

IN RE: BERNARD KANSKY

NO. BD-2013-085

S.J.C. Order of Term Suspension entered by Justice Cordy on January 16, 2014.¹

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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.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. BD-2013-085

IN RE: BERNARD KANSKY

MEMORANDUM OF DECISION

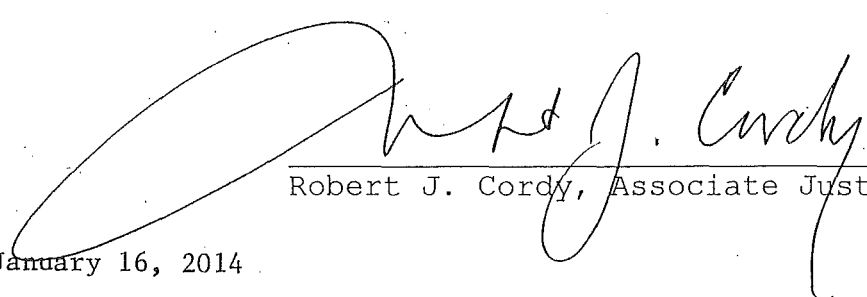
This bar discipline matter is before me on an Information filed by the Board of Bar Overseers (board), and a recommendation that the respondent, attorney Bernard Kansky, be suspended from the practice of law for a period of three months. The misconduct at issue, which is fully supported by the evidence before the Hearing Panel and the board, occurred in the course of the respondent's representation of three of five sibling beneficiaries in connection with their father's estate, and in particular the distribution of \$48,000 that their father had accumulated in a Thrift Savings Account, a 401(k) type of program for postal workers. Each of the five siblings had been designated as a one-fifth beneficiary of that account.

The Thrift Savings Account was not an estate asset, but the respondent's clients alleged that the other two siblings owed the estate a significant amount of money, and would likely dissipate the proceeds of their share of the Thrift Savings

Account (and thus be unable to pay money owed to the estate) if those proceeds were distributed directly to them, rather than held in escrow. In what the panel found to be an overzealous effort to protect the interests of his clients, the respondent made particularly bad judgments in violation of the Rules of Professional Conduct. In particular: he sent two misleading letters to the Federal Retirement Thrift Investment Board (the agency administering the Thrift Savings Plan), attaching to the second one an intentionally altered copy of a Temporary Restraining Order issued by a Massachusetts judge; and misled a judge of the Probate and Family Court by failing to disclose the opposition of a co-administratrix to an ex parte motion for relief he had filed with that court.

Although there appears to have been no ultimate harm resulting from the respondent's conduct, and the conduct was not intended to benefit him financially or personally, the violations were intentional and completely inconsistent with the ethical obligations incumbent on a lawyer. The Hearing Panel recommended a six month suspension, with one member recommending a one year suspension. Bar counsel sought a two year suspension. The board ultimately concluded, based on all the circumstances carefully outlined in its memorandum, that a three month suspension was most appropriate. I agree.

While the respondent's nearly forty-eight years of unblemished practice, balanced against the bad judgments made in this case, present a sympathetic picture on the question of what discipline is necessary to protect the public, in my view, the board has properly (if not explicitly) factored it into its recommendation, which I adopt.



Robert J. Cordy, Associate Justice

Date Entered: January 16, 2014