

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: June 15, 2016 CASE NUMBER: 2015SA250
Original Proceeding in Unauthorized Practice of Law, 13UPL052	
Petitioner: The People of the State of Colorado, v. Respondents: Floyd B. Belsito and Legal Aid Services Inc., a suspended California corporation.	Supreme Court Case No: 2015SA250
ORDER OF INJUNCTION	

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

IT IS ORDERED that Respondents LEGAL AID SERVICES, INC. a suspended California corporation, and FLOYD G. BELSITO 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 Respondents are assessed costs in the amount of \$91.00. Said costs to be paid to the Office of Attorney Regulation Counsel, within (30) days of the date of this order.

IT IS FURTHER ORDERED that Restitution be imposed in the following amounts: for Rosa Perez, \$3,600.00 plus interest of \$873.01, accruing interest at \$0.78 per diem from January 31, 2016, forward; for Joe and Maria Amescua, \$3,990.00 plus interest of \$490.18, accruing interest at \$0.50 per diem from January 31, 2016, forward; and for Donna Minor, \$3495.00 plus interest of \$340.72, accruing interest at \$0.85 per diem from January 31, 2016, forward.

IT IS FURTHER ORDERED that Respondents pay a fine in the amount of \$750.00.

BY THE COURT, JUNE 15, 2016.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN THE UNAUTHORIZED PRACTICE OF LAW BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
<hr/> Petitioner: THE PEOPLE OF THE STATE OF COLORADO Respondents: LEGAL AID SERVICES, INC., a suspended California corporation, and FLOYD G. BELSITO	<hr/> Case Number: 15SA250
ORDER ENTERING DEFAULT JUDGMENT UNDER C.R.C.P. 55(b) AND REPORT OF HEARING MASTER UNDER C.R.C.P. 236(a)	

Before the Presiding Disciplinary Judge (“the PDJ”) is “Petitioner’s (A) Motion for Default Judgment and (B) Request for Recommendation of Injunction, Restitution, Fines and Costs” filed on March 15, 2016, by Kim E. Ikeler of the Office of Attorney Regulation Counsel (“the People”). Legal Aid Services, Inc. and Floyd G. Belsito (“Respondents”) did not file a response. Also before the PDJ is “Petitioner’s Request to Supplement its Motion for Default Judgment with the Affidavit of Donna Minor,” filed on March 21, 2016. Respondents have not responded to this motion, either.

I. PROCEDURAL HISTORY

The People filed a “Petition for Injunction” on September 16, 2015, alleging that Respondents engaged in the unauthorized practice of law. On September 21, 2015, the Colorado Supreme Court issued an “Order to Show Cause,” directing Respondents to answer and show cause within twenty-one days of service why they should not be enjoined from the unauthorized practice of law. The People served the petition and order by certified mail on October 13, 2015, but Respondents did not respond to the petition or the show cause order.

On December 9, 2015, the Colorado Supreme Court issued an “Order of Court,” referring this matter to the PDJ “to prepare a report setting forth findings of fact, conclusions of law, and recommendations” under C.R.C.P. 234(f) and 236(a). Five days later, the PDJ ordered Respondents to answer the People’s petition no later than December 28, 2015, warning that if they failed to do so the PDJ might deem the claims alleged in the People’s petition to have been proved. Respondents did not comply with that order. Accordingly, the

PDJ granted the motion for entry of default on January 26, 2016, thus deeming admitted the allegations in the petition for injunction.

In their pending request to supplement their motion for default judgment, the People ask permission to file the affidavit of Donna Minor in support of her restitution award. The PDJ finds good cause for this request and **GRANTS** “Petitioner’s Request to Supplement its Motion for Default Judgment with the Affidavit of Donna Minor.”

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 section 1-14 by showing valid service on Respondents; submitting an affidavit indicating that venue is proper and that Respondents are not minors, incapacitated persons, officers of the state, or in the military; submitting affidavits by the complaining witnesses, Rosa Perez, Jose (“Joe”) L. Amescua, and Donna Minor, establishing the amounts in restitution that they are due; and filing a statement of the costs. Accordingly, the PDJ **GRANTS** the People’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). The factual findings are an abbreviated version of the admitted allegations.

