

IN RE: LAWRENCE B. GOLDBERG

S.J.C. Order of Term Suspension entered by Justice Cordy on October 26, 2007, with an effective date of November 26, 2007.<sup>1</sup>

SUMMARY<sup>2</sup>

The respondent was admitted to the Bar of the Commonwealth on December 18, 1989. He primarily concentrated his practice on real estate closings and refinancings and maintained an IOLTA account to hold and distribute his client funds.

In about January 1996, the respondent hired a secretary for his law practice. Other than ascertaining that she had previously been employed as a secretary in a law office, the respondent did not investigate the secretary's employment history. In fact, the secretary's previous employer had discharged her for misusing law office checks to pay her personal obligations and for using an office credit card without authority.

By no later than 1998, the respondent had made his secretary the manager of his law office. As such, the secretary had total responsibility for maintaining the respondent's checkbooks, preparing checks and other documents in connection with real estate closings, and sending and receiving all mail, including all statement and account records for the IOLTA account. The respondent also authorized the secretary to sign his name to IOLTA account checks after obtaining his specific advance approval.

The respondent also employed a bookkeeper, to whom he delegated the responsibility to review and balance his business and IOLTA accounts and prepare reconciliation reports. The secretary was responsible for mailing bank statements and other records to the bookkeeper. The respondent did not have in place measures giving reasonable assurance that his secretary was handling funds in his IOLTA account in a manner that was compatible with his own professional obligations, he failed personally to review his IOLTA account records, and he failed to consult with or oversee the bookkeeper to make sure that adequate account records were being maintained and that there were no problems in the account.

Between April 1999 and July 2002, the secretary embezzled between \$150,000 and \$200,000 from closing funds on deposit in the respondent's IOLTA account by issuing checks in the respondent's name on the account to pay her own personal obligations, including credit card bills and the mortgage on her home. Some of these checks were made payable to "cash." She also used IOLTA account funds to pay obligations of other clients from whom she had previously embezzled money. As a consequence, the respondent's office failed promptly to pay liens he was required to pay in connection with several closings, and the secretary routinely misused funds received to pay off liens in unrelated closings.

By the spring of 2001, the respondent had notice of serious problems in his IOLTA account. A borrower whose IRS lien had not been discharged contacted the respondent to complain. The respondent confirmed that the IRS lien had not been paid, but he did not make the necessary inquiry into the reasons for that failure, nor did he review his IOLTA account records to ensure that the funds remained in his account. Instead, he simply instructed his secretary to pay the lien, which she did with funds belonging to clients unrelated to the matter. In addition, the respondent received numerous overdraft notices, totaling approximately \$140,000, concerning

his IOLTA account in 2001 and 2002. His only response to these overdrafts was to deposit over \$52,000 in personal funds to the account.

In late June 2002, the respondent reported the overdrafts in his account to his title insurer. The title insurer conducted an audit and discovered the secretary's embezzlement. The respondent immediately discharged the secretary from employment. The respondent, the title insurer, and the respondent's liability insurer contributed to making restitution to the clients.

The respondent's failure to have measures in place to provide reasonable assurance that his staff's conduct conformed to the respondent's professional obligations violated Mass. R. Prof. C. 5.3(a) (responsibilities regarding nonlawyer assistants). His failure to make reasonable efforts to assure that his staff's conduct was compatible with his own professional obligations violated Mass. R. Prof. C. 5.3(b) (responsibilities regarding nonlawyer assistants).

The respondent's failure to ensure that he maintained adequate records of his receipt and maintenance of funds on behalf of his clients and his failure to safeguard his client funds violated Mass. R. Prof. C. 1.15(a), as in effect prior to July 1, 2004 (lawyer to safeguard client's property in separate account and keep accurate records of receipt, maintenance and disposition of client funds). The respondent's failure to ensure that funds he had received on behalf of clients were promptly paid to the person or persons entitled to receive them violated Mass. R. Prof. C. 1.1 (competence), 1.2(a) (lawyer to seek lawful objectives of client), 1.3 (diligence), and 1.15(b), as in effect prior to July 1, 2004 (lawyer to promptly notify client of receipt of client's funds and promptly deliver to client or third person funds to which client or third person is entitled to receive). The respondent's conduct in permitting the funds of other clients to be used to pay obligations of unrelated borrowers violated Mass. R. Prof. C. 1.1, 1.2(a), 1.3, 1.15(b) as in effect prior to July 1, 2004, and 8.4(c) (lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The matter came before the Supreme Judicial Court for Suffolk County (Cordy, J.) on an agreed statement of facts and joint recommendation for discipline approved by the Board of Bar Overseers. On October 6, 2007, the county court issued an order suspending the respondent from the practice of law for one year and one day with a condition of reinstatement that the respondent be subject to a probationary period of two years during which his financial recordkeeping will be monitored by a certified public accountant, acceptable to and approved by the Office of Bar Counsel.

#### FOOTNOTES:

<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 Supreme Judicial Court.

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

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