SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-351
District Docket Nos. XIV-2015-0372E;
XIV-2015-0445E; XIV-2015-0541E;
XIV-2015-0574E and XIV-2016-0436E
and
Docket No. DRB 17-445
District Docket Nos. XIV-2015-0068E;
XIV-2015-0446E; XIV-2015-0575E;
XIV-2016-0308E; XIV-2016-0416E;
XIV-2016-0417E; XIV-2016-0418E; and
XIV-2016-0520E

IN THE MATTER OF	:
BENJAMIN NAZMIYAL	:
AN ATTORNEY AT LAW	:

Decision

Decided: June 27, 2018

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

These matters were before us on certifications of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). Both complaints charged respondent with violations of RPC 1.5(a) (unreasonable fee); RPC 1.15(a) (commingling); RPC 8.1(b) (failure to respond to a lawful demand for information by

disciplinary authorities); 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). Additionally, the complaint in DRB 17-351 charged violations of RPC 8.4(d) and R. 1:20-20 (conduct prejudicial to the administration of justice).

Because the misconduct in DRB 17-351 is similar to the misconduct in DRB 17-445, and occurred during the same period, we determined to consolidate the matters for consideration. For the reasons detailed below, we recommend respondent's disbarment.

Respondent was admitted to the New Jersey and New York bars in 2010. He has no history of final discipline.

The Court temporarily suspended respondent in nine separate matters for failing to comply with fee arbitration determinations. Those temporary suspensions became effective June 14, 2016, June 14, 2016, July 27, 2016, March 10, 2017, March 31, 2017, May 10, 2017, May 10, 2017 and October 27, 2017, respectively. In re Nazmiyal, 226 N.J. 464 (2016); In re Nazmiyal, 225 N.J. 7 (2016); In re Nazmiyal, 226 N.J. 19 (2016); In re Nazmiyal, 226 N.J. 17 (2016); In re Nazmiyal, 228 N.J. 160 (2017); In re Nazmiyal, 228 N.J. 337 (2017); In re Nazmiyal, 229

N.J. 18 (2017); In re Nazmiyal, 229 N.J. 19 (2017); and In re Nazmiyal, 231 N.J. 1 (2017). Each of those orders is still in effect and respondent has yet to satisfy any of the fee determinations, totaling over $45,000.

DRB 17-351

Service of process was proper in this matter. On April 27, 2017, the OAE sent a copy of the complaint to respondent's attorney at the Bedi Rindosh law firm, in accordance with R. 1:20-7(h), by both regular and certified mail, return receipt requested. The certified mail receipt was returned, indicating delivery on May 1, 2017, and was signed for by "Sarah," but the last name is illegible. The regular mail was not returned.

On May 22, 2017, the OAE sent a second letter to the Bedi Rindosh firm, by regular and certified mail, return receipt requested, informing respondent that, if he failed to file a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the entire record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a violation of RPC 8.1(b). The certified mail receipt was returned, indicating delivery on May 25, 2017, and

again was signed for by "Sarah." Again, the last name is illegible. The regular mail was not returned.

By letter dated July 25, 2017, Prabhkaran S. Bedi, Esq. asked the OAE to delay "entering default on its complaint" because respondent, who was out of the country, would be returning within a week. The OAE sent a confirmation letter on August 24, 2017, memorializing Bedi's confirmation that he was authorized to accept service on behalf of respondent, and giving respondent until September 1, 2017, to file answers in the above-captioned matters. Respondent failed to do so, and on September 25, 2017, the OAE certified the record to us.

The time within which respondent may have answered has expired. As of the date of the certification of the record, no answer had been filed by or on behalf of respondent.

* * *

We now turn to the allegations of the complaint. Respondent was charged with unethical conduct in respect of loan modification services he offered and performed in numerous client matters (consumer fraud).

COUNT ONE

The Federal Trade Commission (FTC) is an agency of the United States Federal Government whose mission is to prevent

business practices that are anticompetitive, deceptive, or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish these objectives without unduly burdening legitimate business activity. The FTC is authorized by law to adopt industry-wide trade regulation rules such as MARS.[1] Respondent was aware, at all relevant times, of the FTC's MARS rule.

The FTC's rule on advanced fees at section 322.5 prohibits mortgage relief companies from collecting any fees until they have provided consumers with a written offer from their lender, along with a written document from the lender describing the changes to the mortgage that would result if the consumer accepts the offer, and the consumer decides the offer is acceptable. On receipt of the offer, the client may reject it and is under no obligation to pay the mortgage relief company. Section 322.7 of MARS specifically exempts attorneys from the advanced fee rule if they are engaged in the private practice of law; are licensed in the state where the consumer or the dwelling is located; and are complying with state laws and regulations governing attorney conduct related to the rule. Section 322.7 of MARS also exempts attorneys who deposit, in a

[1] MARS is the acronym for the Mortgage Assistance Relief Services rule, 16 CFR §322 (2011).

client trust account, funds received from the consumer prior to performing legal services and who also comply with all state laws and regulations, including licensing regulations, applicable to client trust accounts.

As a mortgage relief company, as defined by the MARS rule, respondent's firm does not qualify for the exception provided by Section 322.7 of MARS.

Further, in New Jersey, respondent did not meet the exemption provided by Section 322.7 of MARS because New Jersey's debt adjuster statute, N.J.S.A. 17:16G-1c(2), provides, in relevant part: "[t]he following persons shall not be deemed debt adjusters: (a) an attorney-at-law of the State who is **not** principally engaged as a debt adjuster..." (emphasis added). Pursuant to N.J.S.A. 17:16G-1(c)(2) a debt adjuster "is a person who acts or offers to act for consideration as an intermediary between a debtor and his creditors for the purposes of settling, compounding, or otherwise altering the terms of payment of any debts of the debtor." The New Jersey debt adjuster statute requires a license to conduct mortgage modifications.

