



Rules and Decisions

[Recently Filed Disciplinary Decisions and Complaints](#) | [Home](#)

DECISION FROM DISCIPLINARY REPORTS AND DECISIONS SEARCH

Filed February 17, 2000

**BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

In the matter of:

EDWARD B. BARTOLI,
Commission No. 96 CH 739

Attorney-Respondent,

No. 127507

REPORT AND RECOMMENDATION OF THE HEARING BOARD

INTRODUCTION

The hearing in this matter was held on July 27, and 28, 1999, and August 5, 1999, at the offices of the Attorney Registration and Disciplinary Commission, 130 East Randolph, Suite 1100, Chicago, Illinois. The Panel consisted of Arthur B. Smith, Jr., Chair, John M. Steed, III, and Martin J. Saladin. Participating in the hearing were Mary Robinson, the Administrator, and Sari Montgomery, counsel for the Administrator of the Attorney Registration and Disciplinary Commission ("ARDC"). Joseph A. Izen, Jr., represented the Respondent, Edward B. **Bartoli**.

THE COMPLAINT AND ITS ALLEGATIONS

On November 15, 1996, the Administrator filed a five-count complaint against Respondent pursuant to Supreme Court Rule 753(b). On September 16, 1998, the Administrator filed a six-count first amended complaint. Count I of the first amended complaint alleged that in 1991, Respondent agreed to work with Michael Richmond, Michael Vallone, and Robert Hopper at the Heritage Assurance Group (Heritage). Heritage was a membership organization providing low cost estate planning services to

PAGE 2

its members. Heritage hired insurance agents to recruit new members. These representatives gathered financial and beneficiary information from the prospective members, discussed various trust packages offered by Heritage, advised the prospective members about appropriate trust packages, and delivered the documents to the members. The representatives collected the membership fee and were paid a commission based on the amount of the fee. None of the representatives were licensed to practice law in Illinois.

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

financial information, Respondent submitted it to one of Heritage's secretaries for preparation of the trust documents. The secretaries completed the documents and returned them to the representative without Respondent's review. The representative delivered the documents to the member for explanation and execution.

In exchange for his services, Respondent was paid between \$100 and \$300 of the membership fee for each trust he reviewed. The balance of the membership fee, after the representative's commission and Respondent's fee were paid, was retained by Heritage.

Based on these factual allegations, the Administrator charged Respondent with representing a client when the representation of that client may be materially limited by the lawyer's responsibilities to the lawyer's own interests; sharing legal fees with a nonlawyer; assisting a person who is not a member of the bar in the performance of

PAGE 3

activity that constitutes the unauthorized practice of law; and engaging in conduct that is prejudicial to the administration of justice in violation of Rules 1.7(b), 5.4(a), 5.5(b), and 8.4(a)(5) of the Illinois Rules of Professional Conduct.

Count II of the first amended complaint alleged that in July 1994, Respondent and Heritage founded the Aegis Company. Aegis was a membership organization that provided estate planning solutions using a "common law business organization" (CBO). According to Aegis, the CBO was the ultimate estate plan that could be used to insulate assets from liability, eliminate probate, eliminate estate and capital gain taxes, and substantially reduce income tax. Nonlawyer representatives were paid a commission to sell memberships in Aegis. The representatives explained the CBO to prospective members and advised them how to utilize a CBO as an estate planning device. After a member agreed to purchase a CBO, Respondent directed the drafting of the documents and assisted the member in the execution of the documents. The fee charged for a CBO ranged from \$12,000 to \$25,000, of which Respondent received fifty percent, the representative received twenty-five percent, and Aegis received twenty-five percent.

Under the applicable law, the CBO's sold by Aegis would not achieve the estate planning and tax avoidance goals suggested by Aegis. Respondent knew or should have known that the CBO's would not achieve the tax avoidance goals he represented to the members, and would expose the members to potential tax penalties.

Based on these factual allegations, the Administrator charged Respondent with representing a client when the representation of that client may be materially limited by the lawyer's responsibilities to the lawyer's own interests; sharing legal fees with a nonlawyer; assisting a person who is not a member of the bar in the performance of

PAGE 4

activity that constitutes the unauthorized practice of law; and engaging in conduct that is prejudicial to the administration of justice in violation of Rules 1.7(b), 5.4(a), 5.5(b), and 8.4(a)(5) of the Illinois Rules of Professional Conduct.

Count III of the first amended complaint alleged that between January and March 1994, Respondent and Richmond met with William DiSomma to sell DiSomma a "multi-trust system." Respondent advised DiSomma that by utilizing this system, DiSomma would substantially reduce his income taxes. DiSomma paid Respondent \$12,000 for the trust system. On March 3, 1994, DiSomma executed the trust documents, but Respondent dated the declaration of trust January 1, 1994. Respondent and DiSomma's wife were initially named co-trustees of the trust.

no time did Respondent or Heritage respond to the request for a refund.

Based on these factual allegations, the Administrator charged Respondent with representing a client when the representation of that client may be materially limited by the lawyer's own interests; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and engaging in conduct that is prejudicial to the administration of justice in violation of 1.7(b), 8.4(a)(4), and 8.4(a)(5) of the Illinois Rules of Professional Conduct.

PAGE 5

Count IV of the first amended complaint alleged that based on Respondent's activities for Heritage and Aegis, he violated two Illinois statutes. Specifically, Respondent violated 815 ILCS 505/2BB which provides that the assembly, drafting, execution, and funding of a living trust document by a corporation or nonlawyer is an unlawful practice. Respondent also violated 720 ILCS 5/5-2(c) which provides that a person is legally accountable for the conduct of another when, either before or during the commission of an offense, he solicits, aids, abets, agrees or attempts to aid, another person in the planning or commission of the offense.

Based on these allegations, the Administrator charged Respondent with committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer; and engaging in conduct that is prejudicial to the administration of justice in violation of Rules 8.4(a)(3) and 8.4(a)(5) of the Illinois Rules of Professional Conduct.

The majority of the factual allegations and all the allegations of misconduct contained in Count V of the first amended complaint were voluntarily dismissed by the Administrator.

Count VI of the first amended complaint alleged that on September 29, 1995, the Illinois Supreme Court granted Respondent's motion to transfer to inactive status, and Respondent was no longer licensed to practice law in Illinois. In May 1996, Respondent was affiliated with the Athens Company, an Ohio entity. Athens was in the business of selling CBO's in much the same manner as Aegis. Athens was owned and operated, in part, by nonlawyers. Respondent was the legal director of Athens, but he was not licensed to practice law in Ohio.

PAGE 6

In August 1996, Dr. Max Alumbaugh, a resident of Oklahoma, traveled to Ohio, met with Respondent and executed the CBO documents. Respondent advised Alumbaugh that the CBO would ensure absolute asset protection and enable Alumbaugh to avoid paying all taxes. At no time did Respondent inform Alumbaugh that he was not authorized to practice law. Many of the documents identified Respondent as an attorney. Respondent and Alumbaugh's wife were initially named as co-directors of the management company created by the CBO documents. Alumbaugh paid \$25,000 for the CBO and Athens retained a portion of the fee.

In 1996, Alumbaugh was audited by the Internal Revenue Service and was advised that the CBO established by Respondent would not achieve the benefits as represented by Respondent. Alumbaugh dissolved the CBO.

Based on these factual allegations, the Administrator charged Respondent with representing a client when the representation of that client may be materially limited by the lawyer's responsibility to his own interests; sharing legal fees with a nonlawyer; engaging in the unauthorized practice of law; making false or misleading communications about the lawyer's services; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; engaging in conduct that is prejudicial to the administration of justice; and engaging in conduct that tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute in violation of Rules 1.7(b), 5.4(a), 5.5(a), 7.1, 8.4(a)(4), and 8.4(a)(5) of the Illinois Rules of Professional Conduct and Supreme Court

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

THE ANSWER

Respondent filed a third amended answer to the Complaint on November 19, 1998. Regarding Count I, Respondent admitted that he agreed to provide assistance to the members of Heritage along with Richmond, Vallone and Hopper. He also admitted that Heritage was a membership organization that provided information to its members in the area of estate planning, asset preservation and investments. Respondent admitted that Heritage hired insurance agents to recruit new members and distribute information about Heritage's services, but denied that these representatives advised the prospective member regarding appropriate trust packages. He admitted that the representatives received compensation for their services, but denied that they received a commission.

Respondent also admitted that his responsibilities at Heritage included reviewing members' financial information, contacting members to verify the accuracy of their financial information, and preparing trust and other estate planning documents. He also admitted that he did not personally meet with every member and, in many cases, denied that such a meeting was necessary. He also admitted that after reviewing the members' financial information, and he submitted it to one of Heritage's secretaries for preparation of the trust documents. The secretaries completed the documents, under his supervision, and returned them to the representatives.

Respondent admitted that the representatives delivered the documents to the members, but denied that they gave the members legal advice. Respondent admitted that he was compensated for his services, and that Heritage retained a fee for its services and the services of the representatives. Respondent denied all allegations of misconduct.

PAGE 8

Regarding Count II, Respondent admitted that he was involved with the Aegis Company, but denied that he founded it. Respondent also admitted that Aegis was a membership organization that provided estate planning solutions including using CBO's, and that CBO's could be used to insulate assets from liability, eliminate probate, and eliminate or reduce estate, capital gains, and income taxes.

Respondent admitted that Aegis and its representatives were compensated for their services and he received fees for his services, but denied the percentages specified by the Administrator. He denied that the representatives explained the CBO to prospective members and advised them how to utilize a CBO as an estate planning device, and stated that the representatives merely obtained information from the members. Respondent admitted that licensed attorneys directed the drafting of the documents and assisted the member in the execution of the documents.

Respondent denied that the CBO's sold by Aegis would not achieve the stated estate planning and tax avoidance goals and that he knew or should have known that the CBO's would not achieve these goals. Respondent denied all allegations of misconduct.

Regarding Count III, Respondent admitted that he met with the DiSommas, and that they paid him \$12,000 for the trust system. He also admitted that the DiSommas executed the trust documents and that Respondent and DiSomma's wife were initially named co-trustees of the trust. Respondent denied that he failed to advise the DiSommas to seek the advice of independent counsel. He also denied that the DiSommas' trust system was useless and that the DiSommas requested or were entitled to a refund. Respondent further denied all allegations of misconduct.

PAGE 9

Regarding Count IV, Respondent requested that the Panel take judicial notice of the two Illinois statutes at issue in that count. He also denied that he violated either of those statutes.

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

Regarding Count VI, Respondent admitted that he filed a motion to transfer to inactive status with the Illinois Supreme Court. He also stated that he lacked the requisite knowledge to admit or deny that on September 29, 1995, the Illinois Supreme Court granted his motion, and that he was no longer licensed to practice law in Illinois. Respondent admitted that he provided legal information concerning the use of business trusts to individuals affiliated with the Athens Company, an Ohio entity. He also admitted that he was not licensed to practice law in Ohio or Oklahoma. Respondent denied that he was the legal director of Athens. Respondent denied that Athens was in the business of selling CBO's in the same manner as Athens, but admitted that Athens provided trust services involving CBO's.

Respondent stated that he lacked the requisite knowledge to either admit or deny the allegation that Alumbaugh was a resident of Oklahoma. He denied that he told Alumbaugh that he was an attorney licensed to practice law in Illinois and that he failed to inform Alumbaugh that he was not authorized to practice law. Respondent admitted that he met with Alumbaugh and advised him regarding tax savings, estate planning and asset protection through the use of a CBO. Respondent admitted that the Alumbaughs

PAGE 10

elected to utilize the CBO, but denied that he assisted Alumbaugh in the execution of the CBO documents or that he backdated any of those documents. He further denied that many of the documents identified him as an attorney. Respondent stated that the trust documents were the best evidence of whether he was appointed as co-directors of the Alumbaugh's management company.

Respondent denied that he failed to fully advise the Alumbaughs of the legal effects of the documents and denied that the documents created a conflict of interest. Respondent also denied that he advised the Alumbaughs that the CBO would allow them to avoid all taxes and would insure absolute asset protection. Respondent stated that he lacked sufficient knowledge to admit or deny whether the Alumbaughs paid \$25,000 for the CBO and whether Athens retained a portion of the fee. He also stated that he lacked sufficient knowledge to admit or deny whether Alumbaugh had any subsequent dealing with the Internal Revenue Service. Respondent denied that he knew or should have known that the CBO would not achieve the purported benefits. He further denied all allegations of misconduct.

EVIDENCE

The Administrator presented the testimony of Michael Richmond, William DiSomma, William Marutzky, Robert Hopper and introduced Administrator's exhibits 1-8 & 10-66. Respondent introduced Respondent's exhibits 1-6, and 8. Respondent did not appear or testify at the hearing. Respondent claimed that he was unable to attend the hearing because of his medical condition; however, Respondent failed to submit adequate medical documentation to substantiate this claim. On July 27, 1999, Respondent participated in the hearing by telephone. On July 28, 1999, the Panel contacted

PAGE 11

Respondent by telephone, but he stated that he was unable to participate on that date. On August 5, 1999, the Panel attempted to contact Respondent by telephone at five different times throughout the hearing, but Respondent was unavailable on that date.

Michael Richmond

In 1990, Michael Richmond formed Heritage. Heritage was a membership organization with the stated purpose of assisting members in meeting their estate planning needs and dealing with financial

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

writing responsibility. Hopper was responsible for daily business activities and recruiting new members. Respondent was legal counsel for Heritage, and prepared the necessary legal documents. Heritage initially operated as a sole proprietorship, but was later changed to a corporation and ultimately to a business trust, after a change in Illinois law. After Heritage became a business trust, Richmond owned 50 percent of the beneficial interests, and Vallone and Hopper each owned 25 percent of the beneficial interests. Richmond left Heritage in early 1994. (Tr. 49-54, 110, 123, 149, 175-78; Adm. Ex. 6).

Heritage recruited individuals in the insurance and securities businesses to sell memberships. These individuals were required to take a two or three day training course before they were authorized to be representatives of Heritage. None of the representatives were attorneys. The course included instruction on estate planning,

PAGE 12

taxation, insurance applications, and the use of trusts. The representatives were also instructed about the products offered by Heritage. Respondent gave a 15 to 45 minute presentation during the training course. (Tr. 54-58, 61-62, 79, 85-87; Adm. Exs. 1, 5).

