

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

FILED
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ARDC Clerk

In the Matter of:

JAN R. KOWALSKI,

Attorney-Respondent,

No. 6291301.

Commission No. 2023PR00047

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Melissa A. Smart, pursuant to Supreme Court Rule 761, complains of Respondent Jan R. Kowalski, who was licensed to practice law in Illinois on June 12, 2007, and alleges that Respondent has engaged in the following conduct which subjects her to discipline pursuant to Supreme Court Rule 770:

(Conviction for Concealing Assets from a Bankruptcy Trustee)

1. On March 10, 2019, Respondent and her brother, Illinois attorney Robert Michael Kowalski, were charged by way of a criminal complaint in the United States District Court for the Northern District of Illinois, Eastern Division, with the offense of bankruptcy fraud. The matter was captioned *United States of America v. Robert M. Kowalski & Jan R. Kowalski*, docket number 19CR226.

2. On March 28, 2019, a federal grand jury in the Northern District of Illinois returned an indictment charging Respondent with the offense of bankruptcy fraud. That indictment was thereafter superseded on February 6, 2020 (First Superseding Indictment), August 27, 2020 (Second Superseding Indictment), February 25, 2021 (Third Superseding Indictment) and

December 7, 2021 (Fourth Superseding Indictment). The Fourth Superseding Indictment, which contained thirty-seven counts and named Respondent, her brother, and twelve other individuals as defendants, charged Respondent with four counts of bankruptcy fraud, in violation of Title 18, United States Code, Section 157, paragraphs (1), (2) and (3) (Counts Eleven through Fourteen), and one count of concealing assets from a bankruptcy trustee, in violation of Title 18, United States Code, Section 152(1) (Count Fifteen) for her participation in a continuing bankruptcy fraud scheme to enable Robert M. Kowalski to conceal approximately \$567,200 from his creditors, and later a bankruptcy trustee. The matter was captioned *United States of America v. Robert M. Kowalski, Jan R. Kowalski, Rosallie C. Corvite, Jane V. Iriondo, fka Jane V. Tran, Alicia Mandujano, Cathy M. Torres, James R. Crotty, Boguslaw Kasprowicz, Miroslaw Krejza, Marek Matczuk, William M. Mahon, Janice M. Weston, George F. Kozdemba and William A. Kowalski*, docket number 19CR226, and was assigned to the Hon. Virginia M. Kendall.

3. Counts Eleven through Fifteen of the Fourth Superseding Indictment charged that Respondent and Robert M. Kowalski, whom she represented in a 2018 Chapter 11 bankruptcy petition, committed the offense of bankruptcy fraud when they, as part of a scheme to defraud Robert M. Kowalski's creditors, including the Federal Deposit Insurance Corporation and the trustee appointed to administer Robert M. Kowalski's bankruptcy, made false and fraudulent representations, claims and promises in Robert M. Kowalski's bankruptcy petition and documents filed in the matter, in violation of Title 18, United States Code, Section 157, paragraphs (1), (2) and (3). More specifically, the indictment charged that on March 29, 2018, Robert M. Kowalski filed a bankruptcy petition in docket number 18-09130 in the United States District Court in Chicago. On November 26, 2018, Respondent filed an appearance on behalf of Robert M. Kowalski in the bankruptcy case. (Count Eleven, ¶ 1). The indictment charged that Respondent

and Robert M. Kowalski filed statements and schedules in docket number 18-09130 which intentionally omitted his interests in at least approximately \$567,200 in property belonging to his bankruptcy estate, including cash and cash equivalents, interests in corporate entities and trusts, causes of action, interests in real estate, and rents and the rights to collect rents. (Count Eleven, ¶ 2-3).

4. The indictment further charged that, following the filing of the bankruptcy petition, Respondent and Robert M. Kowalski concealed his income from his creditors and the trustee by not depositing that income into the proper accounts and by filing reports which did not account for a material amount of his income. In furtherance of their scheme to conceal property and assets from Robert M. Kowalski's trustee and creditors, Respondent utilized her trust account to conceal funds that were part of Robert M. Kowalski's bankruptcy estate and to engage in transactions with funds which were property of that bankruptcy estate for the purpose of concealing Robert M. Kowalski's interest in those funds and in property acquired with those concealed funds. (Count Eleven, ¶ 4).

