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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-412

IN THE MATTER OF

JAMES J. MAGUIRE, JR.

AN ATTORNEY AT LAW

Decision

Argued: March 16, 2000

Decided: August 15, 2000

Brian D. Gillet appeared on behalf of the Office of Attorney Ethics.

Albert B. Jeffers appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline filed by special master David H. Dugan, III.

Respondent was admitted to the New Jersey bar in 1974. During the relevant time period, he maintained an office for the practice of law in Trenton, New Jersey. As of the date of oral argument before us, respondent was not practicing law. He has no disciplinary history.

The complaint alleged violations of RPC 1.15(a) (knowing misappropriation of client trust funds and failure to safeguard client funds); RPC 1.15(b) (failure to promptly notify a client or third person of the receipt of property in which the client or third person has an interest and failure to promptly turn over the property); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); RPC 1.7(a) and (b) (conflict of interest); RPC 1.8 (conflict of interest/prohibited transaction); RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence) and RPC 1.15(d) and R. 1:21-6 (recordkeeping violations).

* * *

I. The Rigler/Fox Runne Loan Matter (Count One)

Margaret L. Rigler was born in 1891. In 1965, she entered the Meadow Lakes Retirement Community. For the last three or four years before she died, Rigler resided in the Meadow Lakes' infirmary, which was similar to a nursing home. She died on December 1, 1992. Although Rigler had hearing, writing and mobility problems, her

mental capacity apparently remained unimpaired to the date of her death.

Shortly after Rigler moved to Meadow Lakes, she retained Victor Mowat as her financial advisor. In 1979, Mowat introduced respondent to Rigler. Mowat was a long-time family friend of respondent. On May 5, 1979, respondent drafted a power of attorney from Rigler to Mowat and witnessed Rigler's signature on the document. Respondent also drafted a will for Rigler.[1]

In 1984, respondent drafted another power of attorney, this time from Rigler to him. Thereafter, Rigler's dividend and annuity checks were sent to respondent's office or directly deposited in her account, for which respondent had power of attorney. Respondent paid Rigler's bills with the funds.

On January 28, 1988, respondent prepared and witnessed a second will for Rigler, appointing him as executor of her estate. The will provided for specific bequests of $5,000 to St. David's Chapel in Hightstown, New Jersey, and $75 to the Fidelity Union Bank Employees' Christmas Fund ("Employees Christmas Fund"). The will also provided for the equal distribution of Rigler's residuary estate between Mowat and the Society of the Free Church of St. Mary the Virgin ("Free Church Society") in New York.

On November 12, 1992, approximately three weeks before Rigler's death,

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[1] At the OAE audit, respondent stated that he thought that a copy of the 1979 will was in his file. It could not be found, however. Respondent believed that Mowat was both the executor and a beneficiary of the will.

respondent prepared a third power of attorney for Rigler, in favor of Mowat. Allan Proske, an associate of Mowat at IDS, American Express, witnessed Rigler's signature on the document.

On December 1, 1992, Rigler died at the age of 101. On December 14, 1992, Rigler's will was admitted to probate and letters testamentary were issued to respondent, as executor of the estate.

A. Respondent's Representation of Fox Runne Associates

In 1985, respondent was a partner in JJM Associates, a general partnership formed by respondent and his cousin, Hugh Maguire. JJM owned property in Hamilton Township, on which respondent and his cousin wanted to build a medical office building. The project became known as the Centrum project.

Respondent met Russell Poles and Alan Amaral in 1987, when Poles and Amaral became involved in the Centrum project. At that time, Poles and Amaral were already involved in several construction projects through various entities. One of their projects, known as Drews Farm, consisted of single-family houses in Upper Freehold Township, New Jersey. The houses were being built by Fox Runne Associates, a general partnership of two corporations, the Polamar Group and the Severino Group. Poles and Amaral were the shareholders of the Polamar Group; the Severino Group was

owned by Frank Severino.[2]

In or about November 1989, respondent began representing Fox Runne and other entities owned by Poles and Amaral. The representation included legal work in connection with obtaining new financing for Fox Runne.

Sometime prior to March 1990, Fox Runne lost its $15 million revolving line of credit with City Federal Savings Bank, after the bank was taken over by the Resolution Trust Corporation ("RTC"). Although Fox Runne secured additional funding, there were limits placed on the number of houses that Fox Runne could have under construction at one time. Fox Runne also sought private financing.

On April 5, 1991, Robert and Theresa LaPlaca entered into a contract to purchase a house in Drews Farm for $298,500. Because Fox Runne could not obtain financing from their banks for construction of the LaPlacas' house, it was agreed that Fox Runne would reduce the selling price of the house by $20,000 if the LaPlacas allowed their $100,000 deposit to be used for its construction. Respondent represented Fox Runne and Francis Accisano represented the LaPlacas in negotiating the terms of the contract. The contract provided that Fox Runne would obtain a $150,000 construction loan for the LaPlacas' house. The LaPlacas' $100,000 loan was to be subordinate to the $150,000 construction loan. The house closing was scheduled for

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[2] Frank Severino later changed the name of the corporation from the Severino Group to Titus Realty. For a period of time, respondent was an Assistant Secretary of Titus Realty and was authorized to sign documents on its behalf.

October 15, 1991.

B. The Construction Loan

Respondent advised Amaral and Poles that he had a private investor, Rigler, who could fund the $150,000 construction loan for the LaPlaca's house. Respondent obtained the title work and the title insurance commitment on behalf of Rigler. He then asked another attorney, Mark Cubberley, to represent Rigler in connection with the construction loan.

According to Cubberley, he perceived his client to be respondent because respondent had a power of attorney from Rigler. It is undisputed that Cubberley never met or spoke with Rigler. All of his discussions concerning the loan were with respondent.

The Rigler/Fox Runne construction loan "closed" on April 22, 1991. There was no formal closing. Instead, Cubberley left an unsigned mortgage and note with respondent. Those documents showed Amaral and Poles, "individually, jointly and severally," as the borrowers, an interest rate of eleven percent and a balloon payment of all unpaid principal, interest and late charges on April 22, 1992. Respondent gave Cubberley a $54,000 check and a list of disbursements to be made: $3,000 to respondent for fees, $270 to respondent for "recording & releases," $1,500 to John Cranston for "broker's fee"; $1,500 to himself for his fee and $45,000 to City Federal

for the release of its lien on the LaPlacas' lot.

Between June 3, 1991 and January 17, 1992, respondent disbursed seventeen attorney trust account checks, totaling $66,257, from Rigler's funds. He also disbursed one check for $8,750 directly from Rigler's checking account, on September 27, 1991. The total amount disbursed from Rigler's funds, pursuant to the Rigler/Fox Runne loan, was $129,007[3] (the $54,000 check to Cubberley, of which Cubberley disbursed $52,770,[4] and the $75,007 disbursed by respondent).

