

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:)
)
)CASE NO.: 08-42533-dml13
DEREK TROUTMAN AND)Chapter 13
LATITIA TROUTMAN)
)
Debtors.)

ORAL DEPOSITION OF
ROGER KISTLER
APRIL 9, 2010
VOLUME 1

ORAL DEPOSITION OF ROGER KISTLER, produced as a witness at the instance of the Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on the 9th of April, 2010, from 1:18 p.m. to 2:11 p.m., before Cinnamon Boyle, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Hermes Sargent Bates, 901 Main Street, Suite 5200, Dallas, Texas, pursuant to the Federal Rules of Civil Procedure.

A P P E A R A N C E S

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P R O C E E D I N G S

ROGER KISTLER,

having been first duly sworn testified as follows:

EXAMINATION

BY MR. BARTHOLOW:

Q. Good afternoon, sir. My name is Thad Bartholow, and I am the Plaintiff's attorney -- or rather the Debtor's attorney in this case, and that would be Derek and Latitia Troutman. Are you -- is it your understanding that you are here to testify about that bankruptcy case?

A. Yes, sir.

Q. Okay. Could you please state your name for the record?

A. My name is Roger Kistler.

Q. Okay. And, Mr. Kistler, how are you employed?

A. I am employed by American Home Mortgage Servicing, Incorporated, as an assistant vice president.

Q. Okay. And for how long have you been employed by them in that role?

A. I have had my present job since January of 2008.

Q. Okay. Prior to that, how were you employed?

1 A. I was employed as a supervisor for the
2 collateral administration department.

3 Q. Of?

4 A. American Home Mortgage Servicing.

5 Q. And prior to that, how were you employed?

6 A. Prior to that, I was employed by various
7 mortgage departments, companies down in San Antonio,
8 Texas.

9 Q. Okay. What mortgage companies and
10 departments were you working for?

11 A. I worked for Bank Plus Mortgage, Homeside
12 Lending and Washington Mutual in either their default
13 department or their lien or lease department.

14 Q. Okay. And in connection with your employment
15 with American Home Mortgage Servicing, Inc., has your
16 office at all times been located in the Dallas/Fort
17 Worth area?

18 A. Yes, it has.

19 Q. Okay. Has it been physically located in the
20 same building at all times?

21 A. No, sir, it has not.

22 Q. All right. And where are you currently?
23 What's your address?

24 A. Currently the address is 1525 South Beltline
25 Road, Coppell, Texas.

1 Q. Okay. And previously where was it?

2 A. Previously it was 4600 Regent Boulevard,
3 Irving, Texas.

4 Q. Have you had any other addresses?

5 A. No, sir.

6 Q. Okay.

7 A. I take that back. We had 4650 Regent
8 Boulevard, Irving, Texas.

9 Q. Okay. And those are in Las Colinas; is that
10 right?

11 A. No, sir.

12 Q. No. Okay.

13 A. No.

14 Q. All right. And have you ever been employed
15 by American Brokers Conduit?

16 A. No, sir.

17 Q. Okay. And -- I guess let's talk about what
18 the scope of your current duties involves.

19 A. I am the AVP for the collateral
20 administration department. We are responsible for all
21 custodial relationships with the various custodians
22 that the company uses to hold their documents or each
23 documents.

24 Q. Okay. Let's unpack that statement a little
25 bit, please. You said the company. Are you referring

1 to AHMSI?

2 A. I'm referring to AHMSI, yes.

3 Q. Okay. And in terms of you said to hold their
4 documents. Whose documents are you referring to?

5 A. The mortgage loans that American Home
6 Mortgage Servicing services.

7 Q. Okay. And is there a difference between
8 ownership of a loan and servicing of a loan?

9 A. Yes, sir.

10 Q. Okay. Can you explain to me in brief what
11 difference that would be?

12 A. American Home Mortgage Servicing
13 Incorporated, is strictly a servicing company. We are
14 not the holder or investor of any mortgage loans.

15 Q. Okay. And that is the case nationwide with
16 regard to every loan that is subject to AHMSI's
17 responsibilities?

18 MR. ALFIERI: Objection to form.

19 Q. (BY MR. BARTHOLOW) Are you aware of any loans
20 that -- whole loans that AHMSI owns?

21 A. Yes, sir.

22 Q. Yes?

23 A. Yes.

24 Q. Okay. So generally speaking they are solely
25 a loan servicer but there are exceptions?

1 A. There are exceptions for a few loans, yes,
2 sir.

3 Q. Okay. What percentage of AHMSI's portfolio
4 would include loans that AHMSI's actually owns?

5 A. Less than 1 percent.

6 Q. Okay. Do you know whether any of those loans
7 are for properties located in Texas?

8 A. No, sir.

9 Q. You don't know?

10 A. I don't know.

11 Q. Okay.

12 A. I am not aware of where the properties are
13 located.

14 Q. Okay. Fair enough.

15 And before we began this deposition, I
16 had brought a number of documents with me, and we
17 spoke about those documents; is that correct?

18 A. Yes, sir.

19 Q. Okay. And the -- the basic bottom line of
20 that conversation was that the documents we discussed
21 were documents that you did not have knowledge of; is
22 that also correct?

23 A. That's correct.

24 Q. Okay. What I'd like to do is rather than
25 marking all of them as exhibits, to save time I'm

1 going to -- if Counsel will agree to this, we can mark
2 them all as exhibits if counsel would prefer to do it
3 that way. But I'm going to -- they are all documents
4 that were produced by AHMSI in connection with our
5 discovery requests, so I'm going to identify them by
6 the Bates numbers and ask you to state whether you
7 have knowledge about those documents, okay?

8 MR. ALFIERI: And are these the documents
9 that we discussed prior to the deposition?

10 MR. BARTHLOW: The documents that we
11 discussed today prior to the depositions that I showed
12 to Mr. Kistler today prior to beginning this
13 deposition.

