SUPREME COURT OF INDIANA

State of Indiana ex rel. Indiana State Bar Association v. United Financial Systems Corporation

926 N.E.2d 8 (Ind. 2010) · No. 94S00-0810-MS-551 · Decided April 14, 2010

SUMMARY

The Supreme Court of Indiana held that United Financial Systems Corporation and associated respondents engaged in the unauthorized practice of law through their estate-planning business model. The court ordered injunctive relief, required notice to affected clients, authorized refunds for estate plans sold after the relevant precedent, and awarded certain costs and attorney fees.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Per Curiam; Dickson, J.; Sullivan, J.; Boehm, J.; Rucker, J.; Shepard, C.J.
JURISDICTION	Indiana
DECIDED	April 14, 2010
DOCKET	94S00-0810-MS-551
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Original action by the Indiana State Bar Association seeking to enjoin the respondents' alleged unauthorized practice of law, obtain disgorgement or restitution of fees, and recover costs and attorney fees.
STANDARD OF REVIEW	The Court reviewed the Commissioner's factual findings for clear error and independently determined the legal issues concerning unauthorized practice and available remedies.
PRECEDENTIAL VALUE	Published Indiana Supreme Court opinion; precedential.
PARTIES	State of Indiana ex rel. Indiana State Bar Association v. United Financial Systems Corporation, Richard Follett, Jayne A. Follett, Richard L. Follett II, Beau R. Follett, Jody Waugh, Raymond C. Phillips, Linda Dishong, L. Kay Larsen, John Joyce, Gary Lovelady, Sharon Dorsey, Sherry Jordan, Douglas J. Lalama, Andrew Mark Eads, Katie Jackel, James Boyles

TOPICS

estate planning · trusts · injunctions · restitution · attorney fees

PRACTICE AREAS

unauthorized practice of law · estate planning · professional regulation · equitable remedies · attorney fees

QUESTIONS PRESENTED

1. Whether UFSC and the individual respondents engaged in the unauthorized practice of law by marketing and selling estate plans through nonlawyer personnel despite the involvement of panel attorneys.
2. Whether the Court should enjoin the respondents from continuing the unauthorized practice of law.
3. Whether disgorgement or a restitutionary refund remedy was appropriate and, if so, whether it should apply to estate plans sold before the decision in State ex rel. Indiana State Bar Ass'n v. Northouse.
4. Whether Indiana Admission and Discipline Rule 24 authorized recovery of attorney fees as part of costs and expenses.
5. Whether statutory attorney fees were warranted under Indiana Code section 34-52-1-1 for baseless litigation positions.
6. What costs and expenses were recoverable under Rule 24.

HOLDINGS

1. UFSC and the respondents engaged in the unauthorized practice of law because UFSC's business model marginalized the panel attorneys' professional role and involved nonlawyers in selling and facilitating the preparation and execution of estate-planning documents.
2. The respondents, including any UFSC parent or subsidiary company, must be enjoined from engaging in acts constituting the unauthorized practice of law.
3. A restitutionary remedy was appropriate, and UFSC could not retain fees collected for estate plans sold after the date of Northouse; purchasers of qualifying post-Northouse estate plans must be given notice of their right to request refunds.
4. The phrase costs and expenses in Rule 24 does not itself authorize an award of attorney fees.
5. The ISBA was entitled under Indiana Code section 34-52-1-1 to attorney fees incurred directly as a result of UFSC's baseless claims concerning the ISBA's past settlement practices, but not fees attributable to UFSC's claims concerning the settlement offer in the present case.
6. The ISBA's copying, telephone, vendor, transcript, rebuttal-witness, and Commissioner's-service expenses were recoverable costs and expenses under Rule 24 in the circumstances of this case.

KEY QUOTATIONS

> *“We are convinced, however, that UFSC's business model has marginalized the attorney's role to such a degree as to cross the line of permissible practices.”* (926 N.E.2d 15)

> *“Persons or companies should be deterred from the unauthorized practice of law irrespective of the actual harm their conduct may cause, and the fact that some of the persons who have purchased estate plans from UFSC may have received a product adequate for their needs does not alter the illegality of UFSC's conduct.”* (926 N.E.2d 18)

> *“First, disgorgement is not a "punishment" but rather an equitable form of relief.”* (926 N.E.2d 18)

FACTUAL BACKGROUND

United Financial Systems Corporation marketed and sold wills, trusts, powers of attorney, deeds, and related estate plans through nonlawyer sales and planning assistants. From October 2006 through May 2009, UFSC sold 1,306 estate plans in Indiana for more than $2.7 million, with sales representatives receiving substantial commissions and panel attorneys receiving flat fees for limited consultations and document drafting. The attorneys were routed information after the sale, often relied on UFSC-prepared forms, and were not meaningfully involved in the sales presentations or execution process. UFSC's business model also used information obtained from estate-planning clients to market insurance products, including annuities used to fund trusts.

PROCEDURAL HISTORY

The Indiana State Bar Association filed a verified petition on October 9, 2008. By agreement, Judge Bruce C. Embrey was appointed Commissioner to conduct a three-day evidentiary hearing and submit findings. After receiving the Commissioner's report and additional briefing, the Supreme Court of Indiana heard oral argument on disgorgement and attorney fees and issued an injunction, ordered notice and potential refunds, awarded specified costs and fees, and remanded for implementation.

DISPOSITION

```
reversed_and_remanded
```

REMAND INSTRUCTIONS

The matter was remanded to the Commissioner to determine the amount of attorney fees attributable to UFSC's baseless claims concerning the ISBA's past settlement practices; determine the details of notice to estate-plan purchasers; issue a restitutionary order consistent with the opinion, potentially applicable to UFSC's parent and subsidiary companies and their principals; and submit the Commissioner's service costs for separate determination by the Court.

CASES CITED

- State ex rel. Disciplinary Comm'n v. Owen, 486 N.E.2d 1012, 1014 (Ind. 1985)
- Miller v. Vance, 463 N.E.2d 250, 251 (Ind. 1984)
- State ex rel. Pearson v. Gould, 437 N.E.2d 41, 42 (Ind. 1982)
- State ex rel. Indiana State Bar Ass'n v. Northouse, 848 N.E.2d 668, 672-74 (Ind. 2006)
- Nance v. Miami Sand & Gravel, LLC, 825 N.E.2d 826, 839 (Ind. Ct. App. 2005)

- State ex rel. Indiana State Bar Ass'n v. Diaz, 838 N.E.2d 433 (Ind. 2005)
- State ex rel. Disciplinary Comm'n v. Crofts, 500 N.E.2d 753 (Ind. 1986)
- State ex rel. Indiana State Bar Ass'n v. Indiana Real Estate Ass'n, 244 Ind. 214, 191 N.E.2d 711 (1963)
- Nichols v. Minnick, 885 N.E.2d 1, 4-5 (Ind. 2008)
- Wenzel v. Hopper & Galliher, P.C., 830 N.E.2d 996, 1001 (Ind. Ct. App. 2005)
- Fink v. Peden, 214 Ind. 584, 17 N.E.2d 95 (1938)
- Harris v. Clark, 81 Ind. App. 494, 142 N.E. 881 (1924)
- GKN Co. v. Magness, 744 N.E.2d 397, 401 (Ind. 2001)