UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 9:15-bk-04241-FMD
Chapter 7

Benjamin H. Yormak,

Debtor.
_____/

ORDER GRANTING IN PART AND DENYING IN PART STEVEN YORMAK'S RENEWED MOTION FOR SUMMARY JUDGMENT TO DISMISS DEBTOR'S UNLICENSED PRACTICE OF LAW OBJECTION
(Doc. No. 493)

THIS CASE came on for consideration of Creditor Steven R. Yormak's *Renewed Motion for Summary Judgment to Dismiss Debtor's Unlicensed Practice of Law (UPL) Objection Based on Evidence and the Law* (Doc. No. 493) (the "Motion for Summary Judgment"), Debtor's response (Doc. No. 499), and Steven Yormak's reply (Doc. No. 523). For the following reasons, the Court will grant in part and deny in part the Motion for Summary Judgment.

I. Summary Judgment Standard

Under Federal Rule of Civil Procedure 56, incorporated by Federal Rule of Bankruptcy Procedure 7056, a moving party is entitled to summary judgment if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[1] A factual issue is genuine if the evidence is such that the fact finder could return a verdict for the nonmovant. Facts are material if, under applicable law, they would affect the outcome of the suit.[2]

The moving party bears the initial burden of showing the absence of a genuine issue of material fact by identifying portions of the pleadings, depositions, answers to interrogatories, admissions, and affidavits that support the motion.[3] In deciding whether the movant has met this burden, the court must view all record evidence and draw all reasonable inferences in favor of the nonmoving party.[4] If the movant makes such an affirmative showing, the burden then shifts to the nonmoving party to go beyond the pleadings and to designate specific facts showing there is a genuine issue of material fact.[5]

II. History of the Case

Debtor, a Florida attorney, and Steven Yormak, an attorney licensed in Canada and the State of Massachusetts, are father and son. In 2012, Debtor and Steven Yormak entered into three consulting agreements in connection with Debtor's Florida law practice (the "Consulting Agreements") pursuant to which Debtor agreed to compensate Steven Yormak.

The first consulting agreement (the "Initial Agreement") states:

> WHEREAS the Consultant [Steven Yormak] has expertise in areas beneficial to [Debtor] and [Debtor] desired to retain expert service of [Steven Yormak] and has done so since May 1, 2011 . . .

Under the Initial Agreement, Debtor was to pay Steven Yormak $20,000 per month and fees calculated under formulas set forth in Schedules A1, A2, and A3. The fees were calculated on a percentage of the fees received by Debtor, ranging from 22% to 78% based upon the source of the

[1] Fed. R. Civ. P. 56(a).
[2] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
[3] *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).
[4] *In re Harwell*, 628 F.3d 1312, 1316 (11th Cir. 2010) (citing *Loren v. Sasser*, 309 F.3d 1296, 1301-02 (11th Cir. 2002)).
[5] *United of Omaha Life Ins. Co. v. Sun Life Ins. Co. of America*, 894 F.2d 1555, 1557 (11th Cir. 1990); *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112 (11th Cir. 1993).

client files that generated the fees, with a deduction by Debtor for his office expenses.[6]

Schedule A1 provides the calculation for 2012 and Schedule A2 provides the calculation for 2013 and ongoing years. Both Schedules A1 and A2 differentiate between "Old Files" (Debtor clients retained prior to July 1, 2012 "as attached by Schedule D" that is not attached to the Proof of Claim); "New Files" (all Debtor clients retained after July 1, 2012); and "Rojas/Butcher Files" (all Debtor files transferred from Rojas/Butcher "per attached Schedule C" that is not attached to the Proof of Claim).[7]

Schedule A1 also includes the following language: "NOTE: Disability Files referred to in Schedule A3 are not to be included in any Schedule A1 calculation." And Schedule A2 states "(Excluding Disability files, Barnes, and Funari Files)."

Schedule A3 states

> In addition to and separate from Schedules A1 and A2, [Debtor] to pay [Steven Yormak] pursuant to this Schedule A3, any payments to be credited against total consulting fees incurred as per paragraph 6 of the Consulting Agreement, and not included in [Debtor's] gross income under A1or A2, on the basis of 67% of gross fees to be paid to [Steven Yormak] immediately upon receipt by [Debtor] for any fees arising from the following files . . . .

