

IN RE: JAMES A. GIBBONS

S.J.C. Order of Indefinite Suspension entered by Justice Spina on August 2, 2001, with an effective date of September 1, 2001.¹

SUMMARY²

The respondent was admitted to the Bar of the Commonwealth on December 15, 1982. This matter came to Bar Counsel's attention as the result of the receipt on February 12, 1999 of a notice of two dishonored checks from the bank in which the respondent's IOLTA account was maintained.

The respondent was engaged in the private practice of law in Clinton, Massachusetts. He received, and deposited to this IOLTA account, trust funds received for various purposes including mortgage proceeds for real estate closings, estate funds, and other monies on behalf of clients. Review of his IOLTA account records as a result of the receipt of the dishonored check notices showed that trust funds were wrongly expended by the respondent in the following instances.

In the first matter, the respondent settled a tort case for a client in December 1998 and deposited the proceeds of \$23,000 to his IOLTA account on that date. The respondent did not advise the client that the case had been settled and did not remit her share of the settlement proceeds to her. Without her knowledge or consent, he intentionally expended the settlement funds for his own personal or business purposes unrelated to the client. By December 30, 1998, the balance in the IOLTA account was \$292.37, without any payments having been made to or for the benefit of the client.

After Bar Counsel commenced its investigation and made inquiry as to the disposition of this settlement among others, the respondent falsely advised Bar Counsel that the client had been paid with personal funds and not from the IOLTA account. On February 21, 2001, at Bar Counsel's instance, the respondent submitted a receipt of payment, signed by the client, stating that she had received payment of \$14,574.51. On May 7, 2001, Bar Counsel telephoned the client and learned that she had not been paid as of that date. Bar Counsel notified the respondent that Bar Counsel was aware that the client had not been paid. Thereafter, on May 14, 2001, the respondent remitted payment in full to the client.

In a second matter, the respondent in January 1998, as settlement agent for a refinancing, deposited \$80,400 to his IOLTA account representing the proceeds of a mortgage loan. Without the knowledge or consent of either the lender or the borrowers, the respondent intentionally expended most of the mortgage proceeds for his own business or personal purposes or those of other clients. By January 26, 1998, the balance in the IOLTA account was reduced to \$1334.04, with only \$21,441.44 having been disbursed on account of this closing. On or about May 18, 1998, the respondent remitted \$54,993.32 from the IOLTA account to pay off the borrowers' mortgage. At about the same time, he remitted, also from the IOLTA account, the balance of \$3119.84 due the borrower. He was able to make these payments only by converting funds received for other closings or clients in April and May of 1998.

In a third matter, the respondent on March 23 and May 1, 1998, as settlement agent for a sale of real estate, deposited to his IOLTA account a total of \$159,708.91, representing the deposit and the proceeds of the buyer's mortgage loan. Without the knowledge or consent of any of the parties, the respondent intentionally expended most of the proceeds for his own business

or personal purposes or those of other clients. By May 27, 1998, the balance in the IOLTA account was reduced to \$26,139.15, with only \$59,543.93 having been disbursed on account of this closing. On or about June 9, 1998, the respondent remitted from the IOLTA account \$100,037.88 to pay off the seller's mortgage. He was able to make this payment only by converting funds received for other closings or clients in May of 1998.

In a fourth matter, on April 21 and May 7, 1998, the respondent, as settlement agent for another refinancing, deposited to his IOLTA account a total of \$62,223.12. Without the knowledge or consent of the lender or the borrowers, the respondent intentionally expended a portion of the proceeds for his own business or personal purposes or those of other clients. By May 27, 1998, the balance in the IOLTA account was reduced to \$26,139.15, with only \$3019.33 having been disbursed on account of this closing. On or about June 2, 1998, the respondent remitted from the IOLTA account a total of \$55,233.25 to pay off the borrower's mortgage. He was able to make this payment only by converting funds received for other closings or clients in May of 1998.

In a fifth matter, on May 28 and June 1, 1998, the respondent, as settlement agent for another purchase of real estate, deposited to his IOLTA account a total of \$112,596.79. Without the knowledge or consent of any of the parties in interest, the respondent intentionally expended a portion of the proceeds for his own business or personal purposes or those of other clients. By June 9, 1998, the balance in the IOLTA account was reduced to \$3508.56, with only \$61,620.95 having been disbursed on account of this closing. On or about June 12, 1998, the respondent remitted from the IOLTA account a total of \$51,364.38 to pay off the seller's mortgage. He was able to make this payment only by converting funds received for other closings or clients in June of 1998.

In a sixth matter, on November 30, 1998, the respondent, as settlement agent for a purchase of real estate, deposited to his IOLTA account a total of \$240,929.57. Without the knowledge or consent of any of the parties in interest, the respondent intentionally expended a portion of the proceeds for his own business or personal purposes or those of other clients. By December 30, 1998, the balance in the IOLTA account was reduced to \$292.37, with only \$99,018.29 having been disbursed on account of this closing. On or about February 17, 1999, the respondent remitted a total of \$150,641.73 to pay off the seller's mortgage. He was able to make this payment only by converting funds received for other closings or clients in February of 1999.

In a seventh matter, in January and February 1998, the respondent received a total of \$42,449.08 as counsel to the estate of a decedent. Without the knowledge or consent of the fiduciary or the beneficiaries, the respondent intentionally expended estate funds for his own business or personal purposes or those of other clients. By June 30, 1998, the IOLTA account was in overdraft, with only \$5,668 having been disbursed on account of the estate. On or about December 22, 2000, and after Bar Counsel became aware of the deficiency in the estate funds, the respondent paid the heirs and creditors in full, a total of \$40,000 including interest.

In an eighth matter, in or about February 26, 1999, the respondent deposited to his IOLTA account the sum of \$113,525.56 received on behalf of a client. The client requested that the respondent hold the funds. Without the knowledge or consent of the client, the respondent intentionally expended her funds for his own business or personal purposes or those of other clients. By July 1, 1999, the balance in the IOLTA account was \$10,183.85, with only \$1200 having been disbursed on account of the client. On August 10, 1999, the respondent paid \$5000 to the client and on October 8, 1999, he borrowed funds and paid her in full, a total of \$108,592.52 including interest.

In all of the above matters, the respondent's intentional misappropriation of client funds, with intent to deprive the clients or others of the funds at least temporarily and with actual deprivation resulting, is conduct in violation of Mass. R. Prof. C. 8.4(c),(h) and 1.15(a),(b). In

addition, in the first matter, the respondent's settlement of the client's claim without advising her that he had done so or that settlement funds had been received on her behalf was also conduct in violation of Mass. R. Prof. C. 1.2(a), 1.3, and 1.15(b) and his misrepresentation to Bar Counsel that the client had been paid, and his submission of a receipt of payment in support of his false statement, was conduct in violation of Mass. R. Prof. C. 8.4(c),(h).

The respondent has no prior discipline. No clients complained and restitution was made in full, ultimately from personal or borrowed funds.

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation for an indefinite suspension. On July 9, 2001, the Board voted to accept the stipulation and to recommend the agreed-upon disposition to the Supreme Judicial Court. The Court so ordered on August 2, 2001.

¹ The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

² Compiled by the Board of Bar Overseers based on the record before the Court.

Please direct all questions to webmaster@massbbo.org.

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