



COPY

**STATE OF OHIO
COUNSELOR AND SOCIAL WORKER BOARD**

ADJUDICATION ORDER
in the Matter of:

James B. McGinnis
909 4th Street
Cincinnati, Ohio 45215

IN THE MATTER OF THE ELIGIBILITY OF JAMES B. MCGINNIS TO BE LICENSED AS A PROFESSIONAL CLINICAL COUNSELOR IN THE STATE OF OHIO.

THE MATTER OF JAMES B. MCGINNIS CAME BEFORE THE OHIO COUNSELOR AND SOCIAL WORKER BOARD AT ITS MAY 1998 MEETING.

FINDINGS, ORDER, AND JOURNAL ENTRY

This matter came for consideration after a Notice of Opportunity for Hearing was issued to James B. McGinnis by the Counselor and Social Worker Board on January 12, 1998. An administrative hearing was held on April 15, 1998, at 2:00 p.m. in the offices of the Ohio Counselor and Social Worker Board, 77 S. High Street, Columbus, Ohio 43266, pursuant to Chapter 119 and Section 4757 of the Ohio Revised Code. The State was represented by Assistant Attorney General Jonathan M. Bowman. James B. McGinnis was not present.

The Board has reviewed the Hearing Officer Report and Recommendations prepared in this case following the administrative hearing. The Board has also reviewed the Objections to the Hearing Officer Report and Recommendations submitted by Mr. McGinnis. The Board adopts in their entirety the Findings of Fact and Conclusions of Law in the Hearing Officer Report and Recommendations. A copy of the Hearing Officer Report and Recommendations is attached to this Adjudication Order. The Board also adopts the Hearing Officer's recommendation to revoke Mr. McGinnis's license to practice counseling in the State of Ohio.

THEREFORE, it is hereby ORDERED that for the reasons outlined in this ORDER and in the attached Hearing Officer Report and Recommendations which is hereby incorporated, by reference, into this ORDER, the license of James B. McGinnis (E-511) to practice as a Professional Clinical Counselor in the State of Ohio is REVOKED. This ORDER was approved by unanimous vote of the Members of the Board who reviewed this case.

Motion carried by order of the Counselor and Social Worker Board.

It is hereby certified by this Board that the above language is incorporated into the Board's journal in this matter.

APPEAL RIGHTS

Pursuant to Section 119.12 of the Ohio Revised Code, you may appeal from this Order. Such an appeal may be taken to the court of common pleas in the county in which your place of business is located or to the court in the county in which you reside. If you do not have a place of business in Ohio and are not a resident of Ohio, you may appeal to the Court of Common Pleas in Franklin County, Ohio.

Such an appeal, setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State of Ohio Counselor and Social Worker Board and the appropriate Court within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

By Order of the State of Ohio Counselor and Social Worker Board.



Robert Moore
Chair

Certification

I hereby certify that a true and accurate copy of this Adjudication Order of the State of Ohio Counselor and Social Worker Board was mailed return receipt requested to James B. McGinnis this 27th day of May 1998.

Beth Farnsworth
Beth Farnsworth
Executive Director

5-27-98
Date

2337 619 103
Certified Mail Number
Return Receipt Requested

STATE OF OHIO

COUNSELOR AND SOCIAL WORKER BOARD

IN THE MATTER OF THE
LICENSURE OF

James B. McGinnis

AS A COUNSELOR
IN THE STATE OF OHIO

REPORT AND RECOMMENDATION OF
HEARING EXAMINER

April 27, 1998

FOR THE LICENSEE:

No appearance

HEARING EXAMINER:

Ronda S. Shamansky
245 East Gay Street
Columbus, Ohio 43215-3210
614/224-9078

FOR THE BOARD:

Jonathan Bowman
Assistant Attorney General
Health & Human Services Section
30 E. Broad St., 26th Floor
Columbus, Ohio 43215
614/466-8600

FINDINGS OF FACT:

