SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-082

IN THE MATTER OF

JOHN F. RODGERS, JR.

AN ATTORNEY AT LAW

Decision

Argued: April 17, 2003

Decided: June 19, 2003

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Respondent appeared *pro se*.

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

This matter was originally before us in November 2001 based on a recommendation for discipline filed by the District IV Ethics Committee ("DEC"). After our review, we remanded the matter to the Office of Attorney Ethics ("OAE") to investigate a possible knowing misappropriation of estate funds by respondent, as well as a potential knowing misappropriation and conflict of interest by another attorney involved in the matter. The knowing misappropriation by respondent would have been premised on his awareness that a realtor had retained funds belonging to the estate.

On March 5, 2003, the OAE returned the matter to us. The thorough investigative report concluded that there was no reasonable likelihood of proving knowing misappropriation on respondent's part. The report also found no basis for filing ethics charges against the other attorney. We, thus, reviewed the matter based on the record originally presented to us in November 2001, supplemented by the OAE's investigative report.

The formal complaint charged respondent with violations of *RPC* 1.1(a) (gross neglect); *RPC* 1.3 (lack of diligence), *RPC* 1.4(a) (failure to communicate with client); *RPC* 1.4(b) (failure to explain a matter to the client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); *RPC* 1.15(a) (failure to keep client funds in a separate account and failure to make or maintain complete records of those funds); *RPC* 1.15(b) (failure to promptly deliver funds or property to a

client or third person) and *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1970. He has no disciplinary history.

Respondent rented an office for his sole practice of law until 1996, when he moved his practice to his residence. Since November 1999, he has worked as the administrative assistant to the manager of a CompUSA store, in Mount Laurel. According to respondent, at the time of the ethics hearing he had one remaining bankruptcy matter to handle; once the matter was completed, he intended to cease practicing law. Respondent stated that, although he has not "abandoned" the idea of practicing law again in the future, he has no intention of resuming a solo practice.

* * *

At the hearing below, the presenter informed the hearing panel that respondent had stipulated (1) the facts in the complaint, (2) the introduction of the exhibits to the complaint into evidence and (3) all of the charged violations, with the exception of a violation of *RPC* 8.4(c). The hearing, thus, focused on whether respondent had engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. Relying solely on the complaint, the

presenter introduced no evidence beyond its allegations and exhibits. Respondent, too, announced his intention to confine the facts to those contained in the complaint. Although it does not appear that respondent was sworn in, he answered the hearing panel's questions about the facts and circumstances of this matter.

The following facts were gleaned from the complaint and the brief transcript of the hearing. In July 1990, respondent was appointed as administrator of the estate of Florence G. Webb, who had died presumably intestate, but, as seen below, had executed a will. The will was discovered during the administration of the estate. The estate assets consisted of two bank accounts totaling $6,500, United States savings bonds totaling $3,000, an automobile, several small insurance claims, collectibles and real estate in Camden. A $7,995 mortgage encumbered the Camden property. According to the complaint, respondent failed to preserve and maintain the property; failed to pay taxes, as well as water, sewer and utility charges; permitted the property to become "dilapidated;" failed to act with reasonable diligence and promptness in selling the property; and allowed the realtor to retain estate funds.

Respondent's problems began in October 1990, when he engaged a local realtor, Daniel Riiff, to locate a buyer for the property. Respondent testified that, although he had no prior business dealings with Riiff, in 1987 he had filed bankruptcy petitions for Riiff's

corporations. In 1988, respondent filed a personal bankruptcy petition on Riff's behalf. Despite his awareness of Riiff's financial problems, respondent trusted him.

Respondent asserted that, without any authority, Riiff signed a contract for the sale of the property.[1] According to respondent, although the property was worth only $8,000, a buyer, Carmen Sanchez, had agreed to purchase it for $25,000. Sanchez made an initial deposit of $3,000, agreeing to pay an additional $3,250 at closing and to obtain an $18,750 mortgage. Respondent told Webb that, because Sanchez was not able to obtain the mortgage, Riiff agreed to "take back" a five-year mortgage loan,[2] presumably as an agent for the seller-estate. Although no closing took place, on April 5, 1991, Sanchez took possession of the property, paying Riiff the balance of the down payment. Rodgers understood that Riiff was to hold the deposit monies in escrow until the closing. Riiff never turned over any of the funds to the estate. From June 1991 to October 1993, Sanchez paid $375 per month to Riiff, for a total of $10,875.

