IN RE: CARL J.S. LOVETT

NO. BD-2017-031

S.J.C. Order of Term Suspension entered by Justice Budd on January 3, 2018, with an effective date of February 2, 2018.[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-2017-030 and
BD-2017-031

IN RE: SAMUEL LOVETT AND CARL J.S. LOVETT

MEMORANDUM OF DECISION

Following a rejection of Bar Counsel's recommendation for discipline, the Board of Bar Overseers brought this matter before the Supreme Judicial Court pursuant to Rule 4:01, Section 8(6), regarding the conduct of brothers Carl and Samuel Lovett (respondents) who, although licensed to practice in Massachusetts, engaged in the unauthorized practice of law in Rhode Island. Bar Counsel filed a petition for discipline against the respondents on December 7, 2015, citing violations of Mass. R. Prof. C. 5.5(a) (prohibiting practice in a jurisdiction in violation of its regulations; 8.4(d) (conduct prejudicial to the administration of justice); and 8.4(h) (conduct that adversely reflects on fitness to practice law). Despite the respondents' objections, the Board Chair granted an order of issue preclusion as to all the facts alleged in the petition. On April 21, 2017[1], the respondents filed a Joint Stipulation, recommending a two-year suspension from the practice of law, stayed for two years with conditions. The Board voted to reject the stipulation on the grounds that it was too lenient. The respondents filed a motion for reconsideration, and Bar Counsel filed a response indicating her support for the joint recommendation. Unable to reach agreement, the Board filed an information with the Supreme Judicial Court, recommending that both respondents be suspended from the practice of law for two years without the stay. After hearing and a review of the parties' submissions, and for the reasons set forth below, I conclude that a one-year term of suspension from the practice of law is appropriate for both respondents.

[1] A hearing on the petition was deferred, pending criminal proceedings against the respondents in Rhode Island. The respondents pleaded *nolo contendere* to five misdemeanors in Rhode Island, related to their unauthorized practice of law.

Background

The facts, stipulated to by the parties, indicate the following.[2] The respondents are both admitted to the Massachusetts bar, but neither has ever been licensed to practice in Rhode Island. In 1995, Carl[3] formed Lovett & Lovett in Providence with his then-wife, Karen, who was licensed to practice law in Rhode Island. Once Samuel was admitted to the Massachusetts bar in 1996, he joined the firm as a partner. Each respondent owned 49% and Karen owned 2%. Karen worked limited and inconsistent hours at the firm and did not have supervisory power over either respondent.[4] In 2002, the firm hired a Rhode Island attorney, John Sylvia. While an employee, Sylvia had no cases of his own and had no supervisory authority over the respondents' work on Rhode Island cases.

The facts indicate that both respondents held managerial roles and made all the major decisions regarding the firm's cases. Although they never signed pleadings for or filed appearances in Rhode Island courts, the respondents completed a substantial amount of legal work on Rhode Island-based cases. Among other responsibilities, the respondents drafted pleadings, communicated with clients and opposing counsel, determined case strategy, and negotiated and reached settlements.

The respondents were also responsible for the firm's website and advertising. Although the website indicated that they were licensed to practice in Massachusetts, not Rhode Island, the site featured images of the Providence skyline and the respondent's biographies stated that each

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[2] The facts are mainly derived by the report completed by the Rhode Island Supreme Court Unauthorized Practice of Law Committee (committee). The committee's report was written after a four-day hearing, during which the respondents were both represented by counsel and had an opportunity to testify.

[3] As the parties share a surname, I refer to them by their first names.

[4] The committee report found that Karen's "part-time, or even more limited presence in the firm, her limited litigation experience and expertise in personal injury cases did not provide her with the expertise to supervise and provide meaningful review of Carl's personal injury work."

brother was "born and raised in Rhode Island." Further, the firm was physically located in Providence and all of its phone numbers had Rhode Island area codes.[5]

Appropriate Sanction

The stipulated facts provide uncontroverted proof of the respondents' misconduct. For approximately eighteen years, the respondents practiced law in Rhode Island without authorization or supervision.[6] The fact that the respondents' "work . . . on Rhode Island cases consisted of everything but signing pleadings and appearing in court" proves that the respondents were well aware that they were not authorized to practice law in Rhode Island.

