

ADMONITION NO. 06-14

CLASSIFICATIONS:

Handling Legal Matter When Not Competent or Without Adequate Preparation [Mass. R. Prof. C. 1.1]

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

SUMMARY:

The respondent handled the closing of a residential real estate sale on behalf of the buyer's mortgage lender. He had received a closing package from the lender, a Florida bank, on the day before the closing and understood from the closing instructions that the lender would not fund the closing by wiring funds to the respondent's account until it had approved the HUD-1 Settlement Statement for the transaction.

On the morning of the day of the closing, a Friday, the respondent prepared the HUD-1. He obtained approval of the HUD-1 from the buyer's and seller's attorneys and attempted to send it by fax to the lender twice; each time the lender's fax line was busy.

Because of scheduling conflicts, the seller's attorney could not attend the closing at the registry of deeds. The respondent went to the attorney's office on his way to the registry, received the deed signed by the seller and left the seller's proceeds check with the attorney to be held in escrow until he called her to confirm recording of the closing papers. He then went to the registry, completed the closing with the buyer and his attorney and recorded the seller's deed and the buyer's mortgage.

On the next Monday, the respondent sent the lender by fax a full set of the closing documents, including the HUD-1. On Tuesday afternoon, an employee of the lender called the respondent to inform him that the HUD-1 was incorrect and needed to be corrected and re-signed before the closing would be funded. The respondent had misread the lender's instructions concerning the required treatment of a credit between the seller and buyer. The respondent called the buyer's and seller's attorneys and informed them of the problem and that the closing had not been funded.

The correction to the HUD-1 demanded by the lender required the buyer to pay about \$400 more to complete the purchase. The buyer at first refused to cooperate because of an unrelated dispute he had with the lender. About two weeks later, the closing was reconvened and new documents were signed and approved by the lender, which funded the closing.

The respondent's conduct in recording the buyer's mortgage prior to his receipt of good funds from the lender in violation of the "good funds" statute (G.L. c. 183, § 63(B)) was in violation of Mass. R. Prof. C. 1.1 and 1.3.

The respondent received an admonition for his misconduct, conditioned on his attendance at a CLE program designated by Bar Counsel.