

IN RE: JOHN FRANCIS STOCKS

ORDER OF DISBARMENT¹

SUMMARY

This matter came before the Court on the respondent's affidavit of resignation pursuant to Supreme Judicial Court Rule 4:01, § 15.

The respondent was duly admitted to the Bar of the Commonwealth of Massachusetts on June 11, 1975.

In June of 1991, the respondent received a private reprimand for the neglect of six collection matters for a client, failure to return client files, and failure to cooperate with Bar Counsel's investigation. *PR-91-23*, 7 Mass. Att'y Disc. R 359 (1991).

On October 17, 1994, the respondent received a public reprimand for his handling of four civil matters. The respondent neglected and failed to take required action for his clients, failed to communicate with his clients, failed to respond to his clients' requests for their files after discharge, and failed to remit a \$30 collection to a client upon request. In addition, the respondent misrepresented to Bar Counsel his actions in the cases and failed to cooperate with Bar Counsel's investigation. *Public Reprimand No. 94-10*, 10 Mass. Att'y Disc. R 254 (1994).

In or about October 1994 a client retained the respondent to represent him in a claim for personal injuries arising out of an automobile accident occurring on October 10, 1994. The client and the respondent signed a contingent fee agreement by which the client agreed to pay the respondent a one-third contingent fee.

On or about January 6, 1995, the respondent filed a personal injury protection (PIP) benefits application on behalf of the client. The client and the respondent both signed an authorization form directing the respondent to pay the client's treating physician from the proceeds of any claim asserted in connection with his injuries.

On or about December 13, 1995, the respondent received two checks totaling \$2,000.00 from the client's PIP provider. The respondent did not turn over these checks to the medical care providers which were named payees on the checks. Instead, the respondent deposited the two checks in a non-interest-bearing checking account for which the respondent was the sole signatory. After the deposit of the PIP funds, the account balance on December 13, 1995 was \$3,125.05.

Between December 13, 1995 and January 10, 1996, the respondent made a series of client, personal and business deposits to and withdrawals from the account unrelated to the client or his case. On December 29, 1995 the respondent deposited \$91,265.54 and on January 1, 1996 the respondent deposited \$50,000.00 in escrow funds received pursuant to a residential real estate conveyance for another client. The respondent was required to pay off an existing mortgage in the amount of \$127,968.02 for this client. By a check number dated December 29, 1995 in the amount of \$127,968.02, the respondent attempted to pay off his real estate client's existing mortgage. However, when the check was presented for payment on or about January 10, 1996, the balance in the account including the \$2,000.00 of undistributed PIP funds was only \$122,902.90. On January 10, 1995, the real estate payoff check was returned for insufficient funds. On January 11, 1995, the respondent deposited \$6,896.35 in unrelated client and personal funds in the account, allowing payment of the real estate payoff check.

As a result of a series of withdrawals, by January 16, 1995, the account had a balance of \$777.51, although the \$2,000.00 in PIP proceeds had not yet been distributed. On or about January 12, 1995, the respondent attempted a partial payment of the client's medical bills by a check in the amount of \$1,221.00 from the account. However, this check was returned on January 16, 1995 due to insufficient funds. On January 17, 1995, the respondent deposited \$535.00 in unrelated funds in the account, allowing the check to clear on January 17, 1996 upon redeposit. On May 7, 1996, the medical care provider made demand for payment of the balance of the client's outstanding medical bill by notice sent to the respondent as counsel for the client, but was not paid.

On February 19, 1997, the respondent deposited to his IOLTA account a check for \$20,000.00 received as insurance settlement proceeds on behalf of his client. The balance in the IOLTA account after the deposit was \$20,025.06. After this deposit, the respondent made a series of withdrawals from the IOLTA account including \$18,619.00 in payments to himself. As a result, by March 17, 1997 the balance in the IOLTA account had been reduced to \$524.15 without any payments being made to or for the benefit of the client.