The mortgage and note prepared by Cubberley were apparently never signed. Instead, respondent prepared a different mortgage and note and witnessed Pole's and Amaral's signatures on the new documents. The mortgage and note contained the same interest rate and repayment terms, but the name of the borrower was changed from Amaral and Poles to Fox Runne.

On October 31, 1991, the title company advised Cubberley and respondent that its commitment had expired and that there was no longer a contract to insure title because, among other things, the insurance premium had not been paid and the mortgage had not been recorded. Respondent recorded the mortgage on December 5, 1991.

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[3] The complaint alleged that only $120,257 of the mortgage amount was disbursed, but that did not include the $8,750 check from Rigler's checking account to Fox Runne.

[4] Cubberley later returned $1,230 to the Rigler estate.

By letter dated September 5, 1991, Accisano requested that respondent inform him of the expected completion date of the LaPlacas' house, because the LaPlacas had noticed that no work had been done on the house in one month. Fox Runne failed to complete the La Placas' house by the contract date. Eventually, Accisano sent a "time of the essence" letter and scheduled the closing for January 10, 1992. On December 10, 1991, respondent advised Accisano that Fox Runne would not be able to complete the house by January 10, 1992.

On July 22, 1992, Al, Frank and Russ, a general partnership,[5] gave Rigler a $25,000 mortgage on another Drews Farm lot. The mortgage, which was drafted by respondent, referred to a note signed the same day, in which Al, Frank and Russ promised to pay Rigler $25,000 plus ten percent interest by no later than June 22, 1994. According to respondent, the $25,000 mortgage was additional security for Rigler's $150,000 loan.

C. The LaPlaca Litigation

In March 1992, Accisano filed a civil complaint on behalf of the LaPlacas against Fox Runne, Poles, Amaral, Rigler and others for specific performance of the

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[5] According to Amaral, he, Poles and Severino were the general partners of Al, Frank and Russ; the partnership was established to hold the property that had been removed from City Federal's blanket lien on Fox Runne Associates' property. The record did not explain why a new partnership was created for that purpose. On May 6, 1992, Fox Runne Associates deeded property, including the LaPlaca property, to Al, Frank and Russ.

contract or a refund of the LaPlacas' $100,000 deposit. Edward Hunter represented Rigler and, after Rigler's death, her estate. Respondent filed an answer on behalf of Fox Runne, Amaral and Poles. In November 1992, pursuant to a substitution of attorney, Fox Runne, Amaral and Poles began acting pro se.

The Polamar Group filed a bankruptcy petition on November 11, 1992; Poles and Amaral filed individual petitions in February 1993. At some point, Severino also filed a bankruptcy petition.

On November 12, 1992, the same day that Rigler signed the third power of attorney, in favor of Mowat, Rigler also signed a cancellation of the $150,000 mortgage, which stated that the mortgage had been fully paid. Mowat witnessed Rigler's signature. It is undisputed that Rigler had not received any mortgage payments at that time. Apparently, the mortgage cancellation was never filed.[6]

On March 19, 1993, Accisano filed an amended complaint, adding respondent and Cubberley as defendants. On November 17, 1993, the court awarded partial summary judgment to the LaPlacas, finding that the Rigler estate had failed to administer the construction loan "in the conventional manner of a Construction Mortgage lender and that monies disbursed on the subject mortgage loan were applied

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[6] Respondent testified that the cancellation was obtained in anticipation of a settlement of the LaPlaca suit.

for purposes other than the construction of the [LaPlacas' house]."[7] The court reduced the Rigler estate's lien by the amount that it found had been used for other purposes and set the lien figure at $64,431.65.

By Order dated March 29, 1994, the court established the priority of the liens and directed that the LaPlaca property be sold at a foreclosure sale. The Rigler estate's lien of $64,431.65 plus interest was first in priority. Accisano and Hunter agreed that, if the Rigler estate was the successful bidder at the sheriff's sale, the LaPlacas would take an assignment of that bid for $90,000.

On December 6, 1994, Accisano issued a trust account check for $90,000, payable to the Rigler estate and Edward Hunter. Hunter retained $15,756.33 for his attorney fee and remitted $74,243.67 to respondent as executor of the Rigler estate. Thus, of the $129,007 disbursed under the Rigler/Fox Runne mortgage, only $75,473.67 ($74,243.67 plus the $1,230 returned by Cubberley) was repaid to the estate.

The ethics complaint did not allege that all of the disbursements evidenced misconduct. Rather, the questionable disbursements included (a) checks made to payees other than Fox Runne; (b) checks with notations indicating they were used for

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[7] Judge McGann found that the following disbursements were applied for "purposes other than the construction" of the house: $45,000 to City Federal, $3,000 to respondent, $3,000 to John Cranston, $1,500 to Cubberley, $270 to respondent, $818 to the law firm of Levin Shea and $1,000 to David Zurav, Esq.

purposes other than the construction of the LaPlacas' house; (c) checks drawn after respondent's December 10, 1991 letter, in which he admitted that the LaPlacas' house would not be completed by the date set by Accisano in his "time of the essence" letter and (d) checks that were endorsed over to respondent's attorney business account.

Before us, the OAE argued that respondent knowingly misappropriated only the three trust checks (the December 4, 1991 $750 check payable to Fox Runne and endorsed by Cindy Horner, a Fox Runne employee; the December 11, 1991 $1,500 check payable to Fox Runne and endorsed by Amaral and the January 17, 1992 $1,373.15 check payable to Amaral and endorsed by Amaral) that were endorsed over to respondent's attorney business account. At the time that the December 4, 1991 and the December 11, 1991 trust checks were deposited in respondent's business account, there were overdrafts in the account and four of respondent's business account checks had been returned for insufficient funds. The funds from those two trust checks were used for respondent's business expenses, including his office rent.

* * *

During the OAE's August 26, 1996 audit, respondent made the following statements about his relationship with Rigler:

- he only met with Rigler a few times between 1979 and 1992 and never spoke with her on the telephone;
- Rigler never requested an accounting from him;

- he did not remember why he had five different bank accounts for Rigler;

- he did not speak with Rigler at all in 1992, not even when he drafted the November 1992 power of attorney from Rigler to Mowat;

- he spoke with Mowat, not Rigler, about the 1992 power of attorney;

- Rigler's power of attorney was given to Mowat because respondent became a defendant in the LaPlaca suit.[6]

In addition, at the same audit, respondent made the following statements about the Rigler/Fox Runne mortgage:

- he spoke with Mowat about the loan to Fox Runne because he saw it as "an opportunity to make a decent return for [Rigler]." Mowat replied "you can do what you want to do," but told respondent to make sure that Rigler's mortgage was a first mortgage;

- he did not recall if he spoke with Rigler about the loan, but Mowat told him he would discuss it with her;

- he did not remember who drafted the mortgage and the note;

- he did not recall if there was a note signed with the mortgage;

- he did not remember who was supposed to record the mortgage, but believed that Cubberley was supposed to do it;

- he did not know why the mortgage had not been recorded until December 1991 although he remembered that there were problems because Cubberley did not return his telephone calls; "I didn't even know when it was recorded, I don't recall not knowing that. I don't know anything else. I didn't worry."

