IN RE: FRANCESCO MERCURI

NO. BD-2015-109

S.J.C. Order of Indefinite Suspension entered by Justice Botsford on December 29, 2015, with an effective date of January 28, 2016.[1]

SUMMARY[2]

The respondent was admitted to practice on December 16, 1983. He has no history of discipline. On December 29, 2015, he was indefinitely suspended for the following misconduct.

The respondent's practice primarily consisted of representing lenders in residential real estate closings. The respondent was also a title agent for a title insurance company from about August 1996 to June 2014. He maintained an IOLTA account that he used primarily for the deposit and disbursement of funding proceeds required to complete real estate closings.

At various times between 2011 and June 2014, the respondent intentionally misused client funds from his IOLTA account totaling at least $109,178.02 for personal or business purposed unrelated to his clients and entitled third parties with actual deprivation resulting. The respondent funded his misuse of trust funds in part by failing to make disbursements due to clients or to entitled third parties for, without limitation, title insurance premiums, real estate taxes, plot plan fees, recording fees due to the Registry of Deeds, and sewer and water fees.

From November 2012 through at least June 2015, the respondent failed to maintain the following account records required by Mass. R. Prof. C. 1.15(f): a) check register, b) chronological ledger for each client or third person, c) chronological ledger of his funds deposited to IOLTA account for expected bank charges, d) reconciliation reports, and e) account documentation.

In March 2014, the respondent deposited $25,000 of personal funds to the IOLTA account to partially cover an existing shortage.

---

[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.

In February 2014, and again in June 2014, the title insurance company sent auditors to perform audits of the respondent's records. The auditors determined that as of June 10, 2014, the respondent's IOLTA account was short $136,176. Due to the trust account shortage and the excess funds withdrawn by the respondent, the title insurance company terminated the agency relationship with the respondent and brought this matter to the attention of the bar counsel.

By failing to hold escrow funds in his possession in connection with multiple closings, by commingling escrow funds and personal funds, and by intentionally misusing client's funds for his own personal or business purposes with deprivation resulting, the respondent violated Mass. R. Prof. C. 1.15(b), (c), and Mass. R. Prof. C. 8.4(c), (d) and (h), as in effect prior to July 1, 2015.

By failing to maintain a trust account check register that recorded all deposits and records of disbursements and the current balance, individual client records, subsidiary ledgers, and reconciliation reports on a regular and periodic basis but no less frequently than every sixty days, and account documentation, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(B), (C), (E) and (F), respectively, all as in effect prior to July 1, 2015.

In mitigation, the respondent made full restitution to clients, third parties, and the title insurance company.

This matter came before the board on a stipulation of the parties that the respondent receive an indefinite suspension for his misconduct. On December 14, 2015, the board filed with the Supreme Judicial Court an information and record of proceedings that the stipulation of the parties be adopted. On December 29, 2015, the Court entered an order of indefinite suspension from the practice of law.