

IN RE: HOWARD L. GREENSPAN

Order (public reprimand) entered by the Board February 14, 2000.

SUMMARY¹

During the years 1993-94, the client was involved in three separate automobile accidents: one on March 24, 1993, one on September 23, 1993, and one on June 4, 1994. The respondent served as the client's attorney in the three personal injury claims resulting from these accidents. The claim arising out of the March 24, 1993 accident was resolved to the satisfaction of the client.

On or about May 4, 1994, the respondent took over the case covering the September 23, 1993 accident from the client's prior attorney. The case was undertaken on a contingent fee basis and a contingent fee agreement was signed but not retained by the respondent.

On September 20, 1996, the respondent filed suit in East Boston District Court, within the statute of limitations period. He served a copy of the suit on the defendant on March 12, 1997. Throughout the following year the respondent took no further action on the court case. On August 4, 1998, the case was dismissed for failure to have the case assigned for trial within one year. The respondent received notice of the dismissal but took no action to reinstate the case. After the respondent was discharged, successor counsel succeeded in having the case revived.

The respondent served as the client's attorney for the June 4, 1994 accident from the beginning. A contingent fee agreement was signed by the client on June 15, 1994. The respondent filed a claim with the other driver's insurer on the same day. In July 1996, the insurer offered a settlement of \$8,000, citing the difficulty of differentiating the injuries that resulted from this accident from the injuries incurred in the two previous accidents. The respondent rejected this offer on behalf of the client. Thereafter, the respondent failed to file suit on the June 4, 1994 accident claim before the expiration of the statute of limitations period on June 4, 1997.

In November or December of 1997, the client became dissatisfied with the lack of progress and the respondent's unwillingness to answer her inquiries about the status of both cases. As a result the client found a new attorney. She requested by telephone and letter that her files be forwarded to her new attorney, but received no answer from the respondent. The client's successor attorney also contacted the respondent via certified letters dated December 8, 1997 and January 13, 1998, asking for the previously requested files, but the respondent did not reply.

On April 15, 1998, the client filed a complaint with Bar Counsel. On June 30, 1998, after receiving three letters from Bar Counsel, the respondent sent a copy of his file to Bar Counsel, but made no attempt to answer the complaint. On July 1, 1998, Bar Counsel sent the respondent another letter stating that a detailed answer to the complaint would be needed, and asking that the answer be filed within ten days. Having received no response, Bar Counsel sought and obtained a subpoena from the Board of Bar Overseers, ordering the respondent to appear before Bar Counsel on September 10, 1998. The subpoena was served on the

respondent on July 13, 1998, but he failed to appear.

After being contacted by Bar Counsel, the respondent retained counsel to represent him in the matter, and thereafter he cooperated with Bar Counsel's investigation. On April 26, 1999, the respondent's attorney informed Bar Counsel that the respondent and the client had reached a settlement on her malpractice claim against him arising out of his neglect.

By failing to maintain a copy of the complainant's contingent fee agreement in safekeeping, the respondent violated Canon Two, DR 2-106(C), incorporating Supreme Judicial Court Rule 3:05. By failing after filing suit to actively pursue the September 23, 1993 accident claim or cause it to be assigned for trial, resulting in its dismissal, and by failing to file suit within the statute of limitations period concerning the June 4, 1994 accident claim, the respondent violated Canon Six, DR 6-101(A)(3) and Canon Seven, DR 7-101(A)(1), (2), and (3). By failing to comply with the client's requests that her file be forwarded to a new attorney, the respondent violated Canon Two, DR 2-110(A)(4) and Mass. R. Prof. C. 1.16(d). By failing to cooperate with Bar Counsel's investigation of this matter, resulting in the issuance of a subpoena, and by failing to appear for a meeting with Bar Counsel when served with a subpoena, the respondent violated S.J.C. Rule 4:01 § 3(1)(b) and Mass. R. Prof. C. 8.4(g).

In aggravation, the respondent, who was admitted to practice in 1977, received a private admonition in 1993 for his conduct in two legal matters. The misconduct in those cases included his misrepresentation to a client that he had filed a complaint when he had not, failure to render appropriate accounts to his client, failure to communicate with his client, failure to return a client's files despite repeated demands, failure to take action on a client's claim before the expiration of the statute of limitations, and failure to cooperate with Bar Counsel. In further aggravation, the respondent initially failed to cooperate with Bar Counsel, resulting in the issuance of a subpoena. In mitigation, the respondent reached a financial settlement with the client, making restitution for the harm caused by his neglect.

This matter came before the Board of Bar Overseers on an agreed recommendation for discipline by public reprimand based on a stipulation of facts and disciplinary violations. The Board adopted the parties' recommendation and approved a public reprimand on February 14, 2000.

¹ Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.

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