In or about March of 1997, the client requested that the respondent pay over \$7,500.00 of the settlement funds to be used towards a real estate purchase. As a consequence of the respondent's prior unauthorized use of the settlement proceeds, these funds were not available for the client upon demand. However, the respondent liquidated personal investment assets, and on March 19, 1997, the respondent deposited \$16,812.78 in personal funds in the IOLTA account, bringing the account balance to \$17,981.93. The respondent then used these funds to make a \$7,500.00 payment to the client by check dated April 8, 1997.

On April 24, 1997, the respondent deposited to his IOLTA account \$1,865.13 in additional PIP funds which he had received on behalf of the client. After this deposit, the respondent made a series of deposits to and withdrawals from the IOLTA account. By May 28, 1997, the IOLTA account balance had been reduced to \$124.36 without evidence of additional payments to or on behalf of the client. By this date, the respondent should have been holding \$8,477.13 in undistributed funds due and payable to his client or to medical providers on his behalf.

In June and September of 1997, the client requested that the respondent pay his new attorney a total of \$1,500.00 from his settlement funds for representation in another legal matter. The respondent made these payments, and also paid approximately \$150.00 in legal expenses on behalf of the client at the request of his client's new attorney. The respondent made no additional payments to or on behalf of the client, and as of the date of his resignation the respondent had not paid his client \$6,827.13 in undistributed PIP and personal injury settlement funds.

The respondent's commingling of the client's funds with his personal funds, his failure promptly to pay the client the funds due him, resulting in temporary and continuing deprivation to the client, and his intentional use of the client's funds to pay personal and business obligations and to pay the obligations of other clients, violated Canon One, Disciplinary Rules 1-102(A)(4) and (6), and Canon Nine, Disciplinary Rules 9-102(A), (B) and (C), and Rules 1.15(a), (b), (d), and (e), and Rules 8.4(c) and (h) of the Massachusetts Rules of Professional Conduct.

In another matter, the respondent served as the collection attorney for a medical care provider between 1986 and 1994. On October 27, 1994, the client asked the respondent to provide a status report on the accounts he was handling. The respondent did not provide an accounting, as requested by his client. On December 9, 1994, the client notified the respondent that his services had been terminated, effective immediately. The client requested that the respondent discontinue any further collection efforts, and that he turn over to new counsel all of his existing files. However, on December 30, 1994, three weeks after he had been discharged, the respondent sent a letter to a debtor requesting that the debtor send a check to the respondent for his outstanding medical balance. The respondent also did not turn over the client's files until March of 1995, after being contacted by Bar Counsel. In addition, the respondent failed to cooperate with Bar Counsel's investigation, resulting in the issuance of a subpoena. The respondent failed to appear for the March 20, 1996 subpoena meeting, although he subsequently appeared for later meetings with Bar Counsel.

By failing to return his client's files within a reasonable time following the client's request that he do so, the respondent violated Canon Two, DR 2-110(A)(4). By failing to withdraw from employment after being discharged by his client, the respondent violated Canon Two, DR 2-110(B)(4). By failing to account to his client concerning his handling, maintenance, and disposition of all client funds when requested to do so, the respondent violated Canon Nine, DR 9-102(B)(3). By failing to promptly pay or deliver to his client upon request the client funds in his possession, the respondent violated Canon Nine, DR 9-102(B)(4). By failing to cooperate with Bar Counsel's investigation, the respondent violated Supreme Judicial Court Rule 4:01, § 3.

On November 10, 1999, the respondent submitted his affidavit of resignation from the practice of law. In the affidavit, the respondent acknowledged that sufficient evidence existed to warrant findings that the facts summarized above would be proved by a preponderance of the evidence. On December 13, 1999, the Board of Bar Overseers voted to recommend that the affidavit of resignation be accepted, and that an order of disbarment enter forthwith. The Supreme Judicial Court so ordered on December 30, 1999.

¹S.J.C. Order of Disbarment entered by Justice Ireland on December 30, 1999.

Please direct all questions to webmaster@massbbo.org.

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