IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

MICHAEL JOHN ECHEVARRIA,

Respondent.
_____/

Case No. SC03-904
TFB No. 2000-11,585(13D)

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW **Michael John Echevarria**, pursuant to Rule 3-7.9, Rules Regulating The Florida Bar, and states his present intention to tender a conditional plea to the below-listed violations as charged in the Complaint filed by **The Florida Bar**, in this cause, provided and conditioned upon the below-stated discipline being finally approved by the Supreme Court of Florida. The following is the stipulated factual basis:

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent is aware that Rule 3-7.6(o), Rules Regulating The Florida Bar, provides for the taxing of costs incurred by **The Florida Bar** in a disciplinary proceeding. Respondent agrees that he will not attempt to discharge the obligation

for the payment of the Bar's costs in any future proceedings, including but not limited to, by filing a Petition for Bankruptcy.

3. Respondent is not certified in any area of practice.

4. For purposes of this action, Respondent does not contest the following statements, which are the facts for purposes of this consent judgment:

During the period from 1997 through October 1, 1999, the Respondent was the sole shareholder in Michael J. Echevarria, P.A. Michael J. Echevarria, P.A. was the general and managing partner of the general partnership of Echevarria, McCalla, Raymer, Barrett & Frappier. In October 1999, the partnership dissolved and the succeeding entity was Echevarria & Associates, P.A., f/k/a Michael J. Echevarria, P.A. During the time of 1997 through the finding of probable cause on January 8, 2002, Michael J. Echevarria was the managing attorney of both entities. (Both entities are hereinafter referred to as "Echevarria" without distinguishing between the two). Respondent established or ratified the policies and procedures followed by Echevarria staff working on Florida foreclosure cases, including those applicable to service of process, use of locator services, affidavits of cost, and affidavits related to attorney's fees.

Echevarria's primary business during the period from 1997 through 2000 was collecting debts on behalf of residential mortgage lenders through foreclosure actions which were filed throughout the State of Florida. Echevarria had and

continues to have a very large staff, including more than a dozen attorneys and a large non-lawyer support staff who work on the foreclosure cases. Respondent did not work on individual case files during the relevant time period, and staff attorneys signed all pleadings and correspondence which were sent from Echevarria to the parties in the foreclosure actions.

During the period from 1997 through 2000, many of Echevarria's residential mortgage lender clients were seeking to collect arrearages in, and/or foreclose on, government guaranteed loans, including HUD, VA, and FHA loans.

At all times relevant to this Complaint, Respondent was a 50 percent shareholder and served as President of Lightning Serve, Inc. Echevarria on its own initiative, at the direction of Respondent, disclosed to foreclosure clients that Respondent had a financial interest in Lightning Serve, Inc. While it is possible that not all clients were notified, Respondent can say with certainty that the practice in the firm was to disclose when asked.

Respondent had no direct day to day supervisory responsibilities at Lightning Serve, Inc. Echevarria almost exclusively used Lightning Serve, Inc. to arrange for service of process on defendants named in the foreclosure actions that Echevarria filed on behalf of its clients. Lightning Serve, Inc. arranged for service of process by private process servers who contracted with Lightning Serve, Inc., and in those few counties which required service by the sheriff's department, it

arranged for that service. The usual fee of Lightning Serve, Inc. for its role in service of process was $35.00 for each requested service.

Based on Echevarria guidelines, requests for service of process sent to Lightning Serve, Inc. and forwarded to process servers would typically instruct the local Sheriffs, or private process servers, to attempt to serve process on the debtor, the unknown spouse of the debtor, other parties in interest, and two (2) or more unknown tenants. In some cases, service of process was requested on four unnamed tenants, and summonses for those unnamed tenants were sent to Lightning Serve, Inc. Respondent's guideline was to bill for attempted service on only two unnamed tenants when no unnamed tenants were found at a single family residence being foreclosed. While there may have been instances where Lightning Serve, Inc. charged for service of all four unnamed tenants, that was not done at the direction of Respondent, nor was he aware that it may have occasionally occurred. Testimony taken in this matter has suggested that the charge of $35.00 per service of process is a common charge in foreclosure cases, and that charging for attempted service on two unnamed tenants is also a common practice in the foreclosure industry. While Echevarria did not routinely disclose to the Court the cost Lightning Serve, Inc. paid to the sheriff or private process servers, as distinguished from Lightning Serve, Inc. 's charges to Echevarria for service of process, no instances were found where other firms have been routinely making

that disclosure. No agency contacted by the Bar, such as HUD, Fannie Mae, or the VA, indicated they have a policy prohibiting an attorney utilizing an agency owned in whole or in part by him to facilitate service of process, and charging a fee for the intermediary service that exceeds the amount paid by that agency to a process server. Agencies such as Fannie Mae, HUD, and the Veteran's Administration have indicated that they have no policy or guidelines at the present time which prohibit costs by an intermediary which coordinates service of process.

In foreclosure cases, Echevarria utilized a locator service called Accu-Search to "locate" certain individuals or entities who were named as defendants in the foreclosure complaints. Respondent indicates that while Accu-Search may have been a "sister company" to Lightning Serve, Inc., Respondent does not have, and did not have, a financial interest in Accu-Search.

As part of the foreclosure proceeding, Echevarria was responsible for foreclosing the interest of anyone whose involvement with the real property in question might result in a cloud on the title to the real property. Echevarria would often purchase some title work from a third party, such as Attorneys Title Insurance Fund, Inc., (hereinafter referred to as "the Fund"). In some instances, the charge by the Fund might be as low as $175.00 per file, comprised of $50.00 for the actual title search and $125.00 for a "guaranteed review" of the title search. Although the Fund might guarantee that those whose interests must be foreclosed

had been identified, and agreed at times to pay damages for any incorrect work product, there remained the possibility of financial loss to the firm for any improper work. The "guarantee" did not cover all losses, and would not have provided for compensation to Echevarria if there were damage to Echevarria's reputation had it relied on improper work performed by The Fund. After Echevarria received the title work from the Fund, non-lawyer personnel on the Echevarria staff (title examiners) reviewed the Fund's work. Echevarria routinely charged the clients of Echevarria a total of $325.00 for a title search and a title examination, breaking down the charges on cost statements provided to the courts as $175.00 for title search and $150.00 for title examination. Echevarria did not separately report the charges for Title work paid to third parties and that charged for title work done in-house by Echevarria staff. Other foreclosure firms reviewed also do not separately indicate the amount of charges for Title work which was paid to a third party. Agencies such as HUD, VA, and Fannie Mae provide general guidelines for the amount which can be charged for Title work in foreclosure cases, and have indicated to the Bar that they have no policy regarding costs for work done internally by a firm foreclosing loans. The amount charged by Echevarria fell within the guidelines. Doing in-house title work, and charging a standard fee for title work which may exceed payments to third parties, is a common practice in the foreclosure industry.

In support of Echevarria's claims for attorneys fees in foreclosure cases, during the period of 1997 through 2000, Echevarria attorneys handling foreclosure cases routinely submitted Affidavits Of Plaintiff's Counsel to the court. In some of the Affidavits Of Plaintiff's Counsel, Echevarria associates stated that whenever possible, the attorney utilized the services of paralegals and document clerks to complete the action; that based upon their knowledge and experience, the services that had been rendered included six (6) hours and that it was believed that it would take an additional two (2) hours to complete the action; and that the attorney's billing rate was $125.00 per hour, and a reasonable fee was $1,000.00. The Affidavits of Plaintiff's Counsel indicated that Echevarria and the lender had an agreement for a fixed attorney's fee of $1,000. Respondent acknowledges that the time Echevarria attorneys spend on a file varies from case to case, that at times it is less than eight hours, and at other times is much more. Respondent has amended the statement of costs in uncontested foreclosure cases to prevent misinterpretation by the courts. The statement clearly indicates to the court that Echevarria does not keep track of the hours spent by various personnel at his firm on a file. Echevarria forms now more clearly state that his requested fees are based on a flat fee agreement with the lender.

In support of the request for attorneys fees, Echevarria associate attorneys submitted Affidavits As To Reasonable Attorneys Fees to the court. Since at least

1998 and through 2000, the Affidavits As To Reasonable Attorneys Fees in most, if not all, foreclosure cases submitted to the courts by Echevarria, were signed by Attorney Anthony G. Woodward. The affidavits routinely stated that Attorney Woodward had reviewed the foreclosure file in question, including pleadings, correspondence, and other matters in the action and that it was the opinion of Anthony Woodward that the reasonable number of hours for the services rendered was eight hours, which would include an additional two hours to complete the action. The Affidavits As To Reasonable Attorneys Fees typically further stated that $1,000.00 would be a reasonable attorney fee for the Plaintiff's attorneys for their services. In hundreds of Echevarria foreclosure cases during the period from approximately 1998 through 2000, Affidavits As To Reasonable Attorneys Fees were sent by courier from Echevarria to Attorney Woodward for his signature without the case file being sent along. Except for Woodward's signature and the notarization, the Affidavits would be completed by staff at Echevarria for each uncontested case. The affidavits were signed by Woodward and notarized, and then a courier arranged by Echevarria would pick up the signed and notarized affidavits. Attorney Woodward was paid approximately two dollars for each Affidavit As To Reasonable Attorneys Fees he signed and had notarized.

Respondent indicates that while he knew that Woodward was completing hundreds of affidavits, he was never informed during the relevant time period that

the files were not being sent to Woodward for review, and that he believed that Woodward was reviewing the files and providing affidavits for $2.00 per case. After learning that Woodward was not reviewing all files, Echevarria initiated firm action to conform the affidavits to the procedures being used.

During the period from 1997 through 2000, many of the residential borrowers, when notified of the foreclosure proceedings by Echevarria or the lender, were also advised that they could seek to reinstate the defaulted mortgage loans. Upon request by the borrowers, Echevarria staff provided to residential borrowers a specific payment amount needed to reinstate their loans. In many instances, the amount represented to the residential borrowers was an estimate of the amount needed to reinstate, and took into account an anticipated delay in concluding the reinstatement and various additional interest amounts, payments on principal, and costs for the foreclosure action that might be incurred prior to actual reinstatement. Residential borrowers were at times, but not always, advised that the "amount to reinstate" was an estimate. Regardless of whether borrowers were advised the reinstatement amount was an estimate, any overpayments were refunded at the time of reinstatement.

DISCIPLINARY RULES: Respondent does not contest that he has violated the following Rules Regulating The Florida Bar: Rule 4-5.1(a) (a member of the Bar who is a partner, proprietor, shareholder, member of a limited liability

company, officer, director, or manager in an authorized business entity, shall make reasonable efforts to ensure that the authorized business entity has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct); Rule 4-5.1(b) (any lawyer in an authorized business entity having supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct).

5. In future foreclosure actions handled by Respondent or a law firm in which he has an interest (his firm), Respondent agrees that the following will be disclosed to the individuals or entities for whom his firm is handling foreclosures, to those against whom his firm brings foreclosure actions, and also to the court when statements of costs and affidavits of attorneys fees are filed with the court:

a) If Respondent has a financial interest, directly or indirectly, in any corporation or legal entity other than Respondent's firm, which performs services and/or incurs costs which are then billed in a foreclosure action as costs or services to the client, or to the subject of the foreclosure, the firm will disclose that there is the ownership or other financial interest.

b) When Respondent's firm handles foreclosure actions, if Respondent has a financial interest, directly or indirectly, in any

corporation or legal entity other than Respondent's firm, paid for Title search, Title survey, Title examination, or other Title work, the firm will disclose that the title search/exam cost includes amounts paid to third parties for data and information reviewed for Title purposes, but need not sua sponte disclose the exact amount.

c) In cases where service of process services are performed by any corporation or other legal entity, other than Respondent's firm, in which Respondent has a financial interest, directly or indirectly, Respondent's firm will clearly indicate the number of successful service of process, the number of attempted service of process for which there is a charge, and upon whom each service was made and/or attempted. It will clearly indicate the number of unnamed tenants successfully served, and the number of unnamed tenants for whom service of process was unsuccessful but for whom there was a charge.

d) When Respondent's firm submits affidavits to the Court in support of Attorney's fees, Respondent will ensure that the affidavit indicates clearly whether the attorney submitting the affidavit has actually reviewed the foreclosure file.

e) Respondent will ensure that affidavits submitted by his firm to the

Court in support of attorneys fees clearly indicate whether the firm has kept track of attorney's hours spent on the file for which attorney's fees are being sought.

f) When providing borrowers with the amount required to reinstate, Respondent's firm will itemize the individual components which comprise the total, and will clearly indicate which of the charges have already been incurred and which of the charges are estimates.

6. The parties understand that Respondent's responsibility is to ensure that the appropriate policies and procedures are instituted (continued) in order to ensure his staff comply with the conditions above. Isolated and unintentional instances of not strictly complying with those conditions should not be the basis for further Bar action against Respondent or his staff.

The parties stipulate that Respondent has instituted the measures indicated in paragraphs 5 a) through 5 f) above, in order to further clarify to the court the basis for charges to the debtor in foreclosure cases. These measures were instituted by Respondent during the course of these proceedings.

MITIGATING CIRCUMSTANCES:

Standard 9.32(a) absence of a prior disciplinary record

(g) character or reputation

(e) full and free disclosure to the disciplinary board or

cooperative attitude toward proceedings.

Also noted is Respondent's having taken steps to institute procedures and forms to address the Bar's concerns.

DISCIPLINE: Public Reprimand, to be administered by publication of the Order of the Florida Supreme Court accepting this Conditional Guilty Plea for Consent Judgment.

COSTS: $2,581.73 (Affidavit of costs attached).

Administrative costs pursuant to Rule 3-7.6(o)(1)(I)	$ 750.00
Bar Expenses as set forth in Exhibit A attached hereto and made a part hereof	1,831.73
	$2,581.73

The Respondent acknowledges that there may be additional costs incurred if further proceedings are held. Respondent would be responsible for any future costs.

Dated: 1/15/04

Michael John Echevarria
Respondent
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Dated: Jan. 16, 2004

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Dated: January 20, 2004

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