On November 9, 2016, at an OAE demand interview, respondent stated that sixty to seventy percent of his practice was in the area of mortgage loan modifications, and that the other thirty to forty percent of his practice dealt with addressing other

client debt, such as second mortgages, credit card debt, and bankruptcy. Thus, by his own admission, respondent was principally engaged in debt adjustment. Hence, he does not fall into the category of exemption stated in N.J.S.A. 17:16-1(c)(2)(a) and is not exempt from licensure as a debt adjuster.

The David Sosa Matter (Docket No. XIV-2015-0372E)

On July 18, 2012, David Sosa retained respondent to modify his existing mortgage for his primary residence in New Jersey because he could no longer afford to pay his mortgage, and his payments were in arrears.

The fee agreement between Sosa and respondent provided the following:

> Hybrid Fee: Pursuant to N.J. Court Rule 1:21-7, we will represent you on the basis of the reasonable value of our services. This fee consists of a $4,700 flat fee, which will constitute as funds received for professional services, plus a 5% charge for the amount by which principal of your 1st mortgage loan balance is forgiven.

Sosa paid respondent the following fees pursuant to the agreement:

- On July 27, 2012, $2,000 via check number 2191;
- On [illegible date], $1,300 via check number 2130; and
- On December 16, 2012, $1,300 via check number 2131

Respondent collected fees from Sosa without first having obtained a mortgage modification for him. He then deposited all of Sosa's payments into his attorney business account, in violation of Section 322.7 of the FTC's MARS rule, which, as part of the attorney exception, requires that the fees be deposited into an attorney's trust account.

On February 5, 2013, respondent consulted Sosa regarding an offer by Sosa's mortgage lender to modify Sosa's mortgage, which Sosa rejected. Respondent's collection of $4,600 of fees before Sosa accepted a written mortgage modification from his lender violated Section 322.5 of MARS. Additionally, by this conduct, respondent acted as an unlicensed debt adjuster, in violation of N.J.S.A. 17:16G-I(c)(2).

The Angel Frias Matter (Docket No. XIV-2015-0574E)

On March 19, 2013, Angel Frias retained respondent to obtain a modification of the first mortgage on his primary residence in New Jersey because Frias could no longer afford to pay his mortgage, and his payments were in arrears. The fee agreement provided the following:

> Hybrid Fee: Pursuant to N.J. Court Rule 1:21-7, we will represent you on the basis of the reasonable value of our services. This fee consists of a $5,600 flat fee, which will constitute as funds received for professional services, plus a 4% charge for the amount by

> which principal of your 1st mortgage loan balance is forgiven or deferred.

Frias paid respondent the following fees pursuant to the agreement:

- On March 19, 2013, $1,866 via check number 308; and
- On June 14, 2016, in a statement to the OAE, Frias asserted that he made further payments, each for $1,866, on April 19 and May 19, 2013, respectively.

Respondent deposited Frias' payments into his attorney business account, in violation of Section 322.7 of MARS. The collection of approximately $5,600 of fees before Frias accepted a written mortgage modification from the lender was in violation of Section 322.5 of MARS. Additionally, by this conduct, respondent acted as a debt adjuster without a license, in violation of N.J.S.A. 17:16G-I(c)(2).

The Diana Diaz and Christian Valenzuela Matter (Docket No. XIV-2015-0445E)

On May 5, 2014, Diana Diaz and Christian Valenzuela retained respondent because they could no longer afford to pay their mortgage on their primary residence in New Jersey, and their mortgage payments were in arrears. The fee agreement provided the following:

> Hybrid Fee: Pursuant to N.J. Court Rule 1:21-7, we will represent you on the basis of the reasonable value of our services. This fee consists of a $4,900 flat fee, which will constitute as funds received for professional

> services, plus a 5% charge for the amount by which principal of your 1st mortgage loan balance is forgiven or deferred.

Diaz paid respondent the following fees pursuant to the agreement:

- On May 16, 2014, $1,225 via check number 222;
- On June 16, 2014, $1,225 via check number 223;
- On July 16, 2014, $1,225 via check number 224; and
- On August 16, 2014, $1,225 via check number 225

Respondent deposited all of Diaz' payments into his attorney business account, in violation of Section 322.7 of MARS. On July 31, 2014, Diaz' and Valenzuela's mortgage lender, Central Mortgage Company (Central), informed respondent that Diaz and Valenzuela had been approved for a modification of their loan. Respondent soon thereafter notified them of the temporary repayment plan, which Diaz and Valenzuela rejected.[2] By collecting $4,900 in fees before Diaz and Valenzuela accepted a written mortgage modification from their lender, respondent violated Section 322.5 of MARS. Additionally, by this conduct, respondent acted as a debt adjuster without a license, in violation of N.J.S.A. 17:16G-I(c)(2).

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[2] Thereafter, Diaz and Valenzuela temporarily discontinued respondent's services but later retained him again in relation to a pending foreclosure action upon the same property that had been the subject of the proposed mortgage modification.

The Luz B. Roche Matter (Docket No. XIV-2015-0541E)

a. First Mortgage

On March 17, 2013, Luz B. Roche retained respondent because she could no longer afford to pay her mortgage on her primary residence, and her payments were in arrears.

The fee agreement provided the following:

> Hybrid Fee: Pursuant to N.J. Court Rule 1:21-7, we will represent you on the basis of the reasonable value of our services. This fee consists of a $5,600 flat fee, which will constitute as funds received for professional services, plus a 5% charge for the amount by which principal of your 1st mortgage loan balance is forgiven or deferred.

