

Jo-Ann G. Durr, Esq. Presenter
14 Louisa Court
Wayne, NJ 07470

DISTRICT XI ETHICS COMMITTEE	:	SUPREME COURT OF NEW JERSEY
	:	DISTRICT XI ETHICS COMMITTEE
	:	
Complainant,	:	DOCKET NO: XI-02-015E
	:	XI-02-025E
vs.	:	XI-02-027E
	:	
GLADYS MENDOZA GARBIN, ESQ.	:	DISCIPLINARY ACTION
	:	
Respondent,	:	COMPLAINT FOR MISCONDUCT

Estelle Brown, Robert T. Zeller, Esq., and Edward R. Jackson, Jr.
and Ella Jackson, by way of complaint against respondent, say:

GENERAL ALLEGATIONS

1. The respondent maintains offices at 492 21st Avenue, Paterson, New Jersey.
2. The respondent was admitted to the practice of law in the State of New Jersey in 1989.

**FIRST COUNT
(Estelle Brown)**

1. In September, 2002, the Respondent was investigated by the District XI Ethics Committee based upon a grievance filed by Estelle Brown for various improprieties which plagued a real estate closing the Respondent had conducted on February 22, 2002. Exhibit A, Investigative Report of Jo-Ann G. Durr.
2. As a result of that investigation, the Respondent was charged with Minor misconduct and agreed to sign an Agreement in Lieu

of Discipline (Agreement) admitting fault, which she did on November 4, 2002. Exhibit B. Agreement in Lieu of Discipline.

3. The Agreement listed conditions which were to have been satisfied by the Respondent so that there would be no record of disciplinary action against her. Failure to comply with the conditions permits the filing of a formal complaint. Exhibit B.

4. It has since been determined that the Respondent failed to satisfy either of the conditions imposed upon her and, thus, is in violation of the terms of the Agreement.

5. The failure of the Respondent to comply with the conditions of the Agreement constitutes a violation of R1:20-3(i)(3)(A).

SECOND COUNT
(Robert T. Zeller, Esq.)

1. The complainant repeats and realleges each and every allegation as contained in the first count of the complaint

2. Sometime before January, 2001, Respondent was hired by Bartolo and Senorina Garcia to represent them in the purchase of property located in Clifton, New Jersey.

3. Financing for the purchase was provided by Emigrant Funding Corp. (Emigrant) and involved the filing of two mortgage liens against both the newly purchased property and property already owned by the Garcias.

4. Sometime after the closing of title, which occurred on January 31, 2001, the Grievant, Robert T. Zeller, Esq., who represented Emigrant, determined that the deed, mortgage and a

separate assignment of leases and rents for the newly purchased property had not been recorded. He also discovered that the title company had not been paid its fee.

5. In her response to the notification of the filing of the grievance, Respondent claimed that, up until September 18, 2002, the file had been mishandled and sent into storage containing all of the original documents and checks. She blamed the mishandling of the file on a "disgruntled employee." Respondent subsequently saw to the proper recording of the documents and made payments as specified in the settlement statement.

6. Respondent's failure to properly manage the conduct of her employees and safeguard her trust funds and office practices constitutes violations of RPC 1.1(b), 1.15(b), 5.3(a), (b) and (c)(3).

THIRD COUNT
(Edward R. Jackson, Jr. and Ella Jackson)

1. Respondent was hired by the Grievants to represent them in the purchase of a multi-family home located in Passaic, New Jersey.

2. Grievants were led to expect that, at the time of the closing, all of the apartments would be vacant.

3. At the closing on April 30, 2001, Grievants learned that the tenants leasing the second floor apartment has prepaid rent to the seller through June. Consequently, all parties executed an escrow agreement, which provided that the tenants would be served with a notice to quit by July 1, 2001 and that \$5,000.00 of seller's proceeds

would be held in escrow pending an inspection of the property. Exhibit C, Escrow Agreement.

4. Following their inspection, Grievants found that damage had occurred, documented the same with photographs and obtained estimates for repair. They informed Respondent of their findings and she assured them that she would pursue their reimbursement with the seller's attorney.

5. Grievants attempted to follow up as to Respondents' progress over the course of the next several months, but were never able to speak to her.

6. In January, 2002 Grievants were advised by Respondent's secretary that the seller's attorney was told to release the full amount of the escrowed funds to the seller. Grievants had never discussed releasing the funds with Respondent. Rather, they had fully expected to be reimbursed the cost of repairs caused by the holdover tenants.

7. Due to Respondent's lack of diligence in pursuing her clients' claims, her unavailability to her clients and her general neglect of the matter, Respondent is charged with violations of RPC 1.1(a), 1.3, and 1.4(a).

FOURTH COUNT

1. In the Jackson matter, Respondent was notified of the pendency of the grievance against her by letter of the investigator dated December 9, 2002. Exhibit D.

2. Respondent failed to respond to said letter as required.

3. On January 7, 2003 the investigator called Respondent and left a message with her secretary asking if she would be complying with the requests made in the letter of December 9, 2002.

4. To date, Respondent has not contacted the presenter nor forwarded any of the requested documentation.

5. The actions and inaction of the respondent as set forth in the fourth count of the complaint constitutes a violation of R. 1:20-3(g)(3).

Dated: May 21, 2003

THE DISTRICT XI ETHICS COMMITTEE

By /s/ Jo-Ann G. Durr, Esq.

EXHIBIT A

INVESTIGATIVE REPORT

RE: Estelle Brown vs. Gladys Mendoza Garbin, Esq.
Docket No.: X1-02-015E

Procedural History

By letter and Attorney Ethics grievance form dated March 27, 2002, Estelle Brown wrote to the Committee Secretary complaining of Gladys Mendoza Garbin (Garbin). On May 6, 2002 the matter was forwarded to me by the Secretary to conduct a preliminary investigation and prepare an investigative report.

On April 1, 2002 the Secretary contacted Garbin and requested from her a concise written factual statement of exactly what happened in chronological order. Ms. Garbin responded to the request on April 10, 2002. On April 12, 2002 Ms. Garbin's response was forwarded to the grievant. Ms. Brown reacted to Ms. Garbin's explanation of the matter by letter dated April 22, 2002.

Statement of Facts

The matter that forms the basis of this grievance concerns a real estate transaction that closed on February 25, 2002 at Garbin's office. The grievant/seller, Estelle Brown, was represented by Wayne A. Keller, Esq. Garbin represented the buyers, Angel Campos and Fernando Matias. The grievant alleges that she was not properly advised as to the precise amount of the mortgage payoff owed to Countrywide Home Loans at the time of the closing.

At the time of the closing, the subject property owned by the grievant was in foreclosure. Both attorneys had obtained copies of judgments that delineated the amounts owed to the two mortgage holders, Household/Beneficial Finance Corp. and Countrywide Home Loans (Countrywide). However, the final payoff amount owed to Countrywide was only requested by Garbin on the date of the closing and received on February 26, 2002, the following day. Garbin admitted to making the late request in her letter dated April 10, 2002.

On the date of the closing, the HUD-1 settlement statement indicated that the amount owed to Countrywide was \$26,000.00 and this information was relayed to the grievant. Ms. Brown was told at the closing table that she would realize a profit of \$3,152.00 from the sale of her property, although the HUD-1 indicates a shortfall of \$910.96. Garbin did write Ms. Brown a check for \$2,152.36, on which she later issued a stop payment request. The final payoff amount came to \$30,569.16, resulting in a situation where the grievant would have to contribute more than \$4,000.00 to satisfy the mortgage.

As previously mentioned, Garbin admits to having made a delinquent request for the payoff amount from Countrywide. She attempted to mitigate the situation by negotiating the amount of the payoff with Countrywide, although it was unclear as to whether she was successful.

Analysis

Disciplinary Rules Involved

I perceive the disciplinary rule involved to be RPC 1.3 Lack of Diligence.

Discussion of Application of Disciplinary Rule

After careful consideration of the claims and written documentation and explanations of the same, I find that the evidence supplied by the grievant and Ms. Garbin indicates a deviation on the part of Garbin from proper procedure in procuring the requisite information needed to conduct an effective real estate dosing. It is common procedure that the attorney representing the buyers of the property takes all action to ensure that clear title will be conveyed at the closing table. By failing to act in a timely manner regarding the satisfaction of the mortgage held by Countrywide, Garbin effectively stymied the closing process and misrepresented the situation to both the seller and buyers.

