

IN RE: RANDY M. HITCHCOCK

Order (public reprimand) entered by the Board October 30, 2001.

SUMMARY<sup>1</sup>

Pursuant to Mass. R. Prof. C. 1.15(f), Bar Counsel on August 6, 1998 received notice from the bank in which the respondent maintained his IOLTA account that check no. 1329 in the amount of \$3592, and drawn on the respondent's IOLTA account, had been dishonored. Payment of this check would have caused an overdraft in the amount of \$195.

Check no. 1329 was dishonored because the respondent had earlier made an error in his calculations and overpaid a client, causing a shortfall in the account when paying an unrelated client. The check to this second client was accordingly returned unpaid on account of insufficient funds. The respondent deposited adequate personal funds to the account to correct the error and check no. 1329 was paid upon redeposit.

Review of the records of the respondent's IOLTA account showed that, commencing at least as of November 1997 and continuing until after the notice of dishonored check was sent and Bar Counsel became involved, the respondent's record keeping in his IOLTA account was generally inadequate. Personal funds were commingled with trust funds. Individual client ledgers were not maintained; an accurate check register was not kept; fees were not withdrawn from the account as earned and, when paid, were withdrawn without reference to bills to clients or even to particular client matters; and the account was not reconciled.

As a result of these problems, the respondent made assumptions, sometimes incorrectly, as to whose funds comprised the balance in the account and how much was due the respondent. These problems led to the problems described below and to deficiencies in the account even prior to the return of check no. 1329.

In January 1998, the respondent began depositing money from personal funds and family contributions to his IOLTA account in preparation for a closing on certain real estate that the respondent and his wife were to purchase in April 1998. By the end of April 1998, the respondent calculated, incorrectly, that he had available for the closing \$95,000 from deposits of personal or family funds and from earned fees not withdrawn from the account. As a consequence, he negligently withdrew \$95,000 by check payable to himself and applied this sum to the funds due from him at the closing on April 29, 1998.

In fact, the amount of funds in the IOLTA account available for this closing was only \$79,562. The shortfall of \$15,438 was covered by the float in the account. The deficiency in the trust account balance was subsequently covered by earned fees retained in the account between May and August, 1998, without deprivation to any client.

The respondent's negligent misuse of client funds without intent to deprive and with no deprivation resulting, his commingling of client funds with personal or business funds, and his inadequate and improper record keeping was conduct in violation of Mass. R. Prof. C. 1.15(a).

This matter came before the Board on a stipulation of facts and disciplinary violations and a

joint recommendation for discipline by public reprimand, conditioned upon the respondent's satisfactory completion of a one-year accounting probation agreement. The Board accepted the parties' recommendation and imposed a public reprimand.

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

Please direct all questions to [webmaster@massbbo.org](mailto:webmaster@massbbo.org).

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