

ADMONITION NO. 06-15

CLASSIFICATIONS:

Failure to Notify of Receipt or to Disburse Promptly [Mass. R. Prof. C. 1.15(c)]
IOLTA Violation [Mass. R. Prof. C. 1.15(e)(5)]

SUMMARY:

In August of 2003, the respondent represented the lender and was settlement agent of a residential real estate closing transaction. The seller, who was not represented at the closing, advised the respondent that there was a fifteen-year old development loan in the amount of \$9,500.00 that had been issued by the city in which the property was located. The seller was unsure if the loan needed to be repaid or whether it was secured. The respondent determined that she should hold \$10,000 in her IOLTA account from the seller's

net proceeds in the event that the city had a claim against the property. The HUD-1 settlement statement was adjusted accordingly by the respondent and the parties signed the adjusted HUD-1. There was no written escrow agreement and the seller believed that the respondent was to undertake to research the matter.

Between August of 2003 and June of 2005, the seller, through counsel, contacted the respondent asking for the status of her research, a copy of any release from the city and the money owed to her. During this time, the respondent was unable to find any recorded encumbrance or other records of the loan from the city. However, the respondent did not release the funds, believing that there was still potential that the city might have some enforceable claim relating to the title to the property. The respondent made some efforts to speak with the seller's attorney during this time, but her efforts were inadequate, resulting in confusion as to what needed to be done, and by whom, in order to release the funds.

In August 3, 2005, the seller's attorney complained to bar counsel. The seller and the respondent subsequently reached an agreement to release the funds. The seller provided the respondent with an indemnification agreement in the unlikely event that the city raised a claim that might cloud the title.

At all times, the funds remained intact in the respondent's IOLTA account. The respondent's failure to transfer the holdback funds to an individual interest-bearing trust account was in violation of Mass. R. Prof. C. 1.15(e)(5) as amended effective July 1, 2004.

Upon finding that no recorded or written encumbrance existed, the respondent's failure either to release the funds, or to clearly and timely communicate reasonable terms for release, was in violation of Mass. R. Prof. C. 1.15 (c) as amended effective July 1, 2004.

The respondent has been a member of the Bar since 1999, with no prior discipline. She accordingly received an admonition for the above violations, conditioned upon attendance at a CLE program designated by Bar Counsel.