

**IN RE: SANDRA C. HOWARD**

**NO. BD-2015-091**

**S.J.C. Amended Order of Term Suspension/Stayed entered by Justice Spina  
on November 5, 2015, effective October 16, 2015.<sup>1</sup>**

**SUMMARY<sup>2</sup>**

This matter arises from the respondent's services as guardian or conservator in two cases, as follows.

Case I. In 2007, the respondent was appointed by the probate court as temporary guardian of the person and estate of an elderly woman with substantial assets. The respondent subsequently moved for and obtained her appointment as permanent guardian of the estate (later termed "conservator") and for the appointment of a social services agency as permanent guardian of the person. A \$600,000 surety bond was filed by the respondent and approved by the court in early 2008.

The respondent failed to file timely fiduciary accounts in the probate court. In 2009, an attorney serving as "Rogers" counsel for the protected person obtained orders requiring the respondent to file her accounts. Despite attempts to do so, the respondent failed to comply and was adjudicated in contempt in December 2009. She filed accounts thereafter, but the accounts were deemed improper in form and incomplete. An attorney was appointed to represent the protected person. In late 2010, that attorney obtained an order compelling the respondent to produce corrected accounts and itemized bills. The respondent did not then fully comply.

During her tenure as conservator, the respondent applied the protected person's funds to her care and maintenance and for expenses related to the conservatorship including the respondent's own fees. By late 2010, the protected person was in a nursing home, virtually all of the funds had been depleted, and the respondent had stopped paying the nursing home charges. The respondent moved to reduce her surety bond due to the depletion of the assets. As a result, the court reviewed her accounts and found them to be insufficient. The respondent was ordered to produce records to the protected person's counsel and provide substituted accounts, in proper form, by January 31, 2011. The respondent failed timely to comply. She filed accounts after the entry of further orders, but those accounts were again deemed improper in form and incomplete. Further contempt judgments were entered against her in the spring of 2011, and she was ordered to pay attorney's fees and sanctions.

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<sup>1</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

In the spring of 2011, the nursing home notified the agency serving as guardian that the protected person would be discharged involuntarily absent payment in full within thirty days. On motion by the agency's attorney, the court ordered the respondent's removal and appointed a successor conservator. The respondent filed a final fiduciary account in February 2012, but that account was deemed improper in form and incomplete.

The respondent's knowing disregard of court orders violated Mass. R. Prof. C. 3.4(c) and 8.4(d) and (h). Her failure to render timely, adequate fiduciary accounts and failure to comply with the probate court orders to render accounts violated Mass. R. Prof. C. 1.1, 1.3, 1.15(d)(1) and 8.4(d) and (h).

In addition, the respondent failed to file income tax returns and recover a tax refund for the protected person, failed to file a timely MassHealth application, and borrowed funds in the ward's name without prior court approval. These breaches of fiduciary duty violated Mass. R. Prof. C. 1.1, 1.3 and 8.4(h).

Between 2007 and early 2011, the respondent paid herself a total of about \$87,500 for her services from the protected person's funds, all at her legal rate of \$180 per hour. The fees were clearly excessive in that they included substantial charges for ministerial or administrative services, such as packing and moving the protected person's belongings, and for services inadequately or improperly rendered. By charging and collecting unapproved and clearly excessive fees, the respondent violated Mass. R. Prof. C. 1.5(a) as then in effect.

The respondent's errors and omissions resulted from insufficient knowledge and experience rather than wrongful intent, and her overriding motive was to assist and care for the protected person. Notwithstanding the contempt adjudications, the respondent made significant efforts to comply and never intended to flout the court's directives. The MassHealth application belatedly initiated by the respondent was ultimately successful, with no interruption of services and benefits retroactive to the application date. The respondent was unaware at the time of the requirement for prior court approval of her fees.

Case II. In early 2010, the respondent was appointed as guardian of a nursing home resident. On motion of the nursing home, the court authorized payments to the respondent from the protected person's funds for her services up to a maximum of \$1,200 at \$50 per hour, plus \$250 for a MassHealth redetermination if applicable. The respondent then understood that she was authorized to pay herself for one year only and would require further court authorization for any payments in future years.

In 2011, the nursing home again moved for payment to the respondent under the same terms and limits. The court issued an order requiring the respondent to file an itemized bill as a condition of payment. The respondent paid herself \$300 without first submitting a bill. She later filed motions for payment with itemized bills and thereby obtained authorization for that payment and for additional payments, subject to later review and allowance of her guardian's accounts. An account tendered by the respondent in the fall of 2011 was rejected by the court staff as improper in form.

In 2012 and 2013, the respondent filed motions to pay herself from the protected person's funds. She also filed an amended account but did not submit itemized bills, and no action was taken on her motions. During that period, the respondent disbursed to herself a total of \$2,350 from the ward's funds as earned fees without authorization from the court.

By paying herself for services in knowing disregard of court rules and orders, the respondent violated Mass. R. Prof. C. 3.4(c) and 8.4(d) and (h).

In Case II, the respondent was also motivated by care and concern for the protected person, and she rendered services substantially in excess of the services for which she paid herself. The respondent's efforts to obtain court authorization for her payments were hampered in part by ongoing inability to have her accounts accepted for filing. The respondent recognized, however, that her knowing disregard of court rules and orders in both cases was not excused on that or any other basis and that she was obliged to obtain whatever assistance was needed to carry out her obligations and comply with court orders.

In aggravation, the respondent was admonished in 2005 for in-person solicitation of an elderly woman in a nursing home. Admonition No. 05-25, 21 Mass. Att'y Disc. R. 724 (2005). In mitigation, substantial funds were eventually repaid by agreement to the estate of the protected person in Case I, as a result of which the estate losses were substantially mitigated. In addition, for part of the period in question, the respondent suffered from undiagnosed depression for which she has since received treatment.

Bar counsel commenced disciplinary proceedings against the respondent by filing and serving a petition for discipline in August 2014. In September 2015, prior to hearing on the petition, the parties submitted amended pleadings and a stipulated recommendation that the respondent be suspended for six months with the suspension stayed for two years on conditions including a LOMAP assessment, practice monitoring, and strict compliance and reporting deadlines. The Board of Bar Overseers voted to accept the stipulation and recommendation. On November 5, 2015, the Supreme Judicial Court for Suffolk County entered a final order for a six-month stayed suspension on the stated conditions.