

LEGAL NOTICES, cont.

IN THE COURT OF COMMON PLEAS
OF THE 39th JUDICIAL DISTRICT
OF FRANKLIN COUNTY,
PENNSYLVANIA —
ORPHANS' COURT DIVISION

The following list of Executors, Administrators and Guardian Accounts, Proposed Schedules of Distribution and Notice to Creditors and Reasons Why Distribution cannot be Proposed will be presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: August 7, 1986.

BITTINGER: First and final account, statement of proposed distribution and notice to the creditors of Mary Bittinger and Charles W. Bittinger, Co-executors of the Estate of Charles W. Bittinger, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

KING: First and final account, statement of proposed distribution and notice to the creditors of Thomas Blickenstaff, Russel Blickenstaff and Millard A. Ullman, Executors of the Estate of Leah C. King, late of Waynesboro, Franklin County, Pennsylvania, deceased.

SCHAFF: First and final account, statement of proposed distribution and notice to the creditors of Georgie P. Schaff, Executrix of the Estate of William D. Schaff, late of Greene Township, Franklin County, Pennsylvania, deceased.

SZYPULSKI: First and final account, statement of proposed distribution and notice to the creditors of Chambersburg Trust Company, Chambersburg, Pennsylvania, Executor of the Estate of Helen F. Tananis Szypulski, late of Greene Township, Franklin County, Pennsylvania, deceased.

LEGAL NOTICES, cont.

WALKER: First and final account, statement of proposed distribution and notice to the creditors of Donald Walker, Executor of the Estate of Ruth E. Walker, a/k/a Ruth C. Walker, a/k/a Ruth Walker, late of Fannettsburg, Franklin County, Pennsylvania, deceased.

Robert J. Woods
Clerk of Orphans' Court
Franklin County, Pennsylvania
7-11, 7-18, 7-25, 8-1

NOTICE

Notice is hereby given that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on the 8th day of July, 1986, for the purpose of obtaining a certificate of incorporation. The name of the corporation organized under the Commonwealth of Pennsylvania Business Corporation Law approved May 5, 1933, P.L. 364 as amended, is THE BEACH TANNING SALON, INC., 14 East Baltimore Street, Greencastle, PA 17225.

The purpose for which the corporation has been organized is to engage in and to do any lawful acts concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania.

Stephen E. Patterson, Esquire
Patterson, Kaminski, Keller & Kiersz
239 East Main Street
Waynesboro, PA 17268

8-1-86

each condition was met. *Zoning Hearing Board v. Konyk*, 5 Pa. Cmwlth. 466, 469, 290 A.2d 715, 717 (1972). 53 Pa.C.S.A. §10908(9) only requires the board render a written decision with written findings which are, "sufficiently explanatory of the factual questions involved." *Zoning Hearing Board v. Konyk*, supra at 470, 717. The board's opinion satisfies this requirement.

We are not a super zoning board of adjustment. *Haverford v. Zoning Hearing Board of Haverford Township*, 21 Pa. Cmwlth. 207, 212, 344 A.2d 758, 761 (1975). The board is familiar with the property in question and, based upon the facts which were presented to it, it made a decision within its discretionary power.

ORDER OF COURT

October 24, 1985, appellant, Joseph P. O'Donnell's appeal is dismissed, and the decision of the Borough of Waynesboro Zoning Hearing Board is affirmed.

MILLER & CO. V. SCHULTHEISS, C.P. Franklin County Branch, 1985 Equity Docket Vol. 7, Page 402

Equity - Injunction - Certified Public Accountant - Solicitation of Clients

1. Certified Public Accountants have a code of professional conduct which may be enforced in appropriate situations by the courts by the imposition of sanctions.
2. Overreaching means to overdo matters, or get the better of one in a transaction by cunning, cheating or sharp practice.
3. Where employees solicit the employer's clients for employee's new business prior to the employee's resignation and take information from employer's data disc, employee's conduct is overreaching in violation of C.P.A. Code of Professional Ethics.

John N. Keller, Esquire, Counsel for plaintiffs

Robert E. Graham, Jr., Esquire, Counsel for defendants

OPINION AND DECREE NISI

EPPINGER, P.J., November 7, 1985:

This is an action in equity to enjoin certain former employees of the plaintiff firm from directly soliciting accounting clients of that firm. Plaintiff asked for a preliminary injunction. We held a full hearing and after that counsel for the parties agreed that the court should consider the matter and that its order should be in the nature of a final order, subject to exceptions and appeal if deemed appropriate by either side, but not subject to further hearing.

Paul C. Schultheiss, William M. Porter and Denise D. Barrows are Certified Public Accountants. Formerly they were employees at the Chambersburg Office of Miller & Co., (Miller) which is a firm of Certified Public Accountants. Among themselves they determined to form a partnership for the practice of accounting to be known as "Schultheiss, Porter & Barrows, Certified Public Accountants" (partners). They planned to leave Miller September 23, 1985 by handing in resignations at the opening of business that day. They did not intend to give Miller any notice of their resignations. Miller learned of the plan on September 20, and its Chambersburg managing partner talked to each of them. That was the last day of their association with the firm. Each handed in resignations dated September 23, 1985, and on that Monday the partners opened their business at 961 South Main Street, Chambersburg.

While the partners were associated with Miller, the latter entrusted affairs of its clients to them and as a result they gained confidential information about the clients. Before leaving, the partners contacted some of Miller's clients, told them of their plans to set up an accounting practice and suggested to them that they were available to handle the accounts and that the clients were at liberty to choose anyone to do their work.

Before the partners resigned, Schultheiss, who was handling the Ivan Barnhart account for Miller, solicited the client for the partners. First he discussed his problem with a proposed employment contract with Miller and then told Barnhart that if he switched to the new firm, he, Schultheiss, would handle his account personally. He offered better service at a lower price. He then asked Barnhart to hold up his August accounting data until the new firm got going. Barnhart questioned the ethics of Schultheiss' conduct in soliciting his work. Schultheiss reassured him.

Barnhart also was concerned about how the data could be transferred and Schultheiss explained that he, Barnhart, could sign a release letter. Feeling it might be difficult to get after he left, one night, while still employed by Miller, Schultheiss got a data disc from Miller storage and made a copy of it for the partners so they could do Barnhart's work. He used the purloined disc to make a Barnhart balance sheet.

During this period Schultheiss was also making arrangements with George Helwig, another Miller client, to transfer his work to the partners. He told Helwig, knowing the Miller fees, that the partners could do the job for less. Helwig gave Schultheiss accounting information which he retained while still working for Miller, intending to use the material in the new partnership. He kept this data after he left Miller, though on September 20, he told the Chambersburg manager he had no client information.

Schultheiss also contacted Robert Fogal, another Miller client, told him about the new partnership, and told Fogal that he would have a choice to make sometime in the future about his accounts. Schultheiss was in the process of doing Fogal's monthly account on September 20. When he talked to Fogal about his account being transferred he referred to the partners as us.

While still working with Miller, Porter told Grove Brothers, one of Miller's clients, that he was leaving Miller. He discussed with Grove his dissatisfaction with the employment contract Miller proposed. He then asked Grove what they thought they might do about their accounting business and Grove responded they would let him do the work.

Before he left, Porter also contacted Roxy Cycle and told the owner that he was leaving Miller and that the owner would have a choice to make. He also discussed the proposed employment contract with her. He thought the agreement was unfair.

Another client Porter contacted while still in Miller's employ was Wishard's Trucking and Hauling. He told them that he was leaving the firm and that they would have a choice to make. Again, the employment contract was discussed.

Finally, Porter communicated with Ben Beattie intending to get the latter's accounting business. Beattie called Porter on September 20. During the course of this conversation, Porter told Beattie he'd like to talk with Beattie on Monday. At the time of this call, Beattie did not know Porter was leaving Miller. When Porter talked to Beattie on Monday, he gave Beattie a termination letter so Beattie could terminate his relationships with Miller thus opening the way for the partners to do the work.

