

Late K-1

I don't understand how Jean O'Connell's accountant, Joanne Barnes, who Edward White hired for the estate, and I hired for the trust, would be late is getting the K-1 from the trust to Jean O'Connell or her estate.

$$1,475.97 - 816.00 = 659.97$$

Not Reported

\$125,188

April 21, 1991

The April 21, 1991, payment of \$125,188 from the Lynch note to Jean O'Connell was not reported to the IRS. In my May 29, 1992, letter to Edward White I said it was taxable and should be reported, and he reported it on an amended return. Can we expose the accounting trail for the April 21, 1991, payment of \$125,188?

BRUNER, KANE & MCCARTHY, LTD.

A PROFESSIONAL CORPORATION
CERTIFIED PUBLIC ACCOUNTANTS
700 NORTH FAIRFAX STREET
POST OFFICE BOX 1250
ALEXANDRIA, VIRGINIA 22313

(703) 549-7800
FAX (703) 836-5591

ARTHUR J. BRUNER, CPA
JOHN T. KANE, CPA
JOANNE L. BARNES, CPA
CHARLES W. BALLOU, CPA
NICHOLAS GREKSOUK, CPA
RICHARD G. COLE, JR., CPA
DANIEL F. MCCARTHY, CPA
CONSULTANT

MEMBERS
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PRIVATE COMPANIES PRACTICE SECTION
THE MCGLADREY NETWORK

November 25, 1991

Ms. Jean Nader
350 Fourth Avenue
New Kensington, Pennsylvania 15068

Re: Estate of Jean O'Connell

Dear Ms. Nader:

I am writing to you at this time as a follow-up to our conference regarding your mother's estate. I thought it would be helpful to you to have a timetable of sorts of the filing requirements which will be coming up in order for you to formulate a basic plan.

- Approximately January 15, 1991 (four months after qualification) an inventory is filed with the Commissioner of Accounts in Fairfax County listing the assets and value at the date of death.
- April 15, 1992 her final income tax return would be due.
- June 15, 1992 a Federal estate tax return would be due if her assets exceed \$600,000.
- December 15, 1992, and each year until the estate is closed, an estate prepares an income tax return on net income it receives. This can be a fiscal year ending no later than August 31, 1992 and thereafter, so the first return would be due December 15, 1992.
- Approximately January 15, 1993 (16 months after qualification) a court accounting of all probate assets, income and expenses would be due. If a court accounting is required, it is filed annually until the estate is closed.

While I'm certain Mr. White has probably discussed these filings with you, I thought it would be appropriate for you to understand the timing requirements.

Please contact us directly if we can be of any assistance to you in preparing these documents. We will also be happy to work with Mr. White if that seems appropriate. Louise Priest will be working with me on this estate and will also be familiar with this information if you need assistance.

Very truly yours,

Joanne L. Barnes
Joanne L. Barnes *JLB*

JLB:mbm

EDWARD J. WHITE
ATTORNEY AT LAW
118 SOUTH ROYAL STREET
ALEXANDRIA, VIRGINIA 22314

TELEPHONE 836-5444

February 18, 1992

Mr. Anthony M. O'Connell
6541 Franconia Rd.
Springfield, Va. 22150

Re: Estate of Jean M. O'Connell

Dear Mr. O'Connell,

In order to prepare your mother's 1991 income tax returns, I need the amount that the Harold O'Connell Trust paid her during 1991. In the event the payment was not made in 1991, I will need to file the amount which was due as "income with respect to a decedent" on the estate tax and fiduciary tax returns. The cutoff date for your computation will be September 15, 1991. After that date the trust technically terminated, and the income belongs to the beneficiaries of that trust.

Jean and I are making progress on the estate. We have decided to leave the A. G. Edwards accounts in place since they are earning a better rate of return than a bank can give.

I am trying to get to the bottom of the car problem with Sovran and should be able to get the title soon so that it can be transferred to you before the insurance expires.

