

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

v.

OMAR JAVIER ARCIA,  
Respondent.

Supreme Court Case  
No. SC2023-0413

The Florida Bar File  
No. 2021-50,275 (5B)

The Florida Bar File  
No. 2022-50,086 (17I)

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**AMENDED CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT**

COMES NOW the undersigned respondent, Omar Javier Arcia, and files this Conditional Guilty Plea pursuant to Rule 3-7.9 of the Rules Regulating The Florida Bar.

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 acting freely and voluntarily in this matter and tenders this plea without fear or threat of coercion. Respondent is represented in this matter by David Bill Rothman.

3. As to The Florida Bar File No. 2021-50,275 (5B), there has been a finding of probable cause by the grievance committee. As to The

Florida Bar File No. 2022-50,086 (17I), respondent waives a finding of probable cause.

4. The disciplinary measures to be imposed upon respondent are as follows:

A. 91-day suspension from the practice of law requiring proof of rehabilitation prior to reinstatement.

B. Payment of the bar's disciplinary costs.

5. Respondent acknowledges that, unless waived or modified by the Court on motion of respondent, the Court order will contain a provision that prohibits respondent from accepting new business from the date of the order or opinion and shall provide that the suspension is effective 30 days from the date of the order or opinion so that respondent may close out the practice of law and protect the interest of existing clients.

6. Respondent agrees to eliminate all indicia of respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards, office signs or any other indicia of respondent's status as an attorney, whatsoever. Respondent will not hold himself out as a licensed attorney until he has been reinstated as a member of The Florida Bar eligible to practice law in Florida.

7. The following allegations provide the basis for respondent's guilty plea and for the discipline to be imposed in this matter:

**THE FLORIDA BAR FILE NO. 2021-50,275 (5B)**

A. On or about August 5, 2020, in Miami-Dade Circuit Court Case Nos. 2014-CA-16769 and 2016-CA-28664, John H. Williams, Jr., filed an Emergency Motion to Disqualify respondent from continuing to represent any defendants in the lawsuit due to a conflict of interest in a foreclosure matter. After an evidentiary hearing, the trial court found that respondent had engaged in a conflict of interest by simultaneously representing both a co-lender, Arlene Rodriguez, and a borrower, John H. Williams, Jr. The trial court held that respondent had been representing both Mr. Williams and Ms. Rodriguez as defendants in the matter since February 2015.

B. In the Amended Order on Emergency Motion to Disqualify dated October 15, 2020, the court granted the motion to disqualify respondent and stated:

[Respondent] argued that there was no need to obtain a consent and waiver from Mr. Williams since his interests and those interests of the remaining defendants were aligned. However, [respondent] knew that Mr. Williams thought he was no longer part of this case and did not ensure that he was aware he still remained as personal guarantor on these loans. Ms. Rodriguez is not a personal

guarantor on these loans. There is conflict between these parties, not the least of which appears to be an alleged misrepresentation regarding Mr. Williams' status made by Ms. Rodriguez to secure the quit claim deeds which entitled her to secure control over the property in question.

The Court rejects this contention that the parties are aligned in interest. While both defendants might be served by defeating the Santibanez' claim, it is clear that if that defense does not prevail, the defendants face materially different consequences that are likely to create different motives and strategies in the handling of this case. Based upon the circumstances, and pursuant to the Rules [R]egulating the Florida Bar, [respondent] was required to obtain informed consent confirmed in writing at least in early 2017 after Mr. Williams' deposition. [Respondent] confirmed no such written consent was obtained from Mr. Williams.

The trial court also found that Ms. Rodriguez did not give any consideration for the Quit Claim Deed.

C. In the record before the court, the evidence established that: (a) Ms. Rodriguez advised Mr. Williams that by signing a Quit Claim Deed in 2013, Mr. Williams would be "out;" (b) Mr. Williams assigned the rents for the properties to Ms. Rodriguez; (c) At a deposition taken on January 26, 2017, Mr. Williams, present with respondent as counsel, testified that he understood that the quit claim deed absolved him of any liability on the promissory notes that were the subject of the action in this case; (d) Even after the deposition of Mr. Williams, respondent continued to

represent both Ms. Rodriguez and Mr. Williams in this matter through June 2020; (e) Mr. Williams testified that he had only recently learned that he could still be held liable, personally, under a personal guaranty signed for each of the promissory notes; (f) Mr. Williams testified that respondent did not explain anything to him; (g) Respondent admitted at the hearing that he did not secure a conflict waiver from Mr. Williams. The representation of both Mr. Williams, the borrower, and Ms. Rodriguez, the co-lender, in this case was an inherent conflict of interest, which respondent should have known could not be waived.

D. Additionally, respondent engaged in a pattern in which he represented both co-lenders and borrowers in other foreclosure matters that included Arlene Rodriguez without disclosing the potential conflict of interest or attempting to obtain a knowing and voluntary waiver of the conflict from those clients.

E. Moreover, respondent did not provide timely responses to the bar's Witness Subpoena Duces Tecum requesting certain records documenting his communications with these clients regarding the extent of respondent's legal representation and the discussion of any conflicts of interest.

F. The following Rules Regulating The Florida Bar provide the basis for the discipline to be imposed in this matter: 3-4.3 [Misconduct and Minor Misconduct]; 4-1.1 [Competence]; 4-1.2(a) [Objectives and Scope of Representation]; 4-1.4(a)(b) [Communication]; 4-1.6(a)(c) [Confidentiality of Information]; 4-1.7(a)(b)(c) [Conflict of Interest]; 4-8.4(d)(g) [Misconduct].

**THE FLORIDA BAR FILE NO. 2022-50,086 (17I)**

G. Juan Cabada, a real estate broker, hired respondent after John Lynch, a client of Cabada's, refused to remit a real estate commission to Cabada.

H. Respondent, at Cabada's request, directed his staff to prepare and file a claim of lien against the property in question. Counsel for Lynch challenged the merit of filing the claim and requested that respondent provide authority for filing the claim. Respondent provided no authority to Lynch's counsel.

I. Mediation was held in the dispute between Cabada and Lynch. After the mediation, respondent directed his staff to file a release of the improperly filed lien.

J. Respondent admitted that his lack of sufficient legal knowledge and failure to fully research the issue regarding filing the lien led to a waste of judicial resources and a delay in the sale of the property.

K. The following Rules Regulating The Florida Bar provide the basis for the discipline to be imposed in this matter: 4-1.1 [Competence]; 4-3.1 [Meritorious Claims and Contentions]; and 4-8.4(d) [Misconduct].

8. In mitigation, respondent had no dishonest or selfish motive [Florida Standards of Imposing Lawyer Sanctions 3.3(b)(2)]; respondent was undergoing severe marital problems from 2017 to 2019, which led to an extremely contentious divorce from 2019 to 2021, and respondent's law firm also suffered dramatically during COVID [3.3(b)(3)]; several attorneys and clients have spoken fondly of respondent's professionalism and character [3.3(b)(7)]; respondent has demonstrated remorse throughout this matter and has implemented new protocols in his practice regarding possible conflicts of interests, including obtaining a proper written waiver when appropriate [3.3(b)(12)]; and respondent's prior discipline was nearly 20 years ago [3.3(b)(13)].

9. The Florida Bar has approved this proposed plea in the manner required by Rule 3-7.9.

10. If this plea is not finally approved by the referee and the Supreme Court of Florida, then it shall be of no effect and may not be used by the parties in any way.

11. If this plea is approved, then respondent agrees to pay all reasonable costs associated with this case pursuant to Rule 3-7.6(q) in the amount of \$3,957.09. These costs are due within 30 days of the Court order. Respondent agrees that if the costs are not paid within 30 days of this Court's order becoming final, respondent shall pay interest on any unpaid costs at the statutory rate. Respondent further agrees not to attempt to discharge the obligation for payment of the bar's costs in any future proceedings, including but not limited to, a petition for bankruptcy. Respondent shall be deemed delinquent and ineligible to practice law pursuant to Rule 1-3.6 if the cost judgment is not satisfied within 30 days of the final Court order, unless deferred by the Board of Governors of The Florida Bar.

12. Respondent acknowledges the obligation to pay the costs of this proceeding and that payment is evidence of strict compliance with the conditions of any disciplinary order or agreement and is also evidence of good faith and fiscal responsibility. Respondent understands that failure to pay the costs of this proceeding may reflect adversely on any reinstatement



proceedings or any other bar disciplinary matter in which respondent is involved.

13. This Conditional Guilty Plea for Consent Judgment fully complies with all requirements of the Rules Regulating The Florida Bar.

Dated this 29 day of September, 2023.



OMAR JAVIER ARCIA  
Respondent  
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Dated this 29<sup>th</sup> day of September, 2023.



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Dated this 2nd day of October, 2023.

A handwritten signature in cursive script that reads "Carrie C. Lee".

CARRIE C. LEE  
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