

IN RE: TODD ERIC STERN

S.J.C. Judgment of Disbarment entered by Justice Cowin on February 23, 2009.¹

SUMMARY²

The respondent resigned and was disbarred for the intentional misuse of trust funds with deprivation resulting in the following matter.

The respondent was engaged in the practice of law as a sole practitioner concentrating in residential real estate closings. He served as an agent for a title company to underwrite and issue title insurance policies and administer escrowed funds for real estate transactions pursuant to an agency agreement entitled "issuing contract". The title company issued reliance letters to lenders providing that the company would stand behind its agent's administration of escrowed funds.

The respondent maintained an IOLTA account and used the IOLTA account in part for the deposit of funding proceeds and the payment of disbursements required to complete real estate closing transactions. On January 17, 2008, the respondent was settlement agent for a refinance transaction that closed in connection with a property in Winthrop. As settlement agent for the closing, the respondent was required to pay off a prior recorded mortgage dated November 4, 2005, in the amount of \$464,958, more or less. The respondent received funding for the refinance transaction from the lender and from the borrower totaling \$471,988, sufficient to fund the loan and pay off the prior mortgage holder. By January 23, 2008, the respondent's IOLTA account received by wire transfer the funding proceeds and the borrower's check had been credited.

Despite receipt of funding proceeds, the respondent did not timely pay off the prior mortgage. Instead, on April 8, 2008, the respondent sent to the mortgage holder the sum of \$142,620.05, leaving a balance due of \$322,338.86. Without making any further payments, the respondent intentionally used the funding for personal or business purposes, unrelated to the purposes of the closing. On February 28, 2008, the ending balance in the IOLTA account fell to \$242,620.05 and by April 30, 2008, the ending balance in the IOLTA account was zero, without any further payment to the mortgage holder.

As a result of the respondent's failure to make payment, foreclosure proceedings were commenced against the property. On September 9, 2008, the title company, in accordance with its commitment for title insurance and its protection letter, delivered a check to the mortgage holder in the amount of \$342,443.45 in payment of the balance then due on the outstanding mortgage. Thereafter, the title company made repeated demands of the respondent to reimburse its loss. To date, the title company remains deprived of funds to which it is entitled and has commenced a civil action against the respondent.

The respondent's intentional misuse of trust funds for his own personal or business purposes with actual deprivation resulting and continuing to date, is in violation of Mass. R. Prof. C. 1.15(a), (b) and (c), and Mass. R. Prof. C. 8.4(c).

On January 27, 2009, the respondent filed an affidavit of resignation pursuant to S.J.C. Rule 4:01, § 15. On February 12, 2009, the Board voted to recommend that the affidavit of

resignation be accepted and that an order of disbarment be entered effective immediately. On February 23, 2009, the Supreme Judicial Court for Suffolk County so ordered.

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 filed with the Supreme Judicial Court.

Please direct all questions to webmaster@massbbo.org.

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