Roche paid respondent the following fees pursuant to the agreement:

- On March 18, 2013, $1,400 via check number 289;
- On April 18, 2013, $1,400 via check number 290;
- On May 18, 2013, $1,400 via check number 291; and
- On June 18, 2013, $1,400 via check number 292

Respondent deposited Roche's payments into his attorney business account, in violation of Section 322.7 of MARS. He did so without having obtained a mortgage modification agreement regarding Roche's first mortgage. By collecting $5,600 in fees before Roche accepted a written mortgage modification from her lender, respondent violated Section 322.5 of MARS. Additionally, by this conduct, respondent acted as a debt adjuster without a license, in violation of N.J.S.A. 17:16G-I(c)(2).

b. Second Mortgage

On April 14, 2013, Roche retained respondent to negotiate a modification of the second mortgage on her property. The retainer agreement provided the following:

> You agree to pay the following fees which will be collected from and paid through your monthly installments as outlined below: Flat fee: Pursuant to N.J. Court Rule 1:21-7, we will represent you on the basis of the reasonable value of our services. Client must pay 55% of the total balance listed on the attached client worksheet ($25,000). 15% of the total balance shall be paid to law firm as a flat fee and the remaining 40% shall be allocated to the Global Dedicated Account for settlement purposes. The flat fee shall be paid in no longer than 12 months as per the payment schedule...

The Global Dedicated Account referenced in the retainer was an account established through respondent, with Roche's consent, to accumulate enough funds to offer in exchange for settlement of Roche's outstanding debt related to her second mortgage. Global Client Solutions, Inc. (Global), serviced that account. Roche made monthly payments of $357.75 into her Global account for a total of $2,504.25. Pursuant to the fee arrangement, respondent received approximately $2,429 in fees delivered to his business account via electronic debit from the Global account. Respondent's collection of $2,429 in fees before Roche accepted a written mortgage modification from her second mortgage lender violated Section 322.5 of MARS.

The complaint alleged that, in all of the above client matters, "respondent exhibited a pattern of violating the Rules of Professional Conduct as follows:

a) RPC 8.4(c) – In that Respondent in violation of the Federal consumer protection regulation known as MARS collected prohibited advanced fees from clients.

b) RPC 1.5(a) – In that Respondent collected an illegal and unreasonable fee by failing to obtain client consent consistent with MARS prior to the collection and withdrawal of fees.

c) RPC 1.15(a) – In that Respondent collected an illegal fee by failing to obtain client consent consistent with MARS prior to the collection and withdrawal of fees, and thus failed to safeguard the clients' funds.

COUNT TWO

Pursuant to New Jersey's debt adjustment statute, N.J.S.A. 17:16G-1(a), "[n]o person other than a nonprofit social service agency or a nonprofit consumer credit counseling agency shall act as a debt adjuster." Although the statute prohibits debt adjustment for profit, N.J.S.A. 17:16G-1c(2)(a) exempts attorneys who are not principally engaged as debt adjusters. Respondent was principally engaged as a debt adjuster in New Jersey. Pursuant to N.J.S.A. 2C:21-19(f), acting as a debt adjuster without a license, unless exempted from licensure, is a crime of the fourth-degree. Respondent collected advance fees for mortgage modifications from the above listed clients and is

not licensed as a debt adjuster in New Jersey. The complaint alleges that, by this conduct, respondent committed a criminal act, a violation of RPC 8.4(b).

COUNT THREE

By way of multiple Supreme Court Orders, as detailed above, respondent was temporarily suspended from the practice of law in New Jersey. Respondent has not applied for reinstatement and, therefore, remains suspended from practice to date. The Lawyers' Fund for Client Protection (the Fund) records show respondent's last-known office address as "c/o BEDI RINDOSH, 1605 John Street, Suite 305, Fort Lee, New Jersey 07024." The Fund's records also provide a home address for respondent. During the course of its investigation, the OAE learned that respondent is currently out of the country.

The Court's Orders of temporary suspension required respondent to comply with R. 1:20-20, which mandates, among other things, that respondent "shall within 30 days after the date of the order of suspension (regardless of the effective date thereof) file with the Director the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the

provisions of this rule and the Supreme Court's order." Respondent failed to do so.

By letter dated August 5, 2016, the OAE notified respondent's counsel, Prabhkaran Singh Bedi, Esq., at the Bedi Rindosh firm, of respondent's responsibility to file the affidavit pursuant to R. 1:20-20 and requested that Bedi respond by August 19, 2016. Bedi did not respond to the OAE's letter. The OAE telephoned Bedi on March 8, 2017 and on March 21, 2017, left messages for Bedi regarding respondent's failure to file the affidavit, and requested that Bedi call the OAE. Bedi did not respond.

As of the date of the complaint, respondent has not filed the required affidavit. Thus, the complaint alleged that respondent willfully violated the Supreme Court's Orders, and failed to take the steps required of all suspended or disbarred attorneys, including notifying clients and adversaries of the suspension, and providing active clients with their files, all in violation of RPC 8.1(b) and RPC 8.4(d).

DRB 17-445

Service of process was proper in this matter. On June 23, 2017, the OAE sent a copy of the complaint to respondent's attorney at the Bedi Rindosh law firm, in accordance with R.

1:20-7(h), by both regular and certified mail, return receipt requested. The certified mail receipt was returned, indicating delivery on June 26, 2017, but the name of the signatory is illegible. The regular mail was not returned.

