

IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
DUPAGE COUNTY
STATE OF ILLINOIS

FILED

SEP 25 2012

**ATTY REG & DISC COMM
CHICAGO**

JEROME LARKIN, not individually but
as Administrator of the Attorney Registration
and Disciplinary Commission,

Petitioner,

v.

Melanie Biscardi and Home Advocate
Trustees, LLC,

Respondent.

Case No. 12CC21

Commission No. 2012PR00125

Commission No.

2012PR00125

2012 SEP 21 PM 3:33
FILED
CIRCUIT COURT
DUPAGE COUNTY
ILLINOIS

PETITION FOR ADJUDICATION OF MINOR INDIRECT CRIMINAL CONTEMPT
AND FOR OTHER RELIEF

NOW COMES Jerome Larkin, not individually but as Administrator of the Attorney Registration and Disciplinary Commission (hereinafter "Petitioner"), by his attorney, Scott A. Kozlov, pursuant to the Illinois Attorney Act, 705 ILCS 205/1 *et seq.*, and pursuant to Supreme Court Rule 779(b), and petitions this honorable court to hold Respondents Melanie Biscardi and Home Advocate Trustees, LLC (hereinafter, individually, "Biscardi" and "Home Advocate," and collectively, "Respondents") in contempt of court, and to order such other and further relief as this court deems proper. In support whereof, Petitioner states as follows:

NATURE OF THIS ACTION, JURISDICTION, AND VENUE

1. This is an action brought pursuant to Supreme Court Rule 779, which provides, in relevant part:

Unauthorized practice of law proceedings authorized by the Inquiry Board against a person that is not licensed to practice law in any other U.S. jurisdiction...may be brought by the Administrator as civil and/or contempt actions pursuant to the rules of this court, its inherent authority over the practice

of law, or other laws of the State related to the unauthorized practice of law. Proceedings shall be commenced in the circuit court for the circuit in which venue would be proper under the Code of Civil Procedure (735 ILCS 5/2-101 *et seq.*).... The circuit court is authorized to enter a final judgment disposing of the case. Appeals from that judgment are governed by Rule 301 of this court.

2. On August 28, 2012, the Inquiry Board of the Commission authorized proceedings to be brought against Respondents pursuant to Supreme Court Rule 779.

3. Venue for this action properly lies in the Circuit Court of the 18th Judicial Circuit (DuPage County) pursuant to 735 ILCS 5/2-101, because Respondents' actions, which are described in Count I, *infra*, occurred in DuPage County.

PARTIES

4. Petitioner Jerome Larkin is the Administrator of the Attorney Registration and Disciplinary Commission, which is empowered by Supreme Court Rule 779 to bring civil and/or contempt actions against, *inter alia*, a person that is not licensed to practice law in any other U.S. jurisdiction.

5. Respondent, Melanie Biscardi, is a resident of Land O Lakes, Florida, who at no time has been licensed to practice law in Illinois or any other U.S. jurisdiction.

6. Respondent, Home Advocate Trustees, LLC, is a limited liability company registered in the State of Washington, with offices in Redmond, Washington, and San Diego, California. At no time was Home Advocate authorized to practice law in Illinois or any other U.S. jurisdiction.

I: UNAUTHORIZED PRACTICE OF LAW
IN VIOLATION OF THE ILLINOIS ATTORNEY ACT
IN THE SULLIVAN MATTER

7. On August 4, 2011, JP Morgan Chase Bank (“Chase”) filed a foreclosure action in DuPage County against Juliet Sullivan (“Sullivan”) in connection with a mortgage on Sullivan’s home at 1112 Longwood Drive in Lisle (“the Lisle property”). The Clerk of the Circuit Court then docketed the matter as *JP Morgan Chase Bank v. Juliet Sullivan, et al.*, case number 2011 CH 3690.

