

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE:	)	CHAPTER 13
	)	
VALERIE FERGUSON,	)	CASE NO. 04-64327
	)	
Debtor.	)	JUDGE RUSS KENDIG
	)	
	)	
	)	<b>MEMORANDUM OF DECISION</b>
	)	

This case is before the court upon the objection of Valerie Ferguson (“debtor”) to the claim of Marshall Brown. For reasons that follow, debtor’s objection is **SUSTAINED**.

**I. JURISDICTION AND VENUE**

The court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334(b) and the General Order of Reference entered in this district on July 16, 1984. This is a core proceeding over which the court has jurisdiction pursuant to 28 U.S.C. § 157(b)(2)(B). Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409(a).

**II. BACKGROUND**

Debtor filed her petition on August 15, 2004. The schedules accompanying the petition disclose debtor’s interest in her home, which she valued at \$66,000. The residence is encumbered by two mortgages totaling \$71,806. Debtor scheduled unsecured nonpriority claims of \$1,687 for balances owed on three credit cards.<sup>1</sup> In order to net monthly income of \$1,600 before living expenses debtor maintains two jobs - working simultaneously as operations assistant for a transportation company and as a banquet server at a local hotel. Debtor’s statement of financial affairs reveals that her bankruptcy petition was preceded by a foreclosure action initiated on June 8, 2004. The foreclosure ended with a default judgment entered on August 17, 2004 and the property was scheduled to be sold at a sheriff’s sale on November 29, 2004. On September 23, 2004, debtor’s counsel filed a suggestion of bankruptcy in the state

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<sup>1</sup> The total amount of allowed unsecured claims, excluding the claim at issue here, is \$989.76. The overwhelming majority of debts scheduled and claims filed are those secured by debtor’s home. It is clear that the primary reason for debtor’s chapter 13 case is her desire to save her home.

court proceeding, and debtor's home was withdrawn from the list of properties to be sold by the sheriff.

On December 3, 2004, Marshall Brown ("Brown") filed a claim for \$568 for services performed between July 16, 2004 and September 16, 2004. (See Ex. A). Attached to the proof of claim is a Foreclosure Services Agreement and a single page summary that detailed the property address, owner, previous date of transfer, market value, and other information regarding debtor's home ("the property summary"). The Foreclosure Services Agreement ("Agreement") contemplates "loss mitigation and foreclosure negotiation services to be provided by Marshall Brown" who would "negotiate on [debtor's] behalf for the purpose of settling the legal actions, and if possible, to cancel the foreclosure actions." In return for this service debtor agreed to pay a deposit of \$300 and an additional amount equal to one percent of either the appraised value or the loan value as stated in the foreclosure complaint, whichever was higher. Debtor was not obligated to pay the additional amount until the foreclosure action was cancelled by the mortgagee. No additional fee was due if the foreclosure was not cancelled. The property summary bears a handwritten notation which calculates a total fee of \$668 based upon the appraised value of \$66,800, less a \$100 credit.

Debtor objected to Brown's claim on March 7, 2005. Debtor stated that the foreclosure proceeding was not cancelled, but merely stayed by operation of 11 U.S.C. § 362 as a result of debtor's bankruptcy petition. Debtor reasoned that the Agreement was never fulfilled because the foreclosure proceeding was not cancelled and accordingly, debtor has no obligation to pay Brown.

Brown responded that the status of the foreclosure proceeding in the state court docket is "closed" and that the property was withdrawn from sheriff's sale. Brown argued that his claim should be allowed.

Following Brown's response, debtor's objection was set for a hearing on April 18, 2005. Debtor appeared and presented the same arguments that appeared in her written objection. Brown did not appear.

### **III. DISCUSSION**

#### **A. Issues Presented**

Debtor has raised the issue of whether Brown is entitled to payment for services because the foreclosure proceeding was not cancelled by the plaintiff. In addressing debtor's objection the court must evaluate the nature of the agreement and the services Brown purported to offer. This, in turn, requires an inquiry about whether Brown seeks compensation for the unauthorized practice of law.



