

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

CASE NO:

50 2011 CA 000567 XXXX MB

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THE CONSUMER LAW GROUP, P.A.,
AMERICAN DEBT NEGOTIATORS, INC.,
MICHAEL L. METZNER, an individual,
RAN BARNEA, an individual, and
DANIEL T. POST, an individual

Plaintiffs,

vs.

OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS,
STATE OF FLORIDA

Defendant.

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SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL

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COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs The Consumer Law Group, P.A., American Debt Negotiators, Inc., Michael L. Metzner, Ran Barnea, and Daniel T. Post (together, hereinafter "Plaintiffs"), sue Defendant Office of the Attorney General, Department of Legal Affairs, State of Florida. Plaintiffs seek a declaration that the Attorney General is not permitted to investigate the practice of law and the services offered by The Consumer Law Group, P.A. because under the Florida Constitution the Florida Supreme Court has exclusive jurisdiction over the practice of law and services provided in furtherance thereof. In support Plaintiffs state the following:

JURISDICTION, PARTIES AND VENUE

1. This is an equitable action wherein the amount in controversy exceeds \$15,000.00. This Court has subject matter jurisdiction.

2. Plaintiff The Consumer Law Group, P.A. ("CLG" or the "Law Firm") is a professional association engaged in the practice of law duly organized and existing under the laws of the State of Florida with its principal place of business in Boca Raton, Palm Beach County, Florida.

3. Plaintiff American Debt Negotiators, Inc. ("ADN") is a corporation duly organized and existing under the laws of Florida with its principal place of business in Boca Raton, Palm Beach County, Florida.

4. Plaintiff Michael L. Metzner ("Metzner") is an individual residing in Broward County, Florida.

5. Plaintiff Ran Barnea ("Barnea") is an individual residing in Palm Beach County, Florida.

6. Plaintiff Daniel T. Post ("Post") is an individual residing in Palm Beach County, Florida.

7. Defendant Office of the Attorney General, Department of Legal Affairs, State of Florida (the "Attorney General") is an executive agency of the State of Florida. The Attorney General is, among other things, an enforcing authority of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA") found in Chapter 501, Part II, Florida Statutes. The Attorney General is generally authorized, with certain exceptions pertinent herein, to conduct investigations and, if appropriate, when not limited by statutory and constitutional constraints as exist in this case, to seek appropriate relief as detailed in FDUTPA.

8. Venue is proper in Palm Beach County in that: (a) Plaintiffs CLG and ADN have offices in that County; (b) Defendant has an office in that County; and (c) the circumstances and activities which gives rise to this action are ongoing in that County.

GENERAL ALLEGATIONS

CLG, ADN and the Attorney General's Investigation

9. CLG is a multistate law firm, registered as required in the states in which it maintains a practice, with its principal office located in Palm Beach County, Florida. Metzner, an active member of the Florida Bar in good standing, is CLG's managing and supervising attorney.

10. CLG offers its potential clients an array of legal services. Such services, as they specifically pertain to this action, include assistance relating to consumer debts, bankruptcy filing and other services for consumers who are facing financial difficulty, including enrollment in a debt settlement program offered by CLG and providing litigation defense.

11. CLG has licensed attorneys associated with its firm in each state where it is registered as a multistate law firm to assist and provide legal services to its clients, and, as pertinent here, to oversee the debt settlement programs in which CLG's clients have enrolled.

12. ADN provides administrative services to CLG, including customer service, data entry services, and IT solutions for, among other things, CLG's debt settlement programs pursuant to contract. As contemplated by applicable regulations of the various Bar associations in the states in which CLG is registered as a multi-state law firm, ADN contractually performs an administrative function in support of and under the supervision of CLG and is likewise governed by the rules governing such non lawyers performing pay-for-service functions for lawyers and law firms.

13. CLG has engaged ADN as a vendor to provide the prescribed services in connection with debt settlement programs CLG offers to its clients. CLG compensates ADN on

a fee for service basis, akin to the method by which CLG (and other law firms) compensates its vendors of services employed in the course of the law firms' practice of law.

14. Barnea is President of ADN and Post is Secretary of ADN.

15. The Attorney General is conducting an inquiry into the practice of law by CLG as a multistate law firm. Indeed, the Attorney General recently subpoenaed several former employees of CLG and/or ADN for the purposes of investigating the Law Firm.

16. The Attorney General is investigating potential FDUTPA claims, and possibly other claims the bases for which are not presently known to Plaintiffs, against CLG and its vendors, especially ADN, pursuant to authority it claims is granted by FDUTPA. However, the Attorney General does not have statutory jurisdiction to do so because the legal services provided by CLG do not constitute "trade or commerce" regulated by the cited statute.

17. Metzner, as CLG's managing attorney, and Barnea and Post, as ADN's officers, are also potential targets of such threatened FDUTPA claims, as the Attorney General as a matter of common practice, whether warranted or otherwise, broadens the ambit of its investigations and enforcement proceedings to include those whom, according to the Attorney General's characterization, "direct" and/or "control" the policies and operation of those entities, such as CLG and ADN, the Attorney General chooses to target.

The Florida Constitution's Separation of Powers Doctrine Divests the Attorney General of Authority to Investigate CLG and ADN

18. The Florida Supreme Court and its delegee, The Florida Bar, have been uniquely tasked by the Florida Constitution with oversight of attorney conduct and are the only proper authorities to conduct any investigation relating to the manner in which legal services have been rendered by CLG, that is, the very investigation that the Attorney General is presently pursuing.

Pursuant to Article V, Section 15 of the Florida Constitution, the Supreme Court of Florida has exclusive jurisdiction to regulate the admission of persons to the practice of law and, as pertinent here, the conduct of the practice of law by and the discipline of persons admitted. That constitutional provision is a bright line articulation of the separation of powers doctrine, which operatively prohibits the legislature and the executive branch, of which the Attorney General is a member, from encroachment into matters that fall within the purview of the judiciary.

20. Any misconduct in the practice of law is subject only to regulation by the Florida Bar and/or the Circuit Court and ultimately the Supreme Court and any investigation of the practice of law falls outside of the purview of the Attorney General.

21. Accordingly, the Attorney General, who, as alleged above, does not have the statutory authority to pursue this investigation, also does not have the constitutional authority to travel under Florida's Deceptive and Unfair Trade Practices Act in order to investigate and/or punish CLG, a multistate law firm, in its alleged malfeasance in the practice of law. Likewise, because ADN contractually performs an administrative function relating to the provision of legal services for CLG and is supervised by CLG in doing so, the investigative and enforcement rest with the Florida Bar. *See e.g.* Rules 4-5.3 (Responsibilities regarding nonlawyer assistants) & 4-5.7 (Responsibilities regarding nonlegal services) of the Florida Bar's Rules of Professional Conduct.

22. Despite the fact that the Attorney General is acting outside of its statutory and constitutional authority, the investigation is ongoing.

23. Indeed, at least ten (10) depositions have recently been conducted by the Attorney General regarding CLG's practice of law. As a result of the Attorney General's continuing

activities in excess of its statutory and constitutional authority, Plaintiffs reasonably believe that the Attorney General will soon file suit under the guise of FDUTPA.

24. A Circuit Court of this Circuit, in *Shapiro & Fishman, LLP v. The State of Florida Attorney General, et al.*, Case No. 502010CA021246 (Palm Beach County), has already determined that FDUTPA does not empower the Attorney General to investigate the practice of law by a Florida law firm. Given the the Attorney General has appealed this order it is self-evident that the Attorney General has and will dispute Plaintiffs' challenge to the scope of the Attorney General's statutory and constitutional authority to investigate and to sue Plaintiffs as Plaintiffs have articulated in this Complaint. Accordingly there is a present dispute and controversy between Plaintiffs and the Attorney General which is ripe for determination by a court with appropriate jurisdiction.

COUNT I
(Declaratory Relief)

25. Plaintiffs re-allege and re-aver the allegations contained in paragraphs 1 through 24 as though fully set forth herein.

26. This is an action within the equitable jurisdiction of the Court for Declaratory Relief pursuant to Fla. Stat. §§ 86.011 & 86.021.

27. Plaintiffs do not have an adequate remedy at law.

28. As described in Paragraphs 15, 16, 22 and 23 the Attorney General is investigating the practice of law by CLG and its vendor, ADN.

29. Such investigation and the threatened law suit, however, exceed the Attorney General's statutory authority, as the practice of law does not constitute "trade or commerce" as such term is defined by FDUTPA. The investigation is further constitutionally prohibited as the Attorney General does not have the authority to investigate the activities of a law firm such as

CLG while engaged in the practice of law or the operations of its vendor ADN while operating under CLG's direction and control.

30. Because of the broad remedial sweep of FDUTPA as the Attorney General construes it (whether such construction is warranted or not), Plaintiffs Metzner, Barnea and Post are threatened with suit individually for conduct engaged in while legally and appropriately discharging their respective responsibilities for the legal and other services provided by CLG to its clients while it is operating as a multistate law firm. Because each has acted at all times for and in behalf of CLG while CLG has been engaged in dispensing legal services to and for its clients, any investigative and enforcement activities concerning their conduct exceed the Attorney General's statutory authority under FDUTPA and, as a matter of constitutional mandate, lies solely with the Judicial Branch of Florida's government pursuant to the Separation of Powers Doctrine.

31. There is a bona fide, actual, present and practical need for a declaration that the Attorney General is not permitted to investigate the practice of law and the services offered by CLG to its clients and the conduct of ADN, Metzner, Barnea and Post in furtherance thereof, all of which are exclusively governed, in furtherance of the Florida Constitution's Separation of Powers Doctrine, by the Florida Supreme Court, the Florida Bar and the Rules Regulating the Florida Bar.

32. As the foregoing demonstrates, the declaration being sought concerns a present, ascertained or ascertainable state of facts or present controversy as to a state of facts.

33. An immunity, power, privilege or right of the Plaintiffs is dependent upon the facts or the law applicable to the facts relating to the declaration Plaintiffs are seeking.

34. The Attorney General has an actual, present, adverse and antagonist interest, either in law or fact, to the requested declaration and is presently proceeding in a manner entirely antagonistic to Plaintiffs' rights and privileges as sought to be declared herein.

35. The antagonistic and adverse interests of are all before the Court by proper process.

36. The relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity.

WHEREFORE, Plaintiffs respectfully request this Court enter a declaratory judgment:

A. declaring that the Attorney General is without statutory and constitutional authority to investigate the practice of law by CLG, the services CLG provides to its clients and the conduct of ADN, Metzner, Barnea and Post in furtherance thereof, all as more particularly described above;

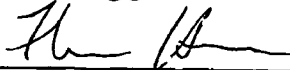
B. enjoining the Attorney General from instituting suit against Plaintiffs as to those matters the Attorney General is impermissibly investigating;

C. awarding Plaintiffs their costs pursuant to Fla. Stat. § 86.081; and

D. granting such other and further relief as the Court shall deem necessary and proper.

DATED January 13th, 2010.

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