SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-186
District Docket No. XIV-2007-0082E

IN THE MATTER OF

VINCENT PARAGANO

AN ATTORNEY AT LAW

Decision

Argued: November 15, 2012

Decided: December 5, 2012

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

Brian Fruehling appeared on respondent's behalf.

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

This matter came before us on a recommendation for disbarment filed by Special Ethics Master Herbert S. Friend, J.S.C. (Ret.). The complaint, filed by the Office of Attorney Ethics (OAE), charged respondent with two counts of having violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The OAE is seeking respondent's disbarment. Based on respondent's repeated misrepresentations to his former business partners, his attempt to conceal that conduct by creating and submitting fictitious documents to the OAE and to the special master, and his disciplinary history for similar misconduct, a five-member majority of this Board determine that a three-year suspension is the appropriate discipline in this matter. Three members dissented, voting to recommend disbarment.

Respondent was admitted to the New Jersey bar in 1980. In 1989, he received a private reprimand for executing a jurat without witnessing the signature or administering the oath concerning the truthfulness of the document's contents. In the Matter of Vincent Paragano, DRB 89-106 (June 27, 1989). He was suspended for six months, in 1999, for violating RPC 8.4(c). In re Paragano, 157 N.J. 628 (1999). There, over a sixteen-month period, respondent created fourteen false entries in his law firm's records to conceal from his law partner his expenditure of law firm funds, in the amount of $16,426.15, for his personal use. In that case, we found that respondent's numerous misrepresentations demonstrated "a pattern of deceit and dishonesty that took place over a long period of time." In the Matter of Vincent Paragano, DRB 98-093 (September 28, 1998) (slip op. at 9).

Essentially, in the matter now before us, respondent and two nonlawyers became partners in a plan to buy, renovate, and sell real estate. They entered into contracts to buy six parcels of real estate, all in Jersey City. After they acquired one property, however, their relationship soured, resulting in the negotiation and execution of a settlement agreement. The settlement agreement provided that, as to one of the properties (Arlington Avenue)[1], (1) the parties would allow the contract to lapse; (2) they would forfeit their real estate deposit and other costs; and (3) in accounting for the financial terms of the dissolution of their business relationship, no party would receive credit for the real estate deposit or costs.

Before signing the settlement agreement, respondent had already purchased the Arlington Avenue (Arlington) property. The OAE alleged that respondent concealed this transaction from his partners. In turn, respondent asserted that, notwithstanding the terms of the settlement agreement, his partners were aware that he had bought the Arlington property, claiming that one of his partners had attended that closing.

Moreover, at the disciplinary hearing, the OAE alleged that, in June 2009, immediately before the hearing in this disciplinary case had been scheduled to occur, respondent produced fictitious

[1] The record also refers to this property as Arlington Street.

documents to support his claim that his partners knew about the Arlington purchase. Respondent denied this allegation.

In addition, the OAE charged that respondent made misrepresentations to two banks that had extended loans to the parties. Finally, the OAE charged respondent with misrepresenting to one of his partners the tax consequences of the transactions. Respondent also denied these charges.

We now turn to the more specific events that gave rise to the charges against respondent.

In October 2002, grievant Adolphus Fernandes, Samuel Champi, and respondent entered into a joint venture to acquire and develop property in Jersey City. Each partner brought his own experience and expertise to the joint venture: respondent's family had engaged in real estate development; Fernandes had been employed in the banking industry for many years, had recently become a licensed real estate agent, and had knowledge about property in Jersey City; and Champi, who, at that time, was employed by respondent's family's company, had construction knowledge.

Each partner had distinct responsibilities in their joint venture: Fernandes was in charge of locating properties for potential purchase; Champi was to examine the properties to determine whether they could be developed, prepare a cost estimate, and supervise the contractors; and respondent was "to

handle the day-to-day checkbook sort of stuff," to ensure that no deadlines were missed, and to supervise the attorney whom the group would hire to represent them.[2] In addition, all members were to try to obtain financing for acquiring the properties and would be guarantors of the loans obtained.

The parties contemplated attaining financing, buying properties from the City of Jersey City (the City), forming a limited liability corporation (LLC) for each property that they acquired, developing and selling the properties, and equally sharing the profits and losses. Because respondent had previously formed Raritan Bay Associates, LLC (RBA) for his own unrelated purposes, the parties determined to purchase the Jersey City properties in RBA's name, as a convenience, and then to convey those properties to each individual LLC.

At Fernandes' request, on February 19, 2003, respondent issued a letter to Fernandes and Champi confirming that, although property would be acquired in RBA's name, they each would have a one-third interest in the property or in its sales proceeds.

The group contracted to buy six properties in Jersey City -- five from the City (Arlington Avenue, Grant Avenue, Ege Avenue,

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[2] Respondent made it clear that he could not and would not represent the group or its individual members. Both Fernandes and Champi signed a March 27, 2003 letter confirming that respondent had not provided any legal services to them.

Park Street, and Van Cleef Street) and one from a private seller (Union Street). Although respondent signed the real estate contracts as the sole RBA member, Fernandes, Champi, and respondent were to be equal owners.

On March 19, 2003, respondent signed a contract to buy Arlington from the City, paying an initial $1,000 deposit and the $12,600 balance on April 8, 2003. The parties each contributed one-third of the total $13,600 for the deposit, as well as other costs, such as the survey, bank application fees, and architect's fees, for a total of $19,300.

During the summer of 2003, after the parties had acquired title only to Van Cleef Street (Van Cleef), disagreements developed, resulting in their decision to end their business relationship. In mid-September, Fernandes and Champi retained attorneys Eugene Boffa and Robert Delventhal, respectively, to represent them in the settlement negotiations, while respondent represented himself.

On October 28, 2003, at Boffa's office, the parties executed a settlement agreement resolving all of their claims and ending their business relationship. As to the properties under contract with the City, the agreement provided that respondent was to receive Park Street (Park), Fernandes was to receive Ege Avenue (Ege) and Grant Avenue (Grant), and Champi was to receive Van

Cleef. The parties agreed to allow the Arlington contract to lapse, thus forfeiting their deposit. Specifically, the settlement agreement stated:

> 267 Arlington Street. The parties acknowledge that there is a conflict regarding the purchase of this property and they have resolved to allow the contract to lapse, as set forth more particularly below. No party shall receive any offset of monies for the deposit or title search or survey cost for such property.
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> [Exhibit P-4¶4(b).]

Despite the above provision that the Arlington contract would lapse, respondent had bought that property on September 24, 2003, more than one month before the execution of the settlement agreement. Although respondent asserted that all parties were aware of this purchase, Fernandes, Champi, Boffa, and Delventhal all denied any knowledge that respondent had bought the Arlington property. In addition, Fernandes and Champi denied having authorized respondent to use funds from the group's line of credit or their portion of the Arlington deposit and costs toward his purchase of that property.[3]

Also on September 24, 2003, the City conveyed the Ege property to RBA. Respondent attended that closing. Although the Park property was also scheduled to be conveyed on September 24,

[3] The complaint did not charge respondent with any infractions in connection with his use of these funds.

2003, that closing was postponed at the last minute, due to title problems.

Previously, while the settlement negotiations were taking place, and before respondent bought the Arlington property, he had sent two letters, both dated September 18, 2003, to Fernandes and Champi. In one of those letters, respondent cautioned:

> Since we all will be acquiring Jersey City property from the City and since we will also be operating within the City, please note that the failure to close on Arlington could have an adverse impact on all of us in our future dealings with the city. However, we have jointly made the decision not to proceed with these properties. I have not included any deed transfer title information. If either of you change your mind and wish to close on Arlington, I would be happy to supply you with sufficient back title and related documents which were previously obtained (and already previously distributed) so that you can effectuate that transaction.
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> [Exhibit P-11.]

Respondent was alluding to a term in a City resolution providing that any entity (or individual associated with that entity) that defaulted on a real estate contract with the City was barred from buying any other property from the City.

In the second September 18, 2003 letter, respondent acknowledged that Fernandes had agreed to allow the Arlington contract to lapse, adding:

> I have no desire to acquire Arlington and I am also willing to lose my portion of the

> deposit. Therefore, the issue is solely one for [Champi] as to whether he wishes to acquire that property and refund our portions of the deposit.
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> [Exhibit P-10.]

Other drafts of the settlement agreement had been exchanged, before the final version was signed, on October 28, 2003. Every edition contained a provision that the parties had agreed to allow the Arlington property to lapse and to forfeit their deposit and other costs.

In addition, many of the letters and e-mails that the parties exchanged before the final settlement agreement was executed also referred to the parties' decision to forgo the Arlington purchase. Specifically, on September 22, 2012, two days before respondent bought the Arlington property, he sent a letter to Boffa, with a copy to Fernandes and Champi, enclosing a draft of the settlement agreement that he had prepared. That draft provided that the parties had agreed to let the Arlington contract to lapse.

On September 25, 2012, Fernandes indicated, in an e-mail to his attorney, Boffa, that he and respondent had an agreement to forfeit their respective shares of the Arlington deposit, in exchange for which respondent had agreed to allow Fernandes to use one-half of a credit line that the group had obtained from Provident Bank. Fernandes also observed that, at a prior meeting

with respondent, Boffa had failed to mention "the Arlington land piece that Raritan Bay will default on." This e-mail was sent the day after the Arlington closing occurred.

In a September 26, 2003 letter, respondent informed Boffa and Delventhal that he and Fernandes had attended the Ege property closing, on September 24, 2003, and enclosed copies of the closing documents. Boffa and Delventhal did not receive a similar letter from respondent concerning the Arlington closing, which took place on the same date.

On September 30, 2003, Delventhal sent to Boffa a draft of the settlement agreement that Delventhal had prepared. That version provided that the parties had agreed to allow the Arlington contract to lapse and that RBA had recently purchased the Ege and Park properties from the City.[4]

Similarly, on October 2, 2003, Boffa sent to Delventhal his draft of the agreement, which also contained a provision that the Arlington contract would lapse. That version likewise recited that RBA became the owner of the Ege and Park properties by September 24, 2003 deeds from the City.

On October 7, 2003, Boffa sent an e-mail to respondent concerning the Arlington deposit:

> As to the amount of money due you and Champi I have made the adjustments as follows. As

[4] As previously noted, the Park transaction had been delayed.

> you recall from our meeting we had reached a figure of $35,263 due to you and $13,043 due to Champi from Fernandes. To your amount due I added $88,587 which represents the $140,000 purchase price of Ege less the deposit and the $35,263 that Fernandes gave you at the closing. I then deducted $2,000 from you and Champi, as Fernandes felt that 1/3 of the deposit on Arlington (aprox) [sic] $14,400, or aprox [sic] $4,000, should be credit [sic] to him, or $2,000 from each you and Champi. His reasoning being that he did not want to purchase the Arlington property and consented because he was going to use the line of credit to buy Union Street. Since that did not happen, he wants a credit.
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> [Exhibit P-17.]

On October 9, 2003, respondent informed Justin Mihalik, an architect who had performed work for the group, that respondent would be taking over the Park project, that Champi would be taking over the Van Cleef property, and that Fernandes would be taking over the remainder. He instructed the architect to bill each party for the services associated with their respective properties. Respondent, who operated through RBA, added: "[RBA] is not the proper party for any property other than the Park Street property." He did not refer to the Arlington property in this letter.

On October 14, 2003, about three weeks after respondent had purchased the Arlington property, he submitted to Boffa a draft of the agreement that he had prepared. That version provided:

> 267 Arlington Street. The parties acknowledge that there is a conflict regarding the purchase of this property and they have resolved to allow the contract to lapse, as set forth more particularly below. No party shall receive any offset of monies for the deposit or title search or survey cost for such property.
>
> [Exhibit P-10.]

Boffa confirmed that respondent had inserted the above underlined provision in the settlement agreement.

The draft that respondent prepared also indicated that RBA acquired the Ege property, by deed dated September 24, 2003. Additionally, respondent's version of the agreement reflected the fact that the Park property remained owned by the City and was still under contract with RBA.

Respondent sent another draft agreement to Boffa, on October 20, 2003, noting in the cover e-mail that, to buy the Ege property, he had drawn $126,000 from the line of credit that the parties had obtained. He provided no similar information concerning the Arlington purchase. Once again, the October 20, 2003 draft provided that the parties had decided to allow the Arlington contract to lapse.

As previously noted, Fernandes denied any knowledge that respondent had bought the Arlington property. He asserted that, sometime after the Arlington closing, he learned that respondent had bought that property. At a chance meeting with respondent, in

2004, he accused respondent of buying Arlington pursuant to the contract that they had agreed would lapse. According to Fernandes, respondent replied that he had changed his mind and had bought Arlington, but had done so only after the parties had entered into the October 28, 2003 settlement agreement.

Champi, too, believed, when he signed the October 28, 2003 settlement agreement, that the Arlington contract would lapse and that the parties were going to "eat the monies, that it was not going to be returned or refunded". He denied knowing, when he signed the settlement agreement, that respondent had purchased the Arlington property more than one month earlier. Champi emphatically asserted that respondent had never disclosed to him that he had purchased Arlington and had used Champi's portion of the deposit to do so:

> The bottom line was Arlington was going to lapse. We were going to lose our money. It was that simple. These versions, I can't tell you exactly which ones I read or didn't read. All I know, I had no idea the man purchased the property.
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> [4T32-4 to 10.][5]

In addition, Champi understood that each party was to compensate the other two for the property received, that is, Champi was to give a credit to respondent and Fernandes for their contribution toward the deposit and expenses associated with the

[5] 4T denotes the transcript of the April 12, 2010 hearing.

Van Cleef property that he agreed to purchase; respondent was to credit Champi and Fernandes for those costs associated with the Park property, etc. During preliminary settlement discussions, respondent sent the following letter to Champi and Fernandes, dated August 8, 2003:

> As discussed at our dinner earlier this week, you are both considering proceeding with the Grant Avenue and Ege Avenue loans without me. If you do decide to pursue that route, I must insist that the monies that I had invested in those properties (for any advances, deposits and expenses) be reimbursed.
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> [Exhibit P-9.]

This letter is in accordance with Champi's understanding concerning credits for property acquired by the parties.

Boffa also believed that the parties were not going to proceed with the Arlington purchase, that the contract would lapse, and that no party would receive any offsets for the deposit and costs associated with that property. He denied having received any instruction from Fernandes to permit respondent to use Fernandes' share of the deposit money toward the Arlington purchase:

> To the contrary, Mr. Fernandez [sic] wanted me to get back, if possible, part of the deposit or all of the deposit. He had felt that the Arlington property was not the best investment. He apparently was against that

transaction, and he had asked me to try to get it back for him.[6]

[3T55-19 to 3T56-1.][7]

Although Boffa received a September 26, 2003 letter from respondent, confirming that the Ege closing had taken place, he denied receiving a similar document from respondent in connection with the Arlington transaction. Boffa denied ever receiving any communication from respondent that he had purchased the Arlington property.

Boffa was responsible for calculating each party's credits and offsets for the particular property being acquired. To that end, he prepared a table itemizing the amounts to be paid and received by respondent, Fernandes, and Champi. The table contains entries for the Van Cleef, Park, Ege, and Grant properties. Boffa explained that the table contained no figures for the Arlington property because he understood, "throughout the whole transaction that Arlington was going to lapse".

Champi's attorney, Delventhal, similarly testified that all parties had agreed to allow the Arlington contract to lapse, that he had prepared a draft of the settlement agreement, dated

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[6] At the hearing before the special master, respondent conceded that he had made a mistake by bidding on the Arlington property, without having seen it first. According to respondent, Fernandes was livid, when respondent told him that he had bid on Arlington.

[7] 3T denotes the transcript of the April 8, 2010 hearing.

September 30, 2003, providing that the Arlington contract would lapse, and that "everyone was willing to forego their share of the deposit". He, too, confirmed that, although he had received a September 26, 2003 letter from respondent in connection with the Ege closing, he had not received any correspondence concerning the Arlington closing. In short, Delventhal never received any communication from respondent that he had purchased the Arlington property.

For his part, respondent asserted that he had disclosed his purchase of the Arlington property in conversations with Fernandes, Champi, Boffa, and Delventhal. He further alleged that he had sent various documents to all of those individuals, revealing that he had bought Arlington.

Respondent claimed that, on the day before the Arlington closing, he had met with Boffa, at Boffa's office, to attempt to settle the parties' dispute. According to respondent, Boffa emphasized the importance of the Arlington purchase because Fernandes was interested in buying the Ege property and the City would not permit transactions to occur, once a party had defaulted in a real estate contract.

Respondent asserted that, as he and Boffa were discussing the disposition of each property, Boffa made notes on a pad. At the ethics hearing, respondent produced a document with a

handwritten note that stated: "Arlington, Ege, Park Street to close within next week". Although Boffa conceded that this document may have been in his file, he asserted that the handwriting was not his and that he did not recognize it.[8]

In addition, respondent alleged that, during that meeting, Boffa telephoned Delventhal and discussed with Delventhal the fact that the group's line of credit would be used to acquire both the Ege and Arlington properties.

Boffa denied having attended any meeting in which respondent had disclosed that he intended to purchase Arlington or that he had already done so.

Moreover, respondent claimed that Fernandes had attended the simultaneous Arlington and Ege closings, which, together, had encompassed between five and ten minutes. According to respondent, after Boffa had indicated to him that Fernandes wanted to be present at the closing, he and Boffa agreed that Fernandes would bring a check to the closing, representing an amount due to respondent, in accordance with Boffa's calculations. Respondent alleged that, although Fernandes was late for the closing, respondent had insisted on waiting for him,

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[8] Respondent and the presenter stipulated that the handwriting is that of Boffa's law partner, Ronald Shaljian. The record does not indicate that Shaljian was present at respondent's and Boffa's meeting.

before starting the closing. After the closing, respondent asked Fernandes to leave so that he could discuss another property, Park Street, with the City officials.

Fernandes, however, denied having attended the closings. According to Fernandes, pursuant to negotiations between Boffa and respondent, Boffa had instructed him to deliver a $35,263 check to respondent, on September 24, 2003, for the Ege Street closing that was to take place that day. Fernandes did so, at respondent's office, between 10:30 and 11:00 that morning. Respondent and Fernandes then agreed to meet at 1:00 that afternoon, outside the real estate office in Jersey City, for the Ege closing. At that time, they were not certain whether the Park closing would take place on that day.

Fernandes asserted that, after he arrived at the closing location, he waited outside, calling respondent's cell and office telephone numbers, to no avail. After he finally went inside, respondent told him that the Ege closing had already taken place. Respondent then told Fernandes that he wanted to talk to the Jersey City real estate manager about the Park Street property and about a personal matter. Fernandes claimed that respondent had "dodged" him.

As for documents allegedly demonstrating that respondent had disclosed the Arlington purchase to Fernandes and Champi,

respondent produced a September 16, 2003 letter to the Jersey City Office of Real Estate, confirming that the Arlington closing had been extended to September 23, 2003, and enclosing a copy of the title insurance commitment. That letter indicated that a copy had been sent to both Fernandes and Champi. Fernandes denied having received it. Although Champi could not specifically recall whether he had received a copy of that letter, he denied having received any document about respondent's intent to proceed with the Arlington purchase.

In addition, respondent produced a copy of a September 29, 2003 letter from him to the Hudson County Register, enclosing the Arlington deed for recording. Again, although the letter indicated that a copy had been sent to Boffa and Delventhal, they both denied having received it.

It is undisputed that, on October 25, 2003, at 6:53 P.M., Fernandes sent an e-mail to respondent requesting, among other things, a copy of the Ege HUD/RESPA form. Respondent claimed that Fernandes then sent another e-mail, two minutes later, requesting, among other items, a copy of the Arlington closing statement. That second e-mail appears in the record as both Exhibit LP-4 and Exhibit RB-24. Fernandes denied having sent that e-mail. Moreover, a string of e-mails between Fernandes and

respondent, on October 25, 2003, did not include Exhibit LP-4/RB-24.

Exhibit LP-4/RB-24 indicates that a copy of the e-mail had been sent to Boffa, who also denied having received it. He asserted that it was his practice to print and keep copies of all e-mails received from clients. He added:

> [T]his e-mail would have kind of jumped out at me. It talks about the closing statement on Arlington dated October 25th. We have been negotiating about this whole thing. So, if anything, if I got this, not only would I [have] copied it, we would not have signed the [settlement] documents. I never saw this and I never copied it and never had it in my file and I never took it out of my file.
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> [3T77-15 to 24.]

Exhibit LP-4/RB-24 was neither produced in discovery nor in response to a June 5, 2009 subpoena that the OAE sent to respondent. Instead, the OAE became aware of it on June 23 2009, during a file inspection at respondent's office. When the OAE and respondent's counsel inspected Boffa's file, it did not contain a copy of Exhibit LP-4/RB-24. In a document titled "Stipulations," the OAE and respondent stipulated that

> documents that appear to be emails can be created on a computer using word processing software such as Microsoft Word. For instance, an actual email could be copied and then edited, and that product would look identical to an email. In the case at hand, the OAE contends that Respondent created such a false email which has been marked as LP-4.

> The Respondent denies that he created such a false email and that in fact, LP-4 is a valid email.
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> [Stipulations ¶3.]

At the ethics hearing, respondent submitted a copy of an October 3, 2003 letter that he sent to an insurance agent, indicating that RBA had acquired the Arlington property and asking that RBA's insurance policy be amended to include that property. The letter indicated that a copy had been sent to Fernandes and Champi. Both denied having received a copy of the October 3, 2003 letter.

Fernandes received a copy of an October 20, 2003 letter from respondent to Boffa, enclosing various documents in connection with a property not relevant to this matter. That letter, admitted as Exhibit P-30, contained no reference to the Arlington property. Respondent claimed, however, that, after he had dictated that letter, but before the original letter had been sent to Boffa by Lawyers' Service, he had added an additional paragraph, reflecting that a copy of the Arlington closing statement was enclosed:

> Also, at Adolphus' request, enclosed is a copy of the closing statement for the Arlington Property. I apologize that it was not included with your copy of the deed.
>
> [Exhibit LP-5.]

Respondent asserted that, after he signed Exhibit P-30, the original version of the letter, he realized that he had not sent the Arlington closing statement. According to respondent, he then dictated to his assistant the paragraph quoted above and instructed her to send Exhibit LP-5 in place of Exhibit P-30. Respondent claimed that, although his office was able to retrieve the original letter from the Lawyers' Service box, the copies to Fernandes and Boffa had been placed in the mailbox and could not be recovered.

The version of the letter produced as Exhibit LP-5 did not include in the caption the lot and block number that appeared on Exhibit P-30. Respondent could not explain why his assistant would have removed that information, when she prepared Exhibit LP-5.

Boffa testified that he did not receive the letter marked as Exhibit LP-5.

Additionally, in a series of e-mails between the parties, in September 2003, they discussed the need to obtain extensions of time to close on the purchases from the City. Respondent asserted that, by participating in the procurement of these extensions, Fernandes and Champi acknowledged their awareness that the Arlington purchase was active. Fernandes, in turn, testified that, because it was important not to default on the contracts,

they continued to seek extensions, insisting that he had not known that respondent planned to buy Arlington.

Further, respondent contended that the October 28, 2003 settlement agreement did not reflect the parties' total intentions, pointing out, for example, that "they knew that Park Street hadn't closed because I told them that it hadn't closed and it still reflected in the agreement as if it was closed and title was being held in Raritan Bay's name".[9] In addition, respondent claimed that the settlement agreement did not provide that Fernandes had located a buyer for the Ege property.[10]

Respondent summed up the absence of any reference to the Arlington sale in the settlement agreement:

> The Settlement Agreement was not amended. It should have been picked up, but it just wasn't. We had the Settlement Agreement at a time early on prior to closing. It never got changed. . . . We blew it. I blew it. We had three cooks stirring the pot. We had five people involved in the discussions . . . and it just got missed.
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> [8T46-14 to 24.][11]

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[9] Respondent was mistaken. The final settlement agreement actually provided that Park Street was under contract with the City.

[10] The presenter stipulated that Fernandes admitted that he had not disclosed this fact to either respondent or to Champi.

[11] 8T denotes the transcript of the April 30, 2010 hearing.

In addition to the Arlington property, the parties disagreed about the disposition of the Union Street (Union) property. As to that property, the settlement agreement also provided that the parties were going to permit that contract to lapse. That was the only real estate that the partners contracted to purchase from a private owner. According to respondent, this provision of the agreement, too, was a misstatement. Respondent claimed that Fernandes and Champi were aware that he had sued the Union property seller to enforce the contract.

In a deposition in that litigation, respondent testified that, although the parties were going to equally share in the profits from the Union property, they later agreed that Champi and Fernandes would no longer have an interest in the transaction. Respondent did not reveal, at the deposition, that the settlement agreement provided that the parties had resolved to allow the Union property to lapse.

Both Fernandes and Champi alleged that they believed that the Union property had lapsed and that they were not aware that respondent had sued the seller.

As previously noted, the presenter alleged that respondent engaged in an elaborate fraudulent scheme to mislead the special master into believing that he had disclosed to all parties his purchase of Arlington. To that end, the presenter produced

several documents (LP Exhibits) for the limited purpose of disputing respondent's disclosure claim.

On December 3, 2008, the OAE served respondent with the formal ethics complaint, along with a cover letter, reminding him of his obligation to provide a "full, candid and complete disclosure of all facts reasonably within the scope of the formal complaint" and requesting discovery. On March 19, 2003, respondent inspected the OAE's files. On March 30, 2009, respondent's counsel submitted fourteen documents to the OAE, in response to its discovery request. None of those documents indicated that respondent had disclosed the Arlington purchase to his partners or their counsel. None of the documents that respondent produced at the hearing, as evidence that he had disclosed the Arlington purchase, were included with the discovery.

On May 13, 2009, the OAE requested respondent's counsel to produce copies of all correspondence from respondent's files for the Arlington and Ege transactions. Although respondent's counsel provided additional discovery on May 28, 2009, those documents did not relate to either the Arlington or Ege properties.

The disciplinary hearing was originally scheduled to be held on June 15, 2009. On June 5, 2009, the OAE served respondent's counsel with a subpoena, directing respondent to bring to the

hearing his files for the Arlington and Ege purchases. Five days later, in a June 10, 2009 letter, respondent's counsel notified the OAE that he would bring the files to the hearing. In addition, for the first time, counsel produced the documents discussed above, which appeared to demonstrate respondent's disclosure of the Arlington purchase to his partners.

Raymond Kaminski, an OAE investigator, testified that, although he had inspected both Boffa's and Delventhal's files, neither Exhibit LP-1 (the September 29, 2003 letter from respondent, submitting the Arlington deed to be recorded and indicating that a copy had been sent to Boffa and Delventhal), nor its enclosures were in those files. Kaminski first saw Exhibit LP-1 when respondent's counsel produced it, on June 10, 2009.

Previously, on March 27, 2007, the OAE had recorded its interview of respondent. He had not asserted, at that interview, that he had disclosed the Arlington purchase to his partners or that Fernandes had attended the Arlington closing. At that interview, when respondent was shown the September 24, 2003 Arlington deed, he replied:

> Don't go by the deed because Jersey City does not, Jersey City dates deed for one date, but doesn't actually conduct closings until later. No, no, don't go by the deed. No, don't go by that.
>
> [Exhibit P-27,p.9.]

The following exchange then took place:

> Sweeney: Well, their accusation is at the time the agreement was signed it said that the parties had abandoned their interest in it.
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> Paragano: I changed my mind.
>
> Sweeney: Is that your explanation?
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> Paragano: I changed my mind. . . . The city threatened that we would, I would never be able to do business with them again if I did not close on that property.
>
> Sweeney: Okay.
>
> Paragano: That changed my mind.
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> [Exhibit P-27,p.10.]

On December 30, 2008, respondent submitted a verified answer to the formal ethics complaint, asserting ten affirmative defenses. His answer failed to mention that he had disclosed the Arlington purchase or that Fernandes had attended that closing. Respondent also failed to assert, in his April 24, 2009 pre-trial report or his June 8, 2009 pre-trial brief to the special master, the alleged notification of the Arlington closing or Fernandes' alleged attendance at that transaction.

After the OAE received the June 10, 2009 documents from respondent's counsel, it moved to adjourn the scheduled ethics hearing. Over respondent's objection, the former special master postponed the hearing.

One of the documents submitted to the OAE on June 10, 2009 led the OAE to believe that it had been fabricated. Specifically, the formal ethics complaint had alleged that, to conceal his Arlington purchase, respondent had waited until November 25, 2003, after the execution of the October 28, 2003 settlement agreement, to submit the September 24, 2003 deed for recording. In turn, respondent had claimed that he had sent the deed to be recorded on September 29, 2003. Among the documents produced to the OAE on June 10, 2009 was Exhibit LP-2, a November 18, 2003 form letter to RBA from the Hudson County Register, purporting to return the Arlington deed because an Affidavit of Consideration had not been included with it. Kaminski saw this document for the first time on June 10, 2009.

Exhibit LP-2 ostensibly was signed by Penelope Betts of the Hudson County Register's Office. Betts, however, testified at the ethics hearing that she became employed at the register's office in January 2006, more than two years after Exhibit LP-2 was signed. She denied having any connection with the register's office on November 18, 2003. She further denied that the signature on Exhibit LP-2 was hers.

Lorraine Senerchia, the Hudson County Deputy Register, confirmed that Betts had become employed by the register's office in January 2006 and that Betts had no connection with that office

in 2003, 2004, and 2005. Senerchia asserted that, although the signature on Exhibit LP-2 appeared similar to Betts', it was not Betts' signature. While conceding that the register's office experienced much higher volume, in September 2003, than it ordinarily did, Senerchia denied that her office would have rejected a document, in November, that had been submitted in September. According to Senerchia, the delay typically occurred in the indexing, not in the reviewing of submitted documents.

In addition, although Senerchia acknowledged that other county employees had assisted her office during that busy time, she denied that Betts was one of them. Betts confirmed that she had never worked as a "temporary" in the register's office in 2003, 2004 or 2005.

In turn, respondent alleged that he had incorrectly assumed that Exhibit LP-2 applied to the Arlington transaction. He asserted that Exhibit LP-2 had been in "a stack of documents that were basically like filing that nobody could find file folders for" that had accumulated over a number of years. He claimed that he first saw that document in 2009 and provided it to the OAE, in response to its subpoena.

Respondent acknowledged Betts' testimony that the signature on Exhibit LP-2 was not hers. As seen by the following exchange

with the presenter at the hearing, however, he professed no knowledge of its preparation or source:

> Q. Assuming that her testimony is correct, the document is a false document, correct?
>
> A. I don't know that, sir. I don't know where it came from. I don't know how it got there and I am not offering it for any purpose.
>
> [10T111-18 to 24.][12]

Respondent later alleged that, after he produced Exhibit LP-2 in discovery, he later realized that another letter, Exhibit RB-21, not Exhibit LP-2, was the document that applied to the Arlington closing. In that letter, the register's office also returned a deed for both an incorrect fee and the failure to include an affidavit of consideration. Respondent alleged that, on November 25, 2003, his assistant, Vicki, submitted the affidavit of consideration and the Arlington deed was ultimately recorded.

As previously noted, the complaint also alleged that respondent made misrepresentations in loan documents, specifically, that Fernandes and Champi were members of RBA.

In connection with their real estate venture, the partners obtained financing from two banks, Pamrapo Savings Bank (Pamrapo), in Bayonne, and Provident Bank (Provident), in Jersey City. Francine Gargano, Esquire, had been retained to represent

[12] 10T denotes the transcript of the May 18, 2010 hearing.

the group. She and respondent had referred cases to each other, over the years. Because she did not have a "regular secretary," Gargano and respondent agreed that respondent's staff would perform the clerical services in connection with Gargano's representation of the group. Although Gargano handled the Pamrapo loan closing, she only reviewed the Provident loan documents and did not attend the loan closing.

