

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2332 Disciplinary Docket No. 3
: :
Petitioner : No. 181 DB 2016
: :
v. : Attorney Registration No. 23348
: :
ANTHONY B. REARDEN, III, : (Berks County)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 5th day of January, 2017, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline is granted, and Anthony B. Rearden, III, is suspended for a period of three years. He shall comply with all the provisions of Pa.R.D.E. 217.

A True Copy Patricia Nicola
As Of 1/5/2017

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

disciplinary proceedings brought in accordance with the various provisions of the aforesaid Enforcement Rules.

2. Respondent was born on June 16, 1951, and was admitted to practice law in the Commonwealth on October 27, 1976. Respondent is on active status and his last registered address is 525 Elm Street, Reading Pennsylvania 19601. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

3. Respondent's affidavit stating, *inter alia*, his consent to the recommended discipline is attached hereto as Exhibit A.

4. Lilian Eways ("Ms. Eways") is an adult individual residing in Reading, Berks County, Pennsylvania. Ms. Eways is the sole beneficiary of the Jeanette M. Eways Irrevocable Trust (the "Eways Trust" or the "Trust"). In 2002, Ms. Eways found herself in need of a successor trustee for the Trust. She located Respondent, who told her that he was both able and qualified to administer her trust. Accordingly, Respondent sought Court appointment as Successor Trustee to the Eways Trust. The Court appointed Respondent the Successor Trustee by Order dated February 13, 2002.

5. As of the date of Respondent's appointment, the Eways Trust held approximately \$700,000.00 in assets. The prior Trustee, Alan S. Readinger, Esq., prepared a final account for the Eways Trust which reflected the following trust values:

\$ 589,507.59	Securities held at M&T Bank ¹
\$ 93,131.45	102 Burning Tree Lane, Cumru Twp., PA (valued at purchase price) ²
\$ <u>1.00</u>	value of shares in Mast Properties Partners
\$ 682,640.04	Total

6. Upon becoming trustee, Respondent repeatedly breached his fiduciary duties to Ms. Eways by making a series of imprudent investments in which Respondent had a conflict of interest. Specifically, beginning in 2003, Respondent began utilizing trust funds to purchase residential real estate. At the time, Respondent owned a real estate company, Dream Realty. Respondent admits that in specific instances Dream Realty realized a broker or agent fee from real estate transactions in which the Eways Trust was a party. Respondent often received payment from both the Trust and the seller, and collected management fees for rent and maintenance after acquiring properties for the Trust. Not every real estate investment resulted in a demonstrable loss to the Trust. However, Respondent's decision to funnel the vast majority of trust

¹ After taking over as trustee, Respondent opened a checking account at Wachovia Bank and a securities account at Valley National Bank. Respondent caused all assets at M&T Bank to be transferred to the two new accounts.

² Ms. Eways lived at this property, which the Eways Trust owned free of any mortgage or encumbrance.

assets into one narrow class of illiquid investment in which he had a conflict of interest was a clear breach of his fiduciary duty.³

7. In addition, Respondent utilized trust funds to make loans (which were often unsecured), to Respondent's clients, former clients and business associates. As a result of Respondent's reckless decisions, at one time Ms. Eways' Trust had lost more than one-half of its value. The precise loss to the Trust is difficult to determine, in part because at the time of Respondent's removal the Trust held five properties, none of which were independently appraised and some of which were mortgaged. However, the Eways Trust's liquid assets dropped from \$589,507.59 at the time Respondent assumed the role of trustee to approximately \$14,000.00, as alleged in a civil complaint filed on Ms. Eways' behalf in 2013. This is not to suggest that the trust sustained actual losses of over \$575,000.00. For example, ODC's auditor calculated the total value of the trust as of December 31, 2012, eight and one half months prior to Respondent's removal as Trustee, as \$424,467.05.⁴

³ The trust owned or was mortgagee for a total of five properties by the time of Respondent's removal as trustee.

⁴ That figure was based on the purchase price of the various properties as current appraisals were not available. Since that time two properties have been sold, both for slightly more than the purchase price. Independent appraisals have not been conducted, but the internet website Zillow provides estimated values for the properties remaining in the trust which have been noted in this Petition. If the Zillow estimates plus the actual sales prices for the two properties are used to calculate trust value, the overall value of the trust amounted to approximately \$544,260.06.

8. Some, but not all, of the transactions/investments Respondent made on behalf of the Trust, are detailed below.

I. The Real Estate Investments

A. 1246 Perkiomen Avenue, Reading PA

9. In 2003, Respondent decided to purchase 1246 Perkiomen Avenue, Reading PA, and move Ms. Eways into that residence. Acting as Trustee, Respondent agreed to pay \$82,500.00 for the property and signed an Agreement of Sale on August 15, 2003.

10. By letter dated August 25, 2003, Ms. Eways wrote to Respondent and stated, with the respect to the purchase that "I am opposed to this...financially this will not benefit me." Nonetheless, despite Ms. Eways' opposition, the sale took place. Respondent paid \$41,250.00 in cash for 1246 Perkiomen Ave. and took a mortgage of \$41,250.00 at 5.0% APR for 8 years from the original owners.

11. The property contained three rental units, one of which was rented to Ms. Eways. Respondent charged a 10% "management fee" for the collection of rents from each tenant except Ms. Eways. Respondent repaid the mortgage at the end of eight years.

12. Although no independent appraisal has been performed, Zillow estimated the market value of the property on July 1, 2016, as \$138,769.00.

B. 18-20 North 9th Street, Reading, PA

13. On June 9, 2004, Roberto Jimenez and Idalisa Abreu sought Respondent's assistance in connection with the threatened foreclosure of their home, taxes owed to the Pennsylvania Department of Revenue and municipal costs owed to the city of Reading.

14. The foreclosure action arose as a result of an Installment Sale Agreement which Mr. Jimenez and Ms. Abreu signed in 2001, but were unable to honor.

15. Respondent negotiated with the mortgagee, resulting in an agreement of sale for the property as well as the forgiveness of late fees. Respondent financed the sale using \$111,961.82 in trust assets. The HUD-1 reflects fees paid to Respondent from Mr. Jimenez and Ms. Abrue in the amount of \$2,750.00. Mr. Jimenez and Ms. Abrue signed a \$150,000.00 mortgage with the Eways Trust, carrying 10% interest, amortized over ten years, but with a balloon payment in five years.

16. Following the closing, Respondent collected mortgage payments and escrow from Mr. Jimenez and Ms. Abreu ("the mortgagors"). Not surprisingly, the mortgagors made only sporadic payments, forcing Respondent to file a foreclosure action and restructure the loan in 2007 by, among other things, increasing the principal value of the loan. As of the time

ODC's records end, which is January of 2013, the mortgagors were current on payments under the new loan.

C. 2413 Cumberland Avenue, Mount Penn, PA

17. On or about October 17, 2005, Respondent drew a check for \$85,000.00 from Valley National Bank, the account holding the Eways Trust securities, payable to Conestoga Title Company as a down payment for the \$90,000.00 purchase of 2413 Cumberland Avenue, Mount Penn, PA. This check was drawn against an already negative cash balance at Valley National Bank, increasing the Eways Trust's negative balance to -\$103,656.18. The Trust had roughly \$400,000.00 in securities at that time, enabling Respondent to take margin loans rather than liquidate the existing securities.

18. On November 18, 2005, Respondent drew a second check from the Valley National account for \$7,755.88 to complete the closing of the purchase. The total outlay for the purchase was \$92,755.88. Respondent's real estate company was paid a real estate commission of \$2,700.00 by the seller.

19. After purchasing the property, Respondent undertook extensive renovations costing \$87,537.47, including a \$6,000.00 fee to himself for supervising renovations on the property.

20. After completing the renovations, Respondent rented the units, collecting a management fee of 10% of the rents

collected. However, the renters at this property frequently failed to make timely payments, and Respondent was forced to spend additional funds to maintain the property. In 2011 and 2012, the net income from the property was negligible, despite the thousands of dollars spent on renovations.

21. The property amounted to a significant loss for the Eways Trust, as the rents never came close to recovering the expenses Respondent paid to purchase, renovate and maintain the property. The new Trustee sold this property on February 29, 2016, for \$95,000.00.

D. 102 Burning Tree Lane, Cumru Twp. PA

22. When Respondent became Trustee of the Eways Trust it owned this property outright and Lilian Eways lived there.

23. On August 11, 2006, Respondent obtained a \$100,000.00 loan from Fulton Bank in return for signing a \$100,000.00 mortgage on the property at a rate of 8.25% for 15 years.⁵ Respondent used \$80,000.00 to reimburse the Valley National Bank account for the earlier purchase of 2413 Cumberland, paid \$11,099.06 for taxes, insurance and renovations for that property, paid \$2,517.75 in closing costs, \$2,567.90 for repairs to 1246 Perkiomen, and a \$2,000.00 "mortgage placement fee" to Anthony Ossandon.

⁵ Interest rates at that time for 15 year loans were generally below 6.5%. It is unclear why the trust was not able to obtain more competitive interest rates.

24. Respondent rented the property from 2006 through 2012. ODC's analysis reveals that considering the mortgages, income and expenses generated from 102 Burning Tree together with 2413 Cumberland, the property which Respondent paid for by using the equity in 102 Burning Tree, the Trust realized a net loss of a little over \$36,000.00. However, the loss is potentially offset by an increase in value of the property. As of July 1, 2016, Zillow estimated the property value as \$149,656.00.

II. Loans

A. Anthony Ossandon Loans

25. According to Respondent, Anthony Ossandon is a "business associate" and "previous client" who came to Respondent regarding the threatened foreclosure of Ossandon's office and residence at 536 Walnut Street, Reading, PA.

26. On January 5, 2005, Respondent, acting as Trustee for the Eways Trust, provided Ossandon with a \$3,000.00 unsecured short-term loan.

27. The loan agreement provided, among other things, that Ossandon was to repay the Eways Trust \$3,600.00 by February 15, 2005. The repayment was allocated as follows: \$3,000.00 to the Trust as principal; \$400.00 to the Trust as interest; and \$200.00 to Respondent as a fee for preparing the agreement.

28. On April 28, 2005, Ossandon repaid the loan via a check in the amount of \$3,720.00. From that, Respondent took his \$200.00 fee leaving the Trust with a \$520.00 profit.

29. Thereafter, on June 30, 2005, Respondent, on behalf of the Trust, lent Ossandon and Marcelino Francisco ("Francisco") \$15,000.00. The loan agreement provided, among other things, for an \$18,000.00 repayment by August 15, 2005, allocated \$15,000.00 to the Eways Trust as return of principal, \$2,000.00 to the Eways Trust as interest and \$1,000.00 to Respondent as a fee. If the loan was not repaid by August 15, 2005, the principal balance would become \$18,000.00 and would accrue interest at the rate of 20% per annum until repaid. Costs associated with collection were to be borne by Ossandon and Francisco. Finally, any money Ossandon or Respondent received for legal matters could be used to pay the debt in full.⁶

30. No payments were made on the loan in 2005, 2006 or 2007. In July of 2008 Respondent capitalized the principal to \$31,000.00 and lowered the interest rate to 12%. Thereafter, Ossandon or a relative made two payments totaling \$2,400.00 and seven payments totaling \$3,500.00, ending in 2009. Thereafter no payments were received. ODC calculates the loss to the Trust

⁶ Although this provision is unclear, it does reflect the ongoing nature of the business relationship between Respondent and Ossandon, providing yet more evidence of Respondent's obvious conflict of interest.

as \$10,595.00, which represents only the amount of principal loss and does not include interest or penalties.

31. Respondent added Ossandon's unpaid interest to principal each year in his Trust accounting giving the impression that the value of the Ossandon/Francisco loan was growing. In fact, it was unsecured and uncollectible.

32. Other documents from the file demonstrate an ongoing business relationship between Respondent and Ossandon at the time of the Trust loan. For example, in 2006, Ossandon arranged for the Trust to receive a \$100,000.00 loan from Fulton Bank, for which the Trust paid Ossandon a \$2,000.00 fee labelled "mortgage placement fee."

B. Ismael Torres Loans

33. According to Respondent, Ismael Torres is a friend and former client. From August 3, 2007 until November 14, 2007, Respondent lent Torres \$9,830.10 from the Eways Trust. Respondent admits that these were unsecured personal loans. There is no loan note or other document among the Eways Trust documents, nor was a mortgage recorded against any property owned by Torres. Respondent's accounting indicates a \$12,000.00 loan at 6% interest for 15 years.

34. Torres made sporadic payments against the loans from 2008 through 2012, totaling \$1,255.63 in principal and \$2,331.67

in interest. The loan was never fully repaid resulting in a loss to the Trust.

C. Ansel A. Allsop Loan

35. Respondent describes Ansel A. Allsop ("Allsop") as a "business acquaintance and independent real estate agent who worked through Dream Realty for a period of about six months."⁷ On August 30, 2007, acting in his capacity as Trustee for the Eways Trust, Respondent lent Allsop \$75,000.00. The purpose for the loan was the purchase of real estate located at 1 Sadowski Drive, Reading, PA. Respondent also obtained a judgment note for \$85,000.00 dated August 30, 2007, which states that the loan was for one month, payable in one lump sum on October 1, 2007.

36. The loan was highly risky, as it was: (a) unsecured; (b) made at a time when Allsop was only 24 years old; and (c) there is no evidence that Respondent performed any kind of credit check on Allsop or verified his employment or income.

37. The sale of the property never materialized and Allsop never repaid any portion of the loan. Respondent's file contains letters from Respondent to Allsop seeking to re-structure the loan, and a new Judgment Note signed by Allsop on August 18, 2012, for \$110,500.00. Respondent's accounting valued the loan

⁷ As noted elsewhere, Respondent owns Dream Realty.

at \$111,724.00, despite the fact that Allsop never made a single payment and the debt appears uncollectible.

D. Jill R. Leone Loan

38. Jill R. Leone ("Ms. Leone") owned a townhome located at 3912 Penns Avenue. Ms. Leone had a mortgage for \$77,250.00 with Countrywide Home Loans. Ms. Leone defaulted on the loan and the mortgagee instituted foreclosure proceedings in Berks County. On April 6, 2005, Ms. Leone filed for bankruptcy protection. Ms. Leone sought Respondent's assistance.

39. Respondent advised Ms. Leone that rather than continue with the bankruptcy, he would help her get current on the loan. On December 28, 2005, Respondent, acting as Trustee for the Eways Trust, drew check no. 1036 for \$27,415.99 from Valley National Bank payable to Anthony B. Rearden, III. Respondent deposited that check into the Eways Trust account at Wachovia Bank, and used it to purchase a cashier's check in the amount of \$27,415.99 payable to Ms. Leone's mortgagee. The Valley National check increased the margin loan in the Eways Trust to \$101,080.67.

40. On January 3, 2006, Respondent drew a second check from the Valley National account for \$652.25 to pay the closing costs for the loan to Ms. Leone. He also paid himself an "attorney's fee" of \$2,189.82 and paid another attorney a "fee"

of \$732.94 from the Eways Trust. Ms. Leone signed a 10 year mortgage for \$35,000.00, which reflected a value at 10% APR more than she borrowed.

41. Respondent thereafter collected monthly payments of \$462.53 from Ms. Leone. However, Ms. Leone did not promptly pay her mortgagee, who filed another foreclosure action in August of 2006. Respondent then restructured Ms. Leone's loan to the Trust for a higher amount, \$39,265.45.

42. In 2007 and again in 2008 Ms. Leone filed for Chapter 13 Bankruptcy, but in each instance the case was dismissed. In the 2007 bankruptcy, Ms. Leone listed the value of the 3912 Penns Ave. as \$105,000.00 and the Countrywide loan balance as \$88,000.00, however, Ms. Leone did not list the second mortgage to the Eways Trust. In the 2008 bankruptcy filing Ms. Leone did list the Trust mortgage, but named Respondent, not the Eways Trust, as the creditor, and listed the loan balance as just under \$35,000.00.

43. In 2010 Ms. Leone stopped making payments to the Trust. Respondent obtained several judgments totaling \$11,176.62 against Ms. Leone. Ms. Leone made payments totaling \$3,000.00 in 2011, which Respondent deposited into his IOLTA account and later transferred to the Trust account at Wells Fargo. On April 28, 2011, Ms. Leone sold the Penns Ave.

property for \$140,000.00. Respondent handled the sale and took a fee at settlement. According to Ms. Leone, she received nothing at settlement. Ms. Leone paid the \$11,176.62 judgment from the proceeds, but not the balance of the loan. Despite that, on May 2, 2011, Respondent filed a satisfaction of the \$35,000.00 mortgage with the Berks County Recorder of Deeds.

44. In August of 2011 Respondent obtained a \$34,516.00 judgment against Ms. Leone and her new husband on behalf of the Trust. Respondent continued to declare the 3912 Penns Avenue mortgage as a Trust Asset in his 2011 accounting. Ms. Leone refused to make any further payments until Respondent provided her with an accounting and a balance, which he never did. Consequently, she made no further payments to the Trust, and any judgment appears uncollectible.

E. TTTA, Inc. Investment

45. In 2007, acting as trustee for the Eways Trust, Respondent made a \$35,000.00 "investment" into a company called TTTA, Inc., 12 N. 4th St., Hamburg, PA. This company was incorporated only days prior to Respondent's loan, suggesting he was investing in a start-up company. The loan was unsecured and realized no income or repayment whatsoever. It does not appear that TTTA is an ongoing concern. Respondent dropped this loan from his Trust accounting without comment in 2010.

F. Loans to Frederick & Rebecca Stubbs

46. Respondent's accountings reflect a total of \$19,000.00 loaned to the Stubbs from the Eways Trust in 2009. There is a judgment note dated March 13, 2009, for the first loan of \$8,200.00, but not for the next two loans totaling \$11,000.00. Nonetheless, the Stubbs did repay the loans in full, along with an additional \$2,100.00 by the end of 2009. However, Respondent deposited the final payment of \$11,000.00 into his IOLTA account, but transferred only \$1,000.00 back to the Trust account at Wachovia. Respondent declared the \$10,000.00 in the 2009 accounting, but not the 2010 accounting. There is no evidence that Respondent actually transferred the final \$10,000.00 payment to the trust.

III. Losses to the Trust & Subsequent Litigation

47. As noted, Respondent took margin loans from the Valley National Bank securities account in order to fund many of these transactions. On March 4, 2008, Respondent moved the Trust securities from Valley National Bank to LPL Securities. Beginning in 2008, the value of the securities declined due to deteriorating market conditions which triggered a margin call. As the Trust no longer had sufficient liquid assets, Respondent was forced to sell securities. Overall, ODC calculated that the

Trust lost \$261,048.91 in 2008, and that figure does not consider the unsecured loans.

48. On November 30, 2008, Respondent liquidated the LPL account and transferred the remaining balance of \$100,026.80 to the Trust account at Wachovia, with the intention of thereafter investing solely in real estate. The liquidation, as well as the previous margin call, ensured that the Trust realized the losses in the stock market and missed the opportunity to recoup value once the market recovered.

49. The trust losses remain difficult to precisely quantify as some of the real estate continues to be held by the trust. Further, there is no dispute that Respondent also utilized some trust assets appropriately on Ms. Eways' behalf, including paying bills, medical expenses, insurance and providing her with spending money. ODC's auditor calculated that Respondent distributed a total of \$160,027.72 to Ms. Eways during the nearly eleven years Respondent served as trustee.

50. By letter dated June 11, 2011, Respondent wrote to Ms. Eways and stated the following:

- a. that he had made "bad investments" which he would repay with either cash or free labor;

- b. that the Eways Trust no longer had a lot of cash to "dish out" to Ms. Eways beyond that necessary to maintain her apartment;
- c. that Ms. Eways should be satisfied with the situation because she didn't "do anything to earn" the Trust money;
- d. that the Trust lost about \$60,000.00 per month, or a total of \$180,000.00, during the "stock market crash;"
- e. that this loss was not from any investments that he had chosen, but admitted that Ms. Eways was forced to take the loss rather than wait for the stock market recovery because Respondent "had taken a margin loan out against the investments;"
- f. that he had told the investment company to "sell everything, payoff the margin loan and give [him] the balance" which Respondent used to purchase yet another piece of real estate; and
- g. that the Trust had "toxic assets," including a \$75,000.00 loan, a \$27,871.59 loan, a \$10,950.68 loan and an \$8,052.50 loan.

51. Upon receipt of this letter, Ms. Eways began consulting with other lawyers.

52. In August of 2013, Ms. Eways, represented by William Rush, Esquire, filed a complaint against Respondent individually, his law practice and Dream Realty in the Berks County Court of Common Pleas as a result of his mismanagement, breach of fiduciary duties and conflicts of interest. In addition, Ms. Eways filed a Petition seeking Respondent's removal as her trustee and the appointment of Paul M. Booker, CPA.

53. The Court appointed Mr. Booker Ms. Eways' new trustee. Eventually, Respondent settled the lawsuit filed by Ms. Eways for a net figure of \$66,000.00, which is appreciably less than the losses to the Trust caused by his breaches.⁸

54. Respondent provided Mr. Rush and Mr. Booker with trust records, which in turn were provided to ODC. In addition, Respondent prepared a trust accounting in connection with the underlying court proceeding. Nonetheless, because the records were both disorganized and incomplete, a forensic audit proved difficult and time consuming. Ultimately, in addition to reviewing all documents provided, ODC's auditor interviewed interested parties and obtained publicly available documents

⁸ The settlement figure was for \$100,000.00 with a credit to Respondent for "January 2008 through August 2013 at a rate of \$500.00 per month for a total credit of \$34,000.00." While Respondent did not take a separate fee as trustee, as noted, he collected management and other fees in connection with the various properties. Further, due to the incomplete nature of the documents provided ODC cannot account for all trust funds.

through Berks County to piece together the nature of these transactions. Respondent did not keep copies of any documents, and thus, his answers to ODC's inquiries were admittedly imprecise, as they were based on his memory of events, many of which occurred years ago.

55. Nonetheless, Respondent has acknowledged that he engaged in misconduct and admits to the Rule violations. Further, prior to notice of the ODC complaint Respondent acknowledged his failure to properly administer the Trust by settling the civil action file by Ms. Eways. Respondent acknowledged all principal averments of fact in the DB-7 letter sent by ODC, and voluntarily disclosed to ODC that multiple transactions involving the Trust were conducted with other clients or former clients. The DB-7 letter did not make any specific allegation of embezzlement or theft and there is no evidence of such misconduct.

56. Respondent has practiced law for nearly forty years with no history of discipline.

**SPECIFIC RULES OF PROFESSIONAL CONDUCT AND
RULES OF DISCIPLINARY ENFORCEMENT VIOLATED**

16. Respondent violated the following Rules of Professional Conduct and Pa.R.D.E.s:

A. RPC. 1.1, which states that a lawyer shall provide

competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation;

B. RPC 1.7(a), which states that except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer;

C. RPC 1.8(a) which states that a lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) the client gives informed consent in a writing signed by the

client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction;

d. RPC 1.15(b), which states that a lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded; and

e. RPC 1.15(e), which states that except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

SPECIFIC RECOMMENDATION FOR DISCIPLINE

Precedent establishes that the type of egregious conflicts of interest Respondent engaged in merit a lengthy license suspension. Considering all of the facts and circumstances,

Respondent and ODC agree that his misconduct warrants a three-year license suspension.

There are several analogous cases where lawyers acted as fiduciaries for clients and engaged in self-dealing.⁹ In *ODC v. Tomasco*, 111 DB 2004 (2006), Respondent violated RPC 1.7(b), 1.8(a) and 1.8(b) in connection with her participation in a real estate transaction with an elderly incapacitated client. Tomasco "borrowed" \$275,000.00 of her client's money to buy Respondent a New Mexico property. The Disciplinary Board noted that Tomasco was charged with a conflict of interest, but not theft of client funds or dishonesty. The record reflected that Tomasco was repaying the client loan. However, Tomasco failed to take steps to fully protect the client's "investment." Further, it was clear that Tomasco had not, and indeed could not, have complied with the Rules of Professional Conduct under the circumstances. The Pennsylvania Supreme Court accepted the recommendation of the majority of the Disciplinary Board and suspended Tomasco's license for one year and one day.

