SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-136
District Docket No. XIV-2011-2000E

IN THE MATTER OF	
JONATHAN EDWARD SACHAR	
AN ATTORNEY AT LAW	

Decision

Argued: October 17, 2013

Decided: December 18, 2013

William C. Cagney appeared on behalf of the District I Ethics Committee.

Respondent waived appearance for oral argument.[1]

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

[1] Initially, respondent waived appearance. Late in the afternoon, the day before the scheduled oral argument in this matter, the Office of Board Counsel received a request for an adjournment of his case. Respondent alleged that he was involved in a project in Florida and was unable to travel to New Jersey. He also indicated that he agreed with the recommendations of the trier of fact. The Board denied respondent's request.

This matter was before us on a recommendation for discipline (three-month suspension) filed by the District I Ethics Committee (DEC). The five-count complaint charged respondent with violating RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) in all five counts and RPC 8.4(d) (conduct prejudicial to the administration of justice) in one count. We agree with the DEC that a three-month suspension is appropriate.

Respondent was admitted to the New Jersey bar in 1995. He has no history of discipline.

On the day of the ethics hearing below, the parties presented to the hearing panel a stipulation in which respondent admitted the allegations of the complaint, with the exception of four paragraphs. Those paragraphs dealt, in part, with what was known or understood by the grievant and his counsel. Respondent denied the RPC violations in each of the five counts.

The undisputed facts are as follows:

In late 2007, respondent was seeking a commercial loan for his business, which engages in real estate development and film production businesses, under the name J.E.S. Properties, LLC. He was referred to James R. Solakian, who operates a private,

so-called "hard money" commercial lending business, under the name J.R.S. Holdings, L.L.C.

By letter dated December 14, 2007, respondent made a proposal to Solakian for the terms of a loan. Respondent proposed that he "sign on personally" as well and attached a one-page personal financial statement, headed "Jonathan E. Sachar, Esq., third-quarter 2007" ("2007 PFS"). Respondent's 2007 PFS showed total assets of over $20 million and total liabilities of just over $4 million, with no liabilities in the form of "Notes & Loans Payable." Respondent's 2007 PFS also showed a twenty-acre "Mimosa Drive Rio Grande" property ("The Mimosa Drive property"), with a market value of $2,050,000 and mortgages of $500,000.

On December 24, 2007, respondent emailed Solakian, asking if he would "do the loan for $150-200K with just the real estate and me personally as collateral. . . . your loan would be secured by me personally and by a first on $180K of real estate and a second on a $1.8M piece of real estate the equity available in these pieces is over $1.2M for a $200K loan."

After further exchanges of emails and telephone conferences, Solakian and respondent agreed to a $200,000 loan,

secured by three mortgages and supported by other consideration not specified in the complaint. Thereafter, most further communications and negotiations over the consummation of the loan occurred between respondent, who handled the loan for his business and for himself, and Solakian's counsel, Daniel E. Knee.

On February 21, 2008, Solakian, as managing member of J.R.S. Holdings, L.L.C., as lender, and respondent, as managing member of J.E.S. Properties, LLC, as borrower and individually, as guarantor, executed a commercial loan and security agreement, essentially providing for a loan of $200,000 for "business purposes," secured by mortgages on three real estate properties ("the loan agreement"). The loan agreement specified as collateral a "First Mortgage" on both 1808 Bay Shore Road, North Cape May, New Jersey, and 1810 Bay Shore Road, North Cape May, New Jersey, and a "certain Mortgage" on "certain commercial real property located at 45 Mimosa Drive, Rio Grande, NJ" and thereafter referred to as the "Mimosa Drive Property." The loan agreement provided that the collateral was free and clear of all liens, except as to the Mimosa Drive property, which, contrary to the 2007 PFS representation that it was encumbered only by a

$500,000 mortgage, had three mortgages on it, totaling more than $1.8 million: a $750,000 mortgage to InterSTATE NET BANK (InterSTATE), a $233,317.70 mortgage to InterSTATE, and a $832,989.00 mortgage to PIDC Local Development Corporation.

Under the loan agreement, respondent represented and warranted that the two InterSTATE mortgages would be removed and cancelled of record within ninety days:

> [T]he Mortgage from J.E.S. Properties to InterSTATE NET BANK, dated January 31, 2006, and recorded February 14, 2006, in Mortgage Book 4313, Page 718, to secure $750,000.00 and the Mortgage from J.E.S. Properties, LLC to InterSTATE NET BANK, dated January 31, 2006, and recorded February 14, 2006, in Mortgage Book 4313, Page 732, to secure $233,317.70, were given as improvement bond collateral for improvements to the property that have already been 95% completed and should be removed within the 90 days from January 10, 2008. All that remains to be done are to top coat a road in the Spring of 2008 for approximately $30,000.00 and for the electric company to install the street lights (already paid for in advance). The property will then released [sic] from liability for these improvements. These two Mortgages will then be cancelled, with such cancellation occurring within the 90 days from the date of this Agreement, with written proof of such cancellation of record being provided to the Lender within said time period.

