

**New York City Department of Investigation
Bureau of City Marshals**

To: File

Date: November 7, 2019

**From: Floralba Paulino
Chief Investigative Auditor**

**Case Number: 17-14351
Case Name: Barbarovich Levies**

CLOSING MEMORANDUM

The following is a summary only of information pertaining to this investigation and may not contain each and every fact learned during the course of this investigation.

ORIGIN OF CASE

Barbarovich was appointed as a City Marshal on November 1, 2013, to the balance of a five year term that expired on December 7, 2014. Barbarovich has been a hold over on his badge since then.

On December 18, 2017, DOI received a complaint, via email, from an attorney representing various judgment debtors (the "Complainant").

The Complainant continuously called and forwarded various complaints to DOI throughout 2018.

NATURE OF ALLEGATION

The Complainant alleged that City Marshal Vadim Barbarovich had exceeded his judgment enforcement authority by serving levies outside of his jurisdictional boundaries, the City of New York. The Complainant initially provided DOI with the following Court Index Numbers: 034638/2016 and 507304/2017. Also included in the Complainant package was a property execution case belonging to another City Marshal (See DOI Case #18-03402).

The Complainant explained that his firm represents several small businesses and his firm is working to overturn judgments entered against the businesses in counties throughout New York State. He said that these judgments are entered by confession, without notice to his clients, and without an opportunity to dispute the underlying allegations. His contention was that the judgments were wrongfully entered to enforce disguised loans that charged interest rates often exceeding 200% and, as a result, the loans were not enforceable.

RESULTS OF INVESTIGATION

On January 31, 2018, DOI investigators visited Marshal Barbarovich's office to audit and review the Marshal's Docket pages for case Index Numbers 034638/2016 and 507304/2017

mentioned above. The Marshal's office manager provided DOI with the records and they revealed the following:

Index No. 034638/2016, Docket Page No. E1211

- On November 4, 2016, a levy was served on a Santander Bank Branch located at 961 Kings Highway, Brooklyn, NY. The levy contained signature, verifying personal service and receipt by the Retail Banking Branch Manager III.
- The Marshal's records reflect that he personally served the bank levy within his jurisdiction.

Index No. 507304/2017, Docket Page No. E3263

- The case file reflects that 19 bank levies were prepared for this case. 14 of these levies were mailed outside of NYC, one was personally served in NYC, one was mailed to a NYC location, two were faxed to unknown locations and one was served by an unknown method.
- Marshal Barbarovich's records for this case show that he served levies outside of his jurisdiction on at least 14 instances.

For further review and examination, DOI requested a list of all cases the Marshal had received between July 1, 2017 and January 30, 2018 from a particular creditor's attorney. The search yielded 28 property execution cases, including the case under Index No. 507304/2017 mentioned above. All 28 cases had the same creditor, Premier Capital Funding.

DOI obtained copies of the Marshal's Docket pages for the remaining 27 property execution cases. A review of those records revealed that a total of 88 levies were prepared and served. 14 were served in person in New York City locations, 8 were mailed to New York City locations, 33 were mailed outside of New York City, 4 were faxed to a New York City number, 22 were faxed to unknown locations, and 7 were served by unknown methods.

On May 9, 2018, DOI investigators interviewed Marshal Barbarovich regarding the findings of the preliminary review and audit. Prior to the interview, DOI investigators informed Marshal Barbarovich that the interview would relate to the 28 cases reviewed. Nonetheless, the Marshal was unprepared and unable to answer specific questions with much detail or to provide any documentation regarding those cases. DOI advised the Marshal that his case files showed that he had served levies outside of his jurisdiction, by mail or fax, and that his files did not have any documented proof of personal service within NYC for any of the levies that he had mailed or faxed outside of NYC. The Marshal explained that the files should contain documentation proving that he had personally served at CSC, CT, or National Corporate Research, all NYC based registered agents for the banks and entities he had served. According to the Marshal, "time is of the essence," and as a courtesy to his client, he mailed or faxed to non-NYC locations but only after having personally served the levies on the NYC based registered agents. Such "courtesy" service is permitted provided it is preceded by lawful personal service. The Marshal agreed to review his files and provide DOI with proof that he personally served the levies within NYC.

DOI provided Marshal Barbarovich with a detailed spreadsheet, listing the 28 case files reviewed, including the methods and locations of 107 levies served as reflected in his case files. On May 14, 2018, Marshal Barbarovich returned the spreadsheet to DOI. The spreadsheet he

submitted contained an additional column he had added, named "Location Marshal Served," and within this column the Marshal indicated that he had personally served 95 levies on CSC, CT or National Corporate Research.

On August 8, 2018, a DOI Investigator telephoned Marshal Barbarovich and asked the Marshal on what basis he had updated the spreadsheet to indicate that each of the levies had been personally served on a registered agent. The Marshal responded that the information he supplied on the spreadsheet was from his recollection because he only serves CT or CSC. He said he usually serves CT or CSC with 20-30 levies at a time and that he writes the personal service information on the copy of the first levy, he then returns to his office and his staff members are responsible for entering the information of personal service onto each copy of the levies served that day. He said his employees were not doing it right, but after DOI's January 2018 visit, his staff is documenting every levy he personally serves.

Additional Marshal Files Reviewed (Not on Spreadsheet)

On April 30, 2018, Barbarovich's office informed DOI that he had been sued for serving outside of his jurisdiction (Docket Page No. E1056). The Marshal was asked to bring the case file to his May 9, 2018 interview. Upon review, the case file showed that on October 3, 2016, the Marshal received the case from the creditor's attorney. 6 levies were prepared and served as follows: 2 levies were mailed outside NYC, 3 levies were faxed to unknown locations and 1 was served by an unknown method. The judgment amount of \$980,184.64 included fees and poundage, and the case remains unsatisfied. The lawsuit is pending as of this writing.

On October 2018, Bloomberg News requested information regarding one of Marshal Barbarovich's cases (Docket Page No. E6586). DOI requested the file from Marshal Barbarovich's office. The review of the file showed that the Marshal received the case on July 10, 2018 from the creditor's attorney. The file indicated that the Marshal prepared a levy for Branch Banking and Trust Co. c/o CT Corporation and served it in person at 111 Eighth Avenue, 13th Floor, New York, NY 10011. The copy of the levy has a received stamp dated July 12, 2018, and was signed for by an employee of CT Corp. The judgment was for \$9,579.95, the Marshal received a check from Branch Banking for \$9,000 and he distributed the funds.

Further Review

NYS Department of State

On May 15, 2018, a DOI Investigator called CT Corp at (212) 894-8940, and spoke with an unidentified female. On July 18, 2018, a DOI Investigator called CSC at (212) 299-9100, and spoke with a female named [REDACTED]. Both women advised that if an entity has a registered agent authorized to accept legal process in New York State, the entity and its registered agent would be listed on the NYS Department of State's website. As of May 14, October 29, and December 5, 2018, that website showed that the following entities did not have a registered agent in New York City: 1) AGS Trucking LLC; 2) Bizdoc Consulting LLC.; 3) Boston Private Bank; 4) Bridgehampton National Bank; 5) Comenity Bank; 6) Community State Bank; 7) EBCO General Contractor LTD; 8) First Common Bank; 9) J&H Electronic LLC; 10) New Jersey Community Bank; 11) NRG Solution, LLC; 12) Origin Bank; 13) Pinebrook Manor Apartments 14) Summit Electric Supply; and 15) Suntrust Bank.

According to the Marshal's spreadsheet submission to DOI, he served levies for each of those entities in person at either CT or CSC.

Employees' Interviews

On March 6, 2019, DOI interviewed two of Marshal Barbarovich's employees.

The first witness, an administrative assistant in Marshal Barbarovich's office, has worked for the Marshal since 2014. He is responsible for dealing with booting and towing, and income and property execution cases. In sum, the witness stated that he prepares levies for mailing, faxing or to give to the Marshal for personal service. He explained that some banks prefer receiving levies by email or fax. He added that levies were always personally served and then he would follow-up with also faxing or emailing the levies. He further explained that, starting a few months back, levies are now being hand served only. When DOI Investigators confronted the witness with the fact that the marshal's files did not contain proof of personal service for many of the levies, the witness maintained that all levies were served personally and that the proof should be in the files.

