

**IN RE: CHARLES R. BALLIRO**

**NO. BD-2013-046**

**S.J.C. Order of Term Suspension entered by Justice Gants on May 14, 2013, with an effective date of June 13, 2013.<sup>1</sup>**

**SUMMARY<sup>2</sup>**

Two brothers hired the respondent and another attorney to represent them in a federal drug trafficking case in which the brothers were charged as codefendants. The respondent agreed to represent one of the brothers on an hourly fee basis and requested a retainer of \$100,000, and the other attorney undertook the representation of the codefendant for a flat fee of \$100,000. The brothers raised \$75,000, which was paid to the other attorney, but they needed to borrow \$125,000 in order to pay both attorneys in full.

The brothers were unable to obtain a conventional loan and asked the respondent for help in finding a private lender. They advised the respondent that their mother and sister jointly owned a house which could be mortgaged to secure a loan. The respondent found a private lender, a close friend and former client, who agreed to provide a cash loan of \$125,000, if there was adequate security for the loan and if monthly interest-only payments were required.

The respondent researched the mother and sister's property and determined that there was sufficient equity to protect the lender's interests. The respondent advised the lender that the \$125,000 loan would be adequately secured by the house, and the lender agreed to make the loan. The respondent advised the brothers that he could arrange a \$125,000 loan from a private lender, secured by a mortgage on the house, for the balance of his and other counsel's fees, and that the brothers would have to make monthly interest-only payments to the lender to which the brothers agreed.

The respondent prepared a mortgage that specified an interest rate of twelve per cent per annum, compounded monthly, and that the debt would be due and payable in two years. He gave the mortgage to the brothers for their review. The mortgage did not provide for monthly interest-only payments, and the respondent did not prepare a promissory note or any other document detailing the terms of the transaction. The respondent arranged for the mother and sister to sign the mortgage, and, later, he arranged for the mortgage to be recorded. In preparing the mortgage and causing it to be executed, the respondent represented the two brothers, the mother, and the sister, as well as the lender. His representation of all four family members was materially limited by the differing interests

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<sup>1</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

among them and by the respondent's own interests. In addition, the interests of both the four family members and of the lender were directly adverse to each other or materially limited by the respondent's representation of the other and by the respondent's personal interests.

Within days of the execution of the mortgage, the lender gave the respondent \$125,000 in cash in a paper bag, \$25,000 of which was then paid to the other attorney. The respondent made no record of the receipt of the funds or of the disbursement to the other attorney. The respondent did not report the receipt of this cash to the Internal Revenue Service pursuant to 26 U.S.C. § 6050-I, which requires an attorney receiving cash in excess of \$10,000 for legal services to file a Currency Transaction Report. The respondent also did not deposit any of his \$100,000 retainer that he had received from the lender into any trust account.

The respondent filed his appearance and represented his client in the criminal case for several months. During this time, the lender and the respondent had expected the brothers to make monthly interest-only payments of one per cent (1%) or \$1,250, but the brothers did not make any payments. After several more months, the lender became concerned about the lack of monthly payments from the brothers, and the two attorneys spoke to the brothers about how the debt could be paid. This caused discord between the respondent and his client in the criminal case. As a result, the client terminated the respondent, and the respondent refunded the unearned portion of his retainer.

At no point did the respondent obtain the consent after consultation to his representation in the mortgage transaction of the four family members and the lender, nor did he fully disclose in writing to the four family members and the lender the terms of the mortgage transaction, obtain their consent in writing to the mortgage transaction, or advise them to seek the advice of independent counsel in connection with the mortgage transaction.

The respondent's conduct in arranging a loan from the lender to the brothers, secured by a mortgage on the mother and sister's house, to assist the brothers in paying their legal fees, without the consent after consultation of the four family members and the lender, was in violation of Mass. R. Prof. C. 1.7 (a) and (b). The respondent's conduct in arranging the loan without fully disclosing in writing to the four family members and the lender the terms of the transaction, without obtaining their consent in writing to the transaction, and without advising them to seek the advice of independent counsel, was in violation of Mass. R. Prof. C. 1.8 (a). The respondent's failure to file a Currency Transaction Report upon receipt of cash in excess of \$10,000 violated 26 U.S.C. §§ 6050-I and 7203 and therefore was in violation of Mass. R. Prof. C. 8.4(c) and (h). The respondent's failure to make or maintain any record of his receipt of \$125,000 in cash from the lender or of his payment of \$25,000 to the other attorney, and his failure to deposit the \$100,000 in retainer funds that he received in connection with his representation of his client in the criminal matter into a trust account constituted a failure to safeguard those trust funds and was in violation of Mass. R. Prof. C. 1.15 (b)(1), (d), and (e).

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation that the respondent be suspended for one year and a day. On April 22, 2013, the board voted to recommend that the Supreme Judicial Court accept the parties' stipulation and joint recommendation for discipline. The Court so ordered on May 14, 2013.