IN RE: ALFRED A. MACCHI

NO. BD-2013-028

S.J.C. Order of Term Suspension/Stayed entered by Justice Spina on April 10, 2013.[1]

SUMMARY[2]

In November of 2004, a developer retained the respondent to assist him in a real estate transaction in which the client intended to sell commercial real estate located in Massachusetts. Between June 15, 2005, and September 13, 2005, as per the terms of an executed purchase and sale agreement dated June 13, 2005, the respondent received three payments from a potential buyer totaling $12,400. The funds represented a $10,000 non-refundable deposit to be used in part by the respondent's client to bring the existing mortgage on the property current through to the date of the purchase and sale agreement. The remaining amount of the $10,000 deposit could be used at the discretion of the client. The additional $2,400 was to be applied to the client's ongoing mortgage payments. All of the funds were deposited by the respondent into his general office operating account.

In June 2005, the respondent accounted to the client in writing for $10,000 of the deposit funds that he had received. The respondent made certain mortgage payments, paid himself an agreed sum for his services and paid the balance to his client, all consistent with the terms of the purchase and sale agreement. By May 2006, the transaction had fallen through and the property was foreclosed upon.

In June 2006, the client retained other counsel and the respondent sent to successor counsel the entirety of his file. The respondent did not maintain adequate records of his receipt, maintenance and disbursement of the additional $2,400 deposit or provide the client with any accounting of his handling of these funds. After the client complained to bar counsel, the respondent adequately accounted for the funds.

The respondent's conduct in depositing trust funds into his business operating account was in violation of Mass. R. Prof. C. 1.15(b). The respondent's failure to

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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.

maintain adequate records of his receipt, maintenance and disbursement of the trust funds and to render a full written accounting to his client was in violation of Mass. R. Prof. C. Rule 1.15(f) and (d).

In addition, between July 1, 2004, and October 2008, the respondent failed to perform a three-way reconciliation of his IOLTA account at least every sixty days. The respondent's failure to properly reconcile his account is conduct in violation of Mass R. Prof. C. 1.15(f)(1)(E).

In aggravation, the respondent received a public reprimand in 2001 for similar misconduct. Specifically, the respondent failed to execute a written contingent fee agreement in violation of DR 2-106(C), commingled trust funds with personal or business funds, and failed to maintain adequate records of, failed to account for, and negligently misused client funds in violation of DR 1-102(A)(6), DR 9-102(A), and DR 9-102(B). The board imposed a public reprimand and placed the respondent on probation for two years with a requirement that he retain an accountant to examine and certify his client account.

In mitigation, the respondent's current trust account records are in compliance with the requirements of Mass. R. Prof. C. 1.15.

This matter came before the board on a stipulation of facts and disciplinary violations and a joint recommendation for discipline. On March 14, 2013, the board accepted the parties' recommendation and recommended a suspension for a period of six months, with execution of the suspension stayed for a period of two years, subject to compliance with the terms of a two-year accounting probation agreement and attendance at a CLE program recommended by bar counsel. On April 10, 2013, the Court so ordered with an effective date as of the date of the order.