

## RIGHTING A WRONG

# Chase for embezzled money leads to honor for Cambridge lawyer

By Brandon Gee

Marblehead real estate attorney James J. Alberino made headlines last year when Attorney General Martha Coakley announced he had been found liable for facilitating an illegal foreclosure rescue scheme.

When all was said and done, Alberino was disbarred and ordered to pay \$70,000 in civil penalties.

But behind the scenes, an even larger fraud — perpetrated against an elderly woman — was unraveling, one that would see the woman's daughter reimbursed \$300,000 and a Cambridge attorney honored for his role in doggedly pursuing Alberino to win the six-figure award for his client.

The Clients' Security Board recently bestowed its coveted William J. LeDoux Award on Leonard A. Frisoli. Established in 1999 in memory of the late CSB member, the award is not given annually, according to board Chairman John J. Egan, but only under extraordinary and difficult circumstances.

Egan says Frisoli's work on the Alberino case easily qualified.

### Doesn't add up

Frisoli didn't know what he was getting into when a law school friend — trusts and estates attorney Kathy L. McNair of Brighton — called him in 2008 asking for help with a client.

The client, Bernadette Stacey, was the sole beneficiary of her mother's estate.

When Anna Matera died in 2007, Stacey knew her mother had sold a rental property in Brighton years earlier, but she couldn't figure out what had become of the sale proceeds. So she contacted Alberino, her mother's longtime attorney.

Alberino met with McNair and Stacey, but the meeting left Stacey with more questions than answers.

"The figures did not balance, and there seemed to be a lot of money unaccounted for," Stacey recalls. "At that point, we decided that we were dealing with someone who was not being honest with us."

Thus began a multi-year chase.

"Taking the case was not a big deal in the beginning," says Frisoli, who practices at a four-lawyer firm and accepted the case on a contingency-fee basis. "We do a lot of probate, partnership and business disputes, so we're pretty familiar with going through bank records and accountings. From the few records I had, it looked like there was a large amount of missing money from Anna Matera's estate."

According to court records, net proceeds from the sale of the Brighton home totaled \$469,855. From that sum, Alberino paid Matera, a hostess at a restaurant, \$169,855 over several payments — an allowance of sorts — until her death. He used the rest to



Supreme Judicial Court Justice Barbara A. Lenk; Attorney Leonard A. Frisoli; and Clients' Security Board Chair John J. Egan, in the Seven-Justice Courtroom of the John Adams Courthouse.

invest in a commercial real estate venture at 22 Beacon St., in Boston.

Frisoli's investigation revealed that Matera's money never made it into Alberino's IOLTA or even his business accounts.

As a first step, Frisoli intervened in Alberino's 2007 bankruptcy with a motion to prevent the money owed to Matera's estate from being discharged.

"I'm willing to bet if he had made money, he would have paid it back, but when the [Beacon Street] project tanked, it just had a cascading effect. He doesn't seem like such a scumbag that he would just steal the money," Frisoli says.

But that didn't make Alberino's actions any less egregious, Frisoli says, noting that not only did the Marblehead attorney steal his client's money, but the client was a trusting, naïve elderly woman.

"She was clearly relying on this guy. It was pretty brazen. On a scale of one to 10,

this is like an 11," he says.

### 'Such a weasel'

A year later, Frisoli sued Alberino on Stacey's behalf in Essex County Superior Court, alleging conversion and violation of Chapter 93A. In September 2010, Alberino agreed to pay a judgment of \$416,134 in exchange for the 93A claim being dropped, Frisoli says.

It was a long, difficult process complicated by a number of issues, including the fact that Stacey lives in Australia and Alberino claimed to have lost a vast number of key records in a sewage leak.

"At the real estate closing [for the sale of the Brighton property], which he had no records of, he represented the buyer, lender and seller," Frisoli says, adding that, since then, the lender went out of business and the buyer sold the property and moved on.

Alberino himself stopped showing up for hearings before eventually agreeing to the judgment to avoid trial, Frisoli says.

"I told him: 'You clearly converted this money. You have to admit it,'" Frisoli remembers. "We battled in court for a while, and he eventually gave in. It was a lot of work."

And a hollow victory, as the judgment was not collectable.

Alberino was broke. His house had been in his wife's name for a decade, and all his real estate had been foreclosed on, Frisoli says.

According to court documents, Alberino's liability insurer had previously refused to cover Stacey's losses, citing — among other reasons — its determination that Alberino's conduct had been intentional.

It was at that point that Frisoli decided to submit a \$416,000 claim (subsequently reduced to \$300,000) on Stacey's behalf with the Clients' Security Board, a move that first required him to file a complaint

against Alberino with the Board of Bar Overseers. The CSB further requires that a claimant exhaust all alternative reasonable means of recovery before a claim is paid, and that the lawyer representing the claimant do so on a pro bono basis.

Not a problem, Frisoli thought, believing the claim would be quickly and easily approved since Alberino had already signed off on the Superior Court judgment.

But Alberino, it turns out, had other ideas in mind. Knowing he would have to repay the claim amount if he were ever to be readmitted to the bar, he fought to have the sum reduced as much as possible.

Neither Alberino nor a lawyer who represented him in the foreclosure rescue scheme case returned phone messages or emails seeking comment.

"Anna Matera was my friend," Alberino wrote in a 2009 letter to the BBO, responding to the complaint Frisoli filed against him. "She begged me for help to get rid of her investment property. I had even loaned her money for repairs to the building. After the sale, Anna asked that I hold monies for her monthly care and maintenance and that those funds be paid to her in accordance with a budget that she provided. ...

"She also requested that a large portion of the funds be invested," the letter continued. "We looked at 22 Beacon Street, Boston together prior to its purchase and Anna invested in it as did I. When things went bad I filed a Chapter 11 Bankruptcy petition to stop the foreclosure and to reorganize the debt, hoping to cram down the mortgage balance. I did all that I could to save the building. I kept Anna informed every step of the way until her death."

When he appeared before the CSB, Alberino argued that the award should be reduced to \$50,000 to reflect the amount he had already turned over in mortgage payments, Frisoli says.

"My reaction was, 'Are you crazy? How can you give him credit for mortgage payments on his own mortgage?'" Frisoli says. "It got to the point where I had done all this work. I thought it would be an easy application and be done quickly, and it just wasn't. Are you kidding me? He's contesting it? At that point I didn't really care how much time I was spending. I was pissed at the guy; he was such a weasel. This guy was so sneaky it became motivating."

With no documentation to back up the claims, the CSB determined that "there was no evidence whatsoever to support Mr. Alberino's position that his client wished to be a 'silent' partner in the Beacon St. venture, or that she ever indicated any interest in investing her life savings in real estate."

The board awarded Stacey \$300,000 — the difference between the sale proceeds and the payments Alberino had made to Matera prior to her death.

Were it not for Frisoli's tenacity, Stacey says, "our case would have been dead in the water. I believe Mr. Frisoli's work was crucial in preventing other unwary people from being deceived by Mr. Alberino in the future."

In the end, Frisoli says he devoted some 100 hours to the Stacey-Alberino matter, with assistance from his colleagues at Frisoli & Associates on the state court portion of the case. Though his work before the CSB was pro bono, he has no regrets over the amount of time and energy he spent trying to right another lawyer's wrong — time that could have gone toward cases involving paying clients.

"I could have just let it go and saved a lot of work, but he was ... so dishonest I couldn't drop it," Frisoli says. "I'm sure he thought that with his client dead and the only heir living in Australia, he wouldn't get caught."