

IN THE SUPREME COURT OF THE STATE OF DELAWARE

In the Matter of a Member
of the Bar of the Supreme Court
of the State of Delaware:

R. KEITH SANCLEMENTE,

Petitioner.

§
§
§
§
§
§
§

No. 23, 2014

Board Case No. 2011-0234-B

Submitted: February 4, 2014

Decided: February 14, 2014

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

O R D E R

This 14th day of February, 2014, it appears to the Court that the Board on Professional Responsibility has filed a Report on this matter pursuant to Rule 9(d) of the Delaware Lawyers' Rules of Disciplinary Procedure. Neither the Office of Disciplinary Counsel ("ODC") nor the Respondent have filed objections to the Board's Report. The Court has reviewed the matter pursuant to the Delaware Lawyers' Rules of Disciplinary Procedure and approves the Board's Report.

NOW, THEREFORE, IT IS ORDERED that the Report filed by the Board on Professional Responsibility on January 15, 2014 (copy attached) is hereby APPROVED and ADOPTED. The Respondent is hereby disbarred effective immediately.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

**BOARD ON PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF THE STATE OF DELAWARE**

In the Matter of a Member of the Bar of
The Supreme Court of Delaware

R. KEITH SANCLEMENTE,

Respondent.

)
)
) CONFIDENTIAL
)
)

) Board Case No. 2011-0234-B
)

BOARD REPORT AND RECOMMENDATION

This is the report of the Board on Professional Responsibility of the Supreme Court of the State of Delaware (the "Board") setting forth its findings and recommendations in the above captioned matter.

The members of panel of the Board (the "Panel") are Wayne J. Carey, Esquire, Yvonne Anders Gordon, Ed.D. and Lisa A. Schmidt, Esquire (the "Chairperson"). The Office of Disciplinary Counsel (the "ODC") was represented by Patricia Bartley Schwartz, Esquire. The Respondent R. Keith Sanclemente (the "Respondent") was represented by Charles Slanina, Esquire.

I. PROCEDURAL BACKGROUND.

The ODC filed an Amended Petition for Discipline on March 7, 2013 (the "Petition"). Respondent answered the Amended Petition on March 11, 2013 (the "Answer").

A telephonic pre-hearing conference was held on March 7, 2013. The Panel conducted a hearing on liability on March 14, 2013 (the "March 14 Hearing").¹ The parties provided the

¹ A motion was made by the ODC to consolidate this matter with Board Case No. 2011-0233-B, which shares common questions of law and fact. The respondents, in both this case and Case No. 2011-0233B did not object to consolidation. After consideration of the request, the

Panel with a Stipulation of Admitted Facts ("Admitted Facts"). At the March 14 Hearing, the Panel heard testimony from 6 witnesses: Ed Tarlov, Sheila Pacheco, Jamaar Manlove, Roseanne Goldberg,² Respondent and John Sullivan. In addition, Joint Exhibits 1 through 27 ("Exhibits") were admitted into evidence. (Tr. 3) At the conclusion of the March 14 Hearing, the parties submitted written post-hearing closing arguments.

On August 7, 2013 the Panel notified counsel that it planned to recommend to the Delaware Supreme Court that the Respondent violated Delaware Rules of Professional Conduct 4.1(a), 4.1(b), 5.1(c), 5.3, 8.4(b), 8.4(c), 8.4(d) and 1.15(a), as alleged in the Petition. On September 19, 2013 the Board reconvened to hear testimony and argument relating to sanctions (the "September 19 Hearing"). At the September 19 Hearing, the Panel heard testimony from: Nancy Carden, Kenya Smith, Gloria Henry, Montgomery Boyer, William Cheesman, Christopher McBride, John Spall, Vincent Turner, Larry Knopf and Respondent, followed by closing arguments. ODC Exhibit 28 was admitted into evidence. (S. Tr. 194).³

II. ALLEGATIONS IN THE PETITION FOR DISCIPLINE.

The Petition alleges that Respondent violated Delaware Lawyers' Rules of Professional Conduct ("Rules") 4.1(a), 4.1(b), 5.1(c), 5.3, 8.4(b), 8.4(c), 8.4(d) and 1.15(a) in connection with residential real estate closings Respondent and his employee conducted between 2006 and 2008. Respondent is alleged to have certified that the representations contained in Department of

Chair of the Board on Professional Responsibility denied the request noting: "based upon the lack of detailed information about the evidence and positions and defenses contemplated, I feel compelled to err on the side of caution and deny the motion." (Letter dated January 29, 2013). For the sake of economy, it was later determined, with the concurrence of the Chairperson of the Board, that the same Panel of the Board would hear both matters.

² The testimony of Ms. Goldberg was presented via deposition transcript (referenced herein as "Goldberg ____").

³ References to the transcript of the March 14 Hearing are cited herein as "Tr. ____" and references to the transcript of the September 19 Hearing are cited as "S. Tr. ____".

Housing and Urban Development Settlement Statements (“HUD-1 Statement”) were a true and accurate account of the transaction when in fact they were not. Specifically, the Petition charges that either the buyers did not bring to the closings the financial contributions set forth on the HUD-1 Statements and/or the proceeds from the transactions were disbursed in amounts that differed from those set forth on the HUD-1 Statements. The Petition alleges that the false certifications constitute violations of Rules 4.1(a), 4.1(b), 8.4(b), 8.4(c) and 8.4(d). The Petition further alleges that Respondent failed to supervise the conduct of another attorney and paralegals employed by Respondent who also participated in real estate transactions where HUD-1 Statements were falsely certified, in violation of Rules 5.1(c) and 5.3. Finally, the Petition charges Respondent with violating Rule 1.15(a) for using his firm’s client trust account to fund all or part of the buyer’s contribution reflected on certain HUD-1 Statements.

III. FACTUAL FINDINGS.

A. Admitted Facts.

Respondent is a member of the Bar of the Supreme Court of Delaware. He was admitted to the Bar in 1996. At all times relevant to this matter, Respondent was the sole owner and managing partner of Sanclemente & Associates, LLC (the “Sanclemente Firm”). Respondent is presently engaged in the private practice of law in Delaware. (Petition and Answer ¶¶ 1 and 2, Admitted Facts ¶ 1). From 2006 through 2008, Respondent, as the closing attorney for the following real estate closings, represented the borrower and acted as agent for the lender:

Virginia & Joseph Reed 13 Hickman Road Claymont, Delaware	(“Reed Closing”)	Ex. 1	10/19/07
Tony Coleman 210 E. 14 th Street Wilmington, Delaware	(“Coleman Closing”)	Ex. 2	6/25/08

Theodore Jones 215 Keiser Place New Castle, Delaware	("Jones Closing")	Ex. 3	3/21/08
Rhonda P. Johnson 417 Baldwin Drive Smyrna, Delaware	("Johnson Closing")	Ex. 4	1/16/07
Robert S. & Robin M. Baldwin 403 Bethune Drive Wilmington, Delaware	("Baldwin Closing")	Ex. 5	9/19/07

Collectively these real estate closings are referred to as the "Sanclemente Closings." (Admitted Facts ¶ 2, Exs. 1-5).

Non-lawyer assistants would prepare the HUD-1 Statements and the checks for the Sanclemente Closings. Respondent was the ultimate supervising attorney for the non-lawyer assistants. (Admitted Facts ¶ 3). The Sanclemente Firm's real estate escrow account bank records show that there were no deposits of funds from the buyers in the Coleman, Jones and Johnson closings and the buyers' costs were paid by others. (Admitted Facts ¶ 4, 5). In the Baldwin Closing, the buyers paid \$2,500 towards their financial contribution of \$9,774.61 as reflected on the HUD-1 Statement. The Sanclemente Firm real estate escrow account bank records show that \$780.90 of Firm escrow account funds were used on behalf of the Baldwin's and the balance of their financial contribution was paid by others. (Admitted Facts ¶ 6).

From 2006 through 2008, John J. Sullivan, Esquire ("Sullivan") was a lawyer employed by the Sanclemente Firm. Respondent also had supervisory authority over the conduct of Sullivan. (Admitted Facts ¶10). While employed by the Sanclemente Firm, Sullivan, as closing attorney for the following real estate closings, represented the borrower and acted as agent for the lender:

Phyllis Graham 405 Llangollen Blvd. New Castle, DE	405 Llangollen Blvd. Closing	Ex. 6	10/30/08
Patricia Singleton 713 E. 7 th Street Wilmington, DE	713 E. 7 th Street Closing	Ex. 7	8/29/08
Lee Price & Tony Coleman 15 Cherry Road New Castle, DE	15 Cherry Road Closing	Ex. 8	8/20/08
Gloria Henry 29 Dallas Road Closing New Castle, DE	29 Dallas Road Closing	Ex. 9	7/18/08
Evelyn Anderson Closing 123 Stroud Street Wilmington, DE	123 Stroud Street	Ex. 10	6/19/08
Charles & Jamie Holmes 411 Jefferson Street Wilmington, DE	411 Jefferson Street	Ex. 11	4/28/08
Evelyn Anderson 1122 Elm Street Wilmington, DE	1122 Elm Street Closing	Ex. 12	4/1/08
Craig Williams 1009 W. Seventh Street Wilmington, DE	1009 W. Seventh Street Closing	Ex. 13	3/12/08
Dwayne & Sheree Manlove 104 Rita Road New Castle, DE	104 Rita Road Closing	Ex. 14	12/27/07
Anna Bennett 729 E. Tenth Street Wilmington, DE	729 E. Tenth Street Closing	Ex. 15	1/24/08
Dwayne & Sheree Manlove	230 Channing Drive Closing	Ex. 16	12/10/07

230 Channing Drive
Bear, DE

Larry Manlove
54 University Avenue
New Castle, DE

54 University Avenue Closing Ex. 17 12/3/07

Gary and Lillian Wilson
314 W. 31st Street
Wilmington, DE

314 W. 31st Street Closing Ex. 18 10/23/07

Ramon Leak
2921 N. Broom Street
Wilmington, DE

2921 N. Broom Street Closing Ex. 19 9/12/07

Clifton Coleman
2511 Heald Street
Wilmington, DE

2511 Heald Street Closing Ex. 20 8/30/07

Clifton Coleman
2142 Culver Drive
Wilmington, DE

2142 Culver Drive Closing Ex. 21 8/15/07

Derron Bowe
214 East 35th Street
Wilmington, DE

214 East 35th Street Closing Ex. 22 6/22/07

Derron Bowe
107 West 30th Street
Wilmington, DE

107 West 30th Street Closing Ex. 23 5/2/07

Kyle Steed
721 Wood Duck Court
Middletown, DE

721 Wood Duck Court Closing Ex. 24 1/4/07

Reginald Johnson
417 E. 10th Street
Wilmington, DE

417 E. 10th Street Closing Ex. 25 11/20/06

Kyle Steed
133 Sterling Avenue

133 Sterling Avenue Closing Ex. 26 2/27/07

Claymont, DE

Theodore Jones
426 Eastlawn Avenue
Wilmington, DE

426 Eastlawn Avenue Closing Ex. 27 2/4/08

Collectively these real estate closings are referred to as the ("Sullivan Closings"). (Admitted Facts ¶ 11; Petition Ex. 2; Exs. 6-27).

The Sanclemente Firm real estate escrow account bank records show there were no deposits of funds from the buyers in the Sullivan Closings with the exception of the Williams, Singleton and Bowe (107 W. 30th Street) closings and the buyers' costs were paid by others. (Admitted Facts ¶ 12, 13). In both the Sanclemente and Sullivan Closings funds were not disbursed according to the HUD-1 Statements. (Admitted Facts ¶ 7, 14). In the Sanclemente and Sullivan Closings funds were disbursed as reflected in the disbursement statement, an internal firm document not shared with the lenders. (Admitted Facts ¶ 8, 15). In the Sanclemente and Sullivan Closings, funds were disbursed to individuals not identified in the HUD-1 Statements. (Admitted Facts ¶ 9, 16).

B. Factual Findings from March 14 Hearing and Exhibits Admitted into Evidence.

Respondent has admitted facts sufficient to support a recommended finding that Rules 4.1(a), 4.1(b), 8.4(b), 5.1(c), 5.3, 8.4(c), 8.4(d) and 1.15(a) were violated. Specifically, Respondent has admitted that (1) he was the closing attorney in 5 of the transactions that form the basis for the allegations in the Petition; (2) that the Sanclemente Firm real estate escrow account records reflect that there were no deposits of funds from the buyers in 3 of those transactions and the buyers' costs were paid by others in those transactions; and (3) funds were not disbursed according to the HUD-1 Statements. In addition, Respondent has admitted that at

least with respect to the Baldwin Closing that firm escrow funds were used for a portion of the buyer's contribution. Finally, Respondent has admitted that he was the supervising attorney for non-lawyer assistants and had supervisory authority over Sullivan. The Panel believes that the factual findings described herein confirm those violations and assist in determining the appropriate sanction.

1. The Sanclemente Firm

Respondent opened the Sanclemente Firm in November of 2006 when his prior employer, Settlement Solutions, ceased doing business in Delaware. (Tr. 173). Respondent claimed he "had" to form the Sanclemente Firm so the employees that were with Settlement Solutions in Delaware could continue to have employment to conduct real estate settlements and meet the needs of their clients. (Tr. 170). Sullivan and Ms. Sheila Pacheco, a real estate paralegal, as well as other office staff joined Respondent at the Sanclemente Firm. (Tr. 80, 165). Respondent testified that he "had a working staff, people that were up on -- they knew their jobs. They had working relationships with all our referral sources. They were well liked. They always had favorable comments when we worked at Settlement Solutions, so I didn't see the need to reinvent the wheel." (Tr. 171).

It was clear though that Respondent was the sole owner of the Sanclemente Firm and had supervisory authority over all lawyer and non-lawyer staff. (Tr. 165, 237). Respondent had the power to set policies and hire and fire employees. (Tr. 176-177, 238). Respondent reminded his employees that he was in charge and that his name was on the door. (Tr. 81-83). While Respondent claimed to be absent from the office up to 5 days per week since he conducted mostly refinancing transactions at locations away from his office throughout Delaware (Tr. 214), Ms. Pacheco confirmed that he managed the office from the road. Ms. Pacheco testified that if

there were questions or problems regarding any settlements she would direct those questions to Respondent. (Tr. 124)(“We would call him on his cell phone a hundred times”).

2. The Manlove Transactions.

Respondent became acquainted with Jamaar Manlove when Manlove was a loan broker with Central Fidelity. Central Fidelity used Settlement Solutions and continued doing business with Respondent when he opened the Sanclemente Firm. (Tr. 145). From 2006 through 2008, Respondent and Sullivan conducted more than 25 real estate closings where Jamaar Manlove, one of his business associates, relatives and/or entities received a significant portion of the proceeds of the sale of the property. (See Exs. 1-27). These entities include Jamaar Manlove, Rhonda Manlove, Master Builders for Christ (“MBFC”), Vision Builders Christian Center (“VBCC”), Mark Singleton, Kyle Steed, Dwayne Manlove, Larry Manlove, Sheree Manlove, Marshall Wiston, and Don Wilson, among others. (Tr. 137-43).

Manlove testified that MBFC was a real estate investment company that he owned and VBCC was a non-profit church he founded. (Tr. 138). He described Mark Singleton and Kyle Steed as investors that he did business with. Manlove claimed that if Steed or Singleton had someone that was interested in purchasing a real estate property for investment, Manlove would find a property and provide Steed or Singleton with a finder’s fee for obtaining the investor. (Tr. 140-41). Marshall Wiston, a member of Manlove’s church would knock on doors of people facing foreclosure and get them to contact Manlove’s office. (Tr. 142). Manlove then got his uncles and others to invest in “promising” properties. (Tr. 143). The HUD-1 Statements reflect that in addition to the “finders’ fees” paid to Steed, Singleton and Manlove, MBFC and VBCC received large amounts from the sales proceeds. Manlove did not explain why fees were paid to MBFC, but claimed the fees “varied.” (Tr. 144). Manlove testified that when checks were disbursed to VBCC that was done out of MBFC’s “fee” to cover the rent expenses for the church

at that time. (Tr. 145). The exhibits demonstrate that the fees varied depending on the amount of equity the seller had in the home. In reality, Manlove and his associates were conducting an equity-stripping scheme preying on homeowners who were facing foreclosure and siphoning off the proceeds from the sales to themselves and their entities.

Respondent and Sullivan both testified regarding their understanding of the Manlove settlements. The Panel found the testimony to be less than forthcoming. Respondent claimed that he learned about Manlove's investment program from Sullivan after he came back to the office from a medical leave in April 2007. (Tr. 179).⁴ This testimony was offered despite evidence that one of the Manlove closings that Respondent himself conducted occurred in January of 2007. (Tr. 180, Ex. 4). Sullivan, on the other hand, disclaimed knowledge of Manlove's investment program. (Tr. 262).

3. Buyers Did Not Make the Cash Contributions Reflected on the HUD-1 Statement and Monies were not Disbursed According to the HUD-1 Statement.

Respondent knew that the buyers in the Manlove settlements were not making the contributions listed on the HUD-1 Statements. Even for the closings he conducted, he did nothing to verify the buyers' contributions. (Tr. 205). Respondent testified that the buyers' contributions were paid out of the portion of the proceeds listed on the HUD-1 Statements for MBFC or VBCC which he understood were both churches. (Tr. 178-79).

My understanding the way Mr. Manlove approached these folks was they would find my clients or people that ultimately became my clients. And as an incentive to invest in the property, he provided all the closing costs. Or, the church made all of the -- in essence, covered the costs. So the money was provided on behalf of the borrower, but from the church. That's the way the program was explained to me.

⁴ Respondent testified that he voluntarily admitted himself to the Rockford Center on April 18, 2007 where he remained as an inpatient for a total of six days. (Tr. 179).

(Tr. 207). Respondent claimed that the financial contributions provided by the church were not gifts or loans to the buyer. (Tr. 206). When asked what these contributions were, he testified "I don't know if I can say what it is. It's not a gift. It's not a loan. Or at least I have no knowledge that they were gifts or loans." (Tr. 207). He indicated that he "had no reason to ask" the buyers whether the funds being provided to them were loans or gifts at closing. (Tr. 196). Respondent thought the payments were closing "contributions" but claimed not to have access to any agreements that were made between the church and his clients the buyers. (Tr. 207-08).

Sullivan testified that in situations where the buyer did not bring a financial contribution, he did not know where the money was coming from. (Tr. 261).

Mr. Carey: Mr. Sullivan, let me stop you there for a second. Exhibit B shows total receipts of just under \$130,000 all coming from a mortgage company.

The Witness: Yes.

Mr. Carey: The settlement sheet shows a line on line 301 the total amount due of \$156,000 and change. When you only get \$129,000 from the lender and there are no other source of funds, where does the other money come from?

The Witness: I don't know the answer to that, Sir.

(Tr. 261 and Ex. 10).

Not only did buyers in the Manlove closings fail to make the financial contributions listed on the HUD-1 Statements, but in many cases they received funds at closing not reflected as disbursements on the HUD-1 Statements. *See* Ex. 8 (buyer did not provide \$44,731 contribution reflected on the HUD-1 Statement, but received \$9,800 at closing); Ex. 14 (buyer did not provide \$22,466 contribution reflected on the HUD-1 Statement, but received \$10,000 at closing); Ex. 16 (buyer did not provide \$24,783 reflected on the HUD-1 Statement, but received \$14,200 at closing); Ex. 17 (buyer did not provide \$25,906 reflected on the HUD-1 Statement, but received \$9,625).

In addition to the lack of cash contribution by the buyers, monies were not disbursed according to the HUD-1 Statements. Ms. Pacheco testified that she would change checks at Jamaar Manlove's direction and with Respondent's knowledge. (Tr. 96, 146). Even though the checks were disbursed differently than reflected on the HUD-1 Statement, Ms. Pacheco would not contact the lender. (Tr. 97). In addition, the money that the borrower was to bring to the table would be taken out of funds listed for MBFC or VBCC or another entity. (Tr. 97). She confirmed that Respondent was aware of the practice of distributing proceeds to entities not listed on the HUD-1 Statement "because we would have asked [Respondent] in the first place if we were allowed to. It was annoying to have to do it." (Tr. 113). Ms. Pacheco indicated that the Manlove closings were not similar to other closings conducted by the Sanclemente Firm. (Tr. 121).

4. The Sanclemente Firm's Escrow Account Funds were Briefly Used to Cover the Buyer's Contribution.

Respondent testified that he was not aware that funds were taken from his firm's escrow account to cover the buyers' contributions. (Tr. 188). Respondent claimed this was done without his authority. (Tr. 205). He testified that no one brought it to his attention -- even in the closings he conducted. (Tr. 189). Respondent was similarly evasive when questioned about the large personal checks seemingly accepted from buyers (but never cashed) in connection with the Manlove closings. Sullivan accepted six personal checks over \$10,000. (Exs. 11, 12, 14, 16, 25, 17).⁵ Respondent confirmed that he was aware of the Supreme Court Rule requiring that

⁵ Sullivan admitted that when he accepted a check in excess of \$10,000 from a buyer in a Manlove closing he knew it was never going to be cashed. (Tr. 273). No explanation was offered for this practice of collecting and copying checks for the file. The only reasonable inference is that the checks were collected to show that buyers made the contribution represented on the HUD-1 Statements when in fact they did not. Instead, in many instances, the funds came from the Sanclemente firm's escrow account. (See Tr. 270; Ex. 27).

amounts in excess of \$10,000 had to be received in "good" funds. He claimed to be shocked that he accepted a \$6,900 personal check for a closing because that was "way above my threshold". (Tr. 215). He further indicated that his "comfort level" was \$2,000-\$3,000. (Tr. 216). When asked why he accepted a personal check for \$7,500 in the Johnson closing he responded "I have no idea what medication I was taking that day. Because that's more than my pain threshold." (Tr. 216). When Respondent was asked what steps he took to insure that Mr. Sullivan was not violating Rule 1.15 he responded "trust". (Tr. 217).

Sullivan was asked if Respondent put in place any type of safeguards or policies to insure that lawyers and non-lawyer staff conducted themselves consistent with their professional obligations. Mr. Sullivan responded that "a form was used or created to be executed by sellers who are making this kind of transaction that directed us to use part of their proceeds to pay what was due from the buyer." (Tr. 263). Sullivan indicated that to his knowledge the mortgage company was not advised of this practice. (Tr. 263-64). These forms were not offered as exhibits.

5. Respondent Becomes Concerned.

Respondent testified that there came a time when he instructed his staff to stop accepting closings for Mr. Manlove and his entities. (Tr. 209).

But when I saw a settlement statement conducted by John Sullivan in which the purchase price was \$100,000 and the church was receiving a donation of \$80,000 that just

You know I'm not going to say whether a person should or should not donate to a church. Sellers are free to do whatever they want with their money. But \$80,000 seemed to be -- that shocked my conscience.

(Tr. 210, 226). Respondent testified that when he saw \$80,000 going to Manlove's church that was "too much" for him. (Tr. 226). He testified that he was not alarmed though when he saw \$40,000 of approximately \$44,000 in proceeds going to the church (Ex. 2), or \$37,000 of

\$40,000 in proceeds going to the church (Ex. 3), or \$53,000 of \$56,000 in proceeds going to the church. (Ex. 4)(Tr. 226-29). Respondent attempted to explain:

But I'm not going to pass -- until it got to \$80,000 I wasn't going to pass judgment on whether somebody should or should not donate to the church. These people were going to lose their houses, in some cases the very next day.

(Tr. 230). Respondent attempted to draw a distinction between buyers losing their houses to foreclosure and losing them to Manlove's scheme. He testified that "they sold their house. That's different from losing it." (Tr. 231).

Sullivan testified with respect to the transaction that Respondent claims triggered the decision to cease conducting Manlove closings, that when he was going through the settlement, one of the sellers said "do you mean we are selling the house?" He testified that he left the room and when he returned the sellers said they understood and were ready to proceed. (Tr. 286). Incredibly, Sullivan testified that he was not concerned that the Manlove entities were getting \$91,000 as a result of this transaction because he had gone through the settlement statement with the sellers and they did not express any concern. (Tr. 287). After that settlement, Sullivan discussed the Manlove closings with Respondent and it was his understanding that Respondent had a discussion with Jamaar Manlove. (Tr. 288). He testified that there came a time when they stopped conducting Manlove settlements but he did not know if it was immediately after that transaction or at some later time. (Tr. 288). Sullivan also testified that although he shared his concerns regarding the large percentage of the proceeds that the Manlove entities were receiving with Respondent, he never addressed those concerns with the lenders. (Tr. 264).

The closing which Respondent and Sullivan both claimed triggered the decision to cease conducting Manlove closings occurred in February of 2008. (Ex. 27). Yet, Respondent conducted 2 closings after that date and Sullivan conducted 8. (See Exs. 2, 3, 6, 7, 8, 9, 10, 11, 12, 13).

Seller	Exhibit No.	Amount of Equity Stripped
Vernell Brown	2	\$20,279.21
Aaron Carden	3	\$22,677.02
Norlyn Ritter	6	\$95,210.18
Ferris Properties	7	\$30,189.38
Mary Glenn	8	\$82,955.00
Willow Mae Fisher	9	\$26,743.65
Tracee Wortham	10	\$21,210.95
Michael Ferris	11	\$57,456.80
James Moss	12	\$25,695.79
James Moss	13	\$25,566.18

Thus, after Respondent became concerned and allegedly told his staff to stop conducting Manlove closings, sellers in 10 transactions had more than \$400,000 of equity stripped from their homes and Respondent and Sullivan continued to sign false HUD-1 Statements.

6. The Lender's Decision to Fund Would Have Been Impacted if the True Facts were Disclosed.

The Sanclemente and Sullivan Closings were inconsistent with Respondent's or Sullivan's representations to the lenders on the HUD-1 Statement. The funding decisions would have been impacted had the HUD-1 Statements been revised to reflect the true nature of the transactions. The ODC presented testimony from Ms. Roseanne Goldberg, Vice President of customer service for Freedom Mortgage, with 25 years of experience in the mortgage industry.

(Goldberg 2-3). Ms. Goldberg testified that Freedom Mortgage requires that the HUD-1 Statement be faxed prior to the closing and there should be no changes once it has been approved by Freedom Mortgage. (Goldberg 5-6). Ms. Goldberg indicated that Freedom would want to know if a borrower comes to a closing without funds and if the borrower's contribution is coming out of someone else's settlement disbursement. (Goldberg 8-9). By way of example, Ms. Goldberg reviewed the HUD-1 Statement in Exhibit 14, which reflected a borrower's contribution of \$22,466.77. Ms. Goldberg testified that if the borrower did not "come to the table" with money, that would have affected Freedom Mortgage's decision to fund the loan. (Goldberg 20). Similarly, Ms. Goldberg indicated that the fact that the borrower received a \$10,000 disbursement at the time of closing would also have affected the decision to fund. (Goldberg 20); *see, also*, Goldberg 22-25 (similar testimony with respect to Exs. 16, 17, 19, and 20). Finally Ms. Goldberg testified that Freedom Mortgage expects the Delaware attorney who is the closing agent for Freedom Mortgage to ensure that the borrower's contribution is collected as reflected on the HUD-1 Statement. (Goldberg 37).

7. Respondent's Conduct was Inconsistent with His Obligation to Lender.

Mr. Tarlov, a member of the Delaware Bar, was called by the ODC to give expert testimony regarding residential real estate matters and conducting residential real estate closings in Delaware. (Tarlov 24). Mr. Tarlov has been a member of the Delaware Bar for more than 25 years and has represented the buyer in thousands of residential real estate closings. (Tarlov 23-24). Mr. Tarlov testified that the certification language contained above the lawyer's signature line on the HUD-1 Statement means that the "HUD-1 is an accurate reflection of the transaction" and "every single penny on the HUD is accurate." (Tarlov 44-45). At closing, Mr. Tarlov indicated that he is representing the borrower, but following the lenders instructions. (Tarlov 49-

50). If Mr. Tarlov became aware at closing that the buyer was receiving settlement assistance from the seller he would revise the HUD-1 Statement and notify the lender for approval because “the lender approved the HUD and the HUD is a representation that you’re putting cash into the transaction” (Tarlov 34; *see also* Tarlov 39 (“I would call the lender”); Tarlov 40-41 (“I am going to obey the lender 100 percent”); Tarlov 43 (“the HUD is being approved by the lender ... so I just want the lender to sign off on my HUD”); Tarlov 60 (“I still would go back to the lender”). Mr. Tarlov testified that if the buyer’s contribution as listed on the HUD-1 Statement was coming from a third party and not the seller, he would verify that the funds were not a loan, and he would also notify the lender. (Tarlov 40-42).

IV. STANDARD OF PROOF.

Allegations of professional misconduct set forth in the ODC’s Petition must be established by clear and convincing evidence. (Rules of Disciplinary Procedure 15(c)). That burden falls on the ODC. (Rules of Disciplinary Procedure 15(d)).

V. DISCUSSION AND ANALYSIS.

A. Violation of Rules 4.1(a), 4.1(b), 8.4(b), 8.4(c), 8.4(d).

Respondent has admitted and the extensive record confirms that Respondent certified HUD-1 Statements that were not a true and accurate account of the transactions where the HUD-1 Statements indicated: (i) the buyer(s) made a financial contribution to the transaction when in fact the buyer(s) made no contributions; (ii) the funds were disbursed in amounts different than the amounts certified on the HUD-1 Statement; and/or (iii) the funds were disbursed to persons or entities not identified in the HUD-1 Statement.

Rule 4.1(a) provides it is professional misconduct for a lawyer, during the course of representing a client, to knowingly make “a false statement of material fact or law to a third person.” Rule 4.1(b) provides it is professional misconduct for a lawyer, during the course of

representing a client, to knowingly “fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.” (Delaware Lawyers’ Rules of Professional Conduct 4.1(a) and 4.1(b)). The HUD-1 Settlement Statement contains the following certification above the attorney signature line:

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

(Tab A of Exhibits 1-27). In the San Clemente Closings funds were not disbursed according to the HUD-1 Statements. (Admitted Facts ¶ 7). In addition, Respondent’s clients did not provide funds reflected as “cash from borrower” on the HUD-1 Statement.

Respondent argues that the ODC is trying to create new law and expand the role of the Delaware real estate settlement attorney. Respondent contends that the ODC is asking the Panel to apply a requirement that the settlement attorney source the funds brought by buyers to the settlements and rule out that the buyer won the lottery or received an inheritance. (Respondent’s Closing Argument at 4). The Panel disagrees. The Panel’s recommendation would not create such a rule, only require following well established procedures. Here, Respondent knew that the buyer’s contributions were coming from the seller or from third parties who were listed on the HUD-1 Statements as receiving disbursements. Even if Respondent did not initially grasp the fact that Manlove was conducting an equity stripping scheme, by his own admission he became concerned during the period yet continued to conduct closings after that time.

Both Respondent and his client, the borrower, made false statements of material fact to the lenders on the HUD-1 Statements. Respondent’s certification of HUD-1 Statements that were not a true and accurate account of the transaction violates Rules 4.1(a) and 4.1(b).

Rule 8.4 provides that it is professional misconduct for a lawyer to:

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice.

The HUD-1 Settlement Statement contains the following language:

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code § 1001 and § 1010.

(Tab A of Exhibits 16-27) Respondent knowingly executed HUD-1 Statements that contained false statements in violation of 10 U.S.C. § 1010. In the Panel's view, Respondent's false statement to lenders to ensure loan funding constituted a "criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects" under Rule 8.

As a result of these actions, and the facts outlined above, the Panel recommends a finding that Respondent's action violated Rules 4.1(a), 4.1(b), 8.4(b), 8.4(c) and 8.4(d).

B. Violation of Rule 5.1(c).

Rule 5.1(c) provides:

[a] lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders, or with knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyers, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.1(c). Respondent admitted that he was the sole owner and managing partner of the Sanclemente Firm and that he had supervisory authority over the conduct of Sullivan. (Admitted Facts ¶¶ 1, 10). The evidence demonstrates that Respondent was aware of Sullivan's conduct in connection with the Manlove closings and was also conducting similar closings. In addition, even after Respondent admittedly became concerned about the Manlove transactions, he and

Sullivan conducted 10 more closings. The Panel recommends a finding that Respondent violated Rule 5.1(c).

C. Violation of Rule 5.3.

Rule 5.3 states in part that in employing non-lawyer assistants:

(b) A lawyer having direct supervisory authority over a non-lawyer shall make reasonable efforts to insure that the person's conduct is compatible with the professional obligations of the lawyer; (c) a lawyer shall be responsible for conduct of such person that would be a violation of the Rules of Professional Conduct if engaged in by the lawyer if: (i) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involves; or (ii) the lawyer ... has direct supervisory authority over the person, and knows of the conduct at time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(Delaware Lawyers' Rules of Professional Conduct 5.3)

The ODC argues that Respondent violated Rule 5.3 (i) by failing to make reasonable efforts to insure that the non-lawyer staff's conduct was compatible with the professional obligations of a Delaware lawyer and/or (ii) by ratifying the non-lawyer staff's conduct with respect to the disbursement of the real estate funds contrary to the HUD-1 Statements and/or (iii) by failing to take reasonable remedial action once Respondent had knowledge of the non-lawyer staff's conduct.

Respondent admitted that he was the supervising attorney for the non-lawyer assistants. (Admitted Facts ¶ 3). Yet, Respondent took no action to prevent Ms. Pacheco from issuing checks inconsistent with the disbursement amounts listed on the HUD-1 Statement. To the contrary, Ms. Pacheco testified that Respondent had approved the practice of issuing checks contrary to the HUD-1 Statements. (Tr. 96). The Panel recommends a finding that Respondent violated Rule 5.3.

D. Violation of Rule 1.15(a).

Rule 1.15(a) requires, in pertinent part, that a lawyer “shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property”, and that property of clients or third persons must be appropriately safe guarded. The ODC argues that by using other clients’ funds that were in the firm’s trust account to fund part or all of the buyer’s contribution in certain settlements, Respondent violated Rule 1.15(a).

Respondent admitted that escrow funds were used to cover the buyer’s contribution in one of the closings he conducted. (Admitted Facts ¶ 6). Firm escrow funds were also used to cover buyer contributions in at least three of the Sullivan Closings. (See Exs. 6, 8, 27). The fact that the funds were replaced does not negate the violation of Rule 1.15(a). *See In Re Figliola*, 652 A.2d 10711, 1076 (Del. 1995) (the Court noted the issue was not whether the funds could be adequately reimbursed, but rather whether the money should have been taken without authorization) (citing *In Re Librizzi*, 569 A.2d 257, 261 (N.J. 1990)). The Panel recommends a finding that Respondent violated Rule 1.15(a).

E. The Panel’s Recommendation is Supported by Precedent from Delaware and Other Jurisdictions.

The Panel’s recommended findings that Respondent violated Rules 4.1(a), 4.1(b), 5.1(c), 5.3, 8.4(b), 8.4(c), 8.4(d) and 1.15(a) of the Delaware Lawyers’ Rules of Professional Conduct are supported by case law from Delaware. *See, e.g., In re Freebery*, 947 A.2d 1121 (Table), 2008 WL 1849916 at *4 (Del. 2008) (lawyer violated Rule 8.4(b) for false statement in connection with loan application); *In re Pankowski*, 947 A.2d 1122 (Table), 2007 WL 4245472 at *7(Del. 2007) (lawyer violated Rule 8.4(c) by forging client’s signature and falsely notarizing the forged signature); *In re Fountain*, 913 A.2d 1180, 1186 (Del. 2006) (lawyer violated Rule

8.4(c) for false certification of Certificates of Compliance); *In re Bailey*, 821 A.2d 851, 864-65 (Del. 2003) (lawyer violated Rules 1.15 and 5.3 for knowing failure to supervise employees to ensure client trust funds were protected); *In re Faraone*, 722 A.2d 1, 3 (Del. 1998) (lawyer violated rules 1.2, 4.1, 4.3 and 8.4 in assisting a client in a scheme to defraud the state and county of real estate taxes in two real estate transactions).

Several cases from other jurisdictions involve more similar fact patterns. *North Carolina State Bar v. Rose*, 10 DHC 17 Feb. 23, 2011; *Cincinnati Bar Association v. Powers*, 895 N.E.2d 172 (Ohio 2008); and *In Re Barbare*, 602 N.E.2d 382 (S.C. 2004). In *Rose*, there was one real estate transaction at issue. In that transaction Rose prepared a HUD-1 Statement reflecting a buyer contribution of \$59,652.31 and a seller disbursement of \$50,930.29. The Disciplinary Hearing Commission found that the HUD-1 Statement prepared by Rose was false and that the buyer brought no money to the closing and Rose did not disburse funds to the seller. The Commission further found that Rose was responsible for ensuring the HUD-1 Statement accurately recited the receipt and disbursement of funds in the transaction and that the HUD-1 Statement certification was false. The Disciplinary Hearing Commission found that Rose had violated Rules 8.4(b) and 8.4(c) which are identical to the Delaware Rules. Respondent argues that this case is distinguishable because the court in *Rose* did not address the source of the funds provided by the borrower. The Panel does not believe this distinguishes *Rose* since in both cases the HUD-1 Statements did not accurately reflect the transactions.

The ODC also relies on *Cincinnati Bar Association v. Powers*, where the attorney was charged with fabricating closing documents on over 300 loans causing lenders to lose nearly \$3.5 million and for filing false income tax returns that concealed his profits. While the Panel agrees that Respondent did not profit from his actions to the extent Powers did (other than the legal fees

he earned in connection with the closings) or file false tax returns, there are some similarities with *Powers*. Mr. Powers knew that the buyer did not bring the down payment but that it was provided by others and that some of the buyers received funds from the sale proceeds. The Court found that these facts were not disclosed to the lenders and that the HUD-1 Statements were falsely certified. The Court found that Powers violated sections of the Ohio Disciplinary Code of Professional Responsibility which are nearly identical to Delaware Rules 8.4(b), (c) and (d).

The ODC also asks the Panel to rely on *In Re Barbare*. In *Barbare* the Respondent pled guilty to a violation of 18 U.S.C. § 1010 in connection with his false certification of HUD-1 Statements where he certified that borrowers brought funds to closing when in fact no borrower's contribution had been made. In addition, the Respondent in *Barbare* permitted the clients to instruct non-lawyer staff on disbursements which were contrary to the amounts reflected on the HUD-1 Statements. Respondent attempts to distinguish *Barbare* on the basis that in *Barbare* the buyers did not pay closing costs, where here they did -- with funds provided by others. The Panel does not view this distinction as compelling since in both cases the HUD-1 Statements were false as certified. The Court found that Barbare's conduct violated Rules 4.1, 5.1, 5.3 and 8.4 of the South Carolina Rules of Professional Conduct, which are identical to the corresponding Delaware rules.

The ODC also relies on *In re Foley*, No. BD-2010-005 (March 24, 2010) and provided a copy of the Petition for Discipline filed with the Commonwealth of Massachusetts Board of Bar Overseers and the Order of Term Suspension issued by the Supreme Court of the Commonwealth of Massachusetts. Since neither document includes the findings either of a Board of Professional Responsibility or of the Supreme Court for the Commonwealth of Massachusetts, these documents do not represent appropriate precedent to be considered by the

Panel. The Panel believes that there is ample case law to support the liability recommendations in this matter.

VI. SANCTIONS.

A. Standard for Imposing Sanctions..

“The objectives of the Lawyer Disciplinary system are to protect the public, to protect the administration of justice, to preserve confidence in the legal profession, and to deter other lawyers from similar misconduct.” *In Re McCann*, 894 A.2d 1087, 1088 (Del. 2005); *In Re Fountain*, 878 A.2d 1167, 1173 (Del. 2005) (quoting *In Re Bailey*, 821 A.2d 851, 866 (Del. 2003)). The focus of the lawyer disciplinary system in Delaware is not on the lawyer but, rather, on the damage to the public that is ascertainable from the lawyers’ record of professional misconduct. *In Re Hall*, 767 A.2d 197, 201 (Del. 2001). It is the duty of the Panel to recommend the sanction that will promote those objectives.

In reaching its recommendation of an appropriate sanction, the Panel considered the ABA Standards for imposing lawyer sanctions (the “ABA Standards”):

The ABA framework consists of four key factors to be considered by the Court: (a) the ethical duty violated; (b) the lawyer’s mental state; (c) the actual potential injury caused by the lawyer’s misconduct; and (d) aggravating and mitigating factors.

ABA Standards for Imposing Lawyer Sanctions, at 9 (1992) (the “ABA Standards”), available at http://www.abanet.org/cpr/regulation/standards_sanctions.pdf.

B. Application of the Standard.

1. The Ethical Duties Violated by Respondent.

As set forth above, the Panel recommends a finding that Respondent violated Rules 4.1(a), 4.1(b), 5.1(c), 5.3, 8.4(b), 8.4(c), 8.4(d) and 1.15(a) of the Delaware Lawyers’ Rules of Professional Conduct.

2. Respondent's Mental State.

The Panel must determine the Respondent's mental state in order to determine the level of culpability. The ABA Standards define the most culpable mental state as that of "intent" when the lawyer acts with purpose to accomplish a particular result. A less culpable mental state is that of "knowledge" where the lawyer is consciously aware of the attendant circumstances of his or her conduct but without the objective or purpose to accomplish a particular result. The least culpable mental state is negligence where the lawyer deviates from the standard of care that a reasonable lawyer would exercise in a given situation. (ABA Standards at 6-7). Based on the factual findings described above, the Panel concludes that the Respondent's mental state was intentional. Respondent acted with the intent of facilitating 5 real estate closings and was the supervising attorney for his employee who conducted 22 real estate closings that defrauded those who relied on the accuracy of the HUD-1 Statements.

C. Injury Caused by Respondent's Misconduct.

Pursuant to the ABA Standards, the Panel must consider the potential or actual injury caused by the Respondent's action. (ABA Standards at 6-7). At the September 19 Hearing the ODC presented testimony from several witnesses to address the injury caused by Respondent's actions. Ms. Nancy Carden, Ms. Kenya Smith, Mr. Montgomery Boyer and Mr. William Cheesman were all sellers of properties in the Sanclemente or Sullivan Closings.

Ms. Nancy Carden was the seller of a property in one of the Sanclemente Closings which took place after Respondent claimed to have become concerned with the monies being diverted to MBFC. (Ex. 3). Ms. Carden testified that she was approached by a couple that visited her home and informed her that her home was going to be sold at a sheriff's sale and they put her in touch with Jamaar Manlove to help her. (S. Tr. 25-27). She testified that she attended the closing and understood that she would rent her home back from the buyer. (S. Tr. 24-25). She

subsequently learned that the rent was going to be \$800 per month while her mortgage had been \$300. (S. Tr. 24-25). Ms. Carden testified that at the closing Respondent told her that \$37,000 being disbursed to MBFC as reflected on the HUD-1 Statement was what she needed to pay the people who were helping her get her house back. (S. Tr. 34). She was never told that Mark Singleton was receiving proceeds from the sale other than \$350 for an appraisal. (S. Tr. 38).

Ms. Smith testified that she attended the closing for her property at the Sanclemente Firm which took five minutes. (S. Tr. 41). Ms. Smith did not receive any proceeds from the sale of her home and she did not understand that the buyer was receiving funds as a result of the sale. (S. Tr. 42). Mr. Sullivan conducted the closing and never explained the reason for the payment of \$36,379 to MBFC. (S. Tr. 47). Nor did Sullivan explain the seller closing contribution. (S. Tr. 47). Ms. Smith remained in the home paying rent to the buyer until she was evicted by the sheriff. (S. Tr. 43-44).

The testimony of Mr. Boyer was similar. Mr. Boyer did not receive any proceeds in the sale and was unaware that the buyers received \$10,000.00. (S. Tr. 66-67). Mr. Boyer further testified that he had no understanding that MBFC received \$34,000 at closing. (S. Tr. 74-75). Mr. Boyer left his home when he could no longer afford the rent the buyers were charging which was more than his prior mortgage. (S. Tr. 62-66).

Mr. Cheesman also testified that he was only in Respondent's office for 10 minutes for his closing and that Sullivan did not go over the HUD-1 Statement. (S. Tr. 80). No one explained that he was making donations to an entity called MMBK of more than \$28,000. (S. Tr. 80). Mr. Cheesman rented his home back from the buyer until it was put up for sheriff's sale. (S. Tr. 81).

The ODC also presented the testimony of Gloria Henry. Sullivan represented Gloria Henry who was the borrower in the 29 Dallas Road Closing. (Ex. 9). Ms. Henry testified that she did not even understand that she was purchasing a home but instead thought that she was co-signing a loan for her nephew. (S. Tr. 53-56). She testified that she remembered signing the papers but did not understand them. (S. Tr. 54). Ms. Henry indicated that prior to the transaction she had excellent credit which was impacted negatively by the transaction. (S. Tr. 56-57).

The ODC also offered the testimony of Christopher McBride, the real estate coordinator for the New Castle County Sheriff's Office. (S. Tr. 91). Mr. McBride explained the sheriff's sale process and testified regarding some properties that were sold in the transactions at issue which were later sold at sheriff's sale. (S. Tr. 97-112). Mr. McBride explained that when the loans were not repaid and the properties were sold, Fannie Mae and Freddie Mac who guaranteed the loans took a loss on the properties. (S. Tr. 101-02).

D. The Existence of Any Aggravating and Mitigating Circumstances.

The Panel considered whether there were any aggregating or mitigating circumstances which would warrant an increase or a decrease in the sanction.

ABA Standard ¶ 9.22 sets forth the following aggravating factors:

- (a) Prior disciplinary offenses;
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;

(f) submission of false evidence, false statement or other deceptive practices during the disciplinary process;

(g) refusal to acknowledge wrongful nature of conduct;

(h) vulnerability of the victims;

(i) substantial experience at the practice of law;

(j) indifference to making restitution;

(k) illegal conduct, including that involving the use of controlled substances.

Based on the evidence presented, the Panel finds the following aggravating factors:

Respondent has a prior disciplinary record. (ABA Standard § 9.22(a)). Respondent testified that he did have a prior disciplinary history. (S. Tr. 185-187; ODC Ex. 28). Respondent received a private admonition in June 2005 for violations of Rules 1.1 and 8.4(c) for false notarization in connection with a real estate closing he conducted. The Panel disagrees with Respondent's assertion that this prior discipline is unrelated and remote. (Tr. 235). The sanction was imposed in June 2005 and the first Sanclemente Closing was in January 2007. The sanction involved a false notarization and here the conduct involved a false certification. The Panel believes this prior discipline is appropriately applied as an aggravating factor.

Respondent had a dishonest or selfish motive. As the sole owner of the Sanclemente Firm, Respondent benefitted from the legal fees his firm received in connection with the transactions. In addition to the attorneys' fees, the Sanclemente Firm received 70-75% of the title premiums paid in connection with the closings. (Tr. 218).

Respondent has engaged in a pattern of misconduct. (ABA Standard § 9.22(c)). The evidence demonstrates that Respondent's misconduct occurred over a period of approximately

eighteen months and involved five separate real estate transactions. In addition, his employee conducted an additional twenty-two transactions.

Respondent's misconduct consists of multiples offenses. (ABA Standard § 9.22(d)). The Panel has recommended a finding that Respondent violated Rules 4.1(a), 4.1(b), 5.1(c), 5.3, 8.4(b), 8.4(c), 8.4(d) and 1.15(a).

The evidence presented at the September 19 hearing demonstrated that the victims of Respondent's misconduct were vulnerable.

Respondent has been a member of the Delaware Bar since 1996 and has substantial experience in the practice of law.

Lastly, although Respondent was not charged criminally, he falsely certified HUD-1 Statements which is a crime under 18 U.S.C. 1010.

1. Mitigating Factors.

ABA Standard § 9.32 sets forth the following mitigating factors:

- (a) Absence of a prior disciplinary record;
- (b) Absence of a dishonest or selfish motive;
- (c) Personal or emotional problems;
- (d) Timely good faith effort to make restitution or to rectify consequences of misconduct.
- (e) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (f) inexperience in the practice of law;
- (g) character or reputation;
- (h) physical disability;

(i) mental disability or chemical dependency including alcoholism or drug abuse when:

(1) there is medical evidence that Respondent is affected by a chemical dependency or mental disability;

(2) the chemical dependency or mental disability caused the misconduct;

(3) Respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and

(4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;

(j) delay in disciplinary proceedings;

(k) interim rehabilitation;

(l) imposition of other penalties or sanctions;

(m) remorse; and

(n) remoteness of prior offenses.

Based on the evidence presented the Panel finds the following mitigating factors:

Respondent testified to personal and emotional problems, including financial pressures, depression and bipolar disorder.

Respondent made full and free disclosure to the disciplinary board.

The Respondent offered several witnesses who provided testimony regarding Respondent's character and reputation.

The Respondent expressed remorse in his testimony regarding the individuals who had been injured as a result of the real estate transactions conducted for Manlove.

VII. THE PANEL'S RECOMMENDED DISCIPLINE.

The ODC argues that disbarment is the appropriate sanction. Respondent asks the Panel to recommend a public reprimand or suspension. The ODC relies on several cases in support of its request that Respondent be disbarred. First, the ODC relies on *In re Freebery*, 947 A.2d 1121, 2008 WL 1849916 (Del. 2008). There, Ms. Freebery failed to disclose a loan on a personal mortgage application and pled guilty to a violation of 18 U.S.C. § 1014, a felony criminal offense. Ms. Freebery stipulated to a violation of Rule 8.4(b). The Panel in *Freebery* analyzed whether the mental state that formed the basis for her conviction was “knowing” or “intentional” As the Panel explained:

This distinction is critical, since the recommendations suggested by the ABA Standards are based on the mental state that forms the basis of an attorney's misconduct-i.e., more culpable mental states generally receive more severe sanctions. Specifically, under the ABA Standards, “knowledge” is defined as “the conscious awareness of the nature or attendant circumstances of the conduct *but without the conscious objective or purpose to accomplish a particular result.*” ABA Standards Definitions (emphasis added). Given the language of 18 U.S.C. § 1014, Respondent's contention that her conduct was merely “knowing,” and not “intentional,” is misplaced. The federal statute under which Respondent was convicted specifically requires that Respondent's false statement be made “for the purpose of influencing ... any institution the accounts of which are insured by the Federal Deposit Insurance Corporation.” Her guilty plea establishes this wrongful conduct. Respondent purposely omitted her \$2.3 million liability to ensure Commerce Bank's expeditious approval of her loan application. While Respondent may not have sought to defraud Commerce Bank, she did intend to have Commerce Bank rely on the erroneous application in granting a mortgage on her new home with favorable terms. Accordingly, her mental state cannot fall within the ABA Standard's definition of “knowledge”, which excludes “the conscious objective or purpose to accomplish a particular result.” Rather, the statute, on its face, requires purposeful influencing of a financial institution, a mental state the Panel considers in the context of this disciplinary proceeding to be substantially equivalent to intentional.

In re Freebery, 2008 WL 1849916, *5. In adopting the Panel's Report in *Freebery*, the Court agreed that disbarment was the appropriate sanction for the conduct that led to a felony conviction and a violation of Rule 8.4(b).

Here while Respondent was not convicted of a felony, his conduct violated 18 U.S.C. Section 1010 and implicates the same "intentional" mental state as found in *Freebery*, suggesting a more severe sanction under the ABA Standards. Section 1010 provides:

Whoever, for the purpose of obtaining any loan or advance of credit from any person, partnership, association, or corporation with the intent that such loan or advance of credit shall be offered to or accepted by the Department of Housing and Urban Development for insurance, or for the purpose of obtaining any extension or renewal of any loan, advance of credit, or mortgage insured by such Department, or the acceptance, release, or substitution of any security on such a loan, advance of credit, or for the purpose of influencing in any way the action of such Department, makes, passes, utters, or publishes any statement, knowing the same to be false, or alters, forges, or counterfeits any instrument, paper, or document, or utters, publishes, or passes as true any instrument, paper, or document, knowing it to have been altered, forged, or counterfeited, or willfully overvalues any security, asset, or income, shall be fined under this title or imprisoned not more than two years, or both.

18 U.S.C. § 1010. Respondent here admittedly violated 18 U.S.C. § 1010 by certifying HUD-1 Statements that he knew to be false and by failing to cause the funds to be disbursed in accordance with the HUD-1 Statements. Although Ms. Freebery made false statements on a loan application for her own benefit and pled guilty to a felony, the Panel does not believe a lesser sanction is warranted here. Respondent also obtained a personal benefit from the closing and title fees paid in each transaction to the Sanclemente Firm. Respondent made misrepresentations on the HUD-1 Statements in 5 transactions and was responsible for supervising his employee who conducted an additional 22 transactions over a 2-year period, causing injury to clients, other parties to the transaction and the lenders.

The ODC also presented other cases in support of its recommended sanction. *In re Lassen*, 672 A.2d 988 (Del. 1996) (lawyer suspended for three years for multiple rules violations

including 4.1(a), 8.4(b), 8.4(c) and 8.4(d) for falsifying invoices to clients); *In re Fabrizzio*, 498 A.2d 1076 (Del. 1985) (lawyer suspended for two years for violating (now) Rule 8.4(c) for falsifying settlement sheets in connection with one real estate closing); *In re Faraone*, 772 A.2d 1 (1998) (lawyer suspended for six months for violations of Rules 1.2(d), 4.1(a), 4.1(b), 4.3 and 8.4(c) for representations made in connection with two real estate transactions); *Cincinnati Bar Assoc. v. Powers*, 895 N.E.2d 172 (Ohio 1008) (lawyer disbarred for multiple rules violations in connection with falsifying closing documents on over 300 loans).

Respondent argues that *In re Lyle*, 74 A.3d 654 (Table), 2013 WL 4543284 (Del. 2013) and *In re Bailey*, 821 A.2d 851 (Del. 2003) support a sanction of six months or less with mitigating factors. (S. Tr. 239). The *Lyle* decision involved an attorney in the Public Defender's office who reviewed the file of another client represented by the office to aid his client's defense. The Court disagreed with the Board's reliance on *Freebery* to support a violation of Rule 8.4(c) since that case concerned a Rule 8.4(b) violation. *In re Lyle* at *2. The Court found that Lyle's disclosure of another client's statement was distinguishable from Rule 8.4(c) violations involving false notarizations and failure to disclose outstanding loans on a mortgage application. *In re Lyle*, at *2. The Court noted "Lyle's disclosure of Milton's statement to Roundtree is qualitatively distinguishable from these instances of 'dishonesty, fraud, deceit or misrepresentation.'" *Id.* at *2. The same is true here.

Respondent also relies on *In re Bailey*, 821 A.2d 851 (Del. 2003). Bailey received a six month suspension for violations of Rules 1.15, 5.3, 8.4(c) and 8.4(d) relating to mishandling of his firm's books and records and failure to supervise as a managing partner. Bailey had no prior disciplinary record, made full restitution, and the Court noted that serious harm did not result. *Id.* at 867. The same cannot be said here. Respondent's actions caused harm to lenders and

serious injury to numerous sellers of homes who were defrauded by Manlove's scheme. Respondent was a knowing participant in those transactions.

The Panel believes the conduct at issue here is more closely aligned in severity with the conduct in *Freebery* and a similar sanction is warranted. Respondent participated in a criminal act of an equity stripping scheme to defraud innocent people of their life savings and in doing so made misrepresentations to lenders causing injury to them as well. Any lesser sanction would only serve to exacerbate the substantial loss those innocent people suffered. *Compare In re Vanderslice*, 55 A.3d 322 (Del. 2012) (involvement in stealing funds coupled with aggregating circumstances warrants more severe sanction). Further, as this Court noted in *Faraone*:

The Board concluded:

In this case the Board was left with an abiding sense that Respondent had knowingly and intentionally undertaken a course of conduct that put innocent third parties ([the sellers]) at unfair risk, solely to benefit an unscrupulous client. In addition, Respondent intentionally participated in a scheme to misrepresent facts to both State and County taxing authorities that could only result in a loss of public revenues, again, to benefit an unscrupulous client. It is of no moment to us that the actual tax revenues at risk were not great. What is great, in our eyes is the betrayal of trust by an attorney who would undercut the proper functioning of the system in such a manner. In addition, the loss to the [the sellers] was staggering, both financially and emotionally. They, and the public at large deserve to feel confident that even if they choose to deal with a lawyer when they themselves are unrepresented they will be dealt with fairly and ethically.

Faraone, 722 A.2d at 4. While the sanction in *Faraone* was a six month suspension and a probation period the Panel believes a far more severe sanction is warranted on these facts.

The Panel has considered the extensive factual record summarized above, the ABA Standards, including aggravating and mitigating factors and precedents of the Delaware Supreme Court and recommends disbarment as the appropriate sanction.

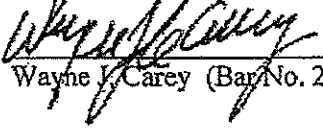
Lisa A. Schmidt
Lisa A. Schmidt (Bar No. 3019)

Wayne J. Carey (Bar No. 2041)

Yvonne Anders Gordon

Dated: January 15, 2014

Lisa A. Schmidt (Bar No. 3019)



Wayne J. Carey (Bar No. 2041)

Yvonne Anders Gordon

Dated: January 15, 2014

Lisa A. Schmidt (Bar No. 3019)

Wayne J. Carey (Bar No. 2041)

Yvonne Anders Gordon
Yvonne Anders Gordon

Dated: January 15, 2014