SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-369
District Docket No. XIV-2014-0178E

IN THE MATTER OF

MICHAEL W. SONG

AN ATTORNEY AT LAW

Decision

Argued: January 18, 2018

Decided: April 11, 2018

Christina Blunda appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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 censure and four hours of ethics courses, filed by the District IIA Ethics Committee (DEC), based on respondent's violation of RPC 1.2(d) (assisting a client in fraudulent conduct), RPC 4.1(a) (false statement of material fact to a third party), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The violations arose out of respondent's

alleged participation in fraudulent conduct involving the Federal Home Loan Mortgage Corporation (Freddie Mac). The DEC dismissed the charged violations of RPC 5.4(c) (permitting a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment) and RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects). We determine to reprimand respondent for his violations of RPC 4.1(a), RPC 5.4(c), and RPC 8.4(c).

Respondent was admitted to both the New Jersey and New York bars in 1996. At the relevant times, he maintained an office for the practice of law in Englewood Cliffs. He has an unblemished disciplinary record.

The facts are somewhat convoluted. In 2008, respondent was involved in two transfers of a residential property located in Little Ferry.

On July 21, 2004, Hae Na Woo (Woo) purchased the property from Osvaldo and Yalin Sanchez. Respondent was not involved in that transaction. By deed dated May 5, 2008, Woo conveyed the property to Song Han, as trustee of the 14 Washington Trust (Trust), for $100. The deed, which was recorded eleven days later, identified the property as that which the Sanchezes had

conveyed to Woo in 2004. Respondent also was not involved in this transaction, and he did not know who had prepared the deed.

As discussed below, at the time of the Woo-to-Trust conveyance, the property was subject to a first mortgage held by Freddie Mac and a second mortgage held by National City Bank. The mortgages were not satisfied when the title was transferred from Woo to the Trust.

Song Han was the brother of Hong J. Han (J. Han). Respondent testified that he represented J. Han in subsequent transactions involving the property, even though, as trustee of the Trust, Song Han, not J. Han, was a party to those transactions.[1]

Grievant James Downs, a Freddie Mac senior fraud investigator, testified that J. Han was the chief executive officer of United Funding and Consulting, LLC (United Funding), and a member of, and the registered agent for, Simpkin & Simpkin, LLC. According to Downs, these entities were involved in negotiating a short sale of the property.

Downs testified that he asked respondent, "in a general sense," whether he was aware of J. Han's business practices. Respondent told Downs that "his clients transferred properties

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[1] In a written statement submitted to Office of Board Counsel, respondent admitted having violated RPC 5.4(c).

into a trust to negotiate short sales and then would sell the property at a higher amount after the short sale and dissolve the trust."

Respondent testified that he became involved with the property in June 2008, when J. Han presented him with a contract of sale between the Trust and Tokusuke Akashi for a purchase price of $265,000.[2] According to paragraph 35 of the contract, the sale was "subject to bank's approval," and J. Han so advised respondent. Presumably, at this point, respondent was unaware of the May 2008 Woo-to-Trust conveyance.

On June 27, 2008, respondent sent a rider to the Akashis' lawyer, Vivian V. Ingilian. Among other things, the rider stated that "there may be outstanding lien(s) on the property and/or unpaid mortgages of the prior owners and that the contract is specifically subject to approval of short sale by the said lienholder(s)." Further, the rider required that the open mortgages and liens be "simultaneously paid off at closing of title and that the closing shall take place the same day as those mortgage [sic] and liens are paid off by the seller by way of a wire transfer." If the Akashis' title company objected to

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[2] Although the contract of sale identifies a single buyer, the property was conveyed to Tokusuke and Taeko Akashi. We, thus, refer to the buyer in the plural – Akashis.

the simultaneous mortgage and lien payoff and closing of title, the Trust would obtain title insurance from a different title agency, which the Akashis had to accept.

On July 21, 2008, Ingilian sent to respondent the Akashis' $26,500 deposit, which he placed in his attorney trust account on July 29, 2008. This was the first entry on respondent's client ledger card for 14 Washington Trust.

