SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-267
District Docket No. XIV-2008-0171E
and XIV-2008-0068E

IN THE MATTER OF	
JERROLD N. KAMINSKY	
AN ATTORNEY AT LAW	

Decision

Argued: November 27, 2011

Decided: December 22, 2011

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Gerard E. Hanlon 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 violated RPC 1.2 (assisting a client in conduct that he knew was illegal, criminal or fraudulent), RPC 8.4(c) (conduct involving dishonesty, fraud,

deceit or misrepresentation), and RPC 1.7(a) (conflict of interest). The OAE recommended a censure. We determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1977. He has no prior discipline.

Respondent and the OAE entered into a June 9, 2011 disciplinary stipulation, in which he admitted the following facts.

I. The Maamouny-to-Aguilar Matter

On May 14, 2007, respondent represented Alfredo Aguilar in the purchase of 129 Townsend Street, New Brunswick, for $420,000. Respondent also acted as the settlement agent for the transaction.

Respondent received $384,640.07 in loan proceeds from Jersey Mortgage Company (JMC) for the transaction. JMC provided respondent with a "Notice to Closing Agent," which he signed at closing. The notice stated as follows:

> This document must be signed by the closing agent and returned with file closing papers. Should the sales price be anything contrary to that listed in these instructions, you must contact the closing department immediately for further instructions.

> Any seller-paid concessions, credits, secondary financing, closing costs, etc., not contained in the contract of sale must be cleared through the closing department.
>
> [Ex.4.]

At settlement, respondent prepared a handwritten document containing different terms, but did not provide the agreement to JMC, as required by the notice.

According to line 303 of the HUD-1 statement, Aguilar contributed $42,608.51 to the settlement. Yet, according to respondent's client ledger card, Aguilar contributed nothing toward the purchase.

Respondent, who witnessed his client's signature, did not inform Aguilar that the information contained in the HUD-1 was false. Immediately above Aguilar's signature on the HUD-1 statement was the following language: "I have carefully reviewed the HUD-1 settlement statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements rrm [sic] my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 settlement statement" (the buyer's certification).

According to line 603 of the HUD-1, respondent paid the seller, Mohamed Maamouny, $103,079 at closing. In fact, as

correctly reflected in respondent's client ledger card for the transaction, Maamouny received just $59,332.71 under the side agreement.

Above respondent's signature on the HUD-1 was the following language: "To the best of my knowledge the HUD-1 settlement statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction" (the settlement agent certification).

Aguilar never made the first payment on the note and thereafter defaulted on the mortgage.

Respondent admitted that the false statements on the HUD-1 constituted misrepresentations, contrary to RPC 8.4(c).

According to the stipulation, in addition to the admitted misrepresentations, the OAE contended that respondent's actions were also dishonest, fraudulent and deceitful, under RPC 8.4(c), and violated RPC 1.2 (counseling or assisting a client in conduct that the lawyer knows is illegal, criminal or fraudulent).

II. The Ayala-to-Moro Matter

On May 30, 2007, respondent represented Hugo Leonel-Moro in the $480,000 purchase of 163 Throop Avenue, New Brunswick, from Raul Herrera-Ayala. Respondent also acted as the settlement agent.

Respondent received a total of $444,404.10 from JMC for the settlement, subject to the same "notice to closing agent," which respondent signed at closing.

Respondent did not disclose to JMC the existence of a handwritten side agreement between Moro, Ayala, and Roger Diaz, who had originally sold the property to Ayala, and under which Diaz would receive $8,080.19 of the settlement funds.

Moreover, Line 303 of the HUD-1 indicates that Moro contributed $46,337.19 toward the purchase price. Yet, as evidenced by respondent's client ledger card for the transaction, Moro contributed no funds toward the purchase.

Line 603 of the HUD-1 indicates that respondent paid the seller $54,856 at closing. Yet, respondent's client ledger card shows that the seller received no funds at the closing. The ledger card also shows that Diaz received the $8,080.19 discussed in the "secret" agreement.

Respondent watched as his client signed the HUD-1 at closing. Respondent did not advise Moro that the information in the HUD-1 was false, before Moro signed it.

Post-closing, Moro immediately defaulted on the mortgage, failing even to make the first payment. At the time, respondent was still holding funds from the December 2006 Diaz to Ayala transaction in his trust account. On June 7, 2007, just eight days after the Ayala to Moro closing, respondent returned a water escrow. The ledger also shows that, on that same date, respondent issued a check to himself for expenses of $320, related to the Diaz to Ayala closing.

According to the stipulation, neither Moro nor Ayala gave their "informed consent to the representation confirmed in writing after full disclosure and consultation."

Respondent admitted that his conduct regarding the HUD-1 constituted misrepresentations, in violation of RPC 8.4(c). The OAE contended that, in addition, respondent's actions were dishonest, fraudulent and deceitful (RPC 8.4(c)). The OAE also contended that "said conduct violated RPC 1.2 (counseling or assisting a client in conduct that the lawyer knows is illegal, criminal or fraudulent) and RPC 1.7(a) (concurrent conflict of interest)."

III. The Crews-to-Smaltini Matter

On February 20, 2007, respondent represented Mabel Crews in the sale of her Franklin Township property to Merrill Smaltini for $380,000.

At the time, respondent was holding funds in his trust account from Smaltini's purchase of property in a "Tidwell to Smaltini" transaction (detailed in count five, below), wherein he represented Smaltini as buyer. Respondent held those funds from November 28, 2006 through March 20, 2007.

Further, respondent represented Smaltini in a Cooper-to-Smaltini transaction, while representing Crews in the Crews-to-Smaltini matter.

Documents in respondent's Cooper-to-Smaltini file indicate that the representation spanned the period from January 31, 2007 to February 28, 2007. Respondent, however, never disclosed to Crews his other representations of Smaltini. Moreover, Crews gave no "informed consent to the representation confirmed in writing after full disclosure and consultation."

Respondent conceded that his failure to advise Crews of his multiple representations amounted to a conflict of interest

situation and that he did not obtain a conflict waiver from Crews, a violation of RPC 1.7(a).

IV. The Khadykalo-to-Smaltini Matter

Respondent represented Smaltini and acted as settlement agent in Smaltini's October 20, 2006 purchase from Olga Khadykalo of 5 Culver Lane, East Brunswick. The purchase price was $340,000.

According to line 303 of respondent's HUD-1, Smaltini contributed $47,722.08 to the settlement. Yet, according to respondent's ledger card for the transaction, Smaltini made a $48,000 down payment and received $101,964.60 from the closing proceeds by four separate trust account checks: a) an October 20, 2006 check for $48,000 (no. 1075), described as "ret of escrow;" b) an October 20, 2006 check for $25,000 (no. 1076), described as "c/o fee;" c) an October 30, 2006 check for $24,000 (no. 1108), described as "c/o fee;" d) and a November 9, 2006 check for $4,964.60 (no. 1223), described as "c/o rent."

The parties conceded that Smaltini actually received net proceeds of $53,964.60 ($101,964.60 minus $48,000) at closing. According to the HUD-1, respondent gave Khadykalo $102,527.15

from the closing proceeds. Yet, his ledger card correctly showed that Khadykalo received just $602.11 (check no. 1071).

Respondent witnessed Smaltini sign the HUD-1, which contained the standard buyer's certification, but did not advise his client, beforehand, that the HUD-1 contained false information.

In addition, he signed the settlement agent certification on the HUD-1.

Respondent admitted that the false statements in the closing documents constituted misrepresentations, in violation of RPC 8.4(c). The OAE contended that, in addition, respondent's conduct was dishonest, fraudulent and deceitful (RPC 8.4(c)) and violated RPC 1.2 (counseling or assisting a client in conduct that the lawyer knows is illegal, criminal or fraudulent).

V. The Tidwell-to-Smaltini Matter

Respondent represented Smaltini and acted as the settlement agent in Smaltini's November 30, 2006 purchase of 3811 Birchwood Court, North Brunswick, for $175,000.

Respondent's client ledger card indicates that Smaltini contributed $20,000 to the closing "for expenses." The HUD-1 shows a down payment of $26,976.65. Respondent's ledger card

confirms that Smaltini received $57,455.54 from the closing proceeds, by way of four trust account checks, as follows: a) two December 1, 2006 checks, one for $25,000 (no. 1275), described as "c/o fee," and another for $20,000 (no. 1276), described as "ret of esc;" b) a December 28, 2006 check for $9,342.60 (check no. 1356), described as "advance c/o fee;" and c) a March 20, 2006 check for $3,112.94 (no. 1535), described as "monthly fee."

The parties stipulated that Smaltini received net proceeds of $37,455.54 ($57,455.54 minus $20,000).

Respondent's HUD-1 indicates that Tidwell received $57,672.50 in closing proceeds. Respondent's client ledger card, on the other hand, shows the much lower figure of $2,286.96 by the following trust account checks: a) a December 28, 2006 check for $1,000 (no. 1360), described as "seller proceeds" and b) a December 28, 2006 check for $1,286.96 (no. 1351), described as "seller proceeds."

Although respondent witnessed his client sign the HUD-1, which contained the standard buyer's certification, he did not inform him that it contained false information. Respondent also signed the settlement agent certification on the false HUD-1.

Respondent admitted that his actions constituted misrepresentations (RPC 8.4(c)). The OAE also contended that the conduct was dishonest, fraudulent and deceitful (RPC 8.4(c)), as well as a violation of RPC 1.2 (counseling or assisting a client in conduct that the lawyer knows is illegal, criminal or fraudulent).

VI. The Conflict of Interest in Tidwell-to-Smaltini

Respondent's records revealed that respondent represented Tidwell "in the sale of this same property in December 2006," referring to the property that Tidwell sold to Smaltini on November 30, 2006. In March 2007, respondent issued a trust account check for $14,887.06 to Pressler and Pressler for an outstanding judgment against Tidwell.

According to the stipulation, respondent claimed that he was acting on behalf of Smaltini, not Tidwell. In January 15 and March 7, 2007 letters to Pressler and Pressler, however, respondent wrote, "I represent Ms. Tidwell, the defendant in the

above matter."[1] In a return letter dated January 22, 2007, that firm referenced Tidwell as respondent's client.

The OAE contended that respondent's conduct constituted a concurrent conflict of interest, a violation of RPC 1.7(a).

VII. The Cooper-to-Smaltini Matter

On February 28, 2007, respondent represented Smaltini in the purchase of 422-424 Doyle Street, Elizabeth, from Emanuel Cooper. The sale price listed in the HUD-1 was $450,000. Respondent prepared the HUD-1 as settlement agent.

According to line 303 of the HUD-1 and respondent's ledger card, Smaltini made a $45,000 down payment. Respondent's ledger card indicates that Smaltini received $70,000 of settlement funds for "expenses" by way of two checks: one for $25,000 (no. 1506) and the other for $45,000 (no. 1507).

According to line 603 of the HUD-1, Cooper received $69,981.63 in closing proceeds. In reality, as seen in

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[1] The quoted letters are not included in the record submitted for our review.

respondent's ledger card for the transaction, Cooper received no funds at the closing.

Respondent witnessed Smaltini's signature on the HUD-1 and failed to advise his client that the document contained false information. He also signed the document as settlement agent.

Respondent admitted that the false statements in the closing documents amounted to misrepresentations, in violation of RPC 8.4(c). The OAE contended that, in addition, the conduct was dishonest, fraudulent and deceitful (RPC 8.4(c)) and that it violated RPC 1.2 (counseling or assisting a client in conduct that the lawyer knows is illegal, criminal or fraudulent).

In mitigation, the parties cited respondent's thirty-three-year career without prior discipline.

The OAE recommended a censure, citing In re Frohling, 205 N.J. 6 (2011).

Following a review of the record, we are satisfied that the stipulation fully supports findings of violations of RPC 1.2, RPC 1.7(a), and RPC 8.4(c).

In five real estate matters in which respondent acted as the attorney for the buyer and as the settlement agent, he prepared HUD-1 settlement statements containing false information about the transactions. That information included

references to non-existent down payments from the buyers and fictitious amounts for proceeds to sellers at closing. In at least two instances, respondent signed a "notice to closing agent" document that misrepresented the transaction by failing to disclose the existence of a side agreement.

In all five matters, respondent also presented the HUD-1 to the client for execution, knowing that federal law prohibited the parties from making fraudulent representations.[2] Respondent's misconduct in all five matters, thus, violated RPC 8.4(c) and RPC 1.2.

In one of the matters, Crews-to-Smaltini, respondent admitted a concurrent conflict of interest (RPC 1.7(a)). There, respondent failed to advise his client, Crews, that he was actively representing Smaltini in several unrelated real estate matters at the time.

The OAE contended that respondent violated RPC 1.7(a) in two other matters. First, in the Ayala-to-Moro matter, the OAE

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[2] The HUD-1 contained the following language: "WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010."

relied solely on the presence of escrow funds in the trust account from a prior transaction, an insufficient basis upon which to find, by clear and convincing evidence, that respondent violated that rule. Second, in the Tidwell-to-Smaltini matter, the closing took place on November 30, 2006. The stipulation stated that respondent also represented Tidwell in "the sale of this same property in December 2006." The stipulation did not consider the impossibility that Tidwell again sold the property in December 2006. By that time, she was no longer the owner, having sold it to Smaltini in November 2006. For lack of clear and convincing evidence, we dismiss the conflict of interest charges in those matters.

Finally, the OAE contended that, in addition to the admitted misrepresentations on the HUD-1s, respondent violated the remaining aspects of RPC 8.4(c) (dishonesty, fraud and deceit). Because respondent already conceded having violated RPC 8.4(c) in each matter without limiting the impropriety to misrepresentation, we find it unnecessary to make such additional findings.

The discipline imposed for misrepresentations on closing documents has ranged 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, and other mitigating or aggravating factors. See, e.g., In re Barrett, 207 N.J. 34 (2011) (reprimand for attorney who misrepresented that a HUD-1 statement that he signed was a complete and accurate account of the funds received and disbursed as part of the transaction; the HUD-1 reflected the payment of nearly $61,000 to the sellers, whereas the attorney disbursed only $8,700 to them; the HUD-1 also listed a $29,000 payment by the buyer, who paid nothing; finally, two disbursements totaling more than $24,000 were left off the HUD-1 altogether; the attorney had no record of discipline); In re Mulder, 205 N.J. 71 (2011) (reprimand for attorney who certified that the HUD-1 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 HUD-1 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 HUD-1, on the deed, and on the affidavit of title were viewed as aggravating factors; mitigating circumstances justified only a reprimand); In re

Spector, 157 N.J. 530 (1999) (reprimand for attorney who concealed secondary financing to the lender through the use of dual HUD-1 statements, "Fannie Mae" affidavits, and certifications); In re Sarsano, 153 N.J. 364 (1998) (reprimand for attorney who concealed secondary financing from the primary lender and prepared two different HUD-1 statements); In re Blanch, 140 N.J. 519 (1995) (reprimand for attorney who failed to disclose secondary financing to a mortgage company, contrary to its written instructions); In re Agrait, 171 N.J. 1 (2002) (reprimand for attorney who, despite being obligated to escrow a $16,000 deposit shown on a HUD-1, 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 communicate to the client, in writing, the basis or rate of his fee); In re Gahwyler, 208 N.J. 353 (2011) ((strong) censure for attorney who, in one real estate transaction, did not memorialize his fee arrangement, engaged in a conflict of interest by representing both sides, misrepresented the parties' disbursements and receipts on the HUD-1 statement, and certified the accuracy of

those figures, thereby misleading the lender; the attorney's misrepresentations led to litigation in bankruptcy court involving the parties and the attorney; violations of RPC 1.2(d), RPC 1.5(b), RPC 1.7(a), and (b), RPC 4.1(a), and RPC 8.4(b),(c), and (d); in mitigation, it was considered that the attorney had an unblemished record of over twenty years, that his civic involvement was noteworthy, and that his intentions were not ill-founded); In re Soriano, 206 N.J. 138 (2011) (censure for attorney who assisted a client in a fraudulent real estate transaction by preparing and signing a HUD-1 statement that misrepresented key terms of the transaction; also, the attorney engaged in a conflict of interest by representing both the sellers and the buyers and failed to memorialize the basis or rate of his fee; the attorney had received a reprimand for abdicating his responsibilities as an escrow agent in a business transaction, thereby permitting his clients (the buyers) to steal funds that he was required to hold in escrow for the purchase of a business, and for misrepresenting to the sellers that he held the escrow funds); In re Frohling, supra, 205 N.J. 6 ((strong) censure for attorney who, in three "flip" real estate transactions, falsely certified on the settlement statements that he had received the necessary funds from the

buyers and that all funds had been disbursed as represented on the statements; the attorney's misrepresentations, recklessness, and abdication of his duties as closing agent facilitated fraudulent transactions; the attorney also engaged in conflicts of interest by representing both parties in the transactions and was found guilty of gross neglect and failure to supervise a non-lawyer employee; prior 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 that 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; violations included RPC 1.1(a) (gross neglect), RPC 1.15(b), RPC 4.1(a), and RPC 8.4(c); the attorney had received a prior admonition and a 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 HUD-1 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 in 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 HUD-1 statements, affidavits of title, and Fannie Mae affidavits and agreements, failed to witness a power of attorney, and made a false statement to a prosecutor about the closing documents); 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 HUD-1 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); In re Newton, 159 N.J. 526 (1999) (one-year suspension for attorney who prepared false and misleading HUD-1 statements in eight

transactions, 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).

The conduct in Soriano (censure) is similar to that of respondent, in that both attorneys prepared fraudulent HUD-1 statements and engaged in conflicts of interest. Soriano also failed to memorialize the basis or rate of his fee and had a prior reprimand, elements that are not present here. Soriano's conduct was limited to one transaction, however, unlike respondent's, which encompassed five matters.

Gahwyler received a strong censure for preparing a HUD-1 containing false information (RPC 8.4(c)), assisted the client in conduct that he knew was criminal or fraudulent (RPC 1.2), and engaged in a conflict of interest (RPC 1.7(a)). As in Soriano, however, the misconduct was confined to one

transaction. Here, respondent's misconduct involved five matters.

Frohling (censure), which addressed similar misconduct, is distinguished from this case because it involved only three matters.

Attorney Nowak, whose conduct involved only one matter, received a three-month suspension. Like respondent, Nowak had not been disciplined before. Nevertheless, Nowak's lack of understanding of the impropriety of his misrepresentations on the HUD-1 statement or refusal to admit to the impropriety was viewed as an aggravating factor.

Longer periods of suspension have been imposed on attorneys whose conduct involved more than three matters. Fink received a six-month suspension for failing to disclose secondary financing in, as here, five transactions. Like respondent, Fink prepared false HUD-1 statements. Fink, however, had a serious transgression not present here – his lie to the prosecutor's office about his misrepresentations on the HUD-1 statements. Fink, like respondent, had no prior discipline.

Newton (one-year suspension), too, was more serious than this case. Nine transactions were at issue, there was serious harm to the lender (eight of nine matters went to foreclosure),

and the attorney was a municipal court judge at the time of the misconduct.

A one-year (suspended) suspension was also imposed in Alum. There, seven transactions were involved, vis-à-vis five here. Neither Alum nor respondent had a disciplinary record. Alum's conduct had occurred ten years before, a mitigating factor taken into account. Although Alum, like respondent, admitted that he had committed ethics improprieties, he blamed others, such as his law firm, for having "trained" him to conceal secondary financing in real estate transactions (the record did not support his contention in this regard). He also alleged that such practice was rampant in the county where he worked; that fourteen other attorneys that he named in a letter to the OAE were equally guilty of such practices (the OAE caused a protective order to be issued, given that those attorneys were not being investigated); that, "because everyone else was doing it," he allowed himself to participate in "silent seconds;" and that to single him out for "selective prosecution" was unfair.

We find that a one-year suspension or even a six-month suspension would be excessive here. As indicated previously, respondent's misconduct was not as serious as Fink's and certainly not as serious as Alum's. It was akin to Nowak's

(three-month suspension). While it is true that Nowak involved only one matter, an aggravating factor was the attorney's lack of understanding of the impropriety of his misrepresentations on the HUD-1 statement or his refusal to admit to the impropriety. We, therefore, determine that a three-month suspension is the appropriate level of discipline here as well.

Chair Pashman voted for a censure. Member Wissinger 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 Jerrold N. Kaminsky
Docket No. DRB 11-267

Argued: November 17, 2011

Decided: December 22, 2011

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Censure	Disqualified	Did not participate
Pashman			X		
Frost		X			
Baugh		X			
Clark		X			
Doremus		X			
Wissinger					X
Yamner		X			
Zmirich		X			
Total:		6	1		1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel