SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-066
District Docket No. XIV-2009-0110E

IN THE MATTER OF	
PAUL JAMES CURRERI	
AN ATTORNEY AT LAW	

Decision

Argued: May 17, 2011

Decided: August 21, 2012

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

Robyn M. Hill appeared on behalf of respondent.

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

This matter was before us on a recommendation for discipline (reprimand) filed by special master Stuart M. Lederman. The complaint charged respondent with violating RPC 1.2(d) (counseling or assisting a client in conduct the attorney knows to be illegal, criminal or fraudulent), RPC 1.5(b) (failure to provide a written fee agreement), and RPC 8.4(c)

(conduct involving dishonesty fraud deceit or misrepresentation) in four matters. Respondent was also charged with violating RPC 1.7(a)(1) (a lawyer shall not represent a client if the representation is directly adverse to the representation of another client) and RPC 1.7(a)(2) (a lawyer shall not represent a client when there is a significant risk that the representation would be limited by his responsibilities to another client) in one matter. Following the hearing below, the OAE withdrew an additional charge that respondent violated RPC 8.4(b) (criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as a lawyer).

We determine to impose a reprimand on respondent.

Respondent was admitted to the New Jersey bar in 1987. He has no history of discipline.

During the relevant time period (2004-2008), respondent handled approximately 350 closings a year. By September 2004, ninety percent of his time was spent doing real estate work. As a matter of practice, he did not reduce to writing fee agreements with real estate clients. Respondent testified that, during the years in question, and with regard to the four transactions at issue, his fee was disclosed to his clients either during their initial phone conversation, or when a

realtor or loan officer referred the client to him and quoted the approximate fee, or when the loan officer provided a good faith estimate of the closing costs to the client.[1] Respondent admitted, however, his "technical violation" of RPC 1.5(b) in each of the transactions.

In the four real estate transactions at issue, respondent represented the buyer and acted as the settlement agent; he did not represent any party to the contract, until after the contracts were signed; he did not conduct any "attorney review" of the contracts and was not involved in any amendments to the contracts; and his involvement was limited to ordering the title work and handling the closings.

The facts in the four transactions in question are as follows:

The J&N/Albizu/Garcia Transaction District Docket No. XIV-2009-0110E

J & N Executive Realty, LLC (J&N) entered into a contract to sell property to Joaquin Albizu for $235,000. Before closing

[1] One of respondent's character witnesses, who is a realtor, testified that the list of attorneys that he provides to his clients does not contain their fees.

on the transaction with J&N, Albizu contracted to sell the property to Joaquin Garcia for $450,000. On January 16, 2008, Albizu and Garcia lowered the price to $340,000. A seller's concession of three percent of the purchase price toward closing costs was noted on the contract and on the amendment.

On January 23, 2008, Garcia contacted respondent to represent him. On February 5, 2008, both real estate transactions were closed at respondent's office. Although the J&N/Albizu HUD-1 indicates that $234,726.30 was due from Albizu, no funds were transferred from Albizu to J&N. Garcia obtained mortgage financing from IndyMac Bank, FSB in the amount of $306,000. Garcia's loan proceeds were used to fund the J&N to Albizu transaction. Respondent's ledger card for Garcia showed a deposit designated as "bank funding," in the amount of $305,263.10. That deposit matched the projected wire amount of $305,263.10 in IndyMac Bank's closing instructions to respondent.

According to the HUD-1, respondent issued the following trust account disbursements in connection with the J&N/Albizu closing:

Line No.	Explanation	Payoff Amount
Line 504	Payoff of first mortgage	$208,924.32
Line 513	Water escrow	$ 1,750.00
Line 514	Judgment escrow	$ 20,000.00
Line 515	Water meter	$ 500.00
Line 516	C O escrow	$ 500.00
Line 1107	Attorney's fees to Joseph C. Petriello, Esq.	$ 1,050.00
Line 1111	Fourth Quarter Taxes City of Newark	$ 718.98
Line 1204	Realty Transfer fee County of Essex	$ 1,208.00

[S¶16;Ex.J4;Ex.J6.][2]

The Holder Group, Inc. had a first mortgage on the property, in the amount of $205,767.31, principal only. It authorized discharge of its mortgage "upon the forwarding of net loan proceeds to its lender." The payoff amount of $208,924.32 was sent to the Holder Group by respondent's trust account check dated February 6, 2008.[3] The Holder Group, Inc. discharged its

[2] S refers to a stipulation of facts submitted to the special master as to certain undisputed issues.

[3] The stipulation mistakenly cites the payoff amount as $208,924.82.

mortgage by instrument dated January 29, 2008. Joseph C. Petriello, who represented J&N at the closing, prepared the discharge of the mortgage. By deed dated February 4, 2008, J&N transferred title to the property to Albizu.

