SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-274
District Docket No. XIV-2009-0070E

IN THE MATTER OF	:
ANDRYS SOFIA GOMEZ	:
AN ATTORNEY AT LAW	:

Decision

Argued: November 19, 2009

Decided: December 15, 2009

Melissa A. Czartoryski appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter came before us on a disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondent. Respondent stipulated to having violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), when she made misrepresentations on a HUD-1 statement and took a false jurat.

For the reasons expressed below, we determine that a reprimand is the appropriate discipline for respondent.

Respondent was admitted to the New Jersey bar in 1992. She maintains a law office in Union City, New Jersey.

In 2003, respondent was admonished for simultaneously representing three passengers and the driver of a vehicle involved in an accident. She tried to avoid the conflict of interest when one of the passengers sued the driver, by transferring some of the work to another attorney. Respondent's secretary retained one of the cases and continued to work on it without respondent's knowledge or consent. Respondent engaged in gross neglect and lacked diligence, performing little or no work in the matters, engaged in conflicts of interest, failed to properly supervise a non-lawyer employee, and failed to communicate with the clients. As mitigation, we considered the significant efforts that respondent made to improve the quality of her practice. In the Matter of Andrys S. Gomez, DRB 03-203 (September 23, 2003).

The facts are as follows:

On February 28, 2006, respondent was the settlement agent and attorney for the buyer (Scott Edris) and sellers (Scott and Victoria Royster) of real estate in Branchburg, New Jersey.

Ottoman Gonzalez, a mortgage broker, had referred the closing to respondent. Respondent had worked with him in the past and considered him to be reliable. Gonzalez had told respondent that both parties to the transaction were his close,

personal friends and that the buyer and sellers knew each other personally.

Respondent was not involved with the negotiation and execution of the contract of sale.[1] In anticipation of the closing, on December 21, 2005, Gonzalez faxed to respondent a contract of sale and waiver and referral, purportedly signed by the parties.

The waiver and referral form, prepared by Gonzalez, contained the following provisions:

> It is hereby acknowledged that the parties were advised to retain their own attorneys if they felt it necessary to satisfy their needs, if any. It is also acknowledged that this office provided them with a list of attorneys they could contact should they not have one ready.
>
> It is the voluntary decision of both parties herein involved to have Attorney Andrys Gomez complete their transaction. This attorney will only act as the Closing Agent with the purpose of executing and legalizing all the documents required to conclude the transfer, sale, recording and execution of the documents herein required, no legal advise [sic] will be given to either party nor review of the already existing contract and its terms.

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[1] An attorney may represent the parties to a real estate transaction without running afoul of the conflict of interest rules, as long as the attorney is not involved in the negotiation of the terms of the contract, its preparation, and its execution. Advisory Committee on Professional Ethics Opinion 243, 95 N.J.L.J. 1145 (1972), approved by the Court in In re Lanza, 65 N.J. 347, 352 (1974).

> Both parties have been explained [sic] that if a conflict arises, this Attorney will be excluded from giving them any advise [sic]." [Ex.2.]

On February 28, 2006, Scott Royster and Scott Edris appeared for the closing. Victoria Royster did not appear. Scott Royster told respondent that his wife could not attend because of health issues. He, therefore, requested permission to take the closing documents to Victoria for her signature, whereupon he would return the documents to respondent. In addition, Edris did not bring the certified funds to the closing, as required.

During the closing, respondent telephoned Gonzalez to advise him of these problems. Gonzalez told respondent that the closing had to take place on that date because the interest rate for the loan was expiring and "Scott Royster's Chapter 13 bankruptcy debts had to be paid to the trustee from the proceeds."

In respondent's presence, Royster signed the HUD-1 Statement, Seller's Residency Certification and Deed. Respondent permitted Royster to take the documents to his wife for her signature. Later that day, Royster returned the documents that purportedly had been signed by Victoria. Respondent notarized both Royster's and Victoria's signatures on the deed, even though she was not present when Victoria signed it.

Respondent prepared and certified as accurate the HUD-1 Statement, knowing that it was false because (1) the cash from the buyer was listed as $257,403.89, even though Edris brought no funds to the closing; (2) a $100,000 escrow was listed as being held for tax debts, when no escrow was being held; and (3) the cash to seller was listed as $140,307.86, when no funds were paid to the Roysters.

At the closing, Royster and Edris informed respondent that no escrow was necessary because the tax debts had been paid and, therefore, the Roysters were entitled to $240,307.86, which they would accept in the form of a mortgage and note, rather than as cash from the buyer. Respondent, therefore, prepared a mortgage, note, and "Certification as to Escrowed Money." Royster presented respondent with the "Certification as to Escrowed Money," also purportedly signed by Victoria.

On February 28, 2006, in respondent's presence, Edris executed an affidavit of title, which respondent notarized. The affidavit indicated that Edris would reside at the property. However, unbeknownst to respondent, Edris did not do so. Instead, he permitted Royster and Victoria to continue living on the premises.

On August 1, 2006, the parties purportedly executed an option agreement that allowed the Roysters to lease back the

residence and gave them the option of buying back the property from Edris in the future.

Royster and Victoria divorced on April 14, 2009. During the course of the divorce proceedings, Victoria claimed that her name had been forged on all of the documents in connection with the sale and lease-back of the residence. She professed no knowledge of those events. That issue was never litigated, however, because the Roysters settled their differences. The Amended Dual Judgment of Divorce deemed any claim not addressed in the judgment as either withdrawn or abandoned with prejudice.

After the divorce, Royster continued to live in the property. Victoria no longer resided there.

Following a full review of the stipulation, we are satisfied that the facts contained therein fully support a finding that respondent was guilty of unethical conduct.

Respondent improperly certified as accurate the HUD-1 Statement, knowing that it was false. That document misrepresented that the buyer had brought funds to the closing, that money had been escrowed for taxes, and that the seller had received funds from the sale. Although the entire transaction appears to be a fraud on the mortgage company, there are no facts in the stipulation from which to conclude that respondent was aware of it. The stipulation specifically states that, "unbeknownst" to respondent, Edris was not residing at the

property, as stated in the affidavit of title. Rather, Royster (possibly with his wife, since their divorce did not become final until April 2009) continued to live on the property. Five months after the closing, the parties executed an option agreement permitting the Roysters to lease back the residence, with the option of buying it back from Edris in the future. In addition, there are no facts in the stipulation from which to conclude that respondent was aware that Victoria's signature had been forged on the documents, as Victoria alleged during the Roysters' subsequent divorce proceedings. Neverthess, respondent notarized a document, the deed, which was not signed in her presence.

Respondent's misconduct, in the aggregate, violated RPC 8.4(c). The only issue left for determination is the proper quantum of discipline.

The discipline imposed for misrepresentations on closing documents has varied greatly, depending on the number of misrepresentations involved, the presence of other ethics infractions, and the attorney's disciplinary history.

Reprimands are usually imposed when misrepresentations are unaccompanied by additional instances of misconduct. See, e.g., In re Spector, 157 N.J. 530 (1999) (attorney concealed secondary financing from the lender through the use of dual RESPA statements, "Fannie Mae" affidavits, and certifications); In re

Sarsano, 153 N.J. 364 (1998) (attorney concealed secondary financing from the primary lender and prepared two different RESPA statements); and In re Blanch, 140 N.J. 519 (1995) (attorney failed to disclose secondary financing to a mortgage company, contrary to its written instructions).

At times, a reprimand may still result even if the misrepresentation is combined with other unethical acts. See, e.g., 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's misconduct included misrepresentation, gross neglect, and failure to communicate to the client, in writing, the basis or rate of his fee). If the misrepresentation is accompanied by reckless conduct, a censure may result. See, e.g., In re Scott, 192 N.J. 442 (2007) (attorney guilty of violating RPC 1.1(a) (gross neglect), RPC 1.15(b) (failure to promptly deliver escrow funds), RPC 4.1(a) (false statement of material fact or law to a third person), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) for reckless misconduct in representing the purchaser in a real estate transaction; among other things, she permitted the closing to proceed without ever seeing the

contract of sale, without obtaining written assurances that the title was clear, and made misrepresentations on the RESPA statement as to the amount due to the seller, the existence of a deposit, the receipt of cash from the buyer and the amount of her fee, the last of which was disguised as a disbursement to the title company; prior admonition and reprimand).

As to the proper execution of a jurat, the Court has long held that five requirements must be fulfilled in all respects. In re Surgent, 79 N.J. 529, 532 (1979). There must be

> (1) the personal appearance by the party before the attorney;
> (2) the identification of the party;
> (3) the assurance by the party signing that he is aware of the contents of the documents;
> (4) the administration of the oath or acknowledgment by the attorney; and
> (5) execution of the jurat or certificate of acknowledgment by the attorney in the presence of the party.
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> [Jurats and Acknowledgments, Disciplinary Review Board Notice to the Bar, 112 N.J.L.J. 30 (July 14, 1983).]

Clearly, respondent did not abide by those requirements. She notarized a deed that had been signed outside of her presence.

The level of discipline in cases where an attorney notarizes a document that has not been signed in the attorney's presence is usually an admonition. See, e.g., In the Matter of Richard C. Heubel, DRB 09-187 (September 24, 2009) (attorney was

asked to prepare a deed for his clients to facilitate an inter-family transfer of a parcel of property for the purpose of obtaining a loan on the property and to make repairs to it; the attorney forwarded the deed to one of the owners of the property to have her sign it and have her signature notarized; although she signed it, she did not have her signature notarized and returned it to the attorney, who witnessed her signature and that of the other owner who appeared before him; mitigation included the attorney's admission of his wrongdoing and his cooperation with the ethics investigation); In the Matter of Robert Simons, DRB 98-189 (July 28, 1998) (attorney signed a friend's name on an affidavit, notarized the "signature," and then submitted the document to a court); and In the Matter of Stephen H. Rosen, DRB 96-070 (April 29, 1996) (attorney witnessed and notarized the signature of an individual on closing documents signed outside his presence; in addition, he failed to cooperate with disciplinary authorities).

Reprimands have been imposed where the circumstances involve other ethics offenses, more serious misconduct, or include aggravating factors. See, e.g., In re LaRussa, 188 N.J. 253 (2006) (attorney improperly permitted a wife to sign her husband's name to a release in a personal injury action and then affixed his jurat to the document; the attorney was found guilty of violating RPC 8.4(c) and RPC 8.4(d); unbeknownst to the

attorney, the husband was unaware that he had been made a party to the lawsuit (per quod claim for loss of consortium) until after the settlement was reached; violation of RPC 8.4(d) found because the adversary, the carrier, and the court believed that the release had been properly executed); In re Uchendu, 177 N.J. 509 (2003) (attorney signed the clients' names on documents filed with the Probate Division of the District of Columbia Superior Court and notarized some of his own signatures on these documents); and In re Giusti, 147 N.J. 265 (1997) (attorney forged the signature of his client on a medical record release form; the attorney then forged the signature of a notary public to the jurat and used the notary's seal).

In LaRussa, we found that the attorney's conduct was more serious than that displayed in the admonition cases, because he had witnessed his client sign her husband's signature to the document. He, therefore, knew that the legitimate party had not signed the release. We found that the attorney's infraction was akin to attorney Uchendu's, who received a reprimand for affixing his jurat to a document, knowing that the correct party had not signed it. In the Matter of Salvatore LaRussa, DRB 06-084 (July 25, 2006) (Slip op. at 13) (reprimand).

Here there is no evidence that Victoria's signature was forged or, if so, that respondent was aware of the forgery. Under the mortgage broker's claim of an expiring interest rate

on the mortgage loan and his insistence that the closing take place, respondent proceeded with the closing and took whatever steps were necessary to close title. Respondent had worked with the mortgage broker in the past and trusted him.

Respondent's conduct was not as egregious as that of the attorney in In re Scott, supra, 192 N.J. 442, who received a censure and had a prior admonition and a reprimand. Respondent's misrepresentations were most similar to those of the reprimanded attorneys, for example, the attorney in In re Agrait, supra, 171 N.J. 1 (although obligated to escrow money that was shown on the HUD-1, Agrait failed to verify it and collect it and failed to disclose the existence of a second mortgage prohibited by the lender; he also engaged in other misconduct). Respondent's misconduct also included taking a false jurat, for which, standing alone, an admonition would be proper.

In this single client matter, respondent exercised poor judgment, not venality, in the face of pressure from a trusted mortgage broker to act quickly to take advantage of an expiring interest rate. Under these circumstances, we find that a reprimand is sufficient discipline in this case.

Member Clark 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 Andrys S. Gomez
Docket No. DRB 09-274

Argued: November 19, 2009

Decided: December 15, 2009

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark						X
Doremus			X			
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			8			1

Julianne K. DeCore
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Chief Counsel