Jean has informed me that you and your sisters have decided that it is best to try and list the Accotink property at its actual value as of the of death rather than a higher value based on its future value. Since you have worked so diligently on this problem in the past, could you give me the name of an appraiser who could do a valuation which will take into account all of the county inspired problems. It seems to me that the county value of \$600,000.00 is too high based on the hurdles you have run into in trying to develop it.

Could you also send me the address of Lynch Properties?

Sincerely,



Edward J. White

EJW/e
Copy to: Jean M. Nader



Missing

\$545,820

April 21, 1992

The accountants do not mention the cash payment of \$545,820 to the Estate from the payoff of Lynch Note 1 on April 21, 1992, and the payment does not show in the accountings or tax returns.

When the accountants told the beneficiaries that the Lynch note would not produce any capital gain, I told them that it would and the taxes were paid. At that time I did not know that they were not reporting the \$545,820 payment. So strangely, the payment was not reported but the taxes on the payment were paid.

Can we expose the accounting trails of the \$545,820 payment?

EDWARD J. WHITE
ATTORNEY AT LAW
118 SOUTH ROYAL STREET
ALEXANDRIA, VIRGINIA 22314
—
TELEPHONE 836-5444



April 22, 1992

Mrs. Jean M. Nader
350 Fourth Ave.
New Kensington, Pa. 15068

Re: Disbursement

Dear Jean,

Enclosed is an agreement which should satisfy Tony as to the car. It cannot be any clearer.

Also enclosed is a preliminary analysis of the estate tax, which should be close to being accurate. I do need to check with Jo Ann Barnes as to a technical question as to whether or not any of your father's trust comes into this. I do not think it does, but there have been many changes in the law since that trust was established. I will have to ask her to bill us for that advice and any other technical tax matters I am not comfortable with. I can do most of the rest of the tax work and save the estate some money.

The executors' commission shown on the analysis is not figured on the value of the realty; however it does not include the 5% commission on the receipts of the estate in addition to the inventory.

In order to file that return and the subsequent Fiduciary Income tax return we will need an accounting from Tony from the date of his last accounting to the date of death. If he does not want to prepare it, I will not agree to any preliminary disbursement to him at all, and will seek your approval to file suit against him to compel the accounting, plus damages to the estate for his delay. Since that trust terminated on your mother's death, his final accounting is due now and not in October.

There will be no further explanations or written entreaties to him as far as I am concerned. He has the duty and he will perform it under a court order if necessary. Of course he will furnish that receipt.

The preliminary analysis contains three alternatives on Accotink at the bottom for your consideration.

In the event that we do seek a reduction in the assessment Tony will be given written notice that his prompt cooperation is necessary and that if he fails to cooperate that he is aware of the

Page 2
Ltr to Mrs. Jean M. Nader
April 27, 1992

adverse consequences to the estate and is responsible for them.

As far as further steps are concerned, we have a lot to do. No gift tax returns were filed for 1989 and 1991 which will have to be done. The results of those gifts are factored in under "Unified Credit used for gifts 9,784".

The paper trail in the court and IRS is as follows:

- File Estate tax by June 15, 1992
- File First Accounting (16 months after qualification but can be sooner)
- Ask for posting of Debts and Demands against the estate.
- File Fiduciary Income tax returns for period 9/15/91-9/15/92, due January 1, 1993.
- File Motion for a Show Cause why distribution should not be made. Submit Show Cause Order.
- Request Executor's exoneration letter from IRS and Virginia.
- Obtain closing letter from IRS and Virginia as to estate tax returns.
- File 1993 Fiduciary tax returns (Sept. 1992-distribution)
- File for Order allowing distribution.
- Distribute estate.
- File Final Accounting.

Normally distribution is withheld until the Order of Distribution is entered. As I indicated the creditors have one year to press claims against the estate. No prudent executor will distribute before that period, the entry of the Order of Distribution and the receipt of the tax closing letters.

Sincerely


Edward J. White

EJW/e
Encl.

