

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

CLEVELAND BAR ASSOCIATION,	:	
Relator,	:	
	:	CASE NO.: UPL02-1
v.	:	
	:	
SHARP ESTATE SERVICES, INC., ET AL.,	:	<u>FINAL REPORT</u>
Respondents.	:	

This matter came before the Board of Commissioners on the Unauthorized Practice of Law ("Board") on the Relator's Complaint filed on February 12, 2002, against the Respondents Sharp Estate Services, Inc., Jeffrey B. Sharp, the Estate Plan ("TEP") and Henry W. Abts, III ("Abts").

Respondents filed their Answers on April 14, 2002 (TEP and Abts) and April 18, 2002 (Sharp), in which the charges against them were denied.

Relators filed an Amended Complaint on July 5, 2002, in which Diane C. Sharp, a.k.a Diane C. Briehl; Asset Preservation Group, Inc.; Sharp Estate & Insurance Services, Inc.; and Robert Clapacs were added as new Respondents.

Respondents TEP and Abts answered the Amended Complaint on August 19, 2002. Respondents Sharp and newly named Respondents Diane Sharp, Asset Preservation Group, Sharp Estate & Insurance Services, and Robert Clapacs filed their Answer to the Amended Complaint on September 25, 2002.

Following extensive discovery, and numerous pre-trial motions, the matter proceeded to a hearing on the merits on July 16 and 17, 2003. Relator was represented by counsel. Respondents TEP and Abts were represented by counsel and personally appeared. Respondent

Clapacs appeared personally in response to Relator's subpoena. None of the other Respondents appeared or were represented by counsel at the hearing. Extensive post-hearing briefs were filed by Relator and Respondents TEP and Abts.

The Board, upon consideration of the evidence presented at the hearing and the briefs of the parties, enters the following findings of fact and recommendations to the Supreme Court of Ohio.

Findings of Fact

1. Sharp Estate Services, Inc. is an Ohio corporation owned and controlled by Jeffrey Sharp. He has also operated under the trade names of Mid-America Ohio, Asset Preservation Group, and Sharp Estate & Insurance Services. Respondents Diane Sharp and Robert Clapacs have worked with Jeffrey Sharp in these businesses. They will be collectively referred to as "Sharp" in this Report.

2. The Estate Plan is a California corporation. The National Estate Plan is a Nevada corporation, doing business as The Estate Plan ("TEP"). Both companies are owned by Henry W. Abts III ("Abts"), a resident of Nevada, who formed the corporation in the early 1980's.

3. Abts has written and published two books - The Living Trust and Selling the Living Trust which are sold in bookstores and on-line.

4. TEP and Abts have, for some years, engaged in the preparation and marketing of living trusts and other estate planning products on a national, if not worldwide, basis. Ohio consumers are among the customers of TEP who have purchased and executed living trusts, wills, and other estate planning documents.

5. Sharp was engaged in the marketing of the TEP products to Ohio consumers.

6. The TEP marketing program worked in the following manner:

a. TEP established a network of individuals, like Sharp, who were not attorneys, but who were called "advisors."

b. The advisors were required, by contract with TEP, to attend training sessions conducted by TEP and Abts, and to follow a "Sales and Marketing Manual" prepared by TEP which provided instruction on how to develop client leads, how to conduct seminars, and how to follow up on appointments with the leads and seminar attendees. The Manual also provided suggested sales presentations, including how to explain the benefits of living trusts, how to overcome customer objections, and how to assist customers in filling out a TEP workbook that would provide the customers' information and estate planning desires.

c. The advisors were instructed to make the sales presentations in the customers' homes and to obtain a signed purchase agreement for the trust products, together with two checks from the customer - one check payable to the advisor and another check payable to an attorney selected by the advisor from a list provided by TEP.

d. The completed workbook and attorney's check were sent by the advisor to the attorney for the purpose of preparing the estate documents.

e. The attorneys who provided these services were required to enter into a contract with TEP, and under most, if not all, of those contracts, the attorney was obligated to place orders for the TEP documents, such as living trusts. If the attorney were to use the information received from the advisor to prepare his own documents (not provided by TEP), the attorney could be terminated by TEP.

f. The attorneys were not required to, and rarely did, speak with or meet with the customer, their client.

g. The attorney (referred to by TEP as a "hub attorney") would enter information from the clients' workbook into a computer software program provided by TEP, and TEP would then prepare the requested documents and return them to the advisor, not to the hub attorney. The advisor would deliver the documents directly to the customer for execution.

h. Sharp would use information contained in the workbook to sell the customer additional products, such as life insurance and annuities.

i. At the sales presentation of the customer's home, the advisor would utilize a TEP videotape, TEP presentation, and "leave behind" folders, and the advisor would determine what type of trust was needed by the customer. No attorney was present at these home sales solicitation meetings.

j. The total cost to the customer for the completed trust document was frequently \$2,195.00, although persons with "large" estates would be charged more than that.

k. Sharp used telemarketers to obtain leads for its advisors. The telemarketers introduced themselves as being from the "Senior Information Bureau."

l. After the initial complaint was filed in this matter, Sharp Estate Services changed its name to Asset Preservation Group.

m. Most, if not all, of the materials used in the sales presentations and on the completed documents bore the name and logo of The Estate Plan.

n. Customers who executed the trust documents were placed on a mailing list to receive periodic brochures and newsletters from TEP which describe, among other

things, changes in the tax laws that would require an amendment to existing living trusts, with an offer to sell a new form to the customer that would effectuate the amendment.

o. TEP has sold over 100,000 living trusts in the United States.

