ORIGINAL

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

09-1643

OHIO STATE BAR ASSOCIATION,	:	
Relator,	:	Case No. **UPL 07-06**
v.	:	**FINAL REPORT**
KIMBERLY A. DALTON	:	On Motion for Default Judgment
and	:	
PRECISION LAND TITLE AGENCY, INC.,	:	
Respondents.	:	

I. PROCEDURAL BACKGROUND

This matter came before the Board on the Unauthorized Practice of Law ("Board") on Relator's Complaint and Certificate filed on September 28, 2007. The Complaint alleges that Kimberly A. Dalton ("Dalton") and Precision Land Title Agency, Inc. ("Precision") engaged in the unauthorized practice of law. According to the Complaint, Dalton was the president of Precision and a licensed title agent. It is alleged that Dalton, on behalf of Precision, prepared and filed two general warranty deeds. Both deeds state that they were prepared by David Brian Bennett, Esq. According to the sworn testimony of Attorney Bennett, he did not prepare the deeds. Further, Attorney Bennett stated that since he sold his shares in Precision to Dalton in 2000, he has had no affiliation with Precision or Dalton. The Complaint alleges that the deeds were prepared in 2004 and 2005.

FILED
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CLERK OF COURT
SUPREME COURT OF OHIO

After six failed service attempts from October 1, 2007, to February 5, 2008, Respondents were served with the Complaint on April 28, 2008. Respondents failed to plead or otherwise defend as provided by the Ohio Rules of Civil Procedure. On June 4, 2008, this matter was assigned to a Panel consisting of Commissioners Curtis J. Sybert (Chair), James W. Lewis, and Mark J. Huller.

Relator filed a Motion for Default Judgment on March 25, 2009, setting forth facts which conclusively establish that Respondents engaged in the unauthorized practice of law. The Motion includes the affidavit of Attorney Bennett in which he states that both of the deeds prepared by Respondents were defective and/or missing significant information which, in his opinion, required both documents to be rewritten. One of the deeds which was allegedly prepared by Attorney Bennett-a fact he disputes, was recorded in Kentucky. Respondents' actions may cause Attorney Bennett, who is not licensed in Kentucky, to explain why he was practicing law in a jurisdiction in which he was not licensed.

The Motion for Default Judgment also includes an April 6, 2007, electronic mail communication between Relator and Dalton in which Dalton denied deliberately signing Attorney Bennett's name on the deeds. In a letter to Relator dated May 1, 2007, Dalton offered to "conclude this matter" by paying Attorney Bennett for the deed preparation.

Respondents did not respond to Relator's Motion for Default Judgment. The Panel considered the Motion via teleconference on June 16, 2009. The Panel granted the Motion through an Order filed on July 1, 2009. On July 2, 2009, Relator notified the Board that Dalton, now known as Kimberly A. Sims, filed for Chapter 7 bankruptcy protection on June 22, 2009.

II. FINDINGS OF FACT

1. Relator, the Ohio State Bar Association, is duly authorized to investigate and prosecute activities which may constitute the unauthorized practice of law in the state of Ohio. (Gov. Bar R. VII(4) and (5)).
2. Respondent, Kimberly A. Dalton, is licensed as a resident title agent by the Ohio Department of Insurance. (Exhibit 1, Motion for Default Judgment).
3. Respondent, Precision Land Title Agency, is an Ohio Corporation having filed Articles of Incorporation with the Secretary of State's Office on October 7, 1993. (Exhibit 2, Motion for Default Judgment).
4. Attorney Bennett sold his stock in Precision to Dalton in 2000 and ceased all contact and communications with Dalton and Precision. (Exhibit 6, Motion for Default Judgment).
5. Dalton became the statutory agent of Precision on or about May 26, 2000. (Exhibit 2, Motion for Default Judgment).
6. Respondents are not admitted to the practice of law in Ohio. (Exhibit 3, Motion for Default Judgment).
7. Dalton and Precision completed and filed two general warranty deeds. The first deed, known as the "Cargle deed," was filed in Ohio. The second deed, known as the "Larison deed," was filed in Kentucky. (Exhibits 4 and 5, Motion for Default Judgment). Both deeds purport to be prepared by Attorney Bennett-a fact he denies. (Exhibit 6, Motion for Default Judgment).
8. Examination of the deeds shows that they were prepared in 2004 and 2005, several years after Attorney Bennett ceased all contact and communications with Dalton and Precision.

Further, Attorney Bennett had no input or supervision with regard to the deeds nor did he give anyone permission to sign his name to the deeds. (Exhibit 6, Motion for Default Judgment).

