SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-404

IN THE MATTER OF	:
HARRY DREIER,	:
AN ATTORNEY AT LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: December 15, 1993

Decided: March 21, 1994

Marianne A. Rotunna Gallina appeared on behalf of the District XIII Ethics Committee.

Noel E. Schablik appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before the Board based upon a recommendation for public discipline filed by the District XIII Ethics Committee (DEC). The formal complaint charged respondent with misconduct in handling an estate matter, in violation of RPC 1.1(a) and (b) (gross neglect and pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate), RPC 1.15 (failure to promptly deliver client property), R.1:20-3(f) and RPC 8.1(b) (failure to cooperate with the DEC). Further, the complaint alleged that respondent was guilty of a pattern of neglect, in violation of RPC 1.1(b), when the within matter was considered in conjunction with the ethics transgressions that led to respondent's previous discipline.

The grievance was filed by the daughter of respondent's client. The daughter currently resides in Australia. The client, seventy-nine at the time of the hearing, would not appear before the DEC without her daughter. Accordingly, neither testified at the DEC hearing. A stipulation as to the basic underlying facts was read into the record at that time.

Respondent was admitted to the practice of law in New Jersey in 1976. He maintains an office in Watchung, Somerset County. He has been publicly reprimanded on three prior occasions: on September 7, 1983, for intentionally misrepresenting the status of a case, attempting to deceive his client and for failing to file a complaint; on July 18, 1990, for lack of diligence as a trustee and failure to communicate with the trust beneficiary; and on February 9, 1993, for lack of diligence, failure to communicate and failure to cooperate with the ethics authorities.

An understanding of this matter must begin with a review of respondent's prior misconduct in connection with his responsibilities as trustee of a testamentary trust.

I. THE BRUMLEY TRUST

The will of Arthur Aronson provided for the creation of a three-part trust. Decedent's wife, Sylvia Aronson (Aronson) was the beneficiary of a trust for life, while the two children, Theodore Aronson and Elinor Aronson (now Linore Aronson Brumley (Brumley)), were the beneficiaries of a ten-year trust with specific provisions. Respondent, a friend of Theodore Aronson, was asked by the latter to become substitute trustee. By order dated

October 17, 1980, respondent was so appointed. He did not serve as the attorney for the estate.

On March 29, 1986, Brumley filed an ethics grievance against respondent, alleging lack of diligence and failure to communicate in connection with his handling of the trust. That grievance resulted in respondent's 1990 public reprimand. Respondent had retained Francis X. Hermes, Esq. to represent him in connection with that matter and to serve as his attorney in connection with the Aronson trust. After the ethics complaint was filed, respondent had no further communication with Brumley. Hermes communicated with her in respondent's behalf (T52-53).[1] Hermes filed a certification in support of the complaint for termination of the trust, dated February 12, 1990, at respondent's request (T47-48, Exhibit R-3). The beneficiaries' written consent to the termination of the trust had previously been obtained (T48). A final accounting was attached for the court's review and, according to respondent, copies had been sent to the three beneficiaries (T49-50). The accounting was approved by judgment dated May 22, 1990 (T49, 57 Exhibit R-4). Also according to respondent, a copy of the judgment terminating the trust was provided to the beneficiaries (T49). The judgment terminated the trust and required respondent to distribute all funds remaining in the trust to the beneficiaries. Ultimately, the difficulties with the Brumley trust were resolved. There were no allegations of

[1] T represents the transcript of the hearing before the DEC on August 12, 1993.

misconduct by respondent in connection with Theodore Aronson's trust.

II. THE ARONSON TRUST

The current allegations stem from respondent's handling of the trust for the benefit of Sylvia Aronson.

Included within the Aronson trust assets were two Ryan Mortgage Acceptance Corporation Bonds. Respondent held these bonds for Aronson and also collected interest in her behalf (T22). At some time during the pendency of the earlier ethics proceeding, respondent had forwarded one of the bonds to Aronson. When asked why he had forwarded the bond, respondent replied that he had been advised, during the proceeding, to turn over property he had been holding. According to his testimony, respondent thought he had sent Aronson all bonds in his possession. At a later date, he had found the second bond in his file (T57). However, both bonds had been issued in respondent's name as trustee and required his signature for transfer. He was aware that the bonds would eventually need to be returned to him to be transferred (T122-123). When the trust was terminated, the bonds needed to be sold or transferred (T55). (Aronson apparently did not wish to sell the bonds, which were returning a high rate of interest.)

