

ROBERT H. GUIDA AND CHRISTOPHER T. PERRY

SUMMARY¹

The respondent Robert H. Guida ("Guida") was admitted to the Bar of the Commonwealth on June 28, 1994. The respondent Christopher T. Perry ("Perry") was admitted to the Bar of the Commonwealth on June 23, 1993. The respondents were publicly reprimanded for misconduct involving inadequate supervision of non-lawyer staff and failure to maintain adequate records of clients' funds that allowed a staff member to misappropriate over \$1,600,000 in clients' funds.

Guida conducted a high volume real estate closing practice that he incorporated as Robert H. Guida, Attorney At Law, P.C. ("Guida PC") in June of 2000. Guida hired an office manager, bookkeepers, outside accountants and other accounting staff and instituted policies and practices for managing the firm's trust, IOLTA and operating accounts.

From February through June 2001, Perry worked part time as one of several contract lawyers handling closings for Guida PC. Effective July 1, 2001, Perry accepted Guida's invitation to join his firm as a principal and the name of the firm was changed to Guida and Perry, P.C. ("G&P"). The office manager and bookkeeping and accounting staff and the practices and procedures that they followed remained the same at G&P after Perry joined the firm. G&P continued Guida's high volume real estate closing practice. Typically, each month G&P would close 100 to 300 real estate transactions and issue between 3000 and 7000 checks from its IOLTA account. Because of the volume of closing transactions, there was always a substantial balance in the IOLTA account, often in excess of \$40 million.

At Guida PC and at G&P, the experienced office manager handled most, if not all, administrative matters in the office. With the respondents' knowledge and authority, the office manager was designated as an authorized signatory on each trust, IOLTA and business account maintained by G&P. Both respondents delegated to the office manager the authority to make deposits to the IOLTA and business accounts and to issue checks drawn on these accounts. Both respondents also delegated to the office manager and the bookkeeping and accounting staff the responsibility for ensuring that IOLTA account records were maintained, reviewed and reconciled and for creating and maintaining individual ledgers and other records showing the receipt, maintenance, and disposition of client and other fiduciary funds.

Beginning at some point before Perry joined the firm and continuing through May 2004, first Guida and then both respondents did not make adequate efforts to ensure that the firm had in effect measures giving reasonable assurance that the office manager and other bookkeeping staff were conducting themselves in a manner compatible with the respondents' professional obligations. The respondents seldom personally reviewed statements from their IOLTA accounts. Rather they believed that other office personnel were engaged in monitoring or confirming the existence and accuracy of the ledgers, reports, and other records that the office manager and the in-house bookkeeping and accounting staff maintained or caused to be maintained for the various accounts and did not otherwise adequately supervise the office manager's management of their accounts. In fact, the office manager did not maintain

accurate or adequate records of the receipt, maintenance, and disposition of client and other trust funds received by the respondents and respondents made insufficient efforts to confirm that she had done so.

Further, Guida instructed the office manager and staff to reconcile the various bank accounts or to cause the accounts to be reconciled and to ensure that accounts were used for their intended purposes. By delegating the task of ensuring that the accounts were reconciled to the same person who was responsible for the deposit and disbursement of funds, inadequate measures to safeguard the maintenance of trust funds were in place. The office manager did not reconcile the IOLTA accounts or cause them to be reconciled by the bookkeeping and accounting staff.

Between 2001 and 2004, the office manager misappropriated over \$1,600,000 from real estate closings conducted by G&P. She did so by making payments from the IOLTA account for her own personal expenses or those of members of her family including personal credit card and mortgage payments. The funds converted were paid from the float in the IOLTA account and from legal fees earned by G&P that the office manager did not remit to the firm.

To conceal her misappropriations, the office manager altered and fabricated closing documents including disbursement sheets, HUD-1 settlement statements and notations on cancelled checks. She also falsely assured Guida that the accounts were being reconciled and were being reviewed by both inside accounting staff and outside accountants, by the title insurance company and by bookkeepers employed by the firm. Neither the bookkeepers nor the accountant were in fact reviewing or reconciling the IOLTA account and the quality reviews by the title insurer were limited in scope and did not include a review of any reconciliation reports or other financial records except a review of bank statements to confirm positive balances.

The respondents had misplaced trust in the office manager and failed to take adequate steps to verify that the oral assurances provided by the office manager to Guida were true, including failing to independently verify whether the IOLTA account was in fact being properly reconciled, failing to confirm that either the outside accountant or the bookkeepers and accounting staff were properly reconciling or reviewing reconciliations of the IOLTA account and failing to ascertain the limited nature of the title insurer's quality reviews.

Guida left G&P in April of 2004. Beginning in May 2004, in part as a result of receipt of notice of a dishonored check, Perry began an investigation of the office manager's handling of G&P's IOLTA and other accounts. Perry retained outside counsel and an accountant to assist him as well as certain members of his staff in whom he had confidence. As a result of his investigation, he discovered the conversion of trust funds and other financial improprieties.

On September 2, 2004, after discovering the scheme, Perry fired the office manager and other employees that he believed were working in concert with her. Through counsel, he filed civil complaints and obtained restraining orders attaching the assets of these individuals. In addition, Perry promptly notified bar counsel, state and federal law enforcement offices and the title insurance company for which he was an issuing agent about the office manager's actions.

Persons and entities due payments from closings conducted by G&P in or before May 2004 were actually deprived of their funds. As of December 15, 2004, the title insurer paid claims or honored unpaid checks totaling \$1,423,818.60. At that time, there were still unknown and outstanding claims for holdbacks. The respondents in all instances either paid the claims or made arrangements satisfactory to the claimants to pay the claims.

Various litigation was instituted among the respondents, staff members and the title insurer. All suits were settled in January 2005, with the title insurer being paid \$800,000 by the office manager, \$200,000 by Guida and \$50,000 by Perry. No party admitted misconduct. Neither

Perry nor Guida knowingly received any financial benefit from the office manager's fraudulent conduct.

By delegating complete responsibility to the office manager and bookkeeping staff for their IOLTA accounts; by each personally failing to supervise and monitor the office manager and staff to insure that G&P's accounts were managed in a manner compatible with the firm's professional obligations; and by failing to maintain or cause to be maintained adequate and accurate records of the receipt, maintenance, and disposition of client and other trust funds, the respondents violated Mass. R. Prof. C. 1.15(a) and (b) as in effect prior to July 1, 2004, as well as Mass. R. Prof. C. 1.3 and 5.3.

By failing to safeguard client funds; by turning over control of trust accounts to the office manager and bookkeeping staff without ensuring that they were conducting themselves in a manner compatible with the firm's professional obligations; and by failing promptly to pay funds due to clients and third persons, the respondents violated Mass. R. Prof. C. 1.15(a) and (b) as in effect prior to July 1, 2004, as well as Mass. R. Prof. C. 1.3 and 5.3.

In mitigation, the respondent Perry self-reported this matter to bar counsel and the firm made prompt efforts and took remedial actions to ensure that disbursements were ultimately paid, the title insurer's losses were settled and the alleged fraud was reported to the appropriate authorities.

This matter came before the Board of Bar Overseers on a stipulation of facts and rules violations and a joint recommendation that a sanction of public reprimand be imposed on each respondent. On November 10, 2008, the Board voted to accept the stipulation of the parties and to administer a public reprimand to each respondent.

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

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