

Office of Attorney Ethics
P.O. Box 963
Trenton, NJ 08625
(609) 530-4008
Presenter: HoeChin Kim, Deputy Ethics Counsel

OFFICE OF ATTORNEY ETHICS,

Complainant,

v.

WILLIAM J. RUSH,

Respondent.

SUPREME COURT OF NEW JERSEY
District XIV Ethics Committee
Docket No. XIV-2012-0273E
Docket No. XIV-2012-0328E

Disciplinary Action
COMPLAINT
Rule 1:20-4(b)

Complainant, Office of Attorney Ethics ("OAE"), P.O. Box 963, Trenton, New Jersey, by way of complaint against William J. Rush (respondent) says:

GENERAL ALLEGATIONS

1. Respondent was admitted to the Bar of the State of New Jersey in 2002.
2. Respondent maintains a solo law practice located at 585 Hoboken Road, Carlstadt, Bergen County, New Jersey.
3. At times relevant to the events in the Complaint, respondent maintained the following attorney accounts at TD Bank:
 - a. Attorney Trust Account ending in #7184; and
 - b. Attorney Business Account ending in #7176.

FIRST COUNT

XIV-2012-0273E - Stephen Switzer Grievance

4. On October 31, 2011, respondent represented Mark A. Kosa in the purchase of real estate located at 75 Rose Street, Wood-Ridge, Bergen County, New Jersey, from Stephen G. and Sarifa Switzer.
5. The Switzers were represented by Michael Urciuoli, Esq.

6. Respondent acted as the settlement agent for the closing, completing a form HUD-1 for the transaction. (Attached hereto as Exhibit 1 is a true and correct copy of the October 31, 2011, form HUD-1 - redacted).
7. The purchase price was \$370,000.
8. On October 31, 2011, a wire transfer from the buyer's lender in the net amount of \$293,899.98 was deposited into respondent's attorney trust account ending in #7184. (Attached hereto as Exhibit 2 is a true and correct copy of respondent's client ledger for this transaction).
9. On November 1, 2011, the sum of \$66,989.56 from the buyer was deposited into respondent's attorney trust account ending in #7184. (Id.).
10. The sellers' mortgage of \$273,458.08 to PNC Bank and home equity loan of \$37,650.05 to Wells Fargo were to be satisfied from the proceeds of the sale, consisting of the deposits from the lender and the buyer.
11. Thus, respondent was to have effected wire transfers on November 1, 2011, to satisfy the sellers' obligations.
12. Respondent failed to do so.
13. After the October 31, 2011, closing, Switzer received a November 2011 bill from both PNC and Wells Fargo, but concluded they had been issued prior to the closing.
14. When he received similar bills in December 2011, Switzer contacted Wells Fargo, who advised its home equity loan had not been paid.
15. Thereafter, via e-mail dated December 12, 2011, Switzer advised Urciuoli of the non-payment.
16. Switzer requested Urciuoli to look into the nonpayment, surmising it likely was a bank error.
17. Via e-mail dated December 13, 2011, Urciuoli advised Switzer that respondent "screwed up. His wire didn't go out. He needs a new payoff figure to make the payment. He will cover all amounts. Can you get a new payoff letter asap."
18. It was not until December 19, 2011, that respondent effected a wire in the new amount of \$37,806.59 to Wells Fargo to satisfy the Switzers' home equity loan.
19. It was not until December 20, 2011, that respondent effected a wire in the new amount of \$275,683.46 to PNC Bank to satisfy the Switzers' mortgage.

20. Additionally, per Lines 1109, 1110, & 1111 of the form HUD-1, respondent was to have been paid a total of \$1185 in fees and costs for the closing. (Exh. 1).

21. Per Lines 1201 & 1202 of the form HUD-1, the buyer was to have been charged \$550 for government recording charges, consisting of \$175 for recordation of the deed and \$375 for recordation of the mortgage. (Id.).

22. Per Line 1202 of the form HUD-1, the sellers were to have been charged \$150 for recordation of the release. (Id.).

23. Those charges were not accurate.

24. Per his client ledger for this transaction, respondent issued attorney trust account check number 14461 in the amount of \$186 to the Bergen County Clerk. (Exh. 2).