Factual Findings

Respondent Legal Aid Services is a suspended California corporation. At relevant times, Respondent Legal Aid Services’ sole owner and general counsel was Respondent Floyd G. Belsito, a lawyer licensed in California.

Rosa Perez Matter

Rosa Perez owned real property in Grand Junction, Colorado. Perez was struggling to pay her mortgage, which was owned by Fannie Mae and serviced by Green Tree Servicing, Inc. In August 2012, Perez received an unsolicited mailing from Respondent Legal Aid Services, offering to help her obtain a modification of her mortgage loan. Perez called the office of Respondent Legal Aid Services. In September 2012, employees of Respondent Legal Aid Services sent her a schedule of payments, which identified her “case manager” as Andy Montero. Respondent Legal Aid Services proposed to perform loan modification services in exchange for three monthly payments of \$1,200.00, the first of which was due immediately. Perez signed the schedule, made the required initial payment, and returned a packet of completed forms to Respondent Legal Aid Services.

In early October 2012, Perez spoke with Respondent Legal Aid Services’ employee Emmanuel Jaramillo, who identified himself as an “attorney representative.” In the same timeframe, two of Respondent Legal Aid Services’ “client service advocates,” Marisela

Villalpando and Jessica Horner, wrote to Perez, stating that a loan processing agent would call her soon to discuss the process. The letter said: “Our loan processing agents have field experience and they work under the supervision of our legal team.” A few days later, Villalpando discussed loan modification options with Perez and recommending the Department of the Treasury and Department of Housing and Urban Development’s Home Affordable Modification Program (“HAMP”). Perez made another \$1,200.00 payment to Respondent Legal Aid Services in October 2012, per the schedule. She also gave Respondent Legal Aid Services pay stubs, a bank statement, and a mortgage statement. In her communications with Respondent Legal Aid Services’ employees, Perez understood that she was dealing with attorneys or paralegals supervised by attorneys.

Perez reported to Montero that Green Tree Servicing was calling her and leaving messages. Montero explained that her loan modification was still in the processing stage. In November 2012, Perez made her final \$1,200.00 payment to Respondent Legal Aid Services.

In January 2013, Respondent Legal Aid Services’ employee Melissa Sedillo researched whether a separate program run by the Department of the Treasury and Department of Housing and Urban Development, this one called the Home Affordable Refinance Program (“HARP”), could be an option for Perez. Respondent Legal Aid Services did not, however, proceed with this option.

Through winter and spring 2013, Respondent Legal Aid Services’ employees negotiated a loan modification for Perez under the HAMP program. Green Tree Servicing agreed to a trial modification, but Perez failed to make the trial payments. As a result, the modification was declined.

In June 2013, Perez’s home was sold at a foreclosure sale. She received notice to leave the premises. The following month, Respondent Legal Aid Services assigned Perez’s file to Laurie McFarland, a Colorado lawyer. McFarland reviewed the file, but it was too late to take any action that would assist Perez.

Joe and Maria Amescua Matter

Joe and Maria Amescua owned a home in Castle Rock, Colorado. Due to financial difficulties, they needed to lower their mortgage payments. In March 2013, Joe Amescua signed a “Schedule of Payments” provided to him by Respondent Legal Aid Services. Joe Amescua agreed to pay Respondent Legal Aid Services a total of \$3,990.00. In return, Respondent Legal Aid Services pledged to perform “preparation work and HAMP & HARP modification.” The Amescuas also signed an “engagement letter” provided by Respondent Legal Aid Services. At the top of the letter was printed: “PRIVILEGED ATTORNEY-CLIENT COMMUNICATION.” The letter went on to state: “We understand that you are currently engaging us to advise you solely in connection with negotiating a possible mitigation of your current home loan situation.” Under a heading of “Limitations of Representations and Warranties,” the letter stated: “Attorney and her agents make no guarantee and predictions

