COURT OF APPEALS OF MARYLAND

Attorney Grievance Commission of Maryland v. Gary S. Mininsohn, 380 Md. 536

846 A.2d 353 (2004) · No. No. 70, Sept. Term, 2002 · Decided March 17, 2004

SUMMARY

The Maryland Court of Appeals reviewed disciplinary charges against attorney Gary S. Mininsohn arising from failures involving diligence, client communication, safekeeping and disbursement of trust funds, compliance with court orders, and payment of employee withholding taxes. The court sustained Bar Counsel’s exceptions, found additional violations involving dishonesty and misconduct, overruled Mininsohn’s exceptions, and imposed disbarment.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Battaglia, J.; Bell, C.J.; Wilner, J.; Cathell, J.; Harrell, J.; John C. Eldridge, J.; Lawrence F. Rodowsky, J.
JURISDICTION	Maryland
DECIDED	March 17, 2004
DOCKET	No. 70, Sept. Term, 2002
DISPOSITION	other
PROCEDURAL POSTURE	The Attorney Grievance Commission filed a petition for disciplinary or remedial action. After an evidentiary hearing, the circuit court hearing judge found numerous violations but declined to find violations of Maryland Rules 8.4(b) and (c). The Court of Appeals sustained Bar Counsel's exceptions, overruled Mininsohn's exceptions, found additional violations, and disbarred Mininsohn.
STANDARD OF REVIEW	The Court has original and complete jurisdiction over attorney-discipline proceedings. Factual findings must be supported by clear and convincing evidence and are accepted unless clearly erroneous; legal conclusions are reviewed de novo.
PRECEDENTIAL VALUE	Published precedential opinion of the Court of Appeals of Maryland
PARTIES	Attorney Grievance Commission of Maryland v. Gary S. Mininsohn

TOPICS

tax collection | tax liens | tax | breach of trust | civil procedure

PRACTICE AREAS

legal ethics and professional responsibility | attorney discipline | tax law | trust-account compliance

QUESTIONS PRESENTED

1. Whether Mininsohn violated Maryland Rules 8.4(b) and 8.4(c) by willfully failing to withhold and remit employee income taxes and by misrepresenting withholding information.
2. Whether Mininsohn violated Maryland Rule 3.4(c) by knowingly disobeying court obligations and orders.
3. Whether Mininsohn violated Maryland Rule 1.3 by failing to prepare and submit a court order as directed.
4. Whether Mininsohn violated Maryland Rule 1.15(b) by failing promptly to deliver client funds.
5. What sanction was appropriate for the established misconduct, including misappropriation and repeated tax-related violations.

HOLDINGS

1. Mininsohn's repeated, willful failure to withhold and remit employee income taxes, failure to maintain required withholding records, and neglect of tax liens and Comptroller communications violated Rules 8.4(b) and 8.4(c).
2. Mininsohn violated Maryland Rule 3.4(c) by repeatedly failing to appear and failing to produce documents as directed by court orders.
3. Mininsohn violated Maryland Rule 1.3 by failing to prepare and submit an order that the court had directed him to prepare.
4. Mininsohn violated Maryland Rule 1.15(b) by retaining client funds for more than a year after receipt and four months after negotiating a reduction of a client lien.
5. Disbarment was warranted because Mininsohn committed misappropriation and repeated serious misconduct, and aggravating factors substantially outweighed mitigating evidence.

KEY QUOTATIONS

> *"Holding a client's funds for longer than a year in these circumstances is not prompt delivery under Rule 1.15(b)."* (373)

> *"In sum, the general rule is that misappropriation of funds results in disbarment."* (377)

FACTUAL BACKGROUND

Mininsohn repeatedly failed to appear in post-judgment proceedings and failed to produce records ordered by a District Court. He failed to prepare and submit a court order in a family-law matter, mishandled and misappropriated client trust funds in a personal-injury settlement, and failed for years to withhold, report, and remit Maryland employee income taxes. He also failed to maintain required trust-account and withholding-tax records, ignored communications and liens from the Comptroller, and had prior disciplinary history and multiple aggravating circumstances.

PROCEDURAL HISTORY

Bar Counsel filed the disciplinary petition on October 23, 2002. The Court referred the matter to Judge John H. Tisdale of the Circuit Court for Frederick County, who conducted hearings and issued findings and conclusions in July 2003. The Court independently reviewed the record, accepted factual findings not clearly erroneous, reviewed legal conclusions de novo, sustained Bar Counsel's exceptions, and imposed disbarment.

DISPOSITION

other

CASES CITED

- Attorney Grievance Comm'n v. Ficker, 319 Md. 305, 572 A.2d 501 (1990)
- Attorney Grievance Comm'n v. Post, 350 Md. 85, 710 A.2d 935 (1998)
- Attorney Grievance Comm'n v. Boyd, 333 Md. 298, 635 A.2d 382 (1994)
- Attorney Grievance Comm'n v. O'Toole, 379 Md. 595, 843 A.2d 50 (2004)
- Attorney Grievance Comm'n v. Angst, 369 Md. 404, 800 A.2d 747 (2002)
- Attorney Grievance Comm'n v. Atkinson, 357 Md. 646, 745 A.2d 1086 (2000)
- Attorney Grievance Comm'n v. McCoy, 369 Md. 226, 798 A.2d 1132 (2002)
- Attorney Grievance Comm'n v. Granger, 374 Md. 438, 823 A.2d 611 (2003)
- Attorney Grievance Comm'n v. David, 331 Md. 317, 628 A.2d 178 (1993)
- Attorney Grievance Comm'n v. Hayes, 367 Md. 504, 789 A.2d 119 (2002)
- Attorney Grievance Comm'n v. Clark, 363 Md. 169, 767 A.2d 865 (2001)
- Attorney Grievance Comm'n v. Harris, 371 Md. 510, 810 A.2d 457 (2002)
- Attorney Grievance Comm'n v. Awuah, 346 Md. 420, 697 A.2d 446 (1997)
- Attorney Grievance Comm'n v. Vlahos, 369 Md. 183, 798 A.2d 555 (2002)
- Attorney Grievance Comm'n v. Seiden, 373 Md. 409, 818 A.2d 1108 (2003)
- Attorney Grievance Comm'n v. Monfried, 368 Md. 373, 794 A.2d 92 (2002)
- Attorney Grievance Comm'n v. Garfield, 369 Md. 85, 797 A.2d 757 (2002)
- Attorney Grievance Comm'n v. McLaughlin, 372 Md. 467, 813 A.2d 1145 (2002)
- Attorney Grievance Comm'n v. Thompson, 376 Md. 500, 830 A.2d 474 (2003)