

ORIGINAL

# The Supreme Court of Ohio

BEFORE THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW

OHIO STATE BAR ASSOCIATION,

Relator,

v.

RYAN & COMPANY, INC.,

and

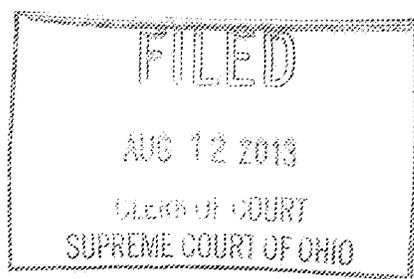
BRETT KOCH,

Respondents.

13-1292

Case No. UPL 11-03

**FINAL REPORT**  
Gov. Bar R. VII(5b)(E)(1)



## I. Introduction

This matter was presented by a Panel of the Board on the Unauthorized Practice of Law (“Board”) to the Board at a regular meeting held on July 11, 2013. The Complaint filed by Relator, the Ohio State Bar Association (“OSBA”), alleges that Respondents, Ryan & Company, Inc. and Brett Koch, engaged in one count of the unauthorized practice of law in Ohio by preparing and filing a Notice of Appeal with the Ohio Board of Tax Appeals on behalf of Owens Corning.

The parties filed a Proposed Consent Decree (Exhibit A) along with a joint motion to approve the Proposed Consent Decree on May 9, 2013. The Panel recommended approval of the Proposed Consent Decree. The Board hereby adopts the Panel’s report and recommendations.

## **II. Procedural Background**

The Complaint was filed by Relator on May 12, 2011. In accordance with Gov. Bar R. VII, Sec. 6, a copy of the Complaint and required Notice of Filing were sent to Respondents via certified mail on May 16, 2011. Respondents, through counsel, filed a Motion for Extension of Time to Answer on June 6, 2011, which was granted. Respondents filed an Answer on July 5, 2011. By Entry dated July 15, 2011, commissioners C. Michael Walsh, Kevin L. Williams, and N. Victor Goodman, Chair, were appointed to hear this matter.

On April 12, 2012, the parties filed a Proposed Consent Decree along with a Memorandum in Support of Motion to Approve Consent [sic]. Upon review, the Panel found that the Proposed Consent Decree was not in compliance with Gov. Bar R. VII(5b)(B)(1), as it was not signed by the Respondents. Further, a notice of waiver and hearing before the Panel, which is also required by the rule, was not submitted. By Entry dated April 25, 2013, the parties were given until June 10, 2013, to submit a revised proposed consent decree that was in compliance with the rule. A revised Proposed Consent Decree was filed on May 9, 2013.

## **III. Findings of Fact**

1. Relator is authorized to investigate and prosecute activities which may constitute the unauthorized practice of law in Ohio. Gov.Bar R. VII(4)-(5). Compl. ¶ 1.
2. Respondent Ryan & Company (“Ryan”) is a Delaware limited liability company with its principal place of business in Texas. Compl. ¶ 5; Resp. Answer ¶ 5. Prop. Consent Dec. ¶ 1.

3. Respondent Brett Koch (“Koch”) is an employee and representative of Ryan. Compl. ¶ 5; Resp. Answer ¶ 6; Prop. Consent Dec. ¶ 1.
4. Neither Ryan nor Koch are admitted to the practice of law in Ohio under Gov. Bar R. I, certified under Gov. Bar R. II, or registered under either Gov. Bar R. VI or IX. Compl. ¶ 7 and ¶ 8; Resp. Answer ¶ 7 and ¶ 8; Notice of Filing of Certificate of Registration filed July 15, 2011.
5. On or about November 18, 2009, Respondents Ryan and Koch prepared and filed a Notice of Appeal with the Ohio Board of Tax Appeals on behalf of Owens Corning, a for profit corporation incorporated in Delaware and authorized to do business in Ohio. Compl. ¶ 9; Resp. Answer ¶ 9.
6. Respondents admit that they engaged in the unauthorized practice of law in Ohio by performing the following services: (a) preparing and filing a notice of appeal before the Ohio Department of Taxation Board of Tax Appeals; and (b) appearing on behalf of a client before the Ohio Department of Taxation Board of Tax Appeals. Prop. Consent Dec. ¶ 5.
7. Respondents were notified of the allegations of the unauthorized practice of law in April 2010. Thereafter, Owens Corning withdrew the appeal before the Ohio Department of Taxation Board of Tax Appeals. Prop. Consent Dec. ¶ 7.