Representatives could receive further training from Heritage by enrolling in a four-day training course. Richmond, Vallone and Respondent taught the course. Respondent gave a 30 to 45 minute presentation on one or two occasions. Upon completion of this course, the representatives were certified as paralegals by Respondent. The representatives had no other paralegal training. The purpose of the paralegal course was to allow representatives to work under the direct supervision of Respondent. The only supervision Respondent provided to the paralegals was an occasional telephone call. Between 60 and 70 individuals became representatives by taking these courses. (Tr. 58-62, 77, 150-51, 178-80; Adm. Ex. 1, at 21-23).

Representatives obtained prospective members from their insurance clients, by sending mailers, or by holding seminars. Representatives would meet with prospective members and complete a data sheet that required them to collect financial information, and calculate whether the prospective member would benefit from Heritage's services. The data sheet included a "calculation of cost of dying" section, which the representatives used to demonstrate the amount the prospective member's estate would lose in the probate process without Heritage's products. The representative calculated the cost of dying by applying a percentage of between four and 20 percent. These percentages were obtained from various legal articles. The representative chose the percentage, and there was no Illinois statute setting the percentage of an estate that would constitute the probate fee. The data sheet required a member to choose a successor trustee and alternate trustee,

PAGE 13

determine who his or her heirs were, choose an executor, complete a durable power of attorney, and nominate a conservator. The representatives informed the members that Heritage had attorneys who prepared the documents, and that an attorney would discuss their case with them and answer their questions. Heritage did not attempt to exclude the member's own attorney or accountant from the process. (Tr. 64-72, 123-24, 127-29, 144, 171-72; Adm. Ex. 1, at 97).

After an individual decided to become a member of Heritage, the representative completed the necessary forms, and the individual signed the forms and gave the representative a check for one-half of the membership fee. The representative sent the membership information and the check to Heritage. After Heritage received the information, it was entered into a computer and a copy was given to Respondent. The check was deposited into Heritage's bank account. (Tr. 73-74; Adm. Ex. 1, at 92).

Respondent reviewed the membership information, authorized the preparation of specific

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

cases, Respondent would contact the members by telephone to discuss their case. However, in late 1992 and 1993, Richmond was informed that Respondent was not contacting every member, and discussed this matter with Respondent. Respondent would occasionally meet personally with a member, but not as a general rule. Respondent knew that the representatives were

PAGE 14

not attorneys. Respondent did not employ the representatives and did not directly supervise them. (Tr. 53-57, 62-63, 74-76, 117-21, 139-41, 172-73, 181, 184-85).

After the documents were prepared, they were sent to the representative. The representative delivered the documents to the members, explained any necessary information, collect the second half of the membership fee, and executed the documents. Respondent generally did not accompany the representative for the delivery or execution of the documents. After the documents were executed, they were sent back to Heritage for safekeeping. Usually, a subsequent meeting between the representative and the member was needed to ensure that the funding of the trust was complete and the necessary assets were transferred into the trust. The documents were kept at Heritage's office and everyone at the office had access to them. The members' files would remain with Heritage, even if Respondent no longer worked for Heritage. (Tr. 77-79, 145, 174-75).

Heritage charged \$1295 for a membership that included a living trust. 63, 128. The membership benefits included preparing the necessary legal documents, continuing support to modify the documents, and receiving a periodic newsletter. The members were also required to pay an annual fee of between \$50 and \$100. Generally, Heritage paid the representative \$500 for their services. The representatives had discretion to charge more for the memberships, and they would receive the additional amount. In 1993, total membership sales amounted to \$514,850, of which Heritage paid \$264,068 to its representatives. Heritage also paid for the costs of legal research, representative assistance, clerical work, record keeping, office rent, and utilities. (Tr. 62, 64-65, 89-90, 134, 137; Adm. Ex. 5).

PAGE 15

On July 1, 1993, Respondent signed an attorney/client agreement with Heritage in which he agreed to be paid \$100 per hour for performing legal work. The contract also states that Respondent would provide Heritage with a "written itemized statement every 30 days of worked hours." Respondent represented the membership program and the members, but he did not sign an attorney/client agreement with any individual members. Despite the terms of the agreement, Respondent never submitted time records to Heritage and was paid \$100 for each membership that was submitted to Heritage, even when he had not reviewed the membership information or performed any legal work for the member. Richmond did not know how much time Respondent spent reviewing members' information or creating the trusts, but estimated that it took one hour per member. If Respondent accompanied the representative in delivering the documents, he spent an additional one or two hours and would receive more than \$100. (Tr. 66, 79-82, 88-89, 123, 133-35; Adm. Exs. 3, 5).

In December 1993, Respondent disputed the amount of money he was paid by Heritage and submitted a document to Richmond explaining the amount of money he was owed. In that document, Respondent enumerated the number of trusts on which he worked, but he did not provide an hourly accounting of his work. In 1993, Respondent was paid \$63,700 in fees from Heritage. (Tr. 89-93, 113-16; Adm. Exs. 4, 5, at 16).

At one point, Richmond received reports that Respondent was not contacting all the members before preparing the trust documents. Richmond confronted Respondent and Respondent promised that he would contact each member. (Tr. 173).

irrevocable trust used for operating businesses. Respondent explained to Richmond that a CBO would provide asset protection, reduce income tax liability by 70 percent or more, eliminate estate and capital gains taxes, and offer privacy of financial records. Richmond opined that some of these claims were exaggerated or untrue. (Tr. 98-101, 151-52, 156-60; Adm. Ex. 1, at 16).

Under a CBO, all assets of the trust are conveyed to the trustee in fee simple. The beneficiaries of that trust hold a certificate entitling them to a pro rata share of any distribution made in the future. In order to create the trust, an individual provides nominal consideration to the trustee. The trustee agrees that he will be bound by the terms of the trust contract, and accepts title to the assets and manages them according to the trust agreement. The trustee issues certificates in exchange for more property. The price of a CBO ranged from \$12,000 to \$15,000, but varied based on the individual case. (Tr. 99, 151-53, 162).

Respondent trained representatives who worked for Heritage to sell CBO's. The representatives made the initial contact with individuals interested in a CBO. Respondent would subsequently meet with the interested individuals, explain the system, and prepare the necessary documents. The fee was paid to Respondent, and he divided the fee by giving one-third to the representative and one-third to Heritage, and retaining one-third for himself. After Richmond left Heritage in February 1994, Heritage created the Aegis Company to market and sell CBO's. (Tr. 101-105, 163-64, 183; Adm. Ex. 4).

Initially, Heritage members were from Illinois. In 1992 and 1993, Heritage recruited representatives and members from Illinois, Indiana and Ohio. Eventually, two-thirds of Heritage's members were from outside of Illinois. Heritage relied exclusively

PAGE 17

on Respondent to perform legal services and did not retain any attorneys from any other state. (Tr. 105-107).

Richmond filed a complaint with the ARDC against Respondent in 1994, because he was dissatisfied with a trust Respondent created for him and because Respondent allegedly had not properly represented other individuals in the creation of their trusts. Respondent, Vallone and Hopper have a civil action pending against Richmond alleging that Richmond embezzled money from Heritage. The accounting of Heritage's records are highly disputed by the parties in that case. After leaving Heritage, Richmond marketed CBO's as a competitor of Respondent, Heritage and Aegis. He has not been involved with any trust companies since 1998. Richmond is the subject of a Security Exchange Commission injunction, but the injunction is not related to selling trusts. Richmond acknowledged seeing a letter from the IRS stating that pure trusts are not subject to tax, but denied that the trusts provided by Heritage were pure trusts. (Tr. 107-113, 165-67, 170, 180-84).

William DiSomma

William DiSomma purchased a CBO from Heritage in 1994. He is a self-employed trader of Standard and Poor futures. William's wife, Mary, is a podiatrist who owns her own practice. He met Respondent in 1994, after a fellow trader referred him to Richmond, and Richmond referred him to Respondent. William was primarily interested in paying less taxes, and was also concerned about protecting his assets. Respondent, Richmond and Vallone told William that they could create a multi-level trust system that would dramatically reduce his taxes and limit his liability. Richmond, Vallone and Hopper told William that Respondent was a Harvard educated lawyer who had been

PAGE 18

creating this trust system for a long time. William verified that Respondent graduated from Harvard

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

and Respondent attended the last meeting. Vallone explained that the trust system would reduce the DiSommas' risk of exposure by limiting their liability to the amount of money held in the particular trust. William decided that he wanted the system after the first meeting. The DiSommas paid \$12,000 for the trust system, \$6,000 at one of the first meetings, which was deposited into Respondent's account, and \$6,000 at the final meeting, which was deposited into Heritage's account. William also paid James Savino, an accountant presented by Richmond, \$3,000 to perform the initial accounting work and would pay him \$600 per month to continue working as his accountant. (Tr. 192-94, 207, 214, 219-20; Adm. Exs. 49, 50).

The trust system involved creating seven trusts and transferring money from one trust to another. The trusts included a family trust, business trust, podiatric trust, equity trust, leasing trust, vehicle trust and charitable trust. The income from Mary's podiatric practice was deposited into the podiatric trust. William's trading income was deposited into the business trust. The money from the podiatric and business trusts flowed into the equity trust. The equity trust would loan money to the other trusts. The DiSommas' house was placed in the family trust and all expenses for the house were paid from that trust. Similarly, the DiSommas' cars were transferred into the vehicle trust and all expenses for the cars were paid from that trust. The money that was not used by these trusts was transferred to the charitable trust. The DiSommas were required to donate five

PAGE 19

percent of the amount of money in the charitable trust to charity. The money remaining in the charitable trust would be available to loan to the other trusts. (Tr. 197-99, 201, 220-22; Adm. Ex. 48).

As William understood the trust system, his income would be deposited into the business trust and flow into the other trusts by either a loan or distribution. If the money were lent to other trusts, the trust making the loan would charge interest. For example, if the business trust lent money to the equity trust, the business trust would charge 3 percent interest. If the equity trust lent money to the another trust, it would charge 5 percent interest. Any remaining money would be donated to the charitable trust. (Tr. 231-32).

On March 3, 1994, the trust documents were executed. William was required to transfer his property to Mary and Respondent. Respondent told William that he would initially be appointed as one of the executive officers of the trusts because William could not personally own the property and become a trustee without a break in the ownership of the property. Immediately after William signed certain documents, Respondent signed other documents resigning as an executive officer and appointing William as a trustee. The DiSommas were ultimately trustees of the trusts. (Tr. 233-36; Adm. Ex. 48A).

As trustees, William and Mary would draw a salary for the services they performed for the trust. They would determine their own salaries, so they could also determine the amount of taxes they would pay. Respondent told the DiSommas that they would not have to pay taxes on any other income. They would be required to buy their own food, clothes, and incidental items, and the trusts would pay for everything else. Before William entered into the trust system, he paid 38 percent tax rate on his income over \$60,000 or \$70,000, and 28 percent tax rate on capital gains. Under the trust

PAGE 20

system, he would donate 5 percent of his income to charity and pay 15 percent tax rate on the income he earned as a trustee. William received a manual explaining the trust system, and he was unsure if it was consistent with what he was told about the operation of the system. Respondent never advised the DiSommas to seek the advice of another attorney. (Tr. 194, 199-202, 216, 221, 232, 234; Adm. Ex. 47).

by the DiSommas. Respondent replied by challenging Levin to prove that the trust system did not work. Levin estimated that it would cost \$50,000 to prove the case. William paid Levin to undo the trust and continues to pay him to handle problems that arose from the system. William estimated that he has paid Levin \$12,000 in legal fees. These fees included Levin's representation of the DiSommas in discussions with the IRS. Prior to entering into the trust system, neither William nor Mary had any problems with the IRS. William was not concerned about losing his trading license if he worked for the trust and deposited his earnings into the business trust. As a result of his experience, William lost trust in lawyers. (Tr. 209-211, 217, 219, 224-29).

William Marutzky

William Marutzky testified as an expert witness. He received bachelor and masters degrees in accounting, and is a certified public accountant. He is also a licensed attorney, and has received a master of law degree in taxation. Since 1972, Marutzky has

PAGE 21

been employed in various capacities performing taxation work. He has worked for the Northern Trust Company and Harris Bank and Trust Company in the trust field and in the area of foreign trusts. He has also taught estate planning and tax courses at DePaul College of Law, Illinois Institute of Technology Chicago Kent College of Law, Northern Illinois University, and North Central College. Marutzky has presented numerous seminars to the American Institute of Certified Public Accountants on topics including mergers, acquisitions, liquidations and S corporations. He has taught classes for the Arthur Anderson accounting firm. He has also instructed IRS agents on how to find assets and foreign asset protection trusts, how to use the laws of foreign jurisdictions to discover if taxpayers are violating tax laws, and how to get information from foreign trusts. Marutzky has testified in the United States District Courts and state courts as an expert. (Tr. 242-50; Adm. Ex. 54).

Marutzky reviewed the promotional material distributed by Heritage relating to the multi-trust system, the trustee's manual for the system, and the documents executed by the DiSommas establishing their trust system. After the family trust was created, other trusts were created including the business, podiatric, equity, leasing and vehicle trusts. The property in the family trust was transferred to the other trusts. There was no consideration given to Mary when she made the initial transfer of her property to William. William transferred the property to the family trust in exchange for certificates of beneficial interest (CBI's). The family trust transferred property to other trusts in exchange for CBI's. The CBI represents a right to receive income that might be distributed by the trustee. The CBI gave no ownership rights in the assets and no ability to controlled the use of the assets. The trustees control the assets. Their powers were

PAGE 22

very broad, and there were very few real limits on their control over the assets. There were no beneficiaries under the trust system. The DiSommas, as trustees, had complete discretion to decide whether or not to distribute any income to the holders of the CBI's. The CBI's were irrelevant for asset protection or tax reduction. (Tr. 250-63, 328, 379-80, 402-405; Adm. Ex. 46, 48A-C, 48G).

In contrast, under a common law trust, there is an agreement between two parties in which property is transferred from one party to the other to be held for the benefit of named beneficiaries. There are duties and limits imposed on the trustee. Typically, the trust would describe the property and how it would be used for the benefit of the beneficiaries. At common law, a trust is considered a separate entity from an individual. (Tr. 261-62, 329).

He testified that the goals of the trust system were to avoid estate taxes, avoid probating assets, offer privacy, protect assets, and minimize taxes. Marutzky opined, however, that the DiSommas' trust system would not accomplish the stated goals. He noted that the promotional material stated

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

death. There is a \$650,000 exemption, and the tax would apply to assets over \$650,000. (Tr. 268-69, 299, 304, 443; Adm. Exs. 46, at 17, 47, at 12-13).

