

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE: . Case No. 01-42625 (MS)
.
.
JENNY RIVERA, .
.
50 Walnut Street
Newark, New Jersey 07102
Debtor, .
December 14, 2005
. 10:10 a.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE MORRIS STERN
UNITED STATES BANKRUPTCY COURT JUDGE

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Proceedings recorded by electronic sound recording, transcript
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INDEX

<u>WITNESS</u>	<u>PAGE</u>
GERALD M. SHAPIRO	
Examination by the Court	11
DAVID S. KREISMAN	
Examination by the Court	32
Cross Examination by Mr. Marino	56
Cross Examination by Mr. Papalia	63
LINDA HYNES	
Examination by the Court	69
Cross Examination by Mr. Marino	91
Re-examination by the Court	101
Cross Examination by Mr. Schneider	102
Cross Examination by Mr. Orlofsky	107
Cross Examination by Mr. Papalia	108
Further Cross Examination by Mr. Marino	110
RHONDI SCHWARTZ	
Examination by the Court	123
Cross Examination by Mr. Marino	136
Cross Examination by Mr. Tobia	140
Cross Examination by Mr. Orlofsky	142
Cross Examination by Mr. Schneider	142
Further Cross by Mr. Marino	147
DIANE BELAFONTE	
Examination by the Court	150
NELSON DIAZ	
Examination by the Court	153
Cross Examination by Mr. Catanzaro	158
Cross Examination by Mr. Marino	161

1 THE COURT: This United States Bankruptcy Court is
2 now in session. The scheduled matter will be heard and fully
3 considered. This is In Re: Rivera. Appearances, please.

4 MR. TOBIA: Good morning, Your Honor, Patrick Tobia
5 from the law firm of Clemente, Mueller & Tobia for the law firm
6 of Shapiro & Diaz, LLP.

7 THE COURT: Good morning.

8 MR. ORLOFSKY: Good morning, Your Honor, Stephen M.
9 Orlofsky, Blank Rome, LLP, appearing for FANDO.

10 MR. MARINO: Good morning, Your Honor, Kevin H.
11 Marino on behalf of Rhondi Schwartz.

12 MR. CATANZARO: Good morning, Your Honor, Mark
13 Catanzaro on behalf of Dondrea Lomas.

14 MR. LUSTBERG: Good morning, Judge, Lawrence S.
15 Lustberg, Gibbons, Del Deo, Dolan, Griffinger & Vecchione on
16 behalf of Dan Schmidt of FANDO.

17 MR. GILBRETH: Good morning, Judge, Peter Gilbreth on
18 behalf of Nelson Diaz.

19 MR. SHINN: Not room up here, Your Honor. Good
20 morning, Robert Shinn, Woodland, Shinn on behalf of Linda
21 Hynes.

22 MR. SCHNEIDER: Robert Schneider on behalf of the
23 United States Trustee.

24 MR. ARTIS: Good morning, Your Honor, Michael Artis
25 on behalf of the U.S. Trustee.

1 MR. MCDONOUGH: Good morning, Your Honor, Douglas
2 McDonough on behalf of Marie Greenberg, the Chapter 13 Trustee.

3 THE COURT: All right. Anyone else? Okay. This
4 hearing is brought on by the Court's orders to show cause. The
5 initial order to show cause issued on the 12th of September,
6 subsequent order to show cause of October 24. There were also
7 supplementary orders of November 9 and November 15. The
8 Court's inquiry is into a certain practice of the Shapiro &
9 Diaz firm and others. Mr. Papalia, you want to make your
10 appearance?

11 MR. PAPALIA: Sorry, Your Honor.

12 THE COURT: That's all right.

13 MR. PAPALIA: Little late. Vincent Papalia, Saiber,
14 Schlesinger, Satz, & Goldstein appearing for EverHome Mortgage
15 Company.

16 THE COURT: Okay. That's all right. Have a seat.
17 Catch your breath. The Court in its 10/24/05 order defined the
18 practice of Shapiro & Diaz which is at the center of this
19 inquiry and today's hearing. The practice involved the use of
20 pre-signed forms, signatures which were then appended to
21 certification forms and submitted to this Court for stay relief
22 purposes either in ex-parte applications or in motions for
23 relief from the stay so that foreclosures could go forward.
24 And, in this particular case, the Rivera case, it was a
25 certification on an ex-parte basis put forth for relief from

1 the stay so that Ms. Rivera's house could be foreclosed upon by
2 EverHome Mortgage.

3 The quote from the 10/24/05 order as to the practice,
4 what I will call the S&D certification practice and have called
5 that practice in various documents, is that those
6 certifications having affixed to them a certifying statement
7 and signature page which was on file with S&D in advance of the
8 preparation of the substance of the certification, where the
9 substance of the certification and the final form of the
10 certification were not contemporaneously reviewed by the
11 purported signatory at the time of the purported signing. And,
12 indeed, it appearing that the final form of certification was
13 never reviewed by the purported signatory prior to its filing
14 with the Court. A subset of the filings includes some 280
15 filings with the signature of Amira Shaheed attached. Those
16 250 or 280 identified filings from some date on or after July
17 of 2004 were submitted to this Court when Ms. Shaheed no longer
18 had any association with any mortgagee or default servicer,
19 really no relation to anyone in the chain running from the
20 mortgagee, and yet she was the purported certifying party.
21 Again, that's a subset of those certifications filed under the
22 S&D certification practice.

23 The Court asked for a number of submissions and
24 received more than it asked for. And, much of it appreciated.
25 And, I'll go to those submissions but rather than spend time on

1 documents I'd like to go more directly to witnesses. The
2 witnesses who were to be ready to testify today included Mr.
3 Shapiro, Mr. Kreisman, Mr. Diaz, Ms. Schwartz, Ms. Bulifant and
4 Ms. Hynes. Are Mr. Shapiro and Kreisman here?

5 MR. TOBIA: Yes, Your Honor, they are.

6 THE COURT: All right. And, I will call one of them
7 first. For purposes of identifying documents I will use the
8 docket in this case. For those who are familiar with
9 electronic filing, and I understand there's some attorneys here
10 who are not, the docket is readily available. The Court will
11 take judicial notice of all matters in the Rivera docket, that
12 is in the case 01-42625. It's a docket that goes back to
13 11/16/01, the filing date by Jenny Rivera. This Court's order
14 to show cause is Item Number 38 in the docket, that is the
15 9/12th/05 order to show cause. The September 12th order to
16 show cause is Number 38. And, I will refer to documents by
17 those docket numbers.

18 There are two exhibits which have been admitted into
19 evidence. And, we can catalogue those either as we go along or
20 at a break. One item is under seal. It's in the docket by
21 general reference but, in fact, the substance of it is under
22 seal. That's Mr. Tobia's submission. And, it's Cover Letter
23 67-1 in the docket, but the sealed material, Mr. Tobia, remains
24 with the Court and as I understand it only shared with Mr.
25 Artis. Is that correct?

1 MR. TOBIA: That is correct, Your Honor.

2 THE COURT: All right. Thanks. Anything before we
3 begin? Okay. I'll call Mr. Shapiro.

4 MR. PAPALIA: Your Honor, can I just -- Vincent
5 Papalia speaking. If I may just raise one point of
6 clarification because it's a term that's been used throughout
7 these proceedings, as the ex-parte submission in support of a
8 lift stay motion. And, certainly, my understanding of ex-parte
9 is one party without notice to the other parties.

10 THE COURT: Yes.

11 MR. PAPALIA: But, in fact, that -- I do not believe
12 the docket shows that the ex-parte submission was actually made
13 on notice, and I believe that that's the practice.

14 THE COURT: Yes, it is. You're right.

15 MR. PAPALIA: So, just as a matter of clarification,
16 I guess ex-parte always has a little bit of a perhaps not
17 positive implication to it and --

18 THE COURT: Right.

19 MR. PAPALIA: -- and I don't think that's what
20 happened here.

21 THE COURT: It is on notice. It's on notice and the
22 matter goes ex-parte unless there's an objection. But, you're
23 right, it is on notice.

24 MR. PAPALIA: Thank you.

25 THE COURT: Okay. And, I appreciate the

1 clarification.

2 MR. MARINO: Your Honor, if I may just briefly? I
3 know that it's a little bit of an unusual proceeding and that
4 the Court is calling witnesses at its own instance, having
5 issued a sua sponte order to show cause. Not that I'm
6 anticipating that Your Honor will ask objectionable questions
7 but I just would like to understand the protocol for preserving
8 the record in the event that a question is asked that --

9 THE COURT: I'm not going to limit the right to
10 object, of course, I don't think I have that right. You can
11 object to my questions. And, we'll see where we go. But, I
12 would hope to handle this hearing as efficiently as possible.
13 Given the sensitivity, I think that everyone's entitled to an
14 opportunity to have some reflection. It's a matter with no
15 discovery.

16 Is this a deposition session, you might ask? And,
17 we'll see. But, I assure everyone that the purpose is not to
18 embarrass anyone. The Court wants to know what the practice
19 is, how it developed, how extensive it was. And, feels
20 obligated to deal with 9011 and contempt issues. And, in that
21 vein I'm --

22 MR. MARINO: I know that Your Honor will --

23 THE COURT: -- going to call the witnesses and hear
24 testimony. And, to the extent that other people want to ask
25 questions when the Court's finished I'll allow that.

1 MR. MARINO: I appreciate that, Your Honor.
2 Obviously, in an attempt to streamline the process I would put
3 the certifications before the Court, which I would ask at least
4 as to those parties on whom you received the certification you
5 would treat as their direct testimony. And then, Your Honor
6 obviously can ask whatever questions you deem appropriate.

7 THE COURT: All right. And, I appreciate the
8 certifications and the other material that was submitted. And,
9 not only the fact of the certifications but the degree of
10 candor included in essentially all of the certifications. I
11 think that's important and it's meaningful to the Court. And,
12 I think we will be able to streamline this matter. All right.
13 Anything else?

14 MR. MARINO: Thank you, Your Honor.

15 THE COURT: From anyone? Mr. Shapiro, if you'd come
16 up here, please, and you'll be sworn in.

17 GERALD M. SHAPIRO, WITNESS, SWORN

18 THE CLERK: Please state your name and address for
19 the record.

20 THE WITNESS: Gerald M. Shapiro. I reside at 17079
21 Castle Bay Court, Boca Raton, Florida.

22 THE COURT: Please, be seated.

23 THE WITNESS: Thank you.

24 THE COURT: All right. If you'd just do me a favor
25 and pull that? Yes. Because sometimes we lose some of the

1 audio.

2

EXAMINATION

3 BY THE COURT:

4 Q Are you represented, Mr. Shapiro?

5 A Yes, I am.

6 THE COURT: Mr. Tobia, are you representing both Mr.

7 --

8 MR. TOBIA: I am representing him.

9 THE COURT: -- Shapiro and Mr. Kreisman?

10 MR. TOBIA: I am, Your Honor. I had discussions with
11 them and -- about potential for conflicts. We didn't see any
12 actual conflicts. We discussed the potential in our
13 application and they have given me conflict waivers. They're
14 here today with the full understanding of potential conflicts.
15 But, I am representing them.

16 THE COURT: All right. All right, thank you.

17 Q Mr. Shapiro, I would ask, do you understand the nature of
18 the inquiry of the Court today?

19 A I do.

20 Q All right. Just as a matter of background, are you an
21 attorney, sir?

22 A I am, sir.

23 Q And, where are you admitted to practice?

24 A I am admitted in the States of Illinois and Florida.

25 Q All right. And, when were you admitted?

1 A In 1969.

2 Q Okay. And, just briefly, if you could give us some of
3 your education and early practice experience?

4 A I started off after law school in the tax department of
5 Arthur Young and I was there for approximately a year and a
6 half. I then went to a small five-man real estate firm,
7 Bernstein, Gaulin & Yalowitz, in Illinois, Chicago. At which
8 time I was there for about a year and a quarter. And,
9 basically I did real estate transactions, commercial, and
10 residential.

11 Q All right. And, would you give me some idea of your
12 practice history or history with law firms in New Jersey?

13 A I have no history with law firms in New Jersey other than
14 I am a principal in the law firm of Shapiro & Diaz.

15 Q And, when did you become a principal, or when was Shapiro
16 & Diaz formed?

17 A I'm not sure when Shapiro & Diaz was formed. The original
18 partnership is with Frank Martone. As a matter of fact, Your
19 Honor, I just met Mr. Diaz today for the first time.

20 Q All right, and I understand that from his certification.
21 Okay.

22 A Yes.

23 Q All right. And, when you say you had an original
24 relationship with Frank Martone, what year was that? If you
25 remember?

1 A It was in the mid-80s, '84, '85, when the mortgage
2 companies asked me to open up in several states. New Jersey
3 was one of them. I flew out to New Jersey to interview
4 potential candidates who had, you know, experience in the
5 industry, and Frank Martone was one of those, and I selected
6 Frank Martone.

7 Q All right. So, you formed some sort of a partnership with
8 Mr. Martone?

9 A Yes, Your Honor.

10 Q All right. Was he an equity partner?

11 A Yes, he was, Your Honor.

12 Q Were you an equity partner?

13 A Yes, Your Honor.

14 Q All right.

15 A As was my partner, Mr. Kreisman.

16 Q Okay. And, did you eventually form another law firm in
17 New Jersey besides what I assume was Shapiro & Martone? Is
18 that fair enough?

19 A Yes.

20 Q All right. And, what firm did you form after that?

21 A I'm not familiar with what firm, you know, was formed
22 after that. I think it went to Shapiro & Kreisman until we
23 found a --

24 Q Mr. Martone was then out of the business?

25 A Mr. Martone then went to -- you know, to form his own

1 partnership and we went to form another partnership.

2 Q And, it was called Shapiro & Diaz? I'm sorry, --

3 A No, it --

4 Q -- Shapiro & Kreisman?

5 A I can't remember the name of the firm previous to it.

6 Your Honor, we have 33 firms across the United States so I
7 can't give you the entire history.

8 Q All right.

9 A I'm sorry to say.

10 Q That's all right. And, but Shapiro & Diaz is the current
11 firm and you and Mr. Kreisman are the equity partners, is that
12 a fair statement?

13 A Yes, Your Honor, it is.

14 Q And, the only equity partners?

15 A Yes, Your Honor.

16 Q Okay.

17 A Mr. Diaz is an income partner.

18 Q All right. And, today is the first time you met him?

19 A Today is the first time I met him.

20 Q All right. From your testimony and from the record in
21 this case it's clear that you and Mr. Kreisman had developed
22 some form of a national network of law firms. Could you
23 describe that national network as it developed and as it exists
24 today?

25 A Yes, I could. The network originally -- originally Dave

1 and I were just in Illinois. Shapiro & Kreisman. And, being
2 licensed in Florida, that's where I eventually wanted to live,
3 I went down there and formed the partnership with a gentleman
4 who has since deceased; to practice, you know, foreclosure and
5 closings, basically, were the two things that we did in the
6 State of Florida. And, that -- you know, that was probably in
7 existence for a year and then we were asked by a couple of
8 additional mortgage companies, and I can't remember, you know,
9 which ones they are at this time because they've all merged
10 into these big conglomerates. And, the mortgage companies
11 asked me to go into other states. And, because they needed
12 representation in those states.

13 Dave and I in our early stages developed software
14 programs that managed the foreclosure process so that it
15 streamlined the time frames and gave the mortgage companies
16 reports on what was happening in the cases at different events;
17 the time of complaint, the time of judgment, the time of sale,
18 etcetera. And, in the early '80s that was way beyond its
19 years. Now, everyone has a system that's better than the next
20 person's, you just have to ask them. And, because we had a
21 system that had work flow built into it and were able to give
22 mortgage companies information that they customarily were not
23 able to get from their attorneys on a timely basis, they asked
24 us to continuously expand our relationships, to find new
25 partners or new associates or existing firms in other states to

1 do their work because the institutions, the savings and loans
2 and mortgage companies went from being -- lending money in
3 their back yard, their own home state and sometimes their own
4 home city, to lending money all over the United States. And,
5 with that came problems of managing the default process in the
6 United States.

7 Q And, how many law firms did the network that you owned or
8 controlled include?

9 A Currently I believe we're in 33 states with 25 offices.
10 Of which, there are a couple of offices in Florida and a couple
11 of offices in New York. Upstate and down-state. And, in
12 Virginia you have Maryland, D.C., and Virginia, you know, out
13 of Virginia. And, Arkansas and Tennessee out of Tennessee.
14 Basically that type of relationship.

15 Q All right. And, we've heard a lot about a LOGS, L-O-G-S,
16 Financial Services, Inc., could you tell me something about the
17 development of LOGS and your involvement with it?

18 A Basically, the way outsourcing commenced was that the
19 mortgage companies needed additional assistance in their
20 backroom operations, meaning they were in a position where the
21 Fannie Mae and Freddie Mac were starting to rate them and if
22 the ratings weren't one or two they suffered in their -- what
23 they were compensated on. And, we took over when the ratings
24 were I think in -- they were Tier 4, several of these mortgage
25 companies. And, by hiring professional mortgage servicing

1 people and letting them do a value added concept for back room
2 operations, LOGS was formed. And, LOGS was able to get
3 sufficient work in the states that the law firms were in to,
4 you know, justify that type of relationship.

5 Q All right. So, is LOGS solely a post-default outsourcing
6 servicer?

7 A It wasn't a servicer, but it was a post-default
8 organization that because of the software development that we
9 had and because the professionals we hired were able to help
10 and assist the mortgage companies in doing a better job.

11 Q Well, why was LOGS necessary? Couldn't it be done through
12 the network and Shapiro & KReisman?

13 A Well, we decided that we would take the legal functions
14 and leave them in the law firms and the non-legal functions,
15 you know, which meant administration and assisting the mortgage
16 companies, in a separate entity. That the lenders were more
17 used to dealing with than dealing with the law firms.

18 Q All right.

19 A Corporate to corporate.

20 Q And, in this particular case Mr. Papalia for EverHome
21 provided us with a copy of an agreement, a servicing agreement.

22 A Yes.

23 Q And, I'll describe it generally, and certainly if you feel
24 the need I'll give you a copy of it. But, it's an agreement
25 between and among EverHome, LOGS Financial Services, Inc., and

1 Shapiro & Kreisman. Is that a standard form agreement that
2 you're familiar with? A DSA, does that make any sense to you?
3 The full -- well, that's what it was called. But, go ahead.

4 A The answer is (inaudible).

5 Q Okay.

6 A I was responsible for creating the relationships between
7 the lenders or mortgage servicers and our law firms. I was not
8 the primary person responsible for negotiating or doing any of
9 the contract work that resulted in a contract between the
10 mortgage company and LOGS, and, you know, the law firm.

11 Q But, do you know how it worked? How, for example,
12 EverHome would interface with LOGS and with Shapiro & Kreisman
13 and eventually with field counsel?

14 A Yes.

15 Q Could you describe that in your own terms?

16 A You have to understand that I am not an operation's
17 person.

18 Q Okay.

19 A And, I really am not an operation's person. I am a client
20 relationship person, a new business development person. The
21 person who deals with the financial statements and the bank and
22 our line of credit. And, --

23 Q Well, who would be the person? Mr. Kreisman would know
24 more about it in your view?

25 A Mr. Kreisman would understand, you know, how the

1 referrals, you know, came from the mortgage company, you know,
2 to the law firms. I just know that we provided a terrific
3 piece of software called Catapult that electronically
4 transferred the -- you know, the documents to the law firms and
5 populated the computer system. I mean, that's --

6 Q Do you know where the data came from in this system? In
7 other words, if we deal, for example, with EverHome, LOGS, and
8 Shapiro & Diaz in that chain?

9 A Yes, I --

10 Q How did the data get from EverHome eventually to this
11 Court? If you know?

12 A That -- I don't know that. I only know how the original
13 documents in the -- to refer out the file got from EverHome to
14 our offices.

15 Q And, how did that happen?

16 A Via electronic Catapult system.

17 Q Okay. And, Catapult was a document transfer system? Or,
18 was it a data access system? In other words, did Catapult give
19 LOGS access to the entire computerized books and records of
20 EverHome on a particular mortgage account?

21 A Absolutely not. You would always -- it would be the
22 servicing system of the mortgage company is the only system
23 that would be capable of giving those figures to anybody.

24 Q All right. So, when you say the servicing system, whether
25 it be Fannie Mae, or MERS, or a servicer?

1 A No, there's only a couple of servicing systems in
2 existence right now, and that's -- it's now called the Fidelity
3 Servicing System --

4 Q All right.

5 A -- it used to be called Alltel, and before that it was
6 called something else.

7 Q And, Fidelity has its own MPS system or whatever?

8 A Which either the servicer owns or leases.

9 Q All right.

10 Q So, Fidelity might service for EverHome?

11 A No, their system would be in EverHome to use.

12 Q Okay. Fair enough. I appreciate the clarification.

13 Really do. Okay. So, again, EverHome has an account, Ms.

14 Rivera's mortgage account, and it began many years ago and

15 there were payments in and escrows developed, and real estate

16 taxes paid out as collected or otherwise, insurance purchase.

17 All of the business of home mortgage lending. And, those are

18 records, presumably, with EverHome. Did LOGS ever have access

19 through some computerized system into those complete records?

20 A I did not -- I was not part of operations, quite honestly.

21 Q Okay.

22 A You know, the mortgage servicing people that we hired had
23 the superior knowledge of running that operation and I honest
24 to God do not.

25 Q Okay. Do you know how information, that is data, was

1 transmitted from LOGS to let's say Shapiro & Diaz on a New
2 Jersey matter, the Rivera matter?

3 A I do not.

4 Q You don't know?

5 A I don't know.

6 Q Okay. All right. And, in terms of oversight of the
7 Shapiro & Diaz firm or any of the network firms, what was the
8 management structure if you know?

9 A Quite honestly, I'm not involved in operations and I just
10 met the personnel out in the hall right before court. So, I --

11 Q I hear you. And, I'm sure you understand the Court's
12 somewhat surprised that you owned a law firm in New Jersey for
13 many years and share a name, Shapiro & Diaz, and have just met
14 Mr. Diaz. And, what is the management connection between a
15 network firm in New Jersey and let's say Shapiro & Kreisman in
16 Illinois?

17 A There is none. Shapiro & Kreisman in Illinois is a
18 separate Illinois law firm.

19 Q Well, who does Shapiro & Diaz report to, if anyone?

20 A They don't report, as -- you know, as you would say to,
21 you know, a superior. My partner Dave Kreisman interfaces with
22 the local partner in terms of dealing with their management
23 reports that are provided, you know, to Dave. And, that's --
24 you know, the volume reports and the personnel reports. And,
25 --

1 Q Financial statements?

2 A And, financial statements. And, I also look at the
3 financial statements, that's the one thing I do look at.

4 Q Okay. And, is there a bookkeeper in Shapiro & Diaz who
5 works for Shapiro & Kreisman or for you and Mr. Kreisman?

6 A Not the -- no. There's no -- there's no bookkeeper in
7 Shapiro & Diaz that works for us. There is a lockbox in
8 Illinois that receives all the funds from all the law firms in
9 Illinois because that's a method of cash management.

10 Q Well, when you say cash management, you're talking about
11 fees received?

12 A Yes. I mean, there's a local trust account in this state
13 that keeps the trust accounts in all the states.

14 Q But, when Shapiro & Diaz gets a fee it goes into a lockbox
15 in Illinois?

16 A Goes into a lockbox in Illinois, yes.

17 Q And, who distributes money from that lockbox?

18 A There is -- we have a CFO.

19 Q And, who's the we?

20 A Dave and I. Dave and I have a CFO.

21 Q As individuals? As a firm? As what?

22 A Well, as part of practice management we perform in
23 Illinois certain functions. We perform IT functions, we
24 perform accounting functions, we perform HR functions.

25 Q But, what's the we? Individuals? An LLP? What's the

1 nature of that entity?

2 A It's the LOGS -- it's the LOGS Group, LLC.

3 Q Does that still exist?

4 A The LOGS Group, LLC exists, yes.

5 Q And, that's different from LOGS Financial Services, Inc.?

6 A Yes.

7 Q All right. Okay. So, there's another LOGS name. And, is
8 LOGS an acronym for Law Offices of Gerald Shapiro?

9 A Yes, it is.

10 Q All right. So, there are several different entities that
11 have or had the name LOGS, is that a fair statement?

12 A Yes. The entity you're referring to previously was sold
13 to First American in June of 2004.

14 Q And, was that a default outsourcing company?

15 A Yes, it was Default Outsourcing. It was Practice
16 Management. And, it was a REO Management Company. All those
17 three companies were sold to First American. FANDO.

18 Q But, LOGS, the LLP that's in the direct line with the
19 field offices in the network, still exists, is that correct?
20 And, that --

21 A A new entity exists, because in December of 2004 we
22 bought, you know, the assets back, other than the outsourcing
23 fees which FANDO kept.

24 Q All right.

25 A So, we bought back Practice Management and we bought back

1 the LOGS REO Management.

2 Q Okay. And so, fees from New Jersey going into Shapiro &
3 Diaz really go into a lockbox in Illinois and are managed and
4 distributed by LOGS, LLP?

5 A Yes, there --

6 Q LOGS Group, LLP, as you put it?

7 A Correct. They're given back to Shapiro & Diaz to, you
8 know, to pay their bills on a monthly basis and to advance
9 court costs, etcetera.

10 Q Okay. And, does anyone from the -- to your knowledge --
11 does anyone from the LOGS Group, LLP do any kind of management
12 or quality control performance with respect to Shapiro & Diaz?

13 A We have outside auditors that audit all our law firms in
14 terms of the accounting functions.

15 Q All right. So, that would be on the financial side.

16 A Yeah.

17 Q How about on the performance side?

18 A I don't get involved in, you know, in operations. And,
19 they --

20 Q But, you said that there are management reports that go
21 somewhere, I assume they go to LOGS Group, LLP, is that a fair
22 statement?

23 A The answer is that's probably a fair statement. My
24 partner Dave Kreisman knows more on that side of the business.
25 I do not.

1 Q Okay. Okay. We'll ask him.

2 A Okay. Thank you.

3 Q All right. All right. And, so the practice that is
4 defined and was defined at outset here, is defined in the 10/24
5 order to show cause as the Shapiro & Diaz certification
6 practice, that is to have pre-signed certification forms on
7 file, did you have any knowledge of that before let's say
8 September 12th of this year?

9 A No, I didn't, Your Honor. I would have no knowledge of
10 any procedural or the local custom and practice in any state.
11 I haven't practiced law, per se, since 1975.

12 Q Okay. So, you don't know about pre-signed certifications
13 and you're not -- would it be fair to say you're not a person
14 who can testify as to the mechanics of Chapter 13 accounting
15 and how information moves from a mortgagee's files down to a
16 network attorney's hands?

17 A That is a very safe assumption.

18 Q Okay. All right. Do you know, for example, how local
19 counsel is hired when, first, LOGS Financial was in the
20 picture, and now that LOGS Financial has sold to -- or, at
21 least sold part of its business to FANDO, how that works? Who
22 hires Shapiro & Diaz, if you know?

23 A The mortgage company always hires the law firm. Even as
24 outsourcers the mortgage company always selected what law firms
25 were to be used in the processing of their work.

1 Q Okay. And, who pays the fee to Shapiro & Diaz, is it the
2 mortgage company?

3 A The mortgage company.

4 Q Okay. And, how did LOGS Financial get paid? I'm not
5 asking how much, but was it paid by the file and paid, in fact,
6 by the mortgage company?

7 A The mortgage company -- the mortgage company paid a fee
8 for the administrative services of the outsourcer.

9 Q Okay. And, did the field counsel pay anything to LOGS
10 Financial for services?

11 A Yes, the field counsel paid an administrative fee to LOGS
12 Financial for services.

13 Q For every case?

14 A For every case.

15 Q All right. So, if Shapiro & Diaz got a fee for a
16 particular case and it went into a lockbox, would a piece of
17 that fee, portion of it, go to LOGS Financial when LOGS
18 Financial was in that business?

19 A The answer is no.

20 Q Okay. So, how would LOGS Financial get compensated by the
21 field counsel?

22 A All fees always went to the law firms.

23 Q Right.

24 A And then, the law firms themselves paid a fee for services
25 performed by LOGS Financial.

1 Q Okay, directly?

2 A Yes.

3 Q Okay. So, only the net would go into the lockbox, or --

4 A The gross.

5 Q -- the gross and funds that would go into the budget of
6 Shapiro & Diaz would then be used to pay that fee, is that a
7 fair statement?

8 A That would be a fair statement.

9 Q All right. All right. Is any aspect of your business and
10 Mr. Kreisman's business today involved in default outsourcing
11 other than through the last tier, that is through field counsel
12 work?

13 A We are not involved in outsourcing, the answer is no.

14 Q Okay. But, you were up until a date in July or --

15 A June of 2004.

16 Q When you sold out to FANDO?

17 A First American National Default Organization.

18 Q Okay. All right. And, that was the end of Default
19 Outsourcing for you?

20 A For us, yes.

21 Q And, so the Catapult system is in the hands of others,
22 FANDO and others?

23 A Um-hmm. And, in various clients that don't necessarily
24 use an outsourcer but need a method to convey the -- by
25 electronic methodology files.

1 Q Okay. And, does the network have access to Catapult?

2 A The network -- well, yes, the network receives work --

3 Q As recipients they would --

4 A Yes.

5 Q -- have access to Catapult?

6 A That's one of the software products that we developed.

7 Q Okay.

8 A Dave and I.

9 Q All right. I understand. And, we'll have to hear more
10 precisely how that works. So, if I would ask you a series of
11 names, and just so it's no surprise, these were names supplied
12 by Mr. Tobia in addition to the name of Amira Shaheed. These
13 are people whose signatures were on file with Shapiro & Diaz.
14 Had you ever heard of Amira Shaheed before this Court issued an
15 order to show cause?

16 A No, Your Honor, I had not.

17 Q You'd have no reason to know who LOGS Financial Services
18 Employee is?

19 A When we sold to First American there was close to 700
20 employees at LOGS Financial. So, other than, you know, the
21 person that I hired, which was Fred Zakula, I would not know
22 anyone underneath them because I never met with anybody.

23 Q Okay. And, so then is it safe to assume that you didn't
24 spend a lot of time at the LOGS Financial Services place of
25 business?

1 A That's correct.

2 Q And, where was that place of business exactly, Chicago?

3 A Two places. Two places.

4 Q All right.

5 A One was in Milwaukee. And, one was in Jacksonville.

6 Q Okay.

7 A Florida.

8 Q All right. And, the name of the person you said you hired
9 for --

10 A Originally when LOGS Financial Services first started,
11 going back into the late '80s, early '90s, was Gail Edwards.

12 Q Okay.

13 A And then, Gail Edwards hired Fred Zakula. And then, when
14 Gail Edwards retired, Fred Zakula -- Fred Zakula became the
15 person who ran outsourcing, you know, for our organization.
16 And, when FANDO bought LOGS Financial -- well, or S&K, which
17 was the holding company for everything, then Fred went to work
18 for FANDO.

19 Q Okay. And, we have Mr. Zakula's certification here
20 submitted yesterday. Okay. But, he was a LOGS person? LOGS
21 Financial Services person before the sale in June, July of '04,
22 is that a fair statement?

23 A Yes, Your Honor, he was.

24 Q Okay. Thanks. All right. Well, I won't burden anyone,
25 including you, with a lot of questions that you can't answer.

1 And, I appreciate you responding, I know it was a Court order.

2 A Thank you.

3 Q But, I appreciate you being here. And, I hope you
4 understand that the Court has what it feels is a heavy
5 responsibility to look into this matter. This is a serious
6 issue for the Court, the use of these pre-signed statements.
7 And, don't misunderstand me, I'm not here to lecture you, but I
8 do want you to understand how seriously the Court views this
9 matter and felt the need to have you visit Newark.

10 A Well, you certainly have my apologies for anything that
11 may have been done that's not approved.

12 Q I appreciate it. But, I'm going to ask Mr. Kreisman some
13 of the questions that you laid off on him, all right? So, for
14 the moment you're excused. If you'd hang around I'd appreciate
15 it.

16 THE COURT: Mr. Kreisman.

17 THE WITNESS: Thank you, Your Honor.

18 MR. MARINO: Your Honor, I would like to ask Mr.
19 Shapiro a question if that would be all right?

20 THE COURT: Go ahead.

21 THE WITNESS: Sure.

22 MR. MARINO: Literally, just a question, too. Mr.
23 Shapiro, you testified at some length about the structure of
24 the LOGS network and how you developed software and set up your
25 business, correct?

1 THE WITNESS: Um-hmm.

2 MR. MARINO: I believe you said this in response to
3 one of the Court's questions but I just want to clarify. You
4 can tell us nothing whatsoever about the manner in which
5 information was transmitted from the mortgage company through
6 the outsource servicer, to the law firm, to the Court, correct?

7 THE WITNESS: That's correct.

8 MR. MARINO: I have nothing further.

9 THE COURT: That was my understanding of his lack of
10 understanding.

11 THE WITNESS: Thank you.

12 MR. MARINO: I'm glad we had him here, though, Your
13 Honor.

14 MR. KREISMAN: Good morning, Your Honor.

15 THE COURT: Good morning.

16 DAVID S. KREISMAN, WITNESS, SWORN

17 THE COURT: Go ahead.

18 THE WITNESS: David S. Kreisman, 8370 Del Prado
19 Drive, Delray Beach, Florida.

20 THE COURT: All right.

21 UNIDENTIFIED SPEAKER: Your Honor, should we --

22 THE COURT: Yeah, I was --

23 THE WITNESS: Oh, thank you.

24 THE COURT: -- I apologize, we should have had water
25 there.

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EXAMINATION

BY THE COURT:

Q All right. Mr. Kreisman, you heard me --

A Yes.

Q -- ask your partner, Mr. Shapiro, a series of questions and to some extent he said that you were the person to talk to.

A Correct.

Q So, here we are.

A Correct, Judge.

Q First, can you give me something of your background? Are you an attorney, sir?

A Licensed in Illinois in 1963. Long time ago.

MR. TOBIA: Your Honor, and I want to make sure that it's clear that the reference -- the conflict with Mr. Shapiro complies with Mr. Kreisman as well. I spoke with both of them, the statements and their reply, as well from Mr. Kreisman.

THE COURT: All right. Thank you, Mr. Tobia.

MR. TOBIA: Thank you.

A I got my BA from University of Chicago in 1960, and JD from University of Chicago Law School in 1963. I clerked in the Illinois Appellate Court for 20 months for the Honorable Thomas Kluczynski, K-l-u-c-z-y-n-s-k-i, who later was elevated to the Illinois Supreme Court and became Chief Justice. Then I worked for a firm called Epton, McCarthy, Bowling, and Druth, which was did personal injury, defense, and subrogation work.

1 And then, I went on my own with a high school buddy, Steve
2 Epstein, that formed a general practice. I spent most of that
3 -- much of the work I did during the next few years was
4 Appellate work. Then we associated with a bunch of friends, a
5 lot of chiefs, no Indians, six partners and no associates that
6 worked for about a year. Mr. Shapiro happened to have space in
7 the suite they were in. When that broke up -- and so, I had
8 Mr. Shapiro obtain the client, a mortgage servicing client, his
9 first one. He said, "Dave, have you ever done mortgage
10 foreclosure work?" I said, "No." He said, "Would you like to
11 learn?" I said, "Sure." So, we became partners and we've been
12 partners since 1971.

13 Q All right. And, can you give us something of the history
14 --

15 A Yes.

16 Q -- which might be more specific than you heard Mr. Shapiro
17 relate with respect to New Jersey practice?

18 A Yes. Mr. Shapiro, I believe met, interviewed, and hired
19 Frank Martone to become -- hired or partnered with Mr. Martone
20 in I think the middle -- in the early -- or, middle '80s. And,
21 let me just back up just for a second, Judge, if I may?

22 Q Go ahead.

23 A We started out in Illinois in '71 and practiced law during
24 that time. First, general practice as well as foreclosures,
25 and then we specialized in foreclosures. In 1982 we moved -- I

1 had opened that Florida operation that Mr. Shapiro spoke about.
2 As we grew and as new firms were established I was still
3 running Illinois. It was not my plan to go out and go forth to
4 other places and become the guru of the world. Okay. But, as
5 the -- as Mr. Shapiro noted, we computerized our practice in
6 1974 when attorneys were using pen and quill, I think. And,
7 when we grew we were able to apply that work flow technology to
8 manage to the work flow of the practice. And so, we imposed
9 that discipline in the offices as we grew. But, most of the
10 attorneys who we became partners with weren't necessarily
11 understanding work flow. Most attorneys just lawyer cases.
12 And, as the volume increased and the need to move the files
13 along, it was necessary for me to fly out to various offices
14 and explain how I think the work should be done. How to staff
15 the office, how to get the work flow going.

16 Then in 1990 HUD came out with their time frame
17 requirements and said you had to complete a case in so many
18 days, weeks, months, in various states. And then, subsequently
19 VA did the same, followed by the GSE's, Freddie Mac, and Fannie
20 Mae. And, they all came up with time frames. And so, we had
21 to learn to slice and dice the -- not slice and dice, that's
22 not the way it worked, to manage the work flow better than we
23 did before. And, that continues to today as not only has the
24 time frames shrunk, but there's more competition and
25 everybody's trying to outdo each other in terms of impressing

1 clients as to their capability of moving work.

2 Your Honor, I believe that -- and, we'll get back to
3 the answer -- there is probably -- I'm going to -- this is a
4 guess -- maybe eight billion dollars worth of files sitting in
5 our offices. Our clients don't expect us to have them sit
6 there and not move them. Nor, would we expect not to move
7 them. So, it becomes a process driven business. I went out
8 and met Frank, terrific guy. And, --

9 Q Frank Martone?

10 A Martone. And, we grew the practice and I would come out,
11 from time to time, I can not remember the frequency, and he
12 grew and I tried to help him staff and -- because we have gone
13 through this already with Illinois and then Florida. Then in
14 early '90s RTC problems arose, foreclosures were -- the economy
15 here fell hell in a handbasket, as they say, and we were
16 deluged with cases. There weren't as many firms then as now to
17 do this work. So, most of that work came to our firm. And,
18 the work was not moving.

19 Q In New Jersey?

20 A In New Jersey. And, I just felt that Frank, as good as a
21 knowledgeable attorney as he was, he understood the work,
22 there's no problem, I mean, he's a terrific guy, too, and I'm
23 not saying this gratuitously, he was. But, I didn't think that
24 he could solve the problems moving the work. Such as a case
25 sitting in service for nine months with one defendant. Because

1 we had so many cases you couldn't see the forest for the trees.
2 Our business is being able to see the forest for the trees and
3 not have cases sit for months without realizing that it's been
4 delayed. So, we became the Shapiro & Kreisman office because I
5 did not have -- oh, whoops, whoops, I'm sorry -- that's all
6 right. That's all right. That's okay.

7 Q Welcome to Newark.

8 A Yeah, that's right. Least it hasn't frozen to ice. So,
9 yeah. So, we formed Shapiro & Kreisman because I had no
10 partner to name. We had a body of people but no partner.
11 Then, in the course of the next several years we had various
12 people taking on the management lead, as a managing attorney
13 and not managing partner. And, Nelson was with the firm at the
14 time. There are some senior people who are there that I chose.
15 They didn't work out either. I think I ended up making Nelson
16 a managing attorney perhaps late in the '90s. Within '99, I
17 can not remember.

18 Q All right.

19 A And, the firm did well, people responded to Nelson's
20 leadership, and we named him a managing attorney -- managing
21 partner in I think 2001.

22 Q All right. Let's just take a minute and --

23 A Sure. Okay. I'm sorry.

24 Q That's all right, don't worry.

25 A These things happen. These things happen.

1 Q Take your time. Take your time.

2 A That's fine with me. Okay.

3 Q All right.

4 A All right. Let's at least -- there's some water.

5 THE COURT: All right, thanks Bills.

6 A Let's see if I can spill this. All right. Nelson had
7 become the managing partner. Partnership agreement calls for
8 him to manage the firm and to handle all of the legal and
9 ethical responsibilities in the State of New Jersey. Now, so
10 that's where we are and he had been the managing partner since.

11 Q Okay. Did you have any knowledge of this pre-signing
12 practice that was defined at the outset of this hearing?

13 A No, Your Honor. And, may I just embellish just a bit?

14 Q Go ahead.

15 A I travel to all the offices, not all of the offices, some
16 offices I have not been to because they don't want me there,
17 they don't need me. They're equity partners or partners who
18 have done so well that my appearance there is only for
19 goodwill. To show the flag, to get to say hello to people.
20 Some offices I spend more time with. In the earlier years we
21 would get reports that would be prepared that were very long,
22 they were actual case by case reports. Not of substance, but
23 of dates. And, I get reports of all the files in a state and
24 I'd review them to see if we're doing okay. We've since got
25 more --

1 Q Okay, along the time line?

2 A Time line, yeah. We don't see the -- I don't see the
3 files.

4 Q So, it's only time line measurement from a management
5 perspective?

6 A Correct.

7 Q Is that a fair statement?

8 A That is correct. That is the point of this. That's why
9 although I have been in New Jersey and other offices, I'm not
10 focused on the local practice, the local rules, and
11 indimniscence a procedure or process that has been described
12 with pre-signed certifications. I didn't even know what we do
13 in Illinois today. I haven't been in bankruptcy court in over
14 20 years and got a legal file in more than 15 years. I ask our
15 bankruptcy managing attorney who's been with me 24 years, what
16 do we do in Illinois? All the Judges, all the Circuits or
17 Divisions in Illinois accept attorney certifications. I said
18 to him, well, the attorneys don't have any knowledge, I mean,
19 they get it from the client, it's a printout, or whatever they
20 get and they look at it, and they says, well, -- they don't
21 care about somebody a thousand miles away who's some processor
22 signing a certification, they don't need that person's
23 certification. They want to know for purposes of certainly
24 Rule 9011 that the attorney has made a good faith review of the
25 information and is submitting it to the Court. Not as

1 testimony. But, as a statement that they have acted with good
2 faith in terms of presenting that material to the Court.

3 Q The material, being --

4 A Being --

5 Q -- being that that was provided by an outsourcer or by the
6 mortgagee?

7 A Or client, yes, that's correct. That's correct.

8 Q And, nothing more?

9 A Correct. This District has different rules. It requires
10 a client to review the submission and sign the submission
11 before it's submitted to the Court. My own view is not
12 important, but I think 9011 should punish bad faith and not bad
13 documents, and therein may lie a distinction here that may not
14 exist, but we'll leave it for the Court to make that decision.

15 Q Well, you haven't lost your edge as an attorney. Go
16 ahead.

17 A So, that's where we are, Judge, I don't --

18 Q You can continue. I appreciate it.

19 A If I had heard that they did this we could have found a
20 way to do it that would have complied with the Court's order.

21 Q Well, they did immediately.

22 A Right. So, it wasn't helpful to us to that.

23 Q I understand.

24 A And, I just think it was poor --

25 Q Judgment?

1 A -- poor management and poor judgment.

2 Q All right. Okay. Now, let me get to the sort of
3 information transmission mechanism if I can. And, generally,
4 I'm not asking you a question about how a particular computer
5 system works mechanically, I just am looking for concept. When
6 LOGS Financial was in business as a default outsourcer, is that
7 a fair way to characterize them?

8 A Yes. Yes, sir.

9 Q Okay. And, let's assume they were interfacing with
10 EverHome on a particular mortgage account that was in default,
11 all right?

12 A Yes.

13 Q What would be the access that LOGS Financial would have to
14 EverHome's files with respect to that particular mortgage
15 account?

16 A I'll start by saying that I'm not an expert on the
17 extraction and the LOGS Financial side. My focus has always
18 been on law office performance. But, my understanding is that
19 our Catapult system extracted certain data, particularly with
20 the referral of the case. It was a referral -- electronic
21 referral system. It didn't invade the database, it extracted
22 certain discreet information from the database and sent it
23 up-line to our offices.

24 Q Being our -- when you say "our offices"?

25 A The -- all of the Shapiro & Kreisman offices. We call it

1 the LOGS Legal Network Offices.

2 Q Well, before you get to sending data to the field offices,
3 the network offices, --

4 A Okay, yeah.

5 Q -- I'm still not clear, and maybe it's just that I'm not
6 getting it and if you could explain what LOGS Financial was
7 able to review before it sent data down to a particular law
8 office such as Shapiro & Diaz? Do you know? And, if you
9 don't, you know, I --

10 A I believe that once the lender determined the referral
11 made --

12 Q Referral to LOGS Financial?

13 A No. The people at the outsourcing center, the LOGS
14 Financial, were doing the referrals.

15 Q Were doing it?

16 A They were doing the referrals. They were the back office
17 for the lender. Once the lender made the decision, -- servicer
18 I should say, not lender -- once the servicer made a decision
19 to foreclose, okay, the outsourcing people were the back office
20 for that process.

21 Q At that moment, before there's a referral to Shapiro &
22 Kreisman, what records were available to LOGS Financial as a
23 back office operator?

24 A I believe they had access to the system that housed the
25 data.

1 Q EverHome's full system?

2 A I believe so.

3 Q Okay.

4 A But, there are others who know more about this than I do
5 in that organization, and who probably could give you a more
6 reliable -- but, I think that's what it was.

7 Q All right. And, now we get to the referral. Who makes
8 that referral to Shapiro & Diaz from LOGS Financial Services as
9 a default outsourcer?

10 A An employee of -- or, employees of LOGS Financial.

11 Q LOGS makes the referral, not EverHome?

12 A Once everyone made the decision to refer, the back office
13 was LOGS. We were the body that --

14 Q So, in your view LOGS was making the reference to -- the
15 referral to Shapiro & Diaz?

16 A Right.

17 Q Okay.

18 A Or, any firm that the client picked to get the work.

19 Q Well, that's what I'm trying to get to. Who picked the
20 firm?

21 A Oh, the client did.

22 Q Okay.

23 A For example, -- for example, to make it very clear.

24 Freddie Mac has designated counsel in Florida -- in New Jersey,
25 excuse me. And, three or four firms, I think, that are used.

1 And, we sent the files to those law firms. The LOGS Financial
2 did.

3 Q So, there would be a panel, if you will, and out of that
4 panel LOGS Financial would pick one, is that a fair statement?

5 A No, the client would direct where the clients go.

6 Q Oh, the client would make the direction?

7 A Yes.

8 Q Okay.

9 A For example, if it was Freddie Mac, they may say take the
10 three and do one, two, three, one, two, three.

11 Q All right.

12 A If it was non, they'd say send it to Shapiro & Diaz.

13 There were may be a --

14 Q If it were non?

15 A Non Freddie Mac and they had the choice they may say send
16 it to Shapiro & Diaz.

17 Q Okay. Okay.

18 A They may have had a state housing authority that wanted to
19 pick a firm in New Jersey to handle the work. They say, well,
20 this file goes to --

21 Q So, the mortgagee would pick the firm?

22 A Right. Right.

23 Q Okay.

24 A And, would tell us who to send it to.

25 Q Now, let's assume that Shapiro & Diaz were selected.

- 1 A Okay.
- 2 Q Would Catapult then pull certain data --
- 3 A Yes.
- 4 Q -- and send it to Shapiro & Diaz?
- 5 A The law firm. Yes.
- 6 Q And, that would not be all the data, just certain data
- 7 that was pre-programed.
- 8 A Just certain data that we needed to commence the case,
- 9 yes, right.
- 10 Q Okay. So, if I have it right, LOGS Financial would have
- 11 access to the full files of EverHome, would act as its back
- 12 office servicer, upon the designation of a referred law firm
- 13 Catapult would pick certain data that was preprogrammed, --
- 14 A Correct.
- 15 Q -- and send it to the law firm?
- 16 A Correct.
- 17 Q Is that all a fair statement?
- 18 A As far as I know that is a fair statement.
- 19 Q All right.
- 20 A I was not a key player in that process, the LOGS Financial
- 21 process side. But, I believe that's how it worked.
- 22 Q Okay. Now, if we look at LOGS Financial, I heard your
- 23 partner say there was 700 employees --
- 24 A Six or 700 people at one time.
- 25 Q At one time. Would people in LOGS become familiar with a

1 particular mortgage owner, mortgagee, such as EverHome if I use
2 that, or Washington Mutual, would there be people assigned to
3 that particular account?

