SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-415
(formerly 11-223)
District Docket No. XIV-09-0077E
Docket No. DRB 12-024
(formerly 11-350)
District Docket No. XIV-09-0114E

IN THE MATTERS OF

VINCENT M. ANSETTI

AN ATTORNEY AT LAW

Decision

Argued: January 19, 2012 (DRB 11-415)
February 16, 2012 (DRB 12-024)

Decided: May 17, 2012

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Brian H. Corrigan appeared on behalf of respondent.

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

These matters were before us on recommendations for admonitions filed by the District VI Ethics Committee (DEC), which we determined to treat as recommendations for greater discipline. R. 1:20-15(f)(4).

In DRB 11-415, respondent was charged with violating RPC 1.8(a) (a lawyer shall not enter into a business transaction

with a client unless the client is advised, in writing, to seek independent counsel and the client gives informed consent, in writing, to the representation) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

In DRB 12-024, respondent was charged with violating RPC 1.15(a) (failure to safeguard client funds) and RPC 8.4(c).

The Office of Attorney Ethics (OAE) urged us to reprimand respondent in each of the matters. We determine to impose a single censure for the sum of respondent's misconduct.

Respondent was admitted to the New Jersey bar in 2005. He has no history of discipline.

The recitation of the facts and our fact-findings for each matter are set out separately. The applicable case law and appropriate measure of discipline for the aggregate of respondent's infractions are set forth at the end of the discussion of the second matter.

DRB 11-415

Respondent and Vanessa Verduga, an attorney, were business partners in the purchase of real property.[1] The seller, Joseph Covello, was a friend and client of respondent. Covello agreed to sell the property to respondent for $255,000, a price that Covello considered to be "very good." Covello understood that respondent was representing him in the transaction.

In evidence is a September 2007 contract of sale between Verduga and 829 Garden Condominiums, LLC, Covello's business entity. Covello, who claimed that the signature on the contract is not his, believed that he was selling the property to respondent. It was not until Covello arrived at the closing, on January 18, 2008, that he learned that Verduga was also purchasing the property.

The contract reflected a price of $265,000, broken down as a $1,000 deposit, $4,000 to be paid at the signing of the contract, $21,500 to be paid at the closing, and a $238,500 mortgage. Also in evidence is a second contract between 829 Garden Street and Verduga, entered in November 2007, which reflected the same terms as the

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[1] Verduga has been admonished for her role in this transaction. In the Matter of Vanessa Verduga, DRB 11-313 (January 25, 2012).

September 2007 contract, except that the $1,000 and $4,000 deposits are combined into one $5,000 payment. Covello testified that the signature on that contract, also, is not his. The record does not reveal the reason for the two contracts.

At the closing, respondent acted as the settlement agent and as the attorney for Verduga and Covello.[2]

In January 2008, two months after the date of the second contract, respondent sent a letter to Verduga, explaining that the contract price had been changed from $255,000 to $265,000 to account for a $10,000 seller's concession. Covello was advised of the change only at the closing. He did not "fully understand" the price increase to $265,000 and his $10,000 concession to the buyer, but respondent and Verduga explained to him that the bank required that it be done that way.

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[2] Because respondent had a poor credit rating, Verduga obtained the mortgage alone, through Aurora Financial Group Inc. (Aurora). In respondent's answer, he stated that Verduga was supposed to represent herself, but "Aurora Financial and/or the title company had an issue with Ms. Verduga representing herself so I became the settlement agent." He added that Covello knew about the arrangement and agreed to have respondent as his attorney. In Verduga's answer, she stated that respondent represented her.

At some point prior to the closing, respondent approached Covello and explained that Covello had to take back a mortgage of $20,000 because respondent did not have enough money for the down payment. Covello agreed to do so. During the closing, however, respondent told Covello that he now had to take back a mortgage of $40,000. Covello testified that he was "not happy" about the change in the amount of the loan, but that he reluctantly had agreed to it.[3]

Both respondent and Verduga were listed as borrowers, in the $40,000 second mortgage loan documents. According to Verduga's answer to the complaint, respondent prepared the loan document. Covello acknowledged that the signature on the document memorializing the $40,000 loan is his.

There are some conflicting statements as to who prepared the RESPA. Steven Harasym, OAE Disciplinary Auditor, testified that, during his interview with Verduga, she stated that respondent had prepared all the paperwork and "brought the deal

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[3] Covello was compelled to agree to the $40,000 loan because he needed the money for a 1031 exchange and felt he was "put in a bad situation at that point." He explained that, in a 1031 exchange, if funds from a real property sale are used to purchase another piece of property within ninety days, the event is tax free.

to her." Respondent, in turn, told the OAE that his paralegal/secretary had prepared the RESPA, under Verduga's direction. During a conversation with Harasym, the paralegal did not dispute what respondent had said. In addition, Harasym spoke with two representatives from Aurora, one of whom stated that the contact number on the mortgage was Verduga's and the other stating that he had dealt equally with Verduga and respondent. Despite this apparent controversy, however, it is unquestionable that respondent signed the certification on the RESPA identifying him as the preparer of that document.

On the closing date, January 18, 2008, respondent had to be at another closing. Verduga then explained the closing documents to Covello. According to Covello, respondent had told him that Verduga was his law partner. When respondent ultimately arrived, Covello asked that he review the documents with him as well. Covello recalled seeing the RESPA statement and reviewing it with Verduga and respondent, but did not remember signing it. He testified that the signature on the RESPA is not his and that he did not authorize anyone to sign his name. Covello could not recall signing anything at the closing.

The figures contained on the RESPA were inaccurate, in that they did not reflect the actual financial terms of the transaction. Specifically, the RESPA indicates that Verduga brought $26,260.01 to the closing. In reality, she brought no funds at all to the closing.[4] Moreover, the $40,000 second mortgage is listed in the Summary of Seller's Transaction as a "Private Mortgage," but not in the Summary of Borrower's Transaction.

During their closing arguments, counsel for both Verduga and respondent admitted that the information on the RESPA was not accurate. However, both argued that there was no intent to misrepresent the details of the sale because buyer, seller, and lender were all aware of the financing terms of the transaction.

As detailed below, a representative from the lender, Aurora, testified, at the DEC hearing, that Aurora was aware of the $40,000 second mortgage and, in fact, had directed that it be moved from the borrower's side of the RESPA, where it was originally listed, to the seller's side.

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[4] Verduga also did not pay the $5,000 deposit required under the contract, but that payment is not reflected on the RESPA.

In evidence as exhibit A to respondent's answer is a letter from the mortgage broker at Aurora who handled the Verduga loan, Amy Tolentino. The letter shows that Aurora clearly knew about the $40,000 second mortgage. It states, in relevant part:

> Vanessa and Vincent needed secondary financing to close the loan because 100% financing was not an option. The Seller, Joseph Covello, was willing to take back a mortgage and lend them sufficient funds to close. We knew about this secondary funding from Covello. At closing, Ansetti's office forwarded our processor the Hud-1 and it was approved by our bank. We understood that the Hud was not necessarily an accurate representation of the actual numbers, however, we funded and approved the loan because we knew the remaining monies were coming from the Seller, Covello. Moreover, we did want the $40,000.00 on the Hud-1 to ensure that this amount was taken from the closing to cover the amount that the Vanessa [sic] was to bring to closing, but there was no fraud or deceit here against Aurora.
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> [A Ex.A.][5]

At the DEC hearing, Tolentino testified that she was the "quality control person" for the Aurora branch involved in the loan.[6] According to Tolentino, Aurora had instructed that the closing documents be amended to reflect the $40,000 second

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[5] A refers to respondent's answer to the formal ethics complaint.

[6] Tolentino's name in the transcript is listed as Tolentino-Karas.

mortgage as a seller's transaction, rather than on the borrower's side of the RESPA, as initially listed. She testified as follows, during questioning by respondent's counsel:

> Q. If it appeared on the opposite side, the private mortgage entry from what it appears on Document 1 [the RESPA], what was objectionable to the bank about it appearing on the left [the borrower's side]?
>
> A. Because it would have shown it -- it would have been money coming in instead of being equal or getting a credit.
>
> Q. And does the bank not allow credits to show?
>
> A. No.
>
> Q. So what did the bank instruct be done with respect to the $40,000 that appeared on the left side of the --
>
> A. It had to be -- it had to be moved [to the seller's side].
>
> Q. Now, the bank was aware that there was a private mortgage being given in the amount of $40,000, correct.
>
> A. Yes, sir.
>
> Q. And the bank was aware that that $40,000 would be used for the buyer to bring the $26,000 that was shown coming to closing, correct?
>
> A. Correct, sir.

> Q. For the sake of completeness do you recall any other changes that were made to the RESPA?
>
> A. No, sir.
>
> Q. And once that change is made, did Aurora look at it again and approve it or just said change this?
>
> A. Once the change was made, the closer approved the HUD-1 and they were able to close.
>
> Q. And it's your recollection that the closer approved it in this form as Document 1 is in its current state?
>
> A. Yes, sir.
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> [T123-20 to T125-6.][7]

Tolentino added that Aurora was aware that the two mortgages exceeded the purchase price.

Respondent certified that the RESPA was a "true and accurate account of the funds which were received and have been or will be disbursed" by him. Verduga certified that the RESPA was "a true and accurate statement of all receipts and disbursements" made on her account or by her. Both certifications were false.

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[7] T refers to the transcript of the DEC hearing on January 13, 2010.

According to Harasym, his investigation revealed no evidence of fraud on either Covello or Aurora.[8] The following exchange took place between Harasym and counsel for respondent:

> Q. Would you agree with me that even in your review of this, you could see that it showed a private mortgage of $40,000?
>
> A. Well, I would agree I could see that it shows a private mortgage of $40,000. When I first looked at it, my first thought was it's on the wrong side of the HUD.
>
> Q. So basically would you agree with me it's not that something was left out or not disclosed, it just appears on the wrong location?
>
> A. Correct, and it's on the wrong location and my first thought was they are trying to conceal the mortgage, that was my first thought.
>
> Q. Well, how do you conceal the mortgage by typing it in bold numbers in print on the RESPA?
>
> A. To me the fact that it's not listed. When I look at a document like this, I look to see what debt is along the transaction, I look on the left side and usually all the other transactions I've reviewed, there is always mortgages both first and second. If there is a second, they are always located

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[8] This transaction culminated in legal proceedings among Verduga, respondent, and Covello. See discussion, infra.

on the left side.[9] This is the only one I've seen in my experience with it on the right. So to me as I said when I first looked at this, my first thought was they are trying to conceal.