as to the outcome of her services, but Attorney and her agents may give an opinion about possible results” Another paragraph read in part: “an attorney-client relationship does not exist outside of the above-described services that will be performed” Respondent Legal Aid Services explained in the letter that it would charge the Amescuas a flat fee, although its standard hourly rate for partners was \$450.00 and its rate for associates was \$350.00. Respondent Legal Aid Services reserved the right to terminate the engagement under “circumstances that would render our continuing representation unlawful, unethical or inconsistent with the degree of trust and communication necessary for the attorney-client relationship.” According to the agreement, any dispute over fees was to be arbitrated by the Fee Arbitration Program of the Orange County Bar Association.

The Amescuas also signed a “Borrowers Authorization.” The couple authorized Respondent Legal Aid Services to obtain their financial information and credit history, as well as to contact their lender and negotiate new terms. Joe Amescua wired two payments of \$1,995.00 to Respondent Legal Aid Services in March 2013 and April 2013, respectively.

Respondent Legal Aid Services’ employees contacted Joe Amescua and obtained from him financial information and documents. The employees did not discuss with the Amescuas the HAMP or HARP program for which they were applying. The employees told Joe Amescua that they would review the documents he sent them, then submit a loan modification application under whatever loan modification program they determined would be best for him. Joe Amescua was not permitted to choose which program to use. Instead, Respondent Legal Aid Services’ employees exercised their own discretion in negotiating the terms of the loan modification for the Amescuas.

In January 2014, Nationstar Mortgage, LLC wrote to the Amescuas, inviting them to enter into a trial period plan for a mortgage modification. The letter directed the Amescuas to make three monthly payments to Nationstar Mortgage. Respondent Legal Aid Services’ employees told Mr. Amescua: “You have been approved. Make the payments. Then you will get a final agreement from the lender. Sign it and send it back.”

The Amescuas made the three monthly trial payments. Nationstar Mortgage, LLC then sent to them a Freddie Mac Standard Modification Agreement. The terms of the modification included a forty-year mortgage, with a new principal balance, a reduced monthly payment, and a reduced interest rate. In the agreement, the Amescuas expressly agreed that they did not qualify for the HAMP program.

Respondent Legal Aid Services’ employees did not advise the Amescuas about the terms of the Freddie Mac Standard Modification Agreement with Nationstar Mortgage, LLC, or about the wisdom of signing the Freddie Mac Standard Modification Agreement. In March 2014, the Amescuas signed the Freddie Mac Standard Modification Agreement with Nationstar Mortgage, LLC.

Donna and Robert Minor Matter

In May or June of 2013, Donna and Robert Minor received a mailing from Respondent Legal Aid Services entitled "IMPORTANT INTEREST RATE NOTIFICATION." According to the mailing, Respondent Legal Aid Services had reviewed the Minors' property and determined that they "may be eligible to receive immediate assistance." The mailing stated: "Eligible applicants in the State of Colorado may also receive a Principle [sic] Reduction, Payment Relief, interest reduction or the Elimination of 2nd Mortgage." The mailing went on to inform the Minors that their lender was an approved lender and that the Minors could obtain a new mortgage payment of \$1,091.00 or less. At the time, their monthly mortgage payment was \$1,945.44. After the Minors called the phone number listed in the mailing, employees of Respondent Legal Aid Services sent a proposed agreement to them.

In June 2013, Donna Minor signed a "Schedule of Payments" and agreed to pay Respondent Legal Aid Services \$3,495.00 for "preparation work and HAMP modification." The Minors sent Respondent Legal Aid Services that amount. The Minors were instructed to provide information about their property, loan, employment, and financial situation. In addition, Respondent Legal Aid Services asked the Minors to sign a "Borrower Authorization" and an "Engagement Letter," which was described as "a contract between you and Legal Aid Services." Respondent Legal Aid Services identified "Darren Thomas" as the Minors' "case manager," to whom they could direct questions.

The Minors also initialed or signed several pages headed "Privileged Attorney-Client Communication" and returned them to Respondent Legal Aid Services. These pages indicated that Respondent Legal Aid Services would charge the Minors a flat fee rather than its standard hourly attorney rate. Respondent Legal Aid Services stated that its "attorney-client relationship" with the Minors was limited in scope and did not include representing the Minors in a "lawsuit, arbitration, bankruptcy, or any other court proceeding." Other provisions of the engagement letter were similar to those in the letter signed by the Amescuas. In addition, Respondent Legal Aid Services reserved the right to withdraw if required by ethics rules and stated that fee arbitration would be held before the Orange County Bar Association. The Minors authorized Respondent Legal Aid Services' employees to negotiate with their lender.

The Minors sent Respondent Legal Aid Services' employees financial information and documents, such as bank statements, a tax return, and mortgage statements. Respondent Legal Aid Services' employees gave the Minors advice, including to stop paying their mortgage for fifty-nine days.

In September 2013, Bank of America told the Minors that it had received their authorization for Respondent Legal Aid Services to negotiate the terms of their mortgage loan. Bank of America took the position that the authorization did not permit Respondent Legal Aid Services to make changes to their loan. In January 2014, Bank of America informed the Minors that it had received their home loan inquiry and that the bank was concluding its

review. Respondent Legal Aid Services' employees then requested updated financial information from the Minors.

Harm Incurred and Roles of Belsito and McFarland

Perez, the Amescuas, and the Minors were harmed because they each paid approximately \$3,500.00 to \$4,000.00 for what purported to be attorney services but what were in fact the services of unsupervised paralegals.

Respondent Legal Aid Services retained attorney Laurie McFarland to review its loan modification files. At relevant times, McFarland was located in New Mexico but licensed in Colorado. Respondent Legal Aid Services made an internet portal available to McFarland for her review of customer files. Among the files she reviewed were those of Perez, the Minors, and the Amescuas. McFarland had no direct contact with the borrowers and did not review any of their documents. Instead, she simply looked in the file to determine whether there had been any activity. McFarland did not consider herself to be local counsel for Perez, the Minors, the Amescuas, or any other of Respondent Legal Aid Services' clients, and she never received any client funds.

In November 2013, McFarland stopped working with Respondent Legal Aid Services. Her off-site and after-the-fact review of loan modification files did not constitute the type of direct supervision of paralegals necessary to prevent the unauthorized practice of law.

Respondent Belsito established the protocol for Respondent Legal Aid Services to use the HAMP program and forms appropriate to that program. Respondent Belsito was not involved in supervising the day-to-day operations of the intake paralegals or the loan processing paralegals, however. His direction that his paralegals use the HAMP program to assist borrowers did not constitute the type of direct supervision of paralegals necessary to prevent the unauthorized practice of law.

Unauthorized Practice of Law

The Colorado Supreme Court, which exercises exclusive jurisdiction to define the practice of law within the State of Colorado,¹ restricts the practice of law to protect members of the public from receiving incompetent legal advice from unqualified individuals.² 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.³

¹ C.R.C.P. 228.

² *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.").

³ See C.R.C.P. 202-227.

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.”⁴ The Colorado Supreme Court has further determined that 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.⁵

Here, because Respondents have failed to defend the case, the PDJ has deemed the People’s legal allegations of the unauthorized practice of law to be proved. An abbreviated recitation of those allegations follows.

In the Perez, Amescua, and Minor matters, Respondent Legal Aid Services’ nonlawyer employees acted in a representative capacity, endeavoring to negotiate with lenders on behalf of the borrowers. In addition, these employees exercised legal discretion and acted in a manner reflective of an attorney-client relationship.

In the Perez matter, Respondent Legal Aid Services took actions that reflected aspects of the attorney-client relationship by, among other things, telling Perez that its lay employees were working under the supervision of the “legal team,” giving Perez the impression that she was being represented by a law firm, and exercising legal discretion on her behalf. For instance, nonlawyer employee Villalpando exercised legal discretion by explaining to Perez that the HAMP program was the most suitable for her needs.

Likewise, Respondent Legal Aid Services entered into an agreement with the Amescuas that bore hallmarks of an attorney-client relationship. The Amescuas’ engagement letter stated that it was a privileged attorney-client communication and made references to the existence of an attorney-client relationship between Respondent Legal Aid Services and the Amescuas. In addition, Respondent Legal Aid Services’ nonlawyer employees exercised legal discretion on behalf of the Amescuas. These employees made independent judgments about the terms of the modification most suitable for the Amescuas. Although McFarland reviewed the Amescuas’ file for activity, she had no contact with the Amescuas and did not supervise the work of Respondent Legal Aid Services’ nonlawyer employees on this matter.

Respondent Legal Aid Services also entered into a relationship with the Minors that mirrored aspects of an attorney-client relationship. Respondent Legal Aid Services had the Minors sign an engagement letter containing language similar to the letter signed by the Amescuas. The letter stated that it was a privileged attorney-client communication and referred to the existence of an attorney-client relationship between Respondent Legal Aid

⁴ *People v. Shell*, 148 P.3d 162, 171 (Colo. 2006).

⁵ *Shell*, 148 P.3d at 171 (quotation omitted).

Services and the Minors. Respondent Legal Aid Services' nonlawyer employees then exercised legal discretion on the Minors' behalf by, among other things, adjudging the HAMP program most appropriate for the Minors' situation. Again, McFarland only reviewed the Minors' file after the fact. She had no contact with the Minors and did not supervise the work of Respondent Legal Aid Services' employees.

By directing the operation of Respondent Legal Aid Services, Respondent Belsito also engaged in the unauthorized practice of law.

Restitution, Fines, and Costs

The People request orders of restitution to Perez, the Amescuas, and the Minors in the following amounts: for Perez, \$3,600.00 plus interest of \$873.01, accruing interest at \$0.78 per diem from January 31, 2016, forward; for the Amescuas, \$3,990.00 plus interest of \$490.18, accruing interest at \$0.50 per diem from January 31, 2016, forward; and for Donna Minor, \$3,495.00 plus interest of \$340.72, accruing interest at \$0.85 per diem from January 31, 2016, forward. The PDJ concludes that the available evidence supports the requested awards.⁶

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. In assessing fines, the Colorado Supreme Court previously has examined whether a respondent's actions were "malicious or pursued in bad faith" and whether the respondent engaged in unlawful activities over an extended timeframe despite warnings.⁷ In this case, Respondents have not previously been enjoined from the practice of law and the People request only the minimum fine for each of Respondents' three instances of the unauthorized practice of law. The PDJ agrees that a \$750.00 total fine is appropriate.

Finally, the People request an award of \$91.00 in costs, reflecting the People's administrative fee. The PDJ finds this request to be reasonable.

IV. RECOMMENDATION

The PDJ **RECOMMENDS** that the Colorado Supreme Court **FIND** Respondents engaged in the unauthorized practice of law and **ENJOIN** them from the unauthorized practice of law. The PDJ further **RECOMMENDS** that the Colorado Supreme Court enter an order requiring Respondents to pay a **FINE** of \$750.00; **COSTS** in the amount of \$91.00; and **RESTITUTION** in the following amounts: for Rosa Perez, \$3,600.00 plus interest of \$873.01, accruing interest at \$0.78 per diem from January 31, 2016, forward; for Joe and Maria Amescua, \$3,990.00 plus interest of \$490.18, accruing interest at \$0.50 per diem from

⁶ See *People v. Love*, 775 P.2d 26, 27 (Colo. 1989) (ordering nonlawyer to pay amounts in restitution for fees he received while engaging in the unauthorized practice of law).

⁷ See *People v. Adams*, 243 P.3d 256, 267-68 (Colo. 2010).

January 31, 2016, forward; and for Donna Minor, \$3,495.00 plus interest of \$340.72, accruing interest at \$0.85 per diem from January 31, 2016, forward.

DATED THIS 14th DAY OF APRIL, 2016.



A handwritten signature in blue ink that reads "William R. Lucero".

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

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