

**IN RE: TIMOTHY M. MAUSER****NO. BD-2015-045****S.J.C. Order of Term Suspension/Stayed entered by Justice Hines on May 28, 2015.<sup>1</sup>****SUMMARY<sup>2</sup>**

The respondent received a three-month suspension, stayed for one year, subject to the conditions set forth below.

On September 3, 2013, a husband and wife (the clients) first contacted the respondent by phone to make an appointment. Before contacting the respondent, the clients had their accountant prepare and send an offer of compromise of certain tax debt to the IRS. The wife had filed for personal bankruptcy on April 26, 2010, and the husband had filed on December 8, 2009. The clients questioned whether the bankruptcy was handled properly, as certain tax debt was not discharged. They further questioned the efficacy of the offer in compromise prepared by the accountant. The clients met with the respondent on September 11, 2013, and orally agreed to a flat fee of \$2,000.00 to review and draft a new offer of compromise, \$4,000.00 to review whether the prior bankruptcy attorney engaged in malpractice, to write a demand letter and resolve the matter short of litigation, if possible, and \$750.00 to do a for-profit business incorporation. No written fee agreement was tendered.

On September 11, 2013, as a matter of the clients' convenience, the clients gave the respondent a check payable to the husband that the husband endorsed over to the respondent for \$8,881.50, being \$2,131.50 in excess of the agreed upon flat fee of \$6,750.00. The respondent deposited the full sum onto his operating account and did not transfer the clients' excess funds into his IOLTA account. The clients asked that the respondent hold the excess for a time and the excess was returned on December 18, 2013.

At various times between September 11, 2013, and December 18, 2013, the balance in the respondent's business operating account fell below an account balance of \$2,131.50, without any intent to deprive and no deprivation resulting.

On February 1, 2014, the respondent filed incorporation papers for his clients. On or shortly after March 26, 2014, the clients learned that the offer of compromise that the accountant had prepared had been accepted by the IRS, and they communicated the

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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.

acceptance to the respondent. Accordingly, there was no need for any further services in that regard. With respect to the potential malpractice claim against the bankruptcy attorney, the respondent appropriately drafted and served Chapter 93A claims in May 2014. After review of a response received on May 30, 2014, the respondent referred the clients to litigation counsel, as it appeared no potential resolution was forthcoming or possible.

On September 8, 2014, the clients made a request for a return of their file. The respondent promised to make the file available for pickup on September 11, 2014, but did not. On October 7, 2014, the clients filed a complaint with bar counsel. On October 31, 2014, the file was finally returned.

The respondent's commingling of client funds in his business operating account and his negligent misuse of those funds, without intent to deprive and no deprivation resulting, violated Mass. R. Prof. C. 1.15(b). The respondent's failure to timely return his clients' file upon request was conduct in violation of Mass. R. Prof. C. 1.16(e). The respondent's failure to have a written fee agreement or to communicate the scope of the representation and the basis or rate of the fee in writing to the clients was conduct in violation of Mass. R. Prof. C. 1.5(b)(1).

In aggravation, in 2010, the respondent received a public reprimand for falsifying dates on bankruptcy petitions to hide his receipt of income while employed by his law firm. In further aggravation, on June 7, 2013, the respondent received a caution for failing to adequately communicate with a client. In mitigation, after the complaint to bar counsel was filed, the respondent refunded the fees paid by the clients in full. In addition, during the time of events recited in the petition for discipline, an associate and a paralegal precipitously left the respondent's law firm, which contributed to the respondent's lack of communication. No harm ultimately resulted.

On April 23, 2015, the matter was brought to the board's attention upon the filing of a petition for discipline and an answer and stipulation of the parties recommending a three-month suspension, stayed for one year, conditioned upon the respondent's agreement to an audit by the Law Office Management Assistance Program (LOMAP), his adoption of LOMAP's recommendations, and his agreement to LOMAP's quarterly reporting to bar counsel. On May 11, 2015, the board voted to recommend the proposed discipline to the Court, and on May 28, 2015, the Court so ordered.