

SUPREME COURT OF OHIO

Ohio State Bar Assn. v. Cleminshaw

137 Ohio St. 3d 576, 2013-Ohio-5200 (2013) · No. 2013-1346 · Decided December 5, 2013

SUMMARY

The Supreme Court of Ohio approved a consent decree concerning John D. Cleminshaw's unauthorized practice of law while questioning a witness at a Wayne County Board of Revision hearing. The court enjoined him from examining witnesses or otherwise participating in such hearings in a manner constituting the unauthorized practice of law, while permitting him to attend as a consultant and advise board panel members. No civil penalty or costs were imposed.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	O'Connor, C.J.; Pfeifer, J.; O'Donnell, J.; Lanzinger, J.; Kennedy, J.; French, J.; O'Neill, J.
JURISDICTION	Ohio
DECIDED	December 5, 2013
DOCKET	2013-1346
DISPOSITION	approved
PROCEDURAL POSTURE	Original proceeding on the final report of the Board on the Unauthorized Practice of Law, arising from a proposed consent decree between the Ohio State Bar Association and John D. Cleminshaw.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Ohio State Bar Association v. John D. Cleminshaw

TOPICS

[administrative law](#) [agency adjudication](#) [remedies](#) [real estate](#)

PRACTICE AREAS

[unauthorized practice of law](#) [administrative law](#) [professional discipline](#) [real estate](#)

QUESTIONS PRESENTED

1. Whether the Supreme Court of Ohio should approve the proposed consent decree concerning Cleminshaw's unauthorized practice of law.
2. Whether Cleminshaw's questioning of a witness during a county board of revision hearing constituted the unauthorized practice of law and should be enjoined.

HOLDINGS

1. The court approved the proposed consent decree and enjoined Cleminshaw from examining witnesses or otherwise participating in a county board of revision hearing through conduct constituting the unauthorized practice of law.
2. An individual who is not authorized to practice law may not examine witnesses or otherwise participate in a county board of revision hearing through conduct constituting the practice of law.

KEY QUOTATIONS

“Respondent admits that his conduct constituted the unauthorized practice of law;” (¶ 1)

“Respondent shall not examine witnesses or otherwise participate in a County Board of Revision hearing through any conduct that would constitute the unauthorized practice of law;” (¶ 1)

FACTUAL BACKGROUND

John D. Cleminshaw was not an attorney admitted or otherwise authorized to practice law in Ohio. While retained as a consultant real estate appraiser by the Wayne County Board of Revision, he questioned or cross-examined Robert D. Mellinger, a witness appearing before the board. Cleminshaw admitted that this conduct constituted the unauthorized practice of law, ceased the conduct, cooperated with the investigation, and agreed not to engage in similar conduct in the future.

PROCEDURAL HISTORY

The Board on the Unauthorized Practice of Law recommended that the Supreme Court of Ohio approve a consent decree proposed by the parties. The court accepted the recommendation, approved the decree, enjoined the respondent from examining witnesses or otherwise participating in county board of revision hearings through conduct constituting the unauthorized practice of law, and imposed no civil penalty or costs.

DISPOSITION

approved

OPINION

PER CURIAM.

[Cite as Ohio State Bar Assn. v. Cleminshaw, 137 Ohio St.3d 576, 2013-Ohio-5200.] OHIO STATE BAR ASSOCIATION v. CLEMINSHAW. [Cite as Ohio State Bar Assn. v. Cleminshaw, 137 Ohio St.3d 576, 2013-Ohio-5200.] Unauthorized practice of law—Questioning witness during

an administrative hearing—Consent decree—Injunction issued. (No. 2013-1346—Submitted September 11, 2013—Decided December 5, 2013.)

ON FINAL REPORT by the Board on the Unauthorized Practice of Law of the Supreme Court, No. UPL 11-06. _____ Per Curiam. {¶ 1} Pursuant to Gov.Bar R. VII(5b), the Board on the Unauthorized Practice of Law has recommended our approval of a consent decree proposed by relator, Ohio State Bar Association, and respondent, John D. Cleminshaw.

We accept the board’s recommendation and approve the proposed consent decree as submitted by the parties as follows: Whereas, Respondent is not and has never been an attorney admitted to practice, granted active status, certified to practice law in the State of Ohio pursuant to Rules I, II, III, IV or V of the Supreme Court Rules [for] the Government of the Bar; Whereas, on December 1, 2010, Robert D. Mellinger filed a complaint with the Ohio State Bar Association Unauthorized Practice of Law Committee [“OSBA UPL Committee”] alleging that John Cleminshaw engaged in the unauthorized practice of law by cross-examining him while he was a witness in a hearing before SUPREME COURT OF OHIO the Wayne County Board of Revision as an appraiser for the Orville Shopping Center; Whereas, Respondent admits that while retained as a consultant real estate appraiser by the Wayne County Board of Revision, he questioned Mr. Mellinger, while Mr. Mellinger appeared as a witness; Whereas, Respondent admits that his conduct constituted the unauthorized practice of law; Whereas, Respondent has ceased engaging in the type of conduct described in the complaint and has ceased doing so since August of 2010; Whereas, respondent agrees not to engage in said conduct or in any other conduct that would constitute the unauthorized practice of law into the future; Now, therefore, upon the consent of the parties affixed hereto, it is hereby ordered and decreed as follows: 1.

Respondent shall not examine witnesses or otherwise participate in a County Board of Revision hearing through any conduct that would constitute the unauthorized practice of law; 2. This consent Decree does not prohibit Mr. Cleminshaw from attending hearings of County Board of Revisions as a consultant to, and provide advice to Panel Members of the Board of Revision during said hearings; 3.

Based upon the facts: that Respondent was unaware that his conduct constituted the unauthorized practice of law at the time he undertook said activities; that Respondent has ceased and desisted said activities and has not engaged in such activities since he was first put on notice of the investigation by the Relator on 2 January Term, 2013 January 12, 2011; that Respondent completely cooperated with the investigation by the OSBA UPL Committee with respect to the complaints against him; that no harm came to any third party as a result of his conduct; and that Respondent has agreed to cease and desist said conduct in the future, as well as any conduct that constitutes the unauthorized practice of law, no civil penalty shall be applied.

4. There are no costs that have been incurred. So ordered. O'CONNOR, C.J., and PFEIFER, O'DONNELL, LANZINGER, KENNEDY, FRENCH, and O'NEILL, JJ., concur. _____ William Hicks and Eugene Whetzel, for relator. Thompson Hine, L.L.P., Frank DeSantis, and John R. Mitchell, for respondent. _____ 3