

SUPREME COURT OF OHIO

Cincinnati Bar Ass'n v. Powers

119 Ohio St. 3d 473 (Ohio 2008) · Decided September 25, 2008

SUMMARY

The Ohio Supreme Court reviewed the appropriate sanction for an attorney who participated in a fraudulent real-estate loan-flipping scheme and filed false income-tax returns. The court found violations involving illegal conduct, dishonesty, fraud, deceit, misrepresentation, and conduct adversely reflecting on fitness to practice law. Rejecting an indefinite suspension, the court ordered permanent disbarment.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per curiam; Moyer, C.J.; Pfeifer; Lundberg Stratton; O'Connor; O'Donnell; Lanzinger; Cupp
JURISDICTION	Ohio
DECIDED	September 25, 2008
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding in which the Cincinnati Bar Association objected to the disciplinary board's recommendation of indefinite suspension and sought permanent disbarment.
STANDARD OF REVIEW	The Supreme Court of Ohio independently reviews the sanction in attorney-discipline proceedings and is the ultimate arbiter of disciplinary matters; it ordinarily defers to a panel's credibility determinations but declined to do so where the panel's assessment minimized the respondent's admitted misconduct.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; binding precedent on the disciplinary sanction and principles applied.
PARTIES	Cincinnati Bar Association v. Donald M. Powers Jr.

TOPICS

- real estate
- tax fraud
- tax evasion
- tax

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Powers violated Disciplinary Rules prohibiting illegal conduct involving moral turpitude, dishonesty, fraud, deceit, or misrepresentation, and conduct adversely reflecting on a lawyer's fitness to practice law.
2. Whether the appropriate sanction for Powers's extensive fraudulent conduct and felony convictions was indefinite suspension or permanent disbarment.

HOLDINGS

1. By overseeing an operation that fabricated closing documents for more than 300 loans, participating in fraudulent real-estate transactions, signing false HUD forms, and filing false income-tax returns, Powers violated DR 1-102(A)(3), DR 1-102(A)(4), and DR 1-102(A)(6).
2. Permanent disbarment was warranted for Powers's extensive participation in a fraudulent loan-flipping scheme, his concealment of income through false tax returns, and his resulting felony convictions.

KEY QUOTATIONS

“Despite the breadth of the underlying fraudulent conduct, the Board of Commissioners on Grievances and Discipline recommended only the indefinite suspension of the lawyer’s license to practice law. For these egregious violations of the Code of Professional Responsibility, we order his permanent disbarment.” (at 473)

“A lawyer who engages in the kind of criminal conduct committed by respondent violates the duty to maintain personal honesty and integrity, which is one of the most basic professional obligations owed by lawyers to the public.” (at 477)

“Because respondent’s ethical breaches are at least as damaging to the legal profession and public as those committed in Bein, disbarment is appropriate.” (at 478)

FACTUAL BACKGROUND

Powers co-owned and oversaw Premier Land Title Agency, which participated in approximately 310 real-estate-loan closings as part of a property-flipping scheme. The scheme used fabricated appraisals, pay stubs, W-2 forms, bank statements, employment records, and HUD forms, including forms Powers signed falsely certifying that buyers had made down payments. The resulting actual or intended losses to financial and lending institutions totaled approximately \$3.49 million, and Powers also filed false federal income-tax returns concealing income from the scheme. He pleaded guilty to making a material false statement in a loan application and filing a false tax return.

PROCEDURAL HISTORY

Powers was convicted in federal court of making a material false statement in a loan application and filing a false income tax return. The Cincinnati Bar Association charged him with violations of three Disciplinary Rules. A hearing panel found misconduct and recommended indefinite suspension, and the Board of Commissioners on

Grievances and Discipline adopted that recommendation. The Supreme Court of Ohio sustained the relator's objections and imposed permanent disbarment.

DISPOSITION

other

CASES CITED

- In re Powers, 108 Ohio St. 3d 1424, 2006-Ohio-289, 841 N.E.2d 786
- Cincinnati Bar Assn. v. Statzer, 101 Ohio St. 3d 14, 2003-Ohio-6649, 800 N.E.2d 1117, ¶ 8
- Disciplinary Counsel v. Furth, 93 Ohio St. 3d 173, 181, 754 N.E.2d 219
- Ohio State Bar Assn. v. Reid, 85 Ohio St. 3d 327, 330, 708 N.E.2d 193
- Disciplinary Counsel v. Margolis, 114 Ohio St. 3d 165, 2007-Ohio-3607, 870 N.E.2d 1158, ¶ 23
- Disciplinary Counsel v. Mesi, 72 Ohio St. 3d 45, 49, 647 N.E.2d 473
- Disciplinary Counsel v. Bein, 105 Ohio St. 3d 62, 2004-Ohio-7012, 822 N.E.2d 358, ¶¶ 9, 12-14
- Cincinnati Bar Assn. v. Blake, 100 Ohio St. 3d 298, 2003-Ohio-5755, 798 N.E.2d 610, ¶ 7