STEPHEN T. DAVID

Public Reprimand No. 2013-23

Order (public reprimand) entered by the Board on November 13, 2013.

SUMMARY[1]

Since 1981, the respondent had his own firm specializing in real estate law. He maintained two accounts designated as IOLTA accounts, one at Citizens Bank and the other at Sovereign Bank.

From at least July 15, 2011, through April 2013, the respondent failed to keep records for either IOLTA account in compliance with Mass. R. Prof. C. 1.15. The respondent did not keep (1) check registers with chronological lists showing for each transaction the client matter, date, amount, check or transaction number, source or purpose of the deposit or withdrawal, payee, and the balance after each transaction; (2) individual client ledgers for each client matter listing each transaction and the balance after each client matter; and (3) ledgers of his personal funds for reasonably expected bank charges. The respondent did not perform a three-way reconciliation of either IOLTA account at least every sixty days.

In October 2011, the respondent represented the lender Sovereign Bank in connection with a residential refinance loan in the amount of $135,000. The lender notified the respondent that the loan proceeds would be used to pay off the first and second mortgages, which were both held by the lender. The lender intended to deduct the payoffs of both mortgages from the loan proceeds and to distribute sufficient funds to the respondent only to enable him to pay miscellaneous debts and closing costs totaling $7,300.62. The lender's closing instructions were ambiguous, however, and the respondent mistakenly believed that the lender would wire sufficient funds to his account to pay off the first mortgage as well as the miscellaneous debts and closing costs.

[1] Compiled by the Board of Bar Overseers based on the record of proceedings before the board.

On October 7, 2011, the respondent closed the loan. He made an effort to confirm online and by telephone that the lender had wired sufficient funds to pay the first mortgage and miscellaneous obligations to his Sovereign account, but he was unable to confirm the wire. Nonetheless, on October 13, 2011, the respondent caused $62,353.73 to be transferred from the Sovereign account to the Citizens account, and he caused the same amount to be wired from the Citizens account to the lender to pay off the first mortgage. In transferring those funds, the respondent inadvertently misused funds belonging to other persons on deposit in the Sovereign account and created negative balances for those clients. On October 13, 2011, the respondent issued checks for the remaining disbursements and was not aware that the Sovereign account was short $62,353.73.

On October 18, 2011, the lender returned the overpayment of $62,353.73 by wiring that amount to the respondent's Citizens account. The respondent was not aware that the Citizens account had been credited this amount, and he failed to transfer the funds to the Sovereign account.

On October 27, 2011, the respondent drew a check in the amount of $103,815.40 from the Sovereign account payable to another client. There were insufficient funds on deposit in the Sovereign account to cover the check, and it was not honored. After the respondent received notice of the returned check from the bank, he looked at the history of transactions in both accounts and identified the reason for the shortfall.

On November 1, 2011, the respondent transferred $62,352.73 from the Citizens account to the Sovereign account. He also promptly contacted the client whose check was returned and provided her with a bank check from Sovereign in the full amount of the returned check. By October 4, 2013, the respondent had brought his records for both IOLTA accounts into compliance with Mass. R. Prof. C. 1.15.

The respondent's negligent misuse of client funds and his issuing funds that created a negative balance for individual clients in an IOLTA account violated Mass. R. Prof. C. 1.15(b)(1) and 1.15(f)(1)(C). His failure to reconcile his IOLTA accounts and maintain required records for the accounts violated Mass. R. Prof. C. 1.15(f)(1)(B)-(E).

The respondent was admitted to the Massachusetts bar in 1981. He had received a public reprimand for conduct occurring in 1998 and 1999 in Matter of Steven T. David, 21 Mass. Att'y Disc. R. 161 (2005).

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for discipline. The Board of Bar Overseers accepted the parties' recommendation and imposed a public reprimand on October 28, 2013.