The second witness, a clerical employee in Marshal Barbarovich's office, has worked for the Marshal since March 2017. His responsibilities are to prepare levies and respond to attorneys. The witness said that when he receives a case he enters the information in the Intellitech computer system, confirms with attorneys, and prints the levies. The witness stated that certain banks prefer service in certain ways, some requiring the use of a secured internet portal so as to avoid personal service and have service directly forwarded to the legal unit. In the past, they would mail or fax at the bank's request. The witness noted Fidelity as an institution that refused to accept service in person and directed the Marshal to send service to their main office in Ohio by mail or fax. According to the witness, beginning around the middle of 2018, the Marshal stated that all levies had to be served by hand.

Both witnesses said that as of March 6, 2019, all levies were currently served in person and that most of the levies are served at CT Corp. Both employees acknowledged that the marshal's jurisdiction is the City of New York and confirmed that there was a Marshals Handbook available in the office for review.

Pole Camera – Installed on March 1, 2019, at CSC, 1180 Avenue of The Americas

Marshal Barbarovich's Diary and surveillance recording were compared for the period of March 11-15, March 18-21, and March 25-29, 2019. One discrepancy was found. The Marshal's Diary for March 22, 2019, shows that he went to CSC at 1180 Avenue of the Americas to serve a levy for TD Bank, however, the surveillance recording does not show the Marshal at that location on that date and at the specified time. DOI inquired and the Marshal provided proof that he served a TD Bank located in Brooklyn. It was brought to the Marshal's attention that his Diary has to be accurate and the Diary entry was updated. According to Marshal Barbarovich's office manager, banks and entities are coded in their computer system with the address where the entity is typically served. She wrote that TD is typically served at CSC and that the reason why the Marshal served in Brooklyn was because "the Marshal had already left CSC in Manhattan and was in Brooklyn". She explained that she discussed the matter with the Marshal and the procedures were changed in the computer so that the computer entries will now reflect the address the Marshal actually serves. The failure to maintain an accurate Diary is a violation of

the New York City Marshals Handbook of Regulations, Chapter 1, Section 1-10: Duty to Maintain Accurate Records.

DOI's Subpoena for Information Regarding Levies Allegedly Served on CSC

According to the Marshal's spreadsheet submission to DOI, he personally served 50 levies at CSC during the periods of October 3 through October 5, 2016, and July 17, 2017 through January 15, 2018.

On March 25, 2019, DOI subpoenaed CSC for information on the service of levies by the Marshal during those periods. According to CSC's response to the subpoena, Marshal Barbarovich served two subpoenas at CSC by certified mail (Docket #s E4162 and E4241), one to a location in Albany and the other to a location in Delaware, respectively. CSC did not have any record of having received the remaining 48 levies, by personal service or otherwise. According to the Marshal's files and subpoena records, the 48 levies were served as follows: 40 were mailed outside a New York City location, 4 were faxed to unknown locations, 1 was emailed to an unknown location and 3 were served by unknown methods. Marshal Barbarovich collected \$18,490.97 on 5 out of the 50 levies served. The total fees and poundage earned by the Marshal for enforcing those levies was \$1,628.26.

The Marshal's spreadsheet submission to DOI indicated that one of the levies he personally served on CSC was for First Data Corporation in Docket # E4109. In response to a subpoena, First Data Corporation indicated that the Marshal had served it with that levy via email. First Data Corporation had no record of the levy having been served on CSC.

DOI's Subpoena for Information Regarding Levies Allegedly Served on CT Corp.

According to the Marshal's spreadsheet submission to DOI, he personally served 43 levies at CT Corporation during the periods of October 3 through December 15, 2016 and August 7 through December 5, 2017. On March 26 and May 30, 2019, DOI subpoenaed CT Corporation for information on the service of levies by the Marshal during those periods. CT has not yet responded to the subpoena.

The Marshal's spreadsheet submission to DOI indicated that one of the levies he personally served on CT Corporation was for Branch Banking and Trust in Docket # E4026. In response to a subpoena, BB&T indicated that the Marshal had served it with that levy via email.

The Marshal's spreadsheet submission to DOI indicated that one of the levies he personally served on CT Corporation was for Paymentech LLC in Docket # E4152. In response to a subpoena, Paymentech LLC indicated that the Marshal had served it with that levy via fax.

