

IN RE: JON F. CONANT

S.J.C. Judgment of Disbarment entered by Justice Ireland on May 23, 2005.¹

SUMMARY²

The respondent acted as settlement agent on behalf of lenders for residential real estate purchases and refinances and used his IOLTA account for the deposit of funding proceeds and the payment of disbursements required to complete each transaction.

On June 1, 2003, the respondent conducted a real estate closing for which he disbursed funds believing, incorrectly, that he had received the funding deposits related to that closing. No later than September 5, 2003, the respondent became aware that there was a substantial deficit in the IOLTA account due to the prior unfunded closing. The respondent failed to rectify the original error or to obtain the missing funding. Between September 5, 2003 and April 15, 2004, despite knowing that his IOLTA account was underfunded, the respondent deposited into his IOLTA account the funding for at least eleven additional real estate transactions and then acted as settlement agent for these eleven closings. Because he knew that the IOLTA account was underfunded, the respondent knew that these new deposits would be drawn upon to pay previously issued checks that remained outstanding.

On September 19, 2003, the respondent conducted a closing transaction for the purchase of real estate. The loan was fully funded and the loan proceeds were deposited into the respondent's IOLTA account. From the loan proceeds, the respondent was required to make a disbursement in the amount of \$263,737.72 to a mortgage company to discharge an outstanding mortgage on the property. The respondent intentionally did not make the disbursement to the mortgage company because he knew that his IOLTA account was underfunded and that a portion of the proceeds would be needed to apply to prior outstanding disbursements on unrelated closings.

In connection with the closing, the respondent acted as agent for a title insurance company. On September 19, 2003, the respondent issued a title insurance policy to the buyers insuring that they held title free and clear of liens despite knowing that he had not made the disbursement to discharge the outstanding mortgage.

On September 22, 2003, a payoff check issued by the respondent for a closing on August 4, 2003, was paid, causing the balance of the respondent's IOLTA account to fall below the amount owed to the mortgage company. The respondent knew that the closing proceeds were applied to pay this check.

In October 2003, the seller received a notice from the mortgage company indicating that his October mortgage payment was overdue. He contacted the mortgage company and discovered that the mortgage had not been paid off. The seller contacted the respondent. The respondent falsely advised the seller that the payoff check must have been lost in the mail and that he would issue a replacement check. The respondent then made the October, November and December monthly mortgage payments to the mortgage company using a portion of the remaining proceeds in his IOLTA account from the closing transaction.

Upon receiving notices in November and December that the respondent had made the

mortgage payments, the seller attempted to contact the respondent by telephone but received no return calls. The respondent paid the January 2004 mortgage payment using the remaining proceeds in his IOLTA account from the closing transaction.

Upon receiving notice that the respondent had paid the January mortgage payment, the seller again contacted the respondent. The respondent promised the seller that the matter would be resolved by February 15, 2004, even if he had to obtain a personal loan. The matter was not resolved by February 15, 2004, and the respondent did not obtain a personal loan. By letter dated February 19, 2004, the respondent advised the seller that the matter would be resolved by the following week, but the matter was not resolved the following week.

The respondent paid the February 2004 and March 2004 mortgage payments to the mortgage company using personal funds that he deposited into his IOLTA account on February 3 and 4, 2004. After March 2004, the respondent paid no additional monthly mortgage payments and did not pay off the mortgage. As a result, the mortgage company initiated foreclosure proceedings on the property. Upon receiving notice of the foreclosure, the buyers made a claim on the title insurance policy and, ultimately, the title company paid the mortgage. The respondent has not reimbursed the title company for its loss.

The respondent's conduct in continuing to use the IOLTA account for closings when he knew that it had a substantial deficit, thereby knowingly misusing the proceeds of one closing to cover a payment relating to an earlier closing, with intent to deprive the proper recipients at least temporarily and with actual deprivation resulting, was in violation of Mass. R. Prof. C. 1.2(a), Mass. R. Prof. C. 1.15(a) and (b), as appearing in 426 Mass. 1301, 1363 (1997), effective 1/1/98 through 6/30/04, and Mass. R. Prof. C. 8.4(c) and (h). The respondent's false certification on the HUD-1 statement that funds were remitted to pay off the mortgage is conduct in violation of Mass. R. Prof. C. 8.4(c) and (h). The respondent's intentional misrepresentation to the seller regarding the status of the loan proceeds and the payoff of the outstanding mortgage is conduct in violation of Mass. R. Prof. C. 8.4(c) and (h). The respondent's intentional misrepresentation to the title insurer and the buyers that the property was transferred free and clear of liens is conduct in violation of Mass. R. Prof. C. 8.4(c) and (h).

The respondent's affidavit of resignation was filed with the Board of Bar Overseers on April 19, 2005. On May 9, 2005, the Board voted to recommend that the affidavit of resignation be accepted and that an order of disbarment be entered effective forthwith. On May 23, 2005, the Supreme Judicial Court for Suffolk County so ordered.

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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