

CLEMENTE, MUELLER & TOBIA, P.A.

218 Ridgedale Avenue

P.O. Box 1296

Morristown, New Jersey 07962-1296

(973) 455-8008

(PT3885)

Attorneys for Shapiro & Diaz, LLP and Rhondi Lynn Schwartz

U.S. BANKRUPTCY COURT
FILED
NEWARK, NJ

05 DEC 12 PM 4: 27

JAMES J. WALDRON

CLERK
DEPUTY CLERK

In re:

JENNY RIVERA

Debtor.

: **UNITED STATES BANKRUPTCY COURT**
: **FOR THE DISTRICT OF NEW JERSEY**
:
: **Honorable Morris Stern**
:
: **Chapter 13**
:
: **Case No. 01-42625 (MS)**

AFFIDAVIT OF NELSON DIAZ

NELSON DIAZ, of full age, hereby deposed and says:

1. I am an attorney at law of the State of New Jersey and am the managing partner of Shapiro & Diaz LLP. I have personal knowledge of the facts contained in this Affidavit.
2. I submit this Affidavit in response to the various Orders to Show Cause issued by the Court in this matter.
3. The purpose of this Affidavit is to set forth with as much detail as possible facts responsive to the Court's inquiry into the use of pre-signed certification pages by Shapiro & Diaz.
4. The firm of Shapiro & Diaz is owned by two equity partners, Mr. David Kreisman and Mr. Gerald Shapiro.
5. I am not an equity partner in Shapiro & Diaz.
6. I have been employed by Shapiro & Diaz, or a predecessor entity, in various capacities for 13 years.
7. I am currently the managing partner of Shapiro & Diaz.

8. My duties as managing partner include general oversight and responsibility for the management of the firm, supervision of employees and the processing of legal work for clients.
9. Over the years most of my work has been in the area of state court foreclosure proceedings.
10. I have not done bankruptcy related work on a regular basis and not reviewed any bankruptcy pleadings in preparation for filing since approximately 1992, although I have familiarity with the bankruptcy process as a result of handling foreclosure matters which are often affected by bankruptcy filings.
11. Linda Hynes was employed as an attorney by Shapiro & Diaz until approximately July of this year and one of Ms. Hynes responsibilities was the review and execution of bankruptcy motions for relief and ex parte default applications.
12. Ms. Hynes was let go in July 2005, not due to any performance reasons, but as a result of a reduction in staff.
13. Ms. Hynes worked for Shapiro & Diaz for several years and was always a good employee.
14. Rhondi Schwartz has been employed as an attorney for Shapiro & Diaz, or a related predecessor, since 1992.
15. Over the years Ms. Schwartz has had many responsibilities, however, most of her work has been related to the firm's bankruptcy practice.
16. Ms. Schwartz recently took over responsibility for the review and execution of all pleadings filed before the bankruptcy court as a result of Linda Hynes leaving the firm.
- ✓ 17. I have known Mr. Shapiro for many years, but I have never met him personally and only on one or two occasions, have had very brief communications with him.
18. It is my understanding that Mr. Shapiro maintains client relations and does marketing and support functions to assist field counsel like Shapiro & Diaz in obtaining clients to do legal work.
- ✓ 19. I have never had any discussions with Mr. Shapiro about the operation of Shapiro & Diaz.
- ✓ 20. I have never spoken with Mr. Shapiro about how Shapiro & Diaz performs legal work, including but not limited to, the pre-signed certification procedures which are the subject of the Court's inquiry.

21. I have had some interaction with Mr. Kreisman, in connection with the operation of Shapiro & Diaz.
- ✓ 22. However, I have no recollection of having ever discussed the day-to-day operations or specific procedures at Shapiro & Diaz with Mr. Kreisman.
23. Prior to this matter being brought to our attention, I have no recollections of speaking with Mr. Kreisman, regarding the pre-signed certification procedures which are the subject of the Court's inquiry.
24. Neither Mr. Kreisman nor Mr. Shapiro has ever given me any specific directions or orders on how to conduct the New Jersey practice at Shapiro & Diaz.
- ✓ 25. I have no recollection of having ever discussed with either of them the use of any specific legal procedures at Shapiro & Diaz, including the use of pre-signed certifications in support of ex parte applications for relief or motions for relief in bankruptcy court.
- ✓ 26. To the best of my knowledge the pre-signed certification practice has been used by Shapiro & Diaz or its predecessors, for several years.
- ✓ 27. From reviewing our records and discussing the issue with Rhondi Lynn Schwartz, I cannot determine when the pre-signed certifications first began to be used, but it appears that we have been using the pre-signed certifications since at least 2000. I cannot determine with certainty if prior to 2000, pre-signed certifications were being used. I cannot determine by looking at the copy of the certification in our file whether it was a signature page or a contemporaneously executed certification.
28. I was not involved in the implementation of this practice, nor its use, because it appears the practice began prior to the time that I became responsible for the firm and I was not involved with the firm's bankruptcy practice since at least 1993 and it appears that it is something that just evolved over time.
29. I know that there were times when we were dealing directly with the clients, before default outsourcers were involved, when certifications were being sent to clients for review and signature.
- ✓ 30. I know that problems were experienced in getting these certifications back from the clients in a timely manner, and in some cases, getting them back at all.
31. A review of the practice indicates that over time a process developed whereby the clients provided a number of pre-signed signature pages to us in advance, for us to

use on certifications submitted to the court in support of Motions for Relief and Ex Parte Applications for Relief.