8. At some time prior to September 20, 2011, Respondents agreed to represent Sullivan in relation to case number 2011 CH 3690, in exchange for Sullivan’s agreement to assign all of her interests in the Lisle property to Home Advocate.

9. In or about September 2011, Biscardi was assigned by Home Advocate to handle the matter for Sullivan, and, on September 20, 2011, Biscardi sent a notice to Chase directing that all future mail to Sullivan be sent to Home Advocate in San Diego, CA. Biscardi’s September 20, 2011 notice further stated, in part:

This is authorization to allow **Home Advocate Trustees** to access and discuss all information regarding a mortgage. This permission includes permission for the above referenced party to negotiate on our behalf and exchange information regarding our Mortgage Loan and authorize (sic) **Home Advocate Trustees** to receive information and discuss all aspects of our loan. (emphasis in original)

10. On January 26, 2012, Biscardi sent a document on Home Advocate’s letterhead entitled “Note Challenge” to Chase, claiming that the promissory note that formed the basis for the foreclosure action against Sullivan was invalid. That document stated, in part:

Our office represents the interests of the above named borrower and loan number. We have been advised that you are attempting to

enforce the payment of the above stated loan via foreclosure action. However, our records show that you are not the actual beneficiary....

According to our research, you do not own, possess or control the note or the mortgage, which regardless, has been satisfied in full...

Demand is hereby made for the production of the original Note and a certified chain of assignments which prove that you have legal standing to foreclose. Borrower demands that you produce these documents, within thirty (30) days of the service hereof, to the address listed below and that the foreclosure sales date be cancelled or put on a legal hold; pending our review of these documents and so we may conduct our mortgage audit/legal discovery.

Biscardi signed the January 26, 2011 correspondence as "Paralegal – Senior Foreclosure Specialist" for Home Advocate. Shortly thereafter, Chase received Biscardi's January 25, 2011 correspondence on the date it was sent, but did not respond to it.

11. On February 17, 2012, Biscardi filed an answer on Sullivan's behalf in case number 2011 CH 3690. The answer stated, in part:

COMES NOW, the defendant/s Juliet Sullivan, represented by **Melanie Biscardi**, attorney in fact and unto this Honorable Court, hereby depose and state...(emphasis in original)

Biscardi signed the answer as "Senior Paralegal, Attorney in Fact for the Defendant."

12. On May 31, 2012, the Honorable Robert Gibson, who was presiding over case number 2011 CH 3690, reported the actions of Biscardi and Home Advocate to the Attorney Registration and Disciplinary Commission.

13. Respondents' advice, opinions, and services provided to Sullivan required a degree of legal skill or knowledge beyond ordinary business intelligence and constituted the practice of law. *People ex rel. Schafer*, 87 N.E.2d 773 (Ill. 1949); *In re Howard*, 721 N.E.2d 1126 (Ill. 1999).

II: UNAUTHORIZED PRACTICE OF LAW
IN VIOLATION OF THE ILLINOIS ATTORNEY ACT
IN THE ZIMMER MATTER

14. On January 18, 2011, Federal National Mortgage Association (“FNMA”) filed a foreclosure action in Will County against Susan Zimmer (“Zimmer”) in connection with a mortgage on Zimmer’s home at 19242 S. 104th Avenue in Mokena (“the Mokena property”). The Clerk of the Circuit Court then docketed the matter as *Federal National Mortgage Association v. Susan L. Zimmer, et al.*, case number 2011 CH 267.

15. At some time prior to October 28, 2011, Respondents agreed to represent Zimmer in relation to case number 2011 CH 267, in exchange for Zimmer’s agreement to assign all of her interests in the Mokena property to Home Advocate.