At some point, respondent received a title report, which reflected the May 2008 Woo-to-Trust conveyance. According to OAE investigator Tashon Jackson, respondent claimed that the May 2008 deed had been prepared to "lock in the buyer" while the short sale was negotiated, approved, and completed. Once the short sale price was agreed upon, respondent would prepare a corrected deed, reflecting the actual consideration. Respondent testified that he "insisted" that a corrected deed be prepared and recorded. Freddie Mac and National City were not aware of the May 2008 conveyance.

J. Han took steps to ensure that Woo's mortgages were paid off so that the Trust-to-Akashi transaction could move forward. He used respondent to accomplish that task. J. Han's efforts to clear the title delayed the Trust-to-Akashi closing from August 12, 2008 to December 29, 2008.

On November 25, 2008, almost five months after the Trust and the Akashis had executed the agreement of sale, and four months after respondent had received the Akashis' $26,500 deposit, Freddie Mac representatives approved a non-performing loans business plan for the property, which reflected a $250,000 value and a current offer of $232,500. On December 5, 2008, Freddie Mac issued a letter to its loan servicer, IndyMac Federal Bank (IndyMac), approving a short sale of the property from Woo to Song Han for $232,500.[3] To Downs' knowledge, Freddie Mac was unaware, at all times, that the Akashis and the Trust were under contract for $265,000 and that the Akashis had paid a $26,500 deposit.

On that same date, IndyMac informed Tommy Pak, a Simpkin & Simpkin employee, that the short sale had been approved and directed him to instruct the "escrow/title" to wire the proceeds to IndyMac and fax the HUD-1 closing statement.

Although Downs believed that Pak had negotiated the short sale on Woo's behalf, respondent testified that J. Han had done so. According to Downs, no evidence established that respondent,

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[3] The contract of sale is not part of the record. Respondent testified that he did not know whether a contract of sale for the Woo-to-Trust transaction existed.

or anyone from his office, was involved with Freddie Mac's approval process for the short sale from Woo to Song Han.

The Freddie Mac approval letter required a minimum payoff of $217,836.50 on the first mortgage. The $14,663.50 balance was to cover Woo's closing costs, which included $9,300 in realtor commissions, $2,500 to satisfy National City's second mortgage, and a $1,000 attorney fee. The approval letter also required any excess funds to be remitted to Freddie Mac.

Respondent testified that, on an unidentified date, J. Han gave the December 5, 2008 Freddie Mac loan approval letter to him and "simply asked [him] to make the two payoffs." Respondent admitted that he did not review the approval letter "in detail," and he did not "try to comply" with the instructions. He also admitted that, when J. Han gave the approval letter to him, he knew that the property was under contract to the Akashis.

On December 9, 2008, a title officer with Dedicated Title Agency, LLC (Dedicated Title) wrote to Ingilian, who was the settlement agent for the Trust-to-Akashi transaction. The letter amended the title commitment to include the following requirements:

> This Company requires a Prior Owner's Policy with coverage of a minimum of $370,700.00 along with proof that both mortgages IndyMac and National City have been paid off including Original Discharges to be recorded prior to closing.

> Please be advised that our underwriter will not permit us to insure the transaction . . . without this being complied with prior to closing.
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> [Ex.P11.]

On December 12, 2008, respondent sent an e-mail to Ingilian, informing her that the Trust would wire the first mortgage payoff and send the second payoff by overnight delivery. Until that was accomplished, the net proceeds would be deposited with the Akashis' title company where the funds were to remain until the first mortgage was discharged. It is not clear whether J. Han had given respondent the approval letter at this point because, as Downs testified, the liens were satisfied in the Woo-to-Trust transaction, which closed on December 18, 2008.

On December 15, 2008, Dedicated Title informed Ingilian that the Trust-to-Akashi transaction could not take place unless the title company received an acknowledgement from both banks confirming the short sale for the amounts agreed upon, the banks' acceptance of those amounts, and their awareness of the "conveyance to be occurring shortly thereafter for a small profit." Respondent made no effort to obtain the acknowledgements. Instead, he gave the letter to J. Han and said "this is what the title company demands."

Respondent testified that Dedicated Title's demand that a $370,700 policy for a property purchased for $236,500 was excessive and, thus, Noble Title Agency, Inc. (Noble Title) "stepped in" and issued the policy.