5. The indictment also charged that, in or around June 2018 through October 2018, Respondent and Robert M. Kowalski deposited cashier's checks and rental income checks into Respondent's trust account, instead of tendering the checks to the trustee, and used those funds to engage in transactions, including the purchase of property, that went to the benefit of Respondent's brother. The indictment further charged that Respondent and her brother engaged in these actions in furtherance of their scheme to obstruct, misrepresent, conceal and hide property that belonged to Respondent's brother's bankruptcy estate from his creditors and the trustee. (Count Eleven, ¶ 21).

6. On March 3, 2022, Respondent appeared before Judge Kendall in docket number 19 CR 226-2 and voluntarily pled guilty to Count Fifteen of the Fourth Superseding Indictment which charged Respondent with concealing assets from a bankruptcy trustee in violation of Title 18, United States Code, Section 152(1). In pleading guilty, Respondent admitted the following facts:

- a) On or about March 29, 2018, Robert M. Kowalski filed a petition under Title 11 of the United States Code initiating a Chapter 11 bankruptcy case, *In re Robert M. Kowalski*, docket number 18-09130, in the United States Bankruptcy Court for the Northern District of Illinois (the Kowalski Bankruptcy Case).
- b) As a debtor in bankruptcy, Robert M. Kowalski was required to appear at a Meeting of Creditors and to testify under oath concerning his financial affairs.
- c) Respondent was aware that Robert M. Kowalski had filed a Chapter 11 bankruptcy no later than on or about May 24, 2018, when Respondent was present at Robert M. Kowalski's Meeting of Creditors.
- d) As Respondent knew, Robert M. Kowalski's filing of a bankruptcy petition created a bankruptcy estate that included all legal and equitable interests of debtor Robert M. Kowalski in property as of the commencement of the case.
- e) Respondent had previously filed her own bankruptcy, a Chapter 13, *In re Jan R. Kowalski McDonald*, 08-27573, and thus understood that all of Robert M. Kowalski's interests in property became his bankruptcy estate.
- f) By filing a Chapter 11 bankruptcy petition, Robert M. Kowalski became a "debtor-in-possession" and was charged with certain obligations and responsibilities as if the debtor was a trustee.
- g) As a debtor-in-possession, Robert M. Kowalski was a fiduciary for his creditors, and his obligations included being accountable for all estate property.
- h) Respondent understood that Robert M. Kowalski had a fiduciary obligation to his creditors.
- i) On or about August 7, 2018, the Bankruptcy Court issued an order removing Robert M. Kowalski as the debtor-in-possession and appointing a trustee to administer the Kowalski Bankruptcy Case (the Trustee).

- j) On or about November 26, 2018, Respondent filed an appearance on behalf of Robert M. Kowalski in the Kowalski Bankruptcy Case and continued to represent Robert M. Kowalski through at least in or around January 2019.
- k) During the pendency of the Kowalski Bankruptcy Case, Respondent used her attorney trust account both to conceal approximately \$364,600 in cash equivalents which she knew were property of Robert M. Kowalski's bankruptcy estate from Robert M. Kowalski's creditors and the Trustee and to engage in transactions with funds which were property of Robert M. Kowalski's bankruptcy estate for the purpose of concealing the bankruptcy estate's interest in those funds and in property acquired with those concealed funds.
- l) From in or around August through October 2018, Respondent concealed from Robert M. Kowalski's creditors and the Trustee approximately \$352,100 in cashier's checks for which Robert M. Kowalski was both the remitter and the payee, by depositing the cashier's checks into her attorney trust account.
- m) In or around September through October 2018, Respondent concealed from Robert M. Kowalski's creditors and the Trustee approximately \$3,400 in rent checks payable to Robert M. Kowalski by causing the checks to be deposited into her attorney trust account.
- n) In or around June, July, and October 2018, Respondent concealed from Robert M. Kowalski's creditors and the Trustee approximately \$96,600, including funds which Respondent had concealed in her attorney trust account, by using those funds, as described below, to purchase 6821 West 96th Street, Oak Lawn, Illinois (the Oak Lawn Property), in the name of a nominee for Robert M. Kowalski.
- o) On or about October 12, 2018, Respondent concealed from Robert M. Kowalski's creditors and the Trustee approximately \$75,600, causing these funds to be wired to a title company account to fund the purchase of the Oak Lawn Property.
- p) On or about September 13, 2018, Respondent concealed from Robert M. Kowalski's creditors and the Trustee approximately \$2,500 which Respondent had concealed in her attorney trust account by using the funds as earnest money in an attempt to purchase 9441 South Indiana Avenue, Chicago, Illinois, in the name of a fictitious trust of which Robert M. Kowalski was the beneficiary.
- q) In or around September through October 2018, Respondent concealed from Robert M. Kowalski's creditors and the Trustee funds that had been concealed in her attorney trust account by purchasing approximately \$350,300 in cashier's checks payable to or for the benefit of Robert M. Kowalski.

- r) In or around October through December 2018, Respondent concealed funds from Robert M. Kowalski's creditors and the Trustee by depositing into her attorney trust account approximately \$325,900 of the cashier's checks that Respondent had purchased as described above.
- s) In or around October through December 2018, Respondent concealed funds from Robert M. Kowalski's creditors and the Trustee through Respondent's withdrawal of approximately \$241,800 in United States currency from her attorney trust account.
- t) On or about January 9, 2019, Respondent filed and caused to be filed a Combined Response to Trustee's Motion For Accounting and Turnover of Estate Funds Against Jan Kowalski and Rule to Show Cause Against Jan Kowalski and Debtor (Combined Response), in the Kowalski Bankruptcy Case, in which Respondent falsely represented that the approximately \$364,600, including cashier's checks for which Robert M. Kowalski was both the remitter and the payee and checks payable to Robert M. Kowalski, deposited into Respondent's attorney trust account were not property of Robert M. Kowalski's bankruptcy estate.
- u) On or about January 14, 2019, Respondent testified under oath during a hearing in the Kowalski Bankruptcy Case and made numerous false statements designed and intended to deceive creditors and the Trustee, including testimony that the hundreds of thousands of dollars in cashier's checks in which Robert M. Kowalski was both the remitter and the payee which Respondent deposited in her attorney trust account were not property of the estate and were attorney's fees, and that these hundreds of thousands of dollars in attorney's fees became due and payable to Respondent upon execution of retention agreements with Indomitable LLC, Piorun Properties LLC, and Burros Blancas.
- v) Respondent further provided to the Bankruptcy Court, creditors, and Trustee purported IOLTA trust account client ledgers and retention agreements which she knew were false, after-created, and back-dated to support her false testimony; and that from on or about March 29, 2018, through in or around June 2020, at Chicago, in the Northern District of Illinois, Eastern Division, Respondent knowingly and fraudulently concealed from a trustee charged with the control and custody of property and, in connection with a case under Title 11, namely, *In re Robert M. Kowalski*, docket number 18-09130, from creditors and the United States Trustee, property belonging to the estate of a debtor Robert Kowalski in the amount of approximately \$364,600 in violation of Title 18, United States Code, Section 152(1).

7. On June 27, 2023, Judge Kendall sentenced Respondent to 37 months in prison and ordered Respondent to pay \$357,492.92 in restitution.

8. As a result of the conduct and conviction described above, Respondent has engaged in the following misconduct:

- a. committed criminal acts that reflect adversely on her honesty, trustworthiness or fitness as a lawyer in other respects, by conduct including her conviction for the federal criminal offense of concealing assets from a bankruptcy trustee in violation of Title 18, United States Code, Section 152(1) and Rule 8.4(b) of the Illinois Rules of Professional Conduct (2010); and
- b. conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including utilizing her attorney trust account to conceal funds from Robert M. Kowalski's creditors and a bankruptcy trustee and making materially false statements to the United States Bankruptcy Court, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct.

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held pursuant to Supreme Court Rule 761(d), 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/ Melissa A. Smart
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