32. I do not believe, nor do I have any reason to believe this practice was originated or directed by Shapiro & Kreisman, or any of its principals or affiliates.

34. It appears this practice may have developed over time to accommodate the perceived needs of the firm's and the clients' business necessities.

✓ 35. I also believe that the office of Shapiro & Kreisman was not aware, at least not from me, that we were using pre-signed certifications.

36. I never told Mr. Shapiro or Mr. Kreisman that this was being done as the issue never arose and once I became responsible for the day to day operations of the firm the practice was already in place and I was not specifically aware of the practice. In addition I would not have raised the issue with either Mr. Shapiro or Mr. Kreisman because any local legal requirements for filing were my responsibility and the responsibility of other attorneys working on the matters in the firm.

37. Mr. Shapiro and Mr. Kreisman were not involved in the day-to-day operations of the legal work the firm produced, and therefore I did not believe there was any reason to discuss this matter with them.

38. Mr. Tobia submitted a letter to the Court dated October 14, 2005, together with his certification and exhibits. Attached to Mr. Tobia's certification as Exhibit A are copies of written procedures that I provided to Mr. Tobia in response to the Court's first order to show cause, paragraphs 6 i (1).

39. These are procedures which were drafted based upon the manner in which Shapiro & Diaz handles certifications of default, Chapter 7 motions for relief, Chapter 13 motions for relief and attorney review procedures.

40. The written procedures previously submitted to the Court are accurate, and are the procedures that Shapiro & Diaz currently follows in performing legal work related to bankruptcy filings.

✓ 41. Shapiro & Diaz has instituted a new policy with regard to the execution of certifications by the client in support of ex parte applications for relief and motions for relief.

✓ 42. The use of pre-signed certifications was discontinued after this Court gave notice to Shapiro & Diaz of this Court's view that use of pre-signed certifications was not acceptable.

43. The particular signature page about which the Court has inquired, bearing the name of Amirah Shahied, was apparently used inadvertently with regard to two applications filed for EverHome.
44. A review of the firms files indicates Ms. Shahied's certification was also improperly used during the course of the past year on other filings even though Ms. Shahied was no longer in the employ of FANDO.
45. Until the Court brought this matter to our attention, and we investigated this matter, we were not aware that Ms. Shahied was no longer working for FANDO.
46. There have been times in the past when personnel at FANDO, or its predecessor, LOGS, were moved from one area of the outsourcer to another. Normally, Shapiro & Diaz would receive some communication from the outsourcer that a new person or persons were working on certain client accounts.
- ✓ 47. We do not have any record of receiving any information from FANDO that Ms. Shahied was no longer employed by them, but this does not mean that FANDO did not notify us of same, only that I have been unable to locate any notification from FANDO that Ms. Shahied was no longer working employed by them.
48. The Court has requested that Shapiro & Diaz provide examples of certifications filed with the Court after Shapiro & Diaz changed procedures to provide for contemporaneous review and signature of certifications by the clients.
49. I have already submitted these to the Court.
50. The Court has also directed Shapiro & Diaz to identify all matters, open and closed, where a pre-signed signature page was used. We have submitted a list to the Court which includes files where based on past practice, we reasonably believe that certifications were filed using pre-signed signature pages in support of Motions for Relief as we are unable to track certifications filed in support of ex parte applications. A subset of said list are files where we had open bankruptcy cases but where we cannot determine whether any motions or applications were filed with the court. As a result a number of files contained in the list provided to the court are cases which were closed prior to our filing any motions with the court and as a result they did not have pre-signed certifications used.
51. The Court has also directed Shapiro & Diaz to provide a full written description of its fee structure detailing in particular the fees paid for Shapiro & Diaz's services in seeking orders for relief from the bankruptcy stay (distinguishing fees for motion practice from filing certifications for ex parte relief, as in the Rivera matter). This information has been provided to the Court under separate cover, under seal. Our files are primarily handled on a flat fee basis and contrary to a

typical hourly fee based practice, many of the legal tasks that we perform on behalf of clients are not compensated.

✓ 52. I believe it is important to point out to the Court that Shapiro & Diaz has always taken great care and pride in the legal work that it performs for clients. We make all possible efforts to ensure that anything that is filed with the Court is a correct and accurate representation of the facts in each case.

✓ 53. I have always made every effort to comply with all legal and ethical requirements in the work I have done, as well as in the work that I have had the responsibility to oversee, including the work of associates and legal assistants at the firm.

54. We previously submitted detailed documentation from the Rivera file showing the level of communications between the firm and the outsourcer.

