

SUPREME COURT OF DELAWARE

In re Tenenbaum

918 A.2d 1109 (Del. 2007) · No. No. 565, 2006 · Decided February 6, 2007

SUMMARY

The Supreme Court of Delaware reviewed attorney disciplinary charges against Joel D. Tenenbaum arising from alleged indecent exposure, sexual assault, and unlawful imprisonment involving a former client. The Court affirmed the Board on Professional Responsibility's findings that the misconduct was proven by clear and convincing evidence and rejected Tenenbaum's laches and due process defenses. The Court ordered that Tenenbaum be disbarred.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Holland, Justice; Berger, Justice; Jacobs, Justice
JURISDICTION	Delaware
DECIDED	February 6, 2007
DOCKET	No. 565, 2006
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding in which the Office of Disciplinary Counsel petitioned for discipline, the Board on Professional Responsibility found professional misconduct by clear and convincing evidence, and recommended disbarment. The Supreme Court independently reviewed the violation findings and sanction.
STANDARD OF REVIEW	The Court reviews factual findings for substantial evidence, reviews conclusions of law de novo, and affirms when substantial evidence supports the Board's decision and no error of law occurred. The Board's violation standard is clear and convincing evidence.
PRECEDENTIAL VALUE	Published Delaware Supreme Court opinion; precedential.
PARTIES	Office of Disciplinary Counsel v. Joel D. Tenenbaum, Respondent

TOPICS

- administrative law
- agency adjudication
- judicial review of agency action
- procedural due process

PRACTICE AREAS

legal ethics and professional responsibility

attorney discipline

administrative law

constitutional law

QUESTIONS PRESENTED

1. Whether the Office of Disciplinary Counsel established by clear and convincing evidence that Tenenbaum engaged in illegal conduct involving moral turpitude in violation of former DR 1-102(A)(3).
2. Whether a delay of more than twenty-two years barred the disciplinary proceeding under laches or violated due process.
3. Whether disbarment was the appropriate sanction for the established misconduct.

HOLDINGS

1. The Board's findings that Tenenbaum committed indecent exposure, sexual assault, and unlawful imprisonment involving moral turpitude, in violation of former DR 1-102(A)(3), were supported by clear and convincing evidence and were affirmed.
2. Laches may be considered in a Delaware lawyer disciplinary proceeding, but the mere passage of time is insufficient; the respondent must prove both unreasonable delay and prejudice resulting from the delay. Tenenbaum failed to establish both elements, and his due-process defense was properly rejected.
3. Disbarment was appropriate because any lesser sanction would fail to protect the public, deter similar misconduct, preserve the integrity of the profession, and maintain public confidence in Delaware's disciplinary process.

KEY QUOTATIONS

"We agree with the ratio decidendi in Bash, and extend it to Delaware lawyer disciplinary proceedings." (1114)

"We conclude that any sanction other than disbarment would not provide the necessary protection for the public, serve as a deterrent to the legal profession, or preserve the public's trust and confidence in the integrity of the Delaware lawyers' disciplinary process." (1115)

FACTUAL BACKGROUND

Tenenbaum represented Carolyn Catts in a 1983 DUI matter. Catts alleged that during an after-hours meeting at Tenenbaum's law office, he indecently exposed himself, sexually assaulted her, and unlawfully restrained her. She did not report the conduct until 2005, after reading about Tenenbaum's prior suspension for sexual misconduct involving female clients and employees. The Board credited Catts's testimony and found the three offenses established by clear and convincing evidence.

PROCEDURAL HISTORY

The Office of Disciplinary Counsel filed a Petition for Discipline alleging three counts of illegal conduct involving moral turpitude arising from conduct in or about 1983. The Board on Professional Responsibility found the charged misconduct established by clear and convincing evidence and rejected Tenenbaum's laches

and due-process defenses. The Board later recommended disbarment. The Supreme Court affirmed the Board's findings and conclusions of law and independently determined that disbarment was appropriate.

DISPOSITION

other

CASES CITED

- In re Tenenbaum, 880 A.2d 1025 (Del. 2005)
- Matter of Berl, 540 A.2d 410 (Del. 1988)
- Matter of Lewis, 528 A.2d 1192, 1193 (Del. 1987)
- Olney v. Cooch, 425 A.2d 610, 613 (Del. 1981)
- Bash v. Board of Medical Practice, 579 A.2d 1145 (Del. Super. 1989)
- Kotler v. Board of Medical Practice, 630 A.2d 1102 (Del. 1993)
- U.S. Cellular Investment Co. of Allentown v. Bell Atlantic Mobile Systems, Inc., 677 A.2d 497, 502 (Del. 1996)
- Nationwide Mutual Insurance Co. v. Starr, 575 A.2d 1083, 1088 (Del. 1990)
- In re Figliola, 652 A.2d 1071, 1076 (Del. 1995)
- In re Agostini, 632 A.2d 80, 81 (Del. 1993)
- In re Rich, 559 A.2d 1251, 1257 (Del. 1989)
- In re Barrett, 630 A.2d 652, 653, 655, 657 (Del. 1993)
- In re Bailey, 821 A.2d 851, 866 (Del. 2003)
- In re Fountain, 878 A.2d 1167, 1173 (Del. 2005)
- In re Steiner, 817 A.2d 793, 796 (Del. 2003)
- In re McCoy, 767 A.2d 191, 195 (Del. 2001)
- In re Gould, 4 A.D.2d 174, 176, 164 N.Y.S.2d 48, 49 (1957)
- The Florida Bar v. McHenry, 605 So. 2d 459 (Fla. 1992)