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[6] However, Accisano did not file the amended complaint adding respondent as a defendant until March 1993, after Rigler's death.

At the ethics hearing, respondent testified that, in April 1991, when Rigler lent funds to Fox Runne, he believed that the loan was a "prudent investment." Respondent admitted that he knew, in April 1991, that Fox Runne was experiencing a "cash flow problem" because the RTC had halted the City Federal funding. He also admitted that, in April 1991, he was representing Fox Runne and other entities owned by Poles and Amaral as defendants in collection actions filed by suppliers and sub-contractors and as plaintiffs in breach of contract actions against home buyers. However, respondent added, based on his review of the financial statements for Fox Runne, as well as the financial statements of Poles' and Amaral's other entities, Fox Runne "looked like a pretty good company."

As to why he did not use the note and mortgage prepared by Cubberley, respondent testified that they were deficient because they showed the mortgagor as Poles and Amaral, when Fox Runne was the record owner of the property, and they identified the property to be mortgaged as block 42, lot 11, rather than block 42, lot 17.

Asked why the mortgage had not been promptly recorded, respondent replied that he had given a corrected mortgage and note to Cubberley and that Cubberley was supposed to record the mortgage. Respondent testified that, after he received the October 31, 1991 letter from the title company stating that the mortgage had not been recorded, he either found another signed mortgage in his file or had Poles and Amaral

execute a new mortgage and then recorded it.[6]

Respondent testified that the disbursements from the Rigler loan were all legitimate, made at the request of Poles and Amaral. According to respondent, he would get a telephone call stating what work had been done and requesting another draw against the construction loan. He would verify that the work had been done by calling the realtor on site and, on occasion, by conducting his own inspection. He would then make the requested disbursement.

With respect to the three checks that were endorsed over to his attorney business account, respondent testified that he gave Amaral cash for the three checks because "sometimes [Amaral] would come after hours. Sometimes it was because he had to pay people in cash." According to respondent, he used cash from two bars that he owned to cash the trust checks for Amaral. Respondent deposited the checks in his business account "to show the trail... I wanted to make sure there was a record." Respondent further testified that he made the disbursements to Amaral after it was evident that Fox Runne was no longer working on the LaPlacas' house to preserve the work that had been done.

According to respondent, the December 1991 overdrafts and returned checks in his attorney business account were caused by the bank's improper "sweeping" of his

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[6] On the recorded mortgage, respondent certified that Poles and Amaral signed the mortgage, as the partners of Fox Runne, on April 22, 1991.

account. Respondent testified that, in December 1991, he owed the bank approximately $1 million in outstanding loans. He had an agreement whereby the bank would "sweep" one of his accounts, not the attorney business account, on a daily basis. The bank, however, would "sweep" his attorney business account when the other account had no balance. He disputed that the bank had a right to "sweep" his business account. According to respondent, the bank subsequently sued him and, in early 1992, "through default," the bank "took all the properties."

* * *

Mowat testified as follows about respondent's involvement in Rigler's affairs and the Rigler loan to Fox Runne:

According to Mowat, Rigler was mentally competent to the day she died. Rigler wanted her funds invested "very prudently to make sure she was looked after regardless of how long she lived."

When Rigler told Mowat, in 1984, that she wanted someone to take over the daily management of her financial affairs, Mowat recommended respondent. According to Mowat, his employer, IDS American Express, did not permit him to act as an attorney-in-fact because of conflict of interest concerns.

With respect to the Rigler/Fox Runne mortgage, Mowat testified that respondent had telephoned to say he was going to talk to Rigler about a mortgage loan to Fox

Runne. Mowat assumed that respondent had spoken with Rigler, because Rigler had consulted with him about the loan. According to Mowat, he had told Rigler that, if the loan was guaranteed and a first lien on the property and "if everything went all right," she would receive a "great" interest rate and the return of her principal within a year.

Mowat did not review any financial documents of "the builder" or any mortgage documents: "I did not go into any detail. It wasn't my position to do that. [Respondent had] the power of attorney." According to Mowat, respondent did not tell him anything about the builder or about respondent's relationship with the builder, other than he knew the builder. Mowat testified that he was unaware that Cubberley would be representing Rigler in the loan transaction. According to Mowat, he never spoke with respondent about how the loan was to be administered.

Mowat recalled witnessing Rigler's signature on the November 12, 1992 cancellation of the Fox Runne mortgage, at respondent's request, but stated that he did not know why Rigler had signed it. Mowat could not remember if respondent was present on that date. Mowat believed that the cancellation was signed at the same time that Rigler signed her power of attorney to him. According to Mowat, he agreed to accept Rigler's power of attorney, even though he knew he could not act on it, because Rigler "insisted I be her power of attorney. And to please the old lady, I said yes, I will do it, knowing full well I couldn't act upon it."

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As noted earlier, Cubberley testified that he perceived respondent to be his client because respondent represented that he held a power of attorney for Rigler. Cubberley never met or spoke with Rigler.

Cubberley stated that he got the information for the mortgage and note from respondent and from the title report. He made Poles and Amaral the mortgagors/borrowers because he wanted them to sign "individually, jointly and severally" so that they would be personally liable. According to Cubberley, respondent told him it would be "more appropriate" for Fox Runne to be the mortgagor. Cubberley had no objection to that change, so long as there were personal guarantees from Poles and Amaral. However, according to Cubberley, respondent never told him that respondent had drafted, and had his clients sign, a different mortgage. Cubberley was particularly concerned about the personal guarantees because there was an "alphabet soup" of partnerships in the line of title and he was worried that Fox Runne might be "just a paper company" that could be placed into bankruptcy.

Cubberley testified that he had "limited" involvement in the negotiation of the terms of the mortgage; primarily, he discussed with respondent the rate of interest to be paid to Rigler and his attorney fee. With respect to the loan closing, Cubberley testified that he went to respondent's office expecting that there would be a formal closing. After waiting, he was told that Poles and Amaral were going to be late. He then left the closing documents and the disbursement checks with respondent.

Subsequently, he had his secretary telephone respondent on several occasions to get copies of the signed closing documents, but he never received them. Cubberley testified that respondent was supposed to record the mortgage.

