

IN RE: JOSEPH A. LOPISI

Order (public reprimand) entered by the Board March 27, 2002.

SUMMARY¹

On October 14, 1999, and pursuant to Mass. R. Prof. C. 1.15(f), Bar Counsel received from U.S. Trust Company a notice of a dishonored check drawn on the respondent's IOLTA account. The check was payable to the respondent's client, a real estate developer, and represented the partial release of escrow funds. The check was resubmitted and paid on October 18, 1999.

The respondent's trust account management was faulty in several respects. First, commencing January 1, 1990 (the effective date of the amendments to former Canon Nine of Supreme Judicial Court Rule 3:07 to make mandatory the maintenance of pooled short-term trust funds in IOLTA accounts), and continuing until 2001, the respondent improperly held pooled trust funds at Cambridge Savings Bank in an interest-bearing trust account that was not an IOLTA account.

In March 1999, the respondent opened the U.S. Trust Company IOLTA account on which the October 1999 dishonored check was drawn. However, even after opening this IOLTA account, he continued to deposit pooled trust funds to both the U.S. Trust Company and the Cambridge Savings Bank accounts and did not close the Cambridge Savings Bank account until 2001 and as a result of Bar Counsel's investigation.

Second, as to both the U.S. Trust Company account and the Cambridge Savings Bank account, the respondent's record keeping was generally inadequate. Bank statements were not retained as required; individual client ledgers were not maintained; accurate check registers were not maintained; the accounts were not reconciled; and several clients were inadvertently overpaid.

The respondent accounted to clients for interest earned on the Cambridge Savings Bank account where feasible and otherwise allowed interest earned to accumulate in the account. However, Cambridge Savings Bank also imposed monthly service charges on this account. The respondent did not reimburse the Cambridge Savings Bank account for these service charges. At least by June 1999 and unknown to the respondent, accrued interest had been exhausted by the payment of service charges, while additional service charges continued to be withdrawn by the bank against trust funds.

The U.S. Trust Company check was dishonored in October 1999 when the respondent became confused as to which bank was the depository for a down payment in June 1999 on a pending sale of real estate by two clients of the respondent. The funds in fact had been deposited to the Cambridge Savings Bank account. However, after the closing on this sale in August 1999, the respondent issued these clients a check from the U.S. Trust Company account for the amount of deposit. The check was enabled to clear only by the use of other client funds on deposit in the U.S. Trust Company account, including the escrow funds held for the real estate developer. The result of this error was that there were inadequate funds in the U.S. Trust Company account to pay the real estate developer in October 1999, causing the check to the developer to be returned unpaid when initially presented. In addition, and as a consequence

of the other record keeping problems in the respondent's accounts including the unreimbursed Cambridge Savings Bank service charges, the balance in the Cambridge Saving Bank account had fallen below the amount of the real estate deposit prior to the August 1999 closing on the sale.

The respondent's failure to maintain pooled short-term client funds in an IOLTA account from 1990 until 1999 is conduct in violation of Canon Nine, DR 9-102(C), and Mass. R. Prof. C. 1.15(e). The respondent's negligent misuse of trust funds, without intent to deprive and with no deprivation resulting, is conduct in violation of Mass. R. Prof. C. 1.15(a). The respondent's inadequate and improper record keeping is conduct in violation of Canon Six, DR 6-101(A)(2),(3), Canon Nine, DR 9-102(A),(B)(3),(4), Mass. R. Prof. C. 1.3 and Mass. R. Prof. C. 1.15(a).

In mitigation, after Bar Counsel commenced investigating, the respondent retained an accountant who reconciled both trust accounts. Only the IOLTA account remains active.

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 satisfactory completion of the one-year financial probation agreement. The Board accepted the parties' recommendation and imposed a public reprimand.

¹ Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.

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