14 MR. ALFIERI: Okay. Then what I want to
15 say on the record is that when we received the notice
16 of deposition -- we received a notice of deposition in
17 this case for the -- for the designation of a
18 corporate representative. There were a series of
19 topics number 14 on that topic list, and AHMSI has
20 complied with that notice of deposition by giving
21 Debtor's counsel notice that they will provide a Corp.
22 rep on certain of those topics. I personally e-mailed
23 Debtor's counsel and noted the specific topic areas
24 that Mr. Kistler would be knowledgeable of and capable
25 of giving deposition testimony in this case. And so

1 while AHMSI does not have an objection to -- well, let
2 me think about that. Strike that.

3 AHMSI does object to the entry of any
4 exhibit in this particular deposition that
5 Mr. Kistler -- any exhibit that Mr. Kistler would not
6 have knowledge of; and previous to this deposition, we
7 went through each of those exhibits, and Mr. Kistler
8 stated whether he had knowledge of those exhibits or
9 not. So I think it's almost duplicative to do that
10 now on the record. So I would say let's go forward
11 with the deposition on those topics upon which he has
12 been designated as having knowledge so that we can get
13 this deposition moved.

14 MR. BARTHLOW: Your objection is noted,
15 and I would respond by saying that we have, as Counsel
16 has indicated, provided a notice of deposition that
17 designated several topics, and we have served
18 discovery requests and received discovery responses
19 including the documents that we've been discussing,
20 and no motion to quash or other filing has been made
21 with the Court seeking to limit the scope of this
22 deposition, and for that reason I think that it is
23 absolutely appropriate to at least identify those
24 documents that have been produced but for which AHMSI
25 has not produced a witness who is capable of

1 testifying to, and so I'm simply going to go through
2 those documents. We can mark them as exhibits and
3 have them attached to the transcript if Counsel would
4 prefer to do that. I think it would be more expedient
5 simply to identify the Bates range and have the
6 witness simply state that he's not here to testify
7 about those documents and lacks knowledge about them.

8 MR. ALFIERI: Okay. Then what we will do
9 is we'll go forward. You can present the document to
10 Mr. Kistler, and our standing objection will be that
11 pursuant to notification to Debtor's counsel he was
12 advised that Mr. Kistler did not have knowledge of
13 these particular areas, notwithstanding Counsel was
14 presented documents and is asking Mr. Kistler to
15 provide knowledge on those topic areas. And my advice
16 to Mr. Kistler, which I believe he will take, is that
17 he will defer to my counsel and not provide any
18 testimony on these particular designated documents.

19 MR. BARTHLOW: And, again, I'm not
20 asking Mr. Kistler to provide testimony on the
21 documents. I'm asking Mr. Kistler simply to explain
22 that he will not be providing testimony on these
23 documents.

24 MR. ALFIERI: Do you feel comfortable
25 with doing that?

1 THE WITNESS: I can state I've never seen
2 the documents.

3 MR. ALFIERI: All right. Then let's go
4 forward.

5 MR. BARTHOLOW: Okay.

6 Q. (BY MR. BARTHOLOW) First, Mr. Kistler, I'm
7 going to hand you documents that are Bates labelled
8 AHMSI Troutman dash 00070 through 00128. Have you
9 seen those documents before?

10 A. No, sir, I've never seen these documents
11 before.

12 Q. Okay. All right. And now I'm handing to you
13 documents Bates labelled AHMSI Troutman 00059 through
14 00063. Have you seen these documents before?

15 A. No, sir.

16 Q. Okay. Thank you. Now I'm handing you
17 documents Bates labelled 00045 through 00058. Have
18 you seen these documents before?

19 A. No, sir.

20 Q. And now I'm handing you documents Bates
21 labelled 00001 through 00040. Have you seen these
22 documents before?

23 A. No, sir.

24 Q. Okay. Now, I'm handing you documents Bates
25 labelled 00064. Have you seen that before?

1 A. No, sir.

2 Q. And another document labelled 00065. Have
3 you seen that?

4 A. No, sir.

5 Q. And a document labelled 00066.

6 A. No, sir.

7 Q. And a document labelled 00067?

8 A. No, sir.

9 Q. And a document labelled 00069?

10 A. No, sir.

11 Q. And I'm sorry. Let me -- it appears I've got
12 that printed twice, so we don't need to even look at
13 that.

14 Okay. Mr. Kistler, have you read the
15 motion for relief from stay that is the subject of
16 this deposition?

17 A. No, sir.

18 Q. Okay. Have you read the affidavit of Mirjeta
19 (pronouncing) or Mirjeta Isufi that was filed in
20 connection with this motion for relief from stay?

21 A. No, sir.

22 Q. Have you seen the notice of withdrawal of
23 motion for -- actually, you may want to correct me.
24 That may be the affidavit that was filed in connection
25 with the previous motion for relief.

1 MR. ALFIERI: Yeah. I never -- I don't
2 remember seeing that.

3 MR. BARTHOLOW: Okay. Fair enough.

4 Q. (BY MR. BARTHOLOW) Have you seen the notice
5 of withdrawal of the first motion for relief from stay
6 filed in this case?

7 A. No.

8 Q. Have you seen the first motion for relief
9 from stay filed in this case?

10 A. No, sir.

11 Q. Okay. Have you seen the Debtor's response
12 filed in opposition to the current motion for relief
13 from stay in this case?

14 A. No, sir.

15 Q. Okay. And -- we looked at that. I'm handing
16 you document Bates label AHMSI 00041 through 42. Have
17 you seen this document before?

18 A. No, sir.

19 Q. Okay. I'm handing you document Bates
20 labelled AHMSI 00043 to 44. Have you seen that
21 document before?

22 A. No, sir.

23 Q. I'm handing you the affidavit of Arthur Dale
24 Simmons filed in connection with the current motion
25 for relief from stay. Have you seen that document

1 before?

