

ELAINE E. BALTAS

Order (public reprimand) entered by the Board December 2, 2005.

SUMMARY¹

The respondent received a public reprimand for her conduct in three separate matters. In the first matter, the respondent acted as the closing agent and attorney for the Mackinac Savings Bank in five residential real estate closings between January and March of 2003. Her responsibilities for each closing included obtaining a title commitment from a title insurance agency prior to the closing, and then obtaining and delivering to the bank a title insurance policy from the title insurer after the deed was recorded. In addition, after the closing the respondent was responsible for recording assignments of mortgages from the bank at the local registry of deeds.

The respondent obtained title commitments from title insurance companies prior to the five closings. After the closings, due to inadvertence and lack of diligence, the respondent did not take steps to ensure that the title insurers provided her with title policies with respect to two of the properties. With respect to a third property, the respondent received the title insurance policy, but failed to promptly deliver the title policy to the bank. In April and May of 2003, after the closings, the respondent also received assignments of mortgages from the bank with respect to three of the properties. Due to inadvertence and lack of diligence, the respondent did not promptly record the assignments of mortgages for the three properties.

After the closings, and continuing through the fall of 2004, the respondent failed to respond to the bank's requests for information about the status of the matters. On October 22, 2004, the bank filed a request for investigation with bar counsel.

Thereafter, in about January of 2005, the respondent forwarded to the bank the one title insurance policy that she had found in her file. The respondent requested copies of the remaining two title insurance policies from the title insurer, and in March of 2005, the respondent provided those title policies to the bank. In February of 2005, the respondent recorded the three assignments of mortgages with the registry of deeds.

By failing to promptly obtain and deliver the title insurance policies to her client and to record the assignments of mortgages, the respondent violated Mass. R. Prof. C. 1.3 (obligation to act with reasonable diligence and promptness in representing a client). By failing to promptly respond to her client's requests for information about the status of the matter, the respondent violated Mass. R. Prof. C. 1.4(a) (obligation to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information).

In the second matter, in 2003 and 2004, the respondent represented a husband and wife in the sale of their personal residence. The closing took place on December 29, 2003. The respondent attended the closing on behalf of the husband and wife because they were traveling outside the country.

On December 24, 2003, prior to the closing, the husband signed the deed in his own name and in the name of his wife, pursuant to a durable power of attorney dated June 2, 2003, naming the husband as attorney-in-fact for the wife. At the closing, a question arose as to the validity of the power of attorney. The parties agreed to go forward with the closing, with the sellers' proceeds to be held in escrow by the closing attorney until the husband executed an affidavit confirming that the power of attorney was still in full force and effect. After the closing, the respondent promptly notified her clients of the need for the husband to execute a confirmatory affidavit. Because of the difficulty in executing an affidavit with the required acknowledgment while still abroad, the clients decided that the husband would sign the affidavit upon his return to Massachusetts on January 17, 2004.

In the late fall of 2003, the respondent closed her office. When the husband returned to Massachusetts, he had difficulty contacting the respondent because she had not informed him of her new address and telephone number, nor had she filed a supplemental registration statement with the Board of Bar Overseers reporting her change of address within thirty days of the change, as required by S.J.C. Rule 4:02, § 1. The husband contacted the respondent through a third party, and on or about January 26, 2004, the husband met with the respondent and signed the required affidavit. The respondent provided the husband's affidavit to the closing attorney, and on or about February 5, 2004, the closing attorney recorded the deed, the power of attorney, and the affidavit at the registry of deeds.

For approximately two weeks after February 5, 2004, the closing attorney attempted to contact the respondent to arrange for payment of the settlement proceeds to the sellers, but was unable to do so because he did not have the respondent's current address and telephone number. On or about February 19, 2004, the closing attorney contacted the respondent through a third party, and the respondent arranged to pick up the check for her clients. On or about February 24, 2004, the clients received and deposited a check for \$88,599.12, representing their proceeds from the sale of the property.

On March 15, 2004, the closing attorney sent the respondent a check for \$1,934.67, for additional funds owed to the sellers due to an overpayment of their third quarter real estate taxes. Between mid-March and mid-April, 2004, the respondent attempted to arrange a meeting with her clients, but was unable to do so due to her commitments and their unavailability. On or about April 16, 2004, the respondent mailed the \$1,934.67 check to her clients by first class mail. However, the respondent addressed the envelope incorrectly, the clients never received the check, and the check was lost in the mail.

Between March and November of 2004, the respondent failed to respond to the clients' requests for information about the closing and the final distribution of the proceeds. On September 13, 2004, the clients filed a request for investigation with bar counsel. The respondent replied to the grievance, and on or about December 6, 2004, the clients contacted the settlement agent, who sent them a new check for \$1,934.67, in place of the original check that had been lost.

By failing to promptly notify the clients and opposing counsel of the change in her office address and telephone number, the respondent violated Mass. R. Prof. C. 1.3, and 1.4(a) and (b). By failing to promptly respond to her client's requests for information about the status of the matter, the respondent violated Mass. R. Prof. C. 1.4(a). By failing to take steps to ensure that her clients promptly received the settlement proceeds from the sale of their real property, the respondent violated Mass. R. Prof. C. 1.3. By sending a check by first class mail to the wrong address, thereby losing the check in the mail, the respondent violated Mass. R. Prof. C. 1.1 (obligation to provide competent representation to a client, including the preparation reasonably necessary for the representation), and Mass. R. Prof. C. 1.15(a) and (b) of the rule in effect prior to July 1, 2004 [now 1.15(b)(3) and (c)] (obligation to safeguard client property, and to promptly deliver to a client funds that the client is entitled to receive).

In the third matter, the respondent represented a client injured in an automobile accident on July 12, 1998. In September of 2003, the client agreed to a settlement of her bodily injury claim, and the respondent received on the client's behalf and deposited the settlement check for \$37,500.00 to her IOLTA account.

On or about September 15, 2003, the respondent paid the client her share of the settlement proceeds by a check drawn on the respondent's IOLTA account. At that time, the respondent also prepared five checks drawn on her IOLTA account totaling \$1,725.90 to pay the client's medical care providers, copying charges for her medical records, the mediator, and a reporting service for expenses incurred in Callahan's case. The respondent listed each of these checks in her check register, but through inadvertence and lack of diligence, the respondent placed the checks in her file and did not distribute them to the payees. However, because the respondent failed to reconcile her check register with the bank statements, she was not aware that the checks she had drawn had not been negotiated.

Beginning in December 2003, and continuing until April of 2004, the client attempted to contact the respondent to find out if she had paid one of the medical care providers, because the client was still being billed for the services she received. The respondent did not reply to the client's telephone calls and letters requesting that she account for the settlement funds.

On May 4, 2004, the client filed a request for investigation with bar counsel. In June of 2004, the respondent paid the medical care provider's bill totaling \$760.00 from the funds that she was still holding from the settlement in her IOLTA account. In January of 2005, the respondent found the remaining four original checks in her file. As the checks were stale, the respondent drew four new checks, and paid the final disbursements in connection with the client matter on or about January 10, 2005.

By failing to promptly disburse the funds she was holding in connection with the settlement of her client's personal injury matter, the respondent violated Mass. R. Prof. C. 1.3, and Mass. R. Prof. C. 1.15(b) as to conduct occurring before July 1, 2004, and Mass. R. Prof. C. 1.15(c) as to conduct occurring on and after July 1, 2004. By failing to promptly respond to her client's requests for information, the respondent violated Mass. R. Prof. C. 1.4(a). By failing to promptly account to her client for the funds that she was holding, the respondent violated Mass. R. Prof. C. 1.15(b) as to conduct occurring before July 1, 2004. By failing to reconcile her accounts at least every sixty days after July 1, 2004, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(E).

The respondent was admitted to the Bar of the Commonwealth on December 15, 1992. In aggravation, the respondent received an admonition in 1999 for failing to promptly make payments as the settlement agent for a residential real estate closing. Admonition No. 99-75, 15 Mass. Att'y Disc. R. 791 (1999). In mitigation, during the relevant time period the respondent was suffering from serious medical problems that affected her ability to handle her solo practice. In addition, several close members of her family experienced serious medical problems beginning in 2003. The respondent was serving as caregiver for these family members. In January 2004 the respondent was injured in a fall, with resulting debilitating injuries to her back through December of 2004. In January 2005, the respondent's father died after injuries sustained in an accident in the fall of 2004. The respondent sought and obtained medical treatment and professional assistance for these problems, and closed her private practice.

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for discipline. The Board of Bar Overseers accepted the parties' recommendation and imposed a public reprimand on November 14, 2005.

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

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