

JOVAN J. LACET

Order (public reprimand) entered by the Board August 1, 2008.

SUMMARY¹

In January 2005, the owners of a single family home occupied by tenants entered into an agreement to sell the property. After negotiations between the sellers' counsel and the buyers' counsel, the parties agreed that the sale would close and the tenants would vacate the premises within 30 days after the closing. The respondent represented the lender and conducted the closing, which commenced on February 14, 2005. Because there were no final figures for a number of required disbursements, the closing could not be completed for several days. The buyers, who had terminated their first counsel before the closing commenced, retained the respondent during the closing to represent them along with the lender when the closing reconvened.

The closing concluded on February 17, 2005 and the respondent disbursed the loan proceeds. However, he unilaterally withheld \$10,000 from the proceeds due the sellers and "escrowed" this amount to cover use and occupancy by the tenants in the event they failed to vacate the property within 30 days. On April 7, 2005, the tenants vacated the premises, after causing substantial damage to the property. On April 20, 2005, after notice to the sellers' counsel and over counsel's objection, the respondent disbursed to the buyers the \$10,000 that he had withheld from the sellers.

The respondent's failure to promptly deliver to the sellers the \$10,000 that they were entitled to receive and his disbursement of these funds to his clients is conduct in violation of Mass. R. Prof. C. 1.7(b), 1.15(c), and 8.4(h). In mitigation, he subsequently repaid the sellers in full from personal funds. He believed that the sellers had acted unreasonably and in bad faith, and he acted in good faith to protect the buyers. The respondent did not benefit financially from his conduct.

The respondent was admitted to the bar of the Commonwealth in 1997 and has no prior discipline. This matter came before the Board of Bar Overseers on the parties' stipulation of facts and rule violations and an agreed recommendation for discipline by public reprimand conditioned upon attendance at a CLE course designated by bar counsel. On July 14, 2008, the Board voted to accept the stipulation and impose the recommended discipline.

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

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