

Amicus Curiarum

VOLUME 40
ISSUE 2

FEBRUARY 2023

A Publication of the Office of the State Reporter

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SUPREME COURT OF MARYLAND

Attorney Grievance Commission of Maryland v. Terence Taniform, Misc. Docket AG No. 40, September Term, 2021, filed December 16, 2022. Opinion by Gould, J.

Booth, J., concurs.

<https://mdcourts.gov/data/opinions/coa/2022/40a21ag.pdf>

ATTORNEY DISCIPLINE – SANCTIONS – INDEFINITE SUSPENSION

The Supreme Court of Maryland sanctioned an attorney with an indefinite suspension with the right to apply for reinstatement after 18 months for providing incompetent representation, failing to file necessary papers, which nearly caused a client to get deported, failing to communicate adequately with his clients, failing to promptly refund money, and making intentional misrepresentations to clients, clients’ families, counsel, and Bar Counsel. The attorney’s conduct violated Maryland Attorneys’ Rules of Professional Conduct 1.1 (Competence), 1.3 (Diligence), 1.4(a) and (b) (Communication), 1.15 (Safekeeping of Property), 1.16(d) (Declining or Terminating Representation), 4.1 (Truthfulness in Statements to Others), 8.1(a) and (b) (Bar Admission and Disciplinary Matters), and 8.4(a), (c), and (d) (Misconduct), and Maryland Rule 19-407 (Attorney Trust Account Record-Keeping).

Facts:

Mr. Taniform was admitted to the Maryland Bar in December 2017. In 2019, he began representing his own clients. He maintained an office in Montgomery County, focusing his practice on immigration law.

Mr. Taniform was retained by Dorothy Fongum, the aunt of Fon Halley Fon, a citizen of Cameroon, to file a motion to reopen Mr. Fon’s appeal to the Board of Immigration Appeals (the “BIA”). Mrs. Fongum signed a retainer agreement on behalf of Mr. Fon and advanced him \$1,500. Despite assuring Mr. Fon and Ms. Fongum on multiple occasions that the motion had been filed, Mr. Taniform filed no motion on Mr. Fon’s behalf. He also did not always return phone calls. When Mr. Fon learned that Mr. Taniform had neither entered his appearance in Mr. Fon’s case nor filed the required motion, he retained a new attorney. Mr. Taniform also made

misrepresentations to Mr. Fon's new counsel. At that point, Mr. Fon was scheduled to be deported. Ultimately, the new counsel was successful in staying Mr. Fon's deportation one day before he was scheduled to be deported.

Mr. Taniform was also retained by Felix Fozao ("Felix"), brother to Clovis Tangmoh Fozao ("Clovis"), a citizen of Cameroon, to represent Clovis to appeal the immigration court's decision and to file an application for parole. Felix paid \$2,000, which Mr. Taniform deposited into his operating account without his client's consent. Again, in multiple conversations, Mr. Taniform told Felix that he filed the required motion on Clovis's behalf. In fact, Mr. Taniform only entered his appearance and noted an appeal.

After receiving complaints on behalf of both Mr. Fon and Clovis, Bar Counsel began an investigation. Despite earlier demands for return of the money paid, it was only at this time that Mr. Taniform refunded money paid by Ms. Fongum and Felix. Mr. Taniform also made misrepresentations to Bar Counsel and did not provide the requested records and files.

On November 17, 2021, the Attorney Grievance Commission of Maryland, acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action against Mr. Taniform, alleging that he violated multiple provisions of the Maryland Attorneys' Rules of Professional Conduct ("MARPC") and the Professional Conduct for Practitioners governing federal immigration proceedings set forth in 8 C.F.R. § 1003.102.

A hearing was held on May 16 and 17, 2022. On July 1, 2022, the hearing judge issued a written statement containing findings of fact and conclusions of law (the "findings"), concluding by clear and convincing evidence that Mr. Taniform violated MARPC 1.1 (Competence), 1.3 (Diligence), 1.4(a) and (b) (Communication), 1.15 (Safekeeping of Property), 1.16(d) (Declining or Terminating Representation), 4.1 (Truthfulness in Statements to Others), 8.1(a) and (b) (Bar Admission and Disciplinary Matters), and 8.4(a), (c), and (d) (Misconduct), and Maryland Rule 19-407 (Attorney Trust Account Record-Keeping).

Pursuant to Maryland Rule 19-728(b), Mr. Taniform filed multiple exceptions to the hearing judge's findings of fact and conclusions of law. Oral arguments were held before this Court on October 3, 2022.

Held:

The Supreme Court found that his exceptions had no merit and were unsupported. We found that all of the hearing judge's findings and conclusions were supported by clear and convincing evidence. The facts demonstrated that Mr. Taniform knowingly and intentionally misled Mr. Fon, Ms. Fongum, Mr. Fon's new counsel, Felix, and Bar Counsel.

The hearing judge found that Mr. Taniform proved by a preponderance of the evidence the mitigating factors of: (1) absence of prior attorney discipline, (2) personal or emotional

problems, (3) inexperience in the practice of law, and (4) unlikelihood of repetition of the misconduct. Mr. Taniform excepted to the hearing judge's failure to find: (1) an absence of a dishonest or selfish motive, (2) timely effort to make restitution, (3) cooperative attitude towards the attorney disciplinary proceeding, (4) character or reputation, and (5) remorse.

Because the hearing judge was in the best position to assess the credibility and persuasiveness of testimony by Mr. Taniform and his character witness, the hearing judge cannot be faulted for not finding these mitigating factors here. Given Mr. Taniform's repeated misrepresentations to his clients, their families, and Bar Counsel, his failure to return the fees after demand by his clients, his failure to take any action to rectify his omissions while he was still representing Mr. Fon and Clovis, and his efforts to shift responsibility for his misconduct, the hearing judge was well within her discretion when she declined to find these additional mitigating factors. We therefore overruled Mr. Taniform's exceptions to the hearing judge's failure to do so.

Mr. Taniform excepted to the hearing judge's findings that Bar Counsel proved by clear and convincing evidence: (1) a dishonest or selfish motive, (2) a pattern of misconduct, and (3) vulnerability of the victims. The hearing judge found that Mr. Taniform had a selfish or dishonest motive when he made repeated knowing and intentional misrepresentations to his clients, their families, and Bar Counsel. The hearing judge found that Mr. Taniform engaged in a pattern of misconduct to the extent that he failed to file petitions in both matters and was dishonest in saying that he had filed them. Although Mr. Taniform engaged in a series of wrongful acts over a period of only five months with two different clients, he nonetheless made multiple misrepresentations.

Based on the evidence, the hearing judge felt constrained to find the aggravating factor of vulnerability of the victims because, in both cases, Mr. Taniform's clients were immigrants. We were not persuaded on these facts that Mr. Taniform's clients should not be deemed vulnerable for purposes of this aggravating factor.

Accordingly, we overruled Mr. Taniform's exception to the hearing judge's findings of those aggravating factors.

We determined that the appropriate sanction was an indefinite suspension with the right to apply for reinstatement after 18 months. In making this determination, we recognized Mr. Taniform's transgressions involved intentional dishonesty on matters going to the heart of the representation of his clients, including the status of their matters and his actions. He knowingly and intentionally misrepresented facts to his clients, their representatives, and Bar Counsel. He failed to promptly refund money to his clients, failed to properly communicate with them and, as he acknowledged, neglected his clients' matters and provided incompetent representation.

We determined that the nature of the dishonesty and the mitigating factors presented here nudged us toward a slightly less severe sanction. Mr. Taniform's misrepresentations were made in two cases, when he was less than three years out of law school, and while he was experiencing personal or emotional problems. He had not been previously disciplined. Mr. Taniform had little experience or training in running a law practice and was experiencing personal or emotional

problems. Ultimately, though belatedly, he refunded the unearned fees to both clients. He did not engage in misappropriation, make a misrepresentation to a court, or commit any criminal offense. And finally, as the hearing judge found, Mr. Taniform is unlikely to repeat the misconduct in the future if he continues receiving counseling and implements a system for tracking cases and deadlines.