On July 25, 2017, the OAE sent a second letter to the Bedi Rindosh firm, by regular and certified mail, return receipt requested, informing respondent that, if he failed to file a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the entire record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a violation of RPC 8.1(b). The certified mail receipt was returned, indicating delivery on July 31, 2017, and again the name of the signatory was illegible. The regular mail was not returned.

On August 24, 2017, a final letter was sent to respondent's attorney confirming that he was authorized to accept service on behalf of his client, and extending the time for respondent to answer to September 1, 2017. The letter was sent by regular and certified mail, return receipt requested. The regular mail was not returned. According to the certification, the United States Postal Service tracking for the certified mail showed that, as of August 29, 2017, the letter was in transit to its destination.

The time within which respondent may have answered has expired. As of the date of the certification of the record, no answer had been filed by or on behalf of respondent.

* * *

In both DRB 17-351 and DRB 17-445, service was effectuated almost identically. Office of Board Counsel contacted the OAE to confirm that the Bedi Rindosh firm was respondent's counsel of record and that service was proper. In response, the OAE submitted two letters to support its belief that the firm was counsel to respondent.

As previously noted, on July 25, 2017, Prabhkaran S. Bedi, Esq. wrote to the OAE memorializing a then recent conversation he had with Deputy Ethics Counsel Al Garcia. The letter requested that the OAE hold "entering default on its complaint." The letter indicated that respondent would be returning from overseas later the following week.

Subsequently, on August 24, 2017, Garcia sent a letter to Bedi, also memorializing a conversation, in which Bedi confirmed that he was authorized to accept service on behalf of respondent, and granting an extension to September 1, 2017, to file answers to the captioned matters. Notably, the caption of that letter lists each docket number included in DRB 17-351 and in DRB 17-445.

* * *

We now turn to the allegations of the complaint in DRB 17-445.

Count One

The Gilma Benitez Matter (Docket No. XIV-2016-0520E)

On July 18, 2012, Gilma Benitez retained respondent to modify her existing mortgage for her primary residence because she could no longer afford to make payments. Benitez' mortgage payments were in arrears before she retained respondent.

The fee agreement between Benitez and respondent provided the following:

> Hybrid Fee: Pursuant to N.J. Court Rule 1:21-7, we will represent you on the basis of the reasonable value of our services. This fee consists of a $4,700 flat fee, which will constitute as funds received for professional services, plus a 5% charge for the amount by which principal of your 1st mortgage loan balance is forgiven.

On April 25, 2012, Benitez paid respondent $2,000, pursuant to the agreement.

Respondent deposited Benitez' payment into his attorney business account, in violation of Section 322.7 of the FTC's MARS rule, which requires, as part of the attorney exemption, that the fees be deposited into an attorney's trust account.

Respondent deposited the funds without having obtained a mortgage modification for Benitez.

On December 2, 2012, Wells Fargo informed Benitez that her loan modification request was approved and she accepted its offer. The collection of $2,000 of fees by respondent, before Benitez had accepted a written mortgage modification from her lender, was in violation of Section 322.5 of MARS. Additionally, by this conduct, respondent acted as an unlicensed debt adjuster, in violation of N.J.S.A. 17:16G-I(c)(2).

The Luis and Angela Encarnacion Matter (Docket No. XIV-2016-0417E)

On March 10 and November 19, 2013, Luis and Angela Encarnacion retained respondent to modify their existing mortgage for their primary residence because they could no longer afford to make the payments. The Encarnacion's mortgage payments were in arrears before they retained respondent.

The March 10, 2013 fee agreement between the Encarnacions and respondent provided the following:

> Hybrid Fee: Pursuant to N.J. Court Rule 1:21-7, we will represent you on the basis of the reasonable value of our services. This fee consists of a $5,600 flat fee, which will constitute as funds received for professional services, plus a 3% charge for the amount by which principal of your 1st mortgage loan balance is deferred or forgiven.

The November 19, 2013 fee agreement between the Encarnacions and respondent was identical to the March 10, 2013 fee agreement, except that the flat fee was $5,900, rather than $5,600.

The Encarnacions paid respondent $11,500 (the flat fees of $5,600 and $5,900, pursuant to both agreements), in nine installments between March 10, 2013 and March 19, 2014.

Respondent deposited the Encarnacions' payments into his attorney business account, in violation of Section 322.7 of the FTC's MARS rule, which requires as part of the attorney exemption that the fees be deposited into an attorney's trust account. Respondent deposited the funds without having obtained a mortgage modification for the Encarnacions.

The Encarnacions' loan modification applications were denied. During the course of their second modification application, the Encarnacions were served with a complaint for foreclosure. The collection of $11,500 in fees by respondent, before the Encarnacions accepted a written mortgage modification from their lender, was in violation of Section 322.5 of MARS. Additionally, by this conduct, respondent acted as an unlicensed debt adjuster, in violation of N.J.S.A. 17:16G-I(c)(2).

The Felix Bernard Matter (Docket No. XIV-2016-0416E)

On February 21, 2013, Felix Bernard retained respondent to modify his existing mortgages on two properties, one in New York, and the other in Pennsylvania. Bernard's payments on both mortgages were in arrears before he retained respondent.

The fee agreements between Bernard and respondent for each of the properties provided the following:

> Hybrid Fee: Pursuant to N.J. Court Rule 1:21-7, we will represent you on the basis of the reasonable value of our services. This fee consists of a $3,500 flat fee, which will constitute as funds received for professional services, plus a 0% charge for the amount by which principal of your 1st mortgage loan balance is forgiven.

Bernard paid respondent $2,500 in two installments in March and May 2013, pursuant to the agreement.

Respondent deposited Bernard's payments into his attorney business account, in violation of Section 322.7 of the FTC's MARS rule, which requires as part of the attorney exemption that the fees be deposited into an attorney's trust account. Respondent deposited the funds without having obtained a mortgage modification for Bernard.

Respondent compiled the necessary financial records and submitted modification applications to Bernard's lenders – Bank of America and Ocwen Loan Servicing. Both modification

applications were denied, and Bernard was eventually served with a complaint for foreclosure on the New York property.

The collection of $2,500 of fees by respondent, before Bernard had accepted a written mortgage modification from his lender, was in violation of Section 322.5 of MARS. Additionally, by this conduct, respondent acted as an unlicensed debt adjuster, in violation of N.J.S.A. 17:16G-I(c)(2).

The Walter and Amarilis Jacome Matter (Docket No. XIV-2016-0418E)

On August 19, 2013 and November 6, 2014, Walter and Amarilis Jacome retained respondent regarding two separate mortgage loan modifications. One of the properties was located in New Jersey. The second property's location was not listed in the retainer agreement. The Jacomes' payments on both mortgages were in arrears before they retained respondent.

The fee agreement between the Jacomes and respondent for the second property provided the following:

> Hybrid Fee: Pursuant to N.J. Court Rule 1:21-7, we will represent you on the basis of the reasonable value of our services. This fee consists of a $6,900 flat fee, which will constitute as funds received for professional services, plus a 5% charge for the amount by which principal of your 1st mortgage loan balance is forgiven or deferred.

The fee agreement between the Jacomes and respondent for property two provided the following:

> Hybrid Fee: Pursuant to N.J. Court Rule 1:21-7, we will represent you on the basis of the reasonable value of our services. This fee consists of a $7,900 flat fee, which will constitute as funds received for professional services, plus a [sic] charge for the amount by which principal of your 1st mortgage loan balance is forgiven or deferred.[3]

The Jacomes paid respondent fees of $13,324, in seven installments, between August 24, 2013 and January 6, 2014.

Respondent deposited the Jacomes' payments into his attorney business account, in violation of Section 322.7 of the FTC's MARS rule, which requires, as part of the attorney exemption, that the fees be deposited into an attorney's trust account. Respondent compiled the necessary financial records and submitted modification applications to the Jacomes' lender, Wells Fargo. The first application was denied. Subsequently, on April 28, 2015, Wells Fargo notified the Jacomes that their loan modification application was approved, and they accepted the offer.

The collection of $13,324 of fees by respondent, before the Jacomes had accepted a written mortgage modification from their lender, was in violation of Section 322.5 of MARS. Additionally,

[3] This agreement provided no percentage amount in respect of any forgiveness or deferral achieved.

by this conduct, respondent acted as an unlicensed debt adjuster, in violation of N.J.S.A. 17:16G-I(c)(2).

The Raymundo A. Vasquez Matter (Docket No. XIV-2016-0308E)

In September 2014, Raymond A. Vasquez retained respondent in connection with a mortgage loan modification. Respondent does not dispute that he represented Vasquez; however, neither party was able to produce a copy of the retainer agreement.

The OAE's examination of respondent's bank records revealed that Vasquez paid respondent fees of $8,898 in three installments between September 15, 2014 and December 31, 2014.

Respondent deposited Vasquez' payments into his attorney business account, in violation of Section 322.7 of the FTC's MARS rule, which requires, as part of the attorney exemption, that the fees be deposited into an attorney's trust account. Respondent compiled the necessary financial records and submitted a modification application to Vasquez' lender, Wells Fargo. The application was denied.

The collection of $8,898 of fees by respondent, before Vasquez had accepted a written mortgage modification from his lender, was in violation of Section 322.5 of MARS. Additionally, by this conduct, respondent acted as an unlicensed debt adjuster, in violation of N.J.S.A. 17:16G-I(c)(2).

The Juan Herrera and Aurora Ruiz Matter (Docket No. XIV-2015-0575E).

On November 6, 2014, Juan Herrera and Aurora Ruiz retained respondent for a mortgage loan modification of their property located in New Jersey. Their mortgage payments were in arrears before they retained respondent.

The fee agreement between Herrera, Ruiz, and respondent provided the following:

> Hybrid Fee: Pursuant to N.J. Court Rule 1:21-7, we will represent you on the basis of the reasonable value of our services. This fee consists of a $8,900 flat fee, which will constitute as funds received for professional services, plus a 5% charge for the amount by which principal of your 1st mortgage loan balance is forgiven or deferred.

Herrera and Ruiz paid respondent $5,900 in fees, pursuant to the agreement, in two installments in November 2014 and January 2015.

Respondent deposited these payments into his attorney business account, in violation of Section 322.7 of the FTC's MARS rule, which requires, as part of the attorney exemption, that the fees be deposited into an attorney's trust account. Respondent compiled the necessary financial records and submitted a modification application to Herrera and Ruiz' lender, Chase Bank.

On March 3, 2015, Chase informed Herrera and Ruiz that they were approved for a repayment plan requiring them to repay the past due balance of $7,278.51. Herrera and Ruiz rejected the proposal, as there was no principal reduction. At his client's request, respondent filed another mortgage modification application on their behalf.

By letter dated April 14, 2015, respondent notified Chase that Herrera and Ruiz were unwilling to accept a mortgage modification without a principal reduction and/or a deferred balance of $100,000. Soon thereafter, Herrera and Ruiz informed respondent that they no longer wanted his services.

The collection of $5,950 of fees by respondent, before Herrera and Ruiz accepted a written mortgage modification from their lender, was in violation of Section 322.5 of MARS. Additionally, by this conduct, respondent acted as an unlicensed debt adjuster, in violation of N.J.S.A. 17:16G-I(c)(2).

The Flordan W. Ramirez-Reilly Matter (Docket No. XIV-2015-0446E)

On July 13, 2014, Flordan W. Ramirez-Reilly retained respondent for a mortgage loan modification of his property located in New Jersey. His mortgage payments were in arrears before he retained respondent.

The fee agreement between Ramirez-Reilly and respondent provided the following:

> Hybrid Fee: Pursuant to N.J. Court Rule 1:21-7, we will represent you on the basis of the reasonable value of our services. This fee consists of a $5,900 flat fee, which will constitute as funds received for professional services, plus a 5% charge for the amount by which principal of your 1st mortgage loan balance is forgiven or deferred.

Ramirez-Reilly paid respondent fees of $5,900, pursuant to the agreement in four installments between August 5 and November 17, 2014.

Respondent deposited Ramirez-Reilly's payments into his attorney business account, in violation of Section 322.7 of the FTC's MARS rule, which requires, as part of the attorney exemption, that the fees be deposited into an attorney's trust account. Respondent compiled the necessary financial records and submitted a modification application to Ramirez-Reilly's lender, Ocwen Loan Servicing. Respondent failed to obtain a loan modification on behalf of Ramirez-Reilly.

The collection of $5,900 of fees by respondent, before Ramirez-Reilly accepted a written mortgage modification from his lender, was in violation of Section 322.5 of MARS. Additionally, by this conduct, respondent acted as an unlicensed debt adjuster, in violation of N.J.S.A. 17:16G-I(c)(2).

The Felicia Montas Matter (Docket No. XIV-2015-0068E)

On May 3, 2013, Felicia Montas retained respondent for a mortgage loan modification for her property in New Jersey. Her mortgage payments were in arrears before she retained respondent.

The fee agreement between Montas and respondent provided the following:

> Hybrid Fee: Pursuant to N.J. Court Rule 1:21-7, we will represent you on the basis of the reasonable value of our services. This fee consists of a $5,600 flat fee, which will constitute as funds received for professional services, plus a [sic] charge for the amount by which principal of your 1st mortgage loan balance is forgiven or deferred.

Montas paid respondent fees of $5,598, pursuant to the agreement, in three installments in May, June, and July 2013.

Respondent deposited Montas' payments into his attorney business account, in violation of Section 322.7 of the FTC's MARS rule, which requires, as part of the attorney exemption, that the fees be deposited into an attorney's trust account. Respondent compiled the necessary financial records and submitted a modification application to Montas' lender. Respondent failed to obtain a loan modification on behalf of Montas.

The collection of $5,598 of fees by respondent, before Montas accepted a written mortgage modification from her lender,

was in violation of Section 322.5 of MARS. Additionally, by this conduct, respondent acted as an unlicensed debt adjuster, in violation of N.J.S.A. 17:16G-I(c)(2).

The complaint alleged that, in respect of the foregoing clients, respondent engaged in a pattern of conduct involving consumer fraud in violation of the Rules of Professional Conduct as follows:

a) RPC 8.4(c) – In that respondent, in violation of the Federal consumer protection regulation known as MARS, collected prohibited advanced fees from multiple clients.

b) RPC 1.5(a) – In that respondent, collected illegal and unreasonable fees by failing to obtain consent from clients consistent with MARS prior to the collection and withdrawal of fees.

c) RPC 1.15(a) – In that respondent failed to safeguard client funds by depositing fees into his business account and not into his trust account as required by the MARS attorney exemption.

COUNT TWO

Pursuant to New Jersey's debt adjustment statute, N.J.S.A. 17:16G-1(a), "[n]o person other than a nonprofit social service agency or a nonprofit consumer credit counseling agency shall act as a debt adjuster." The statute prohibits debt adjustment for profit. However, N.J.S.A. 17:16G-1c(2)(a) exempts attorneys who are not principally engaged as debt adjusters. Respondent

was principally engaged as a debt adjuster in New Jersey. Pursuant to N.J.S.A. 2C:21-19(f), acting as a debt adjuster without a license, unless exempted from licensure, is a crime of the fourth-degree. Respondent collected advance fees for mortgage modifications from the above listed clients and is not licensed as a debt adjuster in New Jersey. The complaint alleged that respondent committed a criminal act, a violation of RPC 8.4(b).

* * *

The complaints allege sufficient facts to support most of the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Notwithstanding that Rule, each charge in an ethics complaint must be supported by sufficient facts for us to determine that unethical conduct occurred.

Respondent collected prohibited advanced fees from clients and deposited those fees into his business account, in contravention of the MARS rule and in violation of both RPC 1.15(a) and RPC 8.4(c).

Additionally, respondent engaged in debt adjusting without a license in New Jersey, a violation of N.J.S.A. 2C:21-19, a fourth degree crime, and a violation of RPC 8.4(b).[4] It matters not that respondent was not charged with, or convicted of, violating New Jersey law. In re Gallo, 178 N.J. 115, 121 (2002) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a crime). Therefore, a violation of RPC 8.4(b) may be found even in the absence of a criminal conviction or guilty plea. In re McEnroe, 172 N.J. 324 (2002) (attorney found to have violated RPC 8.4(b), despite not having been charged with or found guilty of a criminal offense). Hence, by committing a fourth-degree crime in New Jersey, respondent violated RPC 8.4(b).

Finally, respondent failed to comply with the Court's several orders temporarily suspending him by not fulfilling the requirements of R. 1:20-20. Pursuant to Subsection (c), failure to fully and timely comply with the obligations of this Rule constitutes violations of both RPC 8.1(b) and RPC 8.4(d). Respondent committed an additional violation of RPC 8.1(b) by failing to reply to the OAE requests that he respond to the disciplinary complaint.

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[4] Because respondent's practice consists almost exclusively of debt adjustment, he cannot escape the prohibition of N.J.S.A. 17:16G-2, which proscribes for-profit debt adjustment.

The facts alleged in the complaint, however, do not support a finding that respondent violated RPC 1.5(a). The complaint establishes that respondent provided some services in the various matters. However, in the absence of an analysis under RPC 1.5(a), there is no context for determining whether the fees charged for those services were unreasonable. Moreover, the complaint alleges that respondent violated RPC 1.5(a) by taking advance fees for loan modification services, which is more properly a violation of RPC 1.15(a) and RPC 8.4(c). Those RPCs were properly charged in respect of this conduct. Therefore, we determine to dismiss the alleged violation of RPC 1.5(a).

In sum, respondent violated RPC 1.15(a); RPC 8.1(b); RPC 8.4(b); RPC 8.4(c); and RPC 8.4(d). The only issue remaining is the appropriate quantum of discipline for respondent's misconduct.

In In re Velahos, 225 N.J. 165 (2016), a consent matter, an attorney was suspended for six months for, among other violations, fraudulently collecting advanced fees in relation to the representation of clients in mortgage modification matters, in violation of RPC 1.15(a) and RPC 8.4(c) and (d). Velahos was the principal of three companies subject to the FTC's regulations regarding MARS and represented numerous out-of-state clients in jurisdictions in which he was not licensed as an

attorney. In the Matter of Efthemois D. Velahos, DRB 15-409 (March 23, 2016) (slip op. at 4). Further, like respondent here, Velahos did not meet the exemption provided by Section 322.7 of MARS because of New Jersey's debt adjuster statute, N.J.S.A. 17:16G-1c(2), which excludes from its definition of debt adjuster an attorney-at-law of the State of New Jersey who is not principally engaged as a debt adjuster. Thus, under that statute, a license to conduct mortgage modifications was required. Id. at 5.

Velahos, like respondent, was principally engaged as a debt adjuster as his practice was primarily in the area of mortgage loan modifications. Acting as a debt adjuster without a license is a fourth-degree crime in the State of New Jersey, in violation of N.J.S.A. 2C:21-19 and, thus, Velahos was found to have violated RPC 8.4(b). Id. at 5.

Also in violation of MARS, Velahos did not provide clients with a written offer from their lenders, describing the changes to the mortgage that would result, which the consumer would have an opportunity to accept or decline, prior to the payment of a fee. Despite that, like respondent, Velahos required and accepted advanced legal fees. Specifically, over a period of two years, Velahos collected or attempted to collect a total of $216,946.92 in illegal advanced fees from 117 clients, in

violation of MARS. Id. at 5. By taking advance fees, Velahos was found to have violated RPC 1.15(a) and RPC 8.4(c).

In all, Velahos was found to have violated RPC 1.15(a); RPC 1.15(d) and R. 1:21-6; RPC 1.16(a)(1); RPC 5.3(a), (b), and (c)(1)(2) and (3); RPC 5.5(a)(1); RPC 7.1(a)(1) and (2); RPC 7.3(b)(5)(i),(ii),(iii),(iv); RPC 7.4(a); RPC 7.5(e) and R. 1:21-1B(c); RPC 8.1(a); RPC 8.4(a), (b), (c), and (d); and R. 1:21-1B(a)(4). Id.

Although Velahos' infractions ordinarily would result in a reprimand or a censure when considered on their own, we determined that, because (1) he had received a censure for similar conduct in the past, (2) he committed much of his conduct knowing that it was both illegal and unethical, and (3) he engaged in a significant pattern of misrepresentations, a six-month suspension was warranted. Id. at 9.

Typically, misrepresentation to a client (or to third parties) results in a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). At times, a reprimand may 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, not working on it after filing the initial claim, and failing to take any steps to

prevent its dismissal or 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, the attorney assured his client that the client's matter was proceeding apace, and that he should expect a monetary award in the near future, knowing that the complaint had been dismissed, a violation of RPC 8.4(c)); In re Falkenstein, 220 N.J. 110 (2014) (attorney did not comply with his client's request that he seek post-judgment relief, violations of RPC 1.1(a) and RPC 1.3; he also failed to inform the client that he had not complied with the client's request, choosing instead to lead the client to believe that he had filed an appeal and concocting false stories to support his lies, a violation of RPC 8.4(c); because he did not believe the appeal had merit, the attorney's failure to withdraw from the case was a violation of RPC 1.16(b)(4); the attorney also practiced law while ineligible, although not knowingly, a violation of RPC 5.5(a)); and In re Braverman, 220 N.J. 25 (2014) (attorney failed to tell his client that the complaints filed on her behalf in two personal injury actions had been dismissed, thereby misleading her, by his silence, into believing that both cases remained pending, a violation of RPC 8.4(c); the attorney also violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 3.2, and RPC

8.1(b); we found that the attorney's unblemished thirty-four years at the bar was outweighed by his inaction, which left the client with no legal recourse).

When conduct involving criminal acts is not of the utmost seriousness, admonitions and reprimands have been imposed. 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); and In re Murphy, 188 N.J. 584 (2006) (reprimand imposed on attorney who twice presented his brother's driver's license to police in order to avoid prosecution for driving under the influence charges, in violation of RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d); in addition, the attorney failed to cooperate with the OAE's investigation of the matter (RPC 8.1(b)).

The threshold measure of discipline to be imposed for an attorney's failure to file a R. 1:20-20(b)(15) affidavit is a reprimand. In re Girdler, 179 N.J. 227 (2004); In the Matter of Richard B. Girdler, DRB 03-278 (November 20, 2003) (slip op. at 6). The actual discipline imposed may be different, however, if the record demonstrates mitigating or aggravating circumstances.

Ibid. Examples of aggravating factors include the attorney's failure to answer the complaint, the extent of the disciplinary history, and the attorney's failure to follow through on his or her promise to the OAE that the affidavit would be forthcoming. Ibid. Discipline greater than a reprimand was imposed in In re Kinnard, 220 N.J. 488 (2015) (default; censure imposed on attorney who failed to file affidavit after the Court had temporarily suspended him for his failure to pay the disciplinary costs associated with a 2008 admonition; in addition to the attorney's disciplinary history and the default, he also had ignored the OAE's request that he file the affidavit); and In re Goodwin, 220 N.J. 487 (2015) (default; censure imposed on attorney who failed to file affidavit after the Court had temporarily suspended him for his failure to pay the disciplinary costs associated with a 2010 reprimand; violations of RPC 8.1(b) and RPC 8.4(d); in addition to the attorney's disciplinary history and the default, he also ignored the OAE's request that he file the affidavit).

Here, respondent was required to file a R. 1:20-20 affidavit in accordance with the Court's Orders temporarily suspending him for failure to comply with fee arbitration determinations. The OAE reminded him of his obligation to comply with that requirement. He failed to do so. Hence, based on the

aforementioned cases, respondent is misconduct in this regard, standing alone, would merit a censure.

Respondent's conduct contrary to the federal regulations that amounted to a violation of RPCs 1.15(a) and 8.4(c), alone, would merit between a reprimand and a censure. The fact that this misconduct is also a fourth-degree crime in New Jersey supports enhancement to a censure. Finally, the fact that respondent has allowed this matter to proceed by way of default, further enhances the discipline to a three-month suspension. See, In re Kivler, 193 N.J. 332, 342 (2008) ("a respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced"). However, we do not end our analysis here.

Respondent's misconduct was serious and repetitive. Over a period of approximately three years, respondent illegally collected advance fees, totaling almost $79,000, from twelve financially struggling clients for mortgage modification services that he was not licensed to perform. There is no indication that any of these clients, who suffered significant economic harm, have been made whole. In light of respondent's choice to leave the country and to ignore the Court's attempts

to compel him to return the illegally collected fees, restitution appears unlikely in the foreseeable future, if ever.[5] Indeed, respondent has taken advantage of an already vulnerable population – homeowners who, financially, could no longer meet their mortgage obligations. Instead of affording them the opportunity to restructure those obligations lawfully and without further financial strain, respondent enriched himself by extracting his fees in advance. Those who came to him for help had little choice but to dig deeper into their pockets and find the funds to pay his advance fees. In our view, not only were respondent's actions illegal and unethical, but also they were shameful.

We view respondent's misconduct to be as serious as that of the attorney in Velahos, at least in respect of his practice of extracting illegal fees from struggling clients to provide services he was not licensed to perform. Thus, in a vacuum, we would impose, at least, the same discipline on respondent as we did on Velahos – a six-month suspension.[6] In some respects, however, respondent's misconduct is worse. Ultimately, Velahos acknowledged his wrongdoing and entered into a consent to

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[5] At least four of the Court's Orders temporarily suspending respondent pertain to some of these clients.

[6] We note that, in imposing a six-month suspension on Velahos, we considered compelling mitigation, not present in this case.

discipline, whereas respondent has chosen to allow these matters to proceed by way of default.

Indeed, respondent has demonstrated nothing short of disdain for the disciplinary process, beginning with his failure to appear before us, on nine separate occasions, to respond to motions for his temporary suspension based on his failure to satisfy fee arbitration awards entered in favor of his clients, totaling almost $75,000. In each instance, respondent was satisfied to allow the Court to enter an Order for his temporary suspension, instead of appearing before us to attempt to explain or remediate his failures or to formulate a repayment plan to make his clients whole. That pattern of disdain continued when respondent failed to fulfill his R. 1:20-20 obligations imposed on him by the Court's Orders, and when he subsequently failed to respond to the OAE's requests that he fulfill those obligations. Finally, respondent demonstrates his disdain for the Court's process by allowing these two matters to proceed by default, itself justifying enhancement of any discipline imposed. Thus, at a minimum, and again, in a vacuum, we would impose a one-year suspension on respondent for his misconduct.

We note, however, that respondent voluntarily has left the country, leaving behind him a wake of substantial financial responsibility to his clients, apparently with very little

concern on his part. In our view, the time has come, in the case of this particular respondent and these circumstances, to move beyond applying a particular quantum of discipline that is constrained by a mechanical reading of case law. Respondent has reached a tipping point – he has shown us that he does not value the privilege of practicing law, that he holds the disciplinary system in low regard, and that he cares little about the effect of his misconduct and his disinterest on his clients. To us, he is not professionally salvageable and certainly does not demonstrate the character we consider essential to foster public confidence. Thus, we recommend that respondent be disbarred.

Vice-Chair Clark, and Members Boyer and Singer, voted for a six-month suspension. Chair Frost and Member Zmirich did not participate in DRB 17-351.

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
Ellen A. Brodsky

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Benjamin Nazmiyal
Docket No. DRB 17-351

Decided: June 27, 2018

Disposition: Disbar

Members	Disbar	Six-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:	4	3	0	2

Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Benjamin Nazmiyal
Docket No. DRB 17-445

Decided: June 27, 2018

Disposition: Disbar

Members	Disbar	Six-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:	6	3	0	0

Ellen A. Brodsky
Chief Counsel