

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GMAC BANK, a Utah Industrial Bank,)	
)	CIVIL ACTION
Plaintiff,)	
)	
vs.)	No. 06 CV 5291
)	
HTFC CORPORATION,)	
)	
Defendant.)	

**REPLY MEMORANDUM OF JOSEPH R. ZICCARDI, ESQUIRE,
IN FURTHER SUPPORT OF HIS MOTION FOR RECONSIDERATION**

Joseph R. Ziccardi, Esquire, *pro se*, hereby submits this Reply Memorandum In Further Support Of His Motion For Reconsideration pursuant to the Federal Rules of Civil Procedure and other applicable law.

I. INTRODUCTION

Of all of the statements made by Aaron Wider during the two days of his deposition testimony, there is one subject on which he was conclusively and indisputably wrong: the intelligence of GMAC’s lead counsel. No one can credibly deny that Mr. Bodzin is a brilliant legal strategist whose litigation savvy is likely unparalleled in any jurisdiction. Unfortunately for defendant HTFC, Mr. Wider took every inch of the twelve hours worth of “rope” that was handed to him and successfully hanged himself with it.

Now heading for the gallows right behind Mr. Wider is defense counsel, Joseph Ziccardi, an honorable but mild-mannered attorney with a modest practice and an impeccable ethical record maintained throughout his nearly fifteen years practicing law – until now. Ziccardi now finds himself in the unenviable position of having lost a case, lost a client, and most important,

lost the ability to honestly state that “no one has ever called into question” his professional conduct.

This might all be palatable to Ziccardi if only it were not so unjust. In a situation where, as here, neither the facts nor the law have been found or applied in accordance with the mandates of the Constitution that Ziccardi swore to uphold, acceptance of one’s fate is counter-intuitive to the well-educated and ethical lawyer. Nevertheless, Ziccardi holds out hope that the system that he has dutifully served for most of his adult life and the principles that he has defended on behalf of numerous needy clients will not fail him now.

II. STATEMENT OF THE FACTS¹

Deficient Notice

GMAC attempts to refute Ziccardi’s Due Process argument by falsely quoting the sentence that encapsulates Ziccardi’s main point with regard to lack of proper notice. GMAC blatantly lies that, “Ziccardi claims he never had ‘any indication that this Court was considering imposing sanctions upon him.’” (GMAC Response, p. 1.) GMAC then purports to cite to the place in Ziccardi’s Memorandum In Support Of His Motion For Reconsideration (“Memorandum”) where the quoted statement allegedly appears. (GMAC Response, p.1, fn. 1.) Ziccardi has never made any such claim. The complete sentence appearing on page 8 of Ziccardi’s Memorandum reads: “At no time did Ziccardi have any indication that the Court was considering imposing sanctions *upon him by means of either FRCP 30 or FRCP 37.*” (Italicized emphasis in original; underlined emphasis added.) By omitting the latter part of that sentence, GMAC lays the foundation for its utter misrepresentation of Ziccardi’s entire Due Process argument.

¹ In this section, Ziccardi will only address some of the facts that GMAC has falsely stated, mischaracterized, and/or omitted from its Response.

It is beyond dispute and the record clearly demonstrates that prior to this Court's February 29, 2008, Memorandum Opinion and Order ("Opinion"), Ziccardi had absolutely no notice that the Court was considering imposing a sanction upon him under the Federal Rules of Civil Procedure. Of course, all parties and counsel had notice that the Court was considering imposing sanctions upon Wider pursuant to the Federal Rules of Civil Procedure. GMAC now attempts to confuse and misrepresent the facts by citing to and quoting from the content of notices that were given to Wider (as to his conduct, the rules implicated thereby, and potential sanctions being considered) as having applied to Ziccardi (as to Ziccardi's conduct, the rules implicated thereby, and the potential sanctions being considered).

Each time that the Court addressed the issue of sanctions arising out of the conduct that occurred during both sessions of Wider's deposition, it clearly delineated between Wider's conduct, the rules that the Court believed were implicated by Wider's conduct, and the potential sanctions that Wider might face as a result of having violated those particular rules, on the one hand, and Ziccardi's conduct, the rules that the Court believed were implicated by Ziccardi's conduct, and the potential sanctions that Ziccardi might face as a result of having violated those particular rules, on the other hand. This argument and the facts that support it are stated at pages 8-9 of the Memorandum. Moreover, at no time prior to February 29, 2008, did Ziccardi have any indication that the Court was considering imposing liability on him for Wider's conduct.

There were three particular occasions on which the Court provided expressed, specific notice to Ziccardi of the conduct (by Ziccardi) that the Court was concerned with, the rules that the Court believed had been implicated by Ziccardi's conduct, and the potential sanction(s) that the Court was considering imposing upon Ziccardi in the event that the Court found that Ziccardi's conduct had violated those particular rules. The Court's first notice was provided

during the telephone conference that occurred on the morning of December 7, 2007; the Court's second notice was provided later that same day in the Rule To Show Cause that the Court issued against Ziccardi; and the Court's third and final notice was provided to Ziccardi on December 21, 2007, at the hearing held on the Rule To Show Cause, where the Court stated:

Now, Mr. Ziccardi, there are a number of rules of professional conduct which I think are implicated. And I do not doubt that off the record you made every effort, you don't have to go into that. I'm limiting myself to what is apparent on the record, including whether the lawyers shall not engage in conduct intended to disrupt the tribunal, that includes a deposition, that's Rule of Professional Conduct 3.5, Comment 5. It also involves attempts to unlawfully obstruct another party's access to evidence, including obstructive tactics in the discovery process, that's Professional Conduct Rule 3.4, Comment 1. There are – Rule 3 requires a lawyer to take reasonable remedial measures if a lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

The point here is that, if the conduct is not appropriate conduct and it is attempting to obstruct the administration of justice, a lawyer can't just sit idly by and allow the conduct to proceed any more than if a person is testifying falsely you can allow perjurious testimony to go forward. This conduct, particularly the level of hostility, profanity and obscenities, have nothing to do with the case. You can't sit idly by and allow that to happen and, if the client continues to do it, then you have to withdraw. You can't just sit there and allow this to happen.

Transcript of Hearing held on December 21, 2007, p. 13, line 18 to p. 14, line 16.

Toward the end of that hearing, the Court summarized its concerns and reiterated its "notice" as to each respondent, first Wider then Ziccardi. After concluding its discussion as to Wider's conduct, the Federal Rules of Civil Procedure that had been implicated by Wider's conduct, and the form of sanctions that the Court was considering imposing on Wider, the Court then separately addressed Ziccardi's conduct, the rules that the Court believed had been

implicated by Ziccardi's conduct, and the form of sanction that the Court was considering imposing on Ziccardi, stating:

Concerning the rule to show cause, that also implicates, as I have now said on at least two occasions, the role of counsel during the course of depositions. And I had identified previously in the rule to show cause Pennsylvania Rule of Professional Conduct 3.4 or 3.5, 8.4, and as well as 3.2 and 3.3. Under those rules, if found to have been violated, the Court may consider directing that counsel take further continuing education and remedial education in the area, pay a financial sanction, the Court may revoke the pro hac vice admission and, ultimately and most seriously, refer the matter to the disciplinary board.

Transcript of Hearing held on December 21, 2007, p. 18, lines 14-24.

At no time prior to February 29, 2008, did the Court ever indicate that it was considering imposing sanctions on Ziccardi for violation of the Federal Rules of Civil Procedure. To the contrary, the Court consistently referred to Ziccardi's conduct in terms of how the Court believed that conduct may have implicated certain Rules of Professional Conduct. Nor did the Court ever indicate that it was considering imposing sanctions on Ziccardi for Wider's conduct. To the contrary, the Court's statements indicate that it was, at least at that time, concerned with Ziccardi's conduct insofar as he neglected to adjourn the deposition and withdraw from the representation of defendant HTFC, in the face of Wider's conduct.

Meaningless Opportunities To Be Heard

By misquoting and utterly mischaracterizing that portion of Ziccardi's Due Process argument that demonstrates the insufficiency of the notice that Ziccardi received, GMAC is able to avoid that portion of Ziccardi's Due Process argument that demonstrates that each of the so-called "opportunities to be heard" were meaningless. At each of those "multiple opportunities to be heard" (GMAC Response at p. 2), Ziccardi directed his arguments to the issues contained in the deficient "notice" (e.g., whether the Rules of Professional Conduct had been violated,

whether he could have and should have adjourned the deposition and moved to withdraw from the representation of HTFC). Significantly, the choices that Ziccardi made with regard to certain proceedings and submissions – whether to be separately represented by counsel, whether to offer testimony or evidence on his behalf, which issues to address in his supplemental brief – were based entirely on the notice that was provided to Ziccardi by the Court and on the Court’s statements.

For example, GMAC both criticizes and relies on the fact that Ziccardi chose not to present certain evidence at the December 21, 2007 hearing. However, it ignores the fact that at that hearing, the Court explicitly stated:

Now, Mr. Ziccardi, there are a number of rules of professional conduct which I think are implicated. And I do not doubt that off the record you made every effort, you don’t have to go into that. I’m limiting myself to what is apparent on the record[.]

Transcript of Hearing held on December 21, 2007, p. 13, lines 18-22. As discussed more fully below, that statement caused Ziccardi to do – and refrain from doing – numerous things that GMAC now both criticizes Ziccardi for and relies upon in making its arguments.

Newly Available Evidence

GMAC disingenuously argues that the evidence offered by Ziccardi is not “newly available,” essentially because nothing has changed since the December 21, 2007 hearing. (See GMAC Response at p. 2, fn. 2.) In order to facilitate that argument, GMAC first dismisses the fact that Ziccardi has moved to withdraw as counsel for defendant HTFC. More important, GMAC omits completely (by way of another incomplete quote to Ziccardi’s Memorandum) the fact that “Wider has consented to disclosure of the statements set forth in [Ziccardi’s Affidavit].” (Memorandum at p. 10, fn. 6.) Absent Wider’s consent (or other circumstances that had not yet

occurred as of December 21, 2007), Ziccardi was duty bound not to disclose certain information contained in his Affidavit pursuant to Rule 1.6 of the Rules of Professional Conduct.

Equally misleading is GMAC's statement that, "[E]ven if considered, the Affidavits do not change the conduct of [Wider] and Ziccardi that was observed by this Court in hours of videotaped deposition testimony." (GMAC Response at p. 2.) First, while the Affidavits do not "change" the conduct, they do serve to correct certain erroneous factual findings that the Court and that Ziccardi never had an opportunity to address (e.g., the findings that Ziccardi "snickered" at Wider's conduct or "dared" opposing counsel to do anything). Second, the Affidavits largely address what occurred off the record, another issue on which Ziccardi was deprived of a meaningful opportunity to be heard because of the insufficient notice and the Court's statement to Ziccardi that, "[I] do not doubt that off the record you made every effort, you don't have to go into that. I'm limiting myself to what is apparent on the record[.]" Transcript of Hearing held on December 21, 2007, p. 13, lines 19-22 (emphasis added).

Character Assassination

Equally false as to Ziccardi is GMAC's statement that, "Neither Wider nor Ziccardi apologized or offered any explanation for their conduct." (Response at p. 4.) That is simply not true. At the December 21, 2007 hearing, after agreeing with the Court that Wider's conduct was wholly unacceptable and has no place in the legal system, Ziccardi declared that he "tried to correct it and did what he could to correct it" when the Court interrupted and asked, "And, when you failed, that's - - what did you do?" (Transcript of Hearing held on December 21, 2007, p. 14, lines 21-22.) Ziccardi went on to explain generally his efforts and his overall goal with regard to Wider's deposition (*id.* at pp. 14-16), and then specifically stated, "If that was improper

- - and I didn't think it was and I thought I did what I could - - if that was improper, then I do apologize[.]" (Id. at p. 16, lines 305.) (Emphasis added.)

Further, in his Affidavit Ziccardi plainly states:

Following the termination of the deposition, I apologized to plaintiff's counsel, Bob Bodzin, for Mr. Wider's conduct and for the time that was spent by all parties in an effort to complete the deposition without success. Mr. Bodzin replied, "My comments were not directed at you," and that he knew Mr. Wider's conduct was the issue, and he would pursue the matter with the Court.

Ziccardi Affidavit, ¶23. Significantly, although GMAC's counsel, Mr. Bodzin, was present and therefore has personal knowledge of most of the events giving rise to these issues, he has not submitted his own Affidavit denying Ziccardi's statements, nor does GMAC even argue that the statements contained in Ziccardi's Affidavit are false.

Nor is it true that Ziccardi "presented a disingenuous argument that showed little remorse and aggravated, rather than mitigated, the severity of Wider's and Ziccardi's conduct." (Response at p. 4.) That accusation obviously refers to Ziccardi's statements at the December 21, 2007 hearing relating to Wider's conduct, in which Ziccardi attempted to explain that Wider interpreted some of the deposition questions as "provocative." Contrary to Mr. Bodzin's statements in response during the hearing, and contrary to GMAC's arguments since then, at no time did Ziccardi ever state that the questions were, in fact, provocative. He was attempting to explain Wider's overreaction to seemingly benign questions, and he did so by explaining Wider's interpretation of certain questions. Moreover, Ziccardi never asserted that Wider's inaccurate interpretation in any way excused Wider's behavior; only that it provided a partial explanation for some of it. (Transcript of Hearing held on December 21, 2007, p. 5, lines 9-22.)

The most egregious mischaracterization of all, however, is the one that is implicit – rather than explicit – and pervasive throughout GMAC's Response and throughout the Court's

Memorandum Opinion and Order. That is the suggestion or assumption that Ziccardi is inseparable and indistinguishable from Wider. If the rule is that we, as lawyers, are our clients' keepers, equally chargeable with and for every aspect of their conduct throughout the course of litigation, that we are further underwriters and guarantors of any liability they may incur therein – if that is the rule, it will have a chilling effect on the integrity and fundamental principles that currently (presumably) underlie and comprise the American legal system.

III. ARGUMENT

A. Applicable Legal Standards

It is well settled that reconsideration should be entertained when one of the following three factors is present: “(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the Order was entered; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.” North River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995). GMAC argues that, “None of these factors are presented by Ziccardi’s Motion.” (GMAC Response at p. 7.) As set forth more fully herein, Ziccardi has demonstrated the existence of newly available evidence, at least one clear error of law, and numerous clear errors of fact. In the absence of reconsideration, these errors will result in manifest injustice.

GMAC presented this legal standard under the heading “Applicable Legal Standing.” (GMAC Response at p. 7.) (Emphasis added.) Perhaps that nomenclature was a sort of Freudian slip, as Ziccardi questions GMAC’s standing to assert for the first time here most of the

arguments that it asserts.² At no time prior to Ziccardi's Motion For Reconsideration did GMAC take any position criticizing Ziccardi's conduct in connection with Wider's deposition. In fact, at the December 21, 2007, hearing, counsel for GMAC, Mr. Bodzin, specifically stated:

Your Honor, in our motion we did not address Mr. Ziccardi's conduct. I feel a bit conflicted in that I don't have a position with respect to Mr. Ziccardi's conduct other than I am trying to zealously represent my client, which means getting a prompt adjudication of this case. So I am certainly not in favor of anything that will delay the adjudication of this case. I think the record speaks for itself as to what Mr. Ziccardi could or could not have done. I would like to tell the Court though that outside of the deposition itself that for the most part Mr. Ziccardi has acted in a professional and courteous way in my dealings with him. I guess my concern is that, if Mr. Ziccardi continues to represent Mr. Wider, whether, with good intentions or not, he's going to have any ability to influence Mr. Wider in his conduct going forward.

Transcript of Hearing held on December 21, 2007, p. 16, line 18 to p. 17, line 7.

Ziccardi questions whether, at this late date, GMAC can now raise an objection to conduct that occurred during deposition sessions that took place four and five months ago. While GMAC styles its objections in the form of arguments opposing Ziccardi's Motion For Reconsideration, they appear to be objections that should have been timely raised as required by the Federal Rules of Civil Procedure as they are objections that are asserted pursuant to the Federal Rules of Civil Procedure. Thus, at a minimum, GMAC's entire Response appears to be an untimely objection to a purported discovery violation. Moreover, because GMAC's Motion To Compel was not asserted against Ziccardi nor did GMAC seek sanctions against Ziccardi in connection with its Motion To Compel, it would appear that it lacks standing to argue in support of sanctions that the Court, sua sponte, imposed.

² Ziccardi recognizes that GMAC has standing to argue the issue of the calculation and substantiation (or lack thereof) of its claimed attorneys' fees, although he maintains that GMAC lacks standing to seek to recover those fees from Ziccardi for the first time here.

B. Due Process

Insufficient Notice

GMAC completely ignores the well-settled law cited in Ziccardi's Memorandum and holding that Due Process requires that an attorney be given particularized notice of the "precise sanctioning tool" that the Court intends to employ. (Memorandum at pp. 7-9.) The facts, as they appear in the record, clearly demonstrate that Ziccardi was given notice only that the Court intended to employ one or more of certain Rules of Professional Conduct. However, in its Memorandum Opinion and Order, the Court employed Federal Rules of Civil Procedure 30 and 37 as its sanctioning tools against Ziccardi. This is a clear violation of Due Process.

The "notice" that Ziccardi received is fully set forth above and in the Memorandum and there is no need to repeat it here. What does bear repeating, however, is the Court's statement to Ziccardi that: **"[I] do not doubt that off the record you made every effort, you don't have to go into that. I'm limiting myself to what is apparent on the record[.]"** (Transcript of Hearing held on December 21, 2007, p. 13, lines 19-22.) (Emphasis added.) That statement and the significance of those two sentences cannot be understated.

First, the Court's instruction that Ziccardi need not to "go into" what occurred "off the record," and the Court's statement that it was "limiting" itself to an examination of "what is apparent on the record," caused Ziccardi to reasonably believe that he need not address many of the facts that are now presented in the three Affidavits submitted in support of the Motion to Reconsider. Confining his commentary to what occurred on the record, Ziccardi would not have addressed the alleged "snicker" because he knew that he was not the one who had snickered and he knew that Mr. Bodzin's comment regarding the same had not been addressed at him (Ziccardi). Nor would Ziccardi have addressed any alleged "dare" because he knew that his

comment was not a dare. Nor would he have addressed any alleged “improper instruction” not to answer questions because he knew that the Motion To Compel had not been directed at him and he knew that, under no circumstance, did a direction not to answer two questions (assuming arguendo that those instructions were improper) give rise to either the filing of the Motion To Compel or the claim for in excess of \$30,000.00 in attorneys’ fees. In fact, both the Court and GMAC acknowledged that, “Even where Ziccardi directed the witness to answer, he failed to do so.”

Given the Court’s statements, at the conclusion of the December 21, 2007 hearing, Ziccardi was left with the impression and reasonable beliefs that:

1. The Court believed that Ziccardi had “made every effort off the record” and knew that Ziccardi did everything that he could think of to try to control Wider and Wider’s behavior;
2. The Court believed that Ziccardi should have admonished Wider on the record;
3. The Court believed that the Rules of Professional Conduct mandated Ziccardi’s withdrawal after his efforts to curb Wider’s conduct failed; and
4. GMAC was not taking a position adverse to Ziccardi with regard to Ziccardi’s conduct at the two deposition sessions.

Opportunities To Be Heard

Based on those reasonable beliefs and due to the “notice” that Ziccardi received from the Court, his “opportunity to be heard” by way of the supplemental brief (filed January 3, 2008) focused exclusively on: the Rules of Professional Conduct cited by the Court, as well as Rule 1.6 concerning confidentiality (attempting to explain why Ziccardi did not admonish Wider on the record, an argument wholly misunderstood or misinterpreted by the Court in its Memorandum Opinion); Rules relating to mandatory and permissive withdrawal and a discussion of why Ziccardi could not have withdrawn in conformity with the Rules at that point.

Ziccardi believed then, and still believes now, that the Federal Rules of Civil Procedure do not authorize the lawyer defending a deposition to terminate or adjourn the deposition in the absence of harassment or improper conduct by the lawyer conducting the deposition. See, Hearst/ABC-Viacom Entertainment Services v. Goodway Marketing, Inc., 145 F.R.D. 59 (E.D. Pa. 1992).³

Nor is the Court's analogy to the situation "where client is offering false testimony" supported by the Rules or the case law. In the false testimony situation, the rules contain a specific exception for the disclosure of perjury such that the Rules do not merely authorize that disclosure, they require it. Even in that situation, the lawyer must first know that the testimony is false. Then, the lawyer must attempt to dissuade the client from proffering the false testimony. Finally, if the client persists, the lawyer's duty to prevent and disclose fraud upon the court mandates that the lawyer act adverse to his client's interest. See, Nix v. Whiteside (475 U.S. 157, 106 S.Ct. 988 (1986)).

Most significantly, when the Court told Ziccardi that it had "no doubt" that off the record, Ziccardi made every effort, it vitiated any purported notice that the Court was considering or remotely believed that Ziccardi had acted in bad faith. The Court's purported finding of "bad faith" can not be reconciled with its assurance to Ziccardi that it had "no doubt"

³ While the issuance of an order terminating a deposition is a matter within the sound discretion of the court, "the power to halt or limit examination is sparingly used." 4A J. Moore, J. Lucas, Moore's Federal Practice ¶ 40.61 (2d ed. 1991). To obtain a protective order under Rule 30(d), "the moving party must show that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the witness or party. Unless a sufficient showing of these grounds are made the motion will be denied." 8 C. Wright & A. Miller, Federal Practice and Procedure § 2116, at 428 (1970). Moreover, as one commentator has warned, an objecting party who demands the termination of a deposition "may subject himself to costs and reasonable expenses, which may be considerable where the taking of the deposition has ceased upon demand, if the court finds that his motion for a protective order has no substantial basis." 4A J. Moore, J. Lucas, Moore's Federal Practice ¶ 40.61 (2d ed. 1991).

that Ziccardi made every effort. Nor can the Court's statement be reconciled with a finding that any violation by Ziccardi was "willful" or that he "advised the conduct" as the Court found. Ziccardi had no notice – in fact he had notice to the contrary – that the Court was considering his silence on the record as tantamount to "endorsement" or "ratification" of Wider's conduct. This is so particularly where, as here, the Court effectively precluded him from offering evidence as to what occurred off the record.

If Ziccardi had known then (as Due Process requires), what he knows now, he certainly would have made different choices as to how to effectively use his "opportunities to be heard."

C. Policy Concerns

GMAC implies that Ziccardi does not understand the serious nature of this matter. Nothing could be farther from the truth. Perhaps no one appreciates the serious nature of this matter more than Ziccardi does.

Ziccardi understands and appreciates, as he has from the outset, the serious nature of this matter. For lawyers, orders imposing sanctions go beyond the mere monetary penalty. In Simmerman v. Corino, 27 F.3d 58 (3d Cir. 1994), the U.S. Court of Appeals for the Third Circuit recognized that the impact of attorney sanctions goes beyond the dollar amount and acts "as a symbolic statement about the quality and integrity of an attorney's work – a statement which may have tangible effect upon the attorney's career." Id. at 64. One year later, the court again recognized that "the dollar amounts of the sanctions imposed and the potential liability for the unquantified sanction are insignificant in comparison to their stigmatic effect." Martin v. Brown, 63 F.3d 1252, 1260 (3d Cir. 1995).

D. GMAC Presents No Evidence That Might Substantiate The Amount Of Costs And Attorneys' Fees Claimed

As set forth more specifically in Ziccardi's Memorandum of Law in Support of his Motion for Reconsideration, the party seeking attorneys' fees has the burden of establishing the reasonableness of the fees by submitting evidence supporting the hours worked and the rates claimed. Apple Corps Limited, MPL v. International Collectors Society, 25 F.Supp.2d 480, 485 (D.N.J. 1998). To sustain that burden, GMAC must provide specific information establishing the hours devoted to certain tasks to allow the Court to determine the reasonableness of the time spent and fees sought. Id. GMAC fails to sustain its burden in this regard, as the conclusory and vague statements in the affidavits of GMAC's counsel did not provide this Court with the requisite specificity to ascertain how the time was spent, or whether it was reasonably expended on this matter.

Without any citation to any authority whatsoever, GMAC simply asserts that the affidavits submitted were specific as to the "time spent on matters involved, the rates of each billing lawyer, and the reasonableness of the legal fees." Nor does GMAC distinguish, or even attempt to distinguish, the cases cited by Ziccardi, which mandate the specificity required for an award of attorneys' fees. As the case law establishes, the conclusory attestations of GMAC's counsel in their affidavits are insufficient to support the amount of attorney's fees awarded. Accordingly, the award of sanctions in amounts equal to the claimed fees should be vacated.

GMAC further asserts that Ziccardi had ample time to question any aspect of the fees but chose not to do so. GMAC's argument ignores the fact that there was no reason for Ziccardi to request clarification or further information because Ziccardi, as set forth more fully above, had no notice that this Court was considering imposing sanctions on him as measured by the amount of GMAC's attorneys' fees and costs. To the contrary, Ziccardi's only notice prior to the hearing

was the Rule to Show Cause why he should not be sanctioned for conduct that the Court believed may have violated certain Rules of Professional Conduct. While Ziccardi did have notice that, if the Court were to find that he had violated any of those Rules, the Court would consider whether some sort of “financial penalty” (among other possible remedies) should be imposed, he never had any indication whatsoever that GMAC – or anyone – would seek to impose on him nearly \$30,000.00 worth of alleged costs and attorneys’ fees as a sanction. As GMAC well knows, its “fee petition” was submitted in connection with its Motion To Compel, which was directed at Wider’s conduct, not the conduct of Ziccardi.

V. CONCLUSION

For each and all of the foregoing reasons, and for each and all of the reasons set forth in Ziccardi’s Motion for Reconsideration and his Memorandum Of Law In Support Of His Motion For Reconsideration, Ziccardi’s Motion For Reconsideration should be granted.

Respectfully submitted,

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