

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

SIDNEY BOYSTON SMITH,

Attorney-Respondent,

No. 6227144.

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Commission No. 2021PR00048

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Rory Quinn, pursuant to Supreme Court Rule 753(b), complains of Respondent, Sidney Boyston Smith, who was licensed to practice law in the State of Illinois on May 2, 1995, and alleges that Respondent has engaged in the following conduct which subjects him to discipline pursuant to Supreme Court Rule 770:

(Dishonesty in Receiving Annuity Payments)

1. Prior to July 2008, Respondent's mother, Mary Smith ("Mrs. Smith"), was receiving an employee annuity from the Municipal Employees Annuity and Benefit Fund ("MEABF").

2. Prior to July 2008, MEABF deposited Mrs. Smith's annuity payments into Mrs. Smith's Chase Bank account ending in 7282. Mrs. Smith and Respondent were the only signatories to Mrs. Smith's Chase Bank account ending in 7282.

3. On July 18, 2008, Mrs. Smith signed a Power of Attorney for Property, appointing Respondent as her agent.

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4. On August 3, 2010, Respondent signed a MEABF Power of Attorney form appointing Respondent as Mrs. Smith's attorney-in-fact. The MEABF power of attorney required Respondent "to notify MEABF in writing of [Mrs. Smith's] death immediately upon its occurrence."

5. On October 15, 2008, Mrs. Smith signed a trust agreement with ATG Trust Company creating Trust Number L-008163 ("ATG Trust"). Mrs. Smith placed into the ATG Trust her condo located at 4800 South Chicago in Chicago, Illinois ("Smith Condo"). Mrs. Smith named Respondent and his brother, Leonard S. Smith, as the beneficiaries of the ATG Trust.

6. On November 22, 2012, Mrs. Smith died. Upon her death, the interest in the ATG Trust vested with Respondent and his brother Leonard S. Smith and Mrs. Smith was no longer entitled to receive annuity payments from MEABF. Respondent knew that pursuant to the MEABF power of attorney that he signed on August 3, 2010, he was required to immediately notify MEABF in writing of Mrs. Smith's death.

7. Respondent did not provide notice to MEABF and, as a result, MEABF continued to deposit Mrs. Smith's annuity payments into Chase Bank Account 7282. After the death of Mrs. Smith, Respondent became the sole signatory for Chase Bank Account 7282. Respondent knew he was not entitled to receive the annuity payments MEABF deposited in Chase Bank Account 7282 after November 22, 2012.

8. On December 12, 2012, MEABF mailed to Respondent Mrs. Smith's 2013 earnings statement. Respondent received the 2013 earnings statement. The earnings statement contained a notice that stated, "[i]t is illegal to collect or cash a deceased person's pension benefits by ineligible parties or joint account holder and may be a crime punishable under criminal law."

9. Between December 2012 and September 2013, MEABF deposited into Chase Bank Account 7282 an additional \$37,151.92 in annuity payments for Mrs. Smith. Respondent used a portion of the funds from MEABF to pay the mortgage and expenses of the Smith Condo that he owned jointly with his brother.

10. Respondent's failure to notify MEABF of the death of Mrs. Smith and receipt and use of the MEABF funds was dishonest. Respondent knew it was dishonest because Respondent knew his mother had died in November 2012 and that he was not entitled to Mrs. Smith's annuity payments.

11. On July 19, 2013, MEABF mailed to Respondent a form to verify his mother was still eligible to receive annuity payments. Respondent did not return the form to MEABF. On September 17, 2013, MEABF canceled the automatic deposits into Chase Bank Account 7282 due to Respondent's failure to submit the July 19, 2013 verification form. On October 16, 2013, Respondent informed MEABF of the death of Mrs. Smith. Following this disclosure, MEABF demanded that Respondent repay the \$37,151.92 in annuity payments that neither he nor his mother's estate were entitled to receive after her death.

12. On June 10, 2014, Respondent paid MEABF \$5,500 and requested a payment plan for the remaining \$31,651.92. As of that date, Respondent had used \$32,151.92 of MEABF's funds for his own personal purposes. Respondent signed a payment agreement with MEABF. In the payment agreement, Respondent acknowledged that he had a duty to inform MEABF in the event of Mrs. Smith's death. He also acknowledged that he had accepted and deposited Mrs. Smith's annuity checks from MEABF.

13. Between June 10, 2014 and January 15, 2015, Respondent did not timely make the required payments pursuant to the payment agreement.

14. On January 15, 2015, MEABF filed a complaint in the Circuit Court of Cook County alleging Respondent failed to comply with the payment agreement and still owed \$19,290.98. The clerk of the court assigned the matter case number 2015-M1-110882.

15. On January 19, 2017, the Honorable Daniel J. Kubasiak entered an agreed order in case 2015-M1-110882. Respondent agreed to pay MEABF a judgment in the amount of \$29,444.35 which represented the total amount due to MEABF including costs and interest.

16. By reason of the conduct described above Respondent has engaged in the following misconduct:

- a. conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including failing to disclose to MEABF that his mother had died and by accepting, depositing, and using annuity payments he was not legally entitled to, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully Submitted

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Rory P. Quinn
Rory P. Quinn

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