2 A. No, sir.

3 Q. Okay. And I'm handing you the affidavit of
4 Laura Kelly that was filed in connection with the
5 current -- no, the previous motion for relief from
6 stay. Have you seen that document before?

7 A. No, sir.

8 Q. Okay. Now I'm handing you the affidavit of
9 Roger Kistler that was filed in connection with the
10 current motion for relief from stay. Have you seen
11 that document before?

12 A. Yes, sir.

13 Q. Is that your signature on that document?

14 A. Yes, it is.

15 Q. Do you know who Mary Francis Archer is?

16 A. Yes.

17 Q. Okay. Was she present when you signed this
18 document?

19 A. Yes, sir.

20 Q. Okay. And is she an employee of AHMSI?

21 A. Yes, sir.

22 Q. Okay. And does she work in your department?

23 A. No, sir, she does not.

24 Q. Okay. What department does she work in?

25 A. She works in the legal department.

1 Q. Okay. And now I am handing you the qualified
2 written request letter dated April 9, 2009, that was
3 sent by my office to American Home Mortgage Servicing,
4 Inc. regarding this loan. Have you seen that document
5 before?

6 A. No, sir.

7 Q. Okay. And I'm handing you the affidavit of
8 Roger Kistler from the Martin Louis Brown, Jr. case.
9 Have you seen that document before?

10 A. Yes, sir.

11 Q. And did you sign that document?

12 A. Yes, sir, that is my signature.

13 Q. Okay. And do you know who Brenda -- is it
14 Pecina (pronouncing)?

15 A. Pecina.

16 Q. Pecina?

17 A. Yes.

18 Q. Okay. And is she an AHMSI employee?

19 A. Yes, she is.

20 Q. Does she work in your department?

21 A. At this time, no, sir.

22 Q. Okay. As of the 16th day of February 2010,
23 did she work in your department?

24 A. I do not know that, sir.

25 Q. Okay. And did you testify in the Martin

1 Louis Brown case in a case in which I was the counsel
2 for the debtor?

3 A. Yes, sir.

4 Q. Okay. And that was in Judge Rode's court in
5 the Eastern District of Texas?

6 A. Yes, sir.

7 Q. Okay. And did my office serve a subpoena on
8 you for that?

9 A. Yes, sir.

10 Q. Okay. And so if we had a transcript of the
11 testimony that you gave in that case to the extent
12 that it could be authenticated as the Court's
13 transcript, would you agree that that's your
14 testimony?

15 A. Yes, sir.

16 MR. BARTHOLOW: Okay. I'd like to
17 actually have this marked as Exhibit 1, please.

18 (Exhibit No. 1 was marked)

19 MR. BARTHOLOW: Thank you.

20 Q. (BY MR. BARTHOLOW) Why don't I mark the one
21 that you've already looked at, sir. Thank you. Okay.

22 MR. BARTHOLOW: I'm going to note for the
23 record that according to this affidavit there were two
24 attached exhibits, Exhibit A and Exhibit B, and that
25 the affidavit that I've marked as Deposition Exhibit 1

1 is simply the affidavit and does not include the
2 attached note or deed of trust. Do you agree that
3 that's the case?

4 A. I agree, sir.

5 (Exhibit No. 2 was marked)

6 Q. (BY MR. BARTHOLOW) Okay. I've now marked as
7 Exhibit 2 a document that is Bates labelled AHMSI
8 00618 through 00628. And will you take a look at this
9 document, please?

10 A. (Witness reads).

11 Q. Have you seen that document before?

12 A. No, sir, I have never seen this document
13 before.

14 Q. Okay. As far as you are aware, who is the
15 current owner of the note and deed of trust at issue
16 in this case?

17 A. Deutsche Bank, National Trust Company as
18 trustee for the Harborview Securitization 2006-7.

19 Q. Okay. And pursuant to what authority is
20 AHMSI authorized to service the loan on behalf of that
21 trust?

22 A. Under the pooling and servicing agreement
23 dated August -- I believe it's August 1st, 2006.

24 Q. Okay. And is it your testimony that that
25 pooling and servicing agreement identifies AHMSI as

1 the servicer of this trust?

2 A. Yes, sir.

3 (Exhibit No. 3 was marked)

4 Q. (BY MR. BARTHLOW) Okay. Let's see. I am
5 handing you a document that I've marked as Deposition
6 Exhibit No. 3 which I'd like you to take a look at,
7 and let me know whether you've seen that before.

8 A. Yes, sir, I have seen this document before.

9 Q. Okay. Can you tell me what it is?

10 A. It is an assignment of note and deed of trust
11 concerning the Troutman loan.

12 Q. Okay. And who is the assignor?

13 A. The assignor is Mortgage Electronic
14 Recordation System as nominee.

15 Q. Okay. Would that be Registration Systems.

16 A. Registration System. I'm sorry, sir.

17 Q. Okay. And to whom is the -- the note in deed
18 of trust assigned according to this agreement?

19 A. It is assigned to Harborview 2006-7.

20 Q. Okay. Is that the owner of the note?

21 A. That is the owner of the note, yes, sir.

22 Q. Okay. A moment ago you stated that the owner
23 of the note was Deutsche Bank as trustee for --

24 A. Harborview, yes, sir.

25 Q. Okay. And so now I'd like to hand you what

1 I've marked as Deposition Exhibit 4.

2 (Exhibit No. 4 was marked)

3 Q. (BY MR. BARTHOLOW) And this is not stapled,
4 so if we do end up needing to take it apart, I just
5 ask that we take care. It is Bates labelled, and I
6 will represent to you that it's Bates labelled AHMSI
7 Troutman 00629 through 00849. Please take a look and
8 confirm the Bates label.