4 A I believe so.

5 Q So, you've heard the name Amira Shaheed. Did you know who
6 that was?

7 A No. It was just a lower level processor, of which there
8 were many.

9 Q Okay. So, if we take Ms. Shaheed as an illustration only,
10 would Ms. Shaheed be assigned to let's say Washington Mutual,
11 and would she become familiar with the books and records of
12 Washington Mutual? How they operated? How they --

13 A I believe -- well, --

14 Q How they accounted?

15 A I'm not sure she understood what she -- you have to talk
16 to her, but I believe she would have as much understanding as
17 if the -- if the servicer had their own employee there.

18 Q Okay.

19 A I think they're sitting at the CRT tube, or whatever, and
20 they had data available for them to access so they could --
21 just as if the client were to do it.

22 Q They'd look at receipts and disbursements from --

23 A Yes.

24 Q -- a particular mortgage account, --

25 A Yes, correct.

1 Q -- and they would see how Washington Mutual would operate?

2 A Yes.

3 Q And, as they would do more Washington Mutual cases they
4 would develop a certain familiarity, is that a fair statement?

5 A If they were there long enough and understood what they
6 were doing, I would think that would be true.

7 Q Okay.

8 A They did not get involved in cash management. They did
9 not post money. We never touched money.

10 Q That was my next question, but you're --

11 A That's a -- yeah, no, that's --

12 Q -- anticipation. So, all postings occur in-house with the
13 mortgagee, is that a fair statement?

14 A That's correct.

15 MR. MARINO: Your Honor, if I just may point out, and
16 not -- you know, again, as I've indicated earlier, not to
17 object to a line of questioning, but --

18 THE COURT: You could object.

19 MR. MARINO: Well, it seems to me that what Your
20 Honor is doing is asking this witness to speculate about
21 something that was within the knowledge and contemplation of a
22 party he has no knowledge of, never met, he never worked with
23 FANDO, he doesn't know how Amira Shaheed did her business.
24 And, I don't think he pretends to.

25 THE COURT: I'm not talking about FANDO.

1 MR. MARINO: I think what he's --

2 THE COURT: No, we're not talking about FANDO at all.

3 MR. MARINO: Well, what you're asking him is, I
4 think, --

5 THE COURT: I'm talking about LOGS Financial.

6 MR. MARINO: Right. You're talking to him about LOGS
7 Financial but you're asking him questions about the content of
8 Amira Shaheed's knowledge. Amira Shaheed is the --

9 THE COURT: I'm only using it as -- it could be Jane
10 Doe.

11 MR. MARINO: Right, but it would be Jane Doe who
12 worked with FANDO.

13 THE COURT: I'm not talking about FANDO, I'm talking
14 about LOGS.

15 MR. MARINO: Who did Amira Shaheed work for? Did you
16 ask him that question, Your Honor?

17 THE COURT: No. Because, I'm not -- we know from the
18 record that Amira Shaheed was never a FANDO employee. Okay.
19 If you're concerned about the premise to the question I'll
20 restate it, all right?

21 MR. MARINO: Okay.

22 Q The premise is that there is a processor, whether it's
23 Amira Shaheed or Jane Doe or John Doe.

24 A Right.

25 Q Working for LOGS Financial Services, LOGS Financial,

1 before the transition, the sale in the summer --

2 A Yes.

3 Q -- of 2004. As I understand your testimony, and please
4 correct me if I'm wrong, there would be a processor in LOGS
5 Financial, or maybe more than one, who would be assigned to a
6 particular mortgagee's account, such as either EverHome or in
7 my illustration Washington Mutual. Is that a fair statement?

8 A Based on what I understand, but as I said before, and I
9 want to qualify, since I really never -- I visited the sites
10 maybe once, I did not -- as an operation's person I did not --
11 I do not have the knowledge of the process itself, as I do with
12 the law firms, at least. But, that's what I understand, we did
13 -- we did something for all the people that were there and
14 whether a specific person had the certain, you know, task, and
15 how they did it, that I -- that's good enough.

16 Q I'm not asking about --

17 A Yeah. Yeah.

18 Q -- specifically about Amira Shaheed.

19 A Yes, but I -- I don't --

20 Q I'm asking just procedurally whether a particular
21 processor would handle a particular account such as Washington
22 Mutual?

23 A That would be, I think, correct.

24 Q And, time and time again, is that a fair statement?

25 A Sure.

1 Q Okay.

2 A Sure.

3 Q All right.

4 MR. MARINO: He doesn't know that, Your Honor. You
5 know, I don't think he's telling you that he does.

6 THE COURT: Well, then maybe we have to get someone
7 here and extend this hearing and find out exactly who does.

8 MR. MARINO: Well, that would be great because I
9 represent an attorney that represents -- that works at Shapiro
10 & Diaz, --

11 THE COURT: Yes, I understand exactly who you
12 represent.

13 MR. MARINO: Right. So, --

14 THE COURT: So, we'll hear exactly what this witness
15 can say.

16 MR. MARINO: Right.

17 THE COURT: And, each of us can evaluate it, and your
18 objection is noted.

19 MR. MARINO: Right. But, all I'm saying --

20 THE COURT: That is all you're saying. Please, sit
21 down.

22 MR. MARINO: Your Honor, --

23 THE COURT: Please sit down.

24 MR. MARINO: -- I would like to continue to make the
25 record, Your Honor.

1 THE COURT: Please sit down. Your point is made.

2 Please sit down. Thank you. All right.

3 Q Mr. Kreisman, I understand exactly what you do and didn't
4 do and that your knowledge is not so we can have a --

5 A Right. There are people at LOGS --

6 Q -- a bit of a discourse here, there are people who know
7 better.

8 A -- people at LOGS who certainly ran this department and
9 can testify.

10 Q Okay. So, if I were to get, for example, Mr. Zakula, here
11 --

12 A Zakula. Yes.

13 Q -- in your view, would he be the person who can answer
14 these questions very directly?

15 A I would hope so. Yes.

16 Q Okay. And, what was his function with LOGS Financial?

17 A I think he -- Vice-President in charge of the Outsourcing
18 Division.

19 Q Okay. Was he the top man at LOGS Financial?

20 A No, not the top man, but for the outsourcing piece, he was
21 the top man.

22 Q Okay. All right.

23 A And then, he had site managers and the site managers ran
24 the sites and then they had supervisors, and so on.

25 Q Okay.

1 A Right. Right.

2 Q All right. And, now he works for FANDO as what, an
3 Executive Vice-President of --

4 A I don't know what he does, but he's the -- he works for
5 them.

6 Q Yes. Okay. We have his certification. Thanks. All
7 right. In terms of the payment to a field office, you heard
8 Mr. -- and that is payment of fees. You heard Mr. Shapiro's
9 testimony. Do you agree that the fees would go into Shapiro &
10 Diaz and be sent to a lockbox in Illinois, is that your
11 understanding of the process?

12 A Yes. I believe the bill that we generate says, -- bill by
13 Shapiro & Diaz paid to I believe it's Shapiro & Kreisman, LLC
14 at LaSalle Bank, which is our lockbox. And, we secure a line
15 of credit secured by our receivables so they expect us to have
16 a lockbox so they can see the money flowing through our lockbox
17 and know that their line of credit is secure. And then, the
18 money flows to the individual law firms and, you know, state
19 tax returns, we pay our taxes on an income derived, Shapiro &
20 Diaz, etcetera. The money's not kept by Shapiro & Kreisman,
21 LLC, it's just the name on the account because we couldn't put
22 33 names on one account. So, for convenience it's Shapiro &
23 Kreisman, LLC.

24 Q When you heard about this practice, and you've testified
25 to some extent about it, this Shapiro & Diaz practice of pre-

1 signed certifications, and this Court's concern, did you
2 investigate at all?

3 A I believe that I understood after reading everything what
4 they did and that they stopped doing it. Now, why they did it?
5 No, I didn't ask them that. It seemed to me something that
6 they would have to explain themselves. While I might say that
7 I'm the kind of general manager of the network of firms, I
8 don't run the office. Okay. I rely on the people we hire to
9 do that. I can't be in every office every day to look at
10 everything. Never intended to do that, and although my life
11 changed from a practicing attorney to a management type person
12 by necessity, if our people, the people we hire as partners and
13 the supervisory roles that they have to play in the local
14 office, if they fail me then we fail.

15 Q And, who's the "they" in Shapiro & Diaz who fail you?

16 A Oh, well, I think Mr. Diaz, although I know Nelson does
17 not do the bankruptcy work, he tends to focus on the
18 foreclosure side. But, he is the partner in the firm. And, --
19 and, I don't know that he himself -- I don't recall in the
20 certification -- necessarily realized that they were
21 photocopying and doing things of that nature. They don't
22 recall, from what I gather, when this started. I did not know
23 when it started so I can't help you with that. So, --

24 Q Okay. Let me ask you this. From a field office's point
25 of view, do you know who was considered the client? Was it

1 LOGS Financial when LOGS Financial was in business? Or, was it
2 let's say EverHome if EverHome were the mortgagee in a
3 particular case?

4 A Always the mortgagee.

5 Q Always the mortgagee?

6 A Yeah. To us, LOGS was financially just a transparent
7 group that functioned the way another client who didn't have an
8 outsourcing relationship would function. You called somebody
9 and they give the information.

10 Q To your knowledge did a field office such as Shapiro &
11 Diaz personnel interface solely with LOGS Financial people,
12 again, in the pre-July 2004 period, as opposed to interfacing
13 with both LOGS and a mortgagee?

14 A No, they would interface with mortgagees.

15 Q Okay. And, when would they interface with a mortgagee
16 versus LOGS Financial?

17 A Well, if the mortgagee was not using LOGS Financial as an
18 outsourcer, --

19 Q Oh, no, no. No, if LOGS Financial were in the picture,
20 I'm sorry.

21 A Oh. Oh, I see. I'm sorry. I don't know. Because I
22 don't handle the day to day who calls -- used to be I called
23 the client everyday, information on files, when I was
24 practicing, but I don't know who the --

25 Q But, that was a --

1 A Long time. I don't know who they call for what purpose.

2 Q Okay. Fair enough.

3 MR. PAPALIA: Your Honor?

4 THE COURT: Yes.

5 MR. PAPALIA: If I may? Sorry to interrupt. But,
6 the prior question that related to who the field counsel
7 considers to be the client and who they deal with, would that
8 answer also be effective if LOGS was in between the mortgagee
9 and field counsel?

10 THE WITNESS: Yes, we always deemed the client to be
11 the client. Who they hired to do their paperwork or their
12 transmittal was immaterial to the law firm. All they need is
13 information. If I need a note, I call somebody to send me a
14 note, I don't care whether it's the client directly sends me
15 the note, or the outsourcer fetches the note. It's immaterial
16 to the law firm.

17 MR. PAPALIA: But, if LOGS was the outsourcer,
18 designated as the outsourcer for foreclosure and bankruptcy
19 services, would field counsel be dealing with LOGS or the
20 client, such as EverHome?

21 THE WITNESS: I answered that for the Judge, I don't
22 know. I don't do that daily and I don't know who they talk to.

23 MR. PAPALIA: Okay.

24 THE WITNESS: They may be talking to a client at a
25 given time and they may not. Somebody would have to answer

1 that other than myself.

2 Q Okay. But, you heard Mr. Shapiro indicate that the fee is
3 paid by the mortgagee?

4 A Correct.

5 Q Is that consistent with your understanding?

6 A Correct. Right.

7 Q All right. Are you currently involved in any aspect of
8 default outsourcing or is that over for Shapiro & Kreisman?

9 A I think that's over. We've given up all our
10 professionals. We don't have any servicing professionals
11 dealing with servicing issues today.

12 Q And so, how does the network work today? The network of
13 attorneys? It works through FANDO and other default
14 outsources, or directly with mortgagees?

15 A Well, let me clarify -- yeah, right, it works through
16 whatever outsources happen to be there at a given time, they
17 come and they go. And, the clients directly. Those that do
18 not use outsourcing.

19 Q And, the clients directly?

20 A Directly, when they don't have an outsourcing arrangement.

21 Q All right. And, do you know if Catapult is still a
22 mechanism that's being used?

23 A I don't know.

24 Q You don't know. Okay. Do you know what Fidelity MPS or
25 MTS is? Is that familiar to you, or unfamiliar?

1 A If that means Fidelity National Default Services, I think
2 that's an outsourcer, Fidelity is an outsourcer. We get -- we
3 do get files from Fidelity in some of our offices. I don't
4 know if the Diaz firm does, but --

5 Q Okay.

6 THE COURT: All right. Anyone else have a question
7 for Mr. Kreisman?

8 MR. MARINO: I do, Your Honor.

9 THE COURT: Sure.

10 CROSS EXAMINATION

11 BY MR. MARINO:

12 Q Mr. Kreisman, I'm just trying to understand a little bit
13 more about the structure of the field offices that you have, of
14 Shapiro & Kreisman. I think you testified that your focus has
15 always been on law firm performance?

16 A Correct.

17 Q What does that mean, law firm performance? How do you
18 judge it?

19 A A combination of things. There's the productivity of the
20 firm. Just how much work they're getting done with how many
21 people. You look at budgets. Okay. If you have a high budget
22 of salaries, why do we have such a high budget of salaries?
23 You look at time frames, are we getting the work done quickly
24 enough to satisfy the industry requirements? What the FHA-VA
25 Fannie, Freddie, as well as any client expectations.

1 Q Okay.

2 A You want to look at the chemistry of the office when you
3 visit it, and you tend to know after awhile what office seems
4 to click and where there's some lack of teamwork. This is a
5 team oriented practice. So, that's the kinds of things that I
6 look at.

7 Q I understand. Who has responsibility for setting the
8 budgets in the office of Shapiro & Diaz?

9 A I do.

10 Q And, who has the responsibility for setting the salaries
11 for the lawyers who work at Shapiro & Diaz?

12 A I do.

13 Q What is my client, Rhondi Schwartz, paid on an annual
14 basis?

15 A I just finished bonuses, I haven't gotten to salaries this
16 year, so I'd have to go to refresh my memory, 72 to 75, in that
17 area.

18 Q Would I be -- in the 72,000 to \$75,000 a year range?

19 A That would be, I think, my best recollection of what her
20 --

21 Q Do you keep track of hours that are actually billed by the
22 individual lawyers?

23 A We don't bill hours.

24 Q Okay. Do they fill out any time sheets or otherwise
25 report to you as to how much time they're spending?

1 A They do not.

2 Q So, in assessing how an attorney is doing in a given year,
3 other than the things that you mentioned in terms of getting
4 along with others in the office, and so forth, it's driven
5 essentially by how much work they're getting out the door?

6 A No, it's also driven by the recommendations by the
7 management team as to who's performed well. They're there
8 everyday. I --

9 Q All right, but performing well is getting the work out the
10 door, right? That's the essence of it, right?

11 A Most likely, yes.

12 Q Okay.

13 A But, there's other things that affect one's salary.

14 Q Sure. Sure. Now, in June of 2004 when you sold LOGS to
15 FANDO, First American, did First American then simply begin to
16 employ all of the people who had been employed at LOGS? I
17 mean, you sold it as a going concern, right?

18 A I believe they kept them for awhile but then they started
19 to terminate people.

20 Q Right. So, but you sold --

21 A So, I don't know --

22 Q -- you sold it as a going concern?

23 A Yes, I did.

24 Q In other words, the systems were in place, including the
25 software system that you had developed, right?

1 A Yes.

2 Q and, I take it that also you had the personnel in place?

3 A Yes.

4 Q So, the day after the closing FANDO began to operate just
5 as LOGS had been operating up to that moment?

6 A Yes. Yes.

7 Q Now, you testified in response to some of Judge Stern's
8 questions about what someone sitting at LOGS looking at a CRT
9 terminal would have been able to see. Do you know how the
10 interaction went between those servicers, those individuals
11 sitting in front of the screen at LOGS, and the individuals at
12 your various law offices around the country?

13 A No.

14 Q Do you have any idea, for example, about how the
15 information flowed from LOGS to the individual law firm, back
16 to LOGS, back to the individual law firm, and eventually to the
17 Court?

18 A I would have no personal knowledge of that.

19 Q No personal knowledge about the degree of diligence that
20 was exercised by --

21 A No.

22 Q -- the individual sitting in front of that CRT screen?

23 A No. No.

24 Q No personal knowledge about the degree of diligence that
25 was exercised by the individual lawyers?

1 A No, I wouldn't know that.

2 Q No personal knowledge about who conceived this idea of
3 using pre-signed certifications?

4 A No.

5 Q You don't know if that came from someone at LOGS, right?

6 A Correct, I don't know.

7 Q Okay. And, I take it, you testified about when you found
8 out about this, you didn't find out about it until the Judge
9 brought it to everyone's attention this past fall, correct?

10 A Correct.

11 Q And, at that time you took steps to immediately change --

12 A The office did. The office did. They recognized that
13 they needed to do something, they did it, which is what I
14 expect them to do. I hate to be long winded, I didn't expect
15 them to have me fly in there and say this is what you have to
16 do. If I did that, I'd shut the office.

17 Q Sure. You relied on them to do what they had to.

18 A Right. Maybe they erred, but you know, they're human and
19 can make mistakes, but I expect them to correct it promptly and
20 to once it's brought to their attention I would assume that
21 honorable people would make good decisions.

22 Q Sure. And, as the person -- or one of the two people who
23 is really the principal of this firm, and the person, frankly,
24 profiting from all of the business that is done --

25 A If we make a profit. If we make a profit. Assumption

1 that may belie the circumstance.

2 Q Okay. I don't want to go there but I have a measure
3 confidence they -- really. But let's talk just for a moment
4 about as that person, you certainly at no time ever thought
5 that anyone in any of the offices around the country was
6 conveying false information to the Court.

7 A I would hope not.

8 Q And as we sit here today, you don't know a single fact
9 that would lead you to conclude that anybody acted in bad faith
10 or intentionally tried to mislead the Court.

11 A Correct.

12 Q You testified a little bit about the procedure in Chicago
13 of accepting attorney certifications. Is it your understanding
14 that that's basically because the information that's being
15 transmitted to the Court is simply business records type
16 information?

17 THE COURT: I'll let you ask your question and make
18 your speech, but bear in mind that what the witness said that
19 was that he spoke to people operating in Chicago and got that
20 input. But I'll let you go on.

21 A I don't know what we do. I'm told what we do.

22 Q You're told that in some of these offices you rely on
23 attorney certification.

24 A In the Illinois office, the only one they ask and they
25 said we certify the material and if a problem arises after the

1 certification, well then, the Court tells them to do something
2 else, you know. And the affidavits or testimony, whatever
3 might be necessary to resolve the issue, but I personally don't
4 -- happens even in Illinois. And I can't tell you why the
5 judges do what they do, but it's apparently local rules and
6 that's what we do.

7 Q Do you know what the rules are in any of the other 31
8 states in which you have offices?

9 A No. No.

10 Q So as far as you know they could accept attorney
11 certifications, right?

12 A Yes, they could have.

13 Q They could accept the business record just as it appears
14 coming off the computer, right?

15 A Yes. Yes.

16 Q You just don't know about that.

17 A I don't know.

18 MR. MARINO: I don't have anything further.

19 THE COURT: All right, you're sure?

20 Anyone else?

21 All right, thanks again, I do appreciate your coming
22 here --

23 MR. PAPALIA: Your Honor?

24 THE COURT: Go ahead.

25 CROSS EXAMINATION

1 BY MR. PAPALIA:

2 Q Mr. Kreisman, earlier I believe you referred to a Logs
3 Legal Network.

4 A Yes, sir.

5 Q And what is the Logs Legal Network?

6 A That's a -- the Logs Legal Network is the law firm that
7 Mr. Shapiro and I have ownership interest in.

8 Q So in other words, there's Shapiro and Kreisman which is
9 your law firm in Illinois?

10 A It's just one of the thirty, yes.

11 Q Right. And then Shapiro and Diaz in New Jersey is field
12 counsel in New Jersey for the log system?

13 A Yes.

14 Q And is Shapiro and Diaz part of the Logs Network?

15 A Yes.

16 Q The Logs Legal Network.

17 A Yes.

18 Q And let's just pick Florida.

19 A Shapiro and Fishman.

20 Q Shapiro and --

21 A Fishman.

22 Q Okay, Fishman, I'm sorry. And that's part of the Logs
23 Legal Network.

24 A Yes.

25 Q So you're also familiar, I believe, with the Default

1 Services Agreement that logs and Shapiro and Kreisman entered
2 into with various clients, is that correct?

3 A I don't know if I ever read it.

4 Q I'm sorry?

5 A I don't know if I've ever read it or not. I know we have
6 those kinds of agreements. I don't know if I read it. I
7 didn't sign it, I didn't prepare it. But it exists. So it is
8 what it is.

9 Q Okay. Well the Default Services Agreement if I could just
10 represent for the record is that it's in evidence or at least
11 submitted with a certification in this case is a Default
12 Services Agreement between Alliance Mortgage Company, which is
13 the former name of EverHome Mortgage. Shapiro and Kreisman and
14 Logs -- I want to make sure I give you the right name.

15 THE COURT: Financial Services, Inc.

16 MR. PAPALIA: Yes.

17 Q Log Financial Services, Inc. Right. And frankly that
18 agreement was signed as indicated by Mr. Shapiro, but Mr.
19 Shapiro earlier testified he didn't have this particular
20 knowledge of these agreements. And I thought that the
21 indication was that you would have knowledge of this agreement.

22 A No.

23 Q Do you have knowledge of them generally, how they
24 generally work?

25 A I think so.

1 Q Sorry?

2 A I would think so, but --

3 Q Okay. So once Logs and Shapiro and Kreisman enter into a
4 Default Services Agreement with someone like EverHome, one of
5 the services that is agreed to be provided from the Logs
6 Shapiro and Kreisman is Legal Services, is that right?

7 A Yes.

8 Q And once you enter into this Default Services Agreement
9 with someone like EverHome, does Shapiro and Kreisman and
10 FANDO refer to attorneys in the Logs Legal Network or
11 elsewhere?

12 A They refer to wherever the client asks them to refer to.
13 There are states that we don't have an office in and certainly
14 we refer cases to --

15 Q Well, I guess I'm speaking of, and if you don't know you
16 don't know.

17 A Maybe I missed --

18 Q The situation where specifically Legal Services are to --
19 one of the functions that is to be performed by Shapiro and
20 Kreisman and Logs under the Default Services Agreement. And is
21 one of Shapiro and Kreisman's responsibility to manage field
22 counsel?

23 A Well, there's perhaps an answer that isn't quite the way
24 it -- Mr. Shapiro and Mr. Kreisman or at least Mr. Kreisman at
25 least, manages the field counsel regardless of whether the

1 agreement says so or not. So whether it's a formalized
2 contract or not, when I say manage it, I hope to run a good
3 operation in all the offices and I assume that's what the
4 client expects us to do. Shapiro and Kreisman itself as an
5 entity doesn't manage the field counsel. The principals of
6 Shapiro and Kreisman are the principals in the other firms and
7 we are responsible for managing at least in a large sense,
8 those operations. Obviously we don't do it day to day.

9 Q Well, let me put it another way. Again, if you know. Is
10 one of the reasons that a client like EverHome would retain
11 Logs and Shapiro and Kreisman is for access to the Logs Legal
12 Network?

13 A Yes.

14 Q And would that be because the Logs Legal Network is in
15 many states?

16 A Yes.

17 Q And is familiar with the foreclosure and bankruptcy
18 processes in those states?

19 A Yes, and we also have a long history of relationship with
20 Alliance.

21 Q I'm sorry?

22 A I don't know when that was dated, but we go back a lot of
23 years with Alliance.

24 Q I guess this was a restatement and it's dated February
25 1st, 2004.

1 A Okay.

2 Q I guess before the sale to FANDO.

3 A Right. We may have been doing work for Alliance for 15 or
4 20 years in some of the offices even before outsourcing. I
5 can't recall though.

