

IN RE: LEE SAMUEL KAPLAN
NO. BD-2015-067
S.J.C. Order of Term Suspension entered by Justice Hines on July 14, 2015.¹
SUMMARY²

The respondent was admitted to the Massachusetts bar on December 20, 1994.

In March of 2009, a client retained the respondent to represent him in a consumer protection matter. The respondent filed suit in the superior court on the client's behalf on February 25, 2010. The respondent did not effectuate service on the defendant. On June 22, 2010, the case was dismissed. The respondent did not advise his client that the case had been dismissed due to the respondent's failure to make service of process on the defendant. Instead, for the next three years, the respondent intentionally misled the client in to believing that his case was being litigated.

By August of 2013, the client had grown impatient waiting for his case to be resolved. He pressed the respondent for action. The respondent falsely told the client that the defendant had made an offer of settlement that would result in a net recovery for the client of \$30,000. The respondent told the client that this was likely the defendant's best offer and that the client should accept it. The client agreed.

The respondent proceeded to prepare a fictitious settlement agreement, which he presented to his client for his signature. The document stated as part of the agreement that the defendant would pay the settlement funds within twenty-one days from the date of the agreement. The client signed the document on August 14, 2013.

After twenty-one days had passed, the client contacted the respondent, who assured him that his office should be receiving the funds any day. Between early September and early October, the client made several attempts to meet with the respondent without success. The respondent finally agreed to meet with the client on October 7, 2013. On that date, the respondent gave the client two checks, each in the amount of \$15,000, drawn on the respondent's personal bank account. At the time the respondent issued the checks, his account had a negative balance. When the client attempted to cash one check, he was informed that the respondent's account did not have sufficient funds to negotiate the check. The other check, deposited into the client's account, was returned for insufficient funds.

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.

On October 24, 2013, the respondent deposited \$172,200 into his IOLTA account in connection with a real estate closing on a matter unrelated to the client. Drawing from the closing funds received the day before, on October 25, 2013, the respondent issued a check to the client for \$30,000, which the client cashed that same day. With funds that he had obtained from a family member, three days later on October 28, 2013, the respondent deposited \$31,000 into his IOLTA account. The real estate closing client, whose funds the respondent used, was never deprived of money.

The respondent violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3 by failing to effectuate service of process on the defendant and by failing to take any action of any substance on the case after filing suit. The respondent violated Mass. R. Prof. C. 1.4(a) and (b) by failing to keep his client reasonably informed as to the status of his case and by not promptly complying with the client's reasonable requests for information. By making intentional misrepresentations of fact to the client concerning the status of his case and the alleged settlement, and by creating a false settlement agreement, the respondent violated Mass. R. Prof. C. 8.4(c). The respondent also violated Mass. R. Prof. C. 8.4(c) by writing a check he knew would be dishonored due to insufficient funds. By drawing on other client funds and by depositing personal funds into his IOLTA account, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(C) and 1.15 (b)(2).

On May 2, 2014, the Supreme Judicial Court administratively suspended the respondent's license to practice law in the Commonwealth for failing to file his annual registration statement and registration fee with the board. On June 1, 2014, thirty days after his administrative suspension, the respondent became subject to the provisions of the administrative suspension order and S.J.C. Rule 4:01, § 17. Among other things, the order and rule required the respondent to file notices of withdrawal in every court where he had an appearance; resign his fiduciary appointments; provide notice of his suspension to all clients, heirs and beneficiaries; return his clients' files; refund any unearned fees; close all client funds accounts and properly disburse or otherwise transfer all client and fiduciary funds in his possession, custody or control; and file an affidavit of compliance with the Court and bar counsel. The respondent took no action to comply with these requirements. On November 26, 2014, and while still under administrative suspension from the practice of law, the respondent appeared before the Suffolk County Probate and Family Court on behalf of a client who was unaware of his suspension.

The respondent's conduct in failing to abide by the administrative suspension order and the court rule constituted a violation of Mass. R. Prof. C. 3.4(c) and 8.4(d). The respondent's conduct in failing to inform his client that he had been suspended from the practice of law and of the effect of the suspension violated Mass. R. Prof. C. 1.2(e), 1.4(a), and 8.4(c) and (d). The respondent's continued practice of law following his suspension constituted the unauthorized practice of law in violation of Mass. R. Prof. C. 5.5(a) and 8.4(d).

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation that the respondent be suspended from the practice of law for two years. On June 8, 2015, the board voted unanimously to recommend that the Supreme Judicial Court accept the parties' stipulation and joint recommendation for discipline. On July 14, 2015, the Supreme Judicial Court for Suffolk County (Hines, J.) ordered that the respondent be suspended from the practice of law for a period of two years, effective thirty days after the entry date of the Court's order.