In November 1993, after Sanchez had moved to Puerto Rico, her boyfriend, Marvin Vallardes, began making the monthly payments to Riiff. Between November 1993 and March 1997, Vallardes made the payments to Riiff, totaling $8,165. According to

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1 The October 30, 1990 contract, however, was signed by respondent, not Riiff.

2 The mortgage note provided for a seven-year term.

respondent, he expected that Riiff would turn these payments over to him, as the administrator of the estate.

Meanwhile, in April 1991 respondent discovered a will signed by the decedent, naming John Webb and Thelma Hunter as beneficiaries. If the decedent had died intestate, her beneficiaries would have been Hunter and two nieces. Respondent asserted that, once the will was found and the change of beneficiaries was discovered, the closing of title on the property could not take place. Respondent added that, because he was not familiar with estate procedures, after the will was discovered he retained another attorney to represent the estate. On April 8, 1993, the will was admitted to probate, with respondent continuing as administrator of the estate.

Respondent testified that he did not ask Riiff to turn over the funds to him because, once the will was discovered, respondent was not sure if he had the authority to do so or even if he remained the administrator of the estate. In this regard, the complaint charged that, because respondent had essentially abandoned his fiduciary duty to preserve, marshal and distribute the estate assets, he remained unaware of Riiff's actions and allowed him to misappropriate estate funds. Although respondent might not have known of the arrangement when Sanchez moved into the property, he later became aware of it. It is not clear from the record, however, if he found out about this arrangement while Riiff was collecting the payments or after the payments had ceased, in 1997.

Respondent's testimony allows the inference that he was aware of the financial arrangement while Riiff was collecting the payments:

> Q. Did you ever ask Mr. Riiff for the monies from the tenants?
>
> A. Yes.
>
> Q. And when did you do that?
>
> A. That would have been done in '94.
>
> Q. Okay, and how long after the tenants had vacated was that? I'm not sure what the sequence is.
>
> A. I don't know if they actually vacated the property at that point. [T49][3]

On January 21, 1994, the estate attorney sent respondent an accounting, based on information that Riiff had provided. According to the accounting, Riiff had received a total of $18,250, consisting of a $6,250 down payment and $12,000 in monthly payments. That accounting appears to be accurate, up to that point. Although Riiff claimed expenses of $9,784.92, respondent did not obtain receipts or other documentation for the alleged expenditures. The accounting indicated that Riiff had retained $8,465.08 of the estate's funds in his escrow account.

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[3] T refers to the February 9, 2001 hearing before the DEC.

On December 11, 1996, Superior Court Judge Theodore Z. Davis entered an order (1) removing respondent as administrator of the estate, (2) appointing Brian V. Lucianna as its administrator and (3) requiring both respondent and Riiff to file an estate accounting within thirty days. Neither respondent nor Riiff complied with the order.

On March 17, 1997, Judge Davis ordered both respondent and Riiff to file an accounting within ten days. The order provided that, if they failed to comply, they would be held in contempt and would be responsible for costs and counsel fees incurred by Lucianna in reconstructing the records for an accounting. Again, respondent did not comply with the order. Riiff sent Lucianna an accounting indicating that he had received income of $22,750 from January 15, 1992 to March 1, 1997; that he had incurred expenses of $24,614; and that there was a shortfall of $1,864. Riiff did not produce any records to document the income received, the claimed expenses or the satisfaction of the mortgage.

Vallardes provided Lucianna with receipts for rent/mortgage payments totaling $26,497, or $3,747 more than Riiff admitted receiving. Riiff failed to disclose on the accounting that, four days earlier, he had purchased the mortgage for $2,000. The balance of the mortgage at that time was $6,380.35, not the $14,120 shown on Riiff's accounting.

At some point, Vallardes vacated the property. On September 18, 1998, Lucianna sold the property to a third party.

According to Lucianna's May 13, 1998 accounting, the estate assets amounted to $46,864.95; its received income totaled $27,400.60. Lucianna itemized disbursements of $5,932.07, mainly for funeral expenses. He disallowed all of Riiff's claimed expenditures, because of the lack of documentation. The court approved Lucianna's accounting.

In addition to charging respondent with neglect of his obligations as administrator, the complaint alleged that he did not file a New Jersey transfer inheritance tax return or pay the tax, resulting in an assessment of $2,209.61 against the estate for interest and penalties. The complaint also charged that (1) respondent gave Riiff collectibles owned by the decedent, anticipating that Riiff would sell them and that Riiff never turned over the collectibles or any income derived from them; (2) respondent failed to account for $366.53 missing from the decedent's checking account; and (3) respondent failed to communicate with the estate beneficiaries and to reply to their reasonable requests for information about the status of the matter.

