

OPINIONS OF THE SUPREME COURT OF OHIO

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Office of Disciplinary Counsel v. Lash.

[Cite as Disciplinary Counsel v. Lash (1993), Ohio St.3d .]

Attorneys at law -- Misconduct -- One-year suspension --

Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation -- Conviction for bank fraud.

(No. 93-1335 -- Submitted August 16, 1993 -- Decided December 8, 1993.)

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 92-31.

In a complaint filed June 1, 1992, relator, Disciplinary Counsel, charged that respondent, David Lindsay Lash of Beachwood, Ohio, Attorney Registration No. 0031571, had pled guilty to a violation of Section 1344, Title 18, U.S. Code (bank fraud). The matter was heard by a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court ("board") on February 19, 1993. The panel considered whether respondent had violated DR 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The facts underlying relator's complaint were stipulated as follows:

"1. On February 19, 1992, Respondent was indefinitely suspended from the practice of law by the Ohio Supreme Court for conviction of a felony. Respondent pled guilty to Bank Fraud in United States District Court on December 20, 1991.

"2. In 1985, Respondent and his wife were separating. In order to pay off the wife's car, credit cards, and medical bills, Respondent and his wife took out a mortgage loan at First Federal Savings and Loan of Cleveland. At that time, a home equity line of credit was unavailable. Respondent and his wife also wanted to change their variable mortgage to a fixed rate mortgage. Respondent and his wife originally had a \$45,000.00 mortgage on their home. The mortgage was increased by \$15,000.00.

"3. In order to ensure getting the loan, Respondent overstated his income by approximately \$10,000.00.

"4. Medical bills that Respondent and his wife incurred were from numerous medical problems of their mentally retarded

daughter. Respondent and his wife received the money in April of 1986 and used the money as indicated.

"5. Respondent and his wife were finally divorced in April of 1988, after a bitterly fought custody battle. As part of the divorce, the house had to be sold. The house sold in the summer of 1989. The \$60,000.00 mortgage was paid off from the proceeds of the home and no loss was incurred by anyone.

"6. In Respondent's divorce proceeding, Respondent's wife's attorney brought out the income information submitted to First Federal Savings and Loan in order to show Respondent was making more money and therefore should pay more child support. Respondent, under oath, testified honestly that the income he listed on the 1985 loan application was inflated.

"7. In 1990, Respondent represented a \* \* \* [client] in a divorce proceeding from \* \* \* [her husband]. \* \* \* [The husband] read Respondent's divorce file that included the Referee's report indicating Respondent overstated his income to First Federal Savings and Loan. \* \* \* [The husband] called Respondent's law partner and told the partner to tell Respondent to back off in the \* \* \* [the wife's ] divorce representation or else. Respondent continued to zealously represent his client. As a result, \* \* \* [the husband] filed a complaint with the FBI about the Respondent.

"8. The FBI began investigat[ing] Respondent in March 1991. Respondent[] cooperated with the Federal prosecutor and eventually pled guilty to bank fraud."

Other evidence presented to the panel established that respondent was sentenced to perform one hundred hours of community service, to serve one year on probation, and to pay a \$1,000 fine. Respondent has already complied with his sentence. He also cooperated with federal officials during the investigation of his offense, at all times admitting his wrongdoing and accepting the consequences of his acts.

Based on this evidence, the panel found that respondent had violated DR 1-102(A)(4). In recommending a sanction, the panel considered respondent's testimony that he admitted and took full responsibility for his misconduct. The panel also considered letters from and testimony of character witnesses, which established that respondent was a highly respected and trusted practitioner notwithstanding the misconduct. Even relator, who felt compelled to recommend an indefinite suspension in accordance with penalties imposed in prior similar cases, suggested that respondent be allowed credit for the time his license had already been suspended and that the reapplication requirement was too severe for respondent's case.

The panel recommended that respondent be suspended from the practice of law for one year, with such suspension period to have begun on February 19, 1992, the date of his interim suspension pursuant to former Gov.Bar R. V(9)(a)(iii), now Gov. Bar R. V(5)(A). The panel relied on Akron Bar Assn. v. Oestreicher (1990), 50 Ohio St.3d 229, 553 N.E.2d 670, in which an attorney received a one-year suspension with credit for time served after he had pled guilty to having continued to accept Social Security checks for his aunt after her death. The board adopted the panel's findings and its recommendation.

Geoffrey Stern, Disciplinary Counsel, and Dianna L. Chesley, Assistant Disciplinary Counsel, for relator.  
Roger M. Synenberg, for respondent.

Per Curiam. We agree with the board's findings and its recommendation. Accordingly, respondent is hereby ordered to serve a one-year suspension from the practice of law in Ohio, with such suspension to have begun on February 19, 1992. Costs taxed to respondent.

Judgment accordingly.

Moyer, C.J., A.W. Sweeney, Douglas, Wright, Resnick, F.E. Sweeney and Pfeifer, JJ., concur.