<u>IN RE: STEVEN P. STROJNY</u>

NO. BD-2012-092

S.J.C. Order of Term Suspension entered by Justice Cordy on September 28, 2012.[1]

SUMMARY[2]

The respondent received a nine-month suspension subject to attendance at a law office accounting program for his misconduct described in two counts.

In the first count, on May 21, 2008, the respondent entered into an exclusive right-to-sell agreement with the owner of residential real estate. The respondent was to receive a commission of 5%. In May 2008, a potential buyer wished to explore the possibility of purchasing an affordable single family home. At the time, she was employed as a bartender at a café and was a tenant. She was then referred to the respondent by her employer, who told her that the respondent could help her. At some unknown time in May 2008, the buyer signed a consumer disclosure form designating her employer as the buyer's broker.

On May 25, 2008, the buyer made a written offer to purchase the property for $239,900. The offer recited that the seller would pay $7,500 of the buyer's closing costs. The seller accepted the offer as to price but without the recitation as to closing costs. The buyer accepted the modified offer and the recitation as to closing costs was stricken. Thus, by the terms of the written offer, the seller was not to pay any of the buyer's closing costs. The buyer and seller then executed a purchase-and sale-agreement dated May 28, 2008, with a stated purchase price of $239,900. There were no "seller assists" or "seller concessions" listed in the P&S.

After the execution of the P&S, the buyer used the services of a mortgage broker recommended by the respondent. The respondent held a fifty-percent ownership interest in the mortgage broker. The respondent disclosed in writing to the buyer his ownership interest at 50%.

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[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.

On May 29, 2008, the buyer received an inspection report of the property that showed the need for substantial repairs. The buyer then obtained cost estimates for certain major repairs. The buyer was dissatisfied with the cost of repairs and was considering not going forward. The seller ultimately agreed to give to the buyer a credit of $4,050 toward the purchase price.

On or before July 10, 2008, the buyer's lender agreed to loan the buyer the amount of $217,252.76. The lender selected the respondent to close the loan on its behalf. The loan was based in part on a purchase price of $239,900, a disclosed gift of equity from the buyer's mother-in-law to the buyer and a loan to value ratio of 90%. On July 11, 2008, the respondent received closing instructions from the buyer's lender. The closing instructions specifically stated, "no seller credits or assists". The instructions also required the respondent to cause the buyer to re-sign a uniform residential loan application.

At no time did the respondent inform the lender that he had a direct financial interest in a consummated closing transaction by virtue of being the seller's exclusive real estate broker or, indirectly, by having a substantial ownership interest in the mortgage broker. As a result of his financial interest in the closing, the respondent's representation of the lender was or could have been materially limited. The respondent did not obtain the lender's consent to the representation after consultation.

On July 12, 2008, the closing occurred and the respondent was settlement agent and attorney for the lender. At the closing, the respondent gave to the buyer a HUD-1 settlement statement to sign. According to the HUD-1 statement, the cash due to the borrower was $2,997. The buyer signed the statement without question or careful review.

On July 12, 2008, the respondent also executed the signed HUD-1 certifying that the statement was a true and accurate statement of the receipts and disbursements of the transaction and then transmitted the signed HUD-1 to the lender. Also on July 12, 2008, the buyer signed or re-signed a uniform residential loan application listing the sale price of the property at $239,900, without mention of any deductions from the price. The respondent returned the signed loan application to the lender.

On July 14, 2008, having knowledge that the actual terms of the transaction were not as stated on the signed HUD-1 settlement statement or the loan application, the respondent drafted and issued a check to the buyer from his IOLTA account, where he was holding the gross funding proceeds, in the amount of $7,027, an amount more than the buyer should have received under the terms of the HUD-1 statement submitted to the lender. The respondent paid to the seller an amount for the net proceeds that was correspondingly less than the amount reported on the HUD-1 statement submitted to the lender. The difference between what the respondent certified to the lender and what the buyer actually received, $4,050, represented an undisclosed concession or assist from the seller resulting in a loan to value ratio that was greater than the ratio upon which the loan was based.

The respondent's conduct in representing the lender when his representation was materially limited by his personal financial interest in the outcome of the representation in his roles as real estate broker and mortgage broker, without the lender's consent after consultation, was conduct in violation of Mass. R. Prof. C. 1.7(b) and 8.4(h). The respondent's conduct of drafting, causing to be executed, submitting to his lender client and certifying as accurate a HUD-1 settlement statement and a re-executed loan application, knowing that the statement and application were false or misleading, was conduct in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3, 1.4(a) and 8.4(c) and (h).

In the second count, on March 31, 2005, the respondent was sole settlement agent of a real estate re-finance transaction. The respondent used an IOLTA account at a local bank for purposes of receiving funding and making disbursements pursuant to the terms of a HUD-1 settlement statement that the respondent prepared and the lender required in connection with the transaction. On April 5, 2005, after the three-day right of recession expired, consistent with the terms of the loan commitment, the respondent provided the borrower with two checks drawn on the account from the funding proceeds, one in the amount of $1,040, each payable to creditors to pay outstanding debts as required by the terms of her loan commitment. However, the borrower protested that the debts were not her debts, but the debts of her deceased husband. The borrower thus did not send the checks to the creditors.

At and around the time of the closing in 2005, the respondent maintained an active conveyancing practice and used the account for a large number of closings on a monthly

basis. The respondent did not periodically reconcile the account. The respondent kept disbursement closing sheets for each real estate transaction and did so in this transaction. However, the respondent did not balance the disbursement sheet in this case post-closing and did not follow the disbursements post-closing for uncleared transaction detail. As a result, he was unaware that the two checks given to the borrower had not cleared the account. At some point prior to February 2006, the respondent ceased using and closed the account. As of December 31, 2005, the account had a negative balance. The borrower's funds were negligently misused for purposes unrelated to the borrower.

By April 15, 2009, the borrower had settled her dispute with the two creditors and the debts were removed from her credit report. On April 15, 2009, the borrower sent to the respondent the original checks, her credit report and a request that the funds be returned to her. On June 23, 2011, not having received the funds, the borrower filed a complaint with bar counsel. Bar counsel investigated and determined that the funds were due. Due to financial hardship the respondent did not repay the funds until after bar counsel filed a petition for discipline.

The respondent's failure to periodically reconcile his IOLTA account at least once each sixty days and his failure to keep a balanced individual client ledger, violated Mass. R. Prof. C. 1.15(f)(c) and (e). The respondent's failure to promptly deliver trust funds to the borrower that the borrower was entitled to receive, and the subsequent negligent misuse of those funds with deprivation resulting, violated Mass. R. Prof. C. 1.15(b) and (c) and 8.4(h).

This matter came before the board on a stipulation of facts and disciplinary violations and a joint recommendation for a nine-month suspension retroactive to the date of the respondent's administrative suspension for failing to pay registration fees and subject to his attendance at a CLE law office accounting program. On September 10, 2012, the board accepted the parties' recommendation and voted to file an information with the Supreme Judicial Court. On September 28, 2012, the Court suspended the respondent for nine months as recommended.