> (Hereinafter, this representation and warranty provision shall be referred to as the "Mimosa Provision")
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> [S;C¶15.][2]

Additional loan documents executed and delivered in connection with this loan included a promissory note, the aforementioned three mortgages, the corporate warranty and representations of J.E.S. Properties, LLC, and a personal guaranty agreement, all signed by respondent. Both the corporate warranty and representations of J.E.S. Properties, LLC, and the personal guaranty agreement contained the identical Mimosa Provision regarding the removal and cancellation of the two InterSTATE mortgages on the Mimosa Drive property, within ninety days.

At the loan closing, respondent placed his initials next to the first line of this Mimosa Provision, both in the commercial loan and security agreement and in the personal guaranty agreement, after correcting "JES Properties" to "J.E.S. Properties," on the first line, by hand. Apparently, respondent

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[2] "S" refers to the stipulation. "C" refers to the formal ethics complaint.

made the same correction on the corporate warranty and representations, but did not initial it.

The essential language of this representation and warranty came from respondent, in an email to Knee. On January 9, 2008, Knee advised respondent that the title binder and searches for the Mimosa property showed three mortgages, totaling more than the appraised value of the property, as well as three tax sale certificates and unpaid taxes. Knee's email stated, "these matters must be resolved." By reply email, respondent told Knee:

> I paid the 832K loan that was against 45 Mimosa off in November – the others are for improvement bond collateral for improvements that have already been 95% completed, and should be removed within the next 90 days – just waiting to top coat a road in the spring 30K and the electric company to install the street lights (that I already paid for in advance) then they will release the letter of credits against these properties.
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> [S;C¶20.]

In reality, no development had occurred on the Mimosa Drive property. Also, respondent was in no position to represent that those mortgages would be removed within ninety days. In fact, at the time of the loan closing, respondent was in default of

his payment obligations to InterSTATE and used some of the proceeds of the $200,000 loan to make a payment to that bank.

According to the complaint/stipulation, emails exchanged between respondent and Knee, in May 2008, revealed "respondent's approach to dealing with the Mimosa Provision after the fact by indirection if not deception." On May 5, 2008, Knee emailed respondent, first quoting the Mimosa Provision, and then stating:

> The 90 day compliance period will expire on May 21, 2008. Kindly advise of the status of the cancellation of both mortgages and the two Assignments of Leases and Rents. Breach of these "Representations and Warranties" will result in an event of default with automatic acceleration of the total amounts due for principal, interest and other charges. The 20% Default Rate will then apply.
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> [S;C¶24.]

Respondent replied the same day, with an explanation that suggested merely a slight delay:

> Thanks you [sic] for the reminder: the township changed engineers causing more than a 30-day delay but hopefully all will be up to speed on the project this week and we can get them removed within 30-days.
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> [S;C¶25.]

Thereafter, Knee emailed respondent, referring to his May 5, 2008 email and to respondent's reply, and then stating: "To date we have heard nothing from you. At the end of business yesterday, May 21, 2008, your loan went into automatically [sic] default . . . . A Payoff Statement is being prepared and will be provided to you." Respondent replied by email the same day, addressing essentially an irrelevancy and ignoring the real subject, namely, the removal of the mortgages on the Mimosa Drive property. Knee responded about ten minutes later, stating, "These instruments are still of record and have to be removed/discharged, as do the mortgages. The Default remains in effect." Respondent replied by email to Knee the next evening, stating, "The mortgages were never going to be discharged? The $750K?" On May 27, 2008, Knee emailed respondent about his own and Solakian's failure to understand respondent's last email and reiterated the situation:

> Neither Jim or [sic] I understand you [sic] last e-mail. The Assignments of Leases and Rents are recorded liens and must be discharged of record event [sic] if there are no present leases or rents. The Assignments would attach to any future leases and rents. Similarly, the two remaining Mortgages must be discharged of record. You expressly agreed in the Loan Documents to discharge all of these by May 21, 2008. (Otherwise, there would have been

> no loan without the discharges). Although, I reminded you of this, that passed with no explanation or extension request from you. The Loan remains in default and due and owing in full.
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> [S;C¶30.]