16. In or about October 2011, Biscardi was assigned by Home Advocate to handle the matter for Zimmer, and, on October 28, 2011, Biscardi sent a notice to FNMA, directing that all future mail to Zimmer be sent to Home Advocate in San Diego, CA. Biscardi’s October 28, 2011 notice further stated, in part:

This is authorization to allow **Home Advocate Trustees** to access and discuss all information regarding a mortgage. This permission includes permission for the above referenced party to negotiate on our behalf and exchange information regarding our Mortgage Loan and authorize (sic) **Home Advocate Trustees** to receive information and discuss all aspects of our loan. (emphasis in original)

17. On December 1, 2012, Biscardi sent a document on Home Advocate letterhead entitled “Note Challenge” to Codilis & Associates (“Codilis”), FNMA’s attorneys in case number 2011 CH 267, claiming that the promissory note that formed the basis for FNMA’s foreclosure action against Sullivan was invalid. That document stated, in part:

Our office represents the interests of the above named borrower and loan number. We have been advised that you are attempting to

enforce the payment of the above stated loan via foreclosure action. However, our records show that you are not the actual beneficiary....

According to our research, you do not own, possess or control the note or the mortgage, which regardless, has been satisfied in full...

Demand is hereby made for the production of the original Note and a certified chain of assignments which prove that you have legal standing to foreclose. Borrower demands that you produce these documents, within thirty (30) days of the service hereof, to the address listed below and that the foreclosure sales date be cancelled or put on a legal hold; pending our review of these documents and so we may conduct our mortgage audit/legal discovery.

Biscardi signed the December 1, 2011 correspondence as "Paralegal – Senior Foreclosure Specialist" for Home Advocate. On December 5, 2011, Codilis received Biscardi's December 1, 2011 correspondence on the date it was sent, but they did not respond to it.

18. On December 7, 2011, FNMA obtained a judgment of foreclosure against Zimmer in case number 2011 CH 267.

19. On December 8, 2011, Biscardi drafted and sent to Codilis by facsimile, a copy of a document dated December 6, 2011, entitled, "Opposition to Motion." Biscardi's December 8, 2011 correspondence stated, in part:

COMES NOW the defendants (sic), Susan L. Zimmer, thru the undersigned attorney in fact, in the captioned matter hereby enter her objection to the Motion for Default, Motion to Dismiss Unknown Owners and non-record claimants and Judgment of Foreclosure Sale filed by plaintiff. The motion should be denied because:

1. Plaintiff is not the sole and absolute owner of the note....
2. The filing of this petition by plaintiffs is capricious and whimsical as it did not give the defendants the opportunity to cure the defects in the mortgage if there are any.

The December 8, 2011 correspondence listed Biscardi as “Senior Paralegal, Attorney in Fact for the Defendant.” Codilis received Biscardi’s December 1, 2011 facsimile correspondence on the date it was sent, but they did not respond to it.

20. On March 2, 2012, Biscardi prepared and sent by facsimile to Codilis a document on Home Advocate letterhead dated February 29, 2012, entitled, “Written Request for Sales Postponement.” Biscardi’s March 2, 2012 correspondence demanded that the foreclosure sale of Zimmer’s property be canceled or postponed to allow Home Advocate time to “expedite our legal discovery,” and stated, “[i]f our demand and request is not granted, the borrower has requested that we initiate a lawsuit against you.” The December 8, 2011 correspondence listed Biscardi as “Paralegal – Senior Foreclosure Specialist, Home Advocate Trustees, LLC.” Codilis received Biscardi’s March 2, 2012 facsimile correspondence on the date it was sent.

21. On March 6, 2012, Lisa Collins, an attorney from Codilis, sent a letter to Biscardi and Home Advocate, requesting proof that they were authorized to practice law in Illinois in connection with case number 2011 CH 267. Shortly thereafter, Biscardi and Home Advocate received Codilis’ letter, but they did not respond to it.

22. On March 16, 2012, Biscardi prepared and sent by facsimile to Codilis three documents dated March 15, 2012, including: a “Notice of Representation,” in which she maintained that she and Home Advocate represented Zimmer as “Attorney in Fact;” a “Notice of Illegal Sale,” in which she claimed that FNMA’s foreclosure sale of the Mokena property was illegal; and a “Request for Production of Documents,” in which she demanded copies of the original promissory note from Zimmer as to the Mokena property and copies of any assignments of that note. All three of Biscardi’s March 16, 2012 documents listed her as “Paralegal – Senior

Foreclosure Specialist, Home Advocate Trustees, LLC.” Codilis received Biscardi’s March 16, 2012 facsimile correspondence on the date it was sent, but did not respond to it.

23. On March 20, 2012, a female caller telephoned Codilis and inquired whether they had received the correspondence referenced in paragraph 22, above. The caller stated that she was a representative of Home Advocate and acknowledged that she was not an attorney, but she refused to identify herself.

24. On May 27, 2012, Attorney Robert H. Rappe, Jr., of Codilis, wrote to the Administrator of the ARDC, requesting that Biscardi and Home Advocate be investigated for engaging in the unauthorized practice of law.

25. Respondents’ advice, opinions, and services provided to Sullivan required a degree of legal skill or knowledge beyond ordinary business intelligence and constituted the practice of law. *People ex rel. Schafer*, 87 N.E.2d 773 (Ill. 1949); *In re Howard*, 721 N.E.2d 1126 (Ill. 1999).

V. APPLICABLE STATUTE AND VIOLATIONS

26. Section 1 of the Attorney Act, 705 ILCS 205/1, provides, in relevant part:

no person shall be permitted to practice as an attorney or counselor at law within this State without having previously obtained a license for that purpose from the Supreme Court of this State.

no person shall receive any compensation directly or indirectly for any legal services other than a regularly licensed attorney, nor may an unlicensed person advertise or hold himself or herself out to provide legal services.

any person practicing, charging or receiving fees for legal services or advertising or holding himself or herself out to provide legal services within this State, either directly or indirectly, without being licensed to practice as herein required, is guilty of contempt of court and shall be punished accordingly, upon complaint being filed in any Circuit Court of this State. The remedies available

include, but are not limited to: (i) appropriate equitable relief; (ii) a civil penalty not to exceed \$5,000, which shall be paid to the Illinois Equal Justice Foundation; and (iii) actual damages.

27. At no time relevant to this Complaint were Respondents licensed to practice law in the State of Illinois.

28. From at least February 2012 to date, Respondents have knowingly engaged in a course of conduct in violation of the Illinois Attorney Act, 705 ILCS 205/1, including by:

a. falsely representing directly or by implication to Illinois consumers, and in particular, to Sullivan and Zimmer, that they were authorized to practice law in the state of Illinois; and

b. purporting to render legal advice and opinions to Illinois consumers, and in particular, to Sullivan and Zimmer.

29. Respondents knew that their actions constituted the unauthorized practice of law, yet Respondents willfully and knowingly engaged in those actions.

WHEREFORE, the Administrator prays that this honorable Court enter judgment:

A. Finding Respondents guilty of minor indirect criminal contempt of court pursuant to the Court's inherent authority as recognized in Supreme Court Rule 779, *Chicago Bar Association v. Goodman*, 366 Ill. 346, 8 N.E.2d 941 (1937), and the Illinois Attorney Act, 705 ILCS 205/1 *et seq.*;

B. Imposing punitive sanctions and/or fines against the Respondents/Contemnors for their minor indirect criminal contempt of court, including a fine of no more than \$500, and a period of incarceration of less than six (6) months;

C. Declaring that Respondents have engaged in the unauthorized practice of law in violation of the Illinois Attorney Act, 705 ILCS 205/1;

D. Imposing civil penalties against Respondents in amount not to exceed \$5,000 each, payable to the Illinois Equal Justice Foundation, for violation of the Illinois Attorney Act, 705 ILCS 5/201 *et seq.*;

E. Temporarily and permanently enjoining Respondents from engaging in the business of providing legal services in the State of Illinois; and

F. Providing for such other and further relief as justice and equity may require.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: _____
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