According to Cubberley, after April 1991, he had nothing further to do with the Rigler/Fox Runne loan. Although $1,230 of the loan proceeds remained in his trust account when the title company advised that the title insurance premium had not been paid, he did not pay it because "I got to the point in this transaction where I would not have paid one dollar more until I saw the power of attorney evidencing the fact that [respondent] had that power of attorney. And until I saw documents signed by Mr. Amaral and Mr. Poles, I wasn't even sure there were a Mr. Amaral and Mr. Poles at one point in this case."

Cubberley remitted the funds remaining in his account, $1,230, to the Rigler estate on December 30, 1998.

* * *

Robert LaPlaca testified that, after construction began on his house, he and his wife visited the site almost every evening and that the construction stopped in August 1991. Eventually, after the litigation and the sheriff's sale, the LaPlacas took title to the house. LaPlaca testified that, when he took title, the house was a "shell." It lacked a septic system, well, heat, air conditioning, flooring, plumbing fixtures, electric

fixtures, stair rails and inside doors. According to LaPlaca, a house that was supposed to cost $298,500, eventually cost in excess of $367,500.

In the spring of 1992, LaPlaca and his wife visited Rigler to attempt to negotiate a settlement of their lawsuit with her. Rigler was in bed in the infirmary. Although Rigler was "really deaf," according to LaPlaca, she spoke clearly, was alert and "very lucid." Because of her hearing problem, the LaPlacas communicated with her in writing and Rigler answered verbally. Rigler told them that respondent was her attorney. She did not remember having lent money to Fox Runne for the construction of the LaPlacas' house.

* * *

Amaral testified that, in April 1991, financing for Fox Runne was "tight" because the RTC had stopped the City Federal funding and they had "basically used their capital reserves" for Fox Runne. However, he was not concerned because Fox Runne was only one of five projects being built by his various entities and "we had money flying around."

At some point, Fox Runne began seeking private investors because the banks did not "want to touch real estate" because of "the RTC situation." In April 1991, they were thirty to sixty days behind in paying their subcontractors and were working out payment plans with the subcontractors.

According to Amaral, Fox Runne did not complete the LaPlacas' house because

> we lost probably about fifty million dollars in loans in the same type of manner that happened with the RTC. So that where we did have money coming in before, basically everything just exploded. And we just couldn't continue on. There were too many lawsuits, too many negative things happening. We just abandoned all the companies and went home.

Amaral corroborated respondent's testimony that the checks issued by respondent from Rigler's funds were used for the LaPlacas' house and that he had received cash from respondent for the checks that had been deposited in respondent's business account.

* * *

Respondent offered expert testimony of Lee B. Roth, an attorney who has practiced real estate law since 1962 and has testified as an expert in real estate cases in New Jersey courts. Roth opined that

> a construction loan of $150,000 at the rate of 11% secured by a first Mortgage on a building lot, that is under contract for sale in the amount of $298,500.00, where the buyer represented by counsel has advanced a deposit of $100,000.00 that will be subordinate to the construction loan, where the value of the lot is appraised to be worth $80,000.00, and where only $54,000.00 is advanced before construction, and other advances are made as construction progresses, is a good investment. Additional advances may not have been managed as they should have been managed, but that does not make the transaction, as conceived, other than a good investment.

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The complaint alleged that respondent's conduct with respect to the Rigler/Fox Runne loan violated RPC 1.15(a) (knowing misappropriation of client funds and failure to safeguard client funds); RPC 1.15(b) (failure to promptly notify a client or third person of the receipt of property in which the client or third person has an interest and failure to promptly turn over the property); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation) and RPC 1.7(a) and (b) (conflict of interest).

II. The Rigler Power of Attorney Matter (Count Three)[7]

Between 1984 and 1992, respondent was supposed to pay Rigler's bills, including her monthly payments to Meadow Lakes. Respondent admitted that, on numerous occasions, he did not pay each month's charges in full, thereby incurring unnecessary late charges. Respondent also admitted that, although it was his responsibility to do so, he failed to file Rigler's 1987, 1988 and 1989 federal income tax returns, failed to pay her taxes and failed to pay Rigler's estimated quarterly tax payments. As a result, the Internal Revenue Service ("IRS") assessed interest and penalties on the taxes owed by Rigler. On February 12, 1992, the IRS filed a $22,297.74 lien against Rigler's apartment at Meadow Lakes for taxes, interest and

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[7] For continuity, count two of the complaint will be discussed below.

penalties for the 1987 and 1988 tax periods. In 1992 and 1993, the IRS also placed levies on Rigler's bank accounts and on her IDS investment account.

In 1993, respondent retained an accountant to file Rigler's 1990, 1991 and 1992 tax returns. Respondent testified that, before that, he had retained another accountant to prepare Rigler's tax returns, but the accountant had never prepared them. Respondent admitted that he was responsible for filing the returns and paying Rigler's taxes and that his failure to do so was a violation of RPC 1.3 (lack of diligence). However, he denied that his conduct rose to the level of gross neglect, as alleged in the ethics complaint.

According to the OAE auditor, respondent's failure to file the tax returns caused $14,208.23 in losses.

III. The Borowsky and Sussman Loan Matters (Count Four)

In December 1989, Richard Borowsky, an acquaintance of respondent, requested a $3,000 loan from respondent. Borowsky promised to repay the loan from a $20,000 arbitration award he expected to receive within thirty days. Respondent testified that he spoke with Borowsky's attorney and confirmed the arbitration award.

On December 14, 1989, Borowsky signed a promissory note in which he promised to pay Rigler, "c/o [respondent]," $4,000 plus eighteen percent interest within one year. Borowsky also assigned Rigler $4,000, plus interest, from the proceeds of

his two pending personal injury cases. The assignment is not dated. Although the notarization on the assignment is dated December 1989, the notarization is not signed.

Respondent then gave Borowsky $4,000.[8] Respondent issued two checks from Rigler's checking account, both dated December 15, 1989: one for $1,012.58 and the other for $400. Respondent also endorsed over to Borowsky four checks payable to Rigler. Two of the checks were annuity payments to Rigler and two of the checks were dividend payments from Rigler's IDS mutual funds. Respondent admitted that he did not discuss the Borowsky loan with Rigler.

Borowsky did not repay the loan. He died in 1995. Respondent testified that, after Borowsky's death, he retained a Pennsylvania attorney, at his expense, to file a civil action on behalf of Rigler's estate against the law firm that represented Borowsky in the personal injury cases.[9] As of the January 1999 ethics hearing, the case was still pending.

Respondent also lent a total of $3,250 from the Rigler estate's funds to a friend, William Sussman. On June 17, 1993, respondent issued a $2,000 check from a Rigler estate checking account to Sussman. On February 4, 1994, respondent issued a $1,250 trust check to Sussman from the Rigler estate's funds in respondent's attorney trust

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[8] It is unknown why respondent gave Borowsky $4,000 instead of $3,000 as requested by Borowsky.