Q. Do you have training in accounting?

A. Yes.

Q. Let's look at this together with an accounting eye. In looking at this, you certainly do note that the two mortgages total more than what's needed to close this transaction, correct?

A. Correct.

Q. So if I asked you whether in looking at the four corners of this documents it appears that buyer had to come up with money at closing, what would you tell me?

A. Well, after reviewing it and crunching all the numbers so to speak, you could see that, right, that the mortgage is covered once you've been brought to the table but that's because I have experience with real estate and experience with accounting. An unsavvy investor would look at this and his first thought would be that, wow, buyer brought $26,000 to the table.

Q. What type of unsavvy investor are you talking about?

A. If this mortgage say was sold down the road to several different other banks, if

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[9] In fact, second mortgages are to be listed on both the borrower's and the seller's side.

the person looking at it had real estate experience, sure, they could figure it but if the person didn't, it could possibly fool them at first.

Q. Are you suggesting to these people here that some mortgage company who is going to buy this mortgage is not going to bother to look at the RESPA and see that there is a private mortgage?

A. No, I'm sure that they would look at it.

Q. Okay. So in your head, you clearly understand that anybody [sic] would be in a position to buy this loan sees the private mortgage and that would be a totally different situation, would it not be, if that private mortgage and $40,000 vanished from this, correct?

A. Yes.

Q. Because that would be even, I mean, I have an accounting degree as well, if that 40 wasn't there, we would look at this and say, that's very simple, someone came up with 26,000 and that with the mortgage was sufficient to close the loan, correct?

A. Correct.

Q. And with the $40,000 there, only an idiot or somebody who knows nothing about numbers, real estate or accounting would come to that conclusion, correct?

A. Correct.

[T47-8 to T50-16.]

As mentioned previously, respondent had a prior attorney/client relationship with Covello. He had represented Covello in three real estate transactions, before the one in question. He neither advised Covello, in writing, to seek the advice of independent counsel, before entering into their business transaction, nor obtained a waiver of the conflict. In addition, as indicated above, he represented both Covello and Verduga at the closing.

Covello testified that the deed was not timely recorded and that he became third in line behind the lender, rather than second.[10] He did not know who was supposed to record the mortgage, respondent or Verduga.

In his opening argument, Verduga's counsel explained that, at some point, respondent filed an action for partition of the property.[11] Verduga answered and cross-claimed against respondent and Covello. Verduga and Covello settled their dispute. Covello released her from her obligation to pay one-

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[10] The record does not reveal who is "second in line" or why the deed was not timely recorded. There were apparently errors in the deed that respondent prepared, but it is unclear why filing was delayed.

[11] The DEC considered the Ansetti and Verduga matters together. Counsel for both attorneys presented opening statements.

half of the $40,000. Verduga settled the matter with respondent.

As mentioned previously, in his summation, respondent's counsel argued that there was no fraud on the lender because the lender had directed that the RESPA be prepared in the manner in question.[12] He added: "You don't have fraud when there isn't scienter, there isn't misrepresentation, someone that was defrauded. This bank was not only not defrauded, this bank said we have to have [sic] this way." Moreover, as to the OAE's concerns about third-party lenders' buying the mortgage loan, respondent's counsel contended that "people down the road" purchasing the loan would examine the documents and be able to ascertain the details of the financing that had occurred.

As noted before, the complaint charged respondent with violating RPC 1.8(a) and RPC 8.4(c).

Without setting out its findings of facts, the DEC found no clear and convincing evidence that respondent had violated RPC 8.4(c). It found, however, sufficient evidence that respondent had violated RPC 1.8(a). Specifically, the DEC found that

[12] The complaint did not specifically charge respondent and Verduga with fraud on any party, only with misrepresentations on the RESPA.

respondent did not advise Covello, in writing, to seek independent counsel or obtain a written waiver from Covello, when he entered into a business transaction with him. The DEC recommended that respondent be admonished.

Following a de novo review of the record, we find, unlike the DEC, that the evidence clearly and convincingly establishes that respondent violated RPC 8.4(c). Respondent signed certifications on the RESPA knowing that the information that he was certifying as accurate was false.

At the DEC hearing, there was a great deal of discussion on whether respondent and Verduga had committed a fraud on the lender and on secondary market mortgagees, specifically, whether the mortgagees' review of the RESPA would lead to a conclusion about what had taken place at the closing, when, in reality, something else had occurred. For instance, anyone looking at the RESPA would think that Verduga had brought $26,000 to the closing. In truth, she had brought nothing. Moreover, anyone looking at the RESPA would reasonably conclude that the $40,000 entry on the seller's side represented the pay-off of an existing private mortgage on the property (even if the pay-off fee were not listed on the correct line of the RESPA - line 505 "pay-off of second mortgage"), rather than a second mortgage to

be held by the seller, particularly because it was not listed on the borrower's side of the RESPA as well, as it should have been. This would be a logical conclusion reached by savvy people as well, not only by fools, as contended by counsel.