9 A. Yes.

10 Q. And that's accurate, okay. Can you tell me
11 what that document is?

12 A. This is the pooling and servicing agreement
13 for the Harborview 2006-7 securitization.

14 Q. Okay. Is there a name for this trust that's
15 indicated on this agreement?

16 A. The trust is --

17 Q. And if you'd tell me where you're looking
18 when you tell me that.

19 A. Harborview Mortgage Loan Trust Mortgage Loan
20 Past Due Certificate Series 2006-7.

21 Q. Okay. And is that exactly what is written on
22 the assignment of note and deed of trust that we were
23 just looking at?

24 A. No, it is not, sir.

25 Q. Okay. And is it your understanding that this

1 assignment of note and deed of trust is the document
2 that conveyed the mortgage loan to this trust?

3 A. Yes, sir.

4 Q. Okay. Do you know who Robert Hardman is?

5 A. Yes, I know who Robert Hardman.

6 Q. Okay. How do you know Robert Hardman?

7 A. He has been an employee of American Home
8 Mortgage Servicing as long as I have.

9 Q. Okay. And I'm sorry, remind me how long that
10 is.

11 A. Since April 13th of 2008.

12 Q. Okay. Do you know how he was employed prior
13 to that?

14 A. He was employed by American Home Mortgage
15 Holdings out of Melbourne, New York.

16 Q. Okay. So does Mr. Hardman work for Mortgage
17 Electronic Registration Systems?

18 A. No, sir, he does not.

19 Q. Okay. As far as you're aware, has he ever
20 worked for them?

21 A. No, sir.

22 Q. Okay. Are you aware of him having ever been
23 a vice president of Mortgage Electronic Registration
24 Systems?

25 A. Yes, sir.

1 Q. Okay. Explain that to me.

2 A. Under a corporate resolution given from
3 Mortgage Electronic Registrations System to American
4 Home Mortgage Servicing Inc. he is an authorized
5 signer for MERS and the title of vice president and
6 assistant secretary.

7 Q. Okay. And has that -- are you aware of
8 whether that document has been produced in connection
9 with this case?

10 A. I'm not aware of any such -- I'm not aware
11 that it has been produced, no, sir.

12 Q. Okay. And has Mortgage Electronic
13 Registration Systems ever owned this loan?

14 A. No, sir.

15 Q. No?

16 A. No, sir.

17 Q. Okay. Have they ever had possession of this
18 loan?

19 A. No, sir.

20 Q. Okay. When did the trust that is identified
21 in Exhibit 4 first come into possession of the note
22 that's the subject of this case?

23 A. I believe on the date of that document, sir,
24 on the date of this document which is August the 1st,
25 2006.

1 Q. Okay. If you would, turn back to Exhibit 3,
2 please, and tell me what the date of that document is?

3 A. That document is dated May 19, 2008.

4 Q. Okay. And so just to reclarify, it's your
5 testimony that the trust became the owner of this loan
6 by virtue of this assignment; is that right?

7 A. No, sir. The trust became the owner of the
8 note on August 1st, 2006.

9 Q. Okay. Then can you clarify for me what the
10 effect of this assignment is?

11 A. The effect of this assignment was to take the
12 loan out of title on the Tarrant County records and
13 put it into the name of the trust, take it out of the
14 name of Mortgage Electronic Registration System and
15 put it into the name of Harborview 2006-7.

16 Q. Okay. And so while I understand that you're
17 not a lawyer, correct?

18 A. No, sir, I am not a lawyer.

19 Q. Is it -- is it your understanding that an
20 assignment is simply a mechanism used to change the
21 designation in the deed records?

22 A. Yes, sir.

23 Q. Okay. And that that's the sole purpose of
24 this is to change the designation of the deed records?

25 A. Yes, sir.

1 Q. Okay. Okay. And do you know what Mortgage
2 Electronic Registration Systems, Inc. is?

3 A. Would you expound on that question, please,
4 sir?

5 Q. Well, it says there -- the name indicates
6 that they are incorporated. Is it your understanding
7 that they are a business?

8 A. Yes, sir.

9 Q. Okay. Do you know what the nature of their
10 business is?

11 A. No, sir.

12 Q. Okay. Do you know what authority Mortgage
13 Electronic Registration Systems had to make a change
14 in the deed records?

15 A. In this particular case, they are -- if you
16 looked at the deed of trust, they are the nominee for
17 the lender as the beneficiary on the deed of trust.

18 Q. Okay. What is a nominee for a lender?

19 A. It is the terminology on the deed of trust.
20 It's -- that's normal MERS language, Mortgage
21 Electronic Record -- Registration System, which I will
22 abbreviate as MERS.

23 Q. Okay. And so normal MERS language, does that
24 mean there's a MERS dictionary somewhere that we could
25 look up that would tell us what a nominee is?

1 A. No, sir. That's normal mortgage banking
2 terminology and practice.

3 Q. Well, I'm familiar with the term in the
4 political context. I'm a little less familiar with it
5 in the mortgage banking context. What are a
6 nominees -- what is a nominee's role in a real estate
7 deal or with regard to deeds of trust such as the one
8 in this case?

9 A. I don't know, sir. I don't know.

10 Q. Okay. Okay. And do you know whether MERS
11 has any employees?

12 A. Yes, sir, they have employees.

13 Q. Do you know where their business is located?

14 A. Their business is in Flint, Michigan, I
15 believe, is the address that they use for all of their
16 correspondence.

17 Q. Okay. Do you know if that's where their --
18 do they have offices in Flint, Michigan?

19 A. I do not know, sir.

20 Q. Okay. And do you know whether Mr. Hardman
21 has any responsibilities as a vice president of MERS
22 other than assigning documents?

23 A. No, sir, he should not, but I am not -- I
24 can't swear that one way or the other.

25 Q. Okay. And is there some document that

1 actually conveys the authority to assign documents to
2 Mr. Hardman that you're aware of?

