

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT  
OF THE SUPREME COURT OF OHIO**

<b>In Re:</b>	:	<b>Case No. 2014-028</b>
<b>Complaint against</b>	:	
<b>Robert James Belinger</b>	:	<b>Findings of Fact,</b>
<b>Attorney Reg. No. 0017661</b>	:	<b>Conclusions of Law, and</b>
<b>Respondent</b>	:	<b>Recommendation of the</b>
<b>Cleveland Metropolitan Bar Association</b>	:	<b>Board of Professional Conduct of</b>
<b>Relator</b>	:	<b>the Supreme Court of Ohio</b>

**OVERVIEW**

{¶1} This matter was heard on November 14, 2014, in Cleveland before a panel consisting of Sharon Harwood, Robert Fitzgerald, and Janica Pierce Tucker, chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to former Gov. Bar R. V, Section 6(D)(1).<sup>1</sup>

{¶2} Respondent was present at the hearing represented by Audrey K. Bentz. James A. Loeb and Heather M. Zirke appeared on behalf of Relator.

{¶3} This case involved Respondent's role as Trustee for the Trust of James J. and Annette Cervenka ("Cervenka Trust"). Respondent was the nephew of Mrs. Cervenka. He prepared the Cervenka Trust. Sister Barbara Cervenka ("Sr. Cervenka" or "Sr. Barbara"), a Dominican nun, living in Michigan, is the surviving daughter of James Cervenka and the sole remaining beneficiary of the Cervenka Trust. As Trustee, Respondent had broad powers in making investment decisions on behalf of the Trust. Respondent did not have any financial interest in the Trust itself.

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<sup>1</sup> Effective January 1, 2015, the Supreme Court amended Gov. Bar R. V and the Board's Procedural Regulations. This report distinguishes between the former and current versions of Gov. Bar R. V and the Procedural Regulations, as appropriate.

{¶4} As Trustee, Respondent made multiple investment loans over the course of several years. Two of the investment loans are at issue in this matter; a loan made to Bar-Bel (Respondent's family business) and Larry Vagner (Respondent's friend). Both of these loans defaulted, in part, due to the real estate market crash in 2007-2008. As Trustee, Respondent failed to communicate effectively with Sr. Cervenka. Respondent's conduct violated Prof. Cond. R. 1.4.

{¶5} Procedurally, this matter presents additional issues the panel considered. On May 16, 2014, the parties presented a consent to discipline and proposed a public reprimand as the sanction. The panel rejected the parties consent to discipline and scheduled a hearing. Prior to the hearing, the parties presented stipulations to a violation of Prof. Cond. R. 1.4 and proposed public reprimand as the sanction. At the conclusion of the hearing, the panel asked the parties to provide their closing arguments in writing as the case law presented was not directly on point for the proposed sanction. Relator, however, in its brief proposed additional rule violations of Prof. Cond. R. 8.4 and Prof. Cond. R. 1.7 that were not originally charged. Relator relies upon the testimony at the hearing to support these rule violations. Recognizing the panel may consider additional rule violations, not originally charged as allowed by Gov. Bar R. V, Section 10(E)(1)(a), the panel elects not to do so. The evidence presented at the hearing fails to meet the clear and convincing evidence standard to support alleged violations of Prof. Cond. R. 8.4 and Prof. Cond. R. 1.7. Therefore, the panel is not considering these violations as part of this report.

{¶6} Based upon the parties' stipulations and evidence presented at the hearing, the panel finds, by clear and convincing evidence, that Respondent engaged in professional misconduct as outlined below. Upon consideration of the applicable aggravating and mitigating factors and case precedents, the panel recommends that Respondent receive a public reprimand.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶7} Respondent was admitted to the practice of law in the state of Ohio on May 10, 1975 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

### **Bar-Bel Matter**

{¶8} In 1992, Respondent was retained by his aunt and uncle, Mr. and Mrs. Cervenka to draft and prepare the Living Trust for the Cervenkas. Sr. Cervenka is the sole beneficiary of the Cervenka Trust.

{¶9} Respondent was the Trustee of the Cervenka Trust. He was given broad discretion in managing the trust assets.

{¶10} As part of his role as Trustee, Respondent made bridge loans secured with real estate and short-term mortgages as investment tools for the trust. Respondent was paid a fee for his services as trustee.

{¶11} In 2004, Respondent executed a \$100,000 promissory note with seven percent interest for funds borrowed from the trust on behalf of Bar-Bel Ltd. (“Bar-Bel”).

{¶12} Respondent held a personal financial interest in Bar-Bel. Respondent also invested a substantial sum of money in Bar-Bel. His sons were the owners of Bar-Bel.

{¶13} Respondent failed to provide the specifics of the loan to Sr. Cervenka. Respondent sent a letter simply stating that the Trust had entered into a \$100,000 commercial loan. The letter did not state that the loan was secured by real estate unlike prior loans. Respondent also did not disclose his financial interest in Bar-Bel and that he personally guaranteed the loan. At the hearing, Respondent testified that he told Sr. Cervenka that the loan was unsecured and “a family project of sorts.” Hearing Tr. 54. Sr. Cervenka did not testify at the hearing.

{¶14} With respect to the promissory note for \$100,000, Bar-Bel promised to pay the loan and Respondent guaranteed to repay the trust in thirty-six monthly installments of \$665.31 with seven percent interest per annum with the balance due December 15, 2007.

{¶15} Bar-Bel's business was totally dependent on the real estate market and it experienced great financial difficulty after the market crash. To offset some of the financial difficulty, Respondent applied his statutory trustee fees to the mortgage. The commercial loan defaulted in 2007.

{¶16} Respondent filed for bankruptcy on or about October 19, 2010. Respondent included his personal guarantee for the Bar-Bel debt to the trust on his schedule of assets and liabilities as an unsecured claim.

{¶17} Respondent did not inform Sr. Cervenka that he filed for bankruptcy. He did not inform Sr. Cervenka in writing that the trust was a bankruptcy creditor and did not promptly return her phone calls.

{¶18} Eventually, Sr. Barbara retained Michigan attorney Mary M. Lyneis to contact Respondent and to take over all aspects of the trust.

{¶19} Respondent was terminated as trustee by Sr. Barbara on December 22, 2010, when she directed the assets of the Cervenka Trust be transferred to Lyneis.

{¶20} Lyneis, as trustee of the Charitable Remainder Unitrust, requested an accounting from Respondent for the Trust. While Respondent provided information to Lyneis, Lyneis did not believe Respondent responded timely to her requests.

{¶21} Sr. Barbara and Trustee Lyneis did not learn until April 2011 that the loans made by Respondent were in default.

{¶22} On December 21, 2011, Sr. Barbara and Lyneis filed suit against Respondent and others in the Court of Common Pleas for Cuyahoga County, Ohio ("Litigation").

{¶23} Sr. Barbara did not learn until shortly before the complaint was filed that Respondent had filed for personal bankruptcy.

{¶24} The Litigation has been resolved by way of a settlement which included complete restitution for the commercial loan.

### **The Vagner Loan**

{¶25} Respondent also made loans from the Cervenka Trust to his friend Larry Vagner. This was a blanket loan Respondent had recently restructured with a balance of \$347,230 on five residential properties in Geauga and Cuyahoga Counties. Respondent informed Sr. Cervenka about the loan to Vagner.

{¶26} On January 18, 2005, Respondent informed Sr. Cervenka that the Cervenka Trust was short of cash and that Vagner had fallen behind on his payments. From June 2007 through August 2008, Vagner made sporadic payments on the loan. Eventually the loan defaulted.

{¶27} On September 28, 2009, a foreclosure was filed for one of the five properties. Respondent was one of the defendants because of his role as trustee. James Zaffario, an attorney, represented Respondent in the foreclosure action.

{¶28} During the pendency of the foreclosure action, Respondent was terminated by Sr. Cervenka as trustee. Respondent did not provide the court with notice that he was no longer the trustee.

{¶29} Based upon stipulations and the evidence presented at the hearing, Respondent violated Prof. Cond. R. 1.4. Prof. Cond. R. 1.4 states in relevant part:

- (a) A lawyer shall do all of the following:
  - (1) promptly inform the client of any decision of circumstance with respect to which the client's informed consent is required by these rules;
  - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
  - (3) keep the client reasonably informed about the status of the matter; comply as soon as practicable with reasonable requests for information

from the client;

\* \* \*

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

{¶30} Respondent failed to inform the Cervenka Trust beneficiary of material matters affecting the trust; including, but not limited to, failing to provide trust accounting of the loans at issue; failing to inform the beneficiary of litigation affecting the trust; and failing to cooperate with requests for information from Sr. Cervenka.

### **MITIGATION, AGGRAVATION, AND SANCTION**

{¶31} Respondent has been admitted to practice since 1975 and does not have any prior disciplinary record in his almost 40 years of practice.

{¶32} Respondent did not have any dishonest or selfish motive.

{¶33} Respondent has made a full and free disclosure to Relator and cooperated in the investigation.

{¶34} Respondent has made restitution to Sr. Barbara through a settlement in the Litigation (via a malpractice insurance payment).

{¶35} There are no aggravating factors present.

{¶36} The parties originally stipulated to a recommended sanction. At the hearing, Relator agreed that Respondent violated Prof. Cond. R. 8.4 and Prof. Cond. R. 1.7. Relator was unable to establish by clear and convincing evidence these additional rule violations. Therefore, the panel submits the following authority in support of a violation of Prof. Cond. R. 1.4.

{¶37} In *Columbus Bar Assn. v. Craig*, 131 Ohio St.3d 364, 2012-Ohio-1083, the attorney admitted to forging a client's signature on documents, notarizing the documents, and then filing those documents with the court without communicating these facts to the client.

{¶38} In *Columbus Bar Assn. v. Bhatt*, 133 Ohio St.3d 131, 2012-Ohio-4230, the attorney neglected more than one matter by failing to keep those clients reasonably informed about their matters.

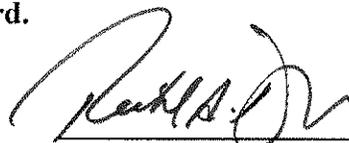
{¶39} In *Lorain Cty. Bar Assn. v. Godles*, 128 Ohio St.3d 279, 2010-Ohio-6274, the attorney failed to keep his clients apprised of the status of their claims and left them with no recourse for his malpractice as he had no malpractice insurance.

{¶40} In each of these cases, the Supreme Court of Ohio believed the appropriate discipline was a public reprimand. The panel recommends a public reprimand as the appropriate sanction.

#### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on February 13, 2015. The Board adopted the findings of fact and conclusions of law of the panel. With regard to aggravating and mitigating factors, the Board voted to delete the panel's finding in ¶32 of this report that Respondent did not act with a selfish or dishonest motive and to add a finding in aggravation that Respondent engaged in self-dealing by using the Cervenka Trust assets to make loans to friends and family. The Board further amended the sanction recommended by the panel and recommends that Respondent, Robert James Belinger, be suspended from the practice of law in Ohio for a period of one year, with the final six months stayed on the conditions that he engage in no further misconduct and pay the costs of these proceedings.

**Pursuant to the order of the Board of Professional Conduct of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.**



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RICHARD A. DOVE, Director