

IN RE: J. MICHAEL FREEDBERG

S.J.C. Judgment of Disbarment entered by Justice Botsford on October 30, 2007, with an effective date of November 29, 2007.<sup>1</sup>

SUMMARY<sup>2</sup>

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. On September 18, 2007, the respondent submitted his affidavit of resignation from the practice of law. 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 May 18, 2007, the respondent acted as the settlement agent for a residential real estate closing with respect to the sale of a two-family house in Springfield, Massachusetts. The respondent represented the lender, HSBC Mortgage Corporation, in the transaction.

On or about May 4, 2007, in advance of the closing and prior to receiving any settlement funds in connection with the closing, the respondent disbursed not less than \$3,000.00 for settlement charges for the closing from the IOLTA account. In order to make these payments, the respondent intentionally misappropriated approximately \$3,000.00 from the funds of other clients on deposit in the IOLTA account, without the knowledge or consent of the other clients and with the intent to deprive the other clients of the funds at least temporarily.

On May 18, 2007, the day of the closing, the respondent received and deposited to his IOLTA account a wire transfer from HSBC Mortgage Corporation totaling \$222,847.98 for the buyer's loan proceeds. That day the respondent recorded at the Hampden County Registry of Deeds a deed from the seller to the buyers. The closing took place approximately one week in advance of a May 24, 2007 foreclosure sale scheduled by Countrywide Home Loans, the holder of the first mortgage on the property. From the sale proceeds, and in accordance with the HUD-1 settlement statement prepared by the respondent, the respondent was obligated to pay off the seller's mortgage on the property. The respondent failed to timely pay Countrywide after the closing.

Between May 18, 2007, and May 24, 2007, and without the knowledge or consent of any of the parties to the transaction, the respondent intentionally misappropriated not less than \$35,000.00 of the funds owed to the seller or to Countrywide by making payments to other clients or third parties in connection with matters unrelated to the closing. The respondent made these disbursements with the intent to deprive the intended recipients of the funds at least temporarily and causing actual deprivation of the funds to the seller or Countrywide.

On May 24, 2007, the respondent informed Countrywide's counsel that the closing was completed. The respondent intentionally misrepresented to Countrywide's counsel that the respondent would immediately send to him overnight, for receipt on May 25, 2007, the full payoff of Countrywide's mortgage in the amount of approximately \$190,000.00. At the time he made this misrepresentation to Countrywide's counsel, the respondent knew that he did not have sufficient funds in the IOLTA account to pay off the Countrywide mortgage. In reliance on the respondent's misrepresentation, Countrywide's counsel cancelled the foreclosure sale.

Between May 25, 2007, and June 4, 2007, the respondent failed to respond to telephone calls and to a May 31, 2007 demand letter from Countrywide's counsel.

On June 4, 2007, Countrywide's counsel filed a request for investigation with the Office of Bar Counsel.

On June 5, 2007, the respondent paid off the seller's mortgage to Countrywide with a check for \$193,329.31 from the IOLTA account. The respondent made the payment to Countrywide by intentionally misusing funds received in late May 2007 relating to other closings and belonging to other borrowers or their creditors. The respondent made the payment to Countrywide intending to deprive and actually depriving the intended recipients of the funds at least temporarily. As of September 18, 2007, when the respondent filed his affidavit of resignation, the respondent had not repaid at least \$10,000.00 due to creditors or borrowers from funds the respondent received as closing attorney on the affected loans.

The respondent's failure to secure the closing funds, failure promptly to pay the closing funds to Countrywide, intentional misappropriation of funds from the closing in May and June of 2007 to pay other clients or third parties, and his intentional misappropriation of funds on deposit for other clients or closings to pay off the Countrywide mortgage in June of 2007, violated Mass. R. Prof. C. 1.15(b), (c), and (d), and 8.4(c) and (h). The respondent's intentional misrepresentations to the mortgagee's counsel violated Mass. R. Prof. C. 8.4(c).

The respondent was admitted to practice in the Commonwealth of Massachusetts on April 24, 1970. On April 8, 1975, the respondent was publicly censured. See Matter of J. Michael Freedberg, 1 Mass. Att'y Disc. R. 103 (1975). On October 15, 2007, 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 October 30, 2007, effective as of November 29, 2007.

#### 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.