3 A. There is a corporate resolution, yes, sir.

4 Q. Okay. And would you be able to produce that
5 if asked to do so?

6 A. I believe American Home Mortgage Service,
7 Inc. can produce that if asked to, yes, sir.

8 Q. Okay. Do you know where it is maintained?

9 A. No, sir, I do not.

10 Q. Okay.

11 MR. ALFIERI: Just to clarify, that's not
12 within our custody and control, that document that was
13 just referred to.

14 MR. BARTHOLOW: So --

15 MR. ALFIERI: So that's why it was not
16 produced.

17 MR. BARTHOLOW: I'm sorry. Mr. Alfieri,
18 I think that constitutes testimony. And If you want
19 to produce a witness that's going to provide that
20 testimony, that would be great, but --

21 MR. ALFIERI: Look, I'm giving you a
22 heads-up that the document you just asked my witness
23 for we do not have. It is not our document, and
24 that's why it wasn't produced. Now, you can do with
25 that information what you want, but I'm giving you a

1 heads-up right now at this deposition that we will not
2 produce any document that we don't have custody of.

3 MR. BARTHLOW: Let the record reflect
4 that Mr. Alfieri is raising his voice.

5 Q. (BY MR. BARTHLOW) So given Counsel's
6 statement on the record, testimony, are you -- have
7 you ever seen a power of attorney such as the one that
8 you've described to me?

9 A. Yes, sir.

10 Q. You have?

11 A. Yes, sir.

12 Q. Where were you when you saw it?

13 A. At my desk.

14 Q. Okay. And so was your desk at American Home
15 Mortgage Servicing Inc.?

16 A. Yes, sir.

17 Q. Okay. And what was the context or the
18 circumstances in which you saw that?

19 A. When I was also listed as a person who could
20 sign for Mortgage Electronic Registration System.

21 Q. Okay. At that time did you sign the
22 document?

23 A. No, I did not sign that document, sir.

24 Q. Okay.

25 A. As counsel has said, that's a MERS document.

1 That's not our document.

2 Q. And so AHMSI does not retain a copy of that
3 document; is that your understanding?

4 A. I'm not sure, sir.

5 Q. Not sure, okay. What did you do with the
6 document?

7 A. I am not -- it is not my responsibility to
8 maintain that document, sir.

9 Q. I understand. When you saw it, what was the
10 reason why you saw it?

11 A. Just so that I could be sure that I was on
12 the list of authorized signers for that document for
13 MERS.

14 Q. Okay. And was it in paper form?

15 A. No, sir. It was in soft copy electronic
16 form.

17 Q. It was an electronic form, so it was on your
18 computer?

19 A. At that time it was, yes, sir.

20 Q. Did you delete it from your computer?

21 A. I've had three computers since then, sir.

22 Q. Okay. Did you receive it via e-mail?

23 A. I'm going to say yes, but I'm not sure.

24 Q. Okay. Do you recall when it was -- or have
25 you seen this document more than once?

1 A. No, sir.

2 Q. Okay. Do you recall the year when you
3 received that document when you first saw it?

4 A. Since American Home Mortgage Servicing, Inc.
5 became an entity among itself in 2008. I'm going to
6 say it was sometime after that.

7 Q. Okay. Would you be able to be anymore
8 specific than that?

9 A. No, sir.

10 Q. Okay. Have you deleted e-mails that you have
11 received since the time that you began work at
12 American Home Mortgage Servicing, Inc.?

13 A. Yes, sir.

14 Q. Have you deleted -- do you know where this
15 e-mail came from?

16 A. No, sir, I don't remember.

17 Q. Okay. Would you be able to look through your
18 e-mail records and let me know whether it is still
19 stored in the archives?

20 A. I can do that.

21 Q. Thank you.

22 MR. ALFIERI: I think the mechanism for
23 that going forward is if there are additional
24 requests, I'd like you to put them in a letter and
25 address them to counsel, me, and we'll address them

1 accordingly.

2 MR. BARTHLOW: The question was whether
3 he'd be able to do it, and his answer was yes, he'd be
4 able to do it. I will make the request.

5 MR. ALFIERI: Please do.

6 Q. (BY MR. BARTHLOW) Okay. So Mr. Kistler,
7 let's turn back to Exhibit 4, please. Do you know
8 what the term "depositor" means?

9 A. No, sir.

10 Q. Okay. If you look at the front page of this
11 exhibit, there's a name at the very top of the page
12 that says, "Greenwich Capital Acceptance, Inc." Do
13 you see that?

14 A. Yes, sir.

15 Q. Okay. And beneath it, it says the word
16 "depositor"?

17 A. Yes.

18 Q. Have you read this agreement before?

19 A. I have read parts of this agreement, yes,
20 sir.

21 Q. Okay. How do you know it to be the agreement
22 by which this particular trust came to be the owner of
23 this loan?

24 A. The pooling -- the Schedule A pooling
25 schedule attached to this lists the particular

1 Troutman loan on that documentation as part of this
2 pooling and servicing agreement for this trust.

3 Q. Okay. And what is a -- can you direct me to
4 the page where that is located at this time?

5 A. I'm not sure it's located on this document.
6 It should be an attachment to this document.

7 Q. Okay. And I believe Counsel has produced two
8 lines of an Excel spreadsheet that counsel has
9 represented to me as indicating that this loan is a
10 part of this pool. Aside from an electronic
11 spreadsheet, have you ever seen the schedule to which
12 you are referring right now?

13 A. That's -- that's what it is. It's an
14 electronic spreadsheet.

15 Q. Okay. There is no print version?

16 A. If you want to print out all 4300 lines, I
17 guess we could make one.

18 Q. Is it 4300 lines?

19 A. I believe so.

20 Q. Okay. And do you know whether that was filed
21 with the Securities and Exchange Commission?

22 A. I have no idea, sir.

23 Q. And do you know where that list is
24 maintained?

25 A. It is maintained in Deutsche Bank as part of

1 their responsibilities.