55. The purpose of this submission was to demonstrate to the Court that, with every ex parte application or motion for relief that we file in bankruptcy court, our attorneys and staff take the time to review the information, question the information and confirm the information, before filing anything with the Court. The submissions of EverHome in response to the Court's original Order to Show Cause corroborates that the information in the certification filed in the Rivera file was accurate.

56. We routinely either withdraw and/or adjourn motions if there is an objection lodged by the debtor in order to address any issues which have been raised by the debtor.

57. Our attorneys and staff spend countless hours dealing with debtors and their counsel, and on the other side with the outsourcers and the clients, trying to clear up any perceived or real discrepancies in the numbers to ensure a result which is fair and correct as to all parties.

58. I fully understand the Court's concerns about the use of a pre-signed certification.

59. I do not know that I understood the potential ramifications of use of a pre-signed certification such as those problems which the Court has now voiced.

✓ 60. I never believed the procedure violated any laws or was in anyway improper.

✓ 61. I, nor do I believe any attorney at this firm, would ever knowingly disregard any rules or legal requirements in the filings of applications with the Court.

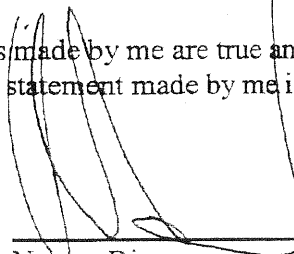
✓ 62. I offer, not by way of excuse, but rather of explanation, that the pre-signed certification practice was used as a convenience to expedite the final step of certification preparation and not for any other reason.

63. The level of interaction that we have always had with clients and outsourcers did not change because we used pre-signed certifications.
64. The information contained in the certifications filed with the Court came from the client's system.
65. Whether Amirah Shahied, or some other client representative, signed a certification did not appear to be an issue.
66. The issue was always that the information contained in the certification filed with the Court was coming from the client and was the client's information and that said information was as accurate and correct as possible.
67. Prior to this matter being brought to our attention by the Court, I was not aware that individuals at the outsourcers had been authorized by virtue of written agreement, or some type of corporate resolutions to be authorized signers of certifications.
68. I was never privy to those documents.
69. The only thing that I knew generally was that, at any given time, we had one client representative at a time for each client that would provide pre-signed certifications to us although that individual may not have been necessarily our point of contact for the file. It was presumed that the party signing the certification was authorized to sign and there was no reason to believe this was not so.
70. We have supplied this information to the Court, and based upon my review of this information, it does appear that at any given time there was only one person for each client that provided us with pre-signed certifications.
71. For any mistake in judgment that I may have made along the way in allowing a process to start or to continue under my supervision, I sincerely apologize to the Court.
72. I never knowingly meant to flaunt any legal requirements.
73. I never knowingly meant to portray any of the information that was provided to the Court from my law firm as anything other than 100 percent accurate representation of the business records maintained by the client.
74. The mistakes that were made in allowing this practice to develop, continue, and then fall into abuse over the past year was, upon reflection, a mistake in judgment.

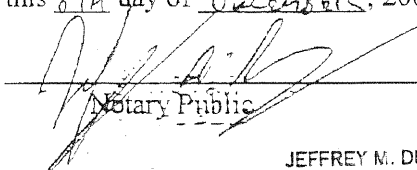
75. Respectfully, I do not believe that this practice, as abhorrent as the Court may find it, which I do not minimize, would have any effect upon the merits of any applications granted while the pre-signed certification practice was being used. Neither the debtors nor our clients were in any way prejudiced by the use of the pre-signed certification. The substance in the applications was an accurate and correct representation of the client's records. Whenever the debtor questioned the accuracy of the information, either formally by filing pleadings with the court, or informally by merely telephoning our office, this firm worked with the debtor and our client to resolve any discrepancies or issues raised by the debtor. I believe that if a contemporaneously signed certification of the client had been filed with the court, the ultimate outcome of each individual case would have been the same. The information contained in the certification would have been identical and any issues raised by the debtor would have been treated in the same manner.
76. I believe that, as in the Rivera matter, the outsourcers and clients would stand behind the information previously provided, at the time it was provided, as being a 100 percent accurate representation of the client's business records. I also believe that if the debtor bar were to be surveyed the majority would advise the Court that this firm enjoys a very good reputation with the debtor bar for the quality of our work, our professionalism and for our efforts to work with debtors to resolve issues which arise in the typical case in a fair manner.
77. To the extent that the Court finds this procedure violative of any legal requirements, I fully understand.
78. Upon being notified of the Court's Order to Show Cause, I immediately took steps to stop the prior practice and to change the practice to obtaining contemporaneously signed certifications as it was clear the Court questioned and was concerned with the prior practice.
79. We have put new procedures in place to try to insure that this type of situation never happens again.

I hereby certify that the foregoing statements made by me are true and correct to the best of my knowledge and belief. I am aware that if any statement made by me is willfully false, I am subject to punishment.

Dated: December 14, 2005


Nelson Diaz

Sworn and subscribed to before me
this 8TH day of DECEMBER, 2005.


Notary Public

JEFFREY M. DUMAS
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JANUARY 28, 2008