According to respondent's testimony, he did not communicate directly with Aronson regarding the return of the bond. He felt it would be inappropriate, in light of the prior ethics matter (T57, 62). Therefore, he relied on Hermes to serve as an intermediary

with Aronson (T89). Respondent explained that, when a dispute arises between an attorney trustee and the beneficiaries of a trust, it is the norm for the trustee to hire an attorney to represent him. He further stated that, in those circumstances, it is normal for the trustee to rely upon the retained attorney to communicate with the beneficiaries (T116-117). Accordingly, respondent continued, after the 1990 matter was completed, on July 18, 1990, he began to contact Hermes. (He also stated that he did so "virtually immediately" after the May 1990 judgment was entered (T61).) Respondent testified that he communicated with Hermes on the topic by letter and by telephone; the two would discuss it when respondent saw Hermes, usually at the courthouse (T58). Indeed, the record contains a great deal of communication between the two and Aronson as well, in order to accomplish the transfer of the bonds, which should have been a simple and quick procedure. Although respondent had one bond in his possession, he determined to wait until the receipt of the other to transfer them together (T96). See Exhibits R-5 through R-10, R-13 and R-15 through R-16. (By way of clarification, in a letter dated June 24, 1991 (Exhibit R-9), respondent asked Hermes if the bonds had been transferred. Clearly, since respondent had not signed the bonds, he had to have known that they had not yet been transferred. During the DEC hearing, respondent testified that that was a misstatement; he meant to ask if the bond had been received (T69-70)).

Respondent received a notice of redemption, dated January 1, 1992. On January 29, 1992, he wrote to the bank requesting

instructions on how to transfer the bonds to Aronson's name (Exhibit R-11). By letter dated February 13, 1992, respondent was so advised (Exhibit R-12). On March 27, 1992, Hermes sent the bond to respondent (Exhibit R-16). (Respondent testified that he was unaware of when Hermes received it from Aronson (T80). In fact, the investigative report (Exhibit S-1) refers to a letter from Brumley to Hermes stating that Hermes had confirmed receipt of the bond as of March 25, 1992.) Hermes' letter and the bond were received in respondent's office on March 30, 1992. By letter dated May 4, 1992, both bonds were forwarded to the bank. The letter asked that the bank confirm that those were the only bonds and that, if there were any outstanding interest checks, they be replaced and forwarded. Subsequently, through no fault of respondent, the bank lost one of the bonds. As of the date of the DEC hearing, the matter had not been resolved. Respondent was unaware if the other bond had been forwarded (T113). However, the investigative report (Exhibit S-1) refers to a telephone conversation between John Gallina, Esq., the DEC investigator, and Brumley on August 26, 1992, during which Brumley stated that one bond had been reissued and returned to respondent. When asked why he had taken no action with regard to the bonds between March 20, 1992 and May 4, 1992, respondent explained that, during that time period, he was coping with the death of his uncle/partner and handling the latter's cases (T81-82).

As noted above, this multitude of letters took a great deal of time, during which the trust assets should have long been distributed.

Interest payments on the bonds for $320 each were issued twice yearly. In addition, an IRS 1099 form reporting earned interest was sent to respondent from the Bank of New York (T23). On February 25, 1988, respondent forwarded two interest checks to Aronson, in the amount of $800 (T22). Respondent admitted that, thereafter, payments were not forwarded. Respondent never contacted Aronson to inform her that he was holding the checks (T94-95). Respondent further failed to forward the IRS form 1099 after 1988. When asked what he had done with the interest checks, respondent explained the situation as follows:

> A. Well, for a period of time I would endorse, either put them in my trust account at the beginning or thereafter, simply endorse them to Sylvia Aronson and mail them to her.
>
> Q. Okay. Now, is your dealing with those interest checks accounted for in the accounting which you submitted as of the date of the accounting?
>
> A. I assume that it is. I don't specifically recall at this stage.
>
> Q. Now, following your submission of the accounting for court approval, did you receive any further interest checks on account of Sylvia Aronson?
>
> A. Yes.
>
> Q. Okay. Do you remember what you did with those checks?
>
> A. I believe they were placed in my file.
>
> Q. Okay. Your open active office file?
>
> A. Yes.

Q. Now, that represents a difference from how you treated those checks previously. Is that correct?

A. Yes. I think this is also true of my checks I may have received during the -- from the filing of the ethics complaint, that may also be true.

Q. So from the moment that you were made aware of the filing of the ethics complaint --

A. Or shortly thereafter, yes.

Q. -- you maintained those checks in your file?

A. Yes, I believe so.

Q. And did not act on them?

A. I believe that's correct.

Q. Why did you do that?

A. My attorney at that time, Mr. Hermes, advised me that once an ethics complaint is filed, other than by direction or authority of the Ethics Committee or the DRB or the court, that I should take no further action with regard to my representation or, in this case, my trusteeship on that file. And it became, I guess, easy to place those checks into the file.
[T55-56]

Respondent also explained that he held onto the interest checks because he was waiting for the bonds to be transferred (T77).