## B. Case Law and Analysis

A bankruptcy court has the power to regulate the practice of law in the cases before it. United States v. Johnson, 327 F.3d 554, 560 (7th Cir.2003), *cert. denied sub. nom.*, Robinson v. United States, 540 U.S. 1111 (2004). The overwhelming majority of reported cases dealing with the unauthorized practice of law in the bankruptcy context arise from motions filed by the United States Trustee to sanction bankruptcy petition preparers for the unauthorized practice of law. However, bankruptcy courts have recognized the potential for abuse where a nonattorney or any other individual purporting to be a “foreclosure negotiator” or “foreclosure mediator” inserts himself (generally for a fee) between a debtor and a foreclosing creditor. The negotiation process is usually unsuccessful, resulting in a poorly prepared bankruptcy petition that does debtor more harm than good. See e.g., In re France, 271 B.R. 748 (Bankr. E.D.N.Y. 2002) (real estate broker who also prepared bankruptcy petitions was enjoined from offering financial or consulting services to any person suffering the prospect of a foreclosure judgment and charging a fee in connection with any of those services); In re Ali, 230 B.R. 477 (Bankr. E.D.N.Y. 1999) (foreclosure consultant who advised debtors and prepared skeletal bankruptcy petitions engaged in the unauthorized practice of law); In re Carlos, 227 B.R. 535 (Bankr. C.D. Cal. 1998) (law firm that allowed a nonattorney to negotiate a debt reaffirmation agreement engaged in the unauthorized practice of law).

In this case, Brown claimed to provide unsuccessful foreclosure services, but avoided compounding the damage he had already caused because he did not thereafter participate in filing debtor’s bankruptcy. Nonetheless, debtor was prejudiced in the time period she received those “services.” It was thirty-two days after Brown arrived on duty that debtor had a default judgment taken against her. This resulted in a final judgment that permanently prejudiced her position and created additional expenses that now will be paid with her mortgage lender’s claim.

Bankruptcy courts issue orders when necessary to give full effect to the determinations of state courts regarding the unauthorized practice of law. See In re Sanders, 2000 WL 329574, No. 99 B 9876 (Bankr. N.D. Ill. Mar. 2, 2000) (Chapter 11 debtor had trustee appointed because debtor, who had been ordered to cease “foreclosure mediation and negotiation” by the state court as unauthorized practice of law, continued to do so). In determining what amounts to the unauthorized practice of law, bankruptcy courts turn to the laws of the locus state. See In re Skobinsky, 167 B.R. 45, 49 (E.D.Pa.1994); In re Campanella, 207 B.R. 435, (Bankr.E.D.Pa.1997); In re Herrera, 194 B.R. 178, 191 (Bankr.N.D.Ill.1996); Foulston v. Jones (In re Robinson), 162 B.R. 319, 325 (Bankr.D.Kan.1993); In re Evans, 153 B.R. 960, 966-67 (Bankr.E.D.Pa.1993); In re Harris, 152 B.R. 440, 444 (Bankr.W.D.Pa.1993); In re Bachmann, 113 B.R. 769, 772 (Bankr.S.D.Fla.1990).

Ohio law defining and prohibiting the unauthorized practice of law applies in this case. The Ohio Constitution vests the regulation of the practice of law in Ohio exclusively in the Ohio Supreme Court. Ohio Const. art. IV, § 5. The unauthorized practice of law consists of rendering