In the DiSommas' case, however, if the value of their estate was less than \$650,000, there would be no estate tax. However, if the value of their estate was more

PAGE 23

than \$650,000, the trust system would not shield their estate from the estate tax. Estate taxes apply to assets an individual owns, has control over, or has an interest in. The DiSommas retained control over the assets in the trusts, so those assets would be subject to estate taxes. Marutzky disagreed with the claim in the trust manual that the transfers were not taxable because they were made in exchange for CBI's. Based on his expertise, the courts would not recognize the operation of CBI's and would impose an estate tax. It is possible that the CBI's would reduce the fair market value of the assets, but the estate tax would not be completely avoided. (Tr. 299-302, 445-57).

The trust system's goal of privacy also would not be accomplished, according to Marutzky. The promotional materials stated that "[w]ith Sole Proprietorships, Partnerships, or Corporations your company is under the regulation of government. Everything in your company can be made public by order of any court, or state or federal government agency. They can force you to turn over your books. However, with a Multi-Trust System your information is 100% private." The trust's documents would be attainable by government organizations. The IRS has authority to issue a summons to obtain business records. The trust system, at best, would provide a colorable claim that the records should not be disclosed, but such a claim would not prevail. The trustees would receive more privacy than officers of a corporation because they are not required to register with the Illinois Secretary of State and would not be required to disclose their assets. (Tr. 269-71, 304, 418-23, 450-51; Adm. Ex. 46, at 17).

According to Marutzky, the trust system would not accomplish the goal of asset protection. The trust system manual claimed that the system would protect a person from lawsuits, liens, and attachments because the person controls, but does not own, the assets.

PAGE 24

These claims are based on the supposition that there is a spendthrift provision in the trust system. However, according to Marutzky, there is no valid spendthrift provision contained in the trust system. A spendthrift trust cannot be self-declared and must be created by someone other than the beneficiary. A properly founded spendthrift provision provides that the trustee need not recognize claims of beneficiaries against either the corpus of the trust or distributions of the trust to the beneficiary and would protect the trust against all creditors except government agencies. In the DiSommas' trust system, Mary conveyed her property to William and he conveyed it to the family trust. A court reviewing these facts would refuse to enforce any spendthrift provision for one of two reasons. The court would find that no trust was created, or that Mary effectively conveyed the property to the trust and the spendthrift provision was self-declared. (Tr. 273-75, 305, 379; Adm. Exs. 47, at 6-8, 48 A, at 36).

Mary could not limit her professional liability based on the trust system, according to Marutzky. As a doctor, Mary is prohibited from limiting her liability under the Illinois Licensing Act. She would not be immune from her negligence, and if a judgment were entered against her, she could not protect her assets from a judgment creditor. Marutzky opined that the podiatric trust is not permitted under Illinois law, a judge would set it aside, and a creditor could reach the assets in other trusts. Although a trust is generally considered a separate entity and is not liable for the debts of other entities or for an amount that exceeds its assets, a doctor cannot limit her liability with a trust. Also, under Illinois law, a doctor cannot practice medicine as an employee of a trust. (Tr. 276-77, 305, 359, 369, 372-73).

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

establishing a business trust as an operating entity for trading. Under the rules, a membership in the Board of Trade can be held by a trust, but the trust under the multi-trust system would not be the type of trust that is permitted to hold a membership. Additionally, at the time William entered into the trusts, he was leasing his membership, and the rules would prohibit him from holding the lease in trust. Accordingly, William would be subject to sanctions under the rules by the Mercantile Exchange. (Tr. 278-81, 295; Adm. Ex 53A, at 6).

Marutzky admitted that a small degree of asset protection would be achieved if the DiSommas were involved in litigation. If a judgment were entered against the DiSommas, to reach the trust assets, the judgment creditor would have to prove that the trust was invalid. The fact that the judgment creditor would have to engage in this additional legal proceeding offers some limited asset protection. (Tr. 393-400).

The trust system also would not significantly reduce the DiSommas tax liability, according to Marutzky. The tax laws do not allow an individual to assign future income. If the IRS examined the DiSommas assignments of their income, they would find a tax deficiency and require them to report the income on a personal tax return. Generally, the IRS taxes income to the entity that earns it and not the entity to which the income is assigned. The exception to this general rule is where there is a contract between the entity and the service provider and the entity controls the work and determines who will perform the work. In such a case, the service provider's income can be assigned to the entity. The DiSommas were not employees of their trust. The trust documents prohibited

PAGE 26

employees, and if they were employees the trust would have been required to pay employment taxes. (Tr. 282-84, 305, 375-78).

Additionally, Marutzky opined that the trust materials overstate the amount of tax deductions allowed under the trust system. For example, the DiSommas would not be entitled to deduct all of their housing expenses or their children's educational expenses. Under the tax laws, housing provided to an employee can be deducted by the employer if the housing is for the convenience of the employer and is solely related to the employer's business. Such situations would include housing provided to a clergy member or a university president. There are situations where a taxpayer can convey his residence to a trust and rent it back from the trust. However, the taxpayer must pay a fair market value for the rent and living in the residence must be necessary to managing the trust. Educational expenses are deductible under limited circumstances relating to the education of an employee of a business, but would not apply if the education prepared the employee for a new business. Accordingly, expenses for college education of the DiSommas' children would not be deductible. Additionally, there is nothing in the trust documents to support the information William stated he was given by Respondent that he was required to declare income consistent with his expenses, or that he could limit his taxable income to clothes, food and incidental expenses. (Tr. 285-87, 407-11, 413-17).

The money contributed to the DiSommas' charitable trust would be tax deductible, but not all expenses related to the trust would be deductible, according to Marutzky. The charitable trust is considered a private nonoperating foundation that must give 5 percent of its income to a public charity. Contributions to this trust would qualify as tax deductible. However, only ordinary and necessary expenses relating to the

PAGE 27

contributions would be deductible. Also, every charity in Illinois must register with the Illinois Attorney General's Office. There is no indication that the DiSommas registered as a charity. (Tr. 287-89, 434-39).

of the goals of asset protection and minimizing income taxes can be accomplished with traditional devices such as land trusts, gifts to children, and establishing a charitable trust. To protect assets, an individual must follow the applicable rules and make disclosures to the IRS. Assets can also be protected by transferring them outside the United States, but the income from those investments is taxable. (Tr. 302-304).

Marutzky concluded that the IRS would disregard the DiSommas' trust system in an audit. He supported this conclusion with a judicial finding by the United States Tax Court in Muhich v. Comm. Respondent of Internal Revenue, No. 21561-97 (1999). In that case, the tax court found that a trust system, similar to the DiSommas' system, was a "sham" because it lacked economic substance and, therefore, did not protect certain income from taxation. The trust system in the Muhich case was created by Respondent and Heritage. (Tr. 295-98; Adm. Ex. 55).

Marutzky acknowledged that the requirements for a valid trust under Illinois law were satisfied in the DiSomma trust documents. However, Marutzky stated that the existence of the elements of a valid trust does not mean that the trust is not a "sham." A

PAGE 28

trust can be a sham based on its operation. The IRS applies either an organizational or operational test to evaluate a trust. Under the organizational test, the content of the trust documents and the purpose of the trust are examined. Under the operational test, the manner in which the terms of the trust are achieved is examined. For example, the operational test would evaluate whether the trustees actually manage the trust property. 355-56. The tax court in Muhich used a combination of the organizational and operational tests. (Tr. 329-46, 348-49, 357-58; Adm. Exs. 48A, Adm. Ex. 55).

Marutzky also rendered his opinion regarding the trust system Respondent established for Linda and Max Alumbaugh. Respondent admitted that Max traveled from Oklahoma to Ohio to meet with Respondent. Respondent advised Max about the benefits of the multi trust system for estate planning, asset protection and tax minimization. Respondent drafted the trust documents and the Alumbaughs paid him \$25,000. Respondent also drafted or supervised the preparation of the Director's Manual for operating the trust system. The promotional material prepared for the type of trust system purchased by the Alumbaughs was similar to the material given to the DiSommas, but also contained information regarding offshore trusts. (Tr. 306-308; Adm. Exs. 59, 61A-61E, 62, 63).

The Alumbaughs' trust system created the Alumbaugh Management Company, the Alumbaugh Business Company and the MLA Corporation. The MLA Corporation acted as the trustee for the MLA International Trust and the MLA Global Trust. The system was funded by the Alumbaugh's assets. Linda transferred her property and income to Max. Max transferred his property and income and Linda's property to a management company. Linda and Respondent were initially the directors of the

PAGE 29

management company. Linda and Respondent appointed Max a director, and Respondent resigned. The management trust issued CBI's to Max. The management company transferred some of its assets to a business company, and the business company issued CBI's to the management company. The CBI's issued to the management company are transferred to the MLA International Trust in Belize, and do not remain in the United States or in the control of the United States. The MLA International Trust and the MLA Global Trust named Linda as the beneficiary. (Tr. 309-13; Adm. Exs. 60, 61A-61E).

The promotional materials claimed that the trust system would provide privacy, asset protection, elimination of estate taxes, and minimization of income taxes. Marutzky concluded that the Alumbaugh's trust system would not accomplish the stated goals. The Alumbaughs would not

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

The Alumbaugh's could receive some asset protection from offshore trusts, if they were properly established, according to Marutzky, but the Alumbaugh's trusts were not properly created. In Belize, an entity must obtain specific authority from the government to act as a trustee. The MLA Corporation was set up to act as trustee for the MLA International Trust and the MLA Global Trust. It was incorporated under the laws of Belize, but it did not seek trust powers and was not authorized to act as a trustee in Belize. (Tr. 315-16).

PAGE 30

Additionally, the Alumbaugh's assets were not put into the trust. The Alumbaugh's own a farm, livestock, farm equipment, and a medical practice, located in Oklahoma. Usually, to protect such assets, they must be located where the trust has been established. Because the assets are in Oklahoma and the trust is in Belize, the assets could not properly be placed in trust. Generally, to protect land, the owner must abandon it. Oklahoma law would have provided some protection for the Alumbaugh's assets if they had been placed in a corporate trust because that state recognizes spendthrift provisions to protect assets from creditors. (Tr. 317-18).

Marutzky also stated, for the same reasons as given in the DiSomma trust, that the Alumbaugh trust system would not eliminate estate taxes and would not minimize income taxes. Marutzky concluded that the trust system purchased by the Alumbaugh's provided no value to them. (Tr. 314-15, 318-19).

Marutzky was unaware of the definition of a "pure trust," but he had seen the term used in the promotional material disseminated by Respondent and his associates. Marutzky could not determine whether the trusts at issue were pure trusts. Therefore, he could not give an opinion regarding a letter written by the IRS was applicable to the present case. The letter stated that a pure trust organization has no tax requirement. Marutzky also stated that the IRS was not bound by the opinion expressed in the letter. Marutzky also disagreed with three of the five benefits of a business trust articulated in a publication by George M. Turner. (Tr. 283, 383-97, 470-72; Resps. Ex. 1C, 2).

Robert W. Hopper

Robert W. Hopper works for Heritage and Aegis. He manages the day-to-day operations of the office and recruits members for Heritage. Respondent became involved

PAGE 31

with Heritage in 1991, representing members and preparing documents. Initially, Richmond received 50 percent of beneficial interests, and Hopper and Vallone each received 25 percent of the beneficial interests. In 1994, Richmond left Heritage and his interests were divided equally between Hopper and Vallone. At that time, Heritage was reorganized as a not-for-profit corporation. (Tr. 484-91, 526-27, 554).

Heritage provides numerous services to its members including estate planning, access to an attorney, and a newsletter. The attorney for Heritage could provide members with living trusts, irrevocable trusts, family limited partnerships, or corporations. Members were charged between \$995 and \$1500 for a living trust. The annual membership fee was \$20. The members paid Heritage for the services and Heritage paid 25 to 40 percent of the amount collected to the representative. Heritage hired an attorney to give its members the protection of the attorney's ethical obligations. The attorney also provided members with a prepaid and negotiated fee structure that gave members economic and competent access to legal representations. (Tr. 492-93, 528-29, 551-54, 563-65).

Respondent was the only attorney employed by Heritage and he was paid \$100 per hour for the work he performed. Hopper was unsure if Respondent submitted time records. Between 1991 and

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

verify any specific amounts. Hooper knew that Respondent engaged in trust work outside of

PAGE 32

Heritage, but was unaware of Respondent giving part of the money he earned to Heritage. (Tr. 494-95, 498, 531, 548-51, 564, 576-78; Adm. Ex. 4).

Respondent would decide the estate-planning device that was appropriate for each member. He would review the membership applications, call the members, and prepare the necessary documents. If an individual did not need a living trust, he could nevertheless become a member. Hopper was unsure of the number of instances where Respondent determined that a living trust was inappropriate for an individual, but recalled at least three or four occasions when this occurred. In Illinois, if an individual owns less than \$50,000 in assets, he would not need a living trust. (Tr. 496-98, 529-32; Adm. Ex. 2).

In addition to representatives recruiting members, Heritage also recruited members by conducting seminars. The seminars were given at no charge, and the information was presented by Heritage representatives. The representatives were insurance agents, CPA's, securities brokers or attorneys. Heritage recruited approximately 50 per cent of its members and the majority of its representatives from outside of Illinois. The trust documents were executed by the representatives. Heritage maintained copies of the members' records, and Respondent had access to the files. When Respondent left Heritage in 1994, the members' files remained with Heritage so they could be used for the members' future needs. Respondent continued to act as a legal consultant to Heritage after 1994, but he no longer provides any services for Heritage and has not received any compensation from Heritage since January 1997. (Tr. 496-99, 501, 515-17, 547-48, 558-59).

PAGE 33

Hopper, Vallone and Respondent filed a lawsuit against the ARDC. The lawsuit was filed in the United States District Court for the Northern District of Illinois and alleged that there was a conspiracy by Richmond, the ARDC and the IRS to obtain Heritage members' files for tax audits. The district court dismissed the lawsuit, and an appeal is pending before the Seventh Circuit of the United States Court of Appeals. Hopper was also involved in a second lawsuit that was filed in the United States District Court for the Central District of Illinois, challenging two statutes relied upon by the ARDC in Respondent's disciplinary action. Vallone also sent a letter to certain Heritage members instructing them not to cooperate with the ARDC investigation. (Tr. 505-508, 560, 578-79; Adm. Exs. 10, 11).

Heritage filed a motion in the Circuit Court of Cook County to quash the ARDC's subpoena that requested members' files. The circuit court entered an order requiring Heritage to produce certain files and membership files under a protective order. Heritage produced the required files. (Tr. 569-71; Adm. Exs. 23-41).

Hopper is also involved in a lawsuit against Richmond based on allegations that Richmond misappropriated money from Heritage. In that case, a \$136,000 judgment has been issued against Richmond based on breach of contract. Richmond admitted wrongdoing in an apology letter he wrote to Hopper. After Richmond left Heritage, he became of competitor and began advertising for individuals who wanted living trusts. (Tr. 525, 533-35, 538).

Heritage was also involved in a lawsuit in Iowa in which the Iowa Supreme Court issued a cease and desist order preventing Heritage from conducting business in Iowa. The case was ultimately resolved with a consent decree that prohibited Heritage from

PAGE 34

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

Heritage continues to provide services to its members. It currently has approximately 160 representatives and prepares 10 to 30 living trusts each month. Between 1994 and 1998 Heritage's gross annual income has ranged from \$1.2 to \$1.4 million. Hopper has polled Heritage members on various political subjects. On occasion, the directors of Heritage would go to Washington D.C. to relay their interests to government officials. Hooper believes that the "lawlessness" of the IRS needs to be restricted. (Tr. 511-13, 539-40).

Hopper also has worked for Aegis, and assisted Respondent in presenting a seminar regarding offshore trusts, but declined to answer further questions relating to Aegis based on his fifth amendment rights. Hooper is familiar with the Athens Company, but has not worked for that company. Athens is located in Ohio and is managed by Jim Binge and Doug Schissler, who are nonlawyers. Athens provides legal documents to individuals who want to establish business trusts or CBO's. Hopper believes that Respondent was affiliated with Athens. Binge and Shissler were representatives for Heritage for two or two and one half years. Heritage did not provide business trusts or CBO's. When Richmond and Respondent sold the trust system to the DiSommas, they were not representing Heritage. (Tr. 518-25, 561, 573-74; Adm. Ex. 43).

James V. Savino

James V. Savino testified by evidence deposition. He has been a certified public accountant for 13 years, but approximately three years ago, he allowed his license to

PAGE 35

lapse. From 1992 through 1994, Savino operated an accounting company and a mortgage company. He no longer performs accounting work and continues to operate the mortgage company. In 1994, Savino and Heritage were partners in the ownership of the building that housed both their businesses. At that time, Heritage was in the business of providing asset protection vehicles, and Respondent created complex business trust systems. In four or five cases, Savino provided accounting services to individuals who purchased complex trusts. He charged between \$1,000 and \$2,000 for these services, and he did not pay a referral fee to Heritage. Savino used the trust documents as a map to set up the proper accounts. (Resp. Ex. 4, at 4-11, 14-15, 67-70).

Respondent created the trust documents. Vallone transferred the client's assets and made sure that the trust was funded. Usually when Savino met with the client, Vallone, Hopper and Richmond were present, and sometimes, Respondent was also present. Respondent was present at the meeting with the DiSommas. Respondent explained to the DiSommas how to operate the trusts. Savino received \$2,000 for meeting with the DiSommas and setting up the appropriate accounts for their trust system, but was not hired to continue performing the necessary accounting. (Resp. Ex. 4, at 15-21).

In 1994 or 1995, Heritage created Aegis, a trust company that provided complex business trusts. These trusts were designed to give asset protection. Savino did not perform work directly for Aegis, but gave Vallone, Richmond and Hopper general advice about the practical applications of the trusts. Savino reviewed the promotional material, and did not think that all the statements were accurate. (Resp. Ex. 4, at 29-35).

PAGE 36

In 1994, Savino purchased two complex business trusts for himself from Vallone, Hopper and Respondent. He wanted to obtain asset protection and tax advantages, but he realized that the tax advantages were minimal. Savino used only one of the trusts and in 1994, 1995, 1996 and 1997, he filed his tax returns in the name of the trust. The IRS conducted an audit of his tax returns for two or three of these years. Savino ultimately prevailed in the audits, however, in 1998 he disavowed the trust to avoid future audits. (Resp. Ex. 4, at 36-47, 60-62, 70-73, 79-81, 84).

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

Savino was familiar with the lawsuit pending against Richmond. Savino performed accounting work in relation to that case, and found that approximately \$250,000 was in question. (Resp. Ex. 4, at 51-53, 56, 74-76, 87).

Larry T. Lopshire

Larry T. Lopshire testified by evidence deposition. He is a certified public accountant. One of Lopshire's clients asked him about pure trusts. Lopshire was unfamiliar with pure trusts and contacted Aegis for information about them. He spoke with Vallone and Respondent about the trust system offered by Aegis, but he did not review any written material. (Resp. Ex. 3 at 37-42, 58-59).

Lopshire reviewed pure trusts offered by other companies and was familiar with the tax benefits of such trusts. He has referred clients to other entities for pure trusts, and has not prepared pure trusts for his clients. Lopshire has seen four letters from the IRS in which the IRS refused to issue tax numbers to a trust. Where the trust does not have a tax

PAGE 37

number, Lopshire assumed that the trust could not file a tax return, and would not be required to pay taxes. At Respondent's request, Lopshire performed eight to ten hours of research and drafted a letter regarding the legitimacy and tax benefits of pure trusts. Lopshire arrived at no conclusions regarding the tax benefits of the trust system offered by Aegis. (Resp. Exs. 1A-1C, 3 at 23-29, 42-56).

Respondent

Respondent did not appear at the disciplinary hearing and while the Hearing Panel attempted at all times to secure participation by telephone, Respondent made himself available by telephone for one day of the hearing, on July 27, 1999, and he did not participate by telephone on the second and third days. Respondent stated that he was admitted to practice law in Illinois in 1958. Between 1958 and 1962, Respondent worked for a sole practitioner in downstate Illinois, concentrating on banking and probate law. In 1963, he received a master of law degree from Harvard University in international business and taxation. From 1963 through 1965, Respondent taught international and business law at Michigan State University. He was also licensed to practice law in Michigan in 1964. Between 1965 and 1991, Respondent invested in real estate and practiced law. His law practice primarily consisted of advising and representing companies on international business law issues, including business trusts. In 1973 or 1975, Respondent voluntarily transferred to inactive status in Michigan, and in September 1995, Respondent voluntarily transferred to inactive status in Illinois. (Adm. Ex. 65, at 6-13, 160-61).

In 1991, Respondent began working for Heritage as the in-house legal counsel. He described Heritage as being in the living trust business. Heritage was initially

PAGE 38

organized as a corporation, but pursuant to Respondent's recommendation, it was reorganized as a business trust. Respondent was uncomfortable with the corporate form and began working for Heritage after it became a business trust. He initially worked for Heritage on a part-time basis for two hours per day, five days per week. Eventually, he worked six hours per day, five days per week. Respondent was paid \$100 per hour. He told Heritage the number of hours he spent in the office, and did not complete an invoice for the hours he worked. Respondent denied that he received \$100 for each trust. When he began working at Heritage, he was its only attorney. Respondent reviewed and modified the living trusts forms used by Heritage. (Adm. Ex. 65, at 13, 19-27, 124-30).

Heritage provided numerous benefits to its members including living trusts. The procedure for a

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

and forward the data sheet to Respondent. Respondent would review the data sheet and determine whether the member qualified for the living trust. If the member qualified for the living trust, Respondent would talk to the member to verify the information and discuss the legal implications of the living trust. Respondent stated that he talked to every member before completing the living trust. The member could personally meet with Respondent if he or she requested a meeting. Respondent's secretary would complete the necessary forms under Respondent's direction. After the documents were complete, either the representative or Respondent would meet with the member to execute the documents and

PAGE 39

transfer assets to fund the trust. (Adm. Ex. 65, at 27-30, 39, 42-43, 63-66-67, 74, 88-89, 137).

The representatives were recruited by Vallone, Hopper and Richmond and consisted of church people associated with Vallone and Hopper, insurance agents or certified public accountants. Respondent was unsure what the representatives said to the members about living trusts. Heritage trained the representatives about the advantages of living trusts and who would benefit from them. The first training session took place approximately four months after Respondent began working for Heritage. Respondent did not talk to the representative about the particular living trust, rather he spoke with the members. The representatives were not authorized to recommend that a member purchase a living trust, only Respondent could do so. (Adm. Ex. 65, at 31-35, 37-38).

Respondent told Richmond that any individual receiving benefits from Heritage had to be a member before receiving the benefits. However, Respondent was not responsible for the financial aspects of the Heritage, and was unsure if the membership fee was paid before he drafted the living trusts. Respondent also instructed Heritage not to cash any checks paid for a living trust until he approved the trust. Heritage charged its members between \$900 and \$1,200 for a living trust, depending on the year it was created. Respondent also drafted investment trusts and Q-Tip trusts for members, which were more expensive than living trusts. (Adm. Ex. 65, at 43-47, 49-51, 101-102).

Respondent spoke with every member before approving a living trust. He wrote notes regarding the members on the data sheet or on a separate sheet of paper. He left the notes in the member's file, which were kept by Heritage. Respondent did not specifically instruct Heritage to keep the notes, but assumed that Heritage would do so. If the notes

PAGE 40

were not in the member's file, he did not know where they were. None of the members files obtained from Heritage contained notes from Respondent's telephone conversations with those members. Respondent did not keep copies of any of the members' files. (Adm. Exs. 25-41, 65, at 39, 54-60, 69-71, 96-98).

At the initial meeting between the representative and the member, the representative would explain the benefits of a living trust. In the course of this discussion, the representative would calculate the "cost of dying" to illustrate the amount of a member's estate that would be lost to probate costs if he did not have a living trust. During the training courses, the representatives were told that probate fees should be estimated at six percent. Respondent was unsure if the estimate was accurate, but believed that there was statistical data supporting it. The amount of the estate that would be subject to federal estate tax involved a different calculation. (Adm. Ex. 65, at 79-81, 92-94).

Respondent stated that, as an attorney, he had a duty to Heritage and to the members. When he talked to the members, he explained that he was an attorney for Heritage and was being paid by Heritage. He also informed them that they should contact their family attorney to discuss the living trust. He assumed that the members knew that Heritage had a financial interest in the trust plan, and

estimate the exact number. In such cases, any fee collected from the member would be refunded to them. (Adm. Ex. 65, at 52).

PAGE 41

Respondent initially stated that he did not review the applications from out-of-state members because Heritage hired attorneys in those states to provide services those members. Respondent interviewed the out-of-state attorneys and explained the procedures to them. Respondent could not recall the names of these attorneys. Respondent would ask the attorneys from those states to explain the differences between the relevant laws in their states and the laws of Illinois. Heritage would inform the representatives of the differences. (Adm. Ex. 65, at 117-19).

Subsequently, Respondent admitted that in the beginning he reviewed all the members' applications, but as Heritage grew, attorneys in other states were hired to assist him. Heritage turned over 17 randomly selected members' files. Eight of the files were for out-of-state members. The vast majority of these members were between 60 and 80 years old. The attorney confirmation sheet in each of those files established that Respondent reviewed the application and reviewed the trust documents. Respondent maintained that he hired outside counsel, but was unable to give any specific facts relating to those attorneys. He also claimed that he had an absolute right, as counsel for the association, to review members' files. (Adm. Exs. 23-41, 65, at 120-24).

The representatives would conduct an annual review of the members' benefits. During the course of that review, the members were entitled to make alterations to their living trusts. The representatives would submit the requests for changes following the same procedure that was used when initially applying for the trust. The representative would submit an application to Heritage, an employee of Heritage would verify the information on the application, Respondent would contact the member, and either approve or deny the requested changes. (Adm. Ex. 65, at 74-75).

PAGE 42

Respondent drafted the legal documents that formed Aegis. Respondent was one of the directors of Aegis when Aegis was created. Aegis was designed as a membership organization with the purpose of providing business trusts to its members. Business trusts are also known as CBO's. A business trust combined with other trusts, such as a charitable trust, is known as a multi-trust system. Respondent was involved in training paralegals for Aegis. Aegis' office was located in the same place as Heritage's office. (Adm. Ex. 65, at 141-46, 151).

Respondent recalled that the DiSommas were Aegis members. He could not recall if he advised the DiSommas to seek the advise of independent counsel, but he knew that he advised every member to seek independent legal advice. Respondent refused to answer numerous questions relating to Aegis based on his fifth amendment rights because he believed that the IRS was investigating his involvement with Aegis. Respondent also refused to answer numerous questions relating to the Athens Company and the Alumbaugh based on his fifth amendment rights. (Adm. Ex. 65, at 108, 140-41, 143-44, 148-52, 155-59, 162-66, 169-178).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In attorney disciplinary proceedings, the Administrator must prove the alleged misconduct by clear and convincing evidence. Supreme Court Rule 753(c)(6); *In re Witt*, 145 Ill. 2d 380, 583 N.E.2d 526 (1991). It is well-settled that "clear and convincing evidence is a standard of proof which, while less than the criminal standard of proof beyond a reasonable doubt, is greater than the civil standard of preponderance of the evidence." Clearly and Graham, *Handbook of Illinois Evidence*, sec. 301.6 (6th ed. 1994). This standard of proof is one in which the risk of error is not equally allocated;

PAGE 43

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

standard requires a quantum of proof that leaves no reasonable doubt in the minds of the fact finder as to the veracity of the proposition in question. *Matter of Jones*, 285 Ill. App. 3d 38, 673 N.E.2d 703 (3rd Dist. 1996); *In re Isreal*, 278 Ill. App. 3d 24, 664 N.E.2d 1032 (2nd Dist. 1996). Suspicious circumstances are insufficient to warrant discipline. *In re Lane*, 127 Ill. 2d 90, 111, 535 N.E.2d 866 (1989). In the present case, we find that the Administrator met this burden for the allegations of misconduct in Counts I, III, and all but one of the allegations of misconduct in Count VI. Based on these findings, we dismiss as moot the allegations of misconduct in Counts II and IV.

Count I

We find that the Administrator proved that Respondent engaged in the misconduct alleged in Count I of the first amended complaint. Specifically, we find that Respondent represented a client when that representation may be materially limited by his responsibilities to his own interests, shared legal fees with a nonlawyer, assisted a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law, and engaged in conduct that is prejudicial to the administration of justice, in violation of Rules 1.7(a), 5.4(a), 5.5(b) and 8.4(a)(5) of the Illinois Rules of Professional Conduct.

Respondent's misconduct arose from his involvement with Heritage. The Administrator produced more than ample evidence to establish that the operations of

PAGE 44

Heritage and Respondent's role in those operations. Whether Respondent aided a nonlawyer in the practice of law involves a two part analysis. First, did Heritage, through its representatives, engage in the unauthorized practice of law. Second, did Respondent aid Heritage in the unauthorized practice of law. We find that Heritage engaged in the practice of law and that Respondent assisted Heritage.

Respondent Assisted Nonlawyers in the Unauthorized Practice of Law

The Illinois Supreme Court has found that a "[d]efinition of the term 'practice of law' defies mechanistic formulation." *In re Discipio*, 163 Ill. 2d 515, 523, 645 N.E.2d 906, 910 (1994). Instead, in determining whether certain acts amount to the practice of law, the Court has examined the character of the acts. The practice of law "encompasses not only court appearances, but also services rendered out of court [citation omitted] and includes the giving of any advice or rendering of any service requiring the use of legal knowledge [citation omitted]. *In re Howard*, No. 86982 slip op. at 11 (Ill. S. Ct., December 2, 1999); see also *Discipio*, 163 Ill. 2d at 523. The Court has also evaluated circumstantial evidence, and has drawn reasonable inferences from all the evidence. *Discipio*, 163 Ill. 2d at 523.

Clarification of the meaning of the practice of law is apparent in the cases decided by the Court. The Court has long held that even simple tasks, such as completing legal forms can constitute the practice of law. *Chicago Bar Ass'n v. Quinlan and Tyson*, 34 Ill. 2d 116, 214 N.E.2d 771 (1966); *People ex rel. Illinois State Bar Ass'n v. Schafer*, 404 Ill. 45, 87 N.E. 2d 773 (1949). As the Court explained in *Quinlan*, "many aspects of law practice are conducted through the use of forms, and not all of the matters handled require extensive investigation of the law. But by his training the lawyer is equipped to

PAGE 45

recognize when this is and when it is not the case. . . . Mere simplicity cannot be the basis for drawing boundaries to the practice of a profession." *Quinlan*, 34 Ill. 2d at 122-23. In *Schafer*, the Court reasoned "[w]hen filling in the blanks as directed he may not by that simple act be practicing law, but if he elicits the proper information and considers it and advises and acts thereon he would in

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

re Yamaguchi, 118 Ill. 2d 417, 426-27, 515 N.E.2d 1235 (1987). In Yamaguchi, a nonlawyer completed and filed valuation complaint on behalf of clients who wanted to challenge their property tax assessment. Initially, a nonlawyer was allowed to sign these complaints. Subsequently, the rules were changed and an attorney or the property owner was required to sign the complaint. Yamaguchi, signed complaints completed by the nonlawyer, and signed blank complaints. The nonlawyer was not an employee of Yamaguchi's law firm. The Court found that the completion of the valuation complaints involved legal analysis of facts that the person completing the complaint deems relevant to the tax reevaluation. The unsupervised completion of the complaint by a nonlawyer was the unauthorized practice of law. Yamaguchi's behavior amounted to aiding a nonlawyer in the unauthorized practice of law. Additionally, the conduct was fraudulent and dishonest, and was prejudicial to the administration of justice because it deceived the tribunal and the property owners.

In Discipio, the Court found that a disbarred attorney's conduct was the practice of law and Discipio's relationship with him amounted to aiding a nonlawyer in the

PAGE 46

unauthorized practice of law. Discipio, 163 Ill. 2d at 525-27. The disbarred attorney, Ruther, interviewed workers' compensation clients to obtain the information necessary to complete the application for adjustment of claim form. The application required general information about the client's background, the accident, and the related injuries. The application also asked questions including whether the client was receiving "temporary total disability benefits," in the proper amount, how the employer got notice of the accident, whether the client received an Industrial Commission information handbook, and whether a petition for immediate hearing was attached. By signing the application, the client agreed that disclosure of the information was made voluntarily pursuant to a specific statutory provision. Ruther also caused the clients to execute medical authorization forms and an attorney representation agreement. After obtaining the necessary information, Ruther delivered the documents to Discipio. Id. at 520-22.

Discipio consulted with the client and asked if the client wanted him to act as counsel for the case. He verified the information gathered by Ruther, obtained any additional information that was necessary, and completed the final copy of the application and attorney agreement. Discipio never asked the client what advice he received from Ruther. He also told the client that he was the only attorney handling the case. Under the arrangement between Ruther and Discipio, Ruther received approximately one-half of the fees earned by Discipio. Id. at 522-23.

The Court found that Ruther's activities constituted the practice of law. The documents completed by Ruther "required a degree of legal skill and knowledge for their comprehension and completion." Id. at 525. Specifically, the application for adjustment of claim called for information regarding legal rights such as temporary total disability

PAGE 47

and petitions for immediate hearing. Additionally, the application and the attorney representation agreement contained references to the statute. The Court found that "[i]t is not unreasonable to infer that Ruther was called upon to explain to clients the significance of these statutory references." Id. The Court further found that "[s]uch explanation required legal expertise in order to ensure that clients understood the statutory and legal principles referenced in the documents." Id. The Court concluded that based on the nature and extent of the relationship between Discipio and Ruther, Discipio aided Ruther in the unauthorized practice of law. Id. at 527-28.

Importantly, the Court's conclusion that Ruther engaged in the unauthorized practice of law was not altered by the fact that Discipio consulted with the clients and completed the final copies of the application and attorney agreement. Id. at 527. It was also insignificant that Ruther performed his work outside of Discipio's office. Id. at 526-27.

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

completed without making legal determinations.

Although the Illinois Supreme Court has not examined a case with facts similar to those involved in the present case, supreme courts in other jurisdictions have evaluated similar cases and the findings of those courts support our findings here. See In re Mid-America Living Trust Associates, 927 S.W.2d 855 (1996); People v. Cassidy, 884 P.2d 309 (1994); The Florida Bar re Advisory Opinion - Nonlawyer Preparation of Living Trusts, 613 So.2d 426 (1992); The Committee on Professional Ethics and Conduct of the

PAGE 48

Iowa State Bar Association v. Baker, 492 N.W.2d 695 (1992). In each of these cases, the courts evaluated facts similar to the facts of the present case and found that the attorney involved with a living trust company aided a nonlawyer in the unauthorized practice of law. In the Florida case, the court determined that "the assembly, drafting, execution and funding of a living trust document constitutes the practice of law." Florida Bar Advisory Opinion, 613 So.2d at 427. The court also found that "a lawyer must make the determination as to the client's need for a living trust and identify the type of living trust most appropriate for the client." Id. at 427-28. A nonlawyer may properly gather the necessary information for a living trust, but cannot give any legal advice relating to the living trust. Id. at 428.

In Baker, the court found that a nonlawyer engaged in the unauthorized practice of law when he met with clients, advised them about what estate planning they needed, advised them about particular documents that would address those needs, and advised them about how those documents should be tailored to their particular situation. Baker, 492 N.W.2d at 702. In that case, the nonlawyer conducted free seminars regarding estate planning, meet with clients to discuss the benefits of a living trust, and refer the client to an attorney, usually Baker. The court found that Baker aided a nonlawyer in the unauthorized practice of law by allowing the nonlawyer to exercise professional judgment in determining whether a living trust was appropriate for the client. The court noted that by the time the client met with Baker, the nonlawyer had already made the important legal decisions and "Baker was merely a scrivener." Baker, 492 N.W.2d at 702-703.

PAGE 49

Heritage's Representatives Engaged in the Unauthorized Practice of Law.

In the present case, there is no question that Heritage, through its representatives, engaged in the unauthorized practice of law because they rendered legal advice, recommended living trusts to the members, and executed the trust documents.

Heritage's representatives rendered legal advice during the initial meeting with the members. Heritage was a membership organization that provided estate planning for its members, primarily through the use of living trusts. Representatives, who were trained and paid by Heritage, recruited the members. The representatives met with prospective members, collected financial information, and determined whether the prospective member would benefit from the services provided by Heritage. In order to form the basis of their determination, the representative completed a "personal estate data sheet" that included numerous questions the answers to which required legal knowledge and the application of that knowledge.

Completion of the data sheet required the representative to either make numerous legal determinations or explain the legal basis for the member to make the legal determinations. The data sheet required the representative to calculate the "cost of dying," which was the amount of an individual's estate that would be lost due to probate expenses and federal inheritance taxes. The representative calculated this amount by choosing a percentage between 4 and 20 of the estate. The applicable percentage was within the discretion of the representative and was not based on any

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

PAGE 50

their heirs were, choose an executor, and complete a durable power of attorney and nomination of conservator. These are legal terms with specific legal significance.

Completion of the data sheet required the representatives to have specific legal knowledge about estate planning and to apply that knowledge to the particular case before them. Drawing reasonable inferences from these facts, it is apparent that Heritage's representatives were giving members legal advice. See Discipio, 163 Ill. 2d at 524-25 (finding that it was reasonable to infer that a nonlawyer explained to clients the legal significance of a legal document, and that such an explanation required legal expertise).

Additionally, the representatives recommended that the members purchase a living trust, and based on the representatives' advice, the members decided to purchase a living trust. The representative sent the members' information to Heritage only after this decision was made. The data sheet that the representative sent to Heritage contained all the information necessary to draft the trust. Respondent reviewed the membership information, and for most of the cases, called the member to verify the information. Although Respondent testified in his deposition that he discussed the legal implications of the living trust with the members, we are not convinced that he did so. Respondent failed to explain in sufficient detail what he told the member about the living trust. Additionally, the overwhelming number of members who wanted a living trust received one. Respondent advised very few of the members not to purchase living trusts. Hopper could recall only three or four cases where Respondent told a member who wanted a living trust that such an instrument would be inappropriate. Respondent could not recall an exact number, but stated that he informed several members not to purchase a living

PAGE 51

trust. The evidence, therefore, supports a finding that the member had decided to purchase a living trust based on the advice of the representative and before Respondent talked to the member.

After the documents were prepared, they were sent to the representatives. The representatives delivered the documents to the members, explained any necessary information, and supervised the execution of the documents. The representative had a subsequent meeting with the member to ensure that the trust was properly funded. Respondent was not present during the execution or funding of the trusts.

Respondent Aided Heritage's Representatives in the Unauthorized Practice of Law.

Respondent aided Heritage's representatives in the unauthorized practice of law. Respondent's primary purpose for working at Heritage was to assist the representatives provide living trusts to the members. Respondent participated in the training of the representatives. He designed the data sheet so that the representatives would obtain the necessary information from the members. He also answered the representatives' questions and accepted the data sheets from them. By the time Respondent received the member's information, the member had decided to purchase a living trust. Respondent simply reviewed the information and directed that the trust be prepared. He directed that the completed trust documents be sent to the representatives, and knew that the representatives would supervise their execution. Respondent also was aware that the representatives would ensure that the trust was properly funded. Respondent, therefore, gave considerable assistance to the nonlawyer representatives as they engaged in the unauthorized practice of law.

PAGE 52

Respondent Engaged in Improper Fee Splitting.

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

\$995 and \$1,500 for a living trust, depending on the year it was purchased. If a member did not purchase a living trust, the membership fee alone was between \$20 and \$100. Simple subtraction shows that the fee for the living trust was between \$895 and \$1,480. Of the amount charged, Respondent received \$100 per trust. The remainder of the amount charged for the trust was divided between the representative and Heritage. Thus, the fee charged for the living trust was shared with nonlawyers.

The Illinois Supreme Court has warned about the dangers of a lawyer splitting a fee with a nonlawyer. "[I]mproper fee splitting is a serious transgression that harms both the public and the legal profession." *Discipio*, 163 Ill. 2d at 529. The harms include providing an incentive for a layperson to recommend the services of an attorney for the sole purpose of sharing the fee, and creating the possibility that the clients' rights might be adversely affected because the attorney would devote less time to the case that is generating less fees. *Id.*, citing *O'Hara v. Ahlgren, Blumenfeld & Kempster*, 127 Ill. 2d 333, 537 N.E.2d 730 (1989). An attorney violates this rule even if there is no evidence of adverse affects on the legal representation of the client. *Discipio*, 163 Ill. 2d at 530.

In the present case, Respondent's fee splitting harmed the members because it created the situation where Respondent had an incentive to devoted very little time to each case. Although Respondent, Richmond and Hopper testified that Respondent

PAGE 53

received \$100 per hour for his services, and a written contract supports this testimony, we find this evidence not credible, and find that Respondent was generally paid \$100 per trust. See *In re Smith*, 168 Ill. 2d 269, 283, 659 N.E.2d 896 (1995)(the Hearing Board is in a superior position to resolve factual questions because it is able to observe the demeanor of the witnesses and judge their credibility). Respondent's contract with Heritage states that he would be paid \$100 per hour for his services. It also states that Respondent would provide Heritage with a "written itemized statement every 30 days of worked hours." Neither Heritage nor Respondent followed the terms of the contract. Respondent never submitted any time records to Heritage or accounted for his hours in any way. In fact, when Respondent disputed the amount of compensation he received for one month, he accounted for the number of trusts he prepared, not the amount of time he spent preparing the trusts. These facts are sufficient to find that Respondent was paid for each trust he prepared and supports the finding that he shared legal fees with nonlawyers.

Respondent Engaged in a Conflict of Interest.

We find that Respondent's representation of Heritage and of Heritage's members created a conflict of interest in violation of Rule 1.7(b) of the Illinois Rules of Professional Conduct. Rule 1.7(b) prohibits a lawyer from representing a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person. The Illinois Supreme Court has stated that "a conflict of interest arises whenever an attorney's independent judgment on behalf of a client may be affected by a loyalty to another party." *In re Lapinska*, 72 Ill. 2d 461, 469, 381 N.E.2d 700 (1978). The rule prohibiting conflicts of interest is "designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well as to preclude the honest

PAGE 54

practitioner from putting himself in a position where he may be required to choose between conflicting duties." *Lapinska*, 72 Ill. 2d at 469, citing *People v. Gerold*, 265 Ill. 448, 477, 107 N.E. 165 (1914).

The courts in other jurisdictions have applied the general conflict of interest rules to attorneys employed by entities who provide living trusts and have found that such arrangements create a

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

client, then the lawyer's duty of loyalty to the client could be compromised." Florida Bar, 613 So.2d at 428. The court concluded that "[i]n light of this duty of loyalty to the client, a lawyer who assembles, reviews, executes, and funds a living trust document should be an independent counsel paid by the client and representing the client's interests alone." Id. Similarly, in Mid-America, the Missouri Supreme Court found that an attorney employed by Mid-America who approved living trusts for clients of Mid-America had a "direct conflict of interest." Mid-America, 927 S.W.2d at 866-67.

In the present case, Respondent's relationship with Heritage and its members created a conflict of interest. Respondent believed that his client was Heritage, and he was paid for his services by Heritage. He also admitted that he had a duty to Heritage's members to give them sound legal advice and provide legally sufficient trust documents. Respondent's duty to Heritage and his duty to the members created a prohibited conflict of interest. Heritage was in the business of selling living trusts. It was in Heritage's

PAGE 55

interest to sell as many living trusts as possible. Respondent was responsible for determining whether a member should purchase a living trust, but was paid by Heritage for each trust. Under these circumstances, Respondent's independent judgment regarding a member's need for a living trust could be affected by his self interest and his loyalty to Heritage. Even assuming Respondent had honest motives, he was in a position where he could be required to choose between his self-interest, duty to Heritage and duty to the members, and a conflict of interest existed. See Lapinska, 72 Ill. 2d at 469; Florida Bar, 613 So.2d at 428; Mid-America, 927 S.W.2d at 866-67

The conflict of interest is not corrected by any disclaimers Respondent made to the members. Respondent informed the members that he was being paid by Heritage and assumed that they knew that Heritage had a financial interest in the trust plan. He did not explain to the members that a potential conflict of interest existed, but told them that they should discuss the living trust with their family attorney. These statements are insufficient to fully disclose the nature and extent of the conflict of interest. Additionally, there is no evidence that the members consented to the conflict of interest after Respondent made these statements.

Respondent Engaged in Conduct that was Prejudicial to the Administration of Justice.

We further find that Respondent's conduct was prejudicial to the administration of justice in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct. When an attorney assists in the unauthorized practice of law, splits his fees with nonlawyers, and places himself in a conflict of interest, he engages in conduct that is prejudicial to the administration of justice. See In re Witt, 145 Ill. 2d 380, 583 N.E.2d 526 (1991) (stating that a finding that an attorney engaged in conduct prejudicial to the

PAGE 56

administration of justice is dependent upon findings that he engaged in other substantive violations). The goals of justice cannot be served where an attorney also a nonlawyer to perform legal work, and places himself in a position where his client has less than his complete loyalty. Here, Respondent created a situation where his professional judgment could have been clouded by the business interests of others and his own interests. Cf. Discipio, 163 Ill. 2d at 524-29; Lapinska, 72 Ill. 2d 469.

Respondent's First Amendment Claims are Inapplicable to this Case.

Respondent argues that a finding of misconduct would violate the first amendment rights of the members of Heritage. According to Respondent, the United States Supreme Court has found that the States cannot prohibit associations from hiring or recommending attorneys to enforce the legal rights

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

however, they are inapplicable to this case.

The Supreme Court has held that the first amendment of the United States Constitution guarantees "freedom of association for advancement of beliefs and ideas . . ." NAACP, 357 U.S. at 461. The beliefs that are advanced can be political, religious or cultural. Id. Specifically, the Court has found that an organization has a right to take steps necessary to pursue legal action on behalf of its individual members. For example, in United Transportation and Brotherhood of Railroad Trainmen, the Court allowed the union to advise injured members to seek legal counsel and to recommend particular

PAGE 57

attorneys to allow the members to pursue their rights under the Federal Employers' Liability Act. United Transportation, 401 U.S. at 583-85; Brotherhood of Railroad Trainmen, 377 U.S. 5-8. In so holding, the Court found that the members had a right to assist and advise each other. Brotherhood of Railroad Trainmen, 377 U.S. at 6. The Court summarized its line of cases allowing such rights by stating that "collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment." United Transportation, 401 U.S. at 585.

Respondent's first amendment arguments are inapplicable to the present case because Heritage is not an organization that is advancing the beliefs or ideas of its members. Heritage is in the business of selling living trusts and providing estate planning information to its members. There is absolutely no evidence that Heritage and its members have any common beliefs or ideas or that any beliefs or ideas are advanced by Heritage. The only conceivable common objective of Heritage's members is an interest in the assets of their estates. This is not a political, religious or cultural belief.

The cursory statements by Hopper, that Heritage polls its members on various political subjects and that the directors of Heritage have gone to Washington D.C. to talk to government officials, are inadequate to find that Heritage is an association that falls within the protections of the first amendment. There is no evidence corroborating these statements and, even if there were, these facts are insufficient to establish that Heritage advances any particular or protectable ideas or beliefs.

Additionally, Heritage has not engaged in collective activity to obtain meaningful access to the courts. Respondent was not hired to pursue members' claims against the IRS. Rather, his sole purpose was to approve living trusts sold by Heritage's

PAGE 58

representatives. The Supreme Court cases relied upon by Respondent are completely devoid of anything that would support Respondent's argument that the first amendment allows for his activities with Heritage. Therefore, we find that Respondent's reliance on the Supreme Court cases is misplaced.

Count II

We dismiss Count II of the complaint as moot based on our findings in Count VI. In Count II the Administrator made general allegations regarding Respondent's involvement in Aegis. According to the Administrator, Aegis was a membership organization that provided estate planning devices including common law business organizations and multi trust systems. As alleged, nonlawyer representatives advised members of the benefits of the devices and were paid to sell the memberships. Respondent directed the drafting of the necessary documents and assisted the member in executing the documents. Respondent knew that the benefits of the devices were exaggerated.

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

engaging in conduct that is prejudicial to the administration of justice in violation of Rules 1.7(b), 5.4(a), 5.5(b), and 8.4(a)(5) of the Illinois Rules of Professional Conduct.

The Administrator was restricted in the amount of evidence she presented to prove this complaint by the fact that Respondent and Hopper declined to answer

PAGE 59

questions relating to Aegis based on their fifth amendment rights. Without commenting on the sufficiency of the evidence or the applicability of the fifth amendment, we find that the allegations of misconduct are moot. The Administrator made nearly identical allegations of misconduct in Count VI of the complaint involving nearly identical conduct by Respondent, but relating to specific facts. Accordingly, given our specific findings in Count VI, *infra*, we dismiss the general allegations of Count II.

Count III

We find that the Administrator proved that Respondent engaged in the misconduct alleged in Count III of the complaint. Specifically, Respondent's representation of the DiSommas created a conflict of interest, and his conduct involved dishonesty, deceit and misrepresentation, and was prejudicial to the administration of justice.

Respondent was responsible for the creation of the DiSommas' trust system and was an active participant in the sale of the trust system to them. William William testified that both Respondent and Richmond explained to him how the trust system would dramatically reduce his taxes. He also stated that Respondent was present when the DiSommas executed the trust documents, and that he explained those documents to them. Savino explained that Respondent created the trust documents and was present at a meeting between Savino and the DiSommas.

Respondent Engaged in a Conflict of Interest.

We find that Respondent's representation of the DiSommas created a conflict of interest in violation of Rule 1.7(b) of the Illinois Rules of Professional Conduct. As discussed, *supra* in Count I, Rule 1.7(b) prohibits a lawyer from representing a client if

PAGE 60

the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person. Additionally, a conflict of interest arises whenever an attorney's independent judgment on behalf of a client might be affected by his loyalty to another party or to himself. See *Lapinska*, 72 Ill. 2d at 469; *In re Vogel*, 92 Ill. 2d 55, 440 N.E.2d 885 (1982); *In re Chernoff*, 91 Ill. 2d 316, 438 N.E.2d 165 (1982).

In the present case, Respondent's loyalty was divided between his own interests, Heritage's interests and the DiSommas' interests. Respondent placed himself in a position where he could be required to choose between conflicting interests and duties. Respondent had a self-interest in selling the DiSommas the trust system, and had a duty to both Heritage and the DiSommas. Respondent was not acting solely as the DiSommas attorney for estate planning. Respondent, along with Richmond, sold the trust system to the DiSommas as an estate planning product. Respondent was not acting exclusively as the DiSommas' attorney when they purchased the trust system, but instead was participating in a business transaction with nonlawyers to sell a multi trust system.

William DiSomma initially met with Richmond about the trust system. After the first meeting, William decided to purchase the system. By the time William met with Respondent, William's decision had been made and Respondent simply supplied the legal work. Respondent's business

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

account and the other was signed over to Heritage and deposited into Heritage's account. Although there is

PAGE 61

conflicting evidence as to the entity that sold the trust system to the DiSommas, we find that Heritage sold the system, but also find the name of the entity is inconsequential to our findings. The evidence clearly establishes that Respondent was involved with Richmond and Vallone in selling the system to the DiSommas and that Respondent's loyalties were divided.

Further, there is no evidence that Respondent evaluated the DiSommas circumstances and gave them independent legal advice, as he would be required to do if he were representing them. Rather, his obligation to Heritage affected his attorney/client relationship with the DiSommas and prevented him from exercising independent judgment. Respondent's divided loyalty is further established by his admission that, although he could not specifically recall the DiSommas, he advised every member to seek independent legal advice before entering into the trust system. If Respondent was representing only the DiSomma's interests, there would be no need for them to seek the advice of another attorney. Accordingly, we find that Respondent's loyalty to the DiSommas was compromised by his self-interest and relationship with Heritage.

Respondent Misrepresented the Benefits of the Trust System to the Disommas.

We also find that Respondent's conduct involved dishonesty and misrepresentation, and was prejudicial to the administration of justice because he aided in the sale of an estate planning device to the DiSommas that would not accomplish the purported goals. The Administrator established that Respondent was instrumental in selling a multi trust system to the DiSommas and that he grossly exaggerated the benefits of that system. We do not find that the trust system was completely without benefit, but only that any such benefits were misrepresented to the DiSommas.

PAGE 62

The multi trust system prepared by Respondent purported to provide privacy, eliminate estate taxes and probate, afford asset protection, and minimize income taxes. The promotional material provided to William DiSomma and the oral representations made to him by Respondent, Richmond and Vallone misrepresent the extent of these benefits. The Administrator presented the testimony of an expert witness, William Marutzky, who examined the facts of this case and gave his opinion regarding the merits of the multi trust system. We find his opinion credible and supported by the law. Smith, 168 Ill. 2d at 283.

Marutzky testified that the multi trust system would not provide the extent of benefits promised to the DiSommas. Marutzky reviewed the promotional material, the trustee's manual for operating the system, and the documents executed by the DiSommas, and observed William DiSomma's testimony. Based on his expertise in taxation and his knowledge of the facts in the DiSommas case, Marutzky evaluated the stated goals of the multi trust system. Our findings are consistent with Marutzky's opinions.

The multi trust system would not accord the DiSommas the purported level of privacy. The promotional materials state that with a multi trust system "your information is 100% private." Adm. Ex. 46 at 14. This statement represents that under the multi trust system, no one, not even the courts or government agencies, can obtain trust records. Marutzky unequivocally stated that government agencies, including the IRS, could require the production of the trust's records. Marutzky admitted that some degree of privacy would be accomplished because the trust would not be required to register with the Secretary of State, and would have a colorable argument against disclosure of

PAGE 63

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

The multi trust system would not eliminate estate taxes. The promotional materials state that because the trustees hold title to the assets of the trusts no estate taxes would be due when the creator of the multi trust system dies. We find that this claim is inaccurate. The federal estate tax applies to estates with assets over \$650,000, and the assets of those estates that an individual owns, has control over, or has an interest in. If the DiSommas estate were valued at more than \$650,000, the trust system would not shield the estate from the estate tax because the DiSommas retained control over the trust assets.

Marutzky also concluded, and we agree, that the transfer of assets would be subject to estate taxes even though they were transferred in exchange for certificates of beneficial interest (CBI's). Based on his expertise, Marutzky determined that the courts would refuse to recognize the operation of the CBI's and would impose an estate tax. At most, the CBI's would reduce the fair market value of the assets, but the estate tax would not be completely avoided. There is no contradictory evidence in the record, and we find Marutzky's testimony credible. Smith, 168 Ill. 2d at 283.

The multi trust system would not provide a significant level of protection for the DiSommas assets. The promotional material claim that the trust system would protect a person from lawsuits, liens, and attachments. The "secret" of the system is that the trustees control everything, but own nothing. Before William DiSomma purchased the multi trust system, he was told that the system would reduce his liability to the amount of money in the specific trust. For example, if he were involved in a serious automobile

PAGE 64

accident, the amount of his liability would be limited to the amount of assets in the vehicle trust. Marutzky concluded that the trust system would not function as promised, and we agree.

The asset protection claim is based on the assumption that a properly founded spendthrift provision was created within the trust system. However, there is no valid spendthrift provision contained in the DiSommas' trust documents. In order for the spendthrift to be valid, it must be created by someone other than the beneficiary and provide that the trustee need not recognize claims against the corpus of the trust or the distributions of the trust. In the DiSommas case, any alleged spendthrift provision would not be enforce either because no trust was created or a self-declared trust was created. The trust would be considered self-declared because Mary effectively conveyed the property directly to the trust. Under the terms of the trust, Mary conveyed her property to William, and became a trustee. William conveyed all his property, including the property conveyed to him by Mary, to the family trust. These facts illustrate that a self-declared trust was created, and a spendthrift provision cannot apply to a self-declared trust.

Additionally, Mary could not limit her professional liability by creating the podiatric trust. William DiSomma understood that Mary would transfer her income and related assets from her podiatry practice into the podiatric trust. The amount of her professional liability would be limited to the amount of assets in the podiatric trust. However, William was not informed that under the Illinois Medical Practice Act, a doctor cannot limit her liability with a trust. Accordingly, the podiatric trust would not protect Mary's assets from a judgment creditor who received a judgment based on Mary's professional conduct. Cf. Berlin v. Sarah Bush Lincoln Health Center, 688 N.E.2d 106

PAGE 65

(1997) (only a human being can sustain the education, training, and character screening necessary to obtain a professional license).

The DiSommas' trust system would make it more difficult for a creditor to reach the DiSommas' assets, but it would not protect them from lawsuits, attachments or liens. Marutzky admitted that the

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

The trust system also would not significantly reduce the DiSommas tax liability. William's primary reason for purchasing the trust system was to reduce his taxes. He was told that under the trust system he could determine the amount of taxes he paid. The trust system provided that William and Mary would deposit their income into the business and podiatric trusts. This income would flow from those trusts into other trusts that would pay for certain expenses. For example, the family trust paid for expenses relating to the DiSommas' residence and education, and the vehicle trust paid for expenses relating to the DiSommas' cars. Any remaining money would flow into the charitable trust. The DiSommas, as trustees, would draw a salary for their services, and would determine their own salaries. Because the DiSommas determined their own salaries, they could also determine the amount of taxes they would pay. Respondent told the DiSommas that they would not have to pay taxes on any other income. Under this system, all the expenses paid by the trusts and the amount contributed to the charitable trust were tax deductible.

PAGE 66

Marutzky concluded and we agree that under the federal tax laws, the DiSommas' trust system would not be effective in reducing the DiSommas' taxes. Marutzky concluded that even if a valid trust was established by the DiSommas' trust system, it would be considered a "sham" by the IRS because of the way it was operated. He explained, and we agree, that the federal tax laws do not allow an individual to assign future income. With few exceptions, income is taxed to the entity that earns it and not the entity to which it is assigned. If the DiSommas assigned their income to the business and podiatric trusts, the IRS would find a tax deficiency and require them to report the income on personal tax returns.

Additionally, we agree with Marutzky's opinion that the amount of tax deductions that would be allowed under the trust system was misrepresented to the DiSommas. The DiSommas would not be allowed to deduct all of their housing expenses. Under federal tax laws, housing of an employee can be deducted by the employer if the housing is for the convenience of the employer and is solely related to the employer's business. For example, the expenses of housing provided to a university president or to a clergy member would be deductible by the employer. The DiSommas would not be entitled to such a deduction because they are not employees of the trust, and because their housing expenses are not solely related to their duties as trustees. Similarly, educational expenses would be deductible if they are related to an employee of a business and performance of the employee's business related duties. Educational expenses are not deductible if they prepare an employee for a new business. Therefore, the educational expenses of the DiSommas' children would not be deductible.

PAGE 67

The recent decision of the tax court in the Muhich case is instructive and supports our findings. Muhich, no. 21561-97. In that case, the federal tax court examined a trust system similar to the DiSomma trust system. In fact, the Muhich trust system was purchased from Heritage and drafted by Respondent. The Muhich trust system created five trusts with the income from a photography business flowing through different trusts including a charitable trust. The trusts paid the Muhichs' housing, transportation, health care, education and miscellaneous expenses. Each of the Muhichs' trusts filed tax returns for two years, and after deductions, reported zero taxable income. The Muhichs also filed income tax returns for those years, but failed to report any income from the photography business.

The tax court found that the Muhichs' trusts should be disregarded for tax purposes because they lack economic substance and were "shams." The court explained that "[w]here an entity is created that has no real economic effect and which affects no cognizable economic relationship, the substance of the transaction involving the entity will control over its form." Adm. Ex. 55, at 13. To find economic substance, the trust must serve some economic purpose other than tax savings. Id. at

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

restrictions imposed by the trust itself or the law of trusts; and 5) whether there are other facts that reveal that the trust did little more than conceal the

PAGE 68

ownership of assets and disguise the true earner of income for the purpose of avoiding taxes. Adm. Ex. 55, at 14-18.

Applying these facts to the Muhichs' trust system, the court found that the trusts lacked economic substance. The Muhichs' relationship to their property did not materially differ before and after the formation of the trusts. Both before and after the trusts were implemented, the Muhichs had complete control over their property. The trusts also lacked an independent trustee. Except for a brief period when Respondent was a trustee, the Muhichs were the sole trustees of the trusts. The fact that Respondent was a trustee was insignificant because he was appointed solely for the purpose of creating the trust.

Additionally, no economic interest in the trusts passed to any beneficiary other than the Muhichs. The only beneficiaries were the Muhichs or the trusts they controlled under the trust system. Further, the Muhichs were not restricted in the use of the trusts by any provision of the trusts or the law. The Muhichs' also lacked a basic understanding of the trust system's operation. All of these facts weighed against the Muhichs' and in favor of a finding of lack of economic substance. The tax court concluded that the trusts were established primarily to avoid taxes and were a sham.

Applying these factors to the present case requires the same conclusion. The DiSommas' relationship to their property did not differ before and after the creation of the trusts. The DiSommas controlled their property before the trusts were created and continued to control the property that was placed in the trusts. The DiSommas' trust system had no independent trustee. The ultimate trustees were William and Mary. Respondent was originally appointed as a trustee, but that appointment was for a brief

PAGE 69

period of time and for purposes of creating the trust. Respondent exercised no authority as a trustee. Also, no economic interest passed to other beneficiaries of the trust. There were no beneficiaries in the DiSommas' trust system, so no economic interests passed to anyone other than the DiSommas. Further, the DiSommas were not bound by any restrictions in the trust or by the law of trusts. They had complete discretion to operate the trusts and manage the property. These factors, as in Muhich, establish that the DiSomma trust system had no economic substance and was ineffective to substantially reduce their tax burden.

The fact that the DiSommas also sought other benefits from the trust system other than tax avoidance does not influence our findings regarding the lack of tax benefits of the system. Initially, we have evaluated the tax implications of the DiSommas' trust system only for the purpose of determining whether Respondent misrepresented the tax benefits of the system to the DiSommas. We have used the testimony of the expert witness and the decision of the tax court to guide us in determining that Respondent, in fact, made misrepresentations to the DiSommas. The fact that the DiSommas also sought asset protection does not change our determination. As discussed supra, the asset protection aspects of the trust system were also misrepresented to the DiSommas, and of no consequence to our discussion of the tax benefits.

Respondent's Conduct was Prejudicial to Administration of Justice.

We further find that Respondent's conduct was prejudicial to the administration of justice in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct. Respondent placed himself in a position where his clients had less than his complete loyalty and his professional judgment could

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

of others and his own interests. Additionally, Respondent misrepresented the legal benefits of the trust system to the DiSommas, and based on these misrepresentations, induced the clients to purchase an expensive, yet ineffective, trust system. This conduct was prejudicial to the administration of justice because it created the situation where an attorney sacrifices the best interests of his client in order to make money. Although attorneys necessarily must earn a living, they should do so honestly, and in exchange for quality legal services. See Lapinska, 72 Ill. 2d at 469.

Count IV

We dismiss Count IV of the complaint as moot based on our findings in Count III. In Count IV the Administrator alleged that Respondent engaged in criminal conduct and conduct that is prejudicial to the administration of justice in violation of Rules 8.4(a)(3) and 8.4(a)(5) of the Illinois Rules of Professional Conduct. These allegations are based on the facts alleged in Counts I, II, and III, relating to Respondent's participation in the sale of living trusts and the DiSommas' trust system. No additional facts are alleged in Count IV. We have already found, in Counts I and III, that based on the specific facts alleged in those counts, Respondent engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(a)(5). To make this finding again, based on the same facts, would be redundant and improper.

We also decline to find that Respondent engaged in criminal conduct. Based on the alleged facts, we found, in Counts I and III, that Respondent assisted a nonlawyer in the unauthorized practice of law, created a conflict of interest, improperly shared fees with a nonlawyer, and engaged in conduct involving dishonesty, deceit and misrepresentation and engaged in conduct prejudicial to the administration of justice in

PAGE 71

violation of Rules 1.7(b), 5.4(a), 5.5(b), 8.4(a)(4) and 8.4(a)(5). It is beyond dispute that we must examine the Respondent's conduct and determine whether that conduct violates the applicable ethical rules. As the Illinois Supreme Court has stated, "the decision whether to impose discipline does not rest on whether a Respondent has been convicted of criminal charges ... it is determined by whether the lawyer's conduct contravenes professional standards." In re Armentrout, 99 Ill. 2d 242, 457 N.E.2d 1262 (1983). We have found that Respondent's conduct violates the ethical rules, and are unwilling to go beyond that determination to decide whether he also violated a criminal statute, a determination which is not within our authority to make in any event. Any sanction Respondent receives will be based on his conduct, not whether he violated a criminal statute while engaging in that conduct. Accordingly, given our specific findings in Counts I and III, supra, we dismiss Count IV as moot.

Count V

The Administrator voluntarily dismissed the allegations of misconduct in Count V of the complaint.

Count VI

We find that the Administrator proved that Respondent engaged in most of the misconduct alleged in Count VI of the complaint. Specifically, we find that Respondent represented a client that was materially limited by his own interests, engaged in the unauthorized practice of law, made false and misleading communications about his services, engaged in conduct involving misrepresentation, engaged in conduct that is prejudicial to the administration of justice, and engaged in conduct that tends to defeat the administration of justice or bring the legal profession into disrepute in violation of

improperly shared legal fees with a nonlawyer in violation of Rule 5.4(a) of the Illinois Rules of Professional Conduct.

Respondent Engaged in a Conflict of Interest.

We find that Respondent's representation of the Alumbaugh's created a conflict of interest in violation of Rule 1.7(b) of the Illinois Rules of Professional Conduct. As discussed, *supra* in Counts I and III, Rule 1.7(b) prohibits a lawyer from representing a client whenever an attorney's independent judgment on behalf of a client could be affected by his loyalty to another party or to himself. See *Lapinska*, 72 Ill 2d at 469; *Vogel*, 92 Ill. 2d 55; *Chernoff*, 91 Ill. 2d 316.

In the present case, Respondent placed himself in a position where he could be required to choose between conflicting interests and duties. Respondent had a duty to the Alumbaugh's to provide competent legal services and had a self-interest in selling them the trust system. Respondent was not acting exclusively as the Alumbaugh's attorney when they purchased the trust system. Rather, Respondent was affiliated with Athens and sold the trust system as part of a business transaction. Athens was a company formed by two of Heritage's representatives, and was in the business of selling business trusts. Respondent was affiliated with Athens and drafted the Director's Manual for Operating a Common Law Business Organization System for Athens. Respondent admitted that Athens provided trust systems and that he provided legal information to Athens. Additionally, both Respondent and Athens stood to gain financially from Respondent's affiliation with Athens and the sale of the trust system to the Alumbaugh's. Accordingly,

PAGE 73

based on these facts, we find that Respondent's independent judgment on behalf of the Alumbaugh's could have been affected by his conflicting interests to Athens and himself.

Respondent Engaged in the Unauthorized Practice of Law and Made False or Misleading Communications to the Alumbaugh's.

We find that Respondent engaged in the unauthorized practice of law and made false and misleading statements about his ability to practice law in violation of Rules 5.5(a) and 7.1 of the Illinois Rules of Professional Conduct. Respondent was licensed to practice law in Illinois and Michigan. In 1973 or 1975, Respondent voluntarily transferred to inactive status in Michigan. On October 4, 1995, the Illinois Supreme Court granted Respondent's motion to transfer to inactive status in Illinois. Accordingly, as of October 4, 1995, Respondent was not licensed to practice law in any state.

Respondent practiced law in 1996. Respondent admitted that he advised the Alumbaugh's that he could develop a plan that would insulate their assets. He drafted the common law business organization documents for the Alumbaugh's in 1996. The first page of the Alumbaugh's' documents plainly state, "THIS AGREEMENT, CONVEYANCE, and ACCEPTANCE, is made and entered into at the time and on the date appearing in the acknowledgement hereto attached, by and between Edward **Bartoli** who drafted the Common Law Business Organization DOCUMENTS as THE CREATOR HEREOF and THE OFFEROR HEREIN." (emphasis in the original). Respondent also signed his name as the "creator" of the documents. Respondent was present when the Alumbaugh's executed the documents and signed his own name as a director of the trust on several of the trust documents. Respondent's actions "require legal knowledge and skill" and constitute the practice of law. *Discipio*, 163 Ill. 2d at 523; *Baker*, 492 N.W.2d 702-703; see also *In re Epstein*, 93 CH 112, M.R. 8984

PAGE 74

(1994) (finding that an attorney engaged in the unauthorized practice of law when he performed

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

We also find that Respondent's conduct involved misrepresentation and was prejudicial to the administration of justice because he aided in the sale of an estate planning device to the Alumbaughes that he knew would not accomplish the purported goals of that system. The Administrator established that Respondent was involved in establishing the multi trust system purchased by the Alumbaughes and that the benefits of the system were wholly exaggerated. We do not find that the trust system was completely without benefit, or that Respondent engaged in fraud, but only that Respondent misrepresented the benefits to the Alumbaughes.

The multi trust system prepared by Respondent purported to provide privacy, eliminate estate taxes and probate, afford asset protection, and minimize income taxes. The representations made to the Alumbaughes misrepresent the extent of the benefits that could be gained from the trust system. The Administrator's expert witness, William Marutzky, examined the facts of this case and gave his opinion regarding the merits of the Alumbaughes' trust system. We find his opinion credible and supported by the law. Smith, 168 Ill. 2d at 283.

Marutzky testified that the multi trust system would not provide the extent of benefits represented to the Alumbaughes. Marutzky reviewed the promotional material, the trustee's manual for operating the system, and the documents executed by the

PAGE 75

Alumbaughes. Based on his expertise in taxation and his knowledge of the facts in the Alumbaughes' case, Marutzky evaluated the stated goals of the multi trust system. Our findings are consistent with Marutzky's opinions.

The Alumbaughes would not receive complete privacy from the trust system. Unlike the DiSommas' trust system, the Alumbaughes' system involved offshore trusts in Belize. Marutzky acknowledged that Belize has strong banking confidentiality laws, but the Alumbaughes' trust documents contained no instructions requiring them to send their records to Belize. Accordingly, United States government agencies could compel production of records that were not in Belize.

The Alumbaughes would receive some asset protection from the offshore trusts, but only if the trusts were properly established. The Alumbaughes' trusts were not properly established because the Alumbaughes failed to receive authority from the Belize government and failed to transfer their assets to the trusts. In Belize, an entity must obtain specific authority from the government to act as a trustee. The MLA Corporation was set up to act as a trustee for the MLA International Trust and the MLA Global Trust. Although the MLA Corporation was incorporated under the laws of Belize, it did not seek trust powers and was, therefore, not authorized to act as a trustee.

Additionally, the Alumbaughes' assets were not put into the trust. In order to protect assets, they must be located where the trust has been established. A substantial portion of the Alumbaughes' assets consisted of a farm, livestock, farm equipment, and a medical practice that were located in Oklahoma. These assets could not properly be placed in a trust located in Belize. Marutzky opined that Oklahoma law would have provided protection for the Alumbaughes' assets under a corporate trust.

