

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: September 21, 2015 CASE NUMBER: 2015SA55
Original Proceeding in Unauthorized Practice of Law, 14UPL012	
<b>Petitioner:</b>  The People of the State of Colorado,  <b>v.</b>  <b>Respondents:</b>  Lino Assaf, d/b/a Debt Solutions and Debt Solutions Group.	Supreme Court Case No: 2015SA55
ORDER OF INJUNCTION	

Upon consideration of the Order Granting Motion for Default Judgment Pursuant to C.R.C.P. 55(b) and Report of Hearing Master Pursuant to C.R.C.P. 236(a) filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that LINO ASSAF, d/b/a DEBT SOLUTIONS and DEBT SOLUTIONS GROUP shall be, and the same hereby are, ENJOINED from engaging in the Unauthorized Practice of Law in the State of Colorado.

IT IS FURTHER ORDERED that Respondent pay Restitution to Tracy S. McCants of \$519.62, plus \$0.10 accruing per diem from January 31, 2015, until paid; to Keith Patterson of \$512.24, plus \$0.10 accruing per diem from January 31, 2015, until paid to Howard Silver of \$511.15, plus \$0.10 accruing per diem from

January 31, 2015, until paid; and to Feliciano Gonzales-Juarez of \$521.41, plus \$0.10 accruing per diem from January 31, 2015, until paid

IT IS FURTHER ORDERED that Respondent is assessed costs in the amount of \$548.35. Said costs to be paid to the Office of Attorney Regulation Counsel, within thirty days from the date of this order.

IT IS FURTHER ORDERED that a fine be imposed in the amount of \$250.00.

BY THE COURT, SEPTEMBER 21, 2015.

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN THE UNAUTHORIZED PRACTICE OF LAW BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203</p>	
<p><b>Petitioner:</b> THE PEOPLE OF THE STATE OF COLORADO</p> <p><b>Respondent:</b> LINO ASSAF, d/b/a DEBT SOLUTIONS and DEBT SOLUTIONS GROUP</p>	<p>Case Number: <b>15SA055</b></p>
<p><b>ORDER GRANTING MOTION FOR DEFAULT JUDGMENT PURSUANT TO C.R.C.P. 55(b) AND REPORT OF HEARING MASTER PURSUANT TO C.R.C.P. 236(a)</b></p>	

Before the Presiding Disciplinary Judge (“the PDJ”) is a “Motion for Default Judgment” filed on June 22, 2015, by Kim E. Ikeler of the Office of Attorney Regulation Counsel (“the People”). Also before the PDJ is the People’s “Supplement to Motion for Default Judgment,” filed on July 7, 2015. Lino Assaf, d/b/a Debt Solutions and Debt Solutions Group (“Respondent”), did not file a response.

#### **I. PROCEDURAL HISTORY**

On February 17, 2015, the People filed a petition for injunction with the Colorado Supreme Court, which ordered Respondent on February 23, 2015, to show cause why he should not be enjoined from the practice of law. The People personally served Respondent with the petition and the Colorado Supreme Court’s order on February 24, 2015, but Respondent did not respond. The Colorado Supreme Court referred this matter to the PDJ on April 6, 2015. The PDJ issued an order directing Respondent to answer the People’s petition no later than April 21, 2015. Respondent did not comply with that order. The PDJ thus entered default against Respondent on May 8, 2015, deeming the allegations in the People’s petition admitted.

#### **II. PETITIONER’S MOTION FOR DEFAULT JUDGMENT**

The People have followed the procedure for default judgments set forth in C.R.C.P. 55 and 121 § 1-14 by showing valid service on Respondent; submitting an affidavit indicating that venue is proper and that Respondent is not a minor, an incapacitated person, an officer of the state, or in the military; filing a statement of the costs; and submitting affidavits by Tracy S. McCants, Keith Patterson, Howard Silver, and Feliciano Gonzales-Juarez, all bankruptcy

debtors, attesting to work Respondent did for them and the amounts he charged, thereby establishing the amount of restitution they are due. Accordingly, the PDJ **GRANTS** “Petitioner’s Motion for Default Judgment.”

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The PDJ issues the following report to the Colorado Supreme Court pursuant to C.R.C.P. 236(a).

#### **Factual Findings**

Respondent is a Colorado resident, with a last-known address of 11653 Pearl Street, Northglenn, Colorado 80023.<sup>1</sup> Respondent is not licensed to practice law in Colorado or in any other state.<sup>2</sup>

Respondent assisted eighty-four debtors who are listed in an attachment to an “Order Granting United States Trustee’s Motion for Entry of Default Judgment and Default Judgment on the United States Trustee’s Complaint for Disgorgement, Fines and Injunctive Relief,” issued on July 30, 2014, by the Hon. Sidney Brooks in a case styled *Richard A. Wieland, United States Trustee, v. Lino M. Assaf, d/b/a/ Debt Solutions, d/b/a Debt Solutions Group*, in the U.S. Bankruptcy Court for the District of Colorado, Adversary No. 14-1083-SBB.<sup>3</sup>

Respondent selected and prepared bankruptcy petitions and schedules for bankruptcy debtors.<sup>4</sup> As part of that preparation, Respondent gave each debtor a workbook to fill out.<sup>5</sup> Respondent then prepared the bankruptcy pleadings based on the debtors’ answers in the workbooks.<sup>6</sup> Respondent advised the debtors that they could request a waiver of the bankruptcy court fees.<sup>7</sup> He also advised them regarding the differences between filing for bankruptcy under Chapters 7, 11, 12, and 13,<sup>8</sup> and he advised them regarding which debts could be discharged in Chapter 7 bankruptcy.<sup>9</sup> Respondent charged each of these debtors \$450.00 for his assistance.<sup>10</sup>

#### **Legal Standards Governing the Unauthorized Practice of Law**

The Colorado Supreme Court, which exercises exclusive jurisdiction to define the practice of law within the State of Colorado,<sup>11</sup> restricts the practice of law to protect

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<sup>1</sup> Pet. ¶ 1.

<sup>2</sup> Pet. ¶ 2.

<sup>3</sup> Pet. ¶ 4.

<sup>4</sup> Pet. ¶ 5; *see also* Mot. for Default J. Exs. A-C; Supp. Mot. for Default J. Ex. A.

<sup>5</sup> Pet. ¶ 7.

<sup>6</sup> Pet. ¶ 8.

<sup>7</sup> Pet. ¶ 9.

<sup>8</sup> Pet. ¶ 10.

<sup>9</sup> Pet. ¶ 11.

<sup>10</sup> Pet. ¶ 12.

<sup>11</sup> C.R.C.P. 228.

members of the public from receiving incompetent legal advice from unqualified individuals.<sup>12</sup> To practice law in the State of Colorado, a person must have a law license issued by the Colorado Supreme Court, unless a specific exception applies.<sup>13</sup>

Colorado Supreme Court case law holds that “an unlicensed person engages in the unauthorized practice of law by offering legal advice about a specific case, drafting or selecting legal pleadings for another’s use in a judicial proceeding without the supervision of an attorney, or holding oneself out as the representative of another in a legal action.”<sup>14</sup> One who acts “in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counseling, advising and assisting that person in connection with these rights and duties” engages in the practice of law.<sup>15</sup>

Measured against these standards, it is clear that Respondent engaged in the unauthorized practice of law. He selected and prepared bankruptcy pleadings, and he advised debtors about bankruptcy law and procedure. Further, his actions are not subject to any specific exception carved out for bankruptcy petition preparers. To the contrary, in fact. In bankruptcy proceedings, a bankruptcy petition preparer may not assist debtors to determine what information should be included in bankruptcy documents or offer any legal information or advice about the debtors’ circumstances.<sup>16</sup> Petition preparers exceed the statutory authority vested in them when they do anything other than “copying or typing information written by prospective debtors on official bankruptcy forms.”<sup>17</sup> Because Respondent selected bankruptcy forms for debtors, filled in those forms, and provided legal advice, Respondent engaged in the unauthorized practice of law.

### **Fine, Costs, and Restitution**

C.R.C.P. 236(a) provides that if a hearing master makes a finding of the unauthorized practice of law, the hearing master shall also recommend that the Colorado Supreme Court impose a fine ranging from \$250.00 to \$1,000.00 for each such incident. Here, the People suggest that the PDJ recommend the minimum fine of \$250.00 be imposed because Respondent has no previous history of engaging in the unauthorized practice of law. The PDJ agrees that a \$250.00 fine is appropriate.

The People filed a statement of costs on June 22, 2015, as Exhibit D to their motion for default judgment. The statement reflects costs totaling \$548.35, largely comprising fees for

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<sup>12</sup> *Unauthorized Practice of Law Comm. v. Grimes*, 654 P.2d 822, 826 (Colo. 1982); see also *Charter One Mortg. Corp. v. Condra*, 865 N.E.2d 602, 605 (Ind. 2007) (“Confining the practice of law to licensed attorneys is designed to protect the public from the potentially severe consequences of following advice on legal matters from unqualified persons.”); *In re Baker*, 85 A.2d 505, 514 (N.J. 1952) (“The amateur at law is as dangerous to the community as an amateur surgeon would be.”).

<sup>13</sup> See C.R.C.P. 201-227.

<sup>14</sup> *People v. Shell*, 148 P.3d 162, 171 (Colo. 2006).

<sup>15</sup> *Id.* at 171 (quotation omitted).

<sup>16</sup> 11 U.S.C. § 110(e)(2); *In re Gomez*, 259 B.R. 379, 386 (D. Colo. 2001).

<sup>17</sup> *Gomez*, 259 B.R. at 386-87.

service of process and administration. The PDJ considers this sum reasonable and therefore recommends that the Colorado Supreme Court assess \$548.35 in costs against Respondent.<sup>18</sup>

Finally, the People recommend an award of restitution to four debtors to whom Respondent charged fees in exchange for bankruptcy assistance. They are:


- Tracy S. McCants, Mailbox 235, 1269 South Uvalda Street, Aurora, Colorado 80012: \$519.62, plus \$0.10 accruing per diem from January 31, 2015, until paid.
- Keith Patterson, 14407 East Mississippi Avenue, #243, Aurora, Colorado 80012: \$512.24, plus \$0.10 accruing per diem from January 31, 2015, until paid.
- Howard Silver, 4140 Shaw Boulevard, Westminster, Colorado 80031: \$511.15, plus \$0.10 accruing per diem from January 31, 2015, until paid.
- Feliciano Gonzales-Juarez, 213 Fox Street, Denver, Colorado 80223: \$521.41, plus \$0.10 accruing per diem from January 31, 2015, until paid.

The People support their requests for restitution by notarized affidavits from McCants, Patterson, Silver, and Gonzales-Juarez.<sup>19</sup> Given the available evidence, the PDJ recommends that Respondent be ordered to pay the requested amount of restitution to these individuals.<sup>20</sup>

#### IV. RECOMMENDATION

The PDJ **RECOMMENDS** that the Colorado Supreme Court **FIND** that Respondent engaged in the unauthorized practice of law and **ENJOIN** him from the unauthorized practice of law. The PDJ further **RECOMMENDS** that the Colorado Supreme Court enter an order requiring Respondent to pay **RESTITUTION** to Tracy S. McCants of \$519.62, plus \$0.10 accruing per diem from January 31, 2015, until paid; to Keith Patterson of \$512.24, plus \$0.10 accruing per diem from January 31, 2015, until paid; to Howard Silver of \$511.15, plus \$0.10 accruing per diem from January 31, 2015, until paid; and to Feliciano Gonzales-Juarez of \$521.41, plus \$0.10 accruing per diem from January 31, 2015, until paid. The PDJ also **RECOMMENDS** that the Colorado Supreme Court enter an order requiring Respondent to pay a **FINE** of \$250.00 and **COSTS** of \$548.35.

DATED THIS 6<sup>th</sup> DAY OF AUGUST, 2015.

  
WILLIAM R. LUCERO  
PRESIDING DISCIPLINARY JUDGE



<sup>18</sup> See C.R.S. § 13-16-122 (setting forth an illustrative list of categories of “includable” costs in civil cases, including “[a]ny fees for service of process”).

<sup>19</sup> See Mot. for Default J. Exs. A-C; Supp. Mot. for Default J. Ex. A.

<sup>20</sup> See *People v. Love*, 775 P.2d 26, 27 (Colo. 1989) (ordering non-lawyer to pay amounts in restitution for fees he received while engaging in the unauthorized practice of law).

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