

IN RE: JOEL F. SOFORENKO

S.J.C. Judgment of Disbarment entered by Justice Spina on January 30, 2008.¹

SUMMARY²

This matter came before the Board of Bar Overseers and the Court on the respondent's affidavit of resignation pursuant to Supreme Judicial Court Rule 4:01, § 15. In the affidavit, the respondent acknowledged that sufficient evidence existed to warrant findings that the material facts summarized below could be proved by a preponderance of the evidence.

On August 30, 2006, the respondent acted as settlement agent for a residential real estate closing with respect to the sale of a house in Westfield, Massachusetts. The respondent represented the buyer's lender at the closing. On August 30, 2006, the respondent received and deposited to his IOLTA account \$235,446.15 for the buyer's loan proceeds. At the time the funds were deposited, there were insufficient funds in the IOLTA account to cover outstanding checks for unrelated closings. The buyer's loan proceeds were used to cover these outstanding checks.

On August 30, 2006, the respondent issued disbursement checks from the IOLTA account for the closing in accordance with the HUD-1 settlement statement, including a payoff check to the seller in the amount of \$56,585.69. The respondent did not have sufficient funds in the IOLTA account to pay this obligation.

On September 6, 2006, the respondent's check to the seller in the amount of \$56,585.69 was returned due to insufficient funds in the respondent's IOLTA account. The respondent received actual notice that the check had been dishonored. The respondent failed to take any action of substance to discover the reason for the bank's refusal to honor the check and why there were insufficient funds in the IOLTA account to cover the check.

On or about September 13, 2006, the respondent issued a replacement check to the seller in the amount of \$56,585.69. On September 14, 2006, the replacement check was returned for insufficient funds. The respondent failed to take any action of substance to discover the reason for the bank's refusal to honor the check and why there were insufficient funds in the IOLTA account to cover the check.

On September 18, 2006, the respondent paid the seller \$56,585.69 by a wire transfer from the respondent's IOLTA account. The respondent made this payment with reckless disregard for whether or not he used funds on deposit for that transaction in the IOLTA account. In fact, the funds used belonged to an unrelated client. On October 11, 2006, the attorney for the seller filed a request for investigation with the Office of Bar Counsel.

By no later than September of 2006, the respondent should have known that there was a shortage in his IOLTA account. The respondent was recklessly indifferent to his fiduciary responsibilities with respect to the handling of client funds and in safeguarding client funds in his IOLTA account. At all times relevant to the petition for discipline, the respondent failed to keep and maintain adequate records of his receipt and disbursement of client funds, and failed to reconcile his accounts as required by Mass. R. Prof. C. 1.15.

After September of 2006, the respondent continued to deposit client funds to the IOLTA account in connection with real estate closings with reckless indifference for whether or not those funds would be used to pay obligations in unrelated closings. In fact, the respondent issued checks drawing on client funds in the account to make payments to or for the benefit of clients in unrelated transactions. Between September of 2006 and about March 2007, the respondent issued disbursement checks for closings from the IOLTA account that were not covered by good funds.

In about February of 2007, the respondent ceased making deposits of client funds to the IOLTA account. Once the respondent stopped depositing funds to the account, the respondent was unable to pay off first mortgages totaling approximately \$600,000 on three real estate loan refinances he had conducted in early 2007.

On March 6, 2007, the respondent reported to Bar Counsel that there was a shortfall in the account.

In about March 2007, the three borrowers whose refinance loan funds were not used to pay off their first mortgages received notice that their mortgages were in foreclosure. The borrowers filed title insurance claims as a result of their unpaid mortgages. The respondent did not repay the \$600,000 that he used to make payments unrelated to the three closings.

The respondent's conduct in failing to maintain required records for his IOLTA account violated Mass. R. Prof. C. 1.15(f). The respondent's conduct in issuing checks from his IOLTA account that caused a negative balance with respect to an individual client violated Mass. R. Prof. C. 1.15(f)(1)(C). The respondent's failure to promptly pay funds to persons or entities entitled to receive them violated Mass. R. Prof. C. 1.3, and 1.15(b). The respondent's reckless disregard that his IOLTA account was short of funds, his continuing to make payments from the account without regard to whether or not there were sufficient funds on deposit from the proper client to meet those obligations, and his use of funds belonging to clients to pay obligations unrelated to those clients violated Mass. R. Prof. C. 1.15(c), and 8.4(c). The respondent's conduct in recklessly issuing disbursement checks that were not covered by good funds violated Mass. R. Prof. C. 1.15(f)(1)(C), and 8.4(c).

The respondent was admitted to practice in the Commonwealth of Massachusetts on December 21, 1979, and was temporarily suspended on March 16, 2007. Matter of Joel F. Soforenko, S.J.C. No. BD-2007-018. On April 17, 2007, the respondent filed an affidavit of compliance as required by the order of temporary suspension. When he submitted his resignation in December of 2007, he had not yet fully complied with the temporary suspension order because he had not disbursed all of the funds he was holding on behalf of clients and third parties. As a further matter in aggravation, the respondent had received a public reprimand in 2006 for failing to maintain complete records of the receipt, maintenance, and disposition of clients' funds in two IOLTA accounts. Matter of Soforenko, Public Reprimand No. 2006-16, 22 Mass. Att'y Disc. R. 732 (2006).

On January 14, 2008, the Board of Bar Overseers voted to recommend that the affidavit be accepted, and that a judgment of disbarment be entered. The Supreme Judicial Court entered a judgment of disbarment on January 30, 2008, effective immediately upon entry of the judgment.

FOOTNOTES:

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 Supreme Judicial Court.

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