6 Q And so when you have a field counsel in New Jersey, for
7 example, Shapiro and Kreisman -- I'm sorry, do you know whether
8 anyone other than Shapiro and Diaz would get EverHome work in
9 New Jersey?

10 A I don't know, they could. If it's Freddie Mack work I
11 said Freddie Mack designates counsel. If it's some other
12 investor --

13 Q But I was just speaking about EverHome files

14 A Yes, I'm saying EverHome files. They may be directed by
15 their investor to send it to a specific firm other than Shapiro
16 and Diaz.

17 Q Okay. All right, let me try just one more time, one more
18 way and then --

19 A Go ahead.

20 Q Is one of the functions that EverHome is hiring you for
21 access to the legal network?

22 A They could access it without going through a outsourcing
23 agreement, they can just select field counsel of their choice.
24 But --

25 Q One of the things though that EverHome when it's acting on

1 its own and not for an investor asking Shapiro and Kreisman to
2 do is to select legal counsel in New Jersey to perform the
3 foreclosure.

4 A Yes, okay. Yes, if they said to us who would you use in
5 New Jersey, I'd say Shapiro and Diaz.

6 Q Okay. But is that one of the things they're looking for
7 your expertise to provide someone who can perform the services
8 --

9 A Yes. Yes.

10 Q -- and is familiar with the services, is expert in the
11 area and will provide those services in accordance with all
12 applicable laws and regulations?

13 A Absolutely. Every client in outsource expect us to follow
14 the requirements of the law, the investors and their own
15 requirements. And we have to know what they are and be
16 prepared to do that everyday.

17 MR. PAPALIA: Thank you.

18 THE COURT: Anyone else? Any other questions?

19 All right, thanks for appearing, I appreciate it.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: All right, Linda Hynes.

22 LINDA HYNES, WITNESS, SWORN

23 THE CLERK: Please state your name for the record.

24 THE WITNESS: Linda Hynes, 881 Rancocas Road,
25 Westhampton, New Jersey 08060.

EXAMINATION

1
2 BY THE COURT:

3 THE COURT: All right, Ms. Hynes, excuse me for a
4 minute.

5 Does anyone have a need for Mr. Shapiro or Mr.
6 Kreisman? Do think we might recall him? I don't think they're
7 going to get anymore specific so I think that's about -- all
8 right. So you're more than welcome and I would actually hope
9 that if time permits you can stay and see what happens here,
10 but you're certainly free to leave if you have a plane to
11 catch.

12 MR. SHAPIRO: Your Honor, I have a meeting --

13 THE COURT: You're more than welcome to stay but
14 you're certainly the least. So you can go.

15 MR. SHAPIRO: Thank you, Your Honor, I appreciate
16 that.

17 THE COURT: All right, thanks. Do you not a minute,
18 Mr. Tobey?

19 Q All right, Ms. Hynes, as I understand it until this summer
20 you were employed by Shapiro and Diaz, is that correct?

21 A Yes.

22 Q And did you do bankruptcy work for Shapiro and Diaz?

23 A Yes, I did.

24 Q Okay, and we have your certification, and I appreciate it
25 and I would hope not to go through every word of your

1 certification, it's available to counsel. That certification,
2 for the record, is Docket Entry 71, again for those who aren't
3 familiar with the docketing system, we can get you copies of
4 the docket, et cetera, so you can sort of keep count of what's
5 being referred to. I'm referring, when I do refer to your
6 certification, Ms. Hynes, to Item Number 71 in the docket.
7 Your certification indicates that you graduated from Weidner
8 University Law School in 1999 and passed the July '99 bar exam
9 in New Jersey and were sworn in at the end of the year, is that
10 correct?

11 A December of '99, yes.

12 Q And was your job with Shapiro and Kreisman your first
13 employment as a lawyer?

14 Q Yes. I did work for a sole practitioner while I was
15 awaiting admission to the bar and left there maybe a few weeks
16 after I passed it and this was my first employment.

17 Q And you indicate that you worked for Shapiro and Kreisman,
18 is that the name of the firm when it hired you?

19 A Yes, it was.

20 Q Okay. And have you ever met either Mr. Shapiro or Mr.
21 Kreisman?

22 A At that time, no.

23 Q Since then up to today?

24 A I had met Mr. Kreisman, he came to visit, I would say
25 about once a year, more a social visit than -- with me anyway,

1 there were meetings but I was not involved in those.

2 Q Okay. And at some time the name of the firm changed to
3 Shapiro and Diaz?

4 A It did. It did change, I believe in 2001.

5 Q Okay, and you worked with Rhondi Schwartz, is that
6 correct?

7 A Yes, I did.

8 Q All right. And did Ms. Schwartz train you with respect to
9 bankruptcy matters?

10 A Yes.

11 Q Okay. And you understand what I am saying when I refer to
12 the S&D certification practice?

13 A Yes, I do.

14 Q Use of pre-signed forms on file?

15 A Yes.

16 Q Okay. When you did work for Shapiro and Diaz and when you
17 were preparing and filing certifications of default or motions
18 for relief from the stay, did you as a normal course matter use
19 certifications where the pre-signed signatures and certifying
20 statements were on file?

21 A Yes, I was aware that there were signature pages. The
22 process was the referral came down and a bankruptcy processor
23 would transcribe it onto Local Form 16, the entire package was
24 put together for me with a copy of the note, the mortgage,
25 things like that, and the signature page was part of that

1 package. And then I reviewed the substance of that package
2 with client's pay history that we were provided via the
3 catapult system, and then any questions that I had I would then
4 either direct to go back to paralegal if I did not have the
5 time, myself, and most of the time, I would, you know, either
6 send an e-mail, make a phone call to our contact and question.

7 Q Okay. Now you mentioned the payment history and client
8 contact, who, if you know, would you get the payment history
9 from in the days when Logs Financial Services was operating?

10 A It was my understanding and grant it until all of this, I
11 never quite understood the whole Log -- the entire process. I
12 knew, you know, that they sent us the servicing and that I was
13 dealing with a contact, but I've learned more about the entire
14 process through all of these certifications than when I was
15 there. It was my understanding the information was provided by
16 Logs and my contact was an employee of Logs who was then
17 getting any further information if it was something that they
18 did not have they would then go directly to the client and then
19 provide me with the information. And I believe -- sometimes
20 when things were very contested, Ms. Schwartz usually handled
21 the more contested litigation, but sometimes you would directly
22 be in contact with the client if there was something that
23 really required their expertise.

24 Q And when you say the client, who are you referring to?

25 A Washington Mutual or Alliance --

1 Q The mortgagee or mortgage holder.

2 A The mortgagee.

3 Q Okay. All right. And you always considered the mortgage
4 owner or the mortgagee to be the client?

5 A The client, yes, absolutely.

6 Q Okay. And on a regular basis where matters were not
7 exceptional, would your contact or the paralegal's contact, to
8 your knowledge, be with the outsource or Logs Financial?

9 A Yes.

10 Q And the payment history that you would get, do you know if
11 that would come through the system, you heard the catapult
12 system mentioned, would it come through the catapult system, if
13 you know.

14 A I think most of the time. I mean pay history is varied
15 and then they always look different sometimes, I mean, but I
16 was under the impression that they usually came via catapult
17 system.

18 Q Okay. And would you explain what the review process was,
19 let's say dealing with a certification of default on what we're
20 calling an ex-parte basis, subject to Mr. Papalia's appropriate
21 correction of the use of that term.

22 A Yes.

23 Q Let's say we're in that process and you're going to file a
24 certification of default following a cure order.

25 A Yes.

1 Q Okay. And the cure order has now been defaulted on and
2 you're preparing the certification, what would be the process
3 if you can explain?

4 A Well, first I would absolutely go to the cure order and
5 see when the cure payments were, you know, to commence. Then
6 we would then -- I would look at the pay history provided by
7 Logs or you know, whoever provided the pay history to make sure
8 that each -- there were no entries, there were no payments, pay
9 histories are -- they're not easy to read you become very well
10 versed once you start examining enough of them and I would, you
11 know, ensure that there was no discrepancies, there was no
12 question that there were payments made or -- I would also
13 ensure that the payment amount, the breakdown of the payment
14 amount was consistent with what was being reflected on the
15 payment history and like I said I really would just make sure
16 that what was on -- what was provided by Logs corresponded with
17 the referral. Usually when things came they also would give us
18 a due date, a post petition due date to make sure that there
19 were no questions, no discrepancies with that, nothing on the
20 pay history that would send a red flag to me that it required
21 further investigation.

22 Q All right, but your sole source of information at that
23 point would be the payments history, is that a fair statement?

24 A Yes, it was.

25 Q Okay. And you said that payment histories are not easy to

1 understand. Can you give a little explanation as to what the
2 difficulty in understanding some pay histories is?

3 A Well, sometimes they are very clear and easy to read.
4 Sometimes there are disbursements as well. It's not just
5 receipts, it disbursements. You also want to ensure that they
6 are applying payments post petition and not contractually on
7 the loans and that is a very different time and place, and they
8 are computer generated, they are sealed and like I said, they
9 will reflect disbursements for taxes, for example, or insurance
10 and things of that nature. You need to make sure. And if
11 there was any question that something did not -- if there was
12 any question that there was a disbursement made or a receipt,
13 then I would follow up with the client or have the paralegal or
14 legal assistant at the office get more information.

15 Q Would suspense accounts be part of the complexity or
16 difficulty in looking at these statements?

17 A Yes. Absolutely.

18 Q Can you give me some further insight into the suspense
19 account accounting?

20 A Sometimes the problem could be that the payments were
21 being applied contractually which would be a different amount
22 of the current post petition payments and therefore the
23 suspense balance may not be accurate. In addition, sometimes
24 certain monies received for the escrows and things of that
25 nature would be placed into the suspense accounts, so I didn't

1 always feel that the suspense account -- I shouldn't say didn't
2 always feel -- I would always question whether the sustain
3 balance that was reflected on the pay history was in fact the
4 suspense balance that they were showing in their computer
5 system as in the debtor's, you know, suspense account at that
6 time.

7 Q And would you ever have access when an outsourcer was
8 involved, did you ever have access to the actual books and
9 records, the actual computer records of the mortgagee, the
10 mortgage owner?

11 A Maybe on a few instances they would get me a print screen
12 or something.

13 Q They, would be?

14 A Logs would provide to me from the clients what the clients
15 -- and that would be on a few instances that I could remember
16 --

17 Q But you didn't have direct access to a mortgage or
18 mortgage owner's file, is that correct?

19 A Not when they were being outsourced through Logs which I
20 believe is what we're dealing with.

21 Q And then later through FANDO, the same thing?

22 A Yes. Later, yes, the same way. FANDO was really just
23 getting up and running. When I was leaving there was -- the
24 transition phase was still somewhat in place.

25 Q When did you leave?

1 A I left in July of this year.

2 Q Okay. Now again, looking at histories as you did and
3 indicating their often complexities, did you ever find in your
4 experience as an attorney there for what four years?

5 A Five years.

6 Q Five years. That for example payments in a Chapter 13
7 post petition were erroneously credited to prepetition arrears?

8 A Yes, that's been the case. Absolutely as Your Honor
9 knows, I mean, there are times we need to withdraw a motion
10 because the certification was not -- the client's records were
11 incorrect and that did happen.

12 Q And even accounting for post petition payments, isn't it
13 often the case that there are cure orders and multiple cure
14 orders with lump sum payments and needs for accounting as to
15 each cure order and each starting point, if you understand what
16 I'm saying.

17 A I do. And that is why when -- especially when there was
18 multiple cure orders, as soon as I started reviewing that pay
19 history, when I saw that it did not reflect the cure orders, I
20 would send, you know, an appropriate, you know, e-mail or
21 telephone message to make sure that the client's, Logs, you
22 know, trying to watch what terms I use, but I would notify my
23 contact that hey, wait a second, remember there's, you know,
24 multiple cure orders because I felt that as the attorney
25 reviewing it, I wanted to make sure -- I started back -- even

1 at a default, I went back to the original motion, the cure
2 order and you try to, you know, go through, and it becomes
3 somewhat confusing. Fortunately, Rhondi and I were the only
4 bankruptcy attorneys there the entire time I was there. We
5 were very familiar with the files, the ones that are multiple
6 cure orders, you know right by name, but yes, that was an issue
7 as well.

8 Q Fine. Did you ever encounter, for example, a debtor
9 claiming that the debtor was making real estate payments --
10 real estate tax payments directly and yet the payment history
11 included a real estate escrows and payments?

12 A I don't think I ever personally dealt with that. I mean,
13 I had heard of that happening, but I don't think I ever dealt
14 with one of those.

15 Q All right. Similarly, focusing on insurance payments.

16 A Homeowner's insurance.

17 Q Did you ever encounter a situation where on the one hand
18 the payment history reflected collection or default with
19 respect to that payment, that is that premium that was due and
20 yet the homeowner at some point would say, I paid and insured
21 directly. Did you ever encounter that?

22 A Yes. On a few instances forced insurance was placed on
23 the property, it would reflect that there were disbursements
24 made, then usually the typical case opposition would be filed
25 by the debtor or debtor's attorney informing, and as soon as

1 our office received, we would ask for a copy of the insurance
2 policy, we then provided it and instructed that force place
3 insurance should be removed from the property and the account
4 reanalyzed as though that premium should have never been
5 disbursed.

6 Q All right. And in terms of the original payment history
7 that you got, before you looked at it for your own quality
8 assurance purposes, it was what it was. You wouldn't know,
9 for example, before the homeowner, mortgage or debtor raised
10 the issue of insurance, for example, as I just asked, just by
11 looking at the history?

12 A No. No.

13 Q Okay. And how about issues such as lost payments. Is
14 that within your experience that a debtor would claim a payment
15 was made and the history wouldn't reflect the receipt?

16 A Again, the way Rhondi and I -- Ms. Schwartz and I, we were
17 there five years and being the only two, we tried to juggle the
18 work and just tried to make it equal among us. The easiest way
19 seemed to be that -- I would say the majority of the time I was
20 there is that I would handle the review work and she would
21 handle the litigation, the contested matters. So I personally
22 did not deal with many of those issues myself.

23 Q Because that would come up after the fact. You wouldn't
24 know just looking at the history --

25 A Correct.

1 Q -- whether a postal money order were sent and either lost
2 at -- should pardon the expression, EverHome or --

3 A Right. Right. I didn't know it was lost because it
4 wouldn't be reflected on the pay history, so I wouldn't know
5 there was one made.

6 Q All right. How about such things as changes in interest
7 rate with variable interest mortgages. Would you be able to
8 discern from a payment history whether the interest rate was
9 appropriately reflected?

10 A No, I would not. I would not. Because the principal and
11 interest amount would change which I know the principal stays
12 the same, but I would not know the exact interest rate change
13 or anything of that nature.

14 Q Did you ever have occasion to find that a mortgage owner,
15 mortgagee would in fact be using a default rate of interest in
16 bankruptcy when they shouldn't have and that that's reflected
17 on the payment history?

18 A I never dealt with that issue myself.

19 Q All right. Have you ever heard of it?

20 A Not really, no.

21 Q All right. How about payments along a time line, you get
22 a history and it's as of a given date, is that correct? So
23 let's say that Logs would send you a payment history as of June
24 1st, '03.

25 A Okay.

1 Q And you're preparing a certification of default.

2 A Okay.

3 Q What if a payment were made before you submitted the
4 certification. The certification was based on the history you
5 received and would you get notice of that somehow?

6 A Well, the time frames were pretty strict so that when I
7 left we were to file motions or ex parte applications within 24
8 hours of receiving the data. So it was pretty up to date when
9 it came to us. In cases of motions, we would question the
10 client before the return date of the motion if any payments had
11 been received. The duty was on them to let us know if any
12 payments were, but Ms. Schwartz and I always took the
13 initiative to follow-up and see if any payments had been --

14 Q But if we're not dealing with a motion, if we're dealing
15 with a certification on a five day notice, the debtor's
16 attorney or the debtor -- if a payment came in and it was slow
17 in getting entered into the books of the mortgagee, you would
18 just have no knowledge of that, is that a fact?

19 A I would not. Certain contacts were made sure that we were
20 informed of it especially on a asserted default because of that
21 issue. However, Your Honor is right, most of the time it would
22 come up, there would be either opposition filed to the asserted
23 default or the ex parte would be entered. We would then
24 receive a phone call saying that the full amount had been sent
25 in which case we would vacate the --

1 Q Phone call from whom?

2 A Phone call from the debtor. Phone call from the debtor
3 advising us that the entire amount either was recently
4 submitted or you know, had been submitted.

5 Q And that bookkeeping on the receipt would be in the
6 accounts and records of the mortgagee, is that correct?

7 A Yes.

8 Q All right. So you wouldn't see that unless it worked its
9 way through the default outsource such as Logs or FANDO to you?

10 A Correct, yes.

11 Q But you didn't have access to the full records of the
12 mortgagee.

13 A No. No.

14 Q Now, within your experience, your five year experience at
15 Shapiro and Diaz, would you indicate how often on a percentage
16 basis you would have to go back to the default outsourcer for
17 further information and couldn't just take the payment history
18 on face value?

19 A I'm trying to think of a response.

20 Q I know.

21 A Because a majority of the motions were filed three months
22 after meaning that no post petition payments had been made at
23 all by the debtor. They were the easiest pay history to
24 review. And I'm trying to think of outside of that how many I
25 would have to question on percent of. I would say probably

1 realistically about 50 percent of them required something
2 because Ms. Schwartz and I are very particular and we would
3 question if there was anything that I felt I just didn't feel
4 comfortable with.

5 Q So in roughly half the times you'd have to go back to the
6 default outsourcer, Logs, or after Logs, FANDO and ask some
7 questions of the processor.

8 A And if it wasn't myself, there was a chain of
9 correspondence --

10 Q Mr. Wills, perhaps?

11 A Mr. Wills or you know, other -- you know there were -- for
12 five years there's been many, you know, legal assistants there.

13 Q Okay. And that inquiry process, I mean sometimes as I've
14 seen in the Rivera case, went back and forth a number of times.

15 A Yes. And Ms. Schwartz and I always -- we did not take --
16 we would not accept -- well, I spoke with the -- I spoke with
17 so and so on the phone and they told me we always wanted it,
18 that's why we send e-mails to be more appropriate this way when
19 it came to us for review since everything was so critical that
20 we had in front of us that, you know, e-mails seemed to work
21 best.

22 Q So typically when someone from Shapiro and Diaz would go
23 back -- would you ever go back as opposed to Mr. Wills or --

24 A Absolutely, yes.

25 Q Okay. So in a typical call when you would go back, would

1 that be by telephone or by e-mail?

2 A Usually by e-mail.

3 Q Okay. And you would talk to a particular processor at
4 let's say we're dealing with the time when Logs was in
5 operation, processor at Logs?

6 A You would have a specific contact at Logs, for example,
7 for -- you had an EverHome contact at Logs and a Washington
8 Mutual contact that, you know, was familiar and was handling
9 that set of loans, you know, in New Jersey, has your own
10 contact.

11 Q Okay. So if you made contact with someone at Logs who was
12 in charge of let's say an EverHome account, and pointed out
13 something you felt was wrong, for example, that there was an
14 application of a payment to a prepetition arrears which should
15 have been credited post petition in a Chapter 13, understand
16 what I'm saying --

17 A Yes.

18 Q I'm sure better than I do, what would the process be?
19 Would that individual in Logs then go check that matter out?

20 A It was my understanding they did and then they would come
21 back with me, they would respond back with a different due date
22 and new information, you know, they were showing --
23 representing to me that they had, you know, advised the client,
24 the client had adjusted their records accordingly, and this was
25 now the correct information.

1 Q Okay. So you would be told that the processor went back
2 to EverHome, talked to EverHome, dealt with the records there
3 and then got back to you?

4 A That was my understanding, that was not explicit in the e-
5 mail, but that was my understanding.

6 Q Okay. And again, in all of this diligent inquiry by
7 Shapiro and Diaz trying to get things right, you never got back
8 into nor did anyone at Shapiro and Diaz, into actual records of
9 EverHome in the illustration I gave you.

10 A No.

11 Q Okay. But someone to your understanding, someone at Logs
12 Financial or FANDO would have access to those records.

13 A Yes. And Your Honor, we would then sometimes ask for then
14 an updated pay history, you know, showing us that it had been
15 adjusted, or a pencil ledger, we always preferred a pencil
16 ledger, but in some circumstances we would ask for updated pay
17 histories.

18 Q Okay. Now, getting back to the use of pre-signed
19 certifications and forms on file, do I understand your
20 certification and what you're saying today that that was always
21 the case that there was always a pre-signed certification on
22 file and that in every case that you processed with regard to
23 motions for relief and certifications of default that the pre-
24 signed signature would be in the file of Shapiro and Diaz?

25 A Well, Your Honor, there were certain clients that did not

1 go through Logs and therefore, their motions were -- their
2 certifications were prepared and then sent back and then they
3 provided on those accounts that we had that were not serviced
4 through Logs.

5 Q Was that a large part of your work or a small part?

6 A A small part. They were the smaller clients that only
7 referred a handful of cases and --

8 Q Can you estimate the percentage of cases that you handled
9 -- by that I mean motions for relief or certifications where
10 you used the pre-signed form in the file. Was it 50 percent,
11 90 percent, 99 percent --

12 A 95 percent.

13 Q 95 percent of the time that you worked there that you
14 filed motions for stay relief and certifications of default --

15 A Yes.

16 Q -- you used a pre-signed certification form.

17 A Yes. Yes.

18 Q Okay. And do you know the origin of the pre-signed
19 certification form?

20 A I have no idea. It was in effect when I came when I was
21 trained. I have no idea how it started or when it started.
22 Honestly, Your Honor, not to use my youth and inexperience as
23 an excuse, I really -- it was related to me that that's how the
24 clients preferred it to be done. The client hired us for that
25 reason and it was attached.

1 Q And now that you're using the term client, who are you
2 referring to?

3 A The contact at Logs apparently. Yes. Who is now -- you
4 know.

5 Q So Logs preferred it that way as I understand your
6 testimony, and that's not the case --

7 A I really don't know what the client preferred. What I
8 mean to say is that these certification pages were provided and
9 it was my understanding that that was how the client preferred
10 it, but --

11 Q The client being --

12 A The client being the client.

13 Q The client being --

14 A The actual mortgagee. But I don't know so much. Until I
15 had -- as I reflected in my certification, I've spent much time
16 now.

17 Q Okay. Did you ever request someone at Logs to send you
18 the pre-signed certification form?

19 A No.

20 Q Do you know specifically whether anyone at Shapiro and
21 Diaz made such a request specifically?

22 A I have no idea how they appeared in our office. I had no
23 idea -- I do know where they were kept and I know where the
24 paralegals took them from. I have absolutely no idea how they
25 actually got into those locations.

1 Q So the preparation of the certification just involved an
2 assembly process where part of the assembly process was to pull
3 a signature page out of a file and attach it to the
4 certification, is that a fair statement?

5 A I think it's a fair statement. The package was prepared
6 before coming to me, but I think that's a fair statement.

7 Q Did you ever question that practice?

8 A I did not. I did not when I was there.

9 Q Okay. Did anyone to your knowledge within the firm
10 question that practice?

11 A No.

12 Q Did anyone outside the firm such as a mortgagee ever
13 question that practice, to your knowledge?

14 A No.

15 Q Okay. Did you ever find a need to have Logs Financial or
16 the mortgagee read the certification as a final matter before
17 it was assembled with a signature and submitted to the Court?

18 A Did I ever --

19 Q Did you ever see a need for that?

20 A No. I did not. It was relayed to me that the contacts
21 were not well versed in Local Form 16. When we first, you
22 know, began doing Local Form 16 and certain things, they were
23 not -- it was easy for me to read. They had problem because it
24 wasn't their system, they were not comfortable with it. So
25 even sometimes if it was sent to them, and I think there may

1 have been a handful of times that it was sent that I may have,
2 you know, still been a little questionable, and I would want
3 them to see it first.