Respondent's reply was unresponsive to the prior email string and set forth an entirely new explanation:

> They are part of the mortgage the bank will not release them, Why would they? All i [sic] said was the LC's that were tied to the construction loans . . . that the work was done or almost done and should be removed before summer, this loan is to be paid in a few months and the one LC should be removed before that but the paving LC/Lien may not happen until the fall as we have some construction going on that would ruin the top coat, so i [sic] have to wait on that but that is the last thing that needs to get done, then the township meets . . . the engineer inspects . . . a month or so goes by before it is released . . .
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> Anyway, I am getting ready to build on the lots and have to pay the loan off to do so so i [sic] may be paying it off early.
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> [S;C¶31.]

After respondent successfully delayed Solakian's action for several more months, Solakian instructed Knee to file suit. At no time did respondent offer any explanation to Solakian and Knee approaching the one that he only much later offered to them. The explanation was that the Mimosa Provision had been a

matter of "confusion," in that Solakian and Knee had confused development that was in process on another piece of real estate.

The ethics complaint alleged, and respondent stipulated, that, regardless of whether the development work purportedly to be completed was on the Mimosa Drive property or on other property, the Mimosa Provision was respondent's representation and warranty that it would be completed and the related liens of record on the Mimosa Drive property would be removed. According to the complaint, despite several requests, respondent has not produced, presumably to Solakian and Knee, any documentation evidencing any "improvement bond collateral" referred to in the Mimosa Provision or any "LC/Lien" documentation referred to in his May 27, 2008 email.[3]

As stated in the complaint, the Mimosa Drive property consisted of approximately twenty acres, in three parcels, including a thirteen-acre and a five-acre lot, as well as two lots that give access to the above two larger lots ("the access lots").

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[3] The record does not reveal who made the requests for the documentation.

According to paragraph 37 of the complaint, which respondent did not admit, at the time of the loan agreement, February 2008, respondent understood — and thought that Solakian and Knee understood — that the two InterSTATE mortgages on the Mimosa Drive property constituted liens on the entire property. The title binder prepared in connection with the loan agreement, however, actually reported that the two InterSTATE mortgages constituted first mortgage liens only on the two access lots and not on either of the two larger lots. The loan agreement memorialized that the mortgage that respondent executed and delivered to Solakian in connection with the loan agreement constituted a lien on all three parcels of the Mimosa Drive property.

As a result, after February 22, 2008, one day after the loan agreement, but unknown to respondent and, he thought, also unknown to Solakian and Knee, Solakian held a valid second mortgage lien on the two access lots, as expected, and a valid first mortgage lien on the two larger lots, rather than a second mortgage lien, as expected. Respondent first became aware of this situation in 2009. He then further encumbered the two larger lots by executing and delivering a $750,000 mortgage to InterSTATE on those lots.

According to the complaint, respondent has indicated (to whom the record does not reveal), without any detailed explanation or supporting documentation, that he agreed to execute and deliver an additional mortgage to InterSTATE, in 2009, as an accommodation to correct a purported record imperfection, during the course of foreclosure proceedings brought by InterSTATE with respect to the two access lots, when it was discovered that the $750,000 mortgage had never constituted a lien on the two larger lots.

As a result, beginning in 2010, respondent knew that Solakian continued to hold a first mortgage lien on the two larger lots and a second mortgage lien on the two access lots, while InterSTATE continued to hold a first mortgage lien on the two access lots and only a second mortgage lien on the two larger lots.

According to the complaint, however, respondent knew that Solakian and Knee understood something different, namely, that Solakian held only a second mortgage position on all of the Mimosa Drive property, behind the first mortgage position of the two original InterSTATE mortgages of $750,000 and $233,317.70 on all of the Mimosa Drive property, including the two access lots and the two larger lots. Respondent disputed having such

knowledge. Also according to the complaint, respondent proceeded to use, to his personal advantage, the misunderstanding of Solakian and Knee. Respondent denied this allegation.

In March 2010, respondent emailed Knee, asking, "Would your client release the Mimosa property from the Judgment and mortgage for $15,000.00? If so, I believe I can get that to him within 60 days." When Knee asked respondent for buyer and purchase/sale contract information, respondent replied, "I don't have all that . . . just ballpark offer to take care of the foreclosure and get you some money. So the question is if they can satisfy the bank for less than is owed (a short sale) will you agree to $15K?" Solakian then asked for a "coherent letter," to which respondent replied, "This is what I asked; do you want $15,000.00 from a property that is in foreclosure and which will not give you anything soon but $15K if you cooperate???"

The complaint alleged, and respondent denied the allegation, that, during April, May, and June, 2010, respondent continued to exchange emails with Solakian and Knee, in an effort to obtain an agreement to release the judgment and the mortgage, premised on what respondent knew to be the

misunderstanding of Solakian and Knee that Solakian held only a second mortgage on the Mimosa Drive property. On April 3, 2010, respondent asked Solakian if he would "accept $15,000.00 to release the judgment and mortgage from the property? If so, I believe the first mortgage holder will agree to this and take less [sic] they are owed and carve out this $15,000.00 for you." Later on the same day, respondent informed Solakian and Knee that

> the foreclosure went through and the next step is the Sheriff's sale . . . you were noticed of that court date as well because you are the second mortgage holder . . . they are actually owed $850K now . . . I might be able to get you $20K . . . This is a way for you to get some money and for me to pay down some of my debt to you.
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> [C¶48.]

On May 13, 2010, respondent told Solakian, "If it goes to Sheriff's sale you may not get anything as I owe over $800K on the first mortgage and the offers are in the $350K range." On May 17, 2010, respondent informed Solakian that "[t]he first mortgage holder is already walking away from over $500,000.00 by agreeing to give you $30K from the funds."

In June 2010, Solakian and respondent agreed to a $23,000 cash payment and a $13,000 mortgage note for Solakian's mortgage

on the Mimosa Drive property. The complaint alleged that respondent took the matter one step further, to his personal advantage, again, using what he knew to be Solakian's and Knee's misunderstanding. In order to remove the entire Mimosa Drive property from Solakian's collateral, respondent asked him for, and Solakian executed and delivered, a limited release of judgment, limited to the Mimosa Drive property plus, rather than a discharge of mortgage, an assignment of Solakian's $200,000 mortgage. The mortgage was assigned, rather than discharged, at respondent's request and based on his explanation that it might assist him in negotiating with the bank. The mortgage assignee was Cape Star Realty, LLC, whose principal managing member was respondent. According to respondent, at that time, he owned ninety percent of Cape Star Realty, LLC, while ten percent was held by his partner, the former broker of record. That entity was not operating, but was intended to be used to refinance and pay off the $13,000 mortgage and the InterSTATE mortgage.

The effect of this transaction, which closed in July 2010, was to assign to respondent's limited liability company Solakian's first mortgage on the two larger lots, putting respondent's limited liability company ahead of all other lienholders, including InterSTATE, as well as Solakian's second

mortgage on the two Mimosa Drive access lots. The fact that respondent was holding the first mortgage on the two larger lots, through his limited liability company, gave him a more advantageous bargaining position with the bank, in order to obtain clear title to the entire property.

At no time did respondent make any disclosure to Solakian or Knee about the correct priority of liens on the Mimosa Drive property. Solakian and Knee first learned of this information in the course of the OAE's investigation of this matter. At an undisclosed time, respondent told Solakian that he had no obligation to disclose the actual facts to him.

Solakian's litigation against respondent continued in the law division. In a certification dated June 22, 2011, and served on Knee, respondent sought to void the parties' earlier settlement of the dispute. Respondent alleged that Solakian had breached his agreement not to pursue fraud or misrepresentation charges against him, by "filing fraud and misrepresentation charges with the Attorney Ethics Committee and the Prosecutor's Office." Respondent's certification mischaracterized the genesis of the Mimosa Provision and asserted that he had signed it by

either mistake or fraud. Respondent's certification accused Solakian and Knee of "fraud" and "extortion."[4]

In essence, respondent certified that he had agreed to a "best efforts" provision relating only to the smaller of the two InterSTATE mortgages, contrary to the language of his own January 9, 2009 email, which had been incorporated verbatim into the loan agreement, the personal guaranty agreement, and the corporate warranty and representations. The ethics complaint alleged and respondent stipulated that

> [t]he understanding of the parties and material terms intended by which the parties intended to be bound were evidenced, by, inter alia, a series of phone conferences and emails beginning on or about December 10, 2007 and ending on February 20, 2008. The parties agreed that plaintiff would reduce the understanding of the parties to writing. The material features of the loan to be drafted were as follows:
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> * * * *
>
> (C) With respect to collateral: A second mortgage on the property known as "Mimosa Property" and a first mortgage on two lots on Bay Shore Road in Lower Township, New Jersey.

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[4] As seen below, this certification was not accepted by the court, because of a filing fee deficiency.

> (D) With respect to the prior mortgages: a $750,000.00 mortgage would remain with the borrower to use his best efforts to get the $233,000.00 mortgage (that had approximately $30,000.00 owed on it) released once roads and other improvements were completed in the spring, summer or fall of 2008 on the Bottle Creek Inc. Subdivision. The completion of said improvements and a completion date for said improvements was [sic] not in the control of the borrower and not a requirement of the loan.
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> [S;C¶61.]

Respondent never properly filed his certification with the court. He served it on Solakian and Knee, without indicating that it had not been filed. Respondent thought it would help him pressure Solakian to settle the matter.

Count one of the ethics complaint alleged that respondent's 2007 PFS was not certified or provided to Solakian as a form of express condition to the issuance of the loan. Nevertheless, it was tendered to Solakian for purposes of inducing him to make the loan, an inducement made obvious by respondent's written representations that his personal assets were a reason for Solakian to issue a loan. Just how deficient respondent's 2007 PFS was cannot be determined with precision. What can be determined, however, and what respondent admitted, is that, on his 2007 PFS, under liabilities, he listed no notes and loan

obligations. Respondent admitted that those obligations were numerous and substantial, easily approximating $1 million, with at least several in default and one in suit, by the time Solakian issued the loan to him. Respondent denied, however, that the contents of his 2007 PFS violated RPC 8.4(c).

Count two of the complaint alleged that respondent executed and delivered the loan documentation containing the Mimosa Provision, which was false in several respects. First, according to the complaint, respondent conceded that the stated reasons, in the Mimosa Provision, for his promise to remove the two InterSTATE mortgage liens within ninety days did not even apply to the Mimosa Drive property, which was and remains vacant, undeveloped land. In a subsequent email, respondent stated that those mortgages were "never" going to be released. Second, respondent certified that, in any event, only one of the two mortgages identified in the Mimosa Provision was ever subject to removal, on completion of development construction items.[5] Third, respondent's email responses to Solakian and Knee, in May 2008, were deceitful in their unresponsiveness and misdirection and only served to mask the fact that the

[5] It is unclear to whom respondent made this certification.

representation and warranty regarding the Mimosa Provision were not true and forthright. Again, respondent stipulated these allegations, but denied that such conduct violated RPC 8.4(c).

Count three of the complaint alleged that respondent's May 2008 communications to Solakian and Knee about the Mimosa Provision contradicted his attempted explanation that he had signed multiple documents containing the Mimosa Provision as a mistake. According to the complaint, respondent's initial responses, when Knee raised the question of compliance, were to reiterate that compliance would be accomplished and to proffer some excuse for a slight delay. His approach then changed to convincing Solakian and Knee that he would be paying off the loan shortly, "anyway." At no time did respondent suggest that he had not meant to sign off on the Mimosa Provision. Eventually, respondent's position grew to chastising Solakian and Knee for their own misunderstanding of what was supposed to happen, without any reference to the express language of the Mimosa Provision, which had been drafted, virtually verbatim, from respondent's own email to Knee. According to the complaint, respondent seemed, at that point, to have been seeking further delay, in avoidance of Solakian's impending lawsuit, while he sought funding elsewhere. Here, too,

respondent stipulated the allegations, but not a violation of RPC 8.4(c).

Count four of the complaint alleged, and respondent stipulated, that he initiated the negotiation of a simple payment to Solakian to obtain Solakian's limited discharge of judgment and discharge of mortgage on the Mimosa Drive property. Respondent convinced Solakian that Solakian was giving up almost nothing, in reaching an agreement, because Solakian understood that he held only a second mortgage. The complaint alleged that respondent failed to disclose otherwise, although he knew otherwise. Respondent also expressly promoted and reinforced Solakian's misunderstanding and used it to his advantage, not only to negotiate a better payment price, but also to obtain the mortgage assignment, rather than its discharge. In this way, he put himself in a priority mortgage position, in order to negotiate more aggressively with the bank and any junior lienholders. Respondent denied, however, that he violated RPC 8.4(c).

Count five of the complaint alleged that respondent's June 2011 certification to the court mischaracterized the Mimosa Provision. Specifically, in paragraph (D) of the certification, respondent told the court that the Mimosa Provision required him

solely to use his best efforts to remove the $233,000 mortgage on the property and that the $750,000 mortgage would remain. Yet, the language of the provision made it clear that respondent had assured Solakian that the two mortgages would be removed within ninety days, as opposed to merely employing his best efforts to see that one of the mortgages would be removed.

In addition, the complaint charged that respondent misrepresented to Solakian and Knee that the certification had been filed, in an effort to gain an advantage in the litigation. Respondent stipulated the factual allegations of count five of the complaint, but denied violations of RPC 8.4(c) and (d).

At the DEC hearing, respondent offered an explanation/defense for his actions. As to the allegations of count one (the inaccurate PFS), he told the DEC that he knew that Solakian was concerned with collateral and not with his personal enterprises. He acknowledged that the PFS was not one hundred percent accurate, but claimed that it was "an overview," rather than a complete list of all of his assets and liabilities.

As to the allegations of count two, respondent reiterated that there was no development on the Mimosa Drive property and

that he never represented that there was. He added that the development related to a different piece of property.

He did not offer much of an explanation or defense for count three.

As to count four (the failure to tell Solakian the true priority of the liens on the Mimosa Drive property), respondent asserted that he "wasn't a hundred percent sure that [Solakian] didn't know it;" he had "suspicions" that Solakian did not realize his position. Respondent acknowledged that he had "made a mistake," that he "should have said something to him," but added that, because Solakian was represented by counsel, he "didn't think it was [his] duty to do it."

As to count five, respondent told the DEC that he had sent the certification to Solakian and to the court, but that it had been returned to him because of a problem with the filing fee. He explained that he had not re-filed it because, by the time that it had been sent back to him, the parties had already agreed to a settlement.

Presumably by way of mitigation, respondent testified that 2008 was "a very difficult time" in real estate. He added that, also in 2008, his marriage had ended.

Based on the stipulated facts, the DEC found respondent guilty of each of the charged violations. The DEC found that "[respondent's] conduct in dealing with [Solakian] as well as his testimony at the Hearing were also conduct involving dishonesty and misrepresentations as well as prejudicial to Administration [sic] of Justice." Specifically, the DEC found the following:

> a.) Blatant misrepresentation by the Respondent concerning the 2007 PFS (First Count).
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> b.) Blatant misrepresentation concerning the 2008 Mimosa Provision (Second Count).
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> c.) Blatant misrepresentation concerning the Mimosa Provision at the Post-Closing (Third Count).
>
> d.) Blatant misrepresentation concerning 2010 Mortgage Assignment (Fourth Count).
>
> e.) Gross misrepresentation and abuse of the Justice System with a 2011 Certification (Fifth Count).
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> [HPR¶12.][6]

By way of aggravation, the DEC pointed to respondent's "hostility to ethical standards;" his failure to cooperate and lack of candor with disciplinary authorities; his lack of

[6] HPR refers to the hearing panel report.

contrition and remorse; his failure to readily admit his wrongdoing, despite the stipulated facts; his testimony and attitude, which indicated the likelihood of repeat offenses; the fact that his conduct was not an isolated incident; and his personal gain.

In mitigation, the DEC noted respondent's lack of ethics history; his "relative inexperience as an Attorney;" the lack of harm to any client; the remedial measures that he took by settling Solakian's claims; his family problems at the time of his misconduct; and the fact that he was not acting as an attorney in this matter.

The DEC recommended a three-month suspension:

> The Panel considered the lesser offenses of Admonition, Reprimand and Censure but found none of these to be sufficient in light of the pattern of misrepresentation, dishonesty and deceit and the conduct prejudicial to Administration [sic] of Justice. Although this is a first offense which normally would result in one of the lesser discipline [sic] the Panel did not feel that any of those were sufficient in that the conduct of the Respondent that [sic] was blatantly deceitful and continued all the way through and including his testimony at the Hearing. If his conduct had been remorseful and contrite at the Hearing a lesser discipline probably would have been recommended. Further, [respondent] does not actually appear to practice Law in the traditional sense. Therefore, we felt

> any discipline less than suspension would be of little effect.
>
> [HPR¶19.]

The DEC also recommended that, "when and if" respondent is reinstated and "when and if [he] actually practices Law," he do so under the supervision of a proctor for at least two years.

Following a de novo review of the record, we find that the DEC's conclusion that respondent was guilty of unethical conduct was fully supported by clear and convincing evidence. We disagree in part, however, with some of the DEC's findings.

That respondent violated RPC 8.4(c) is unquestionable. His dealings with Solakian and Knee reveal duplicity at every turn. Specifically, the language in the Mimosa Provision was misleading at best. We find that respondent's failure to tell Solakian and/or Knee that Solakian held a first mortgage on the subject property of the loan and to then manipulate Solakian, based on his misunderstanding, was inexcusable.

As to the PFS, respondent's claim that Solakian would not rely on his financial affairs was disingenuous. Had that been the case, it would have been pointless for respondent to provide the financial information in the first place. Like the DEC, we

find that the purpose of the false PFS was to induce Solakian to extend the $200,000 loan to respondent.

Count five of the complaint charged respondent with violating both RPC 8.4(c) and RPC 8.4(d). The RPC 8.4(c) charge appears to be based on misrepresentations in respondent's certification to Solakian and Knee and on his statement that the certification had been filed with the court, when, in fact, it had not. As to the former, we find that respondent violated RPC 8.4(c). We cannot find, however, that respondent's statement about the filing of the certification amounted to a misrepresentation. Respondent testified that, although the certification had been sent for filing, it had been returned to him because of a problem with the filing fee. He explained that he did not re-file it because, by then, he and Solakian had reached a settlement. Under the circumstances, we find no clear and convincing evidence that respondent's statement violated RPC 8.4(c).