Respondent acted as settlement agent for the Albizu to Garcia closing. He provided legal services to Garcia, charging him a $1,250 legal fee. Although he had not regularly represented Garcia, he did not communicate the basis or rate of the fee to Garcia, in writing, before or within a reasonable time after commencing the representation.

IndyMac Bank's closing instructions to respondent for the Albizu to Garcia transaction indicated a sale price of $340,000, a loan amount of $306,000, and a LTV (loan-to-value ratio) of ninety percent. The instructions further stated:

> If broker or any other interested party requests an additional fee or increase in any fee or charge, or a change to the sales price, appraised value, loan amount, or LTV, other than what is specifically stated below, do not close until lender has agreed, in writing, to all changes. If you do close with figures other than what is presented

below, we may refuse to fund this loan or seek recourse to the closing agent.

[S¶27;Ex.J-7;Ex.R4;CEx.6.][4]

The instructions also listed a $1,000 broker application fee and $6,800 broker origination fee to be paid at the closing.

Respondent prepared the Albizu to Garcia HUD-1. Line 801 of the HUD-1, "Loan Origination Fee," showed that AMS Mortgage Services was paid $6,800. Line 806 of the HUD-1, "Broker Compensation AMS Mortgage Services $3060 POC," showed that a $3,060 fee was paid outside of closing to AMS Mortgage. Line 810 of the HUD-1, "Application Fee," showed that AMS Mortgage Services was paid $1,000. Respondent paid AMS Mortgage $10,874.88 by check dated February 7, 2008.

Line 303 of the HUD-1, "CASH FROM BORROWER," showed that Garcia brought the sum of $41,474.44 to the closing, which was not true. According to respondent's ledger card for the transaction, funds in that amount were not deposited into his trust account. Indeed, other than bank funding, there was no deposit in respondent's trust account for the transaction. Respondent was aware that Garcia did not bring $41,474.44 to the

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[4] Exhibits designated "C" are attachments to the complaint.

closing. He admitted that the lender was unaware of that fact.

Line 603 of the HUD-1, "CASH TO SELLER," showed that Albizu was paid $324,055.32 at the closing. That was also untrue. Respondent disbursed $280 to Albizu. A seller's concession of $10,200 (three percent of the purchase price) was noted on the HUD-1.

Albizu transferred his title to the property to Garcia by deed dated February 5, 2008. Respondent made two additional disbursements to "Commerce Bank for Yolanda Nevarez," and Fiorella Farfan, that were not reflected on the Albizu/Garcia HUD-1, in the amounts of $44,823.56 and $5,000.00. Respondent testified that these payments were at the direction of the seller and the seller's attorney.

The Wagner/Mejia Transaction District Docket No. XIV-2009-0141E

Respondent acted as the settlement agent in a real estate closing on January 9, 2008. The buyer was Hector Wagner. The sellers were Maritza Donado-Mejia and Alvaro Mejia. Respondent provided legal services to Wagner, charging him a $1,250 legal fee. Respondent had not regularly represented Wagner and did not communicate the basis or rate of the fee to him, in writing,

before or within a reasonable time after commencing the representation.

Wagner entered into a contract to purchase the property from the Mejias for $390,000. He was to receive a seller's concession of up to six percent of the purchase price ($23,400). He obtained mortgage financing from National City Mortgage, in the amount of $370,500. Respondent's client ledger card showed a deposit designated as "bank funding," in the amount of $364,633.69. That deposit matched the total funding of $364,633.69 listed in National City Mortgage's Disbursement of Loan Proceeds.

Respondent prepared the HUD-1, completing three different, but "complementary" versions of page one. In all three versions of page one, line 303, "CASH FROM BORROWER," showed that Wagner brought $32,586.54 to the closing. In reality, Wagner did not bring those funds to the closing. Other than bank funding, no money was deposited into respondent's trust account for the transaction. Respondent's understanding was that "[Wagner's] portion of the funding was going to be provided by the sellers."

Line 603, "CASH TO SELLER," of the first version of page one of the HUD-1 showed that the sellers were paid $373,267.24 from the transaction. This first version did not contain any

payoff figures, seller's concessions, or seller's credits, because that information was not available to respondent prior to the closing. Line 603, "CASH TO SELLER," on a second version of page one of the HUD-1 showed that the sellers were paid $76,107.93. This version of page one contained the payoff amounts of the two mortgages. Line 603, "CASH TO SELLER," on a third version of page one of the HUD-1 showed that the sellers were paid $328,267.24 from the transaction. This third version was prepared sometime after the closing, at the seller's request, and reflected the seller's concession and credits, but did not contain the two mortgage payoff amounts. It is unclear from the three HUD-1 forms what the sellers received from the transaction. According to respondent's ledger card, he disbursed $2,601.53 to the sellers, or none of the sums listed in each of three versions of page one of the HUD-1.

At the time of the closing, respondent made disbursements that were not reflected on the HUD-1, specifically, $12,413.46 to Jesus M. Valdez and $850 to Nestor Guzman, the attorney for

the seller.[5] The Valdez payment was directed by the sellers and their attorney, at the closing.

Respondent was aware that the buyer, Wagner, did not bring $32,586.54 to the closing. Respondent admitted that the lender was unaware of that fact.

The De Anda/Gomez Transaction District Docket No. XIV-009-0167E

Respondent acted as the settlement agent in a real estate closing on December 20, 2006. The buyer was Frank De Anda. The seller was Candelaria Gomez. Respondent provided legal services to De Anda during the closing, charging him a fee of $1,325. Although respondent had not regularly represented De Anda, he did not communicate the basis or rate of the fee to him, in writing, before or within a reasonable time after commencing the representation.

On October 24, 2006, De Anda entered into a contract to purchase the property from Gomez for $480,000. By addendum dated October 31, 2006, the parties reduced the selling price to $470,000. The addendum stated that the price was reduced "as

[5] Valdez is not identified in the record.

per appraisal Value." Respondent was not involved in any discussion or actions regarding the contract or the addendum.

De Anda obtained two mortgages from Lime Financial Services, Ltd. (Lime), in the amounts of $376,000 and $94,000. Respondent's client ledger card showed two deposits designated as "bank funding," in the amounts of $373,655.85 and $93,305.43, on the December 20, 2006 closing date. The lender's closing instructions listed certain fees to be paid at closing. Both sets of instructions stated:

> *** ABSOLUTELY NO CHANGES TO FEES (DO NOT MOVE FROM BORROWER TO SELLER OR SELLER TO BORROWER. DO NOT ADD FEES, DO NOT DELETE FEES, DO NOT CHANGE THE AMOUNT OF FEES IN ANY WAY), DOCUMENTS, INSTRUCTIONS OR CONDITIONS UNLESS IN WRITING FROM LIME FINANCIAL SERVICES, LTD. CLOSING DEPARTMENT. NO OTHER PERSON, OFFICE OR DEPARTMENT HAS AUTHORITY TO MAKE ANY CHANGES ***
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> [S¶78;Ex.J-23;Ex.J-24.]

The following payoff amounts, on behalf of De Anda, were listed on both sets of the closing instructions:

Payoff To	**Amount of Payoff**
Applied Card Bank	$951.00
HSBC NV	$237.00
HSBC NV	$461.00
HSBC NV	$379.00
First Premier Bank	$316.00
Allianceone	$392.00

[S¶79;Ex.J-23;Ex.J-24.]

Respondent prepared three HUD-1 forms: one for the $376,000 mortgage marked as "B1," a second for the $94,000 mortgage marked as "B2," and a third for the entire settlement marked as "S."[6] Lines 808 to 813 of the "B1" HUD-1 listed the above six fees. Respondent did not have the necessary information to pay the payees directly. Instead of disbursing those amounts directly to the listed payees, respondent disbursed $5,000 to De Anda, allowing De Anda to pay off those amounts and did not advise Lime that the debt payoff amount had been changed and did not obtain Lime's written agreement to that change.

Line 303 of the "S" HUD-1, "CASH FROM BORROWER," showed that De Anda brought $15,568.95 to the closing. That was not true. Respondent's ledger card for the transaction did not show a deposit in that amount. Respondent knew that the lender was unaware that De Anda had not brought those funds to the closing.[7]

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[6] Respondent's expert witness, Jonathan Sang (see infra), testified that the use of three HUD-1 forms where there were a first and a second lien was not unusual.

[7] Respondent testified that De Anda brought funds to the closing and that, at the closing table, the buyer and seller agreed not to utilize the funds.

Line 603 of the "S" HUD-1, "CASH TO SELLER," showed that Gomez was paid $19,124.18 at the closing. Contrarily, respondent's ledger card reflects a payment of $192.57.[8] In addition, Line 703 of the "S" HUD-1, "Commission paid at Settlement," showed that Bay Realty was paid $11,750 for a broker's commission. Instead, respondent's client ledger card showed that Bay Realty received a payment of $9,750. Respondent also disbursed $650 to Alan Mariconda, the attorney for the seller, a fee that was not reflected accurately on Line 1107 of the "S" and "BI" HUD-1 forms, given that Mariconda's name was not listed. Finally, respondent made a payment to Luz Gomez that was not reflected on any of the HUD-1 forms.

The Lakhaney/Eichholz Transaction District Docket No. XIV-2009-0169E

On September 28, 2004, respondent acted as settlement agent in a sale of property from Wanda Eichholz to Mary Lakhaney. The property was in foreclosure. Respondent provided legal services to Lakhaney at the closing, charging her a fee of $975.

[8] The special master's report cites respondent's ledger card in the De Anda/Gomez matter as exhibit J-17. It is in fact, exhibit CEx.17 and also exhibit J-22. Exhibit J-17 is the ledger card in the Wagner/Mejia closing.

Respondent had not regularly represented Lakhaney and did not communicate the basis or rate of the fee to her, in writing, before or within a reasonable time after commencing the representation.

On September 15, 2004, Lakhaney signed a contract to purchase the property for $310,000. Eichholz did not sign or initial the contract. Lakhaney obtained a mortgage from New Century Mortgage Corporation in the amount of $279,000. Respondent's client ledger card showed a deposit designated as "bank funding," in the amount of $277,531.56.

Respondent prepared documents for Eichholz, as the seller of the property. There is some contradiction in the record about how respondent came to draft the seller's documents. Eichholz appeared for the closing without an attorney. Respondent testified that he orally advised her, on the day of closing, in the presence of at least Eichholz' daughter, Lakhaney, and the real estate agent, Victor Caba, that he would not represent both a buyer and a seller in a real estate transaction.[9] In light of

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[9] Respondent's wife, who is also his office manager, testified that respondent told Eichholz several times that he was not acting as her attorney.

the foreclosure, however, the closing had to take place. Respondent then provided two options: Eichholz would return the following day with an attorney or he would prepare documents, for which he would charge Eichholz a fee. Eichholz agreed that respondent should prepare the seller's documents. He then explained his fee to her.

The Lakhaney/Eichholz transaction resulted in Eichholz' filing a civil suit against Lakhaney and respondent.[10] At his deposition in that matter, respondent's recollection was somewhat different from his testimony before the special master.[11] He testified there that, prior to the closing, Lakhaney had asked him to prepare the seller's documents. He had agreed to prepare the documents, pointing out to Lakhaney that he could not represent Eichholz in the transaction. He "probably" had told Lakhaney what his fee would be and she had either said that it was "fine" or stated that she would check with Eichholz and get back to respondent. Respondent did not have anything in writing, either from him to Eichholz or from

[10] The lawsuit resulted in a consent order entered in March 2008.

[11] Exhibit C-16 is a transcript from respondent's deposition in the civil matter.

Eichholz to him, confirming that he was going to be performing work that a seller's attorney would normally do or advising her that he was charging her a fee. Respondent testified that his only communications with Eichholz "at the table" were his telling her about his $850 fee and his handing her the seller's documents for her signature.[12]

Respondent prepared the HUD-1 form. The HUD-1 did not show a seller's concession or a gift of equity. Line 303, "CASH FROM BORROWER," showed that Lakhaney brought $46,462.09 to the closing. As reflected on respondent's client ledger card, however, no funds in the amount of $46,462.09 were deposited into his attorney trust account for this closing. Before the special master, respondent testified that he learned, at the closing, that the funds that the buyer was to bring to the closing were coming out of the seller's funds.

At respondent's deposition, he expressed the same understanding. Respondent recalled that Lakhaney and Eichholz discussed that Lakhaney was retaining money for fees and rent.

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[12] In Eichholz' lawsuit against respondent, she certified that "[a]s the HUD-1 indicates, Mr. Curreri took a fee as representing both the buyer and the seller."

They also discussed Eichholz' remaining in the house. Respondent understood that Eichholz would receive $20,000.

Line 603 of the HUD-1, "CASH TO SELLER," showed that Eichholz was paid $105,149.84 from the transaction. Respondent's ledger card showed that she received $20,000 instead. In his deposition testimony, respondent stated that it was his understanding that of the approximately $85,000 remaining ($105,000-$20,000 = $85,000) approximately $46,000 "was being utilized to pick up the funds that [Lakhaney] was to bring to closing." He understood that the balance, $39,000 ($85,000-$46,000 = $39,000), was given to Lakhaney for use and occupancy, rent, and fees.

Before the special master, however, respondent testified that he did not know about the side agreement between Lakhaney and Eichholz, that is, that Eichholz would repurchase the property. Rather, he learned "a substantial period of time after the closing," that Lakhaney approached homeowners who were in foreclosure and offered to buy their homes, allow them to rent the home for one year while they repaired their credit and,

after the year was up, allow the former owners to re-purchase their homes.[13]

Line 516 of the HUD-1 showed that Caba was paid $2,790 from the closing. That entry was inaccurate, as Caba was paid $3,100. Also, respondent made the following disbursements that were not reflected on the HUD-1:

JGFS insurance	$1,478.16
RKVAMR, LLC	$25,000
Mary Lakhaney	$7,999.59
Ivan Gotay	$3,900.00

[S¶110;Ex.J-27;CEx.22.]

At Lakhaney's direction, respondent also disbursed $10,450 to Rajiv Lakhaney, who is related to Lakhaney. The disbursement, made almost two months after closing, was not listed on the HUD-1, although there was an escrow lien of $10,500. In his deposition, respondent explained that the escrow was for a municipal lien for approximately $5,217 and that the title company typically requested an escrow of twice the lien amount.

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[13] In respondent's counsel's letter-brief to the special master, dated June 2, 2011, she stated that respondent knew about the parties' "use and occupancy" agreement, but not about the "sale/leaseback with option to repurchase" agreement.

In each of the four transactions in question, the HUD-1 contained the following certification:

> 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 made on my account or by me in this transaction. I further certify that I received a copy of the HUD-1 Settlement Statement.
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> [Ex.J-25.]

In each case, the buyer signed the certification. Eichholz also signed the certification, as the seller in the Lakhaney/Eichholz transaction.

Also, in each of the four transactions in question, the HUD-1 contained the following certification, which respondent signed. "The HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds disbursed or to be disbursed by the undersigned as part of the settlement of this transaction." The HUD-1 also contained the following standard caution: "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."

In each case, respondent executed the HUD-I closing agent certification. In each case, he prepared the HUD-1 and forwarded it to the lender, knowing that the lender and others would rely on the representations contained therein.[14] As previously noted, in each case, respondent was aware that the HUD-1 form did not reflect the actual deposits and disbursements.

At the ethics hearing, the following exchange took place between respondent and the presenter:

> Q. Is it true you prepared form HUD-1 statements referencing your understanding of each of the four transactions, prior to the actual closing date?
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> A. Yes.
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> Q. It's also true that, at the date at the closings, you learned there were other agreements between the parties?
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> A. Yes.
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> Q. Why did you not reflect those new understandings in an amended HUD form?

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[14] In the Wagner/Mejia transaction, respondent sent the first version of the HUD-1 to the lender. In the De Anda/Gomez transaction, he forwarded more than one HUD-1 to the lender. According to respondent's testimony, HUD-1 B1 went to the lender with the first loan package; HUD-1 B2 went back with the second loan package.

> A. The best answer that I can give is, all the parties were present with their attorneys, and everyone in the room had a clear understanding of what the modified terms were. Also, it had no impact on the lenders, because it did not change the loan to value ratio issue.[15]
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> Q. Could you have completed modified HUD-1 forms for each of those four transactions, reflecting the parties' understanding of the actual closings?
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> A. Factoring in time and support staff, there would have been nothing prohibiting me from updating the HUD forms.
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> [4T136-19 to 4T137-15.][16]

Jonathan Sang, a loan originator offered by respondent as an expert witness in the mortgage industry, testified that, even in the "subprime" mortgage market conditions existing in 2003 to 2008, filling out a HUD-1 form incorrectly was harmful to the lender, including potential lenders in the secondary mortgage market. In Sang's expert opinion, the purpose of a HUD-1 "is to give the closer and both parties to the

[15] As explained by one of respondent's expert witnesses, a loan originator, "'[l]oan to value', in the simplest form, is the percentage of the mortgage compared to the sale price."

[16] 4T refers to the transcript of the hearing before the special master on March 28, 2011.

transaction an accurate record of what transpired at that transaction." In short, the HUD-1 "should reflect the actual deposits and disbursements of that transaction."

Charles Damian, Esq., offered by respondent as an expert witness in New Jersey real estate practice, testified that an attorney who acts as settlement agent has responsibilities to his client, to the title company, and to the lender. In Damian's practice, once a HUD-1 is approved by a lender, the lawyer cannot prepare a new HUD-1 to reflect the parties' "different deal" and have it signed at closing, without the lender's approval of the new HUD-1. Damian typically would memorialize a seller's concession or a gift of equity on the HUD-1. If Damian learned of a "seller's concession" or a "gift of equity" after a HUD-1 already had been prepared, he would amend the HUD-1 or prepare a new HUD-1 to reflect the seller's concession or gift of equity, if his staff was available to prepare the form. In the event that he did not have the capability to amend the HUD-1 to note the change, Damian would prepare a memorandum to memorialize the parties' understanding of the transaction. Of the approximately six thousand closings he conducted, in no instance could Damian recall completing a

HUD-1 that indicated that a buyer brought monies to the closing when, in fact, the buyer brought no funds.

With regard to the alleged conflict of interest charge, in Damian's view, the preparation of documents, for which the attorney is paid, does not create an attorney/client relationship.

As to the issue of respondent's clients' knowledge of his fees from the referral source, Damian testified that, generally, the client had a "preconception" of the attorney's fee from the referral source.

The stipulation noted that respondent has no history of discipline and cooperated with the OAE, during its investigation into these matters. In addition, respondent submitted twenty-five character letters and offered character testimony from six witnesses.[17]

The special master found the character witnesses credible and concluded that respondent "enjoys a good reputation in the community." He also found respondent's wife/office manager

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[17] Sang and Damian also testified as additional character witnesses.

credible and determined that respondent, too, offered honest and forthright testimony.

The special master determined that, in all four transactions, respondent made misrepresentations on the HUD-1 forms, in violation of RPC 8.4(c).[18] In the Albizu/Garcia transaction, respondent's position was that the difference between the HUD-1 and the actual disbursements and funds received was the "cost" of a seller's concession or gift of equity and that the other disbursements were at the direction of the seller.

The special master noted that respondent made a similar argument in Wagner/Mejia, explaining that the difference between what the buyer was supposed to bring to the closing and what the buyer actually brought was a seller's concession or gift of equity. The seller's concession or gift of equity was not noted on the first two HUD-1 forms or otherwise memorialized.

In the De Anda/Gomez transaction, too, respondent contended that the differences in the amounts on the HUD-1 forms, the lender's instructions, and the disbursements "were the result of

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[18] Respondent admitted that he committed a "technical" violation of RPC 8.4(c).

concessions by the seller, broker and instructions by the seller's attorney, the broker and his client, De Anda." Respondent also argued that the loan-to-value ratio was not altered and that, as a result, the lender was not harmed by the discrepancies.

Finally, in the Lakhaney/Eichholz transaction, the lender was not informed of the side agreement between the parties and the HUD-1 was not corrected.

Nevertheless, the special master observed, respondent executed HUD-1 forms knowing that they did not accurately reflect the transaction. In each instance, the special master found that, by signing inaccurate HUD-1 forms, respondent made misrepresentations, a violation of RPC 8.4(c).

As to RPC 1.5(b), the special master noted respondent's admission that his practice was not to reduce his fee arrangements to writing, in real estate transactions. He conceded that he violated RPC 1.5(b), but argued that it was only a technical violation because he had orally advised each of his clients about his fee and many, if not all, would have been advised of his fee by the loan officer, or other referral source. The special master pointed out, however, that the only witness who testified about referring matters to respondent said

that he, the witness, did not provide fee information to the client. The special master remarked that communicating the fee orally or relying on a third-party to do so does not satisfy the requirements of RPC 1.5(b). The special master found, thus, that respondent violated RPC 1.5(b) in all four matters.

As to RPC 1.7(a), the special master found that respondent violated that rule in the Eichholz/Lakhaney transaction. In the special master's view, given the complexity of the transaction and the pending foreclosure, Eichholz needed separate representation:

> "[i]t is self-evident that if the Respondent represented both Ms. Lakhaney and Ms. Eichholz in the same real estate transaction that would be a concurrent conflict for which a waiver was required. The question then becomes, does the preparation of seller's documents constitute a "representation" within the meaning of RPC 1.7(a)?
>
> [SMR33.][19]

The special master pointed to Damian's testimony, in which he indicated that he would not represent both sides in a real estate transaction because it would constitute a conflict and that he would do so only if he were representing intimate

[19] SMR refers to the special master's report.

family members. Damian added that, even in that case, he would make clear that he was only representing one side, would encourage them to have independent counsel, would have them sign a statement to the effect that he had simply prepared documents, and would obtain a waiver that identified whom he had represented.

The special master found that respondent represented both Eichholz and Lakhaney at the same time, that the representation created a conflict, and that respondent failed to inform the parties, in writing, of the circumstances of the representation or obtain a written waiver, in violation of RPC 1.7(a)(1) and (2). The special master also found that, because respondent represented Eichholz, he violated RPC 1.5(b) by failing to provide to her the basis or rate of his fee, in writing.

On the other hand, pointing to In re Opinion 710 of the Advisory Committee on Professional Ethics and its Subsequent Clarification 193 N.J. 419 (2008), the special master determined that respondent did not violate RPC 1.2. The special master found no evidence that the parties to the transaction intended to defraud the lenders. Neither the parties to the transaction nor the lenders testified. There was no evidence presented that the lenders were defrauded or

harmed. There was no evidence presented that the seller's concessions or gifts of equity "were for the purpose of perpetrating a fraud on the ultimate investor." Rather, the only evidence presented was that the loan-to-value ratios were not changed. Thus, the special master found that the OAE failed to sustain its burden of proving that respondent violated RPC 1.2(d).

In sum, the special master found that respondent violated RPC 1.5(b) in the four matters, RPC 1.7(a)(1) and RPC 1.7(a)(2) in one of the matters, and RPC 8.4(c) in the four matters.[20]

In aggravation, the special master considered that respondent's conduct was part of a pattern. In mitigation, the special master considered respondent's good reputation and character; his service to the community; the little likelihood of repeat offenses; his cooperation with ethics authorities; the absence of personal gain; and his "subsequent remedial measures" to change his office procedures. The special master also considered respondent's prior unblemished record. Taking into

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[20] Respondent violated RPC 1.5(b) in four matters, but five instances are at issue, because of his representation of Eichholz.

account precedent for the appropriate sanction for each of respondent's violations, the aggravating and mitigating factors, and the purpose of discipline -- not to punish the attorney but to protect the public -- the special master deemed a suspension inappropriate. Not persuaded by respondent's argument that his violations of RPC 1.5(b) and RPC 8.4(c) were "technical" in nature and considering the number of respondent's violations and the need to preserve the public's confidence in the legal system, the special master recommended a reprimand.

Upon a de novo review of the record, we are satisfied that the conclusion of the special master that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

The special master's conclusion that respondent violated RPC 1.5(b), RPC 1.7(a), and RPC 8.4(c) is supported by the record. Respondent conceded that he violated RPC 1.5(b) by failing to advise his clients, in writing, of the basis or rate of his fee. In addition, his violation of RPC 8.4(c) is obvious from his repeated misrepresentations on the HUD-1 forms, which he certified as accurately representing the disbursements that took place, knowing them to be inaccurate. Respondent conceded

that the lenders in each transaction were unaware that the HUD-1 forms were inaccurate. (See further discussion, infra.)

As to the violation of RPC 1.7(a), there was a great deal of discussion before the special master as to whether respondent represented Eichholz by preparing the seller's closing documents and charging her a fee for his services. If, in fact, it is found that he represented her, then he engaged in a conflict of interest by representing a buyer and a seller in a real estate transaction, without first observing the safeguards of the conflict of interest rules.

In her letter-brief to the special master, respondent's counsel argued that the OAE should have raised, during the ethics hearing, the alleged inconsistencies between respondent's testimony before the special master and his deposition testimony, so that respondent could have had the opportunity to explain the "perceived differences." Counsel's argument is correct. However, the discrepancy in respondent's testimony as to what he said or did not say to Eichholz is irrelevant to a finding that respondent did represent Eichholz. Precedent teaches us that respondent's collecting a fee from Eichholz for the performance of legal services in her behalf equates to his representation of her interests.

Indeed, we have previously examined this issue. In In re Agrait, 207 N.J. 33 (2011), the attorney, who represented the buyers in a real estate transaction, prepared the deed and the affidavit of title for the seller, for which he charged the seller $250. Although the attorney steadfastly maintained that he had represented only the buyer, we found otherwise:

> A deed and affidavit of title are documents of conveyance that the seller is required to provide to the buyer at closing. In re Opinion 26 of the Advisory Committee on the Unauthorized Practice of Law, 139 N.J. 323 (1995) (Opinion 26). These documents are prepared either by the attorney for the seller (if the seller has retained one) or, if the seller is unrepresented, by an attorney selected by either the broker or the title company involved in the transaction. Id. at 336-38. See also Cape May County Bar Association v. Ludlam, 45 N.J. 121, 125 (1965) (the drafting of legal documents necessary to convey title to property is permitted only by licensed attorneys).
>
> In this case, the deed and affidavit were not prepared by either [the broker] or the title company. They were prepared by respondent, for a $250 fee paid by . . . the seller. . . .
>
> Indeed, the HUD-1 form shows that [the seller] paid respondent $250 for document preparation. . . . [R]espondent was certainly not acting as [the buyer's] lawyer

> when he prepared the deed and affidavit of title for the seller's benefit.
>
> [In the Matter of William Enrique Agrait, DRB 10-411 (May 26, 2011) (slip op. at 18-19).]

In Agrait, we noted that, in Cape May Cty. Bar Ass'n v. Ludlam, supra, 45 N.J. at 126, the Court had held that the "preparation of legal instruments for others is within the exclusive realm of the legal profession." In the Matter of William Enrique Agrait, DRB 10-411 (May 26, 2011) (slip op. at 20). Thus, we found that, when the attorney prepared the deed and affidavit of title for the seller, he did not act as a mere scrivener, who was simply facilitating the transaction. Rather, he was engaged in the practice of law, on behalf of the seller. Ibid. We continued:

> It matters not that respondent or [the seller] believed the contrary. When respondent agreed to prepare the deed and affidavit of title on [the seller's] behalf, he owed a duty of loyalty to her. Tartaglia v. UBS PaineWebber, Inc. 197 N.J. 81, 111 (2008). "From that duty issues the prohibition against representing clients with conflicting interests." Ibid.
>
> We are aware that compensation is not necessarily dispositive of this issue. See, e.g., In re Gold, 149 N.J. 23 (1997) (in the absence of a formal attorney-client relationship, conflict of interest rules applied when it was reasonable for the

> putative clients "to assume that [the attorney] was representing their interests;" the wife of the putative clients was the attorney's secretary; six-month suspension for this and other misconduct).
>
> [In the Matter of William Enrique Agrait, DRB 10-411 (May 26, 2011) (slip op. at 20-21).]

Nevertheless, we noted, "that respondent accepted compensation for his services bolsters our conclusion that he also acted as attorney for [the seller] in the transaction." Id. at 21. We found that the attorney's representation of both parties to the transaction constituted a conflict of interest. Id. at 27.

Thus, even accepting respondent's contention that he told Eichholz that he was not representing her, the finding that he violated RPC 1.7(a) by representing both Lakhaney and Eichholz in connection with the closing is inevitable.

In addition, in four matters, respondent made misrepresentations on HUD-1 forms about the transactions. He certified that the disbursements had been exactly as he had recorded them on the HUD-1 forms. He also allowed his clients to sign false certifications on the HUD-1 forms. His argument that the parties were at the closing table and, therefore, knew the true nature of the transaction is without moment. To the

lender, too, respondent owed a fiduciary duty. Respondent did not dispute that the lenders were unaware of what actually occurred at the closings.

Respondent argued that there was no harm to the lenders from the inaccuracies because the loan-to-value ratios did not change. That there may have been no harm to the lenders on that score is unimportant. What is of import is that the lenders were misled about the disposition of their funds, to say nothing of the true nature of the financing of the transaction.

In her written summation to the special master, respondent's counsel argued that, In re Castiglia, 197 N.J. 465 (2009), stands for the proposition that certain inaccuracies on a HUD-1 are not in and of themselves a violation of RPC 8.4(c). Counsel is correct on that score. A mathematical error on a HUD-1 is not a misrepresentation; an omitted disbursement on a HUD-1 may not be a misrepresentation. However, an attorney's signing a certification stating that the disbursements were accurately recorded on the HUD-1, when the attorney knows that that was not the case, is an obvious misrepresentation. That respondent violated RPC 8.4(c) is, thus, undeniable.

Our view differs from the special master's with respect to RPC 1.2(d), however. By allowing his clients to sign the HUD-1

forms certifying that they were accurate, respondent assisted those clients in a fraud on the lenders. We do not look to whether the lenders were ultimately harmed. But, rather, to the underlying conduct. That there was fraud on the lender is a given. The question is whether respondent was a knowing participant in the fraud. For an answer, we look to his experience.

Respondent is not a novice in real estate practice. He testified that, in the four years in which these transactions occurred, 2004 to 2008, he conducted approximately 350 closings per year. He, therefore, had to know that the parties were perpetrating a fraud on the originating lenders and on all lenders in the secondary market, who would have no reason to question what went on at these closings. We find, therefore, that respondent violated RPC 1.2(d) by allowing his clients to certify that the HUD-1 forms accurately reflected the receipts and disbursements on their behalf.

What discipline is thus, appropriate for respondent's ethics misdeeds? An attorney whose improprieties mirrored those of respondent received a censure. In In re Gahwyler, 208 N.J. 353 (2011), the attorney certified the accuracy of a HUD-1, knowing that the entries were not correct. In doing so, he

assisted a client in perpetrating a fraud, made misrepresentations, committed a federal crime, and engaged in conduct prejudicial to the administration of justice by wasting judicial resources, when his misrepresentations led to civil litigation. The attorney also failed to provide a written fee agreement and represented the buyer and seller in a real estate transaction without first obtaining a written waiver of the conflict. The attorney had no prior discipline.

In a similar case, In re Soriano, 206 N.J. 138 (2011), which resulted in a censure, the attorney 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. See also 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 for 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)[21]; and 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; the attorney had received a prior admonition and a reprimand).

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[21] In Khorozian, the buyer was Rajiv Lakhaney, the son of Mary Lakhaney, who had arranged the sale.

Respondent's conduct was similar to Soriano's, who assisted a client in a fraudulent real estate transaction by preparing and signing a RESPA statement that misrepresented key terms of the transaction. Soriano also committed the same additional rule violations present in this matter. Like Soriano, respondent 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 difference between Soriano and this case is that four transactions are at stake here, as opposed to one in Soriano. On the other hand, Soriano had a prior discipline (reprimand), while respondent has no disciplinary record. It would appear, thus, that, on balance, a censure would also be the appropriate sanction for respondent. But several mitigating factors persuade us that a reprimand is sufficient discipline here. Specifically, we noted respondent's extensive character testimony and character letters, his community activities, and the fact that his transgressions occurred in only four closings, among the 1,400 that he completed during the time in question.

Members Doremus, Gallipoli, and Zmirich would impose a censure. Member Clark 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 Paul James Curreri
Docket No. DRB 12-066

Argued: May 17, 2012

Decided: August 21, 2012

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Censure	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark						X
Doremus				X		
Gallipoli				X		
Wissinger			X			
Yamner			X			
Zmirich				X		
Total:			5	3		1

Julianne K. DeCore
Chief Counsel