SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-094
District Docket No. XIV-06-026E

IN THE MATTER OF :
:
LYNN GALE :
:
AN ATTORNEY AT LAW :

Decision

Argued: July 19, 2007

Decided: August 30, 2007

Lee Gronikowski appeared on behalf of the Office of Attorney Ethics.

Alan Zegas appeared on behalf of respondent.

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

This matter came before us on a recommendation for a reprimand by Special Master Julius J. Feinson. The grievance, filed by the law firm in which respondent was an associate, Schwartz, Barkin and Mitchell (Schwartz, Barkin), arose out of her conduct in five real estate transactions that, allegedly unbeknownst to her at the time, involved fraudulent activities

on the part of an individual named Michael Salerno.

The complaint charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 4.1(a)(1) (false material statements to third persons), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Respondent essentially admitted all the allegations of the complaint, except that her conduct had been deceitful or fraudulent.

The Office of Attorney Ethics (OAE) presenter recommends a reprimand to a six-month suspension. For the reasons stated below, we determine to impose a reprimand.

This matter was originally before us in January 2006, based on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). For several reasons, including the lack of correlation of the cited neglect- and intent-based RPCs to the particular unethical acts committed, we vacated the stipulation and remanded the case for a hearing. The matter is now ripe for our de novo review.

Respondent was admitted to the New Jersey bar in 1974. She has no disciplinary history.

Respondent is currently employed by the State of New Jersey as a Child Support Hearing Officer, a non-attorney position. At the time of her ethics infractions, which occurred between March

1999 and January 2000, she was an associate with Schwartz, Barkin, a law firm in Union, New Jersey. The firm hired her because of her experience in real estate matters. She began her employment with that law firm in 1998 and left two years later.

At an unidentified point, respondent met Salerno at a social gathering hosted by a client/friend. Salerno asked her if she was interested in handling real estate closings and she replied that she was. According to respondent, her clients were the two buyers in five of the real estate transactions engendered by Salerno -- Michael McAllister and Ranovir Saroya. These transactions, commonly known as "flips," involved the purchase and immediate resale of the property at an illegally inflated price. McAllister and Saroya merely lent their names and credit histories to qualify as mortgagors.

There is no evidence that McAllister, Saroya, and the initial sellers of the properties participated in Salerno's scheme. In his initial remarks to the special master, the OAE presenter stated that Salerno had told McAllister and Saroya that, even though the properties would be purchased in their names, he would be in charge of leasing them, collecting the rents, paying the mortgages, and otherwise managing the properties. The presenter added that, instead, Salerno

> appears to have pocketed most of the money and sort of, quote, 'disappeared,' unquote.

> He was later prosecuted by several authorities for several crimes in connection with this matter. He is now serving time . . . . Based on the information from the U.S. Attorney, he is, in fact, serving time.
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> [T10-1 to 9.][1]

It is undisputed that Schwartz, Barkin did not know about the illegality of these transactions or about respondent's misconduct at any relevant time. In fact, the firm reported respondent's actions to the OAE. As detailed below, respondent denied that her conduct was intentional, blaming her transgressions on naiveté and misplaced trust on Salerno.

Gary Lambiasi, an OAE investigator, testified about the details of the transactions at issue, using one of them, the 105 Fulton Avenue transaction, as an illustration of the improprieties that permeated the remaining four:

> In this particular case, it appears that Mr. Salerno found this property to be able to sell and resell, and the original owner was Eufracia Paguiligan . . . . . And the buyer was Ranovir Saroya. And in the files that we received from Schwartz, Barkin, it showed that there were . . . two contracts of sale, two deeds, and file correspondence showing that Mr. Salerno wanted to sell and resell the property the same day.

[1] T denotes the transcript of the hearing before the special master, on October 4, 2006.

> One of Mr. Salerno's companies was SALJAM, and they bought the property from Eufracia Paguiligan.
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> . . . .
>
> [Other Salerno companies were] Haley Rose [Holdings, Inc.] and Dominion Enterprises.
>
> . . . .
>
> In this particular case . . . there was a mortgage payoff of $37,829.08 to the company SALJAM, which Mr. Salerno owned. SALJAM was not a mortgag[ee], in fact, but there were settlement proceeds that were reflected on the HUD-1 that SALJAM was paid $14,558.16.
>
> Then what happened was Mr. Paguiligan was paid the $46,320.46 using the proceeds from the mortgage company that Saroya received funds from, and also was paid a $23,000 deposit. And there was no deposit, even though there was a deposit reflected in the HUD-I, there was really no deposit that Saroya paid himself other than through the proceeds that were received from the mortgage company.
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> [T25-20 to T27-21.]

More specifically, the transaction unfolded as follows: Paguiligan sold the property to Saljam for $70,000 on May 18, 1999. On the same day, Saljam sold it to Saroya for $115,000.[2]

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[2] Although the *HUD-1* Uniform Settlement Statement (RESPA) in evidence for this transaction (Ex.C-6) lists Paguiligan as the seller and Saroya as the buyer, it is undisputed that Paguiligan first sold it to Saljam and then Saljam sold it to Saroya. It is not entirely clear from the record that respondent's portrayal

(footnote cont'd on next page)

Greenwich Home Mortgage Corp. provided a $92,000 mortgage loan for the purchase of the property. Presumably, Salerno obtained an inflated appraisal of the property value to obtain a $92,000 mortgage loan for a property that was worth $70,000.[3]

Respondent prepared the RESPA for the transaction, relying on Salerno's instructions as to how the relevant items and figures should be listed on that form. She did not conduct an independent review of the accuracy or truthfulness of the amounts or expenses quoted by Salerno.

As it turned out, the information provided by Salerno was not only erroneous, but downright fraudulent. For instance, although respondent inserted, on line 501 of the RESPA, that a $23,000 deposit had been paid, that was untrue. Respondent testified that she had relied on Salerno's representation that the deposit had been paid.

Line 504 of the RESPA, too, contained a misrepresentation. It showed Saljam as the mortgagee of an existing mortgage loan

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(footnote cont'd)
of the transaction as Paguiligan-to-Saroya breached any ethics rules.

[3] Of course, there is nothing illegal about a seller who obtains a windfall by purchasing property for a certain price and then immediately reselling it for a higher price. The impropriety arises when the seller artificially inflates the resale price to induce a lender to provide financing in excess of the fair market value of the property. Here, the federal investigation of Salerno's activities revealed that he orchestrated the second scenario.

with a $37,829.08 balance. In fact, Saljam was not a mortgagee or otherwise entitled to the funds. Had respondent reviewed the title report, she would have known that there were no mortgages encumbering the property. Instead, she testified, she trusted Salerno's representation: "Michael Salerno told me that's the way it was supposed to be. And I believed him, which I shouldn't have . . . ."

Respondent signed the trust account checks issued in connection with the transaction, including the check to Saljam.[4] As noted earlier, Saljam was one of Salerno's companies. The ethics complaint alleged, and respondent did not dispute, that this disbursement was wrongfully diverted to one of Salerno's companies, Saljam.

The RESPAs that respondent prepared for the four other transactions contained similar misrepresentations. For example, in the 85 Bayside Drive transaction, line 506 listed Dominion Enterprises, another one of Salerno' companies, as the intended recipient of $66,809.32 from the sale proceeds, apparently as a second mortgagee. After the closing, however, respondent wire-

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[4] The record does not explain why the check to Saljam was in the amount of $14,558.16, instead of the sum listed on the RESPA, $37,829.08. Lambiasi found interesting that the difference between the two is roughly $23,000, the amount of the supposed deposit. The record is silent, however, on the significance of this coincidental amount.

transferred $47,665.26 to Saljam, allegedly at Salerno's direction. Also, according to the complaint, respondent told the OAE, during an interview, that the buyer (Michael McAllister) had not brought to the closing $17,281.06 due as "Cash from Borrower," as represented on the RESPA. Respondent did not deny this allegation, maintaining that she did not "specifically recall what she stated during her interview with Attorney Ethics on August 12, 2004." As seen below, respondent testified that a severe stroke has affected her ability to recall certain events. The OAE did not challenge the veracity of respondent's contention in this regard. We, too, have no reason to question it.

A third example of improper representations is seen on the RESPA for the 163 Central Place transaction. There, respondent listed Dominion Enterprises as the holder of a first mortgage in the amount of $24,300. Notwithstanding that Dominion Enterprises did not hold a mortgage on the property, respondent disbursed $12,379.59 to that company, allegedly at Salerno's direction.[5] Here, too, respondent told the OAE, during their interview, that

[5] Once again, there is no explanation for the discrepancy between the sum shown on the RESPA ($24,300) and the amount of the disbursement ($12,379.59). Similarly, any discrepancies that might be noted hereinafter lack explanation, a circumstance that does not appear to be relevant to our review of respondent's unethical conduct.

she had not received the $11,920.41 "Cash from Borrower" listed on the RESPA as due at the closing.

The RESPA of the fourth transaction at issue, 543 East Second Street, reflected similar misrepresentations. Line 603 posted a $41,867.22 cash amount due to seller, Haley Rose Holdings, Inc., another company owned by Salerno. Instead, respondent signed a trust account check for $22,459.76 to Dominion Enterprises, an entity that was neither listed on the RESPA nor owed any sums. Furthermore, respondent told the OAE that she had not received the $19,407.46 shown on the RESPA as due from the buyer (McAllister) at the closing. Respondent did not recall making that statement.

The fifth and last transaction involved property located at 1070 William Street, Elizabeth, New Jersey. The RESPA reflected that $14,445.08 was due to Dominion Enterprises, as a second mortgagee. Instead, respondent disbursed $2,015.62 directly to Salerno, who was not entitled to any funds from the closing. In addition, respondent informed the OAE that she had not collected $11,990.97 due at the closing as "Cash from Borrower" (McAllister). Again, respondent had no recollection of making that statement to the OAE.

One other charge against respondent was that she notarized McAllister's and Saroya's signatures on affidavits of title

misrepresenting that they would occupy the properties. Although this charge was not explored at the hearing below, respondent admitted it in her answer to the ethics complaint. She claimed, however, that

> [s]pecifically, on the cases with Michael McAllister where he was buying several houses, every single case I would call the bank, I would say Michael McAllister is buying another house, I don't think he's living in one. He's living in the one he said he was going to move in.
>
> I always told the bank that, you know, there were other houses. Now, I didn't write letters. I should have written letters. If I did that, we wouldn't be here today.
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> [T61-8 to 18.]

As the foregoing shows, and as Lambiasi testified, the common thread running throughout these transactions was that Salerno, either directly or indirectly, received sums to which he was not entitled. The extent of his illegal activities is not apparent from the record. Lambiasi testified, however, that his conversations with the FBI suggested that Salerno's fraud was of considerable proportions. It is not known if Lambiasi's reference to "fraud" applies to loans that lending institutions might have made, based on exaggerated appraisals, or to what Lambiase termed "tax fraud." In his words, the FBI told him that "they were going after [Salerno] for tax evasion more so than

mortgage fraud. It was easier to prove the tax fraud."

It is undisputed that respondent did not profit from the transactions in any way and that the legal fees that she earned were turned over to her employer, Schwartz, Barkin. It is equally undisputed that the United States Attorney's Office did not consider respondent a "target." Lambiase learned from that office that, although respondent had been interviewed in the course of the investigation of Salerno's activities, the conclusion was that respondent had been "unwittingly" involved in Salerno's scheme.

