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

CINCINNATI BAR ASSOCIATION,

09-0967

Relator,

Case No. UPL 07-04

FINAL REPORT

FORECLOSURE SOLUTIONS, LLC., ET. AL.,

Respondents.

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FILED

MAY 28 2009

CLERK OF COURT SUPREME COURT OF OHIO

I. PROCEDURAL BACKGROUND

This matter came before the Board on the Unauthorized Practice of Law on the Relator Cincinnati Bar Association's Complaint filed on June 13, 2007. The Respondents Foreclosure Solutions, LLC and Timothy Buckley were duly served with a copy of the Complaint and Notice and subsequently filed their Answer on July 27, 2007. The matter was assigned to a Panel consisting of Richard R. Hollington, Panel Chair, Kenneth A. Kraus, and James E. Young.

On November 7, 2008, the parties filed Agreed Stipulations and a Waiver of Notice and Hearing pursuant to Gov.Bar R. VII(7)(H). The Panel permitted either party to supplement the stipulations through additional filings. The Relator filed a Supplemental Statement on November 10, 2008 and the Respondent Timothy Buckley filed an Objection to Statement by Relator on November 17, 2008.

In its Complaint, the Relator alleged that the Respondents, not admitted to practice law in Ohio or any other jurisdiction, engaged in the unauthorized practice of law by soliciting clients, giving legal advice, negotiating repayment terms with mortgage lenders in resolution of foreclosure proceedings, and retaining and paying outside legal counsel to represent customers and clients.

In 2008, the Supreme Court of Ohio disciplined three attorneys who were affiliated with Foreclosure Solutions, LLC for, *inter alia*, aiding nonlawyers in the unauthorized practice of law in violation of DR 3-101(A). *Cincinnati Bar Ass'n v. Mullaney*, 119 Ohio St.3d 412, 2008-Ohio-4541. Specifically, the Court found that the attorneys "facilitated nonlawyer's [Foreclosure Solutions] negotiations with the creditors of debtors facing foreclosure. . . ." Id. at ¶19.

This Panel has agreed to the Waiver of Notice and Hearing and has accepted the Joint Stipulations as its record in this matter. Based upon the Joint Stipulations, the Panel enters the following findings of fact, conclusions of law, and recommendations.

II. FINDINGS OF FACT

- 1. Respondent, Timothy Buckley is not admitted to the practice of law in the state of Ohio or any other jurisdiction. Stip. 4.
- 2. Respondent, Foreclosure Solutions is an Ohio limited liability company. Foreclosure Solutions has occasionally used the names "Foreclosure Help One" and "Foreclosure Solutions USA" in its business. Stip. 1.
- 3. None of Foreclosure Solutions' employees are licensed to practice in Ohio or in any other jurisdiction. Stip. 4.

- 4. Respondent Buckley is the founder, President, and sole owner and member of Foreclosure Solutions. Buckley entered into the joint stipulations in this matter in his capacities as an individual Respondent and as President, sole owner and member of Respondent Foreclosure Solutions, LLC.
- 5. Foreclosure Solutions served homeowners by directing them to set up a savings plan so that money can be saved to negotiate new mortgage terms with lenders.

 Stip. 3.
- 6. Foreclosure Solution's customers in Ohio have each paid between seven hundred dollars (\$700.00) and one thousand one hundred dollars (\$1100.00) for its services. Stip. 5.
- 7. Foreclosure Solutions started business in 2003 and since 2003 has had between 12,000 and 14,000 paying customers. At the time of the filing of the Joint Stipulations, Foreclosure Solutions was not accepting new customers but was closing out approximately 25 customer files. Stips. 6,7.
- 8. Foreclosure Solutions marketed its services on internet sites, www.foreclosuresoltuionsusa.net and www.program10.com, in addition to direct mail marketing to Ohio foreclosure defendants. Stip. 8. Exhibit "A" of the Joint Stipulations.
- 9. Agents of Foreclosure Solutions told prospective customers that an attorney and legal services would be furnished to them as part of their fee. Foreclosure Solutions then hired a lawyer for the customer to respond in court to the recently filed foreclosure action. The client had no choice in the lawyer's selection, and the lawyer was paid a flat fee taken from the seven hundred to one thousand one hundred dollar fee that the customers paid Foreclosure Solutions. Stip. 9.

- 10. Foreclosure Solutions' agents met with customers to collect the company's fee and had the customer sign a standardized contract, the "Work Agreement," containing the basic terms and conditions of the engagement. The "Work Agreements" specified that bankruptcy was to be the customers' "last alternative" in the efforts to save their homes. Exhibit "B" of the Joint Stipulations. Stip.10.
- 11. Foreclosure Solutions' agents also had customers sign a standardized limited power of attorney appointing Foreclosure Solutions as the customer's attorney-infact, which in addition to authorizing the hiring of an attorney, purported to authorize company agents to negotiate on the customer's behalf with creditors. Stip. 11.
- 12. The "Work Agreements" provided that the customer would set up a savings account and deposit a certain amount of money into it on a regular basis. Foreclosure Solutions determined the amount the customers were to periodically deposit in the savings account. Stip. 12.
- 13. Foreclosure Solutions would then use that money as a bargaining chip in negotiations that its agents conducted directly with the mortgage lender on behalf of the customers. These negotiations were intended to prevent the customers, all of whom were defendants in foreclosure lawsuits, from losing their homes to foreclosure. Stip. 13.
- 14. Foreclosure Solutions' agents continued to negotiate directly with the mortgage lenders on behalf of the customers even after the attorney it hired for the customers had entered an appearance in the foreclosure lawsuit. Stip. 14.
- 15. Regardless of whether Foreclosure Solution's negotiations on behalf of the customers were successful, Foreclosure Solutions retained the money paid by the customers.

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 to 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 3, 501 N.E.2d 617; Judd v. City Trust & Savings Bank (1937), 133 Ohio St. 81, 12 N.E.2d 288.
- 2. 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, Sec. 2(A)).
- 3. It is the unauthorized practice of law for any person, not admitted to practice law, to advise debtors of their legal rights and the terms and conditions of settlement in negotiations to avoid pending foreclosure proceedings. *Cincinnati Bar Ass'n v. Telford* (1999), 85 Ohio St.3d 111, 707 N.E. 2d 462.
- 4. Negotiating the interests of others in settlement negotiations is the unauthorized practice of law. *Disciplinary Counsel v. Robson*, 116 Ohio St. 3d 318, 2007-Ohio-6460.
- 5. The Panel finds that the preponderance of the evidence establishes that the Respondents engaged in the unauthorized practice of law in the State of Ohio.
- 6. Each act found by this Panel to constitute the unauthorized practice of law is based upon a stipulation of fact that contains sufficient information to demonstrate 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 ¶24-6.

IV. PANEL RECOMMENDATIONS

- 1. The Panel recommends that the Supreme Court of Ohio issue an Order finding that Respondents 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 from engaging in the unauthorized practice of law in the future.
- 3. The Panel recommends that the Supreme Court of Ohio impose a civil penalty of \$50,000 jointly and severally against the Respondents. The Panel has considered the appropriateness of the imposition of a civil penalty pursuant to Gov. Bar R. VII, §8(B), and UPL Reg. 400, Guidelines for the Imposition of Civil Penalties.
- a). As set forth in the Joint Stipulations, the Respondents provided the described legal services to 12,000 to 14,000 Ohioans. These services included the rendering of legal advice and negotiation on the behalf of others. Gov. Bar R. VII 8(B)(2).
- b). In considering other relevant factors pursuant to Gov.Bar R. VII(8)(B)(5), in evidence of aggravation of any civil penalty being imposed against the Respondents, Respondents benefited from the unauthorized practice of law through the receipt of client fees for the services rendered. UPL Reg. 400 (3)(d).

- c). In evidence of mitigation of any civil penalty being imposed against the Respondents, the Panel has considered and found that the Respondents have essentially ceased to engage in the conduct alleged and have admitted and stipulated to the conduct alleged. Guidelines for the Imposition of Civil Penalties, UPL Reg. 400 (F)(4)(a) and (b).
- d). In addition, and in further evidence of mitigation, the record is devoid of any evidence that the clients specifically referenced in this matter were harmed or suffered direct legal or economic consequences due to the activities of the Respondents. Gov. Bar R. VII(8)(B)(4).
- e). The Relator has asked the Panel that it recommend a civil penalty against the Respondents, jointly and severally, in an amount equal to the disgorgement of the monies obtained in the course of the unauthorized practice of law. The Respondent has objected to the imposition of any civil penalty. UPL Reg. 400 (F)(1).

V. <u>BOARD RECOMMENDATIONS</u>

Pursuant to Gov. Bar R. VII(7)(F), the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio considered this matter on May 6, 2009. The Board adopted the findings of fact, and conclusions of law of the Panel. The Board further adopted the recommendations of the Panel, including the recommendation for a civil penalty for the conduct.

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 of Ohio issue a further

Order prohibiting Respondents from engaging the unauthorized practice of law.

The Board further recommends that the Supreme Court of Ohio impose a total

civil penalty of \$50,000 against the Respondents, jointly and severally, and that any costs

of these proceedings be taxed to the Respondents in any Order entered, so that execution

may issue.

V. <u>STATEMENT OF COSTS</u>

Attached as Exhibit A is a statement of costs and expenses incurred to date by the

Panel and Relator in this matter.

Frank R. DeSantis, Chair

Board on the Unauthorized Practice of Law

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

Exhibit "A"

STATEMENT OF COSTS

Cincinnati Bar Association v. Foreclosure Solutions, LLC. et. al.

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To date, no expenses have been incurred.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served certified mail upon the following this 250 day of May, 2009. Justin D. Flamm, Esq., Taft, Stettinius & Hollister, LLP; Foreclosure Solutions, LLC, c/o Timothy Buckley, 8141 Bridlemaker Lane, Cincinnati, OH 45249; Timothy Buckley, 8141 Bridlemaker Lane, Cincinnati, OH 45249; Cincinnati Bar Association, 255 East Sixth Street, 2nd Floor, Cincinnati, OH 45202-3209; Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, OH 43215; Ohio State Bar Association, P O Box 16562, Columbus, OH 43216-6562.

D. Allan Asbury, Secretary of the Board