

ORIGINAL

THE SUPREME COURT OF OHIO

BEFORE THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW

CINCINNATI BAR ASSOCIATION

Relator,

-vs-

STUART JANSEN

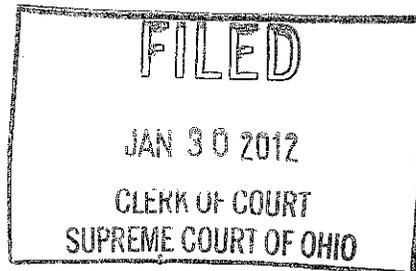
and

AMERICAN MEDIATION & ALTERNATIVE
RESOLUTIONS

Respondents.

09-1663

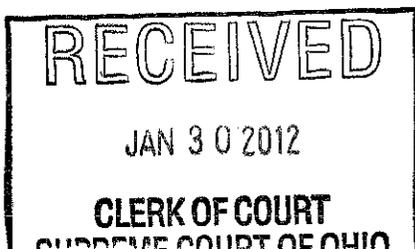
CASE NO. UPL 06-07



**REPLY MEMORANDUM IN SUPPORT
OF MOTION FOR AN ORDER TO SHOW CAUSE**

Respondents' Response to Relator's Motion for an Order to Show Cause (the "Response"), if nothing else, highlights the Respondents' determined and ongoing efforts to blur the distinction between the unauthorized practice of law and the conduct of a legitimate mediation service. Respondents previously conceded they had engaged in the unauthorized practice of law (*See Cincinnati Bar Association v. Jansen, et al.* (2010) 124 Ohio St. 3d 124, 2010-Ohio-133 ¶¶ 8-10) and agreed they permanently would cease and desist from doing so. Their obligation in that regard encompasses not only circumstances in which Respondents' "clients" dispute the amount in controversy, but also – consistent with this Court's holding in *Ohio State Bar Ass'n v. Koloder* (2004), 103 Ohio St. 3d 504, 2004-Ohio-5581 – any "advising, counseling or negotiating resolution of their debts with creditors or creditors' counsel." Jansen at

¶ 16.



As the Response makes clear, however, over the past two years Respondents, by their own admission, continued their “involvement in debt collection cases” by “communicating information (offers, demands, etc.) between debtors and their creditors.” Response at 3. Again, Respondents engaged in that activity, in exchange for a fee paid solely by their client, under the guise of a “Limited Power of Attorney Appointment” (sic) signed only by their client, and without a mediation agreement of any kind between their client and the creditor. Relator respectfully submits that this activity, on its face, constituted the continued unauthorized practice of law by Respondents in violation of this Court’s January 26, 2010 order in this case and that Respondents should be appropriately sanctioned for such conduct.

The Response further indicates that, in reaction to Relator’s Motion for an Order to Show Cause, Respondents once again have modified their business forms in a further attempt to repackage their services as those of an independent and neutral mediator. Respondents evidently have discontinued their use of the Limited Power of Attorney Appointment and have created a new “Mediation Agreement” which, according to Respondents, “[allows] the creditor to speak with Respondents about the debtor’s debt.”¹ Response at p. 3. And yet, Respondents’ client remains entirely responsible for the mediation fees (which Respondents themselves describe as a “retainer” and which its client must pay in advance)² and the creditor is not even required to sign the new mediation agreement.³ Respondents also continue to seek new business by means of

¹ In a true mediation context, any such permission would be unnecessary since, by definition, the mediator would be entitled to discuss the merits of the dispute with both parties. That statement, instead, simply confirms Respondents are serving as their clients’ representative and are attempting to insure that any confidential information about their clients’ financial circumstances is communicated to them by creditors within the bounds of applicable federal privacy laws.

² See ¶ 3 (“The Mediation Fee”) of January 17, 2012 letter to “Jane Doe” attached to Response.

³ The Mediation Agreement signature block indicates the creditor purportedly can “accept” its terms simply by “contacting American Mediation via phone, e-mail or fax.” It is, therefore, entirely possible, if not likely, the creditor will never be aware it has entered into the mediation “agreement.”

solicitation letters – sent only to debtors – which, in Relator’s view, even now purposely obscure the precise nature of Respondents’ proposed role despite the letters’ casual mention of a “mediated resolution.”⁴

Relator recognizes that the professional services provided by a duly licensed attorney, and by an independent mediator, can overlap in certain circumstances. For example, the process of simply communicating settlement proposals between adverse parties is not necessarily within the exclusive province of legal counsel. Nonetheless, Respondents’ calculated modification of their business forms cannot conceal the fact they continue, upon Relator’s information and belief, to:

- send initial solicitation letters only to defendants in pending collection cases
- send follow-up engagement letters only to those defendants
- require the defendants, but evidently not the creditors, to sign the “Mediation Agreement”
- charge the “mediation fee” only to the defendants, who must pay the fee, as a retainer, in advance

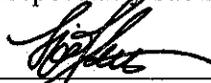
In other words, while Respondents may have conveniently changed their business forms, they have not altered their fundamental business practices – the core of which remains soliciting business from, representing and charging debtors in connection with Respondents’ efforts to settle collection cases filed by their clients’ creditors.

Finally, it is inappropriate for Respondents – however sincere they may be – to solicit an opportunity to “work with” Realtor to further modify Respondents’ business forms and other business practices in order to satisfy Realtor’s “concerns.” Relator is not in the consulting business and it cannot provide any guidance to Realtor concerning its business practices other

⁴ A sample copy of Respondents’ current initial solicitation letter is attached hereto as Exhibit A. A positive response to that solicitation evidently then prompts the “Jane Doe” letter described in fn. 2 *supra*.

than to insist that Respondents abide by the prior order of this Court and immediately cease and desist from the unauthorized practice of law.

Respectfully submitted,



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Counsel for Relator

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Memorandum in Support Motion for an Order to Show Cause was served by regular U.S. Mail, this 26th day of January, 2012 upon:

George D. Jonson, Esq.
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Wednesday, January 11, 2012

Lacy R Larkin
437 Ken Rob St
Loveland, OH 45140

Reference: Sterling Of Ohio Inc vs. Lacy R Larkin
Civil Suit No. **2011CVF05634**, Clermont County

Dear Lacy:

I may have some good news for you regarding a possible mediated resolution of this issue. Our firm is not associated with those who filed this suit against you.

You may soon be served with a *Court Summons* and timing is very important.

Please contact me as soon as possible at 513-936-9600. Your call will be confidential. Our office hours are 8:30am to 5:00pm weekdays.

Sincerely,


Stuart J. Jansen
Managing Director
Tri-State Regional Office

Note: If this matter is resolved, or if you presently have an attorney and/or wish to defend this matter in court, please disregard this letter.

