

F. CHRISTOPHER ZACHARER

Order (public reprimand) entered by the Board February 24, 2006.

SUMMARY<sup>1</sup>

The respondent is a sole practitioner admitted to practice in 1988. He stipulated to the material facts charged in a two-count petition for discipline and received a public reprimand.

Count One of the petition for discipline arose from the respondent's representation of clients, husband and wife, seeking appointments as guardians for their incapacitated sister-in-law and also for her profoundly retarded adult daughter. The respondent received a \$24,060 retainer. In 1994, the husband was appointed conservator and temporary guardian for his sister-in-law. In 1994, the husband was appointed guardian for his niece. In 1995, the husband and wife were appointed as permanent guardians for their sister-in-law. As guardians for the sister-in-law, the clients paid her nursing home costs until her funds were exhausted in 1998. They also maintained her vacant home in Billerica, MA, paying the taxes, heat, and water charges from their own funds.

In June 1998, the clients found a purchaser for the sister-in-law's home in Billerica. The parties signed an offer to purchase the Billerica home and the purchaser paid a \$500 deposit, which the respondent agreed to hold in escrow. The parties agreed to close on the sale after a license to sell was obtained.

The respondent prepared a license to sell the Billerica home in July 1998. The clients executed the petition to sell and promptly returned it to the respondent. The respondent agreed to file the petition to sell and obtain a license to sell the house.

Between 1998 and 2000, the clients repeatedly telephoned the respondent requesting information on the license to sell. The respondent repeatedly promised to obtain the license to sell, but took no further steps between 1998 and 2000 to secure the license to sell while the sister-in-law was alive.

In November 2000, the sister-in-law died intestate. Her daughter was the sole heir-at-law. Shortly after her death, the respondent was retained to act as attorney for the estate and to represent the clients in a petition for appointment as co-administrators. Despite repeated calls and messages from the clients, the respondent failed to file the petition for administration of the estate between November 2000 and April 2003. The respondent also failed to prepare a final account on behalf of the clients in the matter of the sister-in-law's guardianship as required by G.L. c. 205, § 1(6), as modified by G.L. c. 201, § 12.

The respondent filed a petition for administration three years after the sister-in-law's death. The respondent did not publish the citation or send notice to the heir's guardian and took no further action of substance to administer the estate.

In August 2003, the clients' niece died intestate. Shortly after the niece's death, the

guardians retained the respondent to act as attorney for her estate. The respondent refunded \$5,000 for the burial from the retainer. In April 2004, the respondent sent a petition for administration of the niece's estate and other required forms to the clients. They executed the petition and promptly returned the forms to the respondent. The respondent failed to file the petition for administration with the probate court.

In July 2004, the clients terminated the respondent's services and hired successor counsel to complete the estates of the sister-in-law and the niece. They requested an accounting, the balance of the retainer and the files. The respondent failed to respond to the former clients or to successor counsel's requests.

In July 2004, the clients filed a complaint with bar counsel. The respondent did not answer the complaint. In November 2004, the Supreme Judicial Court entered an order of immediate administrative suspension of the respondent due to his failure to respond to bar counsel's inquiries.

Thereafter, in November 2004, the respondent refunded \$2,419.98 to the clients and provided the files to successor counsel. In January 2005, the respondent refunded the \$500 escrow deposit to the buyer. In May 2005, the respondent refunded an additional \$5,000 to the clients.

The respondent's conduct in failing to act with reasonable competence, diligence and promptness in representing the clients with harm resulting, violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3. The respondent's conduct in failing to maintain adequate communication with his clients violated Mass. R. Prof. C. 1.4(a) and (b).

The respondent's failure to render a full accounting and to timely pay over the balance of the retainer due the clients violated Mass. R. Prof. C. 1.15(c) and (d). The respondent's conduct in failing to withdraw as counsel upon being discharged violated Mass. R. Prof. C. 1.16(a)(3), and his failure to timely return the file and to timely refund an unearned fee violated Mass. R. Prof. C. 1.16(d) and (e).

Count Two arose from the respondent's failure to cooperate with bar counsel's investigation in violation of Supreme Judicial Court Rule 4:01, § 3 and Mass. R. Prof. C. 8.4(g) and (h).

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for a public reprimand. The Board of Bar Overseers accepted the parties' recommendation and on February 24, 2006, the Board imposed a public reprimand.

<sup>1</sup> Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.

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