

CINCINNATI BAR ASSOCIATION v. TELFORD.

[Cite as *Cincinnati Bar Assn. v. Telford*, 1999-Ohio-439.]

Unauthorized practice of law—Individual not authorized to practice law in Ohio who gives legal advice and counsel to defendants in collection and foreclosure proceedings in an attempt to settle those cases is engaged in the unauthorized practice of law.

(No. 98-2558—Submitted January 27, 1999—Decided March 17, 1999.)

ON FINAL REPORT of the Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court, No. UPL 97-4.

{¶ 1} In December 1997, relator, Cincinnati Bar Association, filed a complaint with the Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court (“board”), charging that respondent, Stephen Mark Telford, had engaged in the unauthorized practice of law. The board heard the matter in May 1998.

{¶ 2} Based on the pleadings, testimony, and exhibits, the board found that respondent is not an attorney and is not licensed to practice law in Ohio. In 1996, respondent began operating a business known as Kennedy, Katz & Rose. Despite its name, respondent was the sole operator of Kennedy, Katz & Rose.

{¶ 3} In his business, respondent searched a Hamilton County court index for recent filings of foreclosure proceedings and debt collection lawsuits. Respondent then mailed letters to the defendants in these debt-related lawsuits requesting that they hire him to settle the cases. The letters contained a statement that Kennedy, Katz & Rose did not include attorneys and that the business could not represent the debtors or advise them in legal proceedings. When a defendant expressed interest in becoming a client, respondent had the defendant sign a power

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of attorney and a work agreement authorizing the respondent's business to negotiate a settlement in exchange for compensation. Respondent then would send a letter to the attorney representing the plaintiff in the debt-related litigation in an effort to settle the dispute.

{¶ 4} The board found that respondent was retained by John F. Gallant in connection with a collection matter filed by A.F.Y. Security Distributors, Inc. ("A.F.Y.") in Hamilton County Municipal Court against Gallant and Linda J. Kniepp. In January 1997, respondent wrote to the plaintiff's attorney, requesting some time to develop a payment plan to settle the debt issue and to have Kniepp's name removed from the lawsuit because "[s]he had no involvement or liability for Mr. Gallant's business." A.F.Y. refused to dismiss Kniepp from the case.

{¶ 5} James Kersting retained respondent in connection with a collection matter filed in Hamilton County Municipal Court by Quality Supply Co. In November 1996, respondent wrote a letter to the plaintiff's counsel, stating that Kersting did not believe he owed the alleged debt and that respondent "would like to review the facts and decide the merit of this claim" himself. In December 1996, respondent advised Kersting that if he did not have a certified check in the amount of \$3,426.43 made out to the plaintiff by a certain time, "we run the risk of triple damages in the amount of \$17,706.37." The plaintiff, however, requested only a sum of \$5,900.79 in its complaint, which already included treble damages.

{¶ 6} Stanley W. Lindley engaged respondent regarding a complaint for money judgment and foreclosure filed in Hamilton County Common Pleas Court by Federal National Mortgage Association. After respondent requested an "extension" from plaintiff's attorney, the court magistrate issued a decision recommending a default judgment in favor of the plaintiff.

{¶ 7} Joseph D. Foley retained respondent for a collection matter filed in Hamilton County Municipal Court by John F. Schoeny Co. In January 1997, respondent informed plaintiff's counsel that Foley was having "extreme financial

difficulty” and that respondent was attempting to prevent Foley “from exercising his other legal remedies under the law if possible.”

{¶ 8} Respondent was retained by Brownstone Management Consultants, Inc. concerning a collection matter filed by Graphic Action, Inc. in Hamilton County Common Pleas Court. In October 1996, before an answer was due, respondent faxed a “proposal for the settlement of the Graphic Action, Inc. lawsuit” to the plaintiff’s attorney. Respondent later settled the case on behalf of the defendant for an amount lower than the recommended default judgment.

{¶ 9} The board concluded that respondent’s actions, including giving legal advice and counsel to defendants in collection and foreclosure proceedings, constituted the unauthorized practice of law in Ohio. The board recommended that respondent be prohibited from engaging in such practices in the future.

Strauss & Troy and Steven F. Stuhlberg; Taft, Stettinius & Hollister, L.L.P., and Charles F. Croog, for relator.

James F. McDaniel, for respondent.

Per Curiam.

{¶ 10} We adopt the findings, conclusions, and recommendation of the board. Under Gov.Bar R. VII(2)(A), the “unauthorized practice of law is the rendering of legal services for another by any person not admitted to practice in Ohio * * *.” The practice of law is not restricted to appearances in court; it also encompasses giving legal advice and counsel. *Cleveland Bar Assn. v. Misch* (1998), 82 Ohio St.3d 256, 259, 695 N.E.2d 244, 246-247; *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 28, 1 O.O. 313, 315, 193 N.E.650, 652.

{¶ 11} Respondent gave legal advice to defendants in pending lawsuits in an attempt to settle those cases. In fact, in the Kersting matter, respondent gave

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erroneous legal advice to Kersting by specifying a potential damage liability far exceeding the actual sum requested by the plaintiff in that case. In the Gallant matter, respondent informed the plaintiff’s attorney that he should remove a third-party from the lawsuit, and in the Brownstone case, respondent sent a proposed settlement of the suit to the plaintiff’s counsel.

{¶ 12} As we recently held, the practice of law includes “making representations to creditors on behalf of third parties, and advising persons of their rights, and the terms and conditions of settlement.” *Cincinnati Bar Assn. v. Cromwell* (1998), 82 Ohio St.3d 255, 256, 695 N.E.2d 243, 244. Neither respondent’s statements in his solicitation letters that he was not an attorney and was not giving legal advice nor the powers of attorney executed by his clients insulated respondent, a non-attorney, from the unauthorized practice of law. See *Akron Bar Assn. v. Miller* (1997), 80 Ohio St.3d 6, 8-9, 684 N.E.2d 288, 291; *Richland Cty. Bar Assn. v. Clapp* (1998), 84 Ohio St.3d 276, 278, 703 N.E.2d 771, 772.

{¶ 13} Based on the foregoing, we find that respondent engaged in the unauthorized practice of law. Respondent is hereby enjoined from the further practice of law in Ohio. Costs taxed to respondent.

Judgment accordingly.

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and LUNDBERG STRATTON, JJ., concur.