[9] Borowsky had transferred his cases from the New Jersey attorney to whom respondent had spoken to a Philadelphia firm. Respondent testified that he believed that Borowsky's estate was also a defendant in the suit.

account. Although respondent testified that he believed he had received a promissory note from Sussman, the note was not produced. The interest rate was twelve per cent. Respondent also testified that, at some point, he had the title papers to Sussman's automobile, but had returned them to Sussman when the loans were repaid.

Although respondent's Rigler estate ledger card shows only two payments from Sussman, totaling $1,200, respondent produced copies of checks showing that Sussman issued twelve checks to "the Estate of Margaret Rigler," totaling $3,650, which were deposited in respondent's trust account.

It is noteworthy that, between July 1993 and December 1993, Sussman repaid only $1,200 of the $2,000 loan. Despite that fact, in February 1994, respondent gave Sussman an additional $1,250. Sussman did not make any loan payments between December 1993 and July 1995.[10]

Mowat testified that respondent did not consult him about the loans to Sussman and Borowsky.

The complaint alleged that respondent's conduct with respect to the loans to Borowsky and Sussman violated RPC 1.15(a) (failure to safeguard client funds) and RPC 1.7(a) and (b) (conflict of interest).

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[10] Based on statements made by respondent during the audit, the OAE also alleged that respondent lent an additional $1,200 of Rigler's estate funds to Sussman in 1996. Respondent denied having made that loan. There was no independent evidence of it.

The Rigler Estate Administration Matter (Count Five)

As previously noted, Rigler died on December 1, 1992. On December 14, 1992, Rigler's will was admitted to probate and letters testamentary were issued to respondent as executor. Even before the will was admitted to probate, respondent made a distribution to Mowat from Rigler's estate.[11] On December 8, 1992, respondent issued a $1,900 check to Mowat from respondent's trust account, with the notation "partial distribution Rigler."

Thereafter respondent issued the following trust account checks to Mowat as distributions from Rigler's estate: December 27, 1992, $10,000 and $5,000; December 27, 1992, $15,000; January 12, 1993, $5,000; and October 6, 1993, $10,000, for a total of $46,900. Respondent also made the following distributions to Mowat from the estate's checking account: December 29, 1992, $50,000; January 12, 1993, $20,000; and March 2, 1993, $20,000, for a total of $90,000. Furthermore, on March 3, 1995, respondent had a cashier's check for $20,000 issued to Mowat. Finally, when respondent received the proceeds from the LaPlaca settlement ($74,243.67), in May 1995, he endorsed the settlement check over to Mowat. In total, respondent distributed $231,143.67 to Mowat from the Rigler estate.[12] On August 15, 1995, Mowat returned $37,218.74 of the LaPlaca settlement funds to respondent. Therefore, Mowat received

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[11] As noted earlier, Mowat was one of the beneficiaries of Rigler's estate.

[12] Respondent also invested $50,000 of the estate funds with IDS.

$193,924.93 from the Rigler estate. Respondent never obtained a refunding bond and release from Mowat.

On December 18, 1992, respondent and his wife gave Mowat a $100,000 second mortgage on their house. According to Mowat, respondent borrowed the entire $100,000 on that date, a statement respondent disputed. Respondent testified that he did not receive the $100,000 on December 18, 1992, but periodically requested funds from Mowat, all of which were secured by the mortgage. According to respondent, "[a] lot of times [Mowat] would receive the distribution of the estate, which was his money. Then he would then write me a check out....So if I gave him a distribution, he often lent me the money at that point."

As of the January 1999 ethics hearing, respondent had not made any payments on the loan and did not know how much he owed Mowat. At that time, a tenant was residing in respondent's house. Respondent testified that he intended to sell the house when the tenant's lease expired and pay Mowat out of the sale proceeds.

As noted above, Rigler made two specific charitable bequests: $5,000 to St. David's Chapel and $75 to the Employees' Christmas Fund. Respondent did not make those distributions.[13]

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[13] The OAE found a letter in respondent's files, dated December 14, 1992, advising the Free Church Society, St. David's Chapel and the Employees' Christmas Fund that they were named as beneficiaries of the Rigler estate and that the bequests would be forwarded to them "as soon as is possible." The letter did not show a street address or post office box for St. David's Chapel or the Employees' Christmas Fund. The complaint alleged -- and respondent admitted -- that the Chapel never received respondent's letter, apparently because

With respect to the other residuary beneficiary, the Free Church Society, respondent made one distribution of $50,441.77 in June 1993. Respondent obtained a refunding bond and release from the Free Church Society.

Respondent testified that he made disproportionate distributions to Mowat because "I thought I would pay the church once I got the mortgage proceeds. I think is what I was thinking." He could not explain why he did not send checks in equal amounts to the two beneficiaries.

On November 19, 1993, respondent filed a state inheritance tax return for the Rigler estate. On the return, respondent did not include the funds due from the Fox Runne mortgage, the Borowsky loan, or the Sussman loans as assets of the estate.

In June 1998, Edward Hunter replaced respondent as the attorney for the estate. Apparently this was the result of the OAE's notice to the Attorney General's Office that respondent had failed to notify the Attorney General's Office, as he was required to do, that the Rigler estate's beneficiaries included charitable organizations. Respondent continued as the executor of the estate. As of the January 1999 ethics hearing, the Rigler estate was not yet settled.

The complaint alleged that respondent's conduct with respect to the Rigler estate violated RPC 1.1(a) (gross negligence), RPC 1.3 (lack of diligence), RPC 1.7 (conflict of interest) and RPC 1.15(a) and (b) (failure to notify a third party upon the receipt of

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of the incomplete address. The complaint was silent as to the Employee's Christmas fund.

funds and to promptly turn over the funds).

IV. The JJM Associates Matter (Count Two)

As set forth above, respondent met Poles and Amaral in 1987 when they became involved in the Centrum project with JJM Associates, a general partnership comprised of respondent and his cousin. According to respondent, during the relevant times, his interest in JJM varied between twenty-five and thirty-three percent.

When the project did not go forward on time, JJM got extensions of their building approvals in 1988. Apparently, JJM obtained additional extensions in 1990 and 1992. In November 1990, Poles and Amaral each gave JJM a $150,000 mortgage on each of their houses in order to show their good faith in proceeding with the project. No money changed hands. Rather, Poles and Amaral gave JJM the mortgages in order to remain involved in the Centrum project. Respondent prepared and recorded the mortgages.

In 1992, JJM learned that a representation made by JJM to Poles and Amaral at the start of the project was inaccurate, namely, that sewer was available. In 1996, JJM discharged Poles' mortgage without payment. Although respondent testified that he also prepared a discharge for Amaral's mortgage, it was never filed.

The Centrum project was never completed. JJM lost the property through a tax foreclosure.

In 1989, respondent began representing Fox Runne as well as other business entities of Poles and Amaral. That representation continued through1992. Respondent also filed answers on behalf of Poles and Amaral, when they were named as individual defendants in suits against their entities.

In December 1990, respondent represented Amaral, individually, at a hearing on a traffic summons. In September 1991, respondent also represented Poles, individually, at an arraignment on a "bad check charge."

In February 1993, when Amaral and Poles filed for personal bankruptcy, they listed JJM Associates as a lien holder on their houses, to the extent of $150,000 for Amaral and $177,000 for Poles. Poles also listed respondent personally as a creditor for $50,000.

The complaint alleged that respondent's conduct in representing Amaral, Poles and Fox Runne while doing business with Poles and Amaral violated RPC 1.7(a) and (b) (conflict of interest) and RPC 1.8 (conflict of interest/prohibited transaction).

V. Recordkeeping Violations (Count Six)

At its August 26, 1996 audit, the OAE found – and respondent admitted – that he was guilty of numerous recordkeeping deficiencies. It is undisputed that the recordkeeping deficiencies were corrected prior to the ethics hearing.

The complaint alleged that respondent violated R. 1:21-6 and RPC 1.15(d)

(recordkeeping violations).

* * *

In mitigation, respondent offered evidence that he was addicted to alcohol and cocaine from 1985 to January 1992. On January 21, 1992, he admitted himself into a rehabilitation facility and has not used alcohol or cocaine from that date. He became very involved in Alcoholics Anonymous groups and in Lawyers Concerned for Lawyers. He has been instrumental in helping other addicts become sober.

Respondent testified that he was obtaining a master's degree in drug and alcohol counseling and intended to work in that field on a full-time basis. He further stated that he was working full-time "for the state"[14] and was in the process of closing his law practice.

* * *

The special master concluded that respondent knowingly misappropriated client trust funds in December 1991 when he deposited, in his attorney business account, two

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[14] At the argument before us, respondent's counsel stated that respondent was employed by the Department of the Treasury for the State of New Jersey.

attorney trust checks payable to Fox Runne and used those funds for his office rent.[15] The special master found "not credible" respondent's explanation that he had cashed the checks for Amaral. The special master also found Amaral's testimony "weak":

> If Amaral had chosen to cash the checks he could easily have done so at a bank. Moreover, it makes no sense for respondent to establish a paper trail through his business account. The appropriate paper trail would have been through Fox Runne's own account, since the two checks constituted loans to Fox Runne which it was obligated to repay to the Rigler estate. The clear and obvious reason for respondent's depositing the two checks into his business account was to cover outstanding checks that would otherwise have bounced.

The special master also found the following violations of the Rules of Professional Conduct: RPC 1.7, RPC 1.15(a) and RPC 8.4(c) (count one); RPC 1.1(b) and RPC 1.3 (count three) ; RPC 1.7 and RPC 1.15(a) (count four); RPC 1.1(b), RPC 1.3, RPC 1.7 and RPC 1.15 (a) and (b) (count five); and RPC 1.15(d) and R. 1:21-6 (count six).

The special master recommended that respondent be disbarred.

* * *

Upon a de novo review of the record, we are satisfied that the special master's conclusion that respondent was guilty of unethical conduct is fully supported by clear

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[15] The OAE argued that respondent misappropriated all three trust checks deposited in the business account, not just the two discussed by the special master.

and convincing evidence.

Although we are unable to agree with the special master that there is clear and convincing evidence that respondent knowingly misappropriated Rigler's funds, we find that respondent violated numerous Rules of Professional Conduct over an extended time period and that his egregious misuse of Rigler's funds and his abuse of the trust that Rigler placed in him still warrants his disbarment.

In order to reach his conclusion that respondent knowingly misappropriated the checks that were deposited in respondent's business account, the special master had to reject respondent's and Amaral's testimony that respondent cashed the checks for Amaral. There was no testimony or other evidence that respondent had not cashed the checks. The special master, instead, remarked that Amaral could have cashed the checks at a bank. Respondent, however, testified that Amaral would sometimes pick up checks "after [banking] hours" because he needed to make cash payments. The special master, nevertheless, disbelieved respondent's testimony, doubting that respondent had any cash to give to Amaral, in light of respondent's financial problems. The special master did not give any weight to respondent's contention that the cash had come from two bars that respondent owned.

Circumstantial evidence can be used to prove that an attorney knowingly misappropriated trust funds. In re Roth, 140 N.J. 430, 445 (1995); In re Davis, 127 N.J.118, 128 (1992). However, that evidence must be clear and convincing. The clear

and convincing standard requires evidence that produces "in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." In re Purrazella, 134 N.J. 228, 240 (1993) (citation omitted).

Here, there is not sufficient evidence to refute Amaral's and respondent's testimony that respondent cashed the checks for Amaral. The LaPlaca litigation was settled in 1994, five years before the ethics hearing. Respondent's business and professional association with Amaral ended even earlier. There was no reason for Amaral to lie about the checks. This is not to say that the mere fact that a respondent's explanations or defenses are supported by testimony of another precludes a finding of knowing misappropriation. See, e.g., In re Wright, 163 N.J. 133 (2000) and In re Freimark, 152 N.J. (1997). However, under the factual circumstances of this case, we cannot find clear and convincing evidence of knowing misappropriation.[16]

* * *

[16] It is possible that other knowing misappropriation charges could have been made in this case. For example, if respondent could not have reasonably believed, in 1992 and 1993, that there would be sufficient funds from the LaPlaca settlement proceeds to pay the Free Church Society its rightful share of the estate, respondent's excess disbursements to Mowat could have constituted knowing misappropriation. There is also the possibility that respondent's payment of $1,500 to Cranston and his loan to Borowsky amounted to knowing misappropriation. However, it is not clear that the complaint specifically charged knowing misappropriation for that conduct and/or that respondent was on notice that he had to defend against those charges. In light of our determination that respondent should be disbarred for other misconduct in this matter, we need not remand the matter for further investigation or the filing of a supplemental complaint.

The complaint charged that, in five instances, respondent failed to safeguard Rigler's or her estate's funds or the estate's beneficiaries' funds: (1) the Rigler/Fox Runne loan disbursements; (2) the Borowsky loan; (3) the Sussman loans; (4) the excess distribution of the estate's funds to Mowat; and (5) the failure to notify the other beneficiaries about the bequests and to make the appropriate distributions to them.