#### **IV. Conclusions of Law**

A. The Supreme Court of Ohio has original jurisdiction regarding 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, 501 N.E.2d 617; *Judd v. City Trust & Sav.*

*Bank* (1937), 133 Ohio St. 81, 12 N.E.2d 288. Accordingly, the Court has exclusive jurisdiction over the regulation of the unauthorized practice of law in Ohio. *Greenspan v. Third Fed. S. & L. Assn.*, 122 Ohio St.3d 455, 2009-Ohio-3508, 912 N.E.2d 567, at ¶ 16; *Lorain Cty. Bar Assn. v. Kocak*, 121 Ohio St.3d 396, 2009-Ohio-1430, 904 N.E.2d 885, at ¶ 16.

B. The Supreme Court of Ohio regulates the unauthorized practice of law in order to “protect the public against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation.” *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, ¶ 40.

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

D. The Supreme Court of Ohio has held that the practice of law includes “legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured...” *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 28, 193 N.E. 650, 652.

E. The Court has established that preparing a Notice of Appeal for filing at the Board of Tax Appeals, is the practice of law, stating, “[t]he regulations of the BTA, like our Rules for the Government of the Bar, provide that unless a waiver is obtained, practice before the Board of Tax Appeals is limited to attorneys admitted to practice in Ohio. Ohio Adm.Code 5717-1-02.” *Cleveland Bar Ass’n v. Misch*, 82 Ohio St.3d 256, 260, 695 N.E.2d 244 (1998).

F. “Persons not licensed to practice law in Ohio are also prohibited from holding

themselves out ‘in any manner as an attorney at law’ or from representing that they are authorized to practice law ‘orally or in writing, directly or indirectly.’” *Disciplinary Counsel v. Pratt*, 27 Ohio St.3d 293, 2010-Ohio-6210, 939 N.E.2d 170, at ¶ 18.

G. Respondents’ act is found to constitute the unauthorized practice of law based on an admission that contains sufficient information to demonstrate the specific activities upon which the conclusions are drawn in compliance with Gov.Bar R. VII(7)(H) and *Cleveland Bar Assn. v. CompManagement, Inc.*, 111 Ohio St.3d 444, 2006-Ohio-6108, 857 N.E.2d 95, ¶ 24-26.

## V. Analysis

### A. Review of Principal Terms of the Revised Proposed Consent Decree

The Board is responsible for ensuring the Proposed Consent Decree is in compliance with Gov. Bar R. VII(5b). In its review of the Proposed Consent Decree, the Board must consider the following factors:

- (1) The extent the public is protected from future harm and any substantial injury is remedied by the agreement. In the Proposed Consent Decree, the Respondents are enjoined from all activities that constitute the practice of law, including “representation of a client in Ohio in any court or other forum requiring the representation of a licensed attorney or preparation of legal documents in Ohio.” Prop. Consent Dec. ¶ 8(A)(i).
- (2) The admission of the respondents to material allegations of the unauthorized practice of law as stated in the complaint. Respondents admit to the unauthorized practice of law Proposed Consent Dec. ¶ 5.
- (3) Any agreement by respondents to cease and desist the alleged activities. Respondents

have agreed to be enjoined from all activities that constitute the unauthorized practice of law. Proposed Consent Dec. ¶ A(i).

(4) The extent the agreement involves public policy issues or encroaches upon the jurisdiction of the Supreme Court to regulate the practice of law. The relief proposed furthers public policy by enjoining future activities that involve the unauthorized practice of law and takes steps to remedy past conduct. Nothing in the Proposed Consent Decree encroaches upon the jurisdiction of the Ohio Supreme Court to regulate the practice of law.

