

ROBERT E. WEINER

Order (public reprimand) entered by the Board October 30, 2009.

SUMMARY<sup>1</sup>

Robert E. Weiner is an attorney duly admitted to the bar of the Commonwealth of Massachusetts on April 24, 1963. The respondent maintains a solo practice in Boston.

In 2002, the respondent represented a client in the sale of a service station. The respondent and the client did not discuss the respondent's fee for this representation.

The client located a buyer who agreed to purchase the service station for \$150,000. The buyer transmitted a \$20,000 deposit to the respondent. The respondent agreed to hold the deposit funds in escrow pending the finalization of the sale. The respondent failed to keep complete records of his receipt, maintenance and disposition of the deposit funds.

The closing took place in February 2003. Following the closing, the respondent presented the client with a check for \$4,500, as the balance due from the deposit. The respondent claimed that he had earned \$15,500 as a ten percent commission on the sale of the service station, plus expenses. The client had never agreed to pay the respondent a commission on the sale of the service station.

The client expressed outrage at the respondent's fee, and returned the \$4,500 to the respondent. The respondent did not deposit any portion of the disputed funds into a trust account and did not return any part of the undisputed funds to the client until 2009, long after the client filed a grievance with the Office of Bar Counsel. The respondent did not earn \$15,500 in his representation of the client.

By failing to communicate the basis or rate of his fee to his client before or within a reasonable time after commencing the representation, the respondent violated Mass. R. Prof. C. 1.5(b).

By failing to keep complete records of his receipt, maintenance, and disposition of deposited funds that he undertook to hold for the client, the respondent violated Mass. R. Prof. C. 1.15(a) (for conduct prior to July 1, 2004).

By failing, once he understood that the client disputed his right to the \$15,500 fee, to return the funds to a trust account, the respondent violated Mass. R. Prof. C. 1.15(c) and (d)(2) (for conduct prior to July 1, 2004) and Mass. R. Prof. C. 1.15(b)(2)(ii) (for conduct on and after July 1, 2004).

By failing, upon the termination of the representation, to refund the unearned portion of the funds he was holding to the client, the respondent violation Mass. R. Prof. C. 1.16 (d).

In mitigation, the respondent has made restitution to the client in the amount of \$14,000. He

is now maintaining his trust accounts in compliance with Mass. R. Prof. C. 1.15.

The matter came before the Board of Bar Overseers on an agreed recommendation for discipline by public reprimand based on a stipulation of the parties. As a condition of the stipulation, the respondent attended a trust account class sponsored by the Office of the Bar Counsel.

On October 19, 2009, the Board of Bar Overseers voted to administer a public reprimand to the respondent.

<sup>1</sup> Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.

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