SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-183
District Docket No. XIV-2010-0001E

IN THE MATTER OF	
MARVIN BLAKELY	
AN ATTORNEY AT LAW	

Decision

Argued: October 20, 2011

Decided: December 1, 2011

Christina Blunda Kennedy appeared on behalf of the Office of Attorney Ethics.

Catherine M. Brown 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 recommendation for discipline (censure) filed by the District XA Ethics Committee (DEC). Respondent was charged with having violated RPC 1.1(a) (gross neglect), RPC 1.15(a) (negligent misappropriation), RPC 1.5(b) (practicing law while ineligible for failure to pay the

annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF), RPC 1.15(d) and R. 1:21-6 (recordkeeping violations), and RPC 5.5(a) (failure to set forth in writing the rate or basis of the legal fee). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1985 and the New York bar in 1986.

On January 28, 2011, respondent received an admonition for failure to cooperate with ethics authorities (RPC 8.1(b)) in the investigation of a grievance, brought by his ex-wife, in connection with post-divorce judgment issues. All of the other underlying charges against respondent were dismissed for lack of clear and convincing evidence. In the Matter of Marvin Blakely, DRB 10-325 (January 28, 2011).

We first considered this matter at our January 15, 2009 session, upon a stipulated record. By letter to the OAE, dated March 10, 2009, we rejected the stipulation and remanded it to the OAE for a new investigation, the filing of a complaint, and a hearing.

Instead of filing a complaint, the OAE re-submitted the original stipulation to us, on May 1, 2009, and incorporated

into it a joint letter from the parties. The letter intended to answer questions raised in our remand letter.

At our July 16, 2009 session, we considered the matter for a second time and again rejected the stipulation because a critical question remained about respondent's actions. Specifically, was the misappropriation in the underlying matter knowing or was it simply negligent?

The OAE then filed an ethics complaint and proceeded to a hearing before the DEC. The DEC found respondent guilty of all the charges in the complaint.

In respondent's June 16, 2010 verified answer, he admitted virtually every factual allegation and RPC charge against him. The following statement of facts was culled from the admissions in respondent's answer and the hearing testimony.

In September 2006, Gilberto and Bertha Estrada retained respondent to represent them in the sale of their house at 2300 Kerrigan Avenue, Union. Respondent, who had not previously represented the Estradas, did not set forth, in writing, the rate or basis of his fee.

The Estrada closing took place on September 25, 2006. On that date, respondent had been declared ineligible to practice law in New Jersey for failure to pay the CPF annual assessment.

As evidenced by the Estrada closing and concomitant activity in respondent's trust account during the period of his ineligibility, respondent continued to practice law while ineligible. He was removed from the ineligible list on December 5, 2006.

Respondent admitted that the Estrada representation occurred during his period of ineligibility, a violation of RPC 5.5(a). He asserted that he was unaware, at the time, that he had been placed on the CPF list of ineligible attorneys and that, as soon as he learned of the ineligibility, he paid the outstanding assessment.

The Estradas were referred to respondent by Garth Celestin, of Home Savers, a Brooklyn, New York, company. Home Savers advertised itself as a company that helped people with financial difficulties retain possession of their homes.

: Respondent testified that he first became aware of Home Savers through his barber, Phil Simon, a principal in the company:

> I had known Phil as a barber only when I lived in Brooklyn and before I moved to New Jersey. Once I started doing the per diem work, it took me back into the city . . . .
>
> I hadn't seen him in seven, eight years, so we're talking and I explained to him that I spent time in jail because of the [child

> support] problems I was having with my ex-wife and that I was on my own, doing per diem work and he indicated to me that he was, in addition to having his barber shops, doing mortgage rescue, he was rescuing people from foreclosure and that he needed attorneys to do the closings. I informed him that I had no real estate experience and he said not to worry, you go and you talk to people at Reliant Abstract, we'll work it out. I told him I have no malpractice insurance, so it was like -- he said talk to Reliant about that, so I met with the Reliant people and spoke to them and then Simon said he would put me on his list of attorneys to be used for closings for his company, Home Savers.
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> [T112-2 to T113-3.][1]

Respondent was one of several lawyers Home Savers had placed on a referral list.

Respondent admitted that he performed approximately 15-20 closings for Home Savers' clients, beginning in late 2005, and received $1,200 - $1,500 per closing from the sellers' funds.

