SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 07-376 and 07-377
District Docket Nos. XIV-06-088E,
VI-06-902E, and XIV-07-169E

IN THE MATTER OF	
RACHEL Y. MARSHALL	
AN ATTORNEY AT LAW	

Decision

Argued: February 21, 2008

Decided: April 24, 2008

Janice L. Richter appeared on behalf of the Office of Attorney Ethics.

Robyn M. Hill appeared on behalf of respondent.

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

These matters came before us on a recommendation for discipline (ten-month suspension) filed by the District VI

Ethics Committee ("DEC") (DRB-07-376) and on a motion for discipline by consent filed by the Office of Attorney Ethics ("OAE") (DRB 07-377). In the motion, the OAE and respondent (through her former counsel) agreed that a one-year suspension or lesser discipline was appropriate for respondent's conduct in both matters. Both the OAE and respondent agreed that the motion for discipline by consent would be treated as a disciplinary stipulation. We determine to impose a one-year suspension.

The complaint in DRB 07-376 charged violations of RPC 1.1 (a) (gross neglect), RPC 1.2(d) (counsel or assist a client in conduct that the lawyer knows is illegal, criminal or fraudulent), RPC 1.3 (lack of diligence), RPC 1.7(a) (conflict of interest), RPC 1.15(d) (recordkeeping violations), 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). At the hearing, the presenter withdrew the RPC 1.3 charge.

In DRB 07-377, respondent stipulated that she violated RPC 8.4(c).

Respondent was admitted to the New Jersey bar in 1997. She has no prior discipline.

A. DRB 07-376 (District Docket Nos. XIV-06-088E and VI-06-902E)

The charges in this matter stem from a real estate transaction in which respondent defrauded two mortgage companies and failed to deliver to the buyer clear title to the property. At the disciplinary hearing, respondent admitted the allegations of the complaint and agreed that she had violated the charged RPCs, with the exception of the withdrawn RPC 1.3 charge.

In the spring of 2002, the grievant, Alicia Smith, agreed to buy real property from Kevin Brown. At that time, respondent was involved in a romantic relationship with Brown. Smith met Brown through a mutual acquaintance, Sean Gates. The property, a three-family house in Newark, was occupied by three tenants. Brown suggested Smith's purchase of the property as a mechanism for her to recoup money that Gates owed her and to provide an income stream via the rents, which, he assured her, exceeded the amount of the monthly mortgage payment. Smith did not contemplate occupying the property.

Brown told Smith that, if she bought the property, he would manage it, collect the rents, pay the mortgage and expenses, and remit the surplus to her. He also told Smith that she would receive $4,000 for buying the property, as well as a monthly

income of $2,300 to $2,400. Smith did not question why Brown would pay her for buying the property.

Brown informed Smith that she needed to obtain a $148,500 mortgage and that he would help her do so. At the time, Smith was twenty-one years old, had recently graduated from Sarah Lawrence College, and was not employed. Although her father is a lawyer, she did not discuss the real estate purchase with him. Before this transaction, Smith had never bought property and had never applied for a mortgage.

Brown told Smith that respondent would handle the real estate closing. Smith did not visit the property before buying it, did not investigate its condition or value, and did not review any of the tenant leases. She denied having signed the real estate contract and the mortgage application.

The real estate contract contained a purchase price of $165,000, a $148,500 mortgage contingency clause, and no requirement that Smith pay a deposit.

Neither respondent nor Brown disclosed to Smith that (1) on December 13, 2000, Ocwen Federal Bank ("Ocwen") had filed a mortgage foreclosure complaint against the property; (2) Ocwen had filed a notice of lis pendens on February 14, 2001; and (3)

Brown had filed a Chapter 7 bankruptcy petition, which did not list the property or the rents as assets.

To induce Ocwen to accept less than the full amount of the mortgage balance, which was approximately $115,00 to $120,000, respondent created a fictitious real estate transaction. She prepared a deed, dated June 20, 2002, purporting to transfer the property from Brown to Uptown America, Inc. ("Uptown"), a corporation owned by Gates. The deed, the real estate contract, and respondent's ledger sheet indicated a purchase price of $100,000 for the Brown to Uptown transaction. That transaction, however, never took place. Respondent also prepared a HUD-1 settlement statement reflecting a $100,000 purchase price and a $93,000 mortgage payoff to Ocwen. Respondent admitted that she had prepared these false documents to corroborate the phony Brown to Uptown transaction.

In reliance on respondent's representation that Brown had sold the property for $100,000, Ocwen agreed to accept only $93,000 to satisfy the balance of the mortgage and submitted a "Discount Payoff Agreement" to respondent. Respondent referred to this agreement as a "short pay." Respondent did not disclose to Ocwen that Brown had an agreement to sell the property to Smith for $165,000.

Next, respondent prepared a second deed, also dated June 20, 2002, purporting to convey title from Uptown back to Brown for $1. Respondent, however, did not obtain title searches, business searches, and corporate searches on Uptown, or an affidavit of title from Uptown.

On June 20, 2002, respondent conducted the Brown to Smith real estate closing. There, Smith met respondent for the first time and understood that respondent would be representing her. Respondent directed Smith to complete an intake form ordinarily given to clients. Respondent prepared a notice of settlement, which she signed as attorney for the buyer, Smith. Respondent also instructed Smith to sign an affidavit, which respondent then notarized, stating that Smith had chosen respondent to represent her.

Respondent also represented Brown at the closing. At the DEC hearing, respondent admitted that her representation of Smith and Brown constituted a conflict of interest.

Homestar Mortgage Services, LLC ("Homestar") provided the mortgage loan to Smith. The mortgage loan application indicated that Smith was an assistant manager for the Euphoria Café, a business owned by Brown, and had been so employed for two years. This information was not true. Although Smith did not prepare the

loan application and knew that it contained false information, she signed it because Brown instructed her to do so.

Respondent drafted a third deed, also dated June 20, 2002, conveying the property from Brown to Smith for $165,000. She also prepared a HUD-1 statement, a seller's affidavit of title, and a mortgagor's affidavit of title. Respondent knew that these closing documents falsely stated that no tenants resided on the property, no bankruptcy proceedings had been filed, and no interests or rights had been created that would affect Brown's ownership of the property. The closing certification also misrepresented that Smith was buying the property for use as a principal residence and would be occupying the property. Smith did not discover that falsehood until after the closing had occurred.

Respondent was aware that the title agent, the title insurance company, and the mortgage lender would rely on these documents.

The HUD-1 statement also contained false information about the financial aspects of the transaction. Although Smith did not pay a deposit or provide any funds at the closing, the HUD-1 indicated that she had paid a $16,500 deposit and $4,157 at the closing. In addition, the document reflected a "seller's concession" of $6,471.70. The instructions that Homestar had

sent to respondent, as the closing agent, provided that any seller's concessions not appearing in the real estate contract had to be approved by Homestar. Although the contract did not provide for a seller's concession, there is no indication that respondent obtained Homestar's approval of the concession before the closing, as required.

At the closing, Brown gave Smith a check for $4,000 for buying the property.

Respondent did not inform Smith, the title agent, the title insurance company, and Homestar about the prior deed transactions between Brown and Uptown.

On September 20, 2002, more than three months after the closing, respondent recorded all three deeds within minutes of each other.

Respondent did not obtain clear title to the property for Smith. On July 14, 2003, the title agent informed respondent of the following title problems:

- because Uptown had failed to pay corporate franchise taxes from 1999 through 2002, the deed from Uptown to Brown was not valid;
- a mortgage, several financing statements, and a tax sale certificate were outstanding;
- although the affidavit of title submitted by Brown falsely stated that outstanding judgments were against persons of a

similar name, the judgments were entered against Brown and needed to be satisfied; and

- no affidavit of title from Uptown had been submitted.

At the ethics hearing, respondent conceded that, because Brown had filed a bankruptcy petition before the closing, only the bankruptcy trustee, not Brown, had the authority to sell the property. She testified, however, that, at the time of the closing, she may not have understood the consequences of Brown's bankruptcy filing. She admitted that her failure to provide Smith with clear title to the property constituted gross neglect.

According to Smith, Brown managed the property and paid the mortgage for several months after the closing. At some point, she looked at the property and discovered that it was "the worst house on the block in a very bad section of Newark," and that there was only one tenant residing there. Smith informed Brown that she no longer wanted the property. Brown then stopped making the mortgage payments of $1,270 per month.

On December 28, 2002, Smith sold the property under a Declaration of Trust and Land Trust Agreement, whereby the buyer would take title to the property as a trustee, subject to the mortgage, and the parties would attempt to have the buyer refinance the mortgage to release Smith from that debt. At that

time, Smith discovered the title problems and contacted respondent, who referred her to the title company. Smith testified that she received no assistance from the title company.

As of November 2006, Smith no longer was responsible for the mortgage. However, she was required to pay half of the mortgage for several years. The new owner/trustee also paid half. The amount of the mortgage increased every six months, eventually reaching $1,900 per month.

Ultimately, respondent obtained discharges of the liens against the property. Because she could not locate Gates, however, she could not resolve the payment of the corporate franchise taxes.

In mitigation, respondent presented evidence of psychiatric problems. In 1999, she suffered from severe mood swings and feelings of an inability to function. She was treated by a psychologist for six months in 1999 or 2000, then again in 2001 or 2002, and for a third time in 2002 or 2003. During this period, she was trying to deal with her relationship with Brown and with feelings of hopelessness. Although she was aware that Brown was married, she continued in the relationship for four years, believing that he would end his marriage.

According to respondent, at the time of her misconduct, she was disturbed, under a lot of pressure, and confused. Brown constantly told her that she was ruining his life and that, if she did not help him, she would "ruin everything." She felt intimidated by Brown, who lived in her office building and constantly visited her office to criticize her.

At the time of the hearing, respondent was not receiving any psychological or psychiatric treatment.

James R. Cowan, Jr., M.D., a psychiatrist, testified on respondent's behalf at the ethics hearing. According to Dr. Cowan's January 9, 2007 report, respondent consulted with him for an evaluation in connection with the pending ethics matters. Dr. Cowan was not respondent's treating physician, but an expert witness.

In his report, Dr. Cowan opined that, at the time of the misconduct, respondent suffered from major depression with psychotic features. According to Dr. Cowan, she suffered from mood swings, anxiety, insomnia, and paranoia. Her family members also suffered from mental illness, including her mother, who was schizophrenic, and several relatives, who were bipolar. Respondent had reported to Dr. Cowan that Brown had been verbally and physically abusive toward her and was controlling

her. Dr. Cowan recommended that respondent receive counseling or psychiatric treatment for at least one year.

Dr. Cowan asserted that respondent was not out of touch with reality, could appreciate the nature of right and wrong, and did not suffer a loss of competency, comprehension, or will of a magnitude that would excuse knowing misconduct. He added that, although respondent had consulted him about the ethics complaint against her, she had not disclosed the nature of the charges to him.

On February 13, 2008, the Office of Board Counsel received from respondent's counsel a motion to supplement the record with a more recent report from Dr. Cowan. We determined to grant that motion. By letter dated February 6, 2008, Dr. Cowan indicated that he had examined respondent on January 25 and January 31, 2008, and determined that she no longer suffers from depression and requires no additional psychotherapy.

The DEC found that respondent violated all of the RPCs charged in the complaint, except for the withdrawn RPC 1.3 charge. The DEC recommended that respondent be suspended for ten months and that, prior to reinstatement, she attend an ethics seminar and complete a real estate course offered by the Institute for Continuing Legal Education.

B. DRB 07-377 (District Docket No. XIV-07-169E)

On July 1, 2002, respondent submitted to Northwestern Mutual Life Insurance Company ("Northwestern") an application on her own behalf for disability insurance. The application contained a questionnaire in which respondent falsely represented that, in the prior ten years, she had not been treated for "anxiety, depression, stress, or any psychological or emotional condition or disorder" and that, in the prior five years, she had not consulted with a psychiatrist or psychologist. As previously mentioned, respondent had been treated for depression within the stated period. By denying her prior psychological treatment, respondent knowingly provided false and misleading information on her insurance application.

Relying on respondent's misrepresentations, Northwestern issued a disability policy that provided potentially greater disability income benefits than would have been provided if she had answered the questions truthfully.

On May 6, 2003, about ten months after applying for the policy, respondent signed a request for disability benefits. Respondent claimed that she had been disabled as of March 1, 2003, as a result of depression and anxiety. She indicated that her symptoms had first appeared one month earlier, in February

2003. However, on September 15, 2003, respondent submitted to Northwestern a statement, which she certified as true and accurate, indicating that, from 1991 through 2001, she had been treated by a psychologist for depression and anxiety. On April 8, 2004, after receiving this new information, Northwestern rescinded the disability policy.

Northwestern referred the matter to the State Department of Law and Public Safety, Division of Criminal Justice, Office of Insurance Fraud Prosecutor. On October 23, 2006, respondent signed a stipulation of settlement with the State in a civil action, admitting that she had knowingly provided false and misleading information in support of an application for disability insurance. Respondent further admitted that her conduct constituted a violation of the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 et seq. She agreed to pay a civil penalty, attorney's fees, and service fees, all totaling $6,000. On January 2, 2007, an order for entry of judgment by consent in the amount of $6,000 was entered against respondent and in favor of the State.

In the disciplinary stipulation, respondent admitted that her misrepresentations violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The stipulation

refers to respondent's misconduct in the DRB 07-376 matter as an aggravating factor, and to her cooperation with the OAE and the Attorney General's Office, her substantial family history of psychiatric illness, and her major depression as mitigating factors.

Following a review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is supported by clear and convincing evidence and that the stipulated facts also clearly and convincingly establish unethical conduct.

In DRB 07-376, respondent assisted Brown in his scheme to defraud Ocwen, the bank that held the mortgage on Brown's property. Rather than satisfy the outstanding balance on that mortgage, respondent helped Brown deceive Ocwen into accepting a "short pay." She created a fictitious transaction in which Brown sold the property to Uptown for $100,000, thus convincing Ocwen to accept only $93,000 as full payment for a balance of between $115,000 to $120,000.

Respondent actively participated in this elaborate ruse. She prepared both a deed transferring the property from Brown to Uptown and a HUD-1 settlement statement with a purchase price of $100,000. She also created a ledger sheet indicating that she had received and disbursed funds in connection with this

fabricated sale. Altogether, respondent assisted a client in illegal, criminal, or fraudulent conduct; made false statements of material fact to a third person; and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, all in violation of RPC 1.2(d), RPC 4.1(a), and RPC 8.4(c). Her preparation of a phony ledger sheet violated RPC 1.15(d).

After having created one sham transaction, respondent perpetuated the scheme by fabricating a sale from Uptown to Brown. She prepared a deed purporting to convey title back to Brown. She, however, failed to obtain title, business, or corporate searches. As a result, she was not aware that Uptown had not paid its corporate franchise taxes for several years. Because of Uptown's failure to pay these taxes, its deed to Brown was not valid.

The Brown to Smith transaction, too, was replete with improprieties. Respondent represented both buyer and seller without disclosing this obvious conflict of interest or obtaining the clients' consent to the dual representation. At the closing, she signed documents as the buyer's lawyer and directed Smith to sign documents indicating that she was representing Smith. By engaging in an impermissible conflict of interest, respondent violated RPC 1.7(a).

Respondent also defrauded Homestar, Smith's lender. She prepared a HUD-1 statement that did not accurately depict the transaction. According to that statement, Smith had paid a $16,500 deposit, plus $4,147 at the closing. Smith, however, had not contributed any funds toward the purchase of the property. The HUD-1 also indicated that Brown had given Smith a "seller's concession" of $6,471.70. The record contains no evidence corroborating this aspect of the transaction.

Recently, the Court had occasion to address the dishonesty often associated with seller's concessions. In re Opinion 710 193 N.J. 419 (2008). The Advisory Committee on Professional Ethics had issued Opinion 710, 186 N.J.L.J. 1198 (2006), and a clarification, 187 N.J.L.J. 2 (2007), in which it determined that attorneys who participate in transactions involving seller's concessions that are not legitimate violate RPC 1.2(d), RPC 4.1(a), and RPC 8.4(c). The clarification emphasized that the opinion addressed fictional and deceptive increases in purchase prices that have no relation to the actual costs. The Court affirmed the ACPE opinion, noting that

> [e]ssentially, the ACPE was asked a very simple question – whether the Rules of Professional Conduct are violated when a seller and a buyer engage in a seller's concession for the purpose of perpetrating a

> fraud on the ultimate investor. We are confident that attorneys in this state know that they cannot participate in deceptive transactions. Opinion 710 stands for the unremarkable *proposition* that fraudulent transactions by attorneys in connection with real estate closings will run afoul of the Rules of Professional Conduct.
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> [In re Opinion 710, supra, slip op. at 4].

Here, respondent knew that Brown had not given Smith a seller's concession that would justify altering the purchase price. She, thus, knowingly participated in a fraudulent transaction, to the detriment of the lender.

Respondent also prepared closing documents misrepresenting that no tenants resided on the property, that no bankruptcy proceedings had been filed, and that Smith was buying the property for use as her principal residence. Respondent knew that three tenants occupied the property. She also knew that Brown had filed a bankruptcy petition before the closing. Although respondent may not have understood that, once Brown filed the bankruptcy petition, the bankruptcy trustee, not Brown, had the authority to sell the property, she knew that the statement that no bankruptcy had been filed was untrue. Respondent was aware that Smith, who bought the property for investment purposes, had no intention of residing there.

As a result of the sham transactions, Smith did not obtain clear title to the property. In addition to the unpaid corporate franchise taxes, other title problems included an unpaid mortgage, several outstanding financing statements, an outstanding tax sale certificate, unpaid judgments against Brown, and the absence of an affidavit of title from Uptown.

Respondent tried to clear the title problems, obtaining satisfaction of the various judgments and liens encumbering the property. However, she was not able to locate Gates, the owner of Uptown, to arrange for him to file the corporate franchise taxes.

Smith suffered financial damages resulting from her payment of the mortgage, after she had sold it to a trustee. Respondent conceded that she was guilty of gross neglect by failing to provide Smith with clear title to the property.

In sum, in DRB 07-376, respondent exhibited gross neglect; assisted a client in conduct that she knew was illegal, criminal or fraudulent; prepared false HUD-1 statements; engaged in a conflict of interest; failed to comply with the recordkeeping rules; made a false statement of material fact or law to third persons; and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. In DRB 07-377, respondent again engaged in conduct involving dishonesty, fraud, deceit or

misrepresentation when she submitted an insurance application containing false information and sought to obtain insurance benefits to which she was not entitled.

As to the measure of discipline, the parties stipulated that no more than a one-year suspension is warranted for respondent's combined misconduct. Respondent, through new counsel, urged the imposition of a censure, plus community service, a proctorship, and counseling. Respondent's former attorney, from whom she now leases office space, has volunteered to serve as her proctor.

In In re Alum, 162 N.J. 313, 315 (2000), in which the attorney participated in a series of fraudulent real estate transactions, the Court stated that "[o]rdinarily, acts of dishonesty, such as the falsification of public documents or lending documents, warrant a period of suspension."

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. If unaccompanied by other forms of misconduct, such misrepresentations generally lead to the imposition of a reprimand. See, e.g., 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, e.g., In re Agrait, 171 N.J. 1 (2002) (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 failed to communicate the basis of his fee in writing) and In re Silverberg, 142 N.J. 428 (1995) (attorney learned, after a real estate closing, that his clients had concealed secondary financing; the attorney then

failed to correct the inaccuracy in the RESPA; he 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).

Suspension have been imposed in more serious situations. See, e.g., 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 Thomas, 181 N.J. 327 (2004) (attorney suspended for one year for preparing a deed that misstated the sale price of the property, as well as a HUD-1 statement that misrepresented the amount of the buyer's deposit, the amount the seller was to receive, the amount of the

mortgage, and the disbursements made from the closing proceeds; the attorney also engaged in a conflict of interest by representing both buyer and seller in the real estate closing without disclosure and consent; failed to make prompt disbursements from the closing proceeds; failed to remit the remaining proceeds to the seller; failed to communicate with a client; gave false statements to the OAE in connection with the investigation and was guilty of gross neglect and a lack of diligence in his mishandling of the entire real estate transaction); In re Alum, supra, 162 N.J. 313 (one-year suspended suspension for attorney who engaged in a pattern of deception by participating 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 re Newton, 159 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 a 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).

In a more recent case, an attorney received only a reprimand for participating in five real estate transactions in which the parties bought property, obtained inflated appraisals, and then sold the property on the same day as the purchase, improperly profiting from these "flips." In re Gale, N.J. (2007). The attorney prepared false HUD-1 statements, listing deposits that had not been received and disbursements that had not been made. In the Matter of Lynn Gale, DRB 07-094 (August 30, 2007) (slip op. at 7). Gale "blindly trusted" the mastermind of these transactions and failed to independently verify the facts. Id. at

21. Although she prepared HUD-1 statements and other closing documents containing false information, she had no actual knowledge of the scheme, was not motivated by deception, and was described as an "unwitting" participant in the transactions. Id. at 11, 30. The attorney offered compelling mitigation – she was unable to clearly differentiate between good and evil because of health problems, did not benefit from the transactions, and had an unblemished career of about twenty-five years before the misconduct took place. Id. at 26.

Here, unlike Gale, respondent was a willing participant in the real estate transactions. She knew that she misled Ocwen into accepting less than the outstanding balance of its loan. She knew that she created fictitious conveyances toward that end. She knew that Smith had not provided any funds toward the purchase of the property and that Brown had not given a "seller's concession." Yet, she prepared closing documents containing these misrepresentations. Although we consider respondent's mental problems as a mitigating factor, she was able to appreciate the difference between right and wrong.

Respondent's misconduct is similar to that of the attorney in Thomas. Both attorneys engaged in only one transaction; both engaged in a conflict of interest by representing both the buyer

and the seller; both made serious misrepresentations on the HUD-1 statement and the deed about the financial aspects of the sale; and both were guilty of gross neglect in the handling of the real estate transaction. Although Thomas also failed to disburse all of the closing proceeds, made misrepresentations to the OAE, and failed to communicate with a client, circumstances not present in the instant case, here, respondent also created two fictitious property conveyances and failed to ensure that the buyer received clear title to the property.

As to respondent's misrepresentations on her disability insurance application, in cases in which attorneys committed fraudulent conduct, the discipline ranged from a reprimand to a suspension, depending on the factual circumstances. Two attorneys who collected unemployment benefits to which they were not entitled received reprimands. See, e.g., In re Gjurich, 177 N.J. 44 (2003) (attorney was guilty of theft by deception, a third-degree offense, for collecting unemployment benefits from the State of New Jersey while employed as an attorney in a Pennsylvania law firm; the attorney was admitted to a pre-trial intervention program for three years, ordered to pay $11,000 in restitution and a $7,500 fine, and to perform fifty hours of community service) and In re Ford, 152 N.J. 465 (1998) (attorney

falsely certified at least ten times to the Division of Unemployment and Disability Insurance that he was entitled to unemployment benefits; he failed to fully disclose his newly established law practice; even after his practice became successful, he continued to falsely assert that he was unemployed).

More often, however, attorneys who commit fraud for their own financial benefit receive a suspension, rather than lesser discipline. See, e.g., In re Jaffe, 170 N.J. 187 (2001) (three-month suspension for attorney who pled guilty to one count of third-degree theft by deception, in violation of N.J.S.A. 2C:20-4; the attorney received from his health insurer $13,000 by submitting false health insurance claims for specially prescribed baby formula); In re Wiss, 181 N.J. 298 (2004) (six-month suspension for attorney who was suspended in New York for the same period after pleading guilty to insurance fraud in the fifth degree; the attorney admitted that he falsely notarized documents for the purpose of advancing his own interests in a personal injury matter, failed to supervise his staff in connection with settlement negotiations with an insurance carrier, resulting in untruthful statements designed to improperly secure insurance payments, and filed a misleading

retainer statement with the New York Office of Court Administration); In re Brandon-Perez, 149 N.J. 25 (1997) (six-month suspension imposed on attorney who obtained a loan under false pretenses; in refinancing her own property, the attorney misrepresented to the lender that she would use the mortgage loan to satisfy four outstanding mortgages; she failed to disclose that, rather than pay off one of the mortgages, she planned to substitute collateral; she then failed to satisfy one of the mortgages for a period of several years and ultimately defaulted on the mortgage loan); In re White, 191 N.J. 553 (2007) (one-year suspension imposed on attorney who, while a law school student, fraudulently obtained a student loan by submitting an application in the name of a friend; the attorney forged her friend's name and used her friend's credit to obtain a loan of more than $54,000); In re Fisher, 185 N.J. 238 (2005) (attorney suspended for one year for his criminal conviction in Pennsylvania of one count of insurance fraud, one count of forgery, and one count of criminal conspiracy, all third-degree felonies; the attorney submitted a phony receipt to an insurance company for the purpose of obtaining insurance proceeds for his girlfriend, whose computer had been stolen; he then filed a complaint against the insurance company based on the same claim;

the attorney had a prior three-month suspension); In re DeSantis, 171 N.J. 142 (2002) (one-year suspension for attorney who pleaded guilty to obstruction of justice; attorney had given false testimony and engaged in a cover-up to obstruct a Securities and Exchange Commission investigation of insider trading in which the attorney had been involved; substantial mitigating factors considered); In re Kerrigan, 146 N.J. 557 (1996) (attorney suspended for eighteen months after pleading guilty in federal court in Pennsylvania to one count of mail fraud; the attorney received $5,500 after he knowingly submitted a false claim for injuries to an insurance company); In re Berger, 151 N.J. 476 (1997) (two-year suspension for attorney who submitted false information to his insurance agent with the intent to defraud the law firm's insurance carrier in connection with a fire loss); In re Capone, 147 N.J. 590 (1997) (two-year suspension, retroactive to date of temporary suspension, imposed on attorney who pleaded guilty in federal court to knowingly making a false statement on a loan application, in violation of 18 U.S.C.A. §§1014 and 2); and In re Sloane, 147 N.J. 279 (1997) (attorney suspended for two years, retroactive to date of his temporary suspension, after he pleaded guilty in federal court to mail fraud, in violation of 18 U.S.C.A. §§1341-1342, in

connection with false medical reports and bills that he submitted to an insurance company concerning his own personal injury claim).

Here, several mitigating factors are present. Respondent has no disciplinary history. The misconduct in both matters took place within the same very short timeframe — the real estate transactions took place in June 2002 and the insurance application was submitted on July 1, 2002. At the time, respondent suffered from depression and was in an abusive relationship that may have colored her professional judgment.

Based on the foregoing, we determine that, for the misconduct in both DRB 07-376 and DRB 07-377, a one-year suspension is the appropriate level of discipline. In addition, before respondent is reinstated, she must demonstrate proof of fitness to practice law, as attested by a mental health professional approved by the OAE. We further determine that, upon reinstatement, for a one-year period, respondent must practice under the supervision of a proctor approved by the OAE.

Members Baugh, Lolla, and Neuwirth 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, Chair

By:_____
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Rachel Y. Marshall
Docket Nos. DRB 07-376 and DRB 07-377

Argued: February 21, 2008

Decided: April 24, 2008

Disposition: One-year suspension

Members	Disbar	One-year Suspension	Censure	Reprimand	Admonition	Did not participate
O'Shaughnessy		X				
Pashman		X				
Baugh						X
Boylan		X				
Frost		X				
Lolla						X
Neuwirth						X
Stanton		X				
Wissinger		X				
Total:		6				3

Julianne K. DeCore
Chief Counsel