

COURT OF APPEALS OF MARYLAND

Attorney Grievance Commission of Maryland v. Myles Louis
Lichtenberg, 379 Md. 335

842 A.2d 11 (2004) · No. Misc. AG No. 67, Sept. Term, 2002 · Decided February 11, 2004

SUMMARY

The Maryland Court of Appeals considered whether an attorney who owned and operated a title company violated professional-conduct rules and related statutes by retaining interest earned on real-estate settlement funds. The court held that the title company complied with Maryland Insurance Article § 22-103 and that the evidence did not establish violations involving safekeeping of property, misuse of trust money, fraud, or conduct prejudicial to the administration of justice. The disciplinary petition was dismissed.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Raker, J.; Bell, C.J.; Eldridge, J.; Wilner, J.; Cathell, J.; Harrell, J.; Battaglia, J.
JURISDICTION	Maryland
DECIDED	February 11, 2004
DOCKET	Misc. AG No. 67, Sept. Term, 2002
DISPOSITION	dismissed
PROCEDURAL POSTURE	Attorney disciplinary proceeding originating in the Court of Appeals of Maryland. After a referral for an evidentiary hearing, the circuit court hearing judge found that the respondent had violated none of the charged rules or statutes. The Attorney Grievance Commission filed exceptions, which the Court of Appeals overruled, and the disciplinary petition was dismissed.
STANDARD OF REVIEW	The Court accepted the hearing judge's factual findings unless clearly erroneous and reviewed the proposed conclusions of law de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Attorney Grievance Commission of Maryland v. Myles Louis Lichtenberg

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QUESTIONS PRESENTED

1. Whether the Court should construe Insurance Article § 22-103(f), in an attorney disciplinary proceeding, to determine whether consent from beneficial owners was required before the title company retained interest earned on settlement funds.
2. Whether Lichtenberg's retention of the settlement-fund interest constituted theft or misuse of trust money under the cited Maryland statutes.
3. Whether Lichtenberg violated Maryland Rule of Professional Conduct 1.15 by retaining the interest through his title company.
4. Whether Bar Counsel proved violations of Maryland Rule of Professional Conduct 8.4(b), (c), or (d) by clear and convincing evidence.

HOLDINGS

1. The Court declined to construe § 22-103(f) in the first instance under the circumstances presented. Because the alleged conduct arose from Lichtenberg's separate, regulated title-agent business, the statute had not previously been judicially construed, and the Insurance Commissioner had not provided administrative guidance, the Court held that it was inappropriate to decide the statutory issue as the basis for attorney discipline.
2. Lichtenberg did not commit theft because he never exercised unauthorized control over the disputed interest; the client had consented to the title company's retention of it.
3. Lichtenberg did not violate § 10-306 because the settlement funds were used for the settlement and payments to the required parties, while the interest was retained pursuant to the separate agreement with the buyer.
4. Lichtenberg did not violate Rule 1.15(a) or (c) because the challenged conduct was not connected with legal representation of a client.
5. The Court expressly declined to decide whether Rule 1.15(b) applies to conduct outside the course of legal representation because the only plausible violation depended on the unresolved interpretation of Insurance Article § 22-103(f).
6. Bar Counsel failed to prove by clear and convincing evidence that Lichtenberg committed a criminal act reflecting adversely on his honesty, engaged in dishonesty, fraud, deceit, or misrepresentation, or engaged in conduct prejudicial to the administration of justice.

KEY QUOTATIONS

“We shall not proceed down the path suggested by Bar Counsel.” (379 Md. at 353)

“Nonetheless, under the circumstances of this case, where the basis of Bar Counsel's complaint relates to conduct not connected with the practice of law, it would be inappropriate for this Court to determine in the first instance if respondent violated the Insurance Article, and then to impose sanctions with respect to his license to practice law” (379 Md. at 357)

“There being no violation of the Rules of Professional Conduct, the petition is hereby dismissed.” (379 Md. at 358)

FACTUAL BACKGROUND

Lichtenberg was a Maryland lawyer and the owner and president of Guaranteed Title and Escrow, a licensed title company that conducted real estate settlements. In a refinancing transaction, a title-company employee understated the payoff owed to the prior mortgage lender; the company later advanced the resulting shortfall and retained interest earned on the settlement funds pursuant to an addendum signed by the refinancing borrower. Bar Counsel alleged that retaining the interest and handling the escrow funds violated professional-conduct rules and several statutes, although Lichtenberg was acting primarily as a licensed title agent rather than as counsel in the transaction.

PROCEDURAL HISTORY

Bar Counsel charged Lichtenberg with violations of Maryland Rules of Professional Conduct 1.15 and 8.4, Maryland criminal and professional statutes, and Insurance Article § 22-103 based on his title company's retention of interest earned on settlement funds. The Court referred the matter to Judge Christian M. Kahl of the Circuit Court for Baltimore County, who held an evidentiary hearing and proposed dismissal after finding no violations. The Court of Appeals independently reviewed the record and legal conclusions, overruled the exceptions, and dismissed the petition.

DISPOSITION

dismissed

CASES CITED

- Attorney Grievance Commission v. Harris, 371 Md. 510, 539, 810 A.2d 457, 474-75 (2002)
- Attorney Grievance Commission v. Garfield, 369 Md. 85, 97, 797 A.2d 757, 763-64 (2002)
- Attorney Grievance Commission v. McLaughlin, 372 Md. 467, 493, 813 A.2d 1145, 1160 (2002)
- Oaks v. Connors, 339 Md. 24, 35, 660 A.2d 423, 428 (1995)
- Giant Food, Inc. v. Department of Labor, Licensing and Regulation, 356 Md. 180, 189, 738 A.2d 856, 861 (1999)
- Luskin's v. Consumer Protection, 338 Md. 188, 196, 657 A.2d 788, 791-92 (1995)
- Fosler v. Panoramic Design, Ltd., 376 Md. 118, 829 A.2d 271 (2003)
- Attorney Grievance Commission v. Childress, 364 Md. 48, 55, 770 A.2d 685, 689 (2001)

- Attorney Grievance Commission v. Davis, 379 Md. 361, 842 A.2d 26 (2004)

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