SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-365
District Docket Nos. XIV-2007-0192E; XIV-2007-0217E; XIV-2010-0105E; XIV-2011-0168E; and XIV-2015-0064E

IN THE MATTER OF	:
GORDON A. WASHINGTON	:
AN ATTORNEY AT LAW	:

Decision

Argued: February 16, 2017

Decided: June 26, 2017

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Gordon A. Washington appeared pro se.

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

This matter was before us by way of a disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent, who admitted violations of RPC 1.1(a) (gross neglect), two counts of RPC 1.3 (lack of diligence), RPC 1.15(b) (failure to promptly deliver funds or other property to the client or a third person), RPC 1.5(b) (failing to set forth, in

writing, the basis or rate of the fee); RPC 1.7(a)(1) (conflict of interest), RPC 5.3(a) (failure to supervise a nonlawyer), two counts of RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The OAE recommends a short-term suspension, retroactive to the date of respondent's temporary suspension. The stipulation provides that this recommendation is not binding on us or respondent. We recommend a one-year retroactive suspension.

Respondent was admitted to the New Jersey bar in 1985. On January 26, 2006, he received an admonition for lack of diligence and failure to promptly deliver funds to a third party in a real estate transaction. In the Matter of Gordon Allen Washington, DRB 05-307 (January 26, 2006).

Respondent was temporarily suspended on May 26, 2010, pending the disposition of criminal proceedings, discussed below, filed against him. In re Washington, 202 N.J. 125 (2010). He was reinstated on December 10, 2015. In re Washington, 223 N.J. 408 (2015).

In the interim, on March 22, 2011, respondent was censured for his failure to communicate with a client and to cooperate

with disciplinary authorities. In re Washington, 205 N.J. 232 (2011).

On October 14, 2016, respondent and the OAE entered into a disciplinary stipulation. The facts are as follows:

The Stewart Matter (XIV-2007-0192E)

Sometime before his death in 2005, David Stewart agreed to sell his property in Passaic County, New Jersey, to Thelma and Vernon Dickson for $100,000. When Stewart passed away, his brother, Douglas Stewart, inherited the property. In June 2005, Douglas and his wife, Norma (grievants), obtained an appraisal of $275,000 for the property. Grievants, therefore, were not willing to sell the property for only $100,000.

At some point, respondent undertook representation of the Dicksons in connection with their purchase of the property. Sometime in 2006, respondent filed a specific performance action on behalf of his clients, resulting in a tentative agreement that the Dicksons would purchase the property for $165,000, by a date certain. A handwritten note at the bottom of a March 20, 2006 letter to grievants' attorney indicates that the closing may have been scheduled for June 24, 2006. The closing did not occur by that date. Thereafter, the parties agreed that the

Dicksons would buy the property for $180,000 with the closing to take place by July 18, 2006.

On July 17, 2006, respondent held the closing on the sale of property, from Stewart to Thelma Dickson, at his law office. Joanne Clark, Esq., counsel for Stewart, attended the closing and signed the seller's documents via power of attorney. Respondent represented Thelma. In accordance with the HUD-1, respondent was required to pay $13,690.57 to the "NJ Treasury Dept.," representing Stewart's inheritance tax due to the State of New Jersey. Respondent also was required to hold $5,000 in escrow, to cover any additional interest charges that might accrue on the inheritance tax from the time of closing, to the time the debt was satisfied.

After the closing, Clark discovered that her client's inheritance tax was still outstanding. Respondent failed to pay the inheritance tax for almost five months. Eventually, on December 5, 2006, respondent issued a check from his attorney trust account (ATA), for $14,300.54, to the New Jersey Inheritance Tax Division. That pay-off amount was $609.97 more than the closing figure of $13,690.57. Four months later, on April 2, 2007, respondent issued an ATA check to the Stewarts, returning the full escrow amount of $5,000.

In connection with the real estate transaction, respondent retained funds belonging to Dickson, in his ATA, from which he was required to pay Dickson's monthly mortgage until the funds were depleted. Of the twelve mortgage payments respondent made on Dickson's behalf, six were paid late. A late fee of $111.35 was incurred for each late payment, for a total of $668.10 in late fees. Respondent represented that he would reimburse Dickson for the unnecessary fees she paid on her mortgage.[1]

Respondent did not record the deed, which reflected a purchase price of $180,000, and a mortgage for $247,500, until January 14, 2008.

Finally, because the property was appraised at a value higher than the agreed-upon purchase price of $180,000, Vernon Dickson wanted to utilize the equity to retire outstanding debt. To assist the Dicksons, Mark Quartello, a mortgage broker/realtor associated with respondent's office, participated in preparing an inaccurate contract of sale, deed, and form HUD-1, all of which misrepresented that the purchase price of the property was $275,000, not $180,000. Specifically, by contract

[1] The record does not reveal whether respondent has reimbursed Dickson any portion of the late fees.

dated May 18, 2006, the Dicksons agreed to buy the property for $275,000, with a mortgage in the amount of $261,250. The contract purportedly was signed by Douglas Stewart as the seller. Douglas is disabled (and was so at the time that the contract was allegedly executed) and unable to sign his name.

Although respondent denied preparing the false contract, on May 24, 2006, his office faxed a copy of it to Quartello. Further, All Pro Title, the company that issued title insurance on the property, produced documents (a certified copy of the deed and form HUD-1) that listed the purchase price as $275,000. Lastly, in its closing instructions, Freemont Mortgage, Thelma Dickson's lender, listed the sales price as $275,000, with a mortgage in the amount of $247,500.

On July 17, 2006, Freemont Mortgage sent a wire transfer in the amount of $250,328.90, to respondent's ATA, from which funds respondent made disbursements as reflected on his client ledger. Although respondent denied that he assisted his clients in committing fraudulent or criminal conduct, he acknowledged that he failed to properly supervise the conduct of Quartello, who had access to his law office during the time respondent represented the Dicksons.

The McDougald Matter (XIV-2007-0217E)

In January 2006, grievant, Shirley F. McDougald, obtained approximately $300,000 from the settlement of a personal injury claim. She decided to invest her money, seeking a good rate of return to enable the purchase of her first home. A member of her church provided respondent's telephone number to her, because he represented real estate developers. Respondent advised McDougald of an investment opportunity involving the development of a residential property located in Jersey City, New Jersey (the "Pamrapo Project"). He gave her a copy of an Investment Summary. Respondent disclosed to McDougald that he represented Dr. David Broadnax, the 70% owner of a venture to develop the Pamrapo Project; that Broadnax had contracted with NetWorth Builders & Development, LLC, to obtain the requisite approvals and to build the project; and that the property had been purchased with cash and, except for property taxes approximating $25,000, was unencumbered. Respondent further disclosed that he had "known the principal of NetWorth Builders, Mark Quartello, for [twelve] years. He is a realtor and a builder, and I vouch for his ability to complete the project on time and on budget."

After meeting Quartello and visiting some of his other construction sites, McDougald decided to invest $245,000 into the Pamrapo Project. On April 6, 2006, respondent formed a

limited liability company, called Pamrapo Avenue Funding, LLC, through which McDougald would channel her investment. Also on April 6, 2006, McDougald and respondent entered into an "Investment Escrow Agreement" in which respondent represented to McDougald that he:

> shall represent you in regard to investing funds in a certain real estate project located at 40-42 Pamrapo, Jersey City, New Jersey. You have employed me to represent you and I can always be reached at the above-referenced address and telephone number. However, I may not handle every detail of your case. I will sometimes supervise the work of others. To the extent feasible and consistent with proper representation, I will use associates, paralegals and/or clerks.

Respondent neither informed McDougald of her option to consult with another attorney prior to investing in the Pamrapo Project nor obtained McDougald's informed consent to the conflict of interest stemming from his dual representation.

McDougald understood that respondent represented her in her investment in the Pamrapo Project. The Investment Escrow Agreement, however, stated that McDougald acknowledged "that the Construction Manager will pay the Firm [respondent] a minimum fee of 5% for legal services to be performed in connection with the project." Respondent failed to explain to McDougald the basis of the five percent fee, specifically, whether it was derived from the final sale price of the project, the amount of her investment, or another figure.

Also on April 6, 2006, McDougald gave respondent a personal check made payable to "Allen Washington Trust Account," for $245,000. The next day, April 7, 2006, respondent deposited that check into his ATA. Under the Investment Escrow Agreement, respondent agreed that the $245,000 was to be used to develop the land located at 40-42 Pamrapo Avenue.

Further, respondent was obligated to obtain "all necessary agreements, promissory notes and mortgage[s] to codify the agreement to repay your company the principal investment plus a 20 percent return on your investment on or before December 31, 2006." To that end, an undated Promissory Note was executed, in which Pamrapo Development, LLC agreed to pay McDougald the principal sum of $245,000, plus interest of $49,000 on or before December 31, 2006. Quartello signed the note as the managing agent of Pamrapo Development. McDougald did not receive the return of her $245,000 investment with interest on or before December 31, 2006.

On April 10, 2007, about one year after McDougald had given respondent $245,000, he disbursed $1,966.50 to her. From the $245,000, respondent had made the following disbursements:

DATE	PAYEE/PAYOR	AMOUNT	BALANCE
4/07/06	McDougald	245,000	245,000.00
4/11/06	Jersey City Tax	(28,856.17)	216,143.83
4/11/06	NetWorth Bldrs	(51,143.83)	165,000.00
4/11/06	Respondent	(12,250)	152,750.00
4/27/06	NetWorth Bldrs	(12,500)	140,250.00

5/25/06	NetWorth Bldrs	(60,000)	80,250.00
5/25/06	NetWorth Bldrs	(30,000)	50,250.00
5/28/06	Hudson Cty Reg.	(40)	50,210.00
7/14/06	NetWorth Bldrs	(10,000)	40,210.00
7/17/06	BofA cashier chk	31,405.48	8,804.52
7/21/06	T. Dickson	(31,390.98)	40,195.50
7/21/06	Morejon&Punales	(1,000)	39,195.50
7/21/06	Morejon&Punales	(12,500)	26,695.50
8/04/06	Shirley McDougald	(10,000)	16,695.50
9/07/06	NetWorth Bldrs	(3,000)	
9/7/06	Tnsf - Lindsey Sub	(3,000)	13,695.50
9/20/06	Hudson Cty Reg.	(4,159)	9,536.50
10/4/06	Quartello	(7,500)	2,036.50
4/04/07	Hudson Cty Reg.	(70)	1,966.50
4/10/07	Shirley McDougald	(1,966.50)	-0-

The above disbursements are summarized as follows:

1. $171,143.83 to construction firms;
2. $28,856.17 for property taxes;
3. $12,250 to respondent for his legal fees;[2]
4. $13,500 to a law firm for fees related to a buy-out of Pamrapo partners;
5. $4,269 to the Hudson County Register;
6. $3,000 payment to the sub-account of another client, Lindsey (from which respondent's bank erroneously deducted a $3,000 payment to NetWorth Builders);
7. $11,966.50 to McDougald; and
8. $14.50 fee for purchase of a cashier's check ($31,405.48 check $31,390.98 re-deposit).

A mortgage, dated April 23, 2006, from Pamrapo Avenue Funding, LLC, to Pamrapo Development, LLC c/o Palisadium Real Estate, for $245,000, was created to secure McDougald's

[2] As noted below, the fees were repaid to grievant as part of restitution ordered by the Superior Court.

investment. That mortgage was not provided to McDougald until sometime the following year. Further, the mortgage was not recorded with the Hudson County Register of Deeds until April 4, 2007.

In the April 6, 2006 Investment Summary provided to McDougald, respondent represented that the "property was purchased with all cash and, except for taxes approximating $25,000.00, it is unencumbered." That statement was not true. Specifically, on January 12, 2005, a $200,000 mortgage to Pamrapo Development, LLC, from Palisadium Real Estate, LLC, had been recorded on the Pamrapo property. Palisadium is a licensed real estate company, whose broker of record is Mark Quartello.

Thereafter, on May 1, 2006, a second mortgage from Javaid R. Khan to Pamrapo Development, LLC, in the amount of $51,000 was recorded on the Pamrapo property. A few days later, on May 9, 2006, a third mortgage from Mohammad Rafique Khan to Pamrapo Development, LLC, for $49,000, was recorded on the Pamrapo property. Respondent failed to inform McDougald of those recorded mortgages because he was unaware of them, and had not run a title search on the property.

Thus, by the time the mortgage securing McDougald's interest was recorded on April 4, 2007, she was the fourth mortgagee of the Pamrapo property. Had respondent recorded her

mortgage promptly, McDougald most likely would have been the second mortgagee after Palisadium, instead of fourth. Further, had respondent run a title search on the property and disclosed the $200,000 mortgage recorded on January 12, 2005, McDougald may have decided against investing in the Pamrapo project.

Criminal Case (McDougald) (XIV-2010-0105E)

On October 25, 2010, respondent pleaded guilty under an indictment charging him with the crime of Deceptive Business Practices, in violation of N.J.S.A. 2C:21-7(h) (making a false or misleading written statement for the purpose of obtaining property or credit),[3] before the Honorable Patrick J. Roma, J.S.C., in the Superior Court, Bergen County. The indictment stemmed from his conduct in the McDougald matter. During his plea, respondent admitted that, after he had prepared a summary that indicated that the property was unencumbered, he found out that it was encumbered; that he was reckless by failing to order a title rundown and by relying on the representations of others;

[3] N.J.S.A. 2C:21-7 is a disorderly persons offense, unless subsection (h) or (i) is violated, which constitutes a fourth-degree crime. Respondent pleaded guilty to violating subsection (h), which pertains to false statements made for the purpose of obtaining property or credit.

that it was his responsibility to assure the correct status of the title and to communicate that status of the title to all parties; that the parties relied on the representation he made at the time of the closing that there were no encumbrances on the property; and that someone purchased the property with encumbrance[s] that basically rendered the property much less valuable than it would have been otherwise.

On January 28, 2011, Judge Roma sentenced respondent to five years' probation, and ordered him to pay $15,500 in restitution to McDougald at the rate of $258.34 per month for five years.

Criminal Case (Marijuana) (XIV-2011-0168E)

On August 27, 2012, respondent pleaded guilty under an indictment charging him with fourth-degree possession of marijuana, in violation of N.J.S.A. 2C:35-10a(3), before the Honorable Salem Vincent Ahto, J.S.C., in the Superior Court, Morris County. The indictment stemmed from the April 23, 2010 discovery of marijuana plants in respondent's residence, by authorities, when the fire department responded to a report of a small fire in respondent's bedroom. On October 5, 2012, Judge Ahto sentenced respondent to two years' probation, concurrent

with respondent's term of probation imposed in Bergen County, and fifty hours of community service.

The Johnson Matter (XIV-2015-0064E)

On August 20, 2003, respondent represented both grievant, James Johnson, the seller, and Evelin K. Potts, the buyer, in a real estate transaction for property in Madison, New Jersey. Respondent previously had represented Johnson in a matrimonial matter. Potts purchased the property for $425,000. The parties also entered into an agreement whereby Johnson would have the opportunity to repurchase the property by August 20, 2004. He was allowed to remain in the property until he repurchased it, paying a monthly rental fee of $900. Respondent drafted that agreement, including the following language:

> THIS WILL ACKNOWLEDGE THAT THE PARTIES WERE ADVISED THAT THEY SHOULD ALL SEEK SEPARATE COUNSEL TO REVIEW THIS AGREEMENT SINCE ALLEN WASHINGTON, ESQ., HAS ACTED AS ATTORNEY FOR THE PARTIES TO THIS AGREEMENT. YOU MAY OBTAIN THE NAME OF AN ATTORNEY IF YOU DO NOT HAVE AN ATTORNEY FROM THE BERGEN COUNTY LAWYER REFERRAL SERVICE

Nonetheless, respondent failed to obtain each client's informed consent, in writing, after full consultation and

disclosure of that conflict of interest prior to the signing of the real estate contract.[4]

* * *

The stipulation contains sufficient evidence to support the admitted violations of RPC 1.1(a), RPC 1.3, RPC 1.15(b), RPC 1.7(a)(1), RPC 5.3(a), RPC 8.4(b), and RPC 8.4(c).

In the Stewart matter, respondent lacked diligence by failing to pay inheritance taxes and by making six late mortgage payments, resulting in $668.10 in late fees, a violation of RPC 1.3. Further, respondent held $5,000 in escrow to cover any additional interest charges that could potentially accrue on the inheritance tax he was to pay at the time of closing. Respondent failed to pay the inheritance tax for almost five months after the closing. When he eventually did pay the tax, on December 5, 2006, an additional $609.97 in interest had accrued.

[4] The subject property of the above referenced transaction is respondent's current home address, a fact not addressed by the stipulation. Therefore, Office of Board Counsel (OBC) requested from the OAE an explanation as to how respondent came to own that property. On December 15, 2016, by way of letter to the OBC, the OAE explained that, on August 20, 2003, Johnson transferred the property to Potts for $425,000. On May 15, 2006, Potts sold the property to Brad E. Zanardelli for $520,000. Finally, on February 27, 2007, Zanardelli sold the property to respondent for $650,000. Respondent continues to own and reside in the Madison, New Jersey property.

Nonetheless, despite having paid the tax on December 5, 2006, respondent failed to promptly disburse the $5,000 he held in escrow, until April 2, 2007, a violation of RPC 1.15(b).

Finally, the transaction in the Stewart matter was fraught with falsifications. The contract contained an inflated purchase price. The HUD-1 did not reflect the true terms of the contract of sale. Douglas Stewart allegedly executed the contract; however, at the time of execution, he was disabled and incapable of signing his name. Both the title insurance and the mortgage were based on an inaccurate purchase price of $275,000. The stipulation places culpability for all of this behavior on Quartello, a mortgage broker, who also appears in the McDougald matter as a real estate broker, builder, and principal of NetWorth Builders. Respondent denied assisting any of his clients in the commission of a fraud, instead stipulating that he simply failed to supervise Quartello, who had access to respondent's office at the time. Hence, at a minimum, respondent violated RPC 5.3(a). Respondent, however, was not charged with having violated RPC 5.3(c)(1), which would have imputed Quartello's conduct to him. Therefore, we cannot find him responsible for the misrepresentations made on the Stewart HUD-1, but, rather, only for his failure to supervise Quartello, a nonlawyer.

In the McDougald matter, respondent failed to perform a title search, which would have disclosed a prior mortgage on the property in which McDougald was investing. He also failed to record McDougald's mortgage against the property in a timely manner, thus allowing two subsequent mortgages to be recorded ahead of hers, placing her in fourth position, and significantly devaluing her investment. This conduct violated RPC 1.1(a) and RPC 1.3.

Additionally, respondent stipulated that, although he explained, in writing, that the construction manager would be paying him a minimum of 5% for legal services, he failed to explain to McDougald the basis of the five percent fee. Specifically, he failed to explain whether that fee was derived from the final sale price of the project, the amount of her investment, or another figure, a violation of RPC 1.5(b). This particular paragraph of the Investment Escrow agreement between McDougald and Washington addresses the amount of the construction company's legal fees, a potential violation of RPC 1.8(f) (accepting legal fees from one, other than the client), if, indeed, the intent was for the construction company to pay McDougald's legal fees. That RPC, however, is not the subject of this stipulation.

The Investment Escrow agreement, however, does not specify the rate or basis for the fee respondent charged McDougald, a violation of RPC 1.5(b). Specifically, respondent paid to himself fees in the amount of $12,500 from McDougald's subaccount. Nothing in the agreement explains how his fee was to be calculated.

Further, although respondent disclosed to McDougald his prior relationship with both Quartello and NetWorth, he failed to inform her of her right to seek independent counsel and failed to obtain from her, in writing, her informed consent. This conduct violated RPC 1.7(a)(1). Respondent's written statement, to McDougald, that the property was otherwise unencumbered, when he knew that he had not ever performed a simple title search, violated RPC 8.4(c).

Moreover, based on his conduct in the McDougald matter, respondent pleaded guilty to having engaged in a deceptive business practice by making false or misleading statements to obtain property or credit. Specifically, McDougald relied on respondent's statement that the property was unencumbered, and ultimately purchased property that was rendered less valuable because of the prior mortgages. Respondent was sentenced to five years' probation and ordered to pay restitution to McDougald of $258.34 per month, for those five years, totaling $15,500. The

record does not explain the calculation of the restitution amount, although it may be based on respondent's legal fees.

Additionally, in a separate criminal matter, respondent was convicted of fourth-degree possession of marijuana, a violation of RPC 8.4(b).

Similar to McDougald, in the Johnson matter, respondent represented both the buyer and seller in a real estate transaction. Although he informed the parties of their right to seek independent counsel, he failed to obtain, in writing, their informed consent. Hence, respondent again violated RPC 1.7(a)(1).

In sum, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.15(b), RPC 1.5(b), RPC 1.7(a)(1), RPC 5.3(a), RPC 8.4(b), and RPC 8.4(c).

Cases involving conflict of interest ordinarily result in the imposition of a reprimand. In re Guidone, 139 N.J. 272, 277 (1994), and In re Berkowitz, 136 N.J. 134, 148 (1994). If the conflict involves "egregious circumstances" or results in "serious economic injury to the clients involved," however, discipline greater than a reprimand is warranted. Berkowitz, supra, 136 N.J. at 148.

In In re Fitchett, 184 N.J. 289 (2005), we were divided on the appropriate measure of discipline for the attorney's

multiple conflicts of interest that arose when he (1) continued to represent a public entity in litigation with the defendant, Kemi Laboratories, Inc. (Kemi), after he had become employed by Kemi's law firm and (2) filed a suit on behalf of Kemi against that public entity. In the Matter of Frederick Fitchett, III, DRB 04-273 (December 29, 2004) (slip op. at 14-15). The majority believed that a reprimand was appropriate because there was insufficient evidence that respondent's misconduct caused the claimed economic injury to Kemi. The dissenting minority voted for a three-month suspension because "respondent's overall conduct reflected an extreme indifference to Kemi's interests and to our Rules of Professional Conduct." In addition, the dissenting members considered as an aggravating factor the testimony that Kemi lost more than $1 million. Id. at 20-21.

The Supreme Court agreed with the dissenting members and imposed a three-month suspension on the attorney. In re Fitchett, supra, 184 N.J. at 290. In its order, the Court cited Berkowitz and noted that "a suspension has been required when a conflict of interest visits serious economic injury on the client or when the circumstances are egregious." In Fitchett, the attorney was suspended because the "circumstances of [his] conflict of interest [were] egregious" and his misconduct was "blatant and gross." Id. at 290-91.

Here, respondent's matters present both egregious circumstances and economic injury to clients. Specifically, respondent exhibited a complete disregard for the interests of his client, McDougald, not only by advising her to invest in a property developed by entities and Quartello, an individual with whom he was associated, but also by failing to conduct the most basic research - a simple title search - that would have revealed a prior encumbrance on the property and would have provided McDougald the information she needed to appropriately assess the risks of her investment. Instead, he relied on the statements of his associates, his relationship with whom gave rise to the conflict of interest for which he now receives discipline. In fact, so egregious was respondent's conduct in the McDougald matter, he was criminally charged and convicted of a fourth-degree crime. Notably, in most situations, a violation of N.J.S.A. 2C:21-7 is only a disorderly persons offense, unless subsection (h) or (i) is violated, which constitutes a fourth-degree crime. Respondent pleaded guilty to violating subsection (h), which pertains to false statements made for the purpose of obtaining property or credit.

Exacerbating this conduct is respondent's abdication of responsibilities in the Stewart matter. He failed to make mortgage payments on time, failed to pay the inheritance taxes

on time, failed to record the mortgage and the deed in a timely manner, held $5,000 for much longer than he should have before returning it to the Stewarts, and caused the Stewarts economic harm in that they were forced to pay late fees on their mortgage because of respondent's late payments, all violations of RPC 1.1(a), RPC 1.3, and RPC 1.15(b).

Moreover, in the Stewart matter, Quartello, a familiar name throughout this record, prepared multiple inaccurate documents, including a HUD-1, which misrepresented the purchase price of the property by $95,000. Respondent denied that he assisted his clients, the Dicksons, in any fraudulent conduct; however, he admitted that Quartello had access to his law office during this time and, clearly, respondent was not supervising him to any degree.

Finally, as in McDougald, respondent once again was involved in a conflict of interest in the Johnson matter by representing both the buyer and seller in a real estate transaction.

Respondent caused economic injury to his clients as a direct result of his egregious conduct and conflicts of interest. Hence, at a minimum, this conduct alone is deserving of a three-month suspension.

In connection with the aforementioned conduct, respondent failed to supervise a nonlawyer to whom he delegated responsibility for preparing a HUD-1. In a similar matter, a one-year suspension was imposed on the attorney in In re Ejiogu, 197 N.J. 425 (2008). There, the attorney, who had a busy immigration practice, abdicated his responsibilities and failed to supervise Gilbert Hart, whom he believed was a real estate broker. He trusted Hart implicitly and permitted him to take control of several real estate transactions through Hart's companies that functioned as Ejiogu's "paralegal outfit." In the Matter of Nedum C. Ejiogu, DRB 08-163 (November 18, 2008) (slip op. at 3). Among other violations, Ejiogu was charged with having violated RPC 5.3(a). Id. at 12.

Ejiogu deposited the real estate proceeds into his trust account, then authorized disbursements to Hart's companies, who failed to satisfy various liens. Instead of paying off amounts listed on the HUD-1s, Hart negotiated various checks, keeping the proceeds for his own use. Id. at 5. The OAE's investigation did not reveal, however, that Ejiogu had improperly taken funds from his trust account for his own benefit. Rather, he received only his standard attorney's fees in connection with the transactions. Id. at 13.

While Ejiogu viewed Hart as a paralegal, Hart, unlike a paralegal, was not present in Ejiogu's office, making it impossible for the attorney to exercise the required supervision over Hart. Ejiogu, however, permitted Hart to perform functions that were his responsibility and allowed him to control his files and funds. Id. at 37.

There was no evidence to establish that Ejiogu knew that Hart had not intended to pay off liens and was stealing client funds. Id. at 36. Thus, we found only that Ejiogu's actions were negligent, even reckless, but not knowing. Id. at 36. Ejiogu was guilty of failure to safeguard funds, making misrepresentations on HUD-1 settlement statements, and reckless failure to ensure that the settlement funds were properly disbursed. Id. at 40.

Here respondent's failure to supervise Quartello is similar to that of Ejiogu; however, here, there is no negligent misappropriation and only one client matter involved Quartello's preparation of a HUD-1. Nonetheless we view, this particular conduct to warrant an enhancement of respondent's discipline to a six-month suspension.

We determine, however, to further enhance respondent's discipline based on his additional ethics infractions.

Typically, an admonition is imposed for gross neglect and lack of diligence. See, e.g., In the Matter of Joseph C. Lane,

DRB 09-196 (October 21, 2009) (attorney failed to record deeds for two properties until one year after the closing; prior to the recording, the IRS placed a $10,000 lien against one of the properties; without charge, attorney had the lien removed).

Failure to promptly deliver funds to clients or third persons ordinarily leads to an admonition. See, e.g., In the Matter of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19, 2012) (in three personal injury matters, attorney did not promptly notify his clients of his receipt of settlement funds and did not promptly disburse their share of the funds; the attorney also failed to properly communicate with the clients; mitigation considered).

Conduct involving failure to prepare the written fee agreement required by RPC 1.5, even if accompanied by other, non-serious ethics offenses, typically results in an admonition. 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's filing of the disability claim, a

violation of RPC 1.3 and RPC 1.4(b); the attorney also practiced law while administratively ineligible to do so for failure to submit the required IOLTA forms, a violation of RPC 5.5(a); finally, he failed to reply to the ethics investigator's three requests for information, a violation of RPC 8.1(b); we considered that, ultimately, the attorney had cooperated fully with the investigation in this matter by entering into a disciplinary stipulation, that he agreed to return the entire $2,500 fee to help compensate the client for lost retroactive benefits, and that he had an otherwise unblemished record in his forty years at the bar); and In the Matter of Osualdo Gonzalez, DRB 14-042 (May 21, 2014) (the attorney failed to communicate to the client, in writing, the basis or rate of the fee, a violation of RPC 1.5(b); he also failed to communicate with the client, choosing instead to communicate only with his prior counsel, a violation of RPC 1.4(b); in addition, at some point, the attorney caused his client's complaint to be withdrawn, based not on a request from the client, but rather, on a statement from his prior lawyer that the client no longer wished to pursue the claim, a violation of RPC 1.2(a); we considered that the attorney had a pristine record in twenty-seven years at the bar and, in addition, several letters attesting to the attorney's good moral character).

A misrepresentation to a client requires the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Ruffolo, 220 N.J. 353 (2015) (respondent exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, performing no services after filing the initial claim, and failing to take any steps to prevent its dismissal or to ensure its reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates; finally, his assurances that the client's matter was proceeding apace, knowing that the complaint had been dismissed, and that he should expect a monetary award in the near future were false, thereby violating RPC 8.4(c)).

Finally, conduct involving less serious criminal acts generally has resulted in the imposition of an admonition or a reprimand. See, e.g., In the Matter of Michael E. Wilbert, DRB 08-308 (November 11, 2009) (admonition for possession of eight rounds of hollow-point bullet ammunition, a violation of N.J.S.A. 2C:39-3(f), and possession of an over-capacity ammunition magazine, in violation of N.J.S.A. 2C:39-3(j), fourth-degree crimes for which the attorney was admitted into a

pre-trial intervention program); In the Matter of Marc D'Arienzo, DRB 04-151 (December 10, 2004) (admonition for attorney who possessed a small amount of marijuana; when responding to an alarm at a residence, police found the house open and entered looking for a burglar; in the open, the police found marijuana, a "bong," and a marijuana pipe); and In re Thakker, 177 N.J. 228 (2003) (reprimand for an attorney who pled guilty to harassment, in violation of N.J.S.A. 2C:33-4(a), a petty disorderly persons' offense; the attorney harassed a former client, telephoning her repeatedly, after she told him to stop; additionally, the attorney was abusive to the police officer who responded in the matter; despite that police officer's warning, the attorney continued to call the former client and the police officer).

In our view, this violation serves to further enhance the appropriate discipline in this matter.

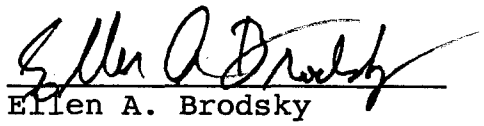
In aggravation, we consider respondent's disciplinary history. In mitigation, we consider respondent's admitted substance abuse problem and the fact that he has sought support through the Lawyer's Assistance Program. Thus, under a totality of the circumstances, we determine to impose a one-year suspension on respondent for his misconduct. However, respondent already has been temporarily suspended for more than five years,

pending the disposition of his criminal matters. Thus, we determine to impose respondent's suspension retroactive to May 26, 2010, the effective date of his temporary suspension.

Members Gallipoli and Hoberman 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Gordon A. Washington
Docket No. DRB 16-365

Argued: February 16, 2017

Decided: June 26, 2017

Disposition: One-year retroactive suspension

Members	One-year retroactive suspension	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