

129 PRB

[Filed 23-Apr-2010]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re PRB File Nos. 2010-048 & 2010-147

Decision No. 129

Respondent's practice is primarily in the field of real estate and he maintains more than one trust account for real estate closings. On two occasions his office deposited the closing funds in one trust account and wrote checks from another trust account resulting in the funds of one client being used for the business of another without the client's permission.

The parties have filed a Stipulation of Facts and Joint Recommendations as to Conclusions of Law and Sanctions. The Hearing Panel accepts the stipulation and recommendations and orders that Respondent be reprimanded by Disciplinary Counsel for violation of Rule 1.15(d)(2) of the Vermont Rules of professional Conduct in existence prior to September 1, 2009 (PRB File no. 2010-048) and 1.15(f)(2) of the present Rules. (PRB File No. 2010-147).

Facts

Respondent was admitted to the Vermont Bar in 1983 and works as a sole practitioner. He does a good deal of real estate work and, due to the requirements of various banks, maintains trust accounts at several different banks.

PRB File No.2010-048

In August of 2009 Respondent represented a property buyer in a cash transaction. The buyer wired the closing funds to Respondent's account at People's Bank for disbursement at the closing.

At the closing on August 14, 2009, a non-attorney employee disbursed \$69,579.42 from a trust account maintained by Respondent at Citizen's Bank, instead of People's Bank where the funds had been deposited. At that time there were funds in Citizen's Bank belonging to other clients. Respondent did not discover the mistake until August 20, 2009. By that time \$50,367.53 of funds belonging to other clients had been disbursed and the account was overdrawn by \$19,211.89. On August 20, 2009, Respondent transferred \$69,579.42 from his Peoples account to his Citizens account.

Citizen's Bank notified Disciplinary Counsel of the overdraft. In connection with the investigation, Respondent agreed to submit to an audit of his bookkeeping system. A certified public accountant performed the audit on October 16, 2009, and provided Disciplinary Counsel with a report of the audit.

PRB File No. 2010-147

On December 10, 2009, Respondent closed a real estate transaction in which he was supposed to fund the transaction by making disbursements from a trust account he maintained at TD Bank. A non-attorney employee disbursed funds from the closing using the Citizens account instead of the TD Bank account. At the time the Citizens account held funds belonging to other clients.

Respondent did not discover this mistake until December 18, 2009, by which time \$1,172.46 of client funds in the Citizens Bank account had been used to conduct the business of the client whose funds were at the TD Bank. The clients whose funds were in the Citizens account had not given Respondent permission to use their money to conduct the business of his other client.

Following receipt of the audit, Respondent instituted several changes to his office procedures. These changes are designed to ensure, among other things, that two employees will independently review trust account disbursements in connection with real estate closings in order to verify that funds are disbursed from the proper trust account.

Conclusions of Law

PRB File No. 2010-048

In August of 2009, Rule 1.15(d)(2) of the Vermont Rules of Professional Conduct provided that “a lawyer shall not use, endanger or encumber money held in trust for a client or third person for purposes of carrying out the business of another client or person without full disclosure and permission of the owner.”

Respondent violated this Rule when he disbursed client funds from Citizens Bank to conduct the business of a client whose funds were in his account at Peoples Bank.

PRB File No. 2010-147

In December of 2009, Rule 1.15(f)(2) of the Vermont rules of Professional Conduct provided that “a lawyer shall not use, endanger, or encumber money held in trust for a client or third person for purposes of carrying out the business of another client or person without the permission of the owner given after full disclosure of the circumstances.”

Respondent violated this Rule by using and endangering money held in trust for one client for the purpose of carrying out the business of another client without the owner’s permission when he disbursed funds from his Citizens Bank account to conduct the business of a client whose funds were at the TD Bank.

Sanction

We accept the parties’ recommendation that Respondent be admonished by Disciplinary Counsel. This sanction is in line with other recent cases of trust account violations where the attorney was negligent in handling trust funds with no intent to harm clients and no actual harm.

In PRB Decision No. 115, Respondent was randomly selected for audit. He had used his checkbook to track his bank account, but had not reconciled the statements. Had he done so he would have uncovered arithmetic errors and other poor bookkeeping. He was admonished by Disciplinary Counsel and placed on probation to ensure accurate record keeping.

In PRB Decision No. 105, Respondent negligently failed to collect the broker's deposit in a real estate transaction which resulted in an overdraft of her trust account. When it was discovered, she immediately obtained the missing funds. No clients were harmed. Respondent was admonished by Disciplinary Counsel and placed on probation, the goal of which was to monitor her trust accounting.

In PRB Decision No. 93, Respondent closed a real estate transaction and disbursed the funds without checking that the closing funds had been wired to her account. Again there was no intent to harm clients, the violation occurred due to the attorney's negligence and Respondent was admonished by Disciplinary Counsel.

In addition, under the ABA Standards for Imposing Lawyer Sanctions, there are no aggravating factors present that would suggest that the sanction should be increased.

We have not imposed probation as was done in several of the cited cases. Disciplinary Counsel has not requested probation and it appears that as a result of the audit Respondent has made changes to his handling of his multiple trust accounts to prevent other instances of funds being deposited in one account and paid out from another.

Order

Respondent shall be admonished by Disciplinary Counsel for violation of Rule 1.15 (d)(2) of the Vermont Rules of Professional Conduct in effect prior to September 1, 2009, and Rule 1.15(f)(2) of the Rules in effect subsequent to September 1, 2009.

Dated: **April 23, 2010**

Hearing Panel No. 2

/s/

Jesse M. Corum, IV, Esq., Chair

/s/

Theodore C. Kramer, Esq.

/s/

Christopher G. Chapman