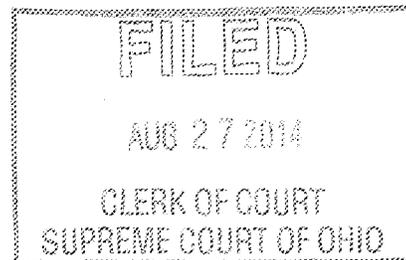


The Supreme Court of Ohio
BEFORE THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW

OHIO STATE BAR ASSOCIATION, :
Relator, :
v. :
ROBERT M. BARATTA, :
and :
ERTEMIO R. BARATTA aka :
TIM BARATTA, :
Respondents. :



UPL 11-04
FINAL REPORT

I. SUMMARY

The Ohio State Bar Association (“OSBA” or “Relator”) filed a formal complaint with the Board alleging that Respondents Robert M. Baratta, Ertemio R. Baratta, a/k/a Tim Baratta (the “Barattas”), and Icon Sports Group, d/b/a Icon Law Group (“Icon”), engaged in the unauthorized practice of law (“UPL”). The OSBA alleged that the Barattas, New York attorneys who are not admitted to the practice of law in Ohio and Icon engaged in one count of UPL by representing Andrew Oliver during his contract negotiations with the Minnesota Twins. At the time of the representation, Mr. Oliver was a high school senior and resided in Vermillion, Ohio.

Relator filed a Notice of Dismissal with regard to Icon, thus the case in this matter is presently against Robert M. Baratta and Ertemio R. Baratta. A proposed consent decree was filed by the parties on May 10, 2012. Upon request from the panel for additional information, the Relator filed a brief in support of the motion to approve the proposed consent decree on May 24, 2013. The panel considered the matter

but recommended rejection of the proposed consent decree. The Board adopted the panel's report and recommendation, and the matter was scheduled for a hearing.

The parties then submitted stipulated facts and waiver of notice and hearing. Upon consideration, the panel submitted its report recommending that the stipulations be accepted, wherein Respondents admit to holding themselves out as attorneys fully able to represent residents of Ohio concerning the first-year player draft in major league baseball.

At the Board's regular meeting on July 30, 2014, the panel presented its report and recommendation. Upon discussion, the panel's report was amended and adopted. Specifically, although the Board finds that the Respondents engaged in the unauthorized practice of law and recommends no civil penalty, the Board, in accordance with Gov. Bar. R. VII(5b)(F)(2), did not consider or reference the rejected proposed resolution in its report or recommendation.

II. PROCEDURAL BACKGROUND

The complaint was filed by Relator on May 27, 2011. In accordance with Gov. Bar R. VII, Sec. 6, a copy of the complaint and required notice of filing were sent to Respondents via certified mail on May 27, 2011. The items were returned unclaimed. A second service attempt to an alternate mailing address on July 8, 2011, was successful. Respondents did not file an answer to the complaint. On December 16, 2011, this matter

was assigned to a hearing panel consisting of Commissioners John P. Sahl, Curt J. Sybert, and Mark J. Huller, Chair.¹

On May 10, 2012, the parties filed a proposed consent decree along with a joint motion to approve the proposed consent decree. Additionally, on May 10, 2012, Relator filed a recommendation that no civil penalty be imposed upon Respondents. On April 16, 2013, the panel issued an Entry ordering the parties to file a memorandum in support of the terms of the proposed consent decree on or before May 24, 2013. Relator filed a brief on May 24, 2013. Upon review of the record, the panel recommended that the proposed consent decree be rejected. The panel's report and recommendation were adopted by the Board at its regular meeting on December 11, 2013, and in accordance with Gov. Bar R. VII(5b)(F), an Entry was issued notifying the parties that the case would proceed on its merits.

On January 23, 2014, a Revised Final Case Scheduling Order was served upon the parties, scheduling the matter for hearing on May 20, 2014. On April 18, 2014, pursuant to Gov. Bar R. Sec. 7(H), the parties submitted Facts Stipulated for Hearing. In addition, Relator filed a Notice of Dismissal of Icon Sports Group dba Icon Law Group and a Pre-hearing Brief. In accordance with the revised case scheduling order, a conference call was held on May 6, 2014, wherein the parties requested that the panel consider the matter based on the stipulations and the record. On May 6, 2014, the parties submitted a Waiver of Notice and Hearing, in accordance with Gov. Bar R. VII(7)(H).

¹ The panel members' terms with the Board have concluded. In accordance with Gov. Bar R. VII(1)(A), "A commissioner whose term has expired and who has an uncompleted assignment as a commissioner shall continue to serve for the purpose of that assignment until the assignment is concluded before the Board, and the successor commissioner shall take no part in the proceedings of the Board concerning the assignment."

III. FINDINGS OF FACT

1. Relator is authorized under Gov. Bar R. VII(4) to investigate and prosecute unauthorized practice of law matters before the Board.
2. Respondents Robert M. Baratta and Ertemio R. Baratta, aka Tim Baratta, are not and have never been, admitted to the practice of law in Ohio pursuant to Gov. Bar R. I, II (Limited practice of law by a legal intern), VI (Corporate Counsel), IX (Temporary certification for practice in legal services, public defender, and law school programs), or XI (Limited practice of law by foreign legal consultants). Stip. ¶ 2. Robert Baratta and Ertemio Baratta are admitted to the practice of law in the state of New York. Stip. ¶ 1. In addition, Robert Baratta is admitted to the practice of law in the state of New Jersey. *Id.*
3. Respondents are not and have never been registered as athlete agents with the Ohio Athletic Commission pursuant to Revised Code §4771.06. Stip. ¶ 3. The Respondents were not acting in the capacity of athlete agents in the conduct herein described. Stip. ¶ 4. Respondents held themselves out as attorneys able to represent Ohio residents concerning Rule 4 – First Year Player Draft of the Major League Rules, including contract negotiation, negotiation of the minor league uniform contract as governed under New York law, and compliance with requirements of the National Collegiate Athletic Association. Stip. ¶ 6.
4. Andrew Oliver was a resident of Ohio during events herein described. In 2006, Oliver was a senior in high school and was drafted by the Minnesota Twins in the seventeenth round of the professional baseball draft. Stip. ¶ 8 Professional baseball teams may draft a player without the player's knowledge or consent. *Id.*

5. Oliver retained Respondents in 2006 after being referred to Respondents by the Midland Redskins, the Ohio based baseball organization for which Oliver played. Stip. ¶ 8. Oliver and Respondents had no previous relationship. An engagement letter dated February 8, 2006, addressed to Oliver from Respondent Robert M. Baratta confirmed that Respondents were Oliver's attorneys. Stip., Exhibit B.
6. In the summer of 2006, Respondent Ertemio Baratta traveled to Vermillion, Ohio and advised Oliver and his family regarding the baseball draft. Stip. ¶ 9. Respondents conducted telephone conversations with the Minnesota Twins organization on behalf of Oliver. Stip. ¶ 10. Thereafter, Respondents sent an invoice to Oliver for "legal advice and counsel" totaling \$113,750. Stip. ¶ 11 and Exhibit C to Stip.

IV. CONCLUSIONS OF LAW

- A. The Supreme Court of Ohio has original jurisdiction regarding admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law. Section 2(B)(1)(g), Article IV, Ohio Constitution; *Royal Indemnity Co. v. J.C. Penney Co.*, 27 Ohio St.3d 31, 501 N.E.2d 617 (1986); *Judd v. City Trust & Sav. Bank*, 133 Ohio St. 81, 12 N.E.2d 288 (1937). Accordingly, the Court has exclusive jurisdiction over the regulation of the unauthorized practice of law in Ohio. *Greenspan v. Third Fed. S. & L. Assn.*, 122 Ohio St.3d 455, 2009-Ohio-3508, 912 N.E.2d 567, ¶ 16; *Lorain Cty. Bar Assn. v. Kocak*, 121 Ohio St.3d 396, 2009-Ohio-1430, 904 N.E.2d 885, ¶ 16.

- B. The Supreme Court of Ohio regulates the unauthorized practice of law in order to “protect the public against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation.” *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, ¶ 40.
- C. The unauthorized practice of law is the rendering of legal services for another by any person not admitted or otherwise certified to practice law in Ohio. Gov. Bar R. VII(2)(A).
- D. An attorney authorized to practice law in a jurisdiction other than Ohio may be prosecuted for the unauthorized practice of law in Ohio if the attorney is not authorized to practice law in Ohio. *Cleveland Bar Ass'n v. Misch*, 82 Ohio St. 3d 256, 695 N.E.2d 244 (Ohio 1998).
- E. A person unauthorized to practice law in Ohio who holds himself or herself out as authorized to practice law in Ohio has engaged in the unauthorized practice of law. Gov. Bar R. VII(2)(A)(4); *Cleveland Metro. Bar Ass'n v. Davie*, 133 Ohio St. 3d 202, 2012-Ohio-4328, 977 N.E.2d 606, ¶ 2.
- F. An individual not licensed to practice law in Ohio who purports to negotiate legal claims on behalf of others, and advises persons of their legal rights, and the terms and conditions of settlement is engaged in the unauthorized practice of law. *Cleveland Bar Assn. v. Henley*, 95 Ohio St.3d 91 (2002); *Cincinnati Bar Assn. v. Cromwell*, 82 Ohio St.3d 259, 695 N.E.2d 243 (1998); *Cleveland Bar Assn. v. Moore*, 87 Ohio St.3d 583, 722 N.E.2d 514 (2000).

- G. The practice of law includes contract negotiations. *Cincinnati Bar Ass'n v. Davis*, 62 Ohio Misc. 2d 64 (Ohio Bd. Comm'rs on Unauthorized Practice of Law 1992); 590 N.E.2d 916 (1992).
- H. The Board finds Respondents engaged in UPL based on admissions contained in both the Facts Stipulated for Hearing. Respondents not only provided legal services in Ohio by advising Oliver in Ohio regarding the baseball draft; they also held themselves out as attorneys who were authorized to represent Ohio residents.
- I. It is significant to the Board that the Respondents were not providing the services of an agent to an athlete, here Oliver. The evidence is unrefuted and Respondents have acknowledged that the services they provided were legal services. It is included in the stipulated facts that, “neither of the Respondents acted in the capacity of an athlete agent.” Stip., ¶ 4. Furthermore, the Respondents’ invoice was for “legal advice and counsel” and the bill was printed on Baratta & Baratta law firm letterhead. Stip., ¶ 11, and Exhibit C to Stip.
- J. The Board’s finding that the Respondents engaged in the unauthorized practice of law is limited to the unique fact pattern of this case and the admissions of the Respondents. The Respondents would not be precluded from providing athlete agent services in Ohio simply because they are out of state attorneys. If the Respondents had provided services that were exclusively those of an athlete agent to Oliver, there, of course, would be no basis for an unauthorized practice of law finding. However, since the Respondents held themselves out to Oliver as attorneys, provided legal services to Oliver, and also billed Oliver for exclusively

legal services, it is clear that Respondents entered an attorney-client relationship with Oliver.

- K. The potential application of Ohio Rule of Professional Conduct 5.5(c)(4) to the stipulated facts has given the Board reason for pause. The rule provides that a lawyer admitted in another United States jurisdiction, in good standing, who regularly practices law may provide legal services on a temporary basis in Ohio if “the lawyer engages in negotiations, investigations, or other non-litigation activities that arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice.” *Id.* Both Respondents are licensed to practice law in another state. (Stip. ¶ 1). Neither the Relator nor the Respondents have addressed the applicability of the aforementioned safe harbor provision at any point in this proceeding. Suffice it to say that *if* Respondents were in good standing in the other state(s) in which they were admitted to practice law and their activities in Ohio, while providing legal services to Oliver, were reasonably related to their law practice in the state(s) in which they were licensed, Ohio Rule of Professional Conduct 5.5(c)(4) may well have provided a safe harbor for the dispensing of legal services by Respondents to Oliver in this instance. However, since a) the safe harbor provision was not raised; b) the facts stipulated are insufficient to determine the applicability of Rule 5.5(c)(4) to the present matter, the Board will not speculate on the potential applicability of Ohio Rule of Professional Conduct 5.5(c)(4) to the stipulated facts.
- L. Therefore, in view of the complete record in this proceeding, it is the conclusion of the Board that a finding that Respondents engaged in the unauthorized practice

of law in their representation of Oliver is appropriate and that the admissions of Respondents together with the stipulated facts form an adequate basis under Gov. Bar Rule VII. ¶ H for such finding.

V. CIVIL PENALTY ANALYSIS

Relator has recommended that no civil penalty be imposed. The Board has considered the following factors pursuant to Gov. Bar R. VII. 8(B) and UPL Reg. 400 in its civil penalty analysis.

1. Relator has averred that Respondents have fully cooperated with the investigation and resolution of the matter and it is also obvious to the Board that Respondents fully cooperated in all aspects of the proceedings.
2. The record reflects no other instances of the unauthorized practice of law in Ohio by Respondents and the Relator specifically states that Respondents committed one count of UPL.
3. The violations do not appear to have been flagrant in that Respondents were not engaged in an effort to conceal their intention of providing legal services in Ohio.
4. The amount of harm generated by the improper representation, if any, is not determinable from the record.

The Board further notes the following mitigating factors:

1. Respondents have ceased engaging in the conduct under review, in Ohio.
2. Respondents admitted the conduct under review.
3. Respondents have agreed not to engage in the conduct in Ohio in the future.

After considering all of the above factors, the Board agrees with the Relator that no civil penalty is warranted.

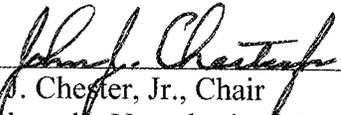
VI. RECOMMENDATIONS

1. The Board recommends that the Supreme Court of Ohio issue an Order finding that Respondents engaged in the unauthorized practice of law.
2. The Board recommends that no civil penalty be imposed on Respondents.
3. The Board recommends that the court issue an Order requiring Respondents to pay the costs and expenses incurred by the board and Relator in this matter.

VII. STATEMENT OF COSTS

The following costs have been submitted by Relator in this matter:

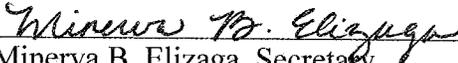
Document reproduction	\$159.60
Federal Express shipping	\$67.98
Color Document Reproduction	\$13.60
Long Distance Telephone	\$0.18
Postage	\$13.47
TOTAL	\$254.83



John J. Chester, Jr., Chair
Board on the Unauthorized Practice of Law

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Final Report was served the 27th day of August, 2014, upon the following in accordance with Gov. Bar R. VII, Sec. 7(G): Eugene Whetzel, Ohio State Bar Association, P.O. Box 16562, Columbus, Ohio 43216; John N. MacKay, Shumaker, Loop & Kendrick, LLP, 1000 Jackson Street, Toledo, Ohio 43604; Robert M. Baratta, 1033 Route 46 East, Suite A105, Clifton, NJ 07013; Tim Baratta, 1033 Route 46 East, Suite A105, Clifton, NJ 07013; OSBA UPL Committee, PO Box 16562, Columbus, Ohio 43216; Amy Stone, Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215; Erie County Bar Association, PO box 905, Sandusky, Ohio 44871.



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