Indeed, nothing at all on the RESPA gave any type of notice that the $40,000 was a second mortgage held by Covello. And even if it is true that Aurora knew about the actual terms of the transaction, it is not necessarily true that a subsequent buyer of Aurora's loan would have known that this was a second mortgage, rather than the pay-off of an existing loan encumbering the property.

That being said, the discussion on this issue is academic. Although the record raises serious suspicions of fraud, neither respondent nor Verduga were specifically charged with having defrauded the lender and/or future buyers of Aurora's loan.

Unquestionably, however, respondent violated RPC 8.4(c). He misrepresented that the RESPA that he signed was a true and accurate account of the funds that he disbursed in connection with the closing. In reality, he did not list the $40,000 as a mortgage held by Covello and listed $26,000 as having been paid by Verduga, who, in fact, paid nothing. It should be remembered that making a misrepresentation on a RESPA is a federal criminal

offense that can subject the individual to a fine and imprisonment. 18 U.S.C. §1001 and §1010.

In addition, respondent violated RPC 1.8(a) by engaging in a serious conflict of interest, when he represented Covello, a friend and client, in a business transaction with himself and Verduga, who was either his partner or shared office space with him. Although, at times, it is possible for an attorney to represent a buyer and seller, that representation is permissible only after the contract has been executed and, importantly, when the requirements of RPC 1.8 have been met, namely, the terms are fair and have been disclosed to the client, advice that the client seek independent counsel has been given, and the client has consented, in writing, to the representation. None of those safeguards were observed here.

Here, the conflict was incurable. The Advisory Committee on Professional Ethics, Opinion 243 (November 9, 1972) (ACPE Opinion 243) states that a concurrent conflict of interest exists when an attorney represents both the buyer and seller in connection with the preparation and execution of a real estate transaction. The ACPE opinion used language that "indicates that the consent of the parties will not remedy the conflict" Kevin H. Michels, New Jersey Attorney Ethics §19:2-2 at 431 (Gann

2012). In In re Lanza, 65 N.J. 347 (1974), the Supreme Court approved ACPE Opinion 243, albeit in a case in which the attorney did not prepare or negotiate the contract of sale.

DRB 12-024

In 2006 Debbi McManimon contacted Liberty Funding (Liberty) about refinancing her then-existing mortgage.[13] McManimon was experiencing financial difficulties, following the death of her husband. She did not have good credit and wanted to maintain her home.[14] Morgan Wilkes, on behalf of Liberty, agreed to work with McManimon.

A closing was scheduled for November 16, 2006. McManimon believed that she was at the closing to refinance her mortgage loan. In fact, the transaction was not a refinance but, rather, a sale of McManimon's home, with a "lease buy back." Wilkes found a buyer, Yelida Piantini, and also contacted respondent to represent Piantini and to act as the settlement agent. Piantini

[13] McManimon's name is spelled both Debbi and Debbie in the record.

[14] McManimon lived with her mother, who was 97 years old as of the DEC hearing. McManimon's father had built the home for her mother. McManimon's sole purpose for the refinance was to keep her mother in the house.

could not afford the mortgage on McManimon's house and had no interest in owning it. Rather, she was merely assisting McManimon in maintaining her home.

Respondent did not meet with or speak to McManimon, prior to the closing. He was not involved in negotiating the contract terms. In fact, McManimon was not represented by counsel in this transaction. Respondent told her that he was not representing her and asked her if she wanted to retain an attorney. She declined.

On the closing date, McManimon signed a "Waiver of Representation by an Attorney," which respondent reviewed with her. According to Piantini, McManimon was not pressured to proceed with the transaction on the closing date. She confirmed that respondent had advised McManimon to retain counsel of her own.

Piantini further testified that respondent explained the closing documents to the parties and asked McManimon repeatedly if she understood the terms of the transaction. According to Piantini, McManimon acknowledged understanding the terms. Indeed, Piantini stated that McManimon requested that changes be made to the documents approximately seven times. Respondent

opined that the requests for changes indicated that the parties had understood the terms.

McManimon conceded that respondent went through the closing documents with her, but stated that she did not understand the transaction. She did not ask for an explanation of any of the documents. McManimon's testimony revealed, however, that she was unclear about the transaction. Specifically, when asked if she understood, that the phrase "Buyer purchasing Seller's home" in the addendum meant that Piantini was purchasing her property, McManimon stated, "Well, if she was buying my home, I thought she would have some money to buy the home. I didn't see any money coming that she was buying my home." She stated further:

> I still did not understand that I was a seller and she was a buyer, that this was just a period of time as I said to get myself back on my feet. There was no money, she did not buy the home from me that day so I did not understand that I needed to buy a home back from her. . . .
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> [2T65.][15]

Elsewhere in the transcript there was more of the same lack of understanding. "After I got there, I understand the way this was supposed to go about was that she was going to put the house

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[15] 2T refers to the transcript of the DEC hearing on May 4, 2011.

into her name for six months until I could get on my feet and then it would revert back to my name so she was there for that purpose." McManimon told the OAE disciplinary auditor, Harasym, that she was "not financially savvy."

