IN RE: THOMAS F. HEALY

NO. BD-2015-072

S.J.C. Judgment of Disbarment entered by Justice Lenk on December 11, 2015.[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-2015-072

IN RE: THOMAS F. HEALY

MEMORANDUM OF DECISION

This matter came before me on an information and record of proceedings pursuant to S.J.C. Rule 4:01, § 8(6), and a recommendation and vote by the Board of Bar Overseers (board), recommending that the respondent be disbarred from the practice of law in the Commonwealth. Bar counsel supports this recommendation. Because the respondent did not file a response to bar counsel's petition for discipline, and did not appear before the board, he was defaulted. Consequently, the assertions in bar counsel's petition are deemed admitted, see S.J.C. Rule 4:01, § 3(a), and form the basis of the board's findings of fact. S.J.C. Rule 4:01, § 3(a)

Bar counsel filed a petition for discipline against the respondent for having intentionally misused client funds for his personal benefit; holding $165,000 of a client's funds in a non-

interest bearing IOLTA account for more than four years; failing diligently to pursue resolution of a Medicare lien against the client, resulting in the client ultimately having to pay an additional $50,000 of his own money to settle the lien; and failing to respond to the client's requests for assistance or to keep the client reasonably informed about the status of his matter. To date, the respondent has not made restitution of any portion of the $165,000 of the client's funds that he withdrew from his IOLTA account and paid to himself by bank check. For the reasons discussed below, I conclude that the board's recommendation of disbarment is appropriate, and that the respondent shall be disbarred from the practice of law in the Commonwealth.

1. Facts. The board found the following. The respondent was admitted to the Massachusetts bar in 1979.

In November, 2005, the client retained the respondent, pursuant to a one-third contingent fee agreement, to handle a claim for a serious personal injury. In December, 2009, the respondent obtained a $485,000 settlement for the client.

On January 15, 2010, the respondent deposited the settlement funds into his IOLTA account. After collecting his $161,666.61 fee, and disbursing $158,334.34 to the client, the respondent still retained $165,738.05 of the settlement funds in his IOLTA account. This was with the client's permission, so

that the respondent could use $165,000 of the settlement proceeds to settle a Medicare lien against the client's recovery. The respondent agreed to return the balance of the settlement funds to the client once he had resolved the Medicare lien, which he told the client could take up to a year.

In December, 2011, almost two years after having settled the personal injury claim, the respondent still had not reached a settlement with Medicare over the amount of its lien. He sent a letter to the client and the client's wife stating that he would work harder to resolve the lien issue, blaming the delay on difficulty in contacting Medicare's Detroit office. The resopndent had no further contact with the client until July, 2014.

From January, 2010, when he first deposited the settlement funds, until April, 2014, the respondent continued to hold the funds in his IOLTA account, rather than placing them in an individual interest-earning trust account. On April 11, 2014, the respondent withdrew $165,000 from his IOLTA account via a bank check payable to his law office. The client and his wife were not aware of and had not authorized this withdrawal.

In July, 2014, Medicare sent a letter directly to the client and his wife informing them that the there was an outstanding medical lien in the amount of $102,294.29. After she was unable to contact the respondent at his office number,

which was reported as out of service, the client's wife eventually managed to speak with the respondent on his cellular telephone. The respondent asked the client's wife to send him a copy of the Medicare letter. She sent the letter, as requested, and then telephoned the respondent several times, but received no response from him after the July, 2014 call. Ultimately, in October, 2014, the client and his wife negotiated the Medicare lien themselves, reaching a settlement of $50,000 to satisfy the underlying medical expenses; they paid this amount with a personal check from their own bank account.

On February 13, 2015, the respondent withdrew the balance of his IOLTA account, then $8,636.84, and closed the account. He has yet to repay or account to the client and his wife for any portion of the $165,000 he agreed to hold on their behalf.

2. Procedural history. On July 31, 2014, the respondent was administratively suspended from the practice of law for nonpayment of fees, pursuant to S.J.C. Rule 4:03(2). On April 3, 2015, bar counsel filed a petition for discipline against the respondent. The petition was served on him via certified mail and first-class mail, as well as by sending a copy in an electronic mail message. Both letters were returned; the certified mailing was marked "moved left no address." At a hearing before me, bar counsel reported that there had been no indication that the electronic mail message was "undeliverable,"

or that it had not been received. The respondent did not file an answer to the petition.

In a letter dated April 28, 2015, the board informed the respondent that bar counsel's assertions in the petition had been deemed admitted because he had not filed an answer. The letter also stated that the respondent had twenty days within which to file a motion for relief from default. This letter, too, was sent by certified mail, first-class mail, and electronic mail. Again, both letters were returned, and the certified letter was again marked "moved left no address." Bar counsel stated at the hearing before me that he had not received any indication that the electronic email message had been "undeliverable." The respondent did not seek to have the default lifted.

