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WAKE COUNTY, C.S.C.

STATE OF NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 03CVS14526

THE NORTH CAROLINA STATE BAR, Plaintiff v. DENNIS LOCKETT, d/b/a CHARLOTTE IMMIGRATION SERVICES, CHARLOTTE LEGAL SERVICES, AND EAST CHARLOTTE LEGAL SERVICES, Defendant	ORDER OF PERMANENT INJUNCTION

THIS MATTER coming before the undersigned Superior Court Judge of Wake County, upon by complaint of the Plaintiff for permanent injunction pursuant to North Carolina General Statutes Section 84-37. Plaintiff was represented by Jennifer A. Porter. Defendant did not appear and was not represented. Based upon examination of the filed pleadings and documents, including Plaintiff's verified complaint and attached affidavits, Plaintiff's Motion for Sanctions, Plaintiff's Motion for Summary Judgment and attached affidavit, Plaintiff's First Request for Admissions, the Court makes the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "State Bar"), is a body duly organized under the laws of the state of North Carolina and is a proper body to bring this proceeding under the authority granted to it in Chapter 84 of the General Statutes of North Carolina and the rules and regulations of the State Bar promulgated pursuant thereto.

2. The Authorized Practice Committee is a standing committee of the State Bar appointed and authorized, pursuant to N.C. Gen. Stat. § 84-37(a) and 27 N.C.A.C. Chapter 1, Subchapter D, §§ .0201 et. seq., to investigate any charges or complaints of

the unauthorized practice of law and bring actions against any person or entity that engaged in rendering any legal services unauthorized or prohibited by law.

3. Defendant Dennis Lockett (hereinafter "Lockett") is a citizen and resident of Mecklenburg County, North Carolina. Defendant Dennis Lockett has conducted and/or currently conducts business under the following trade names: Charlotte Legal Services, Charlotte Immigration Services, and East Charlotte Legal Services. Defendant Lockett is not now, and at no time has ever been, an active member of the North Carolina State Bar and is not now, and at no time has ever been, licensed to practice law in the state of North Carolina.

4. In January 2004, Defendant incorporated a business titled Charlotte Immigration Services, Inc. This corporation is not now and at no time has ever been a corporation entitled to practice law on behalf of others under N.C. Gen. Stat. § 84-5 and the statutes cited therein.

5. Between about October 2001 and about February 2002, Ms. Yuridia Marban met with Defendant Lockett regarding an injury she had experienced on the job.

6. Ms. Marban speaks Spanish; she speaks very little English.

7. Between about October 2001 and about February 2002, Defendant Lockett contacted Ms. Marban's employer on her behalf regarding her medical condition and situation.

8. On or about February 5, 2002, Ms. Marban's employment was terminated. On or near this date, Defendant Lockett advised her to file a claim with the Equal Employment Opportunity Commission, and stated he would assist her with this.

9. Upon Ms. Marban's receipt of a notice of right to sue letter from the Equal Employment Opportunity Commission, Defendant Lockett drafted a legal complaint for Ms. Marban to file in federal court to pursue a claim against her former employer.

10. On or about September 30, 2002, the complaint prepared by Defendant Lockett for Ms. Marban was filed in the United States District Court, Middle District of North Carolina; the case number 3:02CV349-MU was assigned. The complaint appears to have been filed by Ms. Marban *pro se*.

11. Upon receipt of this complaint, Ms. Marban's former employer Tyson Foods, Inc. (hereinafter "Tyson") moved by and through its attorney B. Chad Ewing of

Robinson, Bradshaw & Hinson, P.A. for an enlargement of time to answer. Mr. Ewing called Ms. Marban to ask for her consent.

12. In telephone conversation with Mr. Ewing and another attorney with the firm, Ms. Laura Budzichowski, Ms Marban indicated that Defendant Lockett was her attorney and that they should contact him.

