SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-043
District Docket No. XIV-2013-0187E

IN THE MATTER OF	:
SANGHWAN HAHN	:
AN ATTORNEY AT LAW	:

Decision

Argued: June 16, 2016

Decided: November 21, 2016

Jason D. Saunders appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a recommendation for a reprimand filed by the District IIB Ethics Committee (DEC). The nine-count complaint charged respondent with having violated RPC 1.1(a) (gross neglect); RPC 1.5(b) (failure to state the basis or rate of the fee in writing), RPC 1.15(a) (failure to safeguard client funds and negligent misappropriation of client funds [sometimes mistakenly cited in the complaint as RPC 1.15(b)]), RPC 1.15(d) (failure to

comply with recordkeeping requirements), RPC 1.8(a) (improper business transaction with a client), RPC 8.1(a) and (b) (false statement to a disciplinary authority and failure to disclose a fact necessary to correct a misapprehension known to have arisen in the matter), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). For the reasons expressed below, we determine that a three-month suspension and conditions on respondent's practice are warranted.

Respondent was admitted to the New Jersey bar in 1994. At the relevant times, he maintained a law office in Palisades Park, New Jersey. Although he has no history of discipline, he has been administratively ineligible to practice law since November 17, 2014, based on his failure to fulfill his Continuing Legal Education requirements.

The Office of Attorney Ethics' (OAE) investigation revealed that respondent's poor recordkeeping practices led to the negligent misappropriation of client funds. At one point, he improperly obtained a loan from a client, without complying with the RPCs, and then misrepresented to the OAE the purpose of the loan. He also certified to the accuracy of a HUD-1 settlement statement, which contained a number of inaccuracies and did not properly reflect the transaction.

At the DEC hearing, respondent stipulated to the allegations of the complaint, which the OAE presenter read into the record. The stipulated facts follow.

Respondent maintained trust and business accounts at PNC Bank (PNC). His practice consisted mainly of small business transactions, including real estate transactions.

On April 12, 2013, PNC notified the OAE that respondent's trust account was overdrawn in the amount of $2,663.15.

Count One

Respondent represented Patrick Lee and Gina Kim in the purchase of Superstar Laundromat (Superstar) located in Orange, New Jersey. Zak Aljaludi, Esq.,[1] *represented Superstar. In June* 2012, respondent prepared the contract of sale, which was signed by the parties, but the signatures were not witnessed. On August 31, 2012, the parties executed a rider to the contract. The closing occurred that same day.

Both the bill of sale, which respondent prepared, and the contract of sale provided for a sale price of $150,000 and required the buyers to make a $10,000 down payment upon

[1] The name Abe Jaloudi appears on the bill of sale of the business.

executing the contract. On July 11, 2012, Patrick Lee gave Aljaludi the $10,000 down payment.

The contract of sale included a provision for the sale of two Rolex watches, which stated:

> Balance to be paid at closing of title, in cash or by certified or bank cashier's check [sic] buyer to accept two (2) Rolex watches valued at $5,000 each as payment with balance paid as described above. (subject to adjustment at closing)
>
> [T15;C¶17;C.Ex.4.][2]

Notwithstanding the above provision, which indicates that the buyers would "accept" two watches, the parties stipulated that the buyers had agreed to bring two Rolex watches to the closing, each valued at $5,000, in exchange for $10,000 cash from the seller. Although the seller took the watches, the seller never gave respondent $10,000 for them. Respondent, thus, collected $10,000 less from the seller than the contract of sale required.[3]

Respondent did not prepare the HUD-1, but executed it as the settlement agent. The HUD-1 reflected that the sellers were to bring $29,269.80 to the closing and the buyers were to bring

---

[2] T refers to the transcript of the May 29, 2015 DEC hearing; C refers to the June 24, 2014 ethics complaint.

[3] Because the seller's obligations exceeded the sales price, the seller was required to bring money to the closing.

$142,425, for a total of $171,694.80. The HUD-1 mistakenly showed that the seller brought -$29,269.80. Because the watch transaction was not included on the HUD-1, respondent did not actually collect $39,269.80 from the seller, as required. He received $130,185 from the buyers and two watches valued at $10,000 for a total of $140,185. Rather than the $171,694.80 that respondent should have collected from the buyers and seller, he received only $159,454.80, a shortage of $12,240. Thus, respondent was short $10,000 from the seller and $2,240 from the buyers.

The HUD-1 did not list any transactions or funds paid outside of the closing. Moreover, the contract of sale specified settlement terms that were different from those recorded on the HUD-1. The HUD-1 did not record the August 23, 2012 $128,000 "check payment" from the buyers and inaccurately reflected the $29,269.80 from the sellers as -$29,269.80. Despite these problems and the shortages from the buyer and seller, respondent signed the HUD-1 as the settlement agent, certifying that it was a true and accurate account of all funds received or disbursed at settlement. He also collected and disbursed funds inconsistent with the materially inaccurate HUD-1.

Respondent admitted that he was grossly negligent in executing a HUD-1 that was materially inaccurate, and that, by

certifying that it represented a true and accurate statement of funds received and disbursed, he engaged in a misrepresentation, violations of RPC 1.1(a) and RPC 8.4(c), respectively.

Count Two

Respondent's failure to collect $10,000 from the seller in the Superstar Laundromat transaction resulted in an equivalent shortage in his trust account. Rather than holding $16,000 in escrow on his clients' behalf -- $14,000 for taxes and $2,000 for pending claims or liabilities against the sellers -- he held only $6,000. On November 13, 2012, respondent issued a $14,000 trust account check to the New Jersey Division of Taxation, which ultimately, in April 2013, resulted in an overdraft in his trust account.

Respondent informed the OAE that he had not realized, at the time of the closing or afterwards, that he had a $10,000 shortage in his trust account. When respondent "over-disbursed" $10,000 from his trust account, he had only $15 of his own funds in the account and should have been safeguarding at least $26,767.85 on behalf of seven clients (Kai Young Son, Nail of Nails, Madison Cleaners, Grace Nail Café, Honey Bee Nails, Nail Studio 1025, Inc., and Magic Touch Cleaners). When the check for taxes cleared on December 5, 2012, respondent had only

$16,792.85 in his trust account, rather than $26,767.85, as required. Therefore, he invaded and negligently misappropriated the seven clients' funds.

By letter dated August 30, 2013, the OAE requested information from respondent, including proof that he had remedied the shortage in his trust account. In response to that request, respondent submitted a copy of a $10,000 check. He asserted that he had borrowed $10,000 from a friend, Sun Lee. As it turned out, however, Sun Lee was also a client. Respondent's trust account records showed that he had recorded the $10,000 deposit on his Sun Lee Palisades Property client ledger card noting, "loan to Hahn," rather than on the Superstar Laundromat client ledger card to cover the shortage in that account.

On October 8, 2013, when respondent disbursed $10,000 along with the other closing proceeds for the Sun Lee Palisades property closing, he once again had a $10,000 trust account shortage for the Superstar Laundromat transaction. At that time, respondent should have been safeguarding at least $109,997.85 on behalf of six clients (Kai Young Son, Nail Studio 1025, Inc., Sun Lee-Birchtree property, Elaine's Spa, Tappan Nails, and Viva Nails). On October 17, 2013, respondent had an $11,620.40 trust account shortage and, thus, invaded and negligently misappropriated funds of these six clients.

Respondent admitted the he failed to safeguard and negligently misappropriated client funds, failed to comply with the recordkeeping rules, and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Count Three

Respondent represented "Singh-Hong" in the sale of Stop N Gas LLC to Lakhwinder Singh. Although the complaint alleged, and respondent admitted, that, on July 15, 2011, "Singh-Hong Choi," on behalf of Stop N Gas, provided respondent with a $19,000 deposit, page two of Exhibit 21 to the complaint shows that the check was from Lakhwinder Singh.

Nevertheless, respondent mistakenly recorded the deposit on his client ledger card as $20,000. Thereafter, on June 14, 2012, Stop N Gas gave respondent $2,000 for fees. On the same date, respondent issued a $20,000 trust account check to Singh-Hong Choi and $2,000 to himself for earned fees. The disbursements totaled $22,000, even though respondent had received only $21,000 for this transaction.

Respondent invaded other client funds when he over-disbursed money in this client matter. As of the date of the complaint, respondent had not "addressed the shortage."

As of, at least, November 6, 2013, respondent's trust account had an $11,000 shortage from the Singh-Hong Choi and the Superstar matters. He should have been safeguarding $109,997.85 on behalf of, at least, six clients (Kai Young Son, Nail Studio 1025, Inc., Sun Lee-Birchtree property, Elaine's Spa, Tappan Nails, and Viva Nails).

Respondent admitted that he failed to safeguard funds, negligently misappropriated funds, and did not comply with the recordkeeping rules.

Count Four

Reverend Hye Kyung Kang retained respondent, presumably for a litigation matter. On March 21, 2013, Kang gave respondent a $200 retainer check. On that same date, respondent issued two trust account checks in the Kang matter: $74, listed on the client ledger card as "clerk, Bergen," and $126, listed as "Fee," leaving a zero balance on the ledger card.

On April 22, 2013, respondent issued a $93 check to the Bergen County Clerk on Kang's behalf, which created a shortage in the trust account and impacted other clients' funds. The shortage was corrected on May 6, 2013, with the deposit of an additional $500 retainer fee from Kang. From April 22 to May 6, 2013, respondent's trust account was short by $93.

Respondent admitted that he failed to safeguard and negligently misappropriated client funds, and did not comply with the recordkeeping rules.

Count Five

In a January 28, 2014 fax, respondent informed the OAE that, because of a civil default judgment resulting in a levy against his business account, he maintained his earned fees in his trust account. The fax added that respondent "understood" that he should not have done so, but needed to keep the business going and to take care of his clients' matters.

Respondent further admitted disbursing legal fees from his trust account as needed, rather than when earned. He disbursed fees totaling $2,302 in eight client matters (Aquamarine Spa, K & S Auto Body, Jeong Ho Cho Nail Salon, Julie Ahn, Bong Jin Sa, Hanmani Catering, Tappan Nails, and Rev. Hye Kyung Kang).

The OAE's review of respondent's records revealed that he issued three trust account checks to himself on May 20, July 8, and August 26, 2013, in the amounts of $1,000, $677, and $700, respectively, leaving a negative $75 balance.

On October 3, 2013, respondent deposited in his trust account $45,000 for the Sun Lee Birchtree closing, which took place on November 6, 2013. At that time, respondent earned the

$75 that he had previously disbursed to himself as part of the August 26, 2013, $700 check. Respondent's overdisbursement of client funds to himself invaded other client trust funds.

Respondent maintained $15 of his own funds in the trust account. On August 23, 2013, he issued a $30 trust account check to the Treasurer, State of New Jersey, as a filing fee in a personal matter for a post judgment motion (as the defendant in a civil action Jang Ho Choi v. Hahn), thereby invading other clients' funds.

Respondent again admitted that he failed to safeguard funds, negligently misappropriated client funds, and did not comply with recordkeeping requirements.

Count Six

During the OAE demand audit, respondent admitted that he did not always provide clients with written fee agreements and, specifically, that he had not provided an agreement to clients Patrick Lee and Gina Kim (the clients in the Superstar Laundromat transaction), even though he had not regularly represented them. Respondent, thus, admitted violating RPC 1.5(b) for failing to state, in writing, the basis or rate of the fee.

Count Seven

As previously mentioned in connection with count two, above, respondent borrowed $10,000 from his client, Sun Lee, in September 2013. At that time, he was representing Sun Lee in a real estate transaction. Respondent did not memorialize the loan in writing, advise Sun Lee to seek the advice of independent counsel, or obtain Sun Lee's informed written consent for the loan. Respondent admitted that he failed to comply with the requirements of RPC 1.8(a).

Count Eight

Previously, in 2011, the OAE had made respondent aware of his recordkeeping responsibilities. The OAE's review of respondent's records for the period from January 1, 2012 forward revealed the following recordkeeping deficiencies: respondent did not (1) prepare proper trust account monthly three-way reconciliations; (2) maintain trust and business account canceled checks; (3) maintain trust account client ledger cards; (4) maintain trust and business account cash receipts or disbursements journals; (5) keep a running balance in the attorney trust account checkbook register; (6) consistently record client references in his trust account checkbook; or (7) withdraw legal fees from his trust account when earned or

deposit all earned fees into his business account. In addition, he maintained old balances in his trust account.

Respondent admitted that he failed to comply with the recordkeeping requirements set forth in R. 1:21-6 and, thus, violated RPC 1.15(d).

Count Nine

On August 30, 2013, the OAE requested various documents from respondent, including proof that he had remedied the existing shortage in his trust account. As previously mentioned, in a September 13, 2013 letter to the OAE, respondent attached a copy of the $10,000 check from Sun Lee, claiming that he had borrowed those funds from a friend.

Although respondent deposited the check into his trust account, he disbursed $10,000, on October 17, 2013, as part of Sun Lee's real estate transaction. Respondent had borrowed the funds to correct the Superstar Laundromat shortage for approximately a thirty-two day period, and neither informed the OAE that the loan was only short-term nor that he had subsequently disbursed the funds. Respondent also failed to inform the OAE that his alleged "friend" was a current client whose real estate transaction was pending.

The OAE uncovered the nature of the loan while reviewing respondent's financial records and bank statements. Respondent did not inform the OAE that the $10,000 was a material part of a separate transaction involving the same friend from whom he had borrowed the funds; misrepresented the nature of his relationship with Sun Lee and the nature of the loan; and left the OAE with the misapprehension that the $10,000 loan remained in place, even after he had disbursed the funds on October 17, 2013. Respondent never corrected the OAE's misapprehension about the loan, and was dishonest about its source and purpose in order to deceive the OAE that he had permanently remedied that $10,000 shortage. Respondent, thus, admitted having violated RPC 8.1(a) and (b) and RPC 8.4(c).

At the DEC hearing, the presenter urged either a reprimand or censure for respondent, depending on the weight that the hearing panel gave to the mitigating and aggravating circumstances. The presenter pointed out, in aggravation, that, in 2011, respondent had been informed about his recordkeeping responsibilities, but failed to take corrective measures and that his recordkeeping deficiencies led to the negligent misappropriation of client funds. As to mitigation, the presenter noted that respondent quickly accepted responsibility for his conduct.

Respondent admitted that he had no excuse for his conduct. His remarks concerning discipline were not transcribed because they were inaudible.

The hearing panel concluded that respondent was guilty of the charged violations. Considering that respondent had no history of discipline and that he cooperated throughout the hearing process, including attending the hearing, the hearing panel recommended a reprimand.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. We are unable to agree with the DEC's discipline recommendation, however.

Respondent, who represented the buyers of a laundromat, prepared both the contract of sale and the bill of sale. The contract provided for the sale of two Rolex watches. Respondent, however, failed to collect funds for the watches - $10,000 - and failed to collect sufficient funds from the buyers and seller at the closing. Purportedly, respondent did not prepare the HUD-1 settlement statement. Yet, he certified that it was accurate, even though it contained several errors and failed to reflect the watch transaction or any funds paid outside of the closing.

Although the inclusion of the sale of the watches as part of the transaction raises some questions, including why it was referenced in the contract of sale for the laundromat, respondent was not charged with any wrongdoing in this regard. Moreover, because of the summary nature of the hearing, the record is devoid of any explanation relating to it.

In count one, the complaint charged respondent with gross neglect for executing a materially inaccurate HUD-1 (RPC 1.1(a)) and misrepresentation for certifying that the materially inaccurate HUD-1 was a true and accurate statement of the funds received and disbursed (RPC 8.4(c)). Respondent's admissions to the allegations in this regard are sufficient to support a finding that he violated these RPCs.

Respondent's poor recordkeeping practices (RPC 1.15(d)) resulted in the failure to safeguard client funds and negligent misappropriation of client funds (RPC 1.15(a)), not only in the laundromat transaction (count two), but also in the Stop N Gas transaction (count three), the Kang matter (count four), and in the default judgment in his own matter (count five).

In the sale of the laundromat, respondent failed to collect adequate funds from both the buyers and seller. Thus, when he disbursed more funds than he collected, he created an overdraft in his trust account. During the course of the investigation,

the OAE sought proof that respondent had remedied the shortage. He submitted a reply stating that he had obtained a $10,000 "loan" from his "friend," Sun Lee. Respondent neither informed the OAE that Lee was an existing client nor that the purported "loan" had been recorded on Lee's client ledger card, and was not related to the Superstar Laundromat transaction.

The record concerning the loan scenario is sparse; nevertheless, respondent's conduct in this regard violated RPC 8.4(c), which he admitted (count two). Although it is questionable whether the $10,000 was a bona fide loan obtained to remedy the shortage in respondent's trust account (count seven) or simply a cover-up intended to mislead the OAE (count nine), respondent admitted that it was a loan and that he had not complied with the requirements of RPC 1.8(a): (1) disclosing the terms of the transaction to the client in writing; (2) advising the client, in writing, of the desirability of seeking independent counsel; and (3) obtaining from the client informed written consent to the transaction. Because respondent admitted that he obtained the loan from his client, albeit temporarily, we find an RPC 1.8(a) violation in this regard.

Respondent also admitted that he (1) failed to provide his clients with writings setting forth the basis or rate of his fee, but only one client was mentioned specifically (RPC 1.5(b) - count

six); (2) engaged in the above recordkeeping violations, even though he previously had been made aware of his R. 1:21-6 responsibilities (RPC 1.15(d) and R. 1:21-6), including the commingling of personal and client funds in his trust account, which he did intentionally to avoid enforcement of a levy against his business account (count eight); and (3) made misrepresentations to the OAE about his relationship with the client from whom he purportedly obtained the loan to remedy the shortage in his trust account (RPC 8.1(a) and (b) and RPC 8.4(c)) (count nine).

The following cases are helpful in fashioning the appropriate form of discipline for the aggregate of respondent's ethics infractions.

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Cameron, 221 N.J. 238 (2015) (consent; after the attorney deposited into his trust account $8,000 for the satisfaction of a second mortgage on a property that his two clients intended to purchase, he disbursed $3,500, to himself for fees that the clients owed to him for prior matters; when the transaction fell through, the attorney had forgotten the $3,500 disbursement to himself and issued an $8,000 refund to one of the clients, thereby invading other clients' funds; upon

learning of the overpayment, the attorney replenished the funds in his trust account; a demand audit of the attorney's books and records uncovered various recordkeeping deficiencies; prior admonition); In re Wecht, 217 N.J. 619 (2014) (as a result of poor recordkeeping, attorney negligently misappropriated trust funds when he wire-transferred funds twice to the same client); and In re Gleason, 206 N.J. 139 (2011) (attorney negligently misappropriated clients' funds by disbursing more than he had collected in five real estate transactions; the excess disbursements were the result of the attorney's poor recordkeeping practices, and solely for the benefit of the client; the attorney also failed to memorialize the basis or rate of his fee).

Respondent is also guilty of making misrepresentations to the OAE. Generally, in matters involving misrepresentations to ethics authorities, the discipline ranges from a reprimand to a term of suspension, depending on the gravity of the offense, the presence of other unethical conduct, and aggravating or mitigating factors. See, e.g., In re Fusco, 197 N.J. 428 (2009) (attorney reprimanded where, in connection with an ethics matter, he falsely asserted that another attorney had drafted a response to a grievance and then signed that letter on that attorney's behalf without that attorney's authorization; prior reprimand);

In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who created a phony arbitration award to mislead his partner and then lied to the OAE about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous professional achievements, and his pro bono contributions); In re Otlowski, 220 N.J. 217 (2015) (censure imposed on attorney who demonstrated a troubling pattern of deception toward multiple parties; the attorney made misrepresentations to a third party and to the OAE that funds deposited into his trust account had been frozen by a court order when he had disbursed the funds to various parties pursuant to his client's instructions; the attorney also made misrepresentations on an application for professional liability insurance; mitigating factors included the passage of time, the absence of a disciplinary history in the attorney's lengthy career, and his public service and charitable activities); In re Homan, 195 N.J. 185 (2008) (censure for attorney who fabricated a promissory note reflecting a loan to him from a client, forged the signature of the client's attorney-in-fact, and gave the note to the OAE during the investigation of a grievance against him and continued to mislead the OAE throughout its investigation that the note was authentic; and that it had been executed contemporaneously with

its creation; ultimately, the attorney admitted his impropriety to the OAE; extremely compelling mitigating factors considered, including the attorney's impeccable forty-year professional record, the legitimacy of the loan transaction listed on the note, the fact that the attorney's fabrication of the note was prompted by his panic at being contacted by the OAE, and his embarrassment over his failure to prepare the note contemporaneously with the loan); In re Bar-Nadav, 174 N.J. 537 (2002) (three-month suspension for attorney who submitted two fictitious letters to the district ethics committee in an attempt to justify his failure to file a divorce complaint on behalf of a client; the attorney also filed a motion on behalf of another client after his representation had ended, and failed to communicate with both clients); In re Rinaldi, 149 N.J. 22 (1997) (three-month suspension for attorney who did not diligently pursue a matter, made misrepresentations to the client about the status of the matter, and submitted three fictitious letters to the ethics committee in an attempt to show that he had worked on the matter); In re Katsios, 185 N.J. 424 (2006) (two-year suspension for attorney who prematurely released a buyer's deposit (about $20,000), which he held in escrow for a real estate transaction, to the buyer/client, his cousin, without the consent of all the parties to the

transaction; ordinarily, that misconduct would have warranted no more than a reprimand, but the attorney panicked when contacted by the OAE, and then sought to cover up his misdeed by fabricating evidence; we noted that the cover-up had been worse than the "crime"); and In re Silberberg, 144 N.J. 215 (1996) (two-year suspension imposed on attorney who, in a real estate closing, allowed the buyer to sign the name of the co-borrower; the attorney then witnessed and notarized the "signature" of the co-borrower; the attorney stipulated that he knew at the time that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false seven-page certification to the district ethics committee in order to cover up his improprieties).

Respondent also admitted that he engaged in a misrepresentation "by certifying a clearly inaccurate HUD-1 settlement statement." Here, too, the discipline imposed for misrepresentations on closing documents has ranged from a reprimand to a term of suspension, depending on the seriousness of the conduct, the presence of other ethics violations, the harm to the clients or third parties, the attorney's disciplinary history, and other mitigating or aggravating

factors. See, e.g., In re Barrett, 207 N.J. 34 (2011) (attorney reprimanded for misrepresenting that a HUD-1 statement that he signed was a complete and accurate account of the funds received and disbursed as part of the transaction; the HUD-1 reflected the payment of nearly $61,000 to the sellers, whereas the attorney disbursed only $8,700 to them; the HUD-1 also listed a $29,000 payment by the buyer, who paid nothing; finally, two disbursements totaling more than $24,000 were omitted from the HUD-1; the attorney had no record of discipline); In re Mulder, 205 N.J. 71 (2011) (reprimand for attorney who certified that the RESPA that he prepared was a "true and accurate account of the funds disbursed or to be disbursed as part of the settlement of this transaction;" specifically, the attorney certified that a $41,000 sum listed on the RESPA was to satisfy a second mortgage; in fact, there was no second mortgage encumbering the property; the attorney's recklessness in either making or not detecting other inaccuracies on the RESPA, on the deed, and on the affidavit of title was viewed as an aggravating factor; mitigating circumstances justified only a reprimand); In re Agrait, 171 N.J. 1 (2002) (reprimand for attorney who, despite being obligated to escrow a $16,000 deposit shown on a RESPA, failed to verify it and collect it; in granting the mortgage, the lender relied on the attorney's representation about the deposit;

the attorney also failed to disclose the existence of a second mortgage prohibited, by the lender; the attorney's misconduct included misrepresentation, gross neglect, and failure to communicate to the client, in writing, the basis or rate of his fee); In re Gahwyler, 208 N.J. 353 (2011) (censure imposed on attorney who made multiple misrepresentations on a HUD-1, including the amount of cash provided and received at closing; attorney also represented the putative buyers and sellers in the transaction, a violation of RPC 1.7(a)(1) and (b); mitigating factors included his unblemished disciplinary record of more than twenty years, his civic involvement, and the lack of personal gain); In re Soriano, 206 N.J. 138 (2011) (censure for attorney who assisted a client in a fraudulent real estate transaction by preparing and signing a RESPA statement that misrepresented key terms of the transaction; the attorney also engaged in a conflict of interest by representing both the sellers and the buyers and failed to memorialize the basis or rate of his fee; the attorney had previously received a reprimand); In re Nihamin, 217 N.J. 616 (2014) (three-month suspension for attorney who prepared HUD-1s that falsely indicated that earnest money deposits had been made and disbursed loan proceeds not in accordance with the lenders' instructions; prior admonition); In re De La Carrera, 181 N.J. 296 (2004)

(default; three-month suspension imposed on attorney, who, in one real estate matter, failed to disclose to the lender or on the RESPA the existence of a secondary mortgage taken by the sellers from the buyers, a practice prohibited by the lender; in two other matters, the attorney disbursed funds prior to receiving wire transfers, resulting in the negligent invasion of clients' trust funds); and 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 arranging for a loan from one client to another and representing both the lender (holder of a second mortgage) and the buyers/borrowers).

Respondent also admitted that he failed to provide clients with retainer agreements. Such conduct typically results in an admonition, even if accompanied by other, non-serious ethics offenses. See, e.g., In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015) (attorney violated RPC 1.5(b) when he agreed to draft a will, living will, and power of attorney, and to process a disability claim for a new client, but failed to provide the client with a writing setting forth the basis or rate of his fee; thereafter, the attorney was lax in keeping his client and the client's sister informed about the matter, which

resulted in the client filing the claim; the attorney also practiced law while administratively ineligible to do so for failure to submit the required IOLTA forms, and failed to reply to the ethics investigator's three requests for information; we considered that, ultimately, the attorney cooperated fully with the investigation by entering into a disciplinary stipulation, agreed to return the entire fee to help compensate the client for lost retroactive benefits, and had an otherwise unblemished record in his forty years at the bar); and In re Ibezim, Jr., DRB 15-161 (July 22, 2015) (attorney failed to provide the client with a writing setting forth the basis or rate of the fee and failed to inform the client about critical events in the case).

Finally, respondent is also guilty of entering into an improper business transaction with a client. When an attorney enters into a loan transaction with a client, without observing the safeguards of RPC 1.8(a), ordinarily an admonition is imposed. See, e.g., In the Matter of George W. Johnson, DRB 12-012 (March 22, 2012) (the attorney, who was a trustee of a testamentary trust, made a loan from the trust to himself without seeking court approval, as required; extensive mitigation considered, including the attorney's otherwise unblemished record in his forty-four years at the bar); In the

Matter of Damon Anthony Vespi, DRB 12-214 (October 2, 2012) (attorney obtained a security interest in property that was the subject of the representation by having the client sign a promissory note to guarantee the payment of his $30,000 fee without complying with the requirements of RPC 1.8(a)); and In the Matter of Frank J. Shamy, DRB 07-346 (April 15, 2008) (attorney made small interest-free loans to three clients, without advising them to obtain separate counsel and completed an improper jurat; significant mitigation considered). But, see, In re Futterweit, 217 N.J. 362 (2014) (reprimand for attorney who entered into a business transaction with a client, by agreeing to receive a share of the company's profits in return for legal advice without complying with the RPC 1.8(a) requirements; the attorney also failed to prepare a writing setting forth the basis or rate of the fee; aggravating factors considered were the attorney's inconsistent statements made to ethics authorities, his prior admonition, and his failure to acknowledge any wrongdoing or remorse).

Here, a reprimand might have been justified if respondent had been guilty only of negligent misappropriation of client funds and recordkeeping violations; however, in 2011, respondent was on notice about his recordkeeping problems. The continuation of those problems shows a failure to learn from prior mistakes.

In addition, respondent made misrepresentations to the OAE about the "loan;" certified to the accuracy of the HUD-1 settlement statement, which contained mistakes and did not accurately reflect the transaction; did not satisfy the RPC 1.8(a) requirements for the loan from Sun Lee; hid his fees in his trust account to protect them from enforcement of a default judgment; and did not communicate the basis or rate of his fee in writing. Respondent's conduct as a whole demonstrates either a veil of dishonesty or a lack of understanding of the Rules of the profession.

Thus, under the totality of the circumstances, particularly respondent's dishonest conduct reflected by his misrepresentations in the real estate transaction, hiding fees in his trust account, and his misrepresentations in this disciplinary matter, we determine that a three-month suspension is warranted.

We further require respondent (1) for two years, to provide to the OAE monthly reconciliations of his trust account on a quarterly basis, prepared by a certified public accountant; and (2) to complete five hours of ethics courses, in addition to those mandated by Continuing Legal Education requirements.

Members Hoberman and Rivera 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
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Sanghwan Hahn
Docket No. DRB 16-043

Argued: June 16, 2016

Decided: November 21, 2016

Disposition: Three-month suspension

Members	Three-month Suspension	Recused	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman			X
Rivera			X
Singer	X		
Zmirich	X		
Total:	7		2

Ellen A. Brodsky
Chief Counsel