

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN THE MATTER OF:

Case No. 1:17-mc-0046

ATTORNEY DAVID G. LUTZ

Administrative Order No. 17-AD-136

ORDER IMPOSING ADDITIONAL SANCTIONS

On May 15, 2017, the United States District Court suspended Attorney David G. Lutz from practicing before this Court for a period of eighteen months. (Admin. Order No. 17-AD-064, Case No. 1:17-mc-0046, ECF No. 1) (“Suspension Order”).¹ The Court also imposed additional sanctions, including that Mr. Lutz immediately cease accepting new clients who may have cases that are reasonably likely to be filed in, or removed to, this Court, and that he “forthwith cease all advertising of his legal services relating to practice before this Court.” (*Id.* at 11-12, ¶¶ 1, 7, PageID.11-12).

This matter is again before the District Court on a referral from Chief Bankruptcy Judge Scott W. Dales regarding Mr. Lutz’s apparent violations of this Court’s Suspension Order. Through this referral, Chief Judge Dales provided the Court with credible evidence indicating that Mr. Lutz has violated the above-referenced provisions of the Suspension Order. The evidence indicates that, following his suspension, Mr. Lutz filed documents with the Bankruptcy Court, including on at least one occasion in which Mr. Lutz filed documents on behalf of a former client, after that client had obtained substituted counsel. The evidence also indicates that Mr. Lutz

¹Unless otherwise specified, all citations to docket entries are to the record in the District Court Case No. 1:17-mc-0046.

has, through the Michigan Foreclosure Assistance Program, LLC, continued to solicit clients whose cases would reasonably be anticipated to be filed in this Court.

The District Court issued an order requiring Mr. Lutz to submit a written response “showing cause why the Court should not impose additional sanctions, up to and including disbarment, for his violations of the order of suspension.” (ECF No. 2, PageID.139). The Court provided Mr. Lutz a copy of Chief Judge Dales’ referral, which was attached to the show-cause order. (See ECF No. 2-1). Mr. Lutz has submitted a single-page response. (ECF No. 6).

Discussion

On June 14, 2017, Chief Bankruptcy Judge Scott W. Dales issued an order requiring Mr. Lutz to appear before the Bankruptcy Court and to show cause why that court should not “refer Mr. Lutz to the United States District Court for additional disciplinary action” for violations of the Suspension Order. (*In re Corey M. Nord*, Bankruptcy Case No. 17-02245-swd, ECF No. 34). The show-cause order cited two instances in which Mr. Lutz filed documents with the Bankruptcy Court on or after the effective date of the Suspension Order. (See *id.*).

The first was on June 1, 2017, when Mr. Lutz electronically filed a proposed payroll order in the *Nord* case. Judge Dales issued an order that same day notifying Mr. Lutz that the filing appeared to violate the District Court’s Suspension Order. (See Order at 1, *In Re Nord*, ECF No. 25). Judge Dales noted: “Mr. Lutz should not doubt that the court will comply strictly with the United States District Court’s Suspension Order. [Mr. Lutz] would be well-advised to do the same.” (*Id.* at 2).

Notwithstanding Judge Dale's admonition, Mr. Lutz again attempted to file the same proposed payroll order in the *Nord* case; this time by mailing the proposed order in an envelope post-marked June 5, 2017. (See 6/14/17 Order to Show Cause at 1-2, *In re Nord*, ECF No. 34). The Bankruptcy Court rejected the proposed order due to Mr. Lutz's unauthorized practice of law. In addition, given Mr. Lutz's "recalcitrant refusal to abide by the Suspension Order," Judge Dales issued the show-cause order. (*Id.* at 2). Mr. Lutz filed a single-page written response to the show-cause order. (*In re Nord*, ECF No. 43).

