



In The Court Of Appeals for the District (
BOARD ON PROFESSIONAL RESPONSIBIL

Disciplinary Docket No. 2021-D176

In re:) Date of Admission: December 19, 1983
Patrick Merkle, #375865)
Respondent) Case Initiated September 13, 2021

Respondent's Answer to Specification of Charges

Come now your respondent, Patrick Merkle, and presents the following Answer to the Specification of Charges (Complaint) now filed against him in this matter, stating as follows, with each numbered paragraph in this Answer corresponding to the numbered paragraph in the Complaint:

- 1. Admitted in Virginia on April 26, 1983 and Maryland on December 21, 1992.
2. Admitted.
3. Admitted.
4. Admitted in part. The annuity was not a probate asset.
5. Admitted.
6. Respondent does not recall the details, but admits to filing a petition for probate in behalf of Ms. Falla within months after Ms. Duran-Duarte passed away.
7. Denied in part. The Retainer Agreement and Authorization for Representation references that it is limited to the purpose of "business and personal planning and tax advice."
8. Denied in part. Mr. Bohorquez spoke Spanish, and counsel did not. However, persons served as interpreters during face-to-face meetings between Merkle and Bohorquez as

well as serving as intermediaries without Mr. Bohorquez present, but with his express and apparent authority to do so.

9. Denied. Mr. Bohorquez's opinion mattered, being sole beneficiary, but the decision to sell the unit rested with the personal representative. The apartment in question was never conveyed to Mr. Bohorquez, and he did not sell it.

10. Denied that there was any conflict of interest here. As stated in ¶9., Mr. Bohorquez was not represented in the sale although his opinion weighed heavily on the decision to sell and the decision to have Merkle serve as the listing broker. It was well known to Ms. Falla that Merkle was an experienced real estate investor and developer, as well as attorney authorized to serve as broker under D.C. law for a limited number of transactions per year without a broker's license, and presumably this information was conveyed to Mr. Bohorquez because it led to a lot more interest on his part to have Merkle involved in his real estate planning and activities. Merkle was employed solely by Ms. Falla, personal representative, ergo the implication that "informed consent in writing" was required is denied.

11. Admitted.

12. Admitted that it was an extremely advantageous option for Mr. Bohorquez to inherit the entire annuity as beneficiary of the estate rather than as the surviving beneficiary because A. He did not have a Tax Identification Number, B. A substantial portion of the annuity was subject to income tax as interest earned, C. Mr. Bohorquez had no offsetting expenses to avoid tax, whereas the estate did have expenses incident to sale of property and administration expenses which would offset the interest income.

13. Admitted in part. AR-LLC owns and develops investment property but is not a property management company. Merkle is a licenced property manager.

14. Denied that Merkle suggested anything. Mr. Bohorquez acted on advice of an attorney and/or family members in deciding to invest in the United States, not Merkle. Merkle was never aware of the nature and extent of his client's potential tax liability in his home country from his inheritance in the USA. Mr. Bohorquez's daughter, with his apparent authority, requested to tour properties for possible investment and discussed the ins and outs of owning investment property. Upon information and belief, Mr. Bohorquez actually wanted to invest in Miami, Florida but his daughter was the one who steered investment to Washington, D.C.

15. Admitted that among the many properties toured, which Mr. Bohorquez never viewed personally, Merkle identified a prospect which he believed would sell substantially below market as a cash-only auction. The personal representative was not involved in the decision, did not tour the property and simply performed necessary functions to get the deal closed. Merkle was able to serve as buyer broker at no cost to Mr. Bohorquez and had, prior to the auction, established a price cutoff for bidding which was based on Merkle's considerable experience and knowledge of the process. The price cutoff was specifically set and discussed with Bohorquez's representative to avoid a situation where Merkle was putting his interest as buyer representative ahead of the buyer's to collect a modest commission paid by the seller. That price point was not reached, so Merkle's bid in behalf of Mr. Bohorquez prevailed. Merkle did not charge for his time involved in assisting Mr. Bohorquez, through his family members, for the time involved in making that purchase, including legal research into the property title and outstanding liens, which far exceeded the amount paid in commission.

16. Denied. Prior to the engaging in any activity involving actually buying real estate, which Merkle explained to Mr. Bohorquez's intermediaries, specifically his daughter, Laura, and nephew, David Silva, the cost of Merkle's time was either going to be charged as attorney's fees or be paid by the seller as the selling broker fee from the sale proceeds. No other transactions were actively pursued besides the condominium eventually purchased, but many were considered so that the intermediaries could gain knowledge about the D.C. real estate market and get a sense of "value investing."

17. Denied. The several options available to Mr. Bohorquez for the forms of ownership of real estate, including direct personal ownership, ownership through a nominee, and through an entity, and whether a sole entity or one for each property acquired, were exhaustively discussed and fleshed out with his intermediaries. Merkle was indifferent as to the choice Mr. Bohorquez would ultimately make. Merkle was later instructed to form an LLC, which either Mr. Bohorquez or one of his family members named, because of its flexibility as an entity.

18. Admitted. Merkle was informed that the name "Boallar" was a composite of several family members' first names.

19. Denied. Somewhere in the communications with Mr. Silva, Merkle came to an agreement with the company as property manager memorialized by WhatsApp texts.

20. Denied. Mr. Bohorquez was the client, but never directly engaged with Merkle through an interpreter. All of the progress was accomplished with intermediaries with Merkle relying on their apparent authority to move ahead with everything he accomplished for Mr. Bohorquez.

21. Admitted.

22. Admitted that by September 2019 Mr. Bohorquez still did not have a TIN and could not be listed as beneficial owner of his own company under Patriot Act restrictions on foreign ownership of U.S. bank accounts. Therefore, Merkle agreed to stand in for Mr. Bohorquez while Mr. Bohorquez was believed to be applying for a TIN. In fact, unknown to Merkle, he did not apply and did not want to be identified as a U.S. taxpayer. This was thoroughly explained to Bohorquez through intermediaries, including the Spanish-speaking personal representative. Merkle cautioned that he could not sustain this arrangement for very long.

23. Admitted. The whole idea of this was that Merkle wanted something in writing to conduct business affairs for Mr. Bohorquez with his nephew, David Silva.

24. Denied for lack of completeness. Bar Counsel explains a mere fraction of Merkle's involvement in renovating and preparing the condominium unit for rent, finding a really good tenant, and charging very little as a management fee, about \$70/month based on memory. The owner paid for contractors' services but never paid Merkle for his work in renovating the apartment, which was quite extensive.

25. Denied for lack of completeness. When another unit became available in the complex at auction, Merkle suggested that this would be a good second purchase. Merkle was then involved in renovating his own unit for which he had deferred working on while helping get the Boallar-DC, LLC unit up and rented. Mr. Bohorquez, through David Silva, requested that Merkle would purchase it to expand their ownership to three of 24 units in the complex. Merkle obtained preliminary loan approval from Citibank, but when required to show proof of funds for the auction, Merkle told Silva that he would not be able to purchase the unit because he had not

obtained funding (the funding was based on other properties, not the target property). There was no loan involved until much later in the process.

26. Denied. This was not a loan. Bar Counsel glosses over the actual steps Merkle undertook to assist his client in order to present a short-hand version of facts least favorable to your respondent. In order to solve a problem for Mr. Bohorquez, who did not want to directly inherit funds from the estate because of tax liability therefor in Colombia, Merkle and Silva determined that a transfer from the estate to the company could be accomplished by the beneficiary approving a transaction which involved a third person. That transfer was accomplished in a manner which permitted Merkle to demonstrate “proof of funds” while still expecting the Citibank loan to come through. The funds were then forwarded to Boallar-DC, LLC’s account.

27. Denied. The funds transferred to Boallar-DC’s account always belonged to Mr. Bohorquez, he was not relinquishing them as a loan to anyone, but was benefitting by not taking direct distribution which he reported, through his family members, was subject to significant tax. Merkle is not aware, to this day, if the tax would be due even if the funds never were deposited into a Colombian financial institution.

28. Denied. There was no loan or business transaction between Merkle and Bohorquez. Merkle was a facilitator of what appeared to be a beneficial tax-free transfer of funds for his client, and, in the process, enabled him to pretend to the auction company that he had “proof of funds” when, in reality, the funds were expected to be obtained from Citibank.

29. Denied. When the Citibank loan proceeds were delayed beyond the expected due date, once again the objective of expanded ownership and involvement in the affairs of the condominium was in doubt. Merkle explaining this to Mr. Silva, again suggesting that Boallar-

DC purchase the second property, he originally had when it came on the market. Mr. Silva responded within a few days that Mr. Bohorquez wanted Merkle to buy it and would lend him the money to acquire it, with both parties expecting that the Citibank loan would come through within the next 60 days. Merkle had previously outlined a possible construction lending program to the intermediaries for Mr. Bohorquez as an alternative to owning real estate, showing how returns of 15-20% per year could be obtained with no closing costs but with first deeds of trust securing the debts. In discussing the possibility of a loan with Mr. Silva, this construction loan concept came up again and that is how the \$3,000 loan premium was determined. A post-dated check was exchanged for the current funds to memorialize the loan, the loan premium, and the payment date.

30. First two sentences admitted, but the third sentence is denied. The fact is that the auction company would not accept two sources of payment, so Anacostia Rising, LLC was limited to funding the entire balance of the purchase (having previously paid the deposit or down payment from its own resources) from the Boallar-DC, LLC account. The refund of the difference was immediate.

31. The implication is denied that AR-LLC didn't intend to repay the loan. The fact is that after COVID-19 hit, banks canceled loan approvals for rental properties because of a nationwide government-imposed moratorium on evictions and foreclosures, which was sure to lead to nonpayment of rent and mortgages. The Citibank loan was canceled before it was funded, causing real problems in repaying the Boallar-DC, LLC advance.

32. In consideration of the circumstances by which Merkle's plan was no longer viable, Merkle offered to secure the loan with a deed of trust and offered to transfer the acquired property back to Boallar-DC, LLC. Through Mr. Silva, Mr. Bohorquez apparently didn't want to

set up a long-term payment plan and certainly didn't want the property in a climate where tenants could thumb their noses at paying rent. Merkle was able to repay a substantial portion of the loan.

33. Denied that this was an instruction from the respondent. This was a decision presumably made by Mr. Bohorquez and communicated through his nephew so that he could avoid having to pay tax on his inheritance. This was accomplished by using Merkle's company as a third party and then placing funds in the new company's account.

34. Denied. Respondent has no recollection of this "video conference."

35. Denied. Respondent did not receive any email demanding repayment in two weeks. Also denied that no repayment had occurred, since \$35,000 was paid. Admitted that Mr. Bohorquez would have reminded respondent that he had not submitted a fee request nor charged for his own time and limited investment in renovation of Unit 201.

36. Denied. Had respondent received the emails referred to, he surely would have responded.

37. Admitted.

38. Admitted, but Mr. Bohorquez was ineligible to serve because he still didn't have a TIN.

39. Admitted.

40. Admitted.

41. Admitted, but crucial detail omitted. Citibank only closed the account because the beneficial owner, Mr. Bohorquez, did not have a TIN. It is unknown whether he ever obtained one.

42. Admitted.

43. Denied.

44. Admitted that Mr. Bohorquez, through counsel, filed a motion to seal but did not seek Merkle's consent, which would have been obtained.

45. Admitted. Merkle had no objection to sealing the file but did not file anything.

46. Denied that this was anything more than parroting the motion by Bohorquez's counsel. The attorney's fee claim simply told the story and progress of representation, including for the estate, which Mr. Bohorquez requested as sole beneficiary.

47. Admitted.

48. Admitted. Bar Counsel omits the fact that Mr. Bohorquez's company survived the pandemic with zero loss of rental income, continued to operate it through third parties and sold the apartment for a substantial profit in 2024. Did Mr. Bohorquez ever get his TIN?

49. a. Denied as to breach Rule 1.56(a) in that there was no material breach of any client confidence or contained in the itemized statement of legal services provided.

b. Denied as the allegation that any activity involving the client was adverse to his interest, that they had not been fully disclosed and alternatives offered and, indeed, recommended, and whether the client ever sought independent advice aside from his own family members is unknown.

In consideration whereof, your respondent respectfully demands that the Board on Professional Responsibility consider the facts of this case, the circumstances of the entirely unforeseeable intervention of the COVID-19 crisis, and the ultimate success of the representation which is being called into question.

Respectfully submitted,

/s/ *Patrick G. Merkle*

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Certificate of Service

I hereby certify that on January 29, 2026 a true copy of the foregoing and annexed Respondent's Answer to Specification of Charges was forwarded to James T. Phalen, Executive Attorney of the Board on Professional Responsibility, 430 E Street, NW, Suite 138, Washington, D.C. 20001, email casemanager@dcbpr.org and Jenali Lowery, Asst. Disciplinary Counsel, 515 5th Street, NW, Room 117, Washington, D.C. 20001, email lowery,j@dcodc.org, this January 29, 2026.

/s/ *Patrick G. Merkle*