

IN RE: ALDANA JOHNSON

NO. BD-2010-076

S.J.C. Order of Contempt and Amended Order of Term Suspension entered by Justice Botsford on February 21, 2012.¹

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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
DOCKET No. BD-2010-076

IN RE: ALDANA JOHNSON

MEMORANDUM OF DECISION
ON BAR COUNSEL'S PETITION FOR CONTEMPT

Bar counsel has filed a petition for contempt against the respondent, Aldana Johnson, pursuant to S.J.C. Rule 4:01, § 12A. In substance, bar counsel asserts that the respondent has violated this court's orders relating to actions she was required to take in connection with her suspension from the practice of law. For reasons explained below, I find the respondent in contempt.

Background.

a. Prior history. On August 17, 2010, the respondent was ordered temporarily suspended from the practice of law pursuant to S.J.C. Rule 4:01, § 12A, pending further proceedings before the Board of Bar Overseers (board); on September 27, 2010, the respondent was ordered suspended for a term of three months, retroactive to August 17, 2010; and on March 29, 2011, she was separately ordered suspended for a term of two years, retroactive to March 23, 2011. The orders of suspension directed the respondent, inter alia, to "resign as of the effective date of the temporary suspension all appointments as guardian, executor, administrator, trustee, attorney-in-fact, or other fiduciary"; and to "close every IOLTA, client, trust or other fiduciary account

and properly disburse or otherwise transfer all client and fiduciary funds in her possession, custody or control." The order of suspension dated March 29, 2011, referenced the respondent's March 23, 2011, affidavit of compliance with the September 27, 2010, order, and was made retroactive to March 23 because of that affidavit of compliance.

b. Facts. The following background information is taken from bar counsel's petition for contempt, the respondent's opposition, and the documents attached as exhibits to each of these filings.

1. The David Emery Trust was created on June 28, 2000, by Constance S. Emery (donor), Jonathan Emery (donor), and the respondent, Dana Johnson (trustee). The trust instrument is recorded in the Bristol County Registry of Deeds, and the respondent is identified in that record as the "Trustee". Pursuant to the terms of the trust, "The Trustees may be removed by Jonathan Emery at any time and for any reason . . . the choice of Trustee is solely that of Jonathan Emery" (Trust, art. 6 ¶8); "[a]ny Trustee may resign at any time by written instrument delivered to any person authorized to appoint a successor Trustee" (Trust art. 6 ¶10); and "[a]l . . . resignations of Trustees, decisions to terminate and appointments and acceptances of successor Trustees shall be made by written instrument." (Trust art. 6, ¶12) The respondent has attached to her opposition an email sent to her in 2003 by Jonathan Emery in which Mr. Emery writes he would take over as Trustee, but that the respondent should "continue to do what she was doing."¹

2. Three trust accounts were set up in 2000 with Waddell & Reed Financial

¹ The pertinent language of the email directly states, "I am now back in the country so will be taking over as trustee. I would like you, Mary and Bill to continue to do what you are doing."

Advisors, which both parties refer to as the asset management firm. One of the trust accounts is in the respondent's name as the trustee of the David Emery Trust; a second account is in her name as trustee of the Charlotte Johnson Trust; and the third account is in her name as trustee of the Dana Johnson Client Trust. In her opposition, the respondent states – but does not support with her own affidavit – that (1) she wrote Waddell & Reed and requested that the funds in the David Emery and Charlotte Johnson Trust accounts be disbursed to her "life partner," Mary Jones, as "agent"; (2) unbeknownst to the respondent, the requested disbursement transactions were missing a critical signature of the "financial advisor," and therefore Waddell & Reed was unable to follow through with her request; (3) in any event, the funds in the Charlotte Johnson Trust account were Charlotte Johnson's own funds; and (4) the Dana Johnson Client Trust Account was not really a fiduciary account but rather an account funded with money that was given to the respondent for real estate purposes by Charlotte and Thomas Johnson.

Discussion: To find the respondent in contempt, I must find "clear and convincing evidence of disobedience of a clear and unequivocal command." Matter of Shanahan, 26 Mass. Atty. Discipline Rep. 582 (2010); citing Matter of Birchall, 454 Mass. 837, 853 (2009).

1. After issuance of the three orders, and despite the respondent's affidavit of compliance, the evidence is clear that the respondent formally remained a trustee of the David Emery Trust. The email to which the respondent directs my attention is ambiguous. Although the email suggests that Jonathan Emery would be "taking over as trustee," the language, "keep doing what you are doing", suggests that the respondent was to continue acting as trustee; the trust instrument appears to authorize more than one trustee to serve at a time. The court's orders commanded that the respondent resign as a fiduciary of any trust. As stated above, the trust

instrument for the David Emery Trust contains two specific directions about how a trustee is to effect her resignation: in writing, signed, "and filed with the records of the trust." (Trust at 6, ¶12; see id. at ¶10) The respondent did not follow these directives, at least as shown in the record before me. She fails to satisfy the terms of the court's orders by relying on an email, sent to her by another person years before the court's orders entered, that does not mention resignation and contains a highly ambiguous message.² The fact remains that even as of February, 2012, the Bristol County Registry of Deeds continues to reflect the respondent's name and status as trustee.

2. I turn to the trust accounts. What the evidence shows undeniably is that after the dates of the court orders requiring the respondent to close any trustee or other fiduciary accounts, at least three trust accounts in the name of the respondent as trustee remained open.

The respondent claims that she apparently attempted to transfer two of the three accounts to an "agent," but was unaware of the policy at Waddell & Reed requiring the signature of a "financial advisor." The respondent points to the affidavit of Mary Jones stating she, Mary Jones, was present during a meeting with a financial advisor at Waddell & Reed who confirmed the signature policy at Waddell & Reed. There is, however, no affidavit from an employee at Waddell & Reed attesting to such a policy. What is controlling is that despite the court orders to close them, the David Emery, Charlotte Johnson, and Dana Johnson Client Trust accounts were

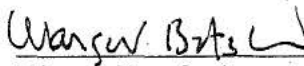
² At the hearing on the petition for contempt, the respondent stated that she inquired about the issue whether she needed to take any further action to resign beyond producing Jonathan Emery's email, but received no definitive answer. She provides no evidence to support this statement. She does provide an affidavit from her life partner, Mary Jones, in which Jones states that she is the "agent" of the account. There is no information given as to what an "agent" of the David Emery Trust account is, or even how the existence of an "agent" effectuates the respondent's resignation as a trustee.

still open in the respondent's name as trustee³ until October 4, 2011, October 17, 2011, and October 18, 2011, respectively.

In summary, I conclude that bar counsel has established by clear and convincing evidence that the respondent did not comply with the terms of the court's order(s) of suspension that are discussed above. Accordingly, I find the respondent in contempt.

ORDER

For the foregoing reasons, it is **ordered** that the respondent, Aldana Johnson, be adjudged in contempt of the judgment of suspension. It is further **ordered** that, based on my finding that the respondent has violated S.J.C. Rule 4:01, § 17(8), the respondent be suspended for an additional one year beyond the two year suspension in effect; the date is March 23, 2014. Accordingly, the respondent is prohibited from applying for readmission to the bar of the Commonwealth until three months before March 23, 2014.


Margot Botsford
Associate Justice

DATED: February 17, 2012

³ Bar counsel provided the court with the monthly personal account summaries for each account reflecting that the respondent received periodic dividends. The respondent contends that she was unaware of the receipt because the dividends were automatically reinvested.