McManimon did not know who would be paying for the mortgage for the six-month period. The following exchange took place between McManimon and respondent's counsel:

> Q. Let's talk about the six-month period when you revert back to your name we talked about. So you just said after six months you might have qualified so did you apply anywhere to see if it would qualify so you could get the house back in your name and actually have to pay a mortgage?
>
> A. No, I didn't.
>
> Q. And how about after nine months?
>
> A. I'm not quite sure of the amount of time.
>
> Q. How about after a year?
>
> A. I'm not quite sure.
>
> Q. When did it happen that you actually were in a position and actually went anywhere to find out if you could qualify, when did that first happen?
>
> A. I did not do that because I was still involved with this case and I was trying to get an attorney to help me to figure out how to get out of this one, to figure this out to end it before I could move elsewhere, not

move out of the home, to move on with my life.

Q. Well, you understood that if you simply could refinance, everything would be back where it's supposed to be, correct?

A. I thought the refinance was putting it back into my name.

Q. And so did you think it was going to come back into your name without you being able to afford a mortgage in your name?

A. It was coming back into my name, I didn't think that anyone there, Miss Piantini, Mr. Ansetti, cared about that, they would put it back, they were done with me at that point.

Q. So let me see if I understand what you are saying. You thought that even though your mortgage was paid off and Miss Piantini encumbered herself to a new mortgage and took title to the house, that nothing to do with now rehabilitating your credit, forgetting whether your credit was good or you could buy it back just six months it just came back to you, is that your understanding?

A. As easily as it went into her name, yes.

Q. And would there be a mortgage on the property?

A. Yes.

Q. What mortgage?

A. I don't know, I guess the mortgage that was being carried over prior.

[2T86-9 to 2T88-10.]

Piantini believed that McManimon clearly understood the transaction, adding that she had said nothing to lead McManimon to believe that the title to the house would automatically revert back to her name.

Respondent prepared the closing documents, including a deed conveying the property to Piantini, a quitclaim deed conveying one-half interest in the property to McManimon for $1, two HUD-1 forms, and an addendum to the contract.[16] Respondent explained that the quitclaim deed was prepared as protection for McManimon, who wanted security that she would be back on the title, after she repaired her credit.

Following the closing, the lender received "the HUD," addendum, mortgage and note, and "the deed." Presumably, the lender received both deeds and both HUD-1 forms.

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[16] Respondent explained that the lender wanted the transaction structured with a first and second mortgages through GreenPoint Mortgage Funding Inc. The secondary mortgage is reflected on the primary mortgage HUD-1. References herein to the HUD-1 are to the primary mortgage.

The HUD-1 reflected that the principal amount of the new loan was $344,000. A secondary loan of $20,665 was also reflected. The HUD-1 further indicated that Piantini brought $64,253.85 to the closing. In fact, Piantini brought no funds to the closing. Rather, she was paid $15,000, which she shared with her boyfriend, Jose Mejia.[17] The payments appear on respondent's ledger "As per Mrs. McManimon Instructions and Agreement" (McManimon agreed that Piantini would be paid for taking part in the transaction.) The HUD-1 also reflected a $132,062.80 payment to McManimon. In fact, she received only $11,000. McManimon did not question why that was all she received. Funds were escrowed with respondent for the mortgage payments on the property for approximately six months.

In connection with the closing, respondent disbursed $10,462.43 to Liberty. He also made a number of disbursements to Liberty employees. Those disbursements were not reflected on the HUD-1. He disbursed $5,000 to Victor DeLapa, $5,000 to Morgan Wilkes, and $3,500 to Leo Genese. McManimon testified that she did not authorize the payment to Wilkes and did not

[17] It appears that Mejia, who had a "relationship" with loan officers at Liberty, was responsible for bringing Piantini into the transaction.

know the others or approve the payments. The payments appear, however, on respondent's ledger card "As per Mrs. McManimon Instructions." Respondent did not record the payment to Liberty on his ledger card.

Respondent testified that these payments were accounted for in the $39,000 payment from McManimon to Piantini, noted in the addendum. The lender did not allow him to reflect payments to "other parties" on the RESPA. Thus, he decided to group the payments under the $39,000 reflected in the addendum. In fact, the payments to Piantini, Mejia, Wilkes, DeLapa, and Genese and the $10,462.43 payment to Liberty total $38,962.43.

In respondent's direct testimony, he attempted to explain how he had documented the transaction on the addendum, in particular the $64,000 payment from Piantini and the $132,062.80 to McManimon. His testimony is so convoluted, however, as to be nearly incomprehensible, particularly to a third party examining the transaction.

The HUD-1 and the addendum together still did not accurately address all of the disbursements. A $6,500 disbursement to a Francis Chernok was not reflected on either the RESPA or the addendum. McManimon did not know about the

Chernok payment. Respondent's ledger, however, has the notification "as per Mrs. McManimon Instructions."