On October 22, 1998, Judge Davis entered a $50,973.14 judgment against respondent, as follows:

> a. In the amount of $27,763.53[4] plus interest from January 2, 1997, representing the Estate money remaining in the hands of John F. Rodgers, Jr., Esquire, as reported in the First and Final Account, Schedule A, filed in this matter.

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[4] Presumably, this sum consists of the $26,497 in income from the property, collectibles valued at $900 and the $366.53 missing from the checking account.

b. In the amount of $21,000, plus interest from January 2, 1997, representing the depreciation from the fair market value of the Estate property as appraised on the date of decedent's death to its current fair market value;

c. In the amount of $2,209.61, representing late interest penalties imposed and paid by the Estate due to the failure of John F. Rodgers, Jr., Esquire, to file an inheritance tax return for the Estate.

In addition, judgment was entered against respondent and Riiff jointly and severally for $18,895.33, representing Lucianna's counsel fees and costs. A $26,497 judgment plus interest was also entered against Riiff for the payments received on the proposed sale of the Camden property.

For his part, respondent testified that he had been a friend of the Webb family. After Florence Webb's funeral, John Webb had asked him to serve as estate administrator. He had agreed, although he was not familiar with this area of the law. He testified that, after he discovered the will and could not locate the witnesses, he hired an attorney to probate the will and serve as the counsel for the estate. He conceded that, although he relied on that attorney to perform the estate accounting, he failed to monitor or supervise the attorney's activities. He further admitted the following:

> When I was practicing, especially in the '90s, I failed to communicate with parties, with Mr. Riiff, [the estate attorney]. Perhaps that was the major problem, keeping on top of everything, maybe this may not have happened; and also I was doing something that I was not really familiar with basically when I was involved in the estate work. I put too much reliance on [the estate attorney].
>
> [T15]

Respondent also acknowledged that he failed to supervise Riiff. He admitted to the OAE investigator that he had been aware that Riiff was collecting monthly payments and that Riiff had retained the down payment. He believed that, at closing, those payments would be applied to the purchase price. He claimed that, in 1994, he sent a letter to Riiff asking him to turn over the income from the property. According to respondent, Riiff's failure to reply to the letter forced him to realize that Riiff was "screw[ing] around with the estate."

As to the judgment entered against him, respondent stated that he has paid nothing toward that debt. The company that posted the required bond, when respondent was appointed as administrator of the estate, paid $13,000 to the estate. According to respondent, although Lucianna has agreed to accept $2,500 in settlement of the judgment, he is not able to come up with that sum.

Lastly, respondent stated that the 1990s were a particularly stressful time for him; since 1991 or 1992, he has been operating his law practice without a secretary and, at one point, filed a Chapter 13 bankruptcy petition on his own behalf.

* * *

The DEC found that respondent was guilty of all of the violations charged in the complaint, including *RPC* 8.4(c). The DEC concluded that respondent's failure to (1) deliver the estate assets to the beneficiaries; (2) explain to them the location and condition of the assets; and (3) inform them that Riiff had not replied to his inquiries constituted deceit, in violation of *RPC* 8.4(c). The DEC recommended a one-year suspension.

* * *

Following a *de novo* review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is supported by clear and convincing evidence. Indeed, respondent stipulated the facts alleged in the complaint, admitted that he violated *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4(a), *RPC* 1.4(b), *RPC* 1.15(a) and *RPC* 1.15(b) and contested only the *RPC* 8.4(c) charge.

After respondent agreed to serve as administrator of the estate of Florence Webb, he neglected his duties. He failed to take action to preserve the main asset of the estate, the real property located in Camden. He also failed to monitor Riiff's activities. Although respondent was appointed administrator in July 1990, when he was removed, more than six years later, the property remained unsold. There is no indication that respondent ever questioned Riiff about his efforts to sell the property. More egregiously, respondent was

aware that Riiff had retained the down payment and monthly payments. Yet, respondent never demanded that Riiff remit those monies to the estate or submit proof of corresponding expenses. Respondent's only explanation was that, after the will was discovered, he did not know if he had the authority to question Riiff. His failure to demand the return of the monies that belonged to the estate was an egregious breach of his fiduciary duty as estate administrator.

