Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-199
District Docket No. XIV-2018-0489E

| | |
|---|---|
| In the Matter of | : |
| Marcy E. Gendel | : |
| An Attorney at Law | : |

Decision

Argued: January 19, 2023

Decided: April 28, 2023

HoeChin Kim appeared on behalf of Office of Attorney Ethics

Marc D. Garfinkle appeared on behalf of respondent.

This matter is before us on a recommendation for a three-month suspension filed by a special ethics master. The formal ethics complaint charged respondent with having violated RPC 1.15(a) (committing negligent misappropriation); RPC 1.15(b) (failing to promptly deliver funds belonging to a client or third party); RPC 1.15(d) (failing to comply with the recordkeeping provisions of R. 1:21-6); RPC 8.4(b) (committing a criminal act that reflects

adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer); and RPC 8.4(c) (two counts – engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

For the reasons set forth below, we unanimously determine that respondent committed misconduct in violation of the Rules of Professional Conduct. However, we are unable to reach a consensus on the appropriate quantum of discipline. As set forth below, four Members determine to recommend to the Court that respondent be disbarred for the totality of her misconduct, and four Members determine that a two-year suspension is the appropriate quantum of discipline.

Respondent earned admission to the New Jersey bar in 1977 and to the Washington, D.C. bar in 1980. She has no disciplinary history. At the relevant times, she maintained a law practice in Springfield, New Jersey.

We now turn to the facts of this matter.

On September 4, 2018, Caroline Record, Esq.,[1] sent a letter to the Office of Attorney Ethics (the OAE) documenting a conversation she had with respondent during a real estate closing. In her letter, Record stated that, in the presence of both her client and the listing realtor, respondent "spontaneously

[1] Record is the secretary for the District XA Ethics Committee.

started discussing that she had come up with a way to take money from clients that she was surprised no one had thought of before." Specifically, Record recalled that respondent had stated that, based off of the number of real estate closings in which she represented sellers, "if she permitted [the] seller to be assessed a realty transfer fee without disclosing that the seller was a senior citizen and entitled to a reduced fee, she could then keep the difference when the correct fee was paid to the county," which respondent estimated would allow her to keep approximately $50,000 to $100,000 per year. Record stated that, after she told respondent that a random audit would uncover such fee abnormalities, respondent replied that, if she maintained an undisclosed or unreported account, the random audit would not uncover the practice.

As a result of Record's referral, the OAE opened an investigation into respondent's recordkeeping and real estate closing practices. In a September 28, 2018 letter to respondent, the OAE requested that respondent provide a written reply to Record's allegation, provide seven years of attorney trust and business account records, and provide eight categories of information pertaining to real estate closings she had participated in, for the previous seven years.

By letter dated November 14, 2018, respondent explained that she was "surprised" that Record interpreted her statements "as anything more than an observation about the laudable improvements made over the years in the

recording offices in our State." Respondent claimed that, during the conversation, she had stated that the newly implemented e-recording system in the County Clerks' offices "should give more checks and balances to the filing and recording system." Respondent further elaborated that when Record:

> asked me what I had meant by that statement, I shared that many years ago, maybe 20, I became aware with a group of friends that the system for proving that someone was a senior citizen (and therefore eligible for a partial exemption from New Jersey's real estate transfer fee applicable to sellers of real estate) relied merely on an affidavit in the Seller's name and that there was no connection between the Seller and the recording office that would reveal whether the claimed exemption from the fee was warranted.
>
> [P-3.][2]

Therefore, according to respondent, she "commented that if someone were falsely executing affidavits purportedly by senior citizens when, in fact, the Seller was not a senior citizen, there was no real way to monitor such a practice, and it could be a syphon of funds over years."

Respondent characterized her conversation with Record as one in which she provided Record with an "observation of the potential for fraud and the manner in which an unscrupulous attorney could have accomplished as now

[2] "P" refers to the OAE's exhibits admitted into evidence during the ethics hearing.
"R" refers to respondent's exhibits admitted into evidence during the ethics hearing.
"Rb" refers to respondent's December 20, 2022 brief to us.
"T" refers to the transcript of the December 7, 2021 ethics hearing.

mitigated by the improvements in the recording system." However, respondent emphasized that:

> at no time did I advise anyone – nor did I intend to suggest – that I was personally taking such action by falsifying realty transfer fees. Even taking Ms. Record's letter at face value, she does not seem to suggest that I indicated I was actually engaging in such misconduct, but merely states she was concerned that I had made an observation of such a possibility.
>
> [P-3.]

Additionally, respondent expressed surprise that Record would send the OAE a letter following their conversation, and stated that she was:

> not suggesting that Ms. Record was motivated by any factor other than her own professional obligations and perhaps her respectable role as a volunteer District [Ethics Committee] Secretary to report any perceived misconduct. I do, however, wish that the intention of my comment had been conveyed as I have done so above, or that she had asked me to clarify or confirm that this was not a practice I had undertaken, particularly given the serious insinuations in her letter and, as I am sure you can appreciate, the tremendous financial, temporal and mental burden associated with an ethics investigation.
>
> [P-3.]

Finally, respondent informed the OAE that she had been practicing law for over forty years and was "moving toward wrapping up my practice and retiring in the short term." Thus, respondent expressed her desire to maintain an unblemished disciplinary record and to cooperate fully with the OAE's

investigation. With her letter, respondent hand-delivered six boxes of records sought by the OAE.

By letter dated November 26, 2018, the OAE informed respondent that its preliminary review of the documents "reveals discrepancies in the amounts you collected for government recording fees, survey fees, and bank wire fees when compared to amounts actually expended by you to third party vendors." Thus, consistent with the Court's decision in In re Fortunato, 225 N.J. 3 (2016), which was issued on May 15, 2016, the OAE requested that respondent conduct a review of the real estate closings she had participated in during the previous seven years and provide the OAE with proof that she had reimbursed the appropriate parties the funds she overcharged them for recording fees; survey fees; bank fees; wire fees; and overnight mail fees. The OAE requested that, by no later than January 15, 2019, respondent provide it with proof she had reimbursed the parties.

**Respondent's Excess Survey Fees Collected from Buyers**

For many of the real estate transactions in which respondent represented buyers, she hired Howard J. Shershinger to perform land surveys.

In one matter, respondent both represented Monica Mendoza in her purchase of property and served as the settlement agent for the transaction. Shershinger surveyed the land and charged $475 for his services. However,

respondent charged Mendoza $795 for Shershinger's land survey and retained the excess fees for herself.[3]

In a separate real estate closing, respondent both represented Robert Start in his purchase of property and served as the settlement agent for the transaction. Shershinger surveyed the land and charged $525 for his services. However, respondent charged Start $695 for the land survey and retained the excess fees for herself.

Respondent both represented Ludrick Freeman in his purchase of property and served as the settlement agent for the transaction. Shershinger surveyed the land, including the preparation of a metes and bounds description,[4] and charged $475 for his services. However, respondent charged Freeman $675 for the land survey and retained the excess fees for herself. Respondent could not provide an explanation for the $200 she overcharged for the land survey in the Freeman matter. Regarding the other matters where she overcharged for land surveys, respondent testified that she believed she had performed additional work that entitled her to the excess funds.

[3] The OAE did not charge respondent with the knowing misappropriation of client funds for this misconduct, despite respondent's intentional inflation of the survey costs, which was a known cost, and improper retention of the excess.

[4] A metes and bounds description is used when preparing deeds. It "describes the distance and bearings around the property so that it's well-defined as to where the property is and has a corner tied to usually a corner distance so everyone knows where the property is." (T125).

**Respondent's Retention of Excess Recording Fees**

In addition to overcharging her clients for land surveys, respondent also routinely retained excess recording fees from buyers and sellers in real estate transactions. During her April 2, 2019 interview with the OAE, respondent admitted that she had routinely collected and retained excess recording fees "because other attorneys estimate recording fees, [and] I thought it was okay."

In one example, respondent represented buyers Vasagam Radhakrishnan and Krishnaveni Veeranan in their purchase of property. Respondent also served as settlement agent for the transaction. Respondent charged her clients $532 to record the deed for the property and $100 for "Recording – Release."[5] However, the cost of recording the deed was only $276 and respondent incurred no costs in connection with "Recording – Release."

**Respondent's Retention of Excess Title Fees**

In addition to overcharging clients for land surveys and deed recording fees, respondent also overcharged her clients for title fees. For example, respondent represented Brandon Slywka in his real estate purchase and served as the settlement agent for the transaction. Although respondent incurred no

[5] Presumably, this charge was intended to represent the costs of recording the release of a mortgage encumbering the property that was satisfied in connection with the purchase and sale.

costs for Slywka's title insurance, she charged him $471.

Similarly, in the Mendoza closing, respondent incurred no costs for Mendoza's title insurance, yet charged her client $124 for the insurance.

**Respondent's Retention of Excess Bank and Overnight Fees**

Additionally, respondent routinely collected and retained fees that she did not actually incur from buyers and sellers for bank and overnight fees in real estate closings. For example, respondent both represented Shamica Parris in her real estate purchase and served as settlement agent in the transaction. Respondent charged Parris $60 as a bank fee and $50 as an overnight seller and payoff fee, even though respondent incurred no costs for either service.

**Respondent's Reimbursement of Excess Fees**

After receiving the OAE's November 26, 2018 letter, respondent reimbursed, on a rolling basis, the parties she had overcharged.

As of July 2019, respondent had reimbursed clients and third parties $38,267.86 in fees that she overcharged in connection with 114 closings. However, she continued to owe additional reimbursements to clients and third parties, which she ultimately satisfied by the December 7, 2021 ethics hearing.

However, at the time the OAE filed its complaint, respondent had yet to fully reimburse parties in the Paul Thomas and Juliana Vaval real estate

transaction.

Respondent both represented Thomas and Vaval in their purchase of real estate and served as the settlement agent in the transaction. Respondent charged her clients $25 in "Overnight taxes," even though she incurred no costs. Furthermore, respondent charged her clients (1) $552 in recording fees, even though the actual cost was $186; (2) $150 for a release fee, even though the actual cost was $0; (3) $675 for a survey fee, even though the survey cost was $475; (4) $40 for title insurance, even though the actual cost was $0; (5) $131 for a sewer tax, even though the actual cost was $0; and (6) $2,500 to pay the town's tax collector, even though the actual taxes were $1,839.37.

As of February 28, 2020, in the Thomas/Vaval transaction, respondent still had not reimbursed the appropriate parties for the title insurance charges, the sewer taxes, or the tax collector funds.

Additionally, respondent both represented Jeanette S. Fears in her purchase of real estate and served as settlement agent in the transaction. Respondent charged Fears (1) $542 for recording fees, even though the actual cost was $292; (2) $100 for a release fee, even though the actual cost was $0; (3) $695 for a survey fee, even though the actual cost was $475; (4) $60 as a bank fee, even though the actual cost was $0; and (5) $41 for title insurance, even though the actual cost incurred by respondent was $0.

As of February 28, 2020, respondent had yet to reimburse her client for the bank and title insurance fees.

In her verified answer to the formal ethics complaint, respondent admitted her misconduct regarding overcharging clients and third parties in real estate transactions, and then failing to reimburse those parties the excess funds. Respondent also admitted that her conduct violated RPC 1.15(b) and RPC 1.15(d) but denied her fee overreaching violated RPC 8.4(c) because she believed, at the time, that "rounding up" and "other wrongful acts" were acceptable.

Ultimately, the OAE analyzed the difference in the actual fees respondent incurred in real estate closings against the fees respondent charged her clients and third parties. In its analysis of 138 matters, from 2011 through 2015, the OAE calculated that respondent had overcharged buyers $51,169.81 and overcharged sellers $15,768.64. Thus, in four years of real estate transactions, respondent had retained for herself $66,938.45 to which she was not entitled.

**Respondent's Conduct Following Superstorm Sandy**

Respondent formerly resided in Short Hills, New Jersey. After selling her Short Hills home, respondent used her Springfield, New Jersey office address as her address of record with the New Jersey Motor Vehicle Commission (the MVC). Respondent maintained that, after selling her Short Hills home, she

resided at a property she owned in Point Pleasant Beach (the Boardwalk Property). Respondent told the OAE that she used her office address on her driver's license – rather than the Boardwalk Property address – because she did not want mail delivered to the Boardwalk Property for fear it would get lost. However, respondent also told the OAE, when asked to estimate how frequently she traveled from the Boardwalk Property to her office in Springfield, New Jersey, that there were some weeks she never traveled to the office and some weeks she went for "a day maybe, I suppose two."

Additionally, respondent asserted that, since at least 2007, she listed her Springfield office address as her address of record on her driver's license because the MVC "did not allow for separate physical and mailing addresses." Respondent maintained that she used her office address "for personal correspondence, including utilities and credit card bills as a matter of convenience and to ensure timely and reliable receipt of my mail."

