

In re Richard Michael Ruggiero
Attorney-Respondent

Commission No. 2021PR00078

Synopsis of Hearing Board Report and Recommendation
(June 2023)

Default Proceeding

The Administrator charged Respondent in a one-count Amended Complaint with engaging in dishonest conduct by knowingly misappropriating \$291,844.28 in trust assets while acting as a successor trustee and failing to distribute funds owed to trust beneficiaries.

As a sanction for failing to comply with discovery, Respondent was barred from testifying and the allegations and disciplinary charge of the Amended Complaint were deemed admitted. Based on the admitted allegations and charge, the Hearing Board found that the Administrator proved by clear and convincing evidence that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

Due to the extremely serious misconduct and significant aggravation, including Respondent's dishonest and selfish motives, the substantial financial harm to the beneficiaries, and Respondent's repeated efforts to obstruct and delay the proceedings, the Hearing Board recommended that Respondent be disbarred.

**BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

In the Matter of:

RICHARD MICHAEL RUGGIERO,

Attorney-Respondent,

No. 6211359.

Commission No. 2021PR00078

REPORT AND RECOMMENDATION OF THE HEARING BOARD

DEFAULT PROCEEDING

SUMMARY OF THE REPORT

The Administrator charged Respondent with engaging in dishonest conduct by misappropriating \$291,844.28 in trust assets for his own purposes and failing to distribute funds to trust beneficiaries. Respondent's Answer was stricken and the allegations of the Amended Complaint were deemed admitted as a sanction for his failure to comply with orders to appear for his deposition and produce documents. Based on the allegations deemed admitted, the Hearing Panel found that the charged misconduct was proven by clear and convincing evidence. The Hearing Panel recommended that Respondent be disbarred based on his egregiously dishonest conduct, the significant factors in aggravation and minimal factors in mitigation.

INTRODUCTION

The hearing in this matter was held remotely by video conference on February 24, 2023, before a Panel of the Hearing Board consisting of Patrick M. Blanchard, Chair, Ricardo Meza, and Daniel G. Samo. Richard C. Gleason, II represented the Administrator. Respondent was present and represented himself.

FILED

June 06, 2023

ARDC CLERK

PLEADINGS AND ALLEGED MISCONDUCT

Before us is a one-count Amended Complaint charging Respondent with engaging in conduct involving dishonesty, fraud, deceit or misrepresentation by knowingly using \$291,844.28 in trust assets, to which he was not entitled, for his own personal or business purposes without authorization, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

Respondent filed an Answer to the initial Complaint in which he denied misusing funds and denied the charge of misconduct. For the reasons discussed below, Respondent's Answer was stricken. Respondent did not file an answer to the Amended Complaint.

PRE-HEARING PROCEEDINGS

The initial Complaint in this matter was filed on September 2, 2021 and served upon Respondent on September 29, 2021. Respondent filed his Answer on October 19, 2021. On December 6, 2021, the Administrator served Respondent with a Notice to Produce. On February 8, 2022, the Administrator filed a notice for Respondent's deposition. Respondent filed a Response to the Notice to Produce on Feb. 18, 2022 and a First Amended Response on March 8, 2022. In those responses, he did not certify that his production was complete and made statements suggesting that he possessed responsive documents that he did not produce. On March 29, 2022, pursuant to the Administrator's Motion to Compel, the Chair ordered Respondent to respond to the Notice to Produce by April 5, 2022. On April 6, 2022, after Respondent failed to comply with the Chair's order, the Administrator moved for sanctions including striking Respondent's Answer, barring him from testifying, and barring him from filing any other pleading. The Administrator filed an Amended Complaint on May 3, 2022, to which Respondent did not file an answer.

From April 2022 through January 2023, based on representations that he was recovering from surgery, contracted COVID, and had bacterial and viral infections, Respondent requested and was granted multiple extensions of time to produce the documents requested in the Notice to

Produce and to appear for his deposition. Despite at least five orders directing him to appear for his deposition and produce all responsive documents by a date certain, he never complied with those directives. On January 10, 2023, Respondent revealed in a pre-hearing conference that he possessed responsive documents that he did not produce.¹

On January 24, 2023, the Chair granted the Administrator's motion for sanctions due to Respondent's repeated failure to comply with prior orders. The Chair's ruling was based on his findings that: (1) Respondent's representations that his health conditions prevented him from cooperating were not credible or substantiated by sufficiently detailed information from a medical provider; and (2) Respondent's conduct during the pre-hearing proceedings constituted a pattern of non-compliance undertaken in bad faith and with the intent of delaying the proceeding and frustrating the Administrator's efforts to obtain information related to the charged misconduct. Consequently, the Chair struck Respondent's Answer, deemed the allegations of the Amended Complaint admitted, and barred Respondent from testifying at hearing.

On February 21, 2023, three days before the hearing, Respondent moved to continue the hearing because he wished to attend his daughter's school ceremony. Respondent stated in his motion that he had known since "late January 2023" that his disciplinary hearing and the ceremony were on the same day. The Chair denied Respondent's motion on the ground that it did not present the requisite extraordinary circumstances to justify a continuance under Commission Rule 272. During the hearing, Respondent again asked for a continuance due to purported health issues and his daughter's ceremony. The Chair denied Respondent's request.

EVIDENCE

The Administrator presented testimony in aggravation from four witnesses. The Administrator's Exhibits 1-3 were admitted. (Tr. 92).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Administrator bears the burden of proving the charges of misconduct by clear and convincing evidence. In re Thomas, 2012 IL 113035, ¶ 56. Clear and convincing evidence constitutes a high level of certainty, which is greater than a preponderance of the evidence but less stringent than proof beyond a reasonable doubt. People v. Williams, 143 Ill. 2d 477, 577 N.E.2d 762 (1991). The Hearing Board assesses witness credibility, resolves conflicting testimony, makes factual findings and determines whether the Administrator met the burden of proof. In re Winthrop, 219 Ill. 2d 526, 542-43, 848 N.E.2d 961 (2006).

A respondent's Answer may be stricken and the allegations of the Complaint deemed admitted as a sanction for the respondent's failure to comply with discovery. When the allegations of the Complaint have been deemed admitted, no further proof of those allegations is required and they may be found to have been proved by clear and convincing evidence. See In re Gray, 2016PR00045, M.R. 029543 (Nov. 15, 2018) (Hearing Bd. at 6-7) and cases cited therein.

Respondent is charged with engaging in conduct involving dishonesty, fraud, deceit or misrepresentation by knowingly using \$291,844.28 of trust assets for his own personal or business purposes without authorization.

A. Summary

The allegations deemed admitted establish that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation by knowingly using \$291,844.28 of the De Benedetto Trust funds for his own purposes, without authorization.

B. Admitted Allegations

The charge in this matter pertains to Respondent's conduct as successor trustee of the Lena De Benedetto Revocable Living Trust (Trust). The following allegations have been deemed admitted. Ms. De Benedetto, who was Respondent's aunt, executed the Trust in 2003. It was amended in 2005 and 2011. Upon Ms. De Benedetto's death on December 30, 2017, Respondent

became successor trustee of the Trust. The purpose of the Trust was to direct the sale of a condominium owned by Ms. De Benedetto and to distribute the proceeds to her son in monthly installments. The Trust terms provided that if Ms. De Benedetto's son died before the trust funds were exhausted, the remaining principal and all accrued or undistributed net income were to be divided equally between The American Heart Association, the Lupus Foundation, the Pacific Garden Mission, and the Shriners Children's Hospital (Shriners). Ms. De Benedetto's son died on August 24, 2018.

On February 22, 2019, Respondent opened an account at Parkway Bank, with an account number ending in 7244, entitled "Lena De Benedetto Rev LIV Tr Dtd 9-19-03 Richard M. Ruggiero Successor Trustee" (account 7244). Respondent was the only signatory on this account. On March 1, 2019, Respondent transferred \$49,740.69 into account 7244. On May 17, 2019, \$213,440.76 in proceeds from the sale of Ms. De Benedetto's condominium were transferred into the account. Between April 8, 2019 and December 22, 2020, Respondent wrote 64 checks to himself from account 7244, totaling \$260,644.28. On each of the checks, Respondent made the notation "trustee's fees" or "trustee's fees/misc."

Respondent never notified the charities that they were beneficiaries of the Trust or that he was taking the trust assets. In April 2019, the American Heart Association and Shriners learned they were beneficiaries. Since that time, they have repeatedly asked Respondent to provide an accounting of the trust assets. Respondent has not done so, nor has he made any distributions to the charities.

On January 12, 2021, Respondent redeemed a certificate of deposit (CD) worth \$31,268.96 that Ms. De Benedetto had purchased in 2000 and was titled in the name of the Trust. The same day that he redeemed the CD, Respondent opened a new account at First Midwest Bank with an account number ending in 1448 and titled "Lena De Benedetto Rev LIV Tr Dtd 9-19-03 Richard

M Ruggiero Successor Trustee” (account 1448). Respondent was the sole signatory on account 1448. He deposited all of the CD proceeds into that account. Between January 28, 2021, and May 21, 2021, he wrote eight checks to himself totaling \$31,200 from account 1448, with the memo “trustee fees/misc” or “trustee/misc.”

Respondent did not perform sufficient services for the Trust that would have entitled him to take all of its assets as fees. He knew he was taking funds for his own purposes, without authorization.

C. Analysis and Conclusions

Respondent is charged with violating Rule 8.4(c), which provides that it is misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Ill. Rs. Prof'l Conduct R. 8.4(c). Dishonesty includes any conduct, statement or omission that is calculated to deceive, including the suppression of truth and the suggestion of what is false. In re Gerard, 132 Ill. 2d 507, 528, 548 N.E.2d 1051 (1989). There must be an act or circumstance that shows purposeful conduct or reckless indifference to the truth, rather than a mistake. In re Gauza, 08 CH 98, M.R. 26225 (Nov. 20, 2013) (Hearing Bd. at 42). The allegations deemed admitted clearly and convincingly establish that Respondent acted purposefully and deceitfully. He was not a beneficiary of the Trust, and therefore was not permitted to take all of the Trust assets for himself. As successor trustee, he was obligated to distribute the Trust assets to the charities. He did not do so, and instead knowingly and dishonestly used \$291,844.28 for his own purposes, without authorization, in violation of Rule 8.4(c).

EVIDENCE IN AGGRAVATION

Sharon Russell, Shriners' Vice President of Finance, testified that the hospital relies on charitable donations to accomplish its mission of providing care to pediatric patients without

regard to their families' ability to pay. A \$75,000 donation could have covered over 420 occupational or physical therapy visits, or three outpatient surgeries. (Tr. 48).

Andrew Fussner, Vice President of Estate Settlement for the American Heart Association (AHA), testified that the vast majority of AHA's income comes from charitable contributions. A \$75,000 donation could have funded a research grant for one year, twenty-five clinics that each would have trained more than one hundred people how to perform CPR, or seven hospital training programs for treating cardiac or stroke events. (Tr. 52-53).

Stephen Welch, Director of Development for Pacific Garden Mission (the Mission), testified that the Mission provides services to homeless persons. It is funded entirely by contributions from individuals. With a \$75,000 donation, the Mission could have provided 38,265 meals to persons in need. (Tr. 55-59).

Attorney Tom Wilson represents the AHA and Shriners in their efforts to obtain the funds due to them from the De Benedetto trust. Wilson testified that Respondent never stated in his communications with AHA and Shriners that those charities were not entitled to receive trust funds. Respondent repeatedly gave excuses for why he had not made the distributions and promised the distributions would be forthcoming. On one occasion, Respondent stated he sent a check to Shriners, but no check was received. (Tr. 68-73).

Wilson filed suit on behalf of the AHA and Shriners against Respondent on August 4, 2020. (Tr. 73). The plaintiffs had to file a motion for alternative service because Respondent avoided personal service. (Tr. 75). Wilson discovered that Respondent continued to take Trust assets after the lawsuit was filed. Respondent has never provided the AHA or Shriners with an accounting for the Trust, nor has he disbursed any funds to the four charities. (Tr. 86).

Prior Discipline

Respondent has no prior discipline.

RECOMMENDATION

A. Summary

Having considered the egregious misconduct, the significant factors in aggravation and minimal factors in mitigation, the Hearing Panel recommends that Respondent be disbarred.

B. Analysis

The purpose of the disciplinary process is not to punish attorneys, but to protect the public, maintain the integrity of the legal profession and safeguard the administration of justice from reproach. In re Edmonds, 2014IL117696, ¶ 90. When recommending discipline, we consider the nature of the misconduct and any factors in mitigation and aggravation. In re Gorecki, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (2003). We seek consistency in recommending similar sanctions for similar types of misconduct, but must decide each case on its own unique facts. Edmonds, 2014IL117696, ¶ 90.

Respondent committed egregious misconduct by dishonestly taking an exorbitant amount of Trust assets, totaling \$291,844.28, and depriving the charitable beneficiaries of those funds. This misconduct was reprehensible and warrants the most severe sanction.

There are numerous factors in aggravation. Respondent engaged in a pattern of misconduct and acted with a selfish motive. In addition, his misconduct caused significant harm. See In re Duric, 2015PR00052, M.R. 030734 (May 18, 2021) (Hearing Bd. at 40). Not only has Respondent deprived the charities of funds that could have gone towards improving the health and welfare of numerous individuals, the charities have had to pursue a lawsuit against Respondent to obtain the funds he should have distributed to them.

In further aggravation, Respondent has made no effort to make restitution, has shown no remorse, and takes no responsibility for his wrongdoing. See In re Lewis, 138 Ill. 2d 310, 344-46, 562 N.E.2d 198 (1990). We do not consider as mitigation Respondent's statement that he "feels

bad” because his aunt changed her mind and made Respondent her beneficiary rather than the charities. On the contrary, we find it to be aggravating because it is based on a false and wholly unsubstantiated premise and is another example of Respondent’s efforts to avoid the consequences of his wrongful acts.

Respondent’s conduct in this matter is another significant factor in aggravation. He failed to comply with multiple orders to appear for his deposition and produce documents, resulting in sanctions. Although he attended pre-hearing conferences and filed pleadings, his participation primarily consisted of efforts to delay and obstruct the proceedings. Those efforts continued up to and during the hearing. “An attorney has an obligation to fully cooperate during the course of a disciplinary proceeding, and the failure to do so is an aggravating factor to be considered in recommending a sanction.” See In re Gray, 2016PR00045, M.R. 029543 (Hearing Bd. at 27-30) and cases cited therein. Respondent’s behavior in this matter gives us little confidence in his ability to conduct himself with honesty and integrity in the future.

Furthermore, while Respondent did not testify under oath because he was barred from doing so, he made numerous misrepresentations throughout the hearing. Those misrepresentations included but were not limited to statements that Ms. De Benedetto changed the terms of her Trust to benefit Respondent. Whether under oath or not, Respondent owes a duty of candor in all of his representations to this tribunal. See Ill. Rs. Prof’l Conduct 3.3 and 1.0(m). He has not complied with that duty.

Respondent raised as mitigation certain points which, for the following reasons, we do not consider or give any weight in mitigation. We do not consider Respondent’s statements that his or his family members’ health conditions impacted his ability to cooperate in this matter. These statements were not substantiated with credible evidence from a qualified healthcare provider, and

we do not accept them as true given Respondent's ability to file numerous motions and to participate in lengthy prehearing conferences and his disciplinary hearing.

We similarly reject Respondent's contention that we should consider as mitigation the fact that the conduct at issue arose outside of an attorney-client relationship. Respondent was acting in a fiduciary capacity as the successor trustee and owed duties of honesty and fidelity to the Trust and its beneficiaries. He disregarded those duties in favor of his own selfish interests. Moreover, the enormous amount of money that Respondent misappropriated, his blatant pattern of dishonesty, and the harm he caused to the beneficiaries far outweigh the fact that the misconduct did not affect clients.

Thus, the only mitigation before us is the absence of prior discipline. This factor does not impact our recommendation, however, due to the egregious nature of the misconduct and the many aggravating factors.

The Administrator contends that disbarment is warranted and cites in support In re Woerthwein, 2018PR00076, M.R. 029775 (May 21, 2019); and In re Franklin, 2019PR00068, M.R.031177 (May 19, 2022). The lawyer in Woerthwein was disbarred for dishonestly converting \$237,000 from settlement funds he received in fifteen client matters over a two-year period. He made restitution of only a fraction of the funds and failed to participate in his disciplinary proceeding. The attorney in Franklin was disbarred for dishonestly converting \$122,000 from settlement funds in thirteen client matters.

The Administrator's cited cases support a recommendation of disbarment, as do the following cases in which attorneys who helped themselves to trust assets were disbarred. In In re Moenning, 2015PR00013, M.R. M.R.028655 (May 18, 2017), the attorney took \$360,000 of trust assets while acting as successor trustee, failed to notify trust beneficiaries that they were entitled to funds, and failed to make required distributions to the beneficiaries. Although Moenning

engaged in additional misconduct of failing to act competently and diligently in three probate matters, the Hearing and Review Boards' recommendations that he be disbarred were based primarily on his intentional withdrawal of "exorbitant sums of money" from the trust assets. Similar to Respondent, Moenning showed no remorse and took no responsibility for his behavior.

We also find comparable In re Owens, 2012PR00135, M.R. 27117 (March 12, 2015). Owens was disbarred for taking \$45,100 from a trust while acting as trustee. He claimed he took the funds as fees, but did not perform sufficient services to justify paying himself that amount of fees. Similar to this matter, Owens did not provide the beneficiaries with an accounting, did not inform them of the fees he paid himself, and continued to take funds from the trust after the beneficiaries filed a lawsuit against him.

Respondent asserts that if any sanction is warranted it should be less than disbarment. He cites in support In re March, 71 Ill. 2d 382, 376 N.E.2d 213 (1978); In re Andros, 64 Ill. 2d 419, 356 N.E.2d 513 (1976); In re Madsen, 68 Ill. 2d 472, 370 N.E.2d 199 (1977); In re Mulroe, 2011 IL 111378; Edmonds, 2014 IL 117696; and In re Karavidas, 2013 IL 115767. Respondent's cited cases are not comparable to this case. None of them involve intentional and dishonest misuse of a large amount of funds or the level of aggravation present here.

The same considerations that led to disbarment in Woerthwein, Franklin, Moenning, and Owens, apply in this case. Disbarment is particularly warranted when an attorney's misuse of funds and dishonesty were intentional and consisted of a series of improper acts over an extended period of time, and the attorney "manifested a pattern of behavior which clearly tends to bring the legal profession into disrepute." Lewis, 138 Ill. 2d at 343. All of these circumstances are present here. Respondent's dishonest misappropriation of \$291,844.28 over the course of two years, his failure to accept responsibility for his behavior, and his obstructionist conduct throughout this proceeding bring the legal profession into disrepute and leave us with no confidence in his ability

to abide by the Rules of Professional Conduct. Accordingly, in the interest of protecting the public and the integrity of the profession, we recommend that the Respondent, Richard Michael Ruggiero, be disbarred.

Respectfully submitted,

Patrick M. Blanchard
Ricardo Meza
Daniel G. Samo

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on June 6, 2023.

/s/ Michelle M. Thome

Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

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¹ Respondent has orally expressed his belief that he might be entitled to withhold documents pursuant to his Fifth Amendment privilege against self-incrimination. However, he has not provided a legal basis for that position nor has he timely filed objections on that basis to any of the Administrator's discovery requests. It is improper and "inexcusable" for Respondent to refuse to produce documents based solely on his own opinion that he was not required to do so on Fifth Amendment grounds. See In re March, 71 Ill. 2d 382, 376 N.E.2d 213 (1978), dissenting opinion at 407.