

IN RE: DAVID M. BLUMENTHAL

NO. BD-2016-101

S.J.C. Order of Term Suspension/Stayed entered by Justice Botsford on October 6, 2016.¹

SUMMARY²

The respondent received a six-month suspension, stayed with conditions, for failure to maintain IOLTA records and other trust account violations, failure to obtain title insurance policies in the course of a conveyancing practice, and failure to supervise a paralegal subordinate.

Between 1998 and June 2014, the respondent failed to keep complete records of his receipt, maintenance and distribution of all funds in an IOLTA account (IOLTA account #1). From and after July 2004, the respondent failed to perform required reconciliations and maintain all required records for this account. The respondent failed to remit to clients or third parties all funds due them from this account, including the funds described above, and retained those funds for periods of years in the account. The respondent failed promptly to withdraw all his earned fees and all expense reimbursements to which he was entitled. He also created negative account balances by making unrecorded disbursements and subsequently remitting excess funds to those clients.

The respondent's failure promptly to remit all funds due clients and third parties from IOLTA account #1 violated Mass. R. Prof. C. 1.15(c) and (d)(1) as then in effect. The respondent's issuance of checks without supporting funds and creation of negative account balances with respect to individual clients violated Mass. R. Prof. C. 1.15(f)(1)(C) as then in effect. His failure promptly to withdraw all his earned fees and expense reimbursements violated Mass. R. Prof. C. 1.15(b) as then in effect. Through June 30, 2004, the respondent's failure to maintain complete account records violated Mass. R. Prof. C. 1.15(a) as then in effect. From and after July 1, 2004, his failure to reconcile this account, failure to account and failure to maintain required account violated Mass. R. Prof. C. 1.15(f)(1)(B)-(F) as then in effect.

In one case, the respondent had represented a client in 2005 in a cash purchase of real estate and acted as closing and title insurance agent in the transaction. After the closing, the respondent disbursed all the sale proceeds from his IOLTA account #1 except for funds earmarked for an owner's title insurance policy and some excess funds due the client. The respondent failed to pay the required premium and never had a title policy issued for the client. He did not inform the client that no title policy had been issued or remit any funds until 2015, after bar counsel inquired. At that time the client elected not to obtain a policy, and the respondent returned all funds due the client. The respondent's failure to procure title insurance

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.

for the client and failure timely to inform the client that he had not done so violated Mass. R. Prof. C. 1.2(a), 1.3 and 1.4(a) and (b) as then in effect. His failure promptly to remit or return the funds due the client violated Mass. R. Prof. C. 1.15(c) as then in effect.

In addition, in the spring of 2008, the respondent entered into an arrangement to act as lender's counsel and closing agent for a residential mortgage lender. Under this arrangement, the respondent used the services of a paralegal employed by the lender to prepare the closing documents and assist in the transactions. The respondent opened an IOLTA account for the lender's closings (IOLTA account #2) with himself and the paralegal as signatories. Although the respondent had direct supervisory authority over the paralegal for the lender's closings, he failed to make reasonable efforts to have in effect measures giving reasonable assurance that the paralegal's conduct was compatible with his professional obligations.

In 2008 and 2009, the respondent handled about twenty-one sale and refinance closings for the lender. During that period, and continuing until the fall of 2012, the respondent gave the paralegal and allowed her to retain total, exclusive control over IOLTA account #2. The paralegal failed to perform required reconciliations and failed to keep all required records for the account. Prior to the fall of 2012, the respondent kept no records of his own for IOLTA account #2, did not review the paralegal's records, and exercised no oversight of the paralegal's handling of the account and account records.

The respondent also delegated responsibility to the paralegal for assuring that title insurance policies were issued to the lender and, if requested, to buyers. Funds for that purpose were collected at each closing. As of August 2009, however, the paralegal had failed to place the policies and pay the required premiums to the title insurer for at least sixteen closings. The paralegal subsequently placed four more policies but never remitted premiums or had title policies issued for the remaining uninsured transactions, as a result of which the lender in twelve closings and at least two buyers had no title protection.

In the fall of 2012, the respondent learned of the undisbursed funds and the title policies that had never been issued. He failed to inform the lender or the affected buyers or take action to rectify the problem until 2015, when he disbursed the required premiums to the title insurer and obtained the title policies.

By failing timely to assure the issuance of title insurance policies and failure timely to inform the lender of his failure to do so, the respondent violated Mass. R. Prof. C. 1.2(a), 1.3 and 1.4(a) and (b) as then in effect. By failing promptly to remit all premiums due the title insurer, the respondent violated Mass. R. Prof. C. 1.15(c) as then in effect. By failing to reconcile his IOLTA account #2 and maintain required account records, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(B)-(F) as then in effect. By failing to supervise the paralegal's conduct, the respondent violated Mass. R. Prof. C. 5.3(b) as then in effect.

The respondent had no history of discipline. He stopped using IOLTA account #1 after bar counsel began her inquiry, engaged an accountant for a complete audit and reconciliation of that account, and worked to identify and disburse all account funds owed to clients or former clients and third parties. The respondent properly disbursed all funds due and owing from IOLTA account #2. He now maintains a new IOLTA account with compliant records. No title claims were made against the lender or any owner who lacked title protection due to the

respondent's failure to have a title insurance policy issued, and the policies issued to rectify the problem are retroactive to the acquisition dates.

The matter came before the Board of Bar Overseers on the parties' stipulation of facts and rule violations and an agreed recommendation for discipline by a six-month suspension, with the suspension stayed for two years on conditions for financial monitoring and reporting by a certified public accountant. The Board of Bar Overseers voted to accept the stipulation and recommendation. On October 6, 2016, the Supreme Judicial Court for Suffolk County entered a final order for a six-month stayed suspension on the stated conditions.