Barrows contacted four of Miller's clients while still employed there. She had no intention of giving Miller any notice of leaving to start the new firm on Monday, September 23, until that day. She felt that had she given notice, Miller would not have wanted her around anyway.

All in all, the partners who were each aware of the efforts of the others, contacted thirteen of Miller's clients before they quit to enter their own firm. This is thirteen of about four hundred, but the client's work produced various amounts of income for Miller. At the time each partner talked with Miller's Chambersburg manager, he or she denied any client contacts on behalf of their new firm. Some of the clients signed forms provided by the partners.

The partners now have thirty of Miller's clients with annual billings of \$79,360. Miller's Chambersburg annual billings before the partners left was less than \$400,000.

While all of this was going on, there was a Miller handbook that governed employee conduct. Work papers were not to be released to clients without approval of the partner in charge. Confidential matters of the firm were not to be discussed with clients and work papers were to be protected. Employees who resigned were expected to give two week's notice to facilitate reassignment of the work.

The handbook also noted Miller's subscription to the Code of Professional Ethics of the American Institute of Certified Public Accountants (the Code). Rule 502 of the Code provides:

A member shall not seek to obtain clients by advertising or other forms of solicitation in a manner that is false, misleading, or deceptive. Solicitation by the use of coercion, overreaching, or harassing conduct is prohibited.



13 West Main St.
P.O. Drawer 391
717-762-8161



TRUST SERVICES
COMPETENT AND COMPLETE



WAYNESBORO, PA 17268
Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS:
Potomac Shopping Center - Center Square - Waynesboro Mall
24 Hour Banking Available at the Waynesboro Mall

McCLURE, Ronald D. & Louise	N-20-31A Rd. 620	99.38
OTT, Charles L. & Shirley A.	N-8-7 Rd. 533	110.83
RHONE, Albert & Jessie Est.	N-20-22A	147.88
STATUM, Pinkie	N-20-15 Mainsville to White Church Rd.	195.85
FARNER, Ronald & Patricia	72 Schultz	533.96
GILBERT, Robert & Kandy R.	70 Empire	537.31
LYNCH, Lester J. & Judy	71 Atlantic	512.60
OTT, Charles & Shirley	76 Windsor	803.85
STATUM, Pinkie & Joseph	70 Rembrant	316.06
COY, Charles D. Jr. & Marie E.	WASHINGTON	
GIFT, Kenneth & Nancy	Q-8-169 Lot 5, Twp. 375	1521.84
GREENE, Francis E. & Peggy R.	Q-7-53A 11538 Anthony Hwy.	1350.82
GREENE, Lester C. Jr. & Judy	Q-13M-13 10913 Baileys Spring Rd.	712.14
HAMPTON, Robert E. & Mary	Q-13M-6B Beartown	350.24
HIPPENSTEELE, Caroline	Q-13M-16	116.31
KREPS, Samuel, Henry Et Al.	Q-8-20 Rd. 28025	566.82
LONG, Donald & Judith	Q-19A-19 Old Rt. 16	591.04
McKENDRICK, Kenneth A. & Wilma c/o Norman G. & Bev A. Murdorf	Q-8-159 10510 Fish & Game Rd.	1372.21
QUEEN, Robert A. Jr. & Janice G.	Q-13R-14A 13252 Mentzer Gap Rd.	882.30
RAMSBURG, Isaac L.	Q-20Q-44 Monterey Lane	2189.51
SHOCKEY, Daniel & Betty	Q-20P-21	865.25
STARRY, Robert S. & Winifred	Q-20K-34	658.79
STARRY, Robert S. & Winifred	Q-8-151	3763.77
STEM, Clarence A. Jr. & Emma C.	Q-13N-30 Rouzerville	2873.90
THARP, Ronald E. & Grace	A-14P-7 Charmain Rd.	1585.98
WITTE, Leona M.	Q-19F-27 Waterloo Road	108.30
BRECHBIEL, Aaron W. & Anna M.	Q-19F-66 Pen Mar	121.27
DAVIS, Joseph	72 Mark IV	615.12
GRISSON, William & Shirley	72 Mark IV	558.97
HAMPTON, Robert E.	Mobile Home	698.84
HARBAUGH, Timothy L. & Beulah J.	65 Rembrant & 71 Amherst	478.79
LEASE, Tina & Tom	72 Atlantic	632.05
MILLER, Kenneth	58 Liberty	215.21
MILLS, Dennis	68 Pacemaker	777.46
THARP, Donald	77 Mark IV	569.46
VALENTINE, Herman	78 Witchcraft	772.75
WITTE, Leona	82 Hillcrest	770.16
WITTE, Leona	Mobile Home	563.90
	65 Brookwood	326.32
CHAMBERLIN, Robert Jr.	WAYNESBORO	
CHAMBERLIN, Robert Jr.	Fairmont Avenue	204.39
EBERLY, Randy L.	63 Pacemaker	322.31
GARNES, Patricia L.	49 East North St.	182.34
GOSS, John M. & Glenda	558 South Church St.	1391.06
GUYER, Larry G. & Mary L.	115-117 North Broad St.	2081.36
KIPE, Larry S. Sr. & Christine	121 North Potomac St.	1119.80
KNOTT, Randall W. & Earlene D.	215 Cleveland Ave.	915.92
SHOCKEY, Joan K.	232-34 North Broad	1546.44
WAGAMAN, Paul	60 North Locust	475.55
YEAGER, Donald & Patricia	Cleveland Ave. & 5th	1537.93
	212 West 4th St.	535.98
GREINER, Arthur K.	WEST END SHIPPENSBURG	
GREINER, Arthur K.	45 Lurgan Avenue	1452.03
GREINER, Arthur K.	Route 11	1002.87
GREINER, Arthur K.	120 Cumberland Avenue	570.11
GREINER, Arthur K.	Lurgan Ave.	67.99

Miller wants us to restrain the partners from any further effort to build their client base by contacting Miller clients. The partners contend that they want to do what every other accountant is permitted to do; that is to make direct contact with any potential client they may know. In this respect, the partners say they will limit their use of Miller information to their knowledge that Miller clients use accounting firm services. They add there are many others who need accounting firms that this is generally known, and they intend to aggressively market their services among all potential clients including Miller's. Under the code, marketing by a presentation of services offered and a statement of fees to be charged is proper practice. This is why the partners oppose any injunctive action.

We conclude that if the partners had made no contacts while in the employ of Miller, upon resignation and the formation of their own firm they could have made direct contact with every Miller client soliciting the clients' business. There would have been no violations of the Code. But, they did make contacts before they resigned.

In *Adler, Barish, Daniels, Etc. v. Epstein*, 482 Pa. 416, 393 A.2d 1175 (1978) a firm of lawyers (Adler Barish) sought to enjoin former associates from interfering with existing contingent fee contractual relations between Adler Barish and its clients. The partners contend that this case is not precedent because it deals with lawyers and the courts have an obligation to regulate in some ways the legal profession while having no such responsibility in the accounting field. However, as pointed out in *Adler Barish* the United States Supreme Court recognizes the special responsibility of the state for maintaining standards among members of the licensed professions. *Id.* at 436, 1186. While we heard no evidence concerning the licensing of an accountant it is plain that a person who holds himself or herself out as a Certified Public Accountant is offering a special service where standards must be maintained. Certified Public Accountants have a Code of professional conduct which we believe may be enforced in appropriate situations by the courts of the states by the imposition of sanctions. So *Adler Barish* is precedent here.

In that case the associates were paid salaries by Adler Barish and while still employed they decided to form their own firm. Before leaving Adler Barish, the associates retained counsel to advise

them concerning their business venture, found office space, signed a lease, and gave a bank a list of eighty-eight cases with anticipated legal fees of \$500,000 or more as security for a loan.

Epstein, one of the associates, terminated his employment with Adler Barish but at his request continued to use the lawyer's offices. During this time and until the complaint was filed, Epstein engaged in an active campaign to procure new business for the associates' new firm. In doing so he advised Adler Barish clients that they could choose to be represented by Adler Barish or by himself or any other lawyer. He also mailed form letters to the Adler Barish clients for the purpose of discharging the firm, named him as new counsel and created a contingent fee agreement. He also provided clients with a stamped envelope addressed to himself. The other associates were aware of Epstein's efforts and did some of the same kind of things.

The lower court and ultimately the Supreme Court enjoined the associates from "contacting and/or communicating with those persons who up to and including April 1, 1977, had active legal matters pending with and were represented by the law firm of (Adler Barish)." The associates were permitted to announce the formation of their partnership in accordance with the Lawyers' Code of Professional Responsibility and clients remained free to discharge Adler Barish if they wanted to and select any attorney, including the associates to represent them. *Id.* at 422, 1178.

The Lawyers' Code of Professional Responsibility, DR2-103(a) (as adopted, 1974) provides:

"A lawyer shall not recommend employment, as a private practitioner, of himself, or his partner, or associate to a non-lawyer who has sought his advice regarding employment of a lawyer."

It is this provision of the lawyers code which the court found the associates had violated. The court also found that the law is clear that states may constitutionally impose sanctions upon attorneys engaging in conduct which violates the lawyers' code and stated the court's task was to determine whether the conduct of the associates was subject to a sanction *Id.* at 424-25, 1179.

In *Adler Barish* the court also found that the associates were interfering in contractual relationships between the firm and its



13 West Main St.
P.O. Drawer 391
717-762-8161



TRUST SERVICES
COMPETENT AND COMPLETE



WAYNESBORO, PA 17268
Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS:
Potomac Shopping Center - Center Square - Waynesboro Mall

24 Hour Banking Available at the Waynesboro Mall

Adoptive Placements

Finally, in regard to adoption situations, where a child is brought into this state by an adoption agency which is supervised by the Department, the Department is relieved of the duty of consenting to the child's placement in Pennsylvania for the purpose of procuring an adoption. Furthermore, there is no current regulation that requires an adoptive parent to be screened prior to the child's placement in the adoptive parents' home. Rather, Act 33 requires that a prospective adoptive parent submit the child abuse and criminal history record information to the agency or person designated by the court after a report of intention to adopt has been filed, which by necessity, means that the child is already in the custody of the preadoptive parents.

It is up to the court to require that the necessary screening of the adoptive parents be done by appointing an individual to obtain the verifications from the adoptive parents.

Compliance with the provisions of Act 33 will be required.

clients and concluded that their behavior indicated they expected to gain a segment of the firm's business while the firm and its clients were parties to valid, existing contracts. *Id.* at 432, 1183.

In this connection (interference with the contractual relationship) the court referred to §767 of the Restatement (Second) of Torts and the six matters to be considered. *Id.* at 433, 1184.

The court also examined whether in *Adler Barish* the associates conduct was sanctioned by "rules of the game which society has adopted." *Id.* at 433, 1184, and found the associates' conduct not protected by those rules. The court concluded that in this situation the associates could *overreach* and unduly influence Adler Barish clients. (Emphasis ours).

Miller contends that the partners, Schultheiss, Porter and Barrows specifically violated Rule 502 of the accountant's Code in overreaching to solicit Miller clients. In *People v. S. W. Straus & Co.*, 285 N.Y.S. 648, 670, 158 Misc. 222, (Sup. Ct. 1936), it was said that fraud is synonymous with overreaching which is the taking of an unfair advantage; something which is wrong and which would have defeated the bargain if it had not been practiced. In defining the word the American Heritage Dictionary of the English Language uses phrases like: Doing or trying to gain too much, or by being too cunning, to get the better of, trick or outwit others going too far and cheating. In *In Re Baruch's Will*, 132 N.Y.S.2d 402, 405, 205 Misc. 1122 (1954), the court said overreaching means to overdo matters, or get the better of one in a transaction by cunning, cheating or sharp practice. One's sense of right and wrong is a safe guide as to what constitutes decent, honorable conduct and therefore is helpful in determining what is overreaching. *People v. S. W. Straus & Co.*, supra at 670.

In this case as in *Adler*, to form the base for their new business, as against Miller, the partners went too far and therefore overreached. First, while Miller did not have written contracts with their clients, they did have subsisting relationships that were continuing. Miller kept doing the clients' work from one period to the next without the renewing of any engagement by the client. The partners attempting to interrupt these relations between Miller and its clients while they were still employees was illegal interference in the contractual relationships between Miller and its clients.

In *Adler Barish* the court seemed to condemn the whole plan of the associates to raid the law firm's clients, but pointed to one act in particular, that is the use of expected fees from Adler Barish clients cases to support their loan to start the business. In this case, the taking of information from a data disc by one of the partners at night is a clear indication of extent to which the partners would go to gain a segment of the firm's business.

We find that the activities of the partners while still employees of Miller were not sanctioned by rules of the game which society has adopted. We find that in the atmosphere surrounding the partners departure, their contacts unduly suggested a course of action for Miller clients that it constituted overreaching and unfairly prejudiced Miller in violation of the Code. An appropriate sanction for such conduct is to enjoin the partners from further direct contact with Miller clients, not however prohibiting them from announcing the formation of the partnership or from advertising their services in a general way that would reach Miller's clients. Our order will make it clear that any former Miller client may voluntarily discharge Miller and select the partners or any other accountant to do their work.

Considering the nature of the contractual relationship between an ongoing client and the accountant, we think that the sanction would be appropriate against the parties and the protection afforded Miller & Co. sufficient if the injunction continued for a period of two years from September 23, 1985.

DECREE NISI

November 6, 1985, the defendants, Paul C. Schultheiss, William M. Porter and Denise D. Barrows, and all persons acting in concert with them or otherwise participating with them or acting in their aid or behalf, are enjoined and restrained from directly contacting and/or communicating with those persons or firms who up to September 23, 1985, had active accounting matters with and were clients of Miller & Co., Certified Public Accountants, Chambersburg, Pennsylvania, for a period of two (2) years from that date, except that:

1. Nothing in this decree shall be construed to preclude the defendants from announcing the formation of their new partnership or from advertising their services generally to all prospective clients.

2. Nothing in this decree shall preclude those persons and firms who, up to and including September 23, 1985, had active accounting matters pending with and were clients of Miller & Co. from voluntarily discharging their present accountants and selecting any of the defendants, or any other accountant, to represent them.

This decree nisi shall become final unless exceptions are file within ten (10) days.

COMMONWEALTH v. BIGLER, C.P. Franklin County Branch,
Misc. Docket Vol. Y, Page 454

Driving Under Influence - Refusal of Breathalyzer - Revocation of License

1. Where a driver is requested to take a breathalyzer test and refuses but instead takes a blood test, his license may be revoked following his guilty plea.

Lawrence Wieder, Esquire, Assistant Counsel for Department of
Transportation, Appellee
Philip S. Cosentino, Esquire, Counsel for Appellant

OPINION AND ORDER

EPPINGER, P.J., November 26, 1985:

David L. Bigler was stopped and charged with driving a motor vehicle while under the influence of intoxicants. He was requested by a Pennsylvania State Trooper to take a breathalyzer test at the State Police Barracks in Chambersburg. He did not take the test. Instead he informed the trooper that he was going to go into the Chambersburg hospital and get a blood test, which he did.

The test showed a blood alcohol content of .22%. That result was introduced in evidence by the Commonwealth at a preliminary hearing against Bigler. These facts were stipulated by Bigler and the Department of Transportation at the hearing on Bigler's appeal from the suspension of his operating privileges for refusing to take the breathalyzer test under the Vehicle Code, §1547(a) which provides that a motorist in Pennsylvania is deemed to have given consent to "one or more" chemical tests of his blood, breath or urine in circumstances where a police officer has