SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-275
District Docket No. XIV-2012-0051E

IN THE MATTER OF	
WILFRID LeBLANC, JR.	
AN ATTORNEY AT LAW	

Decision

Decided: February 19, 2013

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f)(2). The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.2(d) (counseling or assisting a client in conduct the attorney knows is illegal, criminal or fraudulent), RPC 1.15(a) (failure to safeguard client funds), RPC 1.15(b) (failure to promptly disburse funds to a client or third party), RPC 4.1(a) (false statement of material fact or law to a third person), RPC 8.1(b) (failure to cooperate with disciplinary authorities), RPC 8.4(b) (commission of a criminal

act that reflects adversely on the attorney's honesty, trustworthiness or fitness as a lawyer), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). For the reasons expressed below, we determine that a two-year prospective suspension is warranted.

We originally considered this matter as a default, at our January 2012 session, under Docket No. DRB 11-291, District Docket No. XIV-2010-0308E. Respondent filed a motion to vacate the default, which we granted and allowed him time to file a verified answer to the complaint. He failed to do so or to otherwise cooperate with the OAE. The matter is again before us as a default.

Respondent was admitted to the New Jersey bar in 1998. In 2006, he received a censure for multiple violations of the RPCs in three matters, including gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, charging an unreasonable fee, failure to promptly remit funds to a third party, failure to expedite litigation, failure to abide by a court order, failure to cooperate with disciplinary authorities, conduct prejudicial to the administration of justice, and receipt of a prohibited non-refundable retainer in a family law matter. In re LeBlanc, 188 N.J. 480 (2006).

In 2007, respondent received a reprimand, in a default matter, for failure to cooperate with an ethics investigation. In re LeBlanc, 192 N.J. 107 (2007).

In 2008, respondent was suspended for three months for negligent misappropriation of client trust funds, failure to promptly deliver funds to a third party, lack of diligence, and failure to cooperate with disciplinary authorities. In re LeBlanc, 193 N.J., 478 (2008). That matter also proceeded as a default.

Most recently, respondent received a six-month suspension for failure to comply with the mandates of R. 1:20-20. In re LeBlanc, 202 N.J. 129 (2010). Again, respondent allowed the matter to proceed as a default. He remains suspended to date.

Service of the complaint was proper in this matter.

As noted previously, respondent filed a motion to vacate the default, which we granted and allowed him until February 3, 2012 to file a verified answer.[1] Respondent did not file an answer. By letter dated February 15, 2012, the OAE directed respondent to appear for "a demand interview," on March 7, 2012.

[1] Respondent addressed the allegations of the complaint in his motion but did not file a verified answer.

The letter was sent by certified and regular mail to respondent's home address in North Plainfield, New Jersey, and to a New York address provided to the OAE. A certified mail receipt indicating delivery to the North Plainfield address was received. The signature is not legible, but it may be respondent's. The regular mail to the New York address was not returned.[2] Respondent did not appear for the interview. As of the date of the OAE's certification of the record, respondent had neither filed an answer nor contacted the OAE.

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

Count One

In December 2002, respondent represented Tyrinda Tabron in her purchase of real estate from Glenda Sue Seals Johnson. Respondent prepared the deed and the HUD-1, acted as the settlement agent, and executed the closing agent's certification.

According to the HUD-1, the contract sale price was $130,000, the principal amount of the loan was $123,500, the

[2] The certification makes no mention of the certified mail to the New York address or the regular mail to the North Plainfield address.

cash from the borrower was $12,683.51, and the cash to the seller was $127,168.66.

Respondent witnessed Johnson's signature on the deed and took the acknowledgement. Paragraph (c) of the acknowledgement states that the deed was made "for $1.00 as the full and actual consideration paid or to be paid" for the transfer of title. The deed indicates that it was recorded in April 2003. The recording information reflects a realty tax of $1.75 and fees of $40, neither of which is the correct amount due on the conveyance of real estate for $130,000.

Respondent was aware of the sums exchanged at the closing. Thus, he was aware that the deed contained a false statement at the time it was both executed and recorded, that is, a $1.00 consideration, as opposed to the $130,000 price on the HUD-1. N.J.S.A. 2C:21-4a provides that it is a crime of the fourth degree if an individual "falsifies, destroys, removes, conceals any writing or record, or utters any writing or record knowing that it contains a false statement or information with purpose to deceive or injure anyone or to conceal any wrongdoing." By submitting the deed for recording knowing that it contained false information respondent violated N.J.S.A.. 2C:21-4(a).

The HUD-1 reflects that a realty transfer tax of $455 was due.[3] By misrepresenting the purchase price on the deed, respondent enabled his client to avoid payment of the $455 that was due on the conveyance of the property.

The complaint charged respondent with violating RPC 1.2(d), RPC 4.1(a), RPC 8.4(b), and RPC 8.4(c).

Count Two

In March 2004, Tabron submitted a uniform residential loan application to First Atlantic Recourses (Atlantic), seeking to refinance the mortgage on the above property, in the amount of $148,750. Theresia Motley took the application on behalf of Atlantic. In April 2004, Atlantic sent Tabron a "Final Condition Loan Disposition Counteroffer," proposing a mortgage from Chase Manhattan Funding (Chase), in the amount of $144,500. Respondent represented Tabron and acted as settlement agent in the refinance transaction.

The refinance loan closed on April 7, 2004. Respondent did not file a notice of settlement, prior to closing. He prepared

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[3] The HUD-1 refers to the charge as a fee, rather than a tax.

the HUD-1 and executed the closing agent certification on the settlement statement.

On April 13, 2004, Chase wired net mortgage proceeds in the amount of $146,082.10 to respondent's trust account for the Tabron refinance. Respondent did not disburse the closing proceeds in accordance with the HUD-1. Pursuant to the HUD-1, Tabron was to receive $12,734.69. In fact, she received no money. Respondent issued two checks to Motley, in the amounts of $610 and $2,657.50, out of the Tabron proceeds. Out of the proceeds he also issued three checks to Asia Smith, who is not identified in the record, in the amounts of $2,400, $100, and $13,000. In sum, out of the closing proceeds respondent issued five checks totaling $18,767.50 to two individuals who were not listed on the HUD-1 and who were not entitled to the proceeds.

The HUD-1 contained the following certification: "the HUD-1A ref. RESPA Settlement Statement is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction."[4]

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[4] According to the complaint, the HUD-1 also contained the following statement: "Warning: It is a crime to knowingly make

(footnote cont'd on next page)

Respondent's certification on the HUD-1 was false and he knew it to be false at the time he made it. Making a false statement on a HUD-1 is a crime under 18 U.S.C. §§ 1001 and 1010.

As previously indicated, the HUD-1 did not accurately reflect the sums that respondent received and disbursed in connection with the transaction. Respondent prepared the HUD-1 and forwarded it to the lender knowing that it contained materially false entries and knowing that the lender and others would rely on the representations therein.

In connection with the refinance, respondent oversaw the execution of Tabron's mortgage to Chase Manhattan Mortgage Corp. (the mortgage company). He did not forward the mortgage for recording after the closing. Tabron subsequently defaulted on the mortgage. In August 2008, Chase recorded the mortgage. In September 2008, more than four years after the closing, the mortgage company filed a lis pendens in connection with foreclosure proceedings.

(footnote cont'd)

false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment." That language, however, does not appear on the copy of the HUD-1 in the record.

The complaint charged respondent with violating RPC 1.1(a), RPC 1.2(d), RPC 1.15(a), RPC 1.15(b), RPC 4.1(a), RPC 8.4(b), and RPC 8.4(c).

Count Three

In July 2010, the OAE sent a letter to respondent, enclosing a grievance filed against him and requesting that he reply to the allegations, in writing, within ten days. The letter was sent by certified and regular mail to respondent's North Plainfield address and to a Roselle, New Jersey address. According to the complaint, respondent received the OAE's correspondence.[5] He did not provide a written reply to the grievance.

In August 2010, respondent telephoned the OAE and left a voicemail message stating that his reply was "in the mail." He also gave a telephone number where he could be reached. No reply was received.

In September 2010, the OAE wrote to respondent by regular mail addressed to his North Plainfield and New York addresses,

[5] The complaint states only that "Respondent received the OAE correspondence." It does not state which of the four envelopes sent to respondent he received.

requesting his written reply to the grievance.[6] Respondent received the OAE's correspondence.[7] He did not reply to the grievance or otherwise communicate with the OAE.

The complaint charged respondent with violating RPC 8.1(b).

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

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 Curreri, 212 N.J. 433 (2012) (attorney made misrepresentations on four RESPA statements, engaged in a

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[6] Although the complaint refers to this letter as exhibit 12, there is no such document in the record.

[7] Again, the complaint states that respondent received the correspondence, but does not state which of the letters he received.

conflict of interest, and failed to memorialize the basis or rate of his fee; several mitigating factors considered); 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); and 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; we considered in mitigation the attorney's emotional and physical difficulties during the time in question).

Censure: In re Gahwyler, 208 N.J. 353 (2011) (attorney certified the accuracy of a HUD-1 knowing that the entries were not correct; he also failed to provide a written fee agreement and represented the buyer and seller in a real estate transaction without first obtaining a written waiver of the conflict); 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 prior reprimand for abdicating his responsibilities as an escrow agent in a business transaction, thereby permitting his clients (the buyers) to steal funds that he was required to hold in escrow for the purchase of a business and for misrepresenting to the sellers that he held the escrow

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

matter, failed to disclose to the lender or on the RESPA the existence of a second mortgage taken by the sellers, a practice prohibited by the lender; in two other matters, the attorney disbursed funds prior to receiving wire transfers, resulting in the negligent invasion of clients' trust funds); In re Nowak, 159 N.J. 520 (1999) (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).

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, and failing 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) ("Thomas I") attorney involved in a conspiracy to defraud a mortgage lender, 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); 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); and 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).

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).

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 misrepresented the true nature of two transactions in closing documents, failed to record the Tabron mortgage for over four years, and failed to deliver closing proceeds to the proper parties. Further, he failed to cooperate with disciplinary authorities. He violated the charged RPCs, with the exception of RPC 1.15(a). Although respondent failed to correctly disburse closing funds, the money had been safely held in his trust account. Thus, we dismiss that allegation.

As to the appropriate measure of discipline, like the attorney in In re Nowak, supra, 159 N.J. 520, respondent made misrepresentations in the closing documents in two transactions. There is, however, far more to consider.

This is respondent's fourth default proceeding. Although in one, we allowed him an opportunity to participate in the disciplinary proceedings, he again ignored ethics authorities. Moreover, he has an extensive ethics history (censure, reprimand, three-month suspension, six-month suspension).

Progressive discipline is clearly appropriate in this matter. Indeed, this case is at least as serious as In re Frost, supra, 156 N.J. 416, where a two-year suspension was imposed. There, the attorney prepared misleading closing documents, breached an escrow agreement, and failed to honor closing instructions. Like respondent, it was the attorney's fifth brush with the disciplinary system.

We determine to impose a two-year prospective suspension.

Member Baugh 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 Wilfrid LeBlanc, Jr.
Docket No. DRB 12-275

Decided: February 19, 2013

Disposition: Two-year prospective suspension

Members	Disbar	Two-year suspension	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:		8				1

Julianne K. DeCore
Chief Counsel