

**IN RE: ROBERT NEIL FIREMAN****NO. BD-2015-003****S.J.C. Order of Term Suspension entered by Justice Duffly on February 20, 2015.¹****SUMMARY²**

In the fall of 2006, the respondent hired an experienced real estate paralegal, Rebecca Konsevick, to establish a new practice at his law firm for the representation of lenders in residential real estate closings. The respondent had not previously conducted a closings practice.

Konsevick worked at the respondent's firm between about the fall of 2006 and 2009. In the course of the closings practice, Konsevick routinely drafted HUD-1s and other closing documents, kept IOLTA records for the closing funds, issued and signed the disbursement checks, effected the recording of executed deeds and mortgages after the closings, signed the lenders' closing instructions, and returned the signed instructions, with required documents, to the lenders after the closings. In violation of Mass. R. Prof. C. 5.3(a) and (b), the respondent failed to establish adequate procedures for the closings practice and failed to supervise Konsevick's work adequately.

In addition, Konsevick routinely analyzed title examinations to determine whether there were liens or other encumbrances affecting titles; drafted condominium conversion documents and property deeds; certified title when required by G.L. c. 93, § 70, and signed "attorney's" title certifications in the name of the firm; conducted closings without a lawyer's presence and participation; directed the parties' execution of deeds, mortgages, and other instruments required to effect the transfer of title and consideration; signed and certified as settlement agent and had the parties sign the HUD-1 settlement statements for the transactions; and disbursed the closing proceeds. Konsevick carried out those functions with the respondent's knowledge and permission but with little or no substantive control, oversight, involvement or participation by a lawyer. Konsevick thereby engaged in the unauthorized practice of law, and the respondent assisted in the unauthorized practice in violation of Mass. R. Prof. C. 5.5(a).

While working at the respondent's firm, Konsevick was a participant with others in criminal or illegal transactions involving the acquisition of multiple-family buildings, the conversion of the buildings into condominiums, and the sale of the condominium units at inflated prices to straw buyers. The unit buyers obtained mortgage financing under false pretenses and later defaulted on their loans. Konsevick received payments of \$400 to \$1,200 in many of those transactions. In some instances, she received a broker's commission and split the payments with her co-participants. Konsevick participated in defrauding the mortgage lenders in those transactions by, among other actions, making intentional misrepresentations on HUD-1s and

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.

violating the lender's closing instructions. She was convicted of unlawful monetary transactions and bank fraud in the United States District Court for the District of Massachusetts in January 2013.

The respondent was not aware of Konsevick's illicit activities when they took place. As a result, he never informed the lender clients or assured that the lenders were informed of deviations from the closing instructions or irregularities or discrepancies in the transactions, including that buyers had not brought funds to the closings, that sellers were not receiving the funds reported on the HUD-1s, and that buyers were claiming to occupy more than one unit as a primary residence. By failing to provide those clients with diligent representation, failing to pursue the clients' lawful objectives, and failing to maintain adequate communications with the clients, the respondent violated Mass. R. Prof. C. 1.2(a), 1.4(a) and (b), and 1.3.

In aggravation, all or virtually all of the loans leading to Konsevick's conviction went into foreclosure, and the lender clients in those transactions had exposure for substantial losses. Further, the respondent had been publicly reprimanded in 1993 for signing his father's name as guarantor of a note for a business loan without specific prior authority from his father or disclosure to the lender. *Matter of Fireman*, 10 Mass. Att'y Disc. R. 97 (1994).

In mitigation, there were unsettled legal issues at the relevant times regarding the role of paralegals and other nonlawyers in residential real estate closings. Although he allowed Konsevick to conduct closings and take other action without adequate supervision, the respondent had a good faith belief that a nonlawyer could conduct real estate closings if employed by a law firm and supervised by a lawyer. Once the respondent became aware of the issues described above, he established and exercised oversight and control over the practice and thereafter conducted the closings himself.

Bar counsel commenced disciplinary proceedings against the respondent by filing and serving a petition for discipline in August 2013. In November 2014, prior to hearing on the petition, the parties submitted amended pleadings and a stipulated recommendation that the respondent be suspended for one year for his acknowledged misconduct. The Board of Bar Overseers voted to accept the stipulation and recommendation. On February 20, 2015, the Court entered an order for the respondent's one-year suspension effective March 22, 2015.