IN RE: MICHAEL E. BONENFANT

NO. BD-2012-123

S.J.C. Order of Term Suspension entered by Justice Gants on January 3, 2013, with an effective date of February 4, 2013.[1]

(S.J.C. Judgment of Reinstatement entered by Justice Gants on March 13, 2013.)

SUMMARY[2]

In December of 2010, the respondent was engaged by a mortgage broker to represent the interests of a lender and act as settlement agent in a refinance transaction involving the primary residence of a husband and wife. The mortgage broker previously referred a large number of loans to the respondent for closing and both the mortgage broker, and the respondent received a financial benefit upon closing the loans.

On January 28, 2011, the respondent received a closing package from the lender dated January 28, 2011, but he was unable to close the loan on that date and notified the lender. On January 31, 2011, the respondent received another closing package from the lender for the purpose of closing the loan on that date. The respondent was unable to close the loan on January 31, 2011, but he did not notify the lender. In order to preserve the borrowers' interest rate, the loan was required to close on January 31, 2011, to provide the borrowers with the three-day right of rescission required by the Federal Truth in Lending Act. The respondent acknowledged and agreed to the closing instructions of the lender, affixed his signature thereto and dated the closing instructions January 31, 2011.

The closing occurred on February 4, 2011, at the home of the borrowers. All closing documents signed at the closing were backdated by the respondent or at his direction to January 31, 2011, in order to maintain the interest rate the lender had committed to the borrowers. Only the wife was present at the time of the closing. The respondent permitted the wife to sign the husband's name on all closing documents requiring husband's signature without a power of attorney, without the permission of the lender, and contrary to the closing instructions of the lender. The respondent also witnessed and notarized the signature of the husband on the closing documents, knowing that documents were not signed by the husband. The respondent's notarization of the husband's signature on various closing documents falsely certified that the husband had personally appeared before him, that this was proved to him through satisfactory evidence of identification and that he acknowledged that he signed the documents voluntarily for their stated purpose. The respondent also signed the Customer Identification Verification, thereby falsely certifying that he personally examined the husband's driver's license, in his presence, and that it appeared to be genuine. The respondent understood that the signatures of both title holders were required on the mortgage in order to give the lender an enforceable first mortgage on the property.

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[1] The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

[2] Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

The closing instructions required that the loan be recorded in first lien position on or prior to the disbursement date of February 4, 2011. The respondent disbursed the loan proceeds on February 8, 2011, but he did not record the mortgage at the registry of deeds until February 25, 2011. The respondent issued a title insurance commitment and collected the title insurance premium from the proceeds of the loan, but he failed to promptly remit the title insurance premium to the title insurer.

Neither mitigating nor aggravating, the respondent's conduct was motivated by a desire to help the borrowers secure a lower interest rate. On the night of the closing, the respondent asked the wife if he could bring the documents to the husband's place of work so that he could sign, but was told by the wife that it would be difficult for the respondent do to so based on the nature of the husband's job. The wife assured the respondent that her husband had authorized her to sign on his behalf. The backdating of closing documents was done with the knowledge and consent of the mortgage broker, but without the knowledge and consent of the lender; and the mortgage broker, without the knowledge and consent of the lender, authorized the respondent to proceed with the loan closing even though the loan did not close on January 31, 2011, the date by which the loan was required to close to preserve the interest rate. The mortgage broker, without the knowledge and consent of the lender, told the wife that it was not necessary for her husband to be present at the closing and that the wife was to sign her husband's name to the loan documents. The respondent made three trips to the borrowers' home before the loan actually closed (the first time he was told by the wife not to drive up their street due to a snow storm and the second time the wife was unhappy with the listed rate. The respondent received as payment for his services a legal fee typically received by a residential conveyancer for such a transaction.

By permitting the closing to take place without the presence of one of the borrowers without the lender's consent, in failing to obtain the signature of the husband on the closing documents, in failing to provide his client with a fully secured and enforceable first mortgage and in failing to record the mortgage prior to the disbursement of the loan, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 8.4(h). By notarizing the signature of the husband, which he knew to be false, in witnessing husband's signature, which he knew to be false, and in certifying on the Customer Identification Verification that he personally examined husband's driver's license in his presence, the respondent violated Mass. R. Prof. C. 8.4(c) and 8.4(h).

By conducting the closing on February 4, 2011, and backdating the closing documents or causing them to be backdated, and by failing to obtain the consent of the lender to conduct the closing on February 4, 2011, the respondent violated Mass. R. Prof. C. 1.2(a), 1.7(b), and 8.4(c) and 8.4(h). By representing the lender in the closing on February 4, 2011, when his representation was materially limited by his personal interest and the interest of a third person, the respondent violated Mass. R. Prof. C. 1.7(b), and 8.4(h). In failing to promptly remit the title insurance premium to the title insurer, the respondent violated Mass. R. Prof. C. 1.3 and 1.15(c).

The respondent has been in practice since 2000 and has no disciplinary history.

On August 24, 2012, a petition for discipline was filed with the Board of Bar Overseers. On November 8, 2012, the respondent's answer to the petition for discipline and stipulation of the parties was filed with the board jointly recommending that the respondent be suspended from

the practice of law for one month. On December 10, 2012, the board voted to accept the stipulation of the parties and their joint recommendation to file an information with the Supreme Judicial Court. On January 3, 2013, the Court entered an order suspending the respondent from the practice of law for a period of one month, effective thirty days after the date of the entry of the order.