

## IN RE: JOSEPH P. GARGOLINSKI

S.J.C. Order of Term Suspension entered by Justice Ireland on November 9, 2001, with an effective date of December 10, 2001.<sup>1</sup>

SUMMARY<sup>2</sup>

In September 1996, buyer and seller entered into a purchase and sales agreement for the purchase of a condominium located in Eastham, MA. The respondent represented the buyer. The purchase and sales agreement, prepared by the realtor, provided that in "the event of a future assessment to replace the septic system, the buyer and seller agree to share the cost equally." There was no lender involved in the transaction.

In October 1996, the respondent telephoned the seller, who lived in New York. The respondent told the seller that he represented the buyer and that he was sending a power of attorney for the seller to sign and send back to him authorizing the respondent to sign documents in the seller's behalf to complete the sale of the condominium. The respondent did not appreciate that the seller and the buyer had actual or potentially differing interests and did not obtain the informed consent of either to the conflict of interest.

On October 15, 1996, the respondent faxed the seller the power of attorney and a quitclaim deed. On October 16, 1996, the seller signed both the deed and the power of attorney in front of a notary and returned them to the respondent.

The closing on the sale of the condominium took place on October 18, 1996. By then, the respondent understood that the septic system would be replaced and that \$500.00 would have to be held back from the purchase price to pay the seller's estimated share of the cost. The sale price of the condominium was \$25,000.00. On October 18, 1996, the respondent deposited the buyer's check into his client funds account at Wellfleet Savings Bank. On October 19, 1996, the respondent sent the seller a check for \$23,245.24, the net proceeds of the sale, along with a copy of the settlement statement. The seller's share of the "septic holdback", \$500.00, remained in the respondent's client funds account. As a result of personal problems, the respondent neglected his law practice and lost track of the escrow funds in his client funds account.

On June 10, 1997, the respondent was administratively suspended from the practice of law for failure to pay his registration fee. The respondent was not reinstated after thirty days and therefore became subject to all of the requirements of Supreme Judicial Court Rule 4:01, § 17, including the requirement that he immediately close all his client funds accounts, properly disburse the funds in the accounts, and file an affidavit of compliance. The respondent did not close his client funds account until 1998, at which time he negligently appropriated the escrow funds in the account in the belief that they were his personal funds. The respondent did not file an affidavit of compliance.

By the summer of 1998, the septic system had been installed and the buyer had paid the entire installation assessment of slightly more than \$1,000.00. The buyer attempted to contact the respondent, but discovered that his office was closed. The buyer then contacted the seller directly and informed him of the installation and cost of the septic system. The seller told the buyer that he would attempt to locate the respondent to have the buyer paid from escrow.

The seller was unable to locate the respondent. On November 4, 1998, the seller filed his complaint with the Office of the Bar Counsel. On November 13, 1998, bar counsel sent a copy of the complaint to the respondent's registered address. Upon receipt of the complaint, the respondent made restitution to the buyer in the amount of \$500.00.

On March 9, 2001, bar counsel filed a petition for discipline alleging that the respondent's representing both the buyer and the seller in the sale of the condominium without their informed consent violated Canon Five, Disciplinary Rule 5-105(A), (B), and (C); his failure to maintain adequate records of his maintenance of the escrowed violated Canon Nine, Disciplinary Rule 9-102(B)(3); and his commingling and negligent use of the escrowed funds violated Canon Nine, Disciplinary Rules 9-102(A) and (B), and Mass. R. Prof. C. 1.15(a), (b), and (d). The petition also alleged that the respondent's failure to close his client funds account and file an affidavit of compliance violated Supreme Judicial Court Rule 4:01, § 17, Supreme Judicial Court Rule 4:03, and therefore Canon One, Disciplinary Rules 1-102(A)(5) and (6).

The respondent did not file an answer to the petition for discipline, and the allegations in the petition were deemed admitted pursuant to Supreme Judicial Court Rule 4:01, § 8(3). On August 23, 2001, bar counsel filed a disposition memorandum with the Board of Bar Overseers recommending that the respondent be suspended from the practice of law for one year and one day. On October 15, 2001, the Board of Bar Overseers voted to file an information with the Supreme Judicial Court recommending that the respondent be suspended from the practice of law for one year and one day. On November 9, 2001, the Supreme Judicial Court for Suffolk County (Ireland, J.) entered an order suspending the respondent from the practice of law for a year and a day effective 30 days after the date of the entry of the order.

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

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record before the Court.

Please direct all questions to [webmaster@massbbo.org](mailto:webmaster@massbbo.org).

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