SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-073
District Docket No. IIB-04-029E

IN THE MATTER OF	:
LAURA SCOTT	:
AN ATTORNEY AT LAW	:

Decision

Argued: June 21, 2007

Decided: August 3, 2007

Gale Weinberg appeared on behalf of the District IIB Ethics Committee.

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 recommendation for discipline (reprimand) filed by the District IIB Ethics Committee ("DEC"). The three-count complaint charged that respondent violated RPC 1.1(a) (gross neglect), RPC 1.7 (conflict of interest), RPC 1.5(a) (unreasonable fee), RPC 4.1(a) (false statement of material fact

or law to a third person),[1] and RPC 8.4, presumably (c) (conduct involving dishonesty, fraud, deceit or misrepresentation). We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1984. She maintains a law office in Teaneck, New Jersey.

In 1987, respondent was publicly reprimanded for possession of a small amount of cocaine, while employed as a law clerk to an appellate division judge. After she was placed under supervisory treatment and successfully completed a one-year program under N.J.S.A. 24:21-7 (conditional discharge for certain first offenses), the outstanding criminal charges against her were dismissed. The Court did not impose a suspension because it was a case of first impression. In re Scott, et al., 105 N.J. 457 (1987).

In 1996, respondent was admonished for misconduct in a mortgage refinancing matter. She failed to represent her clients diligently by not remitting fees to the title and mortgage companies for six months, failed to reply to her clients' numerous requests for information about the matter, failed to deposit a specific cash amount into either her trust or her business account to fund the disbursement of the closing funds,

[1] Although the presenter stated that RPC 4.1 was omitted by "the committee," it is charged in the third count of the complaint, together with RPC 8.4(c).

and failed to reimburse funds to her clients. In the Matter of Laura P. Scott, DRB 96-091 (May 2, 1996).

This matter involves the sale of real property owned by the grievant, Atif Sarkes. Waheed Akladious, a New Jersey licensed real estate agent who had helped Sarkes obtain a mortgage in an earlier transaction, assisted Sarkes in selling the property. Sarkes and Akladious, both Egyptian nationals, had known each other for at least ten years.

Sarkes had owned the property, located in Jersey City, for only four months. He and his wife had never moved into it. Aware of this circumstance, Akladious approached Sarkes about selling it to Essat Amin, also an Egyptian national. Sarkes agreed. Akladious then referred Amin to respondent for representation.

The contract listed a sale price of $275,000. Sarkes never received evidence of or believed that Amin had paid a deposit. Although Sarkes signed a contract of sale, he never saw or received a fully executed copy, as promised by Akladious.

Sarkes communicated often with Akladious, who updated him on the progress of the transaction. According to Sarkes, Akladious was going to get respondent to handle the closing. As of the closing date, April 22, 2004, Sarkes believed that respondent would act as his attorney. At the closing, however, he learned that respondent was representing Amin, the buyer.

Two days before the closing, Akladious notified Sarkes that the title search had revealed a number of liens on the property that might delay the closing. Akladious told Sarkes that, to move the process along, Sarkes should go to the courthouse to try to clear up the liens. With the assistance of his prior lawyer, Daniel Roy, Sarkes obtained the necessary certificates to establish that certain liens had been satisfied. He turned over that information to Akladious for respondent's use.

At the closing, Sarkes met Timothy Tuttle, an attorney, for the first time. Respondent explained to Sarkes that Tuttle was "preparing the deed." After Sarkes signed the deed, which, apparently, Tuttle notarized, Tuttle left without participating in the closing. Sarkes did not know that he would have to pay Tuttle a fee of $350. Tuttle was someone whom he had just met, shook hands with, and who was at the closing for only a few minutes.

At the closing, Sarkes disputed a number of the entries on the HUD-1 form (RESPA), including a $13,750 deposit, first quarter taxes and a penalty of $795.59, and water charges. Sarkes informed respondent that the taxes had been paid and that he had a $480 credit for water charges, but she told him that she would escrow

the necessary funds until she was able to verify the payments and until all outstanding liens had been satisfied.[2]

According to Sarkes, respondent and Akladious had convinced him to go ahead with the closing, despite his perceived problems with the RESPA. They had told him that, if the closing did not take place at that time, the mortgage funds would have to be returned and there would be a great delay in completing the transaction.

Sarkes took issue with other entries on the RESPA. He did not understand the amounts paid to the Hudson County Clerk (line 1205 - $1,520) and complained that no one had explained to him the realty transfer fee, the mortgage cancellation fee (line 1305 - $150), and the entry on line 1307: $315 for "cancel tax certs (7)." Sarkes also questioned a $350 legal fee to Tuttle, of which he allegedly had no knowledge.

Ultimately, Akladious and Amin left the closing with funds totaling more than $20,000. As seen below, respondent disbursed a portion of the closing proceeds to Akladious' wife, Dorothy Christianson, and to Amin: to Christianson for loans that she and Akladious allegedly had made to Sarkes, and to Amin for a purported repair credit. Sarkes, however, denied having ever

[2] Apparently, the liens had been paid off after the prior closing on the property. Roy later faxed that information to respondent.

discussed giving a $10,000 repair credit to Amin, having signed an escrow agreement, or having authorized respondent to make payments to Akladious's wife, in the amount of $10,000.

According to Sarkes, he remained at the closing for approximately half an hour. He claimed that, after he had signed all the necessary papers, both respondent and Akladious had asked him to contact Roy, his prior lawyer, to try to clear a remaining $30,000 lien against the property. He left the closing with only a $10,346.97 check, instead of the $31,713.96 listed on the RESPA as "cash to seller," to which he believed he was entitled.

Sarkes claimed that respondent had been paid more than what she was entitled to receive. He thought that she had taken an additional $1,245 from his funds.

Sarkes asserted that, after the closing, most of his attempts to contact respondent had been unavailing. He spoke with her the day after the closing and had a later telephone conversation with her, in which he reiterated his earlier request for the balance of his proceeds.

Shortly after the closing, respondent prepared a second RESPA, allegedly as an explanation for Mitchell Elfman, an attorney who, as seen below, contacted her on Sarkes' behalf. The new RESPA contained the following changes: line 603 (cash to seller) listed $10,346.97, the amount that Sarkes received, rather than the

$31,713.96 shown on the first RESPA; there was no entry for an excess deposit; line 514 listed a "Gift of Equity" of $41,210.10; and it eliminated a seller concession of $6,093.11. Sarkes later learned that "gift of equity" meant that he was "giving that money away" to Akladious, Christianson, Amin, and respondent. Sarkes maintained that he had not sold his house "to give $41,000 blowing away as a gift of equity."

Sarkes testified that he first saw the second RESPA eight days after the closing, on April 30, 2004. Akladious had given it to him in a Dunkin' Donuts, stating, "That's it. You got your money. . . . That's the right HUD. The HUD you have is . . . incorrect." Sarkes complained that Akladious had not given him an opportunity to ask questions about the changes, but merely told him that he had received "all [that] he was supposed to get." In turn, Akladious denied having ever seen Sarkes after the closing and having given him the new RESPA.

Thereafter, Sarkes sought the assistance of a friend, better versed in English, to translate and draft a letter to respondent, dated April 30, 2004. The letter requested an appointment to resolve all issues relating to the monies that Sarkes believed he was owed, and asked for an explanation of the "gift of equity." Respondent did not reply to Sarkes's letter until after Sarkes filed an ethics grievance against her. At that time, respondent

told him that she had obtained new information from Akladious, and that she could turn over certain monies to him. By then someone had advised Sarkes not to communicate with respondent because of his grievance against her.

On an unspecified date, Mitchell Elfman, a New York attorney, contacted respondent on Sarkes' behalf. By handwritten letter dated June 4, 2004, respondent informed Elfman that Sarkes had "agreed to permit the seller $10,000 for repairs plus additional points and payment of hazard insurance in the sum of [$]11,624.00." Sarkes denied having agreed to such credit. He claimed that he had no knowledge that a home inspection had been conducted and that he had never seen a home inspection report. Moreover, there was no entry in either RESPA for a repair credit.

Respondent's letter also alleged that a portion of the above credit was for the repayment of a loan from the mortgage broker, presumably Akladious. Sarkes, however, denied having ever borrowed money from either Akladious or Christianson.

Subsequently, Sarkes retained a New Jersey attorney, Carmine Campanile, to pursue the return of some of the closing proceeds. Campanile wrote two letters to respondent, but was unable to obtain a satisfactory reply from her. He, therefore, advised Sarkes to file an ethics grievance against respondent.

Akladious testified at the DEC hearing.[3] He denied that he was a mortgage broker, as respondent contended. He first stated that he represented out-of-state financial institutions at closings, but later claimed that he was a licensed real estate agent employed by Monarch Realty, in Jersey City.

Akladious admitted that Amin had never provided a down payment for the transaction. He claimed that Sarkes was aware of this circumstance and that respondent, too, had been so informed at the closing. He testified that a down payment amount had been included in the contract to induce the lender to provide financing. As seen below, respondent prepared the first RESPA based on information provided to her by the mortgage company.

Akladious had prepared the contract of sale and obtained the parties' signature. He could not recall whether he had returned a fully executed copy to Sarkes, or whether respondent had ever seen it. Akladious did not retain a copy of the contract; only the mortgage company had a copy.

According to Akladious, there was an oral "side agreement," among Sarkes, Amin, and himself, without the benefit of a home inspection, that Amin would receive a $10,000 credit from Sarkes at the closing. Akladious added that the "side agreement" was not

[3] Akladious ignored the presenter's attempts to interview him in connection with these proceedings. He cooperated with respondent's counsel, however, appearing as respondent's witness.

documented on the RESPA because otherwise the lender would not have approved the mortgage loan.

As to the $10,000 disbursed to his wife at the closing, Akladious stated that he and his wife had lent Sarkes $1,600 for the homeowner's insurance in an earlier matter and $8,400, over a period of time, for Sarkes' day-to-day expenses. Akladious had no documentation to substantiate these loans or Sarkes' agreement to repay him from his portion of the sale proceeds. According to Akladious, Sarkes had instructed respondent to write checks to Amin and to Christianson. Akladious believed that the $20,000 difference between what was listed on the original RESPA and what Sarkes received was attributable to monies paid to his wife and to Amin. Akladious noted that respondent had been "kind enough not to ask" for a written authorization from Sarkes to disburse those funds, accepting their "oral directive."

Akladious further testified that Sarkes had been present during the entire closing and had not objected to respondent's payments to him and his wife and to Amin. Akladious contended that the focus of the transaction was for Amin to get $10,000 and for him to recoup the money lent to Sarkes.

For her part, respondent testified that she had acted as the settlement agent in the closing between Sarkes and Amin, and that she had not represented Sarkes or given him any indication that

she would. She stated that Eastern American Mortgage (Eastern) had referred Amin to her. She also stated that Akladious worked for Eastern, a contention that Akladious denied. As seen above, he claimed that he worked for Monarch Realty.

According to respondent, at the closing she had reviewed some of the RESPA figures with Sarkes, "[j]ust so he could see where they came from, especially . . . since he didn't have someone there aside from Mr. Tuttle." Respondent recalled that Tuttle had prepared the deed on the date of the closing, based on the title binder that she had given him.

Respondent testified that she and Tuttle, who have known each other for twenty years, have offices in the same building, but are not affiliated. Her testimony about Tuttle's involvement in the transaction was evasive. She stated, "I just told [Tuttle], well, it looks like [Sarkes] needs somebody to prepare the deed and affidavit and I gave him [the title binder] and he did it from there."

Respondent testified that she had not charged Sarkes a fee or been paid out of his funds, but, rather, "the purchaser's fund." Presumably, she was referring to the mortgage funds, inasmuch as Amin did not bring any funds to the closing.

As to a $1,845 trust account check to herself, respondent explained that it was comprised of the following entries on the

RESPA: $600 for her legal fee, $275 for the title examination (although the RESPA showed it as a payment to the title agency), $815 for "Settlement/Disbursement Fee" to the title agency, $35 for UPS charges, and $150 to cancel any outstanding mortgages.[4] According to respondent, she had prepared the initial RESPA relying on a "preliminary HUD" forwarded by Argent Mortgage Company (Argent).[5] Respondent stated that

> it's not normal for me to do this but because of the extent of what I'd gone through that he didn't have an attorney and I had to go through all this probably several hours of work prior to the closing even that should have been done by a seller's attorney, okay, but couldn't be and I have to clear the title because that's my obligation. . . . I told . . . the girl . . . at Eastern . . . you're going to have to . . . tell Argent that I'm adding another $500 for that because this wasn't a simple thing, it was way beyond what I should have had to do . . . the broker gives them that information. They called it another fee, the settlement fee, the closing fee, the attorney fee and then Argent comes back and puts it into something like a conglomerate, that is what they've done before, they will not separate it. They will not approve the HUD unless everything matches. [Emphasis added.]
>
> [2T45-8 to 2T46-1.][6]

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[4] These amounts total $1,875, however.

[5] The record does not clarify the respective roles of Eastern and Argent in the transaction. An April 12, 2004 letter that respondent allegedly wrote about having the deposit in escrow was addressed to Eastern, although Argent is the mortgage company that provided the loan for the transaction.

[6] 2T refers to the transcript of the DEC hearing of June 30, 2006.

As noted above, respondent did not write checks to Main Street Title for the title examination fee ($275) and the settlement/disbursement fee ($815), even though she showed these payees on the RESPA. According to respondent, Argent required her to reflect the payments in that fashion. She explained that Argent had assumed that the title company would be handling the closing; therefore, certain items, such as "title exam, title review, document preparation, Notary fees, anything like that" had been listed on RESPA as fees to the title company because "that is the way it is accomplished in certain geographical areas."

Respondent also explained that, although the RESPA listed Tuttle's fee as $350, she had given him a check for $485 because of courier and UPS charges.

As to the difference between the deposit amounts listed on Argent's RESPA ($21,837.75) and the RESPA that she had prepared ($13,750), respondent claimed that the $21,000 figure represented a combination of the deposit and of the seller's concession.

Respondent conceded that she had never seen the contract of sale. Although she had become involved in the transaction three or four weeks before the closing, she did not believe that it was legally significant to see the contract because it was already beyond the attorney review period.

Respondent speculated that either Akladious or someone from the mortgage company had ordered a title binder from Main Street Title. Her examination of the binder revealed a number of "open tax certificates," which she deemed to be typical because, in her opinion, Jersey City is very slow to cancel tax certificates. Respondent recalled that, twice before the closing, she had talked to Sarkes about the open tax certificates. She added that, the day before the closing, she had spoken to someone from Roy's office about open judgments against the property and had been informed that the judgments had been resolved. Based on these representations, she had determined to proceed with the closing. She did not request a letter of indemnity from Roy or receive a letter from him about the judgments until a week after the closing.

Respondent recalled that the closing had taken place at her office and had lasted about four hours. Tuttle's office was located on the first floor of the building. Tuttle had entered the conference room at least twice: once to introduce himself and take Sarkes' jurat, and then to inquire why the closing's attendees were arguing (in Arabic).

Respondent denied writing an April 12, 2004 letter to Eastern, stating that she was holding in escrow a $13,750 deposit paid by Amin. She claimed that the letterhead and the signature were not hers. She professed no knowledge of whether Amin had

paid a deposit, although it was her belief that he had and that someone was holding it in escrow. She speculated that she would have called the mortgage broker to verify that belief, but could not demonstrate that she had done so in this instance.

As to the $1,057.99 listed on line 303 of the RESPA as cash from buyer, respondent admitted that she never collected it from Amin.

With respect to the water bill, respondent testified that, because the title search had showed an "open water bill," she had escrowed more than the amount of the bill to ensure that she would have sufficient funds to satisfy it. She determined later that the bill had been paid. At the DEC hearing, respondent asserted that she still had those amounts in her trust account.

Respondent admitted that she owed Sarkes for an overpayment of $400, the water penalty of $539, and the water escrow of $750. She claimed that she was still holding $1,689 in her trust account, which she had not returned to Sarkes because he

> wouldn't take it when I was originally ready to give it to him. Then he had his lawyers write me a letter. Mr. Elfman didn't tell me to give it to him. He didn't ask me to give it to him and then Mr. Campanile also didn't ask me to give it to him, why I don't know, because I certainly would have agreed . . . .
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> [3T79-2 to 3T79-8.][7]

[7] 3T refers to the transcript of the DEC hearing of July 5, 2006.

Respondent recalled that, at the closing, there had been some discussions among Sarkes, Akladious, and Amin, some of which were in Arabic. She heard them discussing a repair credit and a loan, subjects of which she had no knowledge. When she asked them whether these items had been addressed in the contract, they replied that they had not, and disagreed over them. She concluded that no one had ordered a home inspection, but that the house was in a state of disrepair. She "let them argue because [she] didn't know what else to do."

Respondent's testimony supported that of Akladious' – that he had informed her that he and his wife had made loans to Sarkes and had told her to write a check to his wife for the loan. Respondent denied that the payment consisted of real estate commissions. According to respondent, Sarkes had not disputed the existence of the loan at that time and had observed her writing the check. Respondent noted that all three men had been present when Amin had refused to buy the house unless he obtained a check for repairs. Sarkes, according to respondent, agreed to the $10,000 repair credit, a $6,093.11 concession, and the lack of a deposit from Amin.

Respondent did not prepare an escrow agreement for the transaction and never obtained written authorization to support the disbursement of funds to Amin or Christianson. She stated

that, generally, she does not write checks to third parties from closing funds, unless she is authorized to do so. She acknowledged that, in the absence of a written authorization, it is customary to insert the phrase "payment approval" on the bottom of the check and have the seller sign it. She had not done so in this case, however, relying on Sarkes' oral direction. She admitted that her failure to obtain the proper authorizations was a mistake.

Despite the mortgage company's instructions that it had to approve any changes to the RESPA, respondent never sent a modified RESPA to it. She believed that she was not technically required to do so because she had Sarkes' authorization to make the disbursements. She added that she did not reflect the additional credits to the buyer on the RESPA because, by the end of the closing, she had no staff left to do it.

Respondent acknowledged that the checks that she disbursed were inconsistent with the RESPA. She asserted that she had prepared the second RESPA for "illustrative" purposes only, but later stated that she had prepared it as an explanatory statement for Elfman. She conceded that the second RESPA did not make sense; she lumped in all of the funds that she "didn't disburse and called it a 'gift of equity'," funds over which she had no control. According to respondent, the $41,210.10 gift of equity was

comprised of the seller's concession, the funds that Sarkes authorized her to give to Akladious and to Amin, and the deposit. Despite having included the deposit amount in that lump sum, respondent claimed that, she was still unaware of its non-existence, when she prepared the second RESPA. Notwithstanding that Elfman had become involved in the matter post-closing, respondent blamed him for not informing her that there was no deposit.

According to respondent, the funds given to Akladious' wife and Amin, added to the deposit and the seller's concession, left only $10,000 for Sarkes, as funds due to seller.

The DEC found that respondent had represented the buyer in a grossly negligent manner, a violation of RPC 1.1(a). The DEC remarked that, because respondent did not have a copy of the contract, she had handled the issues regarding liens, repairs credit, and other discrepancies based on what she believed to be an agreement among the buyer, the seller, and the mortgage broker.

The DEC found clear and convincing evidence that respondent also violated RPC 4.1(a) and RPC 8.4(c) by misrepresenting to the mortgage company that she was holding $13,750 in her escrow account as the buyer's deposit, preparing a RESPA on which the mortgagee relied in disbursing the loan proceeds to the buyer, and listing a $10,000 repair that, she knew or should have known, was unreasonable in light of the purchase price and the

loan-to-value ratio. The DEC obviously discounted respondent's testimony that she had not prepared the letter to the mortgage company stating that she had the deposit and would hold it in escrow until the closing.

As to the charge of fee overreaching (RPC 1.5(a)), the DEC found that respondent's fee was not unreasonable but, rather, not in accordance with what was listed on the RESPA.

In recommending a reprimand, the DEC noted that respondent presented no mitigation and that her demeanor during the hearing "revealed that she had no awareness of her unethical conduct with respect to this real estate closing."

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

At the outset, we note that none of the witnesses' testimony was entirely credible. Each had a possible motive for embellishing the truth: Sarkes to recover monies that he may or may not have agreed to disburse to others, Akladious to hide the fact that the purported loans to Sarkes were actually a broker's commission (thereby avoiding sharing it with the real estate agency where he claimed he worked), and respondent to disguise her ethics offenses.

As to the charged violation of RPC 1.7, we note that respondent made it appear as if two attorneys had been involved in

the closing: she as the buyer's attorney and Tuttle as the seller's attorney. Her testimony regarding Tuttle's involvement in the transaction was inconsistent, however. On one hand, she claimed that Sarkes had no attorney; on the other hand, she went to great lengths to make it appear as if Tuttle had represented Sarkes. Respondent either recruited Tuttle to prepare the deed and affidavit of title, or merely made it look as if he had drafted those documents. It is likely that her purpose was to avoid what she perceived to be a conflict of interest in representing both parties to the transaction.

If that was the case, respondent was mistaken that the dual representation of Amin and Sarkes violated the conflict of interest rules in this instance. It is permissible to represent both buyer and seller in a real estate closing, following the contract negotiations, so long as the attorney obtains the parties' consent to the representation. In re Lanza, 65 N.J. 347, 353 (1974). Here, respondent did not negotiate the terms of the transaction. Therefore, the mere fact that she might have represented both parties would not in and of itself rise to the level of a conflict of interest. We have considered also that, although the complaint charged a violation of RPC 1.7, that issue was not fully litigated below. For all the foregoing reasons, we dismiss the allegation that respondent violated that rule.

As to respondent's handling of the transaction, we find that she displayed not only gross neglect, as found by the DEC, but, at times, recklessness. First of all, she permitted the closing to proceed without having seen the contract of sale. Had she reviewed it, she would have known, among other important terms, the true sale price, the amount of the deposit, if any, and any pertinent closing conditions, such as the requirement for a home inspection.

Because respondent was retained several weeks before the closing, she had ample opportunity to obtain a copy of the contract of sale, as well as other relevant information. Nevertheless, she claimed, unconvincingly, that she did not view the contract as "legally significant" because she was retained well beyond the attorney-review period. But even if the terms of the transaction had already been negotiated at that juncture, her review of the contract would have disclosed what those terms were. Her failure to become acquainted with the parties' agreement constituted gross negligence.

Respondent was also grossly negligent in handling the open liens and judgments. She relied either on Sarkes' efforts or on verbal assurances from an unidentified person in Roy's office. That individual informed her that the title problems had been

resolved. She then proceeded with the closing, without obtaining written assurances from Roy that the title was clear.

We note also that respondent failed to comply with Argent's closing instructions: to accurately reflect the receipts and disbursements and to stop the closing to obtain written authorization for any changes. This conduct, too, constituted gross neglect, as respondent owed a fiduciary duty to the mortgage company.

By far, one of respondent's most serious errors was neglecting to obtain a written document from Sarkes and Amin, authorizing the disbursement of the sale proceeds. Sarkes may well have agreed to disburse his proceeds to Christianson and Amin. On the other hand, Sarkes vigorously disavowed "giving away" his money and having accepted loans from Akladious. Sarkes' dire financial circumstances certainly erode the effect of respondent's assertion that he had authorized the disputed disbursements. We note also that respondent's failure to obtain written authorizations from Sarkes placed her client, Amin (as well as herself), at risk of being sued for the return of the proceeds. We find such failure to be one more example of the reckless fashion in which she handled the closing.

We hasten to add that, although the unauthorized disbursement of escrow funds may, in some situations, invoke the

disbarment rule under In re Hollendonner, 102 N.J. 21, 29 (1985), the record does not clearly and convincingly support such a finding here, in light of inconsistent testimony on whether Sarkes authorized the disbursement of the funds.

In addition to the above misdeeds, respondent made the following misrepresentations on the first RESPA: (1) the amount due to the seller; (2) the existence of a deposit; (3) the receipt of cash from the buyer; and (4) her fee, which was disguised as disbursements to the title company. A settlement agent is required to certify that the document "is a true and accurate account of the funds" received and disbursed. The RESPA itself warns that it is a crime to knowingly make false statements on the form, subjecting a violator to penalties, fines, and even imprisonment.

Respondent's explanations for making the false entries on the RESPAs are unworthy of belief. She claimed that her first RESPA had to match the one drafted by the mortgage company, Argent. Yet, there were discrepancies between her and Argent's RESPAs. For instance, Argent listed the buyer's deposit as $21,837.75, while respondent listed it as $13,750; Argent listed the settlement charges to the buyer as $8,087, while respondent listed them as $7,323. We, thus, reject respondent's attempted justification and find that her misrepresentations on the first

RESPA were intended to induce Argent to approve a mortgage loan that financed one hundred percent of the purchase price.

The second RESPA, too, which respondent presented to Elfman, contained a material misrepresentation, the $41,000 "gift of equity." By making false entries on both RESPAs, respondent violated RPC 4.1(a) and RPC 8.4(c).

Another violation of RPC 8.4(c) was respondent's letter to Eastern, stating that she was holding the deposit funds in her escrow account until the closing. The DEC found incredible respondent's testimony that she never saw, drafted, or signed that letter. Because the DEC had the opportunity to observe respondent's demeanor during her testimony, it had a "better perspective than a reviewing [tribunal] in evaluating [her] veracity. . . ." Pascale v. Pascale, 113 N.J. 20, 33 (1988) (quoting Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)). We, therefore, defer to the DEC's assessment of respondent's credibility. Dolson v. Anastasia, 55 N.J. 2, 7 (1969).

With respect to respondent's fees, too, we agree with the DEC. There is no clear and convincing evidence in the record that her fees were excessive or amounted to overreaching. In addition, there is no evidence that the fees came from Sarkes' funds, as opposed to Amin's. We, therefore, dismiss that charge.

Finally, respondent failed to promptly disburse to Sarkes the sums that she held in escrow for various purposes, such as taxes and water charges. As of the date of the DEC hearing, respondent still had not turned those funds over to Sarkes. Her failure to do so promptly, violated RPC 1.15(b). Although the complaint did not charge respondent with having violated that rule, the evidence in the record amply supports a finding in this regard. We, thus, deem the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

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

Reprimands are usually imposed when the misrepresentations are unaccompanied by additional instances of misconduct. See, e.g., In re Spector, 157 N.J. 530 (1999) (attorney concealed secondary financing to the lender through the use of dual RESPA statements, "Fannie Mae" affidavits, and certifications); In re Sarsano, 153 N.J. 364 (1998) (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 when the misrepresentation is combined with other unethical acts, such as gross neglect, 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' misconduct included misrepresentation, gross neglect, and failure to communicate to the client, in writing, the basis or rate of his fee).

If the misrepresentation to the lender encompasses several matters, thereby constituting 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 RESPA statements showing repair credits allegedly due to the buyers; in this fashion, the clients were able to obtain one hundred percent financing from the lender; because the attorney's transgressions had occurred

eleven years before and, in the intervening years, his record had remained unblemished, the one-year suspension was suspended).

Suspensions are also warranted when other serious unethical acts are added to the misrepresentation. See, e.g., In re De La Carrera, 181 N.J. 296 (2004) (three-month suspension in a default case in which the attorney, in one real estate matter, failed to disclose to the lender or on the RESPA, that the sellers were taking 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 clients' trust funds); In re Nowak, 159 N.J. 520 (1999) (three-month suspension for attorney who prepared two settlement statements that failed to disclose secondary financing and misrepresented the sale price and other information; the attorney also engaged in a conflict of interest by 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 RESPA statements, affidavits of title, and Fannie Mae affidavits and agreements, and failed to witness a power of attorney); In re Newton, 157 N.J. 526 (1999) (one-year suspension for attorney who prepared false and

misleading RESPA statements, took a false jurat, and engaged in multiple conflicts of interest in real estate transactions); and In re Frost, 156 N.J. 416 (1998) (two-year suspension for attorney who prepared misleading closing documents, including the note and mortgage, the Fannie Mae affidavit, the affidavit of title, and the settlement statement; the attorney also breached an escrow agreement and failed to honor closing instructions; the attorney's ethics history included two private reprimands, a three-month suspension, and a six-month suspension).

Respondent's conduct most closely resembles that of attorney Agrait, who received a reprimand for abrogating his obligation, under the contract, to verify or collect a down payment. Agrait then listed the deposit on the RESPA, thereby inducing the lender to grant the mortgage loan, and also failed to disclose a second mortgage prohibited by the lender.

Respondent, too, misrepresented on the RESPA statement that Amin had paid a $13,750 deposit, in addition to making misrepresentations about her fees, the amount due to seller, and the cash from buyer. In addition, she misrepresented, in a letter to the mortgage company, that she was holding the deposit in escrow. As in Agrait, the mortgagee relied on that representation in issuing the loan. Agrait was also guilty of gross neglect.

Unlike Agrait's, however, respondent's conduct went beyond gross neglect – it rose to the level of recklessness. There is also her ethics history to consider. Although we are aware that more than ten years intervened since she was last disciplined, one of the prior matters also involved the mishandling of two real estate matters. On the other hand, the record conveys a sense that respondent's conduct at the closing resulted, in part, from her being overwhelmed – even intimidated – by the heated discussions that took place among Sarkes, Akladious, and Amin, in a language that she could not understand.

Because respondent's transgressions surpassed those present in Agrait, a reprimand would be insufficient discipline. In our view, the next level of discipline – a censure – adequately addresses the extent of respondent's violations. We believe that a suspension would be too severe a sanction in this instance. We note, for example, that the three-month suspension in Nowak was predicated not solely on his several misrepresentations in two RESPA statements (including the sale price and the existence of secondary financing), but also on a pattern of conflicts of interest. Our decision in that matter stated that, under the circumstances, a reprimand would be insufficient. A three-month suspension was imposed.

In 1999, however, a censure was not yet an available form of discipline. It is possible that Nowak's conduct might have been met with a censure, rather than a three-month suspension, had that degree of sanction been available at that time.

In light of the above considerations, we determine that a censure is suitable discipline for the totality of respondent's conduct.

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
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Laura P. Scott aka Laura A. Scott
Docket No. DRB 07-073

Argued: June 21, 2007

Decided: August 3, 2007

Disposition: Censure

Members	Suspension	Censure	Reprimand	Disqualified	Did not participate
O'Shaughnessy		X			
Pashman		X			
Baugh		X			
Boylan		X			
Frost		X			
Lolla		X			
Pashman		X			
Stanton		X			
Wissinger		X			
Total:		9			

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel