

# The Supreme Court of Ohio

## BEFORE THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW

LORAIN COUNTY BAR ASSOCIATION,

RELATOR,

v.

LVNV FUNDING, ET AL.

Case No. UPL 19-06

RESPONDENTS.

### ORDER NUNC PRO TUNC – Effective June 30, 2021

This matter is before the Board upon the Parties' Stipulation and Settlement Agreement, filed on August 12, 2020. Upon consideration thereof, and consistent with the panel report and recommendation, the Board finds that Respondent engaged in the unauthorized practice of law and approves the Stipulation and Settlement Agreement of Lorain County Bar Association, LVNV Funding, LLC, Clint Morrison, and Resurgent Capital Services.

The formal complaint in this matter was filed by the parties on October 16, 2019. The complaint alleged that respondents, who are not admitted to the practice of law in Ohio or any other jurisdiction, performed legal services by filing a lawsuit against David Dunston in the Elyria Municipal Court (*LVNV Funding LLC v. David Dunston*, Case No. 2008CVF02240).

Respondents were duly served and, through counsel, filed an Answer on January 8, 2020. The parties filed a Stipulation and Settlement Agreement, Motion to Approve Settlement Agreement and Memorandum in Support of Motion to Approve Settlement Agreement on August 20, 2020.

The Board accepts the panel's recommendation and approves the Stipulation and Settlement Agreement as approved and is attached hereto and made a part hereof.

#### I. Stipulated Facts

1. The Relator, Lorain County Bar Association, is a bar association with a membership which includes attorneys practicing law in Lorain County, Ohio, and through its Unauthorized Practice of Law Committee, is authorized to investigate and file complaints with the Board on the Unauthorized Practice of Law pursuant to Gov.Bar R. VII.

2. Respondents, LVNV Funding, Resurgent Management Services, and Clint Morrison, are not attorneys licensed to practice law in Ohio or in any other jurisdiction.
3. Respondents performed legal services by filing a lawsuit against David Dunston in the Elyria Municipal Court (*LVNV Funding LLC v. David Dunston*, Case No. 2008CVF02240).

## **II. Stipulation Resolution**

4. The respondents shall not engage in the unauthorized practice of law in Ohio, which may include the preparation of satisfaction of judgments for filing in a clerk of court's office.
5. Respondents shall use the services of a licensed attorney to represent their interests in courts in Ohio.
6. The Settlement Agreement does not involve any public policy issues or encroach upon the jurisdiction of the Supreme Court of Ohio to regulate the practice of law in this state.
7. The Settlement Agreement furthers the stated purposes of Gov.Bar R. VII.
8. The Board shall retain jurisdiction over and the right to enforce and resolve any disputes concerning this Settlement Agreement.

## **III. Civil Penalty**

9. The relator is not seeking any civil penalties against any respondent in this matter and agrees that each party bear its own costs in this matter.

**IT IS ORDERED** that the Motion to Approve the Settlement Agreement filed on August 20, 2020, is granted. It is further ordered that the Complaint in this matter is hereby dismissed in accordance with Gov.Bar R. VII, Sec. 5b(D)(1). It is further ordered that the signed Settlement Agreement be recorded for reference pursuant to Gov.Bar R. VII, Sec. 5b(H).

**SO ORDERED.**

/s/David E. Tschantz, Chair  
**BOARD ON THE UNAUTHORIZED  
PRACTICE OF LAW**

**BEFORE A PANEL OF THE  
BOARD ON THE UNAUTHORIZED PRACTICE OF LAW  
OF  
THE SUPREME COURT OF OHIO**

<b>LORAIN COUNTY BAR ASSOCIATION</b>	:	
Relator,	:	
	:	<b>CASE NO. UPL 19-06</b>
	:	
v.	:	<b><u>PANEL REPORT</u></b>
	:	
<b>LVNV FUNDING LLC,</b>	:	<b>(Settlement Agreement)</b>
<b>CLINT MORRISON,</b>	:	
<b>RESURGENT CAPITAL SERVICES.</b>	:	<b>Gov. Bar R. VII, Sec. 5b</b>
Respondent.	:	

**I. PROCEDURAL BACKGROUND**

This matter was initiated before the Board on the Unauthorized Practice of Law (“Board”) on October 16, 2019, when Relator, Lorain County Bar Association, filed a Formal Complaint alleging the unauthorized practice of law by Respondents LVNV Funding LLC, Clint Morrison, and Resurgent Capital Services. The Complaint alleges that Respondents performed legal services by filing a lawsuit against David Dunstan in the Elyria Municipal Court for an outstanding debt owed by Mr. Dunstan (*LVNV Funding LLC v. David Dunston*, Elyria Municipal Court Case Judgment No. 2008CVF02240). Along with the Complaint, the parties filed the attached Settlement Agreement (Exhibit 1).

In the Settlement Agreement, Respondents agree to not engage in the unauthorized practice of law, including the preparing of satisfaction of judgments for filing in a clerk of court’s office (Settlement Agreement, p. 4, ¶ 1) and further agree to use the services of a licensed attorney regarding their interests in matters pending in Ohio courts.

Upon review and consideration, the Panel recommends that the Board accept the Settlement Agreement and dismiss the Complaint in accordance with Gov.Bar R. VII(5b)(D)(1).

## **II. FINDINGS OF FACT**

The panel hereby fully adopts the Stipulated Facts presented by the parties in the Stipulation and Settlement Agreement filed on August 12, 2020 (Exhibit 1), attached hereto and made a part hereof.

## **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. Ohio Constitution, Article IV, Section 2(B)(1)(g); *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, 2009 Ohio LEXIS 1938 (Ohio 2009); *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 is the rendering of legal services for another by any person not admitted or otherwise registered or certified to practice law in Ohio. Gov.Bar R. VII(2)(A).

3. The Court has consistently held that “[t]he practice of law is not limited to appearances in court, but also includes giving legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are preserved.” *Miami Cty. Bar Assn. v. Wyandt & Silvers, Inc.*, 107 Ohio St.3d 259, 2005-Ohio-6430, 838 N.E.2d 655, at ¶ 11 (emphasis added), quoting *Cleveland Bar Assn. v. Misch*, 82 Ohio St.3d 256, 259, 695 N.E.2d 244 (1998); *Land Title Abstract & Trust Co. v. Dworken*, 129 Ohio St. 23, 28, 193 N.E. 650 (1934).
4. R.C. 4705.07(A) provides that “[n]o person who is not licensed to practice law in this state shall do any of the following: (1) Hold that person out in any manner as an attorney at law; (2) Represent that person orally or in writing, directly or indirectly, as being authorized to practice law; (3) Commit any act that is prohibited by the [S]upreme [C]ourt as being the unauthorized practice of law.”

#### **IV. PRINCIPAL TERMS OF SETTLEMENT AGREEMENT**

1. Respondents LVNV Funding LLC, Clint Morrison and Resurgent Capital Services shall not engage in the unauthorized practice of law in Ohio, including the preparation of satisfaction of judgments for filing in a clerk of court’s office. (Settlement Agreement, p. 4, ¶ 1).

2. Respondents shall use the services of a licensed attorney to represent their interests in courts [in] Ohio. (Settlement Agreement, p. 4, ¶ 2.).

**V. PANEL ANALYSIS**

**A. Review of Settlement Agreement Using Factors in Gov.Bar R.VII (5b)(C)**

When evaluating a settlement agreement, the Board is required to consider the factors set forth in Gov.Bar R. VII(5b)(C). The Panel reviewed the parties' Settlement Agreement using the factors stated in Section 5b(C) and finds the following:

1. The resolution is submitted in the proper form, and includes the required waiver of notice and hearing under Gov.Bar R. VII(7)(H);
2. The public is sufficiently protected from future harm, as Respondent has ceased the conduct alleged in the Complaint;
3. Respondent has agreed to not engage in activities that constitute the unauthorized practice of law;
4. The Settlement Agreement resolves all material allegations of the unauthorized practice of law;
5. The Settlement Agreement furthers public policy by both ensuring a cessation of the unauthorized practice of law and, because the Settlement Agreement will be posted for reference by the Board in accordance with Gov.Bar R. VII(5b)(H), placing the public on notice that Respondent's conduct is prohibited;
7. The parties' collaborative efforts to resolve this matter by entering into the Settlement Agreement further the purposes of Gov.Bar. R. VII to prevent protracted litigation.

Based upon these findings, the Panel recommends that the Settlement Agreement be accepted by the Board, and that the Board Chair issue an order dismissing the Complaint as required by Gov.Bar R. VII(5b)(D)(1).

B. Applicability of Civil Penalties Based on Factors in Gov.Bar R. VII(8)(B) and UPL Reg. 400

When determining whether to recommend that the Supreme Court impose civil penalties in an unauthorized practice of law case, the Board is required to base its recommendation on the factors set forth in Gov.Bar R. VII(8)(B) and UPL Reg. 400(F). Additionally, UPL Reg. 400(F) specifies aggravating and mitigating factors that the Board may use to justify an enhanced or a reduced penalty. The Panel considered the general, aggravating, and mitigating factors as described below.

1. General Civil Penalty Factors

With regard to the general civil penalty factors listed in Gov.Bar R. VII(8)(B)(1)-(5) and UPL Reg. 400(F)(1) and (2), the Panel finds:

- a. Respondents cooperated with Relator's investigation;
- b. The record fails to contain any evidence of flagrancy by Respondents;
- c. Relator has not sought the imposition of a civil penalty;

2. Aggravating Civil Penalty Factors

Reviewing the aggravating factors of UPL Reg. 400(F)(3)(a)-(g), which are the basis for a recommendation of a more severe penalty, the Panel finds that the record does not contain evidence or statements establishing any of these factors.

3. Mitigating Civil Penalty Factors

Applying the mitigating factors of UPL Reg. 400(F)(4)(a)-(g), which are the basis for a recommendation of no civil penalty or a less severe penalty, the Panel finds:

- a. Respondents were unaware at the time that their activities constituted the unauthorized practice of law in Ohio.
- b. Respondents admit the allegations stated in the Complaint;
- c. Respondents admit their conduct may have constituted the unauthorized practice of law; and
- d. Respondents have agreed to cease and desist from similar conduct in the future, and have taken steps to inform clients that they are not authorized to practice law in Ohio.

4. Conclusion Regarding Civil Penalties

Unlike in Ohio State Bar Association v. Dalton, 124 Ohio St.3s 625, 2010-Ohio-619, in which the Respondent Dalton displayed disregard for the Board's proceedings and refused to cooperate with the Relator which prevented Relator from identifying any other improper acts constituting the unauthorized practice of law, Respondents have cooperated fully with Relator. Accordingly, based upon these findings and the comparison of Respondents' behavior to the Respondent's behavior in the Dalton matter, the Panel agrees with Relator that civil penalties are not warranted in this case, thereby adding further justification for acceptance of the Settlement Agreement.



**VI. PANEL RECOMMENDATION**

The Panel recommends that the Board accept the Settlement Agreement in the form submitted by the parties, and that the Chair issue an order dismissing the Complaint as required by Gov.Bar R. VII(5b)(D)(1). Parties are to pay their individual costs associated with this matter.

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

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Wednesday G. Shipp, Esq.,  
Panel Chair