Furthermore, respondent failed to prepare and file a state inheritance tax return, resulting in the assessment of penalties and interest against the estate; he gave Riiff collectibles, allegedly worth $900, to be sold and then failed to demand that Riiff either return them or account for any funds received from their sale; he failed to account for $366.53 that was missing from Webb's checking account; and he failed to communicate with the beneficiaries, never informing them of Riiff's actions.

Ultimately, the successor administrator, Lucianna, obtained a judgment against respondent for about $70,000 (approximately $51,000 in damages and almost $19,000 in attorney's fees), plus interest. As of the date of the ethics hearing, respondent had not paid any portion of the judgment.

Respondent's overall conduct in this matter violated *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4(a) and *RPC* 1.15(b). Because there is no indication that respondent failed to explain a

matter to a client or that he failed to maintain client funds in a separate account, we dismissed the charges of violations of *RPC* 1.4(b) and *RPC* 1.15(a).

As mentioned earlier, the DEC found that respondent acted with deceit when he failed to disclose to the beneficiaries (1) the location and condition of the assets and (2) Riiff's failure to reply to his inquiries about the income from the property. As administrator of the estate, respondent had a fiduciary duty to obtain, preserve and distribute the assets. He also should have kept the beneficiaries informed about the proposed sale of the property, the cancellation of the sale and the retention of the income by Riiff. There is no clear and convincing evidence, however, that respondent's failure to disclose this information to the beneficiaries amounted to a violation of *RPC* 8.4(c). Although the DEC found that such failure was deceitful, the record does not support a finding in this regard.

In sum, this record supports findings that respondent grossly neglected the administration of the estate, failed to communicate with the beneficiaries, and failed to safeguard and deliver property or funds to a third party.

There remains the issue of discipline. In *In re Gahles*, 157 *N.J.* 639 (1999), the attorney, who was the executrix of an estate, did almost no work on the matter, failing to prepare an accounting and to file the inheritance tax return, resulting in the assessment of penalties against the estate. She first refused to resign as executrix, but then signed a consent order for her removal. Thereafter, she failed to comply with an order for the return

of the file and for the production of an accounting. After the filing of a motion to compel compliance, she finally submitted an accounting. For her lack of diligence and gross neglect the attorney received a reprimand.

In *In re Smith*, 101 *N.J.* 568 (1986), the attorney was suspended for three months. He was retained to represent the executrix of the estate and took little action, if any, in behalf of the estate. He failed to return repeated telephone calls from his client; neglected the estate; failed to file the state transfer inheritance tax return, resulting in the assessment of interest against the estate; and failed to reply to the grievance and to file an answer to the complaint. *See also In re Medford*, 148 *N.J.* 16 (1997) (attorney suspended for three months for grossly neglecting an appeal, resulting in its dismissal; misrepresenting the status of the appeal to the client; failing to return a $900 check to the client; failing to turn over the file to new counsel; practicing law while ineligible and failing to cooperate with disciplinary authorities); *In re Sternstein*, 141 *N.J.* 15 (1995) (three-month suspension for gross neglect, lack of diligence, failure to communicate with clients and failure to cooperate with disciplinary authorities in four matters); *In re Saginario*, 142 *N.J.* 424 (1995) (attorney suspended for three months for gross neglect by failing to file an appeal after accepting substantial payment); and *In re Brantley*, 139 *N.J.* 465 (1995) (attorney suspended for three months for lack of diligence, gross neglect, pattern of neglect and

failure to communicate with clients in two matters and failure to cooperate with disciplinary authorities in a third case).

Here, respondent's conduct was more serious than the conduct in *Gahles* and *Smith*. In addition to grossly neglecting the estate and failing to communicate with clients, he failed to safeguard and promptly deliver funds of a client or third party. Moreover, his infractions took place over six years and resulted in economic harm to the estate. In mitigation, we considered that he had an unblemished twenty-year career prior to these incidents. Balancing this mitigating factor with his overall conduct and the monetary injury to the estate, we determined to impose a three-month suspension. In addition, upon reinstatement, respondent shall practice under the guidance of a proctor for one year. Two members did not participate.

We further required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Robyn M. Hill
Robyn M. Hill
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John F. Rodgers, Jr.
Docket No. DRB 03-082

Argued: April 17, 2003

Decided: June 19, 2003

Disposition: Three-month suspension

Members	*Disbar*	*Three-month Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Maudsley		X					
O'Shaughnessy		X					
Boylan							X
Holmes		X					
Lolla		X					
Pashman		X					
Schwartz							X
Stanton		X					
Wissinger		X					
Total:		7					2

Robyn M. Hill

Robyn M. Hill
Chief Counsel