SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-428
District Docket No. XIV-2009-0284E

IN THE MATTER OF	
EVELYN F. GARCIA	
AN ATTORNEY AT LAW	

Corrected Decision

Argued: May 16, 2013

Decided: June 25, 2013

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

Respondent appeared pro se.

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 ("ninety-day" suspension) filed by the District XIII Ethics Committee (DEC). A three-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.5(b) (failure to set forth in writing the rate or nature of the fee), RPC 1.15(a) and (b), cited merely as negligent misappropriation, but more

properly (a) (failure to safeguard client or escrow funds held in the trust account), RPC 1.15(d) and R. 1:21-6 (recordkeeping violations), RPC 5.4(c) (a lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the attorney's professional judgment in rendering such legal services), RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), and RPC 8.4(c) (misrepresentation). We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1998. She has no prior discipline.

The record in this case involves respondent's role in two real estate transactions regarding the same property, 58 Sefton Circle, Piscataway.

I. The Mike and Stacy Jackson to Lona Brown Transaction

In the Jackson to Brown transaction, respondent represented the buyer, Lona Brown, and acted as the settlement agent. In her answer, respondent admitted that she had not represented Brown previously to that and did not set forth the rate or basis of her fee, in writing, for the representation. Her counsel's post-

hearing summation admitted that her conduct in this regard violated RPC 1.5(b).

The majority of the remaining charges against respondent address the manner in which, as settlement agent, she disbursed the settlement funds, all of which came from the lender, GMAC, and allegations that she engaged in a fraudulent scheme with George Brunson (Brunson), who worked with, or for, several mortgage companies to obtain loans for home buyers, in this case to the detriment of GMAC. Respondent denied that she had knowingly engaged in any wrongful behavior.

According to respondent, the Jackson to Brown matter represented her second ever real estate transaction. It came about when she met George Brunson, who she understood was a real estate broker. She had been introduced to Brunson by another client and had been involved with him in a prior matter.

Respondent testified as follows:

> So my client wanted me to meet George, and he asked me if I did real estate. I told him I really don't do real estate, but at that time I had been practicing full-time for two years because I had retired as a teacher in 2002. Before that, I did part-time municipal court work, things like that. But I was full-time for -- from the summer of 2002 when school finished, and I told him I really didn't do real estate. And he said,

> well, I have a few transactions, if you could find a reliable paralegal.
>
> Now, at the time, I was renting a very small office, but I had access to the whole suite from Mr. Ron Reba, and he had —
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> Q. [Respondent's Counsel] Mr. Ron Reba is an attorney?
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> A. Now he's a judge, I understand, Superior Court judge. He was my landlord. And he had Kathy Schaffer working for him, and she did some work on the side, too. We had gotten friendly. And I knew that she had done real estate work for the last 30 years as a paralegal.
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> [2T104-1 to 20.][1]

According to respondent, Brunson was "a person that elicited trust. He was always dressed very well, he was an older gentleman, he spoke very well. He reminded me of my grandfather. So I just trusted him so much."

Respondent explained her initial discussion with Brunson about the Jackson to Brown matter:

> Just in general, this transaction, when George Brunson approached me, he told me that there was a lawyer named Spiegel who had put together the transaction, but he was sick in the hospital or something, and I

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[1] "2T" refers to the transcript of the April 4, 2012 DEC hearing.

thought that we were supposed to pay him something but -- anyway, because he had done some work. He had put together the contract for sale, [Brown] had already gotten approval for the loan, George worked for several mortgage companies. Since I was not well versed in how this worked, I didn't understand that the mortgage companies were really brokers, that the monies came from a bigger company.

Q. You mean a lender?

A. Right. I really didn't understand any of that. Kathy had explained everything to me. She was really well versed in this. So everything was already set up. And the way Mr. Brunson explained it to me, he said all you have to do is sit down and sign the HUD-1s -- I knew the HUD-1s only from what I learned in the ICLE. I had just recently gone to the ICLE, the mandated course in '98. And that's all I knew. But I knew what HUD-1s were from my own closing from my own house, too, but I didn't know how to prepare one. And it was -- I didn't understand it at all. Kathy explained it to me. I thought I understood it but I guess I did not. I didn't understand all those numbers and all those lines. And I kept asking her questions, and she kept telling me, don't worry about it, I'll prepare everything, everything will be fine.

[2T106-8 to 2T107-11.]

The sale price for the transaction was listed as $355,000, with financing from GMAC in the amount of $300,000. Although respondent was questioned at length about the individual disbursements in the matter, she could shed little light on them.

Ultimately, she conceded, under questioning at the DEC hearing, that the Office of Attorney Ethics' (OAE) forensic reconstruction of the transaction must be an accurate reflection of the disbursements. The OAE had compiled the table with the benefit of subpoenaed bank records. OAE investigator Arthur Garibaldi testified at length, consistently with the bank records, which are, as follows:

DATE MADE	DATE POSTED	CHECK #	TO/FROM	REC'D/DISB'D	CLIENT BALANCE
08/12/04	08/12/04		Wire- GMAC	288,044.06	288,044.06
08/16/04	06/16/04	1006	Fleet Bank- Official Check	52,000.00	236,044.06
08/12/04	08/16/04	1016	Arlene Brunson	19,764.21	216,279.85
08/12/04	08/17/04	1008	Sheriff, Middlesex County	246,822.97	-30,543.12
08/16/04	08/17/04		Fleet Bank- Official Check	52,000.00	21,456.88
08/12/04	08/18/04	1007	Alan B. Siegel	5,000.00	16,456.88
08/12/04	08/23/04	1020	Christopher Omogbai	300.00	16,156.88
08/12/04	08/24/04	1014	Twp. of Piscataway	1,553.88	14,603.00
08/12/04	08/24/04	1011	Twp. of Piscataway	95.00	14,508.00
08/12/04	08/26/04	1018	Clerk, Middlesex County	210.00	14,298.00
09/19/04	08/26/04	1019	Clerk, Middlesex County	70.00	14,228.00
08/12/04	08/26/04	1009	Clerk, Middlesex County	2,783.00	11,445.00
08/12/04	09/01/04	1021	Evelyn Garcia	750.00	10,695.00
08/12/04	09/01/04	1022	Evelyn Garcia	345.00	10,350.00
08/12/04	09/03/04	1012	General Land Abstract	2,010.00	8,340.00
09/15/04	09/16/04	1024	Arlene Brunson	2,400.00	5,940.00
11/09/04	11/22/04	1056	East Coast Termite	1,590.00	4,350.00

DATE MADE	DATE POSTED	CHECK #	TO/FROM	REC'D/DISB'D	CLIENT BALANCE
12/24/04	12/24/04	1068	George Brunson	3,000.00	1,350.00
12/31/04	12/31/04	1069	George Brunson	600.00	750.00

[2C¶16;Ex.7.][2]

Respondent's disbursements did not comport with either of the HUD-1s that she used at the closing. When asked why she had Brown sign two different HUD-1s for a single transaction, respondent stated:

> Kathy did at least a dozen [HUD-1s] in two days and she would tell me, sign them just in case we need them, or if you're not there. And so I would sign them. Sometimes she would tear them up, sometimes she didn't. But we had at least half a dozen of them and they were signed.
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> [2T108-20 to 25.]

Respondent failed to make the following disbursements, shown on the HUD-1 statement that had been approved by the lender: Line 603, cash to seller ($43,602.75); Line 703 commission at settlement ($23,100); Line 1303 NJ Manufacturers'

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[2] "C" refers to the formal ethics complaint.

judgment pay-off ($3,000); Line 1304 Thrift Investment judgment pay-off ($3,000); and Line 1305 NJDMV judgment pay-off ($750).

The complaint charged respondent with gross neglect (RPC 1.1(a)) for her failure to pay the judgments at closing, and for the four months thereafter. However, respondent testified that Brunson took time to negotiate the liens down and that she then disbursed funds to him to pay off the judgments. Respondent later received a title policy showing that there were no judgment liens on the property.

The Jacksons' attorney, Alan B. Siegel, also testified at the DEC hearing. He recalled that there had been testimony from the Jacksons, in their bankruptcy matter, to the effect that the judgments had appeared on a credit report. Siegel had no contact with the Jacksons after the closing, but neither they nor the judgment creditors complained to him that they had not been paid.

The OAE reconstruction disclosed the following disbursements from the settlement proceeds that were not approved by GMAC or listed on the HUD-1: Check #1006 to Fleet Bank ($52,000), representing a buyers' deposit in the Jackson to Brown transaction; Check #1016 ($19,764.21) to Arlene Brunson;

Check #1068 ($3,000) to George Brunson; Check #1069 ($600) to George Brunson; and Check #1024 ($2,400) to Arlene Brunson.

The amounts listed on the HUD-1, as received from Brown, were also inaccurate. According to the HUD-1, Brown contributed funds as follows: Line 201 ($3,000) for a deposit and Line 303 ($46,938.55) cash from borrower.

At the DEC hearing, Brown, who received a total of $35,000 for her participation as a straw purchaser in three Brunson transactions, including this one, testified that she did not contribute any funds toward the closing: "I never gave [respondent] a dime of my personal money." Yet, according to one version of the HUD-1, respondent was supposed to collect funds from Brown in the amount of $46,938.55. The other HUD-1 called for respondent to collect $51,488.55 from Brown.

Brown recalled, however, that respondent had explained the documents at closing to her, stating "she did her best, you know," and was not deceptive.

Respondent could not explain why she had made the payments in the manner that she did. On cross-examination, the following exchange took place with the presenter:

> Q. You said you don't dispute the reconciliations; right?

A. No.

Q. So the items that Mr. Garibaldi testified to that were not on the HUD that should have been, you don't dispute that; right?

A. No.

Q. And the things that were on the HUD that shouldn't have been or didn't get disbursed, you don't dispute that either; right?

A. No. If they weren't disbursed, if the checks weren't there, they're not there.

[2T156-3 to 14.]

Respondent did something else at Brunson's request, that was not contemplated in either HUD-1. On August 16, 2004, just four days after the closing, she issued trust account check #1006 for $52,000 to Fleet Bank, in order to purchase a bank check. Brunson then used the check to "prove" to the lender that Brown had actually contributed funds toward her purchase of the property.

According to respondent, Brunson had come to her in a panic that day, claiming that the lender was going to "take back the wire." Respondent explained:

> He went to court to get me in one of the courtrooms, in criminal court. I was just finished with a hearing. He comes in, he says, you know, [the mortgage company] wants proof that Lona is going to give the Jacksons whatever it was, $49,000, $52,000,

whatever. Then he shows me a check on Lona's personal check [sic] for the amount which I forgot. I put that check away. I didn't give it back to him. And for the life of me I cannot find it. I had found it once. And I said, oh, I have to give this to Nick [respondent's counsel].

This was like a year and a half ago. And I've never been able to find it again. But, anyway, he gave me the check. I said, but, George, she has this kind of money? I didn't even know that they —

Q. How much was the check for?

A. It was like $49,000, $50,000, something like that.

Q. From who to who?

A. It was on Lona Brown's personal check.

Q. To?

A. It was written to my trust account. I think it was to Evelyn Garcia's trust account or to me, one or the other. So he said, look, we have to go to the bank right now because they're calling me, they want proof or they're going to take back the wire. So I freaked out. I said, what do you mean they're going to take back the wire? I've already written a check to the sheriff, to all those other people. They can't do that. Lona's going to be liable for this money, and then what are we going to do. He said, you're going to deposit the check. I said, but is it good. He said, yeah. And I told him, are you sure. He said, yeah, it's good. I said, okay.

[2T117-19 to 2T118-4.]

Respondent wondered why Brunson couldn't give the mortgage company a copy of Brown's check as proof, but Brunson had insisted that the mortgage company wanted a bank check. Therefore, standing at the teller's window at the bank, respondent filled out a deposit slip for Brown's check to her trust account. As she handed it to the teller, Brunson ran over to her and told her that he had just made a telephone call and learned that the check would "bounce" if she deposited it. Respondent continued:

> Now, I know that you're not supposed to bounce checks in your trust account. I was really, really scared to do that, but I already had bought this [bank] check. I panicked, I didn't know what to do. So I said, oh, my God.
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> Now, at this time, I already had given George the copy, I had a copy myself. I said I'm going to redeposit it like right away. It was like 10 minutes later or 15 minutes later, and I redeposited [sic] the check and that was that. He already had the copy. I really did not feel right about him keeping the copy and showing it to Fairfield, but at this point I didn't know what else to do. Kathy told me, look, don't worry about it. All they want is paper. I remember that phrase. All they want to see is paper. They'll be very happy and they work with George. And it was like Kathy called them -- it was like a win/win type thing, you know, when they spoke to Kathy. Kathy said to me they know she doesn't have any money but this is how they work things out. And George

> could always get whatever loans and mortgages he wants. I don't know how he did it, I have no idea, but he always got the mortgages that he needed from these mortgage brokers or mortgage lenders.
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> [2T121-20 to 2T122-13.]

The Jackson to Brown transaction also called for the Jacksons to lease the property back from Brown, despite Brown having signed an occupancy agreement for the lender, under which she promised to use the premises as her primary residence. Respondent recalled having been told by Siegel that the Jacksons intended to lease the property back from Brown.

At the DEC hearing, Siegel testified that he had the same understanding as respondent and that he had initially become involved to redeem the property from a sheriff's sale. He then agreed to represent the Jacksons in the sale to Brown. He recalled that he had attempted to draft a leaseback agreement at the closing, but the Jacksons had waived him off. When asked about that document on cross-examination, respondent stated:

> I wasn't sure, because they were going back and forth with it, and Mr. Siegel was going back and forth. And it was like -- I don't know. They were being sort of -- the Jacksons, I mean, and George were being, like, sneaky.
>
> Q. Didn't George tell you when he first asked you to come into this transaction that

there was going to be a sale/leaseback agreement?

A. That's what they told me. But when you get over there it, like, started to change.

Q. You knew that the Jacksons weren't getting money; right?

A. Yes, I did, because Mr. Siegel told me.

Q. And Siegel and Brunson had already told you that there was a sale/leaseback agreement; right?

A. They told me that there may be one. First they said -- before the closing, it was certain that there was going to be one. This was my understanding and Mr. Siegel's understanding. This is why he really tried to, you know, develop it and produce it. But then the Jacksons were resisting. I think it has something to do with the amount that -- I think so, with the amount that was -- they expected to pay or was expected of them. I overheard them talking, but I can't swear. But I know there was a little bit of a dispute. That is why by the closing time, I was, like, what the heck is going to go on here. If they don't lease it back, are they going to lease it. I wasn't sure.

[2T148-10 to 2T149-13.]

Respondent also recalled having explained the occupancy agreement to Brown at the closing. Respondent testified that she was confused because she thought there was also a leaseback arrangement, but she explained to Brown that she was expected to

live in the house as her primary residence. Brown said, "okay," and signed the agreement.

II. The Lona Brown to Arlene Brunson Transaction

After the closing on the Jackson to Brown sale was completed, Brunson collected at least nine rental payments ($2,100 each) from Stacy Jackson, who remained on the premises after the closing.

Respondent was unaware of those payments, but learned that the Brown mortgage had fallen into arrears when Brunson approached respondent to represent his wife, Arlene, in the purchase of 58 Sefton Circle from Brown. Respondent agreed to the representation.[3] Brunson told respondent that, because he did not want Brown to have "a bad credit rating," he had arranged for 100% financing for his wife's purchase. Brown was unrepresented because, Brunson told her, as the seller, she did not need an attorney.

The OAE reconciliation of the transaction showed the following actual disbursements:

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[3] Respondent was not charged with a conflict of interest for representing Arlene Brunson in her purchase from Brown.

DATE MADE	DATE POSTED	CHECK #	TO/FROM	REC'D/DISB'D	CLIENT BALANCE
03/31/06	03/31/06		Wire-Freemont Investment & Loan	318,015.51	318,015.51
03/31/06	03/31/06		Wire-Freemont Investment & Loan	78,677.68	396,693.19
04/03/06	04/04/06	1305	Sheriff-Middlesex County	340,719.92	55,973.27
04/04/06	04/05/06	1306	George Brunson	8,000.00	47,973.27
04/06/06	04/06/06	1308	George Brunson	10,000.00	37,973.27
04/11/06	04/12/06	1310	Evelyn Garcia	1,750.00	36,223.27
04/06/06	04/12/06	1307	Lona Brown	10,000.00	26,223.27
04/08/06	04/12/06	1309	Fortune Title Agency, Inc.	275.00	25,948.27
04/11/06	04/12/06	1311	Evelyn Garcia	850.00	25,098.27
04/14/06	04/14/06	1322	Evelyn Garcia	250.00	24,848.27
04/11/06	04/19/06	1314	George Brunson	7,000.00	17,848.27
04/11/06	04/27/06	1278	Apex Mortgage	10,785.00	7,063.27
04/11/06	05/15/06	1277	Middlesex County Clerk	3,167.00	3,896.27
06/17/06	06/20/06	1332	George Brunson	2,196.00	1,700.27
06/22/06	06/23/06	1335	George Brunson	1,500.00	200.27

[2C¶54;Ex.26.][4]

There were two HUD-1 statements prepared for the transaction. The first showed a first mortgage to Arlene Brunson for $395,000. The second HUD-1 listed a second mortgage for $79,000. Garibaldi's reconstruction showed that, according to the first mortgage HUD-1, Brown was entitled to receive net sales

[4] The correct figures appear in Exhibit 26. The version of that document in paragraph 54 of the complaint contains errors.

proceeds in the amount of $28,211.94. In fact, respondent disbursed only $10,000 to Brown.

As in the prior transaction, respondent could not explain why Brown had received only $10,000. Respondent stated that another paralegal prepared the HUD-1s for this matter. Respondent had no idea how Brunson could obtain a first and second mortgage from the same lender (Fremont), before title had changed hands.

In the Brown to Brunson matter, respondent disbursed trust account checks to George Brunson totaling $28,696. According to respondent's HUD-1, however, he was not entitled to receive any funds from the closing.

Once again, respondent was unable to explain why she had made the disbursements in this fashion, other than that the amounts were determined by Schaffer and/or Brunson. Respondent then reviewed the checks before signing them.

Count three charged respondent with several recordkeeping violations. Specifically, the OAE audit of respondent's books and records revealed the following shortcomings: (a) no trust receipts journal [R. 1:21-6(c)(1)(A)]; (b) no ledger card identifying attorney funds for bank charges [R. 1:21-6(d)]; (c) no individual ledger card for each client [R. 1:21-6(c)(1)(B)]; (d) no monthly trust bank reconciliation with client ledgers,

journals and checkbook [R. 1:21-6(c)(1)(H)]; (e) deposit slips lack sufficient detail [R. 1:21-6(c)(1)(H)]; (f) no business receipts journal [R. 1:21-6(c)(1)(A)]; and (g) no business disbursements journal [R. 1:21-6(b)(1)(A)].

Respondent conceded that her attempts to correct the deficiencies contained in correspondence from the OAE were unsuccessful. She retained an individual named Debra Dorfman to help her in this regard, but was still unable to rectify all of the deficiencies. Through counsel, she fully admitted having violated RPC 1.15(d) and R. 1:21-6. In a brief to us, respondent's counsel stated that respondent "was under the understanding that Ms. Schaffer had been maintaining the records and she relied on her expertise. Respondent admitted at the hearing that she failed to meet her nondelegable [sic] duty to maintain the trust account records."

The OAE sought the imposition of a one-year suspension, citing In re Ejiogu, 197 N.J. 425 (2000) (one-year suspension). According to the OAE, Ejiogu "failed to safeguard trust funds in three real estate transactions by turning the funds over to a third party whom he believed would properly disburse them, but did not. He also certified the truth of the HUD settlement statement, which, in fact, was inaccurate." The OAE also cited In

re Thomas, II, 181 N.J. 327 (2004) (one-year suspension). The OAE noted that Thomas was involved in a conspiracy to defraud a mortgage lender. He prepared a HUD-1 statement containing numerous misrepresentations, including the amount of the loan and his receipt of $16,000 from his client. Thomas did not collect the funds. He also knowingly made false statements of material fact in connection with the disciplinary matter, engaged in a conflict of interest and grossly neglected the case.

Respondent's counsel sought the imposition of a reprimand, citing inapposite cases, but noted that, in mitigation, respondent has no prior discipline, has represented indigents as a pool attorney for the public defender's office, and has not practiced real estate law since 2007.

The DEC found respondent guilty of having violated RPC 1.5 for her failure to use a written fee agreement for the transactions and RPC 1.15(d) and R. 1:21-6 for the recordkeeping deficiencies. The DEC also found that respondent had grossly neglected the case by her failure to pay the judgment liens at the closing. Further, the DEC found that respondent failed to safeguard escrow funds by not disbursing them according to the HUD-1 statements applicable to the transactions (RPC 1.15(a) and ((b)).

The DEC dismissed the charges relating to the false HUD-1 statements (RPC 8.4(b) and RPC 8.4(c)), concluding that respondent lacked the intent to either commit a criminal act or to engage in misrepresentations. The DEC found that, due to lack of experience, respondent did not make any "knowing" false or misleading statements.

The hearing panel report did not address the RPC 5.4 charge.

The DEC recommended a "ninety-day" suspension, based on (unspecified) "mitigating factors."

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.

Respondent admitted that she violated several of the charged RPCs. Specifically, she failed to set forth in writing, the rate or basis of her fee in either matter, a violation of RPC 1.5(b). She also conceded having failed to comply with the recordkeeping rules, a violation of RPC 1.15(d) and R. 1:21-6. Furthermore, she acknowledged that the OAE's forensic reconciliations of the two real estate transactions were correct.

As to the remaining charges, contrary to the DEC, we find that respondent made misrepresentations on the HUD-1 form when she did not disburse the funds as approved by the lender and

certified that the HUD-1 that she signed was a complete and accurate account of the funds received and disbursed as part of the transaction. In doing so, she violated RPC 1.15(a) and RPC 8.4(b) and (c).[5]

RPC 5.4 (c) states, in relevant part, that a lawyer "shall not permit a person who . . . employs or pays the lawyer to render legal services for another to direct or regulate the attorney's professional judgment in rendering such legal services." Respondent conceded that she did not know what she was doing in these matters and that she blindly followed Brunson and Schaffer's instructions. In effect, respondent abdicated her

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[5] As to RPC 8.4(b), the HUD-1 form says: "[i]t is a crime to knowingly make false statements to the United States on this or any other similar form." It matters not that there was no criminal finding against respondent. In re Gallo, 178 N.J. 115, 121 (2002) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a crime). A violation of RPC 8.4(b) may be found even in the absence of a criminal conviction or guilty plea. In re McEnroe, 172 N.J. 324 (2002). There, we declined to find a violation of RPC 8.4(b) because the attorney had not been charged with the commission of a criminal offense. In the Matter of Eugene F. McEnroe, DRB 01-154 (January 29, 2002) (slip.op. at 14). The Court disagreed and found that the attorney's conduct violated RPC 8.4(b).

attorney role to them. In doing so, respondent violated RPC 5.4(c).

Finally, with regard to the charge of gross neglect (RPC 1.1(a)), there is some evidence that respondent failed to pay three judgment liens in the Jackson to Brown matter. Siegel testified that, in the Jacksons' bankruptcy matter, the Jacksons had made mention of a credit report that showed the liens as outstanding. However, credit reports are, at best, an indicator of the existence of a lien. Respondent's evidence, a post-closing title policy showing that no such liens encumbered the property, is compelling evidence that the judgments had been satisfied. In any event, the burden was on the OAE to prove, by clear and convincing evidence, that the judgments had not been paid. It did not do so. We, therefore, dismiss the RPC 1.1(a) charge.

Violations of RPC 1.15 (d) (recordkeeping) are ordinarily met with an admonition, so long as they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Thomas F. Flynn, III, DRB 08-359 (February 20, 2009); In the Matter of Jeff E. Thakker, DRB 04-258 (October 7, 2004); In the Matter of Arthur G. D'Alessandro, DRB 01-247 (June 17, 2002); In the Matter of Marc D'Arienzo, DRB 00-101 (June 29, 2001).

Misrepresentations on closing documents have been met with discipline ranging 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 HUD-1 statement that he signed was a complete and accurate account of the funds received and disbursed as part of the transaction; the HUD-1 reflected the payment of nearly $61,000 to the sellers, whereas the attorney disbursed only $8,700 to them; the HUD-1 also listed a $29,000 payment by the buyer, who paid nothing; finally, two disbursements totaling more than $24,000 were left off the HUD-1 altogether; the attorney had no record of discipline); In re Mulder, 205 N.J. 71 (2011) (reprimand for attorney who certified that the HUD-1 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 HUD-1 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 HUD-1, on the deed, and on the affidavit of title was viewed as an aggravating factor; mitigating circumstances justified only a reprimand); In re Agrait, 171 N.J. 1 (2002) (reprimand for attorney who, despite being obligated to escrow a $16,000 deposit shown on a HUD-1, 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); In re Spector, 157 N.J. 530 (1999) (reprimand for attorney who concealed secondary financing to the lender through the use of dual HUD-1 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 prepared two different HUD-1 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 the Matter of William E. 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; 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 Soriano, 206 N.J. 138 (2011) (censure for attorney who assisted a client in a fraudulent real estate transaction by preparing and signing a HUD-1 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 "flip" scheme was the creation of an entrepreneur and owner of Upscale Investment Corporation (UIC), who provided the buyers and sellers; the attorney prepared and certified the HUD-1s in each transaction, relying on UIC's instructions as to how the items and figures should be listed on the HUD-1 forms, including the payment and/or collection of deposit funds; the attorney did not conduct an independent review of the accuracy or truthfulness of the amounts or expenses quoted by UIC, including the payment and/or collection of deposit funds; he also engaged in conflicts of interest by representing both parties in the transactions, failed to supervise a non-lawyer employee and engaged in gross neglect in the matter; 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); and In re Scott, 192 N.J. 442 (2007) (censure for attorney who failed to review the real estate contract before the closing; failed to resolve liens and judgments encumbering the property; prepared a false HUD-1 statement misrepresenting the amount due to the seller, the existence of a deposit, the receipt of cash from the buyer, and the amount of her fee, which was disguised as disbursements to the title company; prepared a second HUD-1 statement listing a "Gift of Equity" of $41,210.10; issued checks totaling $20,000 to the buyer and to the mortgage broker, based on undocumented loans and a repair credit, without obtaining the seller's written authorization; failed to submit the revised HUD-1 to the lender; failed to issue checks to the title company, despite entries on the HUD-1 indicating that she had done so; misrepresented to the mortgage broker that she was holding a deposit in escrow; and failed to disburse the balance of the closing proceeds to the seller; violations included RPC 1.1(a), RPC

1.15(b), RPC 4.1(a), and RPC 8.4(c); Scott had received a prior admonition and a reprimand).

Suspensions have been imposed in more serious situations. See, e.g., In re De La Carrera, 181 N.J. 296 (2004) (three-month suspension for attorney who, in one real estate matter, failed to disclose to the lender or on the settlement statement that the sellers had taken back a secondary mortgage from the buyers, a practice prohibited by the lender; in two other matters, the attorney also disbursed funds prior to receiving wire transfers, resulting in the negligent invasion of other clients' trust funds; the discipline was enhanced because the case proceeded on a default basis); 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 representing both the second mortgage holders and the buyers); 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 settlement statements, affidavits of title, and Fannie Mae affidavits and agreements, lied to prosecuting authorities, 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 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 one-year suspension was suspended); In re Newton, 157 N.J. 526 (1999) (one-year suspension for preparing false and misleading settlement statements, taking a false jurat, and engaging in multiple conflicts of interest in real estate transactions; a major factor in the imposition of a one-year suspension was the attorney's participation in and knowledge of the scheme to defraud the lenders); and In re Frost, 156 N.J. 416 (1998) (two-year suspension for attorney who prepared misleading closing documents, including the note and the 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).

The two one-year suspension cases cited by the OAE involve more serious elements not present here. In Ejiogu, the attorney was involved in three matters, but, more importantly, allowed a third party to disburse the funds. In Thomas, II, the attorney knew about the conspiracy to defraud the mortgage company and ratified the conspiracy through his conduct in connection with the closing. He also knowingly made false statements of material fact in connection with the disciplinary matter, engaged in a conflict of interest, and grossly neglected the case.

The cases cited by respondent's counsel are inapplicable, but counsel provided, in mitigation, that respondent has no prior discipline, is a pool attorney for the public defender's office, and has not practiced real estate law since 2007.

We find that respondent's actions have similarities to both reprimand and censure cases.

As to the reprimand cases, in Barrett, the attorney acted in one matter, whereas here there were two. Like respondent, however, Barrett had no prior discipline. Respondent's misrepresentations were more prolific than the single misrepresentation involved in Mulder, where the attorney was

found guilty of only one false statement on the HUD-1 for the transaction: that $41,000 would be disbursed to satisfy a (non-existent) second mortgage. Unlike respondent, Mulder's failure to detect other inaccuracies on the HUD-1, the deed, and the affidavit of title were viewed as aggravating factors. Mulder benefited from significant mitigation: lack of harm to the parties, several of whom profited from the deal; no prior discipline in seven years at the bar; his good reputation; and the payment of $17,000 out of his own funds to settle a claim.

While respondent was engaged in two transactions, the attorney in Spector was guilty of misconduct in three transactions. Spector concealed secondary financing to the lender through the use of dual HUD-1s, "Fannie Mae" affidavits, and certifications. Like respondent, who was handed packaged deals, Spector was not involved in soliciting clients, obtaining financing, preparing the HUD-1s or Fannie Mae affidavits. In mitigation, the passage of time (eight years) between the events and the filing of the complaint and serious family problems were considered.

Unlike respondent, who lacked experience and was unaware that her actions were improper in two matters, the attorney in Sarsano knew that he was wrong when concealing secondary

financing from the primary lender in a single matter and preparing two different HUD-1s.

Finally, the attorney in Agrait committed misrepresentations in one matter, but also failed to disclose the existence of a second mortgage prohibited by the lender, under the belief that he need not do so. Agrait was also found guilty of gross neglect, which is not present here.

As to the censure cases, respondent's misconduct resembles Frohling, where the attorney abdicated the attorney role, when acting as settlement agent, by blindly taking instruction from an outsider regarding the terms and disbursements of the transactions. In contrast, however, Frohling was involved in three transactions (versus two here), was found guilty of conflicts of interest, and had a prior reprimand.

The attorney in Khorozian also engaged in conduct similar to respondent's: the use of a straw buyer; a leaseback agreement; and multiple HUD-1s that contained misrepresentations. In contrast, however, Khorozian changed the HUD-1s after they had been signed by the parties, an element of deceit that is not present here.

The attorney in Scott, too, engaged in a form of concealment not present here, having prepared a false HUD-1 statement

containing four misrepresentations, including the amount of her fee, which she disguised as disbursements to the title company. Scott also had a prior admonition and a reprimand.

In mitigation, respondent has no prior discipline since her 1998 bar admission. So, too, there is a theme that permeates the record in this matter – respondent's unvarnished ineptitude and naiveté. It is obvious from her testimony that she was taken in by Brunson, who was portrayed as a confidence man. Respondent did not seek to conceal a sham transaction. Rather, she had no idea what she was doing when representing Brown and Arlene Brunson.

Looking at precedent, we find that, based on the sheer number and magnitude of the misrepresentations present in these two matters, a censure is the appropriate sanction for respondent.

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
Bonnie C. Frost, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Evelyn F. Garcia
Docket No. DRB 12-428

Argued: May 16, 2013

Decided: June 24, 2013

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Gallipoli			X			
Yamner			X			
Zmirich			X			
Total:			7			

Julianne K. DeCore
Chief Counsel