As to the Estrada transaction, respondent testified that, because the Estradas were debtors in a Chapter 13 bankruptcy at the time, the sale required prior bankruptcy court approval. Respondent was unfamiliar with both real estate and bankruptcy

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[1] "T" refers to the March 1, 2011 DEC hearing transcript.

practice. Therefore, when Gilberto Estrada, at closing presented him with a bankruptcy court order dated April 27, 2006, allegedly authorizing the sale of the house, respondent did not realize that it had been ordered for an earlier sale that had never materialized. The order also authorized certain specific disbursements from the settlement proceeds, but was silent as to the name of the buyer.

According to respondent, the Estrada matter was his first real estate encounter involving a bankruptcy. He conceded that he did not, but should have, contacted the bankruptcy court to verify the applicability of the order to the sale, prior to conducting the closing.[2]

Unbeknownst to respondent, the buyer in the Estrada matter, Ann Marie Worrell, was a "straw purchaser" provided by Home Savers because of her favorable credit rating and ability to obtain mortgage financing. Worrell testified that she never intended to take possession of the Estrada property. Rather, the Estradas were to continue living in the house, after paying Home

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[2] A review of the bankruptcy order reveals disbursements that did not comport in any way with the Estrada disbursements for the sale involving respondent.

Savers $40,000. Home Savers was supposed to continue making mortgage payments from those funds, ostensibly enabling the Estradas to rebuild their credit, while living in the house.

In exchange for allowing Home Savers to obtain funds using her credit, Worrell received a fee from Home Savers.

Respondent testified as follows about the arrangement:

> Q. Okay. So in this transaction, or let me just say, were you aware at the time that in this transaction Miss Worrell received $9,600 minus $1,100 for her own personal use?
>
> A. No, I was not.
>
> Q. Okay. Did anyone else tell you that at the closing or at any time before the closing that Miss Worrell was really, I'll call her a straw-buyer?
>
> A. I found out about Miss Worrell's role when I read her deposition. I did not know that she was a straw-buyer. I didn't know what, what [a] straw-buyer was.
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> [T144-10 to 17.]

Neither of Home Savers' principals, Simon and Celestin, disclosed to respondent the actual nature of the business of Home Savers, which was to strip equity from the real estate transactions in which it was involved and to defraud the lending institutions and the sellers. Respondent had no ownership interest in Home Savers. His role was limited to performing closings for a fee.

Simon and Celestin, through Home Savers, had Reliant Abstract and Settlement, Inc. (Reliant), prepare the settlement documents and conduct title searches on the properties involved. In the Estrada matter, Reliant was also responsible for paying back taxes on the property, out of funds disbursed to it at the closing. Respondent conceded that he did not review the title materials before or during the closing.

The first mortgage on the Kerrigan Avenue property, in the amount of $285,444.22, was held by CitiFinancial Services, Inc. (also referred to in the record as CitiBank and CitiMortgage (herein Citi)). Citi had filed a foreclosure action against Bertha Estrada, the owner of record, in Hudson County Superior Court.

Celestin and Gilberto Estrada both attended the closing, at which time they instructed respondent to wire funds from the sale to Maple Court Corporation, a real estate company controlled by Celestin and Simon. Celestin and Simon had advised respondent that Maple Court would make the Estradas' mortgage payments, while they rebuilt their credit.

On the closing date, the lender, Deutsche Bank, wired $496,360.79 to respondent's attorney trust account, representing the mortgage loan proceeds for the Estrada sale. At the closing,

respondent issued to himself trust account check #1273, in the amount of $285,444.22, rather than $321,000, the inflated amount listed on the HUD-1. He then used those funds to obtain a certified check for $285,444.22, which he hand-delivered to the Hudson County Sheriff's Office to redeem the property from a sheriff's sale that had taken place on September 14, 2006.

Respondent explained his actions at the DEC hearing:

> Q. When did you learn that the house, that the property, that the house had been sold at the Sheriff's Sale for a lower amount than the pay-off amount for the first mortgage?
>
> A. After we closed that day.
>
> Q. After you closed that day?
>
> A. Umm-hum.
>
> Q. Okay. And was it before or after
>
> People's Choice --
>
> A. After.
>
> Q. -- approved --
>
> A. After this.
>
> Q. Let me finish. Before or after People's Choice approved the HUD?
>
> A. It was after the HUD was approved.

