

IN RE: MICHAEL PAUL HENRY

S.J.C. Order of Indefinite Suspension entered by Justice Spina on November 2, 2005, with an effective date of December 2, 2005.¹

SUMMARY²

The respondent was indefinitely suspended for misappropriation of escrow funds in two unrelated sales of real estate.

In the first transaction, the respondent represented a company as seller of a condominium unit or units. On October 21, 2004, the buyers paid a deposit in the amount of \$9,000 to the seller as provided in the purchase and sale agreement. The check was remitted to the respondent as escrow agent. The respondent did not deposit the check either to an IOLTA account or an individual trust account as required. Instead, on October 25, 2004, the buyers' check was deposited into the respondent's law office operating account.

By November 2, 2004, the balance of the respondent's law office operating account had fallen to \$1,218.84, less than the \$9,000 the respondent should have been holding in escrow as of that date. The respondent intentionally used the escrow funds for personal or business purposes unrelated to the real estate transaction.

On November 8, 2004, the sale transaction closed. From the \$9,000.00 that was to be held in escrow, the respondent was due \$1,000.00 for legal services. The balance of the escrow, \$8,000.00, was due and owing to the seller pending resolution of certain post-closing issues.

By December 2, 2004, the respondent's law office operating account had been overdrawn. The respondent used the remaining portion of the escrow funds for personal or business purposes unrelated to the real estate transaction.

The post-closing issues were resolved on or before December 14, 2004. On December 14, 2004, the respondent paid to the seller the sum of \$8,000.00 that the seller was then entitled to receive. The check was drawn on the respondent's law office operating account and paid on December 16, 2004. The respondent was enabled to make this payment only by the use of trust funds deposited into the respondent's account from an unrelated real estate closing transaction, as described below.

In a second transaction, the respondent represented another seller of a condominium unit. On or before December 10, 2004, the buyer paid to the seller the amount of \$1,000.00 to bind the offer to purchase. The check was remitted to the respondent as escrow agent. The respondent did not deposit the check either to an IOLTA account or an individual trust account as required. Instead, the buyers' check was deposited into the respondent's law office operating account.

On December 14, 2004, the buyer paid a deposit in the amount of \$25,450.00 to the seller as provided in the purchase and sale agreement. The check was remitted to the respondent but the respondent did not deposit the check either to an IOLTA account or an individual trust account as required. Instead, the buyers' check was deposited into the respondent's law office operating account.

In total, the respondent was to hold the sum of \$26,450.00 in escrow to be accounted for at the time of closing. However, by December 27, 2004, the balance of the respondent's law office operating account had fallen to \$14,118.85. The respondent intentionally used escrow funds for personal or business purposes unrelated to the real estate transaction, including payment to the seller in the first transaction described above.

On January 20, 2005, the sale transaction closed. From the sums that the respondent was obligated to hold in escrow, \$19,511.03 was due and owing to the seller. As of January 20, 2005, the balance of the respondent's law office operating account was \$13,153.01. On January 31, 2005, the respondent tendered to the seller two checks from his law office operating account, one check in the amount of \$9,000.00 and the second check in the amount of \$10,511.03. The \$9,000.00 check was presented and paid, but on February 1, 2005, the \$10,511.03 check was returned for insufficient funds as a result of the respondent's expenditure of the remaining portion of the escrow funds for personal or business purposes.

On February 25, 2005, the respondent paid the seller \$10,511.03 plus \$650.00 in attorney fees. The respondent used personal funds to make this payment.

The respondent's deposit of escrow funds into his law office operating account constituted commingling of personal and trust funds in violation of Mass. R. Prof. C. 1.15(b)(1) and (e)(5) and Mass. R. Prof. C. 8.4(h). The respondent's intentional misuse of trust funds with deprivation resulting was in violation of Mass. R. Prof. C. 1.15(b)(1) and (c) and Mass. R. Prof. C. 8.4(c) and (h).

In aggravation, the respondent had a prior admonition for neglect and other misconduct.

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violation and a joint recommendation for an indefinite suspension. On October 17, 2005, the Board of Bar Overseers voted to accept the stipulation and to recommend the agreed-upon disposition to the Supreme Judicial Court. The Court so ordered on November 2, 2005.

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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