2 Q. And do you know in what format it is
3 maintained?

4 A. No, sir.

5 Q. Okay. Do you know -- did you compile the
6 list?

7 A. No, sir.

8 Q. Okay. Do you know who compiled the list?

9 A. No, sir.

10 Q. Okay. Do you know when the list was first
11 compiled?

12 A. I'm assuming -- no, sir.

13 Q. I'm not asking you to assume.

14 A. No, sir, I do not know.

15 Q. Okay. Okay. I would like you to turn to
16 Section 2.01 of this document, which I will represent
17 to you is on Bates Page No. AHMSI 00685, also labelled
18 page 57 of 221 in the upper right-hand corner.

19 A. I have it, sir.

20 Q. Okay. I would like you to begin reading the
21 paragraph and continue reading until I ask you to stop
22 beneath where it says, "Section 2.01, Conveyance of
23 Mortgage Loans." And if you would, please begin
24 reading.

25 A. "The Depositor, concurrently with the

1 execution and delivery hereof, does hereby transfer,
2 assign, set over and otherwise convey to the Trustee
3 without recourse for the benefit of the Certificate
4 Holders and the Certificate Insurer all the right,
5 title, and interest of the Depositor, including any
6 security interest therein for the benefit of the
7 Depositor, in and to each Mortgage Loan identified on
8 the Mortgage Loan Schedule, including the related
9 Cut-off Date Principal Balance, all interest due
10 thereon after the Cut-off Date and all collections in
11 respect with interest and principal due after the
12 Cut-off Date, all the Depositor's rights, title and
13 interest in and to the Distribution Account and all
14 amounts from time to time credited to and to the
15 proceeds of the Distribution Account, any real
16 property that secured each Mortgage Loan and that has
17 been acquired by foreclosure or deed in lieu of
18 foreclosure, the Depositor's interest in any insurance
19 policies in respect of the Mortgage Loans, all
20 proceeds of any of the foregoing; and all other assets
21 included or to be included in the Trust Fund. Such
22 assignment includes all interest and principal due the
23 Depositor or the Master Servicer after the Cut-off
24 Date with respect to the Mortgage Loans."

25 Q. That's fine right there. Thank you.

1 Actually, no. Go ahead and finish. I'm sorry.

2 A. "In exchange for such transfer and
3 assignments, the Depositor shall receive the
4 certificates."

5 Q. Okay. Thank you. Now, I would like you to
6 turn to the definition sections of this which is
7 before the page where you just were, and I'll find the
8 exact page where I want you to look.

9 First, I'd like to ask you, when you were
10 on the stand in the Martin Brown case that we were
11 discussing before, did you read similar language in a
12 different pooling and servicing agreement?

13 MR. ALFIERI: Objection, form. You know,
14 there's no -- I'm going to have to object also to the
15 question. First of all, he hasn't been presented with
16 his testimony in the Martin Brown case.

17 Q. (BY MR. BARTHOLOW) If you recall.

18 MR. ALFIERI: Secondly, he hasn't been
19 presented with the particular document you're
20 referencing in the deposition in the Martin Brown
21 case, so I'm just going to have to object to this
22 entire line of questioning right now.

23 MR. BARTHOLOW: And, third, it's vague.
24 That's fine. Strike the question. I'm going to ask
25 it a little bit differently.

1 Q. (BY MR. BARTHOLOW) Have you ever read similar
2 language in any pooling and servicing agreement as far
3 as you recall?

4 A. As far as I recall, no.

5 Q. Okay. Have you ever, as far as you recall,
6 ever read the definition of what a depositor is in any
7 pooling and servicing agreement?

8 A. No, sir.

9 Q. Okay. I would like you to return to page 22
10 of 221 in the upper right-hand corner which is Bates
11 labelled page AHMSI 00650.

12 A. I have it, sir.

13 Q. Okay. And the second definition from the
14 bottom of that page, I believe, says depositor. Is
15 that what you see?

16 A. Yes, sir.

17 Q. Can you read what depositor is defined as?

18 A. Greenwich Capital Acceptance, Incorporated, a
19 the Delaware Corporation or any successor in interest.

20 Q. As far as you're aware, has Greenwich Capital
21 Acceptance, Inc. ever owned this loan?

22 A. No, sir.

23 Q. Okay. Are you aware of any entity having
24 owned this loan other than the trust at issue in this
25 case?

1 A. Yes, sir.

2 Q. What entity?

3 A. American Brokers Conduit, sir.

4 Q. Is it your understanding that American
5 Brokers Conduit sold this loan to this trust?

6 A. Yes, sir.

7 Q. Okay. And what is your basis for that
8 understanding?

9 A. Based on the note that they were the original
10 lender of the loan.

11 Q. Okay. So is it your testimony that you
12 are -- well, let me go back.

13 When began this deposition, we discussed
14 a number of documents that you felt you were not
15 comfortable to testify about, correct?

16 A. Yes, sir.

17 Q. Okay. And then before we began this, we
18 discussed this Exhibit 4, the pooling and servicing
19 agreement, and you stated that this was a document
20 that you were comfortable testifying about, correct?

21 A. Yes, sir.

22 Q. Okay. And can you tell me the basis for your
23 comfort level in testifying about this document?

24 MR. ALFIERI: Objection, form.

25 Q. (BY MR. BARTHLOW) Why do you feel confident

1 to testify about this document?

2 A. It's the document that governs how American
3 Home Mortgage services the loan.

4 Q. Okay. And we'll get to that in a minute. Is
5 there any other thing about this document that you
6 feel comfortable testifying about?

7 A. No, sir.

8 Q. Okay. So if it was, in fact, the case that
9 Greenwich Capital Acceptance, Inc., conveyed the loan
10 to this trust, would that be different than your
11 understanding?