PAGE 76

The Alumbaughes' trust system would not be effective in avoiding estate taxes. As with the DiSommas' trust system, federal estate taxes would be applied to the Alumbaughes' assets in excess of \$650,000. Estate taxes would be charged against the Alumbaughes' assets because they retained control over the assets in the trusts. Although Linda transferred her property to Max, and Max transferred all of the property into the trust system, the Alumbaughes retained control of the assets. Linda and Max were the directors of the Alumbaugh Management Company the Alumbaugh

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

The Alumbaugh's trust system would not significantly reduce their tax liability. There is a significant probability based on Marutzky's opinion that the IRS would not allow the Alumbaugh to assign their future incomes to the trust system and would require them to report that income on a personal tax return. As a general rule, the IRS taxes income to the entity that earns it, and not the entity to which the income is assigned. The exception to this rule is where there is a contract between the entity and the service provider and the entity controls the work and determines who will perform the work. In the present case, Max Alumbaugh is a doctor. He assigned his future income to the Alumbaugh Management Company. Obviously, the Alumbaugh Management Company cannot control the work of Max and the income earned by Max cannot be assigned to the management company.

PAGE 77

The trust material also misrepresented the amount of tax deductions that would be allowed under the trust system. Respondent prepared promotional material explaining the benefits of the trust system. The system would establish an asset management company, business company, vehicle company, leasing company, equity company and charitable trust. Respondent delineated the operation and the tax benefits of the system. Respondent used an example of a doctor that had a medical practice. According to Respondent, all business property and income would be transferred from the individuals to the business company. The business company would pay all the expenses of the assets owned by it, including the mortgage on his medical building, maintenance, utilities, and real estate taxes. To avoid paying income tax on the remaining income, the business company would transfer that income to the asset management company.

The asset management company would use that income to pay the expenses of its assets, including the family residence and vacation residence. It would also pay the expenses related to the directors' medical, travel, food, insurance and entertainment expenses. The asset management company would also be allowed to pay the educational expenses of the current and future directors. All of these expenses would be tax deductible. To avoid paying taxes on the remaining income in the asset management company, it would be donated to the charitable trust. Adm. Ex. 59, at 65-66.

We find, as we did in Count III, that these materials misrepresent the expenses that would be tax deductible. Specifically, we agree with Marutzky's opinion that the Alumbaugh, as directors of the asset management company, would not be allowed to deduct the expenses related to their personal residence. Such deductions are allowed only by an employer who provided housing to an employee where the housing is for the

PAGE 78

convenience of the employer and is solely related to the employer's business. According to the promotional material, the directors of the asset management company are not employees of the company. Therefore, the housing expenses would not be tax deductible. Similarly, we agree with Marutzky's opinion that the educational expenses of future directors, namely the current directors' children, would not be deductible. Educational expenses are deductible in limited circumstances for employees of a company, and only if the education does not prepare the employee for a new business. Under these limitations, we agree with Marutzky's opinion that the educational deductions would not apply to the educational expense of the current directors' children.

**Respondent Engaged in Conduct that was Prejudicial
to the Administration of Justice and
that Brought the Legal Profession into Disrepute.**

We further find that Respondent engaged in conduct that was prejudicial to the administration of justice and which brought the legal profession into disrepute in violation of Rule 8.4(a)(5) of the

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

the trust system and establishing a system that did not accomplish the stated goals. Rather than focusing on the interests of his clients, Respondent focused on selling them an ineffective trust system and profiting from his misrepresentations of that system. This conduct is contrary to our principles of justice and undermines the public's faith in the legal profession.

PAGE 79

**The Administrator Failed to Prove
that Respondent Engaged in Improper Fee Splitting.**

We find that the Administrator failed to prove that Respondent improperly split his fee with nonlawyers in relation to the Alumbaugh's case. The Administrator has the burden of proving this allegation by clear and convincing evidence, which requires a quantum of proof that leaves no reasonable doubt in the minds of the fact finder as to the veracity of the proposition in question. Jones, 285 Ill. App. 3d 38. Suspicious circumstances are insufficient to warrant discipline. Lane, 127 Ill. 2d at 111.

In the present case, the Administrator presented no evidence to prove that Respondent split the fees he received from the Alumbaugh's with a nonlawyer. The evidence establishes only that the Alumbaugh's paid Respondent two checks in the amount of \$12,500 each for his services. The checks were made payable to Respondent and endorsed by Respondent. There is also evidence that Respondent was the legal director of the Athens Company, through which the Alumbaugh's purchased their trust system. However, there is no direct evidence that Respondent split the fees he received from the Alumbaugh's with a nonlawyer at Athens. Although such an arrangement would be consistent with how Respondent operated at Heritage, without more evidence we find that the Administrator failed to prove this allegation of misconduct.

RECOMMENDATION

The purpose of the disciplinary system is to protect the public, maintain the integrity of the legal system and safeguard the administration of justice. In re Howard, No. 86982 (Ill. S. Ct., December 2, 1999); In re March, 71 Ill. 2d 382, 395, 376 N.E.2d 213 (1978). "The Rules of Professional Conduct recognize that the practice of law is a public trust and lawyers are the trustees of the judicial system." Smith, 168 Ill. 2d at 287.

PAGE 80

The objective of a disciplinary inquiry is not punishment. Instead, the purpose is to determine whether an individual should be permitted to engage in the practice of law. Smith, 168 Ill. 2d at 295. Furthermore, an attorney has a duty to cooperate with the Administrator and evidence of such cooperation is relevant in determining a disciplinary sanction. In re Samuels, 126 Ill. 2d 509, 531, 535 N.E.2d 808 (1989). In determining the appropriate sanction for an attorney's misconduct, the purpose of the disciplinary system and the facts surrounding the misconduct must be considered. In re Chernois, 114 Ill. 2d 527, 502 N.E.2d 722 (1986).

The discipline imposed on an attorney who has engaged in misconduct also depends on the aggravating and mitigating factors presented during that attorney's disciplinary proceedings. Samuels, 126 Ill. 2d at 529-30. In the present case, there are numerous aggravating factors and only one mitigating factor.

Respondent aggravated his misconduct by causing harm to his clients, taking advantage of a vulnerable segment of the population, and his high level of education and experience. Respondent's misconduct is aggravated by the fact that the individuals who purchased the trust system were harmed by his actions. Specifically, the DiSommas and the Alumbaugh's paid Respondent a substantial amount of money for trust systems that would not accomplish the goals represented by

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

PAGE 81

system. Additionally, William DiSomma has lost trust in lawyers as a result of Respondent's misconduct.

The Alumbaugh's paid Respondent \$25,000 for their trust system. Although there is no evidence demonstrating that the Alumbaugh's requested a refund or have had problems with the IRS, there is sufficient evidence establishing that they spent a significant amount of money for an ineffective trust system. The Alumbaugh are at risk of being subject to future problems if they operate under the assumption that the trust system will provide protection that does not exist. Therefore, these individuals were harmed by Respondent's misconduct. See In re Lewis, 118 Ill. 2d 357, 515 N.E.2d 96 (1987)(a relevant factor to consider when selecting the appropriate discipline is "the harm or exposure to unreasonable risk caused by [the attorney's] misconduct."); In re Saladino, 71 Ill. 2d 263, 375 N.E.2d 102 (1978)(an attorney violates his duty to safeguard the public where he "exposes a client to the risk of loss, jeopardizes the freedom or the pecuniary or privacy interests of a client . . .").

Respondent also aggravated his misconduct by focusing on a vulnerable segment of the population. When Respondent worked for Heritage, he was involved in providing living trusts to individual members. The applications of these members reveal that the vast majority of the individuals who purchased the living trusts were between 60 and 80 years old. One of the purported advantages of the living trust was the amount of money the individual would save if their estate went through probate. Indeed, this is the segment of the population that would be most interested in this type of trust, and the one most vulnerable to unethical conduct. Accordingly, we consider this fact to be a serious aggravating factor. See In re Lewis, 118 Ill. 2d 357, 515 N.E.2d 96 (1987) (attorney's

PAGE 82

misconduct was aggravated because it jeopardized the interests of a disabled person); In re Kukla, 91 CH 133, M.R. 10425 (1994)(attorney's misconduct was aggravated because it was directed at the aged and infirm who were the least capable of defending themselves).

Respondent's misconduct is further aggravated by the facts that he was a well-educated and experienced attorney. Respondent received his law degree from Notre Dame and a masters of law degree from Harvard Law School. Respondent publicized the fact that he had a law degree from Harvard in an effort to sell trust system. William DiSomma testified that this was an important fact in deciding to purchase his trust system. Additionally, Respondent had been practicing law for over 30 years when the misconduct began. These facts are properly considered in aggravation. See In re Lewis, 138 Ill. 2d 310, 563 N.E.2d 198 (1990)(substantial experience in the practice of law is an aggravating factor); In re Sussman, 92 CH 541, M.R. 8796 (1996)(an attorney's maturity and legal experience aggravated his misconduct); see also In re Lamberis, 93 Ill. 2d 222, 443 N.E.2d 549 (1982)(an advanced law degree improves an attorney's prospects for employment, reputation and advancement in the legal profession);

The Administrator suggested that Respondent's failure to personally appear at the hearing should be considered as an aggravating factor. We decline to accept this suggestion. Respondent's attorney represented that Respondent was unable to attend the hearing because he was seeking treatment for his medical condition. Respondent failed to submit medical reports to substantiate the exact status of his condition and justify a continuance of the hearing. Respondent did cooperate during the prehearing process. While not viewed by us as an aggravating factor, Respondent's nonappearance at the

PAGE 83

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

avoid disbarment.

The only mitigating factor that can be gleaned from the record is that Respondent has received no prior discipline. Although the lack of a prior discipline is considered a mitigating factor, we give little weight to this fact in the present case. See In re Demuth, 126 Ill. 2d 1, 533 N.E.2d 867 (1988). Respondent's prior good conduct is insignificant in light of the extent and severity of his misconduct in this case. Respondent's misconduct was not the result of a temporary lapse in judgment and was not an isolated incident. Rather, he engaged in a pattern of misconduct spanning five years. Respondent's pattern of misconduct significantly lessens the weight given to his prior good conduct. See Lewis, 138 Ill. 2d at 345-46; In re Feldman, 89 Ill. 2d 7, 13, 431 N.E.2d 388 (1982).

Based on all the allegations of misconduct contained in the complaint, the Administrator requests that we recommend Respondent be disbarred. In support of this request, the Administrator directed our attention to numerous disciplinary cases from other states. In these cases, the courts imposed sanctions ranging from a one year suspension to disbarment. See In the Matter of McGuinness, 636 N.Y.S.2d 54 (1996)(five year suspension, and until further order of the court); In the Matter of Pearce, 806 P.2d 21 (1990)(disbarment); People v. Macy, 789 P.2d 188 (1990)(two year suspension); People v. Boyls, 591 P.2d 1315 (1979)(one year suspension).

We agree with the Administrator and recommend that Respondent be disbarred. This sanction is appropriate based on the nature and extent of Respondent's misconduct.

PAGE 84

Although there are no Illinois cases involving identical misconduct, after reviewing the cases from other jurisdictions and examining the reasoning of our Supreme Court in other disciplinary cases, we find that disbarment is the appropriate sanction.

Disbarment is appropriate in cases involving fraud or moral turpitude, a pattern of misconduct, or other egregious behavior. Our Supreme Court has imposed disbarment where the Respondent "has manifested a pattern of behavior which clearly tends to bring the legal profession into disrepute." Feldman, 89 Ill. 2d at 13; see also In re Smith, 75 Ill. 2d 134, 387 N.E.2d 316 (1979) (finding disbarment was appropriate where an attorney made misrepresentations to his client and engaged in other acts of misconduct). Additionally, the amount and seriousness of the misconduct are important factors when determining if disbarment is the proper sanction. See In re Lewis, (finding that based on "the overwhelming amount of serious misconduct on the part of Respondent . . . disbarment is not only appropriate, but essential.").

In determining the appropriate discipline in the present case, we must recommend a sanction that will preserve public confidence in the integrity of the legal profession. In re Chandler, 161 Ill. 2d 459, 641 N.E.2d 473 (1994). Although a degree of uniformity and consistency in sanctions is necessary, the discipline imposed should be based upon the unique facts of each case. Discipio, 163 Ill. 2d at 528. When selecting a sanction, we may properly consider the deterrent value of the discipline and the need to impress upon others the significant repercussions of errors such as those committed in the pending case. *Id.*

We are well aware that disbarment is the ultimate professional sanction, but are convinced that Respondent's misconduct is so egregious that such an extreme sanction is

PAGE 85

necessary. Disbarment is warranted in the present case to protect the public from Respondent's continued misconduct and to deter other attorneys in Illinois from engaging in similar misconduct. Generally, the sanction imposed for Respondent's individual acts of misconduct would range from censure to disbarment. See Discipio, 163 Ill. 2d at (attorney suspended for two years for aiding in

In re Edward Bartoli, 96 CH 739 (Hearing Board)

Lawyer Search Attorney

visited on 10/1/2012

misconduct and the cumulative effect of that misconduct, disbarment is justified. See In re Bell, 147 Ill. 2d 15, 588 N.E.2d 1093 (1992)(cumulative misconduct can demonstrate the attorney's unfitness to practice law and warrant disbarment); In re Schneider, 98 Ill. 2d 215, 456 N.E.2d 2 (1983)(same).

In imposing disbarment, we repeat the words of our Supreme Court, and find that "we cannot permit this Respondent to continue the practice of law, and thus invite the public to retain the purported services of one to whom the common obligations of his profession mean so little. In re Clark, 8 Ill. 314, 321, 134 N.E. 281 (1956). Here, Respondent routinely disregarded his professional obligations and engaged in repeated misconduct, and engaged in the practice of law while on inactive status. His misconduct was driven by his desire for monetary gain rather than by his concern for the people to whom he provided legal services. Respondent was instrumental in providing living trusts to members of Heritage without adequate legal analysis. He sold the DiSommas and the Alumbaugh's expensive trust systems by making false representations about the benefits

PAGE 86

of the system. None of these individuals received the benefits they bargained for, or they deserved, namely the undivided loyalty and sound legal counsel of an attorney. Rather, they were sold legal documents with questionable or negligible value. Respondent has proven himself unworthy of the privilege of practicing law, and we find no alternative to disbarment.

In light of Respondent's conduct including aiding in the unauthorized practice of law, engaging in conflicts of interest, sharing of legal fees with nonlawyers, engaging in the unauthorized practice of law, making false statements about his services, engaging in conduct involving misrepresentations, and engaging in conduct that is prejudicial to the administration of justice and that tends to defeat the administration of justice and bring the legal profession into disrepute, we recommend that Respondent be disbarred.

Dated: February 16, 2000 [Filed February 17, 2000]

Arthur B. Smith, Jr., Chair of the Hearing Panel, John M. Steed, III, and Martin J. Saladin, Hearing Panel Members

End of Document