In *ODC v. Howell*, 155 DB 2008 (2010) the Court suspended Mr. Howell's license to practice law for five years based on his fiduciary breaches and conflicts of interest. Respondent-Howell became a residuary beneficiary of his elderly client's will,

⁹ Ms. Eways has never been determined to be incapacitated. Nonetheless, she is also a person who, as an adult, has required assistance with managing her funds, which is why she remains a beneficiary of the trust.

which was drafted by a friend of Howell's at Howell's request. Thereafter, Howell assumed control of his elderly client's assets which, at his suggestion, she jointly titled in Howell's name. Howell did not use his elderly client's funds for personal purposes during her lifetime. Nonetheless, these self-interested transactions required strict compliance with Rule 1.8(a) to ensure that the client received adequate and disinterested advice.

As the foregoing facts reveal, Respondent repeatedly lent Trust funds to his law firm clients and business associates. He often received payment from both parties while improperly acting for both. Rather than diversifying Trust assets or placing them under professional management, Respondent chose to invest almost all of the Trust assets into residential real estate which permitted him to collect double fees from both sides of the transaction and to collect management fees to which he otherwise would not have been entitled. Respondent's lack of judgment and clear breaches of his fiduciary duty resulted in significant losses to the Eways Trust. Under the circumstances a three-year suspension on consent protects the public, reflects the seriousness of Respondent's misconduct and takes into account Respondent's acceptance of responsibility and remorse.

WHEREFORE, Joint Petitioners respectfully pray that your Honorable Board:

- a. Approve this Petition; and
- b. File a recommendation for a three-year license suspension and this Petition with the Supreme Court of Pennsylvania.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL
PAUL J. KILLION,
Attorney Registration No. 20955,
Chief Disciplinary Counsel

11.3/16
DATE



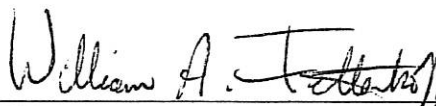
RAMONA MARIANI,
Disciplinary Counsel
Attorney Registration Number 78466
Office of Disciplinary Counsel
Suite 170, 820 Adams Avenue
Trooper, PA 19403
(610) 650-8210

October 24, 2016
DATE



ANTHONY B. REARDEN, III
Attorney Registration Number 23348
Respondent

October 26, 2016
DATE

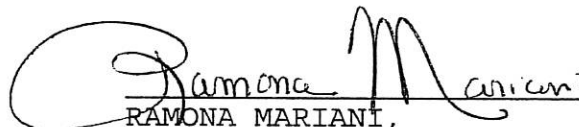


WILLIAM A. FETTERHOFF, ESQUIRE
Attorney Registration Number 23148
Counsel for Respondent

VERIFICATION

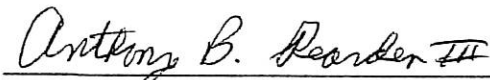
The statements contained in the foregoing *Joint Petition In Support of Discipline on Consent Discipline* are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

11/3/16
DATE



RAMONA MARIANI,
Disciplinary Counsel

October 24, 2016
DATE



ANTHONY B. REARDEN, III
Respondent

October 26, 2016
DATE



WILLIAM A. FETTERHOFF, ESQUIRE
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. DB 2016
Petitioner :
v. :
: Attorney Reg. No. 23348
ANTHONY B. REARDEN, III :
Respondent : (Berks County)

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.22 (relating to service by a participant).

First Class and Overnight Mail, as follows:

William A. Fetterhoff, Esquire
Fetterhoff & Zilli
218 Pine Street
P.O. Box 1161
Harrisburg, PA 17108-1161

Dated:

11/4/16

Ramona Mariani *RyHSC*

RAMONA MARIANI,
Disciplinary Counsel
Attorney Registration No. 78466
Office of Disciplinary Counsel
820 Adams Avenue, Suite 170
Trooper, PA 19403
(610) 650- 8210

4. He consents because he knows that if charges continued to be prosecuted in the pending proceeding, he could not successfully defend against them.

Signed this 24th day of October, 2016.

Anthony B. Rearden III
ANTHONY B. REARDEN, III,
Attorney Registration No. 23348

Sworn to and subscribed
Before me this 24th day
of October, 2016.

Lorraine Czerniak
Notary Public

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL
LORRAINE CZERNIAK, Notary Public
Township of Spring, Berks County
My Commission Expires May 6, 2019