

IN RE: BARRY WAYNE PLUNKETT, JR.

NO. BD-2017-096

S.J.C. Judgment of Disbarment entered by Justice Kafker on October 10, 2017, with an effective date of November 9, 2017.¹

The respondent was disbarred by stipulation for intentional misuse of trust funds with deprivation. While serving as settlement agent on multiple residential real estate transactions, the respondent converted loan proceeds to his personal use.

SUMMARY²

The respondent, Barry W. Plunkett Jr., was disbarred for a pattern of unethical misconduct in a series of real estate transactions. In each, the respondent was the settlement agent responsible for paying off a homeowner's loan. Rather than doing that, the respondent intentionally misused the payoff monies for his own personal use. The Board of Bar Overseers found that the respondent's actions violated Mass. R. Prof. C. 1.15 and additional provisions of the Massachusetts Rules of Professional Conduct. His misconduct is summarized below.

The respondent was admitted to the Bar of the Commonwealth on December 20, 1994. At all relevant times, the respondent was a solo practitioner concentrating in real estate closings. Among other things, the respondent acted as settlement agent on behalf of lenders for residential real estate purchases and refinances. He has no history of prior discipline.

The Walpole Refinancing

At the end of 2013, the respondent was the settlement agent for the refinancing of a home in Walpole, Massachusetts. The homeowners were replacing their existing home mortgage loan at Bank of America with a new one at EverBank. It was the respondent's responsibility to pay off the Bank of America loan with funds provided to him by EverBank. The respondent accordingly received funding for the refinancing from EverBank; he failed, however, to pay off the loan. Instead, he intentionally misused the payoff monies for his own personal use. To avoid detection, over the next fifteen (15) months, the respondent made monthly payments to Bank of America on the loan. Ultimately, in May of 2015, the homeowners learned on their own that the loan remained active. They confronted the respondent, who assured them that there must have been an administrative error at his firm. He promised to make the payoff payment, which he accomplished only after transferring personal funds and funds from family members into one of his firm's trust accounts. An investigation by bar counsel followed, during which the respondent initially repeated the false representation that the delayed payoff was an administrative error.

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.

The respondent's intentional misuse of trust funds for his own personal or business purposes with actual deprivation resulting violated Mass. R. Prof. C. 1.15 and 8.4(c) and (h). The respondent's false representations about his failure to make the timely payoff violated Mass. R. Prof. C. 8.1(a), 8.4(c), (d) and (h).

The Melrose Refinancing

In June of 2014, the respondent was the settlement agent for the refinancing of a home in Melrose, Massachusetts. The homeowners were replacing each of their existing home loans at Cole Taylor Bank and TCF National Bank with a new one at EverBank. It was the respondent's responsibility to pay off the loans with funds provided to him by EverBank. The respondent accordingly received funding for the refinancing from EverBank; he failed, however, to pay off the loans. Instead, he intentionally misused the payoff monies for his own personal use. To avoid detection, over the next six (6) months, the respondent made monthly payments to Cole Taylor Bank and TCF National Bank. He did not pay off the loans until the end of 2014.

The respondent's intentional misuse of trust funds for his own personal or business purposes with actual deprivation resulting violated Mass. R. Prof. C. 1.15 and 8.4(c) and (h).

The Ipswich Refinancing

In December of 2014, the respondent was the settlement agent for the refinancing of a home in Ipswich, Massachusetts. The homeowners were replacing each of their existing home loans at Eastern Bank and JP Morgan Chase Bank with a new one at United Bank. It was the respondent's responsibility to pay off the loans with funds provided to him by United Bank. The respondent accordingly received funding for the refinancing from the bank and paid off the Eastern Bank loan. He did not, however, pay off the loan at JP Morgan Chase. Instead, he intentionally misused the payoff monies for his own personal use. To avoid detection, the respondent made monthly payments to JP Morgan Chase on the loan. During bar counsel's investigation into the matter, the respondent testified falsely under oath that he had paid off the loan when, in fact, it remained active. He had made no restitution.

The respondent's intentional misuse of trust funds for his own personal or business purposes with actual deprivation resulting violated Mass. R. Prof. C. 1.15 and 8.4(c) and (h). The respondent's false representation to bar counsel about paying off the loan violated Mass. R. Prof. C. 8.1(a) and 8.4(c), (d) and (h).

The Needham Refinancing

At the end of 2014, the respondent was the settlement agent for the refinancing of a home in Needham, Massachusetts. The homeowners were replacing their existing home mortgage loan at Cambridge Mortgage Group LLC, a subsidiary of South Shore Bank, with a new one at United Bank. It was the respondent's responsibility to pay off the loan with funds provided to him by United Bank. The respondent accordingly received funding for the refinancing from United Bank; he failed, however, to pay off the loan. Instead, he intentionally misused the payoff monies for his own personal use. To avoid detection, the respondent made monthly payments to

South Shore Bank on the loan. During bar counsel's investigation into the matter, the respondent testified falsely under oath that he was no longer misusing trust funds from any real estate transactions and that, in particular, he had made all of the necessary payoffs on matters in which he had acted as a settlement agent. In fact, the respondent had not made any restitution in the Needham refinancing matter. The respondent's intentional misuse of trust funds for his own personal or business purposes with actual deprivation resulting violated Mass. R. Prof. C. 1.15 and 8.4(c) and (h). The respondent's false representation to bar counsel about no longer misusing trust funds and having made all of the necessary payoffs violated Mass. R. Prof. C. 8.1(a) and 8.4(c), (d) and (h).

Disposition

This matter came before the Board of Bar Overseers on a stipulation filed by the parties in which the respondent acknowledged that the material facts which form the basis of the foregoing allegations and charges could be proved by a preponderance of evidence. The stipulation contained a joint recommendation that the respondent be disbarred from the practice of law. On September 11, 2017, the board accepted the parties' recommendation and recommended a disbarment to the Supreme Judicial Court. On October 10, 2017, the Court issued a judgment of disbarment, effective thirty (30) days from entry.