Pursuant to S.J.C. Rule 4:01, § 1, this court holds exclusive disciplinary jurisdiction over attorneys admitted to practice in the Commonwealth. The respondents and the Bar Counsel have entered a joint agreement to recommend a two-year period of suspension stayed for two years under the conditions that (1) the respondents comply with the Consent Order that they entered into in the Rhode Island criminal matter, and (2) that each agree to report every six months for two years to Bar Counsel with a list of Rhode Island cases currently being handled by the firm.[7] For its part, the Board seeks a two-year suspension for both respondents without the stay. There is little precedent in this area; however, that which does exist indicates that a middle ground is appropriate.

In support of its recommendation, the Board cites Matter of Friery, 28 Mass. Att'y Disc. R. 337 (2012) where the respondent received a two-year suspension for false representation. In that case, the respondent told her firm that she had a medical degree from a prestigious school, when in fact she did not. Id. at 337. Based in part on this fabricated information, the firm paid for her to go to law school and she remained at the firm for eighteen years, continuing to hold

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[5] Carl received an admonition in 2003 for failing to disclose in advertising and a website that the he was only licensed to practice law in Massachusetts. *AD-01-47*, 19 Mass. Att'y Disc. R. 609 (2003). Respondents claim that they thereafter altered their advertisement practices.

[6] This length of time is measured up until the respondents' 2014 hearing before the Rhode Island Supreme Court Unauthorized Practice of Law Committee.

[7] Among several specific requirements, the Rhode Island Consent Order mandated that the respondents cease practicing law in Rhode Island, use only a Massachusetts phone number, and prohibited them from maintaining a Rhode Island office.

herself out as a doctor. Id. at 338. However, Friery is distinguishable from this case in that, here, the respondents did not engage in explicit misrepresentation[8]; instead they created a system designed to circumvent the issue of not being licensed to practice in Rhode Island altogether.

In Matter of Shea, 7 Mass. Att'y Disc. R. 269 (1991), an attorney was given a six-month suspension for falsely holding himself out as being licensed in Connecticut. In an attempt to conceal the fact that he was not licensed in Connecticut, he lied to one of his clients about a conflict of interest which forced her to appear pro se, and caused the case of another client to be dismissed due to his lack of familiarity with Connecticut law. Id. There, although the conduct occurred over a significantly shorter period of time, it also involved false representation and significant harm to clients. See also Matter of Airewele, 28 Mass. Att'y Disc. R. 3 (2012) (attorney given six-month suspension for providing legal services in Georgia, where he was not admitted, and for conduct lacking diligence and competence). Here, in addition to there being no explicit misrepresentation involved, there are no allegations of harm to any client.

In order to practice law in a particular state, a lawyer must be licensed in that state (or be supervised by an attorney so licensed). The rules of each state are different. Lawyers are expected to be familiar with the specific statutes, rules and regulations of the state or states in which they are licensed to practice. That is the purpose of the licensing requirement. Here, the respondents intentionally and completely circumvented the rules by creating a system designed to evade the rules of licensure. Their surreptitious actions included having other attorneys sign documents and appear in court for cases which they themselves worked on, and failing to clearly advertise that they were not licensed in Rhode Island. They continued this pattern of conduct in an attempt to skirt the rules for at least eighteen years. The recommendation by Bar Counsel to stay a two-year suspension is little more than an opportunity for the respondents to avoid the repercussions of their misconduct, and provides no deterrence for others tempted to engage in similar behavior. On the other hand, none of the few cases cited by the Board show more than a one-year suspension for similar misconduct.

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[8] To be sure, the behavior of the respondents comes right up to the line. Although their website indicates that they are licensed to practice in Massachusetts, they marketed themselves to Rhode Islanders.

Given the nature of the misconduct and the lengthy period of time over which the respondents acted, a one-year suspension is appropriate in this case. Accordingly, an order shall enter suspending both respondents from the practice of law for one year.

Dated: December 28, 2017

Kimberly S. Budd
Associate Justice