

SUPREME COURT OF OHIO

Columbus Bar Ass'n v. Moushey

104 Ohio St. 3d 427 (2004) · Decided December 22, 2004

SUMMARY

The Ohio Supreme Court reviewed disciplinary violations by attorney Michael Lee Moushey, including client-fund misappropriation, neglect, failure to return unearned fees, failure to cooperate with the investigation, and practicing law while indefinitely suspended. The court adopted the findings and permanently disbarred Moushey from practicing law in Ohio, with costs taxed to him.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Moyer, C.J.; Resnick, J.; F.E. Sweeney, J.; Pfeifer, J.; Lundberg Stratton, J.; O’Connor, J.; O’Donnell, J.
JURISDICTION	Ohio
DECIDED	December 22, 2004
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding arising from an amended complaint alleging multiple violations of Ohio's professional-conduct rules. Respondent failed to answer, the relator obtained a default, and the Supreme Court of Ohio reviewed the board's findings and recommendation of permanent disbarment.
STANDARD OF REVIEW	The Supreme Court of Ohio reviewed the disciplinary findings and recommended sanction and independently determined the appropriate discipline.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Ohio.
PARTIES	Columbus Bar Association v. Michael Lee Moushey

TOPICS

- default
- sanctions
- contempt
- remedies
- civil procedure

PRACTICE AREAS

- legal ethics
- attorney discipline
- professional responsibility

QUESTIONS PRESENTED

1. Whether respondent committed the professional-conduct and disciplinary-rule violations found by the Board.
2. Whether permanent disbarment was the appropriate sanction for respondent's repeated misconduct, prior discipline, misappropriation of client funds, failure to cooperate, and practice of law while suspended.

HOLDINGS

1. The court agreed that Moushey violated DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 2-110(A)(3), 6-101(A)(1), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), 7-101(A)(3), 7-102(A)(5), 9-102(B)(2), 9-102(B)(3), and 9-102(B)(4), as well as Gov.Bar R. V(4)(G) and V(8)(E).
2. Permanent disbarment was appropriate for Moushey's multiple instances of misconduct, misappropriation of client funds, failure to cooperate, prior discipline, and practice of law while under indefinite suspension.

KEY QUOTATIONS

“Taking retainers and failing to carry out contracts of employment is tantamount to theft of the fee from the client. The presumptive disciplinary measure for such acts of misappropriation is disbarment.” (¶ 16)

FACTUAL BACKGROUND

Moushey had previously been indefinitely suspended for repeated client neglect, deceit, and failure to cooperate with a disciplinary investigation. In the present proceeding, he misappropriated or retained client funds, failed to perform requested legal services, failed to return unearned fees, ignored disciplinary inquiries, and practiced law while indefinitely suspended. He did not answer the amended complaint or participate in the disciplinary proceedings.

PROCEDURAL HISTORY

The Columbus Bar Association filed an amended disciplinary complaint against Moushey. After service, Moushey failed to answer, and a master commissioner granted the relator's motion for default, made findings of misconduct, and recommended discipline; the Board of Commissioners on Grievances and Discipline adopted those findings and recommended permanent disbarment. The Supreme Court of Ohio independently reviewed the matter, agreed that the charged violations were established, and permanently disbarred Moushey.

DISPOSITION

other

CASES CITED

- Columbus Bar Assn. v. Moushey, 96 Ohio St. 3d 461, 2002-Ohio-4850, 776 N.E.2d 16
- Cincinnati Bar Assn. v. Weaver, 102 Ohio St. 3d 264, 2004-Ohio-2683, 809 N.E.2d 1113, ¶ 16
- Disciplinary Counsel v. Sigall, 14 Ohio St. 3d 15, 17, 14 OBR 320, 470 N.E.2d 886 (1984)

- *Disciplinary Counsel v. France*, 97 Ohio St. 3d 240, 2002-Ohio-5945, 778 N.E.2d 573, ¶ 11
- *Lorain Cty. Bar Assn. v. Fernandez*, 99 Ohio St. 3d 426, 2003-Ohio-4078, 793 N.E.2d 434
- *Columbus Bar Assn. v. Moushey*, 98 Ohio St. 3d 1469, 2003-Ohio-916, 784 N.E.2d 704
- *Columbus Bar Assn. v. Moushey*, 99 Ohio St. 3d 1533, 2003-Ohio-4647, 795 N.E.2d 55

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