

THE SUPREME COURT OF OHIO

BEFORE THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW

CINCINNATI BAR ASSOCIATION : **Supreme Court Case No. 2009-1663**

Relator, : Case No. UPL 06-07

-vs- :

STUART JANSEN, et al. :

Respondents. :

FILED
DEC 13 2011
CLERK OF COURT
SUPREME COURT OF OHIO

Respondents' Response to the November 23, 2011 Show Cause Order

Comes now Respondents, Stuart Jansen ("Jansen") and American Mediation & Alternative Resolutions ("AMAR"), by and through counsel, and hereby respond to this Court's Show Cause Order filed November 23, 2011.

On August 17, 2006, Relator initiated proceedings against the Respondents alleging the Respondents engaged in the unauthorized practice of law by contacting debtors in pending collection actions and offering to mediate the debtors' claims in order to effect a reasonable settlement with their creditor. One of the main issues addressed by Relator in the initial proceedings was that Respondent was challenging the validity or amount of the debt on behalf of the debtor.

On January 26, 2010 this Court approved a consent decree entered into between Relator and Respondents, and ordered:

1. The Respondents permanently shall cease and desist from sending on behalf of any client of the Respondents located in the State of Ohio any correspondence, email message, memorandum or any other written or oral communication to any creditor of such client which communication disputes or otherwise calls into question the validity or amount of the creditor's claim

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against such client (except only to the extent any such creditor has or may have incorrectly computed the amount of its claim then due).

2. The Respondents shall not otherwise represent debtors in Ohio by advising, counseling or negotiating resolution of their debts with creditors or creditors' counsel (per *Ohio State Bar Assn. v. Kolodner* (2004), 103 Ohio St.3d 504, 2004-Ohio-5581, [817 N.E.2d 25]) and shall not otherwise engage in the unauthorized practice of law.

Cincinnati Bar Assn. v. Jansen, 124 Ohio St.3d 272, 2010-Ohio-133, at ¶¶ 15-16.

Respondents perceived the act of questioning the validity and/or amount of debtors' debt was at the center of the consent and of the Court's order.

In its September 13, 2011 Motion for an Order to Show Cause, Relator asserted that Respondents have resumed activity which constitutes the unauthorized practice of law. Specifically, they alleged Respondents continue to solicit prospective clients and continue to represent the interests of those clients in collection cases. In support of this, Relator asserted the following: (1) Respondents obtain a Limited Power of Attorney Appointment from the debtor, but not from the creditor; (2) Respondents do not ask either the creditor or the debtor to sign a mediation or arbitration statement; (3) Respondents do not ask the parties to share the cost of mediation, but rather charge the debtor; and (4) Respondents do not act as a truly neutral and independent mediator of the dispute.¹

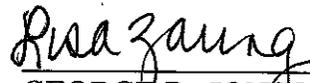
After the initial consent decree was accepted and this Court issued its order, Respondents worked with their former counsel and modified their practice in a good faith attempt to remedy the issues set forth in the consent and Order. In compliance with the order, Respondents completely stopped making any statements to creditors

¹ Due to changes in counsel, Respondents were not aware that they could or should have responded to the Motion to Show Cause. After the Show Cause Order was issued, Respondents retained new counsel.

regarding the validity or amount of a debtor's debt (except to the extent any such creditor has or may have incorrectly computed the amount of its claim then due). Their involvement in debt collection cases has been strictly limited to communicating information (offers, demands, etc.) between debtors and their creditors. However, Respondents believed that they needed to have a power of attorney from the debtor to speak to the creditor or their attorney about the debtor's debt without violating the Fair Debt Collections Act. The use of a power of attorney is common practice in debt collection cases. Respondents were not aware of any concerns related to the use of the power of attorney until Relator filed its Motion to Show Cause. Since that motion was filed and it was brought to Respondents' attention that the power of attorney form is a cause for concern, Respondents have modified their power of attorney form. The form currently in use is attached as Exhibit A. Respondents are willing to produce their current forms and case files to the Relator for review and to further modify their forms and practice as necessary.

Respondents did not knowingly violate this Court's previous order. Any problems that have arisen since the order was issued are due to the fact that Respondents' were not aware of Relator's additional concerns. Respondents are willing to work with Relator to modify their forms and practices to satisfy the concerns addressed in Relator's motion. Respondents respectfully request this Court not hold them in contempt and, rather, refer this case back to the Panel so that Respondents can work with Relator to further modify their forms and practices, reach an amicable resolution, and, if necessary, modify the original consent decree to include the additional provisions addressed in Relator's motion.

Respectfully submitted,

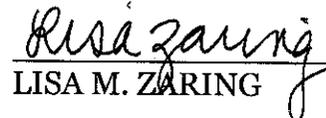


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CERTIFICATE OF SERVICE

I served a copy of the foregoing by First-Class U.S. Mail, postage prepaid, upon the following on this 12th day of December, 2011:

Louis F. Solomine, Esq.
312 Walnut Street, Suite 1400
Cincinnati, Ohio 45202
Counsel for Relator



LISA M. ZARING

LIMITED POWER OF ATTORNEY AUTHORIZATION

NAME AND/OR COMPANY: **Debtor's Name**

ADDRESS:

I hereby give this Power of Attorney to American Mediation to carry out the limited purpose for which this power is granted: **To mediate a resolution regarding:**

Plaintiff vs Debtor

Civil Suit No. 11CV-xxxxx Hamilton County

No resolution is binding unless both parties agree. The undersigned agree that either party may cancel this relationship at any time upon giving reasonable written notice. No legal advice or opinions will be provided under this agreement.

Any information provided to American Mediation will be truthful and may be used in an effort to reach a resolution between the parties. It is understood the above named party agrees to reasonably respond to communications and not circumvent the mediation process or otherwise act in bad faith.

Should any legal action be brought by either party to enforce this agreement, legal jurisdiction and venue shall be in Hamilton County, State of OH.

This Power of Attorney shall terminate upon the conclusion of the mediation process.

DATE: _____

BY: _____ BY: _____
Authorized Signature for Stuart Jansen for American Mediation
Debtor

American Mediation is not an attorney firm. We do not engage in the practice of law or express legal opinions. We cannot represent you in or advise you on any legal issues now pending or which may arise. We cannot inject ourselves into any litigation procedures or processes as our role is independent of such process. It is a condition of our assisting you that in respect to any present or future litigation you follow the advice and instructions set forth in the process you are served.

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