Schedule A3 then goes on to list seven enumerated "files" and for "[a]any other files by mutual agreement and/or any files [Steven Yormak] has provided services on, as follows. . . . " The second and third Consulting Agreements (the "Funari Class Action Agreement" and the "Barnes Qui Tam Agreement") include the following language:

> WHEREAS the Consultant [Steven Yormak] has expertise in areas beneficial to [Debtor] and [Debtor] desired to retain expert service of [Steven Yormak] whose extraordinary expertise, talent and vast experience which [Debtor] has determined is essential and key to the successful completion of this matter as a key participant to render advise in the best interests of the firm and client.

At some point in their relationship, a dispute arose between Steven Yormak and Debtor. In 2013, Steven Yormak sued Debtor in state court for, among other things, breach of contract. Debtor removed the case to the United States District Court for the Middle District of Florida, Case No. 2:14-cv-033-JES (the "District Court Case").

Debtor moved to dismiss the District Court Case on the grounds that the Consulting Agreements were disguised agreements to share attorney's fees with a person unlicensed to practice law in the State of Florida and thus void and unenforceable as a matter of public policy. The District Court denied Debtor's motion to dismiss, stating that "Florida courts have held that it is error to use an ethical rule as a basis to invalidate or render void a provision in private contract between two parties."[8]

On April 24, 2015, Debtor filed a Chapter 13 bankruptcy case, staying the District Court Case. Steven Yormak filed a proof of claim in the bankruptcy case in the amount of "$724,275 + Qui Tam (70%) + Class Action (70%)" (the "Claim").[9] Debtor filed an objection to the Claim (the "Objection to Claim").[10] The Objection to Claim was on the grounds that Claim is unenforceable because it asserts a request to split legal fees with a non-Florida lawyer, that the Claim is contingent and unliquidated, and that Steven Yormak had failed to set forth a clear and concise basis upon which to value the Claim.

On December 29, 2016, Steven Yormak filed an amended Proof of Claim that increased the amount of the Claim, without explanation for the increase, to "$1,095,275.00 + 70% Class action + interest."[11]

[6] Claim 4-2, pp. 15-19.
[7] Initial Consulting Agreement, paragraph 1.
[8] District Court Case, Doc. No. 24, p. 5.
[9] Claim No. 4-1.
[10] Doc. No. 36
[11] Claim No. 4-2.

On April 19, 2018, the Court entered an order permitting Debtor to amend his Objection to Claim to include the UPL Defense (Doc. No. 398).[12] Steven Yormak filed a response to the Objection.[13]

Debtor has now filed the within Motion for Summary Judgment, arguing that he is entitled to summary judgment for the following nine reasons:

1. None of the Creditor's activities relating to disability clients were subject to Florida laws regarding unlicensed practice of law (UPL) which services were specifically permitted pursuant to the seminal case of the United States Supreme Court, *Sperry v. Florida Ex. Rel. Florida Bar* . . . .

2. None of the Creditor's activities relating to providing consulting to the Debtor lawyer is considered UPL being in the nature of mentoring and coaching which consultation is a well-known and respected business in Florida and other jurisdictions . . . .

3. The Creditor's contemplated and actual activities included standard tasks that paralegals and qualified staff would do in law firms including preliminary legal research and medical/legal input provided to the responsible lawyer none of which is considered UPL . . . .

4. The consulting agreements did not contemplate nor was there ever any type of legal or other partnership established in law, the Creditor never having any control or ownership rights in any part of the Debtor's practice, no access to financial information of the practice or any signing authority to any party including any client, creditor or any third party, no reference in the practice letterhead . . . .

5. The Creditor's claim was and is for his consulting hours rendered at an hourly rate (See Claim 4-1) and consulting fees for the qui tam and class action.

6. Fee splitting with non-lawyers is not considered UPL in and of itself, and has been permitted by the courts where the agreement is not with a member of the public i.e. a client, distinguishing cases where the non-lawyer had contracted directly with the client such as *Chandris, S.A. v. Yanakakis*, 668 So.2d 180 (Fla. 1995) . . . .

7. The Florida Bar had investigated these issues at the relevant time in 2012 and decided that there was no liability regarding UPL by the Creditor; the Debtor vociferously defended the Creditor to the Bar in the course of their investigation confirming that in fact there was no UPL on the part of the Creditor . . . .

8. The Debtor himself has confirmed that 'dispensing advice to other lawyers' is not UPL and is 'ok.'

9. Even if arguendo UPL was found it is in the court's discretion to apply court-made law to deem an agreement unenforceable or not particularly when the party for whom the statute was designed to protect (the public) is not the aggrieved but an attorney who is merely seeking to avoid payment on an otherwise admittedly valid agreement.[14]

[12] Steven Yormak filed a motion for leave to appeal the Court's ruling to the district court. On June 8, 2018, the District Court denied the motion for leave to appeal (Doc. No. 443). Steven Yormak then filed an appeal to the Eleventh Circuit Court of Appeals, Appeal No. 18-12623-FF. On August 14, 2018, the Eleventh Circuit dismissed the appeal for lack of jurisdiction. Steven Yormak moved for reconsideration, which was denied by the Eleventh Circuit on October 31, 2018.

[13] Doc. No. 458.

[14] Doc. No 493, pp. 1-4, ¶¶ 1-9.

III. Activities Related to Clients Seeking Social Security Disability Benefits

Steven Yormak contends, among other things, that none of his activities relating to social security disability clients were subject to Florida law regarding the unlicensed practice of law, citing to the United States Supreme Court's decision in *Sperry v. Florida Ex. Rel. Florida Bar*.[15] Steven Yormak also contends that Debtor took a similar position in correspondence with Bar Counsel for the Florida Bar in defending Steven Yormak against an unlicensed practice of law investigation arising from a Social Security disability claim.[16] Debtor's letter to Bar Counsel stated:

> Steven Yormak, like any other individual, is entitled to represent and advise clients as an advocate pursuant to federal legislation governing Social Security Disability Insurance (SSDI), Veterans Act, etc., as confirmed by *Sperry v. State of Florida ex rel. The Florida Bar, 373 U.S. 379 (1963)*.[17]

In his Response, Debtor argues that *Sperry* is limited to the issue of dealing with patent application legislation.[18] In *Sperry*, the Court determined that because federal statute and patent office regulations authorized registered non-lawyers to practice before the United States Patent Office, Florida could not enjoin a non-lawyer from preparing and prosecuting patent applications even though those activities constitute the unlicensed practice of law in Florida.

Similar to Patent Office regulations, the Social Security Administration allows any person who is not an attorney to be a client representative so long as he or she is capable of giving valuable help in connection with a claim, is not disqualified or suspended from acting as a representative, and is not prohibited by any law from acting as a representative.[19] Therefore, the Court finds that the activities Steven Yormak rendered in assisting clients in obtaining Social Security disability benefits did not constitute the unauthorized practice of law.

IV. The Court Cannot Ascertain the Nature of Steven Yormak's Consulting Services.

Notwithstanding the Court's ruling that services rendered on behalf of clients seeking Social Security benefits do not constitute the unlicensed practice of law, the Consulting Agreements do not relate exclusively to Social Security Cases. In fact, Schedule A2 attached to the Initial Consulting Agreement provides for the calculation of services "excluding disability files."[20] And neither the Funari Class Action Agreement nor the Barnes Qui Tam Agreement have anything to do with disability benefits.[21]

Steven Yormak has provided no evidence to support his argument that his activities under the Consulting Agreements did not constitute the practice of law. He directs the Court only to the Consulting Agreements, which refer to his providing "expert service," rendering "consulting services" to Debtor; his having "expertise and experience in areas beneficial to Debtor;" and Debtor's desire to retain Steven Yormak's "expert services" because of Steven Yormak's "extraordinary expertise, talent and vast experience."

But as the Court stated at the March 24, 2016 hearing,

> The consulting agreement states that Steven . . . was retained to provide "expert services to Benjamin in connection with Benjamin's Florida law practice." **However, the consulting agreement does not specify the specific duties or tasks that Steven was to perform.** On the current record, I cannot determine whether Steven was engaged in the practice of law and for that reason will deny the cross-

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[15] 373 U.S. 379, 381 (1963).
[16] Doc. No. 493, Exh. 7, pp. 6-8.
[17] Doc. No. 493, Exh. 7, pp. 6-7.
[18] Debtor cites to the Florida Supreme Court decision, *Chandris, S.A. v. Yanakakis*, 668 So. 2d 180, 181 (Fla. 1995), to support his argument. But *Chandris* applies to the Jones Act and is not applicable here.
[19] 20 C.F.R. § 404.1705(b)(1), (2), and (3).
[20] Claim No. 4-2, p. 17.
[21] Claim No. 4-2, p. 12 and pp. 23-27.

motion [Debtor's cross-motion for summary judgment on the UPL Defense].[22]

In considering the Motion for Summary Judgment today, the Court is in the same position that the Court was in at the March 24, 2016 hearing. The Court has no evidence of the nature of the services contemplated by the Consulting Agreements or the work performed by Steven Yormak for Debtor's law practice. Steven Yormak has offered only conclusory statements regarding the nature of his services under the Consulting Agreements and emails with the Debtor which discuss client files relating to disability benefits. Although Steven Yormak did file an affidavit in connection with his opposition to a motion for summary judgment filed by Debtor, his affidavit cursorily states that he "only [rendered] advise regarding disability and other medical matters at the request of debtor lawyer and in his presence" and largely focused on other factual issues.[23]

The Court finds genuine issues of material fact regarding the services provided by Steven Yormak, the nature of those services, and whether those services constitute the unlicensed practice of law. Therefore, the Court does not have a record upon which it can grant summary judgment.

V. The Consulting Agreements and Fee Splitting

Steven Yormak contends that the Consulting Agreements did not contemplate any type of legal or other partnership established in law, nor was there such a partnership, and that fee splitting with a non-lawyer is not, standing alone, the unlicensed practice of law. But even if Steven Yormak is correct that the Consulting Agreements did not contemplate a legal partnership with the Debtor and fee splitting with a non-lawyer is not the unlicensed practice of law, there remain genuine issues of material fact remain regarding the services Steven Yormak provided to Debtor and Debtor's clients, and whether those services constitute the unlicensed practice of law.

VI. The Florida Bar Investigation

Lastly, Steven Yormak argues that The Florida Bar investigated "these issues" in 2012 and did not find that he was practicing law without a license. In support of the Motion for Summary Judgment, Steven Yormak alleges that Debtor defended him on this issue before The Florida Bar and provides a copy of a "Letter of Advisement" from the Twentieth Circuit Unlicensed Practice of Law Committee of The Florida Bar (the "Committee Letter").[24] Debtor contends that the Committee Letter was an offer from the Committee to resolve an allegation by one of Debtor's clients that Steven Yormak was engaged in the unlicensed practice of law and is not dispositive of the unlicensed practice of law issue as a whole.

In Debtor's letter to The Florida Bar Counsel,[25] Debtor informed The Florida Bar that Steven Yormak's services were provided in connection with a Social Security disability insurance claim. Contrary to Steven Yormak's contention, the Committee Letter does not contain a statement that the Committee made a finding of no liability regarding the unlicensed practice of law. Rather, the Committee Letter resolves an unlicensed practice of law complaint from a single client relating to advice and services relating to the client's claim, apparently for Social Security disability benefits. The Committee Letter does not support Steven Yormak's contention that The Florida Bar found no liability regarding the unlicensed practice of law arising out of the Consulting Agreements.

VII. Conclusion

The Court finds that Steven Yormak has met his initial burden on summary judgment with respect to the services he provided in connection with clients seeking Social Security disability benefits but has not met his initial burden on summary judgment on all other aspects of the Motion for Summary Judgment. Accordingly, it is

[22] Transcript, Doc. No. 197, p. 19, emphasis supplied.
[23] Doc. No. 452, pp. 21.
[24] Doc. No. 493, Exh. 7, pp. 2-5.
[25] Doc. No. 493, Exh. 7, pp. 6-8.

ORDERED:

1. The Motion for Summary Judgment is **GRANTED** as to Steven Yormak's activities related to clients seeking Social Security disability benefits.

2. In all other respects, the Motion for Summary Judgment is **DENIED.**

DATED: June 6, 2019.

/s/ Caryl E. Delano
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Caryl E. Delano
United States Bankruptcy Judge