

IN RE: HARVEY ALFORD

NO. BD-2018-053

S.J.C. Order of Term Suspension entered by Justice Kafker on July 12, 2018.¹

SUMMARY²

On April 13, 2013, the respondent's client was involved in an automobile collision with two other vehicles. The client was hit from behind and pushed into a vehicle in front of him. He alleged soft tissue injuries, unreimbursed medical expenses and lost wages.

On April 24, 2013, the client and the respondent's firm entered into a written contingent fee agreement. In October 2013, the respondent filed a lawsuit for the injuries sustained. After the lawsuit was filed, the parties agreed to binding arbitration.

In August 2014, a binding arbitration award was entered in favor of the respondent's client in the amount of \$10,100.00. The respondent thereafter negotiated reduction in the amount of a lien for physical therapy services, resulting in a net due to the client, after a one-third legal fee and expenses were deducted, of \$4,171.34. The client received a breakdown of the final calculations.

On September 8, 2014, the respondent deposited the insurance company's check for \$10,100.00 into his firm's IOLTA account. At that time, the respondent made no distributions to the client, to himself or to his firm for reimbursement of out-of-pocket expenses. At the time of settlement, the payment for the reduced lien had not been finalized. The respondent was awaiting finalization before final distribution of the proceeds. In March 2015, the respondent paid the reduced amount of the lien, but inadvertently failed to make the other distributions including payment to the client.

In July 2017, the client first brought the non-payment to the attention of the respondent and to bar counsel and the respondent immediately paid to the client the funds to which the client was entitled, plus lost interest.

At no time between September 2014 and November 2, 2017, did the respondent maintain records compliant with Mass. R. Prof. C. 1.15(f), including three-way reconciliations and individual client ledgers.

The client's funds remained intact in the IOLTA account for 18 months after the settlement funds were received. However, beginning in March 2016, from time to time, by debits of variable and small sums, the respondent's IOLTA account fell below the balance of \$4,171.34.

The respondent negligently misused his client's funds for business or personal purposes unrelated to his client without any intent to deprive but with temporary deprivation resulting.

The respondent's negligent misuse of client funds without intent to deprive and his failure to promptly deliver to his client the funds that the client was entitled to receive, is conduct in violation of Mass. R. Prof. C. 1.15(b) and (c).

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.

The respondent's failure to keep compliant records is conduct in violation of Mass. R. Prof. C. 1.15(f).

In mitigation, during the applicable time period, the respondent's wife suffered a serious condition which contributed to his lack of focus. In April 2018, the respondent took a leave of absence from his practice to care for his wife and ceased the practice of law.

This matter came before the Board on a Petition for Discipline and an Answer and Stipulation of the Parties. On June 11, 2018, the Board voted to recommend to the Supreme Judicial Court that the respondent receive a suspension of three months subject to an audit of his accounting practices satisfactory to bar counsel. On July 12, 2018, the Court so ordered, and at the request of the respondent, made the suspension retroactive to the date of the Board vote.