

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENNETH SCHIESS AND LOUANN SCHIESS)	
)	
COMPLAINANTS)	
)	
V.)	CASE NO. 2006-00401
)	
INSIGHT PHONE OF KENTUCKY, LLC)	
)	
DEFENDANT)	

O R D E R

On September 21, 2006, Insight Phone of Kentucky, LLC (“Insight”) filed its answer to this formal complaint with the Commission. The answer is signed by Marian Wright, Billing Operations Manager. On information and belief, Ms. Wright is not an attorney licensed to practice law in Kentucky.

No person may engage in the practice of law in Kentucky without first obtaining a license to practice.¹ The practice of law is:

[A]ny service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services.²

¹ Kentucky Supreme Court Rule 2.100.

² Kentucky Supreme Court Rule 3.020.

The practice of law includes, as Kentucky's highest court held in Kentucky State Bar Association v. Henry Vogt Machine Co., 416 S.W.2d 727 (Ky. 1967), the representation of a corporation before a state administrative agency.

As to its own proceedings, this Commission has adopted a similar position and has required that those representing the interests of others before us be licensed attorneys. In a previous case, the Commission ordered that:

[A]ny attorney who is not licensed to practice in the State of Kentucky and who seeks to represent a client or employer before this Commission must engage a member of the Kentucky Bar Association. It logically follows that if an unlicensed attorney may not represent a client before this Commission, neither may a layman.³

The Commission therefore finds that Insight's answer fails to comply with Kentucky law and should not be accepted for filing. The Commission further finds that Insight should be afforded the opportunity to file an answer signed by an attorney licensed to practice law in Kentucky.

In addition, within the text of the answer filed and on the exhibit attached thereto it is indicated by Insight that it contains "confidential call detail records." The Commission is a public agency and the documents at issue are public records subject to the Open Records Act. "The basic policy of [the Open Records Act] is that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others." The primary purpose

³ Administrative Case No. 249, Practice Before the Commission by Attorneys Non-Licensed in the Commonwealth of Kentucky (Ky. P.S.C. June 15, 1981) at 2.

of the Open Records Act is to inform the public as to whether governmental agencies are properly executing their statutory functions.

All material on file with the Commission is to be “open for inspection by any person, except as otherwise provided in KRS 61.870 to 61.884.” A person requesting that the Commission grant confidential treatment has the burden to show that the material falls within an exclusion from disclosure requirements enumerated in the Open Records Act.

KRS 61.878(1)(c) of the Open Records Act provides an exemption for “records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records. . . .”

To the extent that the parties rely on KRS 61.878(1)(c), they must show that the commercial documents are generally recognized as confidential or proprietary and that disclosure would permit an unfair commercial advantage to competitors. The court in Southeastern United Medigroup, Inc. v. Hughes,⁴ in considering KRS 61.878(1)(c), held that if it is established that a document sought to be withheld is confidential or proprietary, and if disclosure to competitors would provide substantially more than a trivial unfair advantage, the document should be protected from disclosure.

IT IS THEREFORE ORDERED that:

1. The answer is rejected for filing.
2. Within 10 days of the date of this Order, an attorney licensed to practice in Kentucky shall be permitted to file an answer on behalf of Insight.

⁴ Southeastern United Medigroup, Inc. v. Hughes, 952 S.W.2d 195 (Ky.1997).

3. If Insight asserts that any part of its answer is confidential, then the answer must be accompanied by a petition for confidentiality pursuant to KRS 61.878.

4. The Commission will hold the information filed and marked confidential for 20 days, it will then be placed in the public record if no such petition as described herein is received.

Done at Frankfort, Kentucky, this 20th day of October, 2006.

By the Commission

ATTEST:

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Executive Director