

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

THOMAS GEORGE MACEY, Commission No. 2012FR00057
Attorney-Respondent,
No. 6216468.

JEFFREY JOHN ALEMAN, Commission No. 2012FR00058
Attorney-Respondent,
No. 6238869.

FILED - June 5, 2012

COMPLAINT

Jerome Larkin, Administrator of the Illinois Attorney Registration and Disciplinary Commission, by his attorney, Gary S. Rapoport, pursuant to Supreme Court Rule 753(b), complains of Respondent Thomas George Macey (hereinafter "Respondent Macey"), who was licensed to practice law in the State of Illinois on November 4, 1993, and Respondent Jeffrey John Aleman (hereinafter "Respondent Aleman"), who was licensed to practice law in the State of Illinois on April 22, 1997, and alleges that Respondents have engaged in the following conduct which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute, and which subjects Respondents to discipline pursuant to Supreme Court Rule 770:

(Breach of fiduciary duty; failure to consult with clients; assisting nonlawyers in the practice of law; and other misconduct through Legal Helpers Debt Resolution, LLC)

1. In 2008, Respondents established a law firm based in Chicago called Macey, Aleman, Hyatt and Sears ("Macey Aleman"). The two other named members of the firm, Jeffrey Hyatt and Jason E. Sears, have never been licensed to practice law in Illinois, but were licensed in Ohio and Colorado, respectively. Respondents also established the law firm of Legal Helpers Debt Resolution, LLC ("Legal Helpers"), at the same Chicago address as Macey Aleman. Legal Helpers was organized as a limited liability company under the laws of Nevada. At all times alleged in this complaint, Respondents were owners and managers of Legal Helpers and Macey Aleman.

2. Respondents established Legal Helpers for the purpose of partnering with nonlawyer companies in the consumer debt settlement industry in order to take advantage of certain exemptions that new regulations governing the debt settlement industry allowed for attorneys. As a result of economic downturns in the last decade, many people with low and modest incomes accumulated high levels of unsecured debt. Debt settlement companies offered to help those people by setting up monthly payment plans that, in theory, allowed the clients to accumulate funds that would be used to pay their creditors while the debt settlement company negotiated with the creditors in an attempt to settle the debts for reduced amounts. The debt settlement companies promoted their service as an alternative to credit counseling or bankruptcy. In most instances, the debt settlement companies had the clients stop making payments to their creditors in order to fund the purported debt settlement plan, often resulting in collection lawsuits or other adverse consequences to the clients. Also, the debt settlement companies typically charged a fee equal to 15% or more of the client's total debt and collected the fee in advance, in full, from the client's first several monthly payments.

3. Beginning a few years ago, the consumer debt settlement industry has been the subject of increasing state and federal regulations, which, among other things, prohibited the collection of fees in advance. In Illinois, the Debt Settlement Consumer Protection Act, 225 ILCS 429, became effective on August 3, 2010. However, the new regulations, including the Illinois law, typically exempted attorneys from the regulations and prohibitions. 225 ILCS 429/10(c).

4. Respondents, through Legal Helpers, intended to partner with nonlawyer debt settlement companies in order for those companies to appear to be the law firm's agents and thereby permit those nonlawyers to claim the attorney exemption to the new regulations, including the regulations that prohibited the collection of advance fees. The debt settlement companies would identify themselves as Legal Helpers or Macey Aleman in their advertising and promotional materials and, after they were engaged, in their communications and correspondence with clients' creditors and others. In exchange, Respondents would receive signed attorney retainer contracts from every enrolled client that required the client to pay, in advance, attorney fees to Legal Helpers, in addition to paying the advance fees of the debt settlement company. Despite the retainer agreements and Legal Helpers' receipt of attorney fees, all of the debt settlement services would be performed by the nonlawyer companies, to the extent that any such services would be performed. At no time would the clients have any consultation or direct communications with Respondents or any attorney.

5. Respondents and Respondents' nonlawyer associates described in paragraph seven, below, used direct mail and other advertising to offer purported legal representation by Legal Helpers for the purpose of debt negotiation and settlement. The services that Respondents and their nonlawyer associates promoted required, first, that a client open a special bank account, pay a monthly amount into that account, and grant authority to Legal Helpers to withdraw sums from the account to pay its fees and the fees of its nonlawyer associates in advance, or mostly in advance, of providing any services. After most of Respondents' fees and their nonlawyer associates' fees were paid, and as the client continued to make monthly deposits and accumulate a balance of funds in the account, the client's creditors would be paid as Legal Helpers purportedly negotiated and settled the client's debts.