Conclusion

Based upon the allegations set forth by the grievant and materials submitted by Ms. Garbin, I conclude that there is reasonable prospect of finding minor misconduct by clear and convincing evidence. Thus, I recommend that the matter be diverted for proper disciplinary action pursuant to R. 1:20-3(i)(2)(B)(i).

Respectfully submitted,

Jo-Ann G. Durr, Investigator

EXHIBIT B

Jo-Ann G. Durr
Attorney at Law
14 Louisa Court
Wayne, New Jersey 07470

DISTRICT XI ETHICS COMMITTEE	:	SUPREME COURT OF NEW JERSEY
	:	DISTRICT XI ETHICS COMMITTEE
	:	
Complainant,	:	DOCKET NO: XI-02-015E
	:	
vs.	:	DISCIPLINARY ACTION
	:	
GLADYS MENDOZA GARBIN, ESQ.	:	AGREEMENT IN LIEU OF
	:	DISCIPLINE
Respondent,	:	

This agreement is made by the respondent in accordance with R.1:20-3(i)(2). The respondent was admitted to practice law in New Jersey in 1989 and currently practices at 492 21st Avenue, Paterson, New Jersey. In consideration of diversion of this matter by the Director, Office of Attorney Ethics, the following facts and conditions are admitted and agreed:

A. MINOR MISCONDUCT COMMITTED

Respondent admits to failing to obtain in a timely manner the necessary information to satisfy a mortgage debt and convey clear title at a real estate closing that she conducted on February 25, 2002.

The misconduct is mitigated by the fact that the respondent attempted to negotiate the payoff amount on behalf of the grievant.

B. CONDITIONS TO BE SATISFIED

Within six months after acceptance of this agreement by the Director, Office of Attorney Ethics, respondent agrees to complete the following conditions:

Respondent will explain her actions in writing to the grievant and apologize for any confusion she may have caused.

Respondent agrees to attend the New Jersey State Bar Association Diversionary Continuing Legal Education Program. Respondent is responsible to pre-pay any costs associated with this condition.

C. REPORTS REQUIRED

As evidence of progress toward or completion of the above conditions, respondent agrees to file the following reports with the Diversion Coordinator, Office of Attorney Ethics, at the times indicated:

Type:	Final
Substance:	Respondent shall provide evidence of her communication with the respondent.
Due date:	February 1, 2003

D. COMPLETION/LACK OF COMPLETION

The respondent understands that the Director, Office of Attorney Ethics, shall have exclusive discretion to determine whether compliance has occurred. If so, this matter shall be dismissed and there shall be no record of discipline in this case. If not, the Director shall authorize the filing of a formal complaint.

E. SIGNATURE AND RECOMMENDATION

(accepted and signed by Gladys Mendoza Garbin (11/04/02), Jo-Ann G. Durr (09/06/02), Michael A. Sternick, Chair, DEC (11/12/02). Note: not signed by Director of OAE.

(NOTE: Exhibit C, an escrow agreement, is not included)

EXHIBIT D

**SUPREME COURT OF NEW JERSEY
DISTRICT XI ETHICS COMMITTEE**

Passaic County

805 CLIFTON AVENUE
CLIFTON, NJ 07013
(973) 778-0154

Michael A. Sternick, Esq., Chair
Robert L. Stober, Esq., Secretary
Jacqueline Bonney
Patrick J. Caserta, Esq.
Kenneth F. D'amato, Esq.
Kathleen A. Browning Sheridan, Esq.
Imre Karaszegi, Jr. Esq.
Frank L. Pondelick, Esq.
Susan E. Champion, Esq.
Raymond Damiano

Patrick C. De Marco, Esq.
Diane M. Dewey, Esq.
Joann G. Durr, Esq.
Ellen Jo Gold, Esq.
Maria J. LaSala, Esq.
Lawrence, Michael Maron, Esq.
Mary Pat Gallagher, Esq.
Robert C. La Salle, Esq.
Ken Morris, Jr.
Martin F. Murphy, Esq.
John G. Susani

December 9, 2002

Gladys Mendoza Garbin, Esq.
492 21st Avenue
Clifton, New Jersey 07013

RE: Edward R. Jackson, Jr. vs. Gladys Mendoza Garbin, Esq.

Docket No.: X1-02-027E

Dear Ms. Garbin:

Please be advised that you are currently the subject of a grievance docketed by the Secretary of the Ethics Committee. Specifically, you are charged with various irregularities while representing the buyer, Edward R. Jackson, Jr. in a real estate transaction which closed on April 30, 2001. In accordance with the Supreme Court rules, I have been appointed to investigate this case, determine the facts and report to the chair of the Ethics Committee in writing.

Please review this grievance and provide me with a written response to the allegations made within ten days of your receipt of this letter. Feel free to attach copies of any documents or letters which would help me to understand the matter. A copy of your response will be furnished to any grievant and you will receive a copy of any further reply filed by any grievant. As a result of the filing of this grievance, you are required, pursuant to R. I. :20-3(g)(3) and RPC 1.6(c)(2), to reveal otherwise confidential information to the extent necessary to establish a defense to this allegation of ethical misconduct. I request that you make a full, candid and complete disclosure of all facts reasonably within the scope of the transactions set forth in the grievance. In re Gavel, 22 NJ 248, 263 (1956). This will help me to determine what the facts are and to make an appropriate recommendation to the chair.

Your prompt consideration and response are essential. In the absence of a timely and adequate reply, I must still complete my investigation and may have to assume that the facts as stated by the grievant are true. I trust your prompt response will allow me to discern the facts rather than having to make a judgment based upon assumptions.

Please call me with any questions and I will be glad to discuss the matter with you.

Very truly yours,

Jo-Ann G. Durr
Committee Investigator

Fontanella, Benevento, Galluccio, Smith & Rapuano, Esq.
246 Union Blvd
Totowa, NJ 07512
Attorneys for Respondent, Gladys Mendoza Garbin, Esq.

DISTRICT XI ETHICS COMMITTEE	:	SUPREME COURT OF NEW JERSEY
	:	DISTRICT XI ETHICS COMMITTEE
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Complainant,	:	DOCKET NO: XI-02-015E
	:	XI-02-025E
vs.	:	XI-02-027E
	:	
GLADYS MENDOZA GARBIN, ESQ.	:	DISCIPLINARY ACTION
	:	
Respondent,	:	ANSWER AND AFFIRMATIVE
	:	DEFENSES, REQUEST FOR A
	:	HEARING, VERIFICATION
	:	PURSUANT TO R.1:4-7
	:	

The respondent, Gladys Mendoza Garbin, Esq., by counsel, answers the complaint in this matter as follows:

GENERAL ALLEGATIONS

1. Admitted
2. Admitted

**FIRST COUNT
(Estelle Brown)**

1. Admitted
2. Admitted
3. Admitted
4. Admitted
5. Admitted, with explanation

**SECOND COUNT
(Robert T. Zeller, Esq.)**

1. The respondent repeats and realleges all allegations of all preceding paragraphs of this answer as though set forth herein at length verbatim.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Denied. Respondent avers that trust funds were never endangered, and that the conduct of the disgruntled employee was undertaken in such a way as to remain hidden from Respondent, and that the office practices were not so deficient as to constitute a violation of applicable Rules of Professional Conduct.

THIRD COUNT
(Edward R. Jackson and Ella Jackson)

1. Admitted in part, with clarification that the Respondent was not the initial attorney retained to perform the closing on behalf of the complainants, and was retained a short time prior to the closing date after the complainants disagreed with their prior attorney's advice to not go through with the closing.

2. Denied, in that the buyers, Complainants Jackson, agreed to close title with the understanding that the \$5,000 (five thousand dollars) was to be paid into escrow to be held by the seller's attorney, Damian.

3. Denied, in that the complainant's former attorney would not close the transaction and the complainants insisted on closing the transaction.

4. Denied. On July 13, 2001 via conference telephone call with the complainant Jackson, the sellers' attorney and Respondent, Jackson confirmed that the tenants had vacated the premises and authorized the release of the escrow from sellers attorneys account. Not until weeks later, in August, did Jackson begin to call respondent about the condition of the property in general. Respondent advises complainant Jackson that he could bring the estimate, but that the issue of paying for the repairs from the escrow was moot because the complainants had already authorized the release of the escrow funds. The respondent did not assure or agree to ensure the complainant of anything. Jackson did not appear with the estimates of the repair until September, approximately two months after complainants had authorized the release of the escrow and approximately four months after the closing. The estimate for the repairs provided by the complainants was prepared and dated August 30, .001. The estimate for the repairs was dated two days after the complainant Jackson had received both the check from the Damian & Finkel escrow for the per diem rental by the former tenants, in the amount of \$210.00, and the original recorded deed. Both these events took place on August 28, 2001, The check for the per diem rental was issued on July 13, 2001, after the conference call of July 12, 2001.

5. Denied. The respondent spoke several times with the complainant Jackson and invited him to come in to the office, so the respondent could explain to him, face to face, why he was out of time with his complaint. Jackson refused to meet with the respondent.

6. Denied. The complainants explicitly authorized and agreed to release the escrow on July 12, 2001.

7. Denied. The respondent did all that she possibly could to preserve the client's interest. The respondent permitted the release of the escrow only after being assured and advised by the complainant that the apartment was vacant and in the same condition that the complainant had expected it to be. Complainant was present on a four-way telephone conference call on July 12, 2002 at which time complainant agreed to accept a check in the amount of \$210.00 for three days of rental of the apartment and to release the escrow.

FOURTH COUNT
(Edward R. Jackson, Jr. and Ella Jackson)

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted, with explanation that the Committee has granted an extension of time within which to file this answer, affirmative defenses and request for a hearing.

Amendment to Complaint charging wilful violation of RPC 8.1(b)

1. Denied.

AFFIRMATIVE DEFENSES

1. The Respondent has not committed any unethical conduct.

2. Without admitting any unethical conduct, the respondent avers that any breaches of the Rules of Professional Conduct, the Rules of Court, or other applicable principles of law or ethics were solely the result of error, mistake, or inadvertence and not of scienter, knowing or purposeful conduct or other form of affirmative misconduct.

3. The allegations of unethical conduct made by the third count, brought on behalf of the complainant Jackson, are frivolous, false and were made by those complainant(s) with the intent, purpose or design to harass, vex, annoy and/or harm the respondent, including but not limited to an attempt to extract financial consideration to which the complainants are not entitled from the respondent.

4. Without admitting any unethical conduct or misconduct, the Respondent avers that no clients were harmed by or as a result of any actions or inactions of the Respondent.

5. Without admitting any unethical conduct or misconduct, and without admitting having been a cause of any inconvenience or harm, the Respondent is fully contrite and remorseful for any inconvenience or harm suffered by any client, the Committee, and/or any member of the public as a result of any actions or inactions of the Respondent.

6. The Respondent has engaged in substantial service to the community.

7. Without admitting any unethical conduct or misconduct, the Respondent avers that any breaches of the Rules of Professional Conduct or other applicable Rules or Law was clearly not for personal gain.

8. Without admitting any unethical conduct or misconduct, and without admitting any negligence or other fault, the Respondent avers that any breach(es) of the Rules of Professional Conduct or other applicable Rules or Law has been corrected by appropriate subsequent remedial measures undertaken by the Respondent.

9. The Respondent has cooperated fully with Ethics Authorities.

10. The Respondent has cooperated fully with the Committee.

11. The Respondent reserves the right to amend, supplement or modify, as appropriate, this list of affirmative defenses based upon further investigation and discovery and the statements, examination and/or cross-examination of persons with knowledge and/or witnesses at or before any hearing.

REQUEST FOR A HEARING

The Respondent requests that the Committee hear this matter, both, on the factual issues raised by the complaint and answer and, in the event the Committee should find a violation requiring imposition of discipline, in mitigation of any discipline the Committee may seek to impose.

Dated: July 3, 2003

Fontanella, Benevento, Galluccio,
Smith & Rapuano, Esq.
Attorneys for Respondent,
Gladys Mendoza Garbin, Esq.

/s/ Anthony Benevento

VERIFICATION

I, Gladys Mendoza Garbin, Esq., of full age and upon my oath, do hereby verify that I have read this answer and affirmative defenses, that the allegations made herein are made of my own personal knowledge, and that they are true.

/s/ Gladys Mendoza Garbin, Esq.

Sworn to and subscribed before

me this 3rd day of July, 2003

/s/ Notary Public of New Jersey

DISTRICT XI ETHICS COMMITTEE	:	SUPREME COURT OF NEW JERSEY
	:	DISCIPLINARY REVIEW BOARD
	:	
Complainant,	:	DOCKET NO: XI-02-015E
	:	XI-02-025E
vs.	:	XI-02-027E
	:	
GLADYS MENDOZA GARBIN, ESQ.	:	DISCIPLINARY ACTION
	:	
Respondent,	:	HEARING REPORT

TO THE HONORABLE CHAIR AND THE MEMBERS OF THE DISCIPLINARY REVIEW BOARD:

The District XI Ethics Committee Hearing Panel respectfully shows:

I. PROCEDURAL HISTORY

1. Respondent was admitted as a member of the bar of New Jersey in 1989, and is (or was) engaged in the practice of law at 492 21st Avenue, in the City of Paterson, Passaic County, New Jersey.

2. On May 21, 2003, a formal complaint (Exhibit C-1) was filed with the District XI Ethics Committee and was served upon the respondent.

3. Respondent's answer thereto has been marked as Exhibit C-2.

4. A formal hearing was held before this hearing panel of consisting Diane M. Dewey, Esq., Chair, Patrick Caserta, Esq., and Jacqueline Bonney, on the foregoing charges on September 18, 2003, which respondent attended with her counsel, Adolph Galluccio, Esq. The matter was presented by Jo-Ann Durr, Esq.

II. SYNOPSIS OF ALLEGATIONS

5. The formal complaint filed charged the respondent with the following allegations of ethical misconduct:

The First Count alleged that the Respondent failed to comply with the conditions of an Agreement in Lieu of Discipline dated November 4, 2002, in violation of R.P.C. 1:20-3(i)(3)(A). The underlying grievance pertained to various improprieties which plagued a real estate closing conducted by the Respondent on February 22, 2002.

The Second Count dealt with another real estate closing handled by the Respondent. The Respondent represented Bartolo and Senorina Garcia with regard to the purchase of real estate in Clifton, New Jersey. The purchase was funded by Emigrant Funding Corp. Sometime after the closing, the Grievant, Robert T. Zeller, Esq., the attorney for Emigrant Funding Corp., determined that the deed, mortgage and assignment of leases and rents had not been recorded and the title company had not been paid. The Respondent claimed that the file had been mishandled by a "disgruntled employee." The Respondent retrieved the file from storage and saw to the proper recording of documents and made payments as necessary. It is alleged that the Respondent's failure to manage the conduct of her employees and safeguard her trust funds and office practices is in violation of R.P.C. 1.1(b), 1.15(B), 5.3(a),(b) and (c)(3).

As alleged in the Third Count of the complaint, Respondent was retained by Edward R. Jackson and Ella Jackson, to represent them in

regard to the purchase of a multifamily dwelling in Passaic, New Jersey. Grievants were led to expect that, at the time of closing, all of the apartments would be vacant. At the closing which took place on April 30, 2001, the grievants learned that the tenants leasing the second floor apartment had not vacated. All parties executed an escrow agreement which provided that tenants would be served with a notice to quit by July 1, 2001, and 5,000 was to be held in escrow pending an inspection of the property.

Following the inspection, grievants found that damage had occurred, documented the same with photographs and obtained estimates for repairs. They informed respondent of their findings and she assured them that she would pursue reimbursement.

Grievants attempted to follow up as to respondent's progress over the course of the next several months, but were never able to speak to her. In January, 2002, grievants were advised by respondent's secretary that the seller's attorney was told to release the full amount of the escrowed funds to the Seller. Grievants allege that the release of the escrows was never discussed with them. Respondent is charged with violations of R.P.C. 1.1(a), 1.3 and 1.4(a).

The fourth count of the complaint alleges that respondent failed to reply to the investigator within the time prescribed as it pertains to the Jackson matter set forth in the third count, in violation of R.P.C. 1 :20-3(g)(3).

III. FINDINGS OF FACT AND CONCLUSIONS

6. As a result of reviewing the testimony and exhibits, the hearing panel makes the following factual findings and conclusions:

As to the First Count, at the hearing, Respondent stipulated that there was an Agreement in Lieu of Discipline signed by the Respondent and dated November 4, 2002. The conditions of the same were that the Respondent write a letter of apology to the grievant, Estelle Brown, and complete an ICLE course within six (6) months. The conditions were not met within the 6 month time period. The Respondent has since written a letter of apology to Estelle Brown but has not taken the ICLE course.

At hearing, the Respondent stipulated to Paragraphs 1 through 5 of the second Count of the complaint. (See Exhibit C-1).

As to the Third Count of the complaint, the respondent was engaged to represent the Jacksons two weeks prior to closing, taking the file over from a prior attorney with whom the Jacksons had a difference of opinion. At issue was the amount of escrow that was to be held at closing for the removal of the second floor tenant. The previous attorney would not close the matter without a \$20,000.00 escrow. The respondent agreed to close the matter holding the sum of \$5,000.00 in escrow which was acceptable to the Jacksons. The closing took place on May 2, 2001, at which time an Escrow Agreement was signed by the Jacksons, as well as a Notice to Quit. The Notice to Quit directed the tenant to surrender possession as of July 1, 2001. The tenant vacated the premises on or about July 3, 2001, 3 days late.

On July 12, 2001, the Jacksons met with the respondent at her office. A conference call was placed to Charles Damian, Esq., the attorney for the seller. Mr. Damian testified that while he had his client in his office on speaker phone, they spoke with Ms. Garbin about the release of the escrow. Ms. Garbin conferred with someone in her office whom he believed to her clients. It was agreed at that time that the escrow would be released less three (3) days rent which was owed to the Jacksons, due to the later surrender of the tenant. The Jacksons received a check from Mr. Damian's trust account in the amount of \$210.00, representing the 3 days rent. At some point after the release of the escrow, the Jacksons discovered damage to the apartment and sought to contact Ms. Garbin with regard to reimbursement from the seller, providing the respondent with photos of the damage and estimates for repair. The Jacksons were confused about the earlier release of the escrow money and Ms. Garbin's failure to communicate with the Jacksons caused the situation to escalate. Ms. Garbin failed to take the Jacksons' phone calls to her office and did not correspond with them when it became apparent that there was a misunderstanding and confusion on their part. There was no correspondence on the part of Ms. Garbin to her client with regard to the release of the escrow or the repair issue. It was not until January, 2002, that Ms. Garbin, through her secretary, made it clear to the Jacksons that she would not be able to obtain reimbursement for the repairs from the escrow monies because they had been released.

With regard to the Fourth Count, the facts as stipulated at hearing are that, in the Jackson matter, the respondent was notified of the pendency of the grievance on December 9, 2002, in writing. On January 7, 2003, the investigator called the respondent and left a message with her secretary inquiring as to whether the respondent would be complying with the requests made in her letter dated December 9, 2002. At the time of the filing of the complaint on May 21, 2003, the respondent had not replied nor forwarded any requested documentation. Respondent did submit a written response to the Committee on June 25, 2003.

Based on the facts stipulated to by the respondent and presented at hearing, the panel concludes that, as to the First Count of the Complaint, R.P.C. 1:20-3(i)(3)(A) was violated. As to the Second Count of the Complaint, the panel concludes that the Respondent is in violation of R.P.C. 1.15(b); R.P.C. 5.3(a) and R.P.C. 5.3(b). The panel finds that there was no violation of R.P.C. 1.1(b) and 5.3(c)(3). Relative to the Third Count, the panel finds that there was a violation of R.P.C. 1.3 and 1.4(a). We find that there is no violation of R.P.C. 1.1. As to the Fourth Count, the panel finds that there was a violation of R.P.C. 1:20-3(g)(3).

IV. DETERMINATION

7. The panel has carefully considered and reviewed the testimony and evidence and has concluded that the respondent's conduct constituted ethical misconduct in that the following Rules of

Professional Conduct have been violated, R.P.C. 1 :20-3(i)(3)(A); R.P.C. 1.15(b); R.P.C. 5.3(a); R.P.C. 5.3(b); R.P.C. 1.3 and 1.4(a); and R.P.C. 1:20-3(g)(3).

8. Prior to making its recommendation(s), the panel has taken into account the following mitigating factors presented by respondent's counsel at hearing:

As to the first count of the complaint, Ms. Garbin has since written the letter of apology to the grievant, Estate Brown. Further, Ms. Garbin indicated that she was suffering from Lyme Disease and complications therefrom which required hospitalization. Additionally, she was having problems with her teenage daughter. Ms. Garbin has resigned her municipal court judgeship which contributed to her overextension and the added stress which adversely affected her health.

9. As a result, the panel, by unanimous vote, recommends Reprimand.

DISTRICT XI ETHICS COMMITTEE

DATE: November 13, 2003

/s/ Diane M. Dewey, Esq.
Hearing Panel Chair