SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

# In the Matter of Frank G. D'Angelo, Jr.

Matter of D'Angelo, 2017 NY Slip Op 9277 (App. Div. 2017) · No. 2016-01326 · Decided December 29, 2017

## SUMMARY

The Appellate Division, Second Department, sustained all twelve charges of professional misconduct against attorney and guardian Frank G. D'Angelo, Jr. The charges concerned self-dealing involving guardianship funds, an undisclosed real estate commission, and the preparation and probate of wills for an incapacitated person. The court disbarred D'Angelo effective immediately.

## CASE DETAILS

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| COURT | Supreme Court of the State of New York, Appellate Division, Second Judicial Department |
| WRITING FOR THE COURT | Per Curiam; Randall T. Eng, P.J.; William F. Mastro, J.; Reinaldo E. Rivera, J.; Mark C. Dillon, J.; Ruth C. Balkin, J. |
| JURISDICTION | New York |
| DECIDED | December 29, 2017 |
| DOCKET | 2016-01326 |
| DISPOSITION | other |
| PROCEDURAL POSTURE | Attorney disciplinary proceeding in which the Grievance Committee moved to confirm the Special Referee's report sustaining all 12 charges of professional misconduct and to impose discipline. The respondent opposed the motion as to three dishonesty-related charges and sought a public censure. |
| STANDARD OF REVIEW | The Appellate Division independently reviewed the disciplinary record, confirmed the Special Referee's report, and determined the appropriate sanction under the totality of the circumstances. |
| PRECEDENTIAL VALUE | Published Appellate Division opinion; precedential disciplinary decision |
| PARTIES | Grievance Committee for the Tenth Judicial District v. Frank G. D'Angelo, Jr. |

## TOPICS

guardianship procedure · guardianships · elder law · real estate · probate procedure

### PRACTICE AREAS

attorney discipline · guardianships · elder law · probate

### QUESTIONS PRESENTED

1. Whether the Special Referee's findings sustaining all 12 charges of professional misconduct should be confirmed.
2. Whether D'Angelo's conduct involving guardianship payments constituted dishonesty, fraud, deceit, or misrepresentation rather than merely negligence.
3. Whether D'Angelo's receipt and concealment of an unearned real-estate commission constituted dishonesty, fraud, deceit, or misrepresentation.
4. Whether D'Angelo's preparation and use of wills for an incapacitated ward constituted dishonesty, fraud, deceit, or misrepresentation.
5. What disciplinary sanction was warranted by the respondent's course of covert self-dealing.

### HOLDINGS

1. The respondent's use of Family Care, a business solely owned by his wife, as a vehicle for payments from the ward's estate constituted deceitful conduct and properly supported charge three.
2. The respondent's receipt, deposit, and use of a $47,100 unearned commission through Castleworks, without disclosure to the court approving the sale, constituted deceitful conduct and properly supported charge seven.
3. The respondent's preparation and use of the May 8, 2009, and July 8, 2009, wills for Albert K., despite knowing of Albert K.'s severe cognitive and language impairments, constituted deceitful conduct and properly supported charge eleven.
4. The motion to confirm the Special Referee's report was granted, and all 12 charges of professional misconduct were sustained.
5. Disbarment was warranted because the respondent engaged in a course of covert self-dealing while acting as guardian for an elderly and incapacitated ward.

### KEY QUOTATIONS

> *“Using Family Care as a cover for payments to himself was plainly deceptive.”* (*4)

> *“On these facts, it cannot reasonably be argued that the respondent did not engage in deceitful conduct. The subject conduct is another instance of "covert self-dealing.""* (*5)

> *“This case involves a course of covert self-dealing by the respondent, who abused his position as guardian of Albert K., an incapacitated person.”* (*6)

### FACTUAL BACKGROUND

Frank G. D'Angelo, Jr., served as guardian for Albert K., an incapacitated elderly person. The court found that D'Angelo engaged in covert self-dealing in three areas: paying excessive guardianship funds to a business owned by his wife, receiving an undisclosed real-estate commission through a brokerage associated with his wife, and preparing wills naming himself and his wife as fiduciaries despite Albert K.'s severe cognitive and language impairments. Prior court proceedings had imposed a surcharge for the guardianship payments, and the Surrogate's Court denied probate to the 2009 will.

### PROCEDURAL HISTORY

The Court authorized the Grievance Committee to institute the proceeding and referred the matter to a Special Referee. After a prehearing conference and evidentiary hearings, the Special Referee sustained all 12 charges and dismissed the respondent's affirmative defenses. The Appellate Division confirmed the report, sustained all charges, and disbarred the respondent effective immediately.

### DISPOSITION

other

### CASES CITED

- Matter of Albert K. [D'Angelo], 96 AD3d 750
- Matter of Holtzman, 78 N.Y.2d 184
- Matter of Taylor, 113 AD3d 56
- Matter of Aversa, 88 AD3d 339

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