

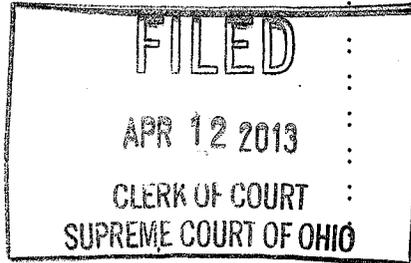
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THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW
OF
THE SUPREME COURT OF OHIO

CINCINNATI BAR ASSOCIATION, :

Relator, :

v. :



Case No. 2009-1663
Case No. UPL 06-07

STUART JANSEN, ET AL., :

Respondents. :

FINAL REPORT
Gov.Bar R. VII(5b)(E)(3)
On a Motion to Show Cause
Alleging a violation
of a Consent Decree

I. SUMMARY

This matter was before a panel of the Board on Relator's Motion to Show Cause alleging violation of a Consent Decree, filed on September 13, 2011. In the accompanying Memorandum in Support, Relator states that Respondents continued to engage in the unauthorized practice of law on behalf of third parties in collection actions.

The parties previously entered into a Consent Decree (the "2010 Consent Decree"), which was approved by the Court on January 26, 2010. The Court ordered that Respondents shall cease in engaging in the unauthorized practice of law and are prohibited from representing "debtors in Ohio by advising, counseling or negotiating resolution of their debts with creditors' counsel." *Cincinnati Bar Assn v. Jansen*, 124 Ohio St.3d 272, 2010-Ohio-133 (2010), quoting *Ohio State Bar Assn. v. Kolodner*, 103 Ohio St.3d 504, 2004-Ohio-5581 (2004).

In accordance with Gov. Bar R. VII(5b)(E)(3), a panel was appointed to conduct a hearing on the motion to show cause, and to submit a report with findings of fact and conclusions of law. The sole issue before the panel was whether the terms of the consent decree were violated.

On September 10, 2012, the parties submitted a Joint Motion to Approve Proposed Findings of Fact and Conclusions of Law and Consent Decree and provided a notice of waiver of oral argument.

The panel, upon review of the proposed Findings of Fact and Conclusions of Law, adopted the parties' findings of fact and conclusions of law, in part. The panel concluded that the Board should recommend to the Court that Respondents violated the terms of the 2010 Consent Decree by continuing to solicit clients in the manner described below. Based on the review of the record, it appears that the violations were unintentional. The panel presented its report and recommendation to the Board on March 21, 2013. The Board adopted the panel's report and recommendations. The Board finds that the Respondents violated the terms of the 2010 Consent Decree.

II. PROCEDURAL BACKGROUND

The 2010 Consent Decree

This case was originally initiated on or about August 17, 2006, when Relator, Cincinnati Bar Association, filed a complaint alleging the unauthorized practice of law against Respondents, Stuart Jansen and American Mediation & Alternative Resolutions ("AMAR"). The Complaint alleged that Respondents engaged in the unauthorized practice of law by attempting to settle a debt on behalf of an Ohio resident who had signed a "Limited Power of Attorney." Respondents filed an Answer on October 6,

2006, which stated that Relator and the Board previously sanctioned the procedures alleged in the Complaint.

The parties negotiated and submitted a revised Consent Decree on August 17, 2009, to the Panel. The Panel recommended its approval to the Board, and on August 27, 2009, the Board filed its final report with the Supreme Court recommending approval of the Consent Decree on September 16, 2009.

The Court approved the Consent Decree on January 26, 2010. In its decision, the Court cited the following provisions of the Consent decree:

- (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 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.

The Motion to Show Cause Alleging Violation of the 2010 Consent Decree

On September 13, 2011, Relator filed a Motion to Show Cause with the Court and the Board, alleging Respondents have violated the Consent Decree. In accordance with Gov. Bar R. VII(5b)(E), this matter was assigned to a panel by Entry dated October 25, 2011. The panel appointed to hear this matter consisted of Mark J. Huller, Chair, John P. Sahl, and C. Michael Walsh.

Respondents filed a Motion for Extension of Time to file a Memorandum in Response to Relator's Motion, which the panel granted by Entry dated December 19,

2011. Respondents filed a Response to the Motion for an Order Show cause on January 18, 2012. In its Response, Respondents indicated that based upon the 2010 Consent Decree, “Respondents worked with their former counsel and modified their business practice in a good faith attempt to remedy the issues set forth in the consent decree and order.”

Relator filed a Reply Memorandum in Support of Motion for An Order to Show Cause on January 27, 2012, asserting that although Respondents have 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.”

By Case Scheduling Order dated February 28, 2012, the panel ordered that the parties submit Stipulations of Facts and or Law to the panel on April 12, 2012, and that an oral argument hearing would be held on May 9, 2012. The parties submitted a Stipulation Re: Motion for an Order to Show Cause on April 12, 2012. Based on communication from the parties that they were working on a resolution to the matter, the hearing on May 9th was stayed. By telephone conference on May 10, 2012, the parties indicated to the panel that they wished to waive the hearing and submit a Revised Proposed Consent Decree. The panel informed the parties that the proceeding is before the panel solely on the issue of whether the 2010 Consent Decree was violated, and it appeared under Gov. Bar R. VII(5b)(E), that the panel was required to submit Findings of Facts and Conclusions of Law. The panel further instructed the parties that if they wished to waive the hearing, a more developed

Proposed Findings of Facts would be required in order for the panel to determine the issue of whether the 2010 Consent Decree was violated.

On September 19, 2012, the parties submitted a Joint Motion to Approve Proposed Findings of Fact and Conclusions of Law and Consent Decree. The parties included a waiver of hearing before the Board. Joint Motion Ex. 7 ¶ J. Upon review of the parties' submission, the panel issued an Entry on September 26, 2012, stating that the facts presented in the Motion were sufficient to provide the panel with a basis for making a recommendation. The Entry further acknowledged the parties' waiver of oral argument, and allowed fourteen (14) days from the date of the filing to request an oral argument, otherwise the waiver of oral argument was deemed reaffirmed. No written request was filed by either party. The Panel convened and upon review of the record, found that the Respondents violated the 2010 Consent Decree. The Panel presented its report to the Board on March 21, 2013, and the Board adopted the Panel's findings of fact, conclusions of law, and recommendation that the terms of the 2010 Consent Decree had been violated.

III. FINDINGS OF FACT

1. On August 17, 2006, Relator filed a complaint against Respondents alleging Respondents had engaged in the unauthorized practice of law by contacting debtors in pending collection actions and offering to effect a settlement with their creditors.
2. The Supreme Court of Ohio accepted the recommendations of the Board on the Unauthorized Practice of Law in this case and approved and entered a Consent

Decree submitted by Relator and Respondents (the “2010 Consent Decree”). The 2010 Consent Decree provided, in pertinent part:

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

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.

3. After the 2010 Consent Decree was accepted and the Supreme Court issued its Order, on the advice of prior counsel, Respondents modified their business practices with the assistance of counsel as follows:

- (a) Respondents sent solicitation letters to prospective clients, typically identified by Respondents’ search of the court index and/or docket in Ohio for named defendants in recently-filed collection cases, in the form of the Exhibit 1 (the “Solicitation Letters”).
- (b) As to those defendants who responded positively to the Solicitation Letters, Respondents asked them to sign and return a Limited Power of Attorney Appointment, in the form of the attached Exhibit 2.

- (c) As to each defendant who signed and returned the Limited Power of Attorney Appointment, Respondents then sent a letter to the creditor which had filed the collection case against the defendant, and which letter contained a “proposed resolution,” in the form of the attached Exhibit 3 (the “Proposed Resolution Letters”).
 - (d) As to those creditors which responded positively to the Proposed Resolution Letters, the Respondents then attempted to facilitate a resolution of the collection case by transmitting settlement proposals between the defendant and the creditor.
 - (e) With respect to those collection cases as to which Respondents were able to facilitate a settlement, the creditor prepared a settlement agreement or an agreed judgment entry. The creditor typically sent the agreement or judgment directly to the debtor. Occasionally, Respondents acted as an intermediary and mailed or emailed the agreement to the debtor. The debtor was responsible for sending money to the creditor or returning the signed judgment entry to the creditor. Respondents were not involved in the dismissal of the collection case.
4. In September 2011, Respondents received Relator’s Motion for an Order to Show Cause and learned, for the first time, that many of their continued practices were of concern to Relator, including the use of the power of attorney form. In response, Respondents: (a) started using a modified Solicitation Letter in the form of the attached Exhibit 4; (b) stopped using the Limited Power of Attorney

- Appointment form; and (c) started using a Mediation Agreement in the form of the attached Exhibit 5.
5. Between January 26, 2010, and the present, Respondents: (a) sent approximately 35,000 Solicitation Letters to defendants; (b) received approximately 467 signed Limited Power of Attorney Appointments from defendants; (c) sent approximately 459 Proposed Resolutions Letters to creditors; and (d) facilitated the settlement of approximately 434 collection cases.
 6. Throughout this period of time, Respondents typically have charged those debtors which agreed to engage Respondents a fee of \$250 per case. In the more complex cases, Respondents sometimes have charged a slightly higher fee, but rarely more than \$295 per case.
 7. Respondent AMAR is an Ohio limited liability company operated by Stuart Jansen. AMAR does not have any other employees.
 8. After Respondents learned their continued practices were of concern to Relator, Respondents have cooperated with Relator to resolve the concerns.
 9. Respondents have agreed to entirely and permanently cease and desist from engaging in any arbitration, mediation or alternative dispute resolution of any kind for profit.

IV. CONCLUSIONS OF LAW

1. The Board has received sufficient stipulations of facts from the parties in their Joint Motion to Approve Proposed Findings of Fact and Conclusions of Law to provide the Court with a recommendation on whether the 2010 Consent Decree was violated.

2. The Respondents violated the 2010 Consent Decree by continuing to solicit debtors as clients and negotiate the resolution of their debts.
3. Violation of the 2010 Consent Decree appears to have been unintentional. The Respondents modified their mediation service with the assistance of counsel following the 2010 Consent Decree; however, the modifications were not substantial enough to completely comply with the terms of the 2010 Consent Decree.
4. The Board does not have authority to recommend a Modified Consent Decree as the parties have requested. Gov. Bar R. VII 5B(E)(3) requires the Board to “submit a final report to the court with findings of facts, conclusions of law, and recommendations on the issue of whether the Consent Decree was violated.”
5. While the Board is not authorized to recommend adoption of the modified consent decree the parties have requested, the Board does not object to the terms of the resolution agreed to by the parties that are set forth in the (revised) Consent Decree, filed with the Board on September 10, 2012 (Exhibit A).

V. CONCLUSION/RECOMMENDATIONS

1. The Board recommends that the Supreme Court of Ohio issue an order finding that Respondents violated the terms of the 2010 Consent Decree.

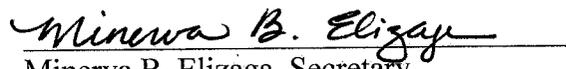
**FOR THE BOARD ON THE
UNAUTHORIZED
PRACTICE OF LAW**



Curtis J. Sybert, Chair

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 12th day of April, 2013: Louis F. Solimine, Esq., Thompson Hine, 312 Walnut Street, Suite 1400, Cincinnati, Ohio 45202; George D. Jonson, Esq., Montgomery, Rennie & Jonson, 36 East Seventh Street, Suite 2100, Cincinnati, Ohio 45202; Stuart Jansen, 9475 Kenwood Road, Suite 9, Cincinnati, Ohio 45242; American Mediation & Alternative Resolutions, LLC, 9475 Kenwood Road, Suite 9, Cincinnati, Ohio 45242; Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215-7411; Eugene Whetzel, Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, Ohio 43216; Maria C. Palermo, Esq., Cincinnati Bar Association UPL Committee, 225 E. Sixth Street, Cincinnati, Ohio 45202.


Minerva B. Elizaga, Secretary
Board on the Unauthorized Practice of Law

THE SUPREME COURT OF OHIO

BEFORE THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW

CINCINNATI BAR ASSOCIATION

Relator,

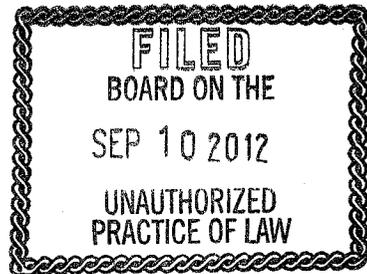
-vs-

STUART JANSEN

and

AMERICAN MEDIATION & ALTERNATIVE
RESOLUTIONS, LLC

Respondents.



CASE NO. UPL 06-07

**CONSENT DECREE AND JUDGMENT ENTRY
AND WAIVER OF HEARING**

THIS CONSENT DECREE AND JUDGMENT ENTRY AND WAIVER OF HEARING (this "Consent Decree") concerning the Cincinnati Bar Association ("Relator"), and Stuart Jansen ("Jansen") and American Mediation & Alternative Resolutions ("AMAR" and, together with Jansen, "Respondents") is as follows:

A. WHEREAS, on January 26, 2010, the Ohio Supreme Court accepted the recommendations of the Board on the Unauthorized Practice of Law in this case and approved and entered the Consent Decree submitted by Relator and Respondents (the "2010 Consent Decree"). *Cincinnati Bar Association v. Jansen, et al.*, 124 Ohio St. 3d 272, 2010-Ohio-133; and

B. WHEREAS, following the Supreme Court's approval and entry of the Consent Decree, Respondents continued in business using, in general, the following practices:



(a) Respondents sent solicitation letters to prospective clients, typically identified by Respondents searching the court index and/or docket in Ohio for named defendants in recently-filed collection cases, in the form of the attached Exhibit 1 (the "Solicitation Letters").

(b) As to those defendants who responded positively to the Solicitation Letters, Respondents asked them to sign and return a Limited Power of Attorney Appointment, in the form of the attached Exhibit 2.

(c) As to each defendant who signed and returned the Limited Power of Attorney Appointment, Respondents then sent a letter to the creditor which had filed the collection case against the defendant, and which letter contained a "proposed resolution," in the form of the attached Exhibit 3 (the "Proposed Resolution Letters").

(d) As to those creditors which responded positively to the Proposed Resolution Letters, Respondents then attempted to facilitate a resolution of the collection case by transmitting settlement proposals between the defendant and the creditor. Those efforts were mostly successful; sometimes they were not; and

C. WHEREAS, with respect to those collection cases as to which Respondents were able to facilitate a settlement, the creditor prepared a settlement agreement or an agreed judgment entry. The creditor typically sent the agreement or judgment entry directly to the debtor. Occasionally, Respondents acted as an intermediary and mailed or emailed the agreement to the debtor on behalf of the creditor. The debtor was responsible for sending money to the creditor or returning the signed judgment entry to the creditor. Respondents were not involved in dismissal of the collection case; and

D. WHEREAS, Relator contends the foregoing business practices constituted the continued unauthorized practice of law by Respondents in violation of, *inter alia*, the 2010 Consent Decree. Respondents contend the foregoing business practices did not constitute the continued unauthorized practice of law but, instead, constituted the conduct of a bona-fide mediation service; and

E. WHEREAS, on September 13, 2011 Relator filed in this case a Motion for an Order to Show Cause in connection with Respondents' foregoing business practices; and

F. WHEREAS, in February, 2012, in response to Realtor's Motion for an Order to Show Cause, Respondents: (a) started using a modified Solicitation Letter in the form of the attached Exhibit 4; (b) stopped using the Limited Power of Attorney Appointment form; and (c) started using a Mediation Agreement in the form of the attached Exhibit 5; and

G. WHEREAS, between January 26, 2010 and the date hereof, Respondents have: (a) sent approximately 35,000 Solicitation Letters to defendants; (b) received approximately 467 signed Limited Power of Attorney Appointments from defendants; (c) sent approximately 459 Proposed Resolutions Letters to creditors; and (d) facilitated the settlement of approximately 434 collection cases; and

H. WHEREAS, throughout this period of time, Respondents typically have charged those debtors which agreed to engage Respondents a fee of \$250 per case. In the more complex cases, Respondents sometimes have charged a slightly higher fee, but rarely any more than \$295 per case; and

I. WHEREAS, in order to eliminate the need for contentious, costly and time-consuming litigation of their dispute, the outcome of which is uncertain, and to amicably settle

their disagreements and differences, Relator and Respondents have agreed to enter into this Consent Decree; and

J. WHEREAS, Relator and Respondents hereby waive a hearing before the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio (the "Board").

NOW, THEREFORE, it hereby is agreed, decreed and ordered that:

1. Upon their execution of this Consent Decree Respondents shall entirely and permanently cease and desist, whether as an owner, principal, officer, employee, consultant, independent contractor, agent, representative or otherwise, from directly or indirectly soliciting, procuring, conducting, participating in, supervising or otherwise engaging in any arbitration, mediation or alternative dispute resolution of any kind for profit. Nothing in this paragraph shall prohibit Respondent Jansen from engaging in any activity in which he is permitted to engage by reason of obtaining a securities license or license to practice law. Nothing in this paragraph shall prohibit Respondent Jansen from participating in a mediation, arbitration, or other dispute resolution as a party.

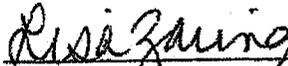
2. If Respondents are determined by the Board to be in violation of this Consent Decree, then there shall be imposed against them, jointly and severally, a monetary sanction in the minimum amount of \$50,000 plus any other sanctions (monetary or otherwise) which may be imposed on them by the Board or the Supreme Court of Ohio.

3. Nothing in this Consent Decree shall be deemed to amend or modify in any respect any prior stipulations, decrees, order or judgments in this case.

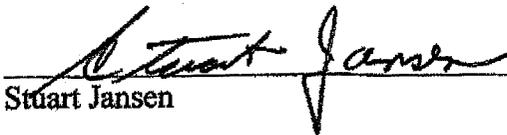
Respectfully submitted,



Louis F. Solimine (0014221)
312 Walnut Street – Suite 1400
Cincinnati, Ohio 45202
Louis.Solimine@ThompsonHine.com
(513) 352-6700
Counsel for Relator

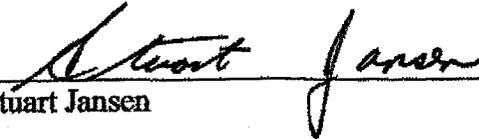


George D. Jonson (0027124)
Lisa M. Zaring (0080659)
Montgomery, Rennie & Jonson
36 East Seven Street, Suite 2100
Cincinnati, Ohio 45202
gjonson@mrjlaw.com
(513) 768-5220
Counsel for Respondents



Stuart Jansen

AMERICAN MEDIATION & ALTERNATIVE
RESOLUTIONS, LLC

By: 
Stuart Jansen

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