13. Mr. Ewing contacted Defendant Lockett by telephone. In that conversation, Defendant Lockett admitted he was not an attorney. Defendant Lockett admitted that he had helped Ms. Marban prepare her complaint against Tyson. Defendant Lockett admitted Ms. Marban spoke very little English.

14. A pre-trial conference was scheduled in the Marban v. Tyson case for February 6, 2003. Defendant Lockett called Mr. Ewing on or about February 5, 2003, and in that telephone conversation indicated that he planned to attend that conference with Ms. Marban.

15. After the telephone conversation regarding the pre-trial conference, Mr. Ewing faxed Defendant Lockett a letter notifying Defendant Lockett of Mr. Ewing's belief that Defendant Lockett's activities constitute the unauthorized practice of law.

16. Defendant Lockett did not appear at the pre-trial conference. Ms. Marban did attend with her brother. Ms. Marban indicated at the conference that Defendant Lockett, who she thought was her attorney, was not present. Mr. Ewing notified the Court that Defendant Lockett was not an attorney. Mr. Ewing's associate Ms Budzichowski translated this for Ms. Marban. Ms. Marban appeared confused and stated that she believed Defendant Lockett was her attorney.

17. At some point while Defendant Lockett was representing Ms. Marban as described above, Defendant Lockett and Ms. Marban entered into a "paralegal fee agreement", whereby Defendant Lockett agreed to represent Ms. Marban in her claims against her former employer in exchange for forty percent (40%) of any recovery, plus expenses.

18. Between late January 2003 and early February 2003, Defendant Lockett contacted Vicki B. Rowan, an attorney who is an active member of the North Carolina State Bar, with a request that Ms. Rowan attend the pretrial conference in Ms. Marban's case; Ms. Rowan declined to do so.

19. Subsequently, Defendant Lockett discussed another matter with Ms. Rowan, regarding a case in which he had drafted a complaint alleging age discrimination, and asked if she would review the case and possibly represent the clients.

20. Based on her interactions with Defendant Lockett, Ms. Rowan came to believe that Defendant Lockett may have been or was then engaged in the unauthorized practice of law and at some point between late January 2003 and April 10, 2003, Ms. Rowan told Defendant Lockett that if she heard of any other such activities, she would report him to the State Bar.

21. Ms. Rowan met with the clients Defendant Lockett had referred to her, Constance Westbrook, Cassandra Montgomery-Gary, Brenda F. Shealey, and Marilyn Shropshire (hereinafter "Westbrook group"), on or about April 10, 2003.

22. Ms. Rowan received documents Defendant Lockett had drafted and sent on behalf of the Westbrook group, pursuing the Westbrook group's claims against their employer, Destination Hotel & Resorts International, Inc. (hereinafter "Destination").

23. Defendant drafted, and each member of the Westbrook group signed, authorizations to release information, in which it is stated that each "have asked Charlotte Legal Services to advise and represent me with respect to my personal, financial, employment or medical situation."

24. On or about January 8, 2003, Defendant sent letters to Hilton International, Inc. on behalf of each member of the Westbrook group, stating that the information is being requested because of the member's recent discharge from the corporation, that each member had requested his "organization" to review the contents of the employee file, and requesting copies of each employee file.

25. On or about January 20, 2003, Defendant Lockett wrote a demand letter to Destination, stating that the Westbrook group had retained "this firm" to represent them, asserting claims on behalf of the Westbrook group, and asking for a response or threatening litigation in the alternative.

26. Defendant Lockett drafted a complaint on behalf of the Westbrook group against Destination and other defendants, alleging age discrimination.

27. Defendant Lockett prepared and/or assisted the members of the Westbrook group in the preparation of *in forma pauperis* affidavits, to be submitted in conjunction with the complaint.

28. On or about February 21, 2003, the above described complaint and the affidavits were filed in the United States District Court, Western District of North Carolina.

29. Defendant Lockett attempted to have Ms. Westbrook individually, and/or all members of the Westbrook group, enter into "paralegal fee agreements, " whereby Defendant Lockett agreed to represent each in her claims against her former employer in exchange for forty percent (40%) of any recovery, plus expenses.

30. On or about March 13, 2003, Defendant Lockett sent the Westbrook group a discontinuance letter, informing them he would no longer offer his services on their case.

31. Defendant Lockett has advertised that he, and/or his business, can provide legal services, including an advertisement run on June 26, 2003 in the Spanish language newspaper El Sol.

32. Plaintiff filed its complaint in this case on October 24, 2003 and filed its amended complaint on October 28, 2003.

33. Defendant was served with the complaint, amended complaint, and alias & pluries summons in this case on January 14, 2004.

34. On February 24, 2004, Tolly A. Kennon, III entered his appearance on behalf of Defendant and moved for an extension of time to file an answer or file other responsive pleading to the complaint. Defendant's request was granted and time was extended until March 25, 2004.

35. On March 22, 2004, Defendant filed motions to transfer venue and to dismiss. These motions were denied by Judge Evelyn W. Hill by Order dated May 24, 2004. Defendant was ordered to file an answer by June 23, 2004.

36. On June 24, 2004, Defendant filed an answer admitting some, but denying many, of the allegations in the complaint.

37. On July 20, 2004, Plaintiff served Defendant with Plaintiff's First Set of Interrogatories, Plaintiff's First Request for Production of Documents, and Plaintiff's

First Request for Admissions. On this same date Plaintiff served Defendant with a Notice of Deposition, requiring Defendant to appear on August 26, 2004 for the taking of his deposition.

38. On August 19, 2004 Defendant moved for an extension of time to respond to Plaintiff's discovery requests. Defendant's request was granted and time was extended until September 21, 2004.

39. On August 26, 2004, counsel for the Plaintiff and the Defendant appeared at the time and location specified in the Notice of Deposition for the taking of Defendant's deposition. Defendant did not appear. Defendant's attorney stated that he had advised Defendant of the date and location and of his obligation to appear and be deposed.

40. Defendant did not respond to Plaintiff's First Set of Interrogatories, Plaintiff's First Request for Production of Documents or Plaintiff's First Request for Admissions by September 21, 2004. Plaintiff has not received any responses to its discovery requests.

41. On or about August 11, 2004, Defendant's attorney filed a motion to withdraw as counsel for Defendant. Mr. Kennon's motion was granted by Order from Judge Howard E. Manning dated October 29, 2004 and filed November 2, 2004.

42. Through on or about August 9, 2004, Defendant could be reached at the office of Charlotte Immigration Services, 1101 Tyvola Road, Suite 208, Charlotte, NC 28205, as evidenced by Mr. Kennon's certificate of service of his Motion to Withdraw served on or about that date and filed with the court in this matter.

43. By on or about September 15, 2004, however, Defendant could no longer be reached at that address, as evidenced by the facts recited in Mr. Kennon's Motion to Supplement/Update Facts of August 11, 2004 Motion to Withdraw filed with the court in this matter, whereby the Notice of Hearing Mr. Kennon attempted to send to Defendant at the Tyvola Road address was returned with an indication that Defendant had moved without leaving any forwarding information.

44. On November 3, 2004, Plaintiff attempted to contact Defendant to set a date for a mediated settlement conference by mailing a letter to the address stated in Judge Manning's Order for use by the Clerk's office, Defendant's last known address on

Tyvola Road. This letter was returned on November 22, 2004 with the notation that Defendant had moved and not left any forwarding information.

45. Plaintiff filed a motion requesting waiver of the mediation requirement in this case. The Court granted plaintiff's motion and waived mediation in an order dated November 23, 2004.

46. Plaintiff filed a Motion for Sanctions and a Motion for Summary Judgment dated February 7, 2005. These motions were sent to the Court's address of record for Defendant.

47. Defendant failed to answer Plaintiff's interrogatories and failed to respond to Plaintiff's requests for production and requests for admission. Furthermore, Defendant failed to appear at his deposition. While Defendant was still represented by counsel and could still be located, he was properly served with Plaintiff's discovery requests and notice of deposition. Defendant purposely failed to respond to Plaintiff's discovery requests and purposely failed to appear for his deposition. Thereafter, Defendant has made himself unavailable for service and for further participation in this litigation.

CONCLUSIONS OF LAW

1. The Court has both personal jurisdiction over the defendant and subject matter jurisdiction in this cause.

2. Plaintiff, the North Carolina State Bar, has the authority to bring this action pursuant to North Carolina General Statute Section 84-37.

3. Plaintiff's verified complaint is accepted as an affidavit of the Chair of the Authorized Practice Committee of the North Carolina State Bar.

4. Pursuant to Rule 37(d) of the North Carolina Rules of Civil Procedure, Plaintiff is entitled to an order imposing sanctions upon Defendant for Defendant's failure to respond to Plaintiff's discovery requests and failure to appear at his properly noticed deposition. The Court has considered Plaintiff's request for sanctions in the form of an order striking Defendant's answer and entering judgment by default in favor of Plaintiff and thereby entering an injunction against Defendant. The Court has considered lesser sanctions available under Rule 37 and find that these lesser sanctions are not appropriate in this case, where Defendant has established a pattern of disregarding his

obligations in this litigation and where Defendant has purposely made himself unavailable for service and participation in this litigation. The Court finds that Plaintiff is entitled to sanctions in this matter under Rule 37(d) in the form of an order striking Defendant's answer in this matter and an entry of judgment by default resulting in an order of permanent injunction against Defendant.

5. Plaintiff also filed a motion for summary judgment.

6. North Carolina General Statute Section 84-4 provides that it is unlawful for "any person or association of persons, except active members of the Bar of the State of North Carolina admitted and licensed to practice as attorneys-at-law by word, sign, letter, or advertisement, to hold himself, or themselves, as competent or qualified to give legal advice or counsel, . . . or as being engaged in advising or counseling in law or acting as attorney or counselor-at-law, or in furnishing the services of a lawyer or lawyers." N.C. Gen. Stat. § 84-4 also provides that it is unlawful for anyone other than an active member of the North Carolina State Bar "to appear as attorney or counselor at law in any action or proceeding before any judicial body, . . . to prepare legal documents, . . . to give legal advice or counsel, [and to] perform or furnish to another legal services . . . ."

7. There is no genuine issue of any material fact pertaining to whether Defendant has held himself out as able to provide legal services and whether Defendant has engaged in providing legal services to others in violation of N.C. Gen. Stat. § 84-4. Defendant has engaged in the unauthorized practice of law in violation of N.C. Gen. Stat. § 84-4 by engaging in the conduct set forth in paragraphs 4-30 in the findings of fact set forth above.

8. In addition to being entitled to a judgment by default as a sanction under Rule 37(d) of the North Carolina Rules of Civil Procedure, Plaintiff is entitled to summary judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure.

9. If Defendant is not enjoined from holding himself out as an attorney, representing North Carolina residents on legal claims, and otherwise engaging in acts which constitute the unauthorized practice of law in violation of Chapter 84 of the North Carolina General Statutes, there is a substantial risk that he will reestablish an office and resume doing so and that the public will suffer immediate and irreparable injury, loss, and damage as a result of his actions.

10. Pursuant to N.C. Gen. Stat. § 84-37(a), no bond for cost is required for the issuance of this permanent injunction order.

Based upon the foregoing findings of fact and conclusions of law, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. Defendant's answer is striken pursuant to Rule 37(d) of the North Carolina Rules of Civil Procedure.

2. Judgment is hereby entered on behalf of the Plaintiff and a permanent injunction hereby entered against Defendant as described below. Judgment for Plaintiff is warranted both as a sanction under Rule 37(d) and as summary judgment under Rule 56 of the North Carolina Rules of Civil Procedure.

3. Defendant Dennis Lockett, in his own name and under any other business name, to include Charlotte Immigration Services, Charlotte Legal Services, and East Charlotte Immigration Services, and any person, association of persons, or corporations including but not limited to Charlotte Immigration Services, Inc., associated with or employed, operated, or controlled by Defendant is hereby permanently and perpetually enjoined and restrained from engaging in acts and activities constituting the practice of law in North Carolina, as defined in N.C. Gen. Stat. §§ 84-2.1, 84-4, and 84-5, including prohibitions of these specific acts:

a. any express or implicit holding out or representation to the public by advertising in any media, circular, or otherwise, that Defendant Dennis Lockett, in his own name and under any other business name, including but not limited to Charlotte Immigration Services, Charlotte Legal Services, and East Charlotte Immigration Services, may prepare legal documents for any person, firm, or corporation, specifically including but not limited to bankruptcy petitions, wills, trusts, divorce complaints, separation agreements, deeds, incorporations, and contracts, for any person, firm, or corporation;

b. any express or implicit holding out or representation to the public by advertising, circular, or otherwise, that Defendant Dennis Lockett, in his own name and under any other business name,

including but not limited to Charlotte Immigration Services, Charlotte Legal Services, and East Charlotte Immigration Services, may help, aid, or assist any person, firm, or corporation in the preparation of legal documents or pleadings for any court, specifically including but not limited to immigration forms, employment litigation documents, bankruptcy petitions, wills, trusts, divorce complaints, separation agreements, deeds, incorporations, and contracts;

c. any express or implicit holding out or representation to the public by advertising, circular, or otherwise, including but not limited to newspaper advertisements and listings in any directory, including telephone directories, under categories such as "attorneys," "paralegal," "legal services," or any type of legal service, that Defendant Dennis Lockett, in his own name and under any other business name, including but not limited to Charlotte Immigration Services, Charlotte Legal Services, and East Charlotte Immigration Services, may provide any legal services to any person, firm, or corporation;

d. contracting with any person, firm, or corporation to provide, prepare, or assist in the preparation of legal documents or pleadings for any court, specifically including but not limited to immigration forms, employment litigation documents, bankruptcy petitions, wills, trusts, divorce complaints, separation agreements, deeds, incorporations, and contracts;

e. offering to contract with, or contracting with, any person, firm, or corporation for any services that provide any legal advice or counsel in any manner;

f. providing, preparing, or assisting in the preparation of legal documents or pleadings for any court, specifically including but not limited to immigration forms, employment litigation

documents, bankruptcy petitions, wills, trusts, divorce complaints, separation agreements, deeds, incorporations, and contracts;

g. engaging or conducting business under any trade name that expressly or implicitly represents that Defendant Lockett, personally or by or through his business, can provide any legal services, including but not limited to prohibition of the use of the terms "legal," "paralegal," or "law" in any trade name or corporate name by Defendant Lockett;

h. engaging or conducting business under the trade names Charlotte Immigration Services, Charlotte Legal Services, and/or East Charlotte Legal Services; and

i. engaging or conducting business as a corporation with a name using or otherwise integrating the business names of Charlotte Immigration Services, Charlotte Legal Services, and/or East Charlotte Legal Services.

4. Defendant is directed to cancel any and all advertisements or listings under his name or under the trade names Charlotte Immigration Services, Charlotte Legal Services, and/or East Charlotte Legal Services or under the corporate name of Charlotte Immigration Services, Inc., including any telephone directory listings or advertisements and any advertisements in English or Spanish language newspapers or other publications.

5. Defendant shall take notice that any willful violation of this Permanent Injunction may be treated as civil and criminal contempt leading to the imposition of sanctions upon him, including incarceration and fines.

6. This Order is binding upon Defendant, his officer, agents, servants, employees, attorneys, and upon those persons or entities in active concert or participation with them who receive actual notice in any manner of the order by personal service or otherwise.

Issued this the 7th day of March 2005.

Evelyn W. Akin
Superior Court Judge Presiding