9. According to Attorney Bennett, the Cargle deed is defective because the legal description is incomplete. He believes that the grantees on the Cargle deed will not be able to transfer ownership on their property until a new deed is executed. (Exhibit 6, Motion for Default Judgment).

10. On April 6, 2007, prior to the filing of Relator's Complaint, counsel for Relator corresponded with Dalton by electronic mail wherein she denied deliberately placing Attorney Bennett's name on the deed and stated that all her files dating before 2006 were lost in a computer failure. The post office box address Dalton provided in this electronic mail is the same address identified as that of Attorney Bennett in the Larison deed. (Exhibits 5 and 8, Motion for Default Judgment).

11. The Larison deed, which Dalton prepared and filed some 19 months after the Cargle deed, with the same alleged "mistake," demonstrates that the Respondent's actions could not have been "accidental." (Exhibits 4 and 5, Motion for Default Judgment).

12. The Larison deed clearly bears the forged signature of David Brian Bennett, Esq. In a May 1, 2007, letter, Dalton offers to "conclude this matter" by paying Attorney Bennett for the deed preparation. (Exhibits 5, 6, and 9, Motion for Default Judgment).

13. On September 10, 2008, Dalton filed a Certificate of Dissolution by Shareholders, Directors, or Incorporators on behalf of Precision. The Ohio Secretary of State issued a

certificate of dissolution of Precision on or about September 12, 2008. (Exhibit 2, Motion for Default Judgment).

14. Relator is unaware of any mitigating factors or exculpatory evidence. (Motion for Default Judgment p. 5).
15. Respondents are not soldiers, servicemen, or servicewomen in the military service of the United States of America. (Motion for Default Judgment p. 5).

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 & Sav. Bank* (1937), 133 Ohio St. 81, 12 N.E.2d 288. It follows that the Court has exclusive jurisdiction over the regulation of the unauthorized practice of law in Ohio. *Greenspan v. Third Fed. S. & L. Assn.*, Slip Opinion No. 2009-Ohio-3508, at ¶ 16; *Lorain Cty. Bar Assn. v. Kocak*, 121 Ohio St.3d 396, 2009-Ohio-1430, 904 N.E.2d 885, at ¶ 16.
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 Supreme Court of Ohio has consistently held that the practice of law is not limited to appearances in court, but also includes giving legal advice and counsel in the preparation of legal instruments and contracts by which legal rights are preserved. *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 1 O.O. 313, 193 N.E. 650.

4. "The practice of law embraces the preparation of legal documents on another's behalf, including deeds which convey real property." *Toledo Bar Assn. v. Chelsea Title Agency of Dayton, Inc.*, 100 Ohio St.3d 356, 2003-Ohio-6453, 800 N.E.2d 29, at ¶ 7, quoting *Lorain County Bar Assn. v. Kennedy* (2002), 95 Ohio St.3d 116, 116-117, 766 N.E.2d 151, quoting *Disciplinary Counsel v. Doan* (1997), 77 Ohio St.3d 236, 237, 673 N.E.2d 1272. Accordingly, a non-attorney who prepares deeds which convey real property engages in the unauthorized practice of law. *Id.*
5. With limited exception, a corporation may not give legal advice, directly or indirectly, through its employees or attorney employees. *Judd* at 88, 12 N.E.2d at 292.
6. Under Gov.Bar R. VII(7)(B), the relator is required to file a motion for default if the respondent fails to file an answer. The relator's motion for default shall contain: a) a statement of the effort made to contact the respondent; b) sworn or certified documentary *prima facie* evidence in support of the allegations of the complaint; c) citations of authorities relied upon by the relator; d) a statement of mitigating factors or exculpatory evidence; e) a statement of the relief sought by the relator; and f) a certificate of service of the motion on respondent. Gov.Bar R. VII(7)(B)(1)-(6).
7. Relator's Motion for Default Judgment complies with Gov.Bar R. VII(7)(B).
8. Gov. Bar R. VII(7)(E) requires proof by a preponderance of the evidence that respondent has engaged in the unauthorized practice of law. *Cincinnati Bar Assn. v. Bailey*, 110 Ohio St.3d 223, 2006-Ohio 4360, 852 N.E.2d 1180.
9. The sworn and certified documentary *prima facie* evidence presented by Relator establishes, by a preponderance of the evidence, that Respondents Dalton and Precision

drafted and completed deeds conveying real property on two separate occasions. This conduct constitutes the unauthorized practice of law.

10. In a Chapter 7 bankruptcy, the U.S. Code provides for an automatic stay of the commencement or continuation of judicial and administrative actions against the debtor that were or could have been initiated prior to the bankruptcy filing. See 11 U.S.C. § 362(a). However, the automatic stay does not apply to the "continuation of an action or proceeding by a governmental unit...to enforce [its] police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power." 11 U.S.C. § 362(b)(4).

11. "The automatic stay as set forth at § 362(a)(1) is not operative when a governmental entity exercises its police or regulatory powers to prevent or stop a debtor in bankruptcy from violating fraud, environmental protection, consumer protection, or public safety laws." *In re Baillie* (Bankr. W.D. Pa. 2007), 368 B.R. 458, 466, affirmed by *Pennsylvania Lawyer's Fund v. Baillie*(W.D. Pa. Oct. 3, 2007), 2007 U.S. Dist. LEXIS 73886, citing *Penn Terra Ltd. v. Department of Environmental Resources* (3d. Cir. 1984), 733 F.2d 267, 272.

12. The Supreme Court of Ohio regulates the unauthorized practice of law to protect the public from those who do not meet the qualifications to practice law in Ohio and are not subject to the attorney discipline process. *Kocak* at ¶ 16, citing *Union Sav. Assn. v. Home Owners Aid, Inc.* (1970), 23 Ohio St.2d 60, 52 Ohio Op.2d 329, 262 N.E.2d 558. In particular, this regulation "protect[s] the public against incompetence, divided loyalties,

and other attendant evils that are often associated with unskilled representation." *Id.*, quoting *Cleveland Bar Assn. v. CompManagement Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, ¶ 40.

13. Governmental units responsible for enforcing attorney discipline rules are exempt from the automatic stay under 11 U.S.C. § 362(b)(4). *In re Wade* (9th Cir. 1991), 948 F.2d. 1122. In addition, discipline sanctions and costs are nondischargeable in a Chapter 7 bankruptcy. See 11 U.S.C. § 523(a)(7) and *In re Bertsche* (Bank. S.D. Ohio 2000), 261 B.R. 436.

14. Subsequent to the filing of the Complaint, Dalton became a Chapter 7 bankruptcy debtor. Similar to governmental units that enforce attorney discipline rules, the Board is a governmental unit exercising its regulatory powers to enforce Gov.Bar R. VII for the protection of the public. In this case, the Board's regulatory action protects the public by addressing the preparation and filing of defective deeds to safeguard the real property conveyance process. Accordingly, the automatic stay provisions of 11 U.S.C. § 362(a) do not apply to this action. Because the automatic stay does not apply, the Board is authorized to proceed in this case despite the Chapter 7 bankruptcy filing of Respondent Dalton (nka Sims).

IV. PANEL RECOMMENDATION

1. The Panel recommended that the Supreme Court of Ohio issue an order finding that Respondents Dalton and Precision engaged in the unauthorized practice of law.

2. The Panel also recommended that the Court issue an order prohibiting Respondents Precision, its officers, agents, employees, successors and assigns, and Kimberly A. Dalton from engaging in the unauthorized practice of law in the future.
3. The panel considered the appropriateness of the imposition of civil penalties pursuant to Gov. Bar Rule VII(8)(B). As found by the Panel, Respondents failed to cooperate in the investigation, drafted and filed two deeds, and deliberately forged the signature of an attorney to give further credibility to one of the deeds. Due to Respondents' lack of cooperation, Relator has been unable to determine whether Respondents executed other fraudulent deeds. Gov. Bar Rule VII(8)(B)(1), (2), and (3).
4. The Panel concluded that Respondents' clients were likely unaware that their legal documents were being prepared by a nonattorney and potentially suffered financial harm as a result. The Panel also concluded that Attorney Bennett suffered potential harm as a result of the Cargle deed, which Respondents filed in a state in which Bennett is not licensed. Further, Respondents offered no information in mitigation of their conduct. Gov. Bar Rule VII(8)(B)(1), (4), and (5).
5. By way of aggravating factors, the Panel concluded that Respondents benefited from the unauthorized practice of law as preparing the Cargle and Larison deeds was part of a for-profit enterprise. In addition, Respondents' unauthorized practice included the preparation of legal instruments for filing with a "court or other governmental entity." UPL Reg. 400(F)(d) and (f).
6. The Panel recommended that the Court order Respondents to disclose to the Board and Relator, within 30 days of the Court's order, the names and addresses of all of

Respondents' clients named as grantor or grantee in any deed or other legal instrument prepared by Respondents, and the name and address of any lender or title insurance company involved in the transaction.

7. The Panel recommended that the Court order Respondents to notify in writing, within 60 days of the Court's order, each grantor, grantee, and any lender or title insurance company involved in the transactions of Respondents' clients that Respondents engaged in the unauthorized practice of law by preparing deeds purporting to convey real estate. The Panel also recommended that Respondents include with the notification copies of the Board's report and the Court's opinion.
8. The Panel recommended that the Court impose a civil penalty of $1,000.00 per day, beginning on the thirty-first day after the Court's order, until Respondents fully disclose all of their clients to the Board and Relator.
9. Finally, the Panel recommended, pursuant to Gov. Bar Rule VII(8)(B), a civil penalty of $5,000.00 ($2,500.00 for each deed prepared by Respondents).
10. Pursuant to Gov. Bar Rule VII(8)(A)(1), the Panel determined that Respondents should reimburse the costs and expenses incurred by the Board and Relator in this matter.

V. BOARD CONSIDERATION OF THE PANEL'S RECOMMENDATIONS

The Board formally considered this matter on August 27, 2009. The Board adopted the findings of fact and conclusions of law of the Panel. The Board also agreed with the Panel that Respondents engaged in the unauthorized practice of law and should be enjoined from the future unauthorized practice of law. Additionally, the Board adopted the Panel's application of the civil

penalty factors in Gov.Bar R. VII(8) and UPL Reg. 400 and the Panel's recommendation that Respondents disclose their clients and notify them of Respondents' unauthorized practice of law.

However, by majority vote, the Board modified the Panel's recommendation regarding civil penalties. Due to Respondents' egregious and fraudulent conduct in the use of Attorney Bennett's name and signature on the deeds in question, Dalton's offer of payment to "conclude the matter," Respondents' disregard for the Board's proceedings, and their refusal to cooperate with Relator, which has prevented Relator from identifying any other deeds Respondents may have prepared, the Board concluded that a more severe penalty than the Panel recommended is appropriate. The Board specifically rejected the $1,000 per day penalty proposed by the Panel.

VI. BOARD RECOMMENDATION

The Board recommends that the Supreme Court of Ohio issue an Order:

1. Finding that Respondents Dalton and Precision engaged in the unauthorized practice of law;
2. Prohibiting Respondents and their officers, agents, employees, successors and assigns from engaging in the unauthorized practice of law in the future;
3. Requiring Respondents to disclose to the Board and Relator, within 30 days of the Court's order, the names and addresses of all of Respondents' clients named as grantor or grantee in any deed or other legal instrument prepared by Respondents, and the name and address of any lender or title insurance company involved in the transaction;
4. Requiring Respondents, within 60 days of the Court's order, to notify in writing each of Respondents' clients named as grantor or grantee in any deed or other legal instrument Respondents prepared, and any lender or title insurance company involved in the

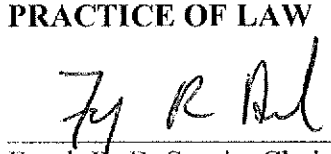
transaction, that Respondents engaged in the unauthorized practice of law by preparing the deeds purporting to convey real estate and include copies of the Board's Final Report and the Court's opinion with each notification;

5. Imposing a civil penalty of $20,000 ($10,000 for each deed prepared by Respondents) against Respondents, jointly and severally, and taxing the costs of these proceedings to Respondents.

VII. 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.

FOR THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW



Frank R. DeSantis, Chair

BOARD ON THE UNAUTHORIZED PRACTICE OF LAW
OF
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Exhibit "A"

STATEMENT OF COSTS

Ohio State Bar Assn. v. Dalton and Precision Land Title Agency, Inc.

Case No. UPL 07-06

To date, no expenses have been incurred.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served by certified mail this 14th day of September 2009 upon the following: Kimberly A. Dalton, 7755 Kyles Station, Liberty Township, Ohio 45044; Precision Land Title Agency, Inc., 7755 Kyles Station, Liberty Township, Ohio 45044; Elliott Polaniecki, Esq., 900 Plainfield Road, Cincinnati, Ohio 45236; Henry E. Menninger Jr., Bankruptcy Trustee, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202; Eugene P. Whetzel, Esq., Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, OH 43204; Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, OH 43215; Butler County Bar Association, 6 South Second Street, Suite 720, Hamilton, Ohio 45011; Agent Licensing, Ohio Department of Insurance, 50 West Town Street, Third Floor, Suite 300, Columbus, Ohio 43215.

Michelle A. Hall

Michelle A. Hall, Secretary
Board on the Unauthorized Practice of Law