B. Applicability of Civil Penalties Based on Factors in Gov.Bar R. VII (8)(B)

and UPL Reg. 400

When determining whether to recommend that the Supreme Court impose civil penalties in an unauthorized practice of law case, the Board is required to base its recommendation on the factors set forth in Gov.Bar R. VII (8)(B) and UPL Reg. 400(F). Additionally, UPL Reg. 400(F)(4) specifies mitigating factors the Board may use to justify a recommendation of no civil penalty or a less severe penalty. Because Relator does not recommend a civil penalty in this case, the Board considered both the general civil penalty factors and the mitigating factors and its analysis is described below.

(1) The degree of cooperation provided by the respondent in the investigation.

The respondents have cooperated fully with the investigation and responded to the complaint.

(2) The number of occasions that the unauthorized practice of law was committed.

Respondents engaged in one act of unauthorized practice of law with one client.

(3) The flagrancy of the violation.

Respondents did not understand that their act of representing a client before the Ohio

Department of Taxation Board of Tax Appeals constituted rendering legal services under Ohio law. Proposed Consent Decree ¶ 8. Upon receiving notice that their actions are being investigated as the unauthorized practice of law, the appeal filed by Respondents was withdrawn by Owens Corning. Proposed Consent Dec. ¶ 7.

(4) Any other relevant factors.

C. Mitigating Civil Penalty Factors

Applying the mitigating factors of UPL Reg. 400(F)(4)(a)-(g), which are the basis for a recommendation of no civil penalty or a less severe penalty, the Board finds:

- (1) The record fails to indicate that the conduct at issue has continued;
- (2) Respondents admit the allegations stated in the complaint;
- (3) Respondents admit their conduct constitutes the unauthorized practice of law;
- (4) Respondents agree to the imposition of an injunction against future unauthorized practice of law;
- (5) The record fails to contain any evidence of a dishonest motive by Respondents;
- (6) Respondents have not had other penalties imposed for the conduct at issue.

D. Conclusion Regarding Civil Penalties

Respondents indicate they were not aware that their actions constituted the unauthorized practice of law, and therefore, did not conceal their activity. Balancing each of the factors, Relator recommends that a civil penalty should not be imposed in exchange for the Respondents' agreement to cease its business operations and submit this joint motion for a Consent Decree.

Based upon these findings, the Board agrees with Relator that civil penalties are not warranted in this case.

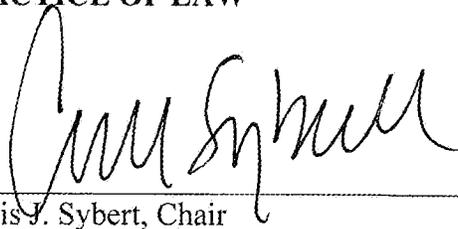
**VI. Board Recommendation**

The Board formally considered this matter on July 11, 2013, and unanimously adopted the Panel's findings of fact and conclusions of law, consent decree and civil penalty analysis, and recommendation that the proposed consent decree be accepted and submitted to the Supreme Court for approval. Accordingly, the Board hereby recommends that the Supreme Court approve the proposed consent decree and issue the appropriate order as specified in Gov.Bar R. VII(5b)(E)(2).

**VII. Statement of Costs**

Relator indicated it incurred no costs in this matter.

**FOR THE BOARD ON THE UNAUTHORIZED  
PRACTICE OF LAW**

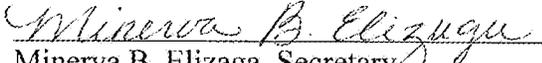


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Curtis J. Sybert, Chair

## CERTIFICATE OF SERVICE

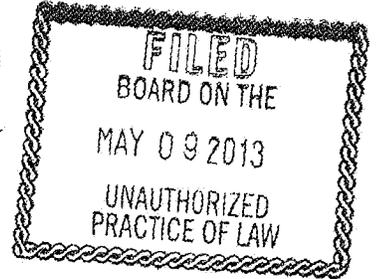
This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 12<sup>th</sup> day of August 2013: Eugene Whetzel, Ohio State Bar Association, PO Box 16562, Columbus, Ohio 43216; William C. Hicks, Cole Acton Harmon & Dunn, 333 N. Limestone St., PO Box 1687, Springfield, Ohio 45503; Ryan & Co., Inc., Three Galleria Tower, 13155 Noel Road, Suite 100, Dallas, Texas 75240; Brett Koch, Ryan & Co., Inc., Three Galleria Tower, 13155 Noel Road, Suite 100, Dallas, Texas 75240; Steven Friedman and Robin G. Weaver, Squire Sanders & Dempsey LLP, 4900 Key Tower, 127 Public Square, Cleveland, Ohio 44114.

  
Minerva B. Elizaga, Secretary



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

IN RE: ) Case No. UPL 11-03  
)  
OHIO STATE BAR ASSOCIATION )  
)  
Relator )  
)  
v. )  
)  
RYAN, LLC, a Delaware ) PROPOSED CONSENT DECREE  
Limited Liability Company, )  
Successor to Ryan, Inc., )  
a Delaware Corporation )  
and BRETT KOCH )  
)  
Respondents )



The Parties, Relator, the Ohio State Bar Association Unauthorized Practice of Law Committee and Respondents, have agreed to settle and resolve all disputes between them on the terms set forth below for the purposes of terminating all existing claims in this litigation. The parties consent to entry of judgment in accordance with the following order and decree.

Accordingly, it is hereby stipulated, found and determined:

1. Respondent Ryan, LLC ("Ryan"), a Delaware Limited Liability Company, is a limited liability company with its principal place of business in Texas. At all times pertinent hereto, Respondent Brett Koch was the employee and representative of Ryan.

2. Respondent Ryan, as a corporation or limited liability company, is not, and has never been, an attorney admitted to practice, granted

active status, or certified to practice law in the State of Ohio pursuant to rules I, II, VI, IX or XI of the Ohio Supreme Court's Rules of the Government of the Bar. Mr. Koch has never been an attorney admitted to practice, granted active status, or certified to practice law in the State of Ohio pursuant to rules I, II, VI, IX or XI of the Ohio Supreme Court's Rules of the Government of the Bar.

3. On or about November 18, 2009, Respondents engaged in the unauthorized practice of law by preparing and filing a notice of appeal on behalf of their client, Owens Corning, before the Ohio Department of Taxation Board of Tax Appeals.

4. Respondents' act of the unauthorized practice of law was limited to this single action.

5. Respondents admit that the conduct described in paragraph 3 above constitutes the unauthorized practice of law in Ohio by: (a) preparing and filing a notice of appeal before the Ohio Department of Taxation Board of Tax Appeals; and (b) appearing on behalf of a client before the Ohio Department of Taxation Board of Tax Appeals.

6. It is the desire of the parties to settle this litigation.

7. Respondents were provided notice of the allegations in the Complaint in April 2010, and on May 17, 2010, Owens Corning withdrew the appeal before the Ohio Department of Taxation Board of Tax Appeals. At no time following April 2010 did Respondents provide any additional services to Owens Corning in connection with the notice of appeal.

8. Respondents have fully cooperated with Relator's

investigation of this matter.

8. Relator does not recommend the imposition of civil penalties pursuant to Gov. Bar R. VII(2)(B). At the time Respondents entered their representation of their client before the Ohio Department of Tax Appeals, Respondents mistakenly did not understand their act to be rendering legal services under Ohio law.

10. The parties waive the right to notice of an appearance at the formal hearing before the hearing panel.

It is hereby ordered:

A. Respondents are enjoined from all activities that constitute the unauthorized practice of law, including:

- (i) representation of a client in Ohio in any court or other forum requiring the representation of a licensed attorney or preparation of legal documents in Ohio by or on behalf of Respondents;
- (ii) the rendering of legal advice regarding legal documents by or on behalf of Respondents within the jurisdiction of the State of Ohio.

