

IN RE: EDWARD P. HOLZBERG

Last known office address:  
10 Chestnut St.  
Peabody, MA 01960

ORDER OF PUBLIC REPRIMAND

This matter came before the Board on a Petition for Discipline and a Stipulation of the Parties waiving hearing and requesting that the matter be resolved by the imposition of a public reprimand. On August 9, 1999, the Board voted to accept the stipulation of the parties and their joint recommendation to administer a public reprimand to Mr. Holzberg without further proceedings before a Hearing Committee. A summary of the charges giving rise to the reprimand is attached to this order.

Whereupon, pursuant to Supreme Judicial Court Rule 4:01, Sect. 8(2), and the Rules of the Board of Bar Overseers, Sect. 3.57, it is ORDERED AND ADJUDGED that EDWARD P. HOLZBERG, Esq. be and hereby is PUBLICLY REPRIMANDED.

By: Cynthia J. Cohen

Board of Bar Overseers

Administered: August 24, 1999

**SUMMARY<sup>1</sup>**

On July 7, 1995, an individual ("the client") who was a social acquaintance of the respondent was injured in a two-car automobile accident. The client thereafter contacted the respondent's law office, spoke with a member of the support staff, and made an appointment to discuss pursuing a personal injury claim. On or about July 18, 1995, he met with the respondent's paralegal, Robert Cohn. Unknown to the respondent, Cohn did not explain, or did not explain adequately, that he was a paralegal. The client accordingly thought that Cohn was an attorney.

At this meeting, Cohn presented the client with a contingent fee agreement and a power of attorney, both of which the client signed. The client did not meet with the respondent or discuss his case with the respondent either at the initial meeting or at any time thereafter.

After his meeting with the client, Cohn presented the respondent with the contingent fee agreement and explained the facts of the claim. The respondent approved taking the case and signed the contingent fee agreement on July 18, 1995. Cohn and other support staff in the respondent's office thereafter pursued both collection of PIP benefits for the client and a liability claim against the driver of the other vehicle

In or about March 1996, the other driver's insurer offered to settle the client's claim for \$13,000. Cohn communicated the offer to the client, who accepted the settlement. This sum was in fact a fair and reasonable settlement amount. The \$13,000 settlement check was received at the respondent's office in or about March 23, 1996. The respondent endorsed it and deposited it to his client trust account.

Cohn at that time prepared and presented the respondent with a letter dated March 23, 1996 to the client for the respondent's signature. The letter, among other matters, indicated that the sum of \$8169 was being remitted to the client. At the time that the letter was signed, Cohn asked the respondent to draw two checks to the client, one for \$600 and one for \$7569, for a total of \$8169, which the respondent did. Cohn explained to the respondent only that the client had requested that the checks be

made out in that fashion.

On or before March 25, 1996, the client met with Cohn, who hand-delivered the original of the letter dated March 23, 1996 signed by the respondent. Cohn at that time gave the client the check for \$7569. Unknown to the respondent, Cohn also presented the client with the check for \$600 and caused the client to endorse it in blank and return it to Cohn, who in turn cashed or deposited it and retained the funds.

Thereafter a dispute arose between the client and Cohn as to Cohn's entitlement to this \$600. Cohn claims, without documentation to have loaned the client \$600 in cash prior to receipt of the settlement check. The client claims, also without documentation, that he had understood that he was being billed \$600 for obtaining medical records.

Also as set forth in the March 23, 1996 letter to the client, the respondent or Cohn on his behalf caused \$498 to be deducted from the client's settlement for various expenses, without specific itemization. Of this sum, \$356 was a bill from an investigatory agency for information concerning the owner and driver of the other vehicle. The information provided by this agency was both minimal and unnecessary and the respondent in fact did not pay this bill until August 1998, after the client filed his complaint with Bar Counsel and after Bar Counsel requested a copy of the disbursement check. The respondent was unaware that the bill had not been paid.

From July 1995 through March 1996, the respondent never met or spoke personally with the client about his personal injury case. Although Cohn kept the respondent apprised of the status of the case, the respondent allowed Cohn and other support staff members to handle the claim from intake to settlement negotiations to accounting for disbursement of settlement funds. The respondent was unaware that the client did not understand that Cohn was not an attorney or that there was an issue concerning the purpose of the \$600 check that the respondent prepared at Cohn's direction or that the bill to the investigatory agency for the client's case was never paid although funds had been deducted from the client's settlement for that purpose. The respondent's failure to supervise his support staff in these respects constituted conduct in violation of Canon Six, DR 6-101(A)(2),(3) and Canon Nine, DR 9-102(B)(3),(4).

In mitigation, the respondent voluntarily paid the client a sum consistent with the disputed funds. In aggravation, the respondent has a prior public reprimand for unrelated misconduct. *Matter of Holzberg*, Public Reprimand no. 96-10, 12 Mass. Att'y Disc. R 200 (1996). That case involved violations of the direct mail solicitation rule, DR 2-103.

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation of a public reprimand. As a condition of this disposition, the respondent will before December 31, 1999 attend at least six hours of continuing legal education on law office management as approved by Bar Counsel. Also as part of this disposition, the respondent has also agreed with Bar Counsel that he will make specified changes to office procedure intended to clarify the role, and improve the supervision, of support staff in his office. The Board accepted the parties' recommendation and imposed a public reprimand on August 24 1999.<sup>1</sup> Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.

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