The Marshal's spreadsheet submission to DOI indicated that two of the levies he personally served on CT Corporation were for Square, Inc., in Docket # E4073 and Docket # 4150. In response to a subpoena, Square, Inc., indicated that the Marshal had served it with those levies via email.

FINDINGS

During the interview on May 9, 2018, the spreadsheet Marshal Barbarovich provided on May 14, 2018, and a phone conversation on August 8, 2018, Marshal Barbarovich informed DOI that he had served each of the 107 levies by personal service, within New York City.

Barbarovich's official records appear to contain contemporaneous proof of personal service for 15 of the 107 levies; Barbarovich's official records do not contain contemporaneous proof of personal service for 92 of the 107 levies.

Barbarovich's files and subpoenaed records for 51 levies show that the levies were served as follows:

- 42 levies served by mail outside of NYC (USPS tracking numbers on record); no documented proof of personal service on file.
- 5 levies faxed to unknown locations and no documented proof of personal service in NYC.
- 4 levies served by emailed and no documented proof of personal service.

Barbarovich's files for the remaining 41 levies show that the levies were served as follows:

- 9 levies served by mail in NYC locations (USPS tracking numbers on record); no documented proof of personal service on file.
- 5 levies served by mail outside of NYC (USPS tracking numbers on record); no documented proof of personal service on file.
- 20 levies faxed to unknown locations and no documented proof of personal service in NYC.
- 4 levies faxed to a NYC number and no documented proof of personal service.
- 3 levies served by unknown methods.

Marshal Barbarovich collected and disbursed \$157,866.07 on 11 out of the 92 levies served. The total fees and poundage earned by the Marshal for enforcing those levies was \$8,930.42. Marshal Barbarovich did not collect money on the remaining 81 levies.

CONCLUSION

Marshal Barbarovich was found in violation of the following rules and regulations as set forth in the New York City Marshals Handbook of Regulations:

- 1) Civil Practice Law and Rules, § 311, New York City Marshal Handbook of Regulations, Chapter II, § 5: Service:

"Service on a corporation must be made according to the provisions of § 311 of the CPLR; that is, by personally serving (in-hand) an officer or other agent of the corporation. Under no circumstances may service be made by mailing a copy of the execution to the corporate garnishee".

Between July 17, 2017 and January 7, 2018, Barbarovich sent at least 51 levies and demands by mail, fax or email to various corporations without making personal service of the levy and demand.

2) Civil Court Act 1504, 1609, New York City Marshal Handbook of Regulations, Chapter II, § 1: Generally:

“A marshal's jurisdiction and authority to serve executions against personal property, as well as all other mandates and processes, extends through and is limited to the geographical boundaries of the City of New York”.

Between July 17, 2017 and January 7, 2018 Barbarovich sent at least 42 levies and demands outside of New York City.

3) New York City Marshal Handbook of Regulations, Chapter XII, § 2-5: Property Execution Docket Record or Book:

“All actions taken in connection with property executions must be recorded in the property execution docket record or book. The information called for on each docket page or in each docket record field must be provided. All entries need to be legible, complete, and must accurately reflect the status of the matter”.

Between July 17, 2017 and January 7, 2018, Barbarovich's official docket records failed to record all relevant actions taken in connection with 92 levies.

4) New York City Marshal Handbook of Regulations, Chapter XII, § 6: Record Retention and Disposal:

The NYC Marshals Records Retention Schedule, located in the Appendix of the Handbook, specifies that the marshal must keep proof of service for property execution cases for five years from the date of the last entry in the record.

Between August 7, 2017 and November 1, 2017, Barbarovich maintained no records regarding the method of service used to process eight levies.

5) New York City Marshals Handbook of Regulations, Chapter I, § 1-10: Duty to Maintain Accurate Records:

“A marshal and his or her employees, contractors and agents, shall make only and truthful entries in all records and documents, including computer records, which relate to the marshal's official activities”.

Barbarovich's official diary entry on March 22, 2019, at 1:52 pm, was not accurate.

6) New York City Marshals Handbook of Regulations, Chapter I, § 1-11 Truthful Statements

“A marshal and the marshal’s employees, contractors, and agents shall provide only truthful and accurate information to the Department of Investigation in all oral and written communications”.

On May 9, 2018, Barbarovich stated to DOI that he had served 107 levies and demands, for 28 cases, by personal service, within New York City. That statement was untruthful. At least 51 of those levies and demands (1) were not served by personal service, (2) were sent outside New York City, or (3) both.

On May 14, 2018, Barbarovich submitted a spreadsheet to DOI purporting to reflect that Barbarovich had properly served 107 levies and demands, by personal service, within New York City. That spreadsheet was untruthful. At least 51 of those levies and demands (1) were not served by personal service, (2) were sent outside New York City, or (3) both.

On August 8, 2018, Barbarovich stated to DOI that the May 14, 2018 spreadsheet was accurate in reflecting that Barbarovich had served each of the 107 levies and demands by personal service in New York City. That statement was untruthful.

7) New York City Marshals Handbook of Regulations, Chapter I, § 1-9(a), (b) Interference with Investigation Prohibited: Cooperation Required

“No person shall prevent, seek to prevent, interfere with, obstruct, or otherwise hinder any study or investigation conducted pursuant to the New York City Charter, Joint Administrative Order 453, or this Handbook”.

From May 9, 2018 until the present, Barbarovich obstructed, hindered and failed to cooperate fully with an investigation by DOI stemming from numerous allegations concerning practices of improper service of levies and demands.

RECOMMENDATIONS

On November 1, 2019, DOI met with Marshal Barbarovich and his attorney Ronald G. Russo at 180 Maiden Lane. DOI informed Marshal Barbarovich that following its investigation, DOI was prepared to charge that (1) between 2017 and 2018, Marshal Barbarovich improperly served levies and demands to various corporations by methods other than personal service as is required; (2) during that same period, Marshal Barbarovich served levies and demands on various corporations outside of the geographical boundaries of his lawful jurisdiction and authority; (3) Between 2017 and 2019 Marshal Barbarovich failed to accurately record and maintain his official records; and (4) from May 9, 2018 through November 1, 2019, Marshal Barbarovich obstructed, hindered, and failed to cooperate fully with DOI’s investigation.

In lieu of pursuing disciplinary charges and termination, DOI agreed to allow Marshal Barbarovich to resign on the following conditions (set forth in a Disciplinary Stipulation dated November 6, 2019): (1) Marshal Barbarovich will submit a letter of resignation, effective March 16, 2020; (2) Marshal Barbarovich will pay to the City \$8,930.42 (an amount representing the total fees and poundage Marshal Barbarovich earned from the 11 levies for which there is no proof of personal service); (3) Marshal Barbarovich commits to a timely and orderly wind down

of his office, winding down all cases by December 31, 2019 and closing out his books and records by March 16, 2020; and (4) Marshal Barbarovich sign three confessions of judgments in the total amount of \$300,000. The confessions of judgment reflect an agreed-upon penalty that DOI has agreed to forego if Marshal Barbarovich adheres to the terms of the Disciplinary Stipulation; the confessions of judgment will be filed only if Marshal Barbarovich fails to meet the obligations set forth in Disciplinary Stipulation.

The confessions of judgments are as follows: (1) Marshal Barbarovich signed a confession of judgment in the amount of \$75,000, in which he agreed to close all his cases by December 31, 2019, and submit a signed Interim Affidavit of Wind Down to DOI on or before January 1, 2020, otherwise the judgment will be enforced; 2) Marshal Barbarovich signed a confession of judgment in the amount of \$75,000, in which he agreed to close all his books, business, and submit to DOI the financial statement package, records, badge, ID and submit a signed Final Affidavit of Wind Down to DOI on or before March 16, 2020, otherwise the judgment will be enforced; and 3) Marshal Barbarovich signed a confession of judgment in the amount of \$150,000, in which he agreed to pay the assessment fees to DOI on or before March 16, 2020, otherwise the judgment will be enforced.

With the above-described actions having been taken, it is recommended that this case be closed as a substantiated.

Submitted by

[Redacted Signature]

Date

11/7/19

**Floralba Paulino, Chief Investigative Auditor
Bureau of City Marshals**

Approved by:

[Redacted Signature]

Date

11/7/19

**Caroline Tang-Alejandro, Director
Bureau of City Marshals**