

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: 91-2 BD

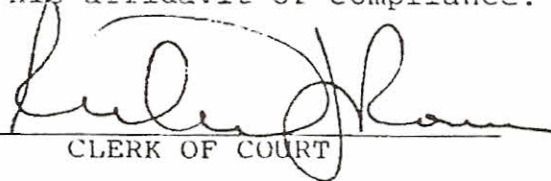
IN RE: DAVID A. BERMAN

ORDER

This matter came before the Court, O'Connor, J., presiding on an Information and Record of Proceedings filed by the Board of Bar Overseers and argument was waived by Bar Counsel, Respondent and Respondent's counsel.

Whereupon it is ORDERED that David A. Berman be suspended from the practice of law in the Courts of the Commonwealth of Massachusetts for one year effective February 1, 1991.

It is further ORDERED that David A. Berman shall within twenty-eight (28) days from the date of this judgment file with this court in accordance with S.J.C. Rule 4:01, §17, his affidavit of compliance.


CLERK OF COURT

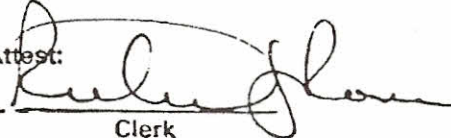
Entered: January 24, 1991

A True Copy

24 Jan 91

Date

Attest:


Clerk

COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

BAR COUNSEL, :
Petitioner :
vs. : BBO File No. C3-90-112V
David A. Berman, Atty., :
Respondent :

PETITION FOR DISCIPLINE

1. This petition is brought pursuant to the provisions of Chapter Four of the Rules of the Supreme Judicial Court, Rule 4:01, Section 8(2), and Sections 3.13(2) and 3.14 of the Rules of the Board of Bar Overseers.

2. The Respondent, David A. Berman, Attorney, was duly admitted to the Bar of the Commonwealth on January 10, 1977.

3. In about May, 1989, Respondent was retained to represent William A. Marino as executor and sole heir of the estate of Agnes W. Dolan, Middlesex Probate Court, docket no. 89P-4104E.

4. Respondent filed the decedent's Will and a petition for probate with the Middlesex Probate and Family Court on August 8, 1989. A decree appointing Marino as executor was duly entered on October 31, 1989.

5. Marino subsequently requested that Respondent take all steps necessary to enable Marino to sell the decedent's real estate in Billerica, Massachusetts.

6. Respondent took no substantive action to enable such a sale to proceed and failed to file any documents to obtain either a license to sell from the Probate Court or a release of the estate tax lien from the Department of Revenue. After Marino found a buyer for the premises, Respondent misrepresented that matters were in order for a closing scheduled for July of 1990.

7. With the intent to conceal his neglect and to deceive his client, Respondent fabricated a decree dated May 29, 1990 purporting to authorize the sale of the decedent's real estate, and forged thereon the signature of the Honorable Arthur G. Coffey, Associate Justice of the Probate and Family Court. A copy of said fabricated decree is attached hereto as Exhibit A.

8. With the intent to conceal his neglect and to deceive his client, Respondent also fabricated a certificate purporting to be from the Massachusetts Department of Revenue releasing the estate tax lien on the Billerica property. A copy of this document is attached hereto as Exhibit B.

9. On July 12, 1990, and while in the office of the lender's counsel Michael Mimno, Respondent gave to Mr. Marino and Attorney Mimno the forged documents, knowing and intending that they would rely on said documents as genuine instruments.

10. Respondent's conduct in this matter was in violation of Disciplinary Rules 1-102(A)(4), (5), (6), 6-101(A)(2), (3), and 7-101(A)(1), (2), (3), which provide as follows:

CANON ONE

A LAWYER SHOULD ASSIST IN MAINTAINING THE INTEGRITY AND COMPETENCE OF THE LEGAL PROFESSION.

DR 1-102 Misconduct.

- (A) A lawyer shall not:
- (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
 - (5) Engage in conduct that is prejudicial to the administration of justice.
 - (6) Engage in any other conduct that adversely reflects on his fitness to practice law.

CANON SIX

A LAWYER SHOULD REPRESENT A CLIENT COMPETENTLY.

DR 6-101 Failing to Act Competently.

- (A) A lawyer shall not:
- (2) Handle a legal matter without preparation adequate in the circumstances.
 - (3) Neglect a legal matter entrusted to him.

CANON SEVEN

A LAWYER SHOULD REPRESENT A CLIENT ZEALOUSLY WITHIN THE BOUNDS OF THE LAW.

DR 7-101 Representing a Client Zealously.

- (A) A lawyer shall not intentionally:
- (1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

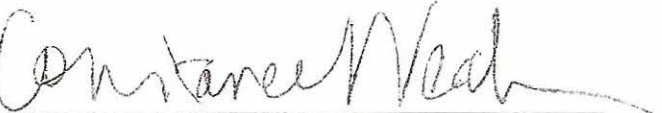
- (2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110, DR 5-102 and DR 5-105.
- (3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 7-102(B).

WHEREFORE, the Bar Counsel requests that the Board of Bar Overseers:

1. Consider and hear the matter set forth herein.
2. Determine that formal discipline of the said David A. Berman, Attorney is required.
3. File an Information concerning these matters with the Supreme Judicial Court.

CONSTANCE V.VECCHIONE
ACTING BAR COUNSEL

By



Constance V. Vecchione

Dated this 30th day of
November, 1990.