B. Written notice, at Respondents' cost, shall be provided by Respondents to Owens Corning, with copy to Relator, stating that:

- (i) Respondents cannot provide legal representation in Ohio;
- (ii) this Court has determined that Ryan's representation of a party before the Ohio Department of Taxation Board of Tax Appeals constituted the unauthorized practice of law; and
- (iii) Respondents have fully cooperated with Relator's investigation of this matter, and as part of the Consent Decree entered into between the parties and approved

by the Court, this Court has ordered Respondents to  
cease legal representation of clients in Ohio.

The form, content and delivery of this notice shall be in a manner  
satisfactory to Relator.

C. Respondents shall be assessed all costs of this matter  
pursuant to Gov. Bar R. VII(8)(A).

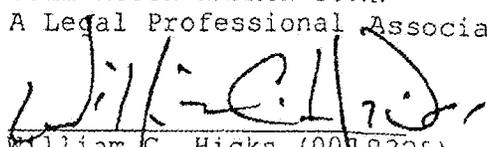
**IT IS SO ORDERED.**

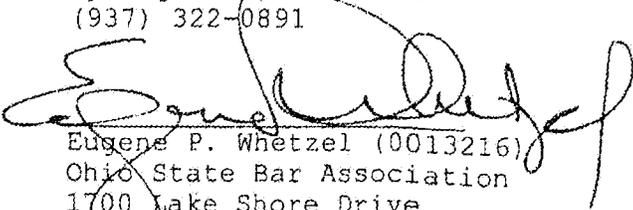
Date: \_\_\_\_\_

Agreed to: \_\_\_\_\_

Respectfully submitted,

COLE ACTON HARMON DUNN  
A Legal Professional Association

  
William C. Hicks (0018325)  
333 North Limestone Street  
P.O. Box 1687  
Springfield, OH 45501  
(937) 322-0891

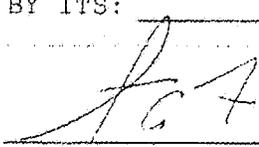
  
Eugene P. Whetzel (0013216)  
Ohio State Bar Association  
1700 Lake Shore Drive  
Columbus, OH 43204  
Telephone: (614) 487-2050  
Facsimile: (614) 487-1008

ATTORNEYS FOR RELATOR

\_\_\_\_\_  
RESPONDENT BRETT KOCH

\_\_\_\_\_  
RESPONDENT RYAN LLC

BY ITS: \_\_\_\_\_

  
Robin G. Weaver (0020673)  
Steven A. Friedman (0060001)  
Squire, Sanders & Dempsey, LLP  
4900 Key Tower  
127 Public Square  
Cleveland, OH 44114  
Telephone: (216) 479-8500  
Facsimile: (216) 479-8780

Respectfully submitted,

COLE ACTON HARNON DUNN  
A Legal Professional Association

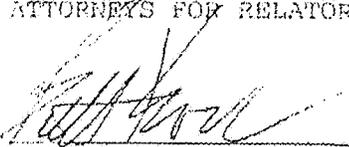
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William C. Hicks (0019325)  
133 North Limestone Street  
P.O. Box 1687  
Springfield, OH 45501  
(937) 322-0891

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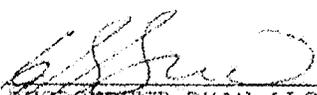
Eugene P. Whetzel (0013216)  
Ohio State Bar Association  
1700 Lake Shore Drive  
Columbus, OH 31204  
Telephone: (614) 487-2050  
Facsimile: (614) 487-1008

ATTORNEYS FOR RELATOR



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RESPONDENT BRETT KOCH



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RESPONDENT RYAN LLC

BY ITS: *Executive Vice President*



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Robin G. Weaver (0020673)  
Steven A. Friedman (0060001)  
Squire, Sanders & Dempsey, LLP  
4900 Key Tower  
127 Public Square  
Cleveland, OH 44114  
Telephone: (216) 479-8500  
Facsimile: (216) 479-8780