

IN RE: WARREN A. KIRSHENBAUM

NO. BD-2012-058

S.J.C. Judgment of Resignation As A Disciplinary Sanction entered by Justice Lenk on July 25, 2012, with an effective date of August 24, 2012.¹

SUMMARY²

In January 2009, the respondent and his client entered into a written fee agreement whereby the respondent agreed to draft and file with the appropriate governmental agency paperwork required for creating a private equity fund to purchase distressed commercial real estate. The fee agreement identified the respondent as the escrow agent for funds that were to be part of the equity fund.

In June 2009, the client wire-transferred a total of \$100,000 into the respondent's IOLTA account as the client's initial investment in the equity fund. The respondent knew that he likely would be holding the funds for a period of time, but he did not open a separate interest-bearing account with interest payable to the client for the investment or any other investment in the equity fund.

Over the next three months, the respondent intentionally misused all of the client's funds. In the meantime, the client decided to abandon the creation of the fund. In January 2010, the client asked the respondent to return the funds.

The respondent did not then have the funds. He intentionally misrepresented to the client that he needed to confirm with the government agency that he was permitted to release the funds. In late January 2010, the respondent wire-transferred personal funds into his IOLTA account and used these funds to repay the client.

The respondent's failure to deposit the funds to a separate interest-bearing account with interest payable to the client violated Mass. R. Prof. C. 1.15(e)(5). The respondent's conversion of the funds to his own use violated Mass. R. Prof. C. 1.15(b) and 8.4(c) and (h). His failure to promptly to pay the client the funds due violated Mass. R. Prof. C. 1.15(c). The respondent's intentional misrepresentations to his client explaining the delay in returning the client's funds violated Mass. R. Prof. C. 1.4(a) and (b) and 8.4(c).

On May 14, 2012, the respondent submitted his resignation from the practice of law pursuant to S.J.C. Rule 4:01, § 15. On June 11, 2012, the Board of Bar Overseers voted to file an Information with the Supreme Judicial Court recommending that the affidavit of resignation be accepted as a disciplinary sanction.

On July 25, 2012, an order was entered in the Supreme Judicial Court for Suffolk County (Lenk, J.), accepting the respondent's affidavit of resignation as a disciplinary sanction.

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.