12 MR. ALFIERI: Objection, form.

13 Q. (BY MR. BARTHOLOW) You can answer, if you
14 know.

15 A. I don't know, sir.

16 Q. Okay. Did you just tell me that you believe
17 that the loan was conveyed by American Brokers Conduit
18 to the trust?

19 A. Yes, sir.

20 Q. And so if it was conveyed by any entity other
21 than American Brokers Conduit, that would be different
22 than what your understanding is; is that correct?

23 A. Yes, sir.

24 Q. Okay. But it's also your testimony that this
25 trust agreement is the agreement that governs the

1 servicing of this loan; is that right?

2 A. Yes, sir.

3 Q. Okay. In your review of this trust
4 agreement, have you seen any other place in the
5 agreement whereby the loans are conveyed to this
6 trust?

7 A. No, sir.

8 Q. Have you seen any mention of American Brokers
9 Conduit in this agreement?

10 A. No, sir.

11 Q. Okay. Have you seen any mention of American
12 Home Mortgage Servicing, Inc., in this agreement?

13 A. Yes, sir.

14 Q. Okay. Tell me where.

15 A. Page 6.

16 Q. Wait. Before we talk about that, when did
17 American Home Mortgage Servicing, Inc., come into
18 existence?

19 A. The present company came into existence in
20 April of 2008.

21 Q. Okay. And I'm sorry. Let's go back to the
22 front page of this document. What's the date of the
23 document?

24 A. August 1, 2006.

25 Q. Okay. And so you said page -- you're looking

1 in the upper right-hand corner, page 6?

2 A. No. This is -- I'm sorry, page 11 of 221.

3 Q. Eleven, okay. And that's Bates label number
4 00639; is that right?

5 A. Yes, sir.

6 Q. Okay. Okay. And I'm -- I'm looking at the
7 definition here for an entity called American Home
8 Mortgage Servicing is the name in quotes?

9 A. Yes, sir.

10 Q. Correct. And it states American Home
11 Mortgage Servicing, Inc. and its successors and
12 assigns in its capacity as servicer of the American
13 Home Mortgage loans. Is that what you see?

14 A. That's what I see, yes, sir.

15 Q. Okay. What entity was that?

16 A. That was the entity at the time in August of
17 2006 that was servicing the loan.

18 Q. How do you know that?

19 A. That's what the document says.

20 Q. Okay. Now, you've testified that the company
21 you work for has only been in existence since 2008; is
22 that right?

23 A. Yes, sir.

24 Q. Okay. Are you aware of the company -- of a
25 company having existed with exactly the same name as

1 the company you work for?

2 A. Yes, sir.

3 Q. Okay. And what were the dates of that
4 company's existence?

5 A. I don't know, sir.

6 Q. Okay. And how did you come to be -- other
7 than the fact that it's printed in this document in
8 front of us, how did you come to be aware of the
9 existence of this other company?

10 A. That was the company that serviced the loans
11 and that I worked for in 2006.

12 Q. In 2006 you also worked for American Home
13 Mortgage Servicing, Inc.

14 A. Yes, sir.

15 Q. Okay. But it was a different entity?

16 A. It was a different entity, yes, sir.

17 Q. Okay. How -- what's the difference between
18 the two entities?

19 A. I can't answer that question, sir.

20 Q. Okay.

21 A. That's -- no.

22 Q. Was the logo the same for the old entity?

23 A. No, sir.

24 Q. Okay. Do you know whether management has
25 changed between the old and the new entity?

1 A. No, sir.

2 Q. No, it hasn't?

3 A. No, I do not know.

4 Q. Okay. And do you know where the current
5 entity is incorporated?

6 A. No, sir, I do not know.

7 Q. Did you know where the former entity was
8 incorporated?

9 A. No, sir.

10 Q. Okay. But your testimony is that the
11 American Home Mortgage Servicing, Inc., listed on this
12 document is not the same American Home Mortgage
13 Servicing, Inc., that you worked for today?

14 A. No, sir, it is not.

15 MR. BARTHOLOW: Did we already mark this
16 as an exhibit. I think we did.

17 Q. (BY MR. BARTHOLOW) I'm going to ask you to
18 turn back to Exhibit 2, please. I'd like you to turn
19 to Bates label page 00620 and take a look at the
20 signature at the very bottom of the page. Do you
21 recognize that signature?

22 A. Robert Hardman.

23 Q. Okay. And do you actually recognize that
24 handwriting?

25 A. No, sir, I do not.

1 Q. Okay.

2 A. I'm going off the printed name, not the
3 signature.

4 Q. Okay. Let's turn back to what I've marked as
5 Exhibit 3, please.

6 A. (Witness complies).

7 Q. Does Exhibit 3 also contain a signature by
8 Robert Hardman on it?

9 A. There is a signature by a printed name of
10 Robert Hardman.

11 Q. Okay.

12 A. I am not going to testify that it is the same
13 signature.

14 Q. Well, certainly it's not the same signature,
15 I hope. But looking at the two, do they look similar?
16 Just on your untrained -- I know you're not an
17 expert -- or I assume you're not a handwriting expert.
18 Are you?

19 A. No, sir, I am not a handwriting expert.

20 Q. To your untrained eye, do they look similar?

21 A. They look similar, yes, sir.

22 Q. Okay. And do you know Mr. Hardman
23 personally?

24 A. Yes.

25 Q. Okay. And what is -- in terms of your --

1 your -- and he works in the same office where you
2 work; is that correct?

3 A. He works in the same building, yes, sir.

4 Q. Is he on the same floor?

5 A. No, sir.

6 Q. Okay. And have you ever spoken with him
7 before?

8 A. Yes, sir.

9 Q. About how often do you speak with him?

10 A. Couple times a week.

11 Q. Okay. So you speak with him on -- well,
12 okay. And are your conversations business or personal
13 related generally?