legal services for another by any person not admitted to practice law in Ohio. See Gov. Bar. R. VII(2)(A). The Ohio Supreme Court has, by its own acknowledgment, defined the practice of law expansively. Sharon Village Ltd. v. Licking Cty. Bd. of Revision, 678 N.E.2d 932, 934 (Ohio 1997). The practice of law in Ohio is not limited to the conduct of cases in court, but embraces "the preparation of pleadings and other papers incident to actions," "the management of such actions," and "in general all advice to clients and all action taken for them in matters connected with the law." Id. (quoting Land Title Abstract & Trust Co. v. Dworken, 193 N.E. 650 (Ohio 1934) (paragraph one of the syllabus)). The unauthorized practice of law occurs when a non-attorney acts as an intermediary to advise, counsel, or negotiate on behalf of an individual or business in an attempt to resolve a collection claim between debtors and creditors. Cincinnati Bar Assn. v. Telford, 707 N.E.2d 462 (Ohio 1999). The practice of law also encompasses "making representations to creditors on behalf of third parties, and advising persons of their rights, and the terms and conditions of settlement." Cincinnati Bar Assn. v. Cromwell, 695 N.E. 2d 243, 344 (Ohio 1998). Statements in solicitation letters and other documents provided to a debtor which announce that the intermediary is not an attorney and does not give legal advice do not insulate the intermediary from the unauthorized practice of law. See Akron Bar. Assn. v. Miller, 684 N.E.2d 288, 291 (Ohio 1997); Richland Cty. Bar Assn. v. Clapp, 703 N.E.2d 771, 772 (Ohio 1998). A non-attorney who offers legal representation to others and draws up the agreements through which he or she will be compensated to secure those legal rights has engaged in the unauthorized practice of law. See Columbus Bar Assn. v. Purnell, 760 N.E.2d 817; Cincinnati Bar Assn. v. Estep, 675 N.E.2d 499 (1994).

The Agreement between debtor and Brown provided that Brown would "negotiate on [Ferguson's] behalf for the purpose of settling the legal actions, and if possible, to cancel the foreclosure actions." Brown would also "contact the lenders of record and attempt to reach a settlement that is acceptable to all parties." Therefore, Brown intended to insert himself between debtor and the mortgage company as an intermediary to advise, counsel, and negotiate on her behalf. A non-attorney who attempts to settle a pending lawsuit on behalf of one of the litigants is engaged in the unauthorized practice of law. Cromwell at 244. Drawing logical inferences from the statements present in the Agreement, it is obvious that Brown's activities fall within the unauthorized practice law as defined by the Ohio Supreme Court in Dworken and Cromwell. It is clearly an effort to advise or negotiate to resolve a collection claim as in Telford. As a non-attorney engaging in the unauthorized practice of law, Brown is not entitled to any fee.

In this case, a non-attorney held himself out as an expert in matters that are clearly legal in nature – precisely the situation that laws governing the unauthorized practice of law are intended to prevent. The Agreement contemplates potential "cancellation" of the foreclosure action. Any court proceeding, once filed, cannot be "cancelled." The only potential *final legal* outcomes are judgment or dismissal. In debtor's foreclosure case the matter proceeded to default judgment approximately one month after debtor signed the Agreement with Brown and gave him \$300 to negotiate on her behalf. Oblivious to these legal realities, Brown responded to debtor's objection by insisting that he is entitled to his fee because the foreclosure case is "closed." In support of this statement, he appended a printout from the state court docket and highlighted the




case status. Brown's inability to distinguish between a legal outcome and the terms used by the state court in administratively managing its docket underscores his lack of legal knowledge, and the use of the word "cancellation" in the Agreement leads to the inescapable conclusion that this is precisely the type of malfeasance to be prevented by restricting the unauthorized practice of law. Brown dabbles in legal matters for which he is unlicensed and unqualified. Moreover, his inappropriate actions outlined above prejudiced debtor's legal position. Ultimately, debtor's home was saved because she left Brown and hired a lawyer before the wheels of justice ground her down and out of her home.

