IN RE: MICHAEL J. BEDNARZ, JR.

S.J.C. Judgment of Disbarment entered by Justice Sosman on June 19, 2001. [1]

SUMMARY [2]

In 1991, the respondent was retained by a client to assist her in collecting a civil judgment against an accountant. After the accountant filed a voluntary Chapter 7 bankruptcy petition, the client commenced an adversary proceeding within the Bankruptcy Court to have the judgment declared nondischargeable. In October of 1991, the accountant delivered a check for $20,000.00 to the respondent as escrow agent. In December of 1991, the client and the accountant executed a settlement agreement in the adversary proceeding which provided that the respondent would hold the $20,000.00 in escrow pending approval of the settlement agreement by the Bankruptcy Court. The settlement agreement also set forth a payment plan for the remainder of the judgment.

Between December of 1991 and August of 1993, the respondent neglected to seek Bankruptcy Court approval of the settlement agreement, to pay the $20,000.00 to his client, or to seek enforcement of the remaining terms of settlement agreement. The respondent also failed to respond to inquiries from his client about the matter. On June 14, 1993, after an inquiry from another attorney on behalf of the client, the respondent deposited $20,868.15 to an interest-bearing account in the client's name. In August of 1993, the respondent filed the settlement agreement with the Bankruptcy Court and obtained approval of the agreement by the Court.

After the adversary proceeding was closed on August 25, 1993, the respondent did not turn over the escrow funds to the client. Instead, between October 21, 1993 and April 15, 1994, the respondent withdrew $20,980.00 from the client's escrow account by a series of four withdrawals, reducing the balance in the escrow account to only $9.89 on April 18, 1994. The initial three withdrawals totaling $20,750.00 from the escrow account were made in October and November of 1993. The respondent deposited these funds to a pooled client funds account, and used the funds to make a series of personal and business payments unrelated to the client. By December 15, 1993, the balance in the client funds account had been reduced to $1,454.94 without payment to or for the benefit of the client.

The client retained new counsel in 1996 when the respondent failed to respond to her inquiries, to pay her the money, or to take steps to collect the client's judgment against the accountant. In May of 1996, the respondent wrote to the client's new counsel misrepresenting the actions he had taken on the client's behalf. The respondent also failed to return the client's file. In 1997, the client obtained a malpractice judgment against the respondent, which the respondent failed to satisfy in full.

The respondent failed to cooperate with Bar Counsel's investigation of the matter, including failing to appear for questioning when subpoenaed, resulting in his temporary suspension from the practice of law on June 16, 1997. Thereafter the respondent failed to comply with the Court's temporary suspension order requiring him to notify his clients, opposing counsel, and courts of his temporary suspension, and to take other actions in compliance with the Order. The respondent's conduct in this regard violated Supreme Judicial Court Rule 4:01, Section 3, Canon One, DR 1-102(A)(5) and (6), and Rules 8.4(d), (g) and (h) of the Massachusetts Rules of Professional Conduct.

The respondent's conduct in commingling his client's escrow funds with his own funds and in

intentionally converting not less than $20,868.15 (the amount of his client's escrow funds which the respondent received by certified check from her successor counsel on June 14, 1993) with the wrongful intent to deprive his client of the use of those assets at least temporarily, resulting in actual and continuing deprivation to his client, violated Canon One, DR 1-102(A)(4) and (6), Canon Two, DR 2-110(A)(2), and Canon Nine, DR 9-102(A), (B), and (C), and Rules 1.15(a), (b), and (d), Rule 1.16(d), and Rules 8.4(c) and (h) of the Massachusetts Rules of Professional Conduct.

The respondent's failure to account to his client concerning the escrow funds violated Canon One, DR 1-102(A)(6) and Canon Nine, DR 9-102(B)(1) and (3), and Rules 1.15(b) and Rule 8.4(h) of the Massachusetts Rules of Professional Conduct.

The respondent's failure to take steps to enforce the terms of his client's settlement agreement or to protect her interests with respect to collecting her judgment violated Canon Six, DR 6-101(A)(2) and (3), and Canon Seven, DR 7-101(A)(1) and (2), and Rules 1.1, 1.2(a), and 1.3 of the Massachusetts Rules of Professional Conduct.

The respondent's misrepresentations to his client and to other third parties concerning his holding of the escrow funds and actions he had taken on his client's behalf violated Canon One, DR 1-102(A)(4) and Canon Seven, DR 7-102(A)(5), and Rules 4.1(a) and 8.4(c) of the Massachusetts Rules of Professional Conduct.

The respondent's failure to return his client's file violated Canon Two, DR 2-110(A)(4), and Rules 1.16(d) and (e) of the Massachusetts Rules of Professional Conduct.

On December 13, 2000, Bar Counsel filed a petition for discipline with the Board of Bar Overseers. The respondent failed to file an answer, or to otherwise participate in the proceedings before the Board. On March 12, 2001, the Board of Bar Overseers voted unanimously to file an Information with the Supreme Judicial Court recommending that the respondent be disbarred. After a hearing on June 14, 2001 at which the respondent did not appear, on June 19, 2001 the Court entered an order of disbarment, effective as of the date of the order.

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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.

[2] Compiled by the Board of Bar Overseers based on the record before the Court.