

IN RE: ERNEST A. SOLOMON

NO. BD-2018-029

S.J.C. Order of Term Suspension entered by Justice Lowy on March 25, 2019.¹

The respondent, who served as an estate executor, loaned money to the testator's daughter-in-law, who was also the testator's attorney in fact under a power of attorney. The respondent failed to obtain informed consent to the conflict. His misconduct was aggravated by his misrepresentations to estate beneficiaries as well as two prior suspensions. The Supreme Judicial Court suspended the respondent for one year and one day.

SUMMARY²

In 2011, the respondent, who was admitted to practice in 2002, drafted a will for a client in which he was the nominated executor of the client's estate. In 2012, the client signed a power of attorney (POA) naming his daughter-in-law his attorney in fact. On April 9, 2013, the respondent loaned \$17,258.60 to the daughter-in-law from his personal funds. In September 2013, the daughter-in-law informed the respondent that the testator was near death. The respondent advised the daughter-in-law that she could use the POA to obtain funds from the testator to repay her debt to the respondent. The daughter-in-law used the POA to take \$25,000 from the testator's account.

The testator died in mid-September 2013. From the funds she had taken, the daughter-in-law gave the respondent \$17,000 to repay her debt and an additional \$6,000, which the respondent used to pay the client's funeral expenses.

In November 2013, the respondent accepted the appointment to serve as the executor for the client's estate. The respondent did not and could not reasonably believe that his services as executor would not be adversely affected by his personal interests. The respondent failed to obtain informed consent to the conflict. In January 2014, the respondent wrote a letter to the beneficiaries of the decedent's estate in which he gave a materially false and deceptive explanation of the daughter-in-law's purpose for taking funds from the testator's account.

After May 2014, the respondent resigned as the executor. In mid-2015, the respondent failed to respond to requests for an accounting of the \$17,000 from the estate's successor representative. The respondent also made materially misleading statements to bar counsel concerning the purpose of the \$17,000 payment.

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.

By accepting the appointment as executor of the estate when his service as the executor and his fiduciary obligations to the beneficiaries of the estate could have been and were materially limited by his personal interests, the respondent violated Mass. R. Prof. C. 1.7(b) as in effect prior to July 1, 2015, 8.4(d) and 8.4(h). By intentionally misrepresenting to the beneficiaries of the estate the purpose for which the daughter-in-law had taken funds from the account of the testator and by making materially false and misleading statements to bar counsel, the respondent violated Mass. R. Prof. C. 4.1(a), 8.1(a), 8.1(b) and 8.4(c). By failing to respond to the demand from the estate's representative for an accounting, the respondent violated Mass. R. Prof. C. 1.15(d).

In aggravation of the respondent's misconduct, in 2014, the respondent received a fifteen-month suspension for reckless mishandling of client funds and making a materially false statement to a tribunal. *Matter of Solomon*, 30 Mass. Att'y. Disc. R. 377 (2014). In 2016, the respondent received a six-month suspension for filing two misleading *pro hac vice* applications for admission in New Hampshire. 32 Mass. Att'y. Disc. R. 522 (2016).

On July 27, 2017, the parties presented a stipulation of facts and rule violations to the Board. The Board voted to recommend that the respondent receive a suspension of one year and one day. On March 25, 2019, the Supreme Judicial Court for Suffolk County (Lowy, J.) entered an order suspending the respondent for one year and one day.