



NO. BD-2010-015

S.J.C. Judgment of Disbarment entered by Justice Cordy on March 23, 2011.<sup>1</sup>

SUMMARY<sup>2</sup>

This matter came before the Court on the respondent's affidavit of resignation pursuant to S.J.C. Rule 4:01, §15.

On May 31, 2007, the respondent represented both a borrower and lender in connection with a real estate closing for property the borrower was purchasing. On May 31, 2007, the lender wired \$128,127.08 to the respondent's conveyancing account to fund the purchase of the property. The respondent understood that he was to use these funds exclusively to discharge the existing mortgage on the subject property. The respondent also understood that the seller's obligation to the mortgagee was \$128,000. At the closing, the respondent signed a HUD -1 settlement statement in which he represented that the mortgagee would be paid \$128,000 to discharge its mortgage.

The respondent received \$740.75 from the buyer at the closing to purchase lender's and owner's title insurance policies, which he did. After the closing, the respondent sent a check for \$128,000 to pay off the mortgage. On June 5, 2007, the respondent recorded a deed from the seller to the buyer at the registry of deeds. The respondent also mailed the closing documents, including the HUD-1, to the lender.

On June 25, 2007, the mortgagee returned the respondent's check because the seller actually owed \$137,000 on his loan. The mortgagee advised the respondent that the seller was in arrears on the loan and that it would take \$11,381 to reinstate the loan. The respondent informed the buyer that the seller owed more on his mortgage than he had disclosed and could not give her good title to the property. The buyer instructed the respondent to apply \$11,381 of the funds from the lender to reinstate the seller's mortgage. On June 29, 2007, the respondent paid \$11,381 to the mortgagee.

The respondent did not inform the lender that he had applied a portion of the mortgage funds to reinstate the seller's mortgage instead of discharging it. The respondent also failed to

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<sup>1</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

inform the title insurer that he did not pay off the underlying mortgage. The respondent failed to take any steps to cancel the lender's and owner's title insurance policies for the property.

On September 4, 2007, at the buyer's instruction, the respondent made a payment of \$2,241 on the seller's loan. In October 2007, at the buyer's instruction, the respondent paid an additional \$2,178 on the seller's loan. The respondent made no further payments on the seller's outstanding loan after October 2007. Sometime after October 30, 2007, both the buyer and the seller filed petitions for bankruptcy.

After October 30, 2007, the respondent intentionally misused the balance of the funds he had received from the lender to pay his own business and personal expenses and the obligations of persons unrelated to the real estate transaction. The title insurer learned that the respondent had not discharged the underlying mortgage and, on September 9, 2008, paid \$141,903.08 in outstanding principal and interest to discharge the mortgage.

By continuing to represent both the buyer and the new lender when the buyer's interests in the loan were directly adverse to the interests of the lender, the respondent violated Mass. R. Prof. C. 1.7(a) and (b). By failing to inform the lender that he had applied the mortgage funds to service the seller's loan, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a), 1.4(a) and (b), 4.1(b), and 8.4(c). By failing to inform the title insurance company that the prior mortgage on the property had not been discharged, he violated Mass. R. Prof. C. 4.1(b) and 8.4(c). By intentionally misusing the funds he received from the lender both to service the seller's loan obligations and to pay his own personal and business expenses, the respondent violated Mass. R. Prof. C. 1.15(b) and 8.4(c).

On May 4, 2010, the respondent was administratively suspended from the practice of law pursuant to S.J.C. Rule 4:01, § 3(2), for his failure to cooperate with a request for information from bar counsel made in the course of processing a complaint. The respondent filed an affidavit of compliance with the order of administration suspension on November 8, 2010. On the same date, the respondent assented to the entry of an order of immediate temporary suspension against him, which the Court entered on November 15, 2010.

The respondent filed an affidavit of resignation in which he acknowledged that there was sufficient evidence to establish the facts related above. On March 14, 2011, the Board of Bar Overseers voted to recommend to the Supreme Judicial Court that the respondent's affidavit of resignation be accepted and that a judgment of disbarment, retroactive to November 15, 2010, be

entered against the respondent. On March 23, 2011, the Supreme Judicial Court (Cordy, J.) so ordered.