SH. NOTES. STOCKS & BONDS

| | |
|---------------------------------------|------------|
| ck Wash Gas Light Co. 8/1/91 | 105.00 |
| ck Signet 8/5/91 | 39.60 |
| ck A. G. Edwards 8/15/91 | 2,346.63 |
| ck Kemper Mun Bond Fund 4/30/91 | 162.86 |
| ck Kemper Mun Bond Fund 5/31/91 | 162.86 |
| ck Kemper Mun Bond Fund 7/31/91 | 162.86 |
| ck Kemper Mun Bond Fund 8/30/91 | 162.86 |
| Ck Nuveen Fund 3/1/91 | 63.00 |
| Ck Nuveen Fund 5/1/91 | 63.00 |
| ck Nuveen Fund 6/3/91 | 63.00 |
| ck Nuveen Fund 8/1/91 | 66.50 |
| ck Nuveen Fund 9/3/91 | 66.50 |
| ck American Funds 9/9/91 | 424.76 |
| Sovran Bank #4536-2785 | 3,310.46 |
| First Virginia Bank #4076-1509 | 22,812.52 |
| Fx Co. Ind Dev Bond | 109,587.00 |
| Franklin Va. Fund 4556.001 sh | 50,507.84 |
| Investment Co. of America 3861.447 sh | 65,663.91 |
| Kemper Mun Bond Fund 2961.152 sh | 30,396.23 |
| Nuveen Premium Inc Mun Fund 700 sh | 6,450.50 |
| Washington Gas Light Co. 200 sh | 6,375.00 |
| Signet Banking Corp 198 sh | 4,331.25 |
| Lynch Properties note | 518,903.26 |
| Travelers Check | 20.00 |
| 1988 Plymouth Van | 8,000.00 |
| Am Funds 5/10/91 | 326.60 |
| USAA Subscriber savings acct | 25.10 |
| SUB TOTAL | 830,599.10 |



OTHER ASSETS

| | |
|----------------------------------|----------|
| 1990 Virginia Tax refund | 1,605.58 |
| Debt from Harold O'Connell Trust | 659.97 |
| Blue Cross refund | 88.78 |
| SUB TOTAL | 2,354.33 |



JOINT ASSETS

| | |
|---------------------------|-----------|
| Hallmark Bank #1107849600 | 40,796.81 |
|---------------------------|-----------|

REAL ESTATE

| | |
|--|------------|
| 15 acres Fairfax Co. Va. 53.9006% interest | 323,403.60 |
|--|------------|

| | |
|--------------|--------------|
| TOTAL ASSETS | 1,197,153.84 |
|--------------|--------------|

DEBTS

| | |
|---|-----------|
| Colonial Emerg Phys (med bill) | 10.40 |
| Fairfax Circ Ct. letters | 14.00 |
| Jean M. Nader probate tax reimb | 1,269.00 |
| Sovran Bank Car loan payoff | 1,364.97 |
| Checks | 15.89 |
| Commissioner of accounts Inventory | 61.00 |
| IRS 1991 1040 return | 15,332.00 |
| Va. Dept Tax 1991 return | 2,856.00 |
| Jean M. Nader, bills pd | 8,559.00 |
| Sheila Ann O'Connell-Shevenell, cem bill | 475.00 |
| Co-Executors' Commission | 41,529.96 |
| Commissioner of Accounts fee for Accounting | 1,048.25 |
| TOTAL DEBTS AND EXPENSES | 72,535.46 |

TAX COMPUTATION

| | | | | |
|---------------------------------|---------|--------------|-------------------------|-----------------------|
| GROSS ESTATE | | 1,197,153.84 | | |
| DEBTS & EXPENSES | | 72,535.46 | | |
| | | ----- | | |
| TAXABLE ESTATE | | 1,124,618.38 | ACC 75% 1,043,767.48 | ACC 60% 995,256.94 |
| | | | | 3% BRACKET |
| TENTATIVE TAX 41% bracket | | 396,893.53 | 363,744.67 | 343,950.21 |
| Unified Credit before gift comp | 192,800 | | | |
| Unified Credit used for gifts | 9,784 | | | |
| UNIFIED CREDIT | | 183,016.00 | 183,016.00 | 183,016.00 |
| CREDIT FOR VIRGINIA TAX | | 40,375.58 | 35,201.12 | 32,934.39 |
| NET FEDERAL TAX | | 173,501.96 | 145,527.55 | 127,999.82 |
| VIRGINIA TAX | | 40,375.58 | 35,201.12 | 32,934.39 |
| | | ----- | ----- | ----- |
| TOTAL ESTATE TAXES | | 213,877.53 | 180,728.67 | 160,934.21 |

Trust U/W Harold O'Connell
Anthony O'Connell, Trustee
6541 Franconia Road
Springfield, Virginia 22150

April 29, 1992
As of April 11, 1992

BRUNER, KANE & MCCARTHY, LTD.
A PROFESSIONAL CORPORATION
CERTIFIED PUBLIC ACCOUNTANTS
700 NORTH FAIRFAX STREET
POST OFFICE BOX 1250
ALEXANDRIA, VIRGINIA 22313

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THE MCGGLADREY NETWORK

MAKE CHECKS PAYABLE TO "BKM, LTD."
(PLEASE INCLUDE REF. NO. ON YOUR CHECK)

CLIENT # 96085-THO

REF. NO. 9059

FOR PROFESSIONAL SERVICES RENDERED:

Preparation of Federal and Virginia fiduciary income
tax returns for the year ended December 31, 1991 and
preparation of annual court accounting for the year
ended December 31, 1991

\$3,100

*paid
5/6/92*

A 1 1/2 % PER MDNTH LATE PAYMENT PENALTY WILL BE ADDED TO ALL ACCOUNTS NOT
PAID WITHIN 40 DAYS OF THE BILLING DATE.

EDWARD J. WHITE
ATTORNEY AT LAW
118 SOUTH ROYAL STREET
ALEXANDRIA, VIRGINIA 22314
TELEPHONE 836-5444

May 4, 1992

Mrs. Jean M. Nader
350 Fourth Ave.
New Kensington, Pa. 15068

Dear Jean,

Enclosed is the form for appealing the tax assessment of the Accotink property. On page 2, it states that there is a June 1 deadline. I do not think we can make a claim of a lesser value on the estate tax return if we do not file an appeal with the county. To fail to do appeal it would hurt our argument with the IRS.

The summary of the estate tax computation and the interplay of the gift tax is as follows:

1. In computing the estate tax, the gross estate (which includes anything which passes due to death whether in the probate estate or not) is figured, the debts subtracted and the "taxable estate" is ascertained.
2. The tax is then computed on the taxable estate. From this figure is subtracted a "unified credit" of \$192,800 (equivalent to a taxable estate of \$600,000).
3. Lifetime gifts in excess of \$10,000 to any one individual are taxable at the estate/gift tax rates. Each year the donor should have filed a gift tax return, though no tax is due unless the entire \$192,800 credit has been used in making the gifts.
4. Each gift over \$10,000 uses a portion of the unified credit, thus reducing the amount of that credit available to apply to the estate tax.

In our case the lifetime gifts used up \$9784.00 of the available credit. A list of the gifts is enclosed. Returns for 1989 and 1991 must be filed. As fiduciaries we must certify to the IRS that the return is true and correct. We have personal liability in that regard. If we have knowledge of a gift to Tony of \$15,000, we must report it. Tony is going to have to answer that question before we can be satisfied. If he claims he did not receive the money, he will have to supply us with an affidavit to that effect.

As far as the management of an estate undergoing the probate process is concerned, the Executors are entitled to some latitude

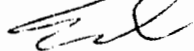
Page 2
Ltr to Mrs. Jean M. Nader
May 4, 1992

within the confines of their fiduciary duty. The decisions about the estate are theirs.

My personal operational mode in these matters is to keep the heirs fully supplied with the paperwork of the estate, and consult with them fully as to strategic and long range issues, such as the valuation of property in the Accotink situation. The day to day matters and the justification for tactical positions taken such as the contents of forms and accountings are the prerogative of the Executors and subject to the scrutiny and approval of the Commissioner of Accounts or the taxing authorities only.

With regard to the filing of the income tax return, my file indicates that I received a fax copy of the K-1 from the Harold O'Connell Trust on April 9, 1992, only six days before the tax return was due.

Sincerely,



Edward J. White

EJW/e
Encl.



Missing

\$70,051

June 11, 1992

There are two versions of the extension request (IRS Form 4768) and two version of the estate tax return (IRS Form 760) with the same dates but for different amounts. One version says \$175,000 was paid to the IRS on June 11, 1992, and one version says i\$119,000 was paid to the IRS on June 11, 1992. There should only be one version. The \$70,051 over payment reported on the \$175,000 version disappears from the accounting.

Can we expose the accounting trail of the \$70.051?



KELLER BRUNER & COMPANY, P.C.

Certified Public Accountants • Management Consultants

700 N. Fairfax Street • P.O. Box 1250 • Alexandria, VA 22313-1250
703-549-7800 • 703-836-5591 Fax

Estate of Jean M. O'Connell
Edward White, Co-Executor
118 South Royal Street
Alexandria, Virginia 22314

February 1, 1993
As of January 15, 1993

TERMS: All accounts over 40 days are
subject to a 1.5% per month finance
charge on unpaid balance.

MAKE CHECKS PAYABLE TO "KBC, P.C."
(PLEASE INCLUDE REF. NO. ON YOUR CHECK)

CLIENT #96088-001 REF. NO. 1286-2

~~RJO~~

FOR PROFESSIONAL SERVICES RENDERED:

Preparation of Federal and Virginia fiduciary income
tax returns for the year ended August 31, 1992.

\$1,000



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2803
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

February 10, 1993

PERSONAL AND CONFIDENTIAL

Mr. Anthony M. O'Connell
6541 Franconia Road
Springfield, Virginia 22150

Re: In the Matter of Edward James White
VSB Docket No. 93-042-0976

Dear Mr. O'Connell:

This letter is in reference to your complaint against the above-referenced attorney received in our office on December 7, 1992. In addition, I acknowledge receipt of your supplemental correspondence dated January 26, 1993, received in my office on January 29. I have concluded my preliminary investigation of your original complaint and wish to advise you that your complaint presents no basis for further investigation by this office for the reasons I shall set out below.

The Respondent did not file a written answer to your complaint. However, Mr. White is represented by counsel in this matter, David R. Rosenfeld, Esquire, and I met with Mr. Rosenfeld and his associate in Alexandria to go over all of the factual matters related to this complaint.

Your complaint alleges that the Respondent served as co-executor of your father's estate along with your mother and that the Respondent allegedly withheld certain information concerning a trust which was set up under your father's will in which you were named as a trustee.

According to your complaint, you retained the Respondent in 1987 to handle a real estate closing and you allege that the Respondent appointed himself co-trustee on the note securing that transaction. Then, the day prior to closing, Respondent allegedly informed you that he was not representing your interests in this real estate transaction. You have also claimed that the Respondent has handled your mother's estate incompetently.

With respect to your first complaint, it appears that your mother, rather than you, retained the Respondent for legal assistance in her capacity as executrix

Mr. Anthony M. O'Connell
Page 2
February 10, 1993

of your father's will. Apparently, your mother removed you from her will as a co-executor and nominated the Respondent in your place. However, none of these matters fall within the scope of the Code of Professional Responsibility particularly in view of the fact that you and the Respondent did not share an attorney-client relationship.

Your father's will poured over into a trust in which you were nominated trustee. By your own complaint, you admit that you hired another attorney to look into the funding of the trust, i.e., what distributions the estate would make to the trust. It is my understanding that you came to Virginia to qualify as a trustee. Again, in respect to that matter, there is no attorney-client relationship between you and the Respondent, Mr. White.

In the absence of an attorney-client relationship between you and Mr. White, Mr. White was under no ethical obligation to follow any of your directions or instructions nor was he obligated to communicate directly with you. His ethical duties regarding competence, promptness and communication were owed to your mother.

It is my understanding, based upon a reading of your complaint, that the Respondent and your attorney reached an agreement regarding the funding of the trust and the Respondent agreed to cooperate by providing your attorney with a draft of the final accounting of your father's estate.

Your complaint initially provoked a thought on my part as to why the father's estate remained open so long. However, as indicated in your complaint, Mr. White was not retained by your mother until 1985. Thus, while your complaint states that you were not aware of the fact that your father had appointed you as a co-trustee until 1985, and that your father passed away in 1975, the Respondent appears to have notified you of that fact after he had become involved in 1985.

You have also complained that your mother executed a codicil to her will removing you as a co-trustee and naming Mr. White in your stead. I find nothing improper about that particular matter as it was certainly your mother's prerogative to amend or modify her will and it was Mr. White's responsibility to follow her instructions in that regard.

Your second complaint involves an allegation that Mr. White undertook to represent your interests in a real estate closing in 1987. By letter dated December 28, 1987, you purportedly asked the Respondent to represent your interests in a transfer of property to the Lynch Properties Limited Partnership. You complain that the Respondent failed to notify you of the closing date which you fortuitously discovered from the purchasers just before the closing. In addition, you point out that the Respondent and another party were named as trustees on the Deed of Trust securing the purchase loan without your knowledge or consent. When you confronted Respondent about this, he advised that he did not represent your interests in this real estate

Anthony M. O'Connell
Page 2
February 10, 1993

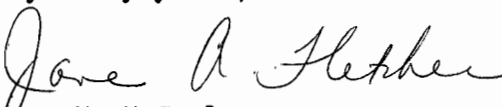
transaction.

My investigation reveals that the Respondent did not serve as settlement attorney for this transaction. In fact, the closing was handled by Coldwell Banker, and the legal instruments for the transaction were prepared under the supervision of McGuire, Woods, Battle & Boothe. I have seen the real estate closing file which was delivered to Mr. Wright by the McGuire, Woods firm, and I am firmly convinced that Mr. White took no part in that transaction other than to perhaps provide informal legal advice to your mother. Your letter of December 28, 1987 is insufficient as a matter of law to establish an attorney-client relationship unless there is some evidence that Mr. White did in fact undertake to handle the closing. Finally, there is no ethical issue raised simply because Mr. White is named as a co-trustee in the Deed of Trust securing the purchase by the Lynch Properties Limited Partnership.

The third complaint involved an allegation that Mr. White allegedly withheld a \$75,000 distribution until you agreed to obtain your own legal counsel. With respect to this allegation, Mr. White, in his capacity as an administrator or executor of an estate is under no obligation by law to make a interim distribution to you. Whether an interim distribution is made is entirely discretionary and the law requires a distribution to be made only upon the filing of a final accounting. With regard to your allegations of incompetence and delay on the part of Mr. White in handling your mother's estate, I have determined that Mr. White has filed in a timely manner the inventory and first accounting for this estate. No delinquency notices or show cause summonses have been issued. The only possible area of neglect appears to be the late filing of Mrs. O'Connell's income tax return, however, I am advised that Mr. White paid one-half of the accrued interest to the IRS, and that no penalties were assessed. In addition, Mr. White timely requested an extension for filing the decedent's last income tax return and therefore no penalties were involved. As justification for the delay, Mr. White points out that he experienced some delay in obtaining the K-1 from you and your own complaint appears to concede that there was a problem with getting the K-1 to Mr. White.

Based on the foregoing, I see no basis in fact or in law to conclude that Mr. White has engaged in any misconduct in violation of the Code of Professional Responsibility. Therefore, please be advised that no further action will be taken on your complaint. By copy of this letter to Respondent's counsel, Mr. Rosenfeld, I am advising him of my determination.

Very truly yours,


for James M. McCauley
Assistant Bar Counsel

JMM/ge
cc: David R. Rosenfeld, Esquire