

## **ADMONITION NO. 25-23**

### **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]

Failing to Keep Client Informed or To Respond to Inquiries [Mass. R. Prof. C. 1.4(a)(3) and (4)]

### **SUMMARY:**

In September 2024, the respondent agreed to represent a client on a pro bono basis in a real estate transaction. The client was seeking the return of her deposit after the purchase transaction did not occur. The deposit was held in an escrow account by the closing attorney. Pursuant to the terms of the purchase and sale agreement (P&S), the seller would be entitled to retain the deposit if the buyer did not obtain financing or opt out of the transaction by a certain date. The buyer was not represented by counsel when she entered into the P&S.

Shortly after his initial meeting with the client, the respondent learned that the closing attorney had filed an interpleader complaint to determine how to distribute the deposit funds. The respondent filed an answer and counterclaim on the client's behalf acknowledging that the client had failed to obtain financing or opt out of the sale as required by the terms of the P&S agreement, but asserting potential discrepancies in the P&S that brought into question the validity of the document. The respondent's strategy was to try and negotiate with the seller to obtain a partial return of the client's deposit. The client agreed with this strategy. Over the course of the next 23 months, the respondent adequately represented the client and negotiated settlement offers from the seller. However, each offer was rejected by the client.

The seller subsequently filed a motion for summary judgment, asking that the entire deposit be released to him. While the motion was not properly served on the respondent, he had actual notice of the motion and an upcoming hearing on the motion from the client and the court. The respondent did not file an opposition to the motion. Due to an administrative error, the respondent failed to enter the hearing date on his calendar and failed to appear at the hearing. Summary judgment was subsequently granted in favor of the seller. After learning that he missed the hearing, the respondent stopped communicating with the client. The respondent has since revised his calendar system to address the failure to calendar the hearing and has offered to file a motion on the client's behalf to vacate the judgment.

By failing to file an opposition to the motion for summary judgment on his client's behalf and failing to appear for the summary judgment hearing, the respondent violated Mass. R. Prof. C. 1.1 and 1.3. By failing to respond to the client's inquiries after the summary judgment decision, the respondent violated Mass. R. Prof. C. 1.4(a)(3) and (4).

The respondent was admitted to practice in Massachusetts in 2004 and has no disciplinary history. The respondent received an admonition for his misconduct.