

IN THE MATTER OF HOWARD FUCHS  
ORDER OF INDEFINITE SUSPENSION<sup>1</sup>

SUMMARY

This matter came before the Court on the respondent's affidavit of resignation pursuant to Supreme Judicial Court Rule 4:01, section 15. The respondent admitted in the affidavit that the material facts set forth in Bar Counsel's statement of disciplinary charges would be established by sufficient evidence at a hearing.

In the first matter, the respondent's clients in January 1999 transmitted to the respondent a check in the amount of \$16,000 to be used as part of the payoff of a second mortgage. The respondent deposited the check to his IOLTA account, but did not make payment to the mortgagee.

The IOLTA account was a commingled account used for the deposit and disbursement of both client funds and personal or business funds. The account was already in overdraft when the check for \$16,000 was deposited. The respondent used the balance of the clients' funds for his own purposes unrelated to the clients such that the balance in the IOLTA account was \$5 by January 29, 1999.

Despite inquiries from the client, and from Bar Counsel after a complaint was filed in June 1999, the respondent did not make restitution until September 1999. At that time he was given or borrowed money from family members to repay the clients.

In the second matter, the respondent represented the seller at a real estate closing in June 1997. It was agreed by the parties that the respondent would hold \$29,500 in escrow after the closing pending resolution of a dispute between the seller and the real estate broker. The respondent deposited the escrow funds to the commingled IOLTA account described above.

The seller and broker brought suit against each other, which settled in principle in March 1999. Thereafter, both the respondent's client and counsel for the broker had difficulty communicating with the respondent to finalize the settlement. The client filed a complaint with Bar Counsel in July 1999.

The respondent did not maintain the escrow funds intact during the litigation. Without authorization from either party, he used the funds for his own personal or business purposes unrelated to the escrow agreement. By October 28, 1998, the balance in the IOLTA account was \$159, without any payment having been made for the benefit of the parties to the escrow agreement. In September 1999, after receiving the complaint from Bar Counsel, the respondent was given or borrowed money from family members to make restitution.

In both cases, the respondent's conduct in commingling and intentionally converting trust funds, with intent to deprive clients or third persons of the use of the funds at least temporarily, and with actual deprivation resulting was in violation of Mass. R. Prof. C. 1.15(a)-(d) and 8.4(c),(h).

On December 13, 1999, the Board of Bar Overseers voted to recommend that the affidavit of resignation be accepted and that an order of indefinite suspension be entered. The Court so ordered on December 30, 1999.

<sup>1</sup>S.J.C. Order of Indefinite Suspension entered by Justice Ireland on December 30, 1999.

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