SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-356
District Docket No. XIV-2008-0461

IN THE MATTER OF

ROGER J. WEIL

AN ATTORNEY AT LAW

Decision

Argued: February 21, 2013

Decided: April 16, 2013

Christina Blunda Kennedy appeared on behalf of the Office of Attorney Ethics.

David H. Dugan, III 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 (censure) filed by the District VIII Ethics Committee (DEC). A two-count complaint charged respondent with violations of RPC 1.15(b) (failure to turn over property belonging to the client); RPC 8.4(c)(misrepresentations in HUD-1 statements); RPC 1.15(a) (commingling personal funds with client funds in the

trust account); RPC 8.1 (lying to ethics investigators); and RPC 8.4(b) (commission of a crime). We determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1979. On September 12, 2011, he was reprimanded for engaging in a conflict of interest. There, he prepared a will for a client that named his wife as a contingent beneficiary, when he should have refused the representation. In re Weil, 208 N.J. 179 (2011).

The facts, which are largely undisputed, are set forth in the complaint. An anonymous grievant brought to the OAE's attention that respondent had inflated charges contained in a HUD-1 settlement statement. The lead case, the Ortega matter (below), involved a residential real estate closing.

The revelations of overcharges in the Ortega HUD-1 statement led the OAE to conduct a wider investigation of respondent's real estate files, in particular, 174 matters in which respondent acted as the closing agent, in 2006. Out of that group the OAE focused on five matters to highlight respondent's alleged improprieties. Of those five the OAE selected two matters, Woessner and Marin, for witness testimony.

I. The Ortega Matter

The facts are largely undisputed. Wilfredo and Rina Ortega retained respondent to represent them in the purchase of a house in Plainfield. Closing took place on March 8, 2005. Respondent overcharged the Ortegas $125 for a survey and $200 for title insurance. Although the actual cost of the title insurance was $1,844.50, respondent charged $2,044.50, according to the HUD-1. Also, the actual cost of the survey was $375. Yet, respondent charged $500 on the HUD-1.

The complaint alleged that respondent's act of placing inflated amounts on the HUD-1 amounted to the commission of a crime, a charge that respondent denied in his answer.[1]

At the November 13, 2008 OAE audit of respondent's files, respondent stated that, whenever he represented the buyer in a real estate transaction, he usually added a fee to the amounts charged for title and survey costs to compensate him for "post-

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[1] The hearing panel report states that the OAE agreed to dismiss the RPC 8.4(b) charge. Moreover, correspondence from respondent's counsel, including a brief to us, also refers to the OAE agreement to dismiss the RPC 8.4(b) charge. The OAE did not contest either account of its intent to dismiss or withdraw the charges.

closing services generally, not just to [sic] services relating to survey and title." Respondent added that he ceased this practice in about 2006. The OAE concluded that respondent had continued to inflate charges for recording expenses in real estate matters, despite his statement to the contrary. The complaint alleged that respondent lied to the OAE in that regard, in violation of RPC 8.1. Respondent denied both charges.

According to the Ortega fee agreement, respondent's representation was to end immediately following the closing of title, after providing the Ortegas with the deed and owner's title insurance policy. This provision notwithstanding, respondent charged the Ortegas for additional post-closing work. Respondent conceded that he did not prepare a timesheet or other documentation to substantiate time or costs he had incurred to complete "extra," post-closing work that he was required to perform. He denied that portion of the complaint that alleged that the Ortegas had no knowledge of his additional undisclosed fees and that he had not performed post-closing legal services to offset the overcharges.

According to the complaint, respondent told the OAE investigator that he had stopped using inflated closing costs sometime in 2006, after a client had questioned him about the

practice. Respondent's answer clarified that he had advised the investigator that he had ceased inflating the charges for surveys and title insurance when he disclosed the practice to a client, who then objected to it. According to respondent, he continued the overcharging practice with regard to filing fees for some time after 2006.

At the DEC hearing, OAE investigator G. Nicholas Hall testified about respondent's alleged lie. Hall explained that he had come to realize later that respondent had limited his statement to the OAE, during the audit, to survey and title overcharges, not recordation fees.

II. The Woessner Matter

Diane Woessner testified that she retained respondent to represent her in the purchase of a house in Warren. The closing took place on December 2, 2006. Woessner recalled that respondent had provided her with information about his legal fee and that he had sent her two September 26, 2006 letters, both of which contained information about his fees and the transaction itself.

