

**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.,**

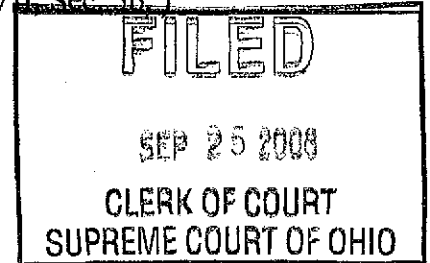
Respondents.

08-1892

Case No. UPL 07-01

FINAL REPORT

Relating to Respondent Mid-South
Estate Planning, Inc.
(Proposed Resolution,
Gov. Bar R. VII Sec. 5b.)



I. PROCEDURAL BACKGROUND

This matter was initiated on or about March 1, 2007, when Relator, Cincinnati Bar Association filed a complaint alleging the unauthorized practice of law against Respondents Mid-South Estate Planning (“Mid-South”), Senior Estate Planning Services (“SESPA”), and Robert D. Tanner, Jr. The Complaint was assigned to a panel consisting of Patricia A. Wise, Chair, Mark J. Huller, and Frank R. DeSantis.

The Complaint alleged that Respondent Tanner, acting on behalf of Respondent Mid-South, hired D. Daniel Heisler (an attorney admitted to practice in Ohio) as an employee to provide legal advice and to sell estate planning documents to Ohio residents identified by Mid-South as potential purchasers of such documents and services. All parties filed an Answer to the Complaint.

On December 3, 2007, Respondent Mid-South and the Relator filed a Proposed Consent Decree, Joint Motion for Approval of Consent Decree, and Stipulations of Fact and Law in Support of Motion to Approve Consent Decree. Each party also filed a separate Memorandum in Support of the Joint Motion for Approval of the Consent Decree. The panel unanimously voted to grant the motion to approve the Consent Decree between Respondent Mid-South and the Relator on February 28, 2008.

II. FINDINGS OF FACT

1. Relator Cincinnati Bar Association is a regularly organized bar association which has constituted and actively maintains a committee on the unauthorized practice of law, each member of which is an attorney at law, duly admitted to the practice of law in the State of Ohio.

2. Respondent Mid-South Estate Planning LLC (hereinafter "Mid-South") is a limited liability company organized and existing under the laws of the State of Louisiana. Mid-South is not licensed to do business in Ohio and it is not a party authorized to practice law in Ohio under Gov. Bar R. III.

3. At all times pertinent hereto, John Chase was the sole member and owner of Mid-South. The general manager of the company was Respondent Robert Tanner. All actions taken by Tanner on behalf of Mid-South were within the scope of his employment.

4. Subsequent to October 31, 2001, Mid-South, under Tanner's operational management, solicited elderly residents of several states, including Ohio, to purchase estate planning products and services, particularly living trusts, as an alternative to

probate administration. These solicitations were carried out by mass mailings and by internet advertisements.

5. Ohio residents who responded favorably to Mid-South's advertising or solicitation were referred to D. Daniel Heisler, an attorney licensed to practice law in Ohio. Heisler was hired by Tanner for Mid-South in June 2004, and continued as an employee of Mid-South until June 2005. Mid-South provided Heisler with an office in Hamilton County, Ohio, and furnished equipment, including computer connections to Mid-South's home office. Heisler held himself out as an "Estate Planning Attorney" and "Living Trust Consultant" for Mid-South. Heisler was paid a salary of \$1,000 a week plus a share of the proceeds from providing estate planning services, typically \$500 for living trusts. All actions taken by Heisler on behalf of Mid-South were within the scope of employment.

6. The usual procedure involved Heisler interviewing the prospective clients, providing legal advice, and making appropriate modifications to the standard form estate planning documents provided by Mid-South. The price for the services was set by Mid-South and checks in payment were directed to Mid-South, which then remitted a portion to Heisler.

7. In September 2004, Gerald and Audrey Day, residents of Fairfield, Ohio, contacted Mid-South in response to direct mail marketing materials published by Mid-South touting the benefits of a living trust. The Days were told that a representative of Mid-South would contact them. Heisler met with the Days on behalf of Mid-South, obtained personal and financial information; and provided legal advice to the Days. As a result, estate planning documents, including a living trust, were prepared by Mid-South at

Heisler's direction and executed by the Days. The Days gave Heisler a check in the amount of \$2,395 payable to Mid-South. Heisler forwarded the check to Mid-South and Mid-South remitted \$500.00 to Heisler.

8. Estate planning products, primarily living trusts, were sold to at least 40 additional Ohio residents through Heisler.

9. On May 30, 2007, the Supreme Court of Ohio found Heisler had violated DR 3-101(A), by aiding Mid-South and or Senior Estate Planning Services in the unauthorized practice of law. *Cincinnati Bar Ass'n v. Heisler*, 113 Ohio St.3d 447, 2007-Ohio-2338.

10. By an asset purchase agreement dated June 10, 2005, Mid-South sold its business of providing estate planning products and services to Senior Estate Planning Services, a newly formed Louisiana corporation owned by Robert D. Tanner, Jr. Mid-South's previous general manager.

11. Mid-South has not engaged in the business of providing estate planning products or services subsequent to June 10, 2005.

12. Mid-South fully cooperated in Relator's investigation. (Stipulations of Fact 1 – 11, Stipulations of Fact and Law (December 3, 2007)).

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; *Judd v. City Trust & Savings Bank* (1937), 133 Ohio St. 81, 12 N.E.2d 288.

2. The sale and marketing of living trusts in Ohio is the unauthorized practice of law. *Cleveland Bar Ass'n v. Sharp Estate Serv., Inc.*, 107 Ohio St.3d 219, 2005-Ohio-6267.

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

4. With limited exception, a corporation may not give legal advice to another, directly or indirectly, through its employees or attorney employees. *Judd v. City Trust & Sav. Bank* (1937), 133 Ohio St. 81, 88, 12 N.E. 2d 288, 291-2.

5. Respondent Mid-South engaged in the unauthorized practice of law by marketing and selling living trusts and other estate planning documents in Ohio. (Stipulation of Law 1, Stipulations of Fact and Law (December 3, 2007)).

6. Respondent Mid-South engaged in the unauthorized practice of law by providing legal advice regarding estate planning in Ohio either directly or through agents or employees, including Ohio attorney D. Daniel Heisler. Stipulation of Law 2, Stipulations of Fact and Law (December 3, 2007)).

IV. PANEL RECOMMENDATION

The Panel has reviewed the proposed resolution under the enumerated factors in Gov. Bar R. VII, §5b and finds that the resolution is submitted in the form of a Consent Decree as described in Gov. Bar R. VII, §5b. Additionally, the Panel finds the

Respondent Mid-South admitted to the material allegations of the Complaint through the submitted stipulations and as reflected in the Consent Decree; and that the public is sufficiently protected from future harm as Respondent Mid-South has agreed to cease and desist from the alleged activities and the agreement resolves the material allegations of unauthorized practice of law raised by the Relator in its Complaint. Finally, the Panel finds that the negotiated imposition of a civil penalty of \$17,500 demonstrates the Respondent's acknowledgement of the serious nature of the conduct and the civil penalty will act as a sufficient deterrent to similar conduct in the future. The Respondent's willingness to pay the civil penalty by a date certain serves as further justification to accept the agreed upon civil penalty.

The Panel recommends the Consent Decree be approved by the Board and filed with the Supreme Court pursuant to Rule VII, §5b(E). (Attachment "A").

The Panel further recommends that the Consent Decree be approved and ordered by the Supreme Court in the form submitted by the parties.

The Panel further recommends that a civil penalty of \$17,500 be imposed against Respondent Mid-South as agreed upon by the parties, and that the Respondent be ordered to deposit the penalty with the Clerk of Court ten days after the Court's approval and entry of the Consent Decree.

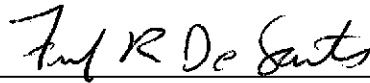
V. BOARD RECOMMENDATIONS

Pursuant to Gov. Bar R. VII, §5b, 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 Consent Decree be approved and ordered by the Supreme Court in the form submitted by the parties.

The Board further recommends that a civil penalty of \$17,500 be imposed against Respondent Mid-South as agreed upon by the parties, and that the Respondent be ordered to deposit the penalty with the Clerk of Court ten days after the Court's approval and entry of the Consent Decree.



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

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

CINCINNATI BAR ASSOCIATION,

Relator,

vs.

MID-SOUTH ESTATE PLANNING LLC;
SENIOR ESTATE PLANNING SERVICES
OF AMERICA, INC.; AND ROBERT D.
TANNER, JR,

Respondents.

Case No. UPL 07-01

PROPOSED CONSENT DECREE

Pursuant to Rule VII, Section 5b, Supreme Court Rules for the Government of the Bar of Ohio, Relator, Cincinnati Bar Association, and Respondent, Mid-South Estate Planning LLC, request that the following Consent Decree be approved by this Board and the Supreme Court of Ohio:

1. By marketing and selling living trusts and other estate planning documents in Ohio, Mid-South engaged in the unauthorized practice of law.
2. By providing legal advice regarding estate planning in Ohio either directly or through agents or employees, Mid-South Estate Planning LLC engaged in the unauthorized practice of law.
3. Mid-South Estate Planning LLC, its successors and assigns, and its officers, members, agents, representatives, and employees are permanently enjoined from advertising, soliciting, or marketing estate planning products, including but not limited to living trusts to residents of the State of Ohio.

4. Mid-South Estate Planning LLC, its successors and assigns, and its officers, members, agents, representatives, and employees are permanently enjoined from providing legal services or legal advice to Ohio residents or otherwise engaging in the unauthorized practice of law in the State of Ohio.

5. Mid-South Estate Planning LLC shall pay a civil penalty of Seventeen Thousand Five Hundred Dollars (\$17,500.00) within ten (10) days of approval of this Consent Decree by the Supreme Court of Ohio.

RELATOR, CINCINNATI BAR ASSOCIATION

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Brian N. Stretcher
Chairman, Unauthorized Practice of
Law Committee

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PLANNING, LLC**

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And: 

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Counsel for Mid-South Estate Planning LLC

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