Q. Okay. Now, you're in a situation, you're the Settlement Agent for a bank --[3]

A. Umm-hum.

Q. -- that's approved the HUD based on the information that's in C-17 and then later on you learn the pay-off for the first mortgage is less?

A. Umm-hum.

Q. Okay. Did you consider what obligation, if any, you may have had to the bank because of that?

A. Regrettably, I did not. I had, as my ledger indicates, sent the package back to the bank by Federal Express the next morning. I, I didn't perceive an obligation to call them and say the money that you lent them is being disbursed differently.

Q. Well, explain to me a little bit more. Was everything still at the closing when you learned -- what did they say, oh, by the way, we sold the house at a Sheriff's Sale?

A. No. No.

Q. How did --

A. Everybody left and either -- I think it was Mr. Simon said to me, we have to redeem this property from Sheriff's Sale, and I, I don't -- and I said what do you mean, we have a pay-off from Citibank, and he said the house is in Sheriff's Sale, may have been sold already, we have to get the pay-

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[3] Respondent testified that he carried no malpractice insurance. Therefore, when negotiating with Home Savers, he agreed to act as settlement agent, if Reliant provided letters of protection for him.

> off and redeem it from the foreclosure sale, so they got on the phone, got a figure and told me that the new figure was 282-something. It was less. I called the Sheriff's Officer to verify the number, to ask them what form of payment they accepted. They would not accept a check drawn on my trust account. They wanted certified funds, which is why I went to my bank. They would only give me a certified check if I wrote the check to myself as cash, gave it to them and then they gave me the check payable to the Sheriff, that I walked over to the Sheriff's Office.
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> [T162-8 to 164-15.]

The next day, September 26, 2006, respondent issued three trust account checks in connection with the Estrada matter: check #1275 for $15,607 to Reliant, for settlement charges; check #1277 for $22,125 to NRF Funding, for the mortgage broker commission and application fees; and check #1279 for $56,228 to Reliant, for the payment of back taxes to Union City.

On September 29, 2006, respondent issued check #1280 for $28,722.34 to "Beneficial," for a second mortgage pay-off; check #1272 ($600) to Fran Leonardo, a title clerk, for the preparation of the title; and checks #1271 ($350) and #1288 ($894) to Jennifer Ranieri, a paralegal who had negotiated the lower pay-off amount with Beneficial.

Respondent explained the Ranieri fee as follows:

> I was told that Miss Ranieri was talking to Beneficial about compromising their pay-off figure for the second loan and she did so with the understanding that if she got it compromised, she, in turn, would receive a percentage of the reduction, which is why Miss Ranieri got a second check, which represents whatever percentage it is of the reduction.
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> [T160-13 to 20.]

Respondent admitted that he failed to revise the HUD-1 settlement statement, once he found out that the pay-off amount to Beneficial and for back taxes had changed.

After the redemption of the property and the above disbursements, Celestin and Estrada directed respondent to make the Maple Court transfers, in the total amount of $98,456.65.

Respondent conceded that total disbursements for the Estrada transaction should have been $496,360.79, the amount that Deutsche Bank had wired to his trust account. Yet, he disbursed a total of $508,472.25. This over-disbursement caused a misappropriation of $12,111.46 in respondent's trust account, which both respondent and the OAE acknowledged was negligent in nature.

The OAE auditor assigned to the matter, Steven Harasym, testified that he attempted to reconstruct the Estrada

transaction from respondent's books and records, which were virtually "nonexistent." Without proper records of the transactions and trust account reconciliations, Harasym concluded, there was no way for respondent to know how much he was supposed to hold in the trust account on behalf of his clients. Harasym's ultimate reconstruction of the trust account records related to the Estrada matter led him to conclude that respondent's misappropriation had been negligent, as opposed to knowing.

As it turned out, the over-disbursement was discovered as the result of an error on respondent's part. Shortly after the closing, on October 5, 2006, Gilberto Estrada complained to respondent that he had received a past-due notice from Union City for real estate taxes, which should have been paid at the closing. Respondent went to the tax collector's office and confirmed that taxes were owed. He then called Reliant, which still had the closing funds designated for taxes. Reliant agreed to wire the funds ($56,228) to respondent's trust account. He then gave trust check #1300 to the tax officer for $49,188, the outstanding tax amount according to the tax office.

Reliant, however, failed to wire the funds to respondent. Instead, on October 23, 2006, Reliant erroneously sent them directly to the attorneys for Union City.

When respondent's check #1300 was presented to the bank for payment, his trust account contained only $41,301.34, none of which was being held for the Estrada matter. The bank returned the check on October 11, 2006.

On October 17, 2006, the attorney for Union City notified the Estradas' bankruptcy trustee, Marie-Ann Greenberg, that respondent's trust account check had been refused for insufficient funds.

It was Greenberg's own investigation that prompted her to file a motion in the Estradas' bankruptcy proceeding to invalidate the sale to Worrell and to recapture the funds disbursed at closing. The resultant May 2, 2007 bankruptcy court order invalidated the sale and ordered Home Savers to disgorge the $98,456.65 disbursed to it.

Respondent was ordered to refund a $2,000 attorney fee listed on the HUD-1. He did so, even though he never took the fee.

Finally, respondent admitted that he had failed to maintain client ledger cards, receipts and disbursements journals, and

that he did not perform three-way reconciliations of his trust account.

At the DEC hearing, respondent explained his recordkeeping habits:

> Q. Okay. Now, back to Exhibit 40, R-40. We've talked about certain problems that this transaction engendered but there are two additional, one of which is the fact that the total amount of disbursements that you made exceeded the initial deposit into your trust account for the Estrada closing and that that excess did not -- you know, it invaded trust funds of other clients of yours --
>
> A. Yes.
>
> Q. -- correct? Were you aware at the time that that had happened?
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> A. No, I wasn't. I, I am a horrible numbers person. In terms of record-keeping, I thought that I could keep track of my funds and records by keeping the disbursement sheets and using the checks that produced a carbon copy and that would reconstruct the client's ledger when I wanted to.
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> Q. When you say you use the disbursement sheets, you put your hands on Exhibit 40?
>
> A. Yes.
>
> Q. Okay. So that, plus your bank record?
>
> A. My bank record and my check stubs.
>
> Q. Okay.
>
> A. Because I got the checks that when you write the check it created a carbon copy.
>
> Q. All right.
>
> A. So I would always have a duplicate of every check that I wrote.

> Q. As you sit here today, and I'm looking at exhibit C-7, at the bottom it shows an overdraft, or I'll say an invasion of other funds of, like, $12,000. Can you figure out how that occurred?
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> A. I can't.
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> [T179-24 to T181-11.]

Respondent further explained that, after the Estrada matter, he

> started getting phone calls from people who I had done a Home Savers closing for complaining that Home Savers was not meeting the terms of their side of the deal, and I started asking about their side of the deal because if, if -- it's unfair to have me at the table not knowing what's going on, and when I got more of these calls I asked Simon and Celestin to explain what was going on, but they would not give me the details of what they were doing, so I wrote them a letter and told them that I would not close for them anymore.
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> [T177-10 to 20.]

Respondent later testified:

> That's, that's been the hardest part of this, that people are like, well, you must have been part of the organization and whatever. They were up and running when they brought me in. It's not like I went to them and said, you know what, let's go out here and strip some equity from people's mortgages, you know. That's not how it went. I wish that I smelled the stinking odor earlier. That's all I can say, because -- and I think, and I'm glad I did when I did, because I would -- I'm convinced that he

> would still be doing the same thing today. I'm thankful for the fact that once I learned enough about real estate, it didn't make sense to me what they were doing, and when I question you and you tell me it's not my business, then I don't need to work for you, it's just that simple, because I can't trust you.
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> [T203-4 to 20.]

As a result of his involvement in Home Savers matters, respondent was questioned by the FBI in a criminal investigation of Home Savers, Celestin, and Simon. Respondent met with the FBI, on several occasions, and gave the FBI the files of the Home Savers closings that he had handled.

Thereafter, respondent received a September 2, 2009 "target" letter from the United States Attorney for the District of New Jersey, naming him as a potential defendant in the ongoing criminal investigation. As of the date of the DEC hearing, respondent had not been indicted, but had retained criminal counsel. In 2010, both Celestin and Simon pleaded guilty to crimes, as a result of the Home Savers enterprise.