Brown demonstrates consummate legal ineptitude by asking the legal system to require that debtor pay additional fees for the unauthorized practice of law. He filed a claim for \$568, and also received a retainer of \$300 when debtor signed the agreement. Adding these two amounts results in a total fee of \$868, yet debtor received no benefit from the illegal services. Debtor had to file a bankruptcy petition to stay the sheriff's sale, and paid her bankruptcy attorney a fee of \$1,250. If debtor had paid Brown's entire fee prior to filing her bankruptcy, he would have received nearly \$900 for the unauthorized practice of law. Regulations prohibiting the unauthorized practice of law are intended to protect the public from being advised in legal matters by incompetent, untrained, and potentially unreliable persons over whom the judicial branch of government can exercise little control. *In re Rose*, 314 B.R. 663 (Bankr. E.D. Tenn. 2004). Brown falls within that class of untrained persons that unwittingly or wittingly impairs or sacrifices the legal rights of others.

The court **SUSTAINS** debtor's objection to the claim of Marshall Brown. Claim #7 is **DISALLOWED**.

An appropriate order shall enter.

 MAY 24 2005  
U.S. Bankruptcy Judge  
Russ Kendig

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

PROOF OF CLAIM - ED

FILED  
04 DEC 13 PM 12:18

Name of Debtor  
Valerie Lynn Ferguson

Case Number  
04-64327-rk

U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CANTON

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. §503.

Name of Creditor (The person or other entity to whom the debtor owes money or property):

MARSHALL BROWN

Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Name and Address where notices should be sent:

MARSHALL BROWN  
320 DUNNER AVE. NW  
NORTH CANTON, OHIO 44720

Check box if you have never received any notices from the bankruptcy court in this case.  
 Check box if the address differs from the address on the envelope sent to you by the court.



Telephone Number: 336-966-7075

THIS SPACE IS FOR COURT USE ONLY

Account or other number by which creditor identifies debtor:  
716/04

Check here if  replaces this claim  amends a previously filed claim, dated: \_\_\_\_\_

1. Basis for Claim

- Goods sold
- Services performed
- Money loaned
- Personal injury/wrongful death
- Taxes
- Other

- Retire benefits as defined in 11 U.S.C. §1114(a)
- Wages, salaries, and compensation (fill out below)  
Last four digits of SS #: \_\_\_\_\_  
Unpaid compensation for services performed from \_\_\_\_\_ to \_\_\_\_\_  
(date) (date)

2. Date debt was incurred:

7/16/04 9/16/04

3. If court judgment, date obtained:

4. Total Amount of Claim at Time Case Filed: \$ 568.00 (unsecured) (secured) (priority) \$ 568.00 (Total)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim.

Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:

- Real Estate  Motor Vehicle
- Other \_\_\_\_\_

Value of Collateral: \$ \_\_\_\_\_

Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ \_\_\_\_\_

7. Unsecured Priority Claim.

Check this box if you have an unsecured priority claim

Amount entitled to priority \$ \_\_\_\_\_

Specify the priority of the claim:

- Wages, salaries, or commissions (up to \$4,925)\* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).
- Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).
- Up to \$ 2,225\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).
- Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)( )

\*Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. Unsecured Nonpriority Claim \$ 568.00

Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.

8. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

THIS SPACE IS FOR COURT USE ONLY

9. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

10. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

Date

12/2/04

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):

Marshall Brown MARSHALL BROWN

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Ex. A

U.S. Bankruptcy Court

**- METROSCAN PROPERTY PROFILE -**  
Stark (OH)

**OWNERSHIP INFORMATION**

Parcel Number : 03 00359  
 Routing Number : 3A 01 3700  
 Owner : Hughes Valerie L  
 CoOwner :  
 Site Address : 1820 31st St NW Canton 44709  
 Mailing Address : 1820 31st St NW Canton Oh 44709  
 Owners Telephone : Tenant :

**SALES AND LOAN INFORMATION**

Transferred : 04/20/1992  
 Document# :  
 Sale Price : \$47,600  
 Deed Type :  
 % Owned :  
 Loan Amount :  
 Lender :  
 Loan Type :  
 Interest Rate :  
 Vesting Type :

**ASSESSMENT, APPRAISAL AND TAX INFORMATION**

Assessed Land	: \$5,565	<u>2003 Taxes</u>	
Assessed Struc	: \$17,815	1/2Yr GrossTax	: \$850.23
Assessed Total	: \$23,380	1/2Yr Sp Assmnt	:
Prior Assd Land	: \$5,285	1/2Yr 10% Redctn	: \$47.29
Prior Assd Sct	: \$14,385	1/2Yr ROH Redctn	: \$11.82
Prior Assd Total	: \$19,670	1/2Yr HB 9-2-0	: \$377.29
Market Land	: \$15,900	1/2Yr Net Tax	: \$413.83
Market Struc	: \$50,900	Delinquent	:
<u>Market Total</u>	<u>: \$66,800</u>	Exempt Type	:
% Improved	: 76		
Tax District	: Canton City		

**PROPERTY DESCRIPTION**

Census : Tract : 7117.00 Block : 2  
 School Dist :  
 Neighborhd Age : Mature  
 Neighborhd Type : Exempt  
 Land Use : 510 Res, Single Family Res, Platted  
 Legal : 36384 WH  
 Local Map : 21 D2  
 Neighborhood Code : EDMA  
 Neighborhood Mix : Diverse  
 Neighborhood Desire : Avg

$\$66,800$   
 $\times 1\%$  (fee due)  
 $= \$668.00$

Profile-Page 1 of 2

Less credit - 100.00

Due \$568.00

Information compiled from various sources. Real Estate Solutions makes no representations or warranties as to the accuracy or completeness of information contained in this report.



**FORECLOSURE SERVICES AGREEMENT**

This agreement between Valerie Ferguson, owners of real estate located at 1820 Flat Street NW - Cordele, GA and Marshall Brown with Jx4 Business Services is for loss mitigation and foreclosure negotiation services to be performed by Marshall Brown.

The lenders who hold one or more mortgages and notes against the said real estate are foreclosing upon the above named property.

The above named property owners authorize Marshall Brown to negotiate on their behalf for the purpose of settling the legal actions, and if possible, to cancel the foreclosure actions. Marshall Brown will contact the lenders of record and attempt to reach a settlement that is acceptable to all parties.

Any agreement reached between Marshall Brown and the lenders is subject to approval by owners. Final settlement figures are subject to bank approval.

For services rendered, sellers will pay a fee of \$ ~~700~~<sup>00</sup> upon signing this agreement, and an additional fee of one percent (1%) of the appraised value of the property as determined by the Auditor's Office of Stark County or the amount due and unpaid as shown in Paragraph 1 of the Foreclosure Complaint, whichever amount is higher. Payment is due when the foreclosure is cancelled by the mortgagee or the mortgagee's attorney. If the foreclosure action is not cancelled, there will be no further fee charged

If the owners/sellers agree to sell the property to Jx4, Inc. or any other buyer, prior to a Sheriff's Sale, the terms of the sale will be determined by the purchase contract and sellers will not be charged a fee in connection with said contract. The one percent fee as defined above will be due and payable upon the closing of escrow.

Regardless of the outcome of the negotiations, owners agree to hold Marshall Brown, Jx4 Business Services, and Jx4, Inc. harmless.

Signed by owners: Valerie L. Ferguson

Date 7/16/04

Accepted by Jx4 Business Services

Marshall Brown

Date

7/16/04



## SERVICE LIST

Valerie Lynn Ferguson  
1820 31st St NW  
Canton, OH 44709

Gerald Golub, Esq.  
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Suite 1  
Canton, OH 44714

Toby L Rosen  
400 W Tuscarawas St  
Charter One Bank Bldg  
4th Floor  
Canton, OH 44702

Marshall Brown  
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North Canton, OH 44720