

In *Adler Barish* the court seemed to condemn the whole plan of the associates to raid the law firm's clients, but pointed to one act in particular, that is the use of expected fees from Adler Barish clients cases to support their loan to start the business. In this case, the taking of information from a data disc by one of the partners at night is a clear indication of extent to which the partners would go to gain a segment of the firm's business.

We find that the activities of the partners while still employees of Miller were not sanctioned by rules of the game which society has adopted. We find that in the atmosphere surrounding the partners departure, their contacts unduly suggested a course of action for Miller clients that it constituted overreaching and unfairly prejudiced Miller in violation of the Code. An appropriate sanction for such conduct is to enjoin the partners from further direct contact with Miller clients, not however prohibiting them from announcing the formation of the partnership or from advertising their services in a general way that would reach Miller's clients. Our order will make it clear that any former Miller client may voluntarily discharge Miller and select the partners or any other accountant to do their work.

Considering the nature of the contractual relationship between an ongoing client and the accountant, we think that the sanction would be appropriate against the parties and the protection afforded Miller & Co. sufficient if the injunction continued for a period of two years from September 23, 1985.

DECREE NISI

November 6, 1985, the defendants, Paul C. Schultheiss, William M. Porter and Denise D. Barrows, and all persons acting in concert with them or otherwise participating with them or acting in their aid or behalf, are enjoined and restrained from directly contacting and/or communicating with those persons or firms who up to September 23, 1985, had active accounting matters with and were clients of Miller & Co., Certified Public Accountants, Chambersburg, Pennsylvania, for a period of two (2) years from that date, except that:

1. Nothing in this decree shall be construed to preclude the defendants from announcing the formation of their new partnership or from advertising their services generally to all prospective clients.

2. Nothing in this decree shall preclude those persons and firms who, up to and including September 23, 1985, had active accounting matters pending with and were clients of Miller & Co. from voluntarily discharging their present accountants and selecting any of the defendants, or any other accountant, to represent them.

This decree nisi shall become final unless exceptions are file within ten (10) days.

COMMONWEALTH v. BIGLER, C.P. Franklin County Branch,
Misc. Docket Vol. Y, Page 454

Driving Under Influence - Refusal of Breathalyzer - Revocation of License

1. Where a driver is requested to take a breathalyzer test and refuses but instead takes a blood test, his license may be revoked following his guilty plea.

Lawrence Wieder, Esquire, Assistant Counsel for Department of
Transportation, Appellee
Philip S. Cosentino, Esquire, Counsel for Appellant

OPINION AND ORDER

EPPINGER, P.J., November 26, 1985:

David L. Bigler was stopped and charged with driving a motor vehicle while under the influence of intoxicants. He was requested by a Pennsylvania State Trooper to take a breathalyzer test at the State Police Barracks in Chambersburg. He did not take the test. Instead he informed the trooper that he was going to go into the Chambersburg hospital and get a blood test, which he did.

The test showed a blood alcohol content of .22%. That result was introduced in evidence by the Commonwealth at a preliminary hearing against Bigler. These facts were stipulated by Bigler and the Department of Transportation at the hearing on Bigler's appeal from the suspension of his operating privileges for refusing to take the breathalyzer test under the Vehicle Code, §1547(a) which provides that a motorist in Pennsylvania is deemed to have given consent to "one or more" chemical tests of his blood, breath or urine in circumstances where a police officer has

reasonable cause to arrest a motorist for driving under the influence. Subsection (b) provides that where a motorist refuses to submit to such chemical test, after having been advised of the consequences of his refusal, his operating privileges shall be suspended. 75 Pa.C.S.A. §1547. His license has been suspended by the Pennsylvania Department of Transportation (Department).

Since this stipulation was entered the defendant has entered a plea of guilty to the charge and has been sentenced. So the Commonwealth has successfully completed its prosecution of the defendant. In so doing it had the benefit of the blood test. The only issue before us is whether in these circumstances the license may be suspended by the Department. Whether the driver was placed under arrest for driving under the influence, was requested to submit to a breathalyzer test, was warned that his license would be revoked and then refused the breathalyzer test are not contested.

This case is governed by *Commonwealth of Pennsylvania, Department of Transportation v. Emory*, ___ Pa. Cmwlth. ___, 498 A.2d 26, 29 (1985). The facts were slightly different in that case. Emory was injured in an accident. A blood sample was taken at the emergency room. Later a police officer asked for another sample but Emory refused. The Commonwealth successfully completed its prosecution of the defendant relying on the emergency room sample, but the Department of Transportation suspended Emory's license for refusing the second sample. On appeal from our order reversing the suspension the Commonwealth Court held that the successful prosecution of a driver using results of a blood sample taken at the hospital did not excuse the driver from taking the test at the request of the police officer and that failure to do so was a proper foundation for suspending his license.

In this case the facts are stronger in support of the Department's suspension. In *Emory* what would seem to be a more reliable blood test had been taken and the refusal came afterwards. Here the refusal preceded the taking of the blood test.

The suspension of Bigler's operating privileges will be affirmed.

ORDER OF COURT

November 26, 1985, the order of the Pennsylvania Department of Transportation suspending the driver's license of David L. Bigler is affirmed and the stay of the suspension is lifted. The costs of these proceedings shall be paid by David L. Bigler.



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