

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

**DISCIPLINARY COUNSEL,
RELATOR,**

v.

**NED K. SCHROEDER,
RESPONDENT.**

Case No. **16-01U**
FINAL REPORT

On Relator's Motion for
Default Judgment
Gov. Bar R. VII(7)(B)

I. SUMMARY

This matter was before a Panel of the Board on the Unauthorized Practice of Law ("Board") on a Complaint filed on February 26, 2016, by the Office of Disciplinary Counsel ("ODC" or "Relator"), alleging that respondent Ned K. Schroeder ("Respondent"), a non-attorney, has engaged in the unauthorized practice of law.

The Complaint consists of one count, describing respondent's actions in connection with acting as the "authorized representative" for James Freytag in response to a March 4, 2015 letter from the Revenue Group. The Revenue Group, on behalf of the Ohio Attorney General's Office, sent Mr. Freytag a letter attempting to collect a debt in the amount of \$24,175.84 purportedly owed by Mr. Freytag. (p. 4). Relator seeks injunctive relief and civil penalties against Respondent. The Respondent wrote to the Revenue Group disputing the debt owed by Mr. Freytag and requesting validation of the debt on behalf of Mr. Freytag. Respondent attached Debt Collector Disclosure Statement and an IRS form w-9,

Request for Taxpayer Identification Number, and demanded that the Revenue Group complete the attachments and return them. *Id.* Respondent also attached an invoice, issued to Thomas Moos, the author of the March 4, 2015 letter from the Revenue Group to Mr. Freytag, from Aaron Lee Hess ® Private Consulting Group seeking payment of \$100,000 for the use of the name James Freytag. The address for Aaron Lee Hess ® Private Consulting Group is the same as respondent's address. *Id.* The Complaint alleges Respondent's actions on behalf of Mr. Freytag constituted the practice of law.(p.6). Why? "The unauthorized practice of law consists of rendering legal service for another by any person not admitted to practice in Ohio...and includes representation by a non-attorney who advise, counsel, or negotiates on behalf of an individual...in the attempt to resolve a collection claim between debtor and creditors." *Ohio State Bar Assn. v. Kolodner et al.*, 103 Ohio St.3d 504, 507, 2004-Ohio-5581, 817, N.E. 2 d 25, 28. *Id.*

II. PROCEDURAL HISTORY

Respondent was personally served by the Shelby County Sheriff's Office with the complaint and notice of his right to file an answer. Previous attempts to serve Respondent by certified and regular mail in accordance with Gov. Bar R. VII, Sec. 6 were unsuccessful, with mailings returned with the notation "refused". To date, Respondent has not filed an Answer. Rather, respondent returned the original complaint that had been served upon him by the Board to relator marking each page "rejected." Thereafter, this matter was assigned to a Hearing Panel consisting of Commissioners Regis E. McGann, Jr., Chair, Edward T. Mohler, and Scott E. Elisar.

On April 20, 2016, the panel held an initial status telephone conference on the matter, which respondent chose not to participate in. Thereafter, Relator prepared and filed a Motion for Default.

On April 26, 2016, Relator forwarded a letter to respondent regarding his failure to file an answer by May 4, 2016.(Exhibit 9 to Motion for Default) The Respondent wrote “return to sender” on the envelope with that letter in it, and returned it unopened to relator. (Exhibit 10 to Motion for Default)

The Relator then filed its Motion for Default on May 11, 2016. It is unopposed.

The panel report was presented to the Board at its meeting held on December 9, 2016.

III. FINDINGS OF FACT

A. BACKGROUND

Upon review of the Motion for Default Judgment, and the evidence presented to the Panel by relator in the form of documents attached thereto, the Board finds the following facts significant and persuasive.

1. Relator, the Office of Disciplinary Counsel is duly authorized to investigate and prosecute activities which may constitute the unauthorized practice of law in Ohio. Gov.Bar R. VII(4) and (5).

2. On or about March 4, 2015, the Revenue Group, on behalf of the Ohio Attorney General’s Office sent James Freytag a letter attempting to collect a debt in the amount of \$24,175.84 purportedly owed by Mr. Freytag. (Exhibits 1 and 2 to the Motion for Default).

In response to that March 4, 2015 letter, Respondent as the “authorized representative” for Mr. Fretag, wrote to the Revenue Group disputing the debt owed by Mr. Fretag and

requesting validation of the debt on his behalf. (Exhibit 1). Respondent attached a Debt Collector Disclosure Statement and an IRS form W-9, Request for Taxpayer Identification Number, and demanded that the Revenue Group complete the attachments and return them. (Exhibit 1). Respondent finally attached an invoice, issued to Thomas Moos, the author of the letter to Mr. Freytag, from Aaron Hess ® Private Consulting Group seeking payment of \$100,000 for the use of the name James Freytag. (Exhibit 1).

3. Respondent Ned K. Schroeder is not an attorney-at-law in the state of Ohio admitted pursuant to Gov. Bar R. 1 or XII, registered under Gov.Bar. R. VI, or certified under Gov. Bar R. II, IX, or XI.(Exhibit 3 to the Motion for Default).

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, 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. The practice of law includes the “preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts.” *Land Title Abstract v. Dworken*, 129 Ohio St. 23, 28, 194 N.E. 650, 652 (1934).

E. 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). Moreover, the fact that the non-attorney received no remuneration for his actions is irrelevant to the determination of whether he engaged in the unauthorized practice of law. *Henley* at 92 *Geauga Cty. Bar Assn. v. Canfield*, 92 Ohio St.3d 15, 16, 748 N.E.2d 23 (2001).

F. The Respondent is in default for not submitting an answer to the Complaint, which was filed and served upon him as set forth above.

V. CIVIL PENALTY ANALYSIS

The Board has carefully considered the relevant aggravating, and mitigating factors for the imposition of civil penalties in this case pursuant to Gov. Bar R. VII(8)(B) and UPL

Reg. 400 and is of the opinion a civil penalty of \$2,500 on the one count of the Complaint is warranted in this case. The Board sets forth its reasons below.

The factors to consider when recommending a civil penalty include the following: (1) The degree of cooperation provided by the respondents in the investigation; (2) The number of occasions that unauthorized practice of law was committed; (3) The flagrancy of the violation; (4) harm to third parties arising from the offense; and (5) any other relevant factors. UPL Reg. 400(F) also details additional considerations, many of which were recently reviewed by the Ohio Supreme Court in *Ohio State Bar Assn. v. Lienguard*, 126 Ohio State St.3d 400, 2010-Ohio-3827.

1. The degree of cooperation provided by the respondent in the investigation.

While the Board recognizes that Respondent corresponded- somewhat, as set forth above, with relator Disciplinary Counsel and the Panel , it is noted that Respondent Ned K. Schroeder chose not to prepare and file an answer to the complaint. Nor did Mr. Schroeder appear as notified and required at the April 20, 2016 pre-hearing telephone conference.

2. The number of occasions that unauthorized practice of law was committed.

The Board found that Ned K. Schroeder committed UPL in the one count presented by relator.

3. Flagrancy and harm to third parties

All of Respondent's actions served to undermine public confidence in the judicial system. The harm caused by Mr. Schroeder's involvement did not result in any financial loss to James Freytag per the record. Ned K. Schroeder offered legal advice in connection with the one count yet refused to acknowledge it is, in fact, legal advice. UPL Reg. 400,

lists “other relevant factors” the Board may consider in the recommendation of civil penalties. That would include Relator’s concern that Mr. Freytag was caused a delay in the resolution of his case.

4. Whether the respondent had been informed prior to engaging in the unauthorized practice of law that the conduct at issue may constitute an act of the unauthorized practice of law

Evidence offered established that respondent was warned his actions may constitute an act of the unauthorized practice of law.

5. Whether the respondent has held himself or herself out as being admitted to practice law in the State of Ohio, or whether respondent has allowed others to mistakenly believe that he or she was admitted to practice law in the State of Ohio

Although Mr. Schroeder does not specifically say he is a licensed attorney in Ohio, he did refer to himself as Mr. Freytag’s authorized representative.

The Board notes Mr. Schroder has failed to avail himself of each of the mitigating factors.

6. Respondents’ conduct appears to have resulted from motives other than dishonesty or personal benefit.

Mr. Freytag did not pay Respondent for his services. However, Respondent, under the guise again of an invoice, issued to Thomas Moos, the author of the March 4, 2015 letter from the Revenue Group to Mr. Freytag, from Aaron Lee Hess R Private Consulting Group seeking payment of \$100,000 for the use of the name James Freytag. Again, the address for Aaron Lee Hess ® Private Consulting Group is the same as respondent’s address.

After balancing all of these factors the Board recommends a civil penalty of \$2,500 for the one count in the complaint against Respondent, Ned K. Schoeder.

V. CONCLUSION/RECOMMENDATIONS

1. The Board recommends that the Supreme Court of Ohio issue an order finding that Respondent engaged in the unauthorized practice of law.
2. The Board recommends that the Court impose a civil penalty against Respondent in the amount of \$2,500 for the one count in the complaint against the Respondent.
3. The Board recommends that the Court issue a further Order prohibiting Respondent from engaging in the unauthorized practice of law in the future.
4. The Board recommends that the Court issue an order requiring Respondent to pay the costs and expenses incurred by the Board and Relator in this matter.

VI. STATEMENT OF COSTS

Relator indicated it incurred no costs in this matter.

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

s/Leo M. Spellacy, Jr.
Chair

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 21st day of April, 2017: Stacy Beckman, Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215; Scott Drexel, Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215; Ned K. Schroeder, 709 Kathy Ave., Sidney, OH 45365; Desiree Blankenship, Ohio State Bar Association, PO Box 16562, Columbus OH 43216; Shelby County Bar Association, 129 E Court Street, Sidney, OH 45365.

s/Minerva B. Elizaga

Secretary

Board on the Unauthorized
Practice of Law