

IN RE: LOUIS G. BERTUCCI, III

NO. BD-2014-006

S.J.C. Order of Term Suspension entered by Justice Hines on October 26, 2015.¹

SUMMARY²

The respondent was admitted to the Massachusetts bar on January 22, 2002. On January 16, 2014, the respondent was administratively suspended from the practice of law for failing to cooperate with bar counsel during her investigation. Since his admission, the respondent has concentrated his practice in real estate conveyancing.

In 2005, the respondent acted as lender's attorney in two separate real estate closings involving the same borrower, "R.S." R.S. was a homeless veteran who suffered from schizophrenia, post-traumatic stress disorder, depression and mental retardation. His comprehension, reading and writing skills were well below those of an average adult. In January of 2005, R.S. was persuaded to participate in an "investment program" by an agent of one Dwight Jenkins. Unbeknownst to R.S. the "investment" was actually a mortgage fraud scheme concocted by Jenkins, who, with the help of brokers, recruited gullible individuals to act as straw "investors" in real estate deals that Jenkins would arrange. With each deal, Jenkins would locate a residential property for sale; agree to purchase the property from the seller for the listed price; and then assign the right to purchase the property to a straw purchaser, or "investor", for a significantly higher price. At a subsequent closing, the straw would borrow the amount of the higher purchase price, pay the seller the lower listing price, and pay Jenkins the difference as a "contract release fee". In return for participating, the straw would receive a small fee.

After R.S. agreed to participate in an "investment program", Jenkins caused a false financial profile to be created for R.S., which grossly inflated his income, assets, and work and rental history. Using the false financial profile, a loan application was completed and submitted to a mortgage lender, which approved R.S. for a loan.

R.S. appeared at the respondent's office on February 7, 2005, for what he believed was a meeting concerning his investment. R.S. was unaware that the meeting was actually a real estate closing and that the respondent had been retained by the lender to act as the lender's settlement agent. At the direction of the respondent, who R.S. believed was representing his interests as his attorney in the investment, R.S. signed real estate closing documents, including an owner

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.

occupancy affidavit, two promissory notes, two mortgage agreements, and a completed loan application. By signing the documents presented to him, R.S. unwittingly borrowed \$411,964.24, secured by two mortgages for the purchase of a single family residential home in Dighton, Massachusetts. After the closing, R.S. received \$10,000 for his role.

Shortly thereafter, another loan application was completed on R.S.'s behalf. As before, the loan application misrepresented R.S.'s income, assets, and work and rental history. The loan application did not mention that R.S. owned or had outstanding mortgages on the Dighton property. The application was submitted to a different mortgage lender, which approved R.S. for a loan in connection with the purchase of property located in Boston, Massachusetts.

The second lender retained the respondent to act as its settlement agent at the closing on the Boston property. On February 28, 2005, R.S. appeared at the respondent's office, believing that he was again participating in another investment. At the respondent's direction, R.S. signed the real estate closing documents, including an owner occupancy affidavit, a promissory note, a mortgage agreement, and a completed loan application. By signing the documents presented to him, R.S. unwittingly borrowed \$437,198.13, secured by a mortgage for the purchase of a three-family home in Boston, Massachusetts. This time, R.S. received \$9,000 for his role in the transaction.

The two loan applications, which the respondent had R.S. sign only two weeks apart at the closings, contained inconsistencies regarding R.S.'s education, work experience and income. The owner occupancy affidavits, which the respondent also had R.S. sign, were inconsistent as well in that they stated that R.S. intended to make both the Dighton property and the Boston property his principal residence. The respondent knew that the closing documents, which he caused R.S. to sign, contained false and misleading information.

Several months after the closings, R.S. began receiving collection calls from the mortgage lenders regarding missed mortgage payments. R.S. was incapable of paying the mortgages and the properties were eventually foreclosed.

The respondent violated Mass. R. Prof. C. 8.4(c) and (h) by having R.S. sign closing documents that contained false and misleading statements, thereby facilitating two fraudulent transactions at the expense of R.S. The respondent also violated Mass. R. Prof. C. 8.4(c) and (h), as well as 1.4(b), by failing to make full disclosure to his lender clients of the true nature of the transactions at least as of the time of the second closing if not before, and by providing his lender clients with false and misleading closing documents. The respondent violated Mass. R. Prof. C. 4.3(a) by not making reasonable efforts to correct R.S.'s misunderstanding as to the respondent's role in the real estate closings and violated Mass. R. Prof. C. 4.3(b) by advising R.S. to sign the loan documents without advising R.S. to secure the advice of independent counsel. The respondent violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3 by failing to competently and diligently represent his lender clients and by failing to seek their lawful objectives through reasonably available means.

In a separate matter, the respondent was retained by a title insurance company in 2012 to act as its settlement agent in real estate closings. As settlement agent, the respondent was responsible for collecting recording fees and using those fees to record insured mortgages. The respondent collected a total of \$1,075 in recording fees for five separate real estate closings conducted on behalf of his client between April of 2012 and November of 2012.

At the time, the respondent employed a paralegal whom the respondent had designated as an authorized signatory on his IOLTA and operating accounts. The paralegal had authority to,

and did, deposit into and disburse funds out of the respondent's IOLTA account. The respondent also delegated to the paralegal the responsibility for insuring that the respondent's IOLTA account records were maintained, reviewed and reconciled as required by Mass. R. Prof. C. 1.15.

The respondent failed to make adequate efforts to ensure that he had in place measures giving reasonable assurance that his paralegal was conducting herself in a manner compatible with the respondent's professional obligations. The respondent did not personally review statements for his IOLTA account and he did not reconcile his IOLTA account. The respondent failed to confirm that all closing funds had been received and disbursed in accordance with the settlement statements and failed to confirm that mortgages had been properly recorded or discharged.

In December of 2012, the respondent discovered that his paralegal had misappropriated approximately \$130,000 from him. The respondent discovered that the paralegal had also misappropriated the \$1,075 in recording fees that the respondent had collected from the five closings. The respondent fired the paralegal and reported the matter to the police. The respondent also reported the matter to his client, whose mortgages were all subsequently recorded.

The respondent violated Mass. R. Prof. C. 5.3(a) and (b) by failing to adequately supervise his paralegal's conduct and by failing to have reasonable measures in place to provide reasonable assurance that his paralegal's conduct conformed to the respondent's professional obligations. The respondent violated Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.4(a) by failing to ensure that his client's mortgages were promptly recorded. The respondent also violated Mass. R. Prof. C. 1.15(b) and 1.15(f) by failing to safeguard his client funds, and by failing to insure that he maintained adequate records of his receipt and maintenance of client funds.

In aggravation, the respondent took advantage of a vulnerable individual, R.S., in connection with two real estate closings. The respondent also failed to cooperate with bar counsel during her investigation. There were no mitigating circumstances.

On August 28, 2015, a petition for discipline and the respondent's answer to the petition for discipline and stipulation of the parties were filed with the Board of Bar Overseers. The parties jointly recommended that that the respondent be suspended from the practice of law for two years, retroactive to January 16, 2014, the date of the entry of the respondent's administrative suspension.

On September 21, 2015, the board unanimously voted to accept the parties' stipulation and recommendation for discipline. On October 16, 2015, the board filed an information and the record of the proceedings with the Supreme Judicial Court for Suffolk County. On October 26, 2015, the Supreme Judicial Court for Suffolk County (Hines, J.) ordered that the respondent be suspended from the practice of law for two years, retroactive to January 16, 2014.