

**IN RE: GARY M. KATZ****NO. BD-2014-090****SUMMARY<sup>1</sup>**

The respondent was admitted to the bar in 1995 and assumed retirement status in March 2012. This matter came before the Court on a stipulated recommendation for suspension based on two counts of misconduct.

The first count arose from record-keeping problems in the respondent's IOLTA account. From at least early 2000 through March 2012, the respondent failed to hold trust property separate from his own property in his IOLTA account. He deposited earned fees to the IOLTA account and on occasion paid his own personal or business expenses directly from the account. He also failed to preserve complete trust account records for a period of six years from the termination of the representation. His conduct in these respects was in violation of Mass. R. Prof. C. 1.15 (b)(2), (e)(3) and (4), and (f), for conduct on and after July 1, 2004, and predecessor rules for conduct before that date.

From at least July 1, 2004, through March 2012, the respondent either did not maintain a check register for his IOLTA account or maintained a check register that did not have a client identifier after every transaction, a list of every transaction, and/or a running balance after every transaction, did not keep individual client ledgers for each client matter in his IOLTA account, did not keep a ledger of his personal funds in the IOLTA account to cover bank fees and expenses, and did not perform a three-way reconciliation of the IOLTA account at least every sixty days. His conduct in these respects was in violation of Mass. R. Prof. C. 1.15(f)(1)(B), (C), (D), and (E).

In 2002, the respondent was the settlement agent for a closing. He negligently failed to pay a designated expense from this closing in the amount of approximately \$300 and subsequently negligently expended some or all of the trust funds intended for payment of this expense for other personal or business purposes unrelated to the closing. The respondent's conduct in failing to pay the closing expense violated Mass. R. Prof. C. 1.1 and 1.3. His conduct in negligently misusing trust funds from the closing is conduct in violation of Mass. R. Prof. C. 1.15(a) and (b) as then in effect for conduct prior to July 1, 2004, and Mass. R. Prof. C. 1.15(b)(1) and (c) for conduct on and after July 1, 2004.

In aggravation of this matter, in February 2000, in connection with an unrelated matter, the respondent was advised by bar counsel that his record keeping was inadequate and that his account was commingled. The respondent at that time agreed to, and did, attend a CLE program designated by bar counsel that included training on trust accounting.

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<sup>1</sup> Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

In the second count, the respondent, as attorney for a married couple, in 2005 prepared and caused to be executed documents necessary to transfer ownership of certain real estate to their adult son from a trust of which the father was trustee. At the clients' request, no documents were recorded.

In 2011, the son and his wife were involved in divorce proceedings. At the request of counsel for the son's wife, the respondent provided an affidavit describing the circumstances under which the documents to transfer the property had been executed. In violation of Mass. R. Prof. C. 1.6(a), the respondent did not obtain the consent after consultation with his clients to provide this affidavit or to reveal the information contained in the affidavit to the son's wife and her counsel.

The matter came before the board on a stipulation of facts and disciplinary violations and a joint recommendation that the respondent be suspended for six months and a day, with the further requirement that he be required to petition for reinstatement. On September 8, 2014, the board voted to accept the stipulation and to recommend the agreed-upon disposition to the Supreme Judicial Court. The Court so ordered on September 22, 2014.