25. Further, respondent issued attorney trust account check number 14462 in the amount of \$1675 as his attorney fee, which was \$490 more than the sum of the amounts listed in Lines 1109, 1110, & 1111. (Id.).

26. Additionally, respondent disbursed a balance of \$24 to himself on November 9, 2011. (Id.).

27. Thus, of the \$700 fees charged to the buyer and sellers as closing costs per Lines 1201 & 1202 of the form HUD-1, respondent disbursed the sum of only \$186, leaving an overcharged balance of \$514.

28. Respondent did not return any of the \$514 balance to either the buyer or the sellers.

29. Instead, per the client ledger, respondent disbursed that sum to himself: \$490 (\$1675 check - \$1185 listed fee) + \$24 disbursement. (Exh. 2).

30. Thus, respondent paid himself a total of \$1699 for his legal and administrative fees, not \$1185 as detailed on the form HUD-1.

31. Nonetheless, respondent signed the form HUD-1, stating that it was “a true and accurate account of this transaction. I’ve caused or will cause the funds to be disbursed in accordance with this statement.” (Exh. 1).

32. In so doing, respondent committed a violation of the following Rules of Professional Conduct:

- a. RPC 1.1(a) - in that a lawyer shall not handle or neglect a matter entrusted to him in such manner that his conduct constitutes gross negligence;
- b. RPC 1.3 - in that a lawyer shall act with reasonable diligence and promptness in representing a client;

- c. RPC 1.15(b) - in that a lawyer shall promptly deliver to a client, Kosa, any funds that the client is entitled to receive;
- d. RPC 1.15(b) - in that a lawyer shall promptly deliver to a third person, the Switzers and their mortgagee/creditor, funds that the third person is entitled to receive; and
- e. RPC 8.4(c) - in that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

SECOND COUNT

XIV-2012-0328E - William Freeman Grievance

33. On or about February 20, 2008, respondent assisted Brian L. Keller in the purchase of real estate located at 110 Indian Trail Road, Cape May Court House, Cape May County, New Jersey, from Debra Jones-Freeman and William Freeman.
34. By family court Order, dated June 25, 2007, Debra was authorized to sign any and all customary real estate documents for William Freeman, her former husband, to effectuate a sale. (Attached hereto as Exhibit 3 is a true and correct copy of the June 25, 2007, Order).
35. In or about January 2008, Debra signed a real estate contract, agreeing to sell the property to Brian Keller for \$305,000. (Attached hereto as Exhibit 4 is a true and correct copy of the Contract for Sale of Real Estate).
36. Per the contract, the purchase price was \$305,000, with the buyer's putting down a \$1000 deposit. (Id.).
37. Thus, with a mortgage in the amount of \$259,250, the buyer was required to bring an additional \$44,750 to the closing. (Id.).
38. Respondent acted as the settlement agent for the closing, which he did not attend; instead, respondent sent a notary agent to notarize the signatures of the buyer and seller.
39. The closing, held February 20, 2008, was a "dry" closing, in that the real estate documents were executed prior to the funding of the closing.
40. On February 25, 2008, a wire transfer from the buyer's lender in the net amount of \$252,193.12 was deposited into respondent's attorney trust account ending in #7184. (Attached hereto as Exhibit 5 is a true and correct copy of respondent's client ledger for this transaction).
41. On February 22, 2008, three days prior to that funding, however, respondent issued a wire in the amount of \$54,050.27 to Nassau Development Group per Line 506 of the form HUD-1. (Id.; attached hereto as Exhibit 6 is a true and correct copy of the February 20, 2008, form

HUD-1 signed by the seller; attached hereto as Exhibit 7 is a true and correct copy of the February 20, 2008, form HUD-1 signed by the buyer and respondent).

42. In other words, respondent used other client funds in his attorney trust account to cover that disbursement to Nassau Development Group, which monies were recouped when the lender's wire was deposited on February 25, 2008.

43. Additionally, according to Line 201 of the form HUD-1, the buyer was credited with a deposit of \$45,750. (Exhs. 6 & 7).

44. That amount was never deposited into respondent's attorney trust account ending in #7184. (Exh. 5).

45. Instead, the seller certified that she "received the deposit for the purchase of said property in the amount of \$45,750.00 representing the payments in accordance with the contract and receipt is acknowledged herein." (Attached hereto as Exhibit 8 is a true and correct copy of Affidavit of Receipt of Funds).

46. In other words, Debra certified that per the sales contract, she did, in fact, receive the sum of the \$1000 deposit and the \$44,750 monies that the buyer was to bring to the closing.

47. The buyer also was responsible to bring an additional \$12,844.22 to the closing, which was the sum of the buyer's settlement charges of \$12,425 and taxes of \$419.22 from January 1, 2008, to February 20, 2008. (Exhs. 6 & 7 - Lines 303, 103, & 106).

48. No such sum was deposited into respondent's attorney trust account ending in #7184. (Exh. 5).

49. The seller was to have received \$12,844.22 from the closing as per Line 603 of the form HUD-1. (Exhs. 6 & 7).

50. No such sum was disbursed to the seller from respondent's attorney trust account ending in #7184. (Exh. 5).

51. Instead, Debra gave a seller's concession to the buyer in the amount of \$12,844.22. (Exhs. 6 & 7 - Lines 303 & 603).

52. But, the seller's concession of \$12,844.22 was not disclosed in the real estate contract. (Exh. 4).

53. Further, the seller's concession of \$12,844.22 also was not disclosed on the form HUD-1 itself. (Exhs. 6 & 7).

54. In effect, the buyer received 100% financing, which fact was not disclosed to the lender.

55. Further, respondent's fee to act as settlement agent was \$1000 per Line 1101 of the form HUD-1. (Id.).

56. That charge was not accurate.

57. Per his client ledger for this transaction, respondent issued attorney trust account check number 8446 in the amount of \$1250 as his settlement fee, which was \$250 more than the amount listed in Line 1101. (Exh. 5).

58. Additionally, respondent disbursed an additional \$15 to himself on February 27, 2008. (Id.).

59. Thus, respondent took a settlement fee of \$1265, an additional \$265 above the \$1000 fee listed on the form HUD-1.

60. That additional \$265 sum was derived from the following.

61. Per Lines 1201 & 1202 of the form HUD-1, the buyer was to have been charged \$500 for government recording charges, consisting of \$150 for recordation of the deed and \$350 for recordation of the mortgage. (Exhs. 6 & 7).

62. Per Line 1202 of the form HUD-1, the seller was to have been charged \$75 for recordation of the release. (Id.).

63. Per his client ledger for this transaction, respondent issued attorney trust account check number 9702 in the amount of \$260 to the Cape May Register's Office. (Exh. 5).

64. Thus, of the \$575 fees charged to the buyer and seller as closing costs per Lines 1201 & 1202 of the form HUD-1, respondent disbursed the sum of only \$260, leaving a balance of \$315 from the overcharged fees.

65. Per Line 1111 of the form HUD-1, the buyer was charged \$150 for a courier fee to UPS. (Exhs. 6 & 7).

66. Respondent kept that courier fee for himself.

67. Thus, there remained a positive balance of \$465 from the overcharged recordation fee and UPS fee.

68. Out of the \$465 sum, respondent disbursed \$200 to Quality Closer LLC. (Exh. 5).

69. That disbursement was not listed on the form HUD-1.

70. That disbursement resulted in a balance of \$265 (\$465 - \$200), which is the additional fee respondent took on top of the listed \$1000 settlement fee.

71. Thus, respondent failed to return any of the \$315 overcharged recording fees to either the buyer or the seller.

72. Nonetheless, respondent signed the form HUD-1, certifying that it was a “true and accurate account of the funds deposited or to be disbursed” by him as part of the real estate settlement. (Exh. 7).

73. In so doing, respondent committed a violation of the following Rules of Professional Conduct:

- a. RPC 1.15(a) - in that a lawyer is not to negligently misappropriate client funds entrusted to his care;
- b. RPC 1.15(b) - in that a lawyer shall promptly deliver to a third person funds that the third person is entitled to receive; and
- c. RPC 8.4(c) - in that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

THIRD COUNT
Recordkeeping Violations

74. During its investigations, the OAE reviewed respondent’s books and records for the audit period of September 2010 to April 2013.

75. Respondent failed to maintain monthly three-way reconciliation reports of his attorney trust account until directed to do so by the OAE.

76. Further, respondent commingled his personal funds in his attorney trust account.

77. Lastly, respondent maintained old balances in his trust account and only disbursed the same when directed to do so by the OAE.

78. In so doing, respondent committed a violation of the following Rules of Professional Conduct and Court Rules:

- a) RPC 1.15(a) - in that a lawyer is to hold property of clients separate from the lawyer’s own property;
- b) RPC 1.15(d) and Rule 1:21-6(c) - in that respondent failed to comply with the provisions of Rule 1:21-6 by not conducting and maintaining reports of monthly three-way reconciliations; and

- c) RPC 1.15(d) and Rule 1:21-6(d) - in that respondent failed to comply with the provisions of Rule 1:21-6 by allowing inactive balances to remain in his attorney trust account.

WHEREFORE, respondent should be disciplined.

OFFICE OF ATTORNEY ETHICS

DATED:

July 15, 2013

By:



CHARLES CENTINARO

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Attorneys for Respondent

OFFICE OF ATTORNEY ETHICS,	:	SUPREME COURT OF NEW JERSEY
	:	District XIV Ethics Committee
Complainant,	:	Docket No. XIV-2012-0273E
	:	Docket No. XIV-2012-0328E
v.	:	
	:	Disciplinary Action
	:	
WILLIAM J. RUSH,	:	RESPONDENT'S VERIFIED ANSWER,
	:	AFFIRMATIVE DEFENSES, REQUEST
Respondent.	:	FOR A PRELIMINARY CONFERENCE,
	:	AND REQUEST FOR HEARING
	:	

GENERAL ALLEGATIONS

1. Respondent admits the allegation set forth in Paragraph 1 of the General allegations.

2. In response to the allegations set forth in Paragraph 2 of the General Allegations, Respondent admits that he previously maintained a solo practice at 585 Hoboken Road, Carlstadt, New Jersey. In May 2013, Respondent relocated his office to 145 Route 46 West, Suite 304, Wayne, New Jersey.

3. Respondent admits the allegation in Paragraph 3 of the General Allegations.

FIRST COUNT

(XIV-2012-0273E – Stephen Switzer Grievance)

4. Respondent admits the allegations set forth in Paragraph 4 of the First Count of the Complaint.

5. Respondent admits the allegations set forth in Paragraph 5 of the First Count of the Complaint.

6. Respondent admits the allegations set forth in Paragraph 6 of the First Count of the Complaint.

7. Respondent admits the allegations set forth in Paragraph 7 of the First Count of the Complaint.

8. Respondent admits the allegations set forth in Paragraph 8 of the First Count of the Complaint.

9. Respondent admits the allegations set forth in Paragraph 9 of the First Count of the Complaint.

10. Respondent admits the allegations set forth in Paragraph 10 of the First Count of the Complaint.

11. Respondent admits the allegations set forth in Paragraph 11 of the First Count of the Complaint.

12. Respondent admits the allegations in Paragraph 12 of the First Count of the Complaint, but denies that the failure to effect the wire transfers on November 1, 2013 was intentional.

13. Respondent lacks sufficient knowledge to admit or deny the allegations set forth in Paragraph 13 of the First Count of the Complaint, and thus leaves the Complainant to its proofs.

14. Respondent lacks sufficient knowledge to admit or deny the allegations set forth in Paragraph 14 of the First Count of the Complaint, and thus leaves the Complainant to its proofs.

15. Respondent lacks sufficient knowledge to admit or deny the allegations set forth in Paragraph 15 of the First Count of the Complaint, and thus leaves the Complainant to its proofs.

16. Respondent lacks sufficient knowledge to admit or deny the allegations set forth in Paragraph 16 of the First Count of the Complaint, and thus leaves the Complainant to its proofs.

17. Respondent lacks sufficient knowledge to admit or deny the allegations set forth in Paragraph 17 of the First Count of the Complaint, and thus leaves the Complainant to its proofs.

18. In response to the allegations set forth in paragraph 18 of the First Count of the Complaint, Respondent admits that the wire transfer was effected on December 19, 2011. To the extent these allegations are construed to imply that Respondent knowingly or purposely delayed the transmission of the wired funds, Respondent denies the same.

19. In response to the allegations set forth in paragraph 19 of the First Count of the Complaint, Respondent admits that the wire transfer was effected on December 20, 2011. To the extent these allegations are construed to imply that Respondent knowingly or purposely delayed the transmission of the wired funds, Respondent denies the same.

20. Respondent admits the allegations set forth in Paragraph 20 of the First Count of the Complaint.

21. Subject to the clarification that follows, Respondent admits the allegations set forth in paragraph 21 of the First Count of the Complaint. The amounts appearing on lines 1201 & 1202 of the form HUD-1 represented average charges for the settlement services that Respondent provided in recording the deed and mortgage. As is usual and customary in residential real estate transactions, Respondent is required to provide lenders with pre HUD-1 settlement forms prior to scheduled closing dates, and the

lenders must approve all such charges in advance of closing – which is what occurred in this transaction. In addition, the County Clerk’s recording fees for the mortgage (determined by the number of pages) are estimated because the HUD-1 is prepared for the lender’s approval in advance of Respondent receiving the actual mortgage document from the lender – which is what occurred in this transaction.

22. Respondent admits the allegations set forth in paragraph 22 of the First Count of the Complaint. In addition, Respondent incorporates by reference his response to paragraph 21 of the First Count of the Complaint.

23. Respondent admits the allegations set forth in paragraph 23 of the First Count of the Complaint. In addition, Respondent incorporates by reference his response to paragraph 21 of the First Count of the Complaint.

24. Respondent admits the allegations contained in Paragraph 24 of the First Count of the Complaint.

25. Subject to the clarification that follows, Respondent admits the allegations set forth in Paragraph 25 of the First Count of the Complaint. Respondent’s attorney trust account check in the amount of \$1675 also includes the estimated charges appearing on lines 1201 & 1202 of the HUD-1.

26. Respondent admits the allegations contained in Paragraph 26 of the First Count of the Complaint.

27. Subject to the clarification that follows, Respondent admits the allegations set forth in paragraph 27 of the First Count of the Complaint. The amounts listed on the HUD-1 are accurate of what Respondent charged, but Respondent denies overcharging the client. In addition, Respondent incorporates by reference his response to paragraph 21 of the First Count of the Complaint.

28. Respondent admits the allegations contained in Paragraph 28 of the First Count of the Complaint. In addition, Respondent incorporates by reference his response to paragraph 21 of the First Count of the Complaint.

29. Respondent admits the allegations contained in Paragraph 29 of the First Count of the Complaint. In addition, Respondent incorporates by reference his response to paragraph 21 of the First Count of the Complaint.

30. Respondent admits the allegations contained in Paragraph 30 of the First Count of the Complaint. In addition, Respondent incorporates by reference his response to paragraph 21 of the First Count of the Complaint.

31. Respondent admits the allegations contained in Paragraph 31 of the First Count of the Complaint. In addition, Respondent incorporates by reference his response to paragraph 21 of the First Count of the Complaint.

32. Respondent denies the allegations set forth in paragraph 32(a) – (e) of the First Count of the Complaint.

SECOND COUNT
(XIV-2012-0328E – William Freeman Grievance)

33. Respondent admits the allegations set forth in paragraph 33 of the Second Count of the Complaint.

34. Respondent admits the allegations set forth in paragraph 34 of the Second Count of the Complaint.

35. In response to the allegations set forth in paragraph 35 of the Second Count of the Complaint, Respondent lacks knowledge to admit or deny the authenticity of the contract and thus leaves Complainant to its proofs. Respondent acted strictly as the settlement agent for this transaction, and thus did not prepare the contract. Respondent admits receiving a contract from East Coast Title Services prior to the closing.

36. In response to the allegations set forth in paragraph 36 of the Second Count of the Complaint, Respondent incorporates his response to paragraph 35 of the Second Count of the Complaint.

37. In response to the allegations set forth in paragraph 37 of the Second Count of the Complaint, Respondent incorporates his response to paragraph 35 of the Second Count of the Complaint.

38. Respondent admits the allegations set forth in paragraph 38 of the Second Count of the Complaint.

39. Respondent admits the allegations set forth in paragraph 39 of the Second Count of the Complaint.

40. Respondent denies the allegations set forth in paragraph 40 of the Second Count of the Complaint. The incoming wire was received into Respondent's trust account on February 20, 2008, not February 25, 2008 as mistakenly reflected on Respondent's client ledger.

41. In response to the allegations set forth in paragraph 41 of the Second Count of the Complaint, Respondent admits issuing a wire transfer of \$54,050.27 to Nassau Development Group though Respondent is unsure of the exact date of the transfer. Respondent further admits that Exhibits 6 and 7 to the Complaint represent a true and correct copy of the HUD-1 statements. The lender's closing instructions did not require Respondent to verify either payment of the buyer's funds for the deposit or the closing costs.

42. Respondent denies the allegations set forth in paragraph 42 of the Second Count of the Complaint. The incoming wire was received into Respondent's trust account on February 20, 2008, not February 25, 2008 as mistakenly reflected on Respondent's client ledger.

43. Respondent admits the allegations set forth in paragraph 43 of the Second Count of the Complaint.

44. Respondent admits the allegations set forth in paragraph 44 of the Second Count of the Complaint.

45. Respondent admits the allegations set forth in paragraph 45 of the Second Count of the Complaint.

46. Respondent admits the allegations set forth in paragraph 46 of the Second Count of the Complaint, except to clarify that Respondent did not prepare the contract, and the lender's closing instructions did not require Respondent to verify the seller's receipt of the buyer's \$1000 deposit or the \$44,750 that buyer was to bring to the closing.

47. Respondent admits the allegations set forth in paragraph 47 of the Second Count of the Complaint, except to clarify that Respondent did not prepare the contract, and the lender's closing instructions did not require Respondent to verify the seller's receipt of the buyer's settlement charges and taxes.

48. Respondent admits the allegations set forth in paragraph 48 of the Second Count of the Complaint.

49. Respondent admits the allegations set forth in paragraph 49 of the Second Count of the Complaint, except to clarify that Respondent did not prepare the contract, and the lender's closing instructions did not require Respondent to verify the seller's receipt of the buyer's settlement charges and taxes.

50. Respondent admits the allegations set forth in paragraph 50 of the Second Count of the Complaint. Prior to disbursing the funds Respondent verified that the seller had agreed to loan \$12,844.22 to the buyer. It was a matrimonial/divorce situation and the HUD-1 was accurate at the time it was prepared and sent to the lender.

51. Respondent admits the allegations set forth in paragraph 51 of the Second Count of the Complaint. In addition, Respondent incorporates his response to paragraph 50 of the Second Count of the Complaint.

52. Respondent denies the allegations set forth in paragraph 52 of the Second Count of the Complaint. Respondent did not prepare the real estate contract, and merely acted as the settlement agent.

53. Respondent admits the allegations set forth in paragraph 53 of the Second Count of the Complaint. In addition, Respondent incorporates his response to paragraph 50 of the Second Count of the Complaint.

54. Respondent lacks sufficient knowledge to admit or deny the allegations set forth in paragraph 54 of the Second Count of the Complaint as to the extent of any communications between the buyer and lender, and thus leaves Complainant to its proofs. To the extent the allegations in paragraph 54 are construed to imply that Respondent owed a duty to the lender that falls outside the scope of the written closing instructions received by Respondent, then Respondent denies these allegations.

55. Respondent admits the allegations set forth in paragraph 55 of the Second Count of the Complaint.

56. Respondent denies the allegations set forth in paragraph 56 of the Second Count of the Complaint.

57. In response to the allegations set forth in paragraph 57 of the Second Count of the Complaint, Respondent admits the transaction as reflected on his client ledger. To the extent these allegations are construed to imply that Respondent falsified the HUD-1 statement, same are denied. There were additional expenses that Respondent built into his fee such as recording fees and administrative disbursement fees (reported as UPS on the HUD-1 as per the lender's recommendation).

58. Respondent admits the allegations set forth in paragraph 58 of the Second Count of the Complaint.

59. In response to the allegations set forth in paragraph 59 of the Second Count of the Complaint, Respondent admits as to the amount of the check only. Respondent denies the balance of these allegations.

60. Respondent denies the allegations set forth in paragraph 60 of the Second Count of the Complaint, as such represent an incomplete sentence/statement.

61. In response to the allegations set forth in paragraph 61 of the Second Count of the Complaint, Respondent admits the accuracy of the amounts appearing on lines 1012 & 1202 of the HUD-1 form. Respondent denies the allegations to the extent same are construed to imply that he violated the Real Estate Settlement and Procedures Act ("RESPA") codified at 12 U.S.C. § 2601, et seq., or HUD-1 regulations incorporated by reference pursuant to 24 CFR 3500, et seq.

62. Respondent admits the allegations set forth in paragraph 62 of the Second Count of the Complaint. In addition, Respondent incorporates his response to paragraph 61 of the Second Count of the Complaint.

63. Respondent admits the allegations set forth in paragraph 63 of the Second Count of the Complaint. In addition, Respondent incorporates his response to paragraph 61 of the Second Count of the Complaint.

64. In response to the allegations set forth in paragraph 64 of the Second Count of the Complaint, Respondent admits insofar as the amounts listed on the HUD-1 and a \$315 balance. Respondent denies that he overcharged the buyer and seller, and thus denies the balance of these allegations.

65. In response to the allegations set forth in paragraph 65 of the Second Count of the Complaint, Respondent admits that the \$150 courier fee was input into the

HUD-1 as a general administrative fee to cover postage, photocopying and overnight mail; the lender informed Respondent that he could list those charges as "UPS courier fee" on the HUD-1.

66. In response to the allegations set forth in paragraph 66 of the Second Count of the Complaint, except to admit receiving the \$150 fee to cover all of his overhead/out-of-pocket costs, Respondent denies these allegations to the extent same are construed to imply that Respondent engaged in any wrongful act.

67. Respondent denies the allegations set forth in paragraph 67 of the Second Count of the Complaint. In addition, Respondent incorporates his response to paragraph 64 of the Second Count of the Complaint.

68. Respondent admits the allegations set forth in paragraph 68 of the Second Count of the Complaint.

69. Respondent admits the allegations set forth in paragraph 69 of the Second Count of the Complaint. When Respondent learned the closing would be in more than an hour's drive from his office, Respondent elected to hire a closer to physically attend the closing.

70. Respondent denies the allegations set forth in paragraph 70 of the Second Count of the Complaint. In addition, Respondent incorporates his response to paragraph 64 of the Second Count of the Complaint.

71. Respondent denies the allegations set forth in paragraph 71 of the Second Count of the Complaint.

72. In response to the allegations set forth in paragraph 72 of the Second Count of the Complaint, Respondent admits that the HUD-1 statement was accurate at the time it was prepared and signed. To the extent these allegations are construed to imply that Respondent knowingly falsified the HUD-1 certification, same are denied.

73. Respondent denies the allegations set forth in paragraph 73(a) to (c) of the Second Count of the Complaint.

THIRD COUNT
(Recordkeeping Violations)

74. Respondent admits the allegations set forth in paragraph 74 of the Second Count of the Complaint.

75. Respondent admits the allegations set forth in paragraph 75 of the Second Count of the Complaint.

76. Respondent admits the allegations set forth in paragraph 76 of the Second Count of the Complaint.

77. Respondent admits the allegations set forth in paragraph 77 of the Second Count of the Complaint.

78. Respondent admits the allegations set forth in paragraph 78(a) to (c) of the Second Count of the Complaint.

AFFIRMATIVE DEFENSES

1. The allegations set forth in the First Count and Second Count of the Complaint are not supported by clear and convincing evidence.

2. Respondent acted as closing agent only concerning the real estate transaction involving grievant William Freeman.

3. Respondent did not knowingly or purposely violate RPC 1.15 or Rule 1:21-6.

4. Respondent's violation of RPC 1.15 and Rule 1:21-6 should be deemed minor misconduct.

5. At all times Respondent acted in good faith and without the intent to cause any harm to anyone involved in the underlying real estate transactions.

6. Respondent did not knowingly falsify the HUD-1 forms in either of the real estate transactions.

7. Respondent did not knowingly or purposely intend to deceive the grievants or the lenders in either real estate transaction.

8. Respondent did not knowingly or purposely misrepresent any charge appearing on the HUD-1 form that he signed in each real estate transaction.

9. Respondent is required to provide lenders with pre HUD-1 settlement drafts prior to scheduled closing dates, and all such charges are approved by the lenders in advance of closing. In addition, these charges, which include average charges for recording fees, are based on estimates of the number of pages for each document to be recorded with the local County Clerk's office.

10. Pursuant to 24 CFR § 3500.2, "title services" is defined to include the service of conducting a settlement. Accordingly, for the Freeman real estate matter where Respondent served as the settlement or closing agent Respondent properly reported his closing fee on line 1101 of the HUD-1 form.

11. Respondent's services as the settlement or closing agent in the Freeman transaction included recording the deed and mortgage, and securing a discharge or release of the seller's liens recorded on lines 504 & 506 of the HUD-1 form. Accordingly, these services fall within the definition of "title services" as defined under 24 CFR § 3500.2 thereby entitling Respondent to charge a reasonable fee over and above the actual County recording fees as compensation for these services, as well as to compensate the closing agent for other out-of-pocket disbursements such as photocopying, postage, and overnight mail delivery.

12. In residential real estate transactions involving lender financing it is usual and customary for the lender to require approval of the HUD-1 in advance of the closing

and prior to the lender issuing the closing agent the actual mortgage document. Accordingly, recording fees are estimated on the HUD-1 form in advance of the closing agent's actual receipt of the recordable instruments. Any funds collected for document recording fees that exceed the actual recording charges are retained for administrative costs such as photocopying, postage, overnight delivery charges, and time spent in securing the recording of the deed, mortgage and/or discharge of the seller's liens.

13. Pursuant to RESPA's rules and regulations, courier and overnight delivery fees are considered to be fees for administrative or processing services. They are part of a primary service, such as the origination service or title service, and may not be separately itemized on the HUD-1.

14. Pursuant to 24 CFR § 3500.8(b)(2), Respondent, acting as a settlement service provider in both real estate transactions, was permitted to list the average charge for a settlement service rather than the exact cost for that service. See Durr v. Intercounty Title Co. of Illinois, 14 F.3d 1183, 1187 (7th Cir. 1994)(Court concluded that the title insurer's overcharge of recording fees "was simply a windfall it kept for itself," and therefore did not violate RESPA); Accord Freeman, et al. v. Quicken Loans, Inc., 132 S. Ct. 2034, 240 (2012); Tubbs v. North American Title Agency, Inc., 2013 U.S. App. LEXIS 14722 (3rd Cir. July 19, 2013) (citing Santiago v. GMAC Mortgage Group, Inc., et al., 417 F.3d 384, 387-388 (3rd Cir. 2005)).

15. In the Freeman transaction, Respondent did not use another client's trust funds to cover the disbursement made to Nassau Development Group. The wired funds were actually deposited into Respondent's attorney trust account on February 20, 2008, not February 25, 2008 as mistakenly reflected on Respondent's client ledger card.

16. In the Freeman transaction, Respondent's decision to hire a closer to physically attend the closing when her learned, shortly beforehand, that it would be in

more than an hour's drive from his office was a proper exercise of Respondent's discretion, and did not result in increasing the costs to either the buyer or the seller and was not misleading.

17. In the Freeman transaction, the \$200 disbursement to Quality Closer LLC was not listed on the HUD-1 because Respondent was not intending to send someone else to the closing. As referenced on the HUD-1, the closing location was listed as 10 Stuyvesant Avenue, Lyndhurst, New Jersey. Shortly before the closing, Respondent was informed that the closing would occur at a different location more than an hour's drive from his office; by that time, however, the lender already approved the HUD-1. Respondent determined that it would be more cost effective to send a closer to witness the document signatures, as this was a dry closing only. The average charges that Respondent listed on the HUD-1 for the recording fees provided enough cushion for Respondent to incur the \$200 disbursement to Quality Closer LLC without increasing the settlement costs to either the buyer or seller.

REQUEST FOR PREHEARING CONFERENCE

Pursuant to *R. 1:20-5(b)*, Respondent requests a prehearing conference.

REQUEST FOR HEARING

Pursuant to *R. 1:20-4(e)*, Respondent requests a hearing on the charges set forth in the Complaint and in mitigation.

LOFARO & REISER, L.L.P.
Attorneys for Respondent

By: 
Glenn R. Reiser

Dated: September 4, 2013

VERIFICATION OF ANSWER PURSUANT TO R. 1:20-4

I, William J. Rush, am the Respondent in the within disciplinary action and hereby certify as follows:

(1) I have read every paragraph of the foregoing Answer to the Complaint and verify that the statements therein are true and based on my personal knowledge.

(2) I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."


William J. Rush, Esq.

Dated: September 4th, 2013