Both the HUD-1 and the addendum listed payments to Cred-Ex Credit Repair (Cred-Ex). The HUD-1 showed a payment of $1,412.61 to Cred-Ex, while the addendum showed a payment of $3,000. Respondent explained that, because there was a $12,000 seller's concession, the closing costs had to equal $12,000. To remain within that number, he recorded $1,412.61 on the HUD-1, not knowing until closing what Cred-Ex's charge was going to be. A check written from respondent's trust account shows a payment of $3,000 to Cred-Ex, the amount recorded in the addendum. McManimon authorized a payment to Cred-Ex.

Harasym testified that there was no way to accurately reflect the entirety of the transaction on a HUD-1. He added, however, that the individual disbursements that respondent made could have been shown on the HUD-1.

Piantini eventually lost her own home, because she was unable to pay for the mortgage loan on McManimon's property. As of the date of the DEC hearing McManimon was still residing in the house. She stated that she is paying rent to Fannie Mae. She filed a lawsuit against respondent, Piantini, Liberty, and the title company. The suit was pending as of the date of the

DEC hearing. Piantini's attempt to have McManimon evicted from the property was thwarted, due to the pending civil suit.

As previously indicated, respondent maintained funds in his trust account to make the mortgage payments on the property. Because, as noted above, he had not recorded the $10,462.43 payment to Liberty, he allegedly thought that he had sufficient funds from the McManimon transaction to make three extra mortgage payments. The payments resulted in a negligent invasion of other client trust funds, in the amount of $10,458.38. After the OAE made respondent aware of the error, he deposited $10,500 in personal funds to correct the deficiency.

The complaint charged respondent with violating RPC 1.15(a)(negligent misappropriation) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The hearing panel was divided as to whether respondent had violated RPC 8.4(c). The two attorney members of the panel concluded that respondent had violated the rule for the misrepresentations on the HUD-1. Respondent misrepresented that he had collected funds due from the buyer and made disbursements that were not accurately reflected on the HUD-1. In the panel's

view, "[t]his was part of a shady real estate transaction that was masterminded by Liberty Funding."

The panel was unanimous in its conclusion that respondent had violated RPC 1.15(a). Because he failed to properly record a trust account check, he negligently invaded other client funds.

In light of unspecified mitigating factors, the panel unanimously recommended that respondent be admonished.

Following a de novo review of the record, we conclude that the DEC's findings that respondent's conduct was unethical are supported by clear and convincing evidence.

It is difficult to review the events in this matter and to not feel sympathy for McManimon (and Piantini) and to not be tempted to point fingers. However, there is no evidence that respondent was a party to a fraud perpetrated on McManimon (or the lender).

We note that the transaction was planned before respondent entered the picture and that, by all accounts, McManimon gave no indication that she did not understand the transaction. According to Piantini, respondent had asked McManimon if she understood the documents and she had asked no questions of him about them. Whether this was a fraudulent "straw-person"

transaction was not fully explored in this record. Therefore, we cannot make any finding that respondent assisted in a fraudulent transfer. Only the misrepresentations on the HUD-1 and the negligent misappropriation have been clearly and convincingly proven.[18]

This is not a case of an attorney's concealing secondary financing or intentionally preparing misleading documents. Respondent argued that there was no way to represent the McManimon-to-Piantini transaction correctly on a HUD-1. In that he may be correct.

Respondent, a new attorney at the time, thought that, by using the addendum, he was correctly portraying the details of the transaction. Respondent explained that, since the entire transaction could not be portrayed on the HUD-1, he split the two-part transaction (sale/buy-back) into two documents (HUD-1/addendum) and accurately reflected each part.

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[18] In connection with the charged violation of RPC 8.4(c), the complaint charged respondent with allowing McManimon and Piantini, "both of whom he represented in this transaction" to sign a false HUD-1 certification. Clearly, respondent did not represent McManimon.

His solution, however, was problematic. He drafted the addendum to the HUD-1, which, in his mind, correctly conveyed the facts of the transaction. There were three flaws in respondent's plan. First, not all information was conveyed on the combination of the two documents, for example, the $6,500 payment to Francis Chernok. Second, the information provided was not clear. Again, for example, respondent's explanation about the inclusion of the payments to Liberty, Piantini, Mejia, and the three Liberty employees in the $39,000 discussed in the addendum may have been clear to the parties at the closing table, but would not be apparent to anyone else looking at the closing documents. In addition, these payments were connected to the sale of the property and should, therefore, have been documented on the HUD-1. Also, there is nothing on the HUD-1 that refers to the addendum. A third party looking at the HUD-1 would have no way of knowing that the terms of the transaction were any other than as portrayed on that document. Anyone examining the HUD-1 would believe that Piantini brought $64,000 to the table and that McManimon left with $132,062.80. Although the numbers may have been explained in the addendum, they were misrepresented on the HUD-1, a violation of RPC 8.4(c).

In addition, respondent negligently misappropriated other clients' funds, a violation of RPC 1.15(a). As mentioned, he failed to record a payment to Liberty. Had he properly reviewed his attorney books and records, he would have discovered his error, before an invasion of over $10,000 occurred.

We now turn to our discussion of the appropriate measure of discipline for respondent's ethics infractions.

In both DRB 11-415 and DRB 12-024, respondent certified on a RESPA that the information on the form was accurate. In neither instance was that the case.

Discipline 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) (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 meant 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 were viewed as aggravating factors; mitigating circumstances justified only a reprimand); 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 communicate to the client, in writing, the basis or rate of his fee); 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 RESPA statement that misrepresented key terms of the transaction; in addition, 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, 205 N.J. 6 (2011) ((strong) censure for an 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 nonlawyer 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 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 RESPA the existence of a second mortgage taken by the sellers, 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 private 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, failed to witness a power of attorney and lied

to a prosecutor about the RESPA); In re Alum, 162 N.J. 313 (2000) (one-year suspended suspension for attorney who participated in five 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 suspension was suspended and he was placed on probation); In re Newton, 157 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).

As to respondent's conflict of interest arising from respondent's business transaction with Covello, when an attorney enters into a loan transaction with a client without observing the safeguards of RPC 1.8(a), the ordinary measure of discipline is an admonition. Reprimands or brief terms of suspension have been imposed when there are other violations and/or the attorney has a serious disciplinary record. See, e.g., In the Matter of Frank J. Shamy, DRB 07-346 (April 15, 2008) (admonition where the attorney made small, interest-free loans to three clients, without advising them to obtain separate counsel; the attorney also completed an improper jurat; significant mitigation considered); In the Matter of April Leslie Katz, DRB 06-190 (October 5, 2006) (admonition where the attorney solicited and received a loan from a matrimonial client; the attorney did not comply with the mandates of RPC 1.8(a)); In the Matter of Frank J. Jess, DRB 96-068 (June 3, 1996) (admonition where the attorney borrowed $30,000 from a client to satisfy a gambling debt; the attorney did not observe the requirements of RPC 1.8(a)); In re Strait, 205 N.J. 469 (2011) (reprimand imposed on attorney who, after being given use of a "companion" credit

card of a close, longtime, elderly friend for whom he had provided legal representation in three "minor matters" within a twenty-five year period, ran the balance up to nearly $50,000, which was beyond the credit limit, which he could not pay, and as to which he did not inform his friend, whose credit rating was compromised as a result; the attorney also had gained control over the friend's assets when she gave him a power-of-attorney and named him executor of her will; aggravating factors included the vulnerability of the friend, her "extremely close relationship" with the attorney, the trust she placed in him, his failure to inform her of the accumulated debt, his false assurance to her that he would bring the account current, and his failure to return her telephone calls after she began to receive communications from a collection agency); In re Gertner, 205 N.J. 468 (2011) (reprimand for attorney who provided legal representation at the closings on houses that he and his business partner purchased and "flipped," without complying with the requirements of RPC 1.8(a); the attorney also negligently misappropriated client funds on four occasions); In re Cipriano, 187 N.J. 196 (2008) (motion for discipline by consent; attorney reprimanded for borrowing $735,000 from a client without regard to the requirements of RPC 1.8(a); he also negligently invaded

client funds ($49,000) as a result of poor recordkeeping practices; two prior reprimands (one included a violation of the conflict of interest rules); and In re Moeller, 201 N.J. 11 (2009) (three-month suspension for attorney who borrowed $3,000 from a client without observing the safeguards of RPC 1.8(a), did not memorialize the base or rate of his fee, and did not adequately communicate with the client; aggravating factors were the attorney's failure to take reasonable steps to protect his client when he withdrew from the matter and his disciplinary record (a one-year suspension and a reprimand).

Respondent's negligent misappropriation of client funds must be added to the mix. Negligent misappropriation of client funds generally leads to a reprimand. See, e.g., In re Macchiaverna, 203 N.J. 584 (2010) (minor negligent misappropriation of $43.55 occurred in attorney trust account, 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 overdisbursed 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); In re Dias, 201 N.J. 2 (2010) (an overdisbursement 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 promptly comply with the OAE's requests for her attorney records; prior admonition for practicing while ineligible; in mitigation, we considered that the attorney, a single mother working on a per diem basis with little access to funds, was committed to and had been replenishing the trust account shortfall in installments); In re Seradzky, 200 N.J. 230 (2009) (due to poor recordkeeping

practices, attorney negligently misappropriated $50,000 of other clients' funds by twice paying settlement charges in the same real estate matter; prior private reprimand); In re Weinberg, 198 N.J. 380 (2009) (motion for discipline by consent granted; attorney negligently misappropriated client funds as a result of an unrecorded wire transfer out of his trust account; because he did not regularly reconcile his trust account records, his mistake went undetected until an overdraft occurred; the attorney had no prior final discipline); and In re Philpitt, 193 N.J. 597 (2008) (attorney negligently misappropriated $103,750.61 of trust funds as a result of his failure to reconcile his trust account; the attorney was also found guilty of recordkeeping violations).

If compelling mitigating factors are present, the reprimand may be reduced to an admonition. See, e.g., In re Gemma, 195 N.J. 5 (2008) (in seven real estate matters, the attorney's trust checking account was out of trust in amounts ranging from a few dollars to nearly $100,000; the misappropriations were negligent, caused by the attorney's failure to maintain proper books and records; compelling mitigation considered, including that the attorney no longer practiced law); In re Weston-Rivera, 194 N.J. 511 (2008) (attorney negligently misappropriated

client's funds in two matters, violated the recordkeeping rules, and charged an excessive fee in eighteen personal injury matters by improperly deducting the fee from gross settlement proceeds and by deducting overhead charges from the clients' share of the proceeds; unblemished career of thirty years was viewed as a compelling mitigating factor); In re Michals, 185 N.J. 126 (2005) (attorney negligently misappropriated $2,000 for one day and $187.43 for two days, respectively, commingled personal and trust funds, and violated the recordkeeping rules; in mitigation, the Board considered that the trust account shortage was limited to a few days, that the attorney fully cooperated with ethics authorities, that he had no prior encounters with the disciplinary system, that he assumed full responsibility for the problems with this practice, and that he subsequently made recordkeeping a priority); In the Matter of Michael A. Mark, DRB 01-425 (February 13, 2002) (motion for discipline by consent; attorney negligently misappropriated client funds for a period of two years, as a result of failure to follow proper recordkeeping procedures; the misappropriation occurred when the attorney erroneously withdrew a legal fee of $4,000, failed to reimburse the trust account for bank service charges in the amount of $100, mistakenly advanced client costs in the amount

of $350 from the trust account, instead of the business account, and failed to reconcile the account on a quarterly basis; an OAE audit also disclosed several recordkeeping violations; mitigating factors were the attorney's prompt replacement of the trust funds and his hiring of a CPA to reconstruct the trust records, to correct all recordkeeping deficiencies, and to insure that all client funds were on deposit; prior three-month suspension); In the Matter of Cassandra A. Corbett, DRB 00-261 (January 12, 2001) (attorney's deficient recordkeeping resulted in a $7,011.02 trust account shortage; in imposing only an admonition, it was considered that the attorney had reimbursed all missing funds, admitted her wrongdoing, cooperated with the OAE, and hired an accountant to reconstruct her records); In the Matter of Bette R. Grayson, DRB 97-338 (May 27, 1998) (poor recordkeeping led to the negligent misappropriation of $6,500 in client trust funds; in mitigation, it was considered that the attorney fully cooperated with the OAE, took subsequent steps to straighten out her records, and had no prior discipline); In the Matter of Joseph S. Caruso, Docket No. DRB 96-076 (May 21, 1996) (misrecording of a deposit led to a trust account shortage and the attorney committed a number of violations in the maintenance of his trust account; in imposing only an admonition, the

Disciplinary Review Board considered that the attorney was newly admitted to the bar at the time, corrected all deficiencies, implemented a computerized system to avoid reoccurrences, and fully cooperated with the OAE; moreover, the attorney's conduct caused no harm to any clients).

Here, respondent has no prior discipline (Michals, Grayson) was newly admitted at the time of the infraction (Caruso), and replenished the funds when the misappropriation was brought to his attention (Mark, Corbett). Thus, we determine that, were this infraction standing alone, an admonition would be appropriate. There is other misconduct to consider, however.

Specifically, we must determine the proper measure of discipline for two instances of misrepresentations on closing documents, a conflict of interest, and recordkeeping violations. In re Soriano, supra, 206 N.J. 138, provides guidance. As discussed previously, in Soriano, the attorney was censured for assisting a client in a fraudulent real estate transaction by preparing and signing a RESPA statement that misrepresented key terms of the transaction; in addition, 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 both Soriano and the case before us, the attorney engaged in a conflict of interest. Soriano failed to memorialize the basis of his fee, an infraction not currently before us. However, respondent is guilty of negligent misappropriation. Considering that we would impose no more than an admonition for either of those infractions standing alone, we view respondent's negligent misappropriation and Soriano's failure to memorialize his fee agreement, as being in equipoise. The significant difference between Soriano and the case before us is respondent's misrepresentations on closing documents in two transactions, whereas Soriano was guilty of that misconduct in only one transaction. We note further that Soriano had been disciplined previously for abdicating his responsibilities as an escrow agent. In our view, respondent's misconduct in a second transaction is equivalent to the aggravating factor of prior discipline in Soriano. Thus, at this juncture, it seems that

the censure imposed in Soriano is appropriate for the sum of respondent's misconduct.

A few more points, however, warrant mention. The record disclosed some aggravating factors, such as respondent's representation of both buyer and seller prior to the execution of the contract of sale (an incurable conflict of interest) and the harm to Covello, who thought that he would receive $40,000 more in cash at the closing and, instead, was forced to take back a second mortgage.

On the other hand, we noted, in mitigation, respondent's relative youth at the time of his misconduct (he was admitted to the bar in 2005; the closings took place in November 2006 and January 2008), as well as the fact that, in DRB 12-024, his misconduct was the result of his attempt to memorialize, not conceal, the true nature of the transaction. Believing that the aggravating and mitigating factors are of equal weight, we determine that a censure remains the appropriate measure of discipline for the sum of respondent's misconduct.

In addition, respondent is to a complete a continuing legal education course in real estate transactions. He is also to complete two hours of ethics courses above and beyond the continuing legal education credits required of all attorneys.

Chair Pashman 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
Bonnie C. Frost, Vice-Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Vincent M. Ansetti
Docket Nos. DRB 11-415 and DRB 12-024

Argued: January 19, 2012

Decided: May 17, 2012

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman						X
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Gallipoli			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			8			1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel