

9/3/02

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Case No: _____

Complainant,

**TFB Case Nos. 1998-50,098(17D)
2000-51,788(17D)**

v.

DAVID JAMES STERN,

Respondent.

_____ /

COMPLAINT

The Florida Bar, by and through undersigned counsel and pursuant to R. Regulating Fla. Bar 3-3.2(b), hereby files its complaint against David James Stern, respondent, and states as follows:

AS TO ALL COUNTS

1. The respondent is, and at all times material to this action was, a member of The Florida Bar subject to the jurisdiction and disciplinary rules of The Supreme Court of Florida.

2. The respondent operates a law firm in Broward County, Florida, incorporated as The Law Offices of David J. Stern, P.A.

3. The law firm's primary business relates to collecting debts on behalf of residential mortgage lenders through foreclosure actions.

PUBLIC RECORD

4. Respondent's law firm employs over thirty attorneys, and over two hundred support staff.

5. A significant portion of work performed by the respondent's law firm is not performed by attorneys, but it is performed by nonlawyer staff. The attorneys in respondent's law firm have a duty to supervise the nonlawyer staff, as well as review the nonlawyer staff work product and sign off on it for the purposes of the foreclosure actions.

6. At all times material to this complaint, the respondent was the sole shareholder, director and officer of the law firm.

7. Respondent is the sole officer, director and shareholder of Professional Title and Abstract Company of Florida, Inc., (hereinafter referred to as "Professional Title"). Professional Title is located at respondent's law office address, and at all times material to this complaint, it was staffed by respondent's law office personnel.

COUNT I

8. Complainant reasserts and realleges by reference the allegations set forth in paragraphs 1 through 7 above.

9. As a matter of industry standard, residential loan documents provide that borrowers must pay lenders the reasonable attorneys' fees and costs lenders incur in foreclosing defaulted loans.

10. As a result of market pressure, reflecting the competition among law firms which concentrate in or limit their practice to foreclosure, respondent has agreed with several lenders to charge a fixed fee for foreclosure actions. This fee is generally \$1,000.00, sometimes slightly more.

11. As part of the foreclosure proceeding, the respondent's law firm must ensure that they foreclose the interest of anyone whose involvement with the real property in question may result in a cloud on the title to the real property.

12. Respondent is an agent for Attorneys Title Insurance Fund, Inc., (hereinafter referred to as "the Fund"). The Fund will provide to attorney/agents, such as respondent, all of the title work necessary for the foreclosure proceeding at a modest charge.

13. Because the amount of attorneys' fees respondent may charge is limited by his contract with his clients, respondent created Professional Title as a means for providing the services in a manner he controls, and as a result increasing the monies he receives for each foreclosure matter.

14. Respondent orders title searches from the Fund at prices ranging from \$75.00 to \$90.00, depending on the property in question. Although respondent could order what is referred to as an "examined search" which is guaranteed by the Fund to have identified those whose interests must be foreclosed, respondent generally requests only a basic title search so that he can provide the examination through his law firm personnel.

15. In some circumstances, respondent orders "examined searches" from the Fund for approximately \$150.00, then has his law firm personnel do additional examination.

16. At all times material to this complaint, the respondent did not have Professional Title render an invoice. As a routine practice, only in situations where a borrower or their counsel challenged the amount of respondent's costs did respondent generate a Professional Title invoice.

17. The Professional Title invoices, when they are generated, reflect respondent's "costs" for Professional Title's services in a range from \$325.00 to over \$400.00.

18. These invoices, as well as the affidavits filed by respondent's law firm in foreclosure cases, suggest that these are out-of-pocket expenses paid by respondent to Professional Title, or to a combination of Professional Title and the

Fund. In reality, in many cases respondent's out-of-pocket expenses for title work were only those of the Fund. These costs range from \$75.00 to \$150.00.

19. But for his contractual relationship with his lender clients, respondent could have his firm's attorneys, or perhaps even legal assistants, spend a reasonable amount of time reviewing title work provided by the Fund, and then properly bill and collect for that time.

20. In many instances, the mischaracterizing as costs what should be identified as attorneys' fees or legal assistant fees allowed respondent to avoid his agreed-to fee cap.

21. In addition, the attorneys' fee affidavits filed by respondent's firm in foreclosure proceedings reflect, under attorney time, time that was actually spent by nonlawyer staff. The amount reflected on these affidavits is a standard or estimated amount, based not on actual time spent by attorneys or legal assistants, but on the nature and nuances of the case. It may be permissible to bill for this nonlawyer time if it is properly identified in any bills and fee affidavits. It is not permissible for an attorney to represent, in bills and/or fee affidavits, that work performed by a nonattorney was performed by the attorney personally.

22. The affidavits filed by respondent's law firm in the foreclosure proceedings routinely contain these misstatements of material fact described in

paragraph 21 above. In addition, respondent's attorneys regularly make legal argument to courts for the entry of judgments of foreclosure, asserting that the amounts they have claimed for fees and costs are correct in their bills and affidavits are correct.

23. By the actions set forth above, respondent violated Rule Regulating The Florida Bar 3-4.3 [Acts contrary to honesty and justice are cause for discipline.]; Rule 4-1.5(a)[An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee]; Rule 4-3.3 [A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal . . .(4) permit any witness . . . to offer testimony or other evidence that the lawyer knows to be false.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; Rule 4-8.4(d) [A lawyer shall not engage in conduct prejudicial to the administration of justice.].

COUNT II

24. Complainant reasserts and realleges by reference the allegations set forth in paragraphs 1 through 7, 9 through 15, 17, and 19 through 21 above.

25. Respondent's invoicing practices could mislead clients and others to believe that Professional Title performed services separate from those of his law firm, and that he incurred actual out-of-pocket expenses due and owing to Professional Title.

26. The respondent did not fully inform some clients of the manner in which these legal services were performed by his firm through Professional Title Services.

27. Although the respondent had performed legal services for several of his lender clients in the past, when he formed Professional Title and began billing in the fashion described above, respondent incurred the obligation to properly inform his clients of the manner in which fees were earned and calculated.

28. By the actions set forth above, respondent violated Rule Regulating The Florida Bar 3-4.3 [Acts contrary to honesty and justice are cause for discipline.]; and Rule 4-1.5(e) [When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.].

COUNT III

29. Complainant reasserts and realleges by reference the allegations set forth in paragraphs 1 through 7, 9 through 15, 17, 19 through 21, and 25 through 27 above.

30. Respondent could have obtained all necessary title insurance work from Attorneys Title Insurance Fund, for which he was an agent.

31. Certain products and services, such as an examined title insurance report, were guaranteed and eliminated the need for respondent to have his attorneys and other personnel engage in further examination of Fund searches.

32. The cost the Fund charged for examined title was significantly less than what respondent billed as a cost through Professional Title.

33. If the equivalent services could have been provided to his clients at a savings, respondent's own interests conflicted with the best interests of his clients. Respondent did not fully explain these circumstances to clients so that they could make an informed waiver of this conflict.

34. By the actions set forth above, respondent violated Rule Regulating The Florida Bar 3-4.3 [Acts contrary to honesty and justice are cause for discipline.]; Rule 4-1.7(b) [A lawyer shall not represent a client if the lawyer's exercise of independent professional judgment in the representation of that client

may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest, unless: (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation.].

COUNT IV

35. Complainant reasserts and realleges by reference the allegations set forth in paragraphs 1 through 7, 9 through 15, 17, and 19 through 22 above.

36. Residential borrowers have the right to attempt to reinstate defaulted mortgage loans, even after being served with a foreclosure summons and complaint.

37. Respondent, by substantial use of and reliance on nonlawyer personnel with no authority to negotiate a resolution, inhibits foreclosure defendants' access to information about their reinstatement figures.

38. Unsuccessful attempts by foreclosure defendants to communicate with the attorneys handling their cases result in increasing attorneys fees, and consequently, increased difficulty in defendant's ability to reinstate.

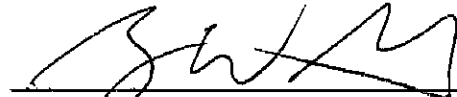
39. In many situations, foreclosure defendants or their counsel request verification of fees spent and costs incurred.

40. Respondent's nonlawyer personnel have a duty to disclose that they are not lawyers and that they cannot engage in settlement negotiations, but these personnel do not routinely make this disclosure.

41. By the actions set forth above, respondent violated Rule Regulating The Florida Bar 3-4.3 [Acts contrary to honesty and justice are cause for discipline.]; Rule 4-3.4(a)[A lawyer shall not unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act.]; Rule 4-4.4 [In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person.]; Rule 4-5.3(a) [A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers' conduct is compatible with the professional obligations of the lawyer.]; Rule 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; Rule 4-8.4(d) [A lawyer shall not engage in conduct prejudicial to the administration of justice.].

WHEREFORE, The Florida Bar, complainant, respectfully requests that David James Stern, respondent, be disciplined appropriately, including awarding costs to the complainant and restitution to the client(s), as appropriate.

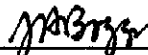
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by regular U.S. mail to respondent's counsel, Jeffrey Allen Tew, 201 South Biscayne Boulevard, Miami, Florida 33131-4332, on this 3rd day of September, 2002.



Barry William Rigby

NOTICE OF TRIAL COUNSEL

PLEASE TAKE NOTICE that the trial counsel in this matter is Barry William Rigby, whose address and telephone number are: The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, (850) 561-5600. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300.

MANDATORY ANSWER NOTICE

RULE 3-7.6(g)(2), RULES OF DISCIPLINE, PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.