14 A. 50/50.

15 Q. Okay. To the extent you have
16 business-related conversations, do they tend to relate
17 to anything in particular?

18 MR. ALFIERI: Objection, form.

19 A. Not -- there's not a repetitive subject that
20 we discuss, no.

21 Q. (BY MR. BARTHOLOW) Okay. So would it be fair
22 to say -- I'm not trying to be ridiculous here -- that
23 every conversation is unique?

24 MR. ALFIERI: Objection, form.

25 A. Not every one, no.

1 Q. (BY MR. BARTHLOW) Okay. Are there any
2 particular types of conversations that you have that
3 are recurring in terms of subject matter?

4 MR. ALFIERI: Objection, form.

5 A. No, sir.

6 Q. (BY MR. BARTHLOW) Okay. Have you spoken
7 with Mr. Hardman about this case prior to today?

8 A. No, sir.

9 Q. Okay. And have you ever seen him sign his
10 name before?

11 MR. ALFIERI: Objection, form.

12 A. No, sir.

13 Q. (BY MR. BARTHLOW) Okay. And I'm going to --
14 I'm going to restate the question for the record.

15 Have you ever seen Robert Hardman sign
16 his name to any document?

17 A. No, sir.

18 Q. Okay. And would it be accurate to say that
19 you work for Mr. Hardman?

20 A. No, sir, it is not accurate.

21 Q. Okay. And what department does he work in?

22 A. I do not know the official name of his
23 department, sir.

24 Q. Do you know what the basic scope of his
25 responsibilities are?

1 MR. ALFIERI: Objection, form.

2 A. Loss recovery.

3 Q. (BY MR. BARTHLOW) Okay. Can you unpack for
4 me what loss recovery means?

5 A. No, sir. I do not know his responsibilities.

6 Q. Has AHMSI ever owned the note at issue in
7 this case?

8 A. No, sir.

9 Q. Prior to the current proceedings, as far as
10 you are aware, has AHMSI ever been in possession of
11 the note in this case?

12 A. No, sir.

13 Q. Okay. And are you certain of that?

14 A. No, sir. But to my knowledge prior to this
15 case, AHMSI has never been in possession of this note.

16 Q. Okay. Have you reviewed the note at issue in
17 this case?

18 A. Yes, sir.

19 Q. Okay. What did your review of the note in
20 this case consist of?

21 A. Physically looking at it and reading.

22 Q. Okay. What in particular did you look at or
23 read?

24 A. The date, the lenders, the endorsement the
25 signatures.

1 Q. And was the document that you were looking at
2 the original with the blue ink signatures on it?

3 A. It was the original. Whether the signatures
4 were blue ink or not, I don't remember.

5 Q. Okay. That's fair enough. But they were ink
6 signatures, as best as you can tell?

7 A. Yes, they were ink signatures, yes, sir.

8 Q. And my recollection from conversations we've
9 had before is that part of your job involves
10 communicating with the entities that are custodians of
11 documents; is that correct?

12 A. Yes, sir.

13 Q. And it is my understanding that Deutsche Bank
14 is who you believe to be the custodian of the
15 documents in this case; is that right?

16 A. Yes, sir.

17 Q. Okay. In this case did you personally
18 request the production of the note in this case?

19 A. Explain production.

20 Q. Did you communicate personally with Deutsche
21 Bank in order to request release of the original note
22 to AHMSI?

23 A. No, sir, I did not communicate with Deutsche
24 Bank directly myself.

25 Q. Okay. And -- okay.

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MR. BARTHOLOW: I pass the witness.

MR. ALFIERI: We'll reserve our questions
for trial.

(Proceedings concluded at 2:11 PM)

1 STATE OF _____)

2 COUNTY OF _____)

3

4 Before me, _____, on this day
5 personally appeared ROGER KISTLER known to me (or
6 proved to me under oath or through

7 _____) (description of identity card

8 or other document) to be the person whose name is

9 subscribed to the foregoing instrument and

10 acknowledged to me that they executed the same for the

11 purposes and consideration therein expressed.

12 Given under my hand and seal of office this _____

13 day of _____, 2010.

14

15

16

NOTARY PUBLIC IN AND FOR

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THE STATE OF _____

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1 UNITED STATES BANKRUPTCY COURT
2 NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION
4

5 IN RE:)
6)
7)CASE NO.: 08-42533-dml13
8 DEREK TROUTMAN AND)Chapter 13
9 LATITIA TROUTMAN)
10)
11 Debtors.)

12 REPORTER'S CERTIFICATION
13 DEPOSITION OF ROGER KISTLER
14 APRIL 9, 2010

15 I, Cinnamon Boyle, Certified Shorthand Reporter in
16 and for the State of Texas, hereby certify to the
17 following:

18 That the witness, ROGER KISTLER, was duly sworn by
19 the officer and that the transcript of the oral
20 deposition is a true record of the testimony given by
21 the witness;

22 That the deposition was submitted on
23 _____, 2010 to the witness or to the
24 attorney for the witness for examination, signature
25 and return to me by _____, 2010;

That the amount of time used by each party at the

1 deposition is as follows:

2 THEODORE O. BARTHLOW, III - 00:53

3 MARK ALFIERI - 00:00

4 That pursuant to information given to the
5 deposition officer at the time said testimony was
6 taken, the following includes counsel for all parties
7 of record:

8 FOR THE PLAINTIFFS:

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FOR MOVANT AMERICAN HOME MORTGAGE SERVICING, INC.:

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18
19 I further certify that I am neither counsel for,
20 related to, nor employed by any of the parties or
21 attorneys in the action in which this proceeding was
22 taken, and further that I am not financially or
23 otherwise interested in the outcome of the action.
24
25

1 Certified to me by this ____ day of _____,
2 2010.

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Cinn Boyle



CINNAMON BOYLE

CSR 6394

Expiration Date: December 31, 2011

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