

Linda G. Champion

Order (public reprimand) entered by the Board November 19, 2009.

SUMMARY¹

On July 19, 2007, the respondent was the settlement agent for a residential closing on a piece of property located in Brockton, MA. In order to purchase the property, the buyer obtained a loan of \$497,000.00 to be secured by a first mortgage. Before attending the closing, the respondent checked her IOLTA account and saw that the receipt of funds from the lender was "pending."

The closing was not completed on July 19th, and the respondent agreed to meet the parties at the registry of deeds the following morning. On the morning of July 20, 2007, the respondent completed the closing and recorded the deed and the new mortgage. The respondent violated G. L. c. 183, 63B, by failing to verify that she had collected funds from the lender prior to going to record. Later on July 20th, the respondent disbursed from her conveyancing account a total of \$474,287.30 to pay an outstanding mortgage and the sellers. In fact, the closing had not been funded by the lender, and the respondent unwittingly used other client funds in the account.

In early August, the respondent learned that the lender would not be funding the transaction and had filed for bankruptcy and that her conveyancing account was in deficit. The respondent unsuccessfully attempted to stop payment of the checks disbursed at the closing. She then contacted the mortgagee and the sellers to retrieve the funds disbursed at the closing. The sellers refused to return the funds, but the mortgagee told the respondent that it would return the funds if she paid the wire-transferring cost. The respondent paid a fee of \$3,500.00 from her own funds to secure the return of the funds.

The respondent understood that the mortgagee would return the funds imminently. In the meantime, she processed closings through her IOLTA account. In September, the mortgagee informed the respondent that it would not return the funds. The respondent had already notified her professional liability insurer of the problem, and she immediately told the insurer that the mortgagee had reneged on its promise to restore the funds to the account.

The respondent's conduct in continuing to handle closings while her account was in deficit resulted in her failure to fund two separate closings. The carrier took responsibility for funding those transactions.

The respondent's recording of the Brockton mortgage and her disbursement of funds related to the sale of the property prior to verifying that the loan had been funded violated Mass. R. Prof. C. 1.1, 1.2(a), and 1.3. The respondent's negligent misuse of funds in her conveyancing account to pay costs and expenses unrelated to the Brockton closing violated Mass. R. Prof. C. 1.3 and 1.15 (f)(C).

The respondent's use of funds in her conveyancing account to pay for unrelated transactions

violated Mass. R. Prof. C. 1.2(a), 1.15 (c) and 8.4(h). Her continuing to represent lenders at real estate closings when her representation would result in the violation of rules of professional conduct or other law through the improper disbursement of closing funds violated Mass. R. Prof. C. 1.16(a)(1) and 8.4(h).

In mitigation, the respondent took numerous steps to correct the deficiency, including attempting to retrieve the funds from the parties, unwinding the transactions, and notifying her malpractice insurance carrier of the problem. At the time of the matters in question, the respondent had only been a lawyer for a short period of time and was unsure how to deal with the circumstances thrust upon her. The respondent's actions were not intentional, and the parties were made whole by the respondent's malpractice insurer.

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation that the respondent receive a public reprimand. The Board of Bar Overseers accepted the parties' recommendation and imposed a public reprimand on November 9, 2009.

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

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