

IN RE: LAWRENCE JOSEPH MCSWIGGAN

NO. BD- 2016-128

S.J.C. Order of Term Suspension entered by Justice Budd on December 8, 2017.¹

SUMMARY²

The respondent, Lawrence Joseph McSwiggan, was admitted to the bar of Massachusetts on December 30, 2005. This matter arose from a bounced check report received in the Office of Bar Counsel. The respondent failed to provide an answer to bar counsel's request for information about the bounced check and failed to appear in response to a subpoena for a meeting with bar counsel. On December 15, 2016, the respondent was administratively suspended from the practice of law for failure to cooperate with bar counsel's investigation. The respondent did not cure the failure to cooperate and never filed an affidavit of compliance with the suspension order. The respondent was subsequently also suspended for non-registration effective on February 21, 2017. He has not been reinstated.

In August of 2016, the respondent represented the sellers in the sale of property located in Chestnut Hill, MA. The closing took place on August 26, 2016. The respondent received a wire transfer of \$1,183,264.23 to his IOLTA account, representing the net sale proceeds to be distributed to three siblings. The balance of the IOLTA account prior to the deposit was \$9,416.59.

After the closing, the respondent issued three checks to the siblings in the amounts of \$850,418.49; \$364,602.68; and \$53,243.06. By check dated August 31, 2016, the respondent paid himself \$1,000 for his legal fees. The respondent did not ascertain that he had good funds in his IOLTA account sufficient to make these payments. In fact, the above payments for the closing were about \$86,000 more than the closing proceeds deposited to the IOLTA account and about \$75,000 more than funds then on deposit.

On September 2, 2016, the check for \$364,602.68 was returned for insufficient funds. After the deficiency came to light, one of the siblings realized that he had not paid over to the respondent \$95,000 he had received as the buyer's deposit toward the purchase. On September 12, 2016, the respondent deposited to his IOLTA account the buyer's deposit of \$95,000, and issued a replacement check in the amount of \$364,602.68, which cleared.

The respondent's conduct in issuing a check from his IOLTA account that caused a negative balance violated Mass. R. Prof. C. 1.3 and 1.15(f)(1)(c). The respondent intentionally failed without good cause to cooperate with bar counsel's requests for information during her investigation of the dishonored check in violation of Mass. R. Prof. C. 8.1(b), 8.4(d), and 8.4(g), and S.J.C. Rule 4:01, §3. The respondent's conduct in intentionally failing without good cause to comply with the Supreme Judicial Court's order of administrative suspension resulting from his failure to cooperate, violated Mass. R. Prof. C. 3.4(c), and 8.4(d) and (g).

¹ The complete order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

² Compiled by the Board of Board Overseers based on the record filed with the Supreme Judicial Court.

Bar counsel filed a petition for discipline alleging the above misconduct on August 4, 2017. In aggravation, the respondent failed to participate in the disciplinary proceedings. *Matter of Gustafson*, 464 Mass. 1021 (2013) (failure to cooperate in the disciplinary process is a matter in aggravation). In further aggravation, the respondent previously received a public reprimand for practicing law from June 2011 through January 2012 while administratively suspended for failure to pay his annual registration fee and failing to seek reinstatement. See *Matter of McSwiggan*, 29 Mass. Att'y Disc. R. 454 (2013).

On October 16, 2017, the Board of Bar Overseers voted unanimously to recommend that the respondent be suspended from the practice law for six months, running from the date of the respondent's affidavit of compliance, and that the respondent be required to petition for reinstatement. On December 8, 2017 the Court imposed an order of six-month suspension to commence once the respondent has filed his affidavit of compliance and a requirement that the respondent petition for reinstatement.