

IN RE: TIMOTHY M. MAUSER

NO. BD-2019-064

S.J.C. Order of Term Suspension entered by Justice Cypher on August 9, 2019, with an effective date of September 8, 2019.¹

The court suspended the respondent's law license for eighteen months based on neglect of a matter, lack of diligence and failing to communicate with his client, resulting in a \$32,000 judgment against his client. In a separate case, the respondent communicated with a represented party and made knowingly false statements to a judge concerning the contacts. In aggravation, the respondent had prior discipline arising out of false statements.

SUMMARY²

The respondent was admitted to the bar of the Commonwealth on December 16, 1983. On August 9, 2019, he was suspended for eighteen months for failing to seek his client's objectives, failing to represent his client diligently, and failing to communicate with his client in one matter, and for communicating with a represented party about the subject of the representation, engaging in conflicts of interest, and making knowingly false statements to the court in a second matter.

In the first matter, the respondent was hired in February 2017 to represent one of two defendants in a civil action. After filing his appearance and an answer to the complaint, the respondent agreed to the plaintiff's request to continue a pre-trial conference. When the new date was set, the respondent did not notify his client of this change in date.

Neither the respondent nor his client appeared at the November 2017 pre-trial conference, and the court defaulted his client. When the respondent received the plaintiff's motion for a default judgment and for assessment of damages – along with a notice that the matter was marked up for hearing on December 1, 2017 – he failed to notify the client or to take any action to oppose the default. The respondent did not appear at the hearing on the plaintiff's motion and a judgment entered against his client for nearly \$25,000 plus interest and costs.

After the client received a notice from the court of the judgment in mid-December 2017, she repeatedly attempted to reach the respondent; he failed to respond to her reasonable requests for information. Similarly, after an execution was levied against the client in February 2018 for over \$32,000, she attempted to reach the respondent over the following months to no avail. The client terminated the respondent in April 2018 and requested a full refund of her \$2,750 retainer, as well as a copy of her file. The respondent provided both to the client.

By failing to seek his client's lawful objectives and failing to act with reasonable diligence, the respondent violated Mass. R. Prof. C. 1.2(a) and 1.3. The respondent's failure to keep the client reasonably informed about the status of the matter and to promptly comply with reasonable requests for information violated Mass. R. Prof. C. 1.4(a)(3) and (4).

In the second matter, in or about September 2017, the respondent agreed to represent two defendants in a land court dispute regarding ownership of a residential building. Soon after he was retained, the respondent filed an answer and counterclaims on behalf of his clients. He then failed to respond to the plaintiff's request for discovery, causing the plaintiff's attorney to move

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 Bar Overseers based on the record filed with the Supreme Judicial Court.

to compel him to respond. The respondent attended the hearing on the motion to compel discovery, and the defendants were ordered to comply by February 28, 2018. Despite the order – and a second order later made by the court due to the respondent’s continued failure to produce discovery – the respondent did not comply, and he twice was personally sanctioned by the court. He paid the sanctions of over \$2000 from his personal funds, but still failed to produce discovery. In late August 2018, the court, in response to the plaintiff’s third motion to compel discovery, ordered that if the respondent’s clients did not comply with discovery by September 17, 2018, they would risk default.

By no later than June 29, 2018, the respondent became aware that the plaintiff’s husband (who lived in Pakistan) held a power of attorney for the plaintiff (his wife) that permitted him to act as her agent with respect to real property, and that the husband was also represented by plaintiff’s counsel. On or about August 31, 2018, a motion was filed with the court, purportedly by the plaintiff, for voluntary dismissal of the complaint. The plaintiff had signed an affidavit in support of the motion, and in it purported to terminate plaintiff’s counsel. In fact, the plaintiff had signed the affidavit because her husband had informed her that he had worked out a private settlement with the defendants. Plaintiff’s counsel told the respondent to ignore the motion, alleging that the plaintiff had been manipulated, in part by the respondent’s clients.

On or about September 12, 2018, the respondent met with one of his clients to discuss the upcoming discovery deadline. During that meeting, the respondent and his client telephoned the husband of the plaintiff in Pakistan. During that call, with the client as the translator, the plaintiff’s husband told the respondent that he wanted the respondent to prepare and file a supplemental motion to voluntarily dismiss the plaintiff’s claims. The respondent had not sought or obtained consent from the plaintiff’s attorney to speak with the plaintiff’s husband about the subject matter of the representation.

The respondent drafted the pleading and a certificate of service and emailed them to the husband for his signature. The respondent then served plaintiff’s counsel with the motion and filed a copy with the court, along with the certificate of service which falsely asserted that the husband had caused the supplemental motion to dismiss to be served on a date two days earlier than it had been. The respondent also misrepresented in pleadings he filed on his clients’ behalf that the husband had been the person to file the plaintiff’s motion. At a pretrial conference, the respondent made similar misrepresentations, and falsely stated the circumstances under which he spoke with the husband. Although he initially misrepresented that he had no role in the drafting or filing of the husband’s supplemental motion, he eventually told the court that he had prepared the pleading “from dictation from [the husband].” Pressed further by the court, the respondent ultimately admitted that he had filed and served the plaintiff’s motion, despite acknowledging that he represented the defendants and that he was aware the plaintiff was represented.

By communicating with the husband, a person the respondent knew to be represented by counsel, about the subject matter of the representation without the consent of his lawyer, the respondent violated Mass. R. Prof. C. 4.2. By preparing and filing with the court pleadings on behalf of the plaintiff, in a matter where he was representing the defendants, the respondent violated Mass. R. Prof. C. 1.7 (a)(1) and (2) and 8.4(c), (d), and (h). By knowingly filing motions and a certificate of service with the land court containing false and misleading statements, the respondent violated Mass. R. Prof. C. 3.3(a)(1) and 8.4(c), (d), and (h). By knowingly making false statements to the land court, the respondent violated Mass. R. Prof. C. 3.3(a) and 8.4(c), (d) and (h).

Bar counsel filed and served on the respondent a petition for discipline against him on March 22, 2019. On April 17, 2019, the respondent was defaulted for failure to answer the petition for discipline. In aggravation, the respondent failed to cooperate in the disciplinary process and in the disciplinary proceeding. In further aggravation, the respondent had received a

prior public reprimand for knowingly making false statements about the dates he collected fees from clients on five bankruptcy petitions he filed in court. Matter of Mauser, 26 Mass. Att'y Disc. R. 346 (2010). The Board of Bar Overseers voted in June 2019 to recommend that the respondent be suspended for eighteen months, and a hearing before the single justice was held on July 31, 2019, at which the respondent appeared. On August 9, 2019, the Supreme Judicial Court for Suffolk County (Cypher, J.) entered an order suspending the respondent for eighteen months effective thirty days after the date of the order.