In connection with the Pamrapo loan, the partners executed several documents, including a Unanimous Consent of Members of Raritan Bay Associates, LLC; a loan commitment for a $500,000 line of credit; a Certificate of Raritan Bay Associates, LLC (the certificate) and an Affidavit of Title (the affidavit). Gargano witnessed the parties' signatures on the certificate and on the affidavit. The affidavit contained the following provision:

> Reliance. The LLC makes this affidavit in order to induce the Buyer(s) or Lender to accept its deed or mortgage. It is aware that the Buyer(s) or Lender will rely on the statements made in this affidavit and on its truthfulness.
>
> [Ex.P-49.]

Once again, different versions of the same document appeared at the ethics hearing. Initially, Gargano testified that, on the affidavit that she witnessed and submitted to Pamrapo, respondent had signed as RBA's managing member, while Fernandes, Champi, and respondent had signed as mortgagors, with the designation

"member" having been stricken. On cross-examination, however, she conceded that she had also witnessed an almost identical affidavit, except that, in that version, Fernandes, Champi, and respondent all had signed as members of RBA, with respondent also signing as managing member. It is undisputed that only respondent was a member of RBA. Gargano could not explain why she did not simply strike through the designation "member," before Fernandes and Champi signed the document.

At a subsequent hearing date, Gargano conceded that the affidavit on which the parties had signed as mortgagors, with the designation "member" stricken, was not a document from her file and that, on her file copy of the affidavit, the parties had signed as members. She also admitted that no document in her file had the designation "member" stricken. She, thus, acknowledged that the version of the affidavit that she submitted to the bank listed all of the parties as members.

Also, on the copies of the affidavit in the files of Donald Campbell, Pamrapo's attorney, and Fernandes, the parties signed as members of RBA.

In addition, Gargano testified that, if a bank had instructed her to leave the document as it had been prepared, she would have done so. The following exchange took place between the presenter and Gargano:

> Q. Are there any circumstances at all in the world where you would submit, knowing that the person whose signature you are witnessing is not a member, where you would let that go through with your signature on there that they are a member?
>
> A. [I]f I called up the bank, because it has happened in the middle of closings, and I say, look, I have these documents and it says member, for example, on here and the LCC [sic] doesn't show them as a member. But they are signing these documents because you tell us to do that. Because this happens all the time. And I want to cross it out and I want to put guarantor or something else in there. They will say, we can't do that because of our secondary market or whatever. We don't want you to make a mess of it. Don't worry about it. We have your formation agreement. We know who is a member.
>
> I am not saying that is what happened here, but I can tell you those things happen all the time in real estate closings.
>
> [5T23-14 to 5T124-13.][13]

For respondent's part, he asserted that the document on which Fernandes and Champi had signed as members of RBA was obviously in error and that the bank was aware that they were not members. Respondent claimed that he had signed one affidavit with the correction and one without, intending that the corrected version would be submitted to Pamrapo.

During his March 27, 2007 recorded statement to the OAE, however, respondent had asserted that the bank had prepared the

[13] 5T denotes the transcript of the April 13, 2010 hearing.

closing papers, erroneously listing Fernandes and Champi as members; that he had notified a bank officer of the error; and that the bank officer had instructed him to sign the documents as they had been prepared, representing that the bank would then submit an acknowledgement that they are not members.

In May 2003, Gargano sent Pamrapo a letter, with a copy to respondent, Fernandes, and Champi, indicating that respondent was the sole member of RBA, that there were no limits on RBA's ability to mortgage its property, that the attached Certificate of Formation and Operating Agreement were correct, and that respondent would notify the lender upon any default.[14] The RBA operating agreement, however, provided that RBA would dissolve upon certain circumstances, including when there was only one member. Conceding that RBA was not able to operate with only one member, Gargano asserted that she was not aware of this provision, when she issued the May 2003 letter to Pamrapo.

Finally, Fernandes alleged that respondent misled him to believe that he would be permitted to claim, on his tax returns, losses incurred by RBA. Fernandes' accountant informed him that, to claim a partnership real estate loss, he needed to obtain a K-1 form from the LLC. After Boffa made such a request on Fernandes' behalf, respondent replied to the accountant that,

[14] Fernandes denied having received a copy of this letter.

because Fernandes had never been an owner of RBA, he was not entitled to a K-1. Respondent denied having misled Fernandes, asserting that Fernandes was aware that he was not a member of RBA.

One of the issues in this case involved the application of R. 1:20-7(n). That rule provides:

> Information concerning prior final discipline or disability of the respondent shall not be a matter for consideration by the trier of fact until a finding of unethical conduct has first been made, unless such information is probative of issues pending before the trier of fact.

On July 8, 2008, the prior special master issued an order, precluding the presenter from introducing evidence in connection with respondent's disciplinary history. The order indicated, however, that it was entered without prejudice to the presenter's proffer, at trial, on how the evidence comports with R. 1:20-7(n) and evidence rules concerning "prior acts".[15]

During the ethics hearing, the presenter renewed his request to present evidence of respondent's prior discipline, as relevant to the issue of whether respondent was guilty of unethical conduct in this matter. Essentially, the presenter argued that

[15] Evidence Rule 404 provides that evidence of prior acts is not admissible to prove a person's disposition to act in a certain manner, but "may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake."

respondent's alleged conduct in this matter - making repeated misrepresentations to his business partners - was so similar to his prior acts of making repeated misrepresentations to his law partner that evidence of the earlier misconduct should be admitted to demonstrate motive, intent, plan, knowledge, and absence of mistake. Respondent's counsel, in turn, contended that the general prohibition of R. 1:20-7(n) against admitting evidence of prior discipline should be applied.

Special Master Friend granted the presenter's request, noting that the weight, if any, to be given to evidence of respondent's prior discipline remained to be determined.

As the appropriate quantum of discipline for respondent's violations, the presenter urged the special master to recommend disbarment, contending that respondent compounded the conduct charged in the complaint by providing false documents to the OAE and by testifying falsely at the ethics hearing. The presenter cited, as an aggravating factor, respondent's disciplinary history for similar misconduct, which involved a pattern of misrepresentation to a law partner, comparable to the conduct in the present matter. In addition, the presenter advanced, as an aggravating factor, respondent's "extraordinary efforts to fabricate evidence and to mislead disciplinary authorities," as well as the special master. Finally, the presenter offered six

letters attesting to respondent's lack of good character and honesty.

In proposing disbarment, the presenter argued that, even without the alleged false documents and testimony, respondent's prior and current misconduct reveal such a basic dishonesty that stern discipline would be required. The presenter's position was that, when the aggravating factors of respondent's alleged fictitious documents and untruthful testimony are considered, disbarment is the only appropriate discipline.

Conversely, respondent's counsel recommended to the special master either a censure or a three-month suspension.[16] He offered twelve letters in which various individuals attested to respondent's good character. Counsel emphasized that respondent's conduct took place in his capacity as a businessman, not as a lawyer. He also contended that, because both Fernandes and Champi were sophisticated businessmen, they did not place any reliance on respondent. Counsel, thus, argued that discipline imposed for misconduct outside the attorney-client relationship should be lower because of the absence of the trust and reliance that clients place in their attorneys.

Counsel advanced the following, as mitigating factors: (1) respondent was not acting as an attorney in this matter; (2) in

[16] At oral argument, however, counsel urged us to dismiss the ethics charges and impose no discipline.

this case, he did not deal with client funds; (3) the partners did not suffer any injury because, by agreeing to allow Arlington to lapse, they had waived their interest in the deposit and other costs associated with that property; (4) Champi, Boffa, and Delventhal did not file ethics grievances against respondent; (5) Pamrapo, Provident, and their counsel were not misled or damaged by respondent's conduct; (6) twelve letters attested to respondent's good character; and (7) respondent has a long record of pro bono and community service.

On March 19, 2011, the special master issued a summary of findings, followed by a more detailed report. The special master found that respondent had violated RPC 8.4(c), as alleged in both counts of the complaint. In addition, he found Fernandes, Champi, Boffa, and Delventhal to be truthful and credible witnesses. On the other hand, he found that respondent was not credible, that his testimony about Arlington and the LP documents was totally contrary to the evidence, and that respondent's manufacture of false documents was an attempt to shift blame to Fernandes, Champi, and their attorneys. The special master also determined that Gargano's testimony was misleading and unreliable.

In his report, the special master concluded that respondent did not disclose to his business partners his purchase of the Arlington property. The special master noted that every draft of

the settlement agreement, including those prepared after the closing had taken place, provided that the Arlington contract would lapse. The special master found that respondent's concealment of the Arlington purchase allowed him to benefit from the use of the funds that his partners had contributed to the deposit and other costs, without providing them with any credit or offsets.

In addition, the special master found that respondent created the LP Exhibits to support his position that disclosure had been made. The special master noted that these documents were prepared after the ethics complaint had been filed. The special master observed that none of the LP documents had been provided in discovery or were contained in the files of Fernandes, Champi, or their attorneys. He specifically found that each LP document was a "forgery."

As to count two of the complaint, the special master found that respondent participated in a scheme to obtain financing, whereby he misled lenders into believing that Fernandes and Champi were members of RBA.

Finally, the special master concluded that respondent led Fernandes to believe that he would be able to claim a part of the tax loss incurred by RBA.

In mitigation, the special master considered the character letters and respondent's community service. In aggravation, he considered the letters critical of respondent's character, his disciplinary history, and his creation of false documents to conceal his unethical conduct.[17]

The special master concluded that disbarment was the only appropriate discipline in this matter.

Following a de novo review of the record, we are satisfied that the special master's finding of unethical conduct is fully supported by clear and convincing evidence. A five-member majority of this Board, however, are unable to agree with the recommendation for respondent's disbarment.

Respondent, Fernandes, and Champi entered into an informal business arrangement to develop and sell real estate in Jersey City. After respondent, on behalf of the group and in the name of RBA, signed contracts to buy six properties, the members determined to end their relationship. They then entered into settlement negotiations. In mid-September 2003, Fernandes retained Boffa and Champi retained Delventhal. For the next six weeks, the parties, including respondent, exchanged e-mails, settlement agreement drafts, and other documents and engaged in discussions

[17] The complaint had not been amended to charge any ethics violations in connection with the allegedly false documents.

to resolve the financial terms of their venture. They signed a formal settlement agreement on October 28, 2003.

The record, including the testimony of Fernandes, Champi, Boffa and Delventhal, which the special master found credible, amply demonstrates that, during that time, respondent made misrepresentations, by both silence and word, to his business partners.

Specifically, in a September 18, 2003 letter to Fernandes, respondent unequivocally proclaimed that he was not interested in acquiring Arlington and was willing to lose his portion of the deposit. Four days later, on September 22, 2012, respondent distributed to Boffa, Fernandes, and Champi a draft of the settlement agreement that he had prepared, providing that Arlington would lapse. This document was sent only two days before he closed on the Arlington property.

Two days after the closing, on September 26, 2012, respondent sent a letter to Boffa and Delventhal, indicating that he had attended the Ege closing and enclosing copies of those closing documents. He did not send to Boffa and Delventhal any information about the Arlington closing, notwithstanding the fact that the two transactions had taken place on the same day.

Six days after the closing, on September 30, 2003, Delventhal prepared a draft agreement with updated information.

That version, providing that RBA had recently purchased the Ege and Park properties, still retained the "lapse" language concerning Arlington. Similarly, on October 2, 2003, eight days after the closing, Boffa's draft agreement provided that RBA had acquired the Ege and Park properties, on September 24, 2003, and that the Arlington contract would lapse. It is obvious from these documents that respondent had not informed either Delventhal or Boffa that the Arlington closing had taken place on September 24, 2003, and that the Park closing had not.

About two weeks after the closing, in an October 7, 2003 e-mail to respondent, Boffa continued settlement negotiations. In that communication, Boffa suggested that Fernandes receive a credit for the Arlington property because Fernandes "did not want to purchase the Arlington property and consented because he was going to use the line of credit to buy Union Street. Since that did not happen, he wants a credit." Had the partners and their counsel been aware that respondent had bought Arlington, Boffa would have based his request on the fact that respondent now owned Arlington and, consistent with the parties' dealings, was required to reimburse them their out-of-pocket costs incurred with that property.

Respondent even concealed his purchase from Justin Mihalik, the group's architect.[18] In an October 9, 2003 letter, respondent informed Mihalik that RBA was responsible for the architectural services applicable only to the Park property. He did not mention that he had acquired the Arlington property.

One of the most significant documents in the record is the October 14, 2003 draft of the agreement that respondent prepared. By that time, respondent had already closed title on the Arlington property. In that version, respondent amended the Arlington paragraph by adding language indicating that no party was due an offset of monies for the deposit or costs for that property. By revising the very paragraph applicable to Arlington, respondent made sure that the lapse language remained in the agreement. Moreover, he stood to gain from the revision because, having acquired Arlington about three weeks earlier, he received the benefit of his partners' agreement not to seek any offset for the deposit and costs. We note that respondent's October 14, 2003 draft correctly indicated that the Park property was still under contract -- a fact of which only respondent was aware.

In yet another draft agreement that respondent sent to Boffa, on October 20, 2003, the Arlington lapse language

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[18] Parenthetically, we note that Mihalik submitted one of the "bad character" letters against respondent.

remained. In his e-mail enclosing the draft, respondent disclosed to Boffa that he had drawn from the line of credit to buy the Ege property, omitting the fact that he had also drawn from the line of credit to acquire Arlington.

Moreover, during the settlement negotiations, Boffa had prepared a chart accounting for each party's credits and offsets, based on the disposition of each parcel of real estate that the group had contracted to purchase. Although that chart listed entries for four of the five properties that were to be purchased from the City, it contained no figures for Arlington. According to Boffa, Arlington was not mentioned on the chart because he believed that that contract was going to lapse.

Apart from that documentary evidence, substantial testimony implicated respondent. Respondent's former business partners, Fernandes and Champi, and their attorneys, Boffa and Delventhal, all testified plainly and unambiguously that respondent had not disclosed his purchase of Arlington and that they continued to believe that that contract had lapsed. The special master found all four of those witnesses to be credible.

Respondent's motive for concealing his purchase was obviously financial. If his partners knew that he had bought Arlington, they would have demanded reimbursement for their share of the deposit and costs. Indeed, in addition to the terms of the

settlement agreement, respondent's own documents demonstrate the parties' understanding that the person who obtained any property was required to compensate the others for their respective share of the costs.

As previously noted, respondent sent to Fernandes a letter, dated September 18, 2003, asserting that Champi needed to decide whether he wanted to buy the Arlington property and "refund our portions of the deposit." Likewise, early in the settlement discussions, respondent sent an August 8, 2003 letter to his partners, cautioning them that, if either of them acquired the Grant or Ege properties, he would insist on being reimbursed for his deposits and costs associated with those properties.

Respondent's claim, first made at the disciplinary hearing, that he had disclosed his acquisition of Arlington to Fernandes, Champi, Boffa, and Delventhal, is contrary to the overwhelming and credible evidence in the record. It is also at odds with the position that he took during the investigative and discovery stages of this ethics grievance. As noted previously, on March 27, 2007, the OAE met with respondent, recording that interview. At that time, respondent asserted that he had changed his mind and had decided to buy Arlington because the City had threatened that it would not enter into any further real estate transactions, if he defaulted on the Arlington purchase. He did

not explain to the OAE why, even if the City had made such threats, he had not told his partners that he had bought Arlington.

Respondent also claimed, at the OAE interview, that the dates on deeds for properties sold by Jersey City were not accurate, alleging that "Jersey City dates deed for one date, but doesn't actually conduct closings until later." He did not raise this issue at the hearing, however.

Furthermore, respondent failed to assert that he had disclosed the Arlington purchase (or that Fernandes had attended that closing) in his answer to the formal ethics complaint, in his pre-trial report, in his pre-trial brief, or at any other time before the disciplinary hearing.

Based on the foregoing, we find that the evidence is clear and convincing that respondent concealed from his partners his purchase of the Arlington property, a violation of RPC 8.4(c).

Moreover, many of the documents on which respondent relied to support his position turned out to be fictitious. As found by the special master, the LP documents were not legitimate, but were created by respondent for use at the ethics hearing. Despite respondent's obligation to provide discovery, he failed to produce these documents until the presenter issued a subpoena.

His suspiciously late submission of the documents resulted in the postponement of the hearing.

The most egregious example of these documents is the November 18, 2003 letter allegedly signed by Penelope Betts. The complaint had charged that respondent had not submitted the Arlington deed to be recorded until November, despite the fact that the closing had occurred in September, in order to conceal that transaction until at least after the execution of the October 28, 2003 settlement agreement. In reply, respondent alleged that, although he had submitted the deed in September, it had been returned in November, because he had failed to submit an affidavit of consideration. He provided a copy of Exhibit LP-2 to the OAE only after receiving its subpoena. Both Betts and her supervisor testified that, notwithstanding Betts' purported signature on Exhibit LP-2, dated November 18, 2003, she was not employed by the Hudson County Register's Office until 2006, more than two years later. Moreover, Betts denied that the signature on Exhibit LP-2 was hers, a contention corroborated by Senerchia.

Upon the OAE's receipt of Exhibit LP-2 and subsequent investigation revealing that Betts was not employed at the register's office in 2003, respondent claimed that he had given that document to the OAE in error and that it was not applicable to the Arlington transaction. Producing yet another letter from

the register's office, he claimed that the new document, also rejecting a deed for failure to attach an affidavit of consideration, was the applicable one. He could not explain how or when he had received either document, claiming that they were not in any particular file, but simply appeared in a stack of miscellaneous papers.

The other LP exhibits are similarly tainted. Exhibit LP-1, a September 29, 2003 letter from respondent to the register's office, purports to enclose the Arlington deed for recording. Although the letter indicates that a copy was sent to Boffa and Delventhal, both attorneys denied receiving it.

Exhibit LP-3, a September 16, 2003 letter from respondent to the Jersey City Real Estate Office, enclosing a title insurance commitment for Arlington, similarly indicated that a copy had been sent to Fernandes and Champi. Again, both denied having received it.

Exhibit LP-4 is an e-mail that Fernandes allegedly sent to respondent, on October 25, 2003, two minutes after Fernandes had sent him a prior e-mail. In the phony e-mail, Fernandes requested a copy of the Arlington closing statement. Not only did Fernandes deny having sent that e-mail, it did not appear in a string of e-mails that had been exchanged between respondent and Fernandes. Moreover, Boffa, to whom Exhibit LP-4 indicated a copy had been

sent, denied having a copy of that e-mail or having ever received it. He testified that his practice was to copy and retain all e-mails involving clients. He also asserted that this e-mail would have "jumped out" at him because, at that time (three days before the settlement agreement was signed), they were engaged in settlement negotiations.

Exhibit LP-5 is an October 20, 2003 letter from respondent to Boffa concerning a property not relevant to this matter. Respondent claimed that, after his assistant had prepared the letter, he had dictated an additional paragraph, enclosing the Arlington closing statement "at Adolphus' request." Not only did Boffa deny having received Exhibit LP-5, it predated Exhibit LP-4, the purported October 25, 2003 e-mail in which Fernandes requested the closing statement. It would make no sense for Fernandes to have asked for the Arlington closing statement on October 25, 2003, if respondent previously had sent a copy of it, by Lawyers' Service, to Boffa, Fernandes' attorney.

Exhibit LP-6 is an October 3, 2003 letter from respondent to an insurance agent purporting to add Arlington to RBA's property insurance policy. Once again, Fernandes and Champi denied having received a copy of that document, notwithstanding that the letter indicates that a copy had been sent to them.

Exhibit LP-7, which is more fully addressed in count two below, is the affidavit of title signed by Fernandes, Champi, and respondent as mortgagors, with the designation "member" stricken. On all other copies of the affidavit, including those in the bank's, its attorney's, and Fernandes' files, the parties signed as members.

As seen below, we consider, as a major aggravating factor, respondent's submission of these phony documents.

The second count of the complaint charged that respondent submitted documents to lending institutions, misrepresenting that Fernandes and Champi were members of RBA. Fernandes, Champi, and respondent applied for loans from two banks, Pamrapo and Provident, to obtain financing for their real estate venture. For the sake of convenience, the properties were initially to be obtained in the name of RBA, a limited liability company of which respondent was the sole member. The parties planned to convey the properties to individual limited liability companies formed subsequently for that purpose.

Several of the documents that the parties signed misrepresented that Fernandes and Champi were members of RBA. Included among these documents were an affidavit and a certificate, both witnessed by Gargano, the attorney retained to represent the group in the Pamrapo loan closing. On the copies of

the affidavit appearing in the bank's, its attorney's, and Fernandes' files, the parties signed as members of RBA. Only respondent claimed to have a version of that document with the parties' signatures as mortgagors and the designation "member" stricken.

Again, respondent's testimony differed from the position that he took during the OAE interview. In his statement to the OAE, on March 27, 2007, he asserted that he had notified a bank officer of the error in the document. According to respondent, he was instructed to sign the erroneous document, with the assurance that the bank would later submit an acknowledgement that Fernandes and Champi were not members. At the ethics hearing, however, respondent claimed that he had signed two versions of the same affidavit, intending that the correct version would be submitted to Pamrapo. Although he alleged that the bank officers were aware that his partners were not members of RBA, he did not offer any evidence in support of that assertion.

As found by the special master, Gargano's testimony was questionable. She could not explain why she had witnessed two versions of the same affidavit - one in which the parties signed (inaccurately) as members of RBA and one in which they signed as mortgagors. She also stated that it is not uncommon for her to

have parties sign inaccurate documents at real estate closings, if those are the instructions that she receives from the lender.

As to count two, also, the record clearly and convincingly establishes that respondent misrepresented to Pamrapo that Fernandes and Champi were members of RBA to induce the bank to offer financing, a violation of RPC 8.4(c).

On the other hand, the record is devoid of clear and convincing evidence that respondent misrepresented to Fernandes that Fernandes would be able to participate in the tax loss of RBA. Although Fernandes signed a letter acknowledging that he was not a member of RBA, he claimed that respondent had informed him that he could benefit from RBA's tax losses. Because we find that the record does not corroborate that assertion, we dismiss the RPC 8.4(c) charge stemming from that allegation.

In sum, respondent made repeated misrepresentations to his business partners to conceal his purchase of property, made misrepresentations on banking documents to obtain financing, created fictitious documents in an attempt to cover his misconduct, and presented those documents to the OAE and to the special master.

The remaining issue is the appropriate quantum of discipline. The sanction imposed on attorneys who have forged documents or have lied to disciplinary authorities, a tribunal,

or clients to conceal other misconduct has covered a broad spectrum, depending on the specific facts of each case. See, e.g., In re Fusco, 197 N.J. 428 (2009) (reprimand for knowingly making a false statement of material fact in connection with a disciplinary matter and for conduct involving misrepresentation; the attorney prepared a letter-response for a junior partner of his law firm, in support of his version of events to an ethics grievance against him; the attorney then signed the letter with his name, followed by "for" the junior attorney; the attorney lied to ethics authorities that he had obtained the other attorney's permission to sign for her; reprimand ten years earlier (1995) for unrelated misconduct was considered too remote in type and time to be an aggravating factor); In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who created a phony arbitration award to mislead his partner and then lied to the OAE about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous professional achievements, and his pro bono contributions); In re Homan, 195 N.J. 185 (2008) (censure for attorney who fabricated a promissory note reflecting a loan to him from a client, forged the signature of the client's attorney-in-fact, and gave the note to the OAE during the investigation of a grievance against him; the attorney

told the OAE that the note was genuine and that it had been executed contemporaneously with its creation; ultimately, the attorney admitted his impropriety to the OAE; extremely compelling mitigating factors considered, including the attorney's impeccable forty-year professional record, the legitimacy of the loan transaction listed on the note, and the fact that the attorney's fabrication of the note was prompted by his panic at being contacted by the OAE and his embarrassment over his failure to prepare the note contemporaneously with the loan); In re Rohan, 184 N.J. 287 (2005) (three-month suspension, in a default matter, for attorney who, in one of three matters, failed to advise his supervising attorney and his client that a settlement conference had been scheduled, that the conference had taken place, and that he had settled the case without authority to do so; thereafter, the attorney made misrepresentations about the status of the case; he also failed to communicate with his clients or abide by one client's decision about the representation; engaged in gross neglect and misrepresentations, and failed to withdraw from the representations when his mental condition materially impaired his ability to represent his clients); In re Bar-Nadav, 174 N.J. 537 (2002) (three-month suspension for attorney who submitted two fictitious letters to the district ethics committee in an attempt to justify his

failure to file a divorce complaint on behalf of a client; he also filed a motion on behalf of another client after his representation had ended and failed to communicate with both clients); In re Rinaldi, 149 N.J. 22 (1997) (three-month suspension for attorney who submitted three fictitious letters to a district ethics committee in an attempt to show that he had worked on a client's case, did not diligently pursue the case, and made misrepresentations to the client about the status of the case); In re Telson, 138 N.J. 47 (1994) (six-month suspension where attorney altered a court document to conceal the fact that a divorce complaint had been dismissed; thereafter, he submitted the uncontested divorce to another judge, who granted the divorce; the attorney then denied to a third judge that he had altered the document); In re Marum, 157 N.J. 625 (1999) (one-year suspension imposed on attorney who, over an eleven-year period, displayed gross neglect in three matters, generally showed a pattern of neglect, exhibited a lack of diligence in eight matters, failed to communicate with clients in nine matters, and made misrepresentations in six matters; the misrepresentations included writing in the diary of the attorney's law firm that a case was listed for trial, when it had been dismissed, to mislead his partners to believe that the case remained active and, in three other cases, creating fictitious settlements and paying

clients with his own funds to conceal the fact that the complaints had been dismissed); In re Geary, 189 N.J. 194 (2007) (two-year suspension imposed for engaging in a repetitive and sustained course of misconduct involving misrepresenting to his law firm and his clients over a period of two years that he had completed work that he had not; the work involved applying for approval from various states to permit his clients, insurance companies, to market their products; he compounded the situation by creating false documents and correspondence that attempted to reassure his clients and his law firm that cases were progressing; in reliance, several clients, believing that they had obtained the necessary licenses to issue insurance policies, commenced business when they were in violation of law; the attorney then issued a letter of resignation to his law firm, admitted and apologized for his actions, expressed "extraordinary remorse" during the disciplinary investigation, and cooperated with disciplinary authorities); In re Katsios, 185 N.J. 424 (2006) (two-year suspension for attorney who improperly released escrow funds to his cousin, a party to the escrow agreement, and then falsified bank records and trust account reconciliations to mislead the ethics investigator that the funds had remained in escrow); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension imposed on an attorney who, in a real estate closing,

allowed the buyer to sign the name of the co-borrower; the attorney then witnessed and notarized the "signature" of the co-borrower; the attorney stipulated that he knew at the time that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false seven-page certification to the district ethics committee in order to cover up his improprieties); In re Penn, 172 N.J. 38 (2002) (in a default matter, three-year suspension imposed on an attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, in order to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible); In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who was involved in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing); In re Meyers, 126 N.J. 409 (1991) (three-year suspension for attorney who prepared and

presented to his client a fictitious divorce judgment to conceal his failure to advance an uncomplicated divorce matter for approximately two years; the attorney then asked his client to misrepresent to the court that the divorce judgment had merely been a draft and misrepresented to a court intake officer that the fabricated divorce judgment had been a mere draft and that his client had misunderstood its significance; the attorney also made other misrepresentations to his client and failed to inform her that her husband had filed a divorce complaint); and In re Yacavino, 100 N.J. 50 (1985) (three-year suspension for attorney who prepared and presented to his clients two fictitious orders of adoption to conceal his neglect in failing to advance an uncomplicated adoption matter for nineteen months and misrepresented the status of the matter to his clients on several occasions; in mitigation, the Court considered the absence of any purpose of self-enrichment, the aberrational character of the attorney's behavior, and his prompt and full cooperation with law enforcement and disciplinary authorities).

Our holding in Katsios, supra, is relevant. In that case, the attorney improperly released escrow funds to clients (who were also his relatives), panicked when the OAE investigated that impropriety, and then altered bank statements and prepared false reconciliations to create the impression that the funds had

remained in his trust account. In the Matter of Demetrios Katsios, DRB 05-074 (July 21, 2005) (slip op. at 3). We took into account, as aggravating factors, the attorney's continuing course of dishonesty and misrepresentation and lack of candor to disciplinary authorities. Id. at 4. Although acknowledging Katsios' initial panic upon being contacted by the OAE, we considered that he had embarked on a calculated plan of repeated misrepresentations to the OAE and observed that

> his cover up of his actions required a great deal of thought, planning, and time. Surely, his initial feeling of panic, had it been the only motivation for his actions, would have passed before the completion of the scheme. . . . As noted by the special master, however, this was truly an instance where the cover-up was worse than the crime.
>
> [Id. at 11-12.]

Likewise, in the instant matter, we find that respondent's cover-up was worse than his crime. In addition, the same aggravating factor of continuing course of dishonesty and misrepresentation found in Katsios is present here.

Moreover, respondent's prior six-month suspension resulted from similar conduct to that presented here. In that case, he repeatedly created false entries in his law firm's records to conceal his use of law firm funds for personal expenses. Here, he repeatedly lied to his business partners. As in the prior case, respondent was motivated by greed in this matter. Had he revealed

his purchase of the Arlington property to his business partners, he would have been required to reimburse them their share of the deposit and costs associated with that property.

In the matter now before us, we also consider, as a significant aggravating factor, respondent's use of his partners' share of the deposit and costs in connection with the Arlington property. Furthermore, respondent exacerbated his initial dishonesty to his business partners by engaging in an extensive plan to fabricate and submit to both the OAE and the special master documents to conceal his wrongdoing.

A misrepresentation to a tribunal "is a most serious breach of ethics because it affects directly the administration of justice." In re Johnson, 102 N.J. 504, 510 (1986). Accordingly, the Court has recognized that "the destructive potential of such conduct to the justice system warrants stern sanctions." Id. at 511.

Here, in our view, respondent's misconduct is akin to that of the attorneys who received long-term suspensions. Specifically, the attorney in Geary received a two-year suspension for repeated misrepresentations to his law firm and his clients, including the creation of false documents. Geary, however, admitted his actions, was remorseful, cooperated with disciplinary authorities, and had no disciplinary history.

Similarly, the attorney in Katsios created false reconciliations and altered bank statements to conceal from disciplinary authorities his improper release of escrow funds. In voting for a two-year suspension, we considered substantial mitigating factors, including the attorney's eventual cooperation with the OAE, admission of wrongdoing, contrition and remorse, good reputation and character, unblemished disciplinary history, lack of personal gain, and the absence of client harm. In this case, other than some letters attesting to respondent's good character, those mitigating factors are not present. Without mitigating factors, the attorney in Kornreich received a three-year suspension for engaging in an elaborate cover-up of her own wrongdoing following an automobile accident, making repeated misrepresentations to law enforcement and judicial officials, and presenting false evidence to implicate her innocent baby-sitter.

Even taking into account that respondent's conduct did not arise out of an attorney-client relationship, on balance, we determine that, here, too, a three-year suspension is warranted.

Dissenting Members Doremus, Gallipoli, and Wissinger voted to recommend disbarment, finding that respondent has displayed a deficiency of character that disqualifies him from the privilege of practicing law.

Member Yamner did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Vincent Paragano
Docket No. DRB 12-186

Argued: November 15, 2012

Decided: December 5, 2012

Disposition: Three-year suspension

Members	Disbar	Three-Year Suspension	Censure	Reprimand	Admonition	Recused
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus	X					
Gallipoli	X					
Wissinger	X					
Yamner						X
Zmirich		X				
Total:	3	5				1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel