

CUYAHOGA COUNTY BAR ASSOCIATION v. SCHMELZER.

[*Cite as Cuyahoga Cty. Bar Assn. v. Schmelzer* (1999), ___ Ohio St.3d ___.]

Attorneys at law — Misconduct — Six-month suspension stayed on condition —

Continuing multiple employment when the exercise of independent judgment is likely to be adversely affected unless each client consents after full disclosure.

(No. 98-1310 — Submitted August 19, 1998 — Decided January 13, 1999.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and

Discipline of the Supreme Court, No. 96-110.

In July 1994, John LaRussa, who had a contract to purchase real estate from Clay and Lillian Ryant, informed his attorney, respondent Thomas Schmelzer of Cleveland, Ohio, Attorney Registration No. 0032560, that he had agreed to purchase real estate from the Ryants. LaRussa asked respondent to negotiate with the mortgagee to release its lien on the property. At about the time that respondent began to negotiate with the mortgagee, the Ryants, at LaRussa's suggestion, called him, stating that they were in financial trouble. They also said that Clay Ryant's former employer intended to pay off the mortgagee, take title to the property, and lease it back to the Ryants. Deciding that the sale to the former employer was more advantageous to the Ryants than a sale to LaRussa, respondent, without informing LaRussa, began to represent the Ryants in the sale of the property to the former employer and in criminal matters relating to Clay Ryant.

Respondent filed a Chapter 13 bankruptcy case on behalf of the Ryants to stop the mortgagee's foreclosure action. He then prepared a deed from the Ryants to the former employer and an assignment of mortgage by the mortgagee to the former employer.

On December 9, 1996, relator, Cuyahoga County Bar Association, filed a complaint charging that respondent's conduct violated DR 5-105(B) (a lawyer shall not continue multiple employment if the exercise of his independent judgment is likely to be adversely affected unless each client consents after full disclosure). Respondent filed an answer, and the matter was heard by a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court ("board").

The panel concluded that respondent had violated the Disciplinary Rule as charged, as well as DR 5-105(A) (a lawyer shall decline employment if the exercise of his independent judgment is likely to be adversely affected unless each client consents after full disclosure), and recommended that he be suspended from the practice of law for six months with the entire six months stayed. During the stay, respondent would be on probation and required to complete six hours of instruction in legal ethics and professionalism in addition to his normal Continuing Legal Education requirements. The board adopted the findings, conclusion, and recommendation of the panel.

Robert Miller and Steven Ott, for relator.

Thomas Schmelzer, pro se.

Per Curiam. We adopt the findings and the conclusion of the board as to a violation of DR 5-105(B) only. We adopt the recommendation of the board. Respondent is hereby suspended from the practice of law for six months with the entire six months stayed. During the stay, respondent will be on probation and required to complete six hours of instruction in legal ethics and professionalism in addition to his normal Continuing Legal Education requirements. Costs are taxed to respondent.

Judgment accordingly.

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and
LUNDBERG STRATTON, JJ., concur.