On December 18, 2008, respondent prepared a corrected Woo-to-Trust deed, which was recorded on December 31, 2008. The recorded deed made no mention of the May 2008 transfer, but, rather, identified the property as that which was conveyed by the Sanchezes to Woo in 2004.

Respondent testified that, once the corrected deed was prepared, he informed his "client," that is, J. Han, that he now had valid title to the property, which could be conveyed to the Akashis. The Trust-to-Akashi closing did not take place until December 29, 2008, however, because "[t]here had to be a gap or exclusion of the property, and for payoff of the two liens that were shown on the title report."

As it turned out, the proper transfer of title from Woo to the Trust involved more than the preparation and recording of a corrected deed. A HUD-1 was created as a means to reflect the details of the $232,500 short sale transaction between the parties.

Although Downs testified that the December 18, 2008 HUD-1 reflected the payoff of the first and second mortgages, the

statement contained a number of misrepresentations. First, the HUD-1 listed the buyer as Song Han, even though the property was transferred to the Trust, of which Song Han was trustee.

Second, although the HUD-1 reflected a $2,500 payoff of the National City second mortgage, respondent disbursed $7,500 to that entity. According to Downs, the $7,500 was significant because Freddie Mac and its servicer had approved only $2,500. Thus, any available funds above that amount should have been remitted to the Freddie Mac servicer.

Third, although the HUD-1 listed payment of a $9,300 commission to Century 21 Key Prestige Realtors, the owner of the agency told Downs that she had received no funds in respect of this transaction.[4] Rather, she received $4,175 in the subsequent sale of the property to the Akashis. Thus, under the terms of the December 5, 2008 approval letter, the full $9,600 should have been remitted to Freddie Mac.

Downs did not know the disposition of the $9,600. The monies did not go to Freddie Mac. Jackson also testified that his investigation did not reveal the disposition of the $9,600.

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[4] The $9,300 commission identified on the HUD-1 should have been $9,600, as the document also shows the division of a $9,600 commission into payments of $5,000 and $4,600.

Respondent testified that J. Han prepared the HUD-1 for the Woo-to-Trust transaction. He acknowledged that it was "unusual" for a client to prepare a HUD-1 and that "it should have been a red flag." Yet, at the time, it made sense to him, as J. Han was negotiating the short sale.

Respondent, who had no interaction with Freddie Mac, chose to abide by J. Han's instructions, rather than those set forth in the approval letter. Despite the discrepancies on the HUD-1, respondent signed it, although he stated that he "didn't have full and complete knowledge of such discrepancy as I do now."

In respect of respondent's signature on the HUD-1, he testified:

> Looking in hindsight, I made a business mistake of signing that HUD-1 as a settlement agent. I should not have signed it. I realize it. For that, I am 100 percent guilty of being stupid, dumb, whatever you call me, but I did not think that constituted a misconduct as a lawyer. My job was to pay off the two liens, and which I did.
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> And if I can just elaborate on that, the HUD is dated December 18. The day before, the private lender, Yun-Hi Lee wired the funds to my attorney trust account. With that [sic] funds, I did pay off the two liens right away and that is one payoff to IndyMac and the second payoff to National City.
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> Once again, the difference between 2,500 shown on the HUD as payoff to National City as to actual 7,500 payoff, I should have caught it. That should have been a trigger point, but because the actual payoff was greater than the

> amount stated on the HUD, I again did not think that constituted any kind of fraud or misrepresentation. I thought paying more than what was stated on the approval letter was allowed.
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> As to other disbursements that are not -- that are shown on the HUD but actually not made, such as broker's commission, I have no excuse for that. I just do not. Hindsight, I should not have done it, but it is what it is. I did it and I am again guilty of being a fool and stupid, but I had no intention to commit a fraud.
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> [T88-11 to T89-12.][5]

The December 18, 2008 conveyance also proved problematic in terms of respondent's client ledger and trust account bank records. Jackson testified that, although the ledger reflected a $225,336.50 wire to respondent's trust account on December 17, 2008, which was used to pay off the Freddie Mac and National City mortgages on the following day, other disbursements were absent.[6]

Neither the $23,250 deposit nor the $9,300 real estate commission was listed on either the trust account bank statement or the client ledger. The ledger also did not reflect the $1,600

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[5] "T" refers to the November 1, 2016 hearing transcript.