In addition, respondent was named a defendant in several civil matters arising out of Home Savers transactions, including one in Bergen County Superior Court. He defaulted, explaining:

> I have never been a defendant before and, quite honestly, I was paralyzed by fear at

> this point, and when I went and got criminal counsel, because I received a target letter from the Attorney General in New Jersey, my counsel told me that I could not -- that it would be best for me to stand still and to not litigate these matters because I would run into a conflict further down the line between being deposed in five different cases and if I said anything different and a criminal case was brought, I would be in a bad situation . . . .
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> [T186-20 to 187-6.]

Another civil matter in New York was settled by Simon and Celestin, without any involvement by respondent. Respondent noted that the New York disciplinary authorities also have a matter pending against him, arising out of his involvement with Home Savers.

Respondent urged the DEC to consider several factors, in assessing the extent of his conduct. First, his inexperience in real estate matters "permitted others in collusion with each other, namely Mr. Simon, Mr. Celestin and Mr. Estrada, to deceive him by providing false and invalid information with the intention that respondent rely and act upon same." Second, he had neither made any misrepresentations of fact nor realized any financial gain from his involvement in the Estrada matter. Third, he had not caused monetary harm to anyone. Fourth, when the Home Savers closings took place, he had been searching for a

position as a litigation attorney, since February 2004, after having been summarily dismissed from his position as a litigator, in a small law firm, for refusing to try a case in New York. When Simon approached him about Home Savers, he had depleted his unemployment benefits, was doing some per diem work out of his house, and was in dire need of funds for himself and for his child support obligations. Fifth, he had "disgorged" a $2,000 legal fee, pursuant to the bankruptcy court order, even though he had never taken a fee. Finally, he had acted in a good faith belief that he was furthering his clients' wishes to remain in their home.[4]

Respondent also offered the character testimony of Aubrey Beckles, of the Forest Elect Apostolic Church. Beckles and other church members retained respondent to represent them in the December 2005 purchase of a building for the church. Respondent advised the church to form a corporation, which they named KAMACK Enterprises. The following exchange occurred between Beckles and respondent's counsel:

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[4] Respondent characterized all but the disgorgement as affirmative defenses, with the disgorgement as the only mitigating factor for consideration.

Q. Now, I'd like to talk, then, about the legal work, specifically the legal work that Mr. Blakely did for KAMAK [sic] Enterprises. What did he do for you once you hired him?

A. Well, Mr. Blakely represented us in terms of the -- he assisted us in getting — about purchasing the building, he worked with us throughout, in all the paperwork in terms of the development and how you -- the legal aspects of the purchasing of the building, and also the closing of the building.

Q. And when you say the closing, the real estate closing?

A. The real estate closing.

. . . . Q. And after the closing did he do any other work for KAMAK [sic]?

A. Yes. Mr. Blakely continued to represent us on problems that occurred during the time after we purchased the building, such as we had a problem with our -- the guy who sold us the building, he had a tax problem and it actually reversed on us and Mr. Blakely was able to represent us to get us our, to get our refund back of the money that we paid towards purchasing of that building and have the person who sold us the building pay his taxes instead of KAMAK, LLC [sic]. We could not, we could not identify, we could not identify that problem. Mr. Blakely was able to identify that problem. That occurred in terms of the person who sold us the building, you know, he didn't pay his taxes and we actually had to pay that tax.

[T24-16 to T25-7.]

Beckles further testified that respondent had represented him for a personal, child-support matter, in 2007. In all respects, he found respondent to be "very honest," "loyal to his job," and

"present[ing] himself in a dedicated manner, in an excellent manner that impressed [Beckles] and members of the corporation."

Respondent also offered the December 14, 2010 written report of his psychotherapist, Kieran Ayre. According to Ayre, respondent suffers from "major depression, recurrent, moderate severity," which had an onset in the spring 2005. Respondent has refused taking medication that may ease his symptoms, stating at the hearing"

> [A]s this thing drew on and on and on, I just got worse and worse. I'd be sitting at home and just see a commercial or something and start crying, and so I sought some counselling [sic] and I'm continuing counselling [sic] now, because I know that I can get back to normal at some point, and that's, thats [sic] where it's at. I've refused to take any medications because I just -- I don't know. I'm not into that. I don't think I need medication, but I've benefited from having someone to talk this through with and to tell me that I'm not crazy, that I basically allowed myself to be used by a bunch of users. It's hard coming to grips with that, because I thought I was smarter than that.
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> [T191-1 to 15].

The DEC found respondent guilty of all of the charges in the complaint: gross neglect (RPC 1.1(a)); failure to set forth, in writing, the rate or basis of his fee (RPC 1.5(b)); practicing law while on the CPF list of ineligible attorneys

(RPC 5.5(a)); negligent misappropriation of client funds (RPC 1.15(a)); and failure to maintain required trust account records (RPC 1.15(d) and R. 1:21-6).

In mitigation, the DEC considered respondent's admission of wrongdoing, the lack of personal gain, the unlikelihood of a repeat offense, the remedial measures taken to straighten out his trust account records, his good reputation and character, and the passage of time since the misconduct occurred.

The DEC was also impressed by respondent's "testimony and demeanor[, which] practically defined contrition and remorse; he wept openly when discussing the events attendant to this grievance."

Although the OAE and respondent's counsel urged the DEC to recommend a reprimand, the DEC recommended a censure, concluding that a reprimand would be insufficient and a suspension unduly harsh. The DEC did not support its recommendation with case law.

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence.

With regard to count one, respondent conceded the RPC 1.5(b) violation. That rule requires an attorney who has not previously represented a client to set forth, in writing, at the

inception of the representation or within a reasonable time thereafter, the rate or basis of the attorney's fee. Respondent had not previously represented the Estradas. In fact, he had never met them, prior to handling their closing. Under those circumstances, respondent's failure to set forth the basis of his fee, in writing, violated RPC 1.5(b).

Respondent also practiced law while ineligible to do so for failure to pay the 2006 annual attorney assessment to the CPF. By Court order dated September 25, 2006, respondent was declared ineligible to practice law. On that same date, he closed the Estrada transaction. Thereafter, he continued to practice law unabated, as evidenced by activity in his attorney trust account.

Respondent claimed, in mitigation, that he had been unaware of his ineligibility at the time that he was involved in the Estrada matter, which spanned late September and early October 2006. The DEC was satisfied that, until the advent of the ethics proceedings, respondent was unaware of his ineligibility.

Respondent also admitted that he had grossly neglected the Estrada matter (RPC 1.1(a)). He never reviewed the proposed closing documents, nor communicated with the clients, prior to the closing. He then failed to review the title binder and

closing documents. When Celestin and Estrada instructed him to wire $98,456.65 of the closing funds to Maple Court, a Celestin and Simon company not associated with the transaction, he blindly did so. In addition, his name appears as the preparer of crucial documents, including the affidavit of title and the HUD-1. Even if it is true that Reliant, not he, prepared those documents, he had an obligation to verify their accuracy.

Yet, he failed to question obvious discrepancies in the HUD-1. He disbursed $285,444 to Citi for the first mortgage, although the HUD-1 called for a $321,576 payment. He paid Beneficial $28,722 for the second mortgage, although the HUD-1 listed that debt as $43,300. He took Celestin's word that the $15,000 difference was a compromised amount that Ranieri had negotiated with Beneficial, for which Ranieri had "earned" $894.

Ultimately, the sale was voided because the property was an asset of the Estrada bankruptcy estate, another issue that respondent did not question at the closing. Maple Court ($98,456.65), Worrell ($8,000), Reliant ($15,607), NRF Funding ($22,125), and Ranieri ($894) were not entitled to some or all of the funds they received. The bankruptcy court ultimately required the return of most of those funds to the estate.

In essence, respondent lent his name to Home Savers and Reliant, doing little more than affixing his attorney imprimatur to the transaction. He failed to protect his client, and as settlement agent, failed to ensure the integrity of the sale. For all of the above, respondent violated RPC 1.1(a).

With regard to the charge of negligent misappropriation (RPC 1.15(a)), in what is now our third review of the Estrada matter, we have the benefit of respondent's explanation for his actions and the OAE auditor's assessment of respondent's actions. It is evident from the testimony of both witnesses that the over-disbursement of $12,111.46 in the Estrada matter resulted from respondent's poor recordkeeping, not from a purposeful taking of client funds. We are now satisfied that the root cause was respondent's failure to maintain client ledgers, receipts and disbursements journals, and to perform three-way reconciliations of his trust account. In fact, respondent's accounting practices were so poor that the OAE auditor concluded that respondent could not have known how much money he was required to hold in trust for his clients. In this regard, respondent violated RPC 1.15(a), RPC 1.15(d) and R. 1:21-6.

Practicing law while ineligible, without more, is generally met with an admonition if, as respondent claimed here, the

attorney is unaware of the ineligibility. See, e.g., In the Matter of Matthew George Connolly, DRB 08-419 (March 31, 2009) (attorney ineligible to practice law rendered legal services; the attorney's conduct was unintentional); In the Matter of William C. Brummel, DRB 06-031 (March 21, 2006) (attorney practiced law during a four-month period of ineligibility; the attorney was unaware of his ineligible status); In the Matter of Richard J. Cohen, DRB 04-209 (July 16, 2004) (attorney practiced law during nineteen-month ineligibility; the attorney did not know that he was ineligible); and In the Matter of Juan A. Lopez, Jr., DRB 03-353 (December 1, 2003) (attorney practiced law while ineligible for nine months; no knowledge of ineligibility).

So, too, failure to memorialize a legal fee (RPC 1.5(b)), even when accompanied by other, non-serious ethics offenses, will ordinarily result in an admonition. See, e.g., In the Matter of Joel C. Seltzer, DRB 09-009 (June 11, 2009) (attorney failed to memorialize the rate or basis of his fee and, in another client matter, failed to promptly deliver funds to a third party); In the Matter of Alfred V. Gellene, DRB 09-068 (June 9, 2009) (in a criminal appeal, attorney failed to furnish the client with a writing that set forth the basis or rate of his fee; the attorney also lacked

diligence in the matter); In the Matter of David W. Boyer, DRB 07-032 (March 28, 2007) (in an estate matter, the attorney failed to provide the client with a writing setting forth the basis or rate of his fee); and In the Matter of Carl C. Belgrave, DRB 05-258 (November 9, 2005) (attorney was retained to represent the buyer in a real estate transaction and failed to state in writing the basis of his fee, resulting in confusion about whether a $400 fee was for the real estate closing or for a prior matrimonial matter for which the attorney had provided services without payment; recordkeeping violations also found).

Generally, a reprimand is imposed for negligent misappropriation of client funds, usually found alongside recordkeeping deficiencies. See, e.g., In re Gleason, 206 N.J. 139 (2011) (attorney negligently misappropriated clients' funds by disbursing more than he had collected in five real estate transactions in which he represented a client; the excess disbursements, which were the result of the attorney's poor recordkeeping practices, were solely for the benefit of the client; the attorney also failed to memorialize the basis or rate of his fee); In re Macchiaverna, 203 N.J. 584 (2010) (minor negligent misappropriation of $43.55, as the result of a bank charge for trust account replacement checks; the attorney was

also guilty of recordkeeping irregularities); In re Clemens, 202 N.J. 139 (2010) (as a result of poor recordkeeping practices, attorney over-disbursed trust funds in three instances, causing a $17,000 shortage in his trust account; an audit conducted seventeen years earlier had revealed virtually the same recordkeeping deficiencies; the attorney was not disciplined for those irregularities; the above aggravating factor was offset by the attorney's clean disciplinary record of forty years); In re Mac Duffie, 202 N.J. 138 (2010) (negligent misappropriation of client's funds caused by poor recordkeeping practices; some of the recordkeeping problems were the same as those identified in two prior OAE audits; the attorney had received a reprimand for a conflict of interest); In re Fox, 202 N.J. 136 (2010) (motion for discipline by consent; attorney ran afoul of the recordkeeping rules, causing the negligent misappropriation of client funds on three occasions; the attorney also commingled personal and trust funds); and In re Dias, 201 N.J. 2 (2010) (an over-disbursement from the attorney's trust account caused the negligent misappropriation of other clients' funds; the attorney's recordkeeping deficiencies were responsible for the misappropriation; the attorney also failed to cooperate with ethics authorities' requests for her attorney records; prior

admonition for practicing while ineligible; in mitigation, the Board considered that the attorney, a single mother working on a per diem basis with little access to funds, committed to, and has been replenishing the trust account shortfall in installments).

As demonstrated by the above cases, for negligent misappropriation, a reprimand ordinarily ensues, even when accompanied by other non-serious misconduct. Here, such other non-serious misconduct includes gross neglect, failure to memorialize a fee, and practicing law while ineligible which, alone, would only yield an admonition.

There are, however, aggravating and mitigating factors to be considered. In aggravation, the HUD-1 contained misrepresentations, an offense with which respondent was not charged. [5] We have previously concluded that

> an attorney who creates or certifies false documents in a real estate transaction may

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[5] The copy of the HUD-1 in our record is cut off at the bottom. Therefore, the portion containing the signature of the settlement agent does not appear on the Board's copy of that document (Ex.C-17). Nevertheless, respondent admitted throughout the proceedings that he was the settlement agent in the transaction.

> be found guilty of misrepresentation, with or without establishing the intent to deceive. Therefore, when respondent attested to the settlement statement as a true and accurate account of the funds received and disbursed in the transaction, he made a misrepresentation, in violation of RPC 8.4(c).
>
> [In re Riedl, 179 N.J. 461 (2004).]

Respondent's conduct in this regard is similar to that of an attorney who received a reprimand. In In re Gale, 195 N.J. 1 (2007), the attorney was involved in five fraudulent real estate transactions on the part of an individual named Salerno. Like respondent and his barber, Simon, the attorney in Gale agreed to represent two buyers for a man she trusted named Salerno.

The settlement statements that Gale prepared in all five transactions contained misrepresentations, inasmuch as Gale disbursed funds to Salerno to which he was not entitled, simply because he instructed her to do so. Gale had relied on Salerno's representations that the actions were proper. We concluded there that, had she reviewed the closing documents in the matters, she would have discovered that Salerno was untruthful with her.

Here, like attorney Gale, respondent failed to question the veracity of the HUD-1 or Celestin's fraudulent disbursement instructions.

In Gale, mitigating factors justified the imposition of only a reprimand. Physical ailments and serious depression made it difficult for her to see Salerno as a criminal. In addition, she was found to be naïve and trusting in nature, did not benefit from the transactions, and had an unblemished disciplinary record.

Respondent's actions are somewhat less serious than Gale's, in that his misconduct was limited to one transaction, as opposed to five in Gale. In addition, Gale was an experienced real estate attorney, while respondent had no prior experience in that area.

In mitigation, we took into account that respondent's misrepresentation of the nature of the transaction was the result of inexperience and trust in an acquaintance of longstanding, did not financially gain from the Home Savers debacle, and caused no obvious monetary harm to the Estradas. Furthermore, when he said "yes" to Home Savers, he was cash-strapped, working from his house, and trying to meet child-support obligations. He was "easy game" for Simon and Celestin. He also considered it a laudable goal to help clients retain their homes. Moreover, he was contrite and remorseful for his actions, as aptly described in the hearing panel report. Lastly,

he was found to have been suffering from depression, during the time encompassing these events, a condition that may have played a role in his vulnerability to Simon and Celestin's plan.

Respondent urged, as mitigation, that he had "disgorged" the $2,000 legal fee in Estrada, pursuant to the bankruptcy court order, even though he had never taken a fee. We do not accept that factor, given that it was ordered by the bankruptcy court. Had he not done so, he would have been subject to a contempt charge for failure to comply with a court order.

In conclusion, we find that a reprimand adequately addresses respondent's conduct, as aggravated by his misrepresentation and his prior admonition, but mitigated by the compelling circumstances enumerated above. There is a strong sense throughout the record, as it is now fleshed out for us, that respondent's participation in Home Savers was not motivated by personal gain, as it was for Celestin and Simon, and that respondent has learned much from, and suffered greatly for, his unfortunate experience with them. Respondent is contrite, remorseful and appears unlikely to repeat these offenses in the future. On balance, thus, we determine that the public will be adequately protected by the imposition of a reprimand.

In addition, we determine that, should respondent ever engage in the practice of law as a sole practitioner, he do so under the guidance of a proctor for two years.

Members Stanton and Yamner did not participate.

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
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Marvin Blakely
Docket No. DRB 11-183

Argued: October 20, 2011

Decided: December 1, 2011

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton						X
Wissinger						
Yamner						X
Zmirich			X			
Total:			7			2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel