

**IN RE: JOHN H. WYMAN****NO. BD-2015-043****S.J.C. Judgment Accepting Affidavit of Resignation As A Disciplinary Sanction entered by Justice Duffly on May 27, 2015, with an effective date of June 26, 2015.<sup>1</sup>****SUMMARY<sup>2</sup>**

The matter came before the Board of Bar Overseers and the Court on the respondent's affidavit of resignation pursuant to SJC Rule 4:01, § 15. In the affidavit, the respondent acknowledged that sufficient evidence existed to warrant findings that the material facts summarized below could be proved by a preponderance of the evidence.

The respondent was admitted to practice on November 28, 1969.

In May of 2009, the respondent filed a petition for probate of a will and appointment of an executor with the Probate Court. He contacted a Florida charity and informed it that the decedent had left her real estate to the charity. The CEO of the charity informed the respondent of the charity's desire to sell the home and use the proceeds to further their charitable purposes. The property was sold in November of 2009, and the respondent deposited the proceeds to his IOLTA account. Net of various fees and commissions, the amount owed to the Florida charity was \$179,106.65.

The respondent failed to promptly disburse the funds due the charity and failed to hold the funds in a separate interest-bearing account. Between November and December 2009, the respondent intentionally misused approximately \$100,000 of the charity's funds for purposes unrelated to the estate.

In February 2011, by letter to the charity, the respondent enclosed a check for a partial distribution in the amount of \$75,000. In the letter, the respondent falsely stated that he had been

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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.

engaged in an attempt to settle a claim against the estate, and as soon as that was resolved, the balance of the distribution would be paid.

The charity was still owed at least \$104,106.65. By letters in April and July 2012, counsel for the charity requested that the respondent provide a status of the estate, an inventory and an accounting of the estate.

During the relevant time period, the respondent did not maintain complete records of his receipt, maintenance and disposition of the charity's funds. He did not retain the required check registers, individual client records, and account documentation, or perform reconciliation reports.

By failing to promptly deliver to the charity the net proceeds from the sale of the property and by intentionally misusing the proceeds for his own purposes, with intent to deprive the charity of the funds at least temporarily and with actual deprivation resulting, the respondent violated Mass. R. Prof. C. 1.15(b) and (c), and Mass R. Prof. C. 8.4 (c) and (h); by failing to safeguard the charity's funds in a separate interest-bearing account, the respondent violated Mass. R. Prof. C. 1.15(e) (5); by misrepresenting to the charity that he was engaged in an attempt to settle a claim against the estate, the respondent violated Mass. R. Prof. C. 8.4(c); and by failing to maintain complete records of the receipt, maintenance, and disposition of client funds in the IOLTA account, the respondent violated Mass. R. Prof. C. 1.15(f) (1) (A)-(G).

On April 21, 2015, the respondent filed an affidavit of resignation. The respondent made restitution to the executor, who has paid the charitable beneficiary of the estate. The respondent had no prior discipline. Bar counsel recommended the affidavit be accepted as a disciplinary sanction.

On May 11, 2015, the Board of Bar Overseers voted to recommend to the Supreme Judicial Court that the affidavit of resignation be accepted as a disciplinary sanction. On May 27, 2015, the Supreme Judicial Court for Suffolk County accepted the affidavit of resignation as a disciplinary sanction, effective thirty days after the entry of the judgment.