1. The hearing on this matter was held on Wednesday, April 15, 1998 commencing at approximately 2:00 p.m. in the offices of the Counselor and Social Worker Board, 77 South High Street, Columbus, Ohio. The Board was represented by Jonathan Bowman. The licensee, James B. McGinnis, had not requested a hearing and did not appear. The hearing allowed the opportunity for direct and cross examination of witnesses, the submission of documents, and for arguments to be made. In addition, although the licensee did not appear, the State offered into evidence two letters from Mr. McGinnis explaining his position. (State's Exhibits 2, 6))
2. The Board has proposed disciplinary action against Mr. McGinnis's counselor's license because of alleged violations of the Ohio Revised Code pertaining to the practice of counseling, and for alleged violations of the Code of Ethics of the American Association for Counseling and Development, adopted by the Board at Rule 4757-21-01 and incorporated into its rules at Appendix A. Particularly, the Board's Notice of Opportunity alleges that Mr. McGinnis violated paragraphs 2 and 8 of Section A, and paragraph 11 of Section B by pressuring a client until the client agreed to loan him money. (State's Exhibit 1) Section A, paragraph 2 requires the maintenance of high standards of professional conduct by the counselor. Section A, paragraph 8 prohibits the counselor from engaging in activities that seek to meet the counselor's personal needs at the expense of the client. Section B, paragraph 11 prohibits a counselor from entering into "dual relationships" with clients that might impair the counselor's objectivity and professional judgment.
3. The Board notified Mr. McGinnis of the charges against him through its Notice of Opportunity for Hearing dated January 12, 1998. (State's Exhibit 1) Mr. McGinnis responded to the Board through a letter dated January 28, 1998 detailing his position, but did not request a hearing in that letter. (State's Exhibit 2) The Board's investigative supervisor, William Hegarty, testified at the hearing that he telephoned Mr. McGinnis on February 12, 1998 to ask if he wished to have a hearing, but that Mr. McGinnis said that a hearing would not be necessary, as he did not want to pursue this matter any further. (State's

Exhibit 3) Mr. McGinnis did receive notice of the hearing held on April 15, 1998. (State's Exhibit 4)

4. At the hearing, the State called William Hegarty to identify documents, and then called James Shields to testify about the substance of the charges against Mr. McGinnis. Mr. Shields testified that he was a client of James McGinnis beginning in about May 1995. He came to Mr. McGinnis's agency, West by Northwest, on a referral from the Ohio Rehabilitation Board for individual mental health counseling. He testified that prior to that time, he had had numerous problems related to "flashbacks" from his service in Vietnam, depression over the deaths of several close friends, and had attempted suicide five times. He had been hospitalized for three months in 1967 after a mental breakdown. (State's Exhibit 9)
5. Mr. Shields testified that he was initially very pleased with Mr. McGinnis as a counselor, and that since McGinnis was also a Vietnam veteran, he seemed to have a great understanding of the problems that the flashbacks were causing for him. At that time, Mr. Shields was receiving welfare benefits, and had applied for disability benefits (SSI) from the Social Security Administration on the basis of his having post-traumatic stress disorder. Mr. Shields testified that this was a frequent matter of discussion in his counseling sessions. (See also, State's Exhibit 9)
6. Mr. Shields testified that in August or September 1995, Mr. McGinnis asked him for a loan of \$8,000 because he said that he wanted to start his own counseling business. Mr. Shields told him that he didn't have any money at that time. Mr. Shields testified that he first began receiving disability benefits from SSI in December 1995, and that those benefits paid him about \$800 per month. On May 3, 1996, Mr. Shields received a lump sum payment of approximately \$23,000 for retroactive SSI benefits. Mr. Shields testified that at that time, Mr. McGinnis told him that he had helped him get his SSI benefits by writing the letter documenting his condition, and that now it was time for Mr. Shields to help him. He again requested that Mr. Shields loan him money, and this time, Mr. Shields agreed to do so. On May 5, 1996, Mr. Shields wrote a check to "cash" and cashed it at his own bank, giving the money to Mr. McGinnis who promised to repay it

with 10 percent interest. (State's Exhibit 5) Shields testified that Mr. McGinnis said he couldn't get a check cashed, and had therefore asked him for a loan of cash instead. On May 14, 1996, Mr. Shields made a second loan to Mr. McGinnis, in the amount of \$450.00. This time the payment was in the form of a check written to Mr. McGinnis, and the check appears to have been cashed the same day. (State's Exhibit 5) Mr. Shields testified that Mr. McGinnis offered various reasons for why he needed these loans. In one instance, he said he needed to pay some bills for his brother who was incapacitated, and in other instances, he said he needed money to pay for groceries or utility bills for himself and his family.

7. Sometime in May 1996, Mr. McGinnis was laid off, and subsequently terminated from his employment with West by Northwest. There is controversy over exactly when Mr. McGinnis left West by Northwest. Mr. McGinnis indicates in his letter to the Board that he left that agency on May 5, 1996, but the State contends that the Termination Summary at State's Exhibit 9 shows that he was still indicated as a service provider on May 20, 1996. It is worth noting that although the first page of State's Exhibit 9 bears the name "Jim McGinnis" on the line indicating "signature of service provider and credentials," on further review following the hearing, this does not appear to be Mr. McGinnis's signature. Instead, the signatures of McGinnis and his supervisor, Brent Lawyer, appear to be in the same handwriting. It may be that Brent Lawyer signed for Mr. McGinnis after his departure, indicating his initials in parentheses after it, although it is unclear whether the initials say "B.R." or "B.L." This appears very possible because of the progress summary indicating that the writer met with Mr. Shields following the therapist's leave. However, given that the progress summaries show that Mr. Shields was seen for counseling approximately every week, the Termination Summary was probably completed a very short time after Mr. McGinnis left the agency. In addition, Mr. Shields testified emphatically that he made the first loan to Mr. McGinnis before McGinnis was laid off. Although Mr. McGinnis claims in his letter that he was not involved professionally with Mr. Shields after December 1995 or January 1996, the documents in State's Exhibit 9 show that Mr. McGinnis wrote an individualized service plan for Mr. Shields on February 29, 1996, and continued submitting "service tickets" requesting payment for services rendered to

Mr. Shields as late as May 1, 1996. (State's Exhibits 2, 9)

8. Mr. Shields testified that Mr. McGinnis kept promising to repay the loans as soon as some particular event occurred, such as when he got paid or when he got his tax refund.¹ However, the first repayment in the amount of \$25 did not come until January 20, 1997. Mr. Shields testified that he had problems getting repayment, and that at least one of Mr. McGinnis's checks to repay him bounced. He filed a small claims action with a court in Kentucky, and was awarded a judgment against Mr. McGinnis. (State's Exhibit 5, p. 4) Eventually, in January 1998, Mr. McGinnis sent Mr. Shields three money orders which repaid him in full for all the amounts owed plus interest. (State's Exhibit 7) Mr. McGinnis's note sent with the money orders indicates in part, "this brings to a full close our need for a relationship," although Mr. Shields testified that he still had serious emotional problems at that time, and that he still sees a social worker at the Veteran's Administration regularly.

DISCUSSION

I am persuaded by the testimony of Mr. Shields and by the documents introduced into evidence to find that Mr. McGinnis did indeed pressure Mr. Shields into loaning him \$990.00 while he was seeing Mr. Shields as a client at West by Northwest.

I found Mr. Shields to be a credible witness, and to have very good organization of his records concerning his money. Mr. McGinnis did not request the opportunity to present evidence at a hearing, and therefore, I give greater weight to Mr. Shields's testimony, since he actually appeared and testified, subject to my cross-examination. I am also more willing to accept Mr. Shields's testimony because of the discrepancies in dates offered by Mr. McGinnis in his letters. For example, Mr. McGinnis indicates in his letter dated January 28, 1998 that he was not involved professionally with Mr. Shields after December 1995 or January 1996. (State's Exhibit 2) However, the client progress notes contained in State's Exhibit 9 indicate

¹Mr. Shields testified and indicated in some of the documents admitted as State's Exhibits that he made additional loans to Mr. McGinnis after May 1996. However, because the Notice of Opportunity concerns only the loans made up to May 20, 1996, any additional loans are not considered by this report.

that Mr. McGinnis was documenting this client's progress and submitting service tickets at least as late as May 1, 1996. Another discrepancy concerns when the loans were made. Mr. McGinnis indicates in his letter that Mr. Shields first loaned him a small amount (\$100) on approximately May 17, 1996. (State's Exhibit 2) However, the copies of the checks admitted as part of State's Exhibit 5 demonstrate that the first check was written on May 5, 1996, that it was cashed the following day, and that it was for \$540 and not \$100. Because of these discrepancies, I find Mr. Shields's testimony more credible than the information provided by Mr. McGinnis in his letters.

I find Mr. McGinnis's coercive tactics unethical and reprehensible. Mr. Shields testified that Mr. McGinnis told him "I helped you get your SSI, now it's time for you to help me," suggesting that Mr. Shields owed him a favor in return for his services, which should have been provided out of professional duty. This testimony also suggests that Mr. McGinnis may have had a conflict of interest in writing the summaries that were used as part of Mr. Shields's SSI application. It is possible that his incentive for personal financial gain may have colored his opinions expressed in the letter(s) written to the Social Security Administration on this client's behalf. Finally, it appears that Mr. McGinnis took advantage of his client's vulnerability as a Vietnam veteran. Mr. Shields testified that he did feel a sense of obligation to Mr. McGinnis as a fellow Vietnam veteran, and that that made him more willing to loan Mr. McGinnis the money. I can find no other reason that Mr. McGinnis would look to this client in particular for a loan. At the time he began counseling, this client was on public assistance. Even though Mr. Shields testified that he later began receiving SSI benefits, he also testified that he is medically retired, and thus, it would seem that he is on a fixed income.

In Mr. McGinnis's letters, he does not deny borrowing money from Mr. Shields, but he contends that it was based on friendship. Yet Mr. Shields testified at the hearing that he had never met Mr. McGinnis prior to being referred to him as a counselor. In addition, in Mr. McGinnis's letter to Mr. Shields accompanying the repayment of the loans, he indicates "this brings to a close our need for a relationship." There was apparently no personal friendship existing prior to the counseling relationship, nor after the loans had been repaid, suggesting that McGinnis had no need for Mr. Shields's friendship once he was no longer indebted to him. Thus, I must believe that Mr. McGinnis took advantage of Mr. Shields as a client and did not borrow money from him merely as a friend.

There is some question over when the counseling relationship ended, in relation to when the loans were made. Mr. Shields testified that he was sure that at least the first loan took place before Mr. McGinnis was laid off, while he was still McGinnis's client, and that he believes the second loan was made before his termination as well. The State presented State's Exhibit 9, which it contends shows that Mr. McGinnis was still employed at the agency as of May 20, 1996. Despite the question about whether Mr. McGinnis was still employed at that agency when the second loan was made, it is clear that the pressure to loan this money took place while Mr. Shields was still Mr. McGinnis's client, and that if the second loan did take place after he was laid off or terminated, then it nonetheless arose out of the counseling relationship begun while he was still employed by the agency.

There is also some controversy over whether Mr. McGinnis asked Mr. Shields for a loan, or whether Mr. Shields first suggested loaning the money to Mr. McGinnis. Mr. McGinnis indicates in his letters that Mr. Shields initiated the offer of the loan, while Mr. Shields testified unequivocally that Mr. McGinnis repeatedly pressured him to loan him money until Shields finally acquiesced in May 1996. (State's Exhibits 2, 6) For all the reasons described above, I find Mr. Shields's testimony to be more credible than the information presented in Mr. McGinnis's letters. However, even if Mr. Shields had initiated the offer, it would still be unethical and improper for Mr. McGinnis to accept a loan from his client.

I recommend that the Board revoke Mr. McGinnis's license to practice counseling. I find that he did violate the Code of Ethics by engaging in a dual relationship with Mr. Shields as both client and creditor. In doing so, he sought to meet his own personal needs at the expense of the client's needs.

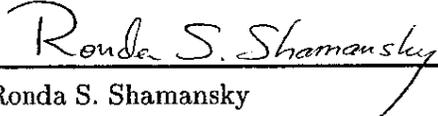
CONCLUSION OF LAW

I conclude that R.C. 4757.13 authorizes the Board to revoke James McGinnis's license to practice counseling for violations of the Code of Ethics of the American Association of Counseling and Development, adopted by the Ohio Board at Rule 4757-21-01. I find that by pressuring client James Shields to loan him money, he violated Section A, paragraph 8 and Section B, paragraph 11. He entered into a dual relationship with this client when he borrowed money from him, thereby engaging in an activity designed to meet the counselor's personal needs at the expense of the client. In addi-

tion, I find that Mr. McGinnis's behavior toward this client violates the counselor's responsibility described in Section A, paragraph 2, to maintain high standards of professional conduct. For these reasons, the Board has the authority to revoke his license.

RECOMMENDATION

For the reasons detailed in this report, I recommend that James B. McGinnis's counselor's license be revoked.



Ronda S. Shamansky
Hearing Examiner