Indeed, in a December 18, 2018 letter to the OAE, respondent claimed that she wanted to use the Springfield address as her mailing address and the Boardwalk Property as her street address but claimed that the MVC did not allow her to do so.[6] However, MVC records reflect that, on February 22, 2013,

[6] MVC records reflect that the driver's license renewal applications respondent was provided had an option to list a mailing and street address, but that she left the street address blank, entering her

(footnote cont'd on next page)

respondent completed a driver's license renewal application, which provided her with the option to provide both a mailing and a street address.

During the ethics hearing, respondent testified that, since August 2012, she had been living full time in Essex County, New Jersey with a friend. On her February 22, 2013 renewal application to the MVC, respondent listed the Boardwalk Property address as both her mailing and street address, even though the home was, at that time, uninhabitable, and she was living in Essex County, New Jersey.[7] Effective January 31, 2013, respondent also changed her voter registration records to reflect the Boardwalk Property address.

Although respondent previously had resided in the Boardwalk Property, in 2011, she contacted Gayton Spina, a realtor with Prudential Zack Shore Realtors, to request that Spina locate tenants for weekly summer rentals at the Boardwalk Property. Spina located tenants, who began renting the Boardwalk Property for weekly summer rentals beginning in the summer of 2011 and continuing through early September 2012.

Spina also located tenants, Patricia Moody and Beth Sammer, to lease the Boardwalk Property from October 2, 2012 through May 1, 2013. Spina sent

---

Springfield office address into the mailing address designation.

[7] Respondent testified that, as of the date of the ethics proceeding, she was still residing with her friend in Essex County, New Jersey.

respondent a copy of the Sammer/Moody lease via United States Postal Service (USPS) in early October 2012. On October 4, 2012, Spina sent an e-mail to respondent, with the subject line "Boardwalk Property lease," advising her that he had sent her a copy of the lease via USPS and was "waiting for you to return the lease to us." The same date, at 5:23 p.m., respondent replied to Spina's e-mail to inform him that she "didn't get the contract." Ibid.

Nevertheless, Sammer and Moody began occupying the Boardwalk Property on October 2, 2012, as contemplated by the lease. However, on October 29, 2012, the Boardwalk Property was seriously damaged when Superstorm Sandy struck New Jersey. The storm lifted the Boardwalk Property off its foundation, rendering the residential structure uninhabitable. As a result of the damage, the Boardwalk Property ultimately was demolished.

On November 2, 2012, following Superstorm Sandy, respondent applied for Federal Emergency Management Agency (FEMA) rental assistance. On the application, respondent was asked "[i]s the address listed in [question] #8 your primary residence," which respondent answered in the affirmative. On December 15, 2012, as part of her application, respondent provided FEMA with a handwritten letter that stated, "I am requesting rental assistance until I can make the repairs on my home and move back in." (emphasis added). On December 20, 2012, respondent received $2,270 in rental assistance from

FEMA. Unbeknownst to respondent, Moody simultaneously had applied for rental assistance from FEMA, due to being displaced from the Boardwalk Property, where she was, in fact, residing at the time Superstorm Sandy struck.

In addition to FEMA rental assistance, following Superstorm Sandy, on June 27, 2013, respondent applied for financial relief from the New Jersey Resettlement Grant Program (the RSP). On the RSP application, respondent was asked "[w]as this your primary residence at the time of the storm," which respondent answered in the affirmative. Additionally, the RSP application asked respondent "if your primary residence was located in one of the 9 impacted counties and was damaged by Superstorm Sandy, are you willing to remain or resettle into the county for 3 consecutive years," which was a condition of the grant program. Respondent answered in the affirmative and agreed that she "underst[ood] that if I receive funds under the Resettlement Program and I fail to remain in one of the 9 impacted counties for 3 consecutive years, I will be required to return all the funds received from the state under this program."

On August 13, 2013, respondent attended a closing related to the RSP grant and the Boardwalk Property, where she executed several documents, including a Grant Agreement and Promissory Note.

The promissory note contained informational pages which described the criteria for eligibility for the RSP grant. One requirement was that "[a]t the time

of the storm (October 29, 2012), the damaged residence must have been owned and occupied by the applicant as the applicant's primary residence." The promissory note informational pages also defined, in detail, "occupancy as primary residence." Specifically, the application provided that "applicants must have occupied the property as their primary residence on the date of the storm. Second homes, vacation homes and rental properties do not qualify an applicant for a Resettlement grant." (emphasis added). The RSP application also required, as verification of a primary residence, an applicant to present a driver's license "that shows the damaged residence as the address."

Respondent signed the promissory note, affirmatively stating that "[a]t the time of Superstorm Sandy, I (We) owned and occupied as my/our primary residence the above-designated IMPACTED RESIDENCE." Respondent also initialed the statement on the promissory note that stated "[t]he damaged dwelling was owned by the Homeowner(s) and was the Homeowner's primary residence at the time of the storm." Furthermore, respondent initialed next to the statement that she agreed that "the information provided in the Resettlement application and any documents submitted to support the application are true and correct to the best of the Homeowner's ability." Respondent also agreed with and initialed the statement that "failure to maintain a primary residence in the county of the damaged dwelling for three years will result in an obligation to

repay the entire $10,000.00 Grant Amount to the STATE within thirty (30) days of termination of residence in the county."[8]

In the eligibility overview portion of the application, respondent was informed that "owners who are not owner/occupants of their primary residence are not eligible for the Resettlement grant."

The State of New Jersey granted respondent's RSP application and, as a result, she received a $10,000 grant.

In her verified answer to the formal ethics complaint, respondent admitted that, despite her statements on the promissory note, the Boardwalk Property was not her primary residence at the time Superstorm Sandy struck. Again, during the ethics hearing, respondent testified that, since August 2012, she had been living in Essex County, New Jersey with a friend. Moreover, according to the Judiciary's Centralized Attorney Management System, on June 7, 2012, respondent changed her home address of record with the Court to reflect the Essex County, New Jersey address. However, respondent contended that, at the time she signed the RSP application, she considered the Boardwalk Property to be her primary residence, even though she was not living there. According to

[8] The record reflects that respondent never resided in Ocean County following Superstorm Sandy and did not repay the $10,000 grant within thirty days of termination of residence in the county. Rather, she repaid the grant on March 9, 2017, as a part of restitution in her criminal matter detailed below.

respondent, "she did not thoroughly consider the language and restrictions of the RSP applications was different from the usual legal definition of personal residence, or she would have known that, for purposes of the aid program [the Boardwalk Property] was not considered her primary residence."

On January 25, 2017, the New Jersey Division of Criminal Justice charged respondent with one count of third-degree theft by deception, in violation of N.J.S.A. 2C:20-4(a),[9] and one count of fourth-degree sworn falsification to authorities, in violation of N.J.S.A. 2C:28-3,[10] citing her filing of fraudulent applications seeking disaster relief assistance pertaining to the Boardwalk Property. During her the ethics hearing, respondent testified that she learned she had been criminally charged when she saw an article in the newspaper. Nevertheless, respondent failed to notify the OAE that she had been charged with an indictable offense, as R. 1:20-13(a)(1) requires.

Subsequently, on May 9, 2017, respondent was charged, via Accusation,

[9] N.J.S.A. 2C:20-4A provides that a person is guilty if she purposely obtains property of another by deception. Deception is purposeful if it "creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind, and including, but not limited to, a false impression that the person is soliciting or collecting funds for a charitable purpose; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise."

[10] N.J.S.A. 2C:28-3(a) provides that "a person commits a crime of the fourth degree if he makes a written false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable."

with one count of third-degree theft by deception, in violation of N.J.S.A. 2C:20-4. Again, respondent failed to notify the OAE of her criminal charge.

Also on May 9, 2017, respondent appeared before the Honorable Linda Baxter, J.S.C., and was accepted into the Pretrial Intervention Program (PTI) for a term of six months. During the hearing, respondent was not required to enter a guilty plea; however, Judge Baxter ordered respondent to make restitution for the RSP grant funds.

Respondent failed to notify the OAE of the disposition of her criminal charges, as R. 1:20-13(a)(1) requires.

On October 20, 2017, Judge Baxter entered an order of dismissal and order to discharge bail after respondent successfully completed PTI. Ten months later, on August 14, 2018, the Honorable Scott F. Nemeth, J.S.C., entered an order expunging respondent's criminal matter.

Although respondent did not comply with her reporting obligation, the OAE independently learned of respondent's criminal matter during its investigation of her improper real estate closing practices and, on September 13, 2018, docketed the matter for investigation.

On October 29, 2018, respondent sent the OAE a one-page letter stating that she "did not report the charges filed against me concerning my Superstorm Sandy application because I was contesting and seeking to resolve the charges

by way of pre-trial diversion and expungement and misunderstood my reporting obligations as they applied under those circumstances at the time pending resolution."[11] However, respondent emphasized that her criminal charges had now been expunged. Ibid. Nevertheless, she "now realize[d] that I was nonetheless obligated to report the matter and that my failure to do so was in error. I sincerely regret the error, to which a very stressful time in my life on a number of levels contributed." Ibid. Respondent wrote that she had practiced law for over forty years without having been disciplined and as she was "moving toward wrapping up [her] practice and retiring in the short term, I would like to maintain my clean record, including by cooperating with your office to the fullest extent." Ibid.

Attached to her letter, respondent included Judge Baxter's order dismissing respondent's criminal charges after her successful completion of PTI and Judge Nemeth's order of expungement.[12] Ibid.

---

[11] As more fully explained below, during her demand interview six months later, respondent blamed her counsel in her criminal matter for not informing her that she either was or was not obligated to report the criminal charges and insisted that, although she believed her reporting obligation was a "gray area," she decided not to review R. 1:20-13 to resolve her ambiguity.

[12] In In re Rausch, 224 N.J. 444 (2016), we noted that "any misbehavior, private or professional, that reveals a lack of good character and integrity essential for an attorney constitutes a basis for discipline" and determined that "an expungement, too, cannot preclude a finding that the underlying conduct violated the RPCs." In Rausch, the attorney was charged with simple assault, successfully completed Pennsylvania's equivalent of PTI, and

(footnote cont'd on next page)

On December 18, 2018, in reply to a December 7, 2018 letter sent by the OAE concerning the Superstorm Sandy fraud,[13] respondent sent the OAE a letter more fully explaining her applications for Superstorm Sandy relief funds. In her letter, respondent explained that, from May 1987 through September 2009, she owned and resided in a home in Short Hills. However, because of the "real estate market crash in 2008," she sold her Short Hills home and moved to the Boardwalk Property. Respondent stated that, from October 2009 through July 2012, she lived in the Boardwalk Property "continuously, except that I continued to rent out the home for several weeks each summer while I was away on vacation or while visiting family and friends." Respondent estimated that, from 2010 through 2012, she had rented out the Boardwalk Property approximately four weeks each year.

Additionally, during the summer of 2012, respondent expended $75,000 to improve the Boardwalk Property, "including a repair of the porch that had collapsed." Also during the summer of 2012, respondent began considering

---

his criminal charges were eventually expunged. We also explained that "although expungements are confidential, [Rausch] raised the issue [of his criminal charges] at the DEC hearing and, thus, waived the confidentiality." Thus, we are not precluded from considering respondent's criminal conduct, despite its expungement.

[13] A copy of the OAE's December 7, 2018 letter is not contained within the record before us. Presumably, it requested a more detailed reply from respondent regarding the criminal matter than she provided in her one-page October 29, 2018 letter.

selling the Boardwalk Property in early 2013.

Concurrently, her:

> realtor approached me with a [sic] potential tenants interested in renting the home for seven months, from October 2012 until May 2013. The proposed tenants signed the lease, made a $1,200 deposit payment, and moved into the home. I had already moved out of the home for a month-long summer-rental beginning in July, and so I continued staying with one [of] my friends in the spare bedroom of his [Essex County] condo.
>
> [P-16.]

When Superstorm Sandy struck, it damaged the supporting pilings of the home, which required its demolition, even though the living area of the home did not sustain significant damage. Consequently, respondent explained that, after Superstorm Sandy, the Boardwalk Property "was not habitable."

After learning the Boardwalk Property would need to be demolished and rebuilt, respondent "changed [her] mind about selling the home and decided that [she] could rebuild a home [she] would want to live in."

After Superstorm Sandy struck New Jersey, respondent "believed that [the Boardwalk Property] constituted my primary residence for the purpose of federal and State disaster-relief benefit programs because I had lived there for over three years and planned to occupy the property once a new home was

rebuilt." Respondent cited to Section 121 of the Internal Revenue Code[14] as support for her position.

Regarding the Superstorm Sandy disaster relief applications, respondent explained that, on December 19, 2012, FEMA granted her application and provided her with $2,270 for rental assistance. Later, on January 6, 2013, the Small Business Administration (SBA) "denied my application for a disaster loan on the ground that I could not demonstrate that [the Boardwalk Property] was my primary residence." Therefore, on June 20, 2013, respondent wrote a letter to the SBA "requesting reconsideration of my SBA loan denial based on my belief that [the Boardwalk Property] was my primary residence."[15]

On the same date, the SBA reinstated respondent's loan application[16] and, on August 8, 2013, the SBA approved a $24,600 disaster relief loan for respondent. On March 13, 2014, the SBA increased the loan amount to $269,400 due to additional rebuilding costs. Seven days after increasing the loan amount,

[14] 26 U.S.C. § 121(a) provides that "gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 years or more."

[15] A copy of respondent's letter to the SBA requesting reconsideration of its denial is not contained within the record.

[16] On respondent's RSP application, she answered "No" to the question of whether she had "applied for any other storm-related assistance from the Small Business Administration (SBA) for damage to the damaged property from Superstorm Sandy."

the SBA requested that respondent provide documentation (such as a driver's license or voter registration) to verify that the Boardwalk Property was her primary residence.

On March 27, 2014, respondent informed the SBA that her driver's license reflected her office address and that, although she sold her Short Hills home in 2009, she had not changed her voter registration.[17] In her letter to the OAE, respondent wrote that, on March 25, 2014, two days before she replied to the SBA, the agency had notified her that "loan proceeds could not be disbursed because my file was undergoing administrative review."

Approximately one month later, on April 29, 2014, the SBA canceled the loan:

> on the ground that the SBA had received information that [the Boardwalk Property] was leased at the time of Superstorm Sandy and so, the SBA concluded, it was not my primary residence as of the date of the disaster. The SBA provided me with six months to provide information demonstrating that this was my primary residence.
>
> [P-16.]

Respondent did not appeal the SBA's loan cancellation.

[17] Respondent's statement to the SBA was incorrect. The record reveals that respondent changed her voter registration to reflect the Boardwalk Property on January 31, 2013.

Six months later, on October 10, 2014, FEMA requested that respondent repay the $2,270 she received in rental assistance or, in the alternative, provide documentation demonstrating that the Boardwalk Property was her primary residence on the day of the storm. Respondent took no action and on June 19, 2015, FEMA sent her another letter requesting repayment. Almost one year later, on February 25, 2016, respondent "completed a credit card authorization form at FEMA's request to pay FEMA $2,270. In June 2016, I inquired why my most recent payment to FEMA had not been processed and I was told that it had previously been repaid."

Independent of the FEMA and SBA relief application, respondent explained that, on June 27, 2013, she also applied for State-administered benefits through the RSP and the Reconstruction, Rehabilitation, Elevation and Mitigation (RREM) Programs. Respondent listed her Springfield office address as her street address on both applications and listed the Boardwalk Property as the "damaged property address." On July 8, 2013, respondent's RSP application was granted and she received a $10,000 grant. However, on the same date, the RREM waitlisted respondent's application; it was later approved in July 2014. On January 23, 2015, the State revoked respondent's RREM approval because the Boardwalk Property was not her primary residence.

Later, on June 19, 2015, the State of New Jersey requested that respondent

provide proof of her residency at the Boardwalk Property:

> because the RSP program required that I continue to reside in Ocean County for three years after Superstorm Sandy. I did not return the $10,000 to RSP at that time because I had intended to occupy [the Boardwalk Property] as my home upon completion. Moreover, the $10,000 was secured by a lien on the property that would be recovered by RSP if I did not re-occupy the new home as my primary residence. I later repaid the $10,000 as restitution in connection with my entry into the pre-trial intervention program."[18]
>
> [P-16.]

In her letter to the OAE, respondent explained that, in mid-February 2016, two federal investigators from the Department of Homeland Security (DHS) approached her and inquired whether the Springfield office was her primary residence. She told the investigators it was not. Although respondent did not provide further details about the conversation in her letter, she noted that the interaction "lasted approximately 10 minutes."

However, two years earlier, DHS prepared a report concerning its investigation into the allegations that respondent fraudulently obtained disaster relief benefits. In its April 24, 2014 report, the investigator noted that, when he first conducted an inspection of the Boardwalk Property in November 2012, he

[18] The RSP application specifically states "because the Grant Agreement/Promissory Note obligates only the owner occupant and no lien is placed on the property . . ." (emphasis added).

was "unable to verify occupancy no drivers license no utility" and that "no driver license no mail no voters registration card=exhausted all means." Respondent informed the inspector that her "Post disaster/mailing address history" was her Springfield office address "from 11/02/12 to present per applicant."

However, respondent told the OAE that she did not remember discussing the circumstances of her driver's license address or living situation with any disaster-relief representatives. Rather, she merely "answered whatever was asked of [her]."

The report also indicated that respondent told the inspector that "the home she owned and occupied was damaged on 10/29/2012. [Respondent] reported the damaged dwelling she owned and occupied was her primary residence." However, FEMA records reflected that Moody received $3,910 in rental assistance and that occupancy had been verified "via Landlord," which was noted to be Spina's realty company. The inspector later confirmed with Moody that she and Sammer were occupying the Boardwalk Property at the time Superstorm Sandy struck and were displaced due to the damage to the property.

The report noted that the SBA initially declined respondent's application for a loan because the Boardwalk Property was not her primary residence, but that the loan application "subsequently was approved upon reconsideration. SBA had not disbursed the funds when an SBA audit team questioned Gendel's

primary residence. SBA will be cancelling the loan and making referral to the SBA Office of Inspector General."

Later, in June 2016, respondent received a letter from the New Jersey Division of Criminal Justice informing her that she was under investigation for fraud in connection with her FEMA and RSP applications.

Respondent expressed that she "regret[ted] [her] error, but never intended to be deceptive or misleading, much less obtain funds unlawfully." According to respondent, in completing the disaster relief applications, she relied upon Section 121 of the Internal Revenue Code, which she asserted allows an individual to claim a primary residency if the taxpayer had resided in the home for two of the previous five years (including non-consecutive time). Thus, respondent claimed that, except for the summer rentals of the Boardwalk Property, she occupied the home after selling her Short Hills home. Nevertheless, respondent stated that "unfortunately, I did not read the applications as carefully as I should have and did not understand that the operative standard for the relief I was seeking was different than the standards I was relying on."

Respondent acknowledged that, in the months preceding Superstorm Sandy, she was paying rent to her friend in Essex County, New Jersey in order to live in his condominium. However, respondent noted that, "while I had rented

out [the Boardwalk Property] home just a few weeks before Superstorm Sandy, there was no other location where I intended to establish any sense of permanency or long-term residence during the relevant period." Respondent maintained that she believed, at the time she applied for Superstorm Sandy relief, that she was eligible for the relief she sought.

In her letter, respondent asserted that she "voluntarily repaid the FEMA funds prior to the criminal investigation"[19] and did not repay the RSP grant prior to the investigation because of a lien that was placed upon her home.

Respondent also cited to stressful personal circumstances that "contributed to [her] judgment," such as partially supporting an adult, autistic son, and her divorce and the subsequent passing of her ex-husband, in 2008.

Respondent recounted her contributions to the bar in her forty years of practice, including:

> lecturing for the NJSBA's [New Jersey State Bar Association] Continuing Legal Education [CLE] seminar on Real Property Practice in New Jersey (2010), the New RESPA Requirements (2009, 2010 – over 7 appearances), Skill and Methods in real estate law for newly admitted attorneys, and to the Union County Bar Association and realtor associations/brokers concerning real estate practice, contractual negotiations relating to real property, 1031

[19] The record reflects, and respondent acknowledged in the same letter, that FEMA twice requested that she refund the $2,270 in rental assistance it provided to her because the Boardwalk Property was not her primary residence at the time Superstorm Sandy struck. Respondent did not repay FEMA until two years after its first request for repayment.

> exchanges, RESPA and TILA requirements, and short sale approaches and pitfalls.
>
> [P-16.]

On April 2, 2019, as part of its investigation into respondent's misconduct, the OAE conducted a demand interview with respondent, where she explained that she exclusively practiced real estate law. Regarding Record's letter to the OAE documenting respondent's comments about manipulating the realty transfer fee for senior citizens, respondent claimed that she said that she had "heard about" people who, in "previous times" said that "anybody could charge any realty transfer fee and there was no way that the county would know, there was no way that the seller would know and there's no way anybody would know if it was filed in – in the county that way." Respondent believed that Record reported the conversation to the OAE because she was upset respondent made the comments in front of Record's client.

When the OAE asked respondent about her retention of excess recording fees, respondent explained that:

> back at that time I used to not know how much the mortgages or – or deeds were gonna cost until well after [the HUD-1] was prepared, because we didn't get it, and it – whether it was inappropriate or not, it was common practice at that time, that I saw coming in from the thing, to estimate what the costs were. And sometimes I would estimate – I would always try to estimate high enough to cover my expense, and I kind of thought about it as, you know, trying to estimate how

> much it was going to be and come up with – and I came up with like a standard number for pretty much most of them.[20]
>
> [P-25pp.21-22.]

Respondent admitted that she failed to return the excess fees and, instead, routinely wrote a check to herself representing the excess recording fees. In reply to the OAE's inquiry about why she decided to keep the excess recording fees, instead of returning them to the appropriate parties, respondent stated that she "didn't really realize that it was – I kind of thought of the recording as a process, not a fee to the county, in my own head. So, I saw that everybody else had been doing like the – you know, these estimated fees, I even still see it today, and that I – and I thought it was okay." Respondent further elaborated that she now sees practitioners describe the recording fee as a "processing fee," but that she "didn't think about anything like that." However, respondent stated that she would charge a recording fee regardless of whether she actually incurred a cost to record a deed. Indeed, respondent denied that she performed any extra work that would have permitted her to retain the excess fees and stated simply that she did "what I saw everybody else doing." Nevertheless, respondent contended that, although she did not think retaining excess, unearned fees was wrong at the

[20] The record reflects that respondent charged her clients different fees for recording their deeds, not, as she claimed, a "standard number."

time, after the OAE provided her with the decision in Fortunato, she came to realize that she was not entitled to retain the excess recording fees.

When the OAE asked respondent why she did not return the funds she overcharged for the sewer lien in the Thomas/Vaval matter, respondent asserted that she had "absolutely no way to explain it. It should have gone back to them. I – it was obviously a mistake when I was doing whatever, and I just didn't pay any attention. It just – that's just so hard for me to believe that I didn't do that." Ultimately, respondent claimed that there was a time where she was "just trying to balance the accounts" and that she "didn't pay attention." Respondent contended that she "felt I had paid everybody and I had waited long enough and that I – I just presumed it was – it was my fee that was left there, since I had paid everybody."

Respondent asserted that it was difficult for her to focus on her law practice because her ex-husband had passed away in 2008, the same year she saw her "real estate practice go away because of the [market] crash." Thus, respondent decided that she wished to retire, and her plan was to sell her Short Hills home, move to the Boardwalk Property, "fix it up, sell that house, retire at 62 and just change my life." However, the real estate market crash precluded her ability to sell the Boardwalk Property. Therefore, respondent claimed she was living at the Boardwalk Property after selling her Short Hills home "and

then of course I finally made a decision to get back into moving a forward movement and Sandy happened, and then I lost the house."

With respect to her overcharging clients for bank fees, respondent explained that her understanding:

> under the Ethics rules at that time [was] that you could not make a wire from your office unless – well, TD Bank would not let you wire unless you had two people to verify in order to do a wire from your office. And it was my understanding that the Ethics Committee would not allow just anybody from the office to do it, that it had to be an attorney that did it. So in order for me to wire the money, I had to actually go to the bank and I had to spend whatever amount of time it took, usually it was a half an hour to an hour of my time, in order to initiate the wires. And I, in my head, thought that I could charge a fee for doing the wire.
>
> [P-25pp.61-62.]

Also, during the April 2, 2019 demand interview, respondent addressed her Superstorm Sandy relief fraud. Regarding her failure to report her criminal charges to the OAE, respondent contended that she had asked her attorneys in the criminal matter:

> am I required to self report this to – to Ethics? And their response to me was, we can't advise you that it is – that you have to or you don't have to. All right? And I interpreted it, because it was coming from somebody who knew, -- right? – that that meant it was a gray area. And that does not excuse the fact that I should go to the – to the Ethics rules and I should read it, but I thought that they were – they were informing me that it was gray, especially since the matter was being dismissed.

> And so I thought that in light of that there was no requirement that I – I did it.
>
> [P-24pp.5-6.]

Yet, respondent stated that she was not blaming her attorneys, because it was "not their fault, I heard what they said – but had they said it differently, clearer to me, that we're not representing you on an Ethics complaint unless you want to pay us. Or that we're not – I was paying them, so I didn't get – I don't get that either, because I was paying them by the hour, so why wouldn't they answer the question [about her obligation to report her criminal charges]?"

Respondent submitted the billing records from Chiesa Shahinian & Giantomasi PC, her counsel in her criminal matter. The billing records reflect that, on August 2, 2016, almost one year before respondent was granted entry into PTI, her attorneys had a conference call regarding "RESEARCH ON DISCIPLINARY CONSEQUENCES FOR ATTORNEYS WITH CRIMINAL CHARGES," and the next day, respondent had meeting with her attorneys "RE: ANALYSIS OF FACT INVESTIGATION, POTENTIAL RESOLUTION, AND DISICPLINARY IMPLICATIONS." Ibid. Later, on September 23, 2016, respondent's counsel in the fraud matter conducted an "ANALYSIS OF PTI IMPLICATION FOR ATTORNEY LICENSE, INCLUDING CONCLUSIVE EVIDENCE RULE AND CONSIDERATIONS FOR IMPOSITION OF DISCIPLINE IN DISCRETIONARY CASES," as well as an analysis of:

> RULES AND CASE LAW RE: IMPACT OF PTI ON ATTORNEY DISCIPLINE ON ETHICS CHARGE OF MISCONDUCT, WHTHER PTI ADMISSIONS ARE 'CONCLUSIVE EVIDENCE' OF MISCONDUCT THAT ESTABLISHES VIOLATION, EFFECT OF NON-PLAN PTI VS. GUILTY-PLEA PTI, AND EFFECT OF CRIMINAL REPERCUSSIONS (PTI CONDITIONS) ON DISCIPLINE; PREPARE MEMORANDUM RE: SAME.
>
> [R-3.]

Indeed, during the ethics hearing, respondent clarified that one of her attorneys in the criminal matter also was an "ethics attorney" and she paid the law firm to research her reporting obligation. However, respondent testified that, when she met with her criminal attorneys about her reporting requirement, "they said to me, we've looked at both sides and we cannot provide you with [an] answer whether you have to or don't have to." Consequently, respondent chose not to report her criminal charges, or their disposition, to the OAE, believing that the criminal charges would be dismissed after her completion of PTI.

Regarding the Boardwalk Property, respondent asserted that she lived in the home after she sold her Short Hills home, but that she did not intend to make it her personal residence. Respondent explained that she lived at the Boardwalk Property during the fall, winter, and spring seasons, and then Spina "came to me and said, hey, are you willing to rent your place for $3,900 a week? And I said, sure, for that I'll take vacation when they're here and I'll leave."

Then, in the summer of 2012, respondent moved into her friend's condominium in Essex County, New Jersey, with the intention that she was going to sell the Boardwalk Property. In her own words, she "registered to live" in the condominium on August 1, 2012. As she was moving into her friend's home, Spina "kept contacting me asking me, can – you know, are you willing to have all – a winter rental? Are you willing to do this? And I said, I gotta think about it, I – whatever." Respondent contended that she "wasn't really paying attention" and did not know the tenants had moved in. Respondent claimed that Spina sent her the winter rental lease on October 12, 2012, but that she never signed it. Respondent explained that she ignored Spina because she had not decided whether a winter rental was a "good idea. The place was still in iffy shape and I wanted to put it up on the market in the spring and I was afraid these people – you know, if they stayed wouldn't be okay."

Even though respondent asserted she had not made up her mind about permitting a winter rental at the Boardwalk Property, she "knew [she] was closing up the – I knew I was closing it up for the winter," and in early October – before Moody and Sammer moved in – she gave Spina her cable boxes to return. Concurrently, Spina "kept calling" her to ask if she would look at the winter rental lease. Respondent contended that, before she had made a decision to sign the lease, Spina called her and informed her that he had allowed the

tenants to move in. Thereafter, respondent "didn't know what to do, 'cause they were there. Right? And then a week and a half later Sandy happened and I went – kind of relief, 'cause they're gone and I hadn't made a decision I wanted them."

After Superstorm Sandy struck New Jersey, respondent stated that she "immediately thought, oh, this is good, I can – you know, I can – you know, now it's like giving me that impetus to rebuild [the Boardwalk Property]. I could make this my personal residence; I could live here and be there and it'd be – and it'd be good." Respondent clarified that, before Superstorm Sandy, she had fixed the collapsed porch, but that the Boardwalk Property was not the home that she wanted to live in. However, after Superstorm Sandy, Point Pleasant Beach town regulations changed and respondent now had the opportunity to build a larger home.

With respect to the FEMA rental assistance respondent sought for her damaged Boardwalk Property, respondent contended that FEMA contacted homeowners and invited them to a meeting where "the first thing [discussed] was the – the rental assistance. And I went there and said, am I allowed to get paid for my rent that I'm paying now if I am going back? And they said yes." Respondent elaborated that she told FEMA she was paying rent to her friend and "so I said, can I get reimbursed [for] that? All right? And they said yes. And I

said, good. All right? That was very nice of them." Respondent denied that she informed the FEMA representative that she would have paid rent to her friend regardless of whether Superstorm Sandy occurred or not.

Regarding the RSP grant respondent sought for the damaged Boardwalk Property, she informed the OAE that she knew one of the requirements was that she had to live in Ocean County for three years. Respondent recalled that she thought to herself "well, that's not a problem because if this house is looking great, I'm gonna get it fixed in like three, four months, I'm gonna move in, and I can certainly stay for the number of years." However, if she left Ocean County before the expiration of the three-year requirement, respondent reasoned that she would simply return the grant money.

Respondent also stated that, through the RSP program, she was able to obtain a mortgage at a lower interest rate. Thus, the program asked respondent whether the Boardwalk Property was her personal residence and "in my head I go, yes, it's my personal residence. Because it's where I lived for the last two out of the five years."

Respondent recalled that the individuals assisting with the relief applications asked her whether the Boardwalk Property was her personal residence, but when pressed to clarify whether she was asked if the property was her personal or primary residence, respondent told the OAE that she considered

personal residence and primary residence to be the same thing. Respondent elaborated that, during the meeting to apply for disaster relief, she "didn't hear the part – there was so much going on – I didn't hear the part where they said, and you had to be living there on that day. All right? I only heard the part, was it your primary residence."

However, after respondent later thought about the FEMA rental assistance she received, she "returned it immediately" because "somebody [from FEMA] called me and said, under the definitions you shouldn't get it. And I said okay. And I just returned it."

When the OAE asked respondent why she handwrote a letter to FEMA on December 15, 2012, requesting rental assistance "until [she] could make the repairs on [her] home and move back in," respondent claimed that she did not know what prompted her to write the letter, but she "would not have voluntarily written anything, unless somebody said to me, you need to write it." Nevertheless, the OAE inquired why respondent would write that she needed rental assistance so that she could "move back in" when she had not been living at the Boardwalk Property for three months before Superstorm Sandy struck. Respondent answered that she was living with her friend temporarily. The OAE again asked respondent whether she thought the words "move back in" would create the impression in the mind of a reader that she was actually living at the

Boardwalk Property when Superstorm Sandy struck, and respondent asserted that "in my view I was living there."

Nonetheless, respondent contented that she simply answered the questions on the applications and never attempted to explain to any agency what her living circumstances were. However, respondent explained to the OAE that, when she was asked whether she wanted rental assistance, she said yes and explained to the OAE that her thought process at the time was:

> they said, okay. And did I read the documents carefully? So they said – and you had to be living there on that date. But I was kind of going, well, you know, I mean, if I was on vacation would it not count? If I was gone temporarily would it not count? Do you know what I'm saying?
>
> [P-24p.63.]

After FEMA asked respondent whether she would like rental assistance, respondent denied reading the "paperwork" involved with the application, but instead, "signed it and I didn't even think anything of it. And then, like I said, when somebody pointed out to me, you know, it should have been – you know, you really shouldn't have it because it's there, I said, okay. And I just returned it." Respondent speculated that "the young women that moved into my house that I didn't give permission to be there for what, a week? Went and filed for rental assistance" and that was how FEMA determined respondent was not entitled to rental assistance. Thereafter, "they contacted me and said, had you

moved out? And I said, yes. And they said to me, well, then you can't – you can't have it. And I said, fine. And I sent it back."

Although respondent asserted that, with respect to the winter rental, Spina provided her with the lease ten days after the tenants moved into the Boardwalk Property, she conceded that his prior practice for every rental was to provide her with the leases in advance. The security deposits also were always made in advance.

Furthermore, although respondent asserted that she did not receive the winter rental lease until October 12, 2012, Spina spoke with her before he sent her the lease, via e-mail, to tell respondent that he wanted to bring in the tenants to show them the Boardwalk Property. Respondent recalled that she wanted to think about it, because it could work as a rental, but she also did not know who the tenants were and was concerned about the home because she wanted to sell the Boardwalk Property in March 2013. Yet, respondent paid for the utilities in the home while the renters were living there. However, respondent claimed that, after she learned the tenants were living at the Boardwalk Property, she did not know what to do because "what do you do when somebody moves in? Where do you – where do you handle it at that point?"

Regarding the RSP application, respondent acknowledged that it required the damaged property to have been occupied on the day of the storm, but

respondent reasoned that primary residence was the "place that was legally your home. And by definition, that was legally, in my mind, my home. All right? The fact that I had been out a couple of days, to me – a couple weeks, did not in turn make it not my primary residence." When the OAE asked respondent why she answered in the affirmative the question of whether she owned and occupied the Boardwalk Property at the time of Superstorm Sandy, respondent explained that she:

> didn't interpret the 'occupying' being on the day of the storm. I thought about it as in the terms of the legal definition of primary residence. . . . There were also all these pieces of paper that were given to me and the word primary residence, primary residence, which I thought about it, and you're coming up with one sentence where it says, occupy as your primary residence. And I defined it as primary residence.
>
> [P-24pp.92-93.]

After the OAE pointed out that the grant agreement defined "occupied," respondent denied that she read the document when she signed it. Moreover, respondent justified her then interpretation of "occupied" by stating that "absolutely nobody" was occupying their homes in Point Pleasant Beach the day Superstorm Sandy struck "because they evacuated the entire area."

However, before respondent began the RSP application process, she spoke to someone who said she needed to change the address on her driver's license to

reflect the Boardwalk Property, instead of her Springfield office address "and so I went, oops, okay, I'll correct it," which respondent believed was merely "codifying the truth, which was that I was living there." However, respondent explained that changing the address on her driver's license to the Boardwalk Property address "really bothered me, because now I was changing the address to an address that there was nothing there. So I was very afraid I was gonna be getting mail that was just gonna be dropped, who knows where?"

At the December 7, 2021 ethics proceeding, Shershinger testified that he had been performing land surveys for more than sixty years. In approximately July 1995, he began doing surveys for respondent and, on numerous occasions, hand-delivered the surveys to respondent at her office "because they were rush surveys and she was in a hurry to get them."

Although respondent frequently requested that Shershinger perform land surveys, she generally did not request that he include a metes and bounds description with the land survey. Even though respondent did not request that Shershinger include metes and bounds descriptions with the surveys he produced for her, he knew how to do them and had "done many of them." In fact, had respondent asked him to include a metes and bounds description in his surveys, he would have done so.

Spina also testified at the ethics proceeding. Spina testified that he is a

licensed realtor in New Jersey and, because New Jersey law requires[21] that a realtor "be on duty in the office during regular hours of operation," he was the individual in the office when respondent first called to inquire about renting out the Boardwalk Property during the summer. Spina testified that, after respondent inquired about renting the Boardwalk Property, he told her that he needed to see what it looked like so that he could "put together a price for the rental."

With respect to Moody's winter rental of the Boardwalk Property, Spina testified that the tenants paid a $1,200 initial deposit in cash, and that the monthly rent thereafter was $800. Spina testified that respondent authorized him to rent the Boardwalk Property to Moody for the winter. Specifically, Spina testified that he never would have rented out the Boardwalk Property without respondent's "advisement and approval" because "first of all, it's unethical. Second of all, it's probably illegal and maybe criminal. And, thirdly, it jeopardizes my real estate license." Spina emphasized that he "would not rent a property without the explicit permission and approval of the owner/landlord" and, although respondent had not signed the lease, he believed they spoke about

[21] N.J.A.C. 11:5-4.4(a) provides that: "every resident real estate broker not licensed as a broker-salesperson shall maintain a main office for the transaction of business in the State of New Jersey, which shall be open to the public during usual business hours. . . . Further, the licensee supervising the main office shall be so employed on a full-time basis and, when not required to be away from the office for reasons related to the business of the office, shall be physically present at that office during usual business hours at least five days per calendar week."

the winter rental over the phone.

Spina denied knowing that respondent intended to sell the Boardwalk Property and pointed to the language in the winter rental lease agreement that stated that the "tenant to make home available for showing to prospective summer tenants." Thus, Spina testified that he anticipated that he was going to assist respondent with renting the Boardwalk Property to tenants for the summer of 2013.

Alison Picione also testified at the ethics hearing. At the time of the ethics hearing, Picione was the assistant chief of investigations at the OAE. However, when she was assigned to respondent's matters, she was a disciplinary investigator. Picione also is a certified fraud examiner, which is a:

> certification much like a [certified public accountant] would get because you have to take an exam in order to be certified. There is a prep course that you take and there's a lot of material to study in preparation for taking the exam. Once you pass the exam, you have to take . . . 20 hours of continuing . . . education courses through the year.
>
> [T109.]

In addition, there is a "code of ethics" to which certified fraud examiners must abide. Ibid.

After she began investigating Record's allegations, Picione discovered that respondent had not been overcharging a realty transfer fee, as mentioned to

Record. However, Picione's examination of the records did reveal that respondent was inflating the cost of land surveys; title fees; recording fees to both buyers and sellers; and was inflating the costs of overnight and bank fees. Picione explained that she reviewed all the records that respondent provided, but respondent's records were incomplete, so Picione's analysis for some of the charges was incomplete.

Regarding Shershinger's land surveys, Picione testified that respondent told her that Shershinger did not like to do metes and bounds descriptions; however, when the OAE received documentation from Shershinger, it learned that respondent had not requested that he produce metes and bounds descriptions.

Regarding respondent's criminal charges pertaining to her Superstorm Sandy fraud, Picione testified that the OAE subpoenaed records from FEMA's fraud investigation and learned that tenants, not respondent, had been living in the Boardwalk Property at the time the storm struck.

Respondent also testified at the ethics hearing. During her testimony, respondent contended that, during her conversation with Record, she was expressing her frustration that each county in New Jersey had its own system of recording property deeds. Respondent contended that she told Record "people could be stealing for years and you would never know because all of the counties

were separate." Respondent denied that she ever had falsified a realty transfer fee.

With respect to overcharging her clients and third parties other fees during real estate closings, respondent claimed that she was unaware of the Court's decision in Fortunato,[22] and that "everybody else's closing statements that were coming in said – did the same thing. So I had no reference to know that anything was not allowable, that it wasn't allowable to charge a set amount to – I had a – just as an example, I had UPS. And every UPS bill was absolutely different. One time it would be $23.12. Another time it would be $27 and whatever. And I just picked an amount that I charged because it was – I didn't think it was wrong."

Respondent elaborated that she charged a "flat amount" to record deeds in real estate transactions because she saw everybody else doing so but, also, it made her bookkeeping process simpler. There were times, according to respondent, she charged too much and other times she did not charge enough. Respondent lamented that mortgage companies did not inform her in advance how many pages would be in a document, but that "it did not occur to me at that time that I needed to then find out what the bills were and then send [the money] back."

[22] For reasons not clear from the record, throughout the ethics proceeding, respondent's counsel inadvertently referred to the Fortunato decision as "Maldonado."

Regarding overcharging clients for land surveys, respondent testified that her secretary discussed with her that if they were:

> reviewing all the metes and bounds description[s], that my time was worth, you know, $400 an hour and her time was worth it and that we should charge for a – a broad concept of survey which included reviewing all the metes and bounds descriptions and making sure that the surveys were accurate, and include that as part of the survey fee.
>
> [P-25p.49.]

Respondent conceded that she had not discussed with her clients or the title companies that she was going to review the metes and bounds for an extra charge, separate from the fee she had already charged clients for Shershinger's land survey.

Respondent insisted that the Boardwalk Property was her "only residence" after she moved there in October 2009, when she sold her home in Short Hills. After she moved into the Boardwalk Property, however, she began renting the home to tenants as summer rentals for approximately two to three weeks per year. Thereafter, at the beginning of October 2012, Spina began calling respondent to discuss Moody's winter rental. Respondent testified that she was "busy with other things. And I didn't really want to rent out during the wintertime." Thus, respondent asserted that she told Spina she would "get back" to him if she was interested in pursuing the winter rental. Respondent testified

that she "never, you know – I never – he sent me the – he says he sent me the lease earlier. I see it. And then on October 12th – the storm was on the 27th. On October 12th, he sent me the lease. And I said, I'll just get back to you." Respondent testified that she never read the lease, never signed it, and "never agreed to have [the tenants] in there."

Respondent claimed that a winter rental was unacceptable to her because the "porch had collapsed and that the roof was leaking and it needed repair. And I didn't – I wouldn't have felt – I'm just saying I wasn't feeling comfortable living there in the condition that the house was in as it were for myself."[23] Respondent did not reconcile her concerns about the condition of the home for prospective winter tenants with the fact that she had been leasing the Boardwalk Property to tenants during the summer, when the home was in the same condition. Indeed, through the beginning of September 2012, respondent still was actively renting the Boardwalk Property to tenants.

Respondent contended that she learned the winter tenants had moved into

[23] Although respondent testified at the ethics proceeding that the porch had collapsed, and its collapse was one of the reasons she did not desire winter tenants in the Boardwalk Property, she wrote in her December 18, 2018 letter to the OAE that she spent $75,000, in the summer of 2012, to repair the porch.

the Boardwalk Property three or four weeks after Superstorm Sandy struck,[24] when she returned to the home, she saw "some baby things lying on the floor in the – in the place. I didn't know who they – you know, I didn't know what was going on." Respondent testified that she "was told afterwards that there were people that were in the house." According to respondent, because she received a copy of the lease on October 12, 2012, and Superstorm Sandy occurred approximately two weeks later, she "had no reason to think that [Spina] would have let this tenant in, and, you know, unless I had agreed to it and signed a lease or anything."

Nevertheless, respondent asserted that she "was living there, okay?" Yet, respondent acknowledged that she had moved into her friend's condominium in August 2012. However, when asked on the Superstorm Sandy benefit applications whether the Boardwalk Property was her primary residence, respondent testified that, based upon her knowledge of real estate law, she believed it to be her personal residence. Respondent testified that, even if she had known the winter tenants were residing in the Boardwalk Property, she still would have claimed the Boardwalk Property as her primary residence on the

[24] Respondent also testified during her April 2, 2019 demand interview with the OAE that she knew the tenants had moved in, but that (despite being a real estate law practitioner) she "didn't know what to do, 'cause they were there. Right? And then a week and a half later Sandy happened and I went – kind of relief, 'cause they're gone and I hadn't made a decision I wanted them."

disaster-relief applications "because you're allowed to rent out a property a certain number of weeks and still have it as your primary residence."

Although respondent denied reading the disaster-relief applications, even though she had the opportunity to do so, she "just didn't think I was – I didn't think I was doing anything – I would ever do anything that was – was wrong." Yet, respondent also testified that she "did look at it. But my explanation to myself apparently was wrong because I thought – I defined my personal residence as that two out of the five years. And since I was not planning on being out for more than two years, I thought that it would be okay."

Regarding mitigating factors, respondent testified that she is a member of the Asperger Autism Spectrum Education Network, an organization that assists autistic individuals find employment. Furthermore, respondent testified that, during the 1980s and 1990s, she was a lecturer for the New Jersey State Bar Association (the NJSBA) and, subsequently, "helped rewrite the book on real estate." Respondent explained that she helped rewrite the Continuing Legal Education (CLE) book for residential real estate because "one of the reasons [she] had participated was because [she] noticed that there were things that were wrong, that were actually wrong in the book, and I wanted to make sure that they were corrected." Respondent clarified that she rewrote the CLE book before

the Court issued its opinion in Fortunato,[25] "somewhere around" the years 2015 through 2017. Respondent was also a member of the Board of Consulters for the NJSBA because she was "a prominent real estate attorney."

In her post-hearing summation, respondent argued that her two, distinct, ethics matters both involved allegations of actions that required "criminal mens rea" for a finding of an ethics violation. Respondent asserted that, although she admitted to the misconduct, she "has consistently denied any attempt to deceive or defraud anyone or any governmental agency." Respondent contended that her "naivete, confusion, lack of attention to her personal matters, her failure to know the law, her trusting nature, her personal life being in disarray, her inherent distaste for numbers and recordkeeping, and an inability to delegate those distasteful tasks" explained her conduct in the fee overreaching and Superstorm Sandy matters.

Therefore, respondent argued that the OAE had failed to prove, by clear and convincing evidence, that she had engaged in any fraudulent or deceptive conduct. Respondent did not acknowledge the RPC violations to which she admitted in her verified answer, nor did she offer an appropriate quantum of discipline for those violations.

[25] On February 2, 2016, we issued our decision in Fortunato. On May 19, 2016, the Court issued its order in Fortunato.

In its post-hearing summation, the OAE argued that it had proven, by clear and convincing evidence, that respondent systematically overcharged both buyers and sellers fees in real estate transactions and improperly retained the excess fees for herself. The OAE asserted that, although respondent denied violating RPC 8.4(c) in the real estate matters, the HUD-1 form "itself served as notice of the wrongfulness of her actions based upon the certified statement she signed as the settlement agent as to the accuracy of the deposits and disbursements indicated on the form." Therefore, the OAE asserted that a censure was the appropriate quantum of discipline for respondent's Fortunato violations alone.

With respect to respondent's Superstorm Sandy fraud, the OAE contended that, notwithstanding respondent's assertions that she did not read the disaster-relief benefit applications, "the paperwork itself was clear as to the requirements of both ownership and actual residence," and that by initialing and signing her name on the application, respondent acknowledged that she understood the terms of the agreement. Thus, the OAE argued that it had proven, by clear and convincing evidence, that respondent committed theft by deception and unsworn falsification when she signed the disaster-relief applications falsely indicating that the Boardwalk Property was her primary residence at the time of Superstorm Sandy.

For respondent's criminal conduct, the OAE cited In re Gjurich, 177 N.J. 44 (2003), a case in which we recommended, and the Court imposed, a reprimand on an attorney who was charged with theft by deception and unsworn falsification when he applied for and received unemployment benefits in New Jersey while employed by a law firm in Pennsylvania. The OAE distinguished Gjurich from the instant matter because here, respondent engaged in the same type of criminal conduct, but also committed Fortunato violations involving misrepresentations.

The OAE argued that respondent's misconduct was not isolated and that she systematically overcharged parties in real estate transactions despite certifying that the transactions indicated on the HUD-1 form were accurate. Worse, the OAE asserted that respondent "carried that same lackadaisical attitude of signing certifications containing falsities when she certified she owned and resided in the Boardwalk Property when Sandy made landfall" to obtain benefits to which she was not entitled.

Although the OAE acknowledged respondent's forty-year, unblemished disciplinary record, it contended we should also hold respondent accountable for her forty years of expertise and knowledge in real estate law. According to the OAE, "as a forty-plus year practitioner of law, respondent cannot credibly claim ignorance, confusion, or lack of knowledge as a defense for her unethical

behavior." Therefore, the OAE argued that, for the totality of respondent's misconduct in the real estate and Superstorm Sandy matters, a three-month suspension was warranted.

Following the ethics proceeding, the special ethics master found that the OAE had proven the facts as alleged in the formal ethics complaint and as admitted to by respondent.

Specifically, the special master acknowledged respondent's admission that she violated RPC 1.15(b) and RPC 1.15(d) in connection with fee overreaching in real estate matters.[26] However, the special master found that the OAE had failed to prove that respondent violated RPC 8.4(c) in connection with the fee overreaching because respondent claimed she was unaware her conduct was unethical. The special master credited respondent's testimony that she believed fee overreaching to be a practice engaged in by many real estate practitioners. Thus, the special master reasoned that respondent did not engage in conduct involving dishonesty, fraud, or deceit, because the OAE failed to prove that respondent knew her conduct was wrongful at the time.

However, the special master found that the OAE had proven that respondent "made misrepresentations" when she signed false HUD-1 forms,

[26] The special master did not address the OAE's allegation that respondent violated RPC 1.15(a) in connection with her fee overreaching in real estate matters.

wherein she certified to the truth of the information contained on the form. Additionally, the special master found that respondent misrepresented to clients and third parties the accuracy of the HUD-1 forms.

With respect to respondent's Superstorm Sandy fraud, the special master found that respondent knew, at the time she signed the RSP application, that the Boardwalk Property was not, and had not been, her primary residence at the time of Superstorm Sandy. Furthermore, the special master found that, although respondent testified that she believed "primary residence" to be defined under the United States tax code, the documentary evidence clearly reflected that respondent was required to have owned the Boardwalk Property and to have been actually living in the property at the time of Superstorm Sandy. The special master noted that, even though respondent denied knowledge that the tenants were residing in the Boardwalk Property, under cross-examination, she admitted that she had received a copy of the lease agreement from Spina.

The special master determined that, to be found guilty of an RPC 8.4(b) violation, "all that is required is a finding of a criminal act." Ibid. Moreover, the special master cited In re Meaden, 165 N.J. 22 (2000) (holding that, because the Court's interest in the integrity of members of the bar requires even applicants to the New Jersey bar to disclose criminal charges or convictions that were expunged, we may, in a disciplinary matter, consider a respondent's criminal

background, despite the entry of an expungement order), for the proposition that the expungement of an attorney's criminal record does not bar the imposition of discipline for that criminal conduct. Consequently, the special master found that the OAE had proven, by clear and convincing evidence, that respondent's misconduct related to her fraudulent Superstorm Sandy benefit applications violated RPC 8.4(b) and RPC 8.4(c).

The special master weighed, in mitigation, respondent's otherwise unblemished forty-year career at the bar and her admission to nearly all of the allegations against her.

However, in aggravation, the special master found that respondent's misconduct in the fee overreaching matter and the Superstorm Sandy fraud matter involved misrepresentations and dishonesty, respectively. Thus, the special master recommended the imposition of a three-month suspension.

In her submission us, respondent conceded that her admitted misconduct:

> would justify, if not demand, discipline of suspension for a term. After all, Respondent participated in two sets of events that smack of the intent to defraud and were fraudulent in effect. In a more typical case involving such charges, we would probably greet with relief a recommendation of a three-month suspension.
>
> [Rbp.1].

Notwithstanding her concession, respondent denied any intent to defraud clients, third parties, or the government. Respondent asserted her belief that her

"explanations" for her misconduct mitigate against the imposition of a suspension.

Although respondent argued that the "'double whammy' of two fraud-laced sets of allegations makes it difficult to dispel the specter of wrongful intent," she has maintained that she never intended to commit fraud. According to respondent, "her explanations are plausible" and "true." To justify her misconduct, respondent asserted that she was "naive, distracted, unduly trusting and negligent. These traits, all unbecoming of an attorney, particularly a recognized expert in the field of real estate law," explain how she came to engage in misconduct, despite viewing herself as someone "who characteristically follows rules."

Respondent again asserted that she did not realize her retention of excess fees in real estate closings was dishonest and acknowledged that "her mens rea is unflattering." Ibid.

Further, respondent contended that after Superstorm Sandy, she:

> was directed by others to apply for Sandy relief. . . . In a manner uncharacteristic of how she would review a matter for a client, Respondent signed off on the application in a summary fashion, not seeing that she was claiming to have been living in the premises at the time of the storm. . . . When the error was eventually pointed out to her, she withdrew her application. She took nothing from the Fund.
>
> [Rbp.3.]

Respondent asserted that, had she known how primary residence was defined on the applications, she would not have signed them.

With respect to her failure to report her criminal charges and their disposition to the OAE, respondent argued that she paid attorneys to answer the question about her reporting obligation, but that their advice was "erroneous." Nevertheless, respondent acknowledged that "New Jersey does not offer 'safe harbor' to a Respondent who relied on incorrect advice from ethics counsel, we do not offer that information for any purpose except to show Respondent's state of mind and her vague awareness of her obligation to report."

Therefore, respondent asserted that she was in the "challenging position of trying to persuade us that two circumstances involving apparent fraud do not reflect fraudulent intent at all, but other aspects of her character." Thus, respondent argued that the record contains clear and convincing evidence that "neutralizes the specter of fraud that hangs over both these matters. This justifies the imposition of discipline less than suspension for this Respondent."

At oral argument before us, respondent urged the imposition of either a censure or a short term of suspension based on her otherwise unblemished career at the bar of more than forty years; her view that her conduct in this matter does not reflect "who she is;" her view that she took "common . . . shortcuts" in the real estate closing matters; and her purported intent to retire soon from the

practice of law. Respondent also stressed that, during the timeframe underlying her misconduct, she was "going through an emotionally stressful period" and was unaware of the Court's decision in Fortunato. Finally, respondent emphasized that, after retaining a certified fraud investigator, she reimbursed the appropriate parties "out to the penny" in connection with the real estate closing matters.

Following a de novo review of the record, we determine that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence. Additionally, although not addressed by the special master, we find that respondent violated RPC 1.15(a). However, we determine to dismiss the charge that respondent violated RPC 1.15(d) based on the lack of specificity of the charge.

In Fortunato and its progeny, the attorneys estimated the recording fees following the closing of a property. They then failed to refund to clients and third parties the excess fees and, instead, improperly kept the funds for themselves. See In re Li, 239 N.J. 141 (2019), and In re Masessa, 239 N.J. 85 (2019). Their arguments in support of their misconduct largely centered around two themes: (1) it was common practice to retain fees that exceeded their estimations ("everyone was doing it"), and (2) at the time of closing, there was no way to know how much it would cost to record the deed.

Here, there is no question that respondent engaged in the type of misconduct that Fortunato addressed and prohibits. The documentary evidence, as well as respondent's admissions, support a clear and convincing finding that she improperly and systematically retained the recording fees that she intentionally overestimated.

However, respondent's misconduct in real estate closings went beyond the failure to refund a miscalculation. Indeed, respondent routinely overcharged clients for fees that were incurred in advance of the real estate closing, such as the land surveys. Those fees were set and, thus, did not require estimation. Respondent claimed that she and her secretary discussed and planned in advance that they would charge for review of the metes and bounds descriptions. However, respondent admitted that she neither informed her clients that she was charging a second fee for the survey, nor did she accurately represent the figure on the HUD-1. Respondent also improperly charged clients for fees that she did not incur at all, such as bank fees and title insurance fees, attempting to justify her misconduct by explaining that she misunderstood the Rules regarding wire transfers, so she charged her clients for waiting in line at the bank. Moreover, without being able to provide an explanation, other than she "just didn't pay any attention," she also failed to refund her clients fees that she retained for a sewer tax and fees that she overcharged in order to pay a township tax collector.

Consequently, in four years of real estate transactions, respondent retained for herself $66,938.45 to which she was not entitled. However, respondent's misconduct is far more egregious than that of the attorneys in Fortunato and its progeny, because she overcharged clients for services that were clearly known ahead of a property's closing, so there was neither a need to estimate its cost nor to keep the excess funds for herself. Worse, she included the inflated charges on the HUD-1 forms and certified that they were true and accurate, when she knew they were not.

Thus, respondent violated RPC 1.15(a) and RPC 1.15(b) by collecting estimated recording fees from her clients in real estate transactions, and then improperly retaining the excess fees for herself. Although respondent admitted that she committed misconduct in connection with the real estate closings, the only explanation she could muster was that she did not think it was wrong because she had observed other practitioners engaging in the same acts. Along with the Court, we repeatedly have rejected these hollow arguments, including in Fortunato, Li, and Masessa.

Moreover, when respondent executed the final HUD-1 forms, confirming that they were true and accurate accounts of the transactions, and affirming that she had "caused or will cause the funds to be disbursed in accordance with this statement," she violated RPC 8.4(c), because, in all 138 transactions, the HUD-

1 was neither an accurate account of the transaction nor were the funds disbursed in accordance with the final HUD-1 form.

Finally, in the real estate closings matters, we determine to dismiss the RPC 1.15(d) charge because, although the OAE alleged that respondent failed to maintain her records, it did not allege, with any specificity, the nature of respondent's recordkeeping violations. Specifically, other than alleging that respondent committed "recordkeeping violations," the OAE did not present any evidence regarding the purported recordkeeping deficiencies during the ethics hearing.

Turning to respondent's most egregious misconduct – her criminal conduct in connection with the Superstorm Sandy fraud – there is no question that she violated RPC 8.4(b). As a threshold aggravating factor, respondent failed to report her criminal charges and their disposition to the OAE, even though the OAE was actively investigating her misrepresentations in the fee overreaching matter.

Thus, based on her decision not to research what she characterized as a "gray area" of the law regarding her reporting obligation under R. 1:20-13(a)(1), respondent concealed from the OAE the fact that she unlawfully sought disaster

relief from three separate sources,[27] even though she had not lived in the Boardwalk Property since June 2012. Moreover, the fact that respondent's criminal charges ultimately were expunged did not absolve her of the obligation incumbent upon every New Jersey attorney to report their criminal charges, and their disposition, to the OAE.

First, she sought rental assistance from FEMA by falsely affirming that the Boardwalk Property was her "primary residence" on the day of the storm. Respondent also wrote a letter in support of her application.

Next, respondent applied for disaster relief through the SBA. Although the SBA initially approved her application, later, on January 6, 2013, it informed respondent that her application was denied because she could not demonstrate that the Boardwalk Property was her primary residence.

Undeterred, on January 31, 2013, respondent changed her voter registration to reflect the Boardwalk Property's address, even though the home was uninhabitable, and, on February 22, 2013, changed her driver's license address to reflect the Boardwalk Property's address, seemingly ignoring her

[27] R. 1:20-13(a)(1) provides: "an attorney who has been charged with an indictable offense in this state or with an equivalent offense in any other state, territory, commonwealth, or possession of the United States or in any federal court of the United States or the District of Columbia shall promptly inform the Director of the Office of Attorney Ethics in writing of the charge. The attorney shall thereafter promptly inform the Director of the disposition of the matter."

earlier concerns about mail delivery to a structure that, prior to October 29, 2012, was habitable.

Then, on June 20, 2013, after changing her voter registration and driver's license addresses, respondent wrote a letter to the SBA to request reconsideration of its denial. Seven days later, knowing that at least one government agency already had determined that the Boardwalk Property was not her primary residence, respondent applied for relief through RSP. Additionally, on the RSP application, respondent denied that she had applied for aid through the SBA.

Although respondent argued that she did not intend to commit fraud on her Superstorm Sandy relief applications, the documentary evidence clearly supports a finding that respondent knew she was not entitled to relief, having been told just one week earlier that the Boardwalk Property was not considered a primary residence. Nevertheless, she took calculated steps to ensure she obtained benefits to which she was not entitled by misrepresenting her living situation at the time on three separate applications, including requests for reconsideration after her applications had been denied. Moreover, the applications themselves, particularly the RSP application, served as actual notice of the grant program's requirements and respondent certified that she understood and agreed to abide by the terms of the programs.

Despite respondent's claims, during the ethics hearing, that she did not read or consider the questions on the applications, her other statements indicate otherwise and clearly demonstrate that, at the time she had completed the applications, she considered their content and decided on a fraudulent course of conduct. As an example, respondent understood the obligation that she would be required to live in Ocean County for three years as a condition of the RSP grant. She, nevertheless, decided not to move to Ocean County and reasoned that, should she not move to Ocean County within the three-year period, she would simply return the grant. Respondent also testified that when she read and completed the application, she believed she could answer "yes" that she had been living in the Boardwalk Property on the day of Superstorm Sandy because "if I was on vacation would it not count? If I was gone temporarily would it not count?" However, respondent was not "gone temporarily." Prior to Superstorm Sandy (and the disaster relief money available thereafter) respondent already had made the decision to move in with a friend, repair the home, and then sell it. Indeed, as respondent repeatedly admitted in this case, in August 2012, she affirmatively changed her address of record with the Court to the Essex County address – because that is where she lived.

Therefore, respondent's affirmative misrepresentations on the Superstorm Sandy disaster relief applications clearly violated RPC 8.4(c).

In sum, we find that respondent violated RPC 1.15(a); RPC 1.15(b); RPC 8.4(b); and RPC 8.4(c) (two instances). We dismiss the charge that respondent violated RPC 1.15(d). The sole remaining issue for our determination is the appropriate quantum of discipline for the totality of respondent's misconduct.

We are equally divided on whether respondent's multi-faceted, calculated, and greedy conduct – along with her inexplicable lack of remorse – was so nefarious and fraudulent that she should no longer hold a license to practice law in New Jersey.

Here, during the OAE's investigation into the propriety of the fees she charged in real estate closings, respondent expressed a desire to be transparent about her actions in the closings. The OAE, however, discovered that respondent systematically inflated multiple charges and retained the differences for herself. Respondent took no responsibility for her actions, and instead insisted she engaged in the misconduct because everyone else was doing it.

Then, during the OAE's active investigation, rather than inform the OAE about her Superstorm Sandy fraud charges, respondent concealed them. Notwithstanding respondent's earlier lip service to transparency, after the OAE independently learned of the criminal conduct, it was forced to write two letters to respondent in order to discover what happened in the fraud case. In her explanation, respondent stated that, for three separate applications, she

committed fraud, and, for two of the applications, requested reconsideration of her denial due to the Boardwalk Property not being her primary residence at the time of Superstorm Sandy. For the third application, she informed FEMA that she needed rental assistance until she could move back into the Boardwalk Property, even though she had no intent to return to the property.

Again, respondent took no responsibility for her actions. First, she blamed government employees for asking her the application questions and not probing for more information or not verbally explaining what was written on the application. Second, she blamed her own attorneys in the criminal matter for informing her that it was a "gray area" of the law regarding her reporting obligations.

Thus, for respondent's purposeful commission of fraud on multiple Superstorm Sandy relief applications – the seminal case is In re Goldberg, 142 N.J. 557 (1995). In Goldberg, the Court discussed aggravating factors that normally lead to disbarment in criminal cases:

> Criminal convictions for conspiracy to commit a variety of crimes, such as bribery and official misconduct, as well as an assortment of crimes related to theft by deception and fraud, ordinarily result in disbarment. We have emphasized that when a criminal conspiracy evidences "continuing and prolonged rather than episodic, involvement in crime," is "motivated by personal greed," and involved the use of the lawyer's skills "to assist in the engineering of the criminal scheme," the offense merits disbarment. (citations

omitted).

[In re Goldberg, 142 N.J. at 567.]

Indeed, the Court has found that attorneys who commit crimes that are serious or that evidence a total lack of "moral fiber" must be disbarred to protect the public, the integrity of the bar, and the confidence of the public in the legal profession. See, e.g., In re Quatrella, 237 N.J. 402 (2019) (attorney convicted of conspiracy to commit wire fraud after taking part in a scheme to defraud life insurance providers via three stranger-originated life insurance policies; the victims affected by the crimes lost $2.7 million and the intended loss to the insurance providers would have been more than $14 million); In re Klein, 231 N.J. 123 (2017) (attorney convicted of wire fraud for engaging in an advanced fee scheme that lasted eight years and defrauded twenty-one victims of more than $819,000; the attorney and his co-conspirator used bogus companies to dupe clients into paying thousands of dollars in advanced fees, in exchange for a promise of collateral that could be used to borrow much larger sums of money from well-known financial institutions; the clients, however, never received legitimate financial instruments that were acceptable to banks as collateral for financing; the attorney leveraged his status as a lawyer to provide a "veneer of respectability and legality" to the criminal scheme, including the use of his attorney escrow account); In re Bultmeyer, 224 N.J. 145 (2016) (the attorney

knowingly and intentionally participated in a fraud that resulted in a loss of more than $7 million to 179 victims; the attorney and a co-conspirator owned Ameripay, LLC, a payroll company that handled payroll and tax withholding services for numerous public and private entities; the attorney and his co-conspirator also owned Sherbourne Capital Management, Ltd., which purported to be an investment company, and Sherbourne Financial, Ltd.; the attorney and his co-conspirator misappropriated monies entrusted to them by Ameripay's clients, as well as by Sherbourne investors, to conceal the shortfalls in Ameripay's payroll and tax withholding accounts; the attorney and his co-conspirator agreed to divert millions of dollars to satisfy the payroll obligations of other payroll clients or to make unrelated tax payments on behalf of other clients); In re Marino, 217 N.J. 351 (2014) (the attorney participated in a fraud that resulted in a loss of more than $309 million to 288 investors; the attorney assisted his brother and another co-conspirator in the fraud, which involved the creation of a false financial history for a failing hedge fund used to persuade contributions from potential investors; the attorney also administered a fraudulent accounting firm that concealed the fund's true financial information; the attorney further prepared a phony purchase and sale agreement for the non-existent accounting firm).

Not every attorney found guilty of egregious fraud has been disbarred, however. Recently, in In re Campos, 241 N.J. 544 (2020), the Court imposed a three-year prospective suspension for such misconduct. The attorney in Campos was tried and convicted of wire fraud, bank fraud, and conspiracy to commit wire and bank fraud, in connection with a scheme involving the use of straw purchasers to illegally purchase new vehicles for a livery taxi business. In the Matter of Christopher Campos, DRB 19-262 (March 3, 2020) (slip op. at 1-2). He had no ethics history. Ibid. His conviction and sentence, thirty months in prison plus $533,669.12 in restitution, were affirmed on appeal. Id. at 12. Campos's role was to solicit straw buyers, and his misconduct involved false statements used to defraud banks, his friends, and his family. Id. at 6, 26. In total, the loss amount was between $250,000 and $550,000, and involved more than ten victims. Id. at 12. Moreover, Campos perjured himself at trial, lacked remorse, and failed to accept responsibility for his crimes. Id. at 11-12, 26. We concluded that, considering the Goldberg factors, disbarment was the appropriate quantum of discipline. Id. at 27. The Court disagreed, however, and determined that a three-year prospective suspension was the appropriate quantum of discipline.

Likewise, attorneys who engage in identity theft or fraudulent conduct for personal gain typically receive suspensions of varying terms, depending on the

seriousness of the fraud and the presence of aggravating and mitigating factors.

For example, in In re Kopp, 206 N.J. 106 (2011), the Court imposed a three-year retroactive suspension on an attorney who, after being criminally charged, admitted that she used her sister's identity, without her knowledge or consent, to obtain several credit cards in her sister's name, thus, defrauding not only her sister, but also the credit card companies. In addition, while she was waiting to be sentenced on those charges, the attorney was arrested on burglary charges and, ultimately, entered a guilty plea to those charges as well. In determining the appropriate discipline, we considered compelling mitigating factors, including that the attorney was in the throes of a long-standing drug and alcohol addiction at the time of her crimes and that she had made substantial strides in and commitment to recovery. In the Matter of Kimberly Ann Kopp, DRB 10-378 (April 14, 2011) (slip op. at 20).

In In re White, 191 N.J. 553 (2007), the Court imposed a one-year retroactive suspension on an attorney who admitted that she obtained a $54,000 student loan by fraud, having forged her co-worker's name on a student loan application. The attorney, who had been criminally charged, completed a six-month PTI program during which she continued to make payments on the loan. The attorney advanced, and we accepted, numerous mitigating factors, including the passage of time since the infraction, her otherwise unblemished ethics

history, her remorse, her cooperation with law enforcement and ethics authorities, and her continuing payment of the loan installments. In the Matter of Angela Y. White, DRB 06-338 (March 19, 2007) (slip op. at 7).

Cases involving falsification of public or lending documents generally have warranted a period of suspension. See, e.g., In re Brandon-Perez, 149 N.J. 25 (1997) (six-month suspension imposed on attorney who obtained a loan under false pretenses; in refinancing her own mortgage, the attorney misrepresented to the lender that she would use the mortgage loan to satisfy four outstanding mortgages; she failed to disclose that, rather than pay off one of the mortgages, she planned to substitute collateral; she then failed to satisfy one of the mortgages for a period of several years and ultimately defaulted on the loan); In re Solvibile, 156 N.J. 321 (1998) (six-month suspension imposed on attorney who, in her application for admission to the Pennsylvania bar, misrepresented that it had been timely mailed and then prepared and submitted a misleading letter to the Pennsylvania Board of Law Examiners, signed by a postal employee, stating that her application and money order payment were timely); In re Capone, 147 N.J. 590 (1997) (two-year retroactive suspension imposed on attorney who pleaded guilty in federal court to knowingly making a false statement on a loan application); In re Meaden, 165 N.J. 22 (2000) (three-year suspension for attorney who, while on vacation in California, stole a credit card

number while in a camera store and then attempted to commit theft by using the number to purchase $5,800 worth of golf clubs, which he had delivered to a New Jersey address; the attorney also made multiple misrepresentations on firearms purchase identification cards and handgun permit applications by failing to disclose his psychiatric condition and his involuntary psychiatric commitment, as required by law; the attorney had a prior reprimand for making direct, in-person contact with victims of the Edison, New Jersey pipeline explosion mass disaster); In re Marinangeli 142 N.J. 487 (1995) (three-year suspension for attorney who pleaded guilty to one count of theft of mail, under federal law, after he had used approximately four credit cards and cashed two checks, which he had stolen from mailboxes in the building where his mother resided; the attorney committed the theft to support his drug and alcohol addictions).

Additionally, convictions for crimes involving the falsification of statements in the procurement of loans have resulted in discipline ranging from long-term suspensions to disbarment. See, e.g., In re Daly, 195 N.J. 12 (2008) (eighteen-month retroactive suspension for attorney who was sentenced to probation after pleading guilty to an information charging him with conspiracy to submit false statements, in violation of 18 U.S.C. § 371, in four real estate transactions; specifically, the attorney prepared settlement statements containing material misrepresentations about the sale price of the properties, the

amount of funds brought by the buyers to the closings, the amount of the deposits, and the disbursements made to the sellers, the real estate and mortgage brokers, and the attorney himself; prior discipline considered in aggravation; in mitigation, the attorney cooperated with the government's investigation); In re Serrano, 193 N.J. 24 (2007) (eighteen-month retroactive suspension for attorney who received a one-year term of probation after pleading guilty to a federal information charging her with making a false statement to a federal agency, in violation of 18 U.S.C. § 1001; the attorney profited from a scheme to fraudulently induce the Federal Housing Administration to insure certain mortgage loans by acting as the closing agent for residential mortgages and preparing fraudulent HUD-1 settlement statements to "qualify unqualified borrowers" for HUD-insured mortgages, knowing HUD would rely on the forms to determine whether to insure the mortgages; the attorney was involved in approximately twenty-five closings, five of which ended in foreclosure; she was paid between $20,000 to $40,000 in legal fees from the scheme; in mitigation, the attorney provided substantial cooperation to the government's criminal investigation); In re Mederos, 191 N.J. 85 (2007) (eighteen-month retroactive suspension for attorney who played a minor role in a mortgage fraud scheme by submitting false loan documents in three transactions; in particular, the attorney prepared settlement statements that contained materially false information about

the financial status of the borrowers; the attorney was paid $900 per closing; after pleading guilty to mail-fraud conspiracy, the attorney was sentenced to a three-year term of probation and fined $2,000; in sentencing the attorney, the court considered his extensive cooperation with the government); In re Jimenez, 187 N.J. 86 (2006) (eighteen-month retroactive suspension for attorney who played a minor role in a major mortgage fraud scheme; the attorney was sentenced to six months in prison after his conviction of mail fraud and conspiracy to commit mail fraud for preparing false documents, including tax returns, W-2s, pay stubs, and bank statements; the attorney also wrote false information on verification of employment forms and forged employers' signatures, even resorting to the use of a "light box" to lend authenticity to the forgeries; the attorney was a law student at the time of his criminal offenses); In re Panepinto, 157 N.J. 458 (1999) (two-year retroactive suspension for attorney who received probation after pleading guilty to conspiracy to commit bank fraud in connection with a fraudulent loan from the attorney to his client, the intent of which was to deceive a mortgage company; the attorney drafted a real estate contract with an artificially inflated purchase price; the attorney then misrepresented to the bank that the borrower had sufficient funds for the down payment when, in fact, the attorney loaned the funds to the borrower in order to deceive the bank into believing the borrower made the down payment; in

mitigation, no prior discipline and full cooperation with criminal investigation); In re Capone, 147 N.J. 590 (1997) (two-year suspension for attorney who made misrepresentations to a bank in order to obtain a mortgage loan, on which the attorney later defaulted; ultimately, he pleaded guilty to a charge of knowingly making false statements on a loan application and was placed on four months' house arrest; although the attorney had no prior discipline, his misconduct harmed the bank in the amount of approximately $169,000 and was motivated by greed); In re Noce, 179 N.J. 531 (2004) (three-year suspension for attorney who pleaded guilty to one count of conspiracy to commit mail fraud; the attorney participated in a scheme to defraud HUD through the fraudulent procurement of home mortgage loans for unqualified buyers resulting in a loss of more than $2,400,000 to HUD; the attorney performed the title work and acted as the settlement agent in more than fifty closings; the attorney received only his regular closing fee for the transactions, was sentenced to five-years' probation, was confined to his residence for nine months, was ordered to make restitution in the amount of $2,408,614, and was fined $5,000; mitigating factors included his minor role in the conspiracy, lack of substantial profit from it, and his cooperation, which was so substantial that he received a reduced sentence); In re Ellis, 208 N.J. 350 (2011) (disbarment; real estate attorney knowingly and intentionally inflated purchase prices, resulting in loan amounts that greatly

exceeded the actual sale price of the properties; after the sale price was paid to the seller, the attorney distributed the remaining monies to several others; for his part, the attorney pocketed $80,400, and received a $30,000 Volkswagen Passat; in view of the substantial loss and the fact that the attorney used his status as a lawyer to facilitate the fraud, was motivated by greed, and had an extensive disciplinary history, disbarment was appropriate).

Discipline imposed for conduct similar to respondent's has ranged from a reprimand to a lengthy suspension. See, e.g., In re Rhody, 191 N.J. 87 (2007) (reprimand for guilty plea to one count of fourth degree tampering with records; the attorney made misrepresentations to his insurance company and the court when he collected long-term disability benefits without disclosing his hobby of buying and selling postcards, which generated no income to him); In re Gjurich, 177 N.J. 44 (2003) (reprimand imposed on attorney guilty of theft by deception for collecting unemployment benefits from the State of New Jersey while employed as an attorney in a Pennsylvania law firm; the attorney committed a third degree offense, in violation of N.J.S.A. 2C:20-4 and N.J.S.A. 2C:28-3; the attorney was admitted into a PTI program for three years, ordered to pay $11,000 in restitution and a $7,500 fine, and required to perform fifty hours of community service); In re Ford, 152 N.J. 465 (1998) (reprimand for attorney who, on at least ten occasions, certified to the Division of Unemployment and

Disability Insurance that he was entitled to unemployment benefits; the attorney failed to disclose the existence of his newly established law practice, which grew to be successful);[28] In re Jaffe, 170 N.J. 187 (2001) (three-month suspension for attorney who, prior to entering PTI, pleaded guilty to one count of third-degree theft by deception, in violation of N.J.S.A. 2C:20-4; the crime involved the theft of $13,000 from Horizon Blue Cross/Blue Shield through the submission of false health insurance claims for specially prescribed baby formula for the attorney's child; in mitigation, we considered that the conduct took place during a very emotional and difficult time in the attorney's life); In re Serbin, 199 N.J. 122 (2009) (six-month suspension for an attorney who wrongfully collected disability benefits; the attorney suffered a stroke while employed, and the disability policy precluded the attorney from engaging in gainful work; the attorney nevertheless provided professional consulting services to a medical communications company); In re Berger, 151 N.J. 476 (1997) (two-year suspension for an attorney who received property insurance proceeds, following a fire that damaged his law office; he submitted false information to his insurance agent, with the intent to defraud the carrier and was charged with one count of false swearing and entered PTI without admitting the charge).

[28] Ford did not face criminal charges.

Here, respondent's misconduct is most analogous to, yet, more egregious than, the misconduct in Berger because she committed fraud by misrepresenting her living situation on multiple disaster relief and loan applications, even after receiving notice that her claim that she was living at the Boardwalk Property was false. Further, respondent failed to demonstrate any remorse for her actions during the ethics proceeding. Rather, respondent repeatedly claimed that she did not read the applications and, thus, was unaware that she was not entitled to the disaster relief funds. It is simply no excuse for an attorney of nearly forty-years, who was considered an expert in the field of real estate law, to be willfully blind to the content of the documents she was executing and the concepts of "primary residence" and "occupation of a residence."

Moreover, respondent did not just misrepresent information on documents in her own Superstorm Sandy applications. For at least seven years, respondent engaged in a carefully constructed scheme to bleed clients of funds to which she was not entitled. Respondent's misconduct went beyond the retention of excess estimated recording fees in real estate closings. She and her secretary knowingly agreed that they would charge clients for purported survey review services without disclosing that charge to clients, nor explaining that the charge was in addition to Shershinger's land survey preparation. Additionally, respondent charged her clients for services for which she incurred no costs, such as bank

fees, a sewer tax, release of mortgage fees, and title insurance.

We find that respondent's misconduct in the real estate matters is particularly egregious because she was an experienced practitioner who frequently lectured on the topic of real estate law and, in fact, testified that she "rewr[o]te" the CLE book for real estate law "somewhere around" the years 2015 through 2017. Thus, respondent had a heightened awareness of the practices of real estate attorneys, but nevertheless chose to engage in misconduct because "everyone else was doing it," rather than attempt to steer her colleagues toward ethical conduct. Additionally, we emphasize, in aggravation, that the 2015 through 2017 timeframe, during which respondent claimed that she rewrote the CLE book on real estate law, encompasses the two years following the Court's pronouncement in Fortunato that it was impermissible to retain excess recording fees.

Additionally, we find that respondent's misconduct in connection with the Superstorm Sandy disaster relief funds fulfilled every aggravating factor set forth in Goldberg.

Specifically, respondent's misconduct was a continuing and prolonged affair. She first applied for FEMA rental assistance, knowing that she was not paying rent due to displacement from Superstorm Sandy. Respondent even went so far as to write a letter to FEMA to inform them she needed rental assistance

so that she could "move back in," which unquestionably would lead the agency to believe that she was residing in the Boardwalk Property the day the storm hit and wanted to move back into her home. The truth, however, was that for the four months preceding the storm, she was residing in Essex County, New Jersey. Then, respondent applied for relief through the SBA. Although the SBA initially granted respondent's application – based on the misrepresentations respondent offered – it later informed her that it had denied her application because it had determined that the Boardwalk Property was not her primary residence. Even though respondent knew that her primary residence at the time of the storm was in Essex County, respondent appealed the SBA's denial after she changed her voter registration and driver's license address. Then, just seven days later, respondent completed a third application, the RSP application, wherein she again falsely certified that she both owned and occupied the Boardwalk Property the day Superstorm Sandy struck.

Respondent's misrepresentations on her RSP application are the most egregious of them all. Not only was she aware that at least one government agency had determined the Boardwalk Property was not her primary residence, but the RSP application contained informational pages defining all the terms within the application. Respondent initialed and signed the RSP application indicating that she understood their definition of "primary residence," which

belies respondent's later attempts, during the ethics investigation, to claim that she was operating under her own, unrelated, definition. Also, during the ethics investigation, respondent explained her contemporaneous thought process at the time she completed the applications, reasoning that no one had been residing in their homes on the day Superstorm Sandy struck because everyone had been evacuated; thus, respondent explained that she believed she was permitted to answer the question in the affirmative.

Thus, respondent would have us believe, even though she is an experienced real estate attorney, who was on notice that the Boardwalk Property was not considered her primary residence, and who initialed that she understood the RSP application's definition of primary residence, that she simply had no intent to illicitly receive disaster relief benefits to which she was not entitled. We emphatically reject respondent's argument as wholly unpersuasive and against the evidence contained in the record.

We next consider, pursuant to Goldberg, whether respondent's criminal conduct was motivated by personal greed. Here, respondent's deceptive conduct was designed solely for her own pecuniary gain. Respondent applied to multiple disaster relief programs despite knowing that she was not entitled to any such relief. In fact, respondent herself admitted that after Superstorm Sandy devastated New Jersey, she "immediately thought, oh, this is good," because she

now had an opportunity to demolish and rebuild her home. Respondent presented no evidence that she was precluded from demolishing and rebuilding the Boardwalk Property before Superstorm Sandy. It is clear that respondent saw an opportunity to obtain disaster relief funds to which she demonstrably was not entitled, because she was motivated by personal greed.

Finally, we consider whether respondent used her legal skills "to assist in the engineering of the criminal scheme." Certainly, respondent has used her legal skills as a justification for her knowing misrepresentations on her disaster relief applications. Respondent repeatedly claimed that "in her head" she believed the United States tax code, with which she was familiar as a forty-year practitioner of real estate law, permitted her to claim the Boardwalk Property as her primary residence because she had resided there for an aggregate of two out of five-year period. Such a position reflects that she not only thought about what "primary residence" meant at the time, but consciously chose not to research whether her thought was consistent with the definition of "primary residence" on the disaster relief applications. In our view, respondent's choice to not utilize her legal skills so that she could later claim, disingenuously, that she did not know what primary residence meant, cannot be countenanced.

As noted above, not every attorney who satisfies all the Goldberg factors is disbarred. However, respondent engaged in additional deceptive conduct in

connection with the real estate matters, demonstrating a troubling pattern of dishonest conduct for pecuniary gain.

For respondent's fee overreaching, Fortunato is the seminal case. In that case, the attorney received a censure for, among other violations, collecting estimated recording costs from clients or third parties, paying the actual recording costs associated with the transactions, but keeping the balance of the excess recording costs rather than distributing the funds to appropriate recipients. Fortunato attempted to characterize those excess funds as a "service fee," whereas here, respondent had no explanation for her misconduct other than that she saw others engage in the same practice.

Again, like respondent, Fortunato also was guilty of misrepresentation by failing to disclose the purported service fees on the final settlement statement to the clients. In four matters, Fortunato retained excess amounts that totaled more than $1,600. He also negligently misappropriated client funds by failing to timely deposit a certified check in connection with a closing, which resulted in a $38,456 overdraft in his trust account and the invasion of $237,513.60 in client funds, maintained on behalf of forty-two clients.

Because Fortunato characterized his retention of excess fees under the fig leaf of a "service fee" and maintained that the practice represented the rule, not the exception, among closing attorneys, we believed that he may have engaged

in the practice on prior occasions. Thus, in addition to directing Fortunato to return the identified excess fees to the appropriate parties, we directed that he review his records for the last seven years to identify any other closings in which he overstated and retained fees and costs that differed from the amounts set forth in the closing statements.

The Court also imposed censures in two additional matters for nearly identical misconduct. See In re Li, 239 N.J. 141 (2019) and In re Masessa, 239 N.J. 85 (2019).

In Li, from 2009 through 2016, in connection with his transactional real estate practice, the attorney collected inflated, "flat" recording fees from his clients and improperly retained the excess recording fees, in addition to his agreed fee listed on the settlement statement form. The attorney did not have his clients' authorization to retain the excess fees. During the relevant period, the attorney knowingly overcharged 738 clients for recording costs totaling $119,660.

In all the transactions, the attorney knew that the final settlement statement was not an accurate account of the transaction and that the settlement funds were not disbursed in accordance with the final settlement statements. The attorney also charged other improper fees to his clients, described in the settlement statements as "title binder review fees" of $100 and "legal

documentation and notary fees" of $50. The attorney admitted that those costs, totaling $66,450, were excessive and already were included in the flat legal fee he had charged the clients for the transactions. Finally, the attorney admitted that he committed multiple recordkeeping violations.

In Masessa, from 2010 through 2017, the attorney engaged in the systematic practice of overcharging recording costs and retaining excess funds as the settlement agent in real estate closings, without client authorization. Over the seven-year period, the attorney's misconduct affected hundreds of real estate clients. During the same time frame, he signed hundreds of settlement statements, confirming their accuracy. In all the transactions, the settlement statements were neither an accurate account of the transactions nor true reflections of the disbursement of settlement funds. The attorney, thus, admitted that he had systematically violated RPC 1.15(b) by retaining the inflated recording costs, instead of promptly notifying his clients or third parties of his receipt of funds to which they were entitled and by failing to promptly disburse those funds to them. He further admitted that, by executing the settlement statements in the transactions, he had engaged in a pattern of misrepresentation. The attorney overcharged and retained costs totaling $76,254.

Although the Court imposed a censure on both Li and Masessa as a matter of stare decisis, it cautioned that, in the future, the purposeful, systematic, and

unauthorized practice of retaining excess recording fees in real estate transactions would be met with more stringent discipline.

Here, the OAE discovered respondent's misconduct following respondent's conversation with a fellow attorney, at a real estate closing, during which described a way to make money by falsifying realty transfer fees that she was surprised no one had thought of before. Although the OAE's investigation did not reveal that respondent had implemented the scheme she described, it did uncover that she retained $66,938.45 in excess fees from both buyers and sellers in 138 real estate matters.

In mitigation, respondent has practiced law for more than four decades and has no disciplinary history. She also contributed her extensive knowledge of real estate law to the NJSBA and to real estate practitioners throughout the State by lecturing, teaching Skills and Methods courses, and rewriting the CLE book.

Nevertheless, as a forty-year practitioner of the law, whose practice focuses exclusively on real estate, and who helped train other attorneys in real estate law, respondent clearly had a heightened awareness regarding permissible practices in real estate closings. See In re Hasbrouck, 186 N.J. 72 (2006) (we found, in aggravation, that an attorney was an experienced matrimonial attorney).

Throughout the ethics matter, respondent denied that she had intended to defraud or engage in deception to others. Yet, the weight of the evidence clearly demonstrates that, in both the real estate matter and the Superstorm Sandy fraud matter, respondent has an extremely troubling and purposeful inclination to deceive others for personal gain whenever presented with the opportunity.

Accordingly, Chair Gallipoli and Members Hoberman, Petrou, and Rivera find that respondent's criminal course of fraud, towards multiple government agencies, in connection with the Superstorm Sandy disaster relief matter, coupled with her prolonged course of deception by charging her clients fees in real estate matters that she never had incurred, evidenced a disturbing pattern of greed and a total lack of moral fiber. Consequently, in order to protect the public and preserve confidence in the bar, those Members determine to recommend to the Court that respondent be disbarred.

Vice-Chair Boyer and Members Campelo, Menaker, and Rodriguez disagree with the disbarment recommendation, determining that, although respondent engaged in a prolonged and serious course of misconduct, her conduct was not so egregious as to warrant the ultimate sanction of disbarment. Accordingly, those Members determine that that a two-year suspension is the appropriate quantum of discipline.

Member Joseph was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Marcy E. Gendel
Docket No. DRB 22-199

Argued: January 19, 2023

Decided: April 28, 2023

Disposition: Other

| ***Members*** | Disbar | Two-Year Suspension | Absent |
|---|---|---|---|
| Gallipoli | X | | |
| Boyer | | X | |
| Campelo | | X | |
| Hoberman | X | | |
| Joseph | | | X |
| Menaker | | X | |
| Petrou | X | | |
| Rivera | X | | |
| Rodriguez | | X | |
| Total: | 4 | 4 | 1 |

**/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel