

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 09-102  
District Docket No. XIV-2007-0267E

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IN THE MATTER OF  
NINO F. FALCONE  
AN ATTORNEY AT LAW

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Decision

Argued: June 18, 2009

Decided: September 29, 2009

Nitza Blasini appeared on behalf of the Office of Attorney Ethics.

Joseph Castiglia appeared on behalf of respondent.

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

This matter was before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics ("OAE"). Respondent stipulated that he failed to safeguard funds, engaged in a conflict of interest, and made misrepresentations in a letter to a lender in a closing statement. Respondent stipulated

violations of RPC 1.15 (no subsection cited), RPC 1.7(b), and RPC 8.4(c).

The OAE recommended discipline ranging from a reprimand to a three-month suspension. We determine to censure respondent.

Respondent was admitted to the New Jersey bar in 1984. On October 2, 2001, he received a reprimand for gross neglect, lack of diligence, failure to communicate with the clients, and misrepresentations in two matters. In re Falcone, 169 N.J. 570 (2001).

In the current matter, respondent represented Manuel Rivera, the grievant, in the May 14, 2004 sale of his house to Elvira Palijaro. The property was in foreclosure. A sheriff's sale had been scheduled for May 18, 2004.

James Coombs, a representative of Executive Land Title Search, Inc., acted as settlement agent and prepared the HUD-1 settlement statement (the "RESPA") for the transaction, which listed a \$12,000 deposit from the buyer. Respondent prepared the contract of sale, which was dated April 12, 2004. The contract required a buyer's deposit of \$13,750, to be held in trust by respondent.

On April 16, 2004, respondent received a \$12,000 check from Palijaro, representing nearly all of the deposit.<sup>1</sup> However, respondent lost the check and, therefore, never deposited it into his trust account.

On April 27, 2004, respondent sent a letter to the mortgage company, Power Financial Associates, stating that he was holding a \$12,000 deposit. According to the stipulation, respondent then knowingly allowed Rivera to sign the RESPA with what the stipulation termed as an "inaccurate" reference to the deposit (line 201). By the time of the claims, respondent knew that the \$12,000 had not been deposited in his trust account.

At about the same time that respondent represented Rivera in the sale to Palijaro, he represented Palijaro in the purchase of a property in Fort Lee, which closed on April 23, 2004. Respondent did not disclose to Rivera, in writing, the Palijaro representation in the Fort Lee matter.

The stipulation cited, as mitigation, respondent's cooperation with the OAE and his admission of wrongdoing. In aggravation, it cited respondent's prior reprimand.

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<sup>1</sup> The stipulation notes the \$1,750 discrepancy between the amounts in the contract of sale (\$13,750) and in the RESPA (\$12,000), but does not explain it.

After an independent review of the record, we are satisfied that the stipulation fully supports findings of unethical conduct on respondent's part.

Respondent admittedly failed to safeguard Palijaro's \$12,000 deposit for the purchase of Rivera's house, losing the check that he was supposed to hold in his trust account for that purpose. He, therefore, violated RPC 1.15(a). The stipulation does not explain how the shortage was rectified at the closing.

In addition, respondent knew that the RESPA contained a false entry, that is, that the \$12,000 deposit was being held in escrow. In this regard, his conduct violated RPC 8.4(c).

Finally, respondent created a concurrent conflict of interest by representing Rivera in the sale of a house to Palijaro and, at the same time, representing Palijaro in her purchase of another property. Respondent could have cured the conflict by obtaining a waiver from both clients, but admittedly did not do so, thereby violating RPC 1.7(b).

The discipline imposed for misrepresentations on closing documents has varied greatly, depending on the number of misrepresentations involved, the presence of other ethics infractions, and the attorney's disciplinary history. Reprimands are usually imposed when the misrepresentations are

unaccompanied by additional instances of misconduct. See, e.g., In re Spector, 157 N.J. 530 (1999) (attorney concealed secondary financing to the lender through the use of dual RESPA statements, "Fannie Mae" affidavits, and certifications); In re Sarsano, 153 N.J. 364 (1998) (attorney concealed secondary financing from the primary lender and prepared two different RESPA statements); and In re Blanch, 140 N.J. 519 (1995) (attorney failed to disclose secondary financing to a mortgage company, contrary to its written instructions).

At times, a reprimand may still result even if the misrepresentation is combined with other unethical acts, such as gross neglect. See, e.g., In re Agrait, 171 N.J. 1 (2002) (reprimand for attorney who, despite being obligated to escrow a \$16,000 deposit shown on a RESPA, failed to verify it and collect it; in granting the mortgage, the lender relied on the attorney's representation about the deposit; the attorney also failed to disclose the existence of a second mortgage prohibited by the lender; the attorney's misconduct included misrepresentation, gross neglect, and failure to advise the client, in writing, of the basis or rate of his fee).

Cases involving conflict of interest, too, absent egregious circumstances or serious economic injury to the clients,

ordinarily result in a reprimand. In re Guidone, 139 N.J. 272, 277 (1994), and In re Berkowitz, 136 N.J. 134, 148 (1994). But see In the Matter of Anton Muschal, DRB 99-381 (February 4, 2000) (admonition for attorney who represented a client in the incorporation of a business and the renewal of a liquor license and then filed a lawsuit against the former client on behalf of another client).

In addition, respondent failed to safeguard funds by losing the check. Failure to safeguard funds for clients or third persons typically results in an admonition, even when accompanied by other non-serious infractions. See, e.g., In the Matter of Michael P. Otto, DRB 08-294 (February 26, 2009) (attorney's failure to oversee law firm trust account enabled law partner to repeatedly misappropriate trust account funds, a violation of RPC 1.15(a); recordkeeping violations also found present) and In the Matter of Patrick D. Martini, DRB 04-440 (February 22, 2005) (attorney received an \$8,500 down payment check from a client, but failed to ensure that it was deposited to his trust account, enabling an office visitor to steal the check and cash it, in violation of RPC 1.15(a)).

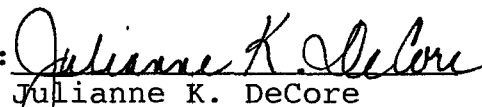
In mitigation, respondent cooperated with ethics authorities and admitted his wrongdoing.

In aggravation, however, respondent has a prior reprimand for misconduct that, as here, included misrepresentations. Obviously, respondent has not learned from his prior mistakes.

After consideration of the relevant circumstances, which include the totality of respondent's ethics infractions, his prior reprimand, and his failure to learn from past mistakes, we determine that a censure is appropriate.

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  
Louis Pashman, Chair

By:   
Julianne K. DeCore  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Nino Falcone  
Docket No. DRB 09-102

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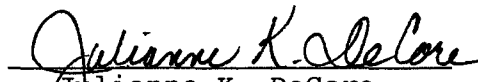
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Argued: June 18, 2009

Decided: September 29, 2009

Disposition: Censure

<i>Members</i>	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			9			

  
Julianne K. DeCore  
Chief Counsel