

IN RE: JOAQUIM F. SILVA

BBO # 462360

NO. BD-2022-031

Order (Term Suspension/Stayed) entered by Justice Lowy on April 25, 2022.¹

For IOLTA recordkeeping violations, aggravated by prior unrelated misconduct, the respondent received a three-month suspension, stayed for one year, on conditions.

SUMMARY²

From approximately 2018 through September 2021, the respondent failed to keep proper IOLTA records, in violation of Mass. R. Prof. C. 1.15(f)(1) (B), (C), (D), and (E). Between April 2018 and February 2021, the respondent paid personal and business expenses directly from his IOLTA. On December 31, 2019, he sent a check representing a client's real estate proceeds from his IOLTA to the client. The client did not cash the check promptly, and for the next eighteen months, the money remained intact in the respondent's IOLTA. On June 1, 2021, the IOLTA balance dipped below the amount the respondent should have been holding for the client, the respondent assuming, incorrectly, that the client had cashed his check. When the client tried to cash the check two months later, the respondent's IOLTA was \$243 short, and the check was refused for insufficient funds. After receiving notice of this from the bank, the respondent immediately deposited funds into the IOLTA, and issued a new check to the client, which the client promptly cashed. In addition to the rules cited above, the respondent's conduct in depositing personal funds to his IOLTA violated rule 1.15(b)(2); issuing checks to his creditors directly from the IOLTA violated 1.15(e)(5); and his negligent misuse violated 1.15(b).

The parties offered nothing in mitigation. In aggravation, the respondent has prior discipline – a 1997 public reprimand and a 2016 public reprimand, both for misconduct different from the misconduct at issue here.

The parties filed a stipulation as to the misconduct and rule violations and jointly recommended to the Board a three-month suspension, stayed for one year on conditions. By vote dated March 14, 2022, the Board of Bar Overseers recommended to the S.J.C. that it accept the parties' stipulation to a three-month suspension, stayed for one year on conditions.

On April 25, 2022, Justice Lowy imposed a three-month suspension, stayed for one year on conditions.

¹ The complete order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

² Compiled by the Massachusetts Board of Bar Overseers' Office of General Counsel based on the record filed with the Supreme Judicial Court.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2022-031

IN RE: Joaquim F. Silva

ORDER OF TERM SUSPENSION/STAYED

This matter came before the Court, Lowy, J., on an Information and Record of Proceedings pursuant to S.J.C. Rule 4:01, § 8(6), with the Recommendation and Vote of the Board of Bar Overseers (Board) and the stipulation of the parties filed by the Board on April 20, 2022. Upon consideration thereof, it is ORDERED that:

1. Joaquim F. Silva is hereby suspended from the practice of law in the Commonwealth of Massachusetts for a period of three (3) months, with the execution of the suspension stayed for a period of one (1) year pursuant to the probationary conditions as set forth in the March 7, 2022 Stipulation of the Parties.

It is FURTHER ORDERED that:

2. Within fourteen (14) days of the date of entry of this Order, the lawyer shall:

a) file a notice only that the lawyer has been placed

on a one (1) year probationary period with every court, agency, or tribunal before which a matter is pending, together with a copy of the notices sent pursuant to paragraphs 2(b) and 2(c) of this Order, the client's or clients' place of residence, and the case caption and docket number of the client's or clients' proceedings;

b) provide notice only to all clients and to all wards, heirs, and beneficiaries that the lawyer has been placed on a one (1) probationary period;

c) provide notice only to counsel for all parties (or, in the absence of counsel, the parties) in pending matters that the lawyer has been placed on a one (1) year probationary period.

All notices required by this paragraph shall be served by certified mail, return receipt requested, in a form approved by the Board.

3. Within twenty-one (21) days after the date of entry of this Order, the lawyer shall file with the Office of the Bar Counsel an affidavit certifying that the lawyer has fully complied with the provisions of this Order and with bar disciplinary rules. Appended to the affidavit of compliance shall be a copy of each form of notice, the names and addresses of the clients, wards, heirs, beneficiaries, attorneys, courts and agencies to which notices were sent, and all return receipts

or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise requested in writing by the lawyer or ordered by the court;

4. Within twenty-one (21) days after the entry date of this Order, the lawyer shall file with the Office of Bar Counsel and the Clerk of the Supreme Judicial Court for Suffolk County a copy of the affidavit of compliance required by paragraph 3 of this Order;

5. The lawyer shall timely comply with the conditions of this Order and remain in compliance through out the one (1) year probationary period. If the lawyer fails to comply with any of the terms and conditions of this Order, the Office of Bar Counsel may petition this Court for the immediate imposition of the three (3) month suspension.

6. After one (1) year from the date of entry of this Order, the lawyer may file an affidavit of compliance with the Office of Bar Counsel and the Clerk of the Supreme Judicial Court for the County of Suffolk. Upon receipt, and with the assent of the Office of Bar Counsel, the lawyer may then request that this court issue an order stating that he is no longer

subject to the three (3) month suspension that gave rise to the petition for discipline.

By the Court, (Lowy, J.)

/s/ Maura S. Doyle

Maura S. Doyle, Clerk

Entered: April 25, 2022