

SUPREME COURT OF OHIO

Disciplinary Counsel v. Taubman

136 Ohio St. 3d 312, 2013-Ohio-3704 (2013) · No. 2012-1715 · Decided September 3, 2013

SUMMARY

The Supreme Court of Ohio adopted a consent-to-discipline agreement involving an attorney who negligently withdrew settlement proceeds held in a client guardianship account for personal use. The court found violations of Ohio Professional Conduct Rules 1.15(a) and 8.4(h). It imposed a six-month suspension, stayed in full on the condition that the attorney commit no further misconduct.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Maureen O'Connor, C.J.; Paul E. Pfeifer, J.; Terrence O'Donnell, J.; Evelyn Lundberg Stratton, J.; Lanzinger, J.; Judith L. French, J.; William M. O'Neill, J.
JURISDICTION	Ohio
DECIDED	September 3, 2013
DOCKET	2012-1715
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding on a certified report from the Board of Commissioners on Grievances and Discipline based on the parties' consent-to-discipline agreement.
PRECEDENTIAL VALUE	Published Ohio Supreme Court disciplinary decision; precedential as to the court's adjudication and sanction of the stipulated misconduct.

TOPICS

guardianships

guardianship accounting

remedies

PRACTICE AREAS

legal ethics and professional responsibility

attorney discipline

guardianships

trust accounts

QUESTIONS PRESENTED

1. Whether Taubman's negligent withdrawal of settlement proceeds held in a client guardianship account violated Prof.Cond.R. 1.15(a) and 8.4(h).

2. Whether the parties' consent-to-discipline agreement imposing a six-month suspension stayed in its entirety on the condition of no further misconduct should be adopted.

HOLDINGS

1. Taubman's negligent withdrawal of settlement proceeds held in a client guardianship account for his personal use violated Prof.Cond.R. 1.15(a) and 8.4(h).
2. A six-month suspension from the practice of law, stayed in its entirety on the condition that Taubman commit no further misconduct, is the appropriate sanction.

KEY QUOTATIONS

"We agree that Taubman violated Prof.Cond.R. 1.15(a) and 8.4(h) and, as stated in the parties' agreement and as indicated by the cited precedent, that this conduct warrants a stayed six-month suspension." (¶ 5)

"Accordingly, Taubman is hereby suspended from the practice of law in Ohio for six months, with the entire suspension stayed on the condition that he commit no further misconduct." (¶ 6)

FACTUAL BACKGROUND

Taubman negligently withdrew settlement proceeds held in a client guardianship account for his personal use. He stipulated that the conduct violated Ohio Rules of Professional Conduct 1.15(a) and 8.4(h). The parties stipulated that there were no aggravating factors and identified several mitigating factors, including Taubman's lack of a prior disciplinary record, cooperation, disclosure, good character, and effort to rectify the misconduct.

PROCEDURAL HISTORY

Disciplinary counsel charged Taubman with professional misconduct after he negligently withdrew settlement proceeds held in a client guardianship account for personal use. The parties stipulated to the facts, violations, mitigating factors, and a six-month suspension stayed on conditions. The Supreme Court initially remanded the matter because Taubman's affidavit did not comply with the applicable procedural rule; after a supplemental affidavit, the board again recommended adoption of the agreement, which the court accepted.

DISPOSITION

other

CASES CITED

- Disciplinary Counsel v. Vivyan, 125 Ohio St. 3d 12, 2010-Ohio-650, 925 N.E.2d 947

OPINION

PER CURIAM.

[Cite as Disciplinary Counsel v. Taubman, 136 Ohio St. 3d 312, 2013-Ohio-3704.]
DISCIPLINARY COUNSEL v. TAUBMAN. [Cite as Disciplinary Counsel v. Taubman, 136 Ohio

St. 3d 312, 2013-Ohio-3704.] Attorneys—Misconduct—Negligently withdrawing settlement proceeds held in client guardianship account—Consent to discipline—Six-month suspension stayed on conditions. (No.

2012-1715—Submitted April 23, 2013—Decided September 3, 2013.) ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 12-046. _____ Per Curiam. {¶ 1} Respondent, Bruce David Taubman of Cleveland, Ohio, Attorney Registration No. 0001410, was admitted to the practice of law in Ohio in 1976.

In June 2012, relator, disciplinary counsel, charged Taubman with professional misconduct for negligently withdrawing settlement proceeds held in a client guardianship account for Taubman's personal use. {¶ 2} A panel of the Board of Commissioners on Grievances and Discipline considered the cause on the parties' consent-to-discipline agreement. See BCGD Proc.Reg.

11. In that agreement, Taubman stipulated to the facts as alleged in relator's complaint and agreed that his conduct violated Prof.Cond.R. 1.15(a) (requiring a lawyer to hold property of clients in an interest-bearing client trust account, separate from the lawyer's own property) and 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law). {¶ 3} The parties also stipulated that no aggravating factors exist and that the mitigating factors include the absence of a prior disciplinary record, a timely SUPREME COURT OF OHIO good-faith effort to rectify the consequences of the misconduct, full and free disclosure to the board and a cooperative attitude toward the disciplinary proceedings, and good character or reputation.

See BCGD Proc.Reg. 10(B)(2)(a), (c), (d), and (e). The parties further agreed that a stayed six-month suspension is the appropriate sanction for Taubman's misconduct. {¶ 4} The board recommended that we adopt the consent-to-discipline agreement, but we remanded the matter because Taubman's affidavit did not conform to the requirements of BCGD Proc.Reg. 11(B).

134 Ohio St. 3d 1463, 2013-Ohio-502, 983 N.E.2d 364. Upon submission of Taubman's supplemental affidavit, the board found that the consent-to-discipline agreement met the requirements of our remand order, and the board again recommends that we adopt the parties' agreement.

The board refers to similar disciplinary cases in support of its recommendation, including Disciplinary Counsel v. Vivyan, 125 Ohio St. 3d 12, 2010-Ohio-650, 925 N.E.2d 947 (imposing a six-month stayed suspension on an attorney who withdrew for his personal use settlement proceeds held in trust for a client). {¶ 5} We agree that Taubman violated Prof.Cond.R.

1.15(a) and 8.4(h) and, as stated in the parties' agreement and as indicated by the cited precedent, that this conduct warrants a stayed six-month suspension. Therefore, we adopt the parties' consent-to-discipline agreement. {¶ 6} Accordingly, Taubman is hereby suspended from the practice of law

in Ohio for six months, with the entire suspension stayed on the condition that he commit no further misconduct.

If Taubman fails to comply with the condition of the stay, the stay will be lifted, and his license will be suspended for the full six months. Costs are taxed to Taubman. Judgment accordingly. O'CONNOR, C.J., and PFEIFER, O'DONNELL, LANZINGER, KENNEDY, FRENCH, and O'NEILL, JJ., concur. 2 January Term, 2013 _____ Jonathan E. Coughlan, Disciplinary Counsel, and Stacy Solochek Beckman, Assistant Disciplinary Counsel, for relator.

Richard S. Koblentz and Kevin R. Marchaza, for respondent. _____ 3