As to the RPC 8.4(d) charge, it is not apparent how respondent's not filing the certification was prejudicial to the administration of justice. We, therefore, dismiss that charge.

Attorneys who have displayed deceitful conduct in real estate transactions, albeit in a different context, have received

sanctions ranging from a reprimand to a term of suspension, depending on the seriousness of the conduct, the presence of other ethics violations, the harm to the clients or third parties, the attorney's disciplinary history, as well as mitigation and other aggravating factors. See, e.g., In re Barrett, 207 N.J. 34 (2011) (attorney reprimanded for misrepresenting that a RESPA statement that he signed was a complete and accurate account of the funds received and disbursed as part of the transaction; the RESPA reflected the payment of nearly $61,000 to the sellers, whereas the attorney disbursed only $8700 to them; the RESPA also listed a $29,000 payment by the buyer, who paid nothing; finally, two disbursements totaling more than $24,000 were left off the RESPA altogether; the attorney had no record of discipline); In re Mulder, 205 N.J. 71 (2011) (reprimand for attorney who certified that the RESPA that he prepared was a "true and accurate account of the funds disbursed or to be disbursed as part of the settlement of this transaction;" specifically, the attorney certified that a $41,000 sum listed on the RESPA was to satisfy a second mortgage; in fact, there was no second mortgage encumbering the property; the attorney's recklessness in either making or not detecting other inaccuracies on the RESPA, on the

deed, and on the affidavit of title was viewed as an aggravating factor; mitigating circumstances justified only a reprimand); In re Khorozian, 205 N.J. 5 (2011) (censure imposed on attorney who represented the buyer in a fraudulent transaction in which a "straw buyer" bought the seller's property in name only, with the understanding that the seller would continue to reside there and would buy back the property after one year; the seller was obligated to pay a portion of the monthly carrying charges; the attorney prepared four distinct HUD-1 forms, two of which contained misrepresentations of some sort, such as concealing secondary financing or misstating the amount of funds that the buyer had contributed to the acquisition of the property; aggravating factors included the fact that the attorney changed the entries on the forms after the parties had signed them and that he either allowed his paralegal to control an improper transaction or he knowingly participated in a fraud and then feigned problems with recall of the important events and the representation); In re Scott, 192 N.J. 442 (2007) (censure for attorney who failed to review the real estate contract before the closing; failed to resolve liens and judgments encumbering the property; prepared a false HUD-1 statement misrepresenting the amount due to the seller, the existence of a deposit, the receipt

of cash from the buyer, and the amount of her fee, which was disguised as disbursements to the title company; prepared a second HUD-1 statement listing a "Gift of Equity" of $41,210.10; issued checks totaling $20,000 to the buyer and to the mortgage broker, based on undocumented loans and a repair credit, without obtaining the seller's written authorization; failed to submit the revised HUD-1 to the lender; failed to issue checks to the title company, despite entries on the HUD-1 indicating that she had done so; misrepresented to the mortgage broker that she was holding a deposit in escrow; and failed to disburse the balance of the closing proceeds to the seller; prior admonition and reprimand); In re De La Carrera, 181 N.J. 296 (2004) (three-month suspension in a default case in which the attorney, in one real estate matter, failed to disclose to the lender or on the RESPA the existence of a secondary mortgage taken by the sellers from the buyers, a practice prohibited by the lender; in two other matters, the attorney disbursed funds prior to receiving wire transfers, resulting in the negligent invasion of clients' trust funds); In re Nowak, 159 N.J. 520 (1999) (three-month suspension for attorney who prepared two settlement statements that failed to disclose secondary financing and misrepresented the sale price and other information; the attorney also engaged in a conflict of

interest by arranging for a loan from one client to another and representing both the lender (holder of a second mortgage) and the buyers/borrowers); In re Swidler, 205 N.J. 260 (2011) (six-month suspension imposed in a default matter; in a real estate transaction in which the attorney represented both parties without curing a conflict of interest, the attorney acted dishonestly in a subsequent transfer of title to property; specifically, in the first transaction, the buyer, Rai, gave a mortgage to Storcella, the seller; the attorney, who represented both parties, did not record the mortgage; later, the attorney represented Rai in the transfer of title to Rai's father, a transaction of which Storcella was unaware; the attorney did not disclose to the title company that there was an open mortgage of record; the attorney was also guilty of grossly neglecting Storcella's interests, depositing a check for the transaction in his business account, rather than his trust account, and failing to cooperate with disciplinary authorities; prior reprimand and three-month suspension); In re Fink, 141 N.J. 231 (1995) (six-month suspension for attorney who failed to disclose the existence of secondary financing in five residential real estate transactions, prepared and took the acknowledgment on false RESPA statements, affidavits of title, and Fannie Mae affidavits and

