SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-201
District Docket No. XIV-2010-0072E

IN THE MATTER OF	:
MICHAEL D. D'ANGELO	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 18, 2012

Decided: December 17, 2012

Missy Urban appeared on behalf of the Office of Attorney Ethics.

Richard M. De Luca 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 (three-month suspension) filed by special master Sherilyn Pastor. The complaint charged respondent with violating RPC 1.1 (gross neglect), RPC 1.4(b) and (c) (failure to comply with a client's reasonable requests for information and failure to explain a matter to the extent necessary for the

client to make informed decisions about the representation), RPC 1.5 (failure to set out the basis or rate of the fee in writing), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). We determine to impose a reprimand.

On October 10, 2012, respondent filed a motion to expand the record, seeking the introduction of certain documents. Specifically, counsel sought to add to the record closing documents, handwritten notes from the grievant, and documents pertaining to a foreclosure sale of the subject property. We determined to grant respondent's motion.

Respondent was admitted to the New Jersey bar in 1983. He has no history of discipline. He was admitted to the bars of Pennsylvania and New Hampshire in 1983 and 1984, respectively.

The facts that gave rise to this matter are as follows:

In 2006, grievant Ruthie Moore was unable to maintain the mortgage payments on her house, which amounted to $1,100 a month. She owed roughly $100,000 on the mortgage.

Moore was approached by Agee Associates (Agee), a company offering help in avoiding foreclosure. Through Agee, Moore met

with W.M., an attorney.[1] During the meeting, W.M. advised Moore that he could help her to save her house.

Moore understood that her house would be "in [W.M.'s] hands" until she recovered financially. She would stay in the house and pay rent. She was to receive $13,000 and the remaining equity would be held by W.M. to help her make future rent payments. She did not understand that her monthly rent payments would be $2,292.21. Moore testified that she did not understand that she was selling her house. However, on questioning from respondent, Moore recalled W.M.'s telling her that she could stay in the house for two years if she made the payments and then "buy it back." Moore assumed she was "deeding the house" to W.M.

According to Moore, while she was at W.M.'s office, she signed various documents that were either blank or incomplete, including the deed, HUD-1, affidavit of consideration, use and occupancy agreement, and affidavit of title.

---

[1] W.M. is ill and unable to defend against ethics charges. On application from the OAE, which respondent did not oppose, W.M.'s identity is being protected. The special master entered a protective order sealing the transcript of the hearing before her.

On December 13, 2006, one day before the closing, W.M. contacted respondent about his possible representation of Moore. Respondent understood that Moore was facing foreclosure on December 18, 2006 and that all options to postpone the sale had been exhausted.[2] Respondent also understood that Moore wanted to remain in her home.

The closing took place on December 14, 2006, at W.M.'s office. W.M. introduced respondent to Moore, explaining that he could not represent two parties in the transaction. W.M. represented the straw buyer, Steve Bonini.

Moore agreed to respondent's representation. Respondent did not tell Moore what he was charging her for his legal services and did not provide her with a writing setting forth the basis or rate of his fee. He testified that he had informed Moore that he was only representing her in connection with the closing. According to respondent, he understood that Moore's signature on the HUD-1 was "sufficient evidence of the scope of

---

[2] Moore had arranged to have the foreclosure sale delayed. It appears that she did not understand the significance of the delay and did not disclose it to respondent. Moore believed that respondent would know about it because he was her attorney. Respondent did not know that the foreclosure sale had been delayed.

[his] legal representation." He charged Moore $1,000 plus $350 for document preparation.

Moore testified that she spoke with respondent for approximately five minutes at the closing, which lasted fewer than thirty minutes. Respondent introduced himself, gave Moore his card, and instructed her to contact him, if there were any problems. Moore denied that respondent had described the nature of the transaction to her or explained the import of the documents that she was signing. According to Moore, she signed no documents in respondent's presence, except for a receipt for the $13,000 check.

Contrarily, respondent testified that he went over the HUD-1 with Moore "line by line," including his fee, and explored alternatives to the transaction. He denied that the closing documents were blank, when Moore signed them.[3] According to respondent, Moore had negotiated the terms of the transaction,

[3] There is no allegation in the complaint that Moore signed blank documents.

which, he advised her, were "draconian."[4] He was unaware of a written contract between the parties.

