

ORIGINAL

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

DISCIPLINARY COUNSEL,

Relator,

v.

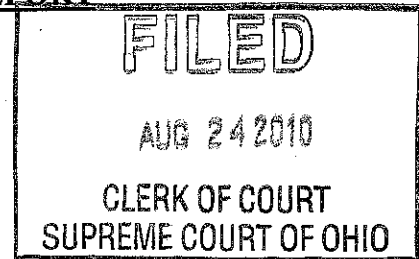
FORECLOSURE ALTERNATIVES,  
INC., ET AL.,

Respondents.

10-1495

Case No. UPL 09-05

FINAL REPORT



**I. PROCEDURAL BACKGROUND**

This matter was initiated before the Board on the Unauthorized Practice of Law (“Board”) on or about June 4, 2009, when Relator, Disciplinary Counsel, filed a Complaint alleging the unauthorized practice of law against Respondents Foreclosure Alternatives, Inc., Kurt Alexakis<sup>1</sup>, and Lance Baker aka Trester<sup>2</sup>. The Complaint alleges that Respondents engaged in the unauthorized practice of law through the operation of a “foreclosure assistance” enterprise. In general, the Complaint states that agents of Respondent Foreclosure Alternatives contacted homeowners named as defendants in foreclosure actions and offered services such as managing the homeowner’s foreclosure litigation and negotiating with the lender. The Complaint further states that Respondents advised two homeowners on pending foreclosure actions, gave legal advice, and retained and paid outside counsel to represent the homeowners for the limited purpose of filing answers and motions in court.

<sup>1</sup> In some parts of the record, Kurt Alexakis is also referred to as “Kert” Alexakis.

<sup>2</sup> Because Respondent Lance Trester used the alias “Lance Baker” during the time at issue in this case, Relator identifies him as “Lance Baker aka Trester” in the Complaint.

The outside counsel Respondents retained for their customers were Ohio attorneys John Thaddeus Willard and David Patterson. In 2009, the Supreme Court of Ohio disciplined both Willard and Patterson for their representation of Foreclosure Alternatives customers and for aiding nonlawyers in the unauthorized practice of law. In *Disciplinary Counsel v. Willard*, 123 Ohio St.3d 15, 2009-Ohio-3629, 913 N.E.2d 960, the Court found that Willard “relegated the negotiation of his clients’ legal matters to nonlawyers” who worked for Foreclosure Alternatives. *Id.* at ¶ 21. Similarly, the Court determined that Patterson “did nothing to determine what legal action should be taken in [the client’s] best interest[,] leaving it up to Foreclosure Alternatives.” *Geauga Cty. Bar Assn. v. Patterson*, 124 Ohio St.3d 93, 2009-Ohio-6166, 919 N.E.2d 206, ¶ 23.

On July 8, 2009, the Board Secretary assigned this matter to a hearing panel consisting of Commissioners N. Victor Goodman (Chair), Richard R. Hollington, and Scott B. Potter. Respondent Alexakis filed a *pro se* Answer on July 9, 2009. The Answer fails to specify whether Alexakis was responding to the allegations in the Complaint individually, on behalf of Foreclosure Alternatives, or both.<sup>3</sup> After receiving an extension of time, Respondent Baker aka Trester filed a *pro se* Answer on August 10, 2009. The Board filed its Case Scheduling Order on August 12, 2009, which set a hearing for March 16, 2010, and served the Order on all of the Respondents via certified mail.

Commissioner Hollington resigned from the Board on or about February 2, 2010. On February 9, 2010, the Board Secretary appointed Commissioner Kenneth A. Kraus to replace Commissioner Hollington on the Panel. Commissioner Goodman then became unable to serve on the Panel, and the Secretary appointed Commissioner Kraus as chair on March 12, 2010. Also on that date, counsel for Respondent Baker aka Trester filed a Notice of Appearance.

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<sup>3</sup> Because Relator did not file a motion for default in this case, the Panel construed the July 9, 2009, *pro se* Answer as filed on behalf of both Respondent Alexakis and Respondent Foreclosure Alternatives.

Relator and Respondent Baker aka Trester filed Stipulations of Fact on March 15, 2010, but the latter did not waive his right to a formal hearing before the Panel as permitted by Gov.Bar R. VII(7)(H). Commissioners Kraus and Potter conducted the hearing in this matter on March 16, 2010, in Columbus. Respondent Baker aka Trester, represented by counsel, participated in the hearing, presenting evidence solely on the issue of whether the Court should impose a civil penalty against him. Respondents Foreclosure Alternatives and Alexakis failed to appear, submit documentation or stipulations, or otherwise participate in the hearing. As indicated above, the Board had served Foreclosure Alternatives and Alexakis with the August 12, 2009, Case Scheduling Order, which included notice of the hearing date.