When asked about the HUD-1 statement for the closing, which showed legal fees to respondent of $400 and another $500 coming

from borrower's funds (both on line 1107), Woessner stated that she "probably [paid the $500] within the closing," having previously given respondent a check for $400 on October 5, 2006. She recalled, however, having expected to pay other charges, in addition to the $900 for respondent's fixed legal fee.

Woesssner could not recall if respondent had explained to her that the $395 charge represented his fee for the title report examination.

Woessner had no concrete recollection whether she had authorized respondent to take other fees, in addition to the $900, or whether respondent had explained to her that recording fees on the HUD-1 were estimates and that he would keep any excess to compensate him for post-closing work. She recalled, however, having followed his instructions "step-by-step." She did not recall receiving a refund from respondent, after the closing.

On cross-examination, Woessner offered that she had been pleased with respondent's representation, so much so that she and her parents had taken respondent to dinner and "had treated" him, in celebration of her purchase.

III. <u>The Marin Matter</u>

Gustavo Marin testified briefly about respondent's representation of his interests. When shown a copy of respondent's February 1, 2007 retention letter for the transaction, Marin did not recognize it. Marin denied that respondent had advised him that he would keep any part of the title examination charge, the recording fee for the deed ($220) and mortgage ($390), or the mortgage release fee ($200).

On cross-examination, Marin acknowledged that the above figures, which appear at Lines 1103 and 1201 of the HUD-1, were actually part of the seller's $7,000 concession to the buyer. Therefore, none of those funds were to be paid over to him.

The OAE investigator, Hall, prepared a table showing alleged overcharges in another four matters culled from the original 174 transactions: Dios from Fanno; Marin from Laski; Nota from Klehr; and Barnett from Stith. Hall testified about the sampled matters, reiterating his belief that respondent had overcharged his clients in the matters. The clients did not testify, except for Marin.

In his answer, respondent explained that, in each of the five matters cited by the OAE, his $395 charge for title

examinations was represented legal services that he had performed. Respondent contended that the charges

> were legitimate, not "padded", were identified on the HUD-1 forms and were fully explained to the clients at the closings. The other three recording fees in each instance were inflated in the sense that they exceeded the amounts respondent actually disbursed to the county clerks. However, this was consistent with standard practice among real estate lawyers at the time, who routinely charged inflated amounts as recording costs in order to pay themselves for their post-closing services. Thus, the allegations of paragraph 12 are essentially denied.
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> [1A¶12.][2]

So, too, the complaint contained an overcharge "average" of $865 for each of the five matters. It alleged that respondent, having acted as the closing agent in 174 residential real estate closings in 2006, overcharged his clients $150,510 (174 X $865) that year.

For his part, respondent conceded that he acted as closing agent in all 174 of the transactions. He contested the OAE figure of $150,510 as inaccurate, however:

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[2] "A" refers to respondent's answer.

> There was [sic] some additional amounts charged in some if not all of those closings. However, Respondent will have to perform his own examination of the records to determine any additional amounts. Not all 174 were charged additional amounts for survey and title insurance costs. Excess charges for recording fees may not have been improper when seen as payment for significant post-closing services, which was then and still is standard practice among real estate lawyers.
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> [1A¶14.]

Respondent also took issue with some of the OAE calculations of overcharges. For example, the five OAE matters referred to his $395 charge as an "overcharge," designated as "Title Examination." Respondent testified that they were legitimate charges, in each instance, for actual services that he had performed, namely, his personal review of the title, prior to the closing. Respondent also stated that his pattern and practice was to tell the client about the charge at the closing, when doing a line-by-line review of the HUD-1 with the client.

Respondent acknowledged that his HUD-1 reference could have more accurately described the actual activity involved, but he insisted that it was for work performed. He also noted that, in

the Marin matter, the $395 was paid not by the client, but by the seller, as part of a seller's concession.

With regard to the "Discharge Mortgage" overcharges listed in the OAE table for the five matters, respondent testified that they were actually charges to the seller, not his clients. In all five matters, the sellers were represented by counsel at closing. The attorneys were aware that respondent would receive a portion of the charges and they explained it to their clients.

In the Dios matter, the OAE table depicts a $100 fee to discharge a "non-existent" mortgage. According to respondent, although the Dioses had paid off their mortgage debt, the mortgage had not yet been cancelled of record. Therefore, the parties escrowed $500 at closing to clear the mortgage, the additional $100 to be used for the recording fee. He claimed that the fee was, thus, proper.

With regard to disclosure, to clients about his fees, respondent testified as follows:

> Okay. When the client would call one of the things they would want to know was what I'd be charging them. Certain of them had already called other attorneys. Others had said that they would call another lawyer, too, after they spoke with me.
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> So what I would explain to them was what my <u>base legal fee</u> would be. I'll explain to them about what the cost would be

> for the title examination [the $395 charge]. If there was going to be a cost for settlement fee or something of that nature I'll also explain that to them. And I'll tell them what the cost of that was.
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> I would repeat that at closing. My practice was giving the, if I had the closing statement in advance of the closing, I would get it to the client so they could look at it. But without exception I would go over the closing statement at closing item-by-item with them. Tell them where the funds were going to with the exception at times the recording fees which I didn't do always because of the practice that it was just in vogue in the 33 years I've been practicing law [emphasis added].
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> [T154-25 to T155-20.][3]

In a January 31, 2013 brief to us, respondent's counsel again argued that the projected overcharges of $150,510 were erroneous

> because it is based upon incorrect overcharge figures. As just explained, the $395 item entitled "Title Examination" was for legitimate services by respondent, and the mortgage discharge figures were charges to the sellers, not to respondent's clients. After these items have been deleted, the client overcharge amounts for recording deeds and mortgages in the five random files would be $1,845, or an average of $369 per

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[3] "T" refers to the December 20, 2011 transcript of the DEC hearing.

case. (If that figure is projected over respondent's 174 closings in 2006, the total overcharge would be $64,206, not the $150,510 figure asserted by OAE).

[Rb4.][4]

Respondent testified that he had used a standard written fee agreement for real estate matters, during the period in question. The agreement called for "incidental post-closing" legal services at a rate of $250 per hour.[5] Post-closing legal services, he claimed, were commonplace. Respondent's counsel described the scenario in his brief to us:

> Although the fees for those services were derived from charges related to recording costs, the services themselves represented a broader range of issues. In his DEC panel testimony, in addition to Ortega (discussed earlier) respondent offered a series of examples of incidental post-closing services he performed during the period 2006-2007 taken from the very same five files OAE had randomly selected. In the Barnett matter, post-closing respondent spent a minimum of three hours to resolve an unpaid water bill and to verify, pay and discharge two open Public Defender liens. (T. 132:19-135:8; Exhibit R-8). In the Woessner matter

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[4] "Rb" refers to respondent's counsel's January 31, 2013 brief to us.

[5] The Woessner and Ortega fee agreements contained this language.

> (another of OAE's random files), post-closing respondent had to deal with a variety of issues relating to the fact that there was an old un-capped well on the property being conveyed. Respondent spent over three hours securing municipal approval for the recapping, seeing that the recapping work was accomplished properly, and disbursing funds from escrow to pay the well contractor. Respondent received payment for about a third of his time in the form of an escrow monitoring fee [citation omitted].
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> [Rb4-Rb5.]

Respondent never charged his clients outside of the HUD-1. He never billed them at his hourly rate for the post-closing work in their matters. In fact, according to respondent's counsel, had respondent done so, the clients would likely have paid more.

The OAE did not refute respondent's assertion that, although he inflated certain charges on the HUD-1s in these matters, he was entitled to fees for post-closing legal services. Likewise, the OAE investigator acknowledged that his review of the files in question did not turn up any post-closing billing by respondent. There were no allegations that respondent charged excessive fees in the matters.

At the conclusion of the DEC hearing, the panel chair permitted respondent's counsel, over the presenter's objection,

to select five transactions (including Ortega), as the OAE had done, that would further corroborate a pattern of post-closing legal services performed by respondent.

In each of the transactions, Ortega, McLeod, Grub, Thomas, and Roberts, respondent performed post-closing work addressing a variety of issues, including an occupancy issue, seller improvements made without proper permits, title insurance issues, lost mortgage documents that were needed for recordation, and the like. Respondent estimated that he had spent the following time for additional legal services: Ortega (five to seven hours); McLeod (more than four hours); Grub (more than three hours); Thomas (more than four hours); and Roberts (two hours plus additional time by his staff).

The remaining count of the complaint charged respondent with commingling or having "accumulated personal funds in his trust account by failing to remove earned legal fees and deposit them into his attorney business account." As of December 31, 2008, $608,948.91 in pre-2006 fees remained in respondent's trust account, an alleged violation of <u>RPC</u> 1.15(a).

For his part, respondent readily admitted that he had left old fees in his trust account, in violation of the rules. All

commingled funds have since been removed from respondent's trust account.

The DEC found respondent guilty of having violated RPC 1.15(b), through the overcharges on the HUD-1 statements:

> The panel finds that the fees related to title and survey are set by the selected vendors. The recording fees are standard and set by each county. As a result, the Respondent violated RPC 1.15(b) by charging his clients any amount above the actual fees and retaining those excess fees. No refunds were given to his clients regarding fees associated with title, surveys or recordings. In the event that post closing work was required, Respondent should have charged his clients $250 per hour for said work as outlined in the retainer letter.
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> [HPR9.][6]

The DEC also found that the overcharges in the HUD-1 statements operated to mislead the lenders and the buyers about the actual settlement costs, violations of RPC 8.4(c).

As previously noted, the DEC dismissed the RPC 8.1 and RPC 8.4(b) charges, stating, "[t]he panel unanimously concluded that respondent did not violate RPC 8.1 or RPC 8.4(b). Additionally

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[6] "HPR" refers to the hearing panel report.

the OAE specifically requested that these two allegations be dismissed and the panel unanimously agreed."

The DEC recommended a censure, without citing supporting case law. The DEC noted that

> [an] admonition was not sufficient since Respondent benefited at the cost of his clients for an unspecified period of time, but clearly during 2006 and 2007. In addition he continued to charge excessive fees after he was audited. The panel did not recommend suspension due to Respondent's cooperation and candor during the hearing.
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> [HPR10.]

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence. We are unable to agree with all of the DEC findings, however.

Respondent represented 174 clients in real estate transactions, in 2006. Part of his pattern and practice included a $395 charge for his pre-closing title examination. Respondent testified that he had earned that fee in every instance, including the matters selected by the OAE for scrutiny. He also inflated the amounts for some ordinary closing costs, such as surveys and recording fees. He readily admitted that he did so in order to create a fund, from borrower's funds, to pay for

post-closing legal services that he typically performed. Although respondent used a standard fee agreement that called for post-closing fees, to be billed separately at a rate of $250 per hour, he never billed the clients "outside of the HUD-1."

The OAE presented a sample of only five transactions, in addition to the lead transaction, Ortega, to support the allegation that respondent had, among other things, violated RPC 1.15(b) by failing to return the charges to the clients, to whom, the OAE argued, the funds belonged.

RPC 1.15(b) states, in relevant part,

> Upon receiving funds . . . in which a client . . . has an interest, a lawyer shall promptly notify the client . . . . Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client . . . any funds . . . that the client . . . is entitled to receive.

The issue before us is whether the clients in these matters were entitled to the return of the $395 title examination fee and any portion of the HUD-1 overcharges that respondent intentionally used to fund post-closing legal services.

On the one hand, respondent was adamant that he had earned the $395 title examination fee in each instance. He also testified that he had discussed the overcharges with his

clients, before the closing, and that they had agreed that he could use the excess funds for post-closing fees. On the other hand, the OAE presented testimony from two clients, in an effort to establish that there was no such agreement with the clients (at least those two).

The OAE's first witness, Woessner, recalled that she had authorized respondent to take $900 in fees and expected to pay for additional charges. She did not recall what those charges were. She was pleased with respondent's representation.

The second witness, Marin, was asked, if he recognized the fee agreement in the matter. He did not. He seemed to recall, however, that respondent had not explained to him the $395 charge for a title review or that overcharges were going to respondent, as fees for post-closing work.

As to the weight of the witnesses' testimony, Woessner's recollection of events was vague on issues bearing on respondent's culpability. Marin's testimony was unhelpful, not because he was untruthful, but because he did not even recall the fee agreement that initiated the representation. Therefore, the value of everything that he offered after that statement is questionable.

Respondent's testimony, however, was clear -- he had advised all of his clients that he was establishing a fund for fees by inflating certain charges on the HUD-1. In fact, this ethics matter arose out of just such an explanation to a client, who thought that his practice of inflating figures was improper and apparently tipped off ethics authorities to respondent's activities.

It is true that it was improper for respondent to have inflated charges on the HUD-1 statements in all of these transactions. That impropriety will be addressed below under a different RPC. The question, however, is whether, under RPC 1.15(b), the clients were entitled to receive the overcharges.

The agreements between respondent and his clients provided for respondent's use of certain overcharges as fees for work performed post-closing. Obviously, if he did not earn fees in an amount equal to the excess funds, the excess funds should have gone back to the clients. Significantly, however, respondent's counsel methodically went through each of the six matters at issue here: Ortega, Dios, Marin, Mota, Barnett, and Woessner. He questioned respondent about post-closing work performed for those clients. Respondent's testimony of work performed post-

closing was supported with documentation. There is no indication that respondent did not earn the fees that he collected.

In fact, at oral argument before us, respondent's counsel stated that the average fee in these matters was $1,600 and that, if respondent had charged that amount as a flat fee, it would have been in line with residential real estate legal fees at the time.[7]

Moreover, as noted previously, respondent was permitted to introduce, in four random matters, evidence that corroborated his version of events, namely, that he earned post-closing fees.

Finally, respondent testified, and the OAE investigator conceded, that respondent never billed any of his clients separately for the post-closing work. He only received those fees from the overcharges.

When we combine the lack of clarity in the witnesses' testimony, respondent's clear recollection of the events in the matters, the documentation of the work that he performed, and

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[7] As to remaining 168 real estate transactions in the OAE's pool, we have no information and we will not speculate about them here. Instead, we limit our review to the six matters specifically discussed in the proceedings below.

the fact that respondent never separately billed his clients for post-closing work that he actually performed, we conclude that there is no clear and convincing evidence that respondent should have turned over the funds to the six clients in question but, instead, was entitled to them as fees. We, thus, dismiss the RPC 1.15(b) charge.

Unquestionably, however, respondent engaged in rampant misrepresentation by placing false information on the HUD-1 statements in 174 matters. He admitted inflating the figures for survey and title charges in those matters, as well as recording fees for mortgages, deeds, and cancellation of mortgages. That he did so in order to fund future fees or that, as he has argued, other lawyers were doing the same thing does not mitigate his wrongdoing. A HUD-1 requires the closing agent to certify that the information contained in it is accurate, to the best of the closing agent's ability. It is not an invitation for creativity, as respondent utilized it for fees. We, therefore, find that respondent's conduct in this regard violated RPC 8.4(c).

Finally, respondent admitted the sole charge in count two: that he left in his trust account $608,948.91 of his own fees, earned prior to 2006, commingled with client and escrow funds,

for at least three years (December 31, 2005 to December 31, 2008), in violation of RPC 1.15(a).

The discipline imposed for misrepresentations on closing documents has ranged from a reprimand to a term of suspension, depending on the seriousness of the conduct, the presence of other ethics violations, the harm to the clients or third parties, the attorney's disciplinary history, and other mitigating or aggravating factors. See, e.g., In re Barrett, 207 N.J. 34 (2011) (reprimand for attorney who 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 $8,700 to them; the RESPA also listed a $29,000 payment by the buyer, who paid nothing; finally, two disbursements totaling more than $24,000 were left off the RESPA altogether; the attorney had no record of discipline); In re Mulder, 205 N.J. 71 (2011) (reprimand for attorney who certified that the RESPA that he prepared was a "true and accurate account of the funds disbursed or to be disbursed as part of the settlement of this transaction;" specifically, the attorney certified that a $41,000 sum listed on the RESPA was 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 was viewed as an aggravating factor; mitigating circumstances justified only a reprimand); In re Spector, 157 N.J. 530 (1999) (reprimand for attorney who concealed secondary financing to the lender through the use of dual RESPA statements, "Fannie Mae" affidavits, and certifications); In re Sarsano, 153 N.J. 364 (1998) (reprimand for attorney who concealed secondary financing from the primary lender and preparing two different RESPA statements); In re Blanch, 140 N.J. 519 (1995) (reprimand for attorney who failed to disclose secondary financing to a mortgage company, contrary to its written instructions); In re Agrait, 171 N.J. 1 (2002) (reprimand for attorney who, despite being obligated to escrow a $16,000 deposit shown on a RESPA, failed to verify it and collect it; in granting the mortgage, the lender relied on the attorney's representation about the deposit; the attorney also failed to disclose the existence of a second mortgage prohibited by the lender; the attorney' misconduct included misrepresentation, gross neglect, and failure to communicate to the client, in writing, the basis or rate of his fee); In re Gahwyler, 208 N.J. 253 (2011)

("strong censure" for attorney who made multiple misrepresentations on a HUD-1, including the amount of cash provided and received at closing; the attorney also represented the putative buyers and sellers in the transaction, a violation of RPC 1.7(a)(1) and (b); mitigating factors included his unblemished disciplinary record of more than twenty years, his civic involvement, and the lack of personal gain); In re Gensib, 206 N.J. 140 (2011) (censure for attorney who, in twenty-seven matters for real estate clients, engaged in dishonest conduct by failing to advise his clients that he had inflated their title insurance costs by $300 each on the RESPA, in order to cover possible later charges from the title company; in aggravation, the attorney also failed to safeguard client funds by placing the inflated amounts in his attorney business account, instead of his trust account; when a client complained, the attorney returned the inflated sums to the clients; prior reprimand for improper acknowledgment of signatures in a real estate matter); In re Soriano, 206 N.J. 138 (2011) (censure for attorney who assisted a client in a fraudulent real estate transaction by preparing and signing a RESPA statement that misrepresented key terms of the transaction; also, the attorney engaged in a conflict of interest by representing both the sellers and the

buyers and failed to memorialize the basis or rate of his fee; the attorney had received a reprimand for abdicating his responsibilities as an escrow agent in a business transaction, thereby permitting his clients (the buyers) to steal funds that he was required to hold in escrow for the purchase of a business and for misrepresenting to the sellers that he held the escrow funds); In re Frohling, 205 N.J. 6 (2011) ("strong" censure for an attorney who, in three "flip" real estate transactions, falsely certified on the settlement statements that he had received the necessary funds from the buyers and that all funds had been disbursed as represented on the statements; the attorney's misrepresentations, recklessness, and abdication of his duties as closing agent facilitated fraudulent transactions; the attorney also engaged in conflicts of interest by representing both parties in the transactions and was found guilty of gross neglect and failure to supervise a non-lawyer employee; prior reprimand); In re Khorozian, 205 N.J. 5 (2011) (censure for attorney who represented the buyer in a fraudulent transaction in which a "straw buyer" bought the seller's property in name only, with the understanding that the seller would continue to reside there and would buy back the property after one year; the seller was obligated to pay a portion of the monthly carrying

charges; the attorney prepared four distinct HUD-1 forms, two of which contained misrepresentations of some sort, such as concealing secondary financing or misstating the amount of funds that the buyer had contributed to the acquisition of the property; aggravating factors included the fact that the attorney changed the entries on the forms after the parties had signed them and that he either allowed his paralegal to control an improper transaction or he knowingly participated in a fraud and then feigned problems with recall of the important events and the representation); In re Scott, 192 N.J. 442 (2007) (censure for attorney who failed to review the real estate contract before the closing; failed to resolve liens and judgments encumbering the property; prepared a false HUD-1 statement misrepresenting the amount due to the seller, the existence of a deposit, the receipt of cash from the buyer, and the amount of her fee, which was disguised as disbursements to the title company; prepared a second HUD-1 statement listing a "Gift of Equity" of $41,210.10; issued checks totaling $20,000 to the buyer and to the mortgage broker, based on undocumented loans and a repair credit, without obtaining the seller's written authorization; failed to submit the revised HUD-1 to the lender; failed to issue checks to the title company, despite entries on the

HUD-1 indicating that she had done so; misrepresented to the mortgage broker that she was holding a deposit in escrow; and failed to disburse the balance of the closing proceeds to the seller; violations included RPC 1.1(a) (gross neglect), RPC 1.15(b), RPC 4.1(a), and RPC 8.4(c); the attorney had received a prior admonition and a reprimand); In re De La Carrera, 181 N.J. 296 (2004) (three-month suspension in a default case for attorney who, in one real estate matter, failed to disclose to the lender or on the RESPA the existence of a secondary mortgage taken by the sellers from the buyers, a practice prohibited by the lender; in two other matters, the attorney disbursed funds prior to receiving wire transfers, resulting in the negligent invasion of clients' trust funds); In re Nowak, 159 N.J. 520 (1999) (three-month suspension for attorney who prepared two settlement statements that failed to disclose secondary financing and misrepresented the sale price and other information; the attorney also engaged in a conflict of interest by arranging for a loan from one client to another and representing both the lender (holder of a second mortgage) and the buyers/borrowers); In re Swidler, 205 N.J. 260 (2011) (six-month suspension imposed in a default matter for attorney who, in a real estate transaction in which the attorney represented both parties without curing a

conflict of interest, acted dishonestly in a subsequent transfer of title to property; specifically, in the first transaction, the buyer, Rai, gave a mortgage to Storcella, the seller; the attorney, who represented both parties, did not record the mortgage; later, the attorney represented Rai in the transfer of title to Rai's father, a transaction of which Storcella was unaware; the attorney did not disclose to the title company that there was an open mortgage of record; the attorney was also guilty of grossly neglecting Storcella's interests, depositing a check for the transaction in his business account, rather than his trust account, and failing to cooperate with disciplinary authorities; prior reprimand and three-month suspension); In re Fink, 141 N.J. 231 (1995) (six-month suspension for attorney who failed to disclose the existence of secondary financing in five residential real estate transactions, prepared and took the acknowledgment on false RESPA statements, affidavits of title, and Fannie Mae affidavits and agreements, and failed to witness a power of attorney); In re Alum, 162 N.J. 313 (2000) (one-year suspended suspension for attorney who participated in seven 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 one-year suspension was suspended and he was placed on probation); In re Newton, 159 N.J. 526 (1999) (one-year suspension for attorney who prepared false and misleading RESPA statements, took a false jurat, and engaged in multiple conflicts of interest in real estate transactions); and In re Frost, 156 N.J. 416 (1998) (two-year suspension for attorney who prepared misleading closing documents, including the note and mortgage, the Fannie Mae affidavit, the affidavit of title, and the settlement statement; the attorney also breached an escrow agreement and failed to honor closing instructions; the attorney's ethics history included two private reprimands, a three-month suspension, and a six-month suspension).

Here, respondent also commingled in his trust account a large sum of personal funds derived from legal fees, an offense usually met with an admonition. See, e.g., In the Matter of William P. Deni, Sr., DRB 07-337 (January 23, 2008) (admonition imposed after a random audit disclosed that, between 2004 and

2007, the attorney had routinely deposited earned legal fees into his trust account, rather than his business account, resulting in the commingling of more than $1,000,000 of his personal funds with client funds; other recordkeeping deficiencies also found) and In re Farynyk, 143 N.J. 302 (1996) (admonition imposed on attorney who had accumulated almost $431,000 in legal fees in his trust account, which we found to be a passive commingling of personal and client trust funds, in violation of RPC 1.15(a)).

Respondent's multitude of misrepresentations on HUD-1 statements is similar to that of the attorney in Gensib, who inflated the title charges in twenty-seven real estate matters. Gensib received a censure. The difference is that, unlike respondent, Gensib did not earn the overcharges.

The other censure cases, Gahwyler, Soriano, Frohling, and Khorozian, involve more actively deceitful conduct by the attorneys than is present here. On the other hand, respondent's inflating of costs on such a very large scale counter-balances that distinction.

In mitigation, respondent readily admitted the relevant violations. In aggravation, however, there is his prior reprimand,

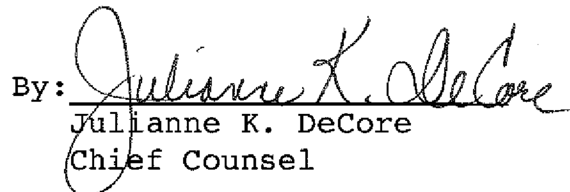
the sheer number of cases involved, and the large sums commingled in the trust account, for which at least a censure is required.

In further aggravation, although respondent did not receive fees in excess of what other attorneys were charging for similar representations, he did not adequately disclose, at the onset of the representation, what the total fees to his clients could be.

For the totality of respondent's misconduct, we determine to impose a three-month suspension. Chair Pashman and Members Clark and Zmirich voted for a censure. Member Baugh voted for a reprimand.

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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

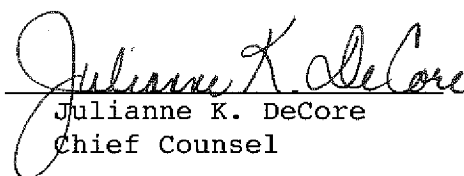
In the Matter of Roger J. Weil
Docket No. DRB 12-356

Argued: February 21, 2013

Decided: April 16, 2013

Disposition: Three-month suspension

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



Julianne K. DeCore
Chief Counsel