

PHILIP COLBY BROWN

Order (public reprimand) entered by the Board June 1, 2007.

SUMMARY¹

From January 2004 through March 2007, the respondent operated his own law office, concentrating his practice in real estate conveyancing. The respondent was responsible for overseeing all checks, deposits, wire transfers, and record keeping in connection with the real estate closings that he handled. The respondent used an IOLTA account for deposits and withdrawals of client or other trust funds.

Commencing at least in March 2004 and continuing through November 2006, the respondent failed to maintain complete records of the receipt, maintenance, and disposition of clients' funds in the IOLTA account. By June 2006, the respondent had approximately \$5,000 in the IOLTA account that he could not attribute to any fee or expense or distribution connected to a client. The respondent failed to maintain records required by Mass. R. Prof. C. 1.15 after specific record-keeping requirements went into effect on July 1, 2004.

On February 1, 2006, the respondent acted as a settlement agent at a residential real estate closing. Prior to the closing, the respondent failed to confirm that the lender's funds had been received and credited to the IOLTA account. In fact, a wire from the lender needed to fund the purchase was not received and credited to the IOLTA account until February 6, 2006.

At the closing on February 1, 2006, the respondent disbursed funds for the closing and went to record in advance of receiving the lender's funds, in violation of M.G.L. c. 183, § 63B (the Good Funds Statute). On February 2, 2006, the bank dishonored a check the respondent had paid to the seller. On February 8, 2006, after the lender's funds were credited to the account, the respondent paid the funds to the seller's attorney.

Between 2004 and June 2006, the respondent failed to write approximately thirty title policies that he was required to obtain and failed to track and/or record a number of mortgage discharges in closings he handled. On or about December 4, 2006, the respondent completed a reconciliation of the IOLTA account. At that time, the respondent was holding in the IOLTA account a total of approximately \$16,000 for eighty-four separate client matters. In many instances, the respondent was holding less than \$200 each for closings that had taken place in 2004 and 2005. For a number of these closings, the respondent had not obtained and recorded mortgage discharges, and the funds he was holding were to cover recording fees and costs. In several matters, the respondent was holding excess funds from closings that were owed to clients or third parties.

The respondent's failure to maintain complete records of the receipt, maintenance, and disposition of trust account funds between March 2004 and June 30, 2004 violated Mass. R. Prof. C. 1.15(a), as in effect prior to July 1, 2004. The respondent's failure to maintain complete records of the receipt, maintenance, and disposition of trust account funds between July 1, 2004 and December 2006 violated Mass. R. Prof. C. 1.15(f) as follows:

- a. The respondent's failure to prepare and maintain a check register that showed the current balance in the IOLTA account after each deposit or withdrawal violated Mass. R. Prof. C. 1.15(f)(1)(B):
- b. The respondent's failure to prepare and maintain a chronological ledger for each client or third person matter for which he received trust funds, documenting each receipt and disbursement of the funds of the client or third person, the identity of the client matter for which funds were deposited or disbursed, and the balance held for the client or third person in that matter violated Mass. R. Prof. C. 1.15(f)(1)(C): and
- c. The respondent's failure to prepare and maintain reconciliation reports at least every sixty days showing the required reconciliation of the check register, individual ledgers, and bank statements for the IOLTA account violated Mass. R. Prof. C. 1.15(f)(1)(E).

By disbursing proceeds for a closing and by going to record in advance of receiving funds from the lender, in violation of the Good Funds Statute, the respondent failed to provide competent representation to a client, in violation of Mass. R. Prof. C. 1.1. By failing to promptly issue title policies and to obtain and record mortgage discharges for closings which he handled, the respondent failed to act with reasonable diligence and promptness in representing a client, in violation of Mass. R. Prof. C. 1.3. By failing to promptly disburse funds from closings dating back to 2004 and 2005, the respondent failed to act with reasonable diligence and promptness in representing a client, and failed to promptly deliver to a third person funds that the third person was entitled to receive, in violation of Mass. R. Prof. C. 1.3 and 1.15(c).

The respondent was admitted to the Bar of the Commonwealth on December 28, 2001. He had no prior discipline.

In aggravation, by no later than February 2006, the respondent knew that there were problems with his client funds account due to the dishonored check notice. The respondent did not take timely action to correct his record keeping to ensure that client funds were adequately safeguarded. Because of the respondent's inability to reconcile his account, in June 2006 the respondent opened a new IOLTA account and allowed his original account to wind down. The respondent nonetheless did not reconcile his original IOLTA account and correct his record keeping to conform to the requirements of the rule until December 2006.

In mitigation, the respondent's neglect and failure to keep proper records did not result in actual financial harm to any person, although there was the potential for harm. In June 2006 the respondent attended a trust account education program conducted by the Boston Bar Association, in cooperation with the Office of Bar Counsel, and sought assistance with his bookkeeping from two certified public accountants. The respondent brought his record keeping into conformance with Mass. R. Prof. C. 1.15, fully distributed the funds he held in his account to the clients and third parties entitled to them, secured the title policies for the approximately thirty closings he had handled, and obtained and recorded the missing mortgage discharges.

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for discipline. On May 14, 2007, the Board voted to accept the parties' stipulation and to impose a public reprimand.

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

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