In May, 2015, bar counsel notified the board that an attorney who represents the receiver for an insurance company that owes the respondent money had telephoned him. The attorney said that he recently had spoken to the respondent, who was then in Florida, and provided bar counsel with the respondent's telephone number and mailing address there. Bar counsel was able to speak with the respondent by telephone, but the respondent declined to provide his current United States mailing address or his electronic mail address. On May 19, 2015, the board sent the respondent notice of a hearing to be held on July

13, 2015, to consider the appropriate discipline to be imposed, on the basis of the documents filed. The parties were given fourteen days within which to file memoranda on the appropriate sanction. The notice again was sent by certified and first class mail, and both letters again were returned, with the certified letter marked "moved left no address." The respondent did not file a response.

In June, 2015, bar counsel filed a motion seeking to have the respondent disbarred. On July 13, 2015, at the noticed hearing, the board voted to disbar the respondent from the practice of law in the Commonwealth. Bar counsel then filed this information in the county court, asking that the respondent be disbarred. An order of notice of a hearing to show cause why the requested discipline not be imposed was sent to the respondent on August 14, 2015; he did not appear before me at the hearing on September 10, 2015, and has submitted no filings to this court, before or after the September hearing.

3. Discussion. The primary purpose of attorney disciplinary sanctions is to protect the public and to maintain its confidence in the integrity of the bar and the fairness and impartiality of our legal system. See, e.g., Matter of Alter, 389 Mass. 153, 156 (1983). While each case should be decided on its own merits, and the attorney should receive "the diposition most appropriate in the circumstances," the sanction imposed

also should not be "markedly disparate" from sanctions imposed on other attorneys for similar conduct. See Matter of Pudlo, 460 Mass. 400, 405-407 (2011); Matter of Goldberg, 434 Mass. 1022, 1023 (2001), and cases cited. "The appropriate level of discipline is that which is necessary to deter other attorneys and to protect the public." Matter of Curry, 450 Mass. 503, 530 (2008), citing Matter of Concemi, 422 Mass. 326, 329 (1996).

The presumptive sanction for an attorney's intentional misuse of client funds, with the intent to deprive the client of the funds, either permanently or temporarily, or with actual deprivation of the client's funds, is indefinite suspension or disbarment. See Matter of Sharif, 459 Mass. 558, 565 (2011); Matter of Schoepfer, 426 Mass. 183, 186 (1997). An offending attorney faces a "heavy burden" in presenting evidence of mitigating circumstances sufficient to justify a lesser sanction. Matter of Schoepfer, supra at 187. Absent "clear and convincing reasons" for departing from the presumptive sanction, a reviewing court will not do so. See Matter of Sharif, supra at 566-567; Matter of Schoepfer, supra. A history of prior disciplinary violations, or other violations of displinary rules in the same proceeding, may be considered as aggravating circumstances that could justify imposing a greater sanction. See Matter of Schoepfer, supra at 188.

Here, the facts warrant the conclusion that the respondent intentionally used his client's funds, intended to deprive the client of those funds, and actually deprived the client of his funds. Rather than working to negotiate a settlement of the Medicare lien using the $165,000 of the client's funds entrusted to him for that purpose, the respondent paid himself a bank check for $165,000 from his IOLTA account, an account which consisted primarily of the client's money. The client did not authorize, and was not aware of, the respondent's withdrawal of these funds. The respondent still has not repaid any of the $165,000 due to the client, and has not accounted to the client for any portion of those funds. Thus, the presumptive sanction here is disbarment. See Matter of LiBassi, 449 Mass. 1014, 1016-1017 (2007), and cases cited.

The respondent's failure to answer the petition against him surely does not meet the "heavy burden" required to overcome the presumption of disbarment where an attorney intentionally misuses client funds, depriving the client of those funds. The facts deemed admitted because of the respondent's failure to respond to the petition for discipline present no mitigating circumstances and no "clear and convincing reasons" for departing from the presumptive sanction. To the contrary, the facts reveal a number of other disciplinary violations that may be considered in aggravation, including: holding $165,000 of

the client's money in a non-interest bearing account, in violation of Mass. R. Prof. C. 1.15(e)(6); failing diligently to attempt a settlement of the Medicare lien, in violation of Mass. R. Prof. C. 1.2(a) and 1.3; and failing both to provide the client with status updates and to respond to the several attempts to contact him for assistance with resolving the Medicaid lien, in violation of Mass. R. Prof. C. 1.4(a).

4. Conclusion. For the foregoing reasons, an order shall enter disbarring the respondent from the roll of attorneys in the Commonwealth.

By the Court

Barbara A. Lenk
Associate Justice

Entered: December 11, 2015