7. TEP and Abts permitted the advisors to hold themselves out as representatives of TEP by the use of the TEP materials in sales presentations and the final preparation of documents by TEP.

8. The hub attorneys have aided and abetted TEP, Abts, and their advisors in the unauthorized practice of law.

Conclusions of Law

1. The Supreme Court of Ohio has original jurisdiction regarding the admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law. Section 2(B)(1)(g), Article IV, Ohio Constitution; Royal Indemnity Co. v. J.C. Penney Co. (1986), 27 Ohio St. 3d 31; Judd v. City Trust & Savings Bank (1937), 133 Ohio St. 81.

2. The unauthorized practice of law consists of the rendering of legal services for another by any person not admitted to the practice of law in Ohio. [Gov. Bar R. VII, Section 2(A)].

3. In Ohio, the sale and marketing of living trusts involves the practice of law. This includes: (1) providing particularized advice about the legal documents which clients should have; (2) explaining the consequences of specific decisions regarding a client's estate plans; and (3) preparing legal documents required to fulfill the client's estate plans. Cincinnati Bar Ass'n v. Kathman (2001), 92 Ohio St. 3d 92, 96.

4. All Respondents have engaged in a common and pervasive scheme to market The Estate Plan's living trusts and other estate planning documents in a manner which constitutes the unauthorized practice of law.

a. Respondents Sharp's acts include:

- (1) suggesting to clients the need for a living trust or other estate planning documents;
- (2) recommending to individuals that they purchase specific types of trusts or estate planning documents; and
- (3) advising customers about the legal consequences of certain choices the customer might make in preparing his or her estate plan.

b. Respondents TEP and Abts' acts include:

- (1) marketing and selling living trusts and other legal documents through their network of non-attorney advisors;
- (2) vicarious responsibility for the actions of the advisors;
- (3) advising customers as to the legal effect of the documents which they prepared; and
- (4) preparing legal documents, such as living trusts, for execution by their customers living in Ohio.

5. TEP and Abts are estopped from denying an agency relationship between themselves and the advisors who marketed the estate planning documents and delivered them to the customer for execution. See Hanson v. Kynast (1986), 24 Ohio St. 3d 171; Union Mutual Life Ins. Co. v. McMillen (1873), 24 Ohio St. 67; Akron Bar Ass'n v. Miller (1997), 80 Ohio St. 3d 6; Mahoning Cty. Bar Ass'n. v. The Senior Services Group, Inc., 66 Ohio Misc. 2d 46 (Bd.

Unauth. Prac. 1994); Rubbo v. Hughes Provision Co., 67 Ohio App. 123 (Mahoning Cty. 1940), aff'd 138 Ohio St. 178 (1941); Ammerman v. AVIS Rent-A-Car System, Inc., 70 Ohio App. 3d 338 (Franklin Cty., 1982).

6. While TEP and Abts attempted to instruct its advisors to not give legal advice to customers and to use hub attorneys to avoid the unauthorized practice of law, the actual practices of the advisors, such as Sharp, the hub attorneys, TEP and Abts, constitute the unauthorized practice of law.

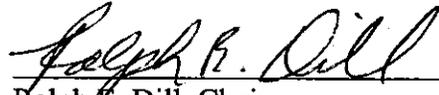
7. The utilization of "hub attorneys" or review attorneys was the subject of the Ohio Supreme Court's decision in the Kathman case, supra. At page 96 of that opinion, the court held that "an attorney violates DR 3-101(A) when the attorney assists a non-attorney, as respondent assisted the non-attorneys, in the marketing and selling of living trusts." In Kathman, the court analyzed the attorney's role in the marketing of living trusts by The Estate Plan. The case instanter presents the other side of the equation, i.e., the role of the Sharp Respondents, TEP and Abts, in the same marketing efforts that were scrutinized in Kathman. As in Kathman, Respondents' use of a "review attorney" or "hub attorney" for document preparation after the decision has been made and a contract has been executed to create a living trust, does not cure the unauthorized practice of law violation; use of an attorney at that stage only serves to cause ethical problems for an attorney who decides to become involved. The findings of this Board are compatible and consistent with the Court's conclusions in Kathman – the practices engaged in by all Respondents constitute the unauthorized practice of law.

Recommendations

The Board recommends that the Supreme Court of Ohio find that Respondents have engaged in the unauthorized practice of law in Ohio and that they should be enjoined from further engaging in the unauthorized practice of law.

Statement of Costs

Attached as Exhibit A is a statement of costs and expenses incurred by the Board and the Relator in this matter.



Ralph E. Dill, Chair
Board of Commissioners on the
Unauthorized Practice of Law

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STATEMENT OF COSTS

Cleveland Bar Association v. Sharp Estate Services, Inc. et al.,
Case No. UPL 02-01

Reimbursement to Cleveland Bar Association	\$16,716.24
Armstrong & Okey, Inc. 7/16/03 Hearing and Transcript	921.75
Armstrong & Okey, Inc. 7/17/03 Hearing and Transcript	1,766.00
Eric Kearney, Commissioner Expenses – 7/16–7/17/03 Hearing	151.20
John Polito, Commissioner Expenses – 7/16–7/17/03 Hearing	324.08
TOTAL	\$19,879.27

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Report was served by certified mail upon the following this 2nd day of December, 2004:

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