In his brief, respondent admitted that he violated RPC 1.15(a) with respect to the Borowsky loan and the excess distributions to Mowat. Even in the absence of respondent's admissions, however, clear and convincing evidence demonstrates that respondent's conduct was improper. Respondent lent Rigler's funds to an acquaintance, Borowsky, without discussing the loan with Rigler or her financial advisor. The only security was an assignment of the proceeds of two pending personal injury cases. The assignment was not dated or notarized. Such a speculative "investment" was contrary to Rigler's expressed concern that her funds be invested "very prudently."

Likewise, respondent's excess distributions to Mowat and his failure to obtain a refunding bond and release, constituted failure to safeguard the Rigler estate funds.

There is also clear and convincing evidence that respondent violated RPC 1.15(b) by failing to tell the two specific beneficiaries about Rigler's bequests to them and by failing to make the proper distributions to them and to the Free Church Society.

With respect to the charge that respondent failed to safeguard Rigler's funds in

his disbursements of the loan proceeds, respondent testified that he disbursed funds when requested by Fox Runne after talking to a realtor on site and, on occasion, by his personal inspection. He apparently never required Fox Runne to present documentation of the work that had been done or of its payments to subcontractors. He primarily relied upon the word of the realtor on the site, hardly a disinterested observer. Furthermore, some of the disbursements were clearly not for the construction of the LaPlacas' house and respondent knew that at the time. For example, Cranston was paid $1,500 to find other investors for Fox Runne. In addition, two of the other disbursements were either "bookkeeping errors" or were used to obtain another loan for Fox Runne. We find, therefore, that respondent failed to safeguard Rigler's funds in his disbursements of the loan proceeds.

Respondent argued that his June 17, 1993 and February 4, 1994 loans to Sussman from the Rigler estate's funds did not violate RPC 1.15(a) because he retained the title to Sussman's automobile until Sussman repaid the $3,250 plus interest. Respondent pointed out that the interest rate was twelve per cent and that Sussman repaid $3,650.

However, Sussman made no payments between December 1993 and July 1995 and did not make the final payment until August 1996. The interest, even compounded annually, would have been more than the $400 paid by Sussman. Furthermore, although Sussman had repaid only $1,200 of the initial $2,000 loan by December 1993

and had not made any payments in January and February 1994, respondent lent Sussman an additional $1,250. Finally, respondent did not explain why he made loans to a friend, rather than liquidate and wind up the estate, as he was required to do as its executor and attorney.

We conclude, thus, that respondent failed to safeguard Rigler's funds in all of the circumstances charged in the complaint.

* * *

The complaint charges that respondent violated the rules dealing with conflict of interest in the following transactions: (1) the representation of both Rigler and Fox Runne in the loan negotiation, the loan closing and the loan disbursements; (2) the Borowsky loan; (3) the Sussman loans; (4) the excess distributions to Mowat, a creditor of respondent; and (5) the representation of Fox Runne, Amaral and Poles, while simultaneously doing business with them through JJM Associates.

Respondent argued that he only represented Fox Runne, not Rigler, in the negotiation and closing of the loan and in the distribution of its proceeds. However, the evidence establishes that respondent acted as Rigler's as well as Fox Runne's

attorney throughout the loan transaction.[17] With respect to the negotiation of the Rigler/Fox Runne loan, it is obvious that respondent was the only attorney involved in that phase of the transaction. Although respondent allegedly retained Cubberley to represent Rigler, Cubberley testified that he considered respondent, as attorney-in-fact for Rigler, to be his client. Cubberley's unrebutted testimony was that he was involved only in negotiating the interest rate and his own fee. Respondent did not even send the letter authorizing Cubberley to represent Rigler until April 22, 1991, the date the loan "closed."

Cubberley further testified that Poles' and Amaral's personal guarantees of the loan were essential. Yet, there were no personal guarantees, apparently because Poles and Amaral avoided giving such guarantees. Presumably, if Cubberley had represented Rigler's interests in negotiating the terms of the mortgage loan, those guarantees would have been obtained.

It is also evident that respondent represented both Rigler and Fox Runne in the loan closing. There was no formal closing, although Cubberley expected that there would be. When respondent determined that the mortgage and note prepared by Cubberley were defective, respondent had his clients sign different documents and then did not record the mortgage or pay the title insurance premium. As a result, title

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[17] Notwithstanding that Hunter, not respondent, represented Rigler in the LaPlaca suit, Rigler perceived respondent as her attorney. Indeed, she told the LaPlacas, in the spring of 1992, that respondent was her lawyer.

insurance was never obtained.

Respondent's assertion that Cubberley was supposed to record the mortgage is not credible because (1) respondent, not Cubberley, received the funds for "recording" and "releases"; (2) respondent gave Cubberley a list of disbursements for Cubberley to make from the $54,000 check; the list did not contain any disbursements to Cubberley for recording the mortgage or for the title insurance premium; and (3) respondent handled all of the loan disbursements – initially, by telling Cubberley which disbursements should be made from the $54,000 and then handling the remaining disbursements himself.

Respondent's arguments that he was acting as Fox Runne's attorney only in connection with the loan disbursements and that he did not require Rigler's consent to the disbursements are without factual or legal support. Typically, it is the lender, not the builder or the builder' attorney, who makes the determination that construction is advancing as represented by the builder and that additional funds should be disbursed. Having undertaken to disburse the loan proceeds as construction progressed, respondent had a fiduciary obligation to the lender – Rigler – to make sure that the disbursements were proper.

In short, there is no merit to respondent's argument that he was acting solely as Fox Runne's attorney in the loan disbursements and that, because he had Fox Runne's consent to the disbursements, there was no violation of the ethics rules in those

transactions.

In Opinion No. 100 of the Advisory Committee on Professional Ethics, 89 N.J.L.J. 696 (October 27, 1966), the ACPE found that the dual representation of a mortgagor and a mortgagee was a direct conflict, in violation of RPC 1.7(a), unless there was full disclosure and informed consent to the representation. See also In re Dolan, 76 N.J. 5, 13 (1978) ("This opinion should serve as notice that henceforth where dual representation is sought to be justified on the basis of the parties' consents, this Court will not tolerate consents which are less than knowing, intelligent and voluntary....This applies with equal force to the dual representation of mortgagor and mortgagee."); In re Chase, 68 N.J. 392 (1978) (reprimand imposed where attorney represented the lender and the borrower in a commercial loan transaction without having obtained the consent of both clients to the representation after having made full disclosure).

There is no evidence that respondent obtained Rigler's consent to the dual representation or that he made "a full disclosure of the circumstances" to Rigler . See In the Matter of Patrick Patel, DRB Decision at 14, n.3 (January 11, 1999) ("It was respondent's burden to demonstrate that his clients consented to his representation despite the conflict of interest; it was not the presenter's burden to prove the absence of consent, as contended by respondent's counsel.")

Respondent did not assert that he made the required disclosure or obtained

Rigler's or Fox Runne's consent to the dual representation. Respondent did not even recall having spoken with Rigler about the transaction, only Mowat. Respondent admitted that he never advised Mowat that Rigler should consult another attorney about the loan. Mowat testified that he did not know anything about respondent's relationship with the builder, except that respondent knew the builder. Rigler told the LaPlacas that she did not even remember the loan transaction. There is no evidence whatsoever that respondent made the required disclosure and obtained Rigler's consent. We find, therefore, that respondent violated RPC 1.7(a) and (b) in his dual representation of Rigler and Fox Runne in the loan transaction. Respondent's conduct was particularly egregious because he was making the periodic disbursements to Fox Runne, as opposed to representing a mortgagor and mortgagee at a straight closing, where an attorney could not disburse the loan proceeds unless all of the lender's requirements had been met.

With respect to the Borowsky and Sussman loans, we find no violation of RPC 1.7(a), because there is no evidence that Borowsky and Sussman were clients of respondent. Respondent's unrebutted testimony was that Borowsky was an acquaintance and Sussman a friend, not clients. In fact, respondent testified that Borowsky's attorney prepared the note and the assignment for the transaction. Similarly, we are unable to find that respondent violated RPC 1.7(b) in the Borowsky and Sussman loan transactions, because there was no evidence that respondent had any

responsibility to Borowsky or Sussman or that his own interests were implicated in the transaction. Therefore, we dismissed those charges.

The complaint further charged that respondent's $100,000 loan from Mowat, while making excess distributions to Mowat from the estate's funds, created a conflict of interest. Respondent admitted that Mowat's loans to him were often contemporaneous with his distributions to Mowat. However, respondent claimed that Mowat had sufficient funds to make the loans without the distributions. Respondent did not, however, present evidence as to Mowat's financial status. Moreover, his argument is undermined by the fact that respondent began distributing the estate's funds to Mowat even before the will was probated and he was appointed executor. It is clear, thus, that respondent's own interests in obtaining loans from Mowat conflicted with his representation of the estate, in violation of RPC 1.7(b).

The final charge of a conflict of interest involves respondent's representation of Poles and Amaral and their entities during the same time period that he was a partner in and represented JJM. The special master dismissed this count, finding that the representations were not "simultaneous" or "in matters where their interests conflicted." We agree. There is no evidence that respondent's representation of Poles, Amaral and their entities was "directly adverse" to his representation of JJM, in violation of RPC 1.7(a). Likewise, there is no evidence that respondent's representation of Poles, Amaral and their entities was "materially limited" by his

representation of JJM, in violation of RPC 1.7(b).

As to the charge that respondent violated RPC 1.8 by entering into a business transaction with Poles and Amaral, it should be noted that the Centrum project predated respondent's representation of Poles and Amaral. It is arguable that, through the JJM mortgage, respondent knowingly acquired a security interest adverse to Poles' and Amaral's interests, since respondent was a partner in JJM. It is also arguable that there was a technical violation of this RPC because respondent apparently did not advise them to seek independent counsel and did not obtain Poles' and Amaral's written consent. However, there is no doubt that Poles and Amaral understood the mortgage transactions and, as experienced developers, had determined that the mortgage terms were "fair and reasonable." Although there may have been a technical violation of RPC 1.8, we did not consider that violation in our determination that respondent should be disbarred.

* * *

The complaint charged that respondent's failure to pay Rigler's taxes and other bills in a timely manner during her lifetime, his failure to pay the charitable beneficiaries of the Rigler estate and his negligent administration of the Rigler estate constituted gross neglect and lack of diligence. In his answer, respondent admitted that

his conduct violated RPC 1.3, but denied that it violated RPC 1.1(a). In his brief, however, respondent conceded that it also violated RPC 1.1(a).[18] Even in the absence of respondent's admissions, however, it is clear that the misconduct amounted to gross neglect.

Finally, respondent admitted – and there is clear and convincing evidence – that he did not comply with the recordkeeping requirements of R.1:21-6, in violation of RPC 1.15(d).

* * *

There remains the issue of discipline. Although we do not find clear and convincing evidence of knowing misappropriation, we do find respondent guilty of multiple violations of RPC 1.1(a), RPC 1.3, RPC 1.7 and RPC 1.15(a), (b) and (d), as well as a violation of RPC 1.8.

Respondent's representation of Rigler's interests was appalling. His handling of her funds was disgraceful. Rigler was an elderly woman who trusted and relied on respondent. He abused that trust. He put the interests of his business partners/clients, who were sophisticated developers, ahead of Rigler's interests. He even lent Rigler's

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[18] Respondent incorrectly cited the rule as RPC 1.1(b), apparently because the complaint, while charging that respondent's conduct constituted gross neglect, inadvertently cited the rule as RPC 1.1(b).

funds to a mere acquaintance, Borowsky, without consulting Rigler.

Moreover, respondent's misconduct extended over many years. His neglect of Rigler's bills and failure to file her tax returns began in 1987 and continued until 1993; his loan to Borowsky took place in 1989; the LaPlaca loan transaction occurred in 1991; and his excess distributions to Mowat continued until May 1995. Although respondent submitted evidence that he was addicted to cocaine and alcohol until January 21, 1992, many of his acts of misconduct, including the loans to Sussman, the disbursements to Mowat, the failure to pay Rigler's taxes, the failure to make proper distributions from Rigler's estate and the negligent administration of the estate, occurred when he admittedly was no longer under the influence of cocaine and alcohol.

Respondent's exploitation of his elderly client was more venal than that displayed by some attorneys who have been disbarred for knowing misappropriation. For his egregious, exceedingly cavalier, reckless handling of his client's funds, he should suffer no less serious consequences. See In re Wolk, 82 N.J. 326 (1980) (attorney was disbarred for advising a widowed client to make a hopeless investment in a building in which he had an interest, while concealing such material information as the fact that the building was in foreclosure, and attempted to commit a fraud on a federal district court and his clients to obtain a larger legal fee than was due). See also In re Ort, 134 N.J. 146 (1993) (attorney was disbarred for withdrawing fees from an estate account without authorization, misrepresenting to a court the value of his

services, preparing deceitful time records and charging excessive and unreasonable fees).

We unanimously determined to recommend that respondent be disbarred from the practice of law. One member recused himself.

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

Dated: 8/10/00

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of James J Maguire, Jr.
Docket No. DRB 99-412

Argued: **March 16, 2000**

Decided: **August 15, 2000**

Disposition: **Disbar**

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Recused	Did not Participate
Hymerling	X						
Peterson	X						
Boylan	X						
Brody	X						
Lolla	X						
Maudsley	X						
O'Shaughnessy	X						
Schwartz	X						
Wissinger						X	
Total:	8					1	

Robyn M. Hill 10/2/00
Robyn M Hill
Chief Counsel