[6] The funds came from J. Han's investor, Yoon Hee Lee (Lee). Respondent testified that he used Lee's $225,336.50 to pay off the two liens, Noble Title, the transfer tax, and recording fees. Respondent knew nothing of Lee other than that J. Han told him that Lee was an investor for "this type of purchase," and, thus, she wired the $225,000+ on December 17.

disbursed to Noble Title for the title examination fee and the title insurance premium, the $1,000 attorney fee to respondent, or the $350 recording fee.

Respondent denied having received a fee in the Woo-to-Trust transaction, notwithstanding the entry on the HUD-1 of a $1,000 attorney fee. Rather, when the property was conveyed from the Trust to the Akashis, later that month, respondent was paid $2,500, which included the $1,000 due to him in the Woo-to-Trust transaction.

Although respondent previously had handled closings and was familiar with the HUD-1 form, he testified that, in 2008, he did not have "complete knowledge of what's involved with that short sale." He acknowledged that he signed the HUD-1, knowing that he had not received the $23,250 deposit, that National City had been paid $7,500, instead of $2,500, and that he did not disburse $9,300 to Century 21. Again, respondent conceded that he should not have signed the HUD-1, given the language of the certification attesting that the document was a "true and accurate account of the funds disbursed or to be disbursed . . . as part of the settlement of this transaction." He "didn't pay that careful attention" and did not review the HUD-1 prior to the closing.

Respondent claimed that he did not "realize" that the HUD-1 would be submitted to IndyMac in connection with the short sale transaction. If he had known that to have been the case, he would have "retracted" it. He continued: "If I knew back then what I know now, I definitely would have ripped it up."

The Trust-to-Akashi transaction took place on December 29, 2008. Ingilian served as settlement agent.

Downs testified that the HUD-1 for the Trust-to-Akashi transaction "demonstrated that the . . . property was sold for a higher amount than the sales price for the short sale in a short period of time after the short sale." Respondent confirmed to Downs that higher offers were not disclosed to Freddie Mac. However, he maintained that the approval letter did not prohibit the purchaser from reselling the property at a higher price.

As with the Woo-to-Trust transaction, the HUD-1 in the Trust-to-Akashi transaction and the manner in which disbursements were made proved problematic. According to the HUD-1, the Akashis paid the Trust $221,101.61. Respondent deposited the monies in his trust account on December 30, 2008. No bank payoff was involved in the transaction. On that same date, respondent disbursed $225,336.50 to Lee, who was identified as the seller on the ledger, even though the actual seller was Song Han, the trustee. Respondent also disbursed

$3,380 to Lee, which represented interest. He disbursed $16,349.61 to J. Han, which represented his profit.

Although Ingilian was the settlement agent, on December 30, 2008, respondent made several disbursements from his trust account, in respect of that transaction, including a $70 recording fee and $1,188.50 in taxes to Bergen County, and $1,277 to Noble Title.

The disbursements to Noble Title had been listed on the December 18, 2008 HUD-1 in the Woo-to-Trust transaction as $1,600. The ledger did not reflect any such disbursement, however. Instead, respondent disbursed $1,277 to Noble Title on December 30, 2008. Similarly, although the HUD-1 in the Woo-to-Trust reflected a $1,188.50 disbursement for a realty transfer tax, that, too, was not paid at the time.

Instead of the $2,500 payoff to National City, respondent disbursed $7,500 on the closing date. He also wired the $217,836.50 to IndyMac.

Respondent emphasized that "a clear distinction needs to be made [sic] what my clients did and what I did." Although he admitted that he signed the HUD-1, respondent insisted that he did not engage in "any kind of fraud or misrepresentation or deceit."

On cross-examination, respondent acknowledged that he received the short sale loan approval from J. Han. Thus, he knew that the minimum payoff was $217,836.50, that the seller's closing costs could not exceed $14,663.50, and that any excess was required to be remitted to Freddie Mac. Respondent testified that he "should have been more careful in reviewing the approval letter and complying with [its] terms." Respondent explained:

> I was simply given the document and I was simply asked to make the two payoffs. I did not go through the approval letter in detail and try to comply with the instruction. This I did not do.
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> [T93-16 to 19.]

The third and final problem involved two versions of the so-called corrected deed for the Woo-to-Trust transaction. One was recorded, and the other was not. Respondent prepared both of them.