Judge Dales conducted the show-cause hearing on June 29, 2017. (See Hrg Tr., filed in Case No. 1:17-mc-0046, ECF No. 2-1, PageID.146-63). Judge Dales indicated that he was willing to excuse Mr. Lutz's June 1, 2017, filing of the proposed payroll wage order, as it appeared to be an attempt to correct a defective filing he made on May 31, 2017. (*Id.* at 3-6, PageID.149-52). When asked to explain his June 5 filing and the fact that he ignored the June 1 order, which included the admonition regarding compliance with the Suspension Order, Mr. Lutz responded simply that he was acting in his client's best interests. (See *id.* at 5-6, PageID.151-52). Mr. Lutz acknowledged that his actions were " 'inconsistent' with the [S]uspension [O]rder." (*Id.* at 6, PageID.152).

During the show-cause hearing, the U.S. Trustee brought to Judge Dales' attention that Mr. Lutz had engaged in other activities in violation of the Suspension Order. (See Hrg Tr. at 9-10, PageID.155-56). This included the fact that Mr. Lutz had solicited clients, through his company, Michigan Foreclosure Assistance Program,

LLC,² whose litigation would reasonably be anticipated to end up in this Court. (*Id.* at 9, PageID.155). The applicable provisions of the May 15, 2017, Suspension Order prohibited the “advertis[ement] of his legal services relating to practice before this Court,” and the acceptance of clients who have cases “to be filed in state court in which it can reasonably be anticipated that the case will be removed to the Western District of Michigan.” (Suspension Order at 11-12, ¶¶ 1, 7, ECF No. 1, PageID.11-12). Those provisions were effective immediately upon receipt of the order. (*See id.*).

The solicitations were made through flyers sent to individuals who were facing foreclosure. Copies of two flyers were provided to the court: one is dated May 19, 2017, and was sent to an individual in Dimondale, Michigan (*See* ECF No. 2-1, PageID.144); the other is dated May 22, 2017, and was sent to an individual in Grand Rapids, Michigan. (*See* ECF No. 2-1, PageID.147). These flyers advertise and offer Mr. Lutz’s legal services to the respective recipient to extend the occupancy in the individual’s home, and to review the individual’s respective case with the potential of bringing foreclosure-related litigation against the lender and loan servicer. (*See id.*, PageID.144, 147). In the May 19 flyer, Mr. Lutz suggested that the individual may have claims against the lender for having engaged in, among other things, “predatory

²In the underlying disciplinary action, Mr. Lutz advised the Court that Michigan Foreclosure Assistance Program was his wife’s business and that he provided legal advice to its clients. (*See* Suspension Order at 4 n.1, ECF No. 1, PageID.4). Mr. Lutz further advised the Court that this business had been “shut down” at the suggestion of the Attorney Grievance Commission, after several grievances had been filed against him. (*See id.*). Apparently, this business has been resurrected as a division of David Lutz Law P.C. (*See* ECF No. 2-1, PageID.144, 147).

lending practices.” (*Id.*, PageID.144). In the May 22 flyer, Mr. Lutz explicitly offered his services in bringing “foreclosure litigation.” (*Id.*, PageID.147).

In his response to the show-cause order, Mr. Lutz claims that he did not receive a copy of the Suspension Order prior to the mailing of the May 19 flyer. (ECF No. 6, PageID.231). The Court will give him the benefit of the doubt. That does not excuse the fact that he apparently continued sending flyers after receipt of the Suspension Order, including the May 22 flyer.³

Mr. Lutz also asserts that these flyers “were not sent to have these people retain [him] to file a law suit or a bankruptcy.” (ECF No. 6, PageID.231). Instead, he contends that they “were intended to do a loan modification or negotiate a cash for keys offer. Neither of which violates this Court’s [Suspension Order].” (*Id.*).

Mr. Lutz’s assertions concerning his intentions in sending these flyers do not withstand even cursory review. The May 19 flyer is a patent effort to solicit litigation business. The flyer explicitly notes that the purpose of extending the time of occupancy for “eligible homeowners” is to allow Mr. Lutz to “tak[e] action against lenders and servicers that have violated homeowners’ rights to a fair review for loan modification, engaged in predatory lending practices or otherwise provided defective services.” (ECF No. 2-1, PageID.144). And, while the May 22 flyer mentions the prospect of a loan modification and a “cash for keys” resolution, those are but two of a number of options

³Mr. Lutz’s attempt to shift the blame for mailing the May 22 flyer to a “third party company” (ECF No. 6, PageID.231) is a non-starter. He is responsible for the actions of those who work on his behalf and under his direction.

addressed. The flyer explicitly offers the prospect of “foreclosure litigation,” suggesting that the lender may have engaged in a number of unlawful actions. (*Id.* at PageID.147).

It is pure sophistry for Mr. Lutz to argue that these flyers did not violate the Suspension Order because he was seeking only to assist the recipient in a loan modification or a cash for keys resolution. Mr. Lutz is well aware that these types of flyers often led to the filing of Chapter 13 bankruptcies on the eve of the sheriff’s sale. (*See* 6/29/17 Hrg Tr. at 10, ECF No. 2-1, PageID.156). He is also well aware that these flyers were likely to result in the retention of clients, at least some of whom were likely to pursue foreclosure-related litigation that would be removed to this Court. This Court’s records indicate that Mr. Lutz represented homeowners in no less than 25 foreclosure-related cases in the past five years that were removed to this Court.

Mr. Lutz’s violations of the Suspension Order are compounded by his lack of candor with the Bankruptcy Court. In his June 26, 2017, response to Chief Judge Dales’ show-cause order, Mr. Lutz stated that, at the time he attempted to refile a payroll order in the *Nord* case (June 5, 2017), “[he] did not realize Jeremy Sheppard represented [Mr. Nord].” (*In re Nord*, Case No. 17-02245-swd, ECF No. 43). According to the U.S. Bankruptcy Trustee, Mr. Sheppard disputes Mr. Lutz’s statement. Mr. Sheppard advised the trustee that Mr. Lutz gave him (Mr. Sheppard) the *Nord* case file on May 30, 2017, that Mr. Lutz signed the stipulation for substitution of counsel on June 1, 2017, and that it was filed the next day, June 2. (6/29/17 Hrg Tr. at 11, ECF No. 2-1, PageID.157).

When confronted with this information, Mr. Lutz conceded that his June 26 statement to the Bankruptcy Court concerning lack of knowledge of Mr. Sheppard's representation of Mr. Nord "create[d] a misleading impression." (*Id.* at 14-15, PageID.160-61). Chief Judge Dales more accurately described it as not telling the truth, adding: "And I think, frankly, you have not told me the truth a number of times." (*Id.* at 15, PageID.161). Mr. Lutz has failed to address the allegations concerning his lack of candor to the Bankruptcy Court in his response to this Court's show-cause order. (*See* ECF No. 6, PageID.231).

The undersigned judicial officers agree with Chief Judge Dales' assessment. Moreover, it is evident that Mr. Lutz's representations to this Court regarding his intentions in sending the May 19 and May 22 fliers lacked the candor that is required by the rules of professional conduct, and which is expected by this Court.

Conclusion and Order

After reviewing all the information submitted in this matter, the panel unanimously concludes that Mr. Lutz has violated provisions of the May 15, 2017, Suspension Order. The violations include the filing and attempt to file documents with the Bankruptcy Court after the effective date of the Suspension Order, as well as the continued solicitation of clients who have cases that reasonably may be anticipated to be removed to the Western District of Michigan. (Suspension Order at 11-12, ¶¶ 1, 6, 7, ECF No. 1, PageID.11-12). Accordingly,

IT IS ORDERED that Mr. Lutz's suspension from practice before the courts of the Western District of Michigan shall be extended from eighteen months to sixty months, beginning June 1, 2017.

IT IS FURTHER ORDERED that the remaining provisions of the Suspension Order remain in full force and effect, except that Paragraph 10 on page 12 of the Order shall be amended to substitute June 1, 2022, for December 1, 2018, as the first date Mr. Lutz may seek reinstatement.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order upon David G. Lutz, Esq.; Daniel M. McDermott, United States Trustee, c/o Michelle M. Wilson, in accordance with the Court's usual procedure; and the Michigan Attorney Grievance Commission.

IT IS SO ORDERED.

Date: December 15, 2017

/s/ Paul L. Maloney
PAUL L. MALONEY
United States District Judge

Date: December 15, 2017

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge

Date: December 15, 2017

/s/ Phillip J. Green
PHILLIP J. GREEN
United States Magistrate Judge