Respondent testified that the documents that he prepared for the closing, specifically, the deed, affidavit of consideration, use and occupancy agreement, and option to purchase, all reflected a sale price of $350,000.[5] The HUD-1, which W.M. prepared, listed a sale price of $273,500.[6] Respondent acknowledged that, when he reviewed the HUD-1, he should have noticed that it did not match the deed price.

With regard to the HUD-1, respondent testified as follows:

> The HUD-1, on the other hand, . . . which was prepared by [W.M.'s] office incorrectly reflected a sale price of $273,500 -- I did add the word incorrectly -- corresponding to the new mortgage. This was clearly in error. Based on my experience with other closings and mortgage

---

[4] The special master agreed with respondent's characterization of the terms.

[5] The option to purchase agreement gave Moore the right to purchase the house, within two years of the closing, for $273,750. Moore also had the right to sell the property to a third party and to keep any proceeds over the fixed option price. The use and occupancy agreement allowed Moore to occupy the residence for two years, if she paid Bonini's mortgage payment.

[6] The residential loan application, presumably prepared by W.M., listed a price of $365,000.

lenders, the HUD-1 appears to be [sic] preliminary draft, and I underscore appears to be, or working copy. The final approval of which the new lender would have typically required as a pre-closing condition prior to funding the mortgage loan. The final version of the HUD-1 should have contained line items accounting for the grievant's equity as deposit or earnest money at lines 201/501 corresponding to a purchase price of $350,000. Whether this was, in fact, the case cannot independently be verified at present, as I am advised that since the time of the closing, the lender has gone out of business or at least the broker has gone out of business and, more recently, [W.M.] has become physically disabled.

However, and since the grievant's sale proceeds were to be based on the new mortgage amount of $273,750, the error on the HUD-1 appears to have been of no adverse material consequence to the grievant. The HUD-1, at Line 603, reflected cash to the grievant in the amount of 21,350.74 [sic]. This figure matched the escrow figure credited to the grievant as reflected in the option to purchase agreement at Paragraph 13 thereof. Had the line items accounting for the grievant's equity been included as calculated above, then the net result to the grievant would have been the same in any event. I want to underscore that the net result to the grievant would have been the same in any event.

[T86-3 to T87-11.][7]

---

[7] Respondent is essentially reading from paragraphs seventeen to eighteen of his answer to the ethics complaint. T refers to the transcript of the hearing before the special master.

In exhibit CE, a November 20, 2009 letter from respondent to the DEC investigator, respondent stated that he was aware of the discrepancy in the sale price in the deed and in the HUD-1 and had questioned W.M. about it. In addition, he noted the discrepancy in his own notes from the closing. His notes showed a price of "$273,500 in reality" and a "deed price" of $350,000, "to induce lender to do the deal [with] straw buyer." Respondent testified:

> This was the deal that came to me, that the difference between the mortgage amount and the sale price, the so-called equity pledge, and that's the term that we've been using, it's a term we used at the closing table, was needed -- it belonged on the HUD because it was needed for the lender. Because, otherwise, if you look at the HUD, it shows no down payment, it's a zero percentage down loan. And that, clearly, was not the case.
>
> So the 76,000 some-odd dollars, whatever the number, is the difference between the loan amount and the purchase price is [sic], roughly, 20 percent of the purchase price, and was needed as a 20 percent down payment, 80 percent loan to satisfy the lender's loan-to-equity ratio.
>
> [T108-T109.][8]

[8] The term "equity pledge" also appears in respondent's closing notes about the price differential.

Moore paid Bonini's costs of $23,039.17 and Agee's fee of $27,500. According to respondent, the payment to Agee was a fee to grant Moore the option to purchase the property. Moore paid a realty transfer fee of $650.[9] She received $21,350.74 from the transaction, of which she received $13,000 by check. The remainder, roughly $8,000, was placed in escrow with W.M., to be used to satisfy Moore's monthly payment obligations. According to respondent, Moore indicated that "she had things in the works" to help her with the payments.

The HUD-1 and the deed are dated December 13, 2006, the day before the closing. Respondent certified Moore's signature on the deed on December 13, 2006, the day before the closing, and the day before he met her.[10] Moore's signature on the affidavit of consideration and affidavit of title purports to have been certified by respondent on December 13, 2006, again, the day before the closing and, possibly, the day before they met. The

---

[9] The special master noted that the appropriate fee on a sale price of $273,750 for a seller over sixty-two, like Moore, is $460.

[10] Moore testified that she met respondent on or about December 13, 2006, but also testified that she met him at the December 14, 2006 closing.

record is silent as to why the documents are dated the day before the closing.

Approximately one month after the closing, Moore received a copy of the completed closing documents in the mail.[11] She learned, at that time, of the buyer and of the $350,000 sale price. She called W.M., who told her not to worry about it because he would "take care of everything." Moore testified that, when she asked W.M. where the $350,000 from the sale was, he stated, "that ain't what I did. I just had to put that there so that the deal will go through."

Six or seven months after the closing, Moore's house again went into foreclosure. Moore called respondent, who, according to her, did not return her call. Respondent confirmed that Moore had called him, but added that they were unable to agree as to the "scope" of this new representation.

As of the date of the hearing before the special master, Moore continued to live in the house, paying $1,500 per month in rent. It is unclear who is the recipient of the rent, who

---

[11] Moore had been receiving mail addressed to Bonini and had not understood why.

currently owns the house, or how the amount of the monthly payment was derived.

The complaint charged respondent with gross neglect, failure to communicate, failure to have a written fee agreement, and conduct involving dishonesty, fraud, deceit or misrepresentation.

In his summation to the special master, the former OAE presenter recommended that respondent receive either a censure or a three- to six-month suspension. By letter dated October 15, 2012, the current OAE presenter who has taken over this matter urged us to impose a three-month suspension.

The special master determined that respondent violated RPC 1.1(a), RPC 1.4(c), RPC 1.5(b), and RPC 8.4(c). The special master did not find clear and convincing evidence that respondent violated RPC 1.4(b).

As to respondent's failure to provide Moore with a writing setting forth the rate or basis of his fee, the special master rejected respondent's testimony that he understood that Moore's signature on the HUD-1 was evidence of the scope of his representation and of his fee. The special master noted that respondent has been practicing law for over twenty-five years and that, consequently, his testimony in this regard did not

justify or excuse his failure to memorialize his fee for the representation of his new client.

The special master also rejected respondent's testimony that his representation of Moore was "limited." The special master noted that nothing in the HUD-1 addressed or informed Moore of such a limitation and that Moore had been told and understood that respondent was at the closing to protect her interests.

With regard to respondent's testimony that Moore had negotiated the transaction and had explained it to him at the closing, the special master found that not credible as well. Moore was not sophisticated in real estate and she did not fully understand the transaction. She retained respondent to represent her interests and it was his obligation to explain the transaction to her.

The special master found that respondent did not adequately explain the transaction or closing documents to Moore, including that her home was being sold to a straw-buyer for $350,000. For a number of reasons, the special master discredited respondent's

testimony that he reviewed the transaction with Moore in "painstaking detail:"[12]

> a. The closing took only 30 minutes;
>
> b. Respondent and Grievant only met (for the first time) at the closing;
>
> c. It was, according to Respondent, his view that Grievant had negotiated the deal, his suggestion being that its drastic terms were not of his making, but also that she must have understood what she negotiated, thereby somehow limiting his responsibilities;
>
> d. Grievant was not sophisticated in real estate transactions and she did not know that a straw buyer was involved and that the Deed reported the sale to be for $350,000;
>
> e. The transaction's nature, import and terms were appropriately described at the hearing by Respondent as "draconian", which required explanation beyond that associated with at [sic] a more typical, buy/sell closing;
>
> f. The closing documents contain false and inaccurate information, and some were signed in blank;
>
> g. Respondent was at the closing at W.M.'s request to facilitate the transaction between Grievant and W.M.'s client. He

---

[12] Because of the significance of the special master's determination about respondent's credibility, we have reproduced this passage from her report in full.

offered a physical presence so that it could not be said that Grievant was without counsel;

h. Grievant had signed documents in blank before the closing, which Respondent should have learned and which should have sent up red flags and required Respondent to spend time exploring the situation; and

i. Time would have been required to explain the transaction and alternatives;

j. Respondent's interaction with Grievant did not uncover that Grievant had undertaken and obtained an adjournment of the foreclosure, and the imminent foreclosure was the primary driver for the closing on such short notice.

The time frame, setting and circumstances belie suggestion that the 30-minute closing offered sufficient time to meet the Grievant; develop an understanding from her of what she believed the transaction involved; discuss what had transpired; discuss the closing documents (including those she had already signed in blank); counsel Grievant on the import of and details of the transaction; explain the concept of a straw buyer; confirm that the closing documents properly reflected Grievant's understandings; and explore and explain alternatives. Moreover, the closing documents contain false and inaccurate information . . . which further undercuts Respondent's representations about this

> supposedly detailed review and explanation of the closing documents with the Grievant.
>
> [SMR¶36-SMR¶37.][13]

The special master supported her findings by Moore's "strong, negative reaction," when she later received copies of the closing documents and learned that she had sold her home and had received a fraction of its equity, in light of the $350,000 price listed in the deed. The special master found credible Moore's claim that she did not understand the details of the transaction. The special master did not find, as respondent urged, that Moore was willing to give up her home and much of its equity solely to remain in it a bit longer.

The special master could not determine, by clear and convincing evidence, which documents Moore signed at closing, versus which documents she signed at the meeting with W.M. Nevertheless, the special master concluded that the documents that Moore signed, both before and at the closing, did not comport with her understanding of the transaction. The special master was also unable to determine the state of the documents signed at closing, that is, whether they contained blanks, in

---

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

large part because they contained inaccurate information about when they were signed. Based on the evidence and the credibility of the witnesses, the special master found that Moore signed some documents in blank, at the first meeting with W.M. and also signed some documents at the closing. The special master remarked, however, that, regardless of when Moore signed the closing documents and what state they were in, they contained inaccurate information about when they were signed and about the sale price of Moore's house.

The special master also found that the inaccuracies in the closing documents were knowing and intentional. She rejected as not credible respondent's testimony that he failed to see W.M.'s error on the HUD-1, specifically, the discrepancy in the price, when he reviewed that document. The special master relied on respondent's notes from the closing and on his November 20, 2009 letter to the DEC investigator, Ex.CE, to reach this conclusion.

In connection with the allegations of gross neglect and failure to communicate, the special master found that respondent was grossly negligent in his handling of the matter, particularly because of his failure to explain the transaction to Moore in a manner that allowed her to make informed decisions about the transaction. Specifically, respondent knew that this

was not a simple sale but, rather, a sale/lease back from a client in financial distress; he agreed that the terms of the transaction were draconian; Moore was unable to keep up with her monthly mortgage payment; pursuant to the terms of the transaction, her payment nearly doubled; and respondent failed to provide her with sufficient information, "leaving her vulnerable to exploitation by others."

The special master concluded that, although respondent was not the mastermind of the transaction, he helped to facilitate it by preparing documents containing false information and by leaving Moore uninformed. He offered little, if any, independent judgment, instead treating the deal as having been negotiated by Moore, before he was retained. In addition, providing Moore with "the physical presence of an attorney at the closing" was insufficient. He had to be certain that Moore understood the transaction and had to prepare documents that contained true and accurate information.

The special master found that respondent knowingly prepared and certified closing documents with material misstatements of fact. In particular, the listed sale price of the property was inaccurate; the deed and affidavit of consideration listed the price as $350,000; the price on the HUD-1 was $273,750; and

respondent certified Moore's signature on documents on a date prior to his first meeting with her.

Respondent contended that the errors were unintentional, pointing to his other transactions with W.M., where no misstatements were made, as evidence that these "were not part of a continuing course of misconduct."[14] However, as the special master noted, "[r]espondent's defense of mistake is belied by his own notes regarding the transaction. Respondent's notes indicate clearly a 'deed price' of $350,000 and a price in 'reality' of $273,750, with the discrepancy considered 'an equity pledge' to 'induce lender to do the deal'." For two reasons, the special master rejected respondent's contention that the misstatement was immaterial and that it did not harm Moore. First, injury to the client is not required to a finding of a violation of an RPC. Second, even if the transaction had been in Moore's best interest, she paid a realty transfer fee of $650, because of the inflated deed price; or $190 above the

---

[14] Respondent testified that he has been involved in seven transactions with W.M. This was the only time there were discrepancies in the closing documents. The presenter confirmed that respondent's statement was accurate.

amount she was required to pay, as a sixty-two-year old seller, on a $273,750 sale.

On the other hand, the special master rejected the OAE's argument that respondent violated RPC 1.4(b) by abandoning Moore, after the closing. That rule requires that an attorney keep the client reasonably informed about the status of a matter and comply with the client's requests for information. The real estate matter was completed at the closing. Respondent spoke with Moore once, after the closing, at which point she had the closing documents and was seeking representation in connection with a foreclosure proceeding. Here, the special master found no violation of RPC 1.4(b).

As to the appropriate measure of discipline, the special master noted that "[o]ur Supreme Court has stated that 'acts of dishonesty, such as falsification . . . of lending documents, warrant a period of suspension.' In re Alum, 162 N.J. 313, 315 (2000); accord In re DiBiasi, 102 N.J. 152 (1986); see also In re Fink, 141 N.J. 231 (1995); In re Weston, 118 N.J. 477 (1990)." In the special master's view, although respondent was guilty of serious misconduct, he was not the "mastermind" of the transaction. Rather, for a "modest fee" for a brief appearance, he facilitated the fraudulent transaction.

The special master accepted, in part, the mitigating factors that respondent advanced: he has had an unblemished record; he did not mastermind the transaction; W.M. had already "cajoled" Moore into the deal, before respondent became involved; and Moore had few options, due to her financial circumstances. The special master found "unconvincing" respondent's argument that Moore's house was ultimately foreclosed and that she continued to live in it, which was what she had hoped to achieve from the transaction. The special master remarked that respondent could not have known, at the time of the closing, how future events would transpire and, more importantly, Moore lost over $50,000 in equity, including funds paid to the straw-buyer of which she had been unaware.

In light of all of the circumstances, the special master deemed a three-month suspension appropriate discipline.

Following 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.

For the most part, the special master's findings as to the violated RPCs are well supported by the record. She was correct in finding that respondent violated RPC 1.4(c). This was a

complex transaction with a use and occupancy agreement, the right to sell the property, the right to buy the property, escrowed funds for rent payments, etc. In light of Moore's credible testimony that she was unaware of the true terms of the transaction, respondent's assertion that he took the time to review each and every aspect of the transaction with Moore merits no weight. Even assuming, for argument's sake, that W.M. had reviewed the details of the transaction with Moore, it was respondent who was representing her at the closing and it was he who had to review the forms and ascertain that she understood the full import of the transaction. He could not have done so in a closing that took under thirty minutes to complete. We agree, thus, with the special master's finding that respondent violated RPC 1.4(c).

Also, respondent admitted that he did not provide Moore with a writing setting out the basis or rate of his fee. His contention that Moore's signature on the HUD-1 evidenced the scope of his representation is without merit, particularly coming from a practitioner with nearly thirty years of experience. We find, thus, that he violated RPC 1.5(b).

As to RPC 8.4(c), at first blush it would appear that respondent was in cahoots with W.M., in perpetrating a fraud on

Moore. It is possible, however, that Moore wanted to remain in the house and accepted whatever "draconian" terms were necessary to accomplish that end. After all, she received a check for $13,000. What did she think was the source of those funds, if not from the closing proceeds?

The lack of clear and convincing evidence of respondent's fraud on Moore notwithstanding, he was still guilty of violating RPC 8.4(c). His notes from the closing and his letter to the DEC investigator make it clear that he saw the discrepancy in the closing documents, going so far as to ask W.M. about them. He, therefore, had to know that he was defrauding the lender by misstating the financial terms of the transaction.

On the other hand, the special master was correct in dismissing the allegation that respondent violated RPC 1.4(b). There is no indication that Moore attempted to contact respondent and was unable to do so. Even accepting Moore's testimony that she tried to reach him and that he did not return her phone call, she was seeking his assistance in a matter separate (albeit related) from the matter for which he had represented her. After the closing was completed, respondent was not obligated to assist Moore in a foreclosure proceeding.

We are unable to agree with one finding by the special master, that is, that respondent violated RPC 1.1(a). The charge of neglect would go to his handling of the closing itself. There are no allegations of any impropriety in this context. More properly, respondent's transgressions stemmed from his allowing a closing to proceed with untrue figures, a violation of RPC 8.4(c), as previously noted.

In sum, respondent is guilty of failure to adequately explain a matter to a client, failure to have a written fee agreement, and conduct involving dishonesty, fraud, deceit or misrepresentation.

The discipline for misrepresentations on closing documents has ranged from a reprimand to a term of suspension, depending on the seriousness of the misconduct, the presence of other ethics violations, the harm to the clients or third parties, the attorney's disciplinary history, and other mitigating or aggravating factors:

Reprimand: In re Barrett, 207 N.J. 34 (2011) (attorney misrepresented that a RESPA statement that he signed was a complete and accurate account of the funds received and disbursed as part of the transaction; the RESPA reflected the payment of nearly $61,000 to the sellers, whereas the attorney

disbursed only $8700 to them; the RESPA also listed a $29,000 payment by the buyer, who paid nothing; finally, two disbursements totaling more than $24,000 were left off the RESPA altogether; the attorney had no record of discipline); In re Mulder, 205 N.J. 71 (2011) (attorney certified that the RESPA that he prepared was a "true and accurate account of the funds disbursed or to be disbursed as part of the settlement of this transaction;" specifically, the attorney certified that a $41,000 sum listed on the RESPA was meant to satisfy a second mortgage; in fact, there was no second mortgage encumbering the property; the attorney's recklessness in either making or not detecting other inaccuracies on the RESPA, on the deed, and on the affidavit of title were viewed as aggravating factors; mitigating circumstances justified only a reprimand); In re Gale, 195 N.J. 1 (2007) (attorney engaged in a pattern of gross neglect and misrepresentation in a series of five real estate matters by knowingly inserting information on RESPAs that was inaccurate and that was supplied to her by a non-client on whom she improperly relied; in mitigation, we considered the attorney's emotional and physical difficulties during the time in question); and In re Agrait, 171 N.J. 1 (2001) (despite being obligated to escrow a $16,000 deposit shown on a RESPA, attorney

failed to verify it and collect it; in granting the mortgage, the lender relied on the attorney's representation about the deposit; the attorney also failed to disclose the existence of a second mortgage prohibited by the lender; the attorney's misconduct included misrepresentation, gross neglect, and failure to communicate to the client, in writing, the basis or rate of his fee).

Censure: In re Gahwyler, 208 N.J. 353 (2011) (attorney certified the accuracy of a HUD-1 knowing that the entries were not correct, 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); In re Soriano, 206 N.J. 138 (2011) (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; the attorney had

also misrepresented to the sellers that he held the escrow funds); In re Frohling, 205 N.J. 6 (2011) ("strong" censure for an attorney who, in three "flip" real estate transactions, falsely certified on the settlement statements that he had received the necessary funds from the buyers and that all funds had been disbursed as represented on the statements; the attorney's misrepresentations, recklessness, and abdication of his duties as closing agent facilitated fraudulent transactions; the attorney also engaged in conflicts of interest by representing both parties in the transactions and was found guilty of gross neglect and failure to supervise a nonlawyer employee; prior reprimand); In re Khorozian, 205 N.J. 5 (2011) (attorney 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); and In re Scott, 192 N.J. 442 (2007) (attorney 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).

Three-month suspension: In re De La Carrera, 181 N.J. 296 (2004) (in a default case, the attorney, in one real estate matter, failed to disclose to the lender or on the RESPA the existence of a second mortgage taken by the sellers, a practice prohibited by the lender; in two other matters, the attorney disbursed funds prior to receiving wire transfers, resulting in the negligent invasion of clients' trust funds); In re Nowak, 159 N.J. 520 (1999) (attorney prepared two settlement statements that failed to disclose secondary financing and misrepresented the sale price and other information; the attorney also engaged in a conflict of interest by arranging for a loan from one client to another and representing both the private holder of a second mortgage and the buyers/borrowers); and In re DiBiasi, 102 N.J. 152 (1986) (attorney submitted, on behalf of his clients, a false lease to a mortgage lender and subsequently pleaded guilty to a federal misdemeanor charging him with misapplication of bank funds).

Six-month suspension: In re Gensib, 209 N.J. 421 (2012) (attorney prepared false RESPA statements in five transactions, engaged in a conflict of interest in two of the five, and had no written fee agreement in all five matters; prior reprimand and censure); In re Swidler, 205 N.J. 260 (2011) (a default matter;

in a real estate transaction in which the attorney represented both parties without curing a conflict of interest, the attorney acted dishonestly in a subsequent transfer of title to property; specifically, in the first transaction, the buyer, Rai, gave a mortgage to Storcella, the seller; the attorney, who represented both parties, did not record the mortgage; later, the attorney represented Rai in the transfer of title to Rai's father, a transaction of which Storcella was unaware; the attorney did not disclose to the title company that there was an open mortgage of record; the attorney was also guilty of grossly neglecting Storcella's interests, depositing a check for the transaction in his business account, rather than his trust account; the attorney also failed to cooperate with disciplinary authorities; prior reprimand and three-month suspension); and In re Fink, 141 N.J. 231 (1995) (attorney failed to disclose the existence of secondary financing in five residential real estate transactions, prepared and took the acknowledgment on false RESPA statements, affidavits of title, and Fannie Mae affidavits and agreements, failed to witness a power of attorney, and lied to a prosecutor about the RESPA).

One-year suspension: In re Thomas, 181 N.J. 327 (2004) (attorney was involved in a conspiracy to defraud a mortgage

lender and prepared a HUD-1 real estate form that contained numerous misrepresentations; the attorney also knowingly made false statements of material fact in connection with the disciplinary matter, engaged in an improper conflict of interest, and grossly neglected the case; prior admonition); In re Alum, 162 N.J. 313 (2000) (attorney participated in five real estate transactions involving "silent seconds" and "fictitious credits"; the attorney either failed to disclose to the primary lender the existence of secondary financing or prepared and signed false RESPA statements showing repair credits allegedly due to the buyers; in this fashion, the clients were able to obtain one hundred percent financing from the lender; because the attorney's transgressions had occurred eleven years before and, in the intervening years, his record had remained unblemished, the suspension was suspended and he was placed on probation); In re Newton, 157 N.J. 526 (1999) (attorney prepared false and misleading RESPA statements, took a false jurat, and engaged in multiple conflicts of interest in real estate transactions); and In re Labendz, 95 N.J. 273 (1984) (attorney knowingly participated in an attempt to perpetrate a fraud by making misrepresentations on a mortgage application; mitigating factors included previously unblemished record, excellent

reputation, lack of loss to any party, and the lack of substantial gain to the attorney).

Two-year suspension: In re Frost, 156 N.J. 416 (1998) (attorney prepared misleading closing documents, including the note and mortgage, the Fannie Mae affidavit, the affidavit of title, and the settlement statement; the attorney also breached an escrow agreement and failed to honor closing instructions; the attorney's ethics history included two private reprimands, a three-month suspension, and a six-month suspension) and In re Weston, 118 N.J. 477 (1990) (attorney engaged in fraudulent misconduct by signing a deed and affidavit of title in the name of a client without authorization and then misrepresenting to the purchaser's attorney that the documents were in fact genuine).

Three-year suspension: In re Thomas, 183 N.J. 230 (2005) ("Thomas II") (attorney engaged in a fraudulent real estate transaction where the buyer contributed virtually no funds towards the purchase, the seller received no consideration for the sale of her house, and a "mortgage broker/realtor," and possibly the attorney, received all of the sale proceeds; prior admonition and one-year suspension).

Here, respondent's misconduct involved only one matter where he was not the mastermind but, rather, a player in W.M.'s scheme. His conduct does not rise to the level of the suspension cases, where generally more than one matter is involved or additional violations are present. Here, even taking into account respondent's violations of RPC 1.4(c) and RPC 1.5(b), a suspension is too severe a penalty.

We liken this case to Gahwyler, a censure case, where the attorney certified that a HUD-1 was an accurate representation of the transaction, knowing that it was not. Here, respondent did not certify the HUD-1, but allowed and facilitated the fraud by not preventing it. Gahwyler, like respondent, failed to provide a written fee agreement to his client. Gahwyler also engaged in a conflict of interest. Although that ethics infraction is not present in this case, respondent failed to adequately communicate with his client. The two violations "balance."

Taking a censure as a starting point, there is mitigation to consider: respondent's previously unblemished career of nearly thirty years at the bar. Taking that into account, we determine that a reprimand is the appropriate measure of discipline for respondent's misconduct.

Members Gallipoli, Wissinger, and Zmirich would impose a censure. Member Doremus did not participate.

One more point warrants mention. By way of this decision, we caution the bar that, in the future, more serious discipline, which could include a suspension, will be imposed for misrepresentations on closing documents. The onus is on closing attorneys to exercise a careful review of closing documents to ensure their accuracy.

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 Michael Daniel D'Angelo
Docket No. DRB 12-201

Argued: October 18, 2012

Decided: December 17, 2012

Disposition: Reprimand

Members	Disbar	Censure	Reprimand	Dismiss	Disqualified	Did not participate
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