Both deeds describe the premises conveyed as the property that the Sanchezes had conveyed to Woo in 2004. There is no mention of the May 5, 2008 conveyance from Woo to the Trust. Thus, respondent conceded, neither deed correctly stated the proper chain of title.

The primary difference between the deeds is that the unrecorded deed states "[t]his is correction and confirmative

deed is [sic] to correctly reflect the consideration of $232,500." The recorded deed does not contain that language.

Respondent claimed that the recorded corrected deed actually did contain the omitted language. He testified that the words "corrected deed" had been on the deed but that they appeared to have been crossed out. Respondent also claimed that the recorded corrected deed contained the correction language, but that language also was missing. Further, respondent asserted that he had placed his initials at the top of the deed next to the area where he had written "corrected deed," and, again, next to the paragraph describing the correction. He could not explain why the correction is not reflected on the recorded deed.

We note that respondent's initials also do not appear on the unrecorded deed. Moreover, at the top, the word "corrected" does not appear next to the word "Deed." Finally, the form of respondent's signature was different on each of the two deeds, forcing him to acknowledge at the hearing that he had signed two different deeds on the same date.

Thus, according to respondent, "[l]ooking at this, the corrected deed that I prepared was not recorded, and somehow what was recorded is missing that crucial language."

In addition to the Woo-to-Trust deeds, prepared on December 18, 2008, respondent prepared a third deed, of the same date,

conveying the property from the Trust to the Akashis, even though closing of title did not take place until December 29, 2008. Unlike the others, this deed identified the premises conveyed as the same premises conveyed by Woo to the Trust on May 5, 2008, which respondent acknowledged was the correct chain of title. The deed was recorded on January 7, 2009. Neither Freddie Mac nor IndyMac received a copy of the Trust-to-Akashi deed.

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In its May 17, 2017 hearing panel report (HPR), the DEC found that respondent violated RPC 1.2(d), by knowingly permitting his client to defraud Freddie Mac and by signing closing documents "furthering the fraud."

According to the panel, respondent violated RPC 4.1(a), by certifying, on the December 18, 2008 HUD-1, that $9,600 was paid as a real estate commission and that Song Han, the individual, was the buyer. Later in its report, the DEC noted that the December 18, 2008 HUD-1 identified Woo as the property owner, even though Woo had conveyed the property to the Trust in May of that year, and that Freddie Mac was told that the best offer was $32,500 less than the actual selling price. Further, according to the DEC, the $23,250 deposit identified on the HUD-1 was never paid, and Freddie Mac was misled about the sales price.

Moreover, the DEC found that National City was paid $7,500, instead of $2,500, and the $5,000 difference should have been remitted to IndyMac.

Finally, the panel concluded that respondent violated RPC 8.4(c), by signing an inaccurate and, thus, deceitful HUD-1, which harmed both HUD and the lenders.

Despite the above findings, the DEC noted that it had "fully assessed" respondent's credibility and found that his actions were not undertaken "with full knowledge of his client's potentially defrauding Freddie Mac." In the DEC's words, respondent was "duped." Nevertheless, as the closing agent for the Woo-to-Trust transaction, it was "a clear lack of due diligence" that prevented respondent from knowing that the HUD-1 was inaccurate.

Without explanation, the DEC found that the RPC 5.4(c) charge "was not supported by the evidence." Yet, as stated previously, respondent admitted this violation in a written statement to Office of Board Counsel.

In respect of the RPC 8.4(b) charge, the DEC found that, although respondent's lack of diligence "aided in the purposeful transaction of a criminal act by his client," the record lacked clear and convincing evidence, that respondent had "committed a knowing, criminal act or significantly profited from that act."

The DEC concluded:

> There is no clear evidence that the Respondent knew of the fraud, or of a criminal act perpetrated by his client, but as an attorney who is licensed by the State of New Jersey, he knew or should have known of the procedural errors. That should have stopped him from handling the transaction and closing the loan as outlined in the HUD statement and in the responses supplied by his office as a pro se Respondent. He did not send out payments as he should have, such as brokerage commissions. Even though, he stated that he did. There is therefore, a clear lack of due diligence. The only evidence presented is [sic] that respondent was not more fully involved in any improper act is that he received nothing, but an ordinary fee and he did not participate in any of the proceeds. After hearing the testimony and assessing the credibility of the Respondent, it was clear to the panel that Respondent was duped by his client. Nevertheless closing on the property in the manner that he did, allowed his client to mislead Freddie Mac. The panel, after fully assessing the Respondent's credibility did not believe that he had a full understanding of his client's actions nor did he profit from the scheme.
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> [HPR¶38.]

In mitigation, the DEC cited respondent's lack of personal gain in the transaction, in addition to the DEC's finding that he did not "knowingly take part in the scheme to defraud the lender."

The DEC recommended the imposition of a censure and a requirement that respondent attend four hours of ethics courses "so that he is more familiar with the responsibilities of an

attorney in representing clients and especially representing clients in real estate transactions."

* * *

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence. Specifically, we determine to uphold the DEC's findings, with the exception of the RPC 1.2(d) and RPC 5.4(c) charges.

RPC 1.2(d) bars a lawyer from counseling or assisting a client in conduct that the lawyer knows is illegal, criminal or fraudulent, or in the preparation of a written instrument containing terms the lawyer knows are expressly prohibited by law. . . ." Here, J. Han was guilty of illegal conduct by defrauding Freddie Mac. Whether respondent was aware of the illegal or fraudulent nature of that conduct is a different issue.

We accept the DEC's finding that respondent was "duped." Because the DEC "hears the case, sees and observes the witnesses, and [hears] them testify, [it] has a better perspective than a reviewing [tribunal] in evaluating the veracity of witnesses." Pascale v. Pascale, 113 N.J. 20, 33 (1988) (quoting Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)).

In our view, the record lacks clear and convincing evidence that respondent knew that J. Han was engaging in illegal conduct. Indeed, the DEC found that respondent had been "duped" and that the record lacked clear and convincing evidence that respondent knew of the fraud or criminal act perpetrated by J. Han.

Pursuant to RPC 1.0(f), the terms "knowingly," "known," or "knows" require actual knowledge of the fact in question. Nevertheless, "[a] person's knowledge may be inferred from circumstances." This definition is different from a finding that respondent "should have known," but did not know, due to a lack of diligence. Rather, actual knowledge is required. Thus, we determine to dismiss the RPC 1.2(d) charge.

RPC 4.1(a) and RPC 8.4(c) require a different analysis. We presume that the specific charge is RPC 4.1(a)(1), which prohibits a lawyer, "[i]n representing a client" from knowingly making "a false statement of material fact or law to a third person." Respondent violated the Rule when he signed the HUD-1, which contained multiple misrepresentations regarding the Woo-to-Trust transaction. Although the DEC found that J. Han had duped respondent, and it was J. Han who had prepared the HUD-1, by signing the document, respondent certified that he had "carefully reviewed" it and that, to the best of his knowledge

and belief, the HUD-1 was "a true and accurate statement of all receipts and disbursements."

Even a cursory review of the HUD-1 would have demonstrated that respondent had not "carefully reviewed" the document at all. Most significant is the $7,500 disbursement to National City even though the approval letter, which respondent had received, and the HUD-1 itself, reflected a $2,500 disbursement. Indeed, respondent himself admitted that he was aware of the inconsistency but "thought that paying more than what was stated on the approval letter was allowed." Further, the HUD-1 reflected the payment of a $9,300 commission (which, if respondent had examined the HUD-1 more carefully, was $300 less than the amount purportedly paid to the agency), yet respondent disbursed nothing in that regard. The HUD-1 reflected the payment of a $23,250 deposit, which was false.

Although respondent did not definitively testify that he knew of all of the inaccuracies on the HUD-1, he acknowledged that he should not have signed it, due to those inaccuracies. Thus, by signing the certification, representing that he had "carefully reviewed" the HUD-1, and that the figures were "true and accurate," respondent acted knowingly. For the same reasons, we uphold the DEC's determination that respondent violated RPC

8.4(c), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Although respondent claimed that J. Han, not Song Han, was his client, respondent held himself out as Song Han's lawyer. Thus, for the purpose of the transaction, respondent represented Song Han and, in that capacity, he knowingly made false statements of material fact to third persons, constituting an additional violation of RPC 4.1(a)(1) and RPC 8.4(c).

We cannot agree with the DEC's dismissal of the RPC 5.4(c) charge. That Rule prohibits a lawyer from permitting a person who pays the lawyer to render legal services for another "to direct or regulate the lawyer's professional judgment." This is exactly what respondent did. Specifically, J. Han controlled the transactions even though respondent represented Song Han and/or the Trust in the Woo-to-Trust and Trust-to-Akashi conveyances.

The DEC correctly determined that the RPC 8.4(b) charge should be dismissed. That Rule prohibits a lawyer from committing "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." As noted by the DEC, although respondent's lack of diligence or attention may have facilitated potentially fraudulent and/or criminal conduct on J. Han's part, the record

is devoid of any evidence to establish that respondent knowingly participated in or furthered that conduct.

To conclude, the record clearly and convincingly establishes that respondent violated RPC 4.1(a)(1), RPC 5.4(c), and RPC 8.4(c). There remains for determination the appropriate quantum of discipline to impose for respondent's ethics infractions.

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 Rush, 225 N.J. 15 (2016) (reprimand imposed on attorney with an unblemished disciplinary history who, in two real estate transactions, prepared HUD-1 statements that were inaccurate as to both accounting and disbursements, including the receipt of attorney fees in excess of the amount stated on the HUD-1; in mitigation, the attorney readily admitted most of the violations, and entered into the stipulation, and the DEC found credible his testimony that he had learned from his mistakes and had modified his practices); In re Barrett, 207 N.J. 34 (2011) (reprimand; attorney falsely attested that the HUD-1 he signed

was a complete and accurate account of the funds received and disbursed as part of the transaction); In re Mulder, 205 N.J. 71 (2011) (reprimand; attorney made misrepresentations on a HUD-1, including the disbursement of $41,000 to satisfy a non-existent second mortgage; aggravating factors included attorney's recklessness either in marking or not detecting other inaccuracies on the HUD-1, the deed, and the affidavit of title; mitigating circumstances justified only a reprimand); In re Spector, 157 N.J. 530 (1999) (reprimand; attorney concealed secondary financing to the lender through the use of dual HUD-1 statements, "Fannie Mae" affidavits, and certifications); In re Batcha, 225 N.J. 608 (2016) (censure imposed on attorney who, as the closing agent in a sale leaseback transaction, misrepresented on the HUD-1 the amounts paid by the buyer and received by the seller; although the attorney had no prior discipline since his admission to practice over twenty years earlier, in aggravation, he exhibited a steadfast refusal to acknowledge and to accept that his conduct was unethical); In re Gensib, 206 N.J. 140 (2011) (Gensib I) (censure; in twenty-seven matters, attorney misrepresented on several HUD-1s the actual cost of title insurance; in fact, the attorney had inflated the cost by $300 to cover possible later charges from the title insurance company; he also failed to convey his fee, in writing,

to his clients, failed to safeguard client funds, and had a prior reprimand for improperly witnessing a document); In re Soriano, 206 N.J. 138 (2011) (censure; attorney acted as settlement agent in a real estate closing in which the financially-distressed sellers conveyed their property to a friend for no consideration; the buyer's loan application misrepresented that the property would be her primary residence, and the HUD-1, prepared by the attorney, grossly misstated the amount of cash paid by the buyer and received by the sellers, and excluded any reference to the "gift of equity" from the sellers to the buyer, violations of RPC 1.2(d), RPC 4.1(a)(1), RPC 8.4(a), and RPC 8.4(c); the attorney also engaged in a conflict of interest (RPC 1.7) when, in addition to representing the buyer, he met with the sellers three times and prepared closing documents for them for a fee; in addition, the attorney violated RPC 1.5(b) when he failed to state, in writing, the basis or rate of his fee to both the buyer and the sellers, and RPC 1.15(b) when he failed to disburse $160 to the sellers, which remained in his trust account after all closing proceeds had been remitted; prior reprimand for abdicating his responsibilities as an escrow agent in a business transaction, thereby permitting his clients (the buyers) to steal funds that he was required to hold in escrow, and misrepresented to the

sellers that he held the escrow funds); In re Frohling, 205 N.J. 6 (2011) (censure; in three "flip" real estate transactions, attorney falsely certified on the HUD-1s that he had received the necessary funds from the buyers and that all funds had been disbursed as represented on the statements; the attorney's misrepresentations, recklessness, and abdication of his duties as closing agent facilitated the fraudulent transactions; the attorney also engaged in conflicts of interest by representing both parties in the transactions and was found guilty of gross neglect and failure to supervise a nonlawyer employee; prior reprimand); In re Kaminsky, 212 N.J. 60 (2012) (three-month suspension; in six matters, attorney served as the buyers' attorney and settlement agent, and prepared HUD-1 statements containing false information, including non-existent down payments from the buyers and fictitious amounts of proceeds to the sellers at closing; in two instances, the attorney failed to disclose the existence of side agreements; he also was guilty of a conflict of interest in one matter; no ethics history); In re De La Carrera, 181 N.J. 296 (2004) (three-month suspension; default; in one real estate matter, the attorney failed to disclose to the lender or on the HUD-1 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); In re Nowak, 159 N.J. 520 (1999) (three-month suspension; attorney 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); In re Gensib, 209 N.J. 421 (2012) (Gensib II) (six-month suspension imposed on attorney who prepared and certified as accurate HUD-1s in five real estate transactions, engaged in a conflict of interest, and failed to memorialize fee agreement; prior reprimand and censure); In re Fink, 141 N.J. 231 (1995) (six-month suspension; attorney failed to disclose the existence of secondary financing in five residential real estate transactions, prepared and took the acknowledgment on false HUD-1 statements, affidavits of title, and Fannie Mae affidavits and agreements, and failed to witness a power of attorney); 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); In re Newton, 157 N.J. 526 (1999) (one-year suspension; attorney prepared false and misleading HUD-1 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).

In this case, we determine to impose a reprimand on respondent for his ethics infractions. Respondent's conduct does not warrant a suspension because, in those cases, the attorneys were involved in more transactions, engaged in other misconduct, or had an ethics history. Similarly, the censure cases involve attorneys who obstinately refused to accept the unethical nature of their conduct

(Batcha), participated in numerous unethical transactions (Gensib I), actually prepared the HUD-1 forms and/or were knowing participants in the fraud (Gensib II), committed other serious infractions (Soriano, Frohling), had an ethics history (Frohling), or some combination of the above (Gensib I and II, Frohling).

Here, the totality of the circumstances justifies a reprimand. Like the attorneys in those cases, respondent has no disciplinary history in more than twenty years at the bar. Further, the number of transactions was limited. The disciplinary hearing took place in 2016, yet the infraction occurred in 2008. Respondent was inexperienced with short sale transactions at the time. Like the DEC, we believe that respondent was deceived by J. Han in respect of the Woo and Trust matters. At the hearing, respondent repeatedly acknowledged his errors. Finally, respondent did not personally benefit by the transactions, other than to collect his fee.

Although the record raises the specter of respondent's active participation in the fraud, the DEC found that the record did not clearly and convincingly establish that fact. We agree. Thus, under the circumstances, a sanction greater than a reprimand would be unjust.

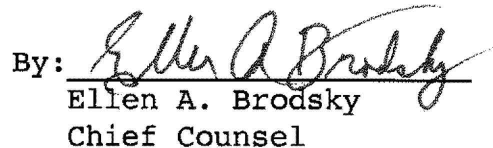
Finally, we do not adopt the DEC's recommendation that respondent be required to take four hours of ethics courses. Respondent repeatedly stated that he knew, albeit in retrospect, that

what he had done was wrong; his conduct took place more than nine-and-a-half years ago; and it appears to be the only incident of misconduct in his twenty-one years at the bar. Thus, we determine that additional ethics courses, beyond his mandatory continuing legal education requirements, are not necessary.

Chair Frost and Member Zmirich 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
Bruce W. Clark, Vice-Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

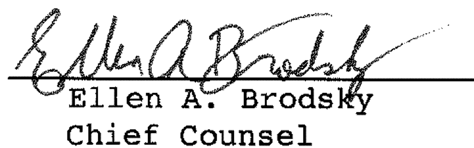
In the Matter of Michael W. Song
Docket No. DRB 17-369

Argued: January 18, 2018

Decided: April 11, 2018

Disposition: Reprimand

Members	Reprimand	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