Susan Dzurec, et al. v. Board of County Commissioners of Calvert County, Maryland, et al., No. 1, September Term 2022, filed January 25, 2023. Opinion by Booth, J.

<https://www.courts.state.md.us/data/opinions/coa/2023/1a22.pdf>

PUBLIC ETHICS LAW – CONFLICTS OF INTEREST – RIGHT TO DECLARATORY RELIEF

Facts:

In this case, four Calvert County residents (“the Residents”) filed a declaratory judgment action against the Board of Commissioners of Calvert County, Maryland, and Calvert County (collectively “the County”) seeking a declaratory judgment that the Calvert County Comprehensive Plan was “illegally passed” and was “therefore void” because one of the Commissioners, Kelly D. McConkey, had a conflict of interest in the legislation and did not recuse himself. Following a hearing, the circuit court granted the County’s motion for summary judgment. The Residents filed an appeal to the Appellate Court of Maryland, which affirmed the circuit court’s judgment.

The Supreme Court granted the Residents’ petition for writ of certiorari to consider the following question:

Whether the circuit court erred in granting the County’s motion for summary judgment where the Residents sought a declaratory judgment that the adoption of the Calvert County Comprehensive Plan—a legislative enactment by the County Commissioners—is void because one Commissioner’s vote on the legislative action violated the conflicts of interest provisions of the Calvert County Ethics Code.

Held: Affirmed.

The Supreme Court of Maryland affirmed the judgment of the Appellate Court of Maryland, holding that the declaratory relief sought by the Residents was not permitted under Maryland common law and that the Calvert County Ethics Code did not create an implied private right of action.

The Court first assumed that the Residents had taxpayer standing to bring a common law action. The Court observed that it was undisputed that the County Commissioners’ action in adopting the Comprehensive Plan was a legislative act. The sole basis for the Residents’ requested declaratory relief arose from Commissioner McConkey’s vote on legislative matters where he

had a conflict of interest. The Court pointed out that, under Maryland common law, ordinarily courts will not consider the motives of legislators or public officials when they undertake purely legislative acts. See *Sugarloaf Citizens Ass'n, Inc. v. Gudis*, 319 Md. 558 (1990); *Kenwood Gardens Condos., Inc. v. Whalen Props., LLC*, 449 Md. 313 (2016). The Court stated that it had found no cases in which the Court had held that participation in a legislative matter where a conflict of interest is determined to exist constitutes an *ultra vires* act, which would permit a court to void it. The Court stated that such a holding would be directly at odds with this Court's holdings in *Sugarloaf* and *Kenwood Gardens*.

The Court similarly rejected the Residents' argument that they had an implied right of action under the Calvert County Ethics Code that would permit them to seek and obtain a declaratory judgment that invalidates the Calvert County Comprehensive Plan. Assuming, without deciding, that Calvert County has the authority to enact a local law that modifies the common law to create such a judicial remedy, the Court held that there was no evidence that the County Commissioners intended to create such a private right of action.

APPELLATE COURT OF MARYLAND

John Critzos, II v. David Marquis, et al., No. 293, September Term 2022, filed January 3, 2023. Opinion by Berger, J.

<https://mdcourts.gov/data/opinions/cosa/2023/0293s22.pdf>

LEGAL IMPOSSIBILITY – FRUSTRATION OF PURPOSE – COMMERCIAL LEASE - COVID-19 PANDEMIC – EXECUTIVE ORDERS LIMITING BUSINESS OPERATIONS – BREACH OF LEASE – TENANTS’ FAILURE TO PERFORM

Facts:

In 2015, landlord John Critzos, II, and tenants David and Carolyn Marquis signed a lease for a property in Annapolis, Maryland for the establishment of a “brewery/pub.” The lease was for the period of January 1, 2016 through December 31, 2020. The Marquises operated a restaurant/pub at the property without substantial difficulties until the arrival of the COVID-19 pandemic.

In March 2020, as COVID-19 began to spread throughout the United States, Governor Larry Hogan declared a “State of Emergency and Existence of Catastrophic Health Emergency” in the State of Maryland. Shortly thereafter, Governor Hogan issued an executive order requiring that bars and restaurants close for in-person dining on March 12, 2020.

In April 2020, the Marquises asked Critzos to abate the April rent in light of the COVID-19 public health emergency and the Marquises’ inability to operate the brewery and restaurant as usual. The parties attempted to negotiate an agreement but were unable to do so. On April 23, 2020, the Marquises informed Critzos that they wished to terminate the lease, and, on May 3, 2020, the Marquises vacated the premises and returned the keys to Critzos. Critzos filed a complaint alleging breach of lease.

At trial, Critzos presented evidence establishing the existence of a contract, breach of said contract, and damages. The Marquises presented the affirmative defenses of frustration of purpose and legal impossibility. The circuit court ultimately ruled in favor of the Marquises, determining that the Governor’s “executive orders, by undisputed testimony of the [Marquises], had made the sole purpose of their lease an illegal activity frustrating this purpose in a legal sense.” The circuit court further found that the Marquises “decision to seek termination after

more than 30 days after the Governor’s March 16, 2020 executive order (declaring the lease’s purpose to be illegal) was a reasonable decision based on commercial frustration and impossibility, and that it was taken after passage of a reasonable amount of time.” Critzos filed a motion for reconsideration, which was denied by the circuit court. Critzos subsequently noted an appeal.

Held: Reversed.

The narrow issue before the Appellate Court of Maryland on appeal was whether the Marquises presented sufficient evidence to establish the interrelated affirmative defenses of frustration of purpose and legal impossibility. The Court explained that “[t]he principle underlying the frustration of purpose doctrine ‘is that where the purpose of a contract is completely frustrated and rendered impossible of performance by a supervening event or circumstance, the contract will be discharged.’” *Panitz v. Panitz*, 144 Md. App. 627, 639 (quoting *Harford Cnty. v. Town of Bel Air*, 348 Md. 363, 384 (1998) (quoting *Montauk Corp. v. Seeds*, 215 Md. 491, 499 (1958))). The Appellate Court observed that in *Montauk*, the Supreme Court of Maryland (at the time named the Court of Appeals of Maryland) outlined three factors that courts should consider when determining whether the frustration of purpose doctrine applies: “(1) whether the intervening act was reasonably foreseeable; (2) whether the act was an exercise of sovereign power; and (3) whether the parties were instrumental in bringing about the intervening event.” 215 Md. at 499.

The Court further observed that the related doctrine of legal impossibility provides that “[i]f a contract is legal when made, and no fault on the part of the promisor exists, the promisor has no liability for failing to perform the promised act, after the law itself subsequently forbids or prevents the performance of the promise.” *Harford Cnty.*, *supra*, 348 Md. at 384-85 (citations omitted). The Court emphasized, however, that the Supreme Court of Maryland had explained that “[i]n order to succeed under this theory, however, performance under the contract must be objectively impossible.” *Id.* at 385.

The Appellate Court of Maryland agreed with the circuit court that the level of disruption caused by the COVID-19 pandemic was not reasonably foreseeable. The Court further explained that the remaining two *Montauk* factors – that the COVID-19 related executive orders restricting business operations were an exercise of sovereign power, and that the parties were not instrumental in bringing about the COVID-19 pandemic – were not disputed. The determination, therefore, turned on whether the Marquises’ performance under the lease was rendered legally impossible by the COVID-19 pandemic and associated legal restrictions on business operations.

The Court looked to decisions from other jurisdictions addressing frustration of purpose and legal impossibility in the context of the COVID-19 emergency and associated shutdowns of businesses, all of which were, necessarily, fact specific and depended upon expressly what is permitted by the terms of the lease. The Court emphasized that the Marquises’ lease did not prohibit takeout dining, which was a factor that other courts considered important in assessing

frustration of purpose and legal impossibility defenses. The Court observed that the circuit court had found the case of *Wischhusen v. Am. Medicinal Spirits Co.*, 163 Md. 565 (1933), to be “most helpful,” but the Appellate Court determined that *Wischhusen* was distinguishable. *Wischhusen* was a Prohibition-era case holding that performance under an employment contract was excused when a whiskey distiller who had been hired to produce alcohol for medicinal purposes but then was denied a federal permit to do so. The circuit court had reasoned that the operation of the brewery/restaurant by the Marquises would have been similarly criminal after the issuance of the Governor’s executive orders.

The Appellate Court observed that the restriction in *Wischhusen* served to prohibit the whiskey distiller from performing any and all of the services required under his employment contract, while the executive orders at issue in this case presented far narrower restrictions. The Court explained that the lease did not limit the Marquises to operating an indoor, in person restaurant and brewery, nor did the lease prohibit carry-out or delivery service. The Court reasoned that, although the Governor’s executive orders certainly limited the Marquises’ business operations, they did not render the sole purpose of the lease illegal. The Court was sympathetic to the challenges faced by the Marquises and other business owners during the unprecedented challenges of the COVID-19 pandemic, but reasoned that economic challenges do not themselves establish the affirmative defenses of frustration of purpose or legal impossibility. The Court emphasized that the COVID-19 pandemic restrictions did not order a complete shutdown of the Marquises’ business, and, therefore, the Court held that the evidence presented to the circuit court was insufficient to establish the affirmative defenses of frustration of purpose and legal impossibility.

Sharon Shivers v. State of Maryland, No. 879, September Term 2021, filed January 3, 2023. Opinion by Beachley, J.

<https://mdcourts.gov/data/opinions/cosa/2023/0879s21.pdf>

CRIMINAL LAW – RESTITUTION – ATTORNEY’S FEES – STATUTORY INTERPRETATION

Facts:

Appellant was convicted of one count of theft of property valued between \$25,000 and \$100,000. The basis for appellant’s convictions were the withdrawals of \$85,000 from her father’s accounts. The court sentenced appellant to six months’ incarceration and ordered her to pay \$6,000 in attorney’s fees her father spent to recover his funds.

Held:

Judgment of conviction affirmed. Restitution order reversed.

After holding that there was sufficient evidence to support appellant’s theft conviction, the Court addressed the restitution award.

In a matter of first impression, the Court held that the circuit court erred in awarding the victim attorney’s fees he incurred in an attempt to retrieve his funds pursuant to CJ § 11-603(a)(2)(ii) (“as a direct result of the crime or delinquent act the victim suffered . . . direct out-of-pocket loss”). Construing the statute’s plain language and the context of the “direct out-of-pocket loss” provision within the subsection, the Court concluded that CP § 11-603(a)(2)(ii) exclusively authorizes a court to award restitution losses resulting from a victim’s physical or mental injury.

Al Czervik LLC v. Mayor & City Council of Baltimore, et al., No. 2026, September Term 2021, & *Thornton Mellon LLC, et al. v. Mayor & City Council of Baltimore, et al.*, No. 144, September Term 2022, filed January 3, 2023. Opinion by Nazarian, J.

<https://mdcourts.gov/data/opinions/cosa/2023/2026s21.pdf>

TAXATION – TAX DEEDS – CONDITIONS AND PREREQUISITES

Facts:

After they secure a certificate of sale and meet certain post-judgment statutory obligations, tax sale purchasers are entitled to have the deed to the property executed and issued to them by the tax collector. As a condition of issuing the deed, however, Maryland Code (1985, 2019 Repl. Vol.), § 14 847(b) of the Tax-Property Article (“TP”) also requires purchasers to bear “all expenses incident to the preparation and execution of the deed.” In Baltimore City tax sales, the Mayor and City Council of Baltimore (“the City”) charges purchasers a \$125 fee to review their proposed deeds before the City executes and issues them. The tax sale purchasers contended that the City lacked authority under TP § 14 847(b), or the tax sale statute more broadly, to charge that fee, and that the City is obliged to execute the deed without further charges once they have paid the purchase price and the taxes, interest, and penalties on the property. The circuit court rejected the challenges, finding in both cases that the tax sale statute is unambiguous and permits the City to collect the deed review fee before executing and delivering a tax deed. The tax sale purchasers appealed.

Held: Affirmed.

The Appellate Court of Maryland affirmed, holding that the tax sale statute, which requires tax sale purchasers to bear “all expenses incident to the preparation and execution of the deed,” unambiguously authorizes the tax collector to charge a fee incident to its execution and issuance of deeds. Md. Code (1985, 2019 Repl. Vol.), § 14 847(b) of the Tax-Property Article (“TP”).

ATTORNEY DISCIPLINE

*

By an Order of the Supreme Court of Maryland dated January 3, 2023, the following attorney has been disbarred by consent:

ADAM LANE CHAUDRY

*

By an Order of the Supreme Court of Maryland dated January 5, 2023, the following attorney has been disbarred by consent:

BYRON KEITH FOGAN

*

This is to certify that the name of

STEPHEN LAWRENCE SNYDER

has been replaced upon the register of attorneys permitted to practice law in this state as of January 20, 2023.

*

By an Order of the Supreme Court of Maryland dated January 23, 2023, the following attorney has been suspended, *nunc pro tunc* to November 19, 2021:

EVAN J. KRAME

*

By an Order of the Supreme Court of Maryland dated January 24, 2023, the following attorney has been disbarred by consent:

HARRY TUN

*

*

By an Order of the Supreme Court of Maryland dated January 30, 2023, the following attorney has been placed on disability inactive status by consent:

JON WILLIAM NORRIS

*

JUDICIAL APPOINTMENTS

*

On December 12, 2022, the Governor announced the appointment of **TRACEY JOHNS DELP** to the District Court for Harford County. Judge Delp was sworn in on January 4, 2023, and fills the vacancy created by the retirement of the Hon. Mimi R. Cooper.

*

On December 12, 2022, the Governor announced the appointment of **ALLISON MICHELE SAYERS** to the District Court for Harford County. Judge Sayers was sworn in on January 9, 2023, and fills the vacancy created by the retirement of the Hon. Ricardo D. Zwaig.

*

On December 12, 2022, the Governor announced the appointment of **ALEX MATTHEW ALLMAN** to the Circuit Court for Harford County. Judge Allman was sworn in on January 12, 2023, and fills the vacancy created by the elevation of the Hon. Angela M. Eaves to the Supreme Court.

*

On January 6, 2023, the Governor announced the appointment of **MAGISTRATE DARREN SEBASTIAN JOHNSON** to the Circuit Court for Prince George's County. Judge Johnson was sworn in on January 17, 2023, and fills the vacancy created by the retirement of the Hon. Sheila R. Tillerson-Adams.

*

On January 6, 2023, the Governor announced the appointment of **MAGISTRATE STENISE LaNEZ ROLLE** to the Circuit Court for Prince George's County. Judge Rolle was sworn in on January 17, 2023, and fills the vacancy created by the retirement of the Hon. John P. Davey.

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RULES ORDERS AND REPORTS

*

A Rules Order pertaining to the 213th Report of the Standing Committee on Rules of Practice and Procedure was filed on January 9, 2023.

<http://mdcourts.gov/sites/default/files/rules/order/ro213.pdf>

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UNREPORTED OPINIONS

The full text of Appellate Court unreported opinions can be found online:

<https://mdcourts.gov/appellate/unreportedopinions>

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