

ADMONITION NO. 06-18

CLASSIFICATIONS:

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

Failing to Notify of Receipt or to Disburse Promptly [Mass. R. Prof. C. 1.15(c)]

Responsibilities Regarding Non-lawyer Assistants [Mass. R. Prof. C. 5.3(a) and (b)]

SUMMARY:

The respondent was the settlement agent for a real estate closing. Shortly before the scheduled closing in October 2004, a lis pendens was filed on the property related to a child support obligation from the prior marriage of the seller's husband, who was not an owner of the property. The closing was delayed for approximately two months until the seller's attorney obtained removal of the lien by order of the Probate Court. During the period from

October to December 2004, additional interest charges accrued on the seller's outstanding mortgage loans.

Because of the additional interest charges, there were insufficient funds at the closing to pay off the priority claims of the mortgage holders and the broker's fee. Nevertheless, the buyer and the seller were anxious to proceed due to the threat of foreclosure on the property. The respondent agreed to close the loan with the understanding that the seller would be responsible for the difference between the broker's full commission of \$18,315 and the \$9,415 available to pay the broker.

The broker did not attend the closing on December 7, 2004. When he learned that his commission would not be paid in full from the closing proceeds, the broker threatened to sue the respondent's office for the difference.

The respondent had delegated to his paralegal the responsibility for sending the broker a check for \$9,415.40 from the closing proceeds. After the broker threatened to sue the respondent, the paralegal did not pay the broker the \$9,415.40 because she erroneously considered the amount to be disputed, and she was waiting to see what a court determined was owed. In fact the \$9,415.40 was not disputed, and this amount should have been promptly distributed with the rest of the closing proceeds as detailed on the HUD-1 statement. The funds that were not paid out remained in the respondent's client funds account.

The paralegal did not seek the respondent's approval to hold back the check, and the respondent did not have any policy or procedures in place to require the paralegal to clear these decisions with him. The respondent was not aware that the check had not been paid until approximately eight months later, when he was contacted by the Attorney and Consumer Assistance Program (ACAP) after the broker contacted bar counsel's office. During that eight-month period, the respondent did not verify that all funds from the closing had been distributed, nor did he review the reconciliation reports for his client funds account. The respondent did not have in place reasonable procedures to confirm that all closing proceeds had been properly paid after the closing. Shortly after he was contacted by ACAP and learned that the funds had not been paid to the broker, the respondent sent the broker a check for \$9,415.40 from his client funds account.

The respondent was admitted to practice in 1995 and had received no prior discipline. The respondent instituted personal monthly review of the required records maintained in connection with his trust accounts, and policies in his office to assure that his employees' conduct is compatible with his professional obligations.

By failing to promptly distribute the funds from the closing, the respondent violated Mass. R. Prof. C. 1.3 (obligation to act with reasonable diligence and promptness in representing a client) and 1.15(c) (a lawyer shall promptly deliver any funds that a client or third person is entitled to receive). By failing to institute policies and procedures in his office to assure that his employee's conduct was compatible with his own professional obligations, the respondent violated Mass. R. Prof. C. 5.3(a) and (b).

The respondent received an admonition conditioned upon his attendance at a CLE course designated by bar counsel.