

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

CINCINNATI BAR ASSOCIATION, :

Relator, :

v. :

MID-SOUTH ESTATE PLANNING, :
INC., ET. AL., :

Respondents. :

08-1893

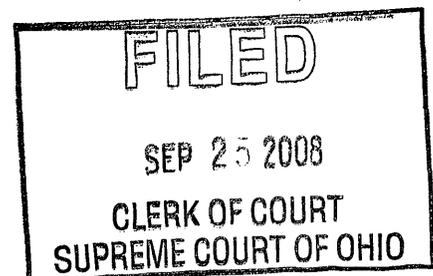
Case No. UPL 07-01

FINAL REPORT

Relating to Respondents
Senior Estate Planning Services of
America, Inc. and Robert D.
Tanner, Jr.

I. PROCEDURAL BACKGROUND

This matter came before the Board on the Unauthorized Practice of Law (“Board”) on Relator’s Complaint and Certificate filed on March 1, 2007. The Complaint alleged the unauthorized practice of law against Mid-South Estate Planning, Inc. (“Mid-South”), Senior Estate Planning Services of America, Inc. (“SEPSA”), and Robert D. Tanner, Jr. In its Complaint, the Relator alleged that Respondents Mid-South and SEPSA, under the direction of Respondent Tanner, were engaged in the business of marketing living trusts and other estate planning documents to Ohio residents. The alleged activities included the solicitation of customers and the sale and preparation of legal documents. The Complaint also alleged that the Respondents retained Ohio attorney Daniel Heisler as its representative or employee to provide legal advice and sell estate planning documents to the clients of the corporations.



This matter was assigned to a Panel consisting of Commissioners Patricia A. Wise— Chair, Frank R. DeSantis, and Mark J. Huller.

SEPSA and Robert D. Tanner, Jr. filed their Answer to the Complaint on April 5, 2007. On November 7, 2007, counsel for SEPSA and Robert D. Tanner, Jr., filed a Motion to Withdraw. The Panel granted the Motion to Withdraw on November 14, 2007.

The Relator filed a Motion for Summary Judgment on January 24, 2008, against Respondents SEPSA and Robert D. Tanner, Jr. The Motion was unopposed. The Motion included Requests for Admission previously served upon the Respondents the response to which were not timely made and are deemed admitted under Civ.R. 36(A).¹ The Panel granted the Relator's Motion for Summary Judgment on February 28, 2008.

II. FINDINGS OF FACT

1. Relator, Cincinnati Bar Association, is duly authorized to investigate and prosecute activities which may constitute the unauthorized practice law in the State of Ohio.

2. Respondents Mid-South and SEPSA, are corporations organized in the State of Louisiana. (SEPSA Tanner Answer, Para. 3).

3. On June 10, 2005, SEPSA acquired certain assets from Mid-South including its operations in Blue Ash, Ohio through an Asset Purchase Agreement.

4. Mid-South and SEPSA were engaged in Ohio in the business of marketing legal services for living trusts. (SEPSA Tanner Answer, Para. 4).

¹ The Respondents untimely submitted to the Relator partial answers not in the form required by Civ. R. 36.

5. None of the Respondents are admitted to the practice of law in Ohio. Joint Stipulation as to Certificate of Registration (June 7, 2007).

6. Prior to June 2005, Respondent Robert D. Tanner served as General Manager for Mid-South Estate Planning LLC. (SEPSA Answer, Para. 3, RFA 3).

7. After the sale of Mid-South, Respondent Tanner became the Officer, Director and Owner of SEPSA and directed the activities of SEPSA. (SEPSA Answer Para. 4).

8. Ohio attorney Daniel Heisler was hired by Mid-South through Respondent Tanner in June, 2004. (Heisler Tr.p. 7).

9. Ohio residents who responded positively to direct solicitations for estate planning services from Mid-Ohio/SEPSA were referred by appointment to Heisler for him to be interviewed as prospective clients. Prospective clients would subsequently make a decision to purchase a trust after meeting with Heisler. Heisler provided the requisite legal advice during the client meeting and later made the appropriate modifications to standard form estate planning documents via a computer system and software owned and provided by Mid-Ohio or Tanner and SEPSA. (Heisler Tr.p. 19-21, 26).

10. The legal documents modified on the computer system by Heisler were finalized by SEPSA staff in Louisiana and delivered directly to Heisler or the clients for execution and notarization.

11. Heisler was paid by either corporation \$1,000 per week and \$500 for every living trust sold. In addition, he was provided free office expenses by both corporations.

12. The price for the trust services was set by Mid-South and SEPSA, with payment made from the client directly to either corporation, but not to Heisler. A portion of the proceeds was remitted to Heisler.

13. Heisler's services continued after June, 2005 when Tanner, through SEPSA, purchased the assets of Mid-South until the termination of his employment in 2006. Heisler provided the same services for SEPSA as he had provided to Mid-South.

14. Heisler was suspended for a term of six months stayed from the practice of law by the Supreme Court for assisting Mid-South and SEPSA in the sale and preparation of living-trust agreements and associated documents to customers in violation of DR 3-101(A) (aiding in the unauthorized practice of law). *Cincinnati Bar Ass'n v. Heisler*, 113 Ohio St.3d 447, 2007-Ohio-2338.

15. SEPSA advertised its services on the internet. The advertisement provided that *inter alia*:

[O]ur services are very complete. We write Single Trusts, Family Trusts, A & B Trusts and C Trust. These may include Pour Over Wills, Living Wills with Medical POA (Power of Attorney), Regular POA, Power of Attorney for Healthcare, Generation Skipping, Disclaimer Trusts, or Qualified Domestic Trust provisions as required." (Relator's Motion for Summary Judgment, Exhibit 3).

16. These proceedings identified five Ohio residents for whom living trusts were sold and prepared by SEPSA and Tanner after 2005: Marian Finnell, Junior Cole, Agnes Cole, Margie Lawson and Esther R. Johnson. (Heisler Tr.p. 51., Relator's Motion for Summary Judgment, Ex. 3(B), RFA 10).

III. CONCLUSIONS OF LAW

1. 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.* (1986), 27 Ohio St.3d 31, 501 N.E.2d 617.

2. The unauthorized practice of law consists of rendering legal services for another by any person not admitted to practice in Ohio. Gov. Bar R. VII(2)(A).

3. The practice of law includes the preparation of legal instruments of all kinds and legal advice. *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 1 O.O. 313, 193 N.E. 650.

4. With limited exception, a corporation may not give legal advice, directly or indirectly, through its employees or attorney employees. *Judd v. City Trust & Sav. Bank* (1937), 133 Ohio St. 81, 12 N.E.2d 288.

5. The marketing of living trusts and the preparation of legal documents related to living trusts by non-attorneys is the unauthorized practice of law. *Cincinnati Bar Ass'n v. Kathman* (2001), 92 Ohio St. 92.

6. Respondents Tanner's and SEPSA's sale and preparation of living-trust agreements and associated documents to customers is the unauthorized practice of law. See *Heisler* at ¶ 16.

7. Respondents Tanner's and SEPSA's sale and preparation of living trusts for Marian Finnell, Junior Cole, Agnes Cole, Margie Lawson and Esther R. Johnson after June 2005 constituted the unauthorized practice of law.

8. Each act found by the Panel to constitute the unauthorized practice of law is based upon specific evidence or an admission that contains sufficient information to demonstrate the specific activities upon which the conclusions are drawn in compliance with Gov.Bar R. VII, §(7)(H); and *Cleveland Bar Assn v. CompManagement, Inc.*, 111 Ohio St.3d 444, 2006-Ohio-6108 at ¶24-6.

IV. PANEL RECOMMENDATIONS

1. The Panel recommends that the Supreme Court of Ohio issue an Order finding that Respondents SEPSA and Robert D. Tanner, Jr. have engaged in the unauthorized practice of law.

2. The Panel further recommends that the Supreme Court of Ohio issue a further Order prohibiting Respondents SEPSA, its officers, agents, employees, successors and assigns and Robert D. Tanner, Jr. from engaging in the unauthorized practice in the future.

3. The Panel further recommends that the Supreme Court of Ohio issue a further Order specifically prohibiting Respondents SEPSA, its officers, agents, employees, successors and assigns and Robert D. Tanner, Jr. from the marketing and sale of living trusts and other estate planning documents in Ohio.

4. The Panel further recommends that the Supreme Court of Ohio impose a civil penalty of \$10,000, for each of the five specific instances of conduct found, for a total of \$50,000 both jointly and severally against the Respondents.

The Panel has considered the appropriateness of the imposition of a higher civil penalty pursuant to Gov. Bar R. VII, §8(B), and UPL Reg. 400, *Guidelines for the Imposition of Civil Penalties*.

The Respondents demonstrated a lack of cooperation during these proceedings through their unwillingness to fully provide timely and accurate information requested by the Relator. For example, while the Respondents asserted in their Answer that they had ceased operating in Ohio, the Respondents later admitted that internet advertising continued into April, 2007. Gov. Bar R. VII, §8(B)(1) (Relator's Memorandum in Support of Civil Penalty, March 17, 2008).

In addition, the number of acts (five) committed by the Respondents and confirmed in the record demonstrated a prolonged and consistent effort to engage in the unlawful activities in Ohio. Gov. Bar R. VII, §8(B)(1). These five individuals were potentially harmed through the marketing and sale of estate planning services. Gov. Bar R. VII, §8(B)(1).

The activities of the Respondents can best be described as flagrant, since the Supreme Court has previously and repeatedly found that virtually the same business model employed by the Respondents is seriously flawed and constitutes the unauthorized practice of law. See *Cleveland Bar Assn. v. Sharp Estate Serv., Inc.*, 107 Ohio St.3d 219, 2005-Ohio-6267; *Cincinnati Bar Assn. v. Kathman*, 92 Ohio St.3d 92, 2001-Ohio-157; *Columbus Bar Assn. v. Fishman*, 98 Ohio St.3d 172, 2002-Ohio-7086.

Lastly, the Respondents ostensibly benefited financially from the sale of the five living trusts in this case. The typical price charged for the living trusts was \$2,395. (Relator's Memorandum in Support of Civil Penalty) UPL Reg. 400(F)(3)(g).

The Relator recommended a civil penalty of \$25,000 jointly and severally against the Respondents. No response to the Relator's recommendation was filed by the Respondents.

6. The Panel further recommends that the Supreme Court of Ohio require the Respondents to reimburse the costs and expenses incurred by the Board and Relator in this matter.

V. BOARD RECOMMENDATIONS

Pursuant to Gov. Bar R. VII(7)(F), the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio formally considered this matter on June 30, 2008. The Board adopted the findings of fact, and conclusions of law of the Panel. The Board adopted all of the recommendations of the Panel.

The Board recommends that the Supreme Court of Ohio issue an Order finding that the Respondents have engaged in the unauthorized practice of law.

The Board further recommends that the Supreme Court issue a further Order prohibiting Respondents SEPSA, its officers, agents, employees, successors and assigns and Robert D. Tanner, Jr. from engaging in the unauthorized practice in the future.

The Board further recommends that the Supreme Court of Ohio issue a further Order specifically prohibiting Respondents SEPSA, its officers, agents, employees,

successors and assigns and Robert D. Tanner, Jr. from the marketing and sale of living trusts and other estate planning documents in Ohio.

The Board further recommends that the Supreme Court of Ohio impose a civil penalty of \$50,000 jointly and severally against the Respondents Senior Estate Planning Services of America, Inc., and Robert D. Tanner, Jr.

The Board further recommends that any costs of these proceeding be taxed jointly and severally to Respondents Senior Estate Planning Services of America, Inc., and Robert D. Tanner, Jr. in any Order, so that execution may issue.

VI. STATEMENT OF COSTS

Attached as Exhibit 'A' is a statement of costs and expenses incurred to date by the Board and Relator in this matter.



Frank R. DeSantis, Chair
Board on the Unauthorized Practice of Law

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

Exhibit "A"

STATEMENT OF COSTS

Cincinnati Bar Ass'n v. Mid-South Estate Planning Inc., et. al.,

Case No. UPL 07-01

Reimbursement to Cincinnati Bar Association

Partial Mileage and Witness Fee for travel to deposition (D. Daniel Heisler).	100.00
Reimbursement for mileage/witness fee/parking for deposition (D. Daniel Heisler)	106.30
AceMerit LLC Deposition of D. Daniel Heisler	346.14
TOTAL:	\$552.44

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 24th day of September, 2008: Cincinnati Bar Association, 225 East Sixth Street, 2nd Floor, Cincinnati, OH 45202-3209; Thomas S. Calder, Esq., 225 East Fifth Street, Suite 1900, Cincinnati, OH 45202; Sue A. Erhart, Esq., 1 E. Fourth Street, Suite 1400, Cincinnati, OH 45202; George D. Jonson, Esq., Montgomery, Renie & Jonson, 36 East Seventh Street, Suite 2100, Cincinnati, OH 45202; Mid-South Estate Planning, LLC c/o CT Corporation, 8550 United Plaza Building, Baton Rouge, Louisiana 70909; Senior Estate Planning Services of America, Inc., c/o Robert D. Tanner Jr., 573 Good Hope Street, Norco, Louisiana 70079; Robert D. Tanner, Jr., 573 Good Hope Street, Norco, Louisiana 70079; Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215; Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, OH 43204.


D. Allan Asbury, Secretary of the Board