

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against ROBERT W. DYGERT,
an Attorney at Law of the
State of Minnesota.

PETITION FOR
DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 4, 1938. Respondent was placed on CLE restricted status by Supreme Court order of February 5, 1998, and on January 1, 1999, was suspended for non-payment of his attorney registration fees. Respondent is not currently practicing law.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

On April 20, 1978, respondent received a warning for neglect of a probate matter, in violation of DR 6-101(A)(3), Minnesota Code of Professional Responsibility (MCPR).

On June 16, 1986, respondent received an admonition for failing to timely file annual accountings for a trust of which he was trustee in violation DR 6-101(A)(3), MCPR.

FIRST COUNT

A. Overview.

1. Organic Conversion Corporation (OCC) is a Minnesota corporation, which makes various gardening soil products for commercial sale. It is a family-owned business, owned by respondent's wife Kathryn (47%), son-in-law Kurt H. Jensen (47%) and son Jerry (6%). Respondent is a co-founder of OCC, and has acted, at various times, as secretary, Board member and corporate attorney for OCC. OCC has been in business since 1965. In July 1998, OCC filed a Chapter 11 bankruptcy.

2. Beginning in 1974, OCC raised operating capital by respondent obtaining loans from friends and family members. Complainants and other investors obtained by respondent were clients and friends of the family for years, and relied on the representations and the guarantee of respondent.

3. The loans or investments were to be secured by respondent's personal guarantees, although respondent had no assets and no ability to honor his guarantees. The loans were also to be secured by the assets of the corporation, and were evidenced by "Junior Mortgage Notes" issued by respondent on behalf of OCC. OCC paid interest on the notes, or in some cases reinvested the interest into OCC. At the time of bankruptcy on July 9, 1998, OCC had approximately \$6.1 million in Junior Mortgage Notes outstanding.

4. Some of the investors in OCC were also clients of the Dygert & Dygert Law Firm (the entity in which both respondent and his son practiced law), and particularly of respondent. Since 1988 respondent's son, Jerry, has practiced law alone in the name of "Dygert Law Office," to which respondent has been named "Of Counsel," but through which respondent has never actively practiced.

5. Dygert & Dygert had received a loan of \$100,000 from OCC sometime prior to 1984. Jerry Dygert has repaid this loan to the bankruptcy trustee. Respondent also had a \$100,000 loan from OCC, and received compensation from OCC for acting as

its legal advisor. At the same time, the bankruptcy lists him as "Trustee" for the Junior Mortgage Note Holders.

B. Representations to Junior Mortgage Note Holders.

6. As an inducement for Junior Mortgage Note Holders to invest, respondent made numerous representations to actual and prospective Junior Mortgage Note Holders. Such representations, which respondent claims were true and were made in good faith included, but were not limited to:

- a. Representations as to the growth of OCC, including that the company was continually increasing sales and growth.
- b. Representations that any investment was to be secured by OCC's assets.
- c. Representations that respondent personally guaranteed repayment of principal and interest.

7. Respondent failed to disclose material facts to actual and prospective Junior Mortgage Note Holders. These facts included:

- a. The true health of OCC, which had lost money for several years.
- b. Respondent owned no assets with which to satisfy his guarantees.
- c. As trustee for the Note Holders, respondent failed to file adequate security documents to secure the interests of the Junior Mortgage Note Holders until 1996. In 1997 and 1998, OCC acquired additional property in Rice County, Minnesota and Pacific Junction, Iowa. Respondent did not file documents evidencing the Junior Mortgage Note Holders' interest in these properties until a few days before filing bankruptcy, making such a filing avoidable as a preference.
- d. Respondent was contributing to the losses experienced by the company by failing to repay a personal loan from the company of \$100,000 made in or about 1985.

8. Over the course of twenty-five years, respondent obtained millions of dollars in loans from Junior Mortgage Note Holders, including loans which were "rolled over" at time of maturity, and interest which was reinvested in OCC. Approximately \$6.1 million in Junior Mortgage Notes was outstanding at the time OCC and respondent filed bankruptcy.

9. Respondent filed bankruptcy in September 1998, seeking to discharge his guarantees made to the Junior Mortgage Note Holders. The bankruptcy reflects less than \$10,000 in personal property owned by respondent, no real estate, and over \$6.1 million in debts, primarily guarantees to the Junior Mortgage Note Holders. Respondent was granted a discharge in December 1999.

10. On November 11, 1998, the Minnesota Commerce Commissioner entered a Cease and Desist Order against OCC and respondent, barring them from offering or selling any further Junior Mortgage Notes. The order states:

OCC and [respondent] omitted disclosure of material facts in the course of offering and selling junior mortgage notes to Minnesota investors, including, but not limited to, the financial status of OCC, the intended use of proceeds from the sale, and the safety of the investment, in violation of Minn. Stat. § 80A.01 (1996).

11. Respondent lists at least seventeen of the Junior Mortgage Note Holders as having been clients of his at one time. Several more investors identified themselves as clients of respondent or Jerry Dygert, as well as investors. Respondent obtained loans for OCC, backed by his personal guarantee, from at least the following clients:

a. Marian Albrecht had respondent prepare wills, and he solicited an investment from her, backed by his guarantee. She was owed \$25,000 at the time of bankruptcy.

b. Charles Beery was a client for many years, until 1987 when respondent's son, Jerry, took over Mr. Beery's legal work. Respondent began making annual solicitations to his former client after 1987. The loans were

generally paid back each year, but at the time of bankruptcy Mr. Beery was owed \$200,000.

c. Carole Chalman owned an interest in farmland in Wisconsin. Respondent handled sale of the farmland, sometime prior to 1991, and persuaded Ms. Chalman to invest the proceeds in OCC notes. Ms. Chalman was owed \$84,000 at the time of bankruptcy.

d. Respondent represented Delores Chandler in matters involving her mother-in-law's estate. When the estate was closed and Ms. Chandler received the proceeds, some of those proceeds were invested in OCC. Ms. Chandler was owed \$33,000 at the time of bankruptcy.

e. Roberta Shine held \$100,000 in OCC Notes at the time of her death. Dorothy Gale, a cousin, was sole beneficiary and inherited the Notes. Her husband was owed \$100,000 plus interest at the time of bankruptcy.

f. Respondent probated the estate of Marion Hedberg's husband. In 1977 and 1978 Marion Hedberg invested \$20,000 in OCC, which was still owed to her at the time of bankruptcy.

g. The first trustee of the Trust of Alice Johnston invested all the assets of the Trust in OCC Junior Mortgage Notes. When the trustee died, respondent became the successor trustee. Respondent left the investment as it was. The Trust was owed over \$40,000 at the time of bankruptcy.

h. Pauline Johnston was a named beneficiary in her sister's estate, probated by Jerry Dygert. When the estate was distributed in 1985, respondent suggested that Pauline and her husband Lyle invest the proceeds in OCC. Their original investment in March 1985 was \$25,000. They reinvested the interest, made additional investments at the solicitation of respondent, and made two withdrawals. They were owed over \$136,000 at the time of bankruptcy.

i. Respondent probated the estate of John Lynch, Mary Lynch's husband, who died in August 1997. Respondent had previously handled many personal business matters for the Lynches, and solicited investment in Junior Mortgage Notes by them. The estate held Junior Mortgage Notes, which now belong to Mary Lynch, in the amount of \$47,000 at the time of bankruptcy.

j. Jerry Dygert represented David and Geraldine Meyer on various matters from 1984 to 1994, both when he practiced with respondent and after he practiced as "Dygert Law Office." Respondent solicited investments from the Meyers in the amount of over \$12,000 at the time of bankruptcy.

k. Respondent is the executor of the Estate of Lee Newman. All undistributed funds are invested in Junior Mortgage Notes.

l. Respondent represented David and Lucille Tellett on various matters, including estate planning, until Jerry Dygert took them over as clients in 1987. Respondent solicited investments of \$280,000 from the Telletts and \$52,000 from the Frank Tellett trust and the Mildred Tellett Trust (David's parents). These investments were unpaid at the time of bankruptcy.

m. W. Dale Weyrich kept the \$40,000 in Junior Mortgage Notes he inherited from his mother, Vivian Weyrich, who was a client of respondent when she invested. Mr. Weyrich owned the notes at the time of bankruptcy.

n. Respondent represented Irene Wilson until 1987, when Jerry Dygert took over the representation. Ms. Wilson invested proceeds of a farm sale, handled by Jerry, in Junior Mortgage Notes. She used the monthly interest to augment her Social Security check, and occasionally made small withdrawals. Her balance was over \$67,000 at the time of bankruptcy.

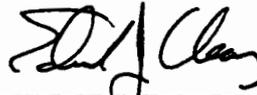
o. Respondent represented Arno Windsor in litigation against a building contractor. Respondent induced Mr. Windsor to invest \$165,000 in Junior Mortgage Notes. The \$165,000 was still owing at the time of bankruptcy.

p. Respondent represented Paige and Phyllis Ziegler on some insurance claims in 1969 and 1972. In 1994 respondent solicited a \$5,000 investment from Mr. Ziegler, and another \$5,000 in 1995. This was not related to any work respondent had done for the Zieglers.

12. Respondent's conduct in obtaining investments from friends and from clients as set forth above constituted a pattern of conduct which violated Rules 1.8(a) and 8.4(c), MRPC. Respondent's conduct prior to September 1, 1985, violated DR 1-104(A)(4), Minnesota Code of Professional Responsibility (MCPR).

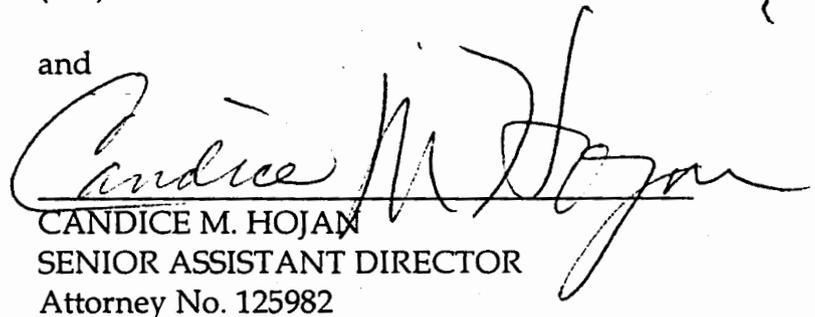
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: March 1, 2000.



EDWARD J. CLEARY
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 17267
25 Constitution Avenue, Suite 105
St. Paul, MN 55155-1500
(651) 296-3952

and



CANDICE M. HOJAN
SENIOR ASSISTANT DIRECTOR
Attorney No. 125982