Respondent contacted Hermes by letter dated February 20, 1992, regarding the transfer of the bonds (Exhibit R-13). Enclosed was a check from the bank for $1,600 representing interest payments from January 1990 through January 1992, to be forwarded to Aronson.

On or about February 25, 1993, the DEC hearing panel chair received two checks from respondent's counsel in behalf of respondent, which were forwarded to Aronson. Both checks were dated May 6, 1992; one was in the amount of $6,312 and the other in

the amount of $3,076, representing principal and interest on the Ryan bonds. The panel chair received another check in April 1993 for $2,091.56. That check was dated October 29, 1992. These were reissues of old checks that had been sent to respondent. Respondent explained that he had asked for replacement checks and that they had been received in two groups (T76). Respondent claimed that, from October 1992 to May 1993, was a reasonable amount of time to hold the checks (T112). (The check was actually forwarded in April 1993). Asked, during the DEC hearing, why he had held the May 1992 and October 1992 checks in his file until 1993, respondent replied:

> The May check, as I believe I've already testified, at that point, if I have my dates correct, I had already received the bond from Mrs. Aronson. And I felt -- and I had already sent the bond to the bank, both bonds. I did not perceive that there would be any reason for a delay in those bonds being returned to me or returned to Mrs. Aronson or returned to Linore Aronson Brumley with Mrs. Aronson's name on it. I presumed and preferred they be returned to me so I had a paper trail of where they went, and indicated that, I believe, in my letter to Mr. Cabrera. And, therefore, I thought it was going to be a very short period of time before I would have the bonds back, and I would forward the check with the bonds. [T110-111]

See also T86. Respondent also explained that, during the time in question, he dealt with the aforementioned death of his uncle/partner, the dissolution of his partnership, another pending ethics matter and a significant medical treatment (T118).

* * *

On January 15, 1992, Brumley filed a grievance against respondent in behalf of Aronson. Between January 1992 and June

1992, the DEC secretary communicated with respondent, his counsel and the grievant in an effort to resolve the matter (T-7, Exhibit S-2). After failing to have the matter resolved, the DEC secretary forwarded the matter for investigation. On June 30, 1992, the DEC investigator, John Gallina, Esq., wrote to respondent requesting a written reply to the allegations in the grievance. On July 15, 1992, respondent telephoned Gallina, leaving a message at that time. Gallina returned the call and left a message. By letter dated August 12, 1992, Gallina informed respondent that a reply had not been received and allowed him seven days to submit a written response to the grievance (Exhibit R-1). On August 13, 1992, respondent telephoned Gallina. Respondent suggested that they have a meeting to discuss the allegations. Gallina stated that a meeting was unnecessary and expressed the need for a written response as soon as possible. Respondent agreed to provide a written reply. Gallina did not receive a written response to the allegations and there was no further verbal communication from respondent (T30).

Gallina's investigative report, filed with the DEC on September 11, 1992, reflected a violation of RPC 8.1(b), based upon respondent's failure to reply to his requests for information (T31-32). On or about September 29, 1992, the formal complaint was filed with the DEC and served on respondent. During the DEC hearing, respondent produced a copy of a letter dated August 17, 1992, which, he stated, had been prepared in response to Gallina's letter of August 12, 1992 (T85, Exhibit R-2). In the letter,

respondent informed Gallina that he had forwarded the bonds to the bank for transfer and requested guidance from Gallina as to what to do with the interest checks he had in his possession (T37). Although respondent recalled drafting the letter, he did not recall with certainty having mailed it to Gallina (T85). Gallina testified that he had no recollection of having received it (T36).

Respondent's answer, dated August 6, 1993, was not provided until three days before the DEC hearing. Respondent testified that he had difficulty in retaining counsel due to a large outstanding fee already owed for a prior matter and his counsel's unwillingness to enter an appearance until the sum was paid down (T90). Respondent also owed a significant debt to his therapist for services in a prior matter. When asked why he had not contacted the DEC secretary or Gallina to explain the situation or why he had not filed an answer to the complaint, respondent replied that he had decided to retain a certain attorney in whom he had confidence; obtaining the funds for the attorney, however, had taken longer than respondent had anticipated (T115).

Respondent testified that he and Theodore Aronson are close friends. He added that Brumley has not spoken with her brother in approximately fourteen years. Respondent also advanced his belief that Brumley used the ethics system to hurt him, as a way of indirectly hurting Theodore Aronson (T91-92).

* * *

The DEC found respondent guilty of a violation of RPC 1.1(b) and RPC 1.3, concluding that

> even if his reliance on having another attorney act as intermediary with grievant could be accepted, it does not excuse him from failing to properly monitor the steps needed to be taken to transfer the bonds. Even if Mrs. Aronson had one of the bonds in her possession, respondent never adequately explained why several years went by before he checked his file to discover the other bond or why forwarding Mrs. Aronson's interest checks to her had to be delayed until he had the bonds transferred. [Panel Report at 7]

In addition, the DEC found a violation of RPC 8.1(b). With regard to that violation, the DEC found that, even if it was true that respondent had sent the August 17, 1992 letter (Exhibit R-2), it was not responsive to Gallina's request for information. The DEC also found that RPC 1.15 was not applicable to this situation because respondent received the trust checks as a trustee and not as an attorney.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent is guilty of unethical conduct is fully supported by clear and convincing evidence.

The DEC found that respondent violated RPC 1.1(b), RPC 1.3 and RPC 8.1(b). The Board disagrees, however, with the DEC's finding of a pattern of neglect. One of the prior matters took place many years before the within misconduct. In addition, one of the prior

matters was based on the same trust and the same clients as the within matter. The Board, therefore, finds that not enough matters are before it to amount to a pattern of neglect. Also, the Board finds that the record supports violations of RPC 1.1(a) (gross neglect) and RPC 1.4 (failure to communicate), both of which were charged in the complaint. The Board concludes that respondent's reliance on Hermes to communicate with Aronson was unreasonable, particularly in light of the fact that respondent clearly knew that Hermes was not adequately doing so.

The DEC found that RPC 1.15(b) was inapplicable to this situation because respondent was serving as a trustee and not as an attorney. The Board disagrees. An attorney serving as a trustee is held to the same high standards as an attorney who is representing a client. "Conduct by an attorney which engenders disrespect for the law calls for disciplinary action even in the total absence of an attorney/client relationship." In re Carlsen, 17 N.J. 338 (1955), citing In re Howell, 10 N.J. 139 (1952).

Previously, misconduct similar to that of respondent has merited a public reprimand. In re Stewart, 118 N.J. 423 (1990) (where the attorney failed to communicate with his client in an estate matter and acted with gross negligence by failing to pay the funeral bill and to file the New Jersey inheritance tax return in a timely fashion. The attorney had been previously privately reprimanded); In re Horan, 78 N.J. 244 (1978) (where the attorney was guilty of inordinate delay in the handling of a simple estate, including waiting over two years to file the New Jersey inheritance

tax return and not providing the Federal estate tax return until almost three and one-half years after the death of the decedent).

The twist in this matter is that respondent was publicly reprimanded previously for similar actions in his handling of the same estate. Indeed, the Board's Decision and Recommendation in the Brumley matter was signed on May 25, 1990. The court's order to distribute the trust assets was issued only days before that and, in fact, several months after the Board's hearing. Respondent was, thus, clearly on notice that his actions in connection with these trusts were in violation of the Rules of Professional Conduct. Still, he carried on in the same manner. It is obvious that respondent does not realize the seriousness of his responsibilities to his clients. He seems to blame the derelictions in the within matter on Hermes' failure to communicate with Aronson and to take necessary action to obtain the bond so it could be transferred. Whether Hermes is also guilty of misconduct in this matter is immaterial. Respondent remained the trustee and the responsibility to the trust was ultimately his. The following exchange took place during the DEC hearing, regarding respondent's responsibility to the trust:

> Q. Now, you're stating that you had delegated those responsibilities to Mr. Hermes. Isn't that correct?
>
> A. Yes.
>
> Q. But Mr. Hermes was not the trustee of the trust, was he?
>
> A. No. He was the attorney for the trustee of the trust.

Q. And Mr. Hermes' name was not on any of the bonds or interest checks, was it?

A. No, it was not.
[T105-106]

Yet, as is clear from respondent's brief, he is still attempting to place the blame on Hermes for the delay in this matter and for the lack of communication with the trust beneficiaries.

Although respondent's argument that he could not communicate with Aronson or Brumley during the pendency of the prior ethics matter may have some merit, that matter was completed in 1990. Respondent's contention that he could not speak to Aronson or Brumley thereafter is unpersuasive. While communicating with Aronson or Brumley might not have been respondent's chosen course of action, it was clear to him that Hermes was not acting diligently to resolve this matter. Respondent should have taken immediate steps to remedy Hermes' inaction. Moreover, respondent acted abominably when, allegedly because he should not have contacted Aronson, he placed the interest checks in his file and allowed them to become stale, withholding them from a widow who needed the funds.

Respondent has twice before been publicly reprimanded for misconduct in an estate matter and, indeed, was previously disciplined for misconduct stemming from this same trust. He is simply unable to understand his responsibilities toward clients and others who have reason to rely on him. Given these factors, as well as his failure to adequately cooperate with the DEC, a one-

year suspension is warranted. The Board unanimously so recommends. Three members did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 5/21/1994 By: Raymond R. Trombadore

Raymond R. Trombadore
Chair
Disciplinary Review Board