

**IN RE: BRUCE E. LAVIGNE**

**NO. BD-2018-064**

**S.J.C. Judgment of Disbarment entered by Justice Cypher on January 18, 2019.<sup>1</sup>**

*The respondent was disbarred for intentional misuse of trust funds with deprivation.*

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

The respondent was admitted to the Massachusetts bar on September 26, 1996. The respondent was an experienced tax attorney. On January 18, 2019, the respondent was disbarred for intentionally misusing escrow funds for his own business and personal purposes with deprivation resulting, failing to deposit the escrow funds to an interest-bearing trust account, failing to account to the beneficiaries, and failing to cooperate with bar counsel's investigation.

The respondent represented the youngest of eight siblings. Their father died in 2007, and their mother died in 2015. The father's trust provided that the father's 50% interest in the family real property would pass to the respondent's client upon the death of his mother, or upon the death of his father if his mother did not survive his father. The mother's trust provided that her 50% interest in the family property would be divided equally among her surviving children. The respondent's client and his brother were co-trustees of their parents' trusts. The respondent's client was also a beneficiary of both parents' trusts.

In April 2017, the family home was sold for \$300,000 by the two trustees of the parents' trusts. The net proceeds of the sale due the sellers were \$283,138.98. There was a dispute among the beneficiaries as to distribution.

As a result, at the closing, the respondent and the co-trustees of both trusts, agreed that the respondent would hold the net proceeds in escrow until the estates were settled and all the beneficiaries agreed in writing to the amounts to be distributed. The agreement also provided that if, at the end of one year, the beneficiaries were unable to agree on disposition of the escrow funds, the respondent would deposit the escrow funds with a court of competent jurisdiction and seek the court's determination of how the funds should be distributed.

In April 2017, the respondent deposited the escrow funds to his pooled IOLTA account. The respondent failed to deposit the escrow funds to a separate interest-earning account. Beginning in April 2017, the respondent intentionally misused the escrow funds for his own business or personal purposes and not for the benefit of the beneficiaries.

On August 21, 2017, the respondent's client died without a will. The client was never married and had no children. He was survived by six siblings and the son and daughter of a deceased sibling.

In December 2017, the respondent distributed a total of \$128,248.34 to the beneficiaries of the mother's trust. There should have been a balance of approximately \$154,890.64 in escrow funds remaining in the respondent's IOLTA account. By December 31, 2017, the balance in the respondent's IOLTA account was only \$98,557.02 with no other distributions to or for the benefit of the beneficiaries of the trusts. By that date, the respondent had intentionally misused at least \$56,333.62 of the escrow funds for his own business or personal purposes.

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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 January 2018, new counsel was retained by the remaining siblings to probate the respondent's former client's estate. By email to the respondent dated January 15, 2018, counsel for the siblings advised the respondent that he had been retained to probate the respondent's former client's estate and requested that the respondent forward his file relative to the former client's estate. The respondent failed to respond to multiple telephone calls, emails and a certified letter from new counsel.

By April 30, 2018, one year after receiving the escrow funds, the balance in the respondent's IOLTA account was only \$32,884.64 with no further distributions made to or for the benefit of the beneficiaries of the trusts. By that date, the respondent had intentionally misused at least \$122,006.00 of the escrow funds for his own business or personal purposes.

In July 2018, a sister of the respondent's former client was appointed by the New Hampshire Circuit Court, Probate Division, as administrator of the former client's estate. In August 2018, counsel for the administrator made demand upon the respondent to turn over the escrow funds. The respondent failed to respond.

By failing to deposit the escrow funds to a trust account with the interest payable to third parties on whose behalf the escrow funds were held, the respondent violated Mass. R. Prof. C. 1.15 (e)(6). By failing to account for the escrow funds to the administrator of the former client's estate and to the beneficiaries on whose behalf the respondent was holding escrow funds, the respondent violated Mass. R. Prof. C. 1.15 (d)(1). By intentionally misusing the escrow funds for his own business and personal purposes with deprivation resulting, the respondent violated Mass. R. Prof. C. 1.15 (b), (c), (d), (e)(6) and Mass. R. Prof. C. 8.4(c) and (h).

On August 23, 2018, the Supreme Judicial Court entered an order administratively suspending the respondent from the practice of law in Massachusetts for failure to cooperate with bar counsel's investigation of the administrator's complaint. The respondent's failure to cooperate with bar counsel's investigation violated Mass. R. Prof. C. 8.4 (d), (g), and (h), and S.J.C. Rule 4:01, § 3.

On August 31, 2018, bar counsel filed a petition for discipline charging the respondent with the above misconduct. The respondent defaulted and the allegations in the petition were deemed admitted. On November 19, 2018, the board voted unanimously to recommend that the respondent be disbarred from the practice of law. On January 18, 2019, the Court (Cypher, J.), entered a judgment of disbarment, effective immediately.