

IN RE: SHEPHARD P. BINGHAM

Order (public reprimand) entered by the Board January 24, 2001.

SUMMARY<sup>1</sup>

Two brothers, William and Gordon, were co-trustees and one-third beneficiaries of a nominee realty trust. The third beneficiary was another family trust. The respondent represented Gordon.

On January 15, 1997, the realty trust sold commercial property located in Massachusetts to another entity for \$835,000.00. The property housed two commercial enterprises organized as corporations in which William and Gordon also held ownership interests. The sale of the real estate represented a part of a complicated disengagement process between the two brothers. Among other terms, the property was sold subject to a \$300,000.00 mortgage loan from the buyer to the seller.

In December 1997, the buyer prepaid the \$300,000.00 note and the discharge of the mortgage was recorded. According to the terms of the agreement, the payment of the payoff amount, \$254,066.60, should have been made to another individual, who was to deposit that amount into the bank account of the seller trust and distribute, by check, one third to each beneficiary. However, the net proceeds check instead was made payable to the respondent in his capacity as attorney for the seller. The respondent, with the knowledge of William and Gordon, deposited the check into the seller trust's bank account.

On December 31, 1997, the respondent received from his client Gordon a check drawn on the seller trust's bank account for \$84,688.86. The respondent was told that the check was William's "purported" share of the proceeds. At or about that date, William knew that the respondent was holding the funds. On January 2, 1998, the respondent deposited the \$84,688.86 check into his IOLTA account. At this time, the two other beneficiaries (his client Gordon and the other family trust) had each already received their one-third distribution. The respondent thereafter did not make distribution to William because his client, Gordon, asserted various claims of entitlement to the funds being held. These claims were related to personal loans from Gordon to William, unpaid wages, and loans to other companies with which William and Gordon were associated.

On April 17, 1998, William retained counsel, who wrote a letter to the respondent protesting the retention of any of the funds. Thereafter, during April, May and June 1998, there was an exchange of correspondence between counsel. During this time, Gordon directed the respondent not to release any funds to William until all claims were settled.

On May 20, 1998, the respondent wrote a letter to William's counsel, itemizing the totality of the claims. The dollar figure of the total of claims at that time was approximately \$16,000.00. On June 23, 1998, by letter, the respondent again informed William's counsel that he would not release any of the proceeds until all matters were resolved. On September 21, 1998, William filed a complaint with Bar Counsel. On November 13, 1998, the respondent reached agreement with William's counsel and released \$74,688.00 to William, with \$10,000.00 still held pending resolution of an isolated litigation matter. On November 23, 1998, the

respondent released the remaining \$10,000.00 to William in full satisfaction of William's claims. Gordon subsequently dropped his claims against William.

During the time period from April 1998 to November 1998 that the respondent was holding the disputed funds, the respondent did not maintain the full balance of \$84,688.86. The respondent distributed a portion of the disputed funds in an amount not exceeding \$13,000.00 upon the direction of, or as authorized by, Gordon and because the respondent believed that his client was entitled to these funds. These funds were distributed without the knowledge or authorization of William. The respondent ultimately paid William from personal funds the difference between the funds that the respondent was holding in his IOLTA account and the funds to which William claimed that he was entitled.

The respondent's distribution of a portion of disputed funds without mutual instruction or court order was in violation of Mass. R. Prof. C. 1.15(a) and (b). The respondent's failure to distribute to William the undisputed portion of the funds held was in violation of Mass. R. Prof. C. 1.15(a) and (b).

During the time that the respondent held the funds, the respondent also did not maintain his IOLTA account in accordance with the requirements of Mass. R. Prof. C. 1.15. The respondent did not withdraw fees promptly when earned, but withdrew fees piecemeal on an "as needed" basis. The respondent deposited his own personal funds into the account and paid personal obligations, in the same amounts, from the account. The respondent allowed funds not nominal in amount to remain in the account for more than a short period of time. In particular, the respondent represented his sister and others in the sale of a condominium unit, deposited his sister's share of the proceeds into his IOLTA account, and allowed that share to remain in his account for a substantial period of time, distributing the same to his sister at various times as she directed.

The respondent's conduct in allowing disputed sums to remain in his IOLTA account for a substantial length of time was in violation of Mass. R. Prof. C. 1.15(e). The respondent's depositing of personal funds and paying personal or office expenses directly from his IOLTA account, and the respondent's withdrawal of fees piecemeal from his IOLTA account, rather than in full as earned, constituted commingling of client and personal funds in violation of Mass. R. Prof. C. 1.15(a).

The parties stipulated that the appropriate sanction was a public reprimand. On October 16, 2000, the Board of Bar Overseers voted to adopt the parties' stipulation and proposed sanction. On January 24, 2001, the respondent received a public reprimand.

<sup>1</sup> Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.