agreements, and failed to witness a power of attorney); In re Alum, 162 N.J. 313 (2000) (one-year suspended suspension for attorney who participated in seven real estate transactions involving "silent seconds" and "fictitious credits"; the attorney either failed to disclose to the primary lender the existence of secondary financing or prepared and signed false RESPA statements showing repair credits allegedly due to the buyers; in this fashion, the clients were able to obtain one hundred percent financing from the lender; because the attorney's transgressions had occurred eleven years before and, in the intervening years, his record had remained unblemished, the one-year suspension was suspended and he was placed on probation); In re Newton, 159 N.J. 526 (1999) (one-year suspension for attorney who prepared false and misleading RESPA statements, took a false jurat, and engaged in multiple conflicts of interest in real estate transactions); and In re Frost, 156 N.J. 416 (1998) (two-year suspension for attorney who prepared misleading closing documents, including the note and mortgage, the Fannie Mae affidavit, the affidavit of title, and the settlement statement; the attorney also breached an escrow agreement and failed to honor closing instructions; the attorney's ethics history included two private reprimands, a three-month suspension, and a six-month suspension).

Scott (censure) is a good starting point for the assessment of the proper discipline for this respondent. There, the attorney failed to review a real estate contract before closing, failed to resolve liens and judgments on the property, prepared a HUD-1 with multiple misrepresentations, prepared a second HUD-1 listing a "Gift of Equity," issued checks to the buyer without proper documentation or the seller's permission, failed to submit a revised HUD-1 to the lender, failed to issue checks to the title company having represented on the HUD-1 that she had done so, misrepresented to the broker that she was holding a deposit in escrow, and failed to disburse proceeds to the seller. Scott had a previous admonition and reprimand. Although respondent's misrepresentations are not as numerous, they are at least as serious, if not more serious, than Scott's.

Unlike Scott, respondent has no history of discipline. However, also unlike Scott, respondent acted for his own benefit. In addition, although respondent conceded that, in some of his dealings, he "made a mistake," he seems to have no grasp of the magnitude of his misconduct. His former counsel submitted a letter to us, the day before the scheduled argument on this matter, expressing respondent's remorse and explaining that the within events took place during "an incredibly difficult personal

period in [respondent's] life which, in part, led to his bad judgment."[7] Although we have been told about respondent's difficulties during the time that he was dealing with Solakian and Knee, we cannot ignore that he spun a web of misrepresentations to advance his financial self-interest, the magnitude of which he failed to acknowledge. He, therefore, deserves stronger discipline than the censure imposed in Scott. We, thus, determine that the three-month suspension recommended by the DEC is the appropriate degree of discipline in this case.

Member Zmirich did not participate.

Two final points warrant mention. First, that respondent's conduct did not involve the practice of law or arise from a client relationship will not excuse his serious transgressions or lessen the degree of sanction. Offenses that evidence ethical shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. It is well-established that the private conduct of attorneys may be the subject of public discipline. In re Musto, 152 N.J. 167, 173

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[7] Earlier, respondent had forwarded to us a letter that he submitted to the DEC, after the ethics hearing was concluded. The DEC panel chair did not make respondent's submission part of the record developed below. Because it is not properly in the record before us, we did not consider it.

(1997); In re Hasbrouck, 140 N.J. 162, 167 (1995); In re Schaffer, 140 N.J. 148, 156 (1995). The reason for that rule is

> not a desire to supervise the private lives of attorneys but rather that the character of a man is single and hence misconduct revealing a deficiency is not less compelling because the attorney was not wearing his professional mantle at the time. Private misconduct and professional misconduct differ only in the intensity with which they reflect upon fitness at the bar. This is not to say that a court should view in some prissy way the personal affairs of its officers, but rather that if misbehavior persuades a man of normal sensibilities that the attorney lacks capacity to discharge his professional duties with honor and integrity, the public must be protected from him [citing In re Mattera, 34 N.J. 259, 264 (1961)].
>
> [In re Magid, 139 N.J. 449, 452 (1995).]

Second, the DEC found respondent's testimony at the hearing "dishonest," apparently basing the "dishonesty" on respondent's refusal to recognize his wrongdoing and continuous assertions that he had done nothing wrong. Because dishonesty and failure to acknowledge one's mistakes are two different things, we make no finding that respondent's testimony was dishonest.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and

actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Isabel Frank
Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jonathan E. Sachar
Docket No. DRB 13-136

Argued: October 17, 2013

Decided: December 18, 2013

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Gallipoli		X				
Yamner		X				
Zmirich						X
Total:		6				1

Isabel Frank
Acting Chief Counsel