Lambiasi agreed with that determination. Asked, at the hearing below, if he was "aware of anything that would suggest that [respondent] intended to deceive any person or party," he replied, "I don't think so at all." He added that "[Schwartz, Barkin] thought the same thing. So not only does the FBI – the person at the FBI thinks [sic] the same thing, we [the OAE] think the same thing, and so does the firm think the same thing, that she really unwittingly did these transactions." Lambiase recalled that, during respondent's interview, she had told him that she did not know that these were "property flips:"

> She met these people and she thought they were law-abiding citizens and that Mr. McAllister was some kind of investor and Salerno was as investor in these properties, and she really did not believe, at least at the time that these transactions were going

> through, that there was anything really wrong with what she was doing.
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> [T20-9 to 15.]

In Lambiasi's view, however, there was a "lack of verification" on respondent's part:

> There should have been some type of checks and balances in there just to verify what you are putting down on the HUD-1 is reasonable.
>
> [T38-5 to 8.]
>
> I could understand, you know, like maybe one transaction. It is just when . . . somebody calls you up and tells you what to put on a HUD-1 and who to make the checks out to [that], you know, should have raised some kind of red flag possibly.
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> [T38-22 to T39-2.]

At the hearing before the special master, respondent recounted the events that led to the current ethics charges against her.[6] According to respondent, a client and friend, Bill Hill, had introduced her to Salerno, at a social gathering. On learning that she was a lawyer, Salerno had asked her if she was interested in doing closings and she had replied, "Sure." She

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[6] The OAE presenter had no questions for respondent. Only respondent's counsel and the special master elicited her testimony.

considered the buyers (McAllister and Saroya) her clients, asserting that she had never represented Salerno. She knew that Salerno was very involved in church activities, including as head of a youth group. Salerno told her that he was "rehabbing" houses with the help of this youth group. She had trusted him: "he was a "church-going fellow whose mother was involved in his business. . . . That also caused me to trust him."

In one of his letters to respondent, Salerno had stated with respect to the 105 Fulton Avenue transaction:

> I have a small crisis I hope you can handle. I have given up completely on dealing with our old attorney . . . . He's being extremely difficult and I'm being blasted by my sellers and my buyers.
>
> [Ex.C-7.]

According to respondent, in the beginning, she thought that the "old attorney" was being "difficult." She began to understand his position, though, when she realized that "something is wrong with this guy [Salerno]." She then

> terminated the relationship [with Salerno]. I dropped him. I refused to answer any calls from him anymore when I realized, after several months and obviously six closings, that there was something wrong with this guy. I didn't know that. They ultimately told me, which was that he a [sic] real crook. I thought he was incompetent.
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> [T58-4 to 10.]

Respondent stated that she found out that Salerno was a "real crook" when she went to the OAE offices in 2004: "That was the first I knew. . . . But before that time I had trusted him and done what he had said was the right way to handle these cases. And since then I found out he was even taking his mother's money, which is even worse."

As to the representative transaction explored at the hearing below (105 Fulton Avenue), respondent contended that, when she listed the $23,000 deposit on the RESPA, in her "heart of hearts" she honestly believed that it had been paid. Although she admitted that she was not holding the deposit in escrow, she pointed out that sometimes it is escrowed by someone other than the attorney for the buyer, such as the seller's attorney or the real estate broker. She acknowledged that, in those instances, the deposit still would be listed on the RESPA and pointed out that she had done so, relying strictly on Salerno's representation that he had the $23,000.

With regard to the fictitious mortgage holders in the transactions (Saljam and Dominion), respondent admitted having access to the respective title reports, which would have shown the existence or non-existence of said mortgages. In an apparent attempt to attribute a measure of unreliability to such documents, however, she called attention to the fact that

mortgages are not always recorded:

> The parties hold them in their drawer and then they don't even record them and they rip them up at the closing or they record them after the closing and then record the . . . satisfaction of mortgage . . . .
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> The satisfaction is sometimes recorded at the same time as the mortgage is recorded, which may even be after the closing. I have seen that happen in other closings that were not done by people who were crooks, and I assume [sic] that was this kind of situation, but I shouldn't have assumed.
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> . . . .
>
> Because I had the experience of other closings where the mortgages were done differently. They're not normal or the average closing, but they happen, you know, so I guess it is the old-fashioned thing.
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> [T66-16 to T67-25.]

Respondent vehemently denied knowledge of any foul play on Salerno's part, at the time of the transactions. With equal vigor, she denied any intent to deceive anyone:

> I had no intention of ever doing anything wrong. I should – you know, if I knew then what I know now, this never would have happened.
>
> I just trusted him . . . but I shouldn't have trusted him.
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> [T62-9 to 15.]

> [T]o me, [Salerno] looked like a mortgage broker or something like that. I was never quite sure of what his position was. But he was – I guess I gave him more authority than he deserved. I thought he knew what he was doing and he knew how these were supposed to go.
>
> . . . .
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> But Salerno, he was very smooth. He was very compelling. He was very charismatic, and I believed he knew what he was doing and he was some kind of a broker and this is the way these things were done. And I did what he told me.
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> [T65-10 to T66-3.]

In her answer, respondent conceded that her conduct constituted neglect, but denied that she "intentionally prepared an instrument expressly prohibited by law, that she intentionally made false material statements to a third person, and that she intentionally engaged in any intentional dishonesty, fraud, deceit or misrepresentation."

Respondent asserted that the serious physical and emotional problems that afflicted her at the time, including a lengthy bout with depression, contributed to her willingness to trust Salerno and to follow his directions. She testified that she is a "naïve person anyway, but that was worse. That was a period when I was getting up in the morning just saying I have to put one foot in front of the other and just walking through life. It

was a hard time period."

Respondent explained that her sister, with whom she was very close, had died from cancer, in 1996. Her sister's death had a "very dramatic" effect on her; the "mourning process hit [her] harder than normal". She was deeply depressed for four years, from 1996 through 2000. The depression affected her ability to work. She closed her sole practice of law and went to work for Schwartz, Barkin, in 1998, "in the hope that that would jump start [her] in going back to [her] real self."

Respondent also alleged that, in 1998 and 1999, she had a severe vitamin B12 deficiency that caused her to become "foggy" and prevented her from being "detail-oriented" and "focused." She claimed that, like the depression, this "foggy" feeling contributed to her readiness to trust Salerno and to accept his instructions.

In 2002, respondent suffered a stroke that left her paralyzed on her right side. She testified that she has some "residual damage to [her] writing and [her] right side," but is "back to pretty much normal." As stated above, respondent testified that the stroke has impaired her ability to recall all of the details of the transactions in question.

Respondent testified about other serious health problems that plagued her in 2001, namely, a gallbladder that "went

septic" and nearly killed her, and an enlarged pancreas that required surgery and caused her to lose fifty pounds in one month because her esophagus "closed up to the level [of] a straw." The surgery left her with some "residuals," such as the need to "stretch" her esophagus yearly to enable her to eat.

Presumably, respondent's reference to the illnesses that post-dated her 1999-2000 conduct in these matters was not intended to serve as mitigation for her actions, but to convey the notion that "a penalty that deprives [her], even temporarily of her livelihood, will work a severe hardship on her, not only economically, but in her ability to maintain her health insurance, which is vital to her life, health, and general well-being," as stated in her answer to the ethics complaint. At the hearing below, respondent expressed her gratitude for her current health-insurance coverage: "God bless my health insurance. Without it, I wouldn't have made it this far."

Respondent's counsel's written summation to the special master reiterated respondent's desperate need for the maintenance of her health insurance so that she may be treated for "ongoing physical conditions, which are, by all accounts, serious." In mitigation, counsel noted that

> [respondent] has been a member of this State's bar for over thirty-two years without incident. Her years in legal practice have been marked by

> professionalism, by the ethical service she has provided to her clients and to Essex County Legal Services from 1974-1977, and by her services as a Child Support Hearing Officer for the past six years. Her admitted negligence on the five real estate transactions at issue, for which she has accepted responsibility, should not wipe away thirty two years of otherwise diligent and dedicated service.
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> [Counsel's Summation at 8.]

Counsel urged the special master to recommend a reprimand.

In his written summation, the OAE presenter noted that respondent had admitted "all of the operative facts." He, therefore, confined his argument to the appropriate sanction for her misdeeds. The presenter remarked that an attorney

> may not follow a client's direction blindly but must first satisfy herself that the client's goals are legitimate and are being pursued by legitimate means. *In re Blatt, 65 N.J. 539 (1974).* Respondent got in trouble by following Michael Salerno's improper, illegal instructions.
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> [OAE's summation at 1.]

The presenter noted that, because respondent had practiced law for almost twenty-five years before these incidents occurred and had experience with real estate matters, Salerno's instructions "should have raised a red flag." The presenter's position was that, although respondent "did not conceive this

fraud, have direct knowledge of illegal activity, or collect any of the fraud's proceeds, except her usual fees, she facilitated it by closing the deals as Salerno directed."

On the other hand, the presenter accepted respondent's testimony that she had been "taken in by Salerno's apparent legitimacy" and that "her judgment [had been] clouded by her medical condition and some personal losses".

At the conclusion of the hearing below, the special master found "apparent that [respondent's] conduct during the course of the various real estate transactions was based on what appears to be blind trust in Salerno." In addition, the special master noted the OAE's acceptance that respondent's judgment had been affected by mental and physical conditions.

Taking the foregoing into account, the special master found clear and convincing proof that "respondent has violated RPC 1.1(a) and (b) and is guilty of gross neglect." On the other hand, he found no violations of the other RPCs charged (RPC 1.2(d), RPC 4.1(a)(1), and RPC 8.4(c)), which require intent. The special master found no "clear and convincing evidence that respondent was a knowing participant in any actual criminal activities of Salerno."

The special master recommended a reprimand, reasoning that (1) respondent's conduct did not result in any personal gain;

(2) her trust was misplaced; (3) she was not the target of any criminal complaint or action; (4) she accepted responsibility for her actions; (5) she was cooperative with the OAE; (6) she did not use technical argument to justify her conduct; (7) and "there is no evidence that she would engage in such practices in the future or for that matter practice law in the same manner as in the past."

Following a de novo review of the record, we find that the special master's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence.

That respondent's conduct was grossly negligent, indeed reckless, is undeniable. In fact, it rose to the level of a pattern of neglect because it encompassed five matters. For a finding of a pattern of neglect at least three instances of neglect are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16).

Although respondent was experienced in real estate matters, she, in the words of the special master, "blindly" trusted Salerno and conducted no independent verification of the legitimacy of his instructions to her. In the process, she not only prepared RESPAs with numerous false entries that misled the lenders that financed the purchase of the properties, but also was instrumental in allowing Salerno to pocket the fruits of his

unlawful activities. Presumably, the individuals whom she considered as clients -- McAllister and Saroya -- suffered financial harm from the scheme that she facilitated, as they were ostensibly the borrowers of the mortgage loans granted for the purchases and, as such, were personally responsible for their satisfaction.

Acknowledging her mistakes, respondent blamed them on Salerno's persuasive tactics and on the unconditional trust that she reposed in his status as an investor. Although, at times, a person's unqualified trust in individuals who later betray that trust may be understandable, that situation usually arises in the context of a longstanding personal or professional relationship between the two. Here, respondent had no reason to have faith in Salerno's directions. She met him through a client/ friend, apparently without any endorsement of Salerno's good character or sterling reputation. There were no past dealings between her and Salerno that could have vouched for his integrity and supported her unrestricted confidence in the legitimacy of the postings on the RESPAs. Even so, she allowed herself, a mature and experienced lawyer, to follow directions from a man with whom, it did not take her long to suspect, "there was something wrong."

In the interim, she did not question the propriety of

reselling properties at artificially inflated prices; did not review the title searches to determine if there were mortgages and who the mortgagees were or, if she did, did not challenge Salerno's instructions to list mortgagees that the title searches did not disclose; in one instance, disbursed funds to Dominion, even though Dominion was not even listed on the RESPA, in another, disbursed funds to Saljam, although Dominion was the company listed on the RESPA, and, in a third instance, wrote a $2,000 directly to Salerno, who was not entitled to the funds; certified on the RESPA of the 105 Fulton Avenue transaction that a $23,000 deposit had been paid, without conducting an independent verification of Salerno's representation that he had the funds; and did not collect funds due from the buyers at closing.

Although respondent's, Lambiasi's, the special master's, and even the FBI's positions were that respondent's conduct was not aimed at deception, the record allows the inference that respondent had to know that her entries on the RESPA were not legitimate. In other words, she may not have been motivated by a desire to deceive anyone. Nevertheless, it is difficult to accept the proposition that an experienced real estate attorney, who had evidence that what she was listing on the RESPA might not have been the true state of affairs -- for example, the

title search for the 105 Fulton Avenue property showed no mortgages, but she listed Saljam as a mortgagee -- would unconditionally follow instructions that were at variance with official records.

The Court has held that circumstantial evidence can add to the conclusion that a lawyer's conduct was knowing. In re Johnson, 105 N.J. 249, 258 (1987). We find, thus, that, even though there is no evidence that respondent had the intent or motive to make misrepresentations, she did precisely that by knowingly inserting information on the RESPA that was contrary to reality.

On the other hand, the charge in connection with the affidavits of title is not so easily resolved. The complaint alleged that respondent notarized affidavits that contained misrepresentations, namely, that the buyers intended to occupy the properties as their residence. The complaint does not allege that respondent was aware of the misrepresentations, but only that she notarized documents containing misrepresentations.

As stated previously, the affidavit of title charge was not explored below. The only reference to it was made by respondent herself, when she volunteered that she had told the bank that McAllister was buying another house and that she did not think that he intended to reside in it. If this statement is viewed as

an admission that she knew that the affidavit was false, then we must find her guilty of having violated RPC 8.4(c) here as well. If it does not amount to an admission, then the only remaining issue is whether her notarization of a document that, unbeknownst to her, contained a misrepresentation, was unethical. The answer is yes only if the notarization itself was improper. Nothing in the record, however, even remotely suggests that it was.

After considering the relevant circumstances, we conclude that respondent was aware of the misrepresentations contained in the affidavits themselves and that, consequently, she violated RPC 8.4(c) in this respect.

We now return to the charges in connection with the RESPAs. We find that the record clearly and convincingly supports findings of gross neglect, pattern of neglect, and misrepresentation, violations of RPC 1.1(a), RPC 1.1(b), and RPC 8.4(c), respectively. We also find that, by taking directions from a non-client, respondent violated RPC 5.4(c) (professional independence of a lawyer). That rule states that 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 lawyer's professional judgment in rendering such legal services. Although the complaint did not charge a violation of that rule,

we deem the complaint amended to conform to the proofs adduced at the hearing below. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

Respondent's conduct was not without compelling mitigation, however. The record amply supports a finding that, at the time, she was unable to clearly differentiate between good and evil because of her depression and other serious physical ailments, in addition to her naiveté and trusting nature. The record conveys a sense that respondent is basically a good person. Lambiasi testified that she was "extremely nice," and that he "felt bad that we even had to go through this kind of proceeding with her."

Moreover, respondent derived no benefit from these transactions, fully cooperated with the OAE's investigation, accepted responsibility for her transgressions, has an unblemished disciplinary and professional record, and gives no reason whatsoever to believe that she will run afoul of the rules of the profession again.

The only remaining question is the appropriate quantum of discipline for respondent's violations.

Misrepresentations in closing statements, unaccompanied by other forms of misconduct, generally lead to the imposition of a reprimand. See In re Spector, 157 N.J. 530 (1999) (attorney

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) (attorney concealed secondary financing from the primary lender and prepared two different HUD-1 statements, thereby violating RPC 8.4(c)); and In re Blanch, 140 N.J. 519 (1995) (attorney failed to disclose secondary financing to a mortgage company, contrary to the company's written instructions).

At times, even when the misrepresentation to the lender appears in conjunction with other unethical acts, such as gross neglect or lack of diligence, a reprimand may still result. See In re Agrait, 171 N.J. 1 (2002) (reprimand for attorney who failed to verify and collect a $16,000 down payment shown on the HUD-1, which he was obligated to escrow under the terms of the contract; he breached his fiduciary duty to the lender by failing to collect the deposit; in granting the mortgage, the lender relied on the attorney's representation about the deposit; he also failed to disclose the existence of a second mortgage prohibited by the lender, thereby engaging in gross neglect and misrepresentation, and further failed to communicate the basis of his fee in writing) and In re Silverberg, 142 N.J. 428 (1995) (reprimand for attorney who learned, after a real estate closing, that his clients had concealed secondary financing; the attorney then failed to correct

the inaccuracy in the RESPA; the attorney was also guilty of gross neglect and lack of diligence; strong mitigating factors considered, including a psychiatric disorder and a finding that the attorney was an innocent party in the scheme masterminded by the seller's attorney and the broker).

If the misrepresentation encompasses several matters, thus evidencing a pattern of deception, more severe discipline is required. See, e.g., 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 HUD-1 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 more serious situations, suspensions have been imposed. See 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 HUD-1 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 HUD-1 statements, affidavits of title, and Fannie Mae affidavits and agreements, lied to prosecuting authorities, and failed to witness a power of attorney); In re Newton, 157 N.J. 526 (1999) (one-year suspension for preparing false and misleading HUD-1 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 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 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's conduct, like attorney Silverberg's, was not motivated by any attempts at deception; in an incredibly misguided fashion, she allowed a non-client to dictate how the details of the transaction should be portrayed on the RESPA, details that turned out to be untruthful. Like Silverberg -- and unlike Newton -- she had no actual knowledge of the scheme that unfolded. It is true that Silverberg's conduct was confined to one instance and that respondent's spanned five matters. On the other hand, the numerous and special circumstances that mitigate her infractions cannot be overlooked. Justice should be tempered with mercy.

Balancing respondent's wrongdoing with the strong mitigation present in this matter, we are convinced that a reprimand is sufficient discipline in this case. A suspension would be too draconian here, particularly in light of the possibility that respondent may either lose or be suspended from her job, thereby being deprived permanently or temporarily of

the health insurance benefits that she so desperately needs.

Vice-Chair Pashman and Member Boylan 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
William J. O'Shaughnessy, Esq.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

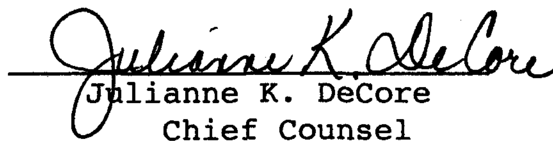
In the Matter of Lynn M. Gale
Docket No. DRB 07-094

Argued: July 19, 2007

Decided: August 30, 2007

Disposition: Reprimand

Members	Suspension	Reprimand	Admonition	Disqualified	Did not participate
O'Shaughnessy		X			
Pashman					X
Baugh		X			
Boylan					X
Frost		X			
Lolla		X			
Pashman		X			
Stanton		X			
Wissinger		X			
Total:		7			2



Julianne K. DeCore
Chief Counsel