4 Q A few times.

5 A I do think there was a handful of times when that was
6 done.

7 Q In a year can you estimate -- any given year, how many
8 motions for relief from stay or certifications of default you
9 would be involved in the processing? Can you estimate that?

10 A I'm sorry --

11 Q How many motions did you personally file or how many --

12 A In a month?

13 Q In a year?

14 A In a year?

15 Q You can do it by the month, you can do it by the year.

16 A I'm thinking by the month.

17 Q Okay, do it by the month if that's easier for you.

18 A I would say maybe forty a month.

19 Q Forty motions?

20 A Forty motions a month.

21 Q How many certifications on the ex parte basis?

22 A Probably about the same. Because it's so varied with some
23 months we were very, very slow when I left, which is the reason
24 that I did leave. So I'm trying to think as a general or
25 before it was so slow.

1 Q So you might have done eighty certifications a month.

2 A I think so.

3 Q Okay. Involving Form 16?

4 A Yes.

5 Q Okay. And except for the handful of matters that you
6 mentioned, those certifications never went back to Logs?

7 A No.

8 Q Never went back to FANDO?

9 A No.

10 Q Actually never went to FANDO or Logs.

11 A No.

12 Q Okay. Never went to any mortgagee.

13 A I do believe though, and again I'm not -- I wasn't ever in
14 charge of bankruptcy management or housings, I do believe that
15 when I was first hired, one of the practices was to send --
16 when we served months before electronic filing, when we served
17 motions, we did serve a copy of the motion on our client. I do
18 believe before electronic filing, we did that.

19 Q As you were filing.

20 A Yes.

21 Q But not before you were filing.

22 A No.

23 Q And that practice stopped when electronic filing took
24 over?

25 A I honestly don't know because I didn't take care of the

1 management but -- I don't know.

2 Q You don't know of any practice where the mortgage was sent
3 a certification before it was filed.

4 A No.

5 Q Okay. And the same with the default outsourcer, they were
6 not provided with the certification before this filing.

7 A No.

8 Q All right. Are you currently doing bankruptcy work?

9 A No. I'm employed at a general practice firm in
10 Manahawkin.

11 THE COURT: All right. Again, I do appreciate your
12 certification and your testimony.

13 Anyone have questions?

14 CROSS EXAMINATION

15 BY MR. MARINO:

16 Q Good morning, Ms. Hynes.

17 A Hi, there.

18 Q You testified that you would have a specific contact at
19 Logs, and I guess after that at FANDO who was handling a
20 particular loan or set of loans.

21 A Yes.

22 Q And that would be the one individual with whom you
23 interacted in determining the information that was then going
24 to be transmitted to the Court, is that a fair statement?

25 A Yes.

1 Q Okay. Do you know what that particular individual had on
2 the screen in front of him or her in those interactions?

3 A I have no idea.

4 Q There seemed to be -- there certainly was a suggestion
5 made that Logs Financial had access to EverHome, for example,
6 EverHome's full files, right? Have you heard that said?

7 A I've heard that said here, yes.

8 Q Do you have any way of knowing?

9 A I have absolutely no way of knowing what they were looking
10 at.

11 Q Is it a fair characterization of your understanding that
12 the individual who was speaking with you from either Logs or
13 later FANDO, had access to the very same payment history that
14 they were discussing with you, is that fair?

15 A Yes.

16 Q And would you agree with me that as far as you knew, they
17 didn't have access to any additional information, correct?

18 A No.

19 Q So their job was basically -- first of all, just to get a
20 flavor for the volume. How many of these loans were those
21 individuals at Logs handling as far as you knew?

22 A You mean out of all of the workers --

23 Q Yes.

24 A Like 95, 96 percent.

25 Q And I take it that each one of them was handling a large

1 volume of files on his or her own.

2 A Yes.

3 Q So can you just walk me through how the interaction would
4 arise in the first place. You would get a payment history from
5 Logs, correct?

6 A I would not. The office would receive a payment history
7 from Logs with a referral to file a motion or asserted default.

8 Q And was it your understanding that that payment history
9 reflected information that was simply taken off a computer at
10 Logs and transmitted to your law firm?

11 A Yes.

12 Q Was it also your understanding that other than that
13 payment history that appeared on that CRT screen, the
14 individual who was responsible for dealing with your law firm,
15 had no other way of knowing what the status was with respect to
16 a particular log?

17 A Correct.

18 Q So it's not as though that person had some greater
19 information available to them than they were given to you by
20 virtue of sending you the record that came off the computer, is
21 that fair?

22 A Right.

23 THE COURT: That person is the person in Shapiro and
24 Diaz, is that what you're --

25 MR. MARINO: No, that person is the person at Logs.

1 A Logs. I was understanding that he meant it was an
2 individual -- our contact at Logs who was --

3 Q Who was handling that particular log.

4 A Right.

5 Q All right. So the way it works in a particular instance
6 is they send you -- that person, that contact person sends you
7 all of the information they have available to them, right?

8 A Yes.

9 Q And then after that, you undertook a diligent analysis of
10 that material, correct?

11 A Yes.

12 Q And if you felt that there might be an inaccuracy -- by
13 the way, how would you be able to determine there was an
14 inaccuracy in the payment history?

15 A I think I went over that earlier. I mean, there's
16 multiple -- again, if I saw any applications -- you know, post
17 petition to a prepetition account, if they were being applied
18 contractually rather than post petition, things of that nature.

19 Q So you'd look back at those documents and then go back to
20 the person who had sent you the record and say I think there
21 may be an error here, right?

22 A Yes.

23 Q And then -- what would happen then? Would the person at
24 Logs rely on what you have to say or would they double check it
25 themselves?

1 A No, it was my understanding they checked with the mortgage
2 and then came back and responded to me with an answer.

3 Q Okay. So Logs would deal with EverHome, for example, they
4 would take the information that you had raised, go to EverHome
5 and say there's a problem with your payment history, right?

6 A Yes.

7 Q And is that because the information at Logs had on its
8 computer screen was given to it in the first instance by the
9 mortgagee, being EverHome?

10 A Yes.

11 Q So the way it would work is EverHome would send the
12 information via computer to Logs, correct?

13 A That's my understanding.

14 Q And then Logs would send that very same, every bit of it,
15 a hundred percent of the information that they got from
16 EverHome with respect to a particular loan, they would then
17 transmit to you, correct?

18 A Yes.

19 THE COURT: Do you know that for a fact?

20 THE WITNESS: I don't know -- as I said it's my
21 understanding. I don't exactly know -- I only know what I was
22 looking at not what anyone else was looking at.

23 Q Well, I guess the question is, and it's an important one,
24 did you -- were you ever given to believe that the person who
25 is sitting in front of a computer screen at Logs had more

1 information in front of them than they were sharing with you?

2 A No. Because when I would ask for -- if I wanted
3 clarification for something, they were not coming back to me
4 instantaneously with an answer. They were following up with
5 the mortgagee then responding back to me and that is why I
6 always also wanted to what are you -- you know, what is the
7 mortgagee showing as a due date for this loan to ensure that it
8 was properly accounted for at the mortgagee's office.

9 Q So in other words, as far as you knew, in order to improve
10 in any way on the information that they at Logs had given you
11 at Shapiro and Diaz in the first instance, you would have to go
12 back to them and say, I think you've got a mistake here, right?

13 A Yes.

14 Q And then they would have to go back to te mortgagee and in
15 this instance, EverHome, right?

16 A That's my understanding.

17 Q And we're not saying they, but one of the people, one such
18 person was Amira Shaheed, right?

19 A Yes.

20 Q And Amira Shaheed worked at Logs and then after Logs she
21 worked at FANDO, right?

22 A Yes.

23 Q And this would be a person -- was a person that with
24 respect to a number of loans, you interacted with on a regular
25 basis, correct?

1 A Yes.

2 Q Did you ever have the slightest fear that the information
3 that you were submitting to the Court with this certification
4 that had been compiled, was false information?

5 A No.

6 Q Did you do everything in your power to confirm that that
7 information was accurate?

8 A Absolutely.

9 Q And if instead of doing it the way you did it, if you had
10 said to -- let's use Amira Shaheed as an example, if you had
11 said to Amira Shaheed on a particular occasion, I'm going to
12 submit this certification, but before I do, I'm going to send
13 it over to you, do you have any reason whatsoever to believe
14 that Amira Shaheed would not have signed it and sent it back as
15 written?

16 A We never did that, I would have no reason to believe she
17 would not sign it and send it back --

18 Q Well, was the information in that certification accurate
19 to the best of your knowledge?

20 A It was.

21 Q Was it accurate based on information that Amira Shaheed
22 had given?

23 A Yes.

24 Q Did you ever submit to the Court a certification bearing
25 Amira Shaheed's signature page that did not reflect information

1 that was agreed to specifically by Amira Shaheed before you
2 filed the certification?

3 A I want to preface that though by Amira Shaheed was my
4 contact -- was the contact for a long time. There was always a
5 shuffling of individuals. And there were times that Amira
6 Shaheed was not by contact, but I do know that it was her
7 signature page that was attached. So I want to preface it, I
8 don't want to say something that's --

9 Q I understand your qualifications.

10 A -- yes.

11 Q Let's Take Amira Shaheed out of the mix for a second.

12 A Okay.

13 Q Did you --

14 THE COURT: Good idea.

15 MR. MARINO: Pardon me, Your Honor.

16 THE COURT: Good idea.

17 MR. MARINO: Your Honor, are these questions helpful
18 to the Court?

19 THE COURT: Yes.

20 MR. MARINO: Okay.

21 Q Sometimes it was someone other than Amira Shaheed who
22 played the role of the person sitting at Logs and looking at
23 the computer screen, right?

24 A Correct.

25 Q That person would interact with you throughout the life of

1 this particular project with respect to a particular loan,
2 correct?

3 A Yes.

4 Q And you would satisfy yourself through that interaction
5 that the information that was being placed in a written
6 certification was true and accurate to the best of the
7 knowledge of the person who had that knowledge at Logs, right?

8 A Yes.

9 Q In other words, it wasn't as though Amira Shaheed or
10 someone else had this information and you were instead relying
11 on conversations with a third party, right?

12 A Right.

13 Q What you did was treat Amira Shaheed's signature page as
14 the all purpose Logs' signature page, right?

15 A I guess, yes, if you look at it that way, yes. Yes.

16 Q In your mind though, and --

17 A I should say yes. I wouldn't phrase it that way, but yes,
18 that's in essence what it was.

19 Q Okay. And you understand the Court has questioned that
20 practice because the signature page says something specific on
21 it, right?

22 A Yes.

23 Q It says basically it indicates to the Court that the
24 person signed it after reading it, right?

25 A Yes.

1 Q But is it fair to say that your assessment of it was I am
2 communicating in substance to the Court every single fact that
3 the person knowledgeable at Logs about this loan has to impart.

4 A Yes. At the time that I did, I absolutely did feel that
5 way, however, also I want to say to His Honor that I feel
6 differently about that now. I find that that procedure was not
7 proper, but at the time I never questioned it and felt that I
8 what I gave to the Court was true and it was accurate and it
9 was not -- neither the process nor the content was in any way
10 in question.

11 Q And as we sit here today, and I understand your
12 clarification that now that this has become topical and you've
13 looked at the rules, you recognize if you file a certification
14 it ought to be signed contemporaneously and so forth, right?

15 A Yes.

16 Q But what I'm getting at is the substance of the
17 information that was transmitted.

18 A Absolutely. I know where you're getting, and I agree. At
19 the time I absolutely felt that way. I just want to clarify
20 that I feel differently today.

21 Q I just want to make sure that you don't feel differently
22 about whether the information that you filed with the Court was
23 accurate.

24 A I would have never put something before this Court or any
25 court that I didn't feel was completely accurate.

1 MR. MARINO: I have nothing further.

2 THE COURT: Anyone else have any questions?

3 RE-EXAMINATION

4 BY THE COURT:

5 Q Mr. Marino has asked you a question about your knowledge
6 of what is available to -- was available to a processor at Logs
7 in terms of information, right?

8 A Yes.

9 Q And you stated in such a way that all of the information
10 available to that person was transmitted to you.

11 A Yes.

12 Q Do you know that for a fact?

13 A I do not know that for a fact.

14 Q Do you know what was available to a processor at Logs in
15 terms of information in computer files at let's say EverHome or
16 other mortgage owner or holder?

17 A I have no idea.

18 Q Did you ever ask a processor to go back to a mortgagee and
19 get more information?

20 A Absolutely.

21 Q Did that happen to your knowledge that the mortgagee
22 provided more information to the default outsourcer and then
23 that information was transmitted to you?

24 A Yes, that was my impression --

25 Q Did that happen frequently?

1 A Yes, it happened frequently, yes.

2 Q Okay. Did you ever ask whether the default outsourcer
3 person, let's say the processor, if I can use that term, had
4 access to files in a mortgagee's computer, did you ever ask
5 that question?

6 A I never asked that, no.

7 Q So you don't know.

8 A I don't know.

9 Q Okay.

10 THE COURT: Any other questions?

11 MR. SCHNEIDER: Robert Schneider, U.S. Trustee's
12 Office.

13 CROSS EXAMINATION

14 BY MR. SCHNEIDER:

15 Q Good afternoon.

16 A Good afternoon.

17 Q You said that you were taught the procedure of how to put
18 together the motions when you joined the firm?

19 A I was trained. I had never even seen anything to do with
20 bankruptcy or a motion before, so I was trained.

21 Q You didn't develop the procedure yourself?

22 A No.

23 Q Okay. And who was it who taught you the procedure?

24 A Rhondi Schwartz was my -- you know, my bankruptcy
25 supervisor, she was there ten years, whatever, before me.

1 Q Did she explain why they did it that way attaching the
2 pre-signed certification?

3 A No. Actually the signature page was never a matter of
4 discussion, it was just represented to me that that was part of
5 the package that was put together by the firm.

6 Q And did you actually have communications with Amira
7 Shaheed at some point in time?

8 A Absolutely, yes. She was a major contact, you know, she
9 was a contact on a number of files for a period of time, yes.

10 Q Was it for the particular client you would call and
11 specifically get Amira Shaheed or --

12 A Yes.

13 Q I'm sorry --

14 A No, no, Amira Shaheed was --

15 Q Okay. So then did it work where you would talk to Amira
16 Shaheed and then when you filed the certification you would
17 attach Amira Shaheed's signature?

18 A Absolutely, yes.

19 Q Now were there times that you knowingly talked to someone
20 other than Amira Shaheed and attached Amira Shaheed's
21 signature?

22 A That did happen. It was attached as part of the package
23 that came to me. In all honesty, I reviewed what I'll term the
24 guts of the motion, the certification. There were, of course
25 -- I didn't review the note and the mortgage, I mean in the

1 process, I, you know, I attempted to on everyone, I cannot say
2 -- but like I say, I did not take notice and if the signature
3 page would have changed and there was another individual that
4 was now authorized to sign on behalf, I probably would not have
5 taken notice of that either.

6 Q So that part of the certification that says, "I, Amira
7 Shaheed, hereby certify as follows..." you didn't even look at
8 that?

9 A I did. I did, that was the first page, yes, that was the
10 first page and I would look at it, yes. And I did not -- and
11 again, I don't mean to use as an excuse that I was
12 inexperienced or something of that nature, but I also did not
13 know that even though Amira Shaheed was no longer my contact, I
14 never knew until -- you know, she was not an employee. Most of
15 the time there were promotions given and there were times when
16 I was aware that certain individuals were supervisors and you
17 know, promoted from within, so I did not know, I actually
18 believed that she still worked there, still had authority to
19 sign for it in some capacity and I knew she wasn't the contact
20 that I was dealing with on an everyday basis, but I did feel
21 that she was still authorized to sign as her signature page was
22 still in the possession of Shapiro and Diaz.

23 Q Okay. I know you had the signature pages, did you ever
24 actually come to a knowledge that she was actually authorized
25 to sign on behalf of any of the clients?

1 A No, I did not know what the qualifications were or what
2 the arrangement was between whether it was a -- or how it came
3 to be that she was the individual that provided signature
4 pages.

5 Q And you said earlier you had no idea how the signature
6 pages got into the office?

7 A I don't know how they actually went out or came back in, I
8 have absolutely no idea.

9 Q Never said, Amira, we're out of signature pages?

10 A No, I never. I never did, no.

11 Q You never said, whatever happened to Amira, I hadn't
12 talked to her in a long time to anybody?

13 A No, because the contacts changed quite often. People left
14 -- even when someone left on maternity leave or vacation,
15 contacts changed. So I did not -- and she was my contact for a
16 long time and up till, you know, recently, was she my contact,
17 you know.

18 Q When did she begin as your contact, do you recall?

19 A I don't remember exactly. And also -- I'm trying to think
20 of -- because as I said, through the five years, work was
21 disbursed differently. We tried to keep it equal. At first it
22 was -- we would try to split by last names or things of that
23 nature. And then what became easier is that I would review,
24 you know, certain motions and you know, we would -- so I'm
25 trying to think if I can even answer when she was my contact

1 because I don't know if I always reviewed them, you know, the
2 motions of every, you know --

3 Q Is it a question of years? I mean, she was a contact for
4 a number of years or months or do you recall? Apparently she
5 left in July of '04, you left in July of '05.

6 A Yes.

7 Q Some time prior to July of '04 must have been when you
8 started to contact her, you're not sure when, but do you know
9 how long a period of time?

10 A I also was out on maternity leave, took 12 weeks off, I'm
11 just trying to think. I don't know exactly. I don't know. I
12 can't answer that. And I don't want to --

13 Q And you don't know what year it is, '01, '02, '03, no
14 idea?

15 A I'm just trying to think and I'm nervous on the spot and
16 I'm trying to think. I'm going to roughly say probably about
17 2001 until she left. Roughly. I don't -- I'm guessing, I
18 don't -- I'm just trying to think in terms of who other
19 contacts were. I'm trying to place her.

20 Q Do you recall having other person's signature pages --

21 A I do know that there was a signature page for Dondrea
22 Lomas, who was our contact at Alliance, and I dealt with
23 Dondrea the entire time even up until the time I left, she was
24 the only contact I had there. And I believe before HomeSide
25 (sic) was acquired by Washington Mutual, that was, you know,

1 they were big -- we did a lot of motions on their behalf, I
2 cannot remember -- I can't remember the individual's name.

3 MR. SCHNEIDER: Thank you, Your Honor, I don't think
4 I have any other questions at this time.

5 THE COURT: Anyone else have any questions for this
6 witness?

7 MR. ORLOFSKY: Your Honor, I have --

8 THE COURT: Go ahead.

9 CROSS EXAMINATION

10 BY MR. ORLOFSKY:

11 Q Ms. Hynes, I don't know if you've had an opportunity to
12 review the declaration of Mr. Zakula, which was filed
13 yesterday.

14 A I have not.

15 Q Okay. Would you have any reason to disagree with the
16 statement contained in his declaration that Amira Shaheed began
17 her employment with Logs in August of 2003? Would you have any
18 basis to disagree with that?

19 A No.

20 Q Okay. And would you have any basis to disagree with his
21 statement and his declaration that she left July 29th, 2004?

22 A I have no reason to doubt that, no.

23 Q And when did you begin working at Shapiro and Diaz?

24 A March of 2000.

25 Q And you left --

1 A In July of 2005.

2 Q Okay. Would you agree with me then that the only period
3 in which you could have had contact with Amira Shaheed was
4 during the period from August of '03 to July 29, '04?

5 A Yes.

6 MR. ORLOFSKY: Thank you, nothing further, Your
7 Honor.

8 THE COURT: Mr. Papalia.

9 CROSS EXAMINATION

10 BY MR. PAPALIA:

11 Q Just a couple of questions. When you were exchanging e-
12 mails back and forth regarding the payment issue or question
13 that you had, was that normally you or the paralegal?

14 A I would say 50 percent of the time before it came to me
15 and 50 percent of the time myself.

16 Q And then when you or the paralegal would communicate with
17 someone it would be someone at Logs?

18 A Yes.

19 Q And that communication would be by e-mail.

20 A Yes, the majority -- yes, typically by e-mail.

21 Q And then your response would be -- the response you
22 received would be typically by e-mail?

23 A Yes.

24 Q So do you know whether the person at Logs actually went
25 back to the mortgagee at some point in time to obtain the

1 information or just to obtain the information from whatever
2 file he or she may have?

3 A I have no idea if they went directly to the mortgagee or
4 not.

5 Q Okay. And then Amira Shaheed was the Washington Mutual
6 contact, right?

7 A Yes.

8 Q Who was the EverHome contact?

9 A I believe it to be -- it was Alliance and that was Dondrea
10 Lomas, is what I remembered.

11 Q Okay. And then on the -- I think you testified or maybe
12 it's in your declaration that you had the impression that the
13 pre-signed certification process was something that was
14 preferred by the client, is that --

15 A That was my impression, yes.

16 Q But it's just an impression, you don't really know that.

17 A That's all it is. I have no knowledge.

18 Q You didn't talk to anyone at EverHome about that?

19 A No.

20 MR. PAPALIA: Thank you.

21 THE COURT: Does anyone have any questions for this
22 witness?

23 MR. MARINO: Just have one follow-up question, Your
24 Honor.

25 CROSS EXAMINATION

1 BY MR. MARINO:

2 Q Again, about this scenario where you would go back to the
3 contact person at Logs, whoever it would be and say, I have a
4 question about this or that aspect of the payment history, did
5 that person then say or were they then able to engage in a
6 conversation with you before going somewhere else to get
7 information?

8 A I don't know if they went somewhere else, it was my
9 understanding they did, because they were not able to simply
10 come back with me instantaneously with a response.

11 MR. MARINO: I have nothing further, Your Honor.

12 THE COURT: All right, anything else? Thank you.

13 THE WITNESS: Thank you.

14 THE COURT: All right. In a minute we'll take a
15 break, but it's obvious from dialogue first Mr. Marino's
16 questions and some dialogue with the Court that there might be
17 an issue that's relevant either as a direct matter or in
18 mitigation as to what access a default outsource or whether it
19 be Logs in historic time or FANDO currently has to a
20 mortgagee's fuller files and the distinction between
21 information available to the default outsourcer and information
22 made initially available to the processing law firm here,
23 Shapiro and Diaz. To the extent, Mr. Orlofsky, that Mr. Zakula
24 seemed to have straddled the operations first in Logs, and when
25 I say Logs here, I'm talking about Logs Financial, and is now

1 in FANDO, perhaps he can clear that matter up. And the net
2 question so that we don't have to extend this, and we might be
3 able to start with a certification, the net question is to what
4 extent does the default outsourcer, whether it was Logs or is
5 now FANDO, to what extent does that enterprise have access to
6 files of the mortgagee, and I use that term loosely. It could
7 be a servicer, but in this case it would be EverHome, and a
8 collateral question would be the extent to which catapult or
9 any other system forwarded information to a network attorney.
10 Was it an extraction from data in the database of the
11 mortgagee. And this might or might not be relevant. It's
12 clear that there's access through the default outsourcer to the
13 mortgagee. The only question, as Mr. Marino cogently put it,
14 what's on the screen. But the access is not denied. And that
15 seemed to be the root from the outsourcer to the mortgagee.
16 But we'll find out from Mr. Zakula.

17 MR. MARINO: And I take it we'll have a -- I don't
18 want to respond immediately to what Your Honor is saying, but I
19 think we'll have an opportunity to do so later.

20 MR. OLOFSKY: Your Honor, if I may respond briefly.

21 THE COURT: Yes.

22 MR. OLOFSKY: I did make a note coincidentally before
23 you raised that question that that was an issue which has
24 developed as a result of the testimony and the colloquy of the
25 Court this morning, and that's certainly something that will

1 require further elimination by our client either in the
2 supplemental declaration by Mr. Zakula or perhaps Mr. Zakula
3 appearing before Your Honor to ask specific questions which you
4 may have about that.

5 THE COURT: All right. Thank you, I appreciate it.
6 And before we get too far into debate, you can make a second
7 supplemental question and it can go to the issue of access to
8 personnel, if not records between the default outsourcer and
9 the mortgagee.

10 MR. MARINO: How do you mean that, Your Honor?

11 THE COURT: Can the default outsourcer, through a
12 processor, make a phone call to EverHome and find out more
13 about what's in the records of EverHome than was initially
14 transmitted.

15 MR. MARINO: Obviously this is a little like shadow
16 boxing because you don't have the person who is sitting in
17 front of the screen. If we have that person who is sitting in
18 front of a screen from Logs and then FANDO, I would suggest to
19 Your Honor you'd have a much better flavor because as --

20 THE COURT: That's why I'm trying to get Mr. Zakula
21 into the mix.

22 MR. MARINO: And I don't know -- I know from Mr.
23 Zakula's certification and declaration what his overall scope
24 of knowledge was, but it probably would helpful to have someone
25 who actually on a day to day basis --

1 THE COURT: I think that's a reasonable amendment to
2 the extent Mr. Orlofsky -- I mean, we don't have logs and
3 business now and unless we go on a search for a witness --

4 MR. ORLOFSKY: Your Honor, to the extent that we can
5 produce testimony for the Court whether it's from Mr. Zakula or
6 some other person employed by FANDO, which can address the
7 questions which Your Honor has posed, we will do that.

8 THE COURT: And Mr. Marino has made a strong point
9 and you know, I respect his point that this is just an absolute
10 pass through of all available information. The quote from Mr.
11 Marino in his question of Ms. Hynes was, "All of the available
12 information to a processor in the default outsourcer is passed
13 along," as he questioned it, "wholesale to the law firm," and I
14 want to know what the truth of that is and so does he.

15 MR. ORLOFSKY: Yes, I do, Your Honor.

16 MR. MARINO: And so do I, Your Honor.

17 If I could just give you one other bit of food for
18 thought, although perhaps you think it might be some other pass
19 through. But if I could just give you one more thing to think
20 about, if you're in the position of someone at Shapiro and
21 Diaz, whether it's Ms. Schwartz or Ms. Hynes or anyone else who
22 would be in interaction with Logs, beyond the ultimate question
23 which I think you would find that the answer to that is that it
24 was a whole sale transmittal of information, but beyond that
25 question, I'd ask Your Honor to direct your attention to what

1 was in the mind of the person at the Shapiro and Diaz. Because
2 I can assure you the testimony you'll hear from Ms. Schwartz
3 will be, of course I believe it was a complete transmittal that
4 they were sending me all the information they had. And when I
5 came up with independent reasons to question it, when I went
6 back to them it wasn't a dialogue back and forth, me trying to
7 convince them, them trying to convince me, it was a similar
8 pass through. The question would be transmitted to Logs, Logs
9 would go back and check with -- we're picking on EverHome, but
10 most of the time it Washington Mutual, and it would come back
11 -- so I ask you just to think about what was the intent and
12 then that's all.

13 THE COURT: And again, I would hope that the tenor of
14 this hearing, which is difficult, and I would put on the
15 record, obviously -- I don't want to argue with counsel because
16 to some extent it's unfair being the interrogator, hearing the
17 objections, and so there's a limit to the inquiry process on
18 the 9011 and the contempt hearing. And that's why I'm trying
19 to curtail these hearings. I don't want to come to a hasty
20 judgment, don't misunderstand me, but I think that there really
21 is a limit to which these hearings can go on. I have an
22 enormous amount of data here. I must say again, to be direct
23 with Mr. Marino, that I understand your point and there's some
24 fact issues that perhaps Mr. Orlofsky, through his client can
25 clear up. I'm not certain that it's particularly relevant, but

1 I'm willing to go down that path because you're entitled to
2 have that area exposed. But we've debated this before, I've
3 read your papers and I appreciate what you've submitted. But
4 much like the attorney certification process in other
5 jurisdictions, I'm not sure how relevant it is in this
6 jurisdiction and in this case. But I'll take it into account.
7 Again, I think it doesn't relate to the straight line of
8 things, but it does get us to intent and state of mind. And so
9 that I can -- if you don't mind, steal your thunder a little
10 bit more and you know, make a statement against interest on the
11 record, not -- if we take Ms. Hynes as an illustration, here's
12 a young attorney who got involved in a process and I understand
13 the pressures of time. I understand and with great respect,
14 somewhat more than you do just because of the experience, and
15 I'll deal with it, and I'll deal with it tomorrow on a Chapter
16 13 days, the complexity of what seemed like theoretically easy
17 accounting matters, and they're not in Chapter 13, you've heard
18 about the prepetition arrears, the post petition defaults, the
19 payments into the plan, the payments outside the plan, and then
20 all of the variations in the mortgage process, interest rates,
21 escrows, real estate taxes, insurance; it's hard to program.
22 And if Mr. Kreisman has gotten it fairly well in hand, I have
23 to take my hat off to him. But having said that, I understand
24 how one can take their eye off the ball a bit, and get into a
25 manufacturing mode, when volume is high, and pressure of time

1 is high, I understand that. And I fully intend to take that
2 into account. And I think it does to just drop the second
3 shoe, I think it does to some extent relate to the issue that
4 you're on, which is intent and state of mind. I think it does,
5 and I'm not minimizing that, and I'm not trying to cut off your
6 defenses whether they be in this matter or others, I'm not you
7 know, I think that you're entitled to get the full picture and
8 flavor out.

9 But, the immediate matter, that is before this Court,
10 is a 9011 violation issue, and a -- and perhaps a contempt
11 issue and as I've explained at the conference other issue, and
12 I think if we can get this hearing concluded, again without
13 shorting anyone's fundamental rights, and I won't do that.
14 I'll carry it on as long as someone wants, but I don't think
15 it's in the best interest of everyone.

16 MR. MARINO: Your Honor if I could just very briefly,
17 I agree with you, and obviously --

18 THE COURT: Well that's a victory -- no go ahead.

19 MR. MARINO: I don't -- I'm not sure -- now there's
20 something that may not have a lot of relevance.

21 THE COURT: Yes.

22 MR. MARINO: But I -- I would have walked through the
23 issues that you raise with Ms. Hynes about specifically an
24 interest rate change, for example, if some of the other
25 variables that come into play. But what I'd like to put you in

1 mind of, is this. You've seen from the beginning of -- at
2 least from the beginning of my involvement in this to have
3 drawn a distinction between arguments that there wasn't a
4 violation, there wasn't a contempt within the meaning of or a
5 violation of 9011.

6 And arguments in mitigation. And what I'd like to
7 ask you to just think about, and I know you will, is the extent
8 to which the arguments that I'm making, including this critical
9 argument, that goes to what was in the mind of the person who
10 was actually communicating with the Court, whether we're really
11 talking about mitigation or something that goes to the
12 substance of the question before you, whether there was a
13 contempt, whether there was a violation.

14 THE COURT: All right, I -- you know I --

15 MR. MARINO: And trying to walk through --

16 THE COURT: I don't -- I don't discount your
17 arguments.

18 MR. MARINO: Yeah.

19 THE COURT: But I think that you have to remember
20 that there isn't anyone in this courtroom who A) denies the
21 practice occurred, and we have as I've seen it in all the
22 certifications, an acknowledgment that it was inappropriate.

23 MR. MARINO: There's no doubt.

24 THE COURT: I only use that neutral term.

25 MR. MARINO: You're right. There's no doubt about

1 that, we've conceded --

2 THE COURT: That's right. And now the question is
3 what does the Court do about it.

4 MR. MARINO: I agree with Your Honor, and I just --
5 what we endeavored to do in our papers that we submitted, and
6 you know, perhaps the briefing is premature, I don't think it
7 is, because our goal was to frame the issues for Your Honor,
8 because at the end of the proceedings on November 30th, you
9 were gracious enough, really to say here is a sort of laundry
10 list of things I'd like you to be thinking about. We're really
11 in the way of explaining to the parties what was animating the
12 Court's interest in this issue, which we very much appreciated,
13 including references to the website, and references to the
14 various rules and regulations.

15 We endeavored to run down each and every one of those
16 and place before Your Honor our arguments and there is a thread
17 that really runs through those arguments, and we -- obviously
18 we can do this a little bit -- in a little bit more of a full
19 fashion at the conclusion of the hearing. But, the thread that
20 runs through them it seems to me is, all of this business of
21 violating the rules you can have a procedural snafu, and there
22 to be avoided for a hundred reasons.

23 But bad faith is a critical component of this, and I
24 don't think there is any reason to believe there was bad faith
25 on anyone's part here, I don't think there is any reason to

1 believe there was an intentional misleading of the Court here,
2 and so what I'd ask you to do is --

3 THE COURT: Okay, I'm not --

4 MR. MARINO: -- be sure --

5 THE COURT: -- again I'm very, very mindful of that,
6 and I think that rather than clutter the record, and I -- you
7 know, I'm not -- and I think I've said it a hundred times, I'm
8 not without appreciating that point, and I am mindful of it,
9 but I would point out that if -- if you're right, on the
10 factual issue, I'm only going to the factual issue of someone
11 not having access to a rather full mortgagee's computerized
12 account. That that puts in jeopardy some of what, if not a lot
13 of what a default outsourcer would do, because this Court needs
14 firsthand information, now that firsthand information may be
15 from someone who has seen all the files, but has not made
16 entries. Obviously we're not talking about making entries, but
17 if you take even the hearsay exception with respect to business
18 records, someone has to know what the files reflect.

19 MR. MARINO: Sure.

20 THE COURT: And if we're -- just let me finish. If
21 we're not -- if we're only getting a snippet and a pass through
22 that raises a whole other set of issues, I don't know if we're
23 there, I don't know if we want to go there, but I do understand
24 your point, all right. So let's take a break.

25 MR. MARINO: Okay, thank you.

1 THE COURT: I'm not trying to cut you off too much,
2 just a little.

3 MR. MARINO: I understand, thank you.

4 UNIDENTIFIED SPEAKER: Your Honor, is the Court --
5 the time.

6 THE COURT: Yes. Does anyone have a need -- can we
7 let Ms. Hynes go back to Manahawkin or where ever?

8 MR. MARINO: Well, Judge, just two things that I may
9 add -- I don't want to -- one thing --

10 THE COURT: Go ahead.

11 UNIDENTIFIED SPEAKER: I believe Ms. Hynes referred
12 to Ms. Lomas as an -- employee, and I think it --

13 THE COURT: No I think she meant to say that -- well
14 Ms. Hynes can you correct that or --

15 MS. HYNES: I meant contact.

16 THE COURT: That she was --

17 MS. HYNES: I -- that she was -- a FANDO -- for Logs
18 --

19 UNIDENTIFIED SPEAKER: So I just wanted the record to
20 reflect that she was actually a phantom employee not a --

21 THE COURT: Okay, that's a fair amendment. Yes.

22 UNIDENTIFIED SPEAKER: And that way --

23 MS. HYNES: Yes -- absolutely.

24 UNIDENTIFIED SPEAKER: -- and then number two was, I
25 -- maybe I -- maybe -- the record or whatever, but I just

1 wasn't clear on the difference between the first two questions
2 that the Court wanted to look into further, as -- I thought it
3 was to determine what -- essentially to determine what
4 information is available to FANDO and then can pass through to
5 Shapiro when he --

6 THE COURT: No, the first question is, what's
7 available to FANDO or was available to Logs from for example,
8 EverHome.

9 UNIDENTIFIED SPEAKER: Okay.

10 THE COURT: Okay, so that's -- really access to
11 computerized records outsourcer to mortgagee. The next
12 question was sort of a -- modification of that, if you will, or
13 even if there weren't access directly through -- and I don't
14 know if it came in this order, but the files sent through a
15 computer system whether by telephone or email, or other
16 contact, the default outsourcer had availability of a -- let's
17 say EverHome employee, to go into the records and get further
18 information.

19 And then the third component would be what's passed
20 from the outsourcer the middle person, as Mr. Marino would love
21 to have me say, and --

22 MR. MARINO: -- to say it.

23 THE COURT: And the firm that's at the outside of the
24 field, counsel, network that being in this case Shapiro and
25 Diaz.

1 Mr. Orlofsky is that consistent with what you think I
2 said before and if not, it's amended.

3 MR. ORLOFSKY: Yes, Your Honor. Well we're going to
4 have a transcript.

5 THE COURT: Okay.

6 MR. ORLOFSKY: And I think --

7 THE COURT: All right, but I mean that's the nature
8 of the inquiry, I'm not trying to circumscribe and I want to
9 make that very clear, and limit what might be said about the
10 linkage between the three critical features, the mortgagee, the
11 outsourcer and the counsel.

12 So, if we can get more exposition of this, it would
13 be helpful to the Court, and I would suggest to the parties.

14 MR. ORLOFSKY: Your Honor, we will do that.

15 THE COURT: I appreciate that.

16 MR. ORLOFSKY: We're willing to undertake to do that,
17 if not through --

18 THE COURT: All right.

19 MR. ORLOFSKY: Mr. Zakula, and perhaps through other
20 witnesses.

21 THE COURT: All right. Mr. Papalia does that --
22 answer --

23 MR. PAPALIA: I understand.

24 THE COURT: All right, it's now five of one, if we
25 could take 45 minutes is that enough time. Be back at a

1 quarter to two. In terms of scheduling, I think I'll ask Ms.
2 Schwartz next, so you can prepare your witness a little more
3 based upon what happened here. All right, thanks again. And
4 Ms. Hynes is excused, correct. All right.

5 (Luncheon recess)

6 THE COURT: All right, we're back on the record,
7 Rhondi Schwartz.

8 RHONDI LYNN SCHWARTZ, WITNESS, SWORN

9 THE CLERK: Please state your name and address for
10 the record.

11 THE WITNESS: Rhondi Lynn Schwartz, 3105 Chadbury
12 Road in Mount Laurel, New Jersey 08054.

13 THE COURT: All right.

14 EXAMINATION

15 BY THE COURT:

16 Q How are you Ms. Schwartz, I'm -- I know you were -- okay --
17 - here at the last hearing, and you began to testify and I'm
18 sure you're fully aware of the Court's inquiry, I appreciate
19 the certification that you filed, which is item 75 in the
20 docket, and I'll try not to rehash matters that are in the
21 record, by virtue of that certification. But again, you
22 started in 1993, with the predecessor firm to Shapiro and Diaz
23 is that correct?

24 A 1992.

25 Q 92, okay. Thanks. And you've been there the entire time?

1 A Yes.

2 Q Since then?

3 A Yes.

4 Q Okay, when did you graduate from law school?

5 A 87, 1987.

6 Q Where did you work before Shapiro?

7 A I worked in the law firm that used to be called Epstein,
8 Epstein, Brown and Bosick in Springfield. And I worked at
9 Perzela and Perzela down in Toms River, New Jersey. And I
10 worked for David Hollander in Springfield, and then I came to
11 Shapiro and Martone.

12 Q And before Shapiro and Martone did you do any bankruptcy
13 work?

14 A Yes, at Perzela and Perzela I was a debtor's attorney.

15 Q Okay.

16 A That's where I learned the bankruptcy practice --

17 Q All right. And I don't have as I say, I'm not going to
18 burden the record, I don't have a lot of questions for you, but
19 I do -- I do want to know how the practice of having pre-signed
20 certification forms, on file, began at the Shapiro firm? Do
21 you know?

22 A No. I don't.

23 Q You have no idea when it began?

24 A No.

25 Q So if you started working for Shapiro and Martone in 1992,

1 correct?

2 A Yes.

3 Q At that time, was the firm using pre-signed certification
4 forms?

5 A No.

6 Q All right, so at that time, they were sending
7 certifications when they needed it to the client and the client
8 would sign, and send the certification back?

9 A The client -- the client -- back then we didn't have like
10 the requirements of the local form 16, and things like that, so
11 we had certifications that the client actually handwrote, in
12 the information, histories and stuff, and sent it back to us.

13 Q Signed?

14 A Yes.

15 Q And again if it's redundant, I apologize, but can you
16 identify roughly when the practice changed?

17 A No, I don't, I -- I just know that when Linda Hynes said
18 that she remembers them -- I don't know if this is hearsay or
19 not, but she remembers that from the time she came that they
20 were using them, and that's my -- I don't know how gradually --
21 or when it changed or --

22 Q All right, did you ever request blank forms, if I can use
23 that term, to be executed by a client and sent in to keep on
24 file?

25 A No, I did not.

1 Q Do you know anyone in the firm who did ask for those?

2 A No I don't.

3 Q Well, you see what we have, we've got a law firm and the
4 equity owners and now the principal bankruptcy attorney saying
5 it happened, but we don't know how or when it happened?

6 A No, because when I get a motion packet or an application
7 for ex parte relief from stay, the packet is already prepared,
8 and it comes to me on the file, already with the required
9 documents, a prior order, a note and mortgage, and it's all
10 there, and what I do is I review all the substantive
11 information, and make sure that what's being filed with the
12 Court, is correct, based upon the information that I obtained
13 from the client, or the processor obtained from the client.

14 Q I understand that, and I understand it from your
15 certification.

16 UNIDENTIFIED SPEAKER: Your Honor, I'm having a
17 little difficulty in hearing you, I'm sorry.

18 THE COURT: No, I'm -- all right.

19 Q I understand that, and I understand it from your
20 certification as well. But so far no one has been able to
21 identify how this practice got started and again, your
22 testimony is that you can't give any input to that question?

23 A No, I just know that one time they were -- the
24 certifications and they were you know, the client sent them
25 back and after time, when they were other requirements that the

1 Court required, we just had to transcribe the information and
2 we had you know, the client sending them back, and we would
3 follow up for those, and I don't know when it got to a point
4 where it broke down and they were just using the pre-signed
5 pages.

6 Q When you say they were using, I mean you were using them.

7 A Right, we were using.

8 Q You were -- you personally were filing papers with the
9 Court, is that correct? That had these pre-signed
10 certifications attached?

11 A Yes.

12 Q Okay. If that practice were described today to lawyers in
13 this Court, at least some would be astonished, that a lawyer
14 could engage in that practice, and I'm trying to understand
15 what went through your mind when you employed the practice of
16 using pre-signed certifications and you can answer that any way
17 you want, I'm trying to get at what you could have been
18 thinking about when you used a pre-signed form, and attached it
19 to a certification?

20 A Well the thing is, is that the client would send us the
21 information, and I reviewed their information. If I had
22 questions on what was supplied to me on their histories, I went
23 back to the client for further clarification.

24 I felt that I was in a better position to know that
25 what was going before the Court was correct, than even a

1 processor who was sending me a printed sheet of a history, or
2 what have you.

3 Q I don't mean to interrupt, but again I'm sure Mr. Papalia
4 and others might -- when you say client, what do you mean, who
5 do you mean?

6 A Logs.

7 Q Okay, so the -- the default outsourcer.

8 A Right, I considered -- I always do -- consider them a
9 client, because even though they would be Logs as the servicer,
10 it would -- be referred to as EverHome, or Washington Mutual,
11 or I considered that my client.

12 Q You considered Logs to be the client, is that what you
13 said?

14 A No, but we -- I just -- like interchanged them, I just say
15 client, I'll say Logs.

16 Q You're swallowing your words, I can't --

17 A Okay. I --

18 MR. ORLOFSKY: I'm having difficulty hearing also
19 Your Honor, could -- maybe --

20 THE COURT: Maybe we could pull the microphone
21 closer, you're -- sorry, are you okay.

22 A Our client -- yes, our client is the mortgage company.
23 Whether it be EverHome, or Washington Mutual. We deal with
24 Logs, the sub-servicer, those are the people that I deal with,
25 those are the people that give me the information, those are

1 the people who are my contacts, and those are the people that I
2 go back and forth with. I just --

3 Q And you use the term client interchangeably, with those
4 people and the mortgagees?

5 A No, because I really don't deal with people at the
6 mortgage company.

7 Q So who do you consider the client to be?

8 A The mortgage company.

9 Q Okay. All right. So when you said you got information
10 from the client, you really meant you got information from the
11 default outsourcer?

12 A The default outsourcer.

13 Q All right. I interrupted you, I'm sorry.

14 A No, that's okay.

15 Q Go ahead.

16 A So, the -- default outsourcing provided us with the
17 information, it is my understanding that it is as if the
18 outsourcing person was actually sitting in the bank, so I
19 believe that their system, that they were sending me
20 information from, was the same as if the bank directly sent me
21 that information.

22 So, I would you know the processor would put together
23 the motion, the application have you, and bring that to me.

24 Q The -- you mean the Shapiro and Diaz paragraph or someone
25 when you say the processor?

1 A Yes. Yes.

2 Q Okay.

3 A They prepare the motion, on the -- default, based upon the
4 information that was provided by the outsourcing party. Then I
5 would review the information again. I would look at the
6 client's history, their pay changes, their breakdown of
7 payments, and make sure that all the information that the
8 client provided to Shapiro and Diaz was correct and correctly
9 reflected in any application or certification that I filed with
10 the Bankruptcy Court.

11 If I wasn't sure or competent in any information
12 provided or I questioned any information provided then I would
13 go back to outsourcing, and say I don't understand this, or I
14 need clarification of this, or this does not make sense.
15 Because I always feel that if I'm putting something before the
16 Court, that I don't understand, how is the debtor or debtor's
17 attorney who don't know and work with these histories as much
18 as I, they're not going to understand it.

19 Q But why didn't you utilize a practice which is -- what I
20 would call the standard practice, of preparing a certification
21 with input from the client or an outsourcer, and sending it
22 back for signature to the outsourcer, or the mortgagee?

23 A Because they provided us with the information, and they
24 just wanted to get it filed, they didn't care, they became
25 paperless, they didn't -- you know they knew they were giving

1 us the information, and we were going to transcribe that
2 information and file it with the Court. They don't even want
3 copies of the motion after they're filed. They rely on the law
4 office, to do the work.

5 Q Did you ever question the practice of slapping on a
6 pre-signed form, to a certification?

7 A No.

8 Q You never questioned that?

9 A No, I -- unfortunately I just -- I never even questioned
10 it I did not even think there was anything wrong with it. And
11 I know, in hindsight now, I understand that there was a
12 problem, but no I -- I didn't, I mean I reviewed proof of
13 claims, the client provides information and me as an attorney
14 and all attorneys we signed the proof of claim, and again
15 that's a transcription of the client's information and you file
16 it with the Court.

17 You know, I file -- I do a lot of the litigation, I
18 file opposition papers, to motions to reinstate, objections to
19 proof of claim, that I get information but I certify because I
20 -- intertwined information from the client, and information
21 from my file, and I -- so I never really looked at it --

22 Q So in that case you would certify, you would say EverHome
23 for example, got a cure order, from the Bankruptcy Court on
24 such and such a date, attached as exhibit A is a copy of that,
25 and you would sign that as your certification?

1 A Right, and that was -- that's standard practice.

2 Q Okay.

3 A And I --

4 Q But the forms that we're questioning, obviously are
5 certifications with somebody else's name attached as the
6 purported signatory? Didn't it ever raise a red flag with you,
7 again I'm not trying to -- you know, I've asked the question a
8 bunch of different ways, and I don't want to make it
9 oppressive, I really don't, but to say that the Court is
10 anything but astonished at the practice would not be honest,
11 and I can't -- I'm trying to understand what the mentality is,
12 and what the intent was, in the law firm at the operating
13 level. If you could help me, fine. If you can't, I
14 understand.

15 A I signed that motion, when I signed the application.

16 Q You all right?

17 A And --

18 Q Take a minute. Take a minute.

19 (Pause)

20 A It's me as an attorney, signing it, and I care about what
21 goes before the Court. And I know what ever I filed with the
22 Court was correct. That's all I can say. I don't even look at
23 the signature pages, because I'm more concerned that the
24 information that's going before the Court and I would stand by
25 any application or motion I've ever filed.

1 Q Okay. Okay. All right, as I understand it, the practice
2 is now changed, is that correct?

3 A Yes, it has.

4 Q Okay, and the practice that's now employed is the
5 certifications are prepared, in your office is that correct?

6 A Yes.

7 Q And then sent to the outsourcer?

8 A Right, the full certification for review and signature --

9 Q At the outsourcer's place of business?

10 A Yes. Correct.

11 Q Okay. I don't know if you've seen this, but FANDO has
12 submitted Mr. Zakula's certification or declaration and has
13 attached a series of very detailed guidelines, if I can use
14 that term, for internal operations, and interfacing with
15 lawyers have you ever seen either a FANDO or a Logs manual for
16 operations, at the law firm level?

17 A No, I might have gotten one at one point, but I'm sure I
18 didn't read it.

19 Q Okay. All right. Because -- in the FANDO material it
20 says very explicitly how a certification or affidavit is to be
21 executed, and it's the long way, but you're not aware of that?

22 A I didn't get anything from FANDO. I haven't gotten
23 anything recently, if anything it would have been something
24 from --

25 Q Logs?

1 A Yeah.

2 Q All right. You heard testimony on the 18th of October,
3 you were in the courtroom when Mr. Diaz testified?

4 A Yes.

5 Q And do you recall him testifying that there was an issue
6 or question in his mind, I think he used the term issue, with
7 respect to the pre-signed certification form practice, did you
8 hear him testify to that?

9 A Yes.

10 Q Did you ever hear him raise that question in the offices
11 of Shapiro and Diaz?

12 A No.

13 Q Ever hear anyone else question the practice?

14 A No.

15 Q Inside the firm?

16 A No.

17 Q Outside the firm?

18 A Nope.

19 Q No client?

20 A Nope.

21 Q No outsourcer?

22 A Nope.

23 Q Okay. Any adversary?

24 A Nope. Never had a problem.

25 Q Want a drink of water?

1 A No, I'm fine.

2 Q Okay. Under the current procedure where certifications in
3 final form are sent back to either the outsourcer or the
4 mortgagee, and executed contemporaneously with that read, and
5 then submitted through your office to the Court, do you find
6 that that process is working?

7 A I don't really understand what you're asking --

8 Q Well, I mean is it feasible for the nature of the work
9 that you're into do -- certifications signing that way?

10 A Yes, we're able to do it. Yes.

11 Q Okay, anybody complaining about it, any client?

12 A Not that I'm aware of.

13 Q Okay. All right.

14 THE COURT: That's all the questions I have.

15 MR. MARINO: I have a few questions?

16 THE COURT: Certainly.

17 CROSS EXAMINATION

18 BY MR. MARINO:

19 Q Ms. Schwartz, Judge Stern asked you if you had reviewed a
20 policy --

21 MR. MARINO: I'm sorry Your Honor, I have -- I'm
22 having difficulty hearing with the typing. I -- just -- could
23 I just ask you to -- just --

24 THE COURT: Is there a way Carol -- that you can sort
25 of hold off a little bit, is that possible?

1 THE CLERK: Yes, that's okay.

2 THE COURT: All right.

3 MR. MARINO: Sorry about that, but thanks.

4 BY MR. MARINO:

5 Q Do you have any recollection whatsoever of ever receiving
6 a policy from FANDO or Logs?

7 A No.

8 Q Okay. So as far as you know sitting here today, you never
9 got such a policy, written or otherwise correct?

10 A Right.

11 Q Okay, as far as the information that you transmitted to
12 the Court, you seem to make an emotional point of the fact that
13 you're very careful in the information that you review,
14 correct?

15 A Yes.

16 Q And yet you submitted a certification that contained a
17 signature page that was signed in advance, and attached to the
18 information, right?

19 A Yes.

20 Q Is that because from your perspective the information that
21 you were submitting to the Court was true and accurate
22 information to the best of the knowledge of Logs?

23 A Yes.

24 Q And you were speaking directly with whoever it was,
25 whether it was a Amira Shaheed or whomever, you were speaking

1 directly with that person on a regular basis with respect to
2 each and every one of the loan files, correct?

3 A Yes.

4 Q If an issue came up that is to say if you had any question
5 whatsoever, would you file a certification without going back
6 to that person and confirming that the information that Logs
7 had was accurate to the best of their knowledge?

8 A No I would not.

9 Q Did you ever think of this as anything other than
10 transmitting to the Court what Logs believed from its review of
11 its computer records, was the story with respect to a
12 particular loan?

13 Did you ever think there was anything other than
14 that, being done here?

15 A No.

16 Q Did you ever have reason to believe there was information
17 that Logs had that somehow they were holding back from you?

18 A No.

19 Q And did you ever have the impression that Logs acting on
20 behalf of EverHome was attempting to conceal information from
21 you as the lawyer for EverHome?

22 A No.

23 Q Did you believe to the contrary that Logs was attempting
24 to facilitate the flow of accurate information from EverHome or
25 Washington Mutual to you?

1 A I don't know if I understand that --

2 Q Did you believe that Logs was attempting to facilitate the
3 flow of accurate information --

4 A Yes.

5 Q -- from EverHome the client to you?

6 A Directly. Yes.

7 Q The lawyer?

8 A Yes.

9 Q This was set up so that there was a middle person between
10 you and your client, right?

11 A Yes.

12 Q Oh, and the middle person was so closely identified with
13 the client in your mind that you almost interchangeably
14 referred to Logs and EverHome as the client right?

15 A Yes.

16 Q But really, it's Logs acting as an arm of the client,
17 right?

18 A Right, right.

19 Q Logs got that power from EverHome, or from Washington
20 Mutual, right?

21 A Yes.

22 Q And the information that the person sitting at Logs had on
23 his or her computer screen was precisely the information that
24 EverHome had given correct?

25 A Yes, correct.

1 Q Did you ever have any reason to believe that there was
2 some extraction going on there, where Logs was somehow
3 concealing a portion of the record for its own purposes, or for
4 EverHome's purposes?

5 A No.

6 Q Did you understand at all times that Logs was there to
7 facilitate your job?

8 A Yes.

9 Q You now know that this process of filing an application
10 with a certification page attached is not the right way to
11 proceed, correct?

12 A Yes. I do.

13 Q Okay. Did you ever think at the time that you were
14 engaged in this process, that you were transgressing the laws
15 or the rules of Court in any way?

16 A No. Not at all.

17 Q If you had thought that, would you ever have done it?

18 A No.

19 Q Okay. How many of these pre-signed certification pages
20 did Shapiro and Diaz have on its premises at any given time?

21 A I don't know.

22 Q To your knowledge were the pages signed in bulk perhaps 35
23 or 40 of them at a time?

24 A I know they were done in bulk.

25 Q And sent over?

1 A Yes.

2 Q Okay. And did you think of Amira Shaheed in your mind,
3 was she the person who was authorized to sign on behalf of
4 Logs?

5 A Yes.

6 Q Did you feel that as long as the information you had was
7 true to the best of Logs' knowledge attaching Amira Shaheed's
8 name to it was not deceiving anyone?

9 A Correct.

10 Q Did you ever attempt to deceive or mislead anyone in any
11 way?

12 A No.

13 MR. MARINO: I don't have anything further Your
14 Honor.

15 THE COURT: Mr. Tobia.

16 MR. TOBIA: Your Honor just a question or two.

17 CROSS EXAMINATION

18 BY MR. TOBIA:

19 Q Ms. Schwartz, the Judge asked you a question about whether
20 or not anyone has ever questioned this procedure, and I believe
21 you said no. Other than this Court? Is there a case before
22 Judge -- I want to clarify for the time frame, prior to this
23 being brought to your attention by this Court, did anyone ever
24 question this procedure?

25 A Prior to the time that this --

1 Q That this Court issued an order to show cause?

2 A No.

3 Q Since that time, since the Court issued an order to show
4 cause, this has become more or less public knowledge that
5 anyone questioned this procedure?

6 A Yes.

7 Q And who has done that earlier -- how many cases?

8 A Well there is a case that was just pending before Judge
9 Wizmur.

10 Q Is that the only case where the issue has been raised?

11 A Yes.

12 Q And --

13 A And she deferred to Judge Stern, and made a ruling in that
14 individual case.

15 Q Okay. There no other -- that's the only one?

16 A That's the only one, that -- yes, the only one.

17 Q Okay.

18 MR. TOBIA: Nothing further.

19 MR. ORLOFSKY: Your Honor.

20 THE COURT: Mr. Orlofsky?

21 UNIDENTIFIED SPEAKER -- Your Honor -- Mr. Orlofsky
22 can go first --

23 MR. ORLOFSKY: Oh, thank you, thank you counsel, I'll
24 be brief.

25 CROSS EXAMINATION

1 BY MR. ORLOFSKY:

2 Q Good afternoon, Ms. Schwartz, my name is Steven Orlofsky,
3 I represent FANDO, you testified during your direct testimony
4 this afternoon that you never received any manuals, attorney
5 manuals from either Logs or FANDO, is that correct?

6 A Correct.

7 Q Is it possible that those manuals were sent to someone
8 other than you, at the Shapiro and Diaz firm?

9 A Possibly.

10 Q You have no reason to -- but as far as you know you never
11 saw them or you never received them?

12 A correct.

13 Q thank you.

14 MR. ORLOFSKY: Nothing further.

15 MR. SCHNEIDER: Robert Schneider, US Trustee's
16 Office.

17 CROSS EXAMINATION

18 BY MR. SCHNEIDER:

19 Q Good afternoon Ms. Schwartz.

20 A Hi.

21 Q The certification that you filed in the Jenny Rivera case.

22 A Yes.

23 Q Or the document that you filed?

24 A Yes.

25 Q Did you believe that to be a certification by Amira

1 Shaheed?

2 A Did I believe it to be a certification by?

3 Q Amira Shaheed.

4 A Amira Shaheed.

5 Q It purports to be a certification by Amira Shaheed?

6 A Yes. It was.

7 Q So you believe it to be a certification by Amira Shaheed?

8 MR. MARINO: I'm going to object to the question Your
9 Honor.

10 THE COURT: I'll allow it.

11 A To tell you the truth, when I -- I didn't even know until
12 after that was filed, whose signature page was attached to it.

13 Q Okay.

14 A So I guess my answer is, no. I can certify that the
15 information that was provided and to this day and this minute,
16 that it was still correct, based upon my client's information
17 and subsequent information provided to me, but at the time that
18 I filed that document, I cannot even tell you whose signature
19 page was attached to it.

20 Q And how about motions that are filed under the new post
21 Judge Stern order regime, whose -- who prepares those
22 certifications?

23 A Who actually prepares the certifications?

24 Q Yeah.

25 A Before it goes to the client?

1 Q No, before it goes to you?

2 A Before it goes to --

3 Q Before it gets filed with the Court? Let's put it that
4 way.

5 A Before it gets filed with the Court, one of the
6 subservicers. We -- well actually our processor prepares a
7 certification based upon the information provided from default
8 outsourcing. They then take the whole certification, send it
9 to default outsourcing, they are supposing -- supposedly
10 reviewing it, signing it, sending it back. It then comes to my
11 office. And then I review it again. And sometimes I still
12 find corrections, and send it back, no process goes over again,
13 and it goes back for original signature, and comes back again,
14 and then it comes in my office again, and that's the routine.

15 Q It's initially drafted by whom?

16 A The legal processor in our office.

17 Q In your office?

18 A Firm.

19 Q Or your firm, I understand.

20 A By my firm. Correct.

21 Q So when you get it and you review it, is it actually
22 signed by somebody?

23 A Yes. When I get it, it's already been sent back to
24 outsourcing, reviewed and signed, and then it comes to me.

25 Q Okay. And I did notice on some of the ones that you filed

1 subsequently a certification by you, that you filed it -- is
2 that -- refers to a facsimile signature, when you filed your
3 certifications? Do you only do that when there is a facsimile
4 signature, is the certification of a facsimile signature?

5 A Right.

6 Q And is that -- it says a verification that the signature
7 is genuine, but --

8 A Because the outsourcing sends it back to us via I believe
9 email. And then they overnight it back to us, regular mail.
10 So if the motion is actually -- you know it's reviewed and I
11 don't have that then I do that facsimile, and I attach to it.
12 And then if I have an original that actually came back before
13 the motion got in to my office, or my chance to review and sign
14 it, then I take the facsimile form, and throw it out, because I
15 have the original already. And we have a separate spot -- in
16 our office, where we follow up and make sure we get the
17 original back.

18 MR. SCHNEIDER: No other questions right now, Your
19 Honor.

20 THE COURT: Anyone else?

21 MR. PAPALIA: Your Honor, if I can -- because there
22 -- you touched on -- that the client outsourcer --

23 THE COURT: Go ahead.

24 MR. PAPALIA: -- entire issue, I just want to get
25 confirmation or not from Ms. Schwartz that when she -- in her

1 testimony was referring to the client, or the outsourcer except
2 when the specific reference was to EverHome as the ultimate
3 client, you were referring to Logs or FANDO.

4 THE COURT: Oh.

5 MR. PAPALIA: Is that correct?

6 MR. MARINO: I'm going to object to that question.

7 THE COURT: It's too -- Mr. Marino is right, it --
8 she said too many things, too many times, to be able to put a
9 salve on it that way. Not that I'm picking a fight with the
10 testimony, but it just can't be remedied that way. In the
11 beginning, if I recall correctly, and the record will say what
12 it says, she said client perhaps twice, and when I asked about
13 that, she made reference to the outsourcer, and was clear
14 ultimately that her view of the client is the mortgagee. But
15 the terminology is mixed, I don't know if we can -- so if you
16 want to ask a series of questions just to --

17 MR. PAPALIA: Well then, see that's why I was raising
18 it, because I was confused because when we referred to
19 outsourcer, who -- what entity are you referring to?

20 THE COURT: Go ahead.

21 THE WITNESS: When I'm referring to outsourcer?

22 MR. PAPALIA: Uh-huh.

23 THE WITNESS: It could be FANDO, it could be Logs, it
24 could be Fidelity, be anybody who is a --

25 MR. PAPALIA: So the --

1 THE WITNESS: -- mediator between the bank and us.

2 MR. PAPALIA: Okay. And when you're referring to
3 client as far as obtaining information from the client, were
4 you referring to the outsourcer, FANDO or Logs?

5 THE WITNESS: Yes, I was.

6 MR. PAPALIA: Thank you.

7 THE COURT: Okay.

8 MR. MARINO: Your Honor, just the one follow up
9 question.

10 THE COURT: Go ahead.

11 FURTHER CROSS EXAMINATION

12 BY MR. MARINO:

13 Q The client is EverHome?

14 A Yes.

15 Q Or Washington Mutual, or whoever else the mortgagee is?

16 A Yes.

17 Q Right. Logs is the intermediary?

18 A Yes.

19 Q Correct. Logs acts as an outsourcer, and they provide you
20 with information they get from the client? Correct?

21 A Correct.

22 MR. MARINO: Nothing further.

23 THE COURT: All right. Does that clarify things? I
24 do have one follow up question to what Mr. Marino asked you.
25 He said you would go back if there was a question under the old

1 practice, you would go back to that person who gave you the
2 initial information?

3 THE WITNESS: No.

4 THE COURT: I'm sorry your answer is?

5 THE WITNESS: No, it -- because it depends who my
6 contact was for certain things, they were different contacts
7 for you know, you're dealing with a consent order, or if you're
8 dealing with -- I don't exactly who I can't say, the exact
9 person who sent me over the pay history is my contact at that
10 time, who I'm going to email back and say, I don't understand
11 this pay history, this is where the discrepancy is.

12 THE COURT: Okay.

13 THE WITNESS: Okay.

14 THE COURT: So if we deal with the use of Amira
15 Shaheed's signature.

16 THE WITNESS: Right.

17 THE COURT: Okay, when -- now it's apparent that
18 Amira Shaheed was not there, that is at some time after July of
19 04?

20 THE WITNESS: Correct.

21 THE COURT: Obviously you didn't go back to Amira
22 Shaheed in that post July 04 period.

23 THE WITNESS: Correct.

24 THE COURT: To question information. Am I correct?

25 THE WITNESS: Correct.

1 THE COURT: Because she wasn't there.

2 THE WITNESS: Correct.

3 THE COURT: So you would go to another processor in
4 the outsourcing outfit.

5 THE WITNESS: Processor.

6 THE COURT: Then it was FANDO, right?

7 THE WITNESS: Hmmm. Yes.

8 THE COURT: Okay. And yet the certification would
9 nonetheless, ultimately be filed with the Amira Shaheed
10 certifying statement on it, is that correct?

11 THE WITNESS: Yes.

12 THE COURT: Okay. All right.

13 THE WITNESS: If I can just clarify --

14 THE COURT: Go ahead please.

15 THE WITNESS: That there -- there were a lot of times
16 also, that we had certain contacts but there were certain
17 people at particular outsourcers that would sign for you know,
18 so it's not always that the person I deal with is going to be a
19 signature, even if it was somebody I was not dealing with,
20 because it could have been just somebody higher up in the
21 hierarchy who chose to sign, who was an authorized
22 representative who might not have been my personal contact.

23 THE COURT: All right, I understand your point, but
24 the clearest point is that Amira Shaheed could not have been
25 contacted after July of 04 by you?

1 THE WITNESS: That's correct. Absolutely Your Honor.

2 THE COURT: Anyone else have a question? All right,
3 thanks a lot. Again in an effort to keep things brief and
4 moving along, I have just a few questions for Ms. Belafonte.

5 UNIDENTIFIED SPEAKER: Belafonte.

6 THE COURT: Yes.

7 DIANE BELAFONTE, WITNESS, SWORN

8 THE CLERK: Please state your name for the record and
9 your address.

10 THE WITNESS: Diane Belafonte, 3416 Church Road, Mt.
11 Laurel, New Jersey 08054.

12 THE COURT: All right.

13 EXAMINATION

14 BY THE COURT:

15 Q Ms. Belafonte, we have your certification for the record,
16 it's bullet 77 in the docket. If someone wants to refer to it,
17 and of course that's incorporated into the record at this
18 hearing.

19 You're the office manager, is that a fair statement?

20 A Yes.

21 Q And just for the record, how long have you been working
22 for Shapiro and Diaz or predecessor firm?

23 A Since May of '92.

24 Q All right, and you've heard a lot of discussion and
25 referred in your certification to this practice of using

1 pre-signed certification forms?

2 A Yes.

3 Q Okay, do you know how that got started in Shapiro and Diaz
4 or a predecessor firm?

5 A No I do not.

6 Q Do you have any idea of what time period it started?

7 A No I do not.

8 Q Was it the practice if you know, if you recall, when you
9 got there in 1992, to use pre-signed certification forms?

10 A No we did not, no we did not, we used regular -- we took
11 the regular certifications and sent them to the client, and
12 they were returned.

13 Q And at some point in time after 1992 that practice changed
14 to --

15 A Correct.

16 Q -- the practice which is the subject of this inquiry?

17 A Correct.

18 Q Again, I -- what -- can you think of an event or a cause
19 for that change?

20 A No. We were just told.

21 Q Okay. Did you ever question that practice?

22 A No I did not.

23 Q Did you ever hear anyone in the office question that
24 practice?

25 A No, I did not.

1 Q Specifically did you ever hear Mr. Diaz question that
2 practice?

3 A No I did not.

4 Q Ms. Schwartz?

5 A No.

6 THE COURT: All right, I have no further questions,
7 anyone else. Thanks a lot.

8 THE WITNESS: Thank you.

9 THE COURT: I'm sorry, Mr. Diaz.

10 MR. GILBRETH: Your Honor, may I speak with Mr. Diaz
11 for a minute before he testifies.

12 THE COURT: Sure. Sure.

13 MR. GILBRETH: Thank you. Can we take a short break.

14 THE COURT: Yes. Yes. We'll take five minutes, all
15 right.

16 A SPEAKER: Thank you.

17 (Pause)

18 A SPEAKER: Judge, I believe Mr. Tobia is still
19 across the hall.

20 THE COURT: Oh, okay, all right. We'll wait.

21 (Pause)

22 NELSON DIAZ, WITNESS, SWORN

23 THE CLERK: Please state your name and address for
24 the record.

25 THE WITNESS: Nelson Diaz, the office address is 406

1 Lippincott Drive, Suite J, Marlton, New Jersey 08053.

2 EXAMINATION

3 BY THE COURT:

4 Q All right, Mr. Diaz we have your earlier testimony from
5 October 18th, and your latest submission a certification which
6 is a number 79 in the docket. And I just have one or two
7 questions really.

8 A Yes, Judge.

9 Q And it goes to what you said, and you heard me mention it
10 to Ms. Schwartz, what you said in your testimony on October
11 18th, you said at some point there was an issue in your mind,
12 if I can paraphrase as to the practice of using pre-signed
13 certification forms, would you expand on that?

14 A I believe Your Honor what I was referring to obviously
15 that particular date I was not prepared to testify as I stated
16 to Your Honor when I requested the opportunity to discuss the
17 matter with an attorney, but I was referring to specifically on
18 that date was the issue that arose at the -- as a result of
19 Your Honor's order to show cause. I was not specifically aware
20 of the use of these certifications prior to that date, because
21 I -- did I have general knowledge, yes. Did I have specific
22 knowledge, and no, did I have specific knowledge regarding the
23 copies I had absolutely no knowledge regarding that.

24 There was an issue raised at that point in time in my
25 mind, when did this happen, as to how did this happen.

1 That's what I was referring to that was --

2 Q All right.

3 A As I believe my certification states.

4 Q I hear you.

5 A There never was an issue prior to that.

6 Q Okay, and so it sort of requires me to follow up a little
7 bit, at what point in time did you become aware that you had on
8 file, pre-signed certification forms?

9 A Specifically I cannot pinpoint that time frame. Was -- as
10 I stated, I had a general knowledge, I presume, that I was --
11 that we were using pre-signed certifications, it would have
12 been after I would have been -- took the position of managing
13 attorney, in 2000.

14 Q So would it be for example, around the time that Ms. Hynes
15 came to work?

16 A Several months after that is when I was elevated to that
17 position yes.

18 Q Okay, so around 2001, is that fair to say?

19 A 2000, 2001, yes.

20 Q Okay. And from 2001 and forward, until I issued my order
21 to show cause in September of 05, did you ever question the
22 practice of using pre-signed certification forms?

23 A No Judge.

24 Q Was it ever a question in your mind, and not articulated
25 to anyone else?

1 A No it was not. I -- as I said, I'm not sure exactly when
2 I first became aware of it, was it 2000, 2001, 2002 I cannot
3 pinpoint that. I just know that I know. It was not something
4 that I saw on a daily basis. I didn't look at the pleadings,
5 so I don't know what was there, and when that began. But it
6 was the process of the office. And we had --

7 Q Well you operate in the state foreclosure area, mostly is
8 that correct?

9 A Yes. That's correct.

10 Q You file certifications on behalf of clients in the state
11 foreclosure proceedings?

12 A We file certifications in -- on behalf of --

13 Q Do you personally do it?

14 A Do I personally?

15 Q File applications associated with foreclosure proceedings?

16 A No -- file applications for entry of judgment which those
17 contain a certification from the client as to the amount that's
18 due.

19 Q All right, and when you file those applications, do you
20 sign the application as the attorney?

21 A If there is a motion yes.

22 Q Okay.

23 A And I do review them all.

24 Q All right, and attached to it is there a certification
25 from the client?

- 1 A Yes there is.
- 2 Q And who is the client?
- 3 A The client is -- the bank the mortgagee.
- 4 Q Okay, so for example it would be EverHome?
- 5 A Yes.
- 6 Q So you get someone's signature from EverHome on the
7 certifying documents, is that correct?
- 8 A From EverHome or the outsourcer.
- 9 Q Okay.
- 10 A I -- specifically who --
- 11 Q All right.
- 12 A I presume it the outsourcer, everything goes through the
13 outsourcer.
- 14 Q Whether it's the outsourcer or EverHome, and those are
15 signed, or are they signed contemporaneously with the
16 information being reviewed by the signor?
- 17 A They are being -- yes.
- 18 Q So that's a different procedure than was used in the
19 bankruptcy side of your office, is that a fair statement?
- 20 A That is a fair statement at this point, yes.
- 21 Q Okay, did you ever use pre-signed certification forms for
22 your foreclosure practice?
- 23 A There was a period of time when yes they were.
- 24 Q And when was that?
- 25 A The last couple of years.

1 Q So.

2 A And again I can't pinpoint when we started or when we
3 specifically stopped.

4 Q Did you stop before I issued the order to show cause?

5 A It stopped I believe when they transitioned from FANDO to
6 Fidelity which was approximately the same time frame as Your
7 Honor's order to show cause. It just happened to be a
8 coincidence that Fidelity was now the outsourcer for Washington
9 Mutual versus FANDO.

10 Q And do you know why the procedure changed from a pre-
11 signed form, to an actually contemporaneous signed form?

12 A I believe it's just Fidelity's process, we upload the
13 certification to them, via the computer, effectively email,
14 they download it back to us. And then we made a hard copy, as
15 Ms. Schwartz explained as in the bankruptcy.

16 Q So as I hear your testimony and please correct me if I'm
17 wrong, from some time around 2000 or 2001 when you were using
18 the normal process of having certifications reviewed and signed
19 contemporaneously, either by an outsourcer, or by the
20 mortgagee, that then changed at some time within the last few
21 years to using pre-signed certifications and when Fidelity
22 replaced FANDO at or about the time I signed my order to show
23 cause in September, it switched back to the contemporaneous
24 signature process is that a fair statement?

25 A That is a fair statement.

1 THE COURT: I have no further questions.

2 MR. CATANZARO: If I may Judge.

3 THE COURT: Certainly.

4 CROSS EXAMINATION

5 BY MR. CATANZARO:

6 Q Mr. Diaz, when did Rhondi Schwartz come to the firm?

7 A She began I believe in February of 1992.

8 Q Now, you obviously had no part in her hiring, correct?

9 A That's correct.

10 Q Do you have any role while she was employed there in terms
11 of her salary?

12 A I -- as to the present time, I make recommendations.

13 Q Yes. All right, do you have any input with regard to Mr.
14 Kreisman, is that who you would be reporting to?

15 A Yes.

16 Q Do you have any feedback to him with regard to the type of
17 work she's doing?

18 A Yes.

19 Q Do you have the same type of relationship and feedback
20 with Mr. Kreisman regarding while she was employed there, Linda
21 Hynes?

22 A Yes.

23 Q And with regard to Ms. Belafonte who was the office
24 manager, do you have any role that is similar to that with Mr.
25 Kreisman as well?

1 A I would be free to speak to Mr. Kreisman regarding that
2 yes.

3 Q During your association with the firm, with regard to Ms.
4 Schwartz, did you ever have any occasion to question her legal
5 abilities?

6 A No.

7 Q Did you ever have any complaints from clients with regard
8 to her legal abilities?

9 A I have not received any complaints from anyone regarding
10 her legal work.

11 Q Did you ever have any reason to complain to or report back
12 to Mr. Kreisman with regard to her legal abilities?

13 A No.

14 Q Did you have any -- ever have any feedback from any
15 outsourcer, mortgagee, client as it were, regarding her legal
16 work?

17 A No.

18 Q Or with regard to Linda Hynes, would your answers be the
19 same?

20 A My answers would be the exactly the same.

21 Q I think there may be a concern by the Court that given the
22 volume of business at certainly at one business, with your firm
23 that somehow corners were being cut with regard to these
24 pre-signed certifications -- that's an assumption on my part,
25 do you think that whatever the volume of the work was, that use

1 of the pre-signed certification was in any way done to weaken
2 or have any negative effect on the paperwork that was being
3 filed with the Court?

4 A Absolutely not. It's always been our policy as far as
5 I've ever been with the firm, since 1992, that anything that is
6 filed from that office, was to be correct and accurate, and
7 professional submissions. We would not take a shortcut just
8 for the purpose of deceiving anyone or taking any -- or take a
9 shortcut if we felt that it would in any way harm the process,
10 or integrity of the process.

11 Q Who was Joshua Wills?

12 A Joshua Wills is a legal assistant of our office.

13 Q And is he here today?

14 A He is here today.

15 Q What role generally did he -- or does he play in the last
16 few years?

17 A He is a legal assistant, he was in our bankruptcy
18 department.

19 Q In terms of his role in a processing or reviewing
20 paperwork, are you familiar with that?

21 A I am familiar with his role, yes.

22 Q Okay, but generally speaking would he ultimately report to
23 one of the lawyers?

24 A He would report to either Linda Hynes when she was with
25 our firm, or with Rhondi Schwartz who was responsible for the

1 bankruptcy department.

2 Q Okay. And did he ever bring to your attention any
3 complaints about Rhondi Schwartz or Linda?

4 A No.

5 Q All right, and did he ever bring to your attention the use
6 of these pre-signed certifications?

7 A No.

8 Q Thank you.

9 CROSS EXAMINATION

10 BY MR. MARINO:

11 Q Good afternoon Mr. Diaz, did -- there certainly came a
12 time when you knew that these pre-signed certifications were
13 being used, correct?

14 A I must presume, yes.

15 Q All right, and I take it that from your perspective the
16 information that was being conveyed to the Court was always
17 true and accurate to the best of Logs' knowledge correct?

18 A That's correct.

19 Q Was it your understanding that Ms. Schwartz and Ms. Hynes
20 and all of the others at Shapiro and Diaz who dealt with the
21 individuals at Logs for endeavoring to get the most accurate
22 information that they could to place before the Court?

23 A That's correct, that's -- that was our policy to make sure
24 that everything was accurate, if we had to delay filing
25 something, we would not file it, until we were sure.

1 Q You have worked with Ms. Schwartz for a long period of
2 time and listened to her testify today?

3 A Yes.

4 Q Do you believe that Ms. Schwartz was diligent in her
5 efforts to get accurate information before the Court?

6 A I have no doubts regarding that.

7 Q Do you believe that Ms. Schwartz worked very hard to see
8 to it that any errors that might crop up in any of this payment
9 history were corrected before any information was brought to
10 the Court's attention?

11 A Yes.

12 Q Did you ever discuss or hear anyone else discuss the idea
13 of cutting a corner with the Court, trying to place information
14 before the Court without 100 percent confirming the accuracy of
15 that information?

16 A No, actually the opposite, we've had discussions regarding
17 the clients, the -- be it the outsourcer or whoever, was just a
18 general practice as how it's changed over the past years, and
19 there are firms that -- who take shortcuts and how it's just
20 against our philosophy and we would not do that.

21 Q Did you feel that Mr. Shapiro and Mr. Kreisman had
22 developed a software system that enabled your firm to process
23 this material for bankruptcy filings clearly accurately and
24 expeditiously?

25 A I'm not familiar with the software system, those details,

1 but it's my understanding that the information we received was
2 from the outsourcer it was complete and accurate information.

3 Q Is it fair to say that when your law firm caused to be
4 filed these certifications, bearing for example, Amira
5 Shaheed's certification, a pre-signed certification you and the
6 other attorneys at the firm always believed that the
7 information that was being imparted to the Court was being
8 imparted as Logs best knowledge of what was happening with a
9 particular file?

10 A Yes.

11 MR. MARINO: I don't have anything further.

12 THE COURT: Anyone else have any questions. All
13 right, thank you Mr. Diaz.

14 MR. DIAZ: Thank you.

15 THE COURT: All right, I know that I ordered the
16 presence of Mr. Wills, unless someone has some specific
17 questions for Mr. Wills, I don't. I've read his certification
18 again, so we can be clear, it's number 76 in the docket, it's
19 included in the record of this proceeding.

20 I believe that exhausts our witness list for today.
21 Let's talk about scheduling, and procedure going forward.

22 I don't want to lose site of the EverHome Rivera
23 issues, how is the -- if you know, Mr. Papalia how the review
24 or bank records search is going with respect to Ms. Rivera's
25 account, and I know it's being done through Ms. Loughlin, but

1 have you any input on that?

2 MR. PAPALIA: What I've been asked Ms. Loughlin about
3 it, Judge about a week ago, and she said that the bank told her
4 it would take several weeks, or maybe more to get the
5 information and she was just waiting on it, but then that --
6 the other underlying information that she needs is the bank
7 statements, this is double or triple hearsay, but the
8 information the bank needs that she needs from the bank are the
9 underlying statements which would have reference numbers which
10 then for a transaction, which then have to be traced through
11 the bank and then -- through our bank, so it does sound like
12 it's -- it does sound like it could take some time, I think
13 it's been narrowed down to four payments that are not tracked
14 -- or not accounted for at this time. And we're working on it,
15 and you know, we fully expect that we'll have a resolution, I
16 know Ms. Schwartz I believe has been working on it, and it's
17 just one of those -- I think I don't do this all the time, but
18 it's one of those ones that is a little bit difficult to
19 resolve.

20 THE COURT: All right, and you're more than welcome
21 to reappear here tomorrow, in a chapter 13 day, and get a
22 little background and chapter 13 mortgage accounting.

23 MR. PAPALIA: I am -- I am quickly getting familiar
24 with all that --

25 THE COURT: I'm sure. I'm sure, and you're a quick

1 study, all right I -- I think if you would do the Court a favor
2 and talk to Ms. Loughlin and see if we can put a fire under
3 whoever has to be dealt with there, but that's going to be a
4 longer process.

5 All right, Mr. Orlofsky, we had discussed the need
6 for input from Mr. Zakula it's a tough time of year, I had
7 scheduled 21 and 22 withholding the potential for January 11
8 and 12, as far as the Court is concerned, and I'm not going to
9 restrict the people who want to call witnesses, as far as the
10 Court is concerned I'll allow people to call witnesses, let me
11 know now if you want to call someone.

12 But what I would hope to do is get input from Mr.
13 Zakula and perhaps others, by certification, declaration,
14 unsworn declaration as the term is used, and see what it is,
15 and if someone wants or feels there is a need to have the
16 declarant present as a witness, we can schedule that. I would
17 schedule it on January 12th I'll use that holding date. Unless
18 there is an uproar from counsel, generally, I won't hold
19 hearings on the 21st and 22nd. A lot of dissent about that.

20 Okay. So if we go forward, at 10 o'clock on January
21 12th, hopefully before that date, Mr. Orlofsky if you could
22 three, four days before then, submit whatever you can dig up,
23 and I understand that it's sort of a free form request, but I
24 appreciate --

25 MR. ORLOFSKY: Your Honor, we'll do it.

1 THE COURT: I know, thank you. And Mr. Papalia if
2 you and Ms. Loughlin can get together and try to see where
3 those four payments went, I might be the only one in the room
4 who sees a relationship between that and the other issues, but
5 I want to know where those four payments went, did they go into
6 the Ethos how is the accounting done.

7 Having said that, it might not be necessary to have
8 that January 12th hearing, we'll use it as a holding date. And
9 when I see what comes in so -- as quickly as we can get a
10 certification or several in from FANDO, on the questions that
11 were raised before, we'll know whether there is a need to go
12 forward.

13 I'm willing to do things by phone if that would ease
14 the cost and the burden. And I'm willing to -- if we don't
15 have another hearing, define the closing date for this hearing.
16 If people want to make submissions closing submissions, I'd
17 leave it up to the individual parties and counsel.

18 With respect to that I have plenty of material here,
19 I believe I understand the issues, but again I think that there
20 is a limit to -- and should be a limit let me add, to the
21 degree of Court's inquiry, there are only so many depositions
22 we can have, in public this way. It's just the nature of
23 things, the Court can't do formal discovery other than to order
24 submission of documents, etcetera, it's a cumbersome way to
25 operate, and it's the -- to the extent as I mentioned before,

1 that there is always potential for unfairness in actuality not
2 to mention the appearance with me asking the questions, and
3 then putting down the objectors.

4 Although I appreciate that people were kind and
5 didn't object much.

6 Having said that, the U.S. Trustee is here, and is an
7 independent agency, and the Court is not going to direct that
8 agency as to how to operate.

9 Any questions, comments, before -- yes.

10 MR. ORLOFSKY: Your Honor, when the record closes
11 that is when Your Honor is completely satisfied that you've
12 taken enough testimony either in person or by declaration or
13 certification, we would like to submit a post hearing brief.

14 THE COURT: Yes.

15 MR. ORLOFSKY: To address the issues.

16 THE COURT: All right, let me key into that a little
17 bit, if I may, in fairness to your client and to you Mr.
18 Orlofsky, because there has been a lot of focus on Ms. Schwartz
19 and Shapiro and Diaz, FANDO had a procedure, as your client's
20 declaration Mr. Zakula's declaration pointed out, with a great
21 deal of openness the footnote in the declaration indicated that
22 Mr. Zakula knew of the requirement for a certification in New
23 Jersey, notwithstanding what the matrix said.

24 And it's apparent that that procedure for certifying
25 statements wasn't followed. Does FANDO have some

1 responsibility here, on a 9011 basis or on a broader basis with
2 respect to dealing with the Court, and the Court's inherent
3 powers and that's a significant issue to the Court.

4 And I mention it because the outsources whether it's
5 FANDO or anyone else who might come before the Court, are --
6 you know, the obvious information gathers and of course Mr.
7 Marino and I may have a different view I don't know, of what
8 that information gathering process is.

9 But at the center of things, is the outsourcer, and
10 it seems to me that there -- if there is responsibility at
11 least some of it lies with the outsourcer. And if I move
12 upstream from counsel, and of course I'm very concerned about
13 counsel's role, as a professional and as an officer of this
14 Court. But if I stay off that point and now move upstream to
15 the outsourcer, and finally to EverHome, or equivalent, as the
16 mortgagee. What responsibility is there for what's happening
17 in the name of the mortgagee.

18 Because we've got at least two parties who are
19 potential agents of the mortgagee, it's the outsourcer, and
20 it's the selected attorney if that is the way it went, and
21 we've heard testimony that the selection is made by the
22 mortgagee. Now, I can't say authoritatively and I'm not for
23 the record, saying that EverHome selected Shapiro and Diaz in
24 this case, I can't get it -- sort of pinned down, but more
25 generally what is the responsibility of the mortgagee for

1 agents.

2 And can we have an effective respondeat superior
3 responsibility under rule 9011, or under the inherent powers of
4 this Court to make sure that the integrity of a filing system
5 is maintained.

6 And so I put that out there.

7 MR. SCHNEIDER: Your Honor, I'm sorry I don't mean to
8 interrupt, you said the liability under rule 9011 --

9 THE COURT: 9011, yes.

10 MR. SCHNEIDER: I'm sorry.

11 THE COURT: 9011.

12 MR. SCHNEIDER: Yeah, 9011, or I didn't --

13 THE COURT: The -- oh, maybe I'm weakening. And I
14 didn't start off too strong. The inherent powers of this Court
15 to protect the integrity of its processes including this very
16 important process dealing with relief from the stay so that
17 foreclosures on homesteads can go forward. Okay.

18 And so we'll adjourn until 10 a.m. on January 12th, I
19 would hope for certifications before then, I will let you know
20 whether we're going to have an actual hearing on that date,
21 also define the closing of the hearing and give some time for
22 briefing etcetera before we close the record.

23 Yes, sir.

24 MR. TOBIA: oh, I'm sorry Your Honor, I just wanted
25 to clarify before you finish, with regard to the documentation

1 which you had requested from Mr. Tobia -- provided a letter and
2 saying they were having difficulties finding --

3 I think there was kind of an open end --with regard
4 to his letter, I don't know if Your Honor is -- continue trying
5 to get that information, stop trying to get that information.

6 THE COURT: Well it's a fair point, and I -- at the
7 lunch break I went back through -- I -- in all candor I'm not
8 particularly encouraged by what was submitted as being the old
9 college try. But I understand and at least one of the purposes
10 to my question and maybe the main purpose, was to find out how
11 extensive this pre-signed certification utilization practice
12 was, in the Shapiro and Diaz operation, and we've had a clear
13 statement from Ms. Hynes, I believe and it seems to be
14 uncontested that it was far and away the rule, and so I don't
15 know that I can justify taking a small firm's time and going
16 back -- it would have to be done as I hear what you're saying,
17 Mr. Tobia. And working their way through each of these 2200
18 and some odd files.

19 And so I'm not going to require that, as to the names
20 of the individuals whose certifications were on file, whether
21 that list is complete or not, is less important in terms of
22 knowing how extensive the process was.

23 This was the rule, this is how Shapiro and Diaz
24 operated with pre-signed certification statements, for a number
25 of years, many years.

1 And if someone wants to contest that, they ought to
2 let me know now. Okay.

3 And so unless you feel there is a need for further
4 information on that -- I mean you do have a -- and to that
5 extent I think that there's been open disclosure of -- and
6 rather complete disclosure of all the cases that might have
7 these certifications filed.

8 MR. SCHNEIDER: Your Honor, we can certainly look
9 them up and determine which ones had the Amira Shaheed
10 signature and -- clear you know -- those documents, other
11 certifications that might have been filed is questionable when
12 looking at the document whether they were or not using the --

13 THE COURT: But it seems like it was the practice.

14 MR. SCHNEIDER: We know -- 95 percent of the ones --
15 you know -- you're not going to ask here that that be verified
16 -- 95 percent --

17 MR. TOBIA: Well, Your Honor, I -- let me address
18 that. The list that we sent to the Court, I don't have the
19 exact ones in front of me, but I believe it is a break down of
20 about 2300 cases, I think there were about --

21 A SPEAKER: A little less.

22 MR. TOBIA: -- 900 of them which according to the old
23 computer system Mr. Diaz cannot tell for sure, whether any
24 motions of that type were filed. Mr. Diaz and I have both
25 spent a considerable amount of time on Pacer looking up some of

1 the cases on the list of 900 just spot checking to see whether
2 or not ex parte motions and motions for relief were filed and
3 it has been spotty, I mean it's -- for example, in checking 20
4 cases we may have found five where there were motions were
5 filed.

6 THE COURT: Well, let me just -- and then I
7 appreciate your point. But what we're talking about -- we're
8 sort of talking a little bit on different levels here. Mr.
9 Tobia is saying in the list of 2200 and some odd, there is a
10 subset where he doesn't know that any motion for relief or any
11 ex parte certification was filed, so of course that would not
12 be an infraction if the Court were to find that the process is
13 some sort of a defalcation.

14 Unless you really feel that it's -- important to get
15 that level of specificity I think we can accept what Ms. Hynes
16 said, that that was the general practice when motions were
17 filed, while she was there, and when certifications on an ex
18 parte basis were filed.

19 MR. ORLOFSKY: Your Honor, look -- we'll do whatever
20 the Court -- if the Court wanted an exact number certainly
21 there may be ways that would be very time consuming, I think
22 that we --

23 THE COURT: I'm trying to let you off the hook.

24 MR. ORLOFSKY: You're letting us off the hook that's
25 fine too, I think that we've given the Court some indication

1 and the testimony of the scope of this problem, and I think the
2 Court probably has enough information to fashion whatever
3 remedy or sanction is appropriate based on what we've given.

4 If it's not, if the Court needs some further
5 information ask for it, and we will of course try to comply.

6 THE COURT: Okay. All right, and I appreciate it.
7 Yes, sir.

8 A SPEAKER: Let me just say, if they do come across
9 additional information without -- into everything and they do
10 come up with additional information, I would appreciate --

11 MR. ORLOFSKY: Certainly.

12 THE COURT: All right, thanks again.

13 MR. ORLOFSKY: Your Honor, one final point.

14 THE COURT: Yes.

15 MR. ORLOFSKY: FANDO did retain a private
16 investigator to attempt to locate Amira Shaheed, and --

17 THE COURT: That's my plan.

18 MR. ORLOFSKY: And thus far the private investigator
19 has been unsuccessful, she has moved twice, we believe she's
20 somewhere in the Milwaukee area, and we're still looking for
21 her.

22 MR. MARINO: Your Honor, we have engaged a private
23 investigator and have located Amira Shaheed. And expect to
24 have a certification to Your Honor before the January 12th
25 proceeding.

1 THE COURT: Fair enough. Okay, and if we need her
2 testimony we'll cross that bridge when we get there.

3 MR. MARINO: Right, I mean I -- you know my
4 expectation is that we'll be able to get at least -- I'm
5 certain we'll be able to place before the Court my declaration
6 as to what is that she has to say. And --

7 UNIDENTIFIED SPEAKER: Oh, Your Honor, I will reserve
8 the right to cross examine --

9 THE COURT: No cross examination.

10 MR. MARINO: I mean I would do it whatever way Your
11 Honor wanted it done, I think it would be onerous to ask her to
12 travel here, from Milwaukee, as an ex-employee, but you know --

13 THE COURT: I think it would too, and but I just --
14 I'm not trying to squelch any effort at defense, on the other
15 hand, you know I think the record has to fairly reflect what
16 went on and if I get something that's a statement that I think
17 is so one sided and I need a witness to look at it and talk to,
18 we're going to extend this hearing, perhaps unnecessarily and
19 not to anyone's advantage.

20 MR. MARINO: I agree with Your Honor, I mean perhaps
21 -- just thinking out loud, she would be available so that Your
22 Honor could hear her by telephone. You know, that might be one
23 way of doing it.

24 THE COURT: I think that the scope of the practice is
25 well defined, I think there are some fact questions which we've

1 identified. I think the intent issues were a function of what
2 was stated, and how that is evaluated by the Court. And I'm
3 certainly not finished evaluating those issues.

4 And I think we're just about done on the 9011
5 contempt and other violations issues, in terms of what can be
6 done at hearings, subject to input. And again I'm not
7 subordinating the questions regarding Ms. Rivera's home. And
8 so I want that.

9 MR. MARINO: I guess we might also hear from EverHome
10 as to this issue which I think is an important one, of the
11 information that it made available to Logs, and specific --

12 THE COURT: All right, we can get it in two
13 directions, we can get it from Mr. Orlofsky and we can get it
14 from EverHome, Mr. Papalia do you think you can go to your
15 client and get us --

16 MR. PAPALIA: Probably --

17 THE COURT: I mean you've been dodging the bullet so
18 far.

19 MR. PAPALIA: -- problem is -- I think we said it in
20 a certification but -- you know I'll double check.

21 THE COURT: Well. But -- the question is whether
22 there is complete, partial or no access to EverHome's files by
23 the outsourcer.

24 And how that's done. Again it's a flip side of what
25 would be asked of FANDO.

1 MR. ORLOFSKY: I think it would just would be helpful
2 to know from both sides of the process how it worked.

3 THE COURT: Fair enough.

4 MR. ORLOFSKY: Thank you sir.

5 THE COURT: Anything else from anyone? Yes, sir.

6 MR. CATANZARO: Your Honor, if I may push the
7 envelope a little bit, you've been very candid and we
8 appreciate it in terms of your thought process, you answered
9 Mr. Orlofsky's concerns, in terms of what he may want to focus
10 on, respondeat superior, three of us represent attorneys, and
11 last time we were here Your Honor read out on the record a
12 litany of potential areas that we should be concerned about,
13 Mr. Marino's brief anticipated what those arguments would be in
14 substance, and has written a brief that addresses those.

15 But are you in a position now to maybe cross off your
16 list some of the concerns you may have, you made reference to
17 referral possibly, outside this Court, to US Attorney's Office,
18 you made reference to the Ethics violations.

19 I'm asking that question in terms of the written
20 summations that we don't write about things that maybe are no
21 longer on Your Honor's agenda.

22 THE COURT: Well, we're not to the point of closing
23 the hearing and going forward, and I would hope that matters
24 might gel a bit more by then, but at this point I'm -- I'm
25 going to give this a lot of thought, I'm not -- I don't blame

1 you for asking the question, I -- you know I think it's a good
2 question, it's just that I don't have a good answer.

3 So, all right. Anything else. Thanks a lot, we'll
4 reconvene if we reconvene on the 12th of January at 10 o'clock,
5 thank you very much.

6 ALL: Thank you Judge.

7 (Court adjourned)

8 * * * * *

9 CERTIFICATION

10 We, MOLLY FATTORE, JOHANNA LiMATO, and PATRICIA C.
11 DUPRE, court approved transcribers, certify that the foregoing
12 is a correct transcript from the official electronic sound
13 recording of the proceedings in the above-entitled matter.

/s/ Molly Fattore
MOLLY FATTORE

Date: December 20, 2005

/s/ Johanna LiMato
JOHANNA LiMATO

Date: December 20, 2005

/s/ Patricia C. DuPre
PATRICIA C. DUPRE
J&J COURT TRANSCRIBERS, INC.

Date: December 20, 2005