itemized bill from the respondent, but he failed to provide one, in violation of Mass. R. Prof. C. 1.15(d)(1).

On June 27, 2007, the respondent refiled the same complaint and served the developer. On March 29, 2011, a mediation was held and the parties agreed to settle the case for \$60,000. By April 7, 2011, the respondent had received the settlement checks, but did not send them to his clients for signature until June 5, 2011. Around June 22, 2011, the respondent deposited the endorsed checks into his account and took his fee. Prior to taking his fee, he failed to provide a written bill or accounting to his clients itemizing his services. He also failed to account for the funds upon final distribution. This conduct violated of Mass. R. Prof. C. 1.15(d)(2) and 1.15(d)(1).

On June 18, 2011, the clients disputed a portion of the respondent's fee, but the respondent failed to place the disputed funds in escrow until December 2013. The respondent's conduct in failing to promptly place disputed funds in escrow violated Mass. R. Prof. C. 1.15(b)(2)(ii) and 8.4(h).

In the fifth matter, the respondent was retained in June 2009 to represent a couple whose home was scheduled for a public auction. The mortgage company had reneged on their agreement with the clients to reduce their monthly payments. The respondent told his clients that he would file an injunction to stop the foreclosure and assist them in applying for a loan modification. The clients paid a retainer, which the respondent deposited into his operating account before it was earned, in violation of Mass. R. Prof. C. 8.4(c) and (h). The respondent failed to notify his clients in writing that he had taken the retainer as his fee and failed to provide them with a bill showing the services rendered, in violation of Mass. R. Prof. C. 1.15(b) and 1.15(d)(2).

Between June 27, 2009, and February 24, 2012, the respondent took no court action on behalf of his clients, either to stop the foreclosure or to address their grievances with the mortgage company. During this period, the respondent accepted upfront funds from his clients solely for assisting them in seeking loan modifications, in violation of G.L. c. 93A and 940 C.M.R. 25.00. This was an illegal advance fee, which violated Mass. R. Prof. C. 1.5(a). The respondent also

failed to inform his clients that they could obtain the same services from government agencies without charge, in violation of Mass. R. Prof. C. 1.4(a) and (b) and 8.4(h).

The mortgage company sold the clients' house at auction and filed an eviction action in housing court. The respondent failed to file a timely answer, but on February 24, 2012, he filed a motion for a continuance and a motion to file a late answer and counterclaim. Thereafter the respondent failed to file an answer, counterclaim, or any pleading on behalf of his clients. A trial date was scheduled in the housing court for March 23, 2012. The respondent failed to inform his clients that the matter was on for trial. The respondent's failure to adequately represent his clients in housing court violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3. His failure to keep his clients' advised of the status of the housing court matter violated Mass. R. Prof. C. 1.4(a).

On March 23, 2012, instead of appearing at the housing court, the respondent filed an action and motion for preliminary injunction in the superior court alleging that the mortgage company had violated G.L. c. 93A, breached its contract and made misrepresentations to the client. The superior court scheduled a hearing on the injunction for 2:00 pm that day. The respondent failed to inform the housing court that he was in the superior court, and he failed to seek a protective order from the superior court regarding his required appearance in the housing court. That conduct violated Mass. R. Prof. C. 8.4(d) and (h).

Without consulting his clients, the respondent entered into an agreement with opposing counsel to settle the eviction case. He instructed the husband to sign the settlement agreement and to sign his wife's name, in her absence. The respondent failed to explain to his clients that the judgment would legally require them to move from their home. The respondent's instructions to his client to sign the agreement without explaining the significance of the matter to them, and his instruction to the husband to sign his wife's name, violated Mass. R. Prof. C. 1.2(a), 1.4(a) and (b) and 8.4 (c) and (d).

The matter came before the Board of Bar Overseers on a stipulation of the parties, agreeing to recommend a two-year suspension. On January 28, 2014, the Board of Bar Overseers voted to adopt the parties' stipulation and proposed sanction. On February 21, 2014, the Supreme Judicial Court for Suffolk County so ordered.