6. At all times alleged in this complaint, Respondents directed, supervised, knew of and approved all aspects of Legal Helpers' operations, policies and procedures, including the operations, policies and procedures described in this complaint.

7. Respondents entered into "Strategic Alliance Agreements" or "Strategic Alliance Subcontract Agreements" with nonlawyer debt settlement companies located around the United States including, but not limited to, Legal Services Support Group, LLC ("LSSG"), JEM Group, Inc., Lynch Financial Solutions, Inc., CDS Client Services, Inc., and Eclipse Financial (hereinafter, collectively referred to as the "nonlawyer companies" or "companies"). The agreements required the companies to provide marketing and administrative services for Respondents, including "enrollment, compliance with client qualification criteria, client support, [and] client fee accounting."

8. The above-described agreements also required the nonlawyer companies to provide "non-legal law-related services" to Legal Helpers' clients. Respondents claimed that the agreements were non-exclusive reciprocal referral agreements with nonlawyer professionals whereby the nonlawyer companies would refer debt settlement clients to Legal Helpers for purported legal services, and Legal Helpers would refer debt settlement clients to the nonlawyer companies for nonlawyer services. The services that the nonlawyer companies would provide to the clients included "assistance with financial workout analysis, collection activities and debt restructuring, and the engagement of collectors on behalf of the [clients] in an effort to modify and settle unsecured debts."

9. Respondents drafted and provided to the nonlawyer companies documents and forms to be used for obtaining clients. The forms included a multi-part attorney retainer agreement that Respondents occasionally modified. The provisions of the retainer agreement always included the following:

- authority for Legal Helpers to delegate to a nonlawyer company the implementation and management of a debt resolution plan pursuant to the "non-exclusive reciprocal referral agreement" between Legal Helpers and the nonlawyer company;
- a disclaimer that no attorney-client relationship existed between the client and the nonlawyer company and that communications between them are not protected by attorney-client privilege;
- several paragraphs that limited, qualified, and disclaimed Respondents' obligations. Among other things, Legal Helpers disclaimed responsibility to intercede in collection efforts by creditors or collection agencies, to prevent late fees and penalties from being incurred on the client's debts as a result of the client's participation in the debt settlement program, or to prevent the client's credit rating from worsening as a result of participation in the debt settlement program. Prior to October 22, 2010, Legal Helpers' retainer contract also disclaimed any obligation to represent the client in the event of a lawsuit against the client by a creditor;
- a requirement of binding arbitration in the event of "any claim or dispute between the client and [Legal Helpers] related to any performance of any services related to this agreement." The retainer contract did not advise the client that the arbitration clause would operate to waive or limit the client's rights to a lawsuit, a jury trial, civil discovery, or appeal;
- a "Disclosure and Election of Services" which purported to describe to the client the differences between credit counseling, Chapter 7 and Chapter 13 bankruptcy proceedings, and debt negotiation; and
- a requirement that the client establish and, for a designated period (usually between 18 and 40 months), make monthly deposits into a special bank account from which Respondents would have authority to make electronic withdrawals, in order to pay their fees, the fees of the nonlawyer company, and purported settlements. More specifically, the agreement required the client to deposit, and allowed Legal Helpers to withdraw, installments to pay "an initial flat fee retainer" of either \$500 or \$900 and a monthly "maintenance" fee of up to \$79 to Legal Helpers. The client's monthly deposits also would include installments to pay a fee to the nonlawyer company equal to 15% of the client's total enrolled debt. The retainer agreement included a "Payment Confirmation Schedule" listing each monthly deposit required of the client and each withdrawal and disbursement to be made by Legal Helpers. The agreement allowed Legal Helpers to take all of its fees, and to disburse all of the debt settlement company's fees, within the first several months of the plan.

10. The forms that Respondents drafted and provided to their nonlawyer partner companies for obtaining clients also included a power of attorney by which the client purported to appoint Legal Helpers as the client's agent in connection with the client's debt and credit matters. The forms also included a settlement pre-authorization by which the client purported to preauthorize Legal Helpers to settle any debt for 50% or less of the account balance.

11. Respondents approved and implemented the following procedures for obtaining clients:

- When, in response to advertising or direct mail solicitations, prospective clients contacted or attempted to contact Legal Helpers to inquire about legal representation, they sometimes spoke with nonlawyers who were employees of Respondents, or, more often, the communications were routed to nonlawyer employees of the above-described affiliated companies. In either case, the nonlawyer representatives promoted and attempted to sell the debt settlement service to the prospective clients. The nonlawyer representatives advised that, if the client enrolled, he would be represented by a law firm, and he should stop making payments to creditors. If a prospective client agreed or was interested, the nonlawyer representative would send promotional information and forms to him, including the representation agreement, the power of attorney and the settlement pre-authorization, described above;
- The nonlawyer representative required the prospective client to submit financial information, reviewed the information, and advised the prospective client about other options to resolve his indebtedness, including the nature, risks and benefits of a bankruptcy proceeding in his specific situation; and
- The nonlawyer representative advised the prospective client about the purposes, terms, conditions, and legal effects of the above-described retainer agreement, power of attorney and settlement pre-authorization, instructed the prospective clients to complete and return them, and answered any questions about them.

12. Between 2009 and 2011, by means of Respondents' partnerships with nonlawyer debt settlement companies as described above and Respondents' implementation and management of the procedures for obtaining clients as described in paragraphs nine, ten and eleven, above, Respondents and their law firm obtained millions of dollars in attorney fees from thousands of clients throughout the United States who retained Legal Helpers.

13. At all times alleged in this complaint, Respondents knew that the employees and representatives of their law firm and of the above-described affiliated companies who met and spoke with prospective debt settlement clients and obtained signed retainer agreements, powers of attorney and settlement pre-authorizations were not licensed to practice law in Illinois or in any jurisdiction.

14. At all times alleged in this complaint, before a debt settlement client engaged Legal Helpers, Respondents would not meet or speak with the client or have any attorney meet or speak with the client. Prior to the engagement of Legal Helpers, neither Respondents nor any attorney for Legal Helpers would personally consult with or advise the client about Legal Helpers' referral of the client's matter to a nonlawyer pursuant to the "non-exclusive reciprocal referral agreement," the absence of attorney-client privilege in communications with the nonlawyer, the limitations on the scope of Legal Helpers' representation, the consequences of not paying creditors while enrolled in the debt settlement program; the scope and effect of the arbitration clause; or the availability, risks and benefits of other courses of action to resolve the client's indebtedness, such as bankruptcy proceedings, under the client's particular circumstances.

15. At all times alleged in this complaint, after a debt settlement client engaged Legal Helpers, Respondents would not meet or speak with the client or have any attorney meet or speak with the client, unless the client specifically asked to talk to a lawyer.

16. Each of the following clients was an Illinois resident who contacted Legal Helpers to discuss legal representation for the purpose of debt settlement in response to a direct mail solicitation or an advertisement. Each of the following clients spoke only with a nonlawyer employee of Legal Helpers or an affiliated nonlawyer company, received explanations and advice from the nonlawyer as described in paragraph eleven, above, executed the retainer agreement and the other documents described in paragraphs nine and ten, above, paid attorney fees to Legal Helpers, and paid separate fees to the nonlawyer debt settlement company that Legal Helpers designated.

CLIENT	DATE OF RETAINER	ATTORNEY FEES OBTAINED BY LEGAL HELPERS
Angela A. Rajic	9-1-09	\$500
Audrey Drozek	2-5-10	785
Mary Corner	2-8-10	650
Barbara Gzesik	2-9-10	500
Leonard W. May	2-15-10	800
Helen Nawracaj	2-26-10	696
Toni Molos	3-17-10	900
Karyn Alridge	3-29-10	650
Roseann Losinieccki	3-31-10	696
Charles Powell Sr.	4-9-10	1,000
Wildria L. Foster	4-22-10	1,250
Ronald Kondracki	4-29-10	1,600
Imelda Hanson	5-13-10	1,050
Nancy A. Duke	5-27-10	2,258
Jennifer Green	6-18-10	\$950
Susan K. Baker	6-23-10	1,000
Patrick Coins	6-26-10	500
Patricia Daniel	7-2-10	950
Donna Soger	7-16-10	950
Monica Plummer	7-7-10	843
Nancy Cress	7-9-10	850
Diana Fanning	7-10-10	750
Tariq T. Gahji	7-13-10	500
Tonyo O. Grady	7-19-10	1,000
Ira Aronson	7-28-10	900
Ronald L. Messmore	7-29-10	850
Erica J. Gonzalez	8-3-10	745
Diana Wolters	8-10-10	745
Herbert Jordine	8-4-10	950
John J. Martin	8-28-10	500
Vesta Ware	8-11-10	1,050
Filberta Corona	9-13-10	560
Desiree Alivas	11-11-10	1,145
Karen Fitzgerald	1-28-11	150
Carlos V. Arceo	2-8-11	1,453
Margaret Dalbke	2-17-11	458

17. In each of the above-listed client matters, at no time before the initiation of the attorney-client relationship did Respondents or an attorney from their law firm meet or speak with the client. At no time before accepting the above-listed clients spoke only with a nonlawyer employee of Legal Helpers personally confer with and advise the clients about Legal Helpers' referral of the client's matter to a nonlawyer pursuant to the "non-exclusive reciprocal referral agreement," the absence of attorney-client privilege in communications with the nonlawyer, the limitations on the scope of Legal Helpers' representation; the consequences of not paying creditors while enrolled in the debt settlement program; the scope and effect of the arbitration clause; or the availability, risks and benefits of other courses of action to resolve the client's indebtedness, such as Chapter 7 or Chapter 13 bankruptcy proceedings, under each client's particular circumstances.

18. In each of the above-listed client matters, at no time during the attorney-client relationship did Respondents or an attorney from their law firm meet or speak with the client, with the exception of clients Diana Fanning and Ronald L. Messmore, who each had a brief telephone conversation with a Legal Helpers attorney in relation to their receipts of summonses in collection lawsuits. Legal Helpers refused to represent them in the lawsuits.

19. In each of the above-listed client matters, Legal Helpers provided no legal services to the client, or, if Legal Helpers did provide some legal service, it did not justify the fee that the law firm collected.

20. In each of the above-listed client matters, a nonlawyer company performed all of the debt negotiation and settlement work that was performed, if any such work was performed, and the client paid the nonlawyer company separately for such work.

21. By reason of the conduct described above that occurred before January 1, 2010, Respondent Macey and Respondent Aleman each have engaged in the following misconduct:

- breach of fiduciary duty to Legal Helpers' debt settlement clients;
- failing to consult with a client about the means by which the objectives of the representation are to be pursued, in violation of Rule 1.2(a) of the Illinois Rules of Professional Conduct (1990);
- failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, in violation of Rule 1.4(b) of the Illinois Rules of Professional Conduct (1990);
- collecting an unreasonable fee, in violation of Rule 1.5(a) of the Illinois Rules of Professional Conduct (1990);
- failing to supervise and make reasonable efforts to ensure that the conduct of nonlawyers employed by or associated with Legal Helpers is compatible with the professional obligations of Respondent, in violation of Rule 5.3(a) and (b) of the Illinois Rules of Professional Conduct (1990);
- assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law, in violation of Rule 5.5(b) of the Illinois Rules of Professional Conduct (1990); and
- conduct which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute.

22. By reason of the conduct described above that occurred on or after January 1, 2010, Respondent Macey and Respondent Aleman each have engaged in the following misconduct:

- breach of fiduciary duty to Legal Helpers' debt settlement clients;
- failing to consult with a client about the means by which the objectives are to be accomplished, in violation of Rule 1.4(a)(2) of the Illinois Rules of Professional Conduct (2010);
- failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, in violation of Rule 1.4(b) of the Illinois Rules of Professional Conduct (2010);
- making an agreement for, charging, or collecting an unreasonable fee, in violation of Rule 1.5(a) of the Illinois Rules of Professional Conduct (2010);
- failing to supervise and make reasonable efforts to ensure that the conduct of nonlawyers employed by or associated with Legal Helpers is compatible with the professional obligations of Respondent, in violation of Rule 5.3(a) and (b) of the Illinois Rules of Professional Conduct (2010);
- assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law, in violation of Rule 5.5(b) of the Illinois Rules of Professional Conduct (2010); and
- conduct which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute.

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: Gary S. Rapoport
Counsel for the Administrator