The Panel determined that the record in this case would be comprised of the hearing testimony and exhibits, the Stipulations of Fact, and the deposition testimony of Respondent Alexakis. Relator previously deposed Alexakis under oath on April 24, 2008, during the investigation of this matter, and filed the deposition transcript with the Board on January 8, 2010. The Panel believed that review of Respondent Alexakis' deposition was imperative, as Alexakis chose not to participate in these proceedings or testify at the hearing. Additionally, in his Answer, Respondent Alexakis specifically asked the Panel to "[p]lease see a transcript of my testimony during my deposition which should also answer these allegations against me." (Alexakis Answer ¶ 10.) Upon review of the record, the Panel made the following findings of fact, conclusions of law, and recommendations.

## **II. FINDINGS OF FACT**

A. The shareholders, directors, officers, and employees of Foreclosure Alternatives, including Lance Baker aka Trester, as employee, and Kurt Alexakis, as officer, are not licensed to practice law in any jurisdiction. (Stip. ¶ 14; Ex. 16, 17.)

B. Respondent Foreclosure Alternatives was incorporated on or about April 19, 2004, by Ronald L. Trester, who is not a party to this action. Ronald L. Trester is Respondent Baker aka Trester's father and Respondent Alexakis' stepfather. (Ex. 1; Tr. 136.)

C. Respondent Foreclosure Alternatives is an Ohio corporation with its former principal place of business in Hamilton County. Foreclosure Alternatives discontinued business operations in 2007. While in business, Foreclosure Alternatives may have had approximately 1,000 customers. (Stip. ¶¶ 1, 2, 4; Ex. 1; Alexakis Dep. 14.)

D. Respondent Foreclosure Alternatives was in the business of "attempting to assist homeowners facing foreclosure." Foreclosure Alternatives is not a licensed or accredited consumer credit counseling agency. (Stip. ¶¶ 11,12.)

E. Respondent Foreclosure Alternatives operated as follows:

1. In an effort to attract customers, Foreclosure Alternatives mailed direct marketing materials to defendants listed on court foreclosure dockets. (Stip. ¶ 18.)

2. Foreclosure Alternatives charged a flat fee of approximately \$600 to \$1,000 for its services. (Stip. ¶ 14.)

3. Foreclosure Alternatives, through its agents, told prospective customers that it would retain an attorney to represent the customer in their foreclosure proceeding. From the flat fee paid by the customer, Foreclosure Alternatives would pay approximately \$100 to \$200 to the attorney. (Stip. ¶¶ 15, 19.)

4. The attorney that Foreclosure Alternatives retained on behalf of the customer was responsible for the foreclosure proceeding, and neither Foreclosure Alternatives nor any of its shareholders, directors, officers, or employees in any way

appeared in, participated in, or directed the defense of the foreclosure proceeding. (Stip. ¶ 16.)

5. The Ohio attorneys Respondents retained on behalf of their customers were John Thaddeus Willard (0002125) and David Patterson (0015280). (Dep. 11, 17; *Willard* at ¶¶ 1,4; *Patterson* at ¶¶ 1,21.)

6. For its share of the fee paid by the customer, Foreclosure Alternatives, through its nonattorney employees, attempted to work with customers and their lenders to resolve the past due amounts or otherwise reinstate the residential loans. (Stip. ¶ 17.)

7. Foreclosure Alternatives, through its agents, used the following documents when securing new customers:

a. A form letter stating that Foreclosure Alternatives will “work with you and your lender in the pending foreclosure case.” The letter also instructs the customer to place money in a savings account and provide a copy of the deposit slip to Foreclosure Alternatives to assist “with the negotiation process with your lender.” The letter further states that the customer should refer all calls from the mortgage company to Foreclosure Alternatives, that the customer does not have to speak with the mortgage company, and that Foreclosure Alternatives will “make this dreadful process go away.” (Ex. 2.)

b. A “Mediation Agreement” and authorization forms in which the customer purportedly allows Foreclosure Alternatives to act as their “agent in assisting... with certain problems resulting from mortgage delinquency and or foreclosure situations.” The Mediation Agreement states that “[i]t is also understood that the use of bankruptcy as a solution is the last alternative to saving

this property.” It also references Foreclosure Alternatives negotiating a settlement with the lender and providing “representation,” and states that the client is “not to contact or attempt to contact the lender of record and if contacted by the lender, agrees to inform them that they have hired and sought representation” from Foreclosure Alternatives. Further, the Mediation Agreement obligates the customer to “forward any and all documents received...pertaining to their foreclosure case to Foreclosure Alternatives.” (Ex. 3.)

c. A form letter stating that Foreclosure Alternatives “will be in contact with your lender letting them know our plan of action and requesting a reinstatement amount.” (Ex. 4.)

F. Respondent Foreclosure Alternatives’ business model was similar to the model employed by Foreclosure Solutions, Inc., which the Supreme Court of Ohio recently found to have engaged in the unauthorized practice of law. See *Cincinnati Bar Assn. v. Foreclosure Solutions, L.L.C., et al.*, 123 Ohio St.3d 107, 2009-Ohio-4174, 914 N.E.2d 386. (Stip. ¶ 24.)

G. Respondent Baker aka Trester is not and has never been a shareholder or director of Respondent Foreclosure Alternatives. (Stip. ¶ 3; Tr. 136.)

H. Ronald L. Trester was convicted of a crime and began serving a five-year prison sentence in February 2006. Ronald L. Trester asked his son, Respondent Baker aka Trester, to postpone his college education and run Foreclosure Alternatives while Trester was incarcerated. (Stip. ¶¶ 5-6.)

I. In January 2006, Respondent Baker aka Trester was twenty-two years old. At this time, he dropped out of college and began working for Respondent Foreclosure Alternatives. Ronald L. Trester provided fifteen days of training before Respondent Baker aka Trester took

over the day-to-day operations of Foreclosure Alternatives in early February 2006. This position was his first full-time job. (Stip. ¶¶ 7-9.)

J. While employed by Respondent Foreclosure Alternatives, Respondent Baker aka Trester supervised and directed the employees of Foreclosure Alternatives, solicited business from homeowners against whom foreclosure cases had been initiated, retained attorneys to represent customers in pending foreclosure cases, and worked with customers and their lenders to resolve past due amounts or otherwise reinstate the customers' residential loans. (Stip. ¶¶ 8, 9, 21, 22; Tr. 137-39.)

K. Respondent Baker aka Trester's last day of employment with Respondent Foreclosure Alternatives was September 22, 2006. One week after he left Foreclosure Alternatives, Respondent Baker aka Trester started a company called American Foreclosure Professionals, which was a competitor of Foreclosure Alternatives. American Foreclosure Professionals was in business until approximately November 2008. (Stip. ¶ 27; Tr. 160.)

L. Respondent Alexakis became the statutory agent of Respondent Foreclosure Alternatives on or about August 10, 2005. He was president of Foreclosure Alternatives when Respondent Baker aka Trester joined the company in January 2006. Respondent Alexakis became involved in the day-to-day operations of Foreclosure Alternatives in 2006, when Respondent Baker aka Trester left the company, although he "ran errands" and "made deposits" for Ronald L. Trester as early as 2004. At some point in 2006, Foreclosure Alternatives' three employees were Respondent Alexakis and two clerical workers. (Ex. 1; Dep. 6-7, 16; Tr. 139.)

M. While employed by Respondent Foreclosure Alternatives, Respondent Alexakis collected financial information from customers, retained attorneys for customers, and negotiated with lenders on behalf of customers. (Dep. 9-11.)

N. David and Annetta Chandler were customers of Respondent Foreclosure Alternatives. Wells Fargo Bank filed a Complaint for Foreclosure against the Chandlers in Warren County Common Pleas Court on May 26, 2006. On June 13, 2006, Mr. Chandler signed a "Mediation Agreement" with Daniel B. Jones of Foreclosure Alternatives. (Stip. ¶¶ 29-31; Ex. 3, 5, 9.)

O. When the Chandlers first became customers of Respondent Foreclosure Alternatives, Respondent Baker aka Trester did not initially meet with them, but he was generally aware of the Chandler case and supervised Foreclosure Alternatives employees who provided services to the Chandlers. The Chandlers did eventually work with Respondent Baker aka Trester and Mr. Chandler spoke with him several times on the telephone. (Stip. ¶ 33; Tr. 64-65.)

P. The Chandlers received a letter from Respondent Foreclosure Alternatives on or about August 3, 2006. The letter states that "[t]he attorney has filed a plea and answered the complaint in your foreclosure case. This has given you the time needed to get your financial affairs in order. Now we need to begin the negotiations with your lender." (Ex. 6.)

Q. An answer was not filed on behalf of the Chandlers in their foreclosure case. Accordingly, Wells Fargo Bank filed a Motion for Default Judgment on August 8, 2006, and the Warren County Common Pleas Court found the Chandlers in default the same day. On August 24, 2006, the Common Pleas Court ordered the Chandlers' home to be sold at a sheriff's sale. (Ex. 10, 11.)

R. The Chandlers first learned of the sheriff's sale when they saw the sale advertised in the local newspaper. Respondents never notified the Chandlers of the sale. (Ex. 12; Tr. 61-62.)



S. The Chandlers made two \$450.00 payments to Foreclosure Alternatives. The first payment occurred on June 22, 2006, approximately four weeks after Wells Fargo filed its Complaint for Foreclosure against the Chandlers. The second payment occurred on September 14, 2006, approximately five weeks after the Chandlers were found in default, and three weeks after the initial order of sale. (Ex. 5, 9, 10, 11.)

T. After Respondent Baker aka Trester left Foreclosure Alternatives, the Chandlers worked with Respondent Alexakis. Mr. Chandler spoke with Respondent Alexakis several times on the telephone, including when he learned of the sheriff's sale via the newspaper. Respondent Alexakis told Mr. Chandler that the sale notice was "just a formality" and that "everything would be okay." (Tr. 65-66.)

U. During his dealings with Respondent Foreclosure Alternatives, Mr. Chandler believed that Foreclosure Alternatives would negotiate with the mortgage company and save his home. Agents of Foreclosure Alternatives advised Mr. Chandler not to file bankruptcy or speak with his mortgage company. (Tr. 56, 58, 63-64, 66.)

V. On or about October 6, 2006, Respondent Alexakis contacted Attorney Willard for the first time about the Chandlers' case. At the time of this communication, judgment and an order of sale had already been entered against the Chandlers. Attorney Willard filed a Motion to Strike in the Chandlers' foreclosure case on October 11, 2006. Willard did not have any further involvement in the Chandlers' case after filing the Motion to Strike. (Tr. 34-38.)

W. The Chandlers' home was sold at a sheriff's sale on October 23, 2006. (Tr. 61-63; Ex. 12, 14.)

X. David Cramer was a Foreclosure Alternatives customer. Mr. Cramer received a letter from Respondent Baker aka Trester in March 2006, which was the first time he learned that his home may be in danger of foreclosure. (Stip. ¶ 35, 36; Tr. 101.)

Y. Respondent Baker aka Trester visited Mr. Cramer's home twice in April or May 2006. At this time, Mr. Cramer entered into a "Mediation Agreement" with Respondent Foreclosure Alternatives. Respondent Baker aka Trester stated to Mr. Cramer that Foreclosure Alternatives would negotiate to save his home. Baker aka Trester also advised Mr. Cramer not to file bankruptcy, to stop making his mortgage payments, and that the foreclosure had been "stopped" by attorneys who would be "taking care of" his case. (Stip. ¶ 37; Ex. 15; Tr. 102-104, 108, 119-120.)

Z. Pursuant to the Mediation Agreement, Mr. Cramer made two deposits totaling \$4,250 in a U.S. Bank account, and Respondent Foreclosure Alternatives withdrew \$850.00. Thereafter, Respondent Baker aka Trester negotiated with Mr. Cramer's lender in an attempt to resolve the past due amounts or otherwise reinstate the residential loan. (Stip. ¶¶ 39, 41.)

AA. Mr. Cramer telephoned Respondent Baker aka Trester at least twice per week during the time that Baker aka Trester was allegedly working on Mr. Cramer's foreclosure case. Baker aka Trester repeatedly told Mr. Cramer that the attorneys assigned to his case were "working on it," but did not have time to talk to him. (Tr. 108-110, 127-28.)

BB. At some point in the fall of 2006, Mr. Cramer had difficulty contacting Respondents. In October 2006, Mr. Cramer telephoned Respondent Alexakis, who stated that he was the owner of Foreclosure Alternatives, would "look into" Mr. Cramer's case, and that "things were being handled and in negotiations." Respondent Alexakis also indicated that he

could not give Mr. Cramer any attorney information as the attorneys were “too busy.” (Tr. 110-11, 129.)

CC. In October 2006, after several unsuccessful attempts to reach Respondents regarding his assigned attorney, Mr. Cramer spoke with a Foreclosure Alternatives secretary. The secretary connected Mr. Cramer to Attorney Willard, who indicated that he was not the attorney of record in Mr. Cramer’s foreclosure case. (Tr. 111-12.)

DD. In January 2007, Mr. Cramer learned that Attorney Patterson had filed an answer in Mr. Cramer’s foreclosure case. At that time, Attorney Patterson stated to Mr. Cramer that “he couldn’t do anything else” for him and that he had only been hired to file the answer. (Tr. 113-14.)

EE. Mr. Cramer’s home was scheduled to be sold at a sheriff’s sale in March 2007. Foreclosure Alternatives did not inform him of the sale. Mr. Cramer was able to delay the sale when he filed for Chapter 13 bankruptcy. However, when Mr. Cramer had to convert his Chapter 13 bankruptcy filing to a Chapter 7, the sale went forward and Mr. Cramer lost his home. Mr. Cramer had lived in his home for twenty years. (Tr. 114-16.)

FF. Respondent Baker aka Trester admits that his “conduct on behalf of Foreclosure Alternatives falls within the definition of the unauthorized practice of law defined by the Supreme Court of Ohio” in *Foreclosure Solutions*. (Stip. ¶ 25.)

### **III. 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.* (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. 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, at ¶ 16; *Lorain Cty. Bar Assn. v. Kocak*, 121 Ohio St.3d 396, 2009-Ohio-1430, 904 N.E.2d 885, at ¶ 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. “Counseling debtors in financial crisis as to their best course of legal action requires the attention of a qualified attorney.” *Cincinnati Bar Assn. v. Foreclosure Solutions, L.L.C.*, 123 Ohio St.3d 107, 2009-Ohio-4174, at ¶ 24, citing *Cincinnati Bar Assn. v. Mullaney*, 119 Ohio St.3d 412, 2008-Ohio-4541, 894 N.E.2d 1210, at ¶ 24; *Columbus Bar Assn. v. Flanagan* (1997), 77 Ohio St.3d 381, 383, 674 N.E.2d 681.

E. Nonlawyers who negotiate with lenders on behalf of homeowners named as defendants in foreclosure proceedings are representing the legal interests of others and therefore engaging in the unauthorized practice of law. *Foreclosure Solutions* at ¶¶ 22, 25, citing *Disciplinary Counsel v. Brown*, 121 Ohio St.3d 423, 2009-Ohio-1152, 905 N.E.2d 163, ¶ 17; *Cincinnati Bar Assn. v. Mullaney*, 119 Ohio St.3d 412, 2008-Ohio-4541, 894 N.E.2d 1210, ¶ 24; *Disciplinary Counsel v. Robson*, 116 Ohio St. 3d 318, 2007-Ohio-6460, 878 N.E.2d 1042, ¶ 10; *Cleveland Bar Assn. v. Henley* (2002), 95 Ohio St.3d 91, 92, 766 N.E.2d 130; *Akron Bar Assn. v.*

*Bojonell* (2000), 88 Ohio St.3d 154, 724 N.E.2d 401; *Cleveland Bar Assn. v. Moore* (2000), 87 Ohio St.3d 583, 722 N.E.2d 514.

F. Nonlawyers who advise debtor / homeowners of their legal rights and remedies in response to the filing of foreclosure proceedings engage in the unauthorized practice of law.

*Foreclosure Solutions* at ¶ 26 and footnote 1, citing *Ohio State Bar Assn. v. Kolodner*, 103 Ohio St.3d 504, 2004-Ohio-5581, 817 N.E.2d 25; *Cincinnati Bar Assn. v. Telford* (1999), 85 Ohio St.3d 111, 707 N.E. 2d 462; *In re Ferguson* (Bankr.N.D. Ohio 2005), 326 B.R. 419, 423.

G. Nonlawyers who advise debtors facing foreclosure may not use a power of attorney executed by the debtor to avoid the prohibitions against engaging in the unauthorized practice of law. *Foreclosure Solutions* at ¶ 27, citing *Telford*, 85 Ohio St.3d 111, 113, 707 N.E.2d 462; *Akron Bar Assn. v. Miller* (1997), 80 Ohio St.3d 6, 8-9, 684 N.E.2d 288; *Richland Cty. Bar Assn. v. Clapp* (1998), 84 Ohio St.3d 276, 278, 703 N.E.2d 771.

H. Under Gov. Bar R. VII(7)(E), unauthorized practice of law violations must be established by a preponderance of the evidence. The Panel hereby finds, by a preponderance of the evidence, that all of the Respondents engaged in the unauthorized practice of law in the state of Ohio, and that Respondents' activities are identical to those condemned by the Court in *Foreclosure Solutions*.

I. Respondents engaged in the unauthorized practice of law, in that they individually and/or collectively committed the following acts: counseling the Chandlers and Mr. Cramer as to the best course of legal action in their pending foreclosure cases, which included recommendations not to make mortgage payments or communicate with their lenders; negotiating the legal and financial interests of the Chandlers and Mr. Cramer with their lenders; representing the legal interests of the Chandlers and Mr. Cramer by retaining and delegating

work to attorneys Willard and Patterson; and providing legal advice such as advising the Chandlers and Mr. Cramer not to file bankruptcy.

J. Each act found to constitute the unauthorized practice of law is based upon evidence that demonstrates the specific activities upon which the conclusion is 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 ¶¶24-26.

#### **IV. CIVIL PENALTY ANALYSIS**

Because the Panel concluded that Respondents engaged in the unauthorized practice of law through their dealings with the Chandlers and Mr. Cramer, the Panel had to determine whether to recommend civil penalties of up to \$10,000 per offense. A civil penalty recommendation must be based upon the general factors set forth in Gov.Bar R. VII (8)(B) and UPL Reg. 400(F). Additionally, UPL Reg. 400(F)(3) lists the aggravating which may be considered in recommending a more severe penalty; and UPL Reg. 400(F)(4) specifies mitigating factors which may be used to justify a recommendation of no civil penalty or a less severe penalty. The Panel's analysis of the applicable civil penalty factors is set forth below.

##### **A. General Civil Penalty Factors – Gov.Bar R. VII(8)(B) and UPL Reg. 400(F)**

1. *Cooperation:* In its closing argument, Relator stated that Respondent Baker aka Trester was cooperative in the pre-hearing process. Respondents Alexakis and Foreclosure Alternatives, however, failed to appear, participate, or present a defense beyond merely filing a *pro se* Answer. In addition, Respondent Baker aka Trester aided these proceedings by entering into the Stipulations of Fact with Relator prior to the hearing. Gov.Bar R. VII(8)(B)(1).

2. *Number of occasions of unauthorized practice of law:* The record contains ample evidence that Respondents rendered legal services in two foreclosure cases. The debtors in these cases were the Chandlers and Mr. Cramer. Otherwise, the record contains inconclusive evidence of the total number of customers serviced by Respondent Foreclosure Alternatives from 2004 to 2007.<sup>4</sup> Gov. Bar R.

VII(8)(B)(2).

3. *Flagrancy:* Respondents made damaging and misleading representations to the Chandlers and Mr. Cramer during their foreclosure cases. For example, in correspondence to Mr. Chandler, Respondents indicated that an attorney had filed an answer in their foreclosure case and they had time to get their “financial affairs in order.” In reality, no answer was filed in the Chandlers’ case, they were found in default just five days after the date of the correspondence, and Respondents accepted a fee payment from the Chandlers post-default. As to Mr. Cramer, Respondents indicated that his foreclosure had been “stopped” when in actuality an attorney Mr. Cramer had never met merely filed an answer in the case. Respondents further gave the false impression to the Chandlers and Mr. Cramer that Foreclosure Alternatives attorneys were providing legal services for them but were “too busy” to speak with them directly. Gov.Bar R. VII(8)(B)(3).

4. *Harm to third parties:* Because both the Chandlers and Mr. Cramer lost their homes in sheriff’s sales after becoming customers of Respondent

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<sup>4</sup> Respondent Baker aka Trester testified that he could not recall how many customers he had while employed by Respondent Foreclosure Alternatives. (Tr. 156) Attorney Willard testified that he provided services for twenty-eight Foreclosure Alternatives customers, while Respondent Alexakis testified in his deposition that Foreclosure Alternatives had over 1,000 customers and earned \$30,000 per month. (Tr. 29; Dep. 14, 21.)

Foreclosure Alternatives, they suffered significant harm as a result of Respondents' conduct. Gov.Bar R. VII(8)(B)(4).

5. *Whether Relator has sought a civil penalty:* Relator recommends a \$10,000 civil penalty, imposed jointly and severally against all three Respondents, for each unauthorized practice of law offense. Gov.Bar R. VII(8)(B)(5); UPL Reg. 400(F)(1).

6. *Whether the imposition of civil penalties furthers the purposes of Gov.Bar R. VII:* In this trying economic climate, the imposition of civil penalties would further the purposes of Gov.Bar R. VII by deterring the establishment of additional "foreclosure assistance" entities that provide unlicensed legal representation to often-desperate, vulnerable homeowners. Gov.Bar R. VII(8)(B)(5); UPL Reg. 400(F)(2).

B. Aggravating Civil Penalty Factors – UPL Reg. 400(F)(3)

The Panel identified the presence of a single aggravating civil penalty factor in this case. Because Respondent Foreclosure Alternatives was a for-profit enterprise that collected fees from customers, Respondents Baker aka Trester and Alexakis were employed by Foreclosure Alternatives, and Respondent Alexakis was also an officer of Foreclosure Alternatives, all three Respondents benefited financially from their unauthorized practice of law. UPL Reg. 400(F)(3)(d).

C. Mitigating Civil Penalty Factors – UPL Reg. 400(F)(4)

In regard to mitigating evidence somewhat favoring Respondent Baker aka Trester, the record indicates that he has ceased providing foreclosure services through Respondent Foreclosure Alternatives. Also, Baker aka Trester stipulated to the conduct



under review and admitted that his conduct constitutes the unauthorized practice of law. UPL Reg. 400(F)(4)(a)-(c).

Concerning Respondent Baker aka Trester's motive for getting involved with Respondent Foreclosure Alternatives, the record shows that Baker aka Trester dropped out of college and joined the company at the request of his father, Ronald L. Trester, who was about to be incarcerated for five years. Baker aka Trester was young and inexperienced at the time he assumed the responsibility for the day-to-day operations of Foreclosure Alternatives, and learned the company procedures from his father, the founder of the business. These facts appear to demonstrate a motive other than personal benefit. Weighing against this mitigating evidence, however, is the fact that Respondent Baker aka Trester started a competing "foreclosure assistance" company immediately upon leaving Foreclosure Alternatives. Baker aka Trester started that venture a mere nine months after taking over the operations of Foreclosure Alternatives. This fact lessens the mitigating effect of Respondent Baker aka Trester's position that he was a naïve, inexperienced college student whose only motive was to help his incarcerated father. UPL Reg. 400(F)(4)(e).

Respondents Alexakis and Foreclosure Alternatives, who have not participated in this proceeding beyond filing their *pro se* Answer, have failed to present any mitigating evidence in their favor. While it appears that Respondents Alexakis and Foreclosure Alternatives are no longer in the "foreclosure assistance" business, they have neither stipulated to the charged conduct nor admitted that it constitutes the unauthorized practice of law. They also neglected to demonstrate any efforts to make restitution or rectify the consequences of their actions. UPL Reg. 400(F)(4)(a)-(c), (f).

Respondent Baker aka Trester argues that the Court's decision in *Foreclosure Solutions*, in which the Court ordered a \$50,000 civil penalty, somehow prohibits the imposition of a civil penalty in this case. Baker aka Trester relies on the fact that Foreclosure Solutions stipulated to having 12,000-14,000 Ohio customers over about four years. *Foreclosure Solutions* at ¶ 11. The Panel agreed this case is distinguishable from *Foreclosure Solutions* on the number of affected customers, as the record establishes Respondents' conduct in regard to just two customers. However, in *Foreclosure Solutions*, the stipulated record failed to contain any specific evidence of legal or economic harm to customers. *Id.* at ¶ 33. Unlike *Foreclosure Solutions*, this case involves significant legal and economic harm to customers. In fact, Respondents' conduct had dire consequences, as the homes of both the Chandlers and Mr. Cramer were foreclosed upon and sold at sheriff's sales. The Panel therefore concluded that although from an unauthorized practice of law perspective *Foreclosure Solutions* is on point with this case, it is also distinguishable from this case on the issue of civil penalties.

D. Conclusion Regarding Civil Penalties

Upon consideration of the civil penalty factors set forth above, especially the loss of the Chandler and Cramer homes and Respondents' blatant and repeated misrepresentations, this Panel concluded that the maximum \$10,000 civil penalty per offense is appropriate. For purposes of its civil penalty recommendation, the Panel found two unauthorized practice of law offenses in this case: the Chandler matter and the Cramer matter. However, due to the cooperation of Respondent Baker aka Trester in these proceedings and the mitigating evidence he presented, the Panel also concluded that Baker aka Trester's share of the total penalty should be significantly reduced.

Accordingly, the Panel recommended apportioning \$2,500 of the penalty for each unauthorized practice of law offense to Respondent Baker aka Trester, for a total of \$5,000; and \$7,500 for each unauthorized practice of law offense to Respondents Alexakis and Foreclosure Alternatives, jointly and severally, for a total of \$15,000.

**V. PANEL RECOMMENDATIONS**

A. The Panel recommended that the Supreme Court of Ohio enter an order finding that Respondents Foreclosure Alternatives, Inc., Kurt Alexakis, and Lance Baker aka Trester engaged in the unauthorized practice of law.

B. The Panel recommended that the Supreme Court of Ohio enter an order enjoining Respondents Foreclosure Alternatives, Inc., Kurt Alexakis, and Lance Baker aka Trester from engaging in any future unauthorized practice of law.

C. The Panel recommended that the Supreme Court of Ohio impose a civil penalty against Respondent Lance Baker aka Trester of \$2,500 per documented unauthorized practice of law offense, for a total of \$5,000. The Panel also recommended that the Court impose a civil penalty against Respondents Foreclosure Alternatives, Inc., and Kurt Alexakis, jointly and severally, of \$7,500 per documented unauthorized practice of law offense, for a total of \$15,000.

D. The Panel further recommended that the Court require Respondents to reimburse the costs and expenses incurred by the Board and Relator in this matter.

**V. BOARD RECOMMENDATIONS**

The Board formally considered this matter on August 17, 2010. The Board adopted the findings of fact, conclusions of law, and penalty recommendations of the Panel. Accordingly, the Board recommends that the Supreme Court of Ohio enter an order:

- A. Finding that Respondents Foreclosure Alternatives, Inc., Kurt Alexakis, and Lance Baker aka Trester engaged in the unauthorized practice of law;
- B. Enjoining Respondents Foreclosure Alternatives, Inc., Kurt Alexakis, and Lance Baker aka Trester from engaging in any future unauthorized practice of law;
- C. Imposing a civil penalty against Respondent Lance Baker aka Trester of \$2,500 per documented unauthorized practice of law offense, for a total of \$5,000, and a civil penalty against Respondents Foreclosure Alternatives, Inc., and Kurt Alexakis, jointly and severally, of \$7,500 per documented unauthorized practice of law offense, for a total of \$15,000;
- D. Requiring Respondents, jointly and severally, to reimburse the costs and expenses incurred by the Board and Relator in this matter.

**VI. STATEMENT OF COSTS**

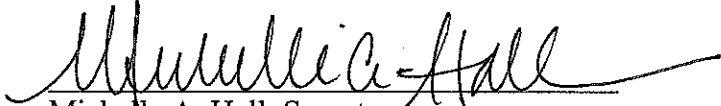
Attached as Exhibit A is a statement of costs and expenses incurred to date by the Board and Relator in this matter.

**FOR THE BOARD ON THE UNAUTHORIZED  
PRACTICE OF LAW**

  
\_\_\_\_\_  
Kenneth A. Kraus, Chair

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Final Report was served by certified mail this 24<sup>th</sup> day of August 2010 upon the following: Lance Baker aka Trester, 7330 Dunmore Ct., West Chester, Ohio 45069; Kurt Alexakis, 5067 Whispering Springs Road, Mason, Ohio 45040-6652; Foreclosure Alternatives, 5067 Whispering Springs Road, Mason, Ohio 45040-6652; Heather Hissom, Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215; James C. Frooman, Frost Brown Todd LLC, 2200 PNC Center, 201 East Fifth Street, Cincinnati, Ohio 45202-4182; Eugene P. Whetzel, Esq., Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, Ohio 43204; Maria C. Palermo, Cincinnati Bar Association, 225 E. Sixth St., 2<sup>nd</sup> Fl., Cincinnati, Ohio 45202.

  
Michelle A. Hall, Secretary  
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**

*Disciplinary Counsel v. Foreclosure Alternatives, et al.*

Case No. UPL 09-05

Reporting and Transcript Services – Fraley Cooper	1027.50
<b>TOTAL</b>	<b>\$1027.50</b>